



Brussels, 5.9.2013
C(2013) 5641 final

COMMISSION DECISION

of 5.9.2013

on the conclusion of a Memorandum of Understanding for a partnership between the European Atomic Energy Community and the International Atomic Energy Agency on nuclear safety cooperation

EXPLANATORY MEMORANDUM

1. CONTEXT

Nuclear safety and nuclear security are of utmost importance to the EU and its citizens. The European Union actively develops and promotes a culture of nuclear safety, nuclear security and nuclear non-proliferation and the application of the highest standards in these fields.

The EU's cooperation on nuclear safety with third countries has two main objectives:

1. Promotion of an effective nuclear safety culture and implementation of the highest nuclear safety and security standards and radiation protection;
2. Responsible and safe management of spent fuel and radioactive waste, decommissioning and remediation of former nuclear sites and installations.

The Instrument for Nuclear Safety Cooperation (INSC), the Instrument for Pre-Accession for EU candidate countries (IPA) and the Instrument for Stability (IfS) provide for large scale cooperation with third countries in the field of nuclear safety, security and safeguards. Some of this cooperation takes place through collaboration with the International Atomic Energy Agency ("IAEA"), including financing of IAEA actions.

1.1. IAEA role in nuclear safety worldwide

The IAEA has a vast experience in cooperation and assisting its members on nuclear safety, security and safeguards matters and unparalleled knowledge of their problems worldwide.

The IAEA receives a large number of requests from its member states ranging from countries operating nuclear power plants, considering implementing a nuclear power programme, operating research reactors or simply wishing to address radiological issues. In this context, the cooperation between the Commission and the IAEA has taken the form of joint projects, financing of projects implemented by the IAEA using EU funds and IAEA identified projects taken over for implementation by the Commission with coordination done by the IAEA (particularly when multiple donors are involved).

Following the Fukushima accident the IAEA established an Action Plan to be implemented in the coming years to address the underlying nuclear safety issues. The support of the Commission, both with technical expertise and financial contribution, is very important for successful completion of the actions identified in the Plan.

1.2. EU-IAEA nuclear safety cooperation

The IAEA and the European Atomic Energy Community ("EURATOM") have developed extensive scientific and technological co-operation for many years. An existing co-operation agreement between the IAEA and EURATOM, in force since 1 January 1976, provides a formal basis for the collaboration of the two organizations. In practice, the Commission represents the EURATOM Community on international forums and negotiates bilateral agreements with international organisations or third countries.

Since the IAEA is also actively cooperating with countries wishing to develop a peaceful nuclear programme and in order to avoid duplication and to optimise the results, it is necessary to closely coordinate EC and IAEA efforts.

The IAEA and the European Commission, on behalf of Euratom, currently cooperate in various areas and their cooperation has grown significantly over the last few years. In May 2008, both organizations signed a Joint Statement where they agreed to examine concrete steps to significantly reinforce the quality and intensity of their cooperation.

A number of priority fields were identified including, inter alia:

1. nuclear safety: i.e. safety standards, installation safety, regulatory issues, safe management of spent fuel and radioactive waste, safe transport of radioactive material and safe decommissioning; radiation protection;
2. international Basic Safety Standards,
3. emergency preparedness, mutual assistance and
4. enhancement of national infrastructures, as needed, in countries wishing to launch new nuclear power programmes.

Concrete examples of cooperation with the IAEA are the support to the IAEA for safeguards research and development, through Commission's Joint Research Centre, the support by the European Commission to the work of the IAEA to develop safety standards and enhance nuclear safety in a number of European countries, the European Union's financial support to the IAEA Nuclear Security Plan, and the support given by the IAEA for cooperating on fusion energy research.

In the field of nuclear safeguards, cooperation has been very fruitful. While in the area of nuclear safety the cooperation has intensified in recent years, it is not yet as well defined or formalised as for nuclear safeguards. Cooperation arrangements have been done on an ad hoc basis.

The Integrated Regulatory Review Service (IRRS) programme offered by the IAEA has been chosen as the way forward for fulfilling the peer-review obligations under the EU Nuclear Safety Directive¹. In order to support the development of a European IRRS programme, a funding arrangement between the Commission and the IAEA has been concluded.

The Commission participates in the IAEA technical standards committees dealing with nuclear safety, radioactive waste and radiation protection. EURATOM is also party to the Convention on Nuclear Safety and the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, as well as to the Convention on Early Notification of a Nuclear Accident and the Convention on Assistance in the case of a Nuclear Accident or Radiological Emergency.

