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PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 26 April 2016

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: JOIN(2016) 19 final Annex 1

Subject: ANNEX to the Joint Proposal for a COUNCIL DECISION on the conclusion
of the Agreement continuing the International Science and Technology
Centre between the European Union and EURATOM acting as one Party,
and Georgia, Japan, the Kingdom of Norway, the Kyrgyz Republic, the
Republic of Armenia, the Republic of Kazakhstan, the Republic of Korea,
the Republic of Tajikistan, and the United States of America

Delegations will find attached document JOIN(2016) 19 final Annex 1.

Encl.: JOIN(2016) 19 final Annex 1



HIGH REPRESENTATIVE
OF THE UNION FOR
FOREIGN AFFAIRS AND
SECURITY POLICY

Brussels, 26.4.2016
JOIN(2016) 19 final

ANNEX 1

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to the Joint Proposal for a

COUNCIL DECISION

**on the conclusion of the Agreement continuing
the International Science and Technology Centre between the
European Union and EURATOM acting as one Party, and Georgia, Japan, the
Kingdom of Norway, the Kyrgyz Republic, the Republic of Armenia, the Republic of
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America**

AGREEMENT CONTINUING THE INTERNATIONAL SCIENCE AND TECHNOLOGY CENTER

THE PARTIES TO THIS AGREEMENT,

CONCERNED about the worldwide threat posed by the proliferation of nuclear, radiological, chemical, and biological weapons (hereinafter weapons of mass destruction or “WMD”) and the use of nuclear, radiological, chemical, and biological materials as weapons;

REAFFIRMING the need to prevent the proliferation of technologies, material, and expertise related to WMD and their means of delivery;

RECALLING United Nations Security Council Resolution 1540, which decided that all States have an obligation to refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer, or use nuclear, chemical, or biological weapons and their means of delivery;

RECOGNIZING that collaborative, multilateral efforts among states are an effective means for preventing such proliferation, and recognizing the important role of scientific research and technological development as key elements of today’s proliferation challenges;

TAKING INTO ACCOUNT the provisions of the Agreement Establishing an International Science and Technology Center (hereinafter “the ISTC” or “the Center”), signed at Moscow on November 27, 1992 (hereinafter “the 1992 Agreement”) and the Protocol on the Provisional Application of the Agreement Establishing an International Science and Technology Center, signed at Moscow on December 27, 1993 (hereinafter “the Provisional Application Protocol”);

ACKNOWLEDGING the need for the ISTC to minimize incentives to engage in activities that could result in the proliferation of WMD or related materials by supporting and cooperating in research and development activities for peaceful purposes of scientists and engineers in states with technologies, expertise, and related materials applicable to WMD, and the ISTC’s past contributions to preventing the proliferation of WMD and to promoting scientific cooperation among states;

REALIZING that the success of the ISTC requires strong support from governments, the European Union and the European Atomic Energy Community (hereinafter “EURATOM”), non-governmental organizations, foundations, academic and scientific institutions, and other inter-governmental and private sector organizations;

DESIRING that the ISTC continue its work in light of recent changes in membership of the ISTC;

DESIRING further to adapt the ISTC to conditions that have changed since the ISTC was founded so that ISTC activities provide impetus and support to participating scientists and engineers, including those with knowledge and skills applicable to WMD or their delivery systems (including dual-use knowledge and skills), in developing international scientific partnership, strengthening global security, and fostering economic growth through innovation; and

DECIDING, in order to accomplish the ISTC’s goals more effectively through scientific cooperation, to continue the ISTC by entering into this Agreement, based on the 1992 Agreement with revisions, and to supersede the Provisional Application Protocol;

HAVE AGREED AS FOLLOWS:

ARTICLE 1

- (A) The ISTC, originally established by the 1992 Agreement as an inter-governmental organization, shall continue under the terms of this Agreement. Each Party shall facilitate, in its territory, the activities of the Center. In order to achieve its objectives, the Center shall have, in accordance with the laws and regulations of the Parties, the legal capacity to contract, to acquire and dispose of immovable and movable property, and to institute and respond to legal proceedings.
- (B) As used in this Agreement, the following terms shall have the definitions provided in this Article:
- (i) **“Parties”** shall mean, after entry into force of this Agreement, the signatories to this Agreement that have provided notification pursuant to Article 17(C) of this Agreement, and any and all states that have acceded to this Agreement pursuant to Article 13(B) of this Agreement;
 - (ii) **“personnel of the Center”** shall mean natural persons who are employed by or working under contract with the Center, or who are assigned to or on temporary duty to the Center as agreed by the Center and one or more of the Parties;
 - (iii) **“family members”** shall mean spouses; unmarried dependent children under 21 years of age; unmarried dependent children under 23 years of age who are in full-time attendance as students at a post-secondary educational institution; and unmarried children who are physically or mentally disabled;
 - (iv) **“activities”** of the Center shall mean projects and other work conducted under the auspices of the Center, consistent with Article 2 of this Agreement;

