EUROPEAN
COMMISSION

Brussels, 24.10.2014
COM(2014) 656 final

ANNEX 1

ANNEX

to the

proposal for a Council Decision on the approval of the conclusion by the Commission, on behalf of the European Atomic Energy Community, of the

Agreement for scientific and technological cooperation between the European Union and European Atomic Energy Community and the Swiss Confederation associating the Swiss Confederation to Horizon 2020 - the Framework Programme for Research and Innovation and the Research and Training Programme of the European Atomic Energy Community complementing Horizon 2020; and regulating the Swiss Confederation's participation in the ITER activities carried out by Fusion for Energy

Agreement for scientific and technological cooperation between the European Union and European Atomic Energy Community and the Swiss Confederation associating the Swiss Confederation to Horizon 2020 - the Framework Programme for Research and Innovation and the Research and Training Programme of the European Atomic Energy Community complementing Horizon 2020; and regulating the Swiss Confederation's participation in the ITER activities carried out by Fusion for Energy

THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY COMMUNITY,

(hereinafter referred to respectively as 'the Union' and 'Euratom'),

of the one part,

and

THE SWISS CONFEDERATION,

(hereinafter referred to as Switzerland),

of the other part,

(hereinafter referred to as the 'Parties'),

CONSIDERING that the close relationship between Switzerland and the Union and Euratom is of benefit to the Parties;

CONSIDERING the importance of scientific and technological research for the Union and Euratom and for Switzerland and their mutual interest in cooperating in this matter in order to make better use of resources and to avoid unnecessary duplication;

WHEREAS Switzerland and the Union and Euratom are currently implementing research programmes in fields of common interest;

WHEREAS the Union and Euratom and Switzerland have an interest in cooperating on these programmes to their mutual benefit;

CONSIDERING the interest of the Parties in encouraging the mutual access of their research entities to research and technological development activities in Switzerland, on the one hand, and to the Union Framework Programme for research and innovation and to the Research and Training Programme of Euratom, and to the activities carried out by the European Joint Undertaking for ITER and the Development of Fusion for Energy[1] (hereafter 'Fusion for Energy'), on the other;

[1] Established by Council Decision (2007/198/Euratom) of 27 March 2007 (OJL90, 30.03.2007, p.58).

WHEREAS the European Atomic Energy Community and Switzerland concluded a Cooperation Agreement in 1978 in the field of controlled thermonuclear fusion and plasma physics (hereinafter referred to as 'the Fusion Agreement');

WHEREAS both Parties wish to emphasize the mutual benefits of the execution of the Fusion Agreement, in the case of the European Atomic Energy Community, the role of Switzerland in the advancement of all the elements of the Fusion Community Programme, in particular JET and ITER on the way to the Demonstration Reactor DEMO, and, in the case of Switzerland, the development and strengthening of the Swiss Programme and its integration in the European and international frames;

WHEREAS both Parties reaffirm their desire to pursue their long-term cooperation in the field of controlled thermonuclear fusion and plasma physics on the basis of a new framework and instruments that will ensure the support to the research activities;

WHEREAS this Agreement terminates and replaces the Fusion Agreement;

WHEREAS the Parties concluded a Framework Agreement on 8 January 1986 for scientific and technical cooperation, which entered into force on 17 July 1987 (hereinafter referred to as 'the Framework Agreement');

CONSIDERING that Article 6 of the Framework Agreement states that the cooperation aimed at by the Framework Agreement is to be carried out through appropriate agreements;

WHEREAS on 25 June 2007 the Communities and Switzerland signed an agreement on scientific and technological cooperation between the European Community and the European Atomic Energy Community, of the one part, and the Swiss Confederation, of the other part;

WHEREAS on 12 December 2012 Euratom and Switzerland concluded an agreement on Scientific and Technological Cooperation between the European Atomic Energy Community, of the one part, and the Swiss Confederation, of the other part, associating the Swiss Confederation to the Framework Programme of the European Atomic Energy Community for nuclear research and training activities (2012-2013);

CONSIDERING that Articles 9(2) of the abovementioned Agreements provide for renewal of the Agreement with a view to participation in new multi-annual Framework Programmes for research and technological development or other current and future activities, under mutually agreed conditions;

WHEREAS Euratom concluded the Agreement on the establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER project. Pursuant to its Article 21 and the Agreements in the form of an Exchange of Letters between the European Atomic Energy Community and the Swiss Confederation on the application of the ITER Agreement, the Agreement on Privileges and Immunities for ITER and the Broader Approach Agreement to the territory of Switzerland and on Switzerland's membership in the European Joint Undertaking for ITER and the Development of Fusion Energy of 22 November 2007, the Agreement applies to Switzerland participating in the Euratom fusion programme as a fully associated third State;

WHEREAS Euratom is a member of the European Joint Undertaking for ITER and the Development of Fusion Energy established by the Council Decision of 27 March 2007. Pursuant to Article 2 of this Decision and the Agreements in the form of an Exchange of Letters between the European Atomic Energy Community and the Swiss Confederation on the application of the ITER Agreement, the

