



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DECISION

Approving the conclusion by the Commission of an Agreement for Co-operation in the Peaceful Uses of Nuclear Energy between the European Atomic Energy Community (EURATOM) and the Government of the Republic of Uzbekistan

(presented by the Commission)

EXPLANATORY MEMORANDUM

On 26 June 2000, the Council adopted a decision directing the Commission to negotiate an agreement for co-operation in the peaceful uses of nuclear energy between the European Atomic Energy Community (Euratom) and the Government of the Republic of Uzbekistan pursuant to the second paragraph of Article 101 of the Euratom Treaty (doc. [9114/1/00/REV/ATO49.RECH68 NIS69+ADD1]).

The negotiations between the Commission and the Uzbek authorities were completed without running into any particular difficulties and the resulting text, initialled on 29 January 2002, complies with the negotiating directives the Council issued to the Commission.

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

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 101, paragraph 2 thereof,

Having regard to the proposal from the Commission¹,

Whereas:

- (1) In accordance with Council directives, adopted by Council Decision of 26 June 2000, the Commission has negotiated an Agreement for Co-operation in the Peaceful Uses of Nuclear Energy between the European Atomic Energy Community (EURATOM) and the Government of the Republic of Uzbekistan.
- (2) The Commission should be authorised to conclude the Agreement.

HAS DECIDED AS FOLLOWS:

Sole Article

The Commission is hereby authorised to conclude an Agreement for Co-operation in the Peaceful Uses of Nuclear Energy between the European Atomic Energy Community (EURATOM) and the Government of the Republic of Uzbekistan.

The text of the Agreement is attached to this Decision.

Done at Brussels,

*For the Council
The President*

¹ OJ C , , p. .

ANNEX

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

The European Atomic Energy Community (Euratom), hereinafter referred to as “the Community”,

and the Government of the Republic of Uzbekistan hereinafter referred to as “Uzbekistan”;

both also generally referred to hereinafter as the “Party” or “Parties”, as appropriate.

MINDFUL that the Partnership and Co-operation Agreement (PCA) between the European Communities and their Member States and Uzbekistan, which entered into force on 1 July 1999, establishes that trade in nuclear materials shall be subject to the provisions of a specific Agreement to be concluded between Euratom and Uzbekistan,

WHEREAS all Member States of the Community and Uzbekistan are Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, hereinafter referred to as “the Non-Proliferation Treaty”,

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

WHEREAS nuclear safeguards are applied in the Community both under Chapter VII of the Euratom Treaty and under safeguards agreements concluded between the Community, its Member States and the International Atomic Energy Agency, hereinafter referred to as “the IAEA”,

WHEREAS nuclear safeguards are applied in Uzbekistan according to a safeguards agreement between Uzbekistan and the IAEA,

WHEREAS the Community, its Member States and Uzbekistan reaffirm their support of the IAEA and of its strengthened safeguards system,

WHEREAS it is appropriate to strengthen the basis for co-operation between the Parties in the civil nuclear sector by a framework agreement,

HAVE AGREED AS FOLLOWS:

CHAPTER I

OBJECTIVE AND SCOPE

Article 1

The objective of this Agreement is to provide a framework for co-operation between the Parties in the peaceful uses of nuclear energy with a view to strengthening the overall co-operation relationship between the Community and Uzbekistan on the basis of mutual benefit and reciprocity and without prejudice to the respective powers of each Party.

Article 2

1. The Parties may co-operate in the way as specified in Articles 3 to 7 below in the peaceful uses of nuclear energy in the following areas:
 - a) nuclear safety (Article 3);
 - b) nuclear research and development in other areas than those foreseen under a) above (Article 6);
 - c) trade in nuclear materials and provision of nuclear fuel cycle services (Article 7);
 - d) other relevant areas of mutual interest (Article 8).
2. The co-operation referred to in this Article, as between the Parties, may also take place between authorised persons and undertakings established in the Community and Uzbekistan.

CHAPTER II

NUCLEAR SAFETY

Article 3

1. The co-operation shall encourage and contribute to the improvement of nuclear safety, including the definition and application of scientifically warranted and internationally accepted nuclear safety guidelines, as well as to the implementation of the Convention on Nuclear Safety and the Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management as far as Parties are concerned.

