COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 6.10.2006
COM(2006) 586 final

Proposal for a

COUNCIL DECISION

Concerning the conclusion, by the Commission, of the Agreement between the European Atomic Energy Community and the Government of Japan for the Joint Implementation of the Broader Approach Activities in the Field of Fusion Energy Research

(presented by the Commission)

EXPLANATORY MEMORANDUM

BACKGROUND AND INTRODUCTION

1. By Decision of 25 November 2004,[1] the Council amended the directives to conduct negotiations on the ITER Project which it had given by Decision of 16 November 2000[2] pursuant to Article 101, paragraph 2 of the EURATOM Treaty. By this amendment, the Council authorised the Commission to negotiate "European participation in international collaborative research activities within a broader approach to the realisation of fusion energy".

2. In accordance with these directives, the resolution of the ITER siting issue was reached at the ministerial meeting on 28 June 2005 in Moscow where the ITER parties agreed that the ITER device and the Headquarters of the Organization would be situated in Cadarache. Instrumental to this choice was a convergence of views between EURATOM and Japan, recorded in the Joint Paper on the roles of the Host and the non-Host for the ITER Project (the Joint Paper) according to which EURATOM and Japan would each make contributions of 46 bn ¥/339 mn € to joint broader approach activities in the territory of Japan.

3. Upon the agreement on the siting of ITER, representatives of the Commission services and of the Government of Japan conducted bilateral negotiations on the broader approach activities to give effect to the Joint Paper. On 20 June 2006, the Final Report of Negotiations on the Broader Approach Agreement was signed, which confirms the completion of the negotiation process and records the subsidiary documents produced at the conclusion of the negotiations. The substantive output of the negotiations is:

3.1. the text of the Agreement between EURATOM and the Government of Japan (the Parties) for the Joint Implementation of the Broader Approach Activities in the Field of Fusion Energy Research (the Agreement);

3.2. the text of a draft Joint Declaration, to be made by the Parties at the time of initialling of the Agreement, with the following attached documents and tables:

   a) Common Understanding on Parties' Contribution to the BA Projects,

   b) Value Estimates and Allocation of Contributions of the Parties,

   c) Provisional Schedule for Implementation of the BA Projects, and

3.3. the Common Understandings on the Technical Reports of the Projects of the Broader Approach Activities with its attached reports:

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[1] 15085/04 RESTRICTED.

[2] As subsequently amended by Council Decisions of 27 May 2002 and 26 November 2003.

a) IFMIF/EVEDA Mission Report,

b) IFERC Mission Report,

c) Report of JA-EU Satellite Tokamak Working Group.

EXPLANATION OF THE AGREEMENT AND RELATED INSTRUMENTS

4. The Agreement comprises a preamble, 26 general articles and three Annexes containing specific provisions for each of the three projects of the Broader Approach Activities.

5. The three projects are (Article 2(1) of the Agreement and Articles 1 of Annexes I, II and III, respectively):

a) Engineering Validation and Engineering Design Activities (EVEDA) to produce a detailed, complete and fully integrated engineering design of the International Fusion Materials Irradiation Facility (IFMIF) and all data necessary for future decisions on the construction, operation, exploitation and decommissioning of IFMIF and to validate continuous and stable operation of each IFMIF subsystem;

b) the International Fusion Energy Research Centre (IFERC) aiming at contributing to the ITER project and at promoting a possible early realisation of DEMO, a future demonstration power reactor;

c) the Satellite Tokamak Programme which includes the participation in the upgrade of the tokamak experimental equipment owned by Japan to an advanced superconducting tokamak and the participation in its exploitation to support the exploitation of ITER and research towards DEMO by addressing key physics issues for ITER and DEMO.

6. The implementation of the Broader Approach Activities is closely related to the implementation of the ITER Project: all three projects are in support of the scientific objective of the ITER Project and will be implemented on a time frame compatible with the ITER construction phase (Article 2(2) of the Agreement). The Agreement may be terminated if the ITER Agreement is terminated or if either of the Parties is no longer party to the ITER Agreement (Article 22(2) of the Agreement).

7. The Agreement provides for an administrative structure of the Broader Approach Activities which comprises a Steering Committee, Project Committees, Project Leaders and Implementing Agencies.

7.1. The Steering Committee, composed of representatives of the Parties is responsible for the overall direction and supervision of the Broader Approach Activities. It decides by consensus and is vested with legal personality in order to allow for exemptions from taxes and duties of European contributions and staff made available to the Broader Approach Activities undertaken in Japan. The Steering Committee is assisted by a Secretariat which will be located in Japan. The administrative

expenditure of the Steering Committee will be borne by the Parties on a mutually agreed basis (Article 3 of the Agreement).

7.2. Project Committees composed of representatives of the Parties are established for each of the three projects. The main functions of the Project Committees which decide by consensus are to make recommendations on the Project Plans, the Work Programmes and the Annual Reports and to monitor and report on the progress of the projects of the Broader Approach Activities (Article 5 of the Agreement).

7.3. Project Leaders are responsible for the co-ordination of the implementation of the projects of the Broader Approach Activities. The Project Leaders are assisted by Project Teams, the structure of which is approved by the Steering Committee (Article 6 of the Agreement).

7.4. The Parties designate Implementing Agencies to discharge their obligations for the implementation of the Broader Approach Activities (Article 7 of the Agreement).

The Implementing Agency responsible for providing the contributions of EURATOM to the Broader Approach Activities will be the Joint Undertaking for ITER and the Development of Fusion Energy[3] which will also be responsible for providing the contributions of EURATOM to the ITER Organization, to be established in accordance with chapter V of Title II of the EURATOM Treaty.

