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

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

¹ Document declassified by the European Commission on 8 April 2019.



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 18 September 2013 (18.09)

13764/13

RESTREINT UE/EU RESTRICTED

**RECH 404
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COVER NOTE

from:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	13 September 2013
to:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union

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Subject:	Recommendation for a COUNCIL DECISION authorising the opening of negotiations on a comprehensive 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 (2014-2020) and the Research and Training Programme of the European Atomic Energy Community (2014-2018) complementing the Horizon 2020; and regulating Switzerland's participation in the ITER project in the years 2014-2020

Delegations will find attached Commission document COM (2013) 628 final.

Encl.: COM (2013) 628 final



EUROPEAN
COMMISSION

Brussels, 13.9.2013
COM(2013) 628 final

Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations on a comprehensive 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 (2014-2020) and the Research and Training Programme of the European Atomic Energy Community (2014-2018) complementing the Horizon 2020; and regulating Switzerland's participation in the ITER project in the years 2014-2020

EXPLANATORY MEMORANDUM**1. CONTEXT OF THE PROPOSAL**

By letter of 7 March 2011 the Swiss Confederation (hereafter 'Switzerland') expressed its interest in association.

Switzerland appears to fulfill the criteria for association outlined respectively in Article 7 of the proposal for a Regulation of the European Parliament and of the Council establishing Horizon 2020 – the Framework Programme for Research and Innovation '2014-2020'² and in Article 5 of the proposal for a Council Regulation on the Research and Training Programme of the European Atomic Energy Community (2014-2018) complementing the Horizon 2020 – the Framework Programme for Research and Innovation³.

Switzerland has been associated to the EU Framework Programmes for Scientific and Technological Development since 2004. The Swiss association to the EU Framework Programmes has been beneficial to the EU, as it increased research cooperation between European Union and Swiss entities particularly in areas of information and communication technologies, health and nanosciences. Switzerland is also an active and financially contributing partner within Article 185 initiatives. With its very good laboratories and institutes in fission and fusion Switzerland is regarded as an excellent and well-positioned partner in Euratom research.

Most recently Switzerland has been associated to the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) on the basis of the 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 part⁴.

Switzerland is the only third country associated to the whole Euratom research programme. It has been associated to the fusion thematic area of the Euratom framework programmes already since 1979 on the basis of the Cooperation Agreement between the European Atomic Energy Community and the Swiss Confederation in the field of controlled thermonuclear fusion and plasma physics of 1978⁵. This Agreement, in accordance with its Article 19 paragraph 2, is tacitly extended in keeping with subsequent programme decisions taken by Euratom.

Swiss association to the fission part of the Euratom framework programme and the nuclear activities of the Joint Research Centre is governed on the basis of the 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

² COM(2011)809/3

³ COM(2011)812/3

⁴ OJ L 189 20/07/2007, p.26.

⁵ OJ L 242 04/09/1978, p.2.

and training activities (2012-2013) which entered into force on 12 December 2012 and will continue to apply till 31 December 2013.

The new agreement between the European Union and the European Atomic Energy Community, of the one part, and Switzerland, of the other part, should bring under one umbrella and regulate comprehensively the terms and conditions of the Swiss association to Horizon 2020 and the Euratom Research and Training Programme complementing Horizon 2020; and the Swiss participation in the ITER project during the years 2014-2020. Consequently, it should succeed and replace the 1978 Fusion Cooperation Agreement. There are multiple reasons for doing this.

The current system of multiple agreements associating Switzerland to the EU and Euratom Framework Programmes is not transparent. The Swiss association to the Euratom Framework Programme which is split between two different agreements could potentially lead to a situation where Switzerland would be associated only to part of the Euratom Framework Programme.

The terminology contained in the 1978 Fusion Cooperation Agreement is outdated and no longer corresponds to the funding instruments proposed by the Commission in the proposal for a Council Regulation on the Research and Training Programme of the European Atomic Energy Community (2014-2018) complementing Horizon 2020⁶.

Under the Fusion Cooperation Agreement Switzerland benefits from a more preferential financial formula for contributions to the Fusion activities under the Euratom Programme than that applied to the rest of the Euratom Programme or the EU Framework Programme. Such a preferential formula is granted to EEA EFTA States in relation to their association to the EU Framework Programme under the Agreement on the European Economic Area. Switzerland chose not to be a member of the European Economic Area. The formula applicable to Swiss contributions under the Fusion Cooperation Agreement was never revisited given that the latter Agreement is tacitly extended for subsequent Euratom Framework Programmes. The terms and conditions of the Swiss association under the Fusion Cooperation Agreement should be renegotiated.

Therefore, for the purpose of clarity and simplification it is desirable to regulate association of Switzerland to the EU and Euratom Framework Programmes and the ITER project in a single comprehensive agreement.

In addition to establishing a single formula/mechanism for calculating the Swiss financial contribution to the programmes and ITER, the negotiations of a new agreement provide a possibility to introduce a new mechanism allowing for review after three years of the Agreement's implementation, which would include re-assessment of the financial contribution to the programmes. The aim is to introduce such a review clause in the future for all third countries associated to the framework programmes.