2. The co-operation shall be as broad as possible and involve the following areas:
 - a) Radiation protection

Research, regulatory aspects, development of safety standards, training and education, particular attention shall be paid to low-dose effects, industrial exposures, forecasting of doses and personnel and post-accident management;
 - b) Nuclear waste management

Assessment and optimization of geological disposal, and scientific aspects of the management of long-lived waste;
 - c) Research and development on safeguards of nuclear material;

Development and evaluation of nuclear material measurement techniques and characterisation of reference materials for safeguards activities and development of the systems of accounting for and control of nuclear materials;
 - d) Prevention of illicit trafficking of nuclear material

Co-operation shall relate to the promotion of methods and techniques of control of nuclear material.
3. Other areas of co-operation under this chapter may be added in accordance with procedures in force on each side.

Article 4

1. The co-operation under this chapter shall be implemented in particular through:
 - exchange of technical information by means of reports, visits, seminars, technical meetings, etc.
 - exchange of personnel between laboratories and/or bodies involved on both sides, including for training purposes;
 - exchange of samples, materials, instruments and apparatus for experimental purposes;
 - balanced participation in joint studies and activities.
2. To the extent necessary, implementing arrangements to set out the scope, terms and conditions to implement specific co-operation activities, may be entered into by the Parties and/or bodies which either Party may eventually entrust with the aforementioned activities. Such implementing arrangements may, inter alia, cover financing provisions, assignment of management responsibilities and detailed provisions on dissemination of information and intellectual property rights.
3. In order to minimise duplication of efforts, the Parties shall endeavour to co-ordinate their activities under this Agreement with other international activities related to nuclear safety in which they are participants.

Article 5

1. Each Party's obligations under this chapter shall be subject to the availability of the required funds.
2. All costs resulting from this co-operation shall be borne by the Party that incurs them.

CHAPTER III

OTHER AREAS OF NUCLEAR RESEARCH AND DEVELOPMENT

Article 6

1. Co-operation under this chapter shall extend to nuclear research and development activities of mutual interest to the Parties other than those provided for in Article 3 above, as agreed between the Parties, insofar as they are covered by respective research and development activities undertaken by the Parties.
2. The co-operation may include in particular the following areas:
 - a) applications of nuclear energy in the fields of medicine and industry, including generation of electricity;
 - b) interaction between nuclear energy and the environment;
 - c) any other area of nuclear research and development as agreed between the Parties and as far as they can be implemented under their respective legislations.
3. The co-operation shall be implemented in particular through:
 - exchange of technical information by means of reports, visits, seminars, technical meetings, etc.;
 - exchange of personnel between laboratories and/or bodies involved on both sides, including for training purposes;
 - exchange of samples, materials, instruments and apparatus for experimental purposes;
 - balanced participation in joint studies and activities.

4.

- a) To the extent necessary, the scope, terms and conditions for co-operation in concrete projects will be laid down in implementing arrangements, entered into by the Parties acting through their competent institutions which will proceed according to their respective legislative and regulatory requirements.
- b) Such implementing arrangements may, inter alia, cover financing provisions, assignment of management responsibilities and detailed provisions on dissemination of information and intellectual property rights.
- c) Costs resulting from co-operation activities shall be borne by the Party that incurs them, unless otherwise specifically agreed by the Parties.
- d) Any nuclear transfers carried out pursuant to the co-operation activities under this chapter shall be made in accordance with the relevant international and multilateral commitments of the Parties and of the Member States of the European Union in relation to peaceful uses of nuclear energy as listed in Article 7(5).

CHAPTER IV

TRADE IN NUCLEAR MATERIALS AND PROVISION OF RELEVANT SERVICES

Article 7

1. Nuclear material transferred between the Parties, whether directly or through a third country, shall become subject to this Agreement upon its entry into the territorial jurisdiction of the receiving Party, provided that the supplying Party has notified the receiving Party in writing prior to, or at the time of, shipment, in accordance with procedures defined in an Administrative Arrangement to be established by the appropriate authorities of the Parties.
2. Nuclear material referred to in paragraph 1 above shall remain subject to the provisions of this Agreement until
 - it is determined in accordance with the provisions for the termination of safeguards in the relevant agreement referred to in paragraph 5.e) below, that it is no longer usable for any nuclear activity relevant from the point of view of safeguards, or has become practicably irrecoverable;
 - it has been transferred beyond the jurisdiction of the recipient Party in accordance with paragraph 5.e) below; or
 - the Parties agree that it should no longer be subject to this Agreement.
3. Trade in nuclear materials and provision of relevant services between the Parties shall be carried out at market-related prices.