Because all projects of the Broader Approach Activities are carried out in the territory of Japan, the Japanese Implementing Agency is responsible for providing host support, for the management of agreed financial contributions to operation costs and to support common expenses of the Project Teams, and for obtaining the necessary permits and licenses to carry out the Broader Approach Activities.

8. Each project of the Broader Approach Activities will be implemented on the basis of a Project Plan which will be further specified by annual Work Programmes, to be approved by the Steering Committee. The annual activities conducted in the implementation of the Broader Approach Activities are subject to an Annual Report to be approved by the Steering Committee (Chapter 3 of the Agreement).

9. The resources for the implementation of the Broader Approach Activities consist of contributions in kind and financial contributions from the Parties. Main principles concerning the contributions of the Parties are set out in the Joint Declaration and in the document "Value Estimates and Allocation of Contributions of the Parties" attached to it (Article 12 of the Agreement).

9.1. The contributions of the Parties will consist to a large extent of contributions in kind, including staff which will be made available to a Project Team after being nominated as Expert by the Steering Committee and staff of the Secretariat. The supply of these contributions has been divided into procurement packages allocated to the Parties as set out in the document "Value Estimates and Allocation of Contributions of the Parties" attached to the Joint Declaration. The procurement of these contributions

[3] COM(2006) 458 final.

will be under the responsibility of the Party providing them, acting through its Implementing Agency.

The contributions in kind are exempt from import and export duties and, in case of staff made available by one Party as contribution in kind for the implementation of the Broader Approach Activities, they are exempt from taxes on salaries, wages and emoluments in the territory of the other Party (Article 13 of the Agreement).

9.2. Each Party will be responsible for the salaries, insurance and allowances to be paid to its staff (Article 14(5) of the Agreement). Japan as the Host Party will arrange for adequate accommodation for the staff made available and their families, take appropriate measures to facilitate the entry to its territory of the staff and their families and request its Implementing Agency to use its best effort to facilitate appropriate legal and translation services in the event of any legal action brought against the staff resulting from the execution of their duties (Article 14(5) of the Agreement).

9.3. In accordance with the Project Plans and Work Programmes, the Parties will make financial contributions on the basis of calls for funds issued by a person designated by the Japanese Implementing Agency (Article 7(3) a) of the Agreement). The financial contributions will be kept in separate accounts for each project of the Broader Approach Activities (Articles 7(3) b) of the Agreement). The accounts can be audited by each Party at any time during the Agreement up to five years after its expiry or termination on the basis of documents and on the spot (Article 11 of the Agreement).

The financial contributions from the Parties may be used for the agreed operation costs of the projects and the common expenses of each Project Team (Articles 7(3) and 17 of the Agreement).

10. The Agreement contains a chapter on Information and Intellectual Property (Chapter 5 of the Agreement) which is based on the Annex C of the Agreement among EURATOM, Japan, the Russian Federation and the United States of America on Co-operation in the Engineering Design Activities for ITER (the ITER EDA Agreement)[4].

11. The Agreement and any amendment to it enter into force on the date on which the Parties have notified each other that their respective internal procedures necessary for the entry into force have been completed (Articles 21 and 23 of the Agreement).

12. The duration of the Agreement is of ten years. It continues in force unless terminated by either Party at the end of the initial period or at any time thereafter by giving to the other Party at least six months' written advance notice (Article 22(1) of the Agreement).

[4] SEC(1991) 2535 final.

13. During the initial duration of 10 years, the Agreement may only be terminated (i) by agreement of the Parties, (ii) if the ITER Agreement is terminated or (iii) if one of the Parties is no longer party to the ITER Agreement (Article 22(2) of the Agreement).

14. Other parties to the ITER Agreement may participate in a project of the Broader Approach Activities, subject to a decision of the Steering Committee (Article 25 of the Agreement). The Steering Committee may approve and conclude agreements and arrangements with that party on such participation in accordance with the internal procedures of the Parties.

15. All questions or disputes related to the interpretation or implementation of the Agreement shall be settled by mutual agreement between the Parties (Article 24 of the Agreement).

16. With regard to EURATOM, the Agreement applies to the territories covered by the EURATOM Treaty and, in accordance with that Treaty and other relevant agreements, to the Republic of Bulgaria, Romania and the Swiss Confederation, participating in the EURATOM fusion programme as fully associated third States (Article 26 of the Agreement).

17. The Annexes which contain specific provisions for each project of the Broader Approach Activities have the following structure: Article 1 sets out their objective, Article 2 defines the scope of the respective activity, Article 3 defines the location of the working site and Article 5 sets out the specific duration of each project. Article 6 of the Annex I on IFMIF/EVEDA and Article 6 of Annex II on IFERC provide for specific provisions on the ownership of components which derogate from the general provision on ownership of Article 14(3).

BUDGETARY IMPLICATION

18. The contributions of EURATOM to the Broader Approach Activities will be provided through the Joint Undertaking for ITER and the Development of Fusion Energy that is to be established under Title II, Chapter V of the EURATOM Treaty. The budgetary implications of the conclusion of the Agreement are embodied in the proposal for a Council Decision establishing the Joint Undertaking of ITER and the Development of Fusion[5].

PROPOSED DECISION

19. It is proposed that, on the basis of Article 101, paragraph 2 of the EURATOM Treaty, the Council adopt the Decision attached hereto concerning the conclusion, by the Commission, of the Agreement between the European Atomic Energy Community and the Government of Japan for the Joint Implementation of the Broader Approach Activities in the field of Fusion Energy Research.

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[5] COM(2006) 458 final.

