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Delegations will find attached document COM(2015) 547 final.

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EUROPEAN
COMMISSION

Brussels, 29.10.2015
COM(2015) 547 final

Recommendation for a

COUNCIL DECISION

approving the renewal of the participation of the European Atomic Energy Community (Euratom) in the Framework Agreement for international collaboration on research and development of Generation IV nuclear energy systems

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The Generation IV International Forum (GIF) as stated in the GIF Charter, is a framework for international cooperation in research and development launched at the initiative of the USA in 2001. The objective is to pool efforts to develop new nuclear energy system designs which will provide a reliable supply of energy, while satisfactorily addressing nuclear safety, waste minimisation, non-proliferation and public concerns.

On the basis of Commission Decision C(2002)4287 of 4 November 2002, the European Atomic Energy Community (hereafter "Euratom"), adhered to GIF by signing, on 30 July 2003, the "Charter of the Generation IV International Forum" (hereafter "the Charter"). This Charter had first been signed by the initial signatories in 2001. The participation of Euratom to the Charter was extended following Commission Decision C(2011)4504 of 29 June 2011. The initial 10 years duration period was replaced at that occasion by an unlimited period, unless discontinued by unanimous consent. However, any member (and thus also Euratom) may withdraw from membership in the GIF by giving 90 days advance written notice. The Charter bears no provision for financial exchanges or special budgetary allocations between the Parties. It falls therefore under the scope of the third paragraph of Article 101 of the Euratom Treaty.

In order to implement the GIF Charter, the signatories have concluded a legally binding Framework Agreement for international research and development cooperation on Generation IV nuclear energy systems, setting out the conditions for cooperation and subsequent system and project arrangements.

Pursuant to the second paragraph of Article 101 of the Euratom Treaty and Council Decision 14929/05, followed by Commission Decision C(2006) 7, Euratom acceded to the Framework Agreement on 24 January 2006, when the duly authorised Commissioner signed an instrument of accession (which was then deposited with the Organisation for Economic Cooperation and Development in Paris on 10 February 2006). The Joint Research Centre was confirmed as coordinator of the Community's participation in GIF and thus represented Euratom as its 'implementing agent', in accordance with Article III.2 of the Framework Agreement.

France and the United Kingdom were already parties to the Framework Agreement. In order to ensure consistency, the following declaration by Euratom was attached to Council Decision 14929/05, approving Euratom's initial accession to the Agreement:

'In becoming a Party to this Framework Agreement, Euratom shall fully participate in all collaboration and deliberations under this Framework Agreement and any System Arrangement to which it is a signatory. Euratom and its Member States parties to the Framework Agreement — currently, France and the UK — will harmonise their positions before any significant decision is taken in the implementation of the Framework Agreement and the relevant System Arrangements'.

The Framework Agreement had entered into force on 28 February 2005 for a period of 10 years and was extended on 26 February 2015, when four parties gave their consent to be bound by an extension agreement. It is therefore possible for Euratom and other signatories

that were unable to complete their internal approval procedures in time to renew participation by means of a later signature.

2. EURATOM ACTIVITIES UNDER THE FRAMEWORK AGREEMENT

Over the past decade, GIF has achieved major advances within a solid legal framework for cooperation, such as the design and implementation of joint projects based on significant R&D investment from around the world, and the design and/or building of prototype demonstrations, e.g. France's and Russia's sodium fast reactor (SFR) and China's very high temperature reactor (VHTR).

Euratom has been very active in GIF in this time and is the only signatory participating in all six reactor systems (system arrangements) and all three cross-cutting ones ('safety and reliability', 'economics' and 'proliferation resistance and physical protection'). Euratom representatives chair three of the six systems (Supercritical Water Reactor, Lead Fast Reactor and Gas-cooled Fast Reactor) and within each system there are project arrangements where the technical work is performed. Euratom is present in most of the Project Arrangements (PAs) with contributions originating from both direct and indirect actions under the Euratom Research and Training Programme.

Much still needs to be done before Generation IV systems become a reality. In the coming decade, activity will focus on:

- continuing R&D on Generation IV systems;
- the development of advance research facilities;
- involving industry in the design of Generation IV systems; and
- developing the workforce for the future.

It is therefore appropriate for Euratom to continue to participate in the Framework Agreement and to agree to its extension by means of the dedicated extension mechanism provided for in its Article XII, paragraph 3.

