AGREEMENT

between the European Atomic Energy Community and the Cabinet of Ministers of Ukraine for Co-operation in the Peaceful Uses of Nuclear Energy

The EUROPEAN ATOMIC ENERGY COMMUNITY (Euratom), hereinafter referred to as ‘the Community’,

and the CABINET OF MINISTERS OF UKRAINE,

both also generally referred to hereinafter as the ‘Party’ or ‘Parties’, as appropriate.

MINDFUL that the Partnership and Co-operation Agreement between the European Communities and their Member States and Ukraine (hereinafter referred to as ‘Partnership and Co-operation Agreement’), which entered into force on 1 March 1998, establishes that the Parties shall co-operate in the civil nuclear sector on the basis of specific agreements to be concluded between the Parties,

WHEREAS all Member States of the Community and Ukraine 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 Ukraine 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 safeguards are applied in the Community both under Chapter 7 of the Treaty Establishing the European Atomic Energy Community (hereinafter referred to as ‘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 safeguards are applied in Ukraine according to the Agreement between Ukraine and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons,

WHEREAS the Community, its Member States and Ukraine 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:

Article 1
Definitions

For the purpose of this Agreement:

(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 Ukraine, the Ministry of Fuel and Energy of Ukraine;

(a) ‘nuclear material’ means any source material or special fissionable material as those terms are defined in Article XX of the Statute of the International Atomic Energy Agency;

(b) ‘Community’ means both:
or such other authority as the Party concerned may at any time notify to the other Party.

Article 2
Objective
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 Ukraine on the basis of mutual benefit and reciprocity and without prejudice to the respective powers of each Party.

Article 3
Scope of co-operation
1. The Parties may co-operate in the way as specified in Articles 4 to 8 of this Agreement below in the peaceful uses of nuclear energy in the following areas:

(a) nuclear safety (Article 4);

(b) controlled nuclear fusion (Article 5);

(c) nuclear research and development in other areas than those foreseen under subparagraph (a) and (b) above (Article 6);

(d) international transfers, trade in nuclear materials and provision of nuclear fuel cycle services (Article 7);

(e) prevention of illicit trafficking of nuclear material (Article 8);

(f) other relevant areas of mutual interest.

2. The co-operation referred to in this Article, as between the Parties, may also take place between persons and undertakings established in the Community and Ukraine.

Article 4
Nuclear safety
The co-operation in the field of nuclear safety shall be implemented according to the Agreement for Co-operation between the European Atomic Energy Community and the Cabinet of Ministers of Ukraine in the Field of Nuclear Safety, which entered into force on 13 November 2002.

Article 5
Controlled nuclear fusion
The co-operation in the field of controlled nuclear fusion shall be implemented according to the Agreement for Co-operation between the European Atomic Energy Community and the Cabinet of Ministers of Ukraine in the Field of Controlled Nuclear Fusion, which entered into force on 13 November 2002.

Article 6
Other areas of nuclear research and development
1. Co-operation shall extend to nuclear research and development activities of mutual interest to the Parties other than those been provided for in Articles 4 and 5 of this Agreement above, as agreed between the Parties, in so far as they are covered by respective research and development activities undertaken by the Parties.

2. On the Community side, 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) environmental impact of nuclear energy;

(c) areas of co-operation in the civil nuclear sector outlined in paragraph 2 of Article 62 of the Partnership and Co-operation Agreement, as far as they can be implemented under the Euratom Treaty.

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. 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.
5. Such implementing arrangements may, inter alia, cover financing provisions, assignment of management responsibilities and detailed provisions on dissemination of information and intellectual property rights.

6. Costs resulting from co-operation activities shall be borne by the Party that incurs them, unless otherwise specifically agreed by the Parties.

Article 7

International transfers, trade in nuclear materials and provision of relevant services

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 of this Article 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 subparagraph (b) of paragraph 6 of this Article below, that it is no longer usable for any nuclear activity relevant from the point of view of safeguards, or has become practically irrecoverable,

   — it has been transferred beyond the jurisdiction of the recipient Party in accordance with subparagraph (e) of paragraph 6 of this Article below, or

   — the Parties agree that it should no longer be subject to this Agreement.

