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**RECOMMENDATION FROM THE COMMISSION TO THE COUNCIL**

**on the approval of an Agreement for cooperation in the peaceful uses of nuclear energy  
between the European Atomic Energy Community (Euratom) and the Government of  
Australia**

## RECOMMENDATION FROM THE COMMISSION TO THE COUNCIL

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#### A. EXPLANATORY MEMORANDUM

##### 1. INTRODUCTION

There is an existing Euratom-Australia Agreement which will expire in early 2012. Since Australia is one of the main uranium suppliers to the EU nuclear power plant operators, there is a need to maintain the agreement in order to provide a stable legal framework for relations in this domain.

The scope of the current agreement is limited to transfers of nuclear material from Australia to the European Atomic Energy Community. Therefore, in accordance with the directives negotiated with the Council, the Commission has enlarged the scope of the Agreement to include transfers of materials, equipment and technology.

While certain EU Member States have bilateral agreements with Australia, this Euratom Agreement ensures equal treatment for all Member States and their operators, and reduces the need to have numerous bilateral agreements between Australia and individual EU Member States.

The Agreement will provide for a broad cooperation in the area of peaceful uses of nuclear energy setting up the overall framework for political, technical and industrial cooperation. It will create a legal framework both for the governments and the industrial operators of the Parties – the Government of Australia and the Community - which will facilitate the cooperation in this field.

##### 2. IMPORTANCE OF THE AGREEMENT

For Euratom, the interest in signing this Agreement is based on the fact that Australia is one of its main suppliers of natural uranium. Facilitating trade in the nuclear domain contributes to the Community's policy of security of energy supply and diversification of energy sources. The importance of the conclusion of this Agreement is mainly based on commercial needs. Australia is the world's third largest producer of uranium with a production capacity of about 8 000 t U/year (19% of global uranium production). Australia's uranium reserves are the world's largest, with 23% of the total. Production and exports average about 10,000 tonnes of uranium oxide (8500 tU) per year.

Australia's uranium is sold strictly for electrical power generation only, and safeguards are in place to ensure this. Australia is a party to the Nuclear Non-Proliferation Treaty (NPT) as a non-nuclear weapons state. Its safeguards agreement under the NPT came into force in 1974 and it was the first country in the world to bring into force the Additional Protocol in relation

to this - in 1998. In addition to these international arrangements Australia requires customer countries to have entered into a nuclear cooperation agreement with Australia.

Furthermore, the conclusion of the present Agreement reaffirms the commitments of Australia, the Community and the Governments of the Member States of the European Union, to the strengthening and strict application of safeguards, export controls, and physical protection.

### **3. GENERAL SCHEME OF THE AGREEMENT**

The objective of the Agreement is cooperation in the peaceful uses of nuclear energy between Euratom and Australia. The scope of cooperation (Article III) mainly comprises nuclear safety, the supply of nuclear material, technology transfer, transfer of equipment and radiation protection, safeguards, use of radioisotopes. The present Agreement builds on the Agreement from 1981, which only covered transfers of nuclear material from Australia to Euratom. The revised Agreement is bi-directional in nature.

With the aim of updating, it revises outdated provisions and, as far as possible, consolidates the main text with its annexes and the attached exchange of notes. The current provisions on non-proliferation, safeguards, physical protection, transfer and retransfer, as well as on consultation and administrative arrangements, confidentiality and dispute resolution as set out in the existing Agreement and in the exchange of notes between the Government of Australia and the European Atomic Energy Community were kept.

In order to respond to the wish of both Parties for extension of its scope and in line with the most recent developments, like the enlargements of the Community, the new Agreement also includes additional provisions, considered as of importance by the concerned Euratom Member States and the Government of Australia.

In terms of structure, the Agreement further defines the items subject to this Agreement (Article IV) – different forms of nuclear and non-nuclear material and describes in detail modalities for trade in nuclear material, non-nuclear material and equipment (Article VI). The Agreement contains a series of provisions determining criteria for the transfer of nuclear material as well as the way of resolving conflicting situations. It is underlined that nuclear material shall be used for peaceful purposes and in compliance with the relevant safeguards agreements (in the Community, Euratom safeguards pursuant to the Euratom Treaty as well as the IAEA Safeguards Agreements and their Additional Protocols<sup>1</sup>). Transports of nuclear materials should be in conformity with the provisions of the International Convention on the Physical Protection of Nuclear Material<sup>2</sup>.