Agreement on Privileges and Immunities for ITER and the Broader Approach Agreement to the territory of Switzerland and on Switzerland's membership in the European Joint Undertaking for ITER and the Development of Fusion Energy of 28 November 2007 Switzerland became a member of the Joint Undertaking as a third State having associated its research programme to the Euratom fusion programme;

WHEREAS Euratom concluded 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. Pursuant to its Article 26 the Agreement applies to Switzerland participating in the Euratom fusion programme as fully associated third State;

WHEREAS the Union programme "Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)" (hereinafter referred to as 'Horizon 2020') was adopted by Regulation (EU) No 1291/2013[2] of the European Parliament and of the Council, the Specific Programme implementing Horizon 2020 was adopted by Council Decision No 743/2013[3], and the Research and Training Programme of the European Atomic Energy Community (2014-2018) complementing Horizon 2020 – (hereinafter referred to as 'Euratom Programme') was adopted by Council Regulation (Euratom) No 1314/2013[4], and the Rules for the participation and dissemination in Horizon 2020 and Euratom Programme were adopted by the Regulation of the European Parliament and of the Council (EU) No 1290/2013[5], and the Regulation (EC) No 294/2008 establishing the European Institute of Innovation and Technology (hereinafter referred as the 'EIT Regulation') was amended by Regulation (EU) No 1292/2013[6] of the European Parliament and of the Council, and the decision to provide the basis for the financing of the ITER related activities for the period 2014-2020 was adopted by Council Decision 2013/791/Euratom[7] amending Decision 2007/198/Euratom establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it;

WHEREAS without prejudice to the provisions of the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community, this Agreement and any activities entered into under it will in no way affect the powers vested in the Member States to undertake bilateral activities with Switzerland in the fields of science, technology, research and development, and to conclude, where appropriate, agreements to that end.

HAVE AGREED AS FOLLOWS:

ARTICLE 1
Subject matter

1. The terms and conditions of Swiss participation in the implementation of Pillar I of Horizon 2020 and actions under the specific objective 'Spreading excellence and widening participation', the Euratom Programme 2014-2018 and in the activities carried out by the European Joint Undertaking for ITER and the Development of Fusion for Energy (hereafter 'Fusion for Energy') for 2014-2020, shall be as laid down in this Agreement.

[2] OJ L347, 20.12.2013, p.104.
[3] OJ L347, 20.12.2013, p.965.
[4] OJ L347, 20.12.2013, p.948.
[5] OJ L347, 20.12.2013, p.81.
[6] OJ L347, 20.12.2013, p.147.
[7] OJ L349, 21.12.2013, p.100.

1bis. Subject to Article 13(3) *quater* this Agreement shall set out as of 1 January 2017 the terms and conditions of Swiss participation in the implementation of the whole of Horizon 2020, the Euratom Programme 2014-2018 and in the activities carried out by the European Joint Undertaking for ITER and the Development of Fusion for Energy for 2014-2020.

2. Legal entities established in Switzerland may participate in Programmes covered by this Agreement and in the activities carried out by Fusion for Energy under the conditions set out in Article 7.

3. As of 1 January 2017 legal entities established in Switzerland may participate in the activities of the Joint Research Centre of the Union, as far as this participation is not covered by paragraph 1.

4. Legal entities established in the Union, including the Joint Research Centre, may participate in research programmes and/or projects in Switzerland on themes equivalent to those of the programmes mentioned in paragraph 1 and, as of 1 January 2017, mentioned in paragraph 1 *bis*.

5. For the purposes of this Agreement:

a. 'legal entity' means any natural or any legal person created and recognised as such under national law, Union law or international law, which has legal personality and which may, acting in its own name, exercise rights and be subject to obligations;

b. 'Programmes covered by this Agreement' means Pillar I of Horizon 2020, actions under the specific objective 'Spreading excellence and widening participation' and the Euratom Programme 2014-2018 or, subject to Article 13(3) *quater*, the whole of Horizon 2020 and Euratom Programme 2014-2018 as of 1 January 2017;

c. 'Pillar I of Horizon 2020' means actions under specific objectives enumerated in Annex I part I of the Regulation (EU) No 1291/2013 of the European Parliament and of the Council, namely the European Research Council, future and emerging technologies, Marie Skłodowska-Curie actions and research infrastructures.

ARTICLE 2
Forms and means of cooperation

1. Cooperation shall take the following forms:

a. Participation of legal entities established in Switzerland in Programmes covered by this Agreement in accordance with the terms and conditions laid down in their rules for the participation and dissemination; and in all activities carried out by Fusion for Energy, in accordance with the terms and conditions laid down by the Joint Undertaking.

In case the Union makes provisions for the implementation of Articles 185 and 187 of the Treaty on the Functioning of the European Union (TFEU)[8], Switzerland shall be allowed to participate in the legal structures created under these provisions, in conformity with the decisions and regulations that have been or will be adopted for the establishment of these

[8] OJ C115, 9.05.2008, p.47.

legal structures. Subject to Article 13(3) *quater,* this provision shall only apply as of 1 January 2017.

