II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 22 April 1992

concerning the conclusion of an Agreement between the European Atomic Energy Community, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America on cooperation in the engineering design activities for the International Thermonuclear Experimental Reactor (ITER) and of its Protocol 1, by the Commission for and on behalf of the Community

(92/439/Euratom)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Whereas the Council, in its Decision of 6 April 1992 approved the conclusion of the agreement between the European Atomic Energy Community, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America on cooperation in the engineering design activities for the International Thermonuclear Experimental Reactor (ITER) and of its protocol 1,

HAS DECIDED AS FOLLOWS:

Article 1

The agreement between the European Atomic Energy Community, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America on cooperation in the engineering design activities for the International Thermonuclear Experimental Reactor (ITER) and its protocol 1 are hereby concluded on behalf of the Community.

The texts of the agreement and of its protocol 1, together with the 'understandings', are appended to this Decision.

Article 2

The President of the Commission is hereby empowered to designate the person authorized to sign the agreement and its protocol 1 for the purpose of binding the European Atomic Energy Community.

Done at Brussels, 22 April 1992.

For the Commission

The President

Jacques DELORS

AGREEMENT

among the European Atomic Energy Community, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America on cooperation in the engineering design activities for the international thermonuclear experimental reactor

(Only the English text is authentic)

THE EUROPEAN ATOMIC ENERGY COMMUNITY (EURATOM), THE GOVERNMENT OF JAPAN, THE GOVERNMENT OF THE RUSSIAN FEDERATION, AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA, ('THE PARTIES'),

RECOGNIZING the long-term potential of controlled thermonuclear fusion as a virtually limitless, environmentally acceptable and economically competitive source of energy,

EMPHASIZING the importance of the work worldwide aimed at developing controlled thermonuclear fusion for peaceful purposes,

ADVOCATING the widest practicable international cooperation in developing this source of energy for the benefit of all humankind,

NOTING that the cooperation conducted successfully under the auspices of the International Atomic Energy Agency (IAEA) on the Conceptual Design Activities (CDA) for the International Thermonuclear Experimental Reactor (ITER) has resulted in the ITER Conceptual Design Activities Final Report,

CONVINCED that now is the proper time for the engineering design of ITER to be initiated on the basis of the outcome of the CDA and the recent progress of the research and development in the field of controlled thermonuclear fusion,

RECOGNIZING that it is a function of the IAEA to encourage and assist research on, and development and practical application of, atomic energy for peaceful uses,

EXPRESSING interest in continuing the fruitful cooperation and assistance of the IAEA in this endeavor,

REAFFIRMING the principle of equality of the Parties with regard to their status in, their contributions to, and their benefits from, the cooperation,

HAVE AGREED AS FOLLOWS:

Article 1

Purpose

1. In accordance with this Agreement, its Annexes and Protocols, the parties, subject to their laws and regulations, shall conduct jointly the Engineering Design Activities (EDA) to produce a detailed, complete, and fully integrated engineering design of ITER and all technical data necessary for future decisions on the construction of ITER. Such design and technical data shall then be available for each of the parties to use either as part of an international collaborative program or in its own domestic program.

2. The overall programmatic objective of ITER, which shall guide the EDA, is to demonstrate the scientific and technological feasibility of fusion energy for peaceful purposes. ITER would accomplish this objective by demonstrating controlled ignition and extended burn of deuterium-tritium plasmas, with steady-state as an ultimate goal, by demonstrating technologies essential to a reactor in an integrated system, and by performing integrated testing of the high-heat-flux and nuclear components required to utilize fusion energy for practical purposes.

Article 2

Scope

For the purposes stated in Article 1, the parties shall conduct jointly the following EDA:

(a) to establish the engineering design of ITER including

(i) a complete description of the device and its auxiliary systems and facilities,

(ii) detailed designs with specifications, calculations and drawings of the components of ITER with specific regard to their interfaces,

(iii) a planning schedule for the various stages of supply, construction, assembly, tests and commissioning of ITER together with a corresponding plan for human and financial resources requirements, and,

(iv) specifications allowing immediate calls for tender for the supply of items needed for the start-up of the construction of ITER if and when so decided;

(b) to establish the site requirements for ITER, and perform the necessary safety, environmental and economic analyses;

(c) to establish both the proposed program and the cost, manpower and schedule estimates for the operation, exploitation and decommissioning of ITER;

(d) to carry out validating research and development work required for performing the activities described above, including development, manufacturing and testing of scalable models to ensure engineering feasibility; and,

(e) to develop proposals on approaches to joint implementation for decisions by the parties on future construction, operation, exploitation and decommissioning of ITER.

Article 3

Implementation

The EDA shall be implemented by two or more Protocols, as appropriate, according to the progress of work, as well as by the relevant provisions of this Agreement and its Annexes. The Annexes shall form an integral part of this Agreement. Subject to this Agreement and its Annexes, the parties shall in each Protocol set forth its duration, the tasks to be performed or initiated during that period and the measures necessary for their execution.

Article 4

Council

1. The parties shall establish a Council which shall act by unanimity. Each party shall designate two members of the Council. The Council shall elect its chair and co-chair from among its members and adopt its rules of procedure.

2. The Council shall meet at least twice a year at places it selects and may have extraordinary meetings which the chair shall convene at the request of a Council member or the Director provided for in Article 5. The Director shall normally attend the meetings.

3. The Council shall have the responsibility for the overall direction of the EDA and shall exercise overall supervision of its execution. The Council shall report to the Parties.

