COMMISSION

COMMISSION DECISION

of 23 July 1999

on the conclusion of two cooperation agreements between the European Atomic Energy Community and the Cabinet of Ministers of Ukraine in the field of nuclear safety and in the field of controlled nuclear fusion

(notified under document number C(1999) 2405)

(2002/924/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,

Having regard to the approval of the Council,

Whereas the two agreements between the European Atomic Energy Community and the Cabinet of Ministers of Ukraine in the field of nuclear safety and in the field of nuclear fusion must be concluded,

HAS DECIDED AS FOLLOWS:

Sole Article

The two agreements between the European Atomic Energy Community and the Cabinet of Ministers of Ukraine in the field of nuclear safety and in the field of controlled nuclear fusion are hereby concluded on behalf of the European Atomic Energy Community.

The text of the two Agreements are attached to this Decision.

Done at Brussels, 23 July 1999.

For the Commission
Hans VAN DEN BROEK
Member of the Commission

AGREEMENT FOR COOPERATION

between the European Atomic Energy Community and the Cabinet of Ministers of Ukraine in the field of nuclear safety

The EUROPEAN ATOMIC ENERGY COMMUNITY,

hereinafter referred to as 'the Community',

of the one part, and

the CABINET OF MINISTERS OF UKRAINE,

of the other part,

both also generally referred to hereinafter as the 'Party' or 'Parties', as appropriate,

MINDFUL that the Agreement on Partnership and Cooperation signed on 14 June 1994 by the European Union and Ukraine establishes that the Parties shall cooperate in the nuclear sector, *inter alia*, through the implementation of an agreement on nuclear safety;

RECALLING that Ukraine and the Member States of the Community are Parties to the Treaty on the Non Proliferation of Nuclear Weapons and members of the International Atomic Energy Agency;

RECALLING that the Commission of the European Communities, hereinafter referred to as 'the Commission', has responsibilities, *inter alia*, for laying down basic standards for radiation protection, and for ensuring their implementation, and for collecting and monitoring radiation data at Community level;

RECALLING that protection of the environment and cooperating in this connection with third parties at Community level is of importance;

CONSIDERING that the Commission implements a Community research programme in nuclear safety, including reactor safety, radiation protection, waste management and nuclear plant decommissioning and dismantling, as well as in safeguards for nuclear materials, and intends to develop international scientific and technological cooperation on these subjects with a view to contributing towards internationally accepted nuclear safety principles and guidelines;

CONSIDERING that Ukraine concentrates its efforts on the implementation of research and development programmes aimed at improving the safety of existing nuclear power plants and the design of new such plants to answer accepted up-to-date nuclear safety requirements, as well as at solving problems of radioactive waste management and disposal and of nuclear plant decommissioning;

RECALLING that Ukraine's regulatory activity for the nuclear sector is intended to ensure the protection of the environment and population in general, as well as the protection of workers, against radiation on the basis of internationally accepted guidelines and principles;

RECOGNISING that the future contribution of nuclear energy to meet the energy needs of Europe as a whole, with due consideration for diversification, the economy and the environment and population in general, also depends on developing satisfactory answers to the safety related issues aforementioned, as well as assessing the safety of existing nuclear reactors and their necessary back-fitting as a consequence;

MINDFUL of the various forms of coordinated action on nuclear safety envisaged by the Community and Ukraine,

HAVE AGREED AS FOLLOWS:

Article 1

Cooperation under this Agreement shall be for peaceful purposes only and shall be conducted on the basis of mutual benefit. It shall encourage and contribute to the improvement of nuclear safety, including the definition and application of scientifically warranted and internationally accepted nuclear safety guidelines.

Article 2

Cooperation shall be as broad as possible and involve the following areas:

(a) **Nuclear reactor safety research**

Review and analysis of safety issues and particularly the impact of nuclear reactor safety on nuclear power development; identification of appropriate techniques to improve nuclear reactor safety through research and development and evaluation studies on nuclear reactors in operation and planned.

(b) **Radiation protection**

Research, regulatory aspects, development of safety standards, training and education, particular attention shall be paid to low-dose effects, industrial exposures, forecasting of doses for population and personnel and post-accident management.

(c) **Nuclear waste management**

Assessment and optimisation of geological disposal, and scientific aspects of the management of long-lived waste.