Proposal for a

COUNCIL DECISION

Concerning the conclusion, by the Commission, of the Agreement between the European Atomic Energy Community and the Government of Japan for the Joint Implementation of the Broader Approach Activities in the Field of Fusion Energy Research

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the Council Decision 2002/668/Euratom[6] adopting the sixth Framework Programme of the European Atomic Energy Community (Euratom) for research and training activities, also contributing to the creation of the European Research Area (2002-2006) and to the Council Decision 2002/837/Euratom[7] adopting a specific programme (Euratom) for research and training in the field of nuclear energy (2002-2006),

Having regard to the proposal from the Commission,[8]

Whereas:

(1) The Commission has, in accordance with the Council Directives of 16 November 2000 as amended by Council Decisions of 27th May 2002, 26th November 2003 and 25th November 2004, conducted negotiations with the Government of China, the Government of Japan, the Government of the Republic of India, the Government of the Republic of Korea, the Government of the Russian Federation and the Government of the United States of America on an Agreement for the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project.

(2) The ITER Negotiation Parties have agreed at the Ministerial Meeting in Moscow on 28 June 2005 that ITER would be built in Cadarache. They also agreed on an attached joint paper on the role of the host (Euratom) and non-host (Japan) on the ITER Project.

(3) In accordance with the joint paper referred to above and the amended Council Directives, the Commission has conducted negotiations with the Government of Japan on an Agreement for the Joint Implementation of the Broader Approach Activities.

(4) On 20 June 2006, at a meeting in Tokyo, the representatives of EURATOM and Japan adopted the Final Report of Negotiations on the Broader Approach Agreement which

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6 OJ L 232, 29.8.2002, p. 34
7 OJ L 294, 29.10.2002, p. 86
8 COM(2006) xxx final.

confirmed the completion of the negotiation process and records the subsidiary documents produced by EURATOM and Japan.

(5) On *[date]*, the representatives of EURATOM and Japan signed a Joint Declaration for the implementation of the Broader Approach Activities which sets out details for the contributions of the Parties to the Broader Approach Activities.

(6) The conclusion, by the Commission, of the Agreement between the European Atomic Energy Community and the Government of Japan for the Joint Implementation of the Broader Approach Activities in the Field of Fusion Energy Research should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

1. The conclusion by the Commission, for and on behalf of the European Atomic Energy Community, of the Agreement between the European Atomic Energy Community and the Government of Japan for the Joint Implementation of the Broader Approach Activities in the Field of Fusion Energy Research is hereby approved.

2. The text of the Agreement is annexed to this decision.

Done at Brussels,

For the Council
The President

Annex I to Draft Council Decision

AGREEMENT BETWEEN THE GOVERNMENT OF JAPAN AND THE EUROPEAN ATOMIC ENERGY COMMUNITY FOR THE JOINT IMPLEMENTATION OF THE BROADER APPROACH ACTIVITIES IN THE FIELD OF FUSION ENERGY RESEARCH

The Government of Japan and the European Atomic Energy Community (hereinafter referred to as "EURATOM"), collectively referred to as "the Parties",

Having regard to the Agreement for Cooperation between the Government of Japan and the European Atomic Energy Community in the Field of Controlled Thermonuclear Fusion;

Having regard to the "Joint Declaration by the Representatives of the Parties to the ITER Negotiations, on the Occasion of the Ministerial Meeting for ITER, Moscow, 28th June 2005" and its attached "Joint Paper The roles of the Host and the non-Host for the ITER Project" (hereinafter referred to as "the Joint Paper") in which the main principles for the implementation of the Broader Approach Activities have been set out;

Having regard to the "Joint Declaration by the Representatives of EURATOM and the Government of Japan for the joint implementation of the Broader Approach Activities" [on the occasion of the Ministerial Meeting for ITER, [*Brussels*], [*date*]] (hereinafter referred to as "the *[Brussels]* Joint Declaration");

Recalling the Parties' contributions to the preparation for the joint implementation of the ITER Project through the ITER Engineering Design Activities and the establishment of the ITER International Fusion Energy Organization;

Recognizing the role of the International Atomic Energy Agency in the ITER Project and the collaboration of the Parties in fusion research and development areas under the International Energy Agency of the Organization for Economic Cooperation and Development;

Desiring to jointly implement the Broader Approach Activities in support of the ITER Project and an early realization of fusion energy for peaceful purposes on a time frame compatible with the ITER construction phase;

Have agreed as follows:

Chapter 1
Introduction

Article 1

Objective

The objective of this Agreement is to establish a framework for specific procedures and details for the joint implementation of broader approach activities (hereinafter referred to as "the Broader Approach Activities") in support of the ITER Project and an early realisation of fusion energy for peaceful purposes in accordance with the Joint Paper.

Article 2

Outline of the Broader Approach Activities

1. The Broader Approach Activities shall comprise the following three projects:

   (a) the project on the Engineering Validation and Engineering Design Activities for the International Fusion Materials Irradiation Facility (hereinafter referred to as "IFMIF/EVEDA");

   (b) the project on the International Fusion Energy Research Centre (hereinafter referred to as "IFERC"); and

   (c) the project on the Satellite Tokamak Programme.

2. In accordance with the Joint Paper and on the basis of the [*Brussels*] Joint Declaration, the Broader Approach Activities shall be implemented on a time frame compatible with the ITER construction phase.

3. The general principles governing the Broader Approach Activities shall be as set out in this Agreement. The principles specific to each project of the Broader Approach Activities shall be as set out in Annexes I, II and III, which form an integral part of this Agreement.

Chapter 2
Administrative Structure of the Broader Approach Activities

Article 3

Steering Committee on the Broader Approach Activities

1. There is hereby established a steering committee on the Broader Approach Activities (hereinafter referred to as "the Steering Committee") which shall be responsible in accordance with this Agreement for the overall direction and supervision of the implementation of the Broader Approach Activities.

