COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.9.2009
COM(2009) 480 final

Proposal for a

COUNCIL DECISION

on the conclusion, by the Commission, of the Agreement for co-operation between the European Atomic Energy Community and the Government of the Federative Republic of Brazil in the field of fusion energy research

EXPLANATORY MEMORANDUM

Subject: Conclusion, by the Commission, pursuant to the second paragraph of article 101 of the Treaty establishing the EAEC, of the Agreement for co-operation between the European Atomic Energy Community represented by the Commission of the European Communities and the Government of the Federative Republic of Brazil in the field of fusion energy research.

Directives for the Commission to conduct negotiations on an Agreement (the "Agreement") for co-operation between the European Atomic Energy Community (EURATOM) and the Government of the Federative Republic of Brazil, in the field of fusion energy research were approved by the Council on 22 July 2008.

The directives were based on a draft Agreement, which was discussed at the level of the Joint Working Party on research and Atomic Questions prior to the approval of the directives as a point A Decision by the Council. No substantial change has been made to this draft Agreement during the negotiations.

The Consultative Committee for the Euratom specific programme on nuclear energy research (Fusion) (CCE-FU) has supported the intention to conclude such an Agreement.

As far as the EAEC is concerned, the forms of co-operation which the new agreement would allow are:

technically compatible with the scientific and technological objectives relevant to nuclear fusion research as laid down in the Council Decision of 18 December 2006 concerning the Seventh Framework Programme of the EAEC for nuclear research and training activities (2007-2011)[1],

financially compatible with the financial reference amount for fusion in the same Decision of 18 December 2006,

in agreement with the scientific and technological objectives of the fusion energy research thematic priority area as laid down in the Council Decision of 19 December 2006[2] concerning the Specific Programme implementing the Seventh Framework Programme of the European Atomic Energy Community (EURATOM) for nuclear research and training activities (2007-2011).

The proposed Agreement will not have financial consequences for the Community budget as all cooperative activities under this agreement will be in fields that are part of the EU programmes, and as such will be financed through the relevant funding schemes (such as the Contracts of Association between the Commission and Member States, the Agreement on Staff Mobility, and other funding schemes foreseen for the implementation of fusion energy research in the EU).

The Agreement will have to be concluded by the Commission in conformity with article 101, second paragraph, of the Treaty establishing the EAEC.

In view of the above, the Commission proposes that the Council adopts, in application of the second paragraph of article 101 of the Treaty establishing the EAEC, the annexed draft proposal for a Council Decision concerning the conclusion, by the Commission, of an Agreement for co-operation between the European Atomic Energy Community and the Government of the Federative Republic of Brazil in the field of fusion energy research.

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1 O.J. n° L400, 30.12.2006 p.60.

2 O.J. n° L400, 30.12.2006, p. 404.

Proposal for a

COUNCIL DECISION

on the conclusion, by the Commission, of the Agreement for co-operation between the European Atomic Energy Community and the Government of the Federative Republic of Brazil 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 Article 101, second paragraph thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Commission has, in accordance with the Council Directives of 22 July 2008, conducted negotiations on an Agreement for co-operation between the European Atomic Energy Community and the Government of the Federative Republic of Brazil in the field of fusion energy research,

(2) The conclusion, by the Commission, of the Agreement should be approved,

HAS DECIDED AS FOLLOWS:

Sole Article

The conclusion, by the Commission, for and on behalf of the European Atomic Energy Community, of the Agreement for co-operation between the European Atomic Energy Community and the Government of the Federative Republic of Brazil in the field of fusion energy research, is hereby approved.

The text of the Agreement is annexed to this decision.