4. The functions of the Council are elaborated in Annex A.1.

Article 5

Director

1. The Council shall appoint the Director. The Director shall report to the Council.

2. In accordance with the provisions of this Agreement, its Annexes and Protocols and in conformance with the decisions taken by the Council, the Director shall direct and coordinate the performance of all activities described in Article 2 (a) to (d); organize, direct and supervise the Joint Central Team provided for in Article 8; and, assist in the performance of activities described in Article 2 (e).

3. In carrying out duties and responsibilities, the Director shall act independently and neither seek nor take instructions from any of the parties.

4. The functions of the Director are elaborated in Annex A.2.

Article 6

Technical Advisory Committee

1. The Council shall designate the members of the Technical Advisory Committee (TAC) and its chair, based on the recommendation of the parties

2. The TAC shall be composed of up to 16 members (including the chair) acting in an individual capacity, no more than one fourth of whom shall come from each party. They shall be chosen by the Council so as to ensure that all areas of expertise required for performance of the activities set out in Article 2 (a) to (d) are represented at the TAC.

3. The TAC shall, upon request of the Council, advise it on technical matters and perform such other tasks as the Council may request it to undertake.

4. Subject to the approval of the Council, the TAC shall draw up its rules of procedure.

Article 7

Management Advisory Committee

1. Each party shall designate three members of the Management Advisory Committee (MAC), one of whom shall be the home team leader provided for in Article 9. The Council shall appoint the chair of the MAC from among the members.

2. The MAC shall report to and advise the Council in management and administrative matters, including finance, personnel, and task assignment provided for in Article 11.

3. Subject to the approval of the Council, the MAC shall draw up its rules of procedure.

Article 8

Joint Central Team

1. On proposal of the Director, the Council shall decide the size of the Joint Central Team, its main structure at each joint work site, provided for in Article 13, and the functions of the Deputy Directors.

2. By secondment agreements or by other means, as specified in the Protocols, each party shall make available to the Joint Central Team qualified persons in approximately equal numbers. Upon proposal by the parties and in consultation with the Director, the Council shall appoint four Deputy Directors, one from each party. Upon proposal of the Director acting in consultation with the parties, the Council shall appoint an administrative officer and a head for each joint work site, all of whom may be chosen from among the Deputy Directors. Other members of the Joint Central Team shall be chosen by the Director from among qualified persons nominated by the parties. The administrative status of the members shall be defined in the Protocols to this Agreement. All members of the Joint Central Team shall come under the management authority of the Director.

3. The Joint Central Team shall assist the Director in the performance of the Director's duties. The functions of the Joint Central Team are elaborated in Annex A.3.

Article 9

Home Teams and Home Team Leaders

1. Each party shall, in consultation with the Council :

(a) establish and organize its home team which shall perform the tasks assigned to it in accordance with Article 11 ; and,

(b) designate a home team leader who shall be responsible to the Director for the execution of these tasks.

2. Each party's home team leader shall inform the Director and the other home team leaders of the organization of that party's home team. Any differences of opinion between the Director and home team leader on this matter shall be resolved by the Council.

3. In general, the Director shall act through the home team leaders on matters relevant to task assignments, change in scope of assigned tasks, and judgments on performance. The interaction between the home teams and their leaders, on the one hand, and the Director and the Joint Central Team, on the other hand, shall be described in the Protocols.

4. The functions of the home teams and home team leaders are elaborated in Annex A.4.

Article 10

Special Working Groups

1. Special Working Groups (SWGs) may be established by means of the Protocols or by decision of the Council and may be entrusted with specific tasks which are outside the responsibilities of the Director as described in this Agreement, its Annexes and Protocols.

2. When a SWG is established, each party shall, after consultation with the Council, designate its representatives to the SWG. The SWG shall report to the Council. The Council shall appoint the chair of the SWG. Subject to the approval of the Council, the SWG shall draw up its rules of procedure. The Council shall decide upon any involvement of the Director in the SWG. With the accomplishment of the task(s) entrusted to it, that SWG shall cease to exist.

Article 11

Work Program and Workshops

The work program for the EDA shall specify the plan for the execution of all work required for the performance of all activities set forth in Article 2 (a) to (d), including the assignment of tasks to the home teams in approximately equal shares and to the Joint Central Team. The work program shall be developed by the Director and approved by the Council upon advice of the MAC. The work program, as approved by the Council, shall apply, subject to updating, over the entire EDA period. Each party shall ensure the implementation of the tasks assigned to it. Tasks shall be assigned by task agreements to be concluded between the Director and each party's home team leader. The terms and conditions relating to the work program and workshops are elaborated in Annex B.

Article 12

Resources

1. With the exception of the resources to be made available by each host party in accordance with Article 14, the parties shall make available, on an equal basis, the resources required for the implementation of this Agreement, its Annexes and Protocols. The estimate of such resources is contained in the ITER Conceptual Design Activities Final Report.

2. To the extent that expenses shall not be supported by the joint fund provided for in paragraph (3), each party shall, in fulfilling its obligations under paragraph (1), bear, subject to its laws and regulations, the costs it incurs in carrying out the provisions of this Agreement, its Annexes and Protocols, including the costs of its personnel's participation in meetings, the execution of assigned tasks and the organization of workshops.

3. A joint fund shall be established to support certain common expenses, such as the salaries of the Director and Deputy Directors. The Council shall establish the appropriate financial rules and regulations including the expenditures to be covered by the joint fund, the amount of the joint fund, its operation, the designation of any person(s) authorized to draw on it, and its auditing. The parties shall maintain the joint fund by equal contributions, subject to their applicable laws and regulations.