Legal entities established in Switzerland shall be eligible for participation, as entities from an associated country, in indirect actions based on Articles 185 and 187 of the TFEU. Subject to Article 13(3) *quater,* this provision shall only apply as of 1 January 2017.

The Regulation (EC) No 294/2008 of the European Parliament and of the Council as amended by the Regulation (EU) No 1292/2013 of the European Parliament and of the Council shall apply to participation of legal entities established in Switzerland in Knowledge and Innovation Communities.

Swiss participants are invited to the Stakeholder Forum of the European Institute of Innovation and Technology (EIT).

b. Financial contribution by Switzerland to the budgets of the work programmes adopted for the implementation of Programmes covered by this Agreement and to the activities carried out by Fusion for Energy, as defined in Article 4(2).

c. Participation of legal entities established in the Union in Swiss research programmes and/or projects decided by the Federal Council on themes equivalent to those of Programmes covered by this Agreement and to those activities carried out by Fusion for Energy, in accordance with the terms and conditions laid down in the relevant Swiss regulations and with the agreement of the partners in the specific project and the management of the corresponding Swiss programme. Legal entities established in the Union participating in Swiss research programmes and/or projects shall cover their own costs, including their relative share of the project's general management and administrative costs.

2. In addition to timely provision of information and documentation concerning the implementation of Programmes covered by this Agreement and of the activities carried out by Fusion for Energy as well as of the Swiss programmes and/or projects, the cooperation between the Parties may include the following forms and means:

a. Regular exchanges of views on research policy guidelines and priorities and plans in Switzerland and in the Union and Euratom;

b. Exchanges of views on the prospects and development of cooperation;

c. Timely exchanges of information on the implementation of the research programmes and projects in Switzerland and in the Union and Euratom and on the results of the work undertaken under this Agreement;

d. Joint meetings and resulting joint declarations;

e. Visits and exchanges of researchers, engineers and technicians;

f. Regular contacts and follow up between programme or project leaders in Switzerland and in the Union and Euratom;

g. Participation by experts in seminars, symposia and workshops;

h. Timely exchanges of information on the activities of ITER in a similar manner as that for Member States.

ARTICLE 3
Intellectual Property Rights and Obligations

1. Subject to Annex A and applicable law, legal entities established in Switzerland participating in Programmes covered by this Agreement and activities carried out by Fusion for Energy shall, as regards ownership, exploitation and dissemination of information and intellectual property arising from such participation, have the same rights and obligations as legal entities established in the Union participating in the research programmes and activities in question. This provision shall not apply to the results obtained from projects started before the provisional application of this Agreement.

2. Subject to Annex A and applicable law, legal entities established in the Union taking part in Swiss research programmes and/or projects, as provided for in Article 2(1c), shall, as regards ownership, exploitation and dissemination of information and intellectual property arising from such participation, have the same rights and obligations as legal entities established in Switzerland participating in the programmes and/or projects in question. This provision shall not apply to the results obtained from projects started before the provisional application of this Agreement.

3. 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, signed at Stockholm on 14 July 1967.

ARTICLE 4
Financial provisions

1. Switzerland's financial contribution deriving from participation in the implementation of Programmes covered by this Agreement and to the activities carried out by Fusion for Energy shall be established in proportion to and in addition to the amount available each year in the general budget of the European Union for commitment appropriations to meet the Commission's financial obligations stemming from work to be carried out in the forms necessary for the implementation, management, functioning and operations of the programmes covered by this Agreement.

   The European Union reserves the right to use the operational and administrative appropriations arising from the Swiss contribution for Programmes covered by this Agreement and all activities carried out by Fusion for Energy according to the needs of these programmes and activities.

2. With the exception of the second sentence of this paragraph, the proportionality factor governing Switzerland's financial contribution under this agreement shall be obtained by establishing the ratio between Switzerland's gross domestic product at market prices and the sum of gross domestic products, at market prices, of the Member States of the European Union. The proportionality factor governing Switzerland's contribution to Fusion for Energy activities and the fusion part of Euratom Programme shall be obtained by establishing the ratio between Switzerland's gross domestic product at market prices and the sum of gross domestic products, at market prices, of the Member States of the European Union and Switzerland.

These ratios shall be calculated on the basis of the latest statistical data from Eurostat, available at the time of publication of the draft budget of the European Union for the same year.

3. The rules governing Switzerland's financial contribution are set out in Annex B.

ARTICLE 5
Switzerland/Communities Research Committee

1. The Switzerland/Communities Research Committee set up in the Framework Agreement shall review, evaluate and ensure the proper implementation of this Agreement. Any issues arising from the implementation or interpretation of this Agreement shall be referred to this Committee.

2. The Committee may decide to amend the references to Union acts in Annex C.

3. The Committee shall meet at the request of any of the Parties. Furthermore, the Committee will work on an on-going basis through exchange of documents, e-mails and other means of communication.