Done at Brussels, […..2009]

For the Council
The President

ANNEX

AGREEMENT FOR COOPERATION

BETWEEN

THE EUROPEAN ATOMIC ENERGY COMMUNITY

AND

THE GOVERNEMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL

IN THE FIELD OF FUSION ENERGY RESEARCH

The Government of the Federative Republic of Brazil and the European Atomic Energy Community (EURATOM) (hereinafter referred to as "the Parties"),

Considering that in the Agreement for Scientific and Technological cooperation between the Government of the Federative Republic of Brazil and the European Community, celebrated on 19 January 2004, the Parties undertake to promote cooperation in the field of research and of technological development activities;

Desiring to continue to promote the development of fusion energy as a potentially environmentally acceptable, economically competitive, and virtually limitless source of energy;

HAVE AGREED AS FOLLOWS:

Article I
Objective

The objective of this Agreement is to intensify cooperation between the Parties in the areas covered by their respective fusion programs, on the basis of mutual benefit and overall reciprocity, in order to develop the scientific understanding and technological capability underlying a fusion energy system.

Article II
Areas of Cooperation

The areas of cooperation under this Agreement may include the following:

(a) tokamaks, including the large projects of the present generation and activities relating to those of the next generation;

(b) alternatives to tokamaks;

(c) magnetic fusion energy technology;

(d) plasma theory and applied plasma physics;

(e) programme policies and plans; and

(f) other areas as mutually agreed upon in writing by the Parties insofar as they are covered by their respective programmes.

Article III
Forms of Cooperation

1. The forms of cooperation under this Agreement may include, but are not limited to, the following:

(a) exchange and provision of information and data on scientific and technical activities, events, practices and results, and on programme policies and plans, including the exchange of undisclosed information under the terms and conditions set out in Articles VI and VII;

(b) exchange of scientists, engineers and other specialists for agreed periods of time in order to participate in experiments, analysis, design and other research and development activities in accordance with Article VIII;

(c) organization of seminars and other meetings to discuss and exchange information on agreed topics in the areas listed in Article II, and to identify cooperative activities which may be usefully undertaken in accordance with Article V;

(d) exchange and provision of samples, materials, equipment (instruments and components) for experiments, testing and evaluation in accordance with Articles IX and X;

(e) execution of joint studies, projects or experiments including their joint design, construction and operation;

(f) establishment of data links such as, but not limited to, remote data analysis tools; and

(g) other specific forms of cooperation as mutually agreed by the Parties in writing.

2. As appropriate, the Parties shall coordinate the activities under this Agreement with other international activities of fusion energy research and development, in order to minimize duplication of effort. Nothing in this Agreement shall be construed to prejudice existing or future arrangements for cooperation between the Parties.

Article IV
Coordinating Committee and Executive Secretaries

1. The Parties shall establish a Coordinating Committee to coordinate and supervise the conduct of activities under this Agreement. Each Party shall appoint an equal number of members to the Coordinating Committee and nominate one of its appointed members as the Head of its Delegation. The Coordinating Committee shall meet annually, alternately in the Federative Republic of Brazil and in the European Union, or at other agreed times and places. The Head of the Delegation of the receiving Party shall chair the meeting.

2. The Coordinating Committee shall review the progress and plans of activities under this Agreement, and propose, coordinate and approve future cooperative activities that are within the scope of this Agreement, with regard to their technical merit and level of effort to ensure mutual benefit and overall reciprocity within the Agreement.

3. All decisions of the Coordinating Committee shall be taken by consensus.

4. Each Party shall nominate an Executive Secretary to act on its behalf during periods between meetings of the Coordinating Committee in all matters concerning cooperation that are within the scope of this Agreement. The Executive Secretaries shall be responsible for the routine management of the cooperation.

Article V
Implementation

1. Each Party shall designate appropriate entities for the implementation of activities under this Agreement.

2. When the Coordinating Committee approves a cooperative activity, it shall also approve, when necessary, a Project Plan under this Agreement.

3. Each Project Plan shall list the entities designated to implement the project, and include detailed provisions for the implementation of the cooperative activity, including its technical scope and management, the applicable decontamination responsibilities, exchange of undisclosed information, exchange of equipment, treatment of intellectual property, total costs, cost-sharing and its schedule, as appropriate.

Article VI
Availability and Dissemination of Information

1. Subject to the applicable laws and regulations and to the provisions of this Agreement, each Party and its designees shall undertake to make freely available to the other Party and its designees any information at its disposal which is required for the execution of cooperative activities under this Agreement.