3. Any nuclear transfers carried out pursuant to the co-operation activities 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 paragraph 6 of this Article.

4. Trade in nuclear materials and provision of relevant services between the Parties shall be carried out at market-related prices.

5. 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 jeopardise the viability of the nuclear industry, including uranium mining, of the Community or Ukraine, either Party may request consultations which shall be held as soon as possible in the framework of an ad hoc Committee.

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.

The implementation of the first and second provisions of this paragraph above shall be without prejudice to the Euratom Treaty and secondary legislation thereunder.

6. 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, European Atomic Energy Community and the International Atomic Energy Agency, which entered into force on 21 February 1977 (published as INFCIRC/193),

          — the Agreement between France, European Atomic Energy Community and the International Atomic Energy Agency, which entered into force on 12 September 1981 (published as INFCIRC/290),

(ii) in Ukraine, to the IAEA safeguards pursuant to the Agreement between Ukraine 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 22 January 1998 (published as INFCIRC/550); supplemented by an Additional Protocol concluded on 15 August 2000 on the basis of the document published as INFCIRC/540 (Strengthened Safeguards System, Part II) if it is in force.

(c) In the event of the application of any of the Agreements with the IAEA referred to in subparagraph (b) of this paragraph above being suspended or terminated for any reason within the Community or Ukraine, 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 (i) or (ii) of subparagraph (b) of this paragraph, 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 provision (i) of subparagraph (b) of this paragraph 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 provisions (i) or (ii) of subparagraph (b) of this paragraph.

(d) Application of physical protection measures at levels which satisfy as a minimum the criteria set out in Annex C to IAEA document INFCIRC/234/Rev.5/Part1 (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 Ukraine will refer when applying physical protection measures to the recommendations in IAEA document INFCIRC/225/Rev.4 corrected (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 framework of the commitments undertaken by individual Member States of the Community and Ukraine 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 document INFCIRC/254/Rev.3/Part1, as it may be revised, shall apply to retransfers of any items subject to this Article.

7. The Parties shall facilitate trade in nuclear materials between themselves or between 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.

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.

Provisions of this Agreement shall not be used to impede the free movement of nuclear material within the territory of the Community.

8. Notwithstanding the suspension or termination of this Agreement for any reason, subparagraphs (a) and (b) of paragraph 6 of this Article 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 of this Article.

Article 8

Prevention of illicit trafficking of nuclear material

Co-operation in the field of prevention of illicit trafficking of nuclear material shall relate to the promotion of methods and techniques of control of nuclear material.

Article 9

Other areas of mutual interest

1. The Parties may agree within the scope of their respective competencies 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 cooperation to promote certain aspects of the safety of nuclear installations.
2. Any dispute relating to the application or interpretation of this Agreement may be dealt with according to the procedure established by Article 96 of the Partnership and Co-operation Agreement.

3. The paragraphs 4, 5 and 6 of Article 6 of this Agreement are equally applicable.

Article 10
Applicable law

Co-operation under this Agreement shall be in accordance with the laws and regulations in force within the Community and Ukraine 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 11
Intellectual property

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 to the Agreements for Co-operation between the European Atomic Energy Community and the Cabinet of Ministers of Ukraine in the Field of Nuclear Safety and Controlled Nuclear Fusion as referred to above in Articles 4 and 5 of this Agreement, respectively.

Article 12
Consultation and arbitration

1. The Parties will hold regular consultations within the framework of the Partnership and Co-operation Agreement to monitor the co-operation under this Agreement unless specific consultation mechanisms are foreseen by the Parties.

2. Any dispute relating to the application or interpretation of this Agreement may be dealt with according to the procedure established by Article 96 of the Partnership and Co-operation Agreement.

Article 13
Entry into force and duration

1. The Agreement shall enter into force on the date the Parties, through an exchange of diplomatic notes, specify its entry into force (1) 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 renegotiations 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.

Action under the first provision of this paragraph 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.

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

Done at Kiev, 28 April 2005.

For the European Atomic Energy Community
Andris PIEBALGS

For the Cabinet of Ministers of Ukraine
Ivan PLACHKOV

(1) 1.9.2006.