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Proposal for a

COUNCIL DECISION

approving the conclusion by the Commission, on behalf of the European Atomic Energy Community, of the Agreement continuing the International Science and Technology Center between the European Union and EURATOM acting as one Party and Georgia, Japan, the Kingdom of Norway, the Kyrgyz Republic, the Republic of Armenia, the Republic of Kazakhstan, the Republic of Korea, the Republic of Tajikistan, and the United States of America

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

REASONS FOR AND OBJECTIVES OF THE PROPOSAL

The overall objective of the non-proliferation policy is to prevent, detect and respond to WMD proliferating activities. There are multilateral conventions and verification mechanisms, bilateral and national legislative frameworks, safeguards, sanctions, export controls, cooperative threat reduction and emergency and response plans in place in order to deal with the proliferation challenges.

Another element of this policy is a set of measures dealing with WMD know-how and high-risk materials and technologies that have the potential for inappropriate and unauthorized use that could result in great harm.

In this context the International Science and Technology Centre (ISTC) was set up in 1994 after the collapse of the Soviet Union. It was funded together with other Parties (USA, Canada, Japan) through an international multilateral agreement for the purpose of non-proliferation of scientific and technical expertise related to Weapon of Mass Destruction (WMD). Over time, other Parties joined the Agreement, i.e. Armenia, Belarus, Georgia, Kazakhstan, Kirghizstan, Republic of Korea, Norway, Russian Federation and Tajikistan.

The ISTC works at the crossroads between scientific research and non-proliferation, and has funded almost 3000 projects with a total value of over 550 million Euros. The EU contribution amounts to approximately 270 million Euros. In the latest years the concept and the work of the ISTC as a science centre evolved to take into account the changing proliferation landscape, the results of threat analyses and the evolving needs of the parties. The Center increasingly focused on supporting projects aiming at mitigation of broader Chemical, Biological, Radiological and Nuclear risks, not necessarily focused on scientists' redirection, but on promoting bio safety and biosecurity, physical upgrades of laboratories as well as stimulation of networking activities among relevant scientific communities.

Following the 2010 announced withdrawal of the Russian Federation, that became effective on 15 July 2015, the Parties agreed that a new Agreement needs to be put in place in order for the Center to effectively fulfil its mandate under changed circumstances.

On 21 October 2013 the Council authorised the Commission to start negotiations, on behalf of the European Union and Euratom (acting as one Party) for the negotiation of an Agreement continuing the International Science and Technology Center (“the Agreement”) between the European Union and EURATOM acting as one Party, Georgia, Japan, the Kingdom of Norway, the Kyrgyz Republic, the Republic of Armenia, the Republic of Kazakhstan, the Republic of Korea, the Republic of Tajikistan, and the United States of America, and issued corresponding negotiating directives (doc.14137/13 R –UE).

The aims set out in the negotiating directives have been fully met and the comments from the Member States have been taken into account during the negotiations. The draft continuation Agreement was presented at the Council Non-Proliferation Working Group (CONOP) on 24 February 2014 and to the Atomic Questions Group on 5 February 2014.

Subsequently, the EC proceeded to the initialling of the draft continuation Agreement. In June 2014 the Agreement was initialled by all of the Parties except for Kazakhstan, Norway and Tajikistan. At this point it was expected that the initialling will be completed within the shortest possible time periods.

The Commission therefore prepared this Proposal for a Council decision to authorise the conclusion of the Agreement on behalf of the EURATOM.

The initialling of the Agreement by Kazakhstan took longer than expected. Initially, Kazakhstan requested an additional time period to complete the internal clearing procedures for the initialling of the Agreement. Later, some objections were raised in relation to the translation of the draft Agreement in the Russian language. During the internal procedure, and following the Government restructuring in August 2014, Kazakhstan raised also a technical legal objection related to the reference to the Vienna convention within the Agreement. During this period Belarus also withdrew from the ISTC Agreement so the reference to Belarus in the new continuation Agreement had to be eliminated. In order to deal with all these requests it was agreed that a different version of the Agreement should be prepared. This new version had no significant substantial changes in comparison to the previous one, and it is fully compliant with the negotiation directives decided by the Council. The linguistic issues were solved, the reference to Belarus was deleted and the reference to the Vienna Convention was replaced with the relevant text of the Convention itself, which was acceptable for the Kazakh side. Following these modifications, a new version of the continuation Agreement was initialled by all the Parties on 22 June 2015 in Astana.

