

## II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

## DECISIONS

## COMMISSION

## COMMISSION DECISION

of 22 November 2007

**on the conclusion of Agreements in the form of Exchange of Letters between the European Atomic Energy Community (Euratom) and the Swiss Confederation (Switzerland) on the application of the ITER Agreement, the Agreement on Privileges and Immunities for ITER and the Broader Approach Agreement to the territory of Switzerland and on Switzerland's membership in the European Joint Undertaking for ITER and the Development of Fusion Energy**

(2008/72/Euratom)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular the third paragraph of Article 101 thereof,

Having regard to Council Decision 2006/976/Euratom<sup>(1)</sup> of 19 December 2006 concerning the Specific Programme implementing the Seventh Framework Programme of the European Atomic Energy Community for nuclear research and training activities,

Having regard to Council Decision of 25 September 2006 concerning the conclusion, by the Commission, of the Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project (the ITER Agreement), of the Arrangement on Provisional Application of the Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation on the ITER Project and of the Agreement on the Privileges and Immunities of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project (the Agreement on Privileges and Immunities for ITER),

Having regard to Council Decision 2007/614/Euratom of 30 January 2007<sup>(2)</sup> concerning the conclusion, by the

Commission, of the Agreement between the European Atomic Energy Community and the Government of Japan for the Joint Implementation of the Broader Approach Activities in the Field of Fusion Energy Research (the Broader Approach Agreement),

Having regard to Council Decision 2007/198/Euratom of 27 March 2007<sup>(3)</sup> establishing the European Joint Undertaking for ITER and the Development of Fusion Energy (the Joint Undertaking) and conferring advantages upon it (Decision 2007/198/Euratom),

Having regard to the Cooperation Agreement between the European Atomic Energy Community and the Swiss Confederation in the field of controlled thermonuclear fusion and plasma physics<sup>(4)</sup>,

Whereas:

- (1) The ITER Agreement, the Agreement on Privileges and Immunities for ITER and the Broader Approach Agreement provide that they also apply to the territory of the Swiss Confederation, participating in the Euratom fusion programme as fully associated third State, in accordance with the Euratom Treaty or relevant agreement.

<sup>(1)</sup> OJ L 400, 30.12.2006, p. 404, as corrected by OJ L 54, 22.2.2007, p. 139-148.

<sup>(2)</sup> OJ L 246, 21.9.2007, p. 32.

<sup>(3)</sup> OJ L 90, 30.3.2007, p. 58.

<sup>(4)</sup> OJ L 242, 4.9.1978, p. 2, as amended by the protocol amending the Cooperation Agreement, OJ L 116, 30.4.1982, p. 21.

- (2) The Decision 2007/198/Euratom and the Statutes attached to the former (the Statutes) foresee the membership of third countries in the Joint Undertaking 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.
- (3) Annex I to the Statutes already provides for voting rights of Switzerland in the Governing Board of the Joint Undertaking as its Member.
- (4) Switzerland that contributes substantially to the Euratom programme in fusion energy research formally expressed its intention to become a member of the Joint Undertaking for an initial period of duration of the 7th Framework programme of Euratom.
- (5) It is in the interest of the Community to formally agree with Switzerland the application of the ITER Agreement, the Agreement on Privileges and Immunities for ITER and the Broader Approach Agreement to the territory of Switzerland and the modalities of Switzerland's membership in the Joint Undertaking,

HAS DECIDED AS FOLLOWS:

*Article 1*

1. The conclusion of the Agreement in the form of Exchange of Letters between the European Atomic Energy Community and the Swiss Confederation on the application of the Agreement on the Establishment of the ITER International Fusion Energy Organization for the joint implementation of the ITER Project, the Agreement on the Privileges and Immu-

nities of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project and the Agreement between Euratom and the Government of Japan for the joint implementation of the Broader Approach Activities in the field of fusion energy research to the territory of the Swiss Confederation is hereby approved on behalf of the Community.