Article 13

Siting for the Joint Central Team

The Joint Central Team will be located at the joint work sites : Garching (near Munich), Naka (Ibaraki) and San Diego (California).

Article 14

Support from the Host Party

1. Each host party shall make available, at its own expense and subject to the conditions provided for in paragraph (2), for the duration of this Agreement its joint work site including land, office accommodations, goods and services required for the implementation of the tasks to be performed at that site by the Joint Central Team, as well as for workshops and meetings of the Council, the TAC, the MAC and the SWGs.

2. The parties, acting through the Council, shall define in each case the support and the conditions under which it is supplied, upon proposal by the Director, following the Director's consultation with each of the host parties.

3. The parties, acting through the Council, shall consult with each other and the Director on the range and level of the facilitations and privileges to be requested from the competent authorities for the members of the Council, the TAC, the MAC, the SWGs, the Joint Central Team and for the Director.

Article 15

Information and Intellectual Property

Dissemination, use and protection of information used or generated in the activities conducted pursuant to this Agreement, its Annexes and Protocols, and allocation of rights in intellectual property arising in the course of such activities shall be governed by the provisions set forth in Annex C.

Article 16

Reporting

The Director, with the assistance of the Joint Central Tream, shall prepare annual progress reports on the EDA, and, upon completion of the EDA, a comprehensive report, which shall contain the detailed, complete and fully integrated engineering design of ITER. The Director shall submit these reports to the Council for approval and subsequent transmission to the parties. The Council shall prepare and publish a final report summarizing the comprehensive report. Furthermore, all technical data developed during the EDA shall be made available to the parties in conformance with Article 15.

Article 17

Applicable Law

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

2. Each party shall use its best efforts to obtain all permits and licenses required by the applicable laws and regulations for the implementation of this Agreement, its Annexes and Protocols.

3. Each party shall use its best efforts to facilitate, in accordance with its laws and regulations, the movement of persons, the importation and exportation of materials, equipment and other goods and the transfer of currencies, which shall be necessary for the implementation of this Agreement, its Annexes and Protocols.

Article 18

Liability

Damages incurred in the course of or arising out of the execution of this Agreement, its Annexes and Protocols shall be compensated to the extent permitted by and in accordance with applicable domestic laws and regulations.

Article 19

Participation of other countries

1. In its contribution to the implementation of this Agreement, its Annexes and Protocols, each Party may involve other countries which possess relevant specific capabilities.

2. The conditions of such an involvement shall be compatible with the provisions of this Agreement, its Annexes and the relevant Protocol and shall be subject to the approval of the Council.

Article 20

International Atomic Energy Agency

1. The EDA will be conducted under the auspices of the IAEA.

2. The parties request the IAEA, acting within the framework of its Statute, to use its best endeavors to facilitate the cooperation among the parties provided for in this Agreement, its Annexes and Protocols.

3. The parties, acting through the Council, may define with the IAEA terms and conditions for the specific forms of assistance.

Article 21

Consultations

1. The parties, acting through their members of the Council, shall consult on any matter arising out of the interpretation or implementation of this Agreement, its Annexes and Protocols, or on any technical issue concerning the tasks elaborated in the Protocols. The parties shall use their best efforts to settle such matters through consultation between or among their Council members.

2. Any party may request that high-level consultations be held with another party or parties on any of the aforementioned issues which cannot be resolved pursuant to the procedure set forth in paragraph 1. The requested party or parties shall accede to such request promptly.

3. If any issue not settled through such high-level consultations still needs to be resolved, the concerned parties may submit that issue to an agreed from of dispute resolution such as conciliation, mediation or arbitration.

Article 22

Amendments

1. This Agreement, its Annexes and Protocols may be amended by written agreement of the parties.

2. An amendment shall enter into force upon the date stipulated therein.

Article 23

Termination

This Agreement may be terminated by written agreement of the parties.

Article 24

Territorial Application in regard to Euratom

This Agreement, its Annexes and Protocols 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 25

Duration

1. This Agreement shall enter into force upon signature of the parties and shall remain in force for six years.

2. According to the progress in achieving the purpose set forth in Article 1.1., the abovementioned duration may be changed in accordance with Article 22.

Done at Washington, on 21 July 1992 in quadruplicate

For the European Atomic Energy Community:

Andreas VAN AGT

For the Government of Japan:

Hiroshi HIRABAYASHI

For the Government of the Russian Federation:

Viktor N. MIKHAILOV

For the Government of the United States of America:

James D. WATKINS

ANNEX A

1. **Council**

In accordance with Article 4 of the Agreement, the Council shall, in particular:

(a) ensure the collaboration among the home teams and between each home team and the Joint Central Team;

(b) establish and implement procedures for the selection, ongoing evaluation, and, if necessary, the replacement of the Director, Deputy Directors, and heads of the joint work sites and establish for implementation by the Director these procedures applicable to the other members of the Joint Central Team;

(c) designate the chair and members of the TAC, and the chair of the MAC;

(d) decide the size and main structure at each joint work site of the Joint Central Team;

(e) approve the initial design basis for the EDA which will be the conceptual design updated as necessary by the results of a review of detailed technical objectives along with technical approaches;

(f) approve any proposal involving a significant change of design basis or of cost of construction and operation;

(g) approve the work program and its updating;

(h) approve annual progress reports, the comprehensive report and the final report;

(i) decide, within the rules established in Annex C of the Agreement, on appropriate disposition of information generated or intellectual property created, respectively, by the Joint Central Team;

(j) approve the conditions under which a party may involve other countries in its contribution;

(k) make the appropriate financial rules and regulations pursuant to Article 12 (3) of the Agreement;

(l) perform other functions as provided for in the Agreement, its Annexes and Protocols; and,

(m) have such other powers and perform such other functions as may be necessary for the pruposes of the EDA.