(d) **Decommissioning, decontamination and dismantling of nuclear installations**

Strategies for decommissioning and dismantling nuclear installations, including radiological aspects.

(e) **Research and development on safeguards of nuclear material**

Development and evaluation of nuclear material measurement techniques and characterisation of reference materials for safeguards activities and development of the systems of accounting for and control of nuclear materials.

(f) **Prevention of illicit trafficking of nuclear material**

Cooperation shall relate to the promotion of methods and techniques of control of nuclear material.

Other areas of cooperation may be added in accordance with procedures in force on each side.

Article 3

1. The cooperation shall be implemented in particular through:

— exchange of technical information by means of reports, visits, seminars, technical meetings, etc.,

— exchange of personnel between laboratories and/or bodies involved on both sides, including for training purposes,

— exchange of samples, materials, instruments and apparatus for experimental purposes,

— balanced participation in joint studies and activities.

2. To the extent necessary, implementing arrangements to set out the scope, terms and conditions to implement specific cooperation activities, may be entered into by the Parties and/or by bodies which either Party may eventually entrust with the aforementioned activities.

Such implementing arrangements may, *inter alia*, cover financing provisions, assignment of management responsibilities and detailed provisions on dissemination of information and intellectual property rights.

3. In order to minimise duplication of efforts, the Parties shall endeavour to coordinate their activities under this Agreement with other international activities related to nuclear safety in which they are participants.

Article 4

1. Each Party's obligations under this Agreement shall be subject to the availability of the required funds.

2. All costs resulting from cooperation shall be borne by the Party that incurs them.

3. The financing of industrial activities shall be excluded from the scope of this Agreement.

Article 5

1. In so far as the Community is concerned, this Agreement shall apply to the territories in which the Treaty establishing the European Atomic Energy Community applies.

2. Cooperation under this Agreement shall be in accordance with the laws and regulations in force as well as with the international agreements entered into by the Parties.

3. Each Party shall use its best endeavours, within the framework of the laws and regulations applicable, to facilitate the accomplishment of formalities involved in the movement of persons, the transfer of materials and equipment and the transfer of currency required to conduct the cooperation.

Article 6

The utilisation and diffusion of information and intellectual property rights including industrial property rights, patents and copyrights connected with the cooperation activities under this Agreement shall be in accordance with the Annexes, which form an integral part of this Agreement.

Article 7

The Parties shall endeavour to settle all questions connected with this Agreement through consultations between themselves.

Article 8

1. A Coordinating Committee consisting of members appointed in equal number by the two Parties shall be established to supervise the implementation of this Agreement.

2. The Coordinating Committee shall meet as needed, alternately in the Community and in Ukraine, for regular sessions in order to:

— review and assess the state of cooperation under this Agreement and prepare annual reports thereon,

— determine by mutual agreement the specific tasks to be undertaken under this Agreement, without prejudice to the taking of autonomous decisions by the Parties on their respective programmes.

3. If mutually agreeable, extraordinary sessions may be held for dealing with particular topics, or in particular circumstances.

Article 9

1. This Agreement shall enter into force on the date on which the Parties exchange diplomatic notes informing each other that their respective internal procedures necessary for its entry into force have been completed and shall remain in force for an initial period of 10 years [1].

[1] This agreement shall enter into force on 13 November 2002.

2. Thereafter, this Agreement shall be automatically renewed for five-year periods, unless either Party, by written notice, requests its termination or renegotiation not later than six months prior to the expiry date.

3. This Agreement may be terminated at any time by either Party upon six month's written notice.

4. Termination of this Agreement shall not affect rights and obligations under Article 6.

Article 10

1. This Agreement may be amended by mutual written agreement of the Parties, in accordance with their respective laws and regulations. Amendments shall form an integral part of this Agreement.

2. In the event of amendment, termination or renegotiation, this Agreement shall remain in force in its previous form with respect to cooperation activities effectively entered into prior to the entry into force of the amendment or prior to the request for termination or renegotiation until the end of such activities and relative implementing arrangements but not more than for one calendar year after the expiry of this Agreement in its previous form.

Done at Kiev on 23 July 1999 in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish and Ukrainian languages, each text being equally authentic.