2. The text of the Agreement is attached to this Decision as Annex I.

*Article 2*

1. The conclusion of the Agreement in the form of Exchange of Letters between the European Atomic Energy Community and the Swiss Confederation on Switzerland's membership in the Joint Undertaking for ITER and the Development of Fusion Energy is hereby approved on behalf of the Community.

2. The text of the Agreement is attached to this Decision as Annex II.

*Article 3*

The Commissioner responsible for Research or a person designated by him is hereby authorised to sign the respective letters referred to in Article 1 and 2 on behalf of the Community.

Done at Brussels, 22 November 2007.

*For the Commission*  
Janez POTOČNIK  
*Member of the Commission*

## ANNEX I

## AGREEMENT

**in the form of an Exchange of Letters between the European Atomic Energy Community and the Swiss Confederation on the application of the Agreement on the Establishment of the ITER International Fusion Energy Organization for the joint implementation of the ITER Project, the Agreement on the Privileges and Immunities of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project and the Agreement between Euratom and the Government of Japan for the joint implementation of the Broader Approach Activities in the field of fusion energy research to the territory of the Swiss Confederation**

*A. Letter from the Swiss Confederation*

Dear Commissioner,

I have the honour to inform you that the Swiss authorities have taken note of the contents of the EU Council Decision of 25 September 2006 (12731/06) on the conclusion of the Agreement on the Establishment of the ITER International Fusion Energy Organization for the joint implementation of the ITER project and of the Council Decision of 30 January 2007 (5455/07) on the conclusion of the Agreement between the Government of Japan and the European Atomic Energy Community (Euratom) for the joint implementation of the Broader Approach Activities in the field of fusion energy research.

The Swiss Confederation ('Switzerland') agrees to apply the Agreement on the Establishment of the ITER International Fusion Energy Organization for the joint implementation of the ITER project (ITER-Agreement, Annex I) and the Agreement between Euratom and the Government of Japan for the joint implementation of the Broader Approach Activities in the field of fusion energy research (Broader Approach Agreement, Annex II) on its sovereign territory, as stated in Article 21 of the ITER-Agreement and in Article 26 of the Broader Approach Agreement, respectively. The application of these Agreements to Switzerland constitutes a continuation of its existing commitment in the area of fusion research in the spirit of Article 3,3 of the Cooperation Agreement of 14 September 1978 between Switzerland and Euratom in the area of controlled nuclear fusion and plasma physics. In addition, it constitutes the implementation of an intensive cooperation in the area of scientific and technical research, as stated in the Agreement on Participation in the 7th Framework Programmes of the European Community and Euratom.

Regarding the application of these Agreements to Switzerland, Euratom and Switzerland have agreed by mutual consent on the following points:

- (a) Swiss nationals with full citizen's rights shall be eligible on the same conditions as those for nationals from EU Member States to be:
- nominated by Euratom as representatives to the Council of the ITER Fusion Energy Organization (Article 6.1 of the ITER-Agreement),
  - nominated by the Council of the ITER Fusion Energy Organization as senior staff (Article 6.7d of the ITER-Agreement),
  - personnel seconded by Euratom to the ITER International Fusion Energy Organization (Article 7.2 of the ITER-Agreement),
  - employed directly by the ITER International Fusion Energy Organization through an appointment by the Director-General of the ITER Fusion Energy Organization (Article 7.2 and 4b of the ITER-Agreement),
  - nominated by Euratom as representatives to the Steering Committee on the Broader Approach activities and to the Project Committees of the Broader Approach activities (Article 3 and 5 of the Broader Approach Agreement),
  - nominated by the Steering Committee as staff of the Secretariat (Article 4 of the Broader Approach Agreement),
  - seconded by Euratom to the Broader Approach activities, i.e. as member of the project teams or as project leader (Article 6 of the Broader Approach Agreement).