2. The Steering Committee shall be assisted by the secretariat established pursuant to paragraph 1 of Article 4 (hereinafter referred to as "the Secretariat").

3. The Steering Committee shall have legal personality and shall enjoy in its relations with other states and international organizations and in the territories of the Parties such legal capacity as may be necessary to perform its functions and achieve its ends.

4. Each Party shall appoint an equal number of members to the Steering Committee and nominate one of its appointed members as the head of its delegation.

5. The Steering Committee shall meet at least twice per year, alternately in Europe and in Japan, or at other agreed times and places. The head of the delegation of the Party that hosts the meeting shall chair the meeting. The Steering Committee shall meet when convened by its chair.

6. The Steering Committee shall decide by consensus.

7. The expenditure of the Steering Committee shall be borne by the Parties on a mutually agreed basis.

8. The functions of the Steering Committee shall include:

   (a) appointment of the staff of the Secretariat as provided for in paragraph 1 of Article 4;

   (b) appointment of a project leader for each project of the Broader Approach Activities as provided for in paragraph 1 of Article 6 (hereinafter referred to as “Project Leader(s)”);

   (c) approval of a project plan, a work programme and an annual report of each project of the Broader Approach Activities as provided for in Chapter 3 (hereinafter referred to as “Project Plan(s)”, "Work Programme(s)" and "Annual Report(s)" respectively);

   (d) approval of the structure of a project team as provided for in paragraph 2 of Article 6 (hereinafter referred to as “Project Team(s)”);

   (e) appointment on an annual basis of experts made available by a Party to the Project Teams as part of its in-kind contribution as provided for in paragraph 1(a)(ii) of Article 12 (hereinafter referred to as “the Experts”);

   (f) in accordance with Article 25, decision on participation of any other party to the Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project (hereinafter referred to as “the ITER Agreement”) in a project of the Broader Approach Activities and subsequent conclusion of agreements and arrangements with that party on such participation; and

   (g) any other functions as may be necessary to direct and supervise the Broader Approach Activities.

Article 4

Secretariat

1. The Steering Committee shall establish the Secretariat which shall be located in Japan. The staff of the Secretariat shall be appointed by the Steering Committee.

2. The Secretariat shall assist the Steering Committee. The functions of the Secretariat shall be determined by the Steering Committee, and shall include:

   (a) receiving and transmitting the Steering Committee's official communications;

   (b) preparing meetings of the Steering Committee;

   (c) preparing administrative and other reports for the Steering Committee; and

   (d) undertaking any other activities as may be decided by the Steering Committee.

Article 5

Project Committee

1. For each project of the Broader Approach Activities, the Parties shall establish a project committee (hereinafter referred to as "Project Committee").

2. Each Party shall appoint an equal number of members to each Project Committee.

3. Each Project Committee shall meet at least twice per year. Unless otherwise agreed by the Project Committee, it shall meet in Japan. The chair of each Project Committee shall be nominated by the Steering Committee from among the members of the Project Committee.

4. Each Project Committee shall decide by consensus.

5. The secretariat of each Project Committee shall be ensured by the respective Project Leader as provided for in Article 6.

6. The functions of each Project Committee shall include:

   (a) making recommendations on the respective draft Project Plans, Work Programmes and Annual Reports to be submitted to the Steering Committee by the Project Leader concerned in accordance with Chapter 3;

   (b) monitoring and reporting on the progress of the project of the Broader Approach Activities concerned; and

   (c) performing any other duties as directed by the Steering Committee.

Article 6

Project Leader and Project Team

1. For each project of the Broader Approach Activities, a Project Leader shall be appointed by the Steering Committee. The Project Leader shall be responsible for the co-ordination of the implementation of the project as specified in Annexes I, II and III.

2. Each Project Leader shall be assisted by the respective Project Team in the exercise of his responsibilities and functions. The members of each Project Team shall comprise the Experts and other members such as visiting scientists. The structure of each Project Team shall be approved by the Steering Committee upon proposal by the respective Project Leader.

3. The functions of each Project Leader shall include:

   (a) organising, directing and supervising the Project Team in the implementation of the Work Programme;

   (b) preparing the Project Plan, the Work Programme and the Annual Report, and submitting them to the Steering Committee for approval after consultation with the respective Project Committee;

   (c) requesting the implementing agency designated by the Government of Japan in accordance with paragraph 1 of Article 7 (hereinafter referred to as "the Japanese Implementing Agency") to disburse the expenditure to support the respective Project Team in accordance with Article 17;

   (d) accounting of the contribution of each Party;

   (e) ensuring the secretariat of the Project Committee; and

   (f) reporting to the Project Committee on the progress of the respective project of the Broader Approach Activities.

Article 7

Implementing Agencies

1. Each Party shall designate an implementing agency to discharge its obligations for the implementation of the Broader Approach Activities (hereinafter referred to as “Implementing Agency(ies)”), in particular to make available the resources for their implementation. If the Implementing Agencies have not been designated even after the entry into force of this Agreement, the Parties shall immediately consult with each other on how to resolve the issue.

2. The Japanese Implementing Agency shall host the Project Teams and shall make available working sites including office accommodations, goods and services

required for the implementation of the tasks to be performed by the Project Teams under the terms and conditions set out in Annexes I, II and III.

3. Subject to paragraph 1 of Article 3, the Japanese Implementing Agency shall be responsible for the management of agreed financial contributions to operational costs and of the financial contributions to common expenses of each Project Team, dedicated to each project of the Broader Approach Activities in accordance with the respective Project Plan and Work Programme. For the purpose of the management of such financial contributions, the Japanese Implementing Agency shall designate a responsible person in charge of the management of financial contributions of the Parties. His functions shall include:

   a) calling on the Party(ies) or the Implementing Agency(ies) to make financial contributions in accordance with Project Plans and Work Programmes; and

   b) keeping separate accounts of the financial contributions for each project of the Broader Approach Activities and retaining them together with all books, records and any other documents in respect of the financial contributions for a minimum period of five years following the expiry or termination of this Agreement.