2. **Director**

In accordance with Article 5 of the Agreement, the Director shall, in particular:

(a) submit to the Council proposals on the size of the Joint Central Team and its main structure at each joint work site as well as on the support to be supplied by each host party;

(b) consult with the Council regarding the appointment of the Deputy Directors, submit proposals to the Council on their functions, on the selection of the administrative officer and of the head of each joint work site, and select other members of the Joint Central Team;

(c) draw up and sign secondment agreements for seconded personnel in accordance with procedures described in the Protocols and send copies to the host party concerned;

(d) assist SWGs as decided by the Council in any tasks entrusted to them by the Protocols or the Council;

(e) pursuant to the procedures described in the Protocols, initiate and carry out those design tasks and assign those R&D tasks, the implementation of which shall start before the approval of the work program, or once it is approved, before its yearly updating;

(f) draft the initial work program and submit it to the Council for approval and thereafter update the work program yearly and submit it to the Council for approval;

(g) implement the work program after approval of the Council and draw up and sign task agreements pursuant to Article 11 of the Agreement;

(h) monitor and control the execution of the assigned tasks with respect to timing, results and quality, and accept the completion of the tasks;

(i) prepare and submit to the Council the reports required by Article 16 of the Agreement;

(j) provide periodically to the seconding party a performance statement on each seconded person and send a copy of these statements to the chair of the Council;

(k) keep a file of task agreements, secondment agreements, missions, performance statements, reports, and any other document produced in implementing the Agreement, its Annexes and Protocols;
and,

(l) carry out such other functions as provided for in the Agreement, its Annexes and Protocols or as directed by the Council.

3. **Joint Central Team**

In accordance with Article 8 of the Agreement the Joint Central Team shall in particular:

(a) perform activities described in Article 2 (a), (b) and (c) of the Agreement;

(b) assist the Director in the definition and preparation of the work program;

(c) assist the Director in the direction and coordination of the performance of the activities described in Article 2 (a) to (d) of the Agreement;

(d) integrate all contributions into a coherent design;

(e) assist the Director in the performance of the activities described in Article 2 (e) of the Agreement; and,

(f) assist the Director in the preparation of the reports as required by Article 16 of the Agreement.

4. **Home teams**

In accordance with Article 9 of the Agreement, the home teams shall in particular:

(a) perform the activities described in Article 2 (d) of the Agreement;

(b) perform such activities described in Article 2 (a), (b), and (c) of the Agreement, as defined by the work program; and

(c) assist in the activities described in Article 2 (e) of the Agreement.

ANNEX B

1. **Work program**

(A) In accordance with Article 11 of the Agreement, the work program shall in particular contain:

(i) a detailed list of specific tasks, including

a) a technical description of each task together with

— a current estimate of all resources required for its performance,

— an implementation schedule with checkpoints, and

— a precise specification of the deliverables, and

b) the assignment of the specific tasks to each of the home teams and the Joint Central Team.

(ii) a flow chart of the specific tasks during the whole EDA demonstrating the full integration of the tasks performed or to be performed by the home teams and the Joint Central Team into one coherent plan aimed at achieving the purpose described in Article 1 (1) of the Agreement within the time limit set by Article 25 of the Agreement.

(B) Pursuant to the procedures described in the Protocols, the work program and its updatings shall be developed by the Director and approved by the Council upon advice of the MAC.

(C) The assignment of tasks to each of the home teams to be provided in the work program shall be guided by the following principles:

(i) Each home team shall be assigned an approximately equal share of the tasks defined in the work program, consistent with its competence and interests. Competence includes the capability to meet technical specifications and schedules, as well as available facilities and existing know-how.

The approximately equal share shall be determined by the Council taking into account:

— both qualitative and quantitative characteristics of the tasks to be assigned,

— the resources estimated necessary for the execution of a task at the time of assignment (the only corrections to that estimate will be those related to changes in the scope of a task), and

— the sum of all assigned tasks, the completion of which is accepted by the Director, during the full term of the Agreement.

(ii) Some tasks may be worthy of parallel efforts. The number of parallel efforts shall be decided on the basis of trade-offs between cost and risk reduction.

2. **Workshops**

In consultation with the Council and after informing the TAC, the Director shall, as appropriate, organize workshops on specific scientific and technological issues relating to the activities described in Article 2 (a) to (d) of the Agreement. The workshops may take place at any of the joint work sites or, subject to the agreement of the home team leader concerned, at any other place situated on the territory of a party or on the IAEA's premises in accordance with Article 20. The parties shall provide appropriate technical personnel in the workshops.

ANNEX C

1. **Dissemination, use and protection of information**

(A) For the purpose of this Annex: 'information' means drawings, designs, computations, reports and other documents, documented data or methods of research and development, descriptions of inventions and discoveries, whether or not patentable;

'business confidential information' means information containing know-how, trade secrets, or technical, commercial or financial information, which:

(i) has been held in confidence by its owner,

(ii) is not generally known or available from other sources,

(iii) has not been made available by its owner to other parties without an obligation concerning its confidentiality, and

(iv) is not available to the receiving party without obligations concerning its confidentiality.

(B) Subject to the provisions of this Annex, the parties support the widest possible dissemination of information generated in the execution of the Agreement, its Annexes and Protocols.