In addition, the Agreement restates the principles of free movement of nuclear materials within the Community. Intellectual property issues (Article IX) are dealt with in detail, as well as the modalities of Exchange of Information (Article X). In order to guarantee the smooth implementation of the Agreement, a specific article on Consultation and Arbitration (Article XV) is being introduced, if questions on the correct application of the Agreement should arise. The initial duration of the Agreement will be 30 years, i.e. mirroring the 1981 Agreement (Article XVIII).

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<sup>1</sup> INFCIRC/540

<sup>2</sup> INFCIRC/274/Rev.1

## **B. RECOMMENDATION**

The Commission considers that the Agreement for cooperation in the peaceful uses of nuclear energy between the European Atomic Energy Community and the Government of Australia, whose adoption is proposed:

- is in conformity with the negotiating directives issued by the Council on 9 June 2010;
- fulfils the goals of simplifying, updating and extending the current agreement;
- confirms the clear commitment of the two Parties in favour of non-proliferation and a high level of nuclear safety in order to guarantee the peaceful and safe use of nuclear energy;
- is in line with the Community's policy on energy security of supply;
- will further strengthen the very good relations between the EU and Australia in the field of energy policy cooperation.

The Commission therefore recommends to the Council to approve, pursuant to the second paragraph of Article 101 of the Treaty establishing the European Atomic Energy Community, the Agreement for cooperation in the peaceful uses of nuclear energy between the European Atomic Energy Community and the Government of Australia, in Annex.

## ANNEX

### **AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE EUROPEAN ATOMIC ENERGY COMMUNITY (EURATOM) FOR CO- OPERATION IN THE PEACEFUL USES OF NUCLEAR ENERGY**

The Government of Australia and the European Atomic Energy Community (Euratom), hereinafter referred to as "the Community",

DESIRING to promote their cooperation in the use of nuclear energy for peaceful purposes;

CONSIDERING that the Agreement between the Government of Australia and the European Atomic Energy Community concerning transfers of nuclear material from Australia to the European Atomic Energy Community done at Brussels on 21 September 1981 is limited in scope and expires in 2012;

REAFFIRMING the strong commitment of the Government of Australia, the Community and the Governments of its Member States to nuclear non-proliferation including the strengthening and efficient application of the related safeguards and export control regimes under which co-operation in the peaceful uses of nuclear energy between Australia and the Community is carried out;

REAFFIRMING the support of the Government of Australia, the Community and the Governments of its Member States for the objectives of the International Atomic Energy Agency (hereinafter referred to as "IAEA") and its safeguards system;

REAFFIRMING the strong commitment of the Government of Australia, the Community and its Member States to the Convention on the Physical Protection of Nuclear Material done at New York and Vienna on 3 March 1980 and entering into force generally on 8 February 1987 and for Australia on 22 October 1987;

WHEREAS Australia and all Member States of the Community are Parties to the Treaty on the Non-Proliferation of Nuclear Weapons done at Washington, London and Moscow on 1 July 1968 and entering into force on 5 March 1970, hereinafter referred to as "NPT";

NOTING that nuclear safeguards are applied in all Member States of the Community pursuant to both the Treaty establishing the European Atomic Energy Community (hereinafter referred to as "the Euratom Treaty") and the safeguards agreements concluded between the Community, its Member States and the IAEA;

NOTING that the Governments of Australia and of all Member States of the Community participate in the Nuclear Suppliers Group;

NOTING that account should be taken of the commitments made by the Government of Australia and the Government of each Member State of the Community in the framework of the Nuclear Suppliers Group;

RECOGNISING the principle of the free movement of nuclear material, equipment, non-nuclear material, and technology within the Community;

AGREEING that the Agreement should be in compliance with international obligations of the European Union and the Government of Australia under the World Trade Organisation agreements;

REITERATING commitments of the Government of Australia and the Governments of Member States of the Community to their bilateral agreements in the peaceful uses of nuclear energy;

HAVE AGREED AS FOLLOWS:

## **Article I**

### **Definitions**

For the purpose of this Agreement, except as otherwise specified:

1. "by-product" means special fissionable material derived by one or more processes, whether successive or not, from nuclear material transferred pursuant to this Agreement.
2. "competent authority" means:
  - for the Government of Australia, the Australian Safeguards and Non-Proliferation Office;
  - for the Community, the European Commission

or such other authority as the Party concerned may at any time notify in writing to the other Party.

