



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.04.2001
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Proposal for a

COUNCIL DECISION

approving the signing by the Commission of a cooperation agreement on thermonuclear fusion between the European Atomic Energy Community (Euratom) and Kazakhstan

(presented by the Commission)

EXPLANATORY MEMORANDUM

On 9 June 1995 the Council adopted, on a proposal from the Commission, a decision directing the latter to negotiate a cooperation agreement on thermonuclear fusion between the European Atomic Energy Community and Kazakhstan based on the second paragraph of Article 101 of the Euratom Treaty.

The negotiations between the Commission and the Kazakh authorities were completed without running into any particular difficulties and the resulting text, initialled on 27 June 2000, complies with the negotiating directives the Council issued to the Commission.

The Commission calls on the Council to adopt the annexed proposal for a decision approving the conclusion of the agreement.

Proposal for a

COUNCIL DECISION

approving the signing by the Commission of a cooperation agreement on thermonuclear fusion between the European Atomic Energy Community (Euratom) and Kazakhstan

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Whereas:

- (1) In accordance with the directives the Council adopted in its decision of 9 June 1995, the Commission has negotiated an agreement on thermonuclear fusion between the European Atomic Energy Community (Euratom) and Kazakhstan.
- (2) The Commission should be authorised to conclude the agreement.
- (3) The Council adopted a Decision on 22 December 1998 concerning the Fifth Framework Programme of the EAEC for research and training activities (1998-2002) which includes the key action controlled thermonuclear fusion.
- (4) The Council in its Decision of 25 January 1999 adopted a research and training programme in the field of nuclear energy (EURATOM) for the period 1998-2002,

HAS DECIDED AS FOLLOWS:

Sole Article

The Commission is hereby authorised to conclude a cooperation agreement on thermonuclear fusion between the European Atomic Energy Community and Kazakhstan.

The text of the agreement is annexed to this Decision.

Done at Brussels,

*For the Council
The President*

ANNEX

AGREEMENT

FOR CO-OPERATION BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN

AND THE EUROPEAN ATOMIC ENERGY COMMUNITY

IN THE FIELD OF CONTROLLED NUCLEAR FUSION

The GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN, of the one part, and the EUROPEAN ATOMIC ENERGY COMMUNITY, of the other part, hereinafter referred to as "the Community", both also generally referred to hereinafter as the "Party" or "Parties", as appropriate,

RECALLING that the Agreement on Partnership and Co-operation was signed on 23 January 1995 by the European Communities and their Members States and Kazakhstan;

DESIRING to facilitate the achievement of fusion energy as a potentially environmentally acceptable, economically competitive, and virtually limitless source of energy;

NOTING that the Community fusion programme is a broad-based comprehensive programme based on the toroidal magnetic confinement;

NOTING that the Fusion Programme of Kazakhstan is a focused programme concentrating on the specific strengths of fusion science and technology in Kazakhstan;

RECOGNIZING the mutual benefits to be obtained by establishing closer links between the Parties' scientific communities working in the field of controlled nuclear fusion;

DETERMINED to strengthen the co-operation between the Parties in the field of controlled nuclear fusion through regular consultations,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

The objective of this Agreement is to maintain and intensify co-operation between the Parties in the areas covered by their respective fusion programmes on the basis of mutual benefit in order to develop the scientific understanding and technological capability underlying a fusion power system.

ARTICLE 2

Co-operation under this Agreement may be undertaken in the following areas:

- (a) experimental and theoretical studies of plasma confinement, transport, heating and current drive (including the development of related RF systems) and diagnostics, in magnetic devices;
- (b) fusion technology;
- (c) applied plasma physics;
- (d) programme policies and plans; and
- (e) other areas as may be agreed.

ARTICLE 3

Co-operation in the areas referred to in Article 2 may include the following activities:

- (a) exchange and provision of information;
- (b) exchange and provision of personnel;
- (c) meetings of various forms;
- (d) exchange and provision of samples, instruments and apparatus for experimental and evaluation purposes;
- (e) balanced participation in joint studies and activities;
- (f) involvement in either Party's contribution to the fusion programmes or projects involving third parties, subject to the consent, if required, of such third parties; and
- (g) other activities as may be agreed.

ARTICLE 4

1. To the extent necessary, implementing arrangements on specific co-operative actions shall be concluded between:

The Community or any organisation associated with it within the framework of the Community fusion programme, designated by the Community for this purpose,

Government of the Republic of Kazakhstan, the executive body of which for those purposes is the Ministry of Energy, Industry and Trade of the Republic of Kazakhstan or any other organisation, designated by the Republic of Kazakhstan for this purpose.

2. Specific terms and conditions necessary to implement activities listed in Article 3 shall be mutually agreed by both parties in the implementing arrangements and shall contain:

- (a) specific details, procedures and financing provisions for individual co-operative activities;
- (b) assignment of the responsibility for the operational management of the concerned activity to a single organisation or operating agent;
- (c) detailed provisions on dissemination of information and treatment of intellectual property.

3. Each Party shall co-ordinate its activities under this Agreement as appropriate, with other international activities related to research and development in the field of controlled nuclear fusion in which the other Party is a participant, in order to minimise duplication of effort.