- (b) In accordance with Article 12 of the ITER-Agreement, Switzerland agrees that the Agreement on the Privileges and Immunities of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project (ITER-API, Annex III) applies to Switzerland in accordance with Article 24 of the ITER-API. Switzerland also agrees that the Privileges and Immunities of the Broader Approach Agreement apply to its territory in accordance with Article 13 and 14.5 of the Broader Approach Agreement.

The Annexes I to III form an integral part of the present letter.

The Swiss authorities shall be consulted by Euratom if the ITER-Agreement, the Broader Approach Agreement or the ITER-API mentioned in this Exchange of Letters are to be amended. Any amendment that would affect Switzerland's obligations requires its formal agreement before taking effect for Switzerland.

This agreed extension to Switzerland shall be applied provisionally on the date of the Commission's reply to this letter. The application of this Exchange of Letters remains provisional until the Swiss Parliament decides on the extension of its content to Switzerland. Switzerland shall notify Euratom the completion of the Swiss internal approval procedures. The date of receipt of this notification by Euratom constitutes the coming into force of the Exchange of Letters. The application of the different agreements to Switzerland mentioned in this letter ends if Switzerland is no longer member of the European Joint Undertaking for ITER and the Development of Fusion Energy.

Euratom shall notify the ITER International Fusion Energy Organisation and the Government of Japan of the present letter on the application of the ITER-Agreement and of the Broader Approach Agreement to Switzerland.

Yours very sincerely,

Bernhard MARFURT  
Head of Swiss Mission

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ANNEX I

**Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project**

*(The text of the Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER <sup>(1)</sup> Project is not reproduced here)*

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<sup>(1)</sup> OJ L 358, 16.12.2006, p. 62.

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ANNEX II

**Agreement between the Government of Japan and the European Atomic Energy Community for the Joint Implementation of the Broader Approach Activities in the Field of Fusion Energy Research**

*(The text of the Agreement between the Government of Japan and the European Atomic Energy Community for the Joint Implementation of the Broader Approach Activities in the Field of Fusion Energy Research <sup>(1)</sup> is not reproduced here)*

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<sup>(1)</sup> OJ L 246, 21.9.2007, p. 34.

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## ANNEX III

**Agreement on the Privileges and Immunities of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project**

*(The text of the Agreement on the Privileges and Immunities of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project <sup>(1)</sup> is not reproduced here)*

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<sup>(1)</sup> OJ L 358, 16.12.2006, p. 82.

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B. *Letter from the European Atomic Energy Community*

Sir,

Reference is made to your letter of 5 November 2007 stating:

'Dear Commissioner,

I have the honour to inform you that the Swiss authorities have taken note of the contents of the EU Council Decision of 25 September 2006 (12731/06) on the conclusion of the Agreement on the Establishment of the ITER International Fusion Energy Organization for the joint implementation of the ITER project and of the Council Decision of 30 January 2007 (5455/07) on the conclusion of the Agreement between the Government of Japan and the European Atomic Energy Community (Euratom) for the joint implementation of the Broader Approach Activities in the field of fusion energy research.

The Swiss Confederation ("Switzerland") agrees to apply the Agreement on the Establishment of the ITER International Fusion Energy Organization for the joint implementation of the ITER project (ITER-Agreement, Annex I) and the Agreement between Euratom and the Government of Japan for the joint implementation of the Broader Approach Activities in the field of fusion energy research (Broader Approach Agreement, Annex II) on its sovereign territory, as stated in Article 21 of the ITER-Agreement and in Article 26 of the Broader Approach Agreement, respectively. The application of these Agreements to Switzerland constitutes a continuation of its existing commitment in the area of fusion research in the spirit of Article 3.3 of the Cooperation Agreement of 14 September 1978 between Switzerland and Euratom in the area of controlled nuclear fusion and plasma physics. In addition, it constitutes the implementation of an intensive cooperation in the area of scientific and technical research, as stated in the Agreement on Participation in the 7th Framework Programmes of the European Community and Euratom.