The Commission already participates to the Regulatory Cooperation Forum established under the IAEA, aiming at coordinating the assistance activities of different international actors towards countries starting a peaceful nuclear energy programme.

The IAEA and the Commission have been cooperating by exchanging information and, with EU funding, supporting a number of IAEA safety and security projects or jointly implementing them (e.g. the nuclear safety evaluation of the Ukrainian NPPs).

Given the scale of the challenges and the limited resources, coordination is essential to avoid duplication of efforts and optimization of the use of resources. Therefore, there is a clear need to reinforce the nuclear safety cooperation with the IAEA and to make it more structured, in particular in the current context after the Fukushima accident. Based on the 1976 Co-operation Agreement and the 2008 "Joint Statement", it is proposed to conclude a Memorandum of Understanding (MoU) with the IAEA to define specific areas of nuclear safety cooperation and to establish a working mechanism following the example of nuclear safeguards cooperation.

The proposed MoU on nuclear safety cooperation addresses the wish expressed by both organizations in the Joint Statement of 2008 and creates a framework for extensive cooperation. The MoU would allow further synergies avoid duplication of efforts. The MoU

¹ Council Directive 2009/71/EURATOM of 25 June 2009 establishing a Community framework for the nuclear safety of nuclear installations (OJ L 172/18 of 2.7.2009)

highlights also the need to improve the visibility of the actions financed by the EU or implemented with substantial technical assistance.

2. LEGAL ELEMENTS

The areas of cooperation defined in Article II of the proposed MoU include nuclear safety standards, regulatory framework, installation safety, protection against ionising radiation from radioactive materials, safe management of spent fuel and radioactive waste, safe transport of radioactive material and safe decommissioning of installations and emergency preparedness.

The points of contact (Article III.) foresee that the Commission and the IAEA will each appoint a focal point to be responsible for the coordination of activities. On the Commission side, DG ENER would be the focal point given the contacts it has already established with the IAEA in the framework of the Euratom Treaty and its competences in the field of nuclear energy.

A Senior Officials Liaison Committee (SOLC) (Article IV.) will be established and composed of senior representatives of the European Commission and of the IAEA in order to structure the cooperation.

The further arrangements (Article V.) indicate that where measures taken to implement the MoU may require financial contributions by the Community, the "*Financial and Administrative Agreement between the European Community and the United Nations*" (FAFA) will apply.

Provisions on dissemination of information (Article VII.) foresee that the contributions provided by each organization in the context of specific projects will be acknowledged and publicised to ensure the visibility they deserve.

In terms of procedure, the Commission can negotiate and conclude the proposed MoU under Article 101(3) of the Euratom Treaty, according to which agreements or contracts whose implementation does not require action by the Council and which can be effected within the limits of the relevant budget are to be negotiated and concluded solely by the Commission.

After a trial period, this working arrangement could possibly be transformed into an additional formal agreement with the IAEA (based on Art. 101, second paragraph, of the Euratom Treaty, requiring a mandate from the Council).

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THE EUROPEAN COMMISSION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular its Article 101(3),

Whereas:

- (1) Under the Article 101(3) of the Treaty establishing the European Atomic Energy Community, agreements or contracts concluded by the Community with an international organisation, whose implementation does not require action by the Council and which can be effected within the limits of the relevant budget, shall be negotiated and concluded solely by the Commission.
- (2) According to the Article V of the 1976 Cooperation Agreement between the European Atomic Energy Community and the International Atomic Energy Agency ("the IAEA"), the European Commission and the IAEA may make the arrangements necessary for ensuring satisfactory implementation of the Agreement.
- (3) The European Commission and the IAEA have expressed a mutual determination to significantly reinforce the quality and intensity of their cooperation in a Joint Statement signed on 7 May 2008.
- (4) The European Commission, on behalf of the European Atomic Energy Community, and the IAEA have a long-standing cooperation in many areas related to the peaceful uses of nuclear energy. Until recently the focus of this cooperation has been on nuclear safeguards and non-proliferation but cooperation on nuclear safety needs to be further reinforced.
- (5) Formalising the cooperation with the International Atomic Energy Agency in the area of nuclear safety is in the interest of the European Atomic Energy Community and represents an important contribution to strengthening nuclear safety at the global level in line with the EU priorities.
- (6) No financial implications or legal obligations incur from the present Memorandum of Understanding.

HAS DECIDED AS FOLLOWS:

Article 1

The Memorandum of Understanding in annex for a partnership between the European Atomic Energy Community and the International Atomic Energy Agency on nuclear safety cooperation is approved.