ARTICLE 6
Participation in Committees

1. Representatives of Switzerland shall participate as observers in the committees responsible for implementation of the Programmes covered by this Agreement. Participation shall be in accordance with the Rules of Procedure of these committees. Switzerland shall be informed of the results of votes in these committees. Participation as referred to in this paragraph shall take the same form, including procedures for receipt of information and documentation, as that applicable to representatives from Member States of the European Union.

2. Representatives of Switzerland shall participate as observers in the Board of Governors of the Joint Research Centre. This participation shall be in accordance with the rules of procedure for the Joint Research Centre Board of Governors.

3. Travel costs and subsistence costs incurred by representatives of Switzerland participating in meetings of the committees mentioned in paragraphs 1 and 2 shall be reimbursed by the Commission on the same basis as, and in accordance with the procedures currently in force for, representatives of the Member States of the European Union.

4. Representatives of Switzerland shall participate in Fusion for Energy bodies. Participation shall be in accordance with the Fusion for Energy statutes, including their provisions on voting rights.

5. Participation of representatives from Switzerland in the European Research Area and Innovation Committee (ERAC) and in the ERA-related groups shall be in accordance with the rules of procedure of the Committee and these groups.

ARTICLE 7
Participation

1. Without prejudice to the provisions of Article 3, legal entities established in Switzerland participating in Programmes covered by this Agreement and in the activities carried out by

Fusion for Energy shall have the same contractual rights and obligations as legal entities established in the Union.

2. For legal entities established in Switzerland, the terms and conditions applicable for the submission and evaluation of proposals and those for the granting and conclusion of grant agreements and/or contracts under Programmes covered by this Agreement and under the activities carried out by Fusion for Energy shall be the same as those applicable for grant agreements and/or contracts concluded under the same programmes or activities of Fusion for Energy with legal entities established in the Union.

3. Legal entities established in Switzerland shall be eligible for financial instruments established under Programmes covered by this Agreement.

4. An adequate number of Swiss experts shall be taken into consideration in the selection of evaluators or experts under the Programmes covered by this Agreement as well as for the activities carried out by Fusion for Energy, taking into account the skills and knowledge appropriate to the tasks assigned to them.

5. Without prejudice to the provisions of Article 1(4), Article 2(1c) and Article 3(2) and to existing regulations and rules of procedure, legal entities established in the Union may participate under equivalent terms and conditions to Swiss partners in programmes and/or projects of the Swiss research programmes and activities mentioned in Article 2(1c). The Swiss authorities may make participation in a project by one or more legal entities established in the Union subject to joint participation by at least one legal entity established in Switzerland.

ARTICLE 8
Mobility

Each Party shall undertake, in accordance with existing regulations and agreements in force, to guarantee the entry and stay – as far as indispensable for successful accomplishment of the activity concerned – of a number of their researchers participating, in Switzerland and in the Union, in the activities covered by this Agreement.

ARTICLE 9
Revision and future collaboration

1. Should the Union or Euratom revise or extend their research programmes or the activities of Fusion for Energy, this Agreement may be revised or extended under mutually agreed conditions. The Parties shall exchange information and views concerning any such revision or extension, as well as on any matters which affect directly or indirectly Switzerland's cooperation in the fields covered by Programmes covered by this Agreement and by the activities carried out by Fusion for Energy. Switzerland shall be notified of the exact content of the revised or extended programmes or activities within two weeks of their adoption by the Union and Euratom. In case of such revision or extension of the research programmes or activities, Switzerland may terminate this Agreement by giving six months' notice. The Parties shall give notice of any intention to terminate or to extend this Agreement within three months after the adoption of the Union or Euratom decision.

2. Should the Union or Euratom adopt new multi-annual framework programmes for research and technological development or a new decision to finance the Fusion for Energy activities, this

Agreement may be renewed or renegotiated under conditions agreed mutually between the Parties. The Parties shall exchange information and views on the preparation of such programmes or other current and future research activities, including those carried out by Fusion for Energy, through the Switzerland/Communities Research Committee.

ARTICLE 10
Relation to other International Agreements

1. The provisions of this Agreement shall apply without prejudice to the advantages envisaged by other international agreements binding one of the Parties and reserved only for legal entities established on the territory of that Party.

2. A legal entity established in another country associated to Horizon 2020 (Associated Country) or to the Euratom Programme enjoys the same rights and obligations under this Agreement as legal entities that are established in a Member State provided that the Associated Country in which the entity is established has agreed to award legal entities from Switzerland the same rights and obligations.

ARTICLE 11
Territorial application

This Agreement shall apply, on the one hand, to the territories in which the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community are applied and under the conditions laid down in those Treaties and, on the other, to the territory of Switzerland.

ARTICLE 12
Annexes

Annexes A, B and C shall form an integral part of this Agreement.

ARTICLE 13
Amendment and termination

1. This Agreement shall apply for the duration of Horizon 2020, until 31 December 2018 for the Euratom Programme and until 31 December 2020 for the activities carried out by Fusion for Energy.