3. "equipment" means those items listed in Sections 1, 3, 4, 5, 6 and 7 of Annex B of IAEA INFCIRC/254/Rev.9/Part 1.
4. "intellectual property" shall have the meaning set out in Article 2 of the Convention establishing the World Intellectual Property Organization, done at Stockholm on 14 July 1967, as amended on 28 September 1979, and may include other subject matter as mutually determined by the Parties.
5. "military purpose" includes but it is not limited to direct military applications of nuclear energy such as nuclear weapons or other nuclear explosive devices (including research and development, or production of tritium for use in such nuclear weapons and other nuclear explosive devices), military nuclear propulsion, munitions, including depleted uranium munitions, military nuclear rocket engines or military nuclear reactors but does not include indirect uses such as power for a military base drawn from a civil power network, or production of radioisotopes to be used for diagnosis in a military hospital.
6. "non-nuclear material" means:

- Deuterium and heavy water (deuterium oxide) and any other deuterium compound in which the ratio of deuterium to hydrogen exceeds 1:5000, for use in a nuclear reactor, as defined in paragraph (1.1) of Annex B of IAEA INFCIRC/254/Rev.9/Part 1 (Guidelines for Nuclear Transfers),
  - Nuclear grade graphite: graphite, for use in a nuclear reactor, as defined in paragraph (1.1) of Annex B of IAEA INFCIRC/254/Rev.9/Part 1 (Guidelines for Nuclear Transfers), having a purity level better than 5 parts per million boron equivalent and with a density greater than 1.50 grams per cubic centimetre.
7. "nuclear material" means any source material or special fissionable material as those terms are defined in Article XX of the Statute of the IAEA done at the Headquarters of the United Nations on 23 October 1956, and which entered into force on 29 July 1957 (hereinafter referred to as the IAEA's Statute). Any determination by the Board of Governors of the IAEA under Article XX of the IAEA's Statute that amends the list of material considered to be "source material" or "special fissionable material", shall only have effect under this Agreement when the Parties have informed each other in writing that they accept that determination.
8. "Parties" means the Government of Australia on the one hand and the Community on the other hand;
- "the Community" means both:
- the legal person created by the Euratom Treaty; and
  - the territories to which the Euratom Treaty applies.
9. "persons" means any natural person, undertaking or other entity governed by the applicable laws and regulations in the respective territorial jurisdiction of the Parties, but does not include the Parties to this Agreement.
10. "technology" has the meaning as defined in Annex A of IAEA INFCIRC/254/Rev.9/Part 1 (Guidelines for Nuclear Transfers).

## **Article II**

### **Objective**

The objective of this Agreement is to provide a framework for co-operation between the Parties in the peaceful uses of nuclear energy on the basis of mutual benefit and reciprocity and without prejudice to the respective competences of each Party.

## **Article III**

### **Scope of co-operation**

1. Nuclear material, equipment, non-nuclear material or nuclear material produced as a by-product shall be used only for peaceful purposes; and shall not be used for any military purpose.

2. The co-operation envisaged between the Parties under this Agreement may include, inter alia:
  - a) the supply of nuclear material, non-nuclear material, and equipment;
  - b) technology transfer, including supply of information relevant to this Article, providing that individual Member States of the Community had expressed their willingness to place such transfers in the framework of this Agreement;
  - c) transfer of equipment which has been designated by the Parties as equipment designed, constructed or operated on the basis of or by the use of information obtained from the other Party and which is within the jurisdiction of one of the Parties at the time of designation;
  - d) the procurement of equipment and devices;
  - e) access to and use of equipment and facilities;
  - f) management of spent fuel and radioactive waste;
  - g) nuclear safety and radiation protection;
  - h) safeguards, and physical protection of nuclear material and facilities;
  - i) use of radioisotopes and radiation in agriculture, industry and medicine;
  - j) geological and geophysical exploration, development, production, further processing and use of uranium resources;
  - k) nuclear forensics;
  - l) regulatory aspects of the peaceful uses of nuclear energy; and
  - m) other areas relevant to the subject of this Agreement, insofar as they are covered by the Parties' respective programmes.
3. Co-operation shall extend to nuclear research and development activities of mutual interest to the Parties according to complementary provisions to be agreed by the Parties.
4. The co-operation referred to in paragraph 2 of this Article may be undertaken in the following forms:
  - a) organisation of symposia and seminars;
  - b) organisation of joint projects and establishment of joint ventures;
  - c) establishment of bilateral working groups for implementation of the joint projects;
  - d) supply of nuclear fuel cycle services including uranium conversion and isotopic enrichment;

- e) trade and commercial cooperation relating to the nuclear fuel cycle;
  - f) transfer of industrial equipment and industrial technology; and
  - g) other forms of cooperation as may be determined by the Parties in writing.
5. The co-operation in specific areas outlined in paragraph 2 of this Article may be implemented as necessary through arrangements between a legal entity of Australia and a legal entity of the Community, which the respective competent authority notifies the other competent authority as being duly authorised to implement such co-operation. Any such arrangements shall include provisions dealing with intellectual property rights protection where such rights exist or arise.