4. The Japanese Implementing Agency shall take the necessary steps to obtain all permits and licenses provided for in the laws and regulations in force in Japan and required for the implementation of the Broader Approach Activities.

Chapter 3
Instruments of Implementation

Article 8

Project Plan

1. After consultation with the respective Project Committee, each Project Leader shall submit, not later than 31 March of each year, a Project Plan of the respective project of the Broader Approach Activities to the Steering Committee for its approval.

2. Each Project Plan shall cover the entire duration of such project and be regularly updated. It shall:

   (a) outline an overall plan of activities including time schedule and major milestones for the implementation of such project in light of the progress achieved; and

   (b) provide a comprehensive overview of the contributions already made and to be made in the future for the implementation of such project.

Article 9

Work Programme

After consultation with the respective Project Committee, each Project Leader shall submit, not later than 31 October of each year, an annual Work Programme of the respective project of the Broader Approach Activities for the following year to the Steering Committee for its approval. The Work Programmes shall provide the details of the respective Project Plans and shall provide the programmatic description of the activities to be undertaken, including objectives, planning, common expenses and the contributions to be provided by each Party.

Article 10

Annual Report

1. Not later than 31 March of each year, each Project Leader shall submit an Annual Report covering all the activities conducted in the implementation of the respective project of the Broader Approach Activities including a summary of the contributions made by each Party and of the disbursement made by the Japanese Implementing Agency in accordance with paragraph 3 of Article 7 for such project to the Steering Committee for its approval. Upon approval by the Steering Committee, the Project Leader shall forward the Annual Report and any comments by the Steering Committee to the Parties and to the Implementing Agencies.

2. The Japanese Implementing Agency shall provide each Project Leader with the data necessary for the summary of the contributions made by each Party and the disbursement made by the Japanese Implementing Agency for such project.

3. The Project Plans, Work Programmes and Annual Reports as provided for in Articles 8 to 10 and any other essential documents for the implementation of the Broader Approach Activities shall be drafted in English.

Article 11

Financial Audit

Each Party may initiate a financial audit of the separate accounts kept by the Japanese Implementing Agency for the purposes of the Broader Approach Activities at any time during this Agreement and up to five years after the expiry or termination of this Agreement on the basis of documents and on the spot. All books, records and any other documents kept by the Implementing Agencies and by the Project Leaders in respect of the Broader Approach Activities shall be open, as necessary and appropriate, for the purposes of the audit.

Chapter 4
Resources

Article 12

General Principles

1. The resources for the implementation of the Broader Approach Activities shall comprise:

   (a) in-kind contributions, in accordance with technical specifications and under the terms and conditions as referred to in the [*Brussels*] Joint Declaration and its attachments, comprising:

      (i) specific components, equipments, materials and other goods and services; and

      (ii) the Experts made available by a Party to the Project Teams after their appointment by the Steering Committee and the staff made available by a Party to the Secretariat after their appointment by the Steering Committee; and

   (b) financial contributions under the terms and conditions as referred to in the [*Brussels*] Joint Declaration and its attachments.

2. Subject to the laws and regulations of each Party, the document "Value Estimates and Allocations of Contributions of the Parties" attached to the [*Brussels*] Joint Declaration may be annually updated by decision of the Steering Committee.

Article 13

Taxes

1. Each Party shall grant permission for duty-free importation and exportation to and from its territory of goods which are necessary for the implementation of this Agreement, and shall ensure their exemption from any other taxes and duties collected by the customs authorities and from import prohibitions and restrictions. This paragraph shall be implemented without regard to the country of origin of such necessary goods.

2. The Experts made available by a Party to the Project Teams after their appointment by the Steering Committee and the staff made available by a Party to the Secretariat after their appointment by the Steering Committee as in-kind contribution in accordance with paragraph 1 (a) (ii) of Article 12 shall be exempt from taxes on salaries, wages and emoluments in the territory of the other Party.

Article 14

Regulation of In-Kind Contributions

1. Each in-kind contribution shall be the object of a procurement arrangement (hereinafter referred to as "the Procurement Arrangement") agreed between the Implementing Agencies with the consent of the Project Leader concerned.

2. The Procurement Arrangement shall provide a detailed technical description of the contributions to be made including the technical specifications, schedules, milestones, risk assessments, deliverables and criteria for their acceptance, and shall set out the arrangements by which the Project Leader concerned will be enabled to exercise technical authority over the performance of the in-kind contributions. The Procurement Arrangement shall, in particular, set out:

   (a) the value attributed to each in-kind contribution;

   (b) the roles and responsibilities of the Implementing Agencies and the Project Leader;

   (c) the procedure for procurement;

   (d) the schedule and conditions for the acceptance of achievement of milestones and deliverables;

   (e) the application of quality assurance measures;

   (f) the relation and monitoring procedures among the Project Leader concerned, the Implementing Agencies and the entities involved in the supply of the deliverables;

   (g) procedures to deal with changes of a procurement that can have an impact on costs, scheduling and performance; and

   (h) the acceptance of the final deliverables and possible transfer of ownership.

3. The ownership of components to be contributed in kind by the implementing agency designated by EURATOM in accordance with paragraph 1 of Article 7 (hereinafter referred to as "the European Implementing Agency) shall be transferred to the Japanese Implementing Agency at the time of acceptance by the respective Project Leader and the Japanese Implementing Agency at the respective working site. The Japanese Implementing Agency shall be responsible for the transportation of components contributed by the European Implementing Agency from the port of entry to the working site.