2. The Parties and their designees shall support the widest possible dissemination of information which they have the right to disclose, be it developed jointly or be it provided or exchanged pursuant to this Agreement, subject to the need to protect undisclosed information and the need to protect intellectual property created or provided under this Agreement.

3. Information transmitted by one Party to the other Party under this Agreement shall be accurate to the best knowledge and belief of the transmitting Party, but the transmitting Party does not warrant the suitability of the information transmitted for any particular use or application by the receiving Party or by any third party. Information developed jointly by the Parties shall be accurate to the best knowledge and belief of both Parties. Neither Party warrants its suitability for any particular purpose, use or application by either Party or by any third party.

Article VII
Intellectual Property

The protection and allocation of intellectual property created or provided in the course of cooperative activities under this Agreement shall be governed by the provisions in Annex A, which shall form an integral part of this Agreement and shall apply to all activities conducted under this Agreement.

Article VIII
Exchange of Personnel

The following provisions shall apply to the exchange of personnel between the Parties or their designees under this Agreement:

(a) each Party shall ensure the selection of qualified personnel with the skills and competence necessary to conduct the activities planned under this Agreement. The exchange of personnel shall be mutually agreed in advance by an exchange of letters between the Parties, referencing this Agreement and its pertinent intellectual property provisions as well as the cooperative activity concerned;

(b) each Party shall be responsible for the salaries, insurance, and allowances to be paid to its exchanged personnel;

(c) the sending Party shall pay for the travel and living expenses of its exchanged personnel staying at the host establishment of the receiving Party, unless otherwise agreed;

(d) the receiving Party shall arrange for adequate accommodations for the exchanged personnel (and their families forming part of their household) of the other Party on a mutually agreeable, reciprocal basis;

(e) the receiving Party shall provide all necessary assistance to the exchanged personnel of the other Party regarding administrative formalities (e.g. acquiring visas), pursuant to its laws and regulations;

(f) each Party shall ensure that the exchanged personnel shall comply with the general rules regarding work and with safety regulations in force at the host establishment;

(g) each Party may, at its own expense, observe specific test activities and analytical work of the other Party in the areas of cooperation defined in Article II. Such observation may be carried out by visits of personnel, subject to the prior agreement of the receiving Party on each occasion.

Article IX
Exchanges of Equipment, Samples, Materials and Spare Parts

In the event equipment, instruments, samples, materials or necessary spare parts (hereinafter referred to as "the equipment, etc.") are to be exchanged, loaned or supplied by one Party or its designees to the other or its designees, the following provisions shall apply to the shipment and use of the equipment, etc.:

(a) the sending Party shall supply as soon as possible a detailed list of the equipment, etc. to be provided, with the relevant specifications and technical and informational documentation*;*

(b) the equipment, etc. supplied by the sending Party shall remain its property and shall be returned to the sending Party on a date to be determined by the Coordinating Committee unless otherwise agreed in the Project Plan referred to in article V;

(c) the equipment, etc. shall be brought into operation at the host establishment only by mutual agreement between the Parties; and

(d) the receiving Party shall provide the necessary premises for the equipment, etc. and shall provide for electrical power, water, gas, and other necessary resources, in accordance with technical requirements, which shall be mutually agreed by the Parties.

Article X
General Provisions

1. Each Party shall conduct the activities provided for in this Agreement subject to its applicable laws and regulations, and shall provide resources subject to the availability of appropriated funds.

2. Unless otherwise agreed in writing by the Parties, all costs resulting from cooperation under this Agreement shall be borne by the Party that incurs them.

3. All questions of interpretation or implementation relating to this Agreement arising during its term shall be resolved by agreement of the Parties.

4. This Agreement shall apply, in so far as EURATOM is concerned, to the territories to which the Treaty establishing EURATOM applies and to the territories of the countries participating in the EURATOM fusion program as fully associated third States.

Article XI
Duration, Amendment and Termination

1. This Agreement shall enter into force on the date of the last written notification in which the Parties inform each other that their respective internal procedures necessary for its entry into force have been completed, and shall remain in force for five (5) years, being automatically renewed for additional periods of five (5) years, unless one Party notifies the other Party in writing of its intention to terminate this Agreement.