- (v) **“project”** of the Center shall mean a collaborative activity of a set duration conducted anywhere in the world that may include grants and/or equipment, and is subject to approval as described in Article 6 of this Agreement;
- (vi) **“consensus”** of the Governing Board shall mean agreement of all Parties on the Governing Board that are participating and voting at a meeting at which a decision is taken, so long as a quorum is present, except as provided otherwise in this Agreement. The ISTC Statute, as provided for in Article 4 of this Agreement, shall define quorum and the permissible forms of Parties’ participation at meetings;
- (vii) **“Host State”** shall mean a Party that has been designated as the Host State in accordance with Article 9(A) of this Agreement;
- (viii) **“dual-use technology, materials, and expertise”** shall mean technology, materials, and expertise that have both commercial applications and proliferation applications, such as applications related to the development, production, use, or enhancement of WMD or their means of delivery;
- (ix) **“dual-use knowledge and skills”** shall mean knowledge and skills applicable to the use of dual-use technology, materials, and expertise in the development, production, use, or enhancement of WMD or their means of delivery; and
- (x) **“related materials”** shall mean materials, equipment, and technology covered by relevant multilateral treaties and arrangements, or included on national control lists, which could be used for the design, development, production, or use of WMD or their means of delivery.

ARTICLE 2

- (A) The Center shall develop, approve, finance, and monitor activities for peaceful purposes, which are to be carried out at institutions and facilities located in the territories of the Parties. Projects may be conducted in states that are not Parties to this Agreement that have technologies, expertise, and related materials applicable to WMD in cases where those states have solicited such projects by written communication to the Governing Board and the Governing Board unanimously approves the conduct of such projects. Notwithstanding the foregoing, individuals who are nationals of non-Party states may be permitted to participate in activities conducted by the ISTC in states that are Parties to this Agreement.
- (B) The objectives of the Center shall be:
 - (i) to promote the improvement of international mechanisms for the prevention of the proliferation of WMD and their delivery systems, as well as of technologies, materials, and expertise that are key elements directly related to the development, production, use, or enhancement of WMD or their delivery systems (including dual-use technology, materials, and expertise);
 - (ii) to give scientists and engineers with knowledge and skills applicable to WMD and their delivery systems, including dual-use knowledge and skills,

opportunities for training and alternative employment where their knowledge and skills can be used for peaceful activities;

- (iii) to promote a culture of security with respect to the handling and use of materials, equipment, and technology which could be used for the design, development, production, or use of WMD or their means of delivery; and
- (iv) to contribute through its activities: to the development of international scientific partnership, strengthening global security, and fostering economic growth through innovation; to basic and applied research and technology development and commercialization, *inter alia*, in the fields of environment, energy, health, and nuclear, chemical, and biological safety and security; and to promoting the further integration of scientists with technologies, material, and expertise applicable to WMD into the international scientific community.

ARTICLE 3

In order to achieve its objectives, the Center is authorized to:

- (i) promote and support, by use of funds or otherwise, activities in accordance with Article 2 of this Agreement;
- (ii) monitor and audit Center activities in accordance with Article 8 of this Agreement;
- (iii) establish appropriate forms of cooperation with, and receive funds or donations from, governments, the European Union and EURATOM, inter-governmental organizations, non-governmental organizations, private sector organizations, foundations, academic and scientific institutions, and related programs;
- (iv) establish branch offices or information offices as appropriate in interested states that are Parties, or in the territory of a non-Party if the Governing Board unanimously approves the establishment of such an office in that non-Party's territory; and
- (v) engage in other activities within the scope of this Agreement as may be agreed upon by consensus of the Governing Board.