Notwithstanding paragraph 3 below, during the period from 1 January 2019 until 31 March 2019, either Party may terminate this Agreement by written notice in relation to the activities carried out by Fusion for Energy. In this case the Agreement shall cease to apply on 31 December 2018 in relation to such activities.

This Agreement shall be tacitly extended and apply under the same terms and conditions to the Euratom Programme 2019-2020, unless either party notifies its decision not to extend this Agreement to this Programme within three months after the adoption of the Euratom Programme 2019-2020. In the case of such a notification, this Agreement shall cease to apply on 31 December 2018 to the Euratom Programme, without prejudice to the participation of Switzerland in Horizon 2020 and in the activities carried out by Fusion for Energy.

2. This Agreement may be amended only in writing by common consent between the Parties. The procedure for entry into force of the amendments shall be the same as the procedure applicable to this Agreement.

3. Each Party may terminate this Agreement at any time, subject to six months' written notice.

3bis. In case the agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons is terminated, this Agreement shall cease to apply on the same date as the aforementioned agreement. No prior written notice shall be required to that effect.

3ter. This Agreement shall cease to apply in the absence of the Swiss notification required for the entry into force of the Protocol on the extension to Croatia of the agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, within six months after the completion of Swiss internal procedures. No prior written notice shall be required to that effect.

3quater. This Agreement shall cease to apply with retroactive effect as of 31 December 2016, in the absence of Swiss ratification of the Protocol on the extension to Croatia of the agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, by 9 February 2017. If the Swiss Confederation ratifies the abovementioned Protocol, this Agreement shall apply to the whole of Horizon 2020, Euratom Programme 2014-2018 and the activities carried out by Fusion for Energy as of 1 January 2017.

4. Projects and activities in progress at the time of termination and/or expiry of this Agreement shall continue until their completion under the conditions laid down in this Agreement. The Parties shall settle by common consent any other consequences of termination.

ARTICLE 14
Review clause

In the fourth year after this Agreement becomes applicable, Parties shall jointly review the implementation of the Agreement, including the proportionality factor governing the financial contribution of Switzerland, on the basis of the data concerning participation of legal entities established in Switzerland in indirect and direct actions under the Programmes covered by this Agreement in the years 2014-2016 as well as Fusion for Energy activities.

ARTICLE 15
Entry into force and provisional application

1. This Agreement shall be ratified or concluded by the Parties in accordance with their respective rules. It shall enter into force on the date of the last notification of completion of the procedures necessary to this end.

In relation to Switzerland's association to Horizon 2020, provisional application of this Agreement shall start upon signature of this Agreement by representatives of Switzerland and the Union.

In relation to Switzerland's association to Euratom Programme and Fusion for Energy activities, provisional application of this Agreement shall start when Switzerland has signed the Agreement and Euratom has notified Switzerland of the completion of procedures necessary for conclusion of this Agreement.

Provisional application shall take effect from 15 September 2014. Legal entities established in Switzerland shall be treated as entities from an Associated Country in the meaning of Article 2(1) point 3 of Regulation (EU) No 1290/2013 of the European Parliament and of the Council laying down the rules for participation and dissemination in Horizon 2020 for the purpose of the calls for proposals or invitations to submit proposals, procurement procedures or contests under Programmes covered by this Agreement which have a deadline from 15 September 2014 onwards.

If legal entities established in Switzerland are not eligible for funding in calls for proposals or invitations to submit proposals or contests under Programmes covered by this Agreement financed from 2015 budget, on the basis of Article 10(1)(a) of Regulation (EU) No 1290/2013 of the European Parliament and of the Council laying down the rules for participation and dissemination in Horizon 2020, for calculation of Switzerland's financial contribution issued in accordance with Annex B of this Agreement for the year 2015, the budget of the relevant Programme shall be diminished by the budget of these calls, invitations to submit proposals or contests.

2. Should one of the Parties inform the other that it will not conclude or ratify this Agreement, it is hereby agreed that:

- the Union and Euratom shall reimburse to Switzerland its contribution to the general budget of the European Union, as provided for in Article 2(1b);

- however, the funds already committed by the Union and Euratom during the provisional application of this Agreement for participation by legal entities established in Switzerland in indirect actions or for participation in activities carried out by Fusion for Energy, shall be deducted by the Union and Euratom from the abovementioned reimbursement;

- projects and activities started during this provisional application and still in progress at the time of the abovementioned notification shall continue until their completion under the conditions laid down in this Agreement.

ARTICLE 16
Relation to the 1978 Fusion Agreement

1. Upon its provisional application, this Agreement shall suspend the Cooperation Agreement of 1978 in the field of controlled thermonuclear fusion and plasma physics.

2. Upon its entry into force, this Agreement terminates and replaces the Cooperation Agreement of 1978 in the field of controlled thermonuclear fusion and plasma physics.

This Agreement shall be drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish and Swedish languages, each of those texts being equally authentic.