Regarding the application of these Agreements to Switzerland, Euratom and Switzerland have agreed by mutual consent on the following points:

- (a) Swiss nationals with full citizen's rights shall be eligible on the same conditions as those for nationals from EU Member States to be:
- nominated by Euratom as representatives to the Council of the ITER Fusion Energy Organization (Article 6.1 of the ITER-Agreement),
  - nominated by the Council of the ITER Fusion Energy Organization as senior staff (Article 6.7d of the ITER-Agreement),
  - personnel seconded by Euratom to the ITER International Fusion Energy Organization (Article 7.2 of the ITER-Agreement),
  - employed directly by the ITER International Fusion Energy Organization through an appointment by the Director-General of the ITER Fusion Energy Organization (Article 7.2 and 4b of the ITER-Agreement),

- nominated by Euratom as representatives to the Steering Committee on the Broader Approach activities and to the Project Committees of the Broader Approach activities (Articles 3 and 5 of the Broader Approach Agreement),
  - nominated by the Steering Committee as staff of the Secretariat (Article 4 of the Broader Approach Agreement),
  - seconded by Euratom to the Broader Approach activities, i.e. as member of the project teams or as project leader (Article 6 of the Broader Approach Agreement).
- (b) In accordance with Article 12 of the ITER-Agreement, Switzerland agrees that the Agreement on the Privileges and Immunities of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project (ITER-API, Annex III) applies to Switzerland in accordance with Article 24 of the ITER-API. Switzerland also agrees that the Privileges and Immunities of the Broader Approach Agreement apply to its territory in accordance with Articles 13 and 14,5 of the Broader Approach Agreement.

The Annexes I to III form an integral part of the present letter.

The Swiss authorities shall be consulted by Euratom if the ITER-Agreement, the Broader Approach Agreement or the ITER-API mentioned in this Exchange of Letters are to be amended. Any amendment that would affect Switzerland's obligations requires its formal agreement before taking effect for Switzerland.

This agreed extension to Switzerland shall be applied provisionally on the date of the Commission's reply to this letter. The application of this Exchange of Letters remains provisional until the Swiss Parliament decides on the extension of its content to Switzerland. Switzerland shall notify Euratom the completion of the Swiss internal approval procedures. The date of receipt of this notification by Euratom constitutes the coming into force of the Exchange of Letters. The application of the different agreements to Switzerland mentioned in this letter ends if Switzerland is no longer member of the European Joint Undertaking for ITER and the Development of Fusion Energy.

Euratom shall notify the ITER International Fusion Energy Organisation and the Government of Japan of the present letter on the application of the ITER-Agreement and of the Broader Approach Agreement to Switzerland.'

I hereby have the honour to express the agreement of the European Atomic Energy Community with this letter.

Please, accept, Sir, the assurance of my highest consideration.

On behalf of the European Atomic Energy Community

Janez POTOČNIK

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## ANNEX II

## AGREEMENT

**in the form of an Exchange of Letters between the European Atomic Energy Community and the Swiss Confederation on Switzerland's membership in the European Joint Undertaking for ITER and the Development of Fusion Energy***A. Letter from the Swiss Confederation*

Dear Commissioner,

On 18 July 2006 the Swiss Confederation (Switzerland) notified the Commission about its interest in the European Joint Undertaking for ITER and the Development of Fusion Energy.

I am pleased to inform you that the Swiss authorities have taken note of the content of the Council Decision 2007/198/Euratom of 27 March 2007 on the establishment of the European Joint Undertaking for ITER and the Development of Fusion Energy (Joint Undertaking). In particular, Switzerland is aware of the possibility for third countries to become members of the Joint Undertaking under the condition that they have concluded a cooperation agreement with Euratom in the field of controlled nuclear fusion that associates their respective research programmes with the Euratom programmes.

