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European Union

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Subject: Proposal for a Council Decision issuing directives to the Commission for the negotiation of an Agreement between the European Atomic Energy Community (Euratom) and the Government of the Republic of South Africa for cooperation in the peaceful uses of nuclear energy

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 1 October 2010

14196/10

RESTREINT UE

ATO 52

NOTE

from: General Secretariat of the Council
to: Delegations
No. Cion prop.: 11457/10 ATO 28 RESTREINT

Subject: Proposal for a Council Decision issuing directives to the Commission for the negotiation of an Agreement between the European Atomic Energy Community (Euratom) and the Government of the Republic of South Africa for cooperation in the peaceful uses of nuclear energy

Based on the discussions on 28 September 2010, the Presidency proposes to revise the text as attached. To the extent possible the revised text is aligned on the provisions of the Euratom-Canada mandate.

Changes compared to the previous text are identified in **bold underlined**, deletions by ~~strikethrough~~.

Proposal for a

COUNCIL DECISION

issuing directives to the Commission for the negotiation of an Agreement between the European Atomic Energy Community (Euratom) and the Government of the Republic of South Africa for cooperation in the peaceful uses of nuclear energy

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 proposal from the European Commission,

Whereas

- (1) South Africa expressed its interest to enter into an agreement with the European Atomic Energy Community (Euratom) on the cooperation in the peaceful uses of nuclear energy,
- (2) It is important to enhance the co-operation in the peaceful uses of nuclear energy between the European Atomic Energy Community and the Republic of South Africa,
- (3) Due to the increasing interest in nuclear energy there is a necessity to strengthen co-operation in this sector, which would include transfers of nuclear material equipment and technology as well as research and development.

HAS ADOPTED THIS DECISION:

Sole Article

The Commission is hereby authorised to negotiate, in accordance with directives contained in the Annex, an Agreement between the European Atomic Energy Community and the Government of the Republic of South Africa for cooperation in the peaceful uses of nuclear energy.

Done at Brussels,

For the Council

The President

DECLASSIFIED

ANNEX

Negotiating Directives for negotiation of an Agreement between the European Atomic Energy Community (Euratom) and the Government of the Republic of South Africa for cooperation in the peaceful uses of nuclear energy

1. OBJECTIVE

The Agreement should encourage and facilitate, on the basis of mutual benefit, equality and reciprocity, cooperation in the peaceful uses of nuclear energy with a view to strengthening the overall co-operative relationship between the European Atomic Energy Community ("Community") and the Republic of South Africa ("South Africa"), in accordance with the needs and priorities of their respective nuclear programmes.

Further the Agreement should foster the scientific cooperation between the Community and South Africa, in particular to facilitate the participation of South African research entities in research projects carried out in the framework of the relevant Community research programmes and to ensure a reciprocal participation of research entities of the Community and its Member States in South African projects in similar areas of research.

Nothing contained in the Agreement should be construed as binding the Parties to any form of exclusivity and each Party should be entitled to conduct business independent of the other where market requirements so dictate.

2. GENERAL CONSIDERATION

The agreement should make clear reference, in the preamble, to the Community's, its Member States' and South Africa's commitments towards:

- the International Atomic Energy Agency (IAEA) and the respective safeguards agreements,
- the Treaty on the Non-Proliferation of Nuclear Weapons (NPT),
- the Nuclear Suppliers Group,
- The African Nuclear-Weapon-Free zone treaty (Pelindaba Treaty), signed at Cairo on 11 April 1996, entered into force on 15 July 2009.

- The World Trade Organization (WTO),
- The bilateral Agreement on Trade, Development and Cooperation between the European Community, its Member States and South Africa signed in Pretoria on 11 October 1999,
- The Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States on the one part, and the European Community and its Member States, on the other Part, signed in Cotonou, Benin on 23 June 2000 (COTONOU/ACP Agreement) as far as it is applicable.

3. SCOPE OF CO-OPERATION

1. The Agreement should include the cooperation in the peaceful and non-explosive uses of nuclear energy in:
 - research and development in the field of nuclear energy (including fusion technologies);
 - use of nuclear materials and technologies such as applications in health, agriculture;
 - transfers of nuclear materials and equipment;
 - nuclear safety, radioactive waste and spent fuel management, decommissioning, radiation protection including emergency preparedness and response;
 - Nuclear **safeguards** security, ~~nuclear material accounting, control and physical protection~~;
 - other areas to be agreed by the Parties, in so far as they are covered by respective programmes.
2. The co-operation referred to in the first sub-paragraph above may also take place between authorised persons and undertakings established in the respective territories of the Parties.