2. This Agreement may be amended by written agreement of the Parties. The amendments shall come into force on the date of the last written notification in which the Parties inform each other that their respective internal procedures necessary for the entry into force of an amendment have been completed.

3. All joint efforts and experiments not completed at the termination of this Agreement may be continued until their completion under the terms of this Agreement.

4. Either Party may terminate this Agreement and any Project Plan at any time, upon a notification in writing to the other Party. The termination shall be effective six (6) months after the date of receipt of the notification, without prejudice to the rights that may have accrued under this Agreement or Project Plan to either Party up to the date of the termination.

Signed at ……..on.....of.....of 2009, in duplicates, in Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Lithuanian, Latvian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL	FOR THE EUROPEAN ATOMIC ENERGY COMMUNITY
_____	_____

ANNEX A
INTELLECTUAL PROPERTY RIGHTS

Rights to intellectual property created or provided under this Agreement shall be allocated as follows:

I. Application

This Annex is applicable to all cooperative activities undertaken under this Agreement, except as otherwise specifically agreed.

II. Ownership, Allocation and Exercise of Rights

A. For purposes of this Agreement "Intellectual Property" shall have the meaning found in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm, 14 July 1967.

B. This Annex addresses the allocation of rights, interests and royalties between the Parties or their implementing agencies designated under the terms of Article V. Each Party shall ensure that the other Party may obtain the rights to intellectual property allocated to it or to the implementing agencies designated under the terms of Article V in accordance with this Annex. This Annex does not otherwise alter or prejudice the allocation of such rights, interests and royalties between a Party and its nationals, which shall be determined by that Party's laws and practices.

C. The termination or expiry of this Agreement shall not affect the rights or obligations arising under this Annex.

D. (1) In the case of cooperative activities between the Parties or between implementing agencies designated under the terms of Article V, intellectual property arising from joint research, i.e., research supported by both Parties, shall be treated in a Technology Management Plan (TMP) according to the following principles:

a) The Parties or their implementing agencies designated under the terms of Article V shall notify each other within a reasonable time of any intellectual property rights arising under this Agreement;

b) Unless otherwise agreed, rights, royalties and interests in intellectual property created during joint research shall be exploitable by either Party or by their implementing agencies designated under the terms of Article V without territorial restriction;

c) Each Party or implementing agency designated under the terms of Article V shall seek protection for the intellectual property to which it obtains rights and interests under the TMP in a timely fashion;

d) Each Party or implementing agency designated under the terms of Article V shall have a non-exclusive, irrevocable, royalty-free license to use any intellectual property arising under this Agreement for research purposes only, in accordance with the respective applicable laws of the Parties.

e) Visiting researchers having participated in the creation of intellectual property shall receive intellectual property rights and royalty shares earned by the host institutions from licensing of such intellectual property rights under the policies of the host institutions. Each Party shall accord to the visiting researchers no less favorable treatment than that it accords to its own nationals with regard to the grant of the aforementioned intellectual property rights and royalty shares. In addition, each visiting researcher named as an inventor shall be entitled to treatment as a national of the host Party with regard to awards,

bonuses, benefits, or any other rewards, in accordance with the policy of the host institution and the respective laws of the Parties applicable thereto.

(2) In the case of cooperative activities other than joint research which falls within the provisions of paragraph II.D.(1), to the extent required by its laws and regulations, each Party shall require all its participants to enter into specific agreements concerning the implementation of joint research activities and the respective rights and obligations of the participants. With respect to intellectual property, the agreements will normally address, among other things, ownership, protection, user rights for research purposes, exploitation and dissemination, including arrangements for joint publication, the rights and obligations of visiting researchers and dispute settlement procedures. The agreements may also address other issues such as access to foreground and background information, licensing and deliverables.

E. While maintaining the conditions of competition in areas affected by this Agreement, each Party shall endeavor to ensure that rights acquired pursuant to this Agreement and arrangements made under it are exercised in such a way as to encourage, in particular, (i) the use of information created, or otherwise made available, under this Agreement and its dissemination insofar as this is in accordance both with the conditions set out in this Agreement, the provisions of Section IV hereof and any rules which may be in force under the Parties' domestic laws governing the treatment of sensitive or confidential information in the nuclear field, and (ii) the adoption and implementation of international standards.