ANNEX A

PRINCIPLES ON THE ALLOCATION OF INTELLECTUAL PROPERTY RIGHTS

I. INTELLECTUAL PROPERTY RIGHTS OF THE LEGAL ENTITIES OF THE PARTIES

1. Each Party shall ensure that the intellectual property rights of the legal entities of the other Party participating in the activities undertaken under this Agreement and the rights and obligations resulting from such participation are treated in a manner compatible with the relevant international conventions applicable to the Parties, notably the TRIPS Agreement (Agreement on Trade Related Aspects of Intellectual Property Rights administered by the World Trade Organisation), the Berne Convention (Paris Act 1971) and the Paris Convention (Stockholm Act 1967).

2. Legal entities established in Switzerland participating in indirect actions under Programmes covered by this Agreement shall have intellectual property rights and obligations in accordance with Regulation (EU) No 1290/2013 of the European Parliament and of the Council laying down the rules for participation and dissemination in Horizon 2020 and the provisions of the Horizon 2020 and Euratom Grant Agreements.

3. Legal entities established in Switzerland participating in activities carried out by Fusion for Energy shall have intellectual property rights and obligations in accordance with the rules on intellectual property rights and dissemination of information and with the financial rules adopted by Fusion for Energy.

4. Where legal entities established in Switzerland participate in indirect actions under Horizon 2020, implemented in accordance with Article 185 and Article 187 of the TFEU, the legal entities established in Switzerland shall have intellectual property rights and obligations in accordance with Regulation (EU) No 1290/2013 of the European Parliament and of the Council laying down the rules for participation and dissemination in Horizon 2020 and provisions of the relevant Grant Agreements and any other relevant rules, as applicable.

5. Legal entities established in a European Union Member State participating in Swiss research programmes and/or projects shall have the same intellectual property rights and obligations as legal entities established in Switzerland participating in these research programmes or projects.

II. INTELLECTUAL PROPERTY RIGHTS OF AND INFORMATION EXCHANGE BETWEEN THE PARTIES

1. Unless otherwise agreed between the Parties, the following rules shall apply to the intellectual property rights generated by the Parties in the course of the activities undertaken in accordance with Article 2(2) of this Agreement:

   a. The Party generating the intellectual property shall have ownership thereof. Where their respective shares in the work cannot be determined, the Parties shall co-own the intellectual property;

b. The Party holding ownership shall grant the other Party rights of access to and the use of the intellectual property with a view to the activities referred to in Article 2(2) of this Agreement. No charge shall be made for granting rights of access to and the use of the intellectual property.

2. Unless otherwise agreed between the Parties, the following rules shall apply to scientific publications from the Parties:

a. Where a Party publishes a work containing data, information and technical or scientific results arising from the activities undertaken under this Agreement in journals, articles, reports and books, including audio-visual works and software, a worldwide, non-exclusive, irrevocable royalty-free licence to translate, adapt, transmit and publicly distribute the data, information and technical or scientific results in question shall be granted to the other Party unless precluded by existing intellectual property rights of third parties;

b. All copies of copyrighted data and information to be publicly distributed and prepared under this section shall indicate the names of the author or authors, unless an author expressly declines to be named. Copies shall also bear a clearly visible acknowledgement of the cooperative support of the Parties.

3. Unless otherwise agreed between the Parties, the following rules shall apply to undisclosed information of the Parties:

a. At the time of submission to the other Party of information relating to the activities undertaken under this Agreement, each Party shall identify the information which it wishes to remain undisclosed;

b. For the specific purposes of application of this Agreement, the receiving Party may, on its own responsibility, communicate such undisclosed information as confidential information to bodies or persons under its authority and under an obligation to keep the information confidential;

c. With the prior written consent of the Party providing undisclosed information, the receiving Party may disseminate such information more widely than otherwise permitted by subparagraph (b). The Parties shall cooperate in developing procedures for requesting and obtaining prior written consent for wider dissemination, and each Party shall grant such approval to the extent permitted by its domestic policies, regulations and laws;

d. Non-documented undisclosed or other confidential or privileged information provided in seminars or other meetings of the representatives of the Parties arranged under this Agreement, or information arising from the attachment of staff, use of facilities or indirect actions must remain confidential, where the recipient of such undisclosed or other confidential or privileged information was made aware of the confidential character of the information before it was communicated, in accordance with subparagraph (a);

e. Each Party shall ensure that undisclosed information which it obtains in accordance with subparagraphs (a) and (d) shall be controlled as provided for in this Agreement. If one of the Parties becomes aware that it will be, or may be expected to become, unable to meet the non-dissemination provisions of subparagraphs (a) and (d), it shall immediately inform the other Party. The Parties shall thereafter consult to define an appropriate course of action.