#### **Article IV**

##### **Items subject to the Agreement**

1. This Agreement shall apply to:
- a) Nuclear material, non-nuclear material, or equipment, transferred between the Parties or their respective persons, whether directly or through a third country.  
  
Such nuclear material, non-nuclear material, or equipment shall become subject to this Agreement upon its entry into the territorial jurisdiction of the receiving Party. The supplying Party shall notify the receiving Party in writing of the intended transfer, and the receiving Party shall confirm in writing that such item will be held subject to this Agreement. The proposed recipient, if other than the receiving Party, will be an authorised person under the territorial jurisdiction of the receiving Party.
  - b) All forms of nuclear material prepared by chemical or physical processes or isotopic separation provided that the quantity of nuclear material so prepared shall only be regarded as falling within the scope of this Agreement in the same proportion as the quantity of nuclear material used in its preparation, and which is subject to this Agreement, bears to the total quantity of nuclear material so used;
  - c) All generations of nuclear material produced by neutron irradiation provided that the quantity of nuclear material so produced shall only be regarded as falling within the scope of the Agreement in the same proportion as the quantity of nuclear material which is subject to this Agreement and which, used in its production, contributes to this production;
  - d) Nuclear material produced, processed or used in equipment where:
    - (i) non-nuclear material subject to this Agreement was principally or wholly responsible for the production, processing or use of that nuclear material and;

(ii) equipment<sup>3</sup> subject to this Agreement was wholly responsible for the production, processing or use of that nuclear material and;

(iii) equipment<sup>3</sup> has been designated by the supplying Party after consultation with the recipient Party as being designed, constructed, manufactured or operated on the basis of, or by the use of technology transferred subject to this Agreement.

- e) Nuclear material which was subject to the Agreement concerning transfers of nuclear material from Australia to the European Atomic Energy Community, done at Brussels on 21 September 1981;
- f) Nuclear material which was transferred from Member States of the Community to Australia pursuant to bilateral agreements, and which is notified to the Community at the time this Agreement comes into force;
- g) Nuclear material recovered for nuclear purposes from ores or concentrates, other than uranium ore concentrates, which are transferred between the Parties directly or through a third country, and which recovery has been notified by the transferring Party as being of relevance to the Agreement<sup>4</sup>.

2. Nuclear material, non-nuclear material, or equipment, referred to in paragraph 1 of 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:

- a) that such item has been re-transferred beyond the jurisdiction of the receiving Party in accordance with paragraphs 5 and 6 of Article VII of this Agreement;
- b) that nuclear material is no longer usable for any nuclear activity relevant from the point of view of safeguards referred to in paragraph 1 of Article VII or has become practically irrecoverable. For the purpose of determining when nuclear material subject to this Agreement is no longer usable or is no longer practicably recoverable for processing into a form in which it is usable for any nuclear activity relevant from the point of view of safeguards, both Parties shall accept a determination made by the IAEA in accordance with the provisions for the termination of safeguards of the relevant safeguards agreement to which the IAEA is a party;
- c) that non-nuclear material and equipment are no longer usable for nuclear purposes; or
- d) that the Parties mutually determine that it should no longer be subject to this Agreement.

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<sup>3</sup> For the purpose of this article, equipment is restricted to items 1.1, 3, 4, 5, 6, 7 of Annex B of INFCIRC/254/Rev.9/Part 1, but does not include their sub-components.

<sup>4</sup> If such nuclear material cannot be subject to the all of the conditions set out in Article VII, then such nuclear material shall not be used until the Parties have consulted and decided on safeguards and physical protection measures to apply.

3. Technology transfer shall be subject to this Agreement for the Member States of the Community that have expressed their willingness to place such transfers in the framework of this Agreement through a written notification from the Member State concerned to the European Commission. A prior notification between the Member State(s) concerned and the European Commission, on one side, and the Government of Australia, on the other, should be given before each transfer.