(C) Subject to the provisions of this Annex, all information generated by personnel of the Joint Central Team in the execution of the tasks assigned to it shall be made freely available to each of the parties for use in the research and development of controlled thermonuclear fusion as a source of energy for peaceful purposes.

(D) Subject to the provisions of this Annex, each party shall be entitled to a non-exclusive, irrevocable, royalty-free license in all countries to translate, reproduce, and publicly distribute scientific and technical journal articles, reports, and books directly arising from the execution of the Agreement. All publicly distributed copies of a copyrighted work prepared under the provisions of this Annex shall indicate the names of the authors of the work unless an author explicitly declines to be named.

(E) Subject to the provisions of this Annex, all information generated by the personnel of a home team in the execution of the tasks assigned to it shall be made freely available to the Joint Central Team and to each of the parties for use in the research and development of controlled thermonuclear fusion as a source of energy for peaceful purposes.

(F) Any contract placed on the initiative of a home team or the Joint Central Team for the execution of a task assigned to one of the teams shall contain provisions to allow the parties to meet their obligations under the Agreement, its Annexes and Protocols.

(G) Subject to its laws and regulations and to its obligation to third parties and to the provisions of this Annex, each party shall undertake to make freely available to the Joint Central Team and the Home Teams any information at its disposal which these teams need for the execution of the tasks assigned to them.

(H) If business confidential information is made available in the execution of the Agreement, its Annexes and Protocols, it must be duly marked so and transmitted pursuant to an arrangement of confidentiality. The recipient of such information shall use it for the execution of the Agreement, its Annexes and Protocols, and preserve its confidentiality to the extent provided in that arrangement.

2. **Intellectual property**

(A) For the purposes of the Agreement, its Annexes and Protocols 'Intellectual Property' shall have the meaning defined in Article 2 of the convention establishing the World Intellectual Property Organization, done at Stockholm on 14 July 1967. In accordance with its laws and regulations, each party shall ensure that the other parties can obtain the rights to intellectual property allocated in accordance with this Annex. This Annex does not alter or prejudice the allocation of rights between a Party and its nationals. Whether the rights concerning intellectual property shall be held by a party or its nationals shall be determined as between themselves in accordance with their applicable laws and regulations.

(B) Where protectable subject matter is created by personnel of the Joint Central Team in the execution of the Agreement, its Annexes and Protocols, the Director shall promptly inform the Council with a recommendation on the countries where intellectual property protection should be obtained. Each party, or its personnel seconded to the Joint Central Team shall, however, be entitled to acquire all right, title, and interest in and to intellectual property in its own territory. The Council shall decide

whether and how to seek such protection in third countries. In all cases where intellectual property is obtained by a party or its personnel seconded to the Joint Central Team, the party shall ensure that the personnel of the Joint Central Team can freely use the protected subject matter for the execution of the tasks assigned to the Joint Central Team, and that the other parties are granted an irrevocable, non-exclusive, royalty-free license, with the right to sublicense, for research and development on controlled thermonuclear fusion as a source of energy for peaceful purposes.

(C) If intellectual property is created by personnel of a home team in the execution of a task assigned to it, the party of that home team or its personnel shall be entitled to acquire all right, title and interest in all countries in and to such intellectual property according to applicable laws and regulations. The party of such home team shall ensure that the personnel of the Joint Central Team can freely use the protected subject matter for the execution of the tasks assigned to the Joint Central Team, and that the other parties are granted an irrevocable, non-exclusive, royalty-free licence, with the right to sublicense, for research and development on controlled thermonuclear fusion as a source of energy for peaceful purposes.

(D) If intellectual property is created by personnel of one party (the sending party) while working in the home team of another party (the receiving party), subject to the relevant applicable laws:

(i) the receiving party or its personnel shall be entitled to acquire all right, title, and interest in and to any such intellectual property in its own territory and in third countries, including those of the parties other than the sending ones, subject to a non-exclusive, irrevocable, royalty-free license, with the right to sublicense, to the other parties for research and development on controlled thermonuclear fusion as a source of energy for peaceful purposes;

(ii) the sending party or its personnel shall be entitled to acquire all right, title and interest in and to any such intellectual property in its own territory subject to a non-exclusive, irrevocable, royalty-free license, with the right to sublicense, to the other parties for research and development on controlled thermonuclear fusion as a source of energy for peaceful purposes.

(E) Each party shall, without prejudice to any rights of inventors or authors under the applicable laws, take all necessary steps to provide the cooperation of its personnel seconded to the Joint Central Team, sent to other home teams or assigned to its home team, which are required to carry out the provisions of this Annex. Each party shall assume the responsibility to pay awards and compensations required to be paid to its personnel, according to its laws and regulations.

(F) Notwithstanding paragraphs (B), (C) and (D), if any party decides not to exercise its right to seek protection for intellectual property in any country or region, it shall so notify the other parties, and any of those other parties may then seek to obtain such protection. A party which so decides shall notify the other parties at least three months before formally seeking protection. Within three months of such notification any party may inform the notifying party that it, too, desires to seek such protection. In this case the notifying party and such other parties shall jointly agree on the management of the intellectual property concerned.

(G) The Council may establish a joint expert team for the purpose of advising in the management of any matter relating to intellectual property in accordance with the relevant provisions of this Annex.

3. The rights conferred and obligations imposed upon the parties by the provisions of this Annex shall subsist in accordance with applicable laws and regulations after the termination of the Agreement, its Annexes and Protocols.