Article 2

The Commissioner for Energy is hereby authorised to sign the Memorandum of Understanding between the European Atomic Energy Community and the International Atomic Energy Agency concerning cooperation in the area of nuclear safety on behalf of the Commission.

Done at Brussels, 5.9.2013

*For the Commission
Günther Oettinger
Member of the Commission*

ANNEX

MEMORANDUM OF UNDERSTANDING

for a partnership

between the European Atomic Energy Community and the International Atomic Energy Agency

on nuclear safety cooperation

This Memorandum of Understanding (MOU) is entered into by the European Atomic Energy Community, (hereinafter also referred to as “the Community”), and the International Atomic Energy Agency, (hereinafter also referred to as “the IAEA”) and hereinafter also individually referred to as “Side” and jointly as “the Sides”. The European Commission (hereinafter referred to as the "Commission") will implement this MOU on behalf of the Community.

WHEREAS reference is made to the “Cooperation Agreement between the European Atomic Energy Community and the International Atomic Energy Agency”, which entered into force on 1 January 1976 and a “Joint Statement of the International Atomic Energy Agency and the European Commission”, which was signed by the Sides on 7 May 2008;

WHEREAS the Sides recognize the co-operation under this MOU complements the already existing co-operation between the Sides in areas of common interest;

NOW, THEREFORE, the Sides envisage strengthening the partnership (“Partnership”) of the Sides on nuclear safety cooperation through the modalities of this MOU as follows;

ARTICLE I. PRINCIPLES AND OBJECTIVES

1.1 The Sides envisage cooperating and consulting with each other with regard to matters of common interest whenever this may be appropriate in the light of their respective mandates.

1.2 Through this MOU, the Sides express their wish to strengthen and structure their cooperation in the area of nuclear safety.

1.3 The Partnership will be based on respect and mutual understanding of the respective strengths, mandates, organizational structures, and institutional capacities, as well as the governing regulations, rules, policies and procedures of the respective Sides.

1.4 The objectives of the Partnership are:

- a. to establish a framework for cooperation;
- b. to facilitate the joint identification of programmes for potential cooperation in the areas covered by the Partnership;
- c. to enhance knowledge sharing with a view to fostering co-ordination and synergies in the areas of cooperation, and to support best practices in IAEA Member States, when requested; and
- d. to build on each Side’s comparative advantage, with the objective to strengthen nuclear safety worldwide.

1.5 It is anticipated that working towards these objectives will lead to greater harmonization, coordination and complementarity of planning and identification of projects for cooperation. Likewise it will result in a structured framework for cooperation, for shared analysis and exchange of information.

1.6 The objectives of the Partnership will be achieved through:

- a. Regular dialogue between the Sides;
- b. Enhanced collaboration at all levels between the Sides; and
- c. Financial cooperation under existing contribution agreements between the Sides or by signing new agreements, when needed.

ARTICLE II. SPECIFIC AREAS OF COOPERATION

The Sides, subject to their respective Financial Regulations and Rules, policies and procedures and subject to the availability of funds, envisage cooperating in specific areas including the following:

- a. Nuclear safety standards, regulatory framework, installation safety, protection against ionising radiation from radioactive materials, in particular from high activity radioactive sources, safe management of spent fuel and radioactive waste, safe transport of radioactive material and safe decommissioning of installations, as well as safety related research;
- b. Provision of IAEA peer reviews of the nuclear safety regulatory structure and nuclear installations safety of IAEA Member States which are Member States of Euratom, that so request, in accordance with IAEA Safety Standards and in line with the Council Directive 2009/71/EURATOM of 25 June 2009 establishing a Community framework for the nuclear safety of nuclear installations;
- c. Assistance to countries, that so request, in further development of comprehensive risk and safety assessments and related peer reviews based on experiences and lessons learnt in IAEA Member States;
- d. Assistance to countries, that so request, introducing a nuclear power programme or further developing nuclear power use by coordinating assistance activities and sharing information;
- e. Arrangements for the prevention of emergencies with radiological consequences, as well as the management and mitigation of consequences thereof, should they occur, (emergency preparedness) in accordance with the Joint radiation Management Plan of the International Organizations;”
- f. Support for the implementation of the IAEA Nuclear Safety Action Plan (NSAP); and
- g. Provision of IAEA peer reviews of radioactive waste and spent fuel management of the IAEA Member States which are Member States of Euratom, that so request, in accordance with IAEA Safety Standards and in line with the Council Directive 2011/70/EURATOM of 19 July 2011 establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste.