## **Article V**

### **Enrichment**

Prior to the enrichment of any nuclear material subject to this Agreement to twenty (20) percent or more in the isotope U 235, the written consent of both Parties shall be obtained and the IAEA shall be notified. Such consent shall describe the conditions under which the uranium enriched to twenty (20) percent or more may be used. An arrangement to facilitate the implementation of this provision may be established by the Parties.

## **Article VI**

### **Trade in nuclear material, non-nuclear material or equipment**

1. Any transfer of nuclear material, non-nuclear material or equipment carried out pursuant to the co-operation activities shall be made in accordance with the relevant international commitments of the Community, the Member States of the Community, and Australia in relation to peaceful uses of nuclear energy as listed in Article VII.
2. The Parties shall, to such extent as is practicable, assist each other in the procurement, by either Party or by persons within the Community or under the jurisdiction of the Government of Australia, of nuclear material, non-nuclear material or equipment.
3. The continuation of the co-operation envisaged in the present Agreement shall be contingent upon the mutually satisfactory application of the system for safeguards and control established by the Community in accordance with the Euratom Treaty and of the system for safeguards and control of nuclear material, non-nuclear material or equipment established by the Government of Australia.
4. The provisions of this Agreement shall not be used to impede the free movement of nuclear material, non-nuclear material, equipment, and technology within the territory of the Community.
5. Transfers of nuclear material and appropriate services shall be carried out under fair commercial conditions. The implementation of this paragraph shall be without prejudice to the Euratom Treaty and its derived legislation, and to Australian laws and regulations.
6. Further to paragraphs 5 and 6 of Article VII any retransfers of any items or technology subject to this Agreement outside the jurisdiction of the Parties shall only be made in the framework of the commitments undertaken by the Governments of individual Member States of the Community and the Government of Australia within the group of nuclear supplier countries known as the Nuclear Suppliers Group. In particular, the Guidelines for Nuclear Transfers, as set out in IAEA

INFCIRC/254/Rev. 9/Part 1, shall apply to retransfers of any items subject to this Agreement.

## **Article VII**

### **Nuclear Material Subject to the Agreement**

1. Nuclear material subject to this agreement shall be subject to the following conditions:
  - a) In the Community, to the Euratom safeguards pursuant to the Euratom Treaty and to the IAEA safeguards pursuant to the following safeguards agreements, as they may be revised and replaced, and in accordance with the Non-Proliferation Treaty:
    - i) The Agreement between the Community's non-nuclear weapon Member States, the European Atomic Energy Community and the International Atomic Energy Agency, done at Brussels on 5 April 1973 and which entered into force on 21 February 1977 (published as IAEA INFCIRC/193);
    - ii) The Agreement between France, the European Atomic Energy Community and the International Atomic Energy Agency, done in July 1978 and which entered into force on 12 September 1981 (published as IAEA INFCIRC/290);
    - iii) The Agreement between the United Kingdom of Great Britain and Northern Ireland, the European Atomic Energy Community and the International Atomic Energy Agency for the application of safeguards in the United Kingdom of Great Britain and Northern Ireland in connection with the Treaty on the Non-Proliferation of Nuclear Weapons, done at Vienna on 6 September 1976 and which entered into force on 14 August 1978 (published as IAEA INFCIRC/263);
    - iv) The Additional Protocols concluded on 22 September 1998 which entered into force on 30 April 2004 on the basis of the IAEA INFCIRC/540 (corrected) (Strengthened Safeguards System, Part II);
  - b) In Australia, to the IAEA safeguards pursuant to the Agreement between Australia and the International Atomic Energy Agency for the Application of Safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons, which entered into force on 10 July 1974 (IAEA INFCIRC/217); supplemented by a Protocol Additional to the Agreement between Australia and the International Atomic Energy Agency for the application of safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons, done at Vienna on 23 September 1997 and which entered into force on 12 December 1998 (published as IAEA INFCIRC/217/Add.1).
2. In the event of the application of any of the Agreements with the IAEA referred to in paragraph 1 of this Article being suspended or terminated for any reason within the Community or Australia, the relevant Party shall enter into an agreement with the IAEA which provides for effectiveness and coverage equivalent to that provided by

the safeguards agreements referred to in provisions a) or b) of paragraph 1 of this Article, or, if that is not possible,