ARTICLE 4

- (A) The Center shall have a Governing Board and a Secretariat, consisting of an Executive Director (who serves as the chief executive officer), Deputy Executive Director(s), and other personnel of the Center, in accordance with the Statute of the Center.
- (B) The Governing Board shall be responsible for:
 - (i) determining the Center's policy and its own rules of procedure;
 - (ii) providing overall guidance and direction to the Secretariat;
 - (iii) approving the Center's operating budget;

- (iv) governing the financial and other affairs of the Center, including approving procedures for the preparation of the Center's budget, drawing up of accounts and auditing thereof;
 - (v) formulating general criteria and priorities for the approval of activities;
 - (vi) approving projects in accordance with Article 6 of this Agreement;
 - (vii) adopting the Statute and other implementing arrangements as necessary; and
 - (viii) other functions assigned to it by this Agreement or necessary for the implementation of this Agreement.
- (C) Decisions of the Governing Board shall be by consensus.
- (D) Each Party shall be represented by a single vote on the Governing Board and shall appoint no more than two representatives to the Governing Board.
- (E) The Parties may establish a Scientific Advisory Committee, made up of representatives to be nominated by the Parties, to give to the Board expert scientific and other necessary professional advice; to advise the Board on the fields of research for peaceful purposes to be encouraged; and to provide any other advice that may be required by the Board.
- (F) The Governing Board shall adopt a Statute in implementation of this Agreement. The Statute shall establish:
- (i) the structure of the Secretariat including the duties and responsibilities of the Executive Director, Deputy Executive Directors, and other key staff;
 - (ii) the process for selecting, developing, approving, financing, carrying out, and monitoring activities;
 - (iii) procedures for the preparation of the Center's budget, drawing up of accounts, and auditing thereof;
 - (iv) appropriate guidelines on intellectual property rights resulting from Center projects and on the dissemination of project results;
 - (v) procedures governing the participation of governments, the European Union and EURATOM, inter-governmental organizations, and non-governmental organizations in Center activities;
 - (vi) personnel policies; and
- other arrangements necessary for the implementation of this Agreement.

ARTICLE 5

Inter-governmental and non-governmental organizations, or states that are not Parties, may be invited by the Governing Board to participate in Governing Board deliberations as observers, in a non-voting capacity.

ARTICLE 6

Each project proposal submitted for approval by the Governing Board shall be accompanied by the written concurrence of the state or states in which the work is to be carried out. In addition to the prior agreement of that state or those states, the approval of projects shall require the consensus of the Governing Board.

ARTICLE 7

- (A) Projects approved by the Governing Board may be financed or supported by the Center, Parties, non-governmental organizations, foundations, academic and scientific institutions, inter-governmental organizations, and organizations in the private sector. Such financing and support of approved projects shall be provided on terms and conditions specified by those providing it, provided that any terms and conditions specified shall be consistent with this Agreement.
- (B) Representatives of the Parties on the Governing Board and personnel of the Center Secretariat shall be ineligible for project funding and may not directly benefit from any project funds.

ARTICLE 8

- (A) The Center shall have the right, within the states in which the activity is to be carried out:
 - (i) to examine, on site, Center activities, materials, supplies, use of funds, and related services and use of funds, upon notification by the Center or, in addition, as specified in a project agreement; and
 - (ii) to inspect or audit, upon its request, any records or other documentation in connection with Center projects, activities, and use of funds, wherever such records or documentation are located, during the period in which the Center provides the financing, and for a period thereafter as determined in a project agreement.

The written concurrence required in Article 6 of this Agreement shall include the agreement, of the state or states in which the project is to be carried out and the recipient institution, to provide the Center with access necessary for auditing and monitoring the project, as required by this paragraph.

- (B) Each Party shall also have the rights stated in paragraph (A) of this Article, coordinated through the Center, with regard to projects it finances in whole or in part or projects that are carried out in its territory.
- (C) If it is determined that the terms and conditions of a project have not been respected, the Center or a financing government or organization may, having informed the Governing Board of its reasons, terminate the project and take appropriate steps in accordance with the terms of the project agreement.

