EUROPEAN
COMMISSION

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Recommendation for a

COUNCIL DECISION

issuing directives to the Commission to negotiate renewals of the Agreement between the European Atomic Energy Community (Euratom) and the Korean Peninsula Energy Development Organisation (KEDO)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

KEDO was founded by the USA, Japan and the Republic of Korea in 1995. Its main objective was the provision of two nuclear light water reactors (LWR project) to the Democratic People's Republic of Korea (DPRK - North Korea). Euratom has been a full member of KEDO since 1997. The agreement governing Euratom membership in the Korean Peninsula Energy Development Organisation (KEDO) expired on 31 May 2024.

In November 2023, the Republic of Korea informed the other members of the KEDO Executive Board (US, Japan and Euratom) of the resolution to extend KEDO for the 2024-2027 period. Japan agreed on the KEDO extension at the beginning of 2024, while the US only recently expressed their agreement in July 2024. Euratom still has to express its consent.

Under the procedure laid down in Article 101, second paragraph, of the Euratom Treaty, agreements between Euratom and international organisations, such as KEDO, shall be negotiated by the Commission in accordance with directives previously issued by the Council. The negotiated agreement will then have to be approved by the Council before the Commission can conclude it on behalf of Euratom. The issuance by the Council of negotiating directives to the Commission is therefore the first step of the procedure for the renewal of the Euratom-KEDO agreement. For the reasons set out in more detail below, the Commission considers that it is in Euratom's interest to renew its membership and therefore presents a recommendation to the Council authorising it to negotiate the renewed membership.

KEDO has currently no operative activities. Its continued existence serves to protect the financial and legal interests of its members, including Euratom. Continued membership would require no financial contribution from the EU budget.

2. BACKGROUND

As a result of the DPRK's failure to implement its non-proliferation obligations, KEDO's operative activities were terminated on 30 May 2006. However, one year later, the KEDO Executive Board decided that the organisation should continue to exist as a legal entity for the following financial and legal reasons:

- *To uphold the overall financial claims against the DPRK*.

  These claims would have lapsed if KEDO were to disappear without a successor. The total of financial claims of KEDO against the DPRK so far corresponds to an asset of 1,89 billion USD. *[N.B.: KEDO has no remaining claims against Korea Electric Power Corporation (KEPCO), the main contractor.]* One possible manner to distribute such an asset would be to divide it based on the overall percentage of contribution made by each contributing contracting party. If so, Euratom would be entitled to 4,7%.

- *To provide legal protection to KEDO members against liability or compensation claims*.

  In September 2011, the DPRK claimed compensation of USD 5.6 billion from KEDO for not having finalised the LWR project. Aside from this claim from DPRK, claims against KEDO or its members could in theory arise from the state-owned banks through which Japan and the Republic of Korea channelled their financial

contributions to KEDO (JBIC and KEXIM respectively). These contributions were made in the form of loans that have not been fully repaid.

- *There were still financial interests with regard to KEDO's main contractor, KEPCO*.

  Under the terms of the termination agreement between KEDO and KEPCO, KEPCO assumed all outstanding KEDO liabilities (mainly claims from subcontractors) in exchange for the acquisition of certain KEDO assets. Subject to certain conditions, any excess benefits which KEPCO would make from the resale or reuse of these assets have to be shared with KEDO.

- *KEDO is still the owner of the infrastructure and other assets in the DPRK*, in which approximately USD 500 million have been invested. With KEDO's disappearance, the infrastructure and assets would become the property of the DPRK.

The tasks of KEDO are limited to serving as contact point with the DPRK, with KEDO's main contractor KEPCO, together with the Japan Bank for International Cooperation (JBIC) and the Export-Import Bank of Korea (KEXIM), as well as to reporting to and co-ordinating amongst the Executive Board members.

This 'empty shell KEDO' has so far been financed exclusively out of the still existing KEDO funds, thus without any additional financial contribution from its members.