On behalf of Switzerland I have the honour to state that, in accordance with Article 2 c) of the above-mentioned Council Decision, Switzerland is willing to become a member of the Joint Undertaking. This membership will be the basis of an ongoing cooperation between Euratom and Switzerland. It will substantiate the continuation of existing commitments to the fusion research in accordance with Article 3,3 of the Cooperation Agreement of 14 September 1978 between Euratom and Switzerland in the field of controlled nuclear fusion and plasma physics. In addition, this membership will constitute the implementation of an intensive cooperation in the area of scientific and technical research, as stated in the Agreement on Participation in the 7th Framework Programmes of the European Community and Euratom.

In view of the willingness of Switzerland to become a member of the Joint Undertaking, I would be grateful if you would confirm that the following interpretation is shared by the Commission representing Euratom:

*Notwithstanding Article 12,2 a) and 82,3 a) of the Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 on the Staff Regulations of Officials of the European Communities and the Conditions of Employment of other servants of the European Communities and in accordance with Article 10 of the Statutes of the Joint Undertaking attached to the Council Decision on the Joint Undertaking establishment and the implementing provisions for the application of the Staff regulations by the Joint Undertaking, the Swiss nationals with full citizen's rights may be appointed by the Director of the Joint Undertaking as the Joint Undertaking's staff.*

In addition, I would like to confirm that Switzerland as a member of the Joint Undertaking will comply with the above mentioned Council Decision on the Establishment of the Joint Undertaking and conferring benefits upon it. In particular:

- (a) In accordance with Article 7 of the above mentioned Council Decision Switzerland applies the Protocol on the Privileges and Immunities of the European Communities to the Joint Undertaking, its Director and Staff under the modalities attached to this correspondence (Annex I).
- (b) Switzerland confers all the advantages provided for in Annex III to the Euratom Treaty (Annex II) on the Joint Undertaking within the scope of its official activities.
- (c) Switzerland accepts the distribution of the voting rights of the Members of the Governing Board and to make annual membership contribution to the Joint Undertaking in accordance with Annex I and Annex II to the Statutes included in the above mentioned Council Decision.
- (d) Switzerland accepts the financial control as regards its participation in the activities of the Joint Undertaking stipulated in the above mentioned Council Decision and attached to this correspondence (Annex III).

Annexes I, II, and III form an integral part of the present letter.

According to Article 6.5 and Article 21 of the Statutes attached to the abovementioned Council Decision the Swiss authorities will be consulted if the provisions of the Statutes are to be amended. In point of fact, Switzerland underlines that any amendment that affects Switzerland's obligations requires its formal agreement before taking effect for Switzerland.

If the foregoing is acceptable for the Commission, I have the honour to propose that this letter together with the Commission's reply to that effect shall constitute an agreement between Switzerland and Euratom that shall be applied provisionally on the date of the Commission's reply to this letter. The application of this agreement remains provisional until the Swiss Parliament decides on the Swiss membership to the Joint Undertaking. Switzerland will notify Euratom of the completion of the Swiss internal approval procedures. The date of receipt of this notification by Euratom constitutes the coming into force of this Exchange of Letters. This agreement will be concluded for the duration of the seventh Euratom framework programme, i.e. from 2007 to 2011. It will be tacitly renewed for the duration of the following Euratom framework programmes, as long as neither party cancels the agreement at least one year before the end of the respective Euratom framework programme in force.

Yours very sincerely,

Bernhard MARFURT  
*Head of Swiss Mission*

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ANNEX I

**Protocol on the Privileges and Immunities of the European Communities**

*(The text of the Protocol on the Privileges and Immunities of the European Communities <sup>(1)</sup> is not reproduced here)*

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<sup>(1)</sup> OJ C 321 E, 29.12.2006, p. 318.

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Appendix

Procedure for the Application in Switzerland of the Protocol on the Privileges and Immunities of the European Communities

1. Extension of application to Switzerland

Wherever the Protocol on the privileges and immunities of the European Communities (hereinafter called 'the Protocol') contains references to Member States, the references shall be understood to apply equally to Switzerland, unless the following provisions determine otherwise.