ARTICLE 5

1. The Parties shall establish a Co-ordinating Committee to co-ordinate and to supervise the execution of this Agreement. Each of the Parties shall appoint an equal number of members to the Co-ordinating Committee and nominate one of its appointed members as its Head of Delegation. The Co-ordinating Committee shall meet each year, alternately in the Community and in Kazakhstan or at any other agreed time and place. The Head of Delegation of the receiving Party shall chair the meeting.
2. The functions of the Co-ordinating Committee shall include:
 - (a) assessing the state of co-operation under this Agreement;
 - (b) determining the specific tasks to be undertaken in the areas referred to in Article 2 of this Agreement, without prejudice to the taking of autonomous decisions by the Parties on their respective programmes.
3. All decisions of the Co-ordinating Committee shall be by unanimity.
4. For periods between meetings of the Co-ordinating Committee, each Party shall nominate an Executive Secretary to act on its behalf in all matters concerning co-operation under this Agreement. The Executive Secretaries shall be responsible for day-to-day management of such co-operation.

ARTICLE 6

All costs resulting from the co-operation shall be borne by the Party that incurs them, unless otherwise specifically agreed in writing by the implementing agencies.

ARTICLE 7

Utilisation and diffusion of information and intellectual property rights including industrial property, patents and copyrights connected with the co-operative activities under this Agreement shall be in accordance with the Annexes, which form an integral part of this Agreement.

ARTICLE 8

Nothing in this Agreement shall be construed to prejudice existing or future arrangements for co-operation between the Parties.

ARTICLE 9

1. Performance of the Parties under this Agreement shall be subject to the availability of appropriated funds.
2. Co-operation under this Agreement shall be in accordance with the laws and regulations applicable.
3. Each Party shall use its best endeavours, within the framework of the laws and regulations applicable, to facilitate the accomplishment of formalities involved in the movement of persons, the transfer of materials and equipment and the transfer of currency required to conduct the co-operation.

4. Compensation for damages incurred during the implementation of this Agreement shall be in accordance with the laws and regulations applicable.

ARTICLE 10

Subject to the laws and regulations applicable, the Parties shall endeavour to settle all questions connected with this Agreement through consultations between themselves.

ARTICLE 11

1. This Agreement shall enter into force on the date which the Parties, by an exchange of diplomatic notes, specify for its entry into force and shall remain in force for an initial period of 10 years.

2. Thereafter, this Agreement shall be automatically renewed for five-year periods, unless either Party, by written notice, requests its termination or re-negotiation not later than 6 months prior to the expiry date.

3. In the event of termination or re-negotiation, this Agreement shall remain in force in its previous form, with respect to co-operation activities effectively entered into prior to the request for termination or re-negotiation and to implementing arrangements as envisaged in Article 4, until the end of such activities and arrangements.

4. Termination of this Agreement shall not affect rights and obligations under Article 7.

ARTICLE 12

This Agreement shall apply, insofar as the Community is concerned, to the territories in which the Treaty establishing the European Atomic Energy Community applies and to the territories of the countries participating in the Community fusion programme as fully associated Third States.

ARTICLE 13

This Agreement shall be drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Kazakh, Portuguese, Russian, Spanish and Swedish languages, each text being equally authentic.

Done in ...

For the European Atomic
Energy Community

For the Government of
the Republic of Kazakhstan

GUIDING PRINCIPLES ON THE ALLOCATION OF INTELLECTUAL PROPERTY RIGHTS^(*) RESULTING FROM JOINT RESEARCH UNDER THE CO-OPERATION AGREEMENT IN THE FIELD OF CONTROLLED NUCLEAR FUSION

I. OWNERSHIP, ALLOCATION AND EXERCISE OF RIGHTS

1. All research carried out pursuant to this Agreement shall be "joint research". The participants shall jointly develop joint technology management plans (TMPs)^(**) in respect of the ownership and use, including publication, of information and Intellectual Property (IP) to be created in the course of joint research. Those plans shall be approved by the Parties before the conclusion of any specific R&D co-operation contracts to which they refer. The TMPs shall be developed taking into account the aims of the joint research, the relative contributions of the participants, the advantages and disadvantages of licensing by territory or for fields of use, requirements imposed by laws applicable and other factors deemed appropriate by the participants. The rights and obligations concerning the research generated by visiting researchers in respect of IP shall also be addressed in the joint technology management plans.
2. Information or IP created in the course of joint research and not addressed in the technology management plan shall be allocated, with the approval of the Parties, according to the principles set out in the technology management plan. In case of disagreement, such information or IP shall be owned jointly by all the participants involved in the joint research from which the information or IP results. Each participant to whom this provision applies shall have the right to use such information or IP for his own commercial exploitation with no geographical limitation.
3. Each Party shall ensure that the other Party and its participants may have the rights to IP allocated to them in accordance with these principles.
4. While maintaining the conditions of competition in areas affected by the Agreement each Party shall endeavour to ensure that rights acquired pursuant to this Agreement are exercised in such a way as to encourage in particular:
 - (i) the dissemination and use of information created, disclosed, or otherwise made available, under the Agreement;
 - (ii) the adoption and implementation of international standards.