PROTOCOL I

to the Agreement among the European Atomic Energy Community, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America on cooperation in the engineering design activities for the International Thermonuclear Experimental Reactor

THE EUROPEAN ATOMIC ENERGY COMMUNITY (EURATOM), THE GOVERNMENT OF JAPAN, THE GOVERNMENT OF THE RUSSIAN FEDERATION, AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA ('THE PARTIES'),

HAVING REGARD to the Agreement on Cooperation in the Engineering Design Activities (EDA) for an International Thermonuclear Experimental Reactor (ITER), concluded among the parties on 21 July 1992 ('the Agreement'), and in particular to Article 3 thereof,

HAVE AGREED AS FOLLOWS:

SECTION I

Special Working Groups

In accordance with Article 10 of the Agreement, two Special Working Groups (SWG) shall be established.

SWG 1 shall conduct the review as defined in Section 2.

SWG 2 shall submit, not later than three months after entry into force of the Agreement, guidelines for implementation of task assignments, as defined in Section 3 (1), to the Council for its approval, and prepare in accordance with Section 4 a draft of Protocol 2.

SECTION 2

Review of the Conceptual Design

SWG 1 shall, based on the conceptual design report, review the detailed technical objectives along with technical approaches to determine the best practicable way to achieve the programmatic objective of ITER, as described in Article 1 (2) of the Agreement.

SWG 1 shall submit, not later than three months after entry into force of the Agreement, its findings in a review report to the Council for its approval.

SECTION 3

Task Assignment

1. In proceeding toward the assignment of tasks to each of the home teams in developing the work program,

(a) the Director shall, acting in close interaction with the home team leaders,

— identify the tasks to be performed by the home teams and draw up a list of these tasks,

— draw up a detailed technical description of each task including schedules, deliverables and an indication of facilities and background information needed for its implementation, and

— send a list of the tasks together with their technical description to each home team leader;

(b) each party shall, within two months after receipt of the list and technical description, send to the Director in writing

— an estimate of all resources required for each task on the list, and

— an expression of interest, in order of priority, in the implementation of certain tasks,

and, where such interest is expressed,

— a description of its capability to meet the specifications and schedules as well as the availability of necessary facilities and know-how,

— an indication of where the work would be performed, and

— an evaluation of the technical risk and, in case of high technical risk, possible suggestions for parallel efforts; and

(c) on the basis of this material and of the guiding principles set out in Annex B, 1 (C) to the Agreement and of the guidelines established by SWG 2, the Director shall propose in the draft work program to be submitted by the Director to the Council pursuant to Article 11 of the Agreement, the assignment of the tasks to each of the home teams.

SECTION 4

Protocol 2

1. SWG 2, assisted by the Director and the Joint Central Team, shall draft Protocol 2 and submit a draft to the Council not later than ten months after entry into force of the Agreement.

2. In drafting Protocol 2, the SWG 2 shall consider, among others, the following items:

— new tasks to be initiated,

— duration of Protocol 2,

— consequences of inadequate performance of tasks assigned to a home team,

— possible need for SWGs and their tasks,

— detailed functions and responsibilities of the Council, the Director, and the MAC, with respect to the implementation of Protocol 2, and

— any necessary changes to items described in Protocol 1.

SECTION 5

Design and R&D Tasks

1. The Appendix, which shall form an integral part of this Protocol, contains

— a first set of initial tasks relating to research and development work, the implementation of which shall commence upon entry into force of this Protocol, and

— the assignment of each of these tasks to a home team.

2. In addition to the tasks defined in the Appendix, the Director may, before the approval of the work programme by the Council, identify further tasks, the assignment of which should not wait for that approval. In this event, the Director shall draw up a technical description of the task in conformance with Annex B, 1 (A) to the Agreement and assign it to a home team subject to the prior approval of the home team leader concerned and the Council.

3. Upon approval of the work programme by the Council, the Director shall proceed to its implementation in accordance with the schedules provided therein for the various tasks.

4. The technical description of a task, the task assignment, and the terms and conditions of its execution, developed in conformance with Article 11 of the Agreement and paragraphs (1), (2), or (3) shall form the subject of a task agreement. The task agreement shall be drawn up by the Director and signed by the Director and the leader of the home team to whom the task has been assigned. The task agreements shall be concluded forthwith after respectively,

— the entry into force of this Protocol, or

— the approval of the Council, or

— the approval of the work program by the Council.

as according to paragraphs (1), (2) or (3).

Each home team leader shall notify the Director, in a timely fashion, of the location where work described by the task agreement is to be performed.

5. Each home team leader shall ensure that access for the purpose of interaction, monitoring of work in progress and evaluation of quality control to the sites and premises where a task assigned to a home team is being carried out, as well as to the personnel performing and documents concerning the task, is not unreasonably denied either to the Director or to members of the Joint Central Team authorized by the Director. The home team leader shall be notified in a timely fashion of such access by the Director or members of the Joint Central Team authorized by the Director. The detailed arrangements for this access shall be specified in the task agreement.

6. The Joint Central Team and the home teams shall, during the term of this Protocol, perform design work as requested by the Director in accordance with the guidelines established by the Council. In addition, the Joint Central Team shall assist the SWGs and the Director in the implementation of the tasks defined in Sections 2, 3, 4 and paragraphs (2) and (4).

SECTION 6

Secondment of Joint Central Team Members

1. For the purpose of this Section and the subsequent Sections of this Protocol,

'Seconding party' means the party which makes a person available to the Joint Central Team in accordance with Article 8 (2) of the Agreement, irrespective whether that party is the employer or not of that person;

'Seconded person' or 'seconded personnel' means one or several persons made available by the seconding party to the Joint Central Team, except those who will be employed specifically for the EDA by the IAEA or any other entity.