2. Exemption of the European Joint Undertaking for ITER from indirect taxation (including VAT)

Goods and services exported from Switzerland shall not be subject to Swiss value added tax (VAT). In the case of goods and services provided to the European Joint Undertaking for ITER in Switzerland for its official use, in accordance with the second paragraph of Article 3 of the Protocol, exemption from VAT shall be granted by way of refund. Exemption from VAT shall be granted if the actual purchase price of the goods and services mentioned in the invoice or equivalent document totals at least 100 Swiss francs (inclusive of tax).

The VAT refund shall be granted on presentation to the Federal Tax Administration's VAT Main Division of the Swiss forms provided for the purpose. As a rule, refund applications shall be processed within the three months following the date on which they were lodged together with the necessary supporting documents.

3. Procedure for the application of the rules relating to the European Joint Undertaking for ITER's staff

As regards the second paragraph of Article 13 of the Protocol, Switzerland shall exempt, according to the principles of its national law, officials and other servants of the European Joint Undertaking for ITER within the meaning of Article 2 of Regulation (Euratom, ECSC, EEC) No 549/69 of 25 March 1969 (OJ L 74, 27.3.1969, p. 1) from federal, cantonal and communal taxes on salaries, wages and emoluments paid to them by the Community and subject to an internal tax for its own benefit.

Switzerland shall not be considered as a Member State within the meaning of point 1 above for the application of Article 14 of the Protocol.

Officials and other servants of the European Joint Undertaking for ITER and members of their families who are members of the social insurance system applicable to officials and other servants of the Community shall not be obliged to be members of the Swiss social security system.

The Court of Justice of the European Communities shall have exclusive jurisdiction in any matters concerning relations between the European Joint Undertaking for ITER or the Commission and its staff with regard to the application of Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 (OJ L 56, 4.3.1968, p. 1) and the other provisions of Community law laying down working conditions.

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ANNEX II

**Annex III of the Euratom Treaty providing Advantages on the Joint Undertaking 'Fusion for Energy'**

*(The text of Annex III of the Euratom Treaty is not reproduced here)*

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ANNEX III

**Financial Control as regards Swiss Participants in Activities of the European Joint Undertaking for ITER and the Development of Fusion Energy**

*Article 1*

**Direct communication**

The Joint Undertaking and the Commission shall communicate directly with all persons or entities established in Switzerland and participating in activities of the Joint Undertaking, as contractors, participants in the Joint Undertaking's programmes, recipients of payments from the Joint Undertaking or the Community budget, or subcontractors. Such persons may send directly to the Commission and to the Joint Undertaking all relevant information and documentation which they are required to submit on the basis of the instruments referred to in this Agreement and of contracts or agreements concluded and any decisions taken pursuant to them.

*Article 2*

**Audits**

1. In accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002, p. 1), as amended by Council Regulation (EC) No 1995/2006 of 13 December 2006 (OJ L 390, 30.12.2006, p. 1) and the financial regulation adopted by the Governing Board of the Joint Undertaking on 22 October 2007, with Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 (OJ L 357, 31.12.2002, p. 1), as last amended by Commission Regulation (EC, Euratom) No 478/2007 of 23 April 2007 (OJ L 111, 28.4.2007, p. 13) and with the other instruments referred to in this Agreement, contracts or agreements concluded and decisions taken with beneficiaries established in Switzerland may provide for scientific, financial, technological or other audits to be conducted at any time on the premises of the beneficiaries and of their subcontractors by Joint Undertaking and Commission officials or by other persons mandated by the Joint Undertaking and the Commission.
2. Joint Undertaking and Commission officials and other persons mandated by the Joint Undertaking and the Commission shall have appropriate access to sites, works and documents and to all the information required in order to carry out such audits, including in electronic form. This right of access shall be stated explicitly in the contracts or agreements concluded to implement the instruments referred to in this Agreement.
3. The Court of Auditors of the European Communities is to have the same rights as the Commission.
4. The audits may take place until five years after the expiry of this Agreement or under the terms of the contracts or agreements concluded and the decisions taken.
5. The Swiss Federal Audit Office shall be informed in advance of audits conducted on Swiss territory. This information shall not be a legal condition for carrying out such audits.