II. COPYRIGHT WORKS

Copyright belonging to the Parties or to their participants shall be accorded treatment consistent with the Berne Convention (1971 Paris Act).

^(*) Definitions of the concepts referred to in these guiding principles are set out in Annex II.

^(**) The indicative features of such TMPs are set out in Annex III.

III. SCIENTIFIC LITERARY WORKS

Without prejudice to Section IV, unless otherwise agreed in the TMP, publication of results of research shall be made jointly by the Parties or participants to that joint research. Subject to the foregoing general rule, the following procedures shall apply:

1. In the case of publication by a Party or public bodies of that Party of scientific and technical journals, articles, reports, books, including video and software, arising from joint research pursuant to this Agreement, the other Party shall be entitled to a worldwide, non-exclusive, irrevocable, royalty-free licence to translate, reproduce, adapt, transmit and publicly distribute such works.
2. The Parties shall ensure that literary works of a scientific character arising from joint research pursuant to this Agreement and published by independent publishers shall be disseminated as widely as possible.
3. All copies of a copyrights work to be publicly distributed and prepared under this provision shall indicate the names of the author(s) of the work unless an author or authors expressly declines or decline to be named. They shall also bear a clearly visible acknowledgement of the co-operative support of the Parties.

IV. UNDISCLOSED INFORMATION

A. *Documentary undisclosed information*

1. Each Party or its participants, as appropriate, shall identify at the earliest possible moment and preferably in the technology management plan the information that it wishes to remain undisclosed in relation to this Agreement, taking account inter alia of the following criteria:
 - secrecy of the information in the sense that the information is not, as a body or in the precise configuration or assembly of its components, generally known among or readily accessible by lawful means to experts in the field;
 - the actual or potential commercial value of the information by virtue of its secrecy;
 - previous protection of the information in the sense that it has been subject to steps that were reasonable under the circumstances by the person lawfully in control, to maintain its secrecy.

The Parties and the participants may in certain cases agree that, unless otherwise indicated, parts or all of the information provided, exchanged or created in the course of joint research pursuant to the Agreement may not be disclosed.

2. Each Party shall ensure that undisclosed information under this Agreement and its ensuing privileged nature is readily recognisable as such by the other Party, for example by means of an appropriate marking or restrictive legend. This also applies to any reproduction of the said information, in whole or in part.

A Party receiving undisclosed information pursuant to the Agreement shall respect the privileged nature thereof. These limitations shall automatically terminate when this information is disclosed by the owner without restriction to experts in the field.

3. Undisclosed information communicated under this Agreement may be disseminated by the receiving Party to persons within or employed by the receiving Party, and other concerned departments or agencies in the receiving Party authorised for the specific purposes of the joint research under way, provided that any undisclosed information so disseminated shall be pursuant to an agreement of confidentiality and shall be readily recognisable as such, as set out above.
4. With the prior written consent of the Party providing undisclosed information under this Agreement, the receiving Party may disseminate such undisclosed information more widely than otherwise permitted in paragraph 3 above. The Parties shall co-operate in developing procedures for requesting and obtaining prior written consent for such wider dissemination, and each Party will grant such approval to the extent permitted by its domestic policies, regulations and laws.

B. Non-documentary undisclosed information

Non-documentary undisclosed or other confidential or privileged information provided in seminars and other meetings arranged under this Agreement, or information arising from the attachment of staff, use of facilities, or joint projects, shall be treated by the Parties or their participants according to the principle specified for documentary information in the Agreement, provided, however, that the recipient of such undisclosed or other confidential or privileged information has been made aware of the confidential character of the information communicated at the time such communication is made.

C. Control

Each Party shall endeavour to ensure that undisclosed information received by it under this Agreement shall be controlled as provided therein. If one of the Parties becomes aware that it will be, or may reasonably be expected to become, unable to meet the non-dissemination provisions of paragraphs A and B, it shall immediately inform the other Party. The Parties shall thereafter consult to define an appropriate course of action.

DEFINITIONS

1. INTELLECTUAL PROPERTY: shall have the meaning found in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm on 14 July 1967.
2. PARTICIPANT: any natural or legal person, including the Parties themselves, participating in a project under this Agreement.
3. JOINT RESEARCH: research implemented and/or funded by the joint contributions of the Parties and with collaboration from participants of both Parties, where appropriate.
4. INFORMATION: scientific or technical data, results or methods of research and development stemming from the JOINT RESEARCH and any other information deemed necessary by the Parties and/or participants engaged in the JOINT RESEARCH to be provided or exchanged under this Agreement or research pursuant thereto.

**INDICATIVE FEATURES OF A
TECHNOLOGY MANAGEMENT PLAN (TMP)**

The TMP is a specific agreement to be concluded between the participants, about the implementation of joint research and the respective rights and obligations of the participants. With respect to IP, the TMP will normally address, inter alia: ownership, protection, user rights for R&D purposes, exploitation and dissemination, including arrangements for joint publication, the rights and obligations of visiting researchers and dispute settlement procedures. The TMP may also address foreground and background information, licensing and deliverables.