4.

- a) The Parties shall try to avoid conflict situations requiring commercial safeguard measures in their mutual trade in nuclear materials. If problems nevertheless arise in their mutual trade in nuclear materials which would seriously jeopardize the viability of the nuclear industry, including uranium mining, of the Community or Uzbekistan, either Party may request consultations which shall be held as soon as possible in the framework of an ad hoc Committee.
- b) If no mutually acceptable solution to these problems can be found in the consultations, the Party having requested the consultations may take the appropriate commercial safeguard measures to solve them or mitigate their effects in accordance with its internal legislation and with the relevant principles of international law.
- c) The implementation of sub-paragraphs (a) and (b) above shall be without prejudice to the Euratom Treaty and secondary legislation thereunder, as well as to the legislation of Uzbekistan.

5. Transfers of nuclear material shall be subject to the following conditions:

- a) the nuclear material shall be used for peaceful purposes and not for any nuclear explosive device or for research on, or development of, any such device;
- b) the nuclear material shall be subject:
 - i) in the Community, to the Euratom safeguards pursuant to the Euratom Treaty and to the IAEA safeguards pursuant to the following safeguards agreements, as relevant, and as they may be revised and replaced, so long as coverage as required by the Non-Proliferation Treaty is provided for:
 - the Agreement between the Community's non-nuclear weapon Member States, Euratom and the IAEA, which entered into force on 21 February 1977 (published as INFCIRC/193);
 - the Agreement between France, Euratom and the IAEA, which entered into force on 12 September 1981 (published as INFCIRC/290);
 - the Agreement between the United Kingdom, Euratom and the IAEA, which entered into force on 14 August 1978 (published as INFCIRC/263);supplemented by Additional Protocols concluded on 22 September 1998 on the basis of the document published as INFCIRC/540 (Strengthened Safeguards System, Part II).
 - ii) in Uzbekistan, to the safeguards agreement concluded with the IAEA in implementation of Article III.(1) and (4) of the NPT, which entered into force on 8 October 1994 (published as INFCIRC/508); supplemented by an Additional Protocol concluded on 22 September 1998. The basis of

the document published as INFCIRC/540 (Strengthened Safeguards System, Part II), as well as to the legislation of Uzbekistan.

- c) In the event of the application of any of the Agreements with the IAEA referred to in paragraph b) above being suspended or terminated for any reason within the Community or Uzbekistan, 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 paragraphs b i) or b ii), or, if that is not possible,

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 paragraphs b i) or, if that is not possible,

the Parties shall enter arrangements for the application of safeguards, which provide for effectiveness and coverage equivalent to that provided by the safeguards agreements referred to in paragraphs b i) or b ii).

- d) Application of physical protection measures at levels which satisfy as a minimum the criteria set out in Annex C to IAEA document INFCIRC/254/Rev.4/Part 1 (Guidelines for Nuclear Transfers) as it may be revised; supplementary to this document, the Member States of the Community, the European Commission, as appropriate, and Uzbekistan will refer when applying physical protection measures to the recommendations in IAEA document INFCIRC/225/REV/4 (Physical Protection of Nuclear Material) as it may be revised. International transport shall be subject to the provisions of the International Convention on the Physical Protection of Nuclear Material (IAEA document INFCIRC/274/Rev.1), as it may be revised and, as soon as possible, to the IAEA Regulations for the Safe Transport of Radioactive Materials (IAEA Safety Standards Series n. ST-1), as they may be revised.
- e) Retransfers of any items subject to this Article outside the jurisdiction of the Parties shall only be made under the conditions of the Guidelines for Nuclear Transfers, as set out in IAEA document INFCIRC/254/Rev.4/Part1, as it may be revised.

6.

- a) The Parties shall facilitate nuclear trade between themselves or between authorised persons or undertakings established in the respective territories of the Parties in the mutual interest of producers, the nuclear fuel cycle industry, utilities and consumers.
- b) Authorisations, including export and import licences as well as authorisations or consents to third parties, relating to trade, industrial operations or nuclear material movements on the territories of the Parties shall not be used to restrict trade or hinder the commercial interests of either Party on the peaceful use of nuclear energy both internationally and domestically. The relevant authority shall act upon applications for such authorisations as soon as possible after

submission and without unreasonable expense. Appropriate administrative provisions shall be in place to ensure respect of this provision.