*Article 3*

**On-the-spot-checks**

1. Under this Agreement, the Commission (OLAF) shall be authorised to carry out on-the-spot checks and inspections on Swiss territory, under the terms and conditions set out in Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996.

2. On-the-spot checks and inspections shall be prepared and conducted by the Commission in close cooperation with the Swiss Federal Audit Office or with other competent Swiss authorities appointed by the Swiss Federal Audit Office, which shall be notified in good time of the object, purpose and legal basis of the checks and inspections, so that they can provide all the requisite help. To that end, the officials of the competent Swiss authorities may participate in the on-the-spot checks and inspections.

3. If the Swiss authorities concerned so wish, the on-the-spot checks and inspections may be carried out jointly by the Commission and by them.

4. Where the participants in the programme resist an on-the-spot check or inspection, the Swiss authorities, acting in accordance with national rules, shall give the Commission inspectors such assistance as they need to allow them to discharge their duty in carrying out an on-the-spot check or inspection.

5. The Commission shall report as soon as possible to the Swiss Federal Audit Office any fact or suspicion relating to an irregularity which has come to its notice in the course of the on-the-spot check or inspection. In any event the Commission is required to inform the aforementioned authority of the result of such checks and inspections.

#### Article 4

##### Information and consultation

1. For the purposes of proper implementation of this Annex, the competent Swiss and Community authorities shall exchange information regularly and, at the request of one of the Parties, shall conduct consultations.

2. The competent Swiss authorities shall inform the Joint Undertaking and the Commission without delay of any fact or suspicion which has come to their notice relating to an irregularity in connection with the conclusion and implementation of the contracts or agreements concluded in application of the instruments referred to in this Agreement.

#### Article 5

##### Confidentiality

Information communicated or acquired in any form whatever pursuant to this Annex shall be covered by professional secrecy and protected in the same way as similar information is protected by Swiss law and by the corresponding provisions applicable to the Community institutions. Such information shall not be communicated to persons other than those within the Community institutions, in the Member States, or in Switzerland whose functions require them to know it, nor may it be used for purposes other than to ensure effective protection of the financial interests of the Contracting Parties.

#### Article 6

##### Administrative measures and penalties

Without prejudice to application of Swiss criminal law, administrative measures and penalties may be imposed by the Joint Undertaking or the Commission in accordance with Regulations (EC, Euratom) No 1605/2002 of 25 June 2002 and (EC, Euratom) No 2342/2002 of 23 December 2002 and with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests.

#### Article 7

##### Recovery and enforcement

Decisions taken by the Joint Undertaking or the Commission within the scope of this Agreement which impose a pecuniary obligation on persons other than States shall be enforceable in Switzerland.

The enforcement order shall be issued, without any further control than verification of the authenticity of the act, by the authority designated by the Swiss government, which shall inform the Joint Undertaking or the Commission thereof. Enforcement shall take place in accordance with the Swiss rules of procedure. The legality of the enforcement decision shall be subject to control by the Court of Justice of the European Communities.

Judgments given by the Court of Justice of the European Communities pursuant to an arbitration clause shall be enforceable on the same terms.

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B. Letter from the European Atomic Energy Community

Sir,

I have the honour to acknowledge receipt your letter of 5 November 2007 which reads as follows:

'On 18 July 2006 the Swiss Confederation ("Switzerland") notified the Commission about its interest in the European Joint Undertaking for ITER and the Development of Fusion Energy.

I am pleased to inform you that the Swiss authorities concerned have taken note of the contents of the Council Decision 2007/198/Euratom of 27 March 2007 on the establishment of the European Joint Undertaking for ITER and the Development of Fusion Energy (Joint Undertaking). In particular, Switzerland is aware of the possibility for third countries to become members of the Joint Undertaking under the condition that they have concluded a cooperation agreement with Euratom in the field of controlled nuclear fusion that associates their respective research programmes with the Euratom programmes.