4. IMPLEMENTATION

1. Agreement should be implemented mainly through:
 - the supply of nuclear and non-nuclear materials, equipment and related technologies;
 - the provision of nuclear fuel cycle services;
 - the establishment of Working Groups, if necessary, to implement specific studies and projects in the area of scientific research and technological development;
 - the exchange of experts, scientific and technological information, organization of scientific seminars and conferences, training of administrative, scientific and technical personnel;
 - the consultations on research and technological issues and performing joint research under agreed programmes
 - the co-operation activities in promoting nuclear safety.
2. The provisions of the Agreement should be implemented in such a manner as to avoid undue interference in the Parties' nuclear activities and so as to be consistent with the prudent management practices required for the economic and safe conduct of their nuclear programmes.
3. This agreement is without prejudice to the right of the Member States to conclude a bilateral agreement with South Africa, respecting the competences of the Member States on the one hand and the Community on the other, and in so far as such bilateral agreement is in full conformity with the aims and terms of the present Agreement. The bilateral agreements concluded by certain Member States **and South Africa**, before the entry into force of the agreement between the Community and South Africa may continue to apply, ~~taking account of the new Community legal framework once it is in place.~~ **Provisions for articulating these agreements and the Agreement should be projected where appropriate, in accordance with the respective competence of the parties, and subject to the agreement of concerned parties.**¹

¹ Point 22, p. 13 of Euratom - Russia negotiating mandate (doc. 17326/09)

5. CONDITIONS FOR THE TRANSFER OF NUCLEAR MATERIALS, EQUIPMENT AND RELEVANT SERVICES

Transfers under the Agreement must be subject to the following conditions²:

1. ~~Transfers under the Agreement must be for p~~Peaceful and non-explosive purposes only; any use for research or development for any military purpose would be specifically excluded.
2. Nuclear material ~~transferred to the Parties and any nuclear material~~ must be subject:
 - (1) in the Community, to the Euratom safeguards pursuant to the Euratom Treaty and, as relevant, to the IAEA safeguards pursuant to the following safeguards agreements [.] and as they may be revised and replaced, so long as coverage as required by the Non-Proliferation Treaty is provided for:
 - (a) to the Agreement between the Community's non-nuclear weapon Member States, European Atomic Energy Community and the IAEA, which entered into force on 21 February 1977 (published as INFCIRC/193);
 - (b) to the Agreement between France, European Atomic Energy Community and the IAEA, which entered into force on 12 September 1981 (published as INFCIRC/290);
 - (c) to the Agreement between the United Kingdom, European Atomic Energy Community and the IAEA, which entered into force on 14 August 1978 (published as INFCIRC/263);

Supplemented by Additional Protocols concluded on 22 September 1998 on the basis of the document published as INFCIRC/540 (Strengthened Safeguards System, Part II) and entered into force on 30 April 2004.

The implementation of the relevant provisions of the Agreement will not impose on the Member States any new obligations in addition to those resulting from the application by the IAEA of the agreements mentioned above or, where appropriate, those resulting from the bilateral agreements that bind them.

² Point 2(a), 2(b), p. 6 of Euratom - Canada negotiating mandate (doc. 11369/09)

- (2) In South Africa, to the IAEA safeguards pursuant to the Agreement between South Africa and the IAEA for the Application of Comprehensive Safeguards, which was signed and entered into force on 16 September 1991 in connection with the Treaty on the Non-Proliferation of Nuclear Weapons, published as INFCIRC/217, supplemented by the Additional Protocol signed on 12 September 2002.
3. In the event of the application of any of the Agreements with the IAEA referred to in second subparagraph being suspended or terminated for any reason within the Community or South Africa, the relevant Party should enter into an agreement with the IAEA which provides for effectiveness and coverage equivalent to that provided by the safeguards agreements referred to in provisions (1) or (2) of second subparagraph, or, if that is not possible,
- (1) the Community, as far as it is concerned, should apply safeguards based on the Euratom safeguards system, which provides for effectiveness and coverage equivalent to that provided by the safeguards agreements referred to in provision (1) of second subparagraph or, if that is not possible,
- (2) the Parties should enter into arrangements for the application of safeguards, which provide for effectiveness and coverage equivalent to that provided by the safeguards agreements referred to in provisions (1) or (2) of second subparagraph.
4. Physical protection measures should be applied at levels which satisfy as a minimum the criteria set out in Annex C to IAEA document INFCIRC/254/Rev.9/Part 1 (Guidelines for Nuclear Transfers) as it may be revised; supplementary to this document, the Member States of the Community, the European Commission, as appropriate, and South Africa would refer when applying physical protection measures to the recommendations in IAEA document INFCIRC/225/Rev.4 corrected (Physical Protection of Nuclear Material) as it may be revised. International transport shall be subject to the provisions of the International Convention on the Physical Protection of Nuclear Material (IAEA document INFCIRC/274/Rev.1), as it may be revised.