- c) Provisions of this Agreement shall not be used to impede the free movement of nuclear material within the territory of the Community.
7. Notwithstanding the suspension or termination of this Agreement for any reason, paragraphs 5.a) and b) shall continue to apply so long as any nuclear material subject to these provisions remains under the jurisdiction of either Party or until a determination is made in accordance with paragraph 2, above.

CHAPTER V

OTHER AREAS OF MUTUAL INTEREST

Article 8

1. The Parties may agree within the scope of their respective competences to co-operation in other activities in the field of nuclear energy.
2. On the Community's side, the activities would have to be covered by relevant programmes of action and correspond to the conditions specified for it, e.g. in areas such as the safe transport of nuclear material, safeguards or industrial co-operation to promote certain aspects of the safety of nuclear installations.
3. The provisions of Article 6, paragraph 4, are equally applicable.

CHAPTER VI

GENERAL PROVISIONS

Article 9

Co-operation under this Agreement shall be in accordance with the laws and regulations in force within the Community and Uzbekistan 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 secondary legislation thereunder.

Article 10

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

Article 11

1. The Parties will hold regular consultations within the PCA framework to monitor the co-operation under this Agreement unless the Parties foresee specific consultation mechanisms.
2. Any dispute relating to the application or interpretation of this Agreement may be dealt with according to Article 90 of the PCA.

Article 12

1. The Agreement shall enter into force on the date the Parties, through an exchange of diplomatic notes, specify its entry into force and shall remain in force for an initial period of five years.
2. Thereafter this Agreement shall be automatically renewed for five-year periods, unless either Party, by written notice, requests the termination or renegotiation of the Agreement not later than six months prior to the expiry date.
3. If either Party or any Member State of the Community violates any of the material provisions of this Agreement, the other Party may, on giving written notice to that effect, suspend or terminate co-operation under this Agreement in whole or in part. Before either Party takes action to that effect the Parties shall consult with a view to reaching agreement on the corrective measures to be taken and on the time-scale within which such measures shall be taken. Such action shall be taken only if there has been failure to take the agreed measures within the agreed time or, in the event of failure to reach agreement as provided in the foregoing paragraph, after the lapse of a reasonable period of time having regard to the nature and gravity of the violation.

Article 13

For the purpose of this Agreement

- a) “nuclear material” means any source material or special fissionable material as those terms are defined in Article XX of the Statute of the IAEA;
- b) “Community” means both:
 - i) the legal person created by the Treaty establishing the European Atomic Energy Community, Party to this Agreement;
 - ii) the territories to which this same Treaty applies;
- c) “appropriate authorities of the Parties” means:
 - i) for the Community, the European Commission;
 - ii) for Uzbekistan, the Cabinet of Ministers of the Republic of Uzbekistan

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

Article 14

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

Done at

For the EUROPEAN ATOMIC
ENERGY COMMUNITY

For the Government of the Republic
of UZBEKISTAN

ANNEX I

GUIDING PRINCIPLES ON THE ALLOCATION OF INTELLECTUAL PROPERTY RIGHTS^(*) RESULTING FROM JOINT RESEARCH UNDER THE AGREEMENT FOR CO-OPERATION IN THE PEACEFUL USES OF NUCLEAR ENERGY BETWEEN THE EUROPEAN ATOMIC ENERGY COMMUNITY AND THE GOVERNMENT OF THE REPUBLIC OF UZBEKISTAN

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 responsible funding agency or department of the Party involved in financing the research, before the conclusion of the specific research and development co-operation contracts to which they are attached. 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.
2. Information or IP created in the course of joint research and not addressed in the TMP 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 have the rights allocated to them in accordance with these principles.
4. While maintaining the conditions of competition in areas affected by this 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.

^(*) 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.

II. COPYRIGHT WORKS

Under this Agreement, copyright belonging to the Parties or to their participants shall be accorded treatment consistent with the Bern Convention (1971 Paris Act).

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 world-wide, 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 the agreement and published by independent publishers shall be disseminated as widely as possible.
3. All copies of a copyright work to be publicly distributed and prepared under these provisions 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 TMP 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 due 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 the owner without restriction to experts in the field discloses this information.

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 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 above, it shall immediately inform the other Party. The Parties shall thereafter consult to define an appropriate course of action.

ANNEX II

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 development 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.

ANNEX III

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 IPR, 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.