- a) the Community, as far as it is concerned, shall apply safeguards based on the Euratom safeguards system, which provides for effectiveness and coverage equivalent to that provided by the safeguards agreements referred to in provision a) of paragraph 1 of this article or, if that is not possible;
  - b) the Parties shall enter into arrangements for the application of safeguards, which provide for effectiveness and coverage equivalent to that provided by the safeguards agreements referred to in provisions a) or b) of paragraph 1 of this Article.
3. Application of physical protection measures shall be at all times at levels which satisfy as a minimum the criteria set out in Annex C of IAEA INFCIRC/254/Rev.9/Part 1 (Guidelines for Nuclear Transfers); supplementary to this document, the Member States of the Community, the European Commission, as appropriate, and Australia will refer when applying physical protection measures to their obligations under the Convention on the Physical Protection of Nuclear Material done on 3 March 1980, including any amendments that are in force for each Party and the recommendations in IAEA INFCIRC/225/Rev.4 corrected (Physical Protection of Nuclear Material). Transport shall be subject to the provisions of the International Convention on the Physical Protection of Nuclear Material done on 3 March 1980, including any amendments that are in force for each Party, and to the IAEA Regulations for the Safe Transport of Radioactive Material (IAEA Safety Standards Series No. TS-R-1).
  4. Nuclear safety and waste management shall be subject to the Convention on Nuclear Safety, done at Vienna on 17 June 1994 and which entered into force on 24 October 1996 (IAEA INFCIRC/449), the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, done at Vienna on 5 September 1997 and which entered into force on 18 June 2001 (IAEA INFCIRC/546), the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, done at Vienna on 26 September 1986 and which entered into force on 26 February 1987 (IAEA INFCIRC/336), the Convention on Early Notification of a Nuclear Accident, done at Vienna on 26 September 1986 and which entered into force on 27 October 1986 (IAEA INFCIRC/335).
  5. Nuclear material subject to this Agreement shall not be transferred beyond the territorial jurisdiction of the receiving Party without the prior written consent of the supplier Party, except in accordance with paragraph 6 of this Article.
  6. Upon entry into force of this agreement, the Parties shall exchange lists of third countries to which retransfers by the other Party pursuant to paragraph 5 of this Article are authorised. Each Party shall notify the other Party of changes to its list of third countries.

## **Article VIII**

### **Reprocessing**

The Parties grant their consent to the reprocessing of nuclear fuel containing nuclear material subject to this Agreement provided that such reprocessing takes place in accordance with the conditions set out in Annex A.

## **Article IX**

### **Intellectual Property**

The Parties shall ensure the adequate and effective protection of intellectual property created and technology transferred pursuant to the co-operation under this Agreement in accordance with documented arrangements between the Parties and with the relevant international agreements and the laws and regulations in force in Australia and in the European Union, the Community or their Member States.

## **Article X**

### **Exchange of information**

1.
  - (a) The Parties may make available to each other and to persons within the Community or under the jurisdiction of the Government of Australia, information at their disposal on matters within the scope of this Agreement.
  - (b) The supply of information received from any third party under terms preventing such supply shall be excluded from the scope of this Agreement.
  - (c) Information regarded by the supplying Party as being of commercial value shall be supplied only under terms and conditions specified by the Parties.
2.
  - (a) The Parties shall encourage and facilitate the exchange of information between persons under the jurisdiction of the Government of Australia on the one hand and persons within the Community on the other hand on matters within the scope of this Agreement.
  - (b) Information owned by such persons shall be supplied only with the consent of and under terms and conditions to be specified by those persons.
3. The Parties shall take all appropriate precautions to preserve the confidentiality of information received as a result of the operation of this Agreement.

## **Article XI**

### **Implementation of the Agreement**

1. The provisions of this Agreement shall be implemented in good faith in such a manner as to avoid hampering, delay or undue interference in the nuclear activities in Australia and in the Community and so as to be consistent with the prudent management practices required for the economic and safe conduct of nuclear activities.

2. The provisions of this Agreement shall not be used for the purpose of seeking commercial or industrial advantages, nor of interfering with the commercial or industrial interests, whether domestic or international, of either Party or authorised persons, nor of interfering with the nuclear policy of either Party or of the Governments of the Member States of the Community, nor of hindering the promotion of the peaceful and non-explosive uses of nuclear energy, nor of hindering the movement of items subject to or notified to be made subject to this Agreement either within the respective territorial jurisdiction of the Parties or between the Government of Australia and the Community.
3. The accounting of nuclear material subject to this Agreement will be based on the fungibility of the nuclear material and the principles of proportionality and equivalence of nuclear materials as set out in the Administrative Arrangements pursuant to Article XII of this Agreement.
4. Any amendment to IAEA Information Circulars mentioned in Articles I, IV, VI and VII of this Agreement shall have effect under this Agreement only when the Parties have informed each other in writing through diplomatic channels that they accept such amendment.