ANNEX B

FINANCIAL RULES GOVERNING THE CONTRIBUTION OF SWITZERLAND REFERRED TO IN ARTICLE 4 OF THIS AGREEMENT

I. DETERMINATION OF FINANCIAL PARTICIPATION

1. The Commission shall communicate to Switzerland together with relevant background material including the corresponding Eurostat data, as soon as possible and at the latest on 1 September of each year and any Multi-annual Financial Framework 2014-2020 update as soon as available:

   a. The amounts in commitment appropriations in the statement of expenditure of the draft budget of the European Union for the following year corresponding to the Programmes covered by this Agreement and the Union final contribution to Fusion for Energy;

   b. The estimated amount of the contributions derived from the draft budget, corresponding to the participation of Switzerland for the following year in each of the Programmes covered by this Agreement and in the activities carried out by Fusion for Energy.

2. Once the general budget has been finally adopted and at the same time as the first call for funds of the year, the Commission shall communicate to Switzerland the above mentioned amounts with relevant background material including the corresponding Eurostat data, in separate statements of expenditure corresponding to the participation of Switzerland in each of the Programmes covered by this Agreement and in the activities carried out by Fusion for Energy.

II. PAYMENT PROCEDURES

1. In June and November of each financial year, the Commission shall issue a separate call for funds to Switzerland corresponding to its contribution to each of the Programmes covered by this Agreement and to the activities carried out by Fusion for Energy under this Agreement. These calls for funds shall provide respectively for the payment of six twelfths of Switzerland's contribution for each call for funds and not later than 30 days after receipt of the corresponding call for funds. However, in the last year of the two Programmes and the last year of the Council Decision 2013/791/Euratom[9] amending Decision 2007/198/Euratom establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it, the Commission shall issue in June a single call for funds covering the whole year to be paid not later than 30 days after receipt of the corresponding call for funds.

1bis. Notwithstanding paragraph 1 above, the Commission shall issue by 15 December 2014 a call for funds to Switzerland corresponding to 7/24 of its annual contribution to Programmes covered by this Agreement in 2014, with the exception of fusion activities under the Euratom Programme. The Commission shall also issue by 15 December 2014 a call corresponding to 12/12 of Swiss annual contribution to the fusion activities of the Euratom Programme and the activities carried out by Fusion for Energy in 2014. These calls shall provide for the payment of Switzerland's contribution not later than 30 days after the receipt of the corresponding call for funds.

Paragraphs below shall apply accordingly.

[9] OJ L349, 21.12.2013, p.100.

2. The contributions of Switzerland shall be expressed and paid in Euros.

3. Switzerland shall pay its contribution under this Agreement according to the schedule in paragraph 1. Any delay in payment shall give rise to the payment of interest at a rate equal to the one-month inter-bank offered rate (EURIBOR). This rate shall be increased by 1.5 percentage point for each month of delay. The increased rate shall be applied to the entire period of delay.

III. CONDITIONS FOR IMPLEMENTATION

1. The financial contribution of Switzerland to the two Programmes and the activities carried out by Fusion for Energy in accordance with Article 4 of this Agreement shall remain unchanged for the financial year in question. Any relevant changes in the EU budget adopted in the financial year in question shall be taken into account in the first call for funds issued in the following year, except in the final year of the respective Programmes and activities.

2. The Commission, at the time of the closure of the accounts relating to each financial year (n), within the framework of the establishment of the revenue and expenditure account, shall proceed to the regularisation of the accounts with respect to the participation of Switzerland, taking into consideration modifications which have taken place, either by transfer, cancellations, carry-overs, or by supplementary and amending budgets during the financial year.

3. This regularisation shall occur at the time of the first payment for the year n+1. However, the final such regularisation shall occur not later than July of the fourth year following the end of each of the two Programmes and the end of the duration of the Council Decision 2013/791/Euratom amending Decision 2007/198/Euratom establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it. Payment by Switzerland shall be credited to the European Union and Euratom programmes as budget receipts allocated to the appropriate budget heading in the statement of revenue of the general budget of the European Union.

IV. INFORMATION

1. At the latest on 1 September of each financial year (n+1), the statement of appropriations for the Programmes covered by this Agreement and for the activities carried out by Fusion for Energy related to the previous financial year (n), shall be prepared and transmitted to Switzerland for information, according to the format of the Commission's revenue and expenditure account.

2. The Commission shall make available to Switzerland the statistics and all other general financial data relating to the implementation of each of the two Programmes and activities carried out by Fusion for Energy which is made available to the Member States.

ANNEX C

FINANCIAL CONTROLS OF SWISS PARTICIPANTS IN HORIZON 2020, IN THE EURATOM PROGRAMME AND IN THE ACTIVITIES CARRIED OUT BY FUSION FOR ENERGY COVERED BY THIS AGREEMENT

I. DIRECT COMMUNICATIONS

The Commission may communicate directly with the participants in Programmes covered by this Agreement and in the activities carried out by Fusion for Energy established in Switzerland and with their subcontractors. They may submit directly to the Commission all relevant information and documentation which they are required to submit on the basis of the instruments referred to in this Agreement and of the grant agreements and/or contracts concluded to implement them.