On behalf of Switzerland I have the honour to state that, in accordance with Article 2(c) of the above-mentioned Council Decision, Switzerland is willing to become a member of the Joint Undertaking. This membership will be the basis of an ongoing cooperation between Euratom and Switzerland. It will substantiate the continuation of existing commitments to the fusion research in accordance with Article 3.3 of the Cooperation Agreement of 14 September 1978 between Euratom and Switzerland in the field of controlled nuclear fusion and plasma physics. In addition, this membership will constitute the implementation of an intensive cooperation in the area of scientific and technical research, as stated in the Agreement on Participation in the 7th Framework Programmes of the European Community and Euratom.

In view of the willingness of Switzerland to become a member of the Joint Undertaking, I would be grateful if you would confirm that the following interpretation is shared by the Commission representing Euratom:

*Notwithstanding Article 12.2(a) and 82.3(a) of the Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 on the Staff Regulations of Officials of the European Communities and the Conditions of Employment of other servants of the European Communities and in accordance with Article 10 of the Statutes of the Joint Undertaking attached to the Council Decision on the Joint Undertaking establishment and the implementing provisions for the application of the Staff regulations by the Joint Undertaking, the Swiss nationals with full citizen's rights may be appointed by the Director of the Joint Undertaking as the Joint Undertaking's staff.*

In addition, I would like to confirm that Switzerland as a member of the Joint Undertaking will comply with the above mentioned Council Decision on the Establishment of the Joint Undertaking and conferring benefits upon it. In particular:

- (a) In accordance with Article 7 of the above mentioned Council Decision Switzerland applies the Protocol on the Privileges and Immunities of the European Communities to the Joint Undertaking, its Director and Staff under the modalities attached to this correspondence (Annex I).
- (b) Switzerland confers all the advantages provided for in Annex III to the Euratom Treaty (Annex II) on the Joint Undertaking within the scope of its official activities.
- (c) Switzerland accepts the distribution of the voting rights of the Members of the Governing Board and to make annual membership contribution to the Joint Undertaking in accordance with Annex I and Annex II to the Statutes included in the above mentioned Council Decision.
- (d) Switzerland accepts the financial control as regards its participation in the activities of the Joint Undertaking stipulated in the above mentioned Council Decision and attached to this correspondence (Annex III).

Annexes I, II, and III form an integral part of the present letter.

According to Article 6.5 and Article 21 of the Statutes attached to the above mentioned Council Decision the Swiss authorities will be consulted if the provisions of the Statutes are to be amended. In point of fact, Switzerland underlines that any amendment that affects Switzerland's obligations requires its formal agreement before taking effect for Switzerland.

If the foregoing is acceptable for the Commission, I have the honour to propose that this letter together with the Commission's reply to that effect shall constitute an agreement between Switzerland and Euratom that shall be applied provisionally on the date of the Commission's reply to this letter. The application of this agreement remains provisional until the Swiss Parliament decides on the Swiss membership to the Joint Undertaking. Switzerland will notify Euratom of the completion of the Swiss internal approval procedures. The date of receipt of this notification by Euratom constitutes the coming into force of this Exchange of Letters. This agreement will be concluded for the duration of the seventh Euratom framework programme, i.e. from 2007 to 2011. It will be tacitly renewed for the duration of the following Euratom framework programmes, as long as neither party cancels the agreement at least one year before the end of the respective Euratom framework programme in force.'

I have the honour to inform you that Euratom is in agreement with the above mentioned interpretation of the Staff regulations and the content of this letter, and to confirm that Switzerland shall become the member of the Joint Undertaking on the date of this letter.

Please, accept, Sir, the assurance of my highest consideration.

On behalf of the European Atomic Energy Community

Janez POTOČNIK

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