The new Agreement will not be concluded before the adoption of Horizon 2020, the Euratom Research and Training Programme complementing Horizon 2020 and the funding decision for

⁶ COM(2011)812/3

the ITER project (2014-2020). The new Agreement should allow for provisional application starting from 1 January 2014.

Nevertheless, the signature of the future Agreement resulting from these negotiations will depend on the satisfactory outcome on the on-going discussions on various outstanding issues in the EU-Switzerland overall relations, in particular on the signature by Switzerland of the Cooperation Agreement on GNSS (Global Navigation Satellite System). Furthermore, the new agreement should provide for its automatic termination in case of termination of the EU-Switzerland Agreement on the Free Movement of Persons and in the absence of Swiss notification required for entry into force of the protocol for the extension of the Agreement on the Free Movement of Persons with Switzerland to Croatia within six months after completion of Swiss internal procedures.

Although there are other issues in the EU-Switzerland relations, the automatic termination is linked to the Free Movement of Persons Agreement (FMPA) and the protocol extending it to Croatia, since this agreement has the most direct and profound impact on the lives of citizens of the EU Members States.

2. LEGAL ELEMENTS OF THE PROPOSAL

The recommendation for a Council decision is based on Article 218 (3) and (4) of the Treaty on the Functioning of the European Union and Article 101 of the Euratom Treaty.

In the light of the above, the Commission recommends that the Council authorises the Commission to negotiate, in accordance with Article 218(3) and (4) of the Treaty on the Functioning of the European Union and in accordance with Article 101, paragraph 2 of the Euratom Treaty, with the Swiss Confederation a comprehensive agreement for scientific and technological cooperation between the European Union and the European Atomic Energy Community, of the one part, and the Swiss Confederation, of the other part, associating the Swiss Confederation to Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) and the Research and Training Programme of the European Atomic Energy Community (2014-2018) complementing the Horizon 2020; and regulating Switzerland's participation in the ITER project in the years 2014-2020.

Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations on a comprehensive 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 (2014-2020) and the Research and Training Programme of the European Atomic Energy Community (2014-2018) complementing the Horizon 2020; and regulating Switzerland's participation in the ITER project in the years 2014-2020

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(3) and (4) thereof;

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 recommendation from the Commission;

Whereas negotiations should be opened with a view to concluding a comprehensive agreement on 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 (2014-2020) and the Research and Training Programme of the European Atomic Energy Community (2014-2018) complementing the Horizon 2020; and regulating Switzerland's participation in the ITER project in the years 2014-2020,

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to negotiate on behalf of the Union and the European Atomic Energy Community a comprehensive 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 (2014-2020) and the Research and Training Programme of the European Atomic Energy Community (2014-2018) complementing the Horizon 2020; and regulating Switzerland's participation in the ITER project in the years 2014-2020.

Article 2

The negotiating directives are set out in the Annex.

Article 3

The negotiations shall be conducted in consultation with the [name of the special committee to be inserted by the Council] .

Article 4

This decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*

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ANNEX

DIRECTIVES FOR THE NEGOTIATION OF AN AGREEMENT BETWEEN the European Union and the European Atomic Energy Community and the Swiss Confederation associating the Swiss Confederation to Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020) and the Research and Training Programme of the European Atomic Energy Community (2014-2018) complementing the Horizon 2020; and regulating Switzerland's participation in the ITER project in the years 2014-2020.

1. The agreement should provide for association of the Swiss Confederation to the whole of the Horizon 2020 Framework Programme for Research and Innovation (2014-2020) and the whole Research and Training Programme of Euratom (2014-2018) complementing Horizon 2020 in line with the Regulation of the European Parliament and of the Council laying down the rules for the participation and dissemination in 'Horizon 2020' and Euratom Framework Programme (2014-2018). The Agreement should also regulate participation of the Swiss Confederation in the ITER Project in the years 2014-2020. The new comprehensive Agreement should succeed and replace the 1978 Fusion Cooperation Agreement.
2. In order to allow the Swiss Confederation to participate, as soon as possible, in the EU and the whole Euratom Framework Programme as well as the ITER project as an associated country, the Agreement should provide for provisional application as of 1 January 2014.
3. The Commission should strive to include into the new Agreement uniform rules applicable to calculating the Swiss financial contribution to the EU and Euratom Programmes and the ITER project. The new Agreement should contain a clause allowing for a review of its implementation which would include re-assessment of the Swiss financial contribution to the programmes.
4. The Agreement should provide for adequate protection of the financial interests of the EU and Euratom covering the communication of financial data, audits and administrative anti-fraud on-the-spot investigations, administrative assistance and the recovery of money. Insofar as necessary, the Agreement should also envisage elimination of obstacles in relation to taxation and social security resulting from the cross-border participation of researchers in research projects under the Agreement, in particular for the personnel of the Joint Research Centre governed by the staff regulations of the European Union.
5. The Agreement should provide for its automatic termination in case of termination of the EU-Switzerland Agreement on the Free Movement of Persons.
6. The Agreement should cease to apply in the absence of Swiss notification required for entry into force of the protocol for the extension of the Agreement on the Free Movement of Persons with Switzerland to Croatia within six months after completion of Swiss internal procedures.