ARTICLE 9

- (A) The Headquarters of the Center shall be located in the Republic of Kazakhstan and the Republic of Kazakhstan shall act as the Host State unless and until such time as: (i) the Republic of Kazakhstan submits written notification to the Governing Board of its desire to no longer serve as the Host State; (ii) another Party referred to in Article 13(A) of this Agreement or that accedes to this Agreement in accordance with Article 13(B) of this Agreement for the purpose of permitting the conduct by the ISTC of activities in the territory of such state submits written notification to the Governing Board requesting that it be designated as the successor Host State; (iii) the Governing Board decides by consensus to accept that Party's request to be designated as the successor Host State; and (iv) the Party requesting the designation as the successor Host State submits written notification to the Governing Board confirming that it accepts designation as the successor Host State.
- (B) By way of providing material support to the Center, the government of the Host State shall provide, at its own expense, a facility suitable for use by the Center, along with maintenance, utilities, and security for the facility. The government of the Host State and the ISTC may enter into an agreement specifying the terms and conditions on which the Host State shall provide material support and the facility for the Center.
- (C) In the Host State, the Center shall have the status of a legal person and, in that capacity, shall be entitled to contract, to acquire and dispose of immovable and movable property, and to institute and respond to legal proceedings.

ARTICLE 10

In the Host State:

- (i)
- (a) funds received by the ISTC and any interest earned on those funds shall not be subject to taxation in the Host State;
 - (b) the Center, or any branch thereof, shall not be subject to any taxation on property that is subject to taxation under the tax laws of the Host State;
 - (c) commodities, supplies, and other property provided or utilized in activities of the Center may be imported into, exported from, or used in the Host State free from any tariffs, dues, customs duties, import taxes, value added taxes (VAT), and other similar taxes or charges. Commodities, supplies, and other immovable or movable property may be transferred or otherwise provided by the ISTC to legal entities (including but not limited to Host State scientific organizations) and possessed or used by the ISTC and/or the entities to which such items have been provided or transferred free from any tariffs, dues, customs duties, import taxes, VAT, property taxes, and similar taxes or charges;
 - (d) personnel of the Center who are not Host State nationals shall be exempt from payment of the income tax in the Host State for natural persons;

- (e) funds received in connection with the Center's projects by legal entities, including Host State scientific organizations, shall not be subject to taxation in the Host State;
 - (f) funds received by natural persons, in particular, by scientists and specialists, within the framework of the Center's projects shall not be included in those persons' total taxable income;
- (ii)
- (a) the Center, the Parties, governments, inter-governmental organizations, and non-governmental organizations shall have the right to move funds needed by the Center to carry out its activities, other than Host State currency, into or out of the Host State without restriction. Each shall have the right to so move only amounts not exceeding the total amount it moved into the Host State; and
 - (b) to finance the Center and its activities, the Center shall be entitled, for itself and on behalf of the entities referred to in subparagraph (ii)(a) of this Article, to sell foreign currency on the internal currency market of the Host State.
- (iii) Personnel of non-Host State organizations taking part in any Center activity and who are not Host State nationals or permanent residents shall be exempt from the payment of any customs duties and charges upon personal or household goods imported into, exported from, or used in the Host State for the personal use of such personnel or members of their families.

ARTICLE 11

- (A) In the Host State, the ISTC and its assets and property shall be immune from jurisdiction and execution except to the extent the ISTC has expressly waived immunity in a particular case.
- (B) Privileges and immunities are accorded to the Center only for the purposes specified in this Agreement.
- (C) The provisions of this Article shall not prevent compensation or indemnity available under applicable international agreements or national law of any state.
- (D) Nothing in paragraph (A) of this Article shall be construed to prevent legal proceedings or claims against Host State nationals or permanent residents of the Host State.

ARTICLE 12

- (A) Personnel of the Center and their family members present in the Host State shall be accorded by the Host State Government the following privileges and immunities:
 - (i) immunity from arrest, detention, and legal process, including criminal, civil, and administrative jurisdiction, in respect of words spoken or written and all acts performed by them in their official capacity;

- (ii) exemption from any income, social security, or other taxation, duties or other charges, except those that are normally incorporated in the price of goods or paid for services rendered;
- (iii) immunity from social security provisions;
- (iv) immunity from immigration restrictions and from alien registration; and
- (v) rights to import their furniture and effects, at the time of first taking up their post, free of any Host State tariffs, dues, customs duties, import taxes, and other similar taxes or charges and to export their furniture and effects, at the time of termination of their post, free of any Host State tariffs, dues, customs duties, export taxes, and other similar charges.

The provisions of subparagraph (i) of this Article shall not apply in respect of a civil action either: (a) arising out of a contract concluded by personnel of the Center in which the personnel did not contract expressly or impliedly as an agent of the Center; or (b) by a third party for damage arising from an accident in the Host State caused by a vehicle.