Por la Comunidad Europea de la Energía Atómica
På Det Europæiske Atomenergifællesskabs vegne
Für die Europäische Atomgemeinschaft
Για την Ευρωπαϊκή Κοινότητα Ατομικής Ενέργειας
For the European Atomic Energy Community
Pour la Communauté européenne de l'énergie atomique
Per la Comunità europea dell'energia atomica
Voor de Europese Gemeenschap voor Atoomenergie
Pela Comunidade Europeia da Energia Atómica
Euroopan atomienergiayhteisön puolesta
På Europeiska atomenergigemenskapens vägnar
Від Європейської спільноти по атомній енергії



Por el Consejo de Ministros de Ucrania
På vegne af Ukraines ministerkabinet
Für das Ministerkabinett der Ukraine
Για το Υπουργικό Συμβούλιο της Ουκρανίας
For the Cabinet of Ministers of Ukraine
Pour le Cabinet des ministres de l'Ukraine
Per il Consiglio dei ministri dell'Ucraina
Voor de Ministerraad van Oekraïne
Pelo Gabinete de Ministros da Ucrânia
Ukrainan hallituksen puolesta
På Ukrainas regerings vägnar
Від кабінету міністрів України



ANNEX I

GUIDING PRINCIPLES ON THE ALLOCATION OF INTELLECTUAL PROPERTY RIGHTS (*) RESULTING FROM JOINT RESEARCH UNDER THE AGREEMENT FOR COOPERATION BETWEEN THE EUROPEAN ATOMIC ENERGY COMMUNITY AND THE CABINET OF MINISTERS OF UKRAINE IN THE FIELD OF NUCLEAR SAFETY

I. OWNERSHIP, ALLOCATION AND EXERCISE OF RIGHTS

1. All research carried out pursuant to this Agreement shall be 'joint research'. The participants shall jointly develop joint technology management plans (TMPs) (**) in respect of the ownership and use, including publication, of information and Intellectual Property (IP) to be created in the course of joint research. Those plans shall be approved by the responsible funding agency or department of the Party involved in financing the research, before the conclusion of the specific research and development cooperation contracts to which they are attached. The TMPs shall be developed taking into account the aims of the joint research, the relative contributions of the participants, the advantages and disadvantages of licensing by territory or for fields of use, requirements imposed by laws applicable and other factors deemed appropriate by the participants. The rights and obligations concerning the research generated by visiting researchers in respect of IP shall also be addressed in the joint technology management plans.

2. Information or IP created in the course of joint research and not addressed in the TMP plan shall be allocated, with the approval of the Parties, according to the principles set out in the technology management plan. In case of disagreement, such information or IP shall be owned jointly by all the participants involved in the joint research from which the information or IP results. Each participant to whom this provision applies shall have the right to use such information or IP for his own commercial exploitation with no geographical limitation.

3. Each Party shall ensure that the other Party and its participants have the rights to IP allocated to them in accordance with these principles.

4. While maintaining the conditions of competition in areas affected by this Agreement each Party shall endeavour to ensure that rights acquired pursuant to this Agreement are exercised in such a way as to encourage in particular:

   (i) the dissemination and use of information created, disclosed, or otherwise made available, under the Agreement;

   (ii) the adoption and implementation of international standards.

II. COPYRIGHT WORKS

Copyright belonging to the Parties or to their participants shall be accorded treatment consistent with the Berne Convention (1971 Paris Act).

III. SCIENTIFIC LITERARY WORKS

Without prejudice to Section IV, unless otherwise agreed in the TMP, publication of results of research shall be made jointly by the Parties or participants to that joint research. Subject to the foregoing general rule, the following procedures shall apply:

1. In the case of publication by a Party or public bodies of that Party of scientific and technical journals, articles, reports, books, including video and software, arising from joint research pursuant to this Agreement, the other Party shall be entitled to a worldwide, non-exclusive, irrevocable, royalty-free licence to translate, reproduce, adapt, transmit and publicly distribute such works.

2. The Parties shall ensure that literary works of a scientific character arising from joint research pursuant to this Agreement and published by independent publishers shall be disseminated as widely as possible.

3. All copies of a copyright work to be publicly distributed and prepared under these provisions shall indicate the names of the author(s) of the work unless an author or authors expressly declines or decline to be named. They shall also bear a clearly visible acknowledgement of the cooperative support of the Parties.

(*) Definitions of the concepts referred to in these guiding principles are set out in Annex II.
(**) The indicative features of such TMPs are set out in Annex III.