This current proposal is the next step in the process of the signature of the Agreement continuing the International Science and Technology Center (“the Agreement”). Two parallel procedures are proposed, one for the conclusion of the Agreement under the EURATOM treaty and a parallel procedure for the signature of the Agreement under the TEU/TFEU legal base.

CONSISTENCY WITH EXISTING POLICY PROVISIONS IN THE POLICY AREA

As mentioned in the Thematic Strategy Paper 2014-2020 under the Instrument Contributing to Stability and Peace, there is a need due to the spread of dual use knowledge to focus support from "redirection of scientists" to the development of the concept of "scientists' engagement". Since then, the EU approach has been adapted accordingly, taking also into account the emergence of new information and communication tools allowing easier access to sensitive knowledge and know-how by potential proliferators.

During the years the “human dimension” aspect gradually increased in importance within overall security policy and focused not only on redirection activities but also on towards the need to contain of dual use knowledge and expertise at global level. These aspects became more relevant in the post 9/11 era and ultimately led to the adoption of the UNSCR 1540 of 2004. These developments were also discussed within the framework in the G8 Global Partnership program. In 2009, a G8 Working Group as endorsed by the Summit meeting, adopted a set of recommendations for a coordinated approach in the field of global weapons of mass destruction knowledge proliferation and scientist engagement. It identified the proliferation of WMD expertise or any sensitive knowledge in CBRN areas as a matter of serious concern. The recommendations made reference to the lessons learned from ISTC to shape appropriate projects outside the G8 countries as a way to contribute to global non-proliferation efforts. The Deauville G8 Declaration extended the Global Partnership Program beyond 2012 identifying scientists’ engagement as a focal area.

The various recommendations were taken into account during the negotiations on the new ISTC continuation Agreement. Its content is in line with the objectives of the UNSCR 1540.

CONSISTENCY WITH OTHER UNION POLICIES

The new continuation Agreement is in line with the EU Security Strategy of 2003 and its revision in 2008 as well as with the Council Conclusions of 2013 on ensuring the continued pursuit of an effective EU policy on the new challenges presented by the proliferation of weapons of mass destruction and their delivery systems. The conclusions call for further strengthening of protection against transfers of sensitive technology and know-how, including dual-use items.

The new Agreement is also consistent with Horizon 2020, in particular the Secure Societies Work Programme promoting applied security research in different sensitive areas. It is also compliant with the content of the relevant Euratom research programmes.

The funding of ISTC is part of the new Instrument contributing to Stability and Peace (IcSP) in particular its Article 5.2. The IcSP has a number of provisions to ensure that overlap of activities and double funding will be avoided. The Commission is under a legal obligation to ensure that measures adopted are consistent with Union and national assistance measures to prevent overlapping in activities and double funding.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

LEGAL BASIS

The legal base for the current proposal was decided after the exchange of view on the proposal of the negotiation directives in relevant Council Working Groups (CONOP, Atomic Questions Group) and COREPER.

This current proposal is based on based on Article 101 of the EURATOM Treaty.

A parallel procedure is launched based Articles 29 and 37 of TEU and on Article 218 of TFEU.

SUBSIDIARITY (FOR NON-EXCLUSIVE COMPETENCE)

The Member States invited the European Union to be a Party to the Agreement due to its capacity to mobilize expertise across the Union, as well as its long standing experience in this field since 1992. The Member States agreed the EU is able to ensure better coordination as well as networking between the stakeholders, especially the scientists, beyond the capability of individual Member States. Some of the risks addressed know no borders (i.e. epidemics or smuggling of dangerous materials) and need to be managed from a regional or a global scale.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND COLLECTION AND USE OF EXPERTISE

EX-POST EVALUATIONS/FITNESS CHECKS OF EXISTING LEGISLATION

The choice was made to continue with an international agreement because it provides a maximum of legal certainty for the European Union including financing procedures based on international standards that would guarantee the protection of the financial interests of European Union funds.

Moreover, a number of privileges are obtained which could only be arranged in the framework of a new international agreement such as related to immunities and privileges of EU staff working at the Secretariat in Kazakhstan. Equally, access to institutes to monitor the

implementation of EU funded activities is guaranteed, as well as a number of privileges allowing the delivery of the assistance free of taxes such as VAT, duties and other taxes.