5. Retransfers of any items subject to this Agreement outside the jurisdiction of the Parties shall be made only within the framework of the commitments undertaken by individual Member States of the Community and South Africa within the group of nuclear supplier countries known as the Nuclear Suppliers Group (NSG). In particular, the Guidelines for Nuclear Transfers, as set out in IAEA document INFCIRC/254/Rev. 9/Part 1, as it may be revised in agreement with the interested parties, **should** ~~must~~ apply to retransfers of any items subject to this Agreement.
6. []
7. The Agreement should include a provision referring to the Parties' recognition of the principles of proportionality, fungibility and the equivalence of nuclear material.
8. The Agreement must not jeopardise the international obligations of the Parties under the World Trade Organisation.
9. The Agreement should include a provision ensuring that the cooperation provided for in this Agreement is in accordance with the Treaty establishing the European Atomic Energy Community and its secondary legislation.
10. The Agreement must not impede the free movement of nuclear material and equipment within the Community, in accordance with the provisions of paragraph 7.
11. The Agreement should provide that transfers of nuclear material and the provision of relevant services be carried out under fair commercial conditions..

6. ADMINISTRATIVE ARRANGEMENTS

1. The Agreement should contain provisions on the mutual consultations between the Parties on issues of mutual interest related to peaceful uses of nuclear energy, to monitor the fulfilment of the obligations under the agreement and to review its implementation.

2. Provisions should be included establishing administrative arrangements and stating that they are aimed at facilitating the implementation of the Agreement. This should be done in compliance with the existing Community regulatory framework in order to prevent any further legal constraint, especially regarding the collection of information from Member States and operators.³ ~~A copy of the administrative arrangements will be sent to the Member States after they have been finalised.~~

7. EXCHANGE OF INFORMATION AND INTELLECTUAL PROPERTY

The Agreement should include provisions on the utilisation and diffusion of information and intellectual property rights including industrial property, patents and copyrights connected with the cooperative activities under the Agreement, as the inclusion of technology transfer may necessitate an annex on Intellectual Property rights.

8. GENERAL AND FINAL CLAUSES

1. The Agreement should be interpreted in accordance with the laws and regulations in force within the Community, the European Union and the Republic of South Africa.
2. The Agreement should remain fully compatible with international obligations of the Parties.
3. It should include clauses for amicable procedures (consultation and negotiation) applicable in the event of any dispute between the Parties arising out of the interpretation, application or implementation of the Agreement.
- 3a. The Agreement should call **the Parties to ensure that** ~~for South Africa to develop~~ a sound legal framework in the area of civil nuclear liability **is in place**.
4. A provision should be included defining the action to be taken in the event of violation of the Agreement; according to the gravity of any violation, cooperation may be suspended or terminated in whole or in part.

³ Prior information of the Member States by the Commission during the preparation of these arrangements will be subject to a joint declaration of the Council/Commission once the agreement is finalised.

5. The Agreement should be drawn up in duplicate in all the official languages of the Community and of South Africa, while only the English language version will be authentic for the resolution of disputes.
6. The Agreement should include provisions on the entry into force, duration (10 years and automatic extension for subsequent five year periods), amendment, suspension and termination.

8a. Inclusion of new provisions applicable at the request of South Africa and some Member States

Provisions on technology transfer should be included in the Agreement⁴. These provisions should be applicable only to transfers made between South Africa and the Member States having expressed their willingness to place such transfers in the framework of the Agreement and should allow the principle of the common market within the EU. Their application should be made subject to the prior written notification between the Member States(s) concerned and the Commission, on one side, and South Africa, on the other, before each transfer.

The inclusion of such provisions in the Agreement should be done without prejudice to the right of a Member State to conclude a bilateral agreement with South Africa on this matter or to maintain in effect an existing bilateral agreement between a Member State and South Africa, ~~in so far as such bilateral agreement is in full conformity with the aims and terms of the present Agreement.~~

⁴ In accordance with Nuclear Suppliers Group list, Annex A of INFCIRC 254/Rev.9/Part 1