4. For the Experts or the staff to the Secretariat, the Procurement Arrangement shall take the form of a secondment arrangement. The value attributed to the Experts or the staff to the Secretariat shall be as referred to in the document "Value Estimates and Allocation of Contributions of the Parties" attached to the [*Brussels*] Joint Declaration and may be updated by the Steering Committee from time to time as necessary.

5. Each Party shall be responsible for the salaries, insurances and allowances to be paid to the Experts and the staff of the Secretariat made available by such Party, and shall, unless otherwise agreed, pay for the travel and living expenses of them. The Party that hosts the Project Teams and/or the Secretariat shall arrange for adequate accommodation for the Experts and the staff of the Secretariat and their families. The Party that hosts the Project Teams and/or the Secretariat shall also take appropriate measures to facilitate the entry to its territory of the Experts and the staff of the Secretariat and their families, and shall request its Implementing Agency to use its best efforts to provide appropriate facilities with respect to legal and translation services in the event of any legal action brought against the Experts and the staff of the Secretariat resulting from the execution of their duties. The Experts and the staff to the Secretariat shall comply with the general and special rules of work and safety regulations in force at the host establishment, or as agreed in the secondment arrangement in the execution of their duties in the other Party.

Article 15

Adjustments to Allocations

If unforeseen circumstances so require, a Party may propose to modify the allocation of contributions within a project of the Broader Approach Activities. Upon such proposal, the Project Leader concerned shall, following consultation with the Project Committee concerned, propose to the Steering Committee a revised allocation of resources while maintaining the total cost of such project and the overall balance of the contributions between the Parties within that project.

Article 16

Financial Contributions

All payments made by the European Implementing Agency shall be made in Euro. All payments made by the Japanese Implementing Agency shall be made in Yen.

Article 17

Common Expenses of the Project Teams

Common expenses of each Project Team shall be disbursed in accordance with paragraph 3 of Article 7 by the Japanese Implementing Agency. For this purpose, the Japanese Implementing Agency shall undertake the necessary actions upon request by the Project Leader concerned and within the ceilings given in the relevant Work Programme.

Chapter 5
Information and Intellectual Property

Article 18

Dissemination, Use and Protection of Information

1. For the purposes of this Chapter,

   (a) "information" means drawings, designs, computations, reports and other documents, documented data or methods of research and development, descriptions of inventions and discoveries, whether or not protectable; and

   (b) "Business Confidential Information" means information containing know-how, trade secrets, or technical, commercial or financial information, which:

      (i) has been held in confidence by its owner;

      (ii) is not generally known or available from other sources;

      (iii) has not been made available by its owner to other parties without an obligation concerning its confidentiality; and

      (iv) is not available to the receiving party without obligations concerning its confidentiality.

2. Subject to the provisions of this Chapter, the Parties support the widest possible dissemination of Information generated in the implementation of this Agreement.

3. Subject to the provisions of this Chapter, all Information generated by the members of the Project Teams in the execution of the tasks assigned to them under this Agreement shall be made freely available to each of the Parties for use in the research and development of fusion as a source of energy for peaceful purposes.

4. Subject to the provisions of this Chapter, each Party shall be entitled to a non-exclusive, irrevocable and royalty-free license in all countries to translate, reproduce and publicly distribute scientific and technical journal articles, reports and books directly arising from the implementation of this Agreement. All publicly distributed copies of a copyrighted work prepared under the provisions of this Chapter shall indicate the names of the authors of the work unless an author explicitly declines to be named.

5. Subject to the provisions of this Chapter, all Information generated by the personnel of an Implementing Agency in the execution of the tasks assigned to it under this Agreement shall be made freely available to the Project Teams and to each of the Parties for use in the research and development of fusion as a source of energy for peaceful purposes.

6. Any contract placed on the initiative of an Implementing Agency or a Project Leader for the execution of a task assigned to them under this Agreement shall contain provisions to allow the Parties to meet their obligations under this Agreement.

7. Subject to its laws and regulations and to its obligations to third parties and to the provisions of this Chapter, each Party shall use its best efforts to make freely available to the Project Teams and to the Implementing Agencies any Information at its disposal which they need for the execution of the tasks assigned to them under this Agreement.

8. If business confidential information is made available in the implementation of this Agreement, it must be duly marked so and transmitted pursuant to an arrangement of confidentiality. The recipient of such information shall use it for the implementation of this Agreement, and preserve its confidentiality to the extent provided in that arrangement.

Article 19

Intellectual Property

1. For the purposes of this Agreement, "intellectual property" shall have the meaning defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation, done at Stockholm on July 14, 1967. In accordance with its laws and regulations, each Party shall ensure that the other Party can obtain the rights to intellectual property allocated in accordance with this Chapter. This Chapter does not alter or prejudice the allocation of rights between a Party and its nationals. Whether the rights concerning intellectual property shall be held by a Party or its nationals shall be determined as between themselves in accordance with their applicable laws and regulations.

2. Where protectable subject matter is generated by the members of the Project Teams in the implementation of this Agreement, the respective Project Leader shall promptly inform the Steering Committee with a recommendation on the countries where protection for such intellectual property should be obtained. Each Party, its Implementing Agency, or the members of the Project Teams made available by that Party shall, however, be entitled to acquire all right, title and interest in and to intellectual property in the territory of that Party. The Steering Committee shall decide whether and how to seek protection for such intellectual property in third countries. In all cases where protection for intellectual property is obtained by a Party, its Implementing Agency or the members of the Project Teams made available by that Party, the Party shall ensure that the members of the Project Teams can freely use such intellectual property for the execution of the tasks assigned to the Project Teams.