## **Article XII**

### **Administrative arrangements**

1. The competent authorities of both Parties shall establish administrative arrangements to ensure the effective implementation of the provisions of this Agreement.
2. An administrative arrangement established pursuant to paragraph 1 of this Article may be amended as mutually determined in writing by the competent authorities.

## **Article XIII**

### **Applicable law**

1. The co-operation provided for in this Agreement shall be in accordance with the laws, regulations in force in Australia and within the European Union as well as with the international agreements entered into by the Parties. In the case of the Community the applicable law includes the Euratom Treaty and its derived legislation.
2. Each Party shall be responsible toward the other for ensuring that the provisions of this Agreement are accepted and complied with as to Australia by all of its governmental enterprises and by all persons under its jurisdiction, and as to the Community by all persons within the Community to whom authorisation has been granted pursuant to this Agreement.

## **Article XIV**

### **Non-Compliance**

1. If either Party or any Member State of the Community violates any of the material provisions of the Agreement, the other Party may, on giving written notice to that effect, suspend or terminate in whole or in part co-operation under this Agreement.
2. Before either Party takes action to that effect, the Parties shall consult with a view to reaching a decision on whether corrective measures are needed, and if so, the corrective measures to be taken and the time-scale within which such measures shall be taken.
3. Action pursuant to paragraph 1 of this Article shall be taken only if there has been failure to implement the decided measures within the time determined by the Parties or, in the event of failure to find a solution, after the lapse of a reasonable period of time. In these cases, the supplier Party shall have the right to require the return of nuclear material subject to this Agreement.
4. In the event of detonation of a nuclear explosive device by a non-nuclear weapon Member State of the Community or by Australia, the aforementioned provisions would apply

## **Article XV**

### **Consultation and arbitration**

1. At the request of either Party, representatives of the Parties shall meet when necessary to consult with each other on matters arising out of the application of this Agreement, to supervise its operation and to discuss arrangements for co-operation additional to those provided in this Agreement. Such consultations may also take the form of an exchange of correspondence. Specifically, the Parties shall consult before the commencement of new enrichment or reprocessing projects relevant to nuclear material subject to this Agreement.
2. Any dispute arising out of the interpretation or application of this Agreement which is not settled by negotiation or as may otherwise be resolved between the Parties shall, on the request of either Party, be submitted to an arbitral tribunal which shall be composed of three arbitrators. Each Party shall designate one arbitrator and the two arbitrators so designated shall elect a third, not a national of either Party, who shall be the Chairman. If within thirty days of the request for arbitration either Party has not designated an arbitrator, the other Party to the dispute may request the President of the International Court of Justice to appoint an arbitrator to the Party which has not designated an arbitrator. If within thirty days of the designation or appointment of arbitrators for both the Parties the third arbitrator has not been elected, either Party may request the President of the International Court of Justice to appoint the third arbitrator. A majority of the members of the arbitral tribunal shall constitute a quorum, and all decisions shall be made by majority vote of all the members of the arbitral tribunal. The arbitral procedure shall be fixed by the tribunal. The decisions of the tribunal shall be binding on both Parties and implemented by

them. The remuneration of the arbitrators shall be determined on the same basis as that for ad hoc judges of the International Court of Justice.

3. For dispute resolution purposes, the English version of this Agreement shall be used.

## **Article XVI**

### **Complementary Provisions**

The provisions of any bilateral nuclear co-operation agreements in force between Australia and Member States of the Community shall be regarded as complementary to this Agreement and shall, where appropriate, be superseded by the provisions of this Agreement.

## **Article XVII**

### **Amendments**

1. The Parties may consult, at the request of either Party, on possible amendments to this Agreement, particularly to take account of international developments in the field of nuclear safeguards.
2. This Agreement may be amended if the Parties so agree.
3. Any amendment shall enter into force on the date specified by the Parties, by an exchange of diplomatic notes between the Parties.
4. The Annex to this Agreement forms an integral part of this Agreement and may be amended in accordance with this Article.