STAKEHOLDER CONSULTATIONS

In 2014 the ISTC's Scientific Advisory Committee started a series of meetings with representatives of the scientific communities of the European Union, Japan, USA, and other countries currently members of the ISTC. A number of priorities for future support were identified in the nuclear, bio and chemical security sectors, but also related to climate change and further scientific networking opportunities.

In February 2015 the European Commission organized a meeting deepening the discussions with a team of experts from all the partner countries, including from the EU. The set of priorities were further defined and recommendations were received on funding mechanisms and working modalities, in particular to strengthen the networking approach.

COLLECTION AND USE OF EXPERTISE

The EU position was formulated on the basis of recommendations by in house scientific experts at the European Commission, as well as by the EEAS. Moreover, advice was provided by a number of high level of EU experts active in this field, in particular those that are participating on the behalf of the EU in the ISTC Scientific Advisory Committee.

Furthermore, a number of expert studies were financed to assess the risks and threats in this field present in the Caucasus and in Central Asia. The results were discussed in a Working Group on Scientist Engagement chaired by the Commission. Its recommendations were followed up.

4. DETAILED EXPLANATION OF THE SPECIFIC PROVISIONS OF THE PROPOSAL

The objectives of the ISTC are fully in line with the negotiations directives set by the Council.

The Center's core objectives as laid down in Article 2 of the continuation Agreement. These objectives are:

- (i) to promote the improvement of international mechanisms for the prevention of the proliferation of WMD and their delivery systems, as well as of technologies, materials, and expertise that are key elements directly related to the development, production, use, or enhancement of WMD or their delivery systems (including dual-use technology, materials, and expertise);
- (ii) to give scientists and engineers with knowledge and skills applicable to WMD and their delivery systems, including dual-use knowledge and skills, opportunities for training and alternative employment where their knowledge and skills can be used for peaceful activities;
- (iii) to promote a culture of security with respect to the handling and use of materials, equipment, and technology which could be used for the design, development, production, or use of WMD or their means of delivery; and
- (iv) to contribute through its activities: to the development of international scientific partnership, strengthening global security, and fostering economic growth through innovation; to basic and applied research and technology development and commercialization, inter alia, in the fields of environment, energy, health, and nuclear, chemical, and biological safety and

security; and to promoting the further integration of scientists with technologies, material, and expertise applicable to WMD into the international scientific community.

In line with the negotiations directives, the Agreement (Article 10) foresees that all the activities will benefit from a tax-free regime and other tax privileges in the recipient countries.

The funding Parties will have full access to monitor, audit, evaluate and inspect EU funded projects, including inspection of the facilities benefiting from the funding, as set in Article 8 of the Agreement.

Article 12 of the Agreement sets the immunities and privileges for the ISTC staff, including for the staff working on the behalf of the European Union. The text of Article 12 of the Agreement is fully compliant with the provision of Vienna Convention on diplomatic relations of 18 April 1961.

A direct reference to the Vienna Convention cannot be used due to some legal matters raised by Kazakhstan. Therefore, during negotiations this reference was replaced by the exact wording of the relevant provisions of the Vienna Convention.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 4 and the second paragraph of Article 101 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 21 October 2013 the Council authorised the Commission to open negotiations for the establishment of an Agreement continuing the International Science and Technology Center between the European Union and EURATOM acting as one Party, and Georgia, Japan, the Kingdom of Norway, the Kyrgyz Republic, the Republic of Armenia, the Republic of Kazakhstan, the Republic of Korea, the Republic of Tajikistan, and the United States of America.¹
- (2) These negotiations have been successfully completed.
- (3) The signature, subject to its conclusion at a later stage, of the Agreement is subject to a separate procedure as regards matters falling under the Treaty on European Union and Treaty on the Functioning of the European Union.
- (4) The conclusion of the Agreement by the Commission, acting on behalf of the European Atomic Energy Community should be approved.

HAS ADOPTED THIS DECISION:

Sole Article

The conclusion by the Commission, on behalf of the European Atomic Energy Community, of the Agreement continuing the International Science and Technology Center between the European Union and EURATOM acting as one Party, Georgia, Japan, the Kingdom of Norway, the Kyrgyz Republic, the Republic of Armenia, the Republic of Kazakhstan, the Republic of Korea, the Republic of Tajikistan, and the United States of America (“the Agreement”) is hereby approved.

The text of the Agreement to be signed is attached to this Decision.

¹ Doc. 14137/13 R-UE adopted on 21/10/2013

Done at Brussels,

*For the Council
The President*