III. Copyright Works

In accordance with the terms of this Agreement, copyright belonging to the Parties or to the implementing agencies designated under the terms of Article V shall be accorded treatment consistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights administered by the World Trade Organisation.

IV. Scientific Literary Works

Subject to the treatment provided for undisclosed information in Section V, the following procedures shall apply:

A. Each Party or implementing agency designated under the terms of Article V shall be entitled to a non-exclusive, irrevocable, royalty-free license in all countries to translate, reproduce and publicly distribute information contained in scientific and technical journals, articles, reports, books, or other media, directly arising from joint research pursuant to this Agreement by or on behalf of the Parties.

B. All copyrighted work prepared under this provision shall respect the author's moral rights accordingly to article 6 Bis of Berne Convention. They shall also bear a clearly visible acknowledgment of the cooperative support of the Parties.

V. Undisclosed Information

A. Documentary Undisclosed Information

(1) Each Party shall identify at the earliest possible moment the information that they wish to remain undisclosed in relation to this Agreement, taking account, *inter alia*, of the following criteria:

(a) the information is secret in the sense that it is not, as a body or in the precise configuration or assembly of its components, generally known or readily accessible by lawful means;

(b) the information has actual or potential commercial value by virtue of its secrecy; and

(c) the information has been subject to steps that were reasonable under the circumstances by the person lawfully in control, to maintain its secrecy. The Parties may in certain cases agree that, unless otherwise indicated, parts or all of the information provided, exchanged or created in the course of joint research pursuant to this Agreement may not be disclosed.

(2) Each Party shall ensure that undisclosed information under this Agreement and its ensuing privileged nature is readily recognisable as such by the other Party, for example, by means of an appropriate marking or restrictive legend. This also applies to any reproduction of the said information, in whole or in part. A Party or participant receiving undisclosed information pursuant to this agreement shall respect the privileged nature thereof. These limitations shall automatically terminate when this information is disclosed by the owner without restriction.

(3) Undisclosed information communicated under this Agreement may be disseminated by the receiving Party to persons employed by the receiving Party, including its contractors, and other concerned departments of the Party authorised for the specific purposes of the joint research underway, on a-need-to-know basis and provided that any undisclosed information so disseminated shall be protected in accordance with this Annex and to the extent provided by each Party's laws and regulations, and shall be readily recognisable as such, as set out above.

B. Non-Documentary Undisclosed Information

Non-documentary undisclosed or other confidential or privileged information provided in seminars and other meetings arranged under this Agreement, or information arising from the attachment of staff, use of facilities, or joint projects, shall be treated by the Parties or their designees according to the principles specified for documentary information in this Agreement, provided, however, that the recipient of such undisclosed or other confidential or privileged information has been made aware in writing of the confidential character of the information communicated not later than the time such a communication is made.

C. Control

Each Party shall endeavor to ensure that undisclosed information received by it under this Agreement shall be controlled as provided herein. If one of the Parties becomes aware that it will be, or may be reasonably expected to become, unable to meet the non-dissemination provisions of paragraphs A and B above, it shall immediately inform the other Party. The Parties shall thereafter consult to define an appropriate course of action.

VI. Dispute Settlement and New or Unforeseen Types of Intellectual Property

A. Disputes between the Parties concerning intellectual property shall be resolved in accordance with Article X, paragraph 3 of this Agreement. However, upon mutual agreement of the Parties, such a dispute may be submitted to an international arbitral tribunal for binding arbitration in accordance with the applicable rules of international law. Unless otherwise agreed, the arbitration rules of UNCITRAL shall govern.

B. In the event either Party concludes that a new type of intellectual property not covered in a TMP or agreement between designated entities may result from a cooperative activity undertaken pursuant to this Agreement, or if other unforeseen difficulties arise, the Parties shall enter into immediate discussions in order to assure that the protection, exploitation and dissemination of the intellectual property in question are adequately provided for in their respective territories, in accordance with their national legislation.