2. After the selection of a person in accordance with Article 8 (2) of the Agreement, the employer of that person shall second such person without any undue delay to the Joint Central Team. In respect of each seconded person a specific secondment agreement shall be drawn up by the Director and signed by the Director, the seconded person, and that person's employer. If the employer and the seconding party are different entities, the seconding party shall endorse the secondment agreement(s) to indicate it has made the seconded personnel available to the Joint Central Team as described in Article 8 (2) of the Agreement. The secondment agreement for the director shall be co-signed by the Chair of the Council. Secondment agreements for Deputy Directors (see Article 8 (2) of the Agreement) shall require the prior approval of the Council, except in the cases where paragraph (5) applies. Upon signature of the secondment agreement, the Director shall copy it to the entity operating the joint work site to which the seconded person shall be assigned.

The secondment agreement shall state the work and the joint work site to which the seconded person shall be assigned, that person's reporting responsibility, and that the seconded person and that person's employer will comply with the provisions of Articles 8 (2) and 15 of the Agreement and of this paragraph to the extent they concern the secondment, and that the seconded person will comply with the internal rules regarding safety and security to be observed on the premises of the joint work site. The duration of a secondment agreement may exceed that of this Protocol.

3. The secondment agreements should be developed to be as uniform as practicable and to reflect the guidelines for secondment agreements set forth in the attachment.

4. If the seconding party is not the employer of the seconded person, it shall use best efforts to ensure that the employer of the said seconded person complies with the provisions of this section.

5. If the Director and members of the Joint Central Team are to be employed by the IAEA or any other entity, the condition of employment shall be subject to the approval of the Council.

SECTION 7

Financing

In accordance with Article 12 (2) of the Agreement, each party shall bear the costs it incurs in carrying out the provisions of the Protocol, particularly those relating to

(a) the participation of its members and experts in the work and the meetings of the Council, the TAC, the MAC, and the SWGs, including the costs for travel and subsistence;

(b) payments to its seconded personnel including salaries, travel, insurance, relocation and living expenses;

(c) the execution of tasks assigned to its home team in accordance with Section 5;

and

(d) the organization of workshops taking place on its territory and the participation in workshops including travel expenses and subsistence.

SECTION 8

Duration

This Protocol shall enter into force upon signature of the parties. It shall terminate upon entry into force of Protocol 2 but not later than twenty months after signature.

Done at Washington, on 21 July 1992 in quadruplicate.

For the European Atomic Energy Community

Andreas VAN AGT

For the Government of Japan

Hiroshi HIRABAYASHI

For the Government of the Russian Federation

Viktor N. MIKHAILOV

For the Government of the United States of America

James D. WATKINS

APPENDIX

INITIAL R&D TASKS

The parties, recognized the needs to provide early identification and initiation of critical technology R&D tasks which

— will determine the EDA and licensing procedures schedules, and

— will permit timely choices of design options,

agree to start immediately preparatory work for construction (or modification) of major test facilities and development of scalable models and their components listed below in accordance with the specifications and estimated costs given in the *ITER Management Committee Research and Development Needs* for ITER Engineering Design developed in the CDA.

The details of the tasks listed below, defined by references in parentheses which express the designations contained in the *Research and Development Needs* for ITER Engineering Design, shall be worked out in the respective task agreements to be drawn up forthwith after the signature of Protocol 1 in accordance with its Sections 5 (1) and 5 (4). Without prejudice to the immediate start of the implementation of these tasks, their description and assignment shall be incorporated in the work programme provided for in Article 11 of the Agreement.

Euratom shall perform the following tasks:

E1 design of central solenoid model coil (MAG 2.1.1 in 1991)

E2 design of neutral beam test facility (HCD 1.5 in 1991)

E3 critical elements study of vacuum vessel (COS 1.1 step 1 in 1991)

The Government of Japan shall perform the following tasks:

J1 design of central solenoid model coil (MAG 2.1.1 in 1991)

J2 design of toroidal field model coil (MAG 2.2.1 in 1991)

J3 design of central solenoid test facility (MAG 3.1 in 1991)

J4 development of fabrication methods for ceramic blanket models (BKT 1.2 in 1991)

J5 critical elements study of vacuum vessel (COS 1.1 step 1 in 1991)

The Government of the Russian Federation shall perform the following tasks:

R1 design of central solenoid model coil (MAG 2.1.1 in 1991)

R2 design of toroidal field model coil (MAG 2.2.1 in 1991)

R3 development and test of electrostatic accelerator (HCD 1.3 from 1991 through 1993)

R4 design of neutral beam test facility (HCD 1.5 in 1991)

R5 design and preparatory work of in pile blanket test facility (BKT 1.2 in 1991)

R6 fabrication and testing of LiPb blanket channel (BKT 2 in 1991)

R7 critical elements study of vacuum vessel (COS 1.1 step 1 in 1991)

The Government of the United States of America shall perform the following tasks:

A1 design of central solenoid model coil (MAG 2.1.1 in 1991)

A2 design of toroidal field model coil (MAG 2.2.1 in 1991)

A3 design of toroidal field test facility (MAG 3.3)

A4 design of electrostatic quadrupole accelerator (HCD 1.1 in 1991)

A5 development of fabrication methods for ceramic blanket models (BKT 1.2 in 1991)