3. EURATOM'S CURRENT MEMBERSHIP OF KEDO

Euratom membership in KEDO was renegotiated in 2007, with a view to maintaining membership in the reduced 'empty shell' KEDO.

This decision reflected the view that it was in Euratom's interest to maintain its membership. Otherwise, Euratom would have ceased to be eligible to receive a share of the possible benefits that KEPCO might make from the sale of former KEDO equipment or of any payment from DPRK to KEDO. As a member, Euratom would be eligible to receive a share in proportion to its share of total contributions paid, i.e., up to a maximum of approximately EUR 89 million (this figure being based on Euratom's contributions and not including interest).

Moreover, if it had ceased to be a member, Euratom would not have been able to uphold its legal rights with regard to KEDO's assets in the DPRK. Finally, in the event of possible liability or compensation claims, Euratom would have lost any control over the protection currently awarded to KEDO's members by the continued existence of the organisation as a legal entity.

This approach was followed for the 2012, 2015, 2018 and 2021 renewals of the KEDO agreement.

4. THE DECISION TO CONTINUE KEDO'S EXISTENCE AS A LEGAL ENTITY BEYOND 31 MAY 2024

The main reasons for which the other members of the Executive Board decided to maintain KEDO in existence beyond 31 May 2024 are the same:

(a) To maintain KEDO's financial claims against the DPRK;

(b) To continue the protection of the four full KEDO members against legal claims, whether spurious or not, from the DPRK;

(c) To maintain legal rights over KEDO-owned infrastructure and assets in the DPRK; and

(d) The possibility that KEDO's main contractor on the LWR project might have to reimburse KEDO at a later stage, once the resale of the former KEDO equipment has been completed.

The current agreement governing Euratom's membership of KEDO expired on 31 May 2024. Continued membership will have to be negotiated by the Commission on the basis of negotiating directives to be granted by the Council.

As in the previous renewals, the Council directives should take into account that KEDO will continue to be fully financed out of existing funds and that, therefore, the continued Euratom membership shall be at no cost to the EU budget. This condition, which was included in the previous renewal agreements, should continue to be spelt out in any renewed agreement with KEDO.

In addition, given the repetitive and lengthy nature of the previous KEDO extension exercises and no need for financial commitments from Euratom and Member States, the future extensions of the agreement should benefit from a simplified approach on the basis of a broader mandate of the Council for the Commission to negotiate future extensions. This broader mandate would consist of the possibility for the Commission to negotiate more than one renewal agreement, as long as the renewal of the Euratom membership in KEDO will have no financial impact on the EU budget.

5. CONCLUSION

The arguments that led to the decision to continue membership beyond 2007 and, subsequently, beyond 2012, 2015, 2018 and 2021 remain valid. Continued membership in the 'empty shell KEDO' beyond 31 May 2024 remains the best way to protect Euratom interests. By remaining a member after that date, Euratom would keep open the possibility, however remote, of reimbursement (up to a maximum of approximately EUR 89 million) in case of reimbursement by KEDO's main contractor following the resale of equipment or in case of a successful claim by KEDO against the DPRK. Continued membership also offers the best protection against any possible liability claims and will allow Euratom to remain directly involved in all discussions (within KEDO and with third parties) on these issues.

Therefore, the Commission recommends that the Council adopts the Decision hereafter, authorising the Commission to negotiate renewals of the Agreement between Euratom and KEDO, on the basis of the draft negotiating directives.

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the recommendation from the European Commission,

Whereas:

(1) The agreement between Euratom and KEDO expired on 31 May 2024.

(2) KEDO's Executive Board is expected to decide to continue KEDO as an International Organisation beyond 31 May 2024.

(3) It is in the interest of Euratom, for financial and legal reasons, to continue its membership in KEDO,

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to negotiate extensions of the Euratom membership in KEDO, on behalf of Euratom, in accordance with the negotiating directives set out in the Annex.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President