3. LEGAL ELEMENTS OF THE PROPOSAL

The Agreement is to be extended on the basis of the second paragraph of Article 101 of the Euratom Treaty.

In June 2014, on behalf of the depositary (the OECD), the GIF Technical Secretariat distributed a note on the extension of the Framework Agreement, which presented signatories with three options for extension:

- '1. Specific Extension Procedure — The parties could agree to extend the duration of the Framework Agreement through the specific procedure set out in paragraph 3 of Article XII of the Framework Agreement (Option 1);
2. Amendment of the Agreement — If the parties cannot agree on Option 1, they have the possibility to amend the Framework Agreement through the procedure set out in paragraph 4 of Article XII (Option 2);

3. Expiration and New Agreement — Finally, if the parties cannot agree on an extension or amendment, they can let the Framework Agreement expire and conclude a new Framework Agreement which would constitute a new international treaty (Option 3).’

The implementing agent supported Option 1, as it appeared to be the most expeditious way of extending the Agreement and the parties had expressly provided for a specific extension procedure distinct from the procedure for other amendments. On 14 October 2014, the US mission to the OECD (the depositary) submitted to the other parties, including the Euratom implementing agent (via the EEAS), a draft Agreement extending the Framework Agreement for international collaboration on research and development of Generation IV nuclear energy systems, to be signed under the specific extension procedure.

The initial intention was for the Policy Group to adopt a decision extending the Framework Agreement for 10 years, i.e. until 28 February 2025, in line with the specific extension procedure, at its meeting on 17-18 December 2014 (or by written procedure). However, in view of some parties’ (including Euratom’s) procedural requirements and in order to preserve the distinction between GIF Policy Group meetings convened under the auspices of the GIF Charter on the one hand, and the formal intergovernmental Framework Agreement on the other, the Policy Group did not discuss the extension at that meeting.

Following observations and exchanges on the extension procedure and the draft extension agreement, a new proposal for an extension agreement was issued after the December 2014 meeting with the support of a majority of the parties’ representatives. The solution proposed was that the extension should enter into force once at least three parties had given their consent to be bound. Four parties (France, Japan, South Korea and the United States) indicated that they were able and ready to give their consent to be bound by or before 28 February 2015, thus enabling the Extension Agreement to enter into force by that date.

The other parties considered that, under Article XII, paragraph 3 of the existing Framework Agreement, signature by all parties by that date (whether or not subject to subsequent acceptance) would indicate their assent to the extension. The Euratom implementing agent signalled that it could not agree to this means of giving assent. The other parties accepted as sufficient a letter from the Euratom implementing agent to the depositary’s secretariat indicating support for the extension procedure conducted by the other parties.

Four signatories signed the attached Extension Agreement on 26 February 2015. It can be signed on behalf of Euratom as soon as the Council approves the renewal.

The Commission considers the decision on the renewal of the Framework Agreement to be significant and therefore, through its implementing agent, harmonised its position with that of France. (The UK has in the meanwhile withdrawn as a separate party to the Agreement but, like the other Member States, continues to be a party as part of Euratom).

The Commission considers that the proposed renewal of the Framework Agreement is acceptable for the Community and is thus submitting this recommendation for a Council decision in accordance with the second paragraph of Article 101 of the Euratom Treaty.

The renewal of the Agreement requires the Council’s endorsement, as the Agreement will continue to set clear conditions governing research cooperation within GIF. In addition, the renewal period covers more than two Euratom Research and Training Programmes, so at least two Council decisions will be needed to guide the Euratom participation in GIF in line with Council regulations on existing and future Euratom Research and Training Programmes.

The Euratom participation in GIF should remain within the scope of the Council Regulations on the Euratom Research and Training Programmes. As stated in the GIF Charter, each Member will individually determine the nature of its participation in GIF activities.

Council Regulation (Euratom) No 1314/2013 on the Research and Training Programme of the European Atomic Energy Community (2014-2018), complementing the Horizon 2020 Framework Programme for Research and Innovation, expressly provides for the implementing agent to pursue its activities under the GIF Framework Agreement. Under ‘Activities necessary to achieve the programme objectives’, Annex I to the Regulation states, in reference to ‘JRC direct actions’, that:

‘As the Euratom Implementing Agent for the Generation IV International Forum (GIF), the JRC will continue to coordinate the Community contribution to GIF’.