IV. UNDISCLOSED INFORMATION

A. **Documentary undisclosed information**

1. Each Party or its participants, as appropriate, shall identify at the earliest possible moment and preferably in the TMP the information that it wishes to remain undisclosed in relation to this Agreement, taking account, *inter alia*, of the following criteria:

   — secrecy of the information in the sense that the information is not, as a body or in the precise configuration or assembly of its components, generally known among or readily accessible by lawful means to experts in the field;

   — the actual or potential commercial value of the information by virtue of its secrecy;

   — previous protection of the information in the sense that it has been subject to steps that were reasonable under the circumstances by the person lawfully in control, to maintain its secrecy.

   The Parties and the participants may in certain cases agree that, unless otherwise indicated, parts or all of the information provided, exchanged or created in the course of joint research pursuant to the Agreement may not be disclosed.

2. Each Party shall ensure that undisclosed information under this Agreement and its ensuing privileged nature is readily recognisable as such by the other Party, for example by means of an appropriate marking or restrictive legend. This also applies to any reproduction of the said information, in whole or in part.

   A Party receiving undisclosed information pursuant to the Agreement shall respect the privileged nature thereof. These limitations shall automatically terminate when this information is disclosed by the owner without restriction to experts in the field.

3. Undisclosed information communicated under this Agreement may be disseminated by the receiving Party to persons within or employed by the receiving Party, and other concerned departments or agencies in the receiving Party authorised for the specific purposes of the joint research under way, provided that any undisclosed information so disseminated shall be pursuant to an agreement of confidentiality and shall be readily recognisable as such, as set out above.

4. With the prior written consent of the Party providing undisclosed information under this Agreement, the receiving Party may disseminate such undisclosed information more widely than otherwise permitted in paragraph 3 above. The Parties shall cooperate in developing procedures for requesting and obtaining prior written consent for such wider dissemination, and each Party will grant such approval to the extent permitted by its domestic policies, regulations and laws.

B. **Non-documentary undisclosed information**

Non-documentary undisclosed or other confidential or privileged information provided in seminars and other meetings arranged under this Agreement, or information arising from the attachment of staff, use of facilities, or joint projects, shall be treated by the Parties or their participants according to the principle specified for documentary information in the Agreement, provided, however, that the recipient of such undisclosed or other confidential or privileged information has been made aware of the confidential character of the information communicated at the time such communication is made.

C. **Control**

Each Party shall ensure that undisclosed information received by it under this Agreement shall be controlled as provided therein. If one of the Parties becomes aware that it will be, or may reasonably be expected to become, unable to meet the non-dissemination provisions of paragraphs A and B above, it shall immediately inform the other Party. The Parties shall thereafter consult to define an appropriate course of action.

ANNEX II

DEFINITIONS

1. INTELLECTUAL PROPERTY: shall have the meaning found in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm on 14 July 1967.
2. PARTICIPANT: any natural or legal person, including the Parties themselves, participating in a project under this Agreement.
3. JOINT RESEARCH: research implemented and/or funded by the joint contributions of the Parties and with collaboration from participants of both Parties, where appropriate.
4. INFORMATION: scientific or technical data, results or methods of research and development stemming from the JOINT RESEARCH and any other information deemed necessary by the Parties and/or participants engaged in the JOINT RESEARCH to be provided or exchanged under this Agreement or research pursuant thereto.

ANNEX III

INDICATIVE FEATURES OF A TECHNOLOGY MANAGEMENT PLAN (TMP)

The TMP is a specific agreement to be concluded between the participants, about the implementation of joint research and the respective rights and obligations of the participants. With respect to IPR, the TMP will normally address, *inter alia*: ownership, protection, user rights for R&D purposes, exploitation and dissemination, including arrangements for joint publication, the rights and obligations of visiting researchers and dispute settlement procedures. The TMP may also address foreground and background information, licensing and deliverables.