- (B) Representatives of the Parties on the Governing Board, the Executive Director, and the Deputy Executive Directors shall be accorded by the Host State Government, in addition to the privileges and immunities listed in paragraph (A) of this Article, any additional privileges, immunities, exemptions, and facilities generally accorded by the Host State to the representatives of members and executive heads of international organizations in its territory.
- (C) Nothing in this Agreement shall require the Host State Government to provide the privileges and immunities provided in paragraphs (A) and (B) of this Article to its nationals or its permanent residents.
- (D) Nothing in this Agreement shall be construed to derogate from privileges, immunities, and other benefits granted under other agreements to persons described in paragraphs (A) and (B) of this Article.

ARTICLE 13

- (A) The Republic of Armenia, Georgia, the Republic of Kazakhstan, the Kyrgyz Republic, and the Republic of Tajikistan shall be bound to comply with the obligations undertaken by the Host State in Articles 9(C), 10, 11, and 12 of this Agreement.
- (B) Any state desiring to accede to this Agreement after its entry into force shall notify the Governing Board through the Executive Director. The Governing Board shall provide such a state with a certified copy of this Agreement through the Executive Director. Upon approval by the Governing Board, that state shall be permitted to accede to this Agreement. This Agreement shall enter into force for that state on the thirtieth (30th) day after the date on which the state deposits its instrument of accession with the Depository. Any state with technology, expertise, or related materials applicable to WMD that accedes to this Agreement for the purpose, which shall be stated in its instrument of accession, of permitting the conduct by the ISTC

of activities in the territory of such state shall, by acceding to this Agreement, be bound to comply with the obligations undertaken by the Host State in Articles 9(C), 10, 11, and 12 of this Agreement.

ARTICLE 14

- (A) This Agreement shall be subject to review by the Parties two years after its entry into force. This review shall take into account the financial commitments and payments of the Parties.
- (B) This Agreement may be amended by written agreement of the Parties, excluding any Party that has withdrawn or provided notification in accordance with paragraph (C) of this Article of its intent to withdraw from this Agreement. If a Party that has provided notification of withdrawal rescinds its withdrawal before it becomes effective, that Party shall be bound by any amendments to this Agreement that have become effective after the date that Party provided its notification of withdrawal.
- (C) Any Party may withdraw from this Agreement no less than six months after providing written notification to the Depository.

ARTICLE 15

- (A) Any question or dispute relating to the application or interpretation of this Agreement shall be the subject of consultations between the Parties.
- (B) If an issue is not resolved through consultations, all concerned Parties may jointly agree to submit that issue to another form of dispute resolution such as conciliation, mediation, or arbitration.

ARTICLE 16

Nothing in this Agreement is intended to interfere with the continuation of the ISTC as the inter-governmental organization originally established by the 1992 Agreement, including the operations of existing ISTC branch offices, nor affect the validity of any existing contracts, grants or other legal instruments or arrangements of the ISTC, except as specifically revised by this Agreement.

ARTICLE 17

- (A) This Agreement shall be open for signature by the European Union and EURATOM, acting as one Party, Georgia, Japan, the Kingdom of Norway, the Kyrgyz Republic, the Republic of Armenia, the Republic of Kazakhstan, the Republic of Korea, the Republic of Tajikistan, and the United States of America.
- (B) This Agreement shall be subject to ratification, acceptance, or approval. Instruments of ratification, acceptance, or approval shall be deposited with the Depository.
- (C) This Agreement shall enter into force on the date of receipt by the Depository of the last instrument of ratification, acceptance, or approval from the states listed in

paragraph (A) of this Article and the European Union and EURATOM, acting as one Party.

- (D) Upon entry into force, this Agreement shall supersede the Provisional Application Protocol. At that time, the Parties shall cease to provisionally apply the 1992 Agreement.

ARTICLE 18

The Center Secretariat shall be the Depositary of this Agreement. All notifications to the Depositary shall be addressed to the Center's Executive Director. The Depositary shall fulfill the duties in accordance with Article 77 of the Vienna Convention on the Law of Treaties of May 23, 1969.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Agreement.

Done at [PLACE] on [DATE], in the Armenian, English, French, Georgian, German, Japanese, Kazakh, Korean, Kyrgyz, Norwegian, Russian, and Tajik languages, all language texts being equally authentic. In the case of a discrepancy between two or more language versions, the English language text shall prevail.