Under ‘International cooperation with third countries and international organisations’, it states, in reference to Euratom, that:

‘International cooperation in nuclear research and innovation, based on shared goals and mutual trust, must continue, with the aim of providing clear and significant benefits for the Union and its environment. As a contribution to the achievement of the specific objectives set out in Article 3, the Community will seek to reinforce the Union’s scientific and technical expertise through international cooperation agreements and to promote the access of the Union nuclear industry to new emerging markets. International cooperation activities will be promoted through multilateral frameworks (such as IAEA, OECD, ITER, GIF) ...’.

The renewal of the Framework Agreement appears therefore to have been seen as appropriate in the framework of Euratom’s contribution to Horizon 2020.

In the light of the above, the Commission proposes that the Council adopt, in application of the second paragraph of Article 101 of the Euratom Treaty, the attached draft recommendation for a Council decision approving the renewal of Euratom’s participation in the GIF Framework Agreement and authorise it to sign the attached Extension Agreement.

4. BUDGETARY IMPLICATION [WHERE NECESSARY]

[NA]

5. OPTIONAL ELEMENTS [WHERE NECESSARY]

[NA]

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approving the renewal of the participation of the European Atomic Energy Community (Euratom) in the Framework Agreement for international collaboration on research and development of Generation IV nuclear energy systems

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the recommendation from the European Commission,

Whereas:

- (1) The Generation IV International Forum (GIF) is a framework for international cooperation in research and development launched at the initiative of the USA in 2001. The objective is to pool efforts to develop new nuclear energy system designs which will provide a reliable supply of energy, while satisfactorily addressing nuclear safety, waste minimisation, non-proliferation and public concerns.
- (2) The renewal of the participation of Euratom to this Framework Agreement is independent from any decision on the scope of participation in the various GIF systems and related Project Arrangements. Euratom will individually determine the nature of its contribution (intellectual and financial) in GIF activities.
- (3) On 30 July 2003, on the basis of Commission Decision C(2002) 4287, Euratom joined the GIF by signing its Charter, which the initial signatories had signed in 2001. Following Commission Decision C(2011) 4504, Euratom's initial 10-year adherence to the Charter was extended for an unlimited period, subject to withdrawal by EU Member States' unanimous consent. Any GIF member (including Euratom) can withdraw by giving 90 days' written notice. As the Charter does not provide for financial exchanges or special budgetary allocations between the parties, it falls within the scope of the third paragraph of Article 101 of the Euratom Treaty.
- (4) In order to implement the GIF Charter, the signatories have concluded a legally binding Framework Agreement among the Members of the Generation IV International Forum for international collaboration on research and development of Generation IV nuclear energy systems, setting out the conditions for cooperation and subsequent system and project arrangements.
- (5) Based on Council Decision 14929/05 of 20 December 2005, followed by a Commission Decision C(2006)7 of 12 January 2006, adopted pursuant to the second paragraph of Article 101 of the Euratom Treaty, Euratom also acceded to the Framework Agreement on 24 January 2006, when the duly authorised Commissioner

signed an instrument of accession (which was then deposited with the Organisation for Economic Cooperation and Development in Paris on 10 February 2006). The Joint Research Centre was confirmed as coordinator of the Euratom participation in GIF thus represented Euratom as its 'implementing agent', in accordance with Article III.2 of the Framework Agreement.

- (6) The Framework Agreement had entered into force on 28 February 2005 for a period of 10 years and was extended on 26 February 2015, when four parties gave their consent to be bound by the attached Extension Agreement. This is in line with the specific extension procedure foreseen by the Framework Agreement itself. It is therefore possible for Euratom and other signatories that were unable to complete their internal approval procedures in time to renew participation by means of a later signature.
- (7) The renewal by the Commission, on behalf of Euratom, of the Framework Agreement by means of signature of the Extension Agreement in accordance with the specific extension procedure should therefore be approved.

HAS ADOPTED THIS DECISION:

Sole article

The renewal by the Commission, on behalf of the European Atomic Energy Community, of the Framework Agreement for international collaboration on research and development of Generation IV nuclear energy systems, by means of signature of the Extension Agreement, is hereby approved. The text of the Extension Agreement is attached to this Decision.

Done at Brussels,

*For the Council
The President*