## **Article XVIII**

### **Entry into force and duration**

1. This Agreement shall enter into force on the date of the latter written notification that internal procedures necessary for its entry into force have been completed by the Parties.
2. This Agreement shall remain in force for an initial period of thirty years. Thereafter this Agreement shall be automatically renewed for additional periods of ten years, unless, at least six months before the expiration of any such additional period, a Party notifies the other Party of its intention to terminate the Agreement.
3. Notwithstanding the suspension, termination or expiration of this Agreement or any co-operation hereunder for any reason, the obligations in Articles III, IV, V, VI, VII, VIII, IX, X, XI, XII and XIII shall continue in effect so long as any nuclear material, non-nuclear material or equipment subject to these Articles remains in the territory of the other Party or under its jurisdiction or control anywhere or until it is mutually determined by the Parties in accordance with the provisions of Article IV that such nuclear material is no longer usable, or is practicably irrecoverable for processing into a form in which it is usable, for any nuclear activity relevant from the point of view of safeguards.
4. This Agreement replaces:

- a) Agreement between the Government of Australia and the European Atomic Energy Community concerning Transfers of Nuclear Material from Australia to the European Atomic Energy Community, done at Brussels on 21 September 1981;
- b) Exchange of Notes constituting an Implementing Arrangement, concerning International Obligation Exchanges, to the Agreement between the Government of Australia and the European Atomic Energy Community (EURATOM) concerning Transfers of Nuclear Material of 21 September 1981, done at Brussels on 8 September 1993;
- c) Exchange of Notes constituting an Implementing Arrangement, concerning Plutonium Transfers, to the Agreement between the Government of Australia and the European Atomic Energy Community (EURATOM) concerning Transfers of Nuclear Material of 21 September 1981, done at Brussels on 8 September 1993; and
- d) Exchange of Notes constituting an Implementing Arrangement between the Government of Australia and the European Atomic Energy Community (EURATOM) concerning Plutonium Transfers under the Agreement between the Government of Australia and EURATOM concerning Transfers of Nuclear Material from Australia to EURATOM, and accompanying Side Letter No. 2, of 21 September 1981, and the Implementing Arrangement concerning Plutonium Transfers of 8 September 1993.

Done in duplicate at ....., in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto have signed the present Agreement.

For the European Atomic Energy Community

For the Government of Australia

[signature]

[signature]

**ANNEX A**  
**REPROCESSING**

Whereas Article VIII of the Agreement provides that nuclear material subject to this Agreement (hereinafter referred to as NMSA) shall be reprocessed only according to conditions set out in this Annex.

The Parties to this Agreement,

Acknowledging that the separation, storage, transportation and use of plutonium require particular measures to reduce the risk of nuclear proliferation;

Recognizing the role of reprocessing in connection with efficient energy use, management of materials contained in spent fuel or other peaceful non-explosive uses including research;

Desiring predictable and practical implementation of the agreed conditions set out in this Annex, taking into account both their determination to ensure the furtherance of the objective of non-proliferation and the long-term needs of the nuclear fuel cycle programmes of the Parties;

Determined to continue to support the development of international safeguards and other measures relevant to reprocessing and plutonium, including measures to promote proliferation resistance and effective physical protection;

Have agreed as follows:

**Article 1**

NMSA may be reprocessed subject to the following conditions:

- a) reprocessing shall take place for the purpose of energy use or management of materials contained in spent fuel, in accordance with the nuclear fuel cycle programme mutually determined through consultation between the competent authorities;
- b) a description of any proposed nuclear fuel cycle programme, including details on the policy, legal and regulatory framework relevant to reprocessing and plutonium storage, use and transportation shall be provided by the Party envisaging such activities;
- c) the recovered plutonium shall be stored and used in accordance with the nuclear fuel cycle programme referred to in paragraph (a) above; and
- d) reprocessing and use of the recovered plutonium for other peaceful non-explosive purposes including research shall take place only under conditions mutually determined in writing between the Parties following consultations pursuant to Article 2 of this Annex.

## Article 2

Consultations shall be held between the Parties within 40 days of the receipt of a request from either Party:

- a) to review the operation of the provisions of this Annex;
- b) to consider amendments to the nuclear fuel cycle programme referred to in Article 1 of this Annex;
- c) to consider improvements in international safeguards and other control techniques including the establishment of new and generally accepted international mechanisms relevant to reprocessing and plutonium; or
- d) to consider proposals for reprocessing, use, storage and transportation of the recovered plutonium for other peaceful non-explosive purposes including research.