3. If intellectual property is generated by personnel of an Implementing Agency in the execution of a task assigned to it under this Agreement, the Party of that Implementing Agency**,** the Implementing Agency or its personnel shall be entitled to acquire all right, title and interest in all countries in and to such intellectual property according to applicable laws and regulations. The Party of such Implementing Agency shall ensure that the members of the Project Teams can freely use such

intellectual property for the execution of the tasks assigned to the Project Teams, and that the other Party is granted an irrevocable, non-exclusive and royalty-free license, with the right to sublicense, for research and development on fusion as a source of energy for peaceful purposes.

4. If intellectual property is generated by personnel made available through an Implementing Agency while working in the Implementing Agency of the other Party, subject to relevant applicable laws:

   (a) the receiving Party, its Implementing Agency or its personnel shall be entitled to acquire all right, title and interest in and to any such intellectual property in its own territory and in the third countries; and

   (b) the sending Party, its Implementing Agency or its personnel shall be entitled to acquire all right, title and interest in and to any such intellectual property in its own territory.

5. Each Party shall, without prejudice to any rights of inventors or authors under the applicable laws and regulations, take all necessary steps to seek the co-operation from such inventors or authors, including the personnel of its Implementing Agency, which are required to implement this Agreement. Each Party shall ensure the payment of awards and compensations to such inventors or authors, according to its laws and regulations.

6. Notwithstanding paragraphs 2 to 4, if a Party decides not to exercise its right to seek protection for Intellectual Property in any country or region, it shall so notify the other Party, and the other Party may then seek to obtain such protection.

Article 20

Expiry or Termination

The rights conferred and obligations imposed upon the Parties under this Chapter shall subsist in accordance with applicable laws and regulations after the expiry or termination of this Agreement.

Chapter 6
Final Provisions

Article 21

Entry into Force

This Agreement shall enter into force on the date on which the Parties exchange diplomatic notes informing each other that their respective internal procedures necessary for its entry into force have been completed.

Article 22

Duration and Termination

1. This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless terminated by either Party at the end of the ten-year period or at any time thereafter by giving to the other Party at least six months' written advance notice of its intention to terminate this Agreement.

2. This agreement may be terminated before its expiry only when:

   (a) both Parties mutually agree;

   (b) the ITER Agreement is terminated; or

   (c) either of the Parties is no longer a party to the ITER Agreement.

3. The expiration or termination of this Agreement shall not affect the validity or duration of any arrangements made under it, or any specific rights and obligations that have accrued in compliance with Chapter 5.

Article 23

Amendment

The Parties shall, at the request of either of them, consult with each other whether to amend this Agreement, and may agree to the amendment. Such amendment shall enter into force on the date on which the Parties exchange diplomatic notes informing each other that their respective internal procedures necessary for its entry into force have been completed.

Article 24

Dispute Settlement

All questions or disputes between the Parties concerning the interpretation or implementation of this Agreement shall be settled by consultation and negotiation between them.

Article 25

Participation of other ITER Parties

In the event that any other party to the ITER Agreement expresses its intention to participate in a project of the Broader Approach Activities, the Project Leader concerned shall, after consultation with the Project Committee, submit to the Steering Committee a proposal concerning the terms and conditions of the participation of that party in such project. The Steering Committee shall decide on the participation of that party upon the proposal of the Project Leader, and subject to the approval of the Parties following their internal procedures, may conclude agreements and arrangements with that party on such participation.

Article 26

Application with regard to EURATOM

In accordance with the Treaty establishing EURATOM, this Agreement shall apply to the territories covered by that Treaty. In accordance with that Treaty and other relevant agreements, it shall also apply to the Republic of Bulgaria, Romania and the Swiss Confederation, participating in the EURATOM fusion programme as fully associated third States.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by the Government of Japan and the European Atomic Energy Community respectively, have signed this Agreement.

Done at [*Brussels*] on [date], in duplicate, in the English and Japanese languages, both texts being equally authentic.

For the European Atomic Energy Community

[Personne qui signe]

For the Government of Japan

[Personne qui signe]

Annex I
IFMIF/EVEDA

Article 1

Objective

1. The Parties, subject to this Agreement as well as their laws and regulations, shall conduct the Engineering Validation and Engineering Design Activities (hereinafter referred to as "EVEDA") to produce a detailed, complete and fully integrated engineering design of the International Fusion Materials Irradiation Facility (hereinafter referred to as "IFMIF") and all data necessary for future decisions on the construction, operation, exploitation and decommissioning of IFMIF, and to validate continuous and stable operation of each IFMIF subsystem.

2. Such design and data shall then be set out in a final design report to be adopted by the Steering Committee upon proposal by the Project Leader after consultation with the Project Committee, and be made available for each of the Parties to use either as a part of an international collaborative programme or in its own domestic programme.

Article 2

Scope

1. In pursuance of the objectives set out in Article 1 of this Annex, the following tasks shall be carried out:

   (a) establishment of the engineering design of IFMIF, including :

      (i) a complete description of IFMIF including its three main subsystems (the accelerators, the target facility and the test facility), the buildings including the hot cells for post irradiation examination, the auxiliary systems and the safety systems;

      (ii) detailed designs of the components, the subsystems and buildings with specific regard to their interfaces and integration;

      (iii) a planning schedule for the various stages of supply, construction, assembly, tests and commissioning together with the corresponding plan of human and financial resources requirements; and

      (iv) the technical specifications for the components allowing calls for tender for the supply of items needed for the start-up of the construction;

   (b) establishment of the site requirements for IFMIF, and performance of the necessary safety and environmental analyses;

(c) proposal of the programme and corresponding estimates of the cost, human resources and schedule for the operation, exploitation and decommissioning of IFMIF; and

(d) validating research and development work required for performing the activities described in points sub-paragraphs (a) to (c) , including:

(i) designing, building and assembling the prototype of the low energy part and the first high energy section of one of the two accelerators including its radio frequency power supplies, generators and their auxiliaries, and conducting their integrated beam testing operation;

(ii) designing, manufacturing and testing of scalable models to ensure engineering feasibility of the target facility and of the test facility; and

(iii) constructing the buildings to house the prototypical accelerator and its auxiliary systems.