Attachment

Guidelines for secondment agreements

(a) seconded personnel shall remain employees of their existing employers and the contract of employment between the seconded personnel and its employer shall subsist during the secondment. The employer shall continue to pay its seconded personnel their salaries and other related expenditure such as social charges, allowances, fees and cost reimbursement according to the legislation and rules applicable to the employer;

(b) the employer shall ensure that accident insurance and other insurance in favor of the seconded person which exist by virtue of the conditions of employment remain valid during the secondment to the Joint Central Team. The employer will immediately inform its responsible departments and its insurers of the secondment. If an existing insurance protection of the seconded person is affected, the employer will be responsible for re-establishing an equivalent insurance protection ;

(c) during the secondment, the leave regulations of the employer will be valid and shall be communicated to the Director. The timing and duration of leave during the secondment shall be arranged with the Director who shall notify the employer. In accordance with paragraph (b), the regulations of the existing employer in regard to sick leave shall remain valid during the period of the secondment ;

and,

(d) the employer of the seconded personnel shall, with regard to the careers of its seconded personnel, give due consideration to the performance of these seconded personnel during their secondment to the Joint Central Team.

Understandings

1. *Siting and General Missions of the Co-centers*

The three technical sites have the following general missions:

— Site A: project integration
— Site B: out-of-vessel components and related systems
— Site C: in-vessel components and related systems

Moscow will be the formal seat for ITER Council meetings.

Assignment of responsabilities:

— Site A will be located at San Diego (USA)
— Site B will be located at Naka (Japan)
— Site C will be located at Garching (European Community)

2. *Provision of Host Support*

Each hosting party will, as three have already stated in their individual proposals, provide for the duration of the EDA its joint work site, including land, office accommodations, goods and services required for the operation of the Joint Central Teams, workshops and the meetings of the Council, the TAC, MAC and the SWGs at no cost to the ITER parties with the exception of certain items, such as communications and supplies, for which the host party has set upper limits which are at reasonable expectations for these costs. Detailed arrangements for these items as well as for other support shall be developed as specified in the Agreement, its Annexes and Protocols.

3. *Director and Chairs*

While the Agreement specifies that the Council will make the individual personnel appointments, aside from the MAC members who are designated by the parties, the negotiators have understood in common that the parties' likely nominees for the various positions are as follows:

— Council chairman: Russian Federation — E. Velikhov
— Council co-chairman (1): Japan — M. Yoshikawa
— TAC chair: USA — P. Rutherford
— Director: European Community — P.H. Rebut

ITER Council members:

EC	Japan	Russian Federation	USA
P. Fasella (2)	M. Yoshikawa	E. P. Velikhov	J. F. Decker
C. Maisonnier (2)	K. Atarashi	N. S. Cheverev	N. A. Davies

MAC Members:

	EC	Japan	Russian Federation	USA
	P. Kind	M. Yoshikawa	L. Golubchikov	T. R. James
	J. Vetter	I. Makino	Y. Balasanov	G. Jasny
HTL (3)	R. Toschi	S. Matsuda	O. Filatov	A. J. Glass

(1) the Council co-chairman will also be the MAC chairman
(2) will be accompanied by chair, CCFP, as expert.
(3) HTL = Home Team Leaders

TAC Members :

EC	Japan	Russian Federation	USA
R. Andreani	I. Inoue	E. Adamov	P. Rutherford
R. Aymar	K. Itoh	V. Glukhikh	J. Sheffield
D. Robinson	M. Seki	B. Kadomtsev	E. C. Brolin
F. Troyon	S. Shimamoto	M. Solonin	J. F. Clarke

Deputy Directors :

EC	Japan	Russian Federation	USA
M. Huguet (co-center head in Japan)	Y. Shimomura (deputy to the Director)	V. Chuyanovc (co-center head in USA)	R. Parker (co-center head in EC)

4. *Role of the IAEA*

The negotiators suggest that consultation with IAEA be pursued with a view to defining the domain in which assistance could be provided by the IAEA and the possible modalities of implementation.

5. *Independence of Joint Central Team members*

The Parties will refrain from giving any instructions to their members of the Joint Central Team that may introduce conflict with the Director's management authority.

Statement of the European Atomic Energy Community's Delegation on the occasion of the last Quadripartite negotiation meeting on Cooperation in the Engineering Design Activities for the International Thermonuclear Experimental Reactor (ITER)

— The delegation of the European Community thanks the host for organizing this 4th meeting of negotiation, and the three parties for their kind words of appreciation for the tritium experiment recently performed at JET.

— The EC delegation considers that the QEN-3 results (texts and negotiation packages) represent a fair and realistic basis for the conclusion of the negotiation. It will make all efforts to promote an early signature of the Agreement and of Protocol 1, so as not to put at risk by delay what has been equitably reached.

— The consensus towards the ITER-EDA cooperation has been facilitated by the phased structure of the Agreement as developed during the negotiation. Such a scheme, with successive Protocols for the implementation of the EDA and Special Working Groups (SWGs) for preparing adequate solutions to the outstanding problems, will ensure the flexibility required to incorporate into the EDA the latest technical results (such as those which are being generated by the successful recent JET tritium experiments), and to cope with the evolution of the parties' fusion programmes.

— The EC is attaching a particular importance to the review of the detailed technical objectives, which will be undertaken by the SWG-1 right at the beginning of Protocol 1, to determine the best practicable way to achieve the programmatic objective of ITER laid down in the Agreement. In order to prepare its representatives at SWG-1 for this constructive review, the EC has conducted, through its Consultative Committee of the Fusion Programme, an assessment of the conceptual design of ITER which it is happy to communicate to the other parties.