ARTICLE III. POINTS OF CONTACT

The Sides will each appoint a point of contact responsible for the coordination of activities under this MOU. All correspondence related to this MOU will be through the designated points of contact. Any change to the points of contact will be notified in writing to the other Side in a timely manner.

ARTICLE IV. SENIOR OFFICIALS LIAISON COMMITTEE

4.1 A Senior Officials Liaison Committee (SOLC) will be established by the Sides.

4.2 The SOLC will be comprised of senior representatives of the Sides. Each Side will appoint up to five (5) representatives as permanent members of the SOLC, within three (3) months after the signature of this MOU by the Sides. Besides the permanent members, experts may be invited on an ad hoc basis to the respective meetings of the SOLC, as deemed appropriate by the Sides.

4.3 The SOLC will meet once per year in order to hold consultations on the development and review of activities to be conducted under the cooperation framework established under this MOU. Detailed programmes of such activities will be developed following consultations between the Sides.

4.4 It is envisaged that the meetings of the SOLC would alternate between Brussels and Vienna.

ARTICLE V. NON BINDING AND FURTHER ARRANGEMENTS

Nothing in this MOU will, without further agreement by the Sides as described in this Article, give rise to legal or financial obligations upon either Side. To the extent that any activity may give rise to a legal or financial obligation, separate agreements shall be concluded prior to such activity being undertaken. In particular, where measures taken further to this MOU may require financial contributions by the Community, separate agreements shall be entered into under the Financial and Administrative Agreement between the European Community and the United Nations (FAFA) concluded on 29 April 2003, to which the IAEA adhered on 17 September 2004.

ARTICLE VI. PERSONNEL

Any personnel employed by the respective Sides remains subject to the regulations and rules of respective Sides in all matters of employment, medical and life insurance and employee rights and benefits. Nothing contained in this MOU will be deemed to constitute or create any employer/employee relationship between the Sides.

ARTICLE VII. DISSEMINATION OF INFORMATION

7.1 The Sides will support the widest possible dissemination of information provided or exchanged under this MOU, subject to the need to protect proprietary or confidential information. The Sides will ensure the confidentiality of information classified by the other Side as restricted or confidential.

7.2 The Sides will seek to ensure that the, financial or otherwise, contributions provided by each Side in the context of specific projects entered into through separate written agreements, in accordance with Article V of this MOU, will be acknowledged and publicised in accordance with section 11 of the FAFA.

ARTICLE VIII. INTELLECTUAL PROPERTY

The Sides will consult each other, as appropriate and if circumstances so require, on issues relating to intellectual property and rights thereto including the necessity of separate written agreements referred to in Article V, ensure that the intellectual property and rights thereto, including all copyrights and patents, in and to any materials or invention produced by either

Side, their employees and sub-contractors arising from the cooperation between the Sides are protected and owned by the relevant Side and can be used by the Sides to further their respective roles of fostering the exchange and dissemination of information.

ARTICLE IX. USE OF NAMES, EMBLEMS AND FLAGS

Documentation relating to activities undertaken under this MOU may include the respective names, emblems and flags of the Sides. The names, emblems and flags are and remain the property of the respective Side. Joint use of the names, emblems and flags is restricted to activities conducted under this MOU and each use will be approved in writing on a case-by-case basis by the owning Side. The Sides will not otherwise use the name, emblem or flag of the other Side without prior written permission.

ARTICLE X. PRIVILEGES AND IMMUNITIES

Nothing in this MOU will be construed as a waiver, either express or implied, of the privileges and immunities accorded to the respective Sides by their respective Member States.

ARTICLE XI. SETTLEMENT OF DISPUTES

Any disputes arising out of or relating to the interpretation or implementation of this MOU will be amicably settled between the Sides.

ARTICLE XII. MODIFICATION

No modification of, or changes to this MOU, or waiver of any of its provisions, will be valid unless mutually agreed in writing by the Sides. Notwithstanding the foregoing, any change to the respective focal points of contacts will be notified to the other Side as mentioned in Article III, without requiring the consent of the other Side.

ARTICLE XIII. DURATION

This MOU will remain valid for a period of four (4) years after signature by the Sides and can be extended by exchange of letters.

ARTICLE XIV. TERMINATION

Either Side may terminate this MOU by giving sixty (60) days' written notice to the other Side. Where notice of termination is given, the Sides will take immediate steps to bring all activities under this MOU to a close in a prompt and orderly manner.

Done at in duplicate.

For the European Atomic Energy Community
represented by the European Commission

For the International Atomic Energy
Agency