2. The implementation of the tasks set out in paragraph 1 shall be further specified in the Project Plan and Work Programmes.

Article 3

Working Site

The working site for IFMIF/EVEDA shall be located at Rokkasho, Aomori Prefecture.

Article 4

Resources

The Parties shall make available the resources required for the implementation of the IFMIF/EVEDA as referred to in the [*Brussels*] Joint Declaration and its attachments.

Article 5

Duration

The duration of the IFMIF/EVEDA shall be six years and may be extended by decision of the Steering Committee.

Article 6

Ownership of Accelerator Components

Notwithstanding paragraph 3 of Article 14 of this Agreement, the European Implementing Agency shall retain the ownership of the prototypical accelerator components specified in this Article that it provides as a in-kind contribution, and shall take responsibility for shipping these components back after the dismantling of the prototypical accelerator:

(a) injector;

(b) radio frequency power supplies, generators and their auxiliaries; and

(c) control system.

Annex II
IFERC

Article 1

Objective

The Parties, subject to this Agreement as well as their laws and regulations, shall conduct research and development activities at IFERC aiming at contributing to the ITER Project and at promoting a possible early realisation of a future demonstration power reactor (hereinafter referred to as "DEMO").

Article 2

Scope

In pursuance of the objectives set out in Article 1 of this Annex, the following tasks shall be carried out:

(a) activities of the DEMO Design Research and Development Coordination Centre aiming at establishing a common basis for a DEMO design, including:

  (i) holding of seminars and other meetings;

  (ii) provision and exchange of scientific and technical information;

  (iii) DEMO conceptual design activities; and

  (iv) research and development activities on DEMO technologies;

(b) activities of the Computational Simulation Centre, including the provision and exploitation of a super-computer for large scale simulation activities to analyse experimental data on fusion plasmas, prepare scenarios for ITER operation, predict the performance of the ITER facilities and contribute to DEMO design; and

(c) activities of the ITER Remote Experimentation Centre to facilitate broad participation of scientists into ITER experiments, including the development of remote experimentation techniques for burning tokamak plasmas, to be tested on existing machines, such as the Advanced Superconducting Tokamak, as provided for in Article 1 of Annex III.

Article 3

Working Site

The working site for IFERC shall be located at Rokkasho, Aomori Prefecture.

Article 4

Resources

The Parties shall make available the resources required for the implementation of the IFERC activities as referred to in the [*Brussels*] Joint Declaration and its attachments.

Article 5

Duration

The duration of the IFERC activities shall be ten years and may be extended by decision of the Steering Committee.

Article 6

Details of Delivery and possible Transfer of Ownership of Super Computer Systems

Notwithstanding paragraph 3 of Article 14 of this Agreement, details of delivery and possible transfer of ownership of super computer systems shall be determined by the Steering Committee in accordance with the Project Plan.

Annex III
Satellite Tokamak Programme

Article 1

Objective

1. The Parties, subject to this Agreement as well as their laws and regulations, shall conduct the satellite tokamak programme (hereinafter referred to as "the Satellite Tokamak Programme"). This programme includes:

   (a) the participation in the upgrade of the tokamak experimental equipment owned by the Japanese Implementing Agency to an advanced superconducting tokamak (hereinafter referred to as "the Advanced Superconducting Tokamak"); and

   (b) the participation in its exploitation, to support the exploitation of ITER and research towards DEMO by addressing key physics issues for ITER and DEMO.

2. The construction and exploitation of the Advanced Superconducting Tokamak shall be conducted under the Satellite Tokamak Programme and the Japanese national programme. The exploitation opportunities of the Advanced Superconducting Tokamak shall be equally shared between the national programme and the Satellite Tokamak Programme.

Article 2

Scope

1. In pursuance of the objectives set out in Article 1 of this Annex, the following tasks shall be carried out:

   (a) Construction phase: design, manufacturing of components and systems, and assembly of the Advanced Superconducting Tokamak; and

   (b) Exploitation phase: planning and execution of Satellite Tokamak Programme experiments.

2. The implementation of the tasks set out in paragraph 1 shall be further specified in the Project Plan and Work Programmes on the following basis:

   (a) the conceptual design report, including the functional specifications of the components to be supplied by the Parties for the implementation of the Satellite Tokamak Programme, shall be provided by the Japanese Implementing Agency and reviewed and accepted by the Parties;

   (b) each Implementing Agency shall develop the detailed design of the components to be supplied by it as in-kind contribution;

(c) the Japanese Implementing Agency shall be responsible for the integration of the Advanced Superconducting Tokamak components and for the general assembly and operation of the device; and

(d) EURATOM shall be entitled to participate in the exploitation of the Advanced Superconducting Tokamak on an equitable basis.

Article 3

Working Site

The working site for the Satellite Tokamak Programme shall be located at Naka, Ibaraki Prefecture.

Article 4

Resources

The Parties shall make available the resources required for the implementation of the Satellite Tokamak Programme as referred to in the [*Brussels*] Joint Declaration and its attachments.

Article 5

Duration

The duration of the Satellite Tokamak Programme shall be ten years including three years for commissioning and operation and may be extended by decision of the Steering Committee.