II. AUDITS

1. In accordance with the Regulation of the European Parliament and of the Council (EU) No 966/2012[10] and Commission Delegated Regulation (EU) No 1268/2012[11] and with the other rules referred to in this Agreement, the grant agreements and/or contracts concluded with participants in the programmes and activities established in Switzerland may provide for scientific, financial, technological or other audits to be conducted at any time on the premises of the participants and of their subcontractors by Commission agents or by other persons mandated by the Commission.

2. Commission agents, the European Court of Auditors and other persons mandated by the Commission shall have access to relevant sites and works and to all information, including information in electronic form, required in order to carry out such audits. This right of access shall be stated explicitly in the grant agreements and/or contracts concluded to implement the instruments referred to in this Agreement.

3. After the expiry of Horizon 2020 and the Euratom Programme, or after 31 December 2020 for the activities carried out by Fusion for Energy, audits may be conducted on the terms laid down in the grant agreements and/or contracts in question.

4. The Swiss Federal Audit Office shall be informed in advance of the audits conducted on Swiss territory. Such notification shall not be a legal precondition for carrying out such audits. The Swiss Federal Audit Office or other competent Swiss authorities designated by the Swiss Federal Audit Office may assist during such audits.

III. INVESTIGATIONS BY THE EUROPEAN ANTI FRAUD OFFICE (OLAF)

1. Within the framework of this Agreement, the Commission (OLAF) may carry out investigations, including on-the-spot checks and inspections, on Swiss territory, in accordance with the terms and conditions laid down in Council Regulation (Euratom, EC) No 2185/96[12] and Regulation (EU, Euratom) No 883/2013[13] of the European Parliament and of the Council with a view to

[10] OJ L298, 26.10.2012, p.1.
[11] OJ L362, 31.12.2012, p.1.
[12] OJ L292, 15.11.1996, p.2.
[13] OJ L248, 18.9.2013, p.1.

establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union and/or of Euratom.

2. On-the-spot checks and inspections shall be prepared and conducted by OLAF in close collaboration with the Swiss Federal Audit Office or with other competent Swiss authorities designated by the Swiss Federal Audit Office, which shall be notified in good time of the object, purpose and legal basis of the checks and inspections, so that they can provide all the requisite help. To that end, the officials of the competent Swiss authorities may participate in the on-the-spot checks and inspections.

3. If the Swiss authorities concerned so wish, the on-the-spot checks and inspections may be carried out jointly by OLAF and them.

4. Where the participants in Programmes covered by this Agreement and activities carried out by Fusion for Energy resist an on-the-spot check or inspection, the Swiss authorities, acting in accordance with national rules, shall give OLAF investigators such assistance as they need to allow them to discharge their duty in carrying out an on-the-spot check or inspection.

5. OLAF shall report as soon as possible to the Swiss Federal Audit Office or other competent Swiss authorities designated by the Swiss Federal Audit Office any fact or suspicion relating to an irregularity which has come to its notice in the course of the on-the-spot check or inspection. In any event OLAF shall inform the aforementioned authorities of the result of such checks and inspections.

IV. INFORMATION AND CONSULTATION

1. For the purposes of proper implementation of this Annex, the competent Swiss and Union authorities shall regularly exchange information and, at the request of one of the Parties, shall conduct consultations.

2. The competent Swiss authorities shall inform the Commission without delay of any fact or suspicion which has come to their notice relating to an irregularity in connection with the conclusion and implementation of the grant agreements and/or contracts concluded in application of the instruments referred to in this Agreement.

V. CONFIDENTIALITY

Information communicated or acquired in any form under this Annex shall be covered by professional secrecy and protected in the same way as similar information is protected by Swiss law and by the corresponding provisions applicable to the Union institutions. Such information may not be communicated to persons other than those within the Union institutions or in the Member States or Switzerland whose functions require them to know it nor may it be used for purposes other than to ensure effective protection of the Parties' financial interests.

VI. ADMINISTRATIVE MEASURES AND PENALTIES

Without prejudice to application of Swiss criminal law, administrative measures and penalties may be imposed by the Commission in accordance with the Regulation of the European Parliament and of the Council (EU) No 966/2012, and Commission Delegated Regulation (EU)

No 1268/2012, and with Council Regulation (EC, Euratom) No 2988/95[14] on the protection of the European Communities' financial interests.

VII. RECOVERY AND ENFORCEMENT

Decisions taken by the Commission under Horizon 2020 or Euratom Programme within the scope of this Agreement which impose a pecuniary obligation on persons other than States shall be enforceable in Switzerland. The enforcement order shall be issued, without any further control than verification of the authenticity of the act, by the authorities designated by the Swiss government, which shall inform the Commission thereof. Enforcement shall take place in accordance with the Swiss rules of procedure. The legality of the enforcement decision shall be subject to control by the Court of Justice of the European Union. Judgments given by the Court of Justice of the European Union pursuant to an arbitration clause in a contract or grant agreement under Horizon 2020 and Euratom Programme shall be enforceable on the same terms.

[14] OJ L312, 23.12.1995, p.1.