AGREEMENT FOR COOPERATION

between the European Atomic Energy Community and the Cabinet of Ministers of Ukraine in the field of controlled nuclear fusion

the EUROPEAN ATOMIC ENERGY COMMUNITY,

hereinafter referred to as 'the Community',

of the one part, and

the CABINET OF MINISTERS OF UKRAINE,

of the other part,

both also generally referred to hereinafter as the 'Party' or 'Parties', as appropriate,

MINDFUL that the Agreement on Partnership and Cooperation signed on 14 June 1994 by the European Union and Ukraine establishes that the Parties shall cooperate in the nuclear sector, *inter alia*, through the implementation of an agreement on thermonuclear fusion;

DESIRING to facilitate the achievement of fusion energy as a potentially environmentally acceptable, economically competitive, and virtually limitless source of energy;

NOTING that the Community Fusion programme is a broad-based comprehensive programme based on the toroidal magnetic confinement;

NOTING that the Fusion researches of Ukraine are based on the specifics strengths of fusion science and technology in Ukraine;

RECOGNISING the mutual benefits to be obtained by establishing closer links between the Parties' scientific communities working in the field of controlled nuclear fusion;

DETERMINED to strengthen the cooperation between the Parties in the field of controlled nuclear fusion through regular consultations,

HAVE AGREED AS FOLLOWS:

Article 1

Cooperation under this Agreement shall be for peaceful purposes only and shall be conducted on the basis of mutual benefit. The objective of this Agreement is to maintain and intensify cooperation between the Parties in the areas covered by their respective fusion programmes in order to develop the scientific understanding and technological capability underlying a fusion power system.

Article 2

Cooperation under this Agreement may be undertaken in the following areas:

(a) experimental and theoretical studies of plasma confinement, transport, heating and current drive (including the development of related RF systems) and diagnostics, in toroidal magnetic devices;

(b) studies in plasma theory, in particular on the physics of fast ions and alpha particles in toroidal magnetic devices, and studies of turbulent plasmas and of non-linear plasma-wave interactions;

(c) fusion technology;

(d) applied plasma physics;

(e) policy concerning programme and plans.

Other areas of cooperation may be added in accordance with procedures in force on each side.

Article 3

The cooperation shall be implemented in particular through:

— exchange of technical information by means of reports, visits, seminars, technical meetings, etc.,

— exchange of personnel between laboratories and/or bodies involved on both sides, including for training purposes,

— exchange of samples, materials, instruments and apparatus for experimental purposes,

— balanced participation in joint studies and activities.

Article 4

1. Within the framework of this Agreement, implementing arrangements on specific cooperative actions shall be concluded between:

the Community or any organisation associated with it within the framework of the Community Fusion Programme or the Joint European Torus (JET) Joint Undertaking, designated by the Community for this purpose,

and the Government of Ukraine or any other institution designated by the Government of Ukraine for this purpose.

2. Specific terms and conditions necessary to implement activities listed in Article 3 shall be specified in the implementing arrangements and shall contain:

(a) specific details, procedures and financing provisions for individual cooperative activities;

(b) assignment of the responsibility for the operational management of the concerned activity to a single organisation or natural person;

(c) detailed provisions on dissemination of information and treatment of intellectual property.

3. Each Party shall endeavour to coordinate its activities under this Agreement as appropriate, with other international activities related to research and development in the field of controlled nuclear fusion in which the other Party is a participant, in order to minimise duplication of effort.

Article 5

1. The Parties shall establish a Coordinating Committee to coordinate and to supervise the implementation of this Agreement. Each of the Parties shall appoint an equal number of members to the Coordinating Committee and nominate one of its appointed members as its Head of Delegation. The Coordinating Committee shall meet each year, alternately in the European Community and in Ukraine or at any other agreed time and place. The Head of Delegation of the receiving Party shall chair the meeting.

2. The functions of the Coordinating Committee shall include:

(a) assessing the state of cooperation under this Agreement;

(b) determining the specific tasks to be undertaken in the areas referred to in Article 2, without prejudice to the taking of autonomous decisions by the Parties on their respective programmes.

3. All decisions of the Coordinating Committee shall be by unanimity and shall be binding to the Parties. For making such decisions, each Party shall have one vote to be cast by its Head of Delegation.

4. For periods between meetings of the Coordinating Committee, each Party shall nominate an Executive Secretary to act on its behalf in all matters concerning cooperation under this Agreement. The Executive Secretaries shall be responsible for day-to-day management of such cooperation.

Article 6

All costs resulting from the cooperation shall be borne by the Party that incurs them, unless otherwise specifically agreed in writing by the implementing agencies.

Article 7

The utilisation and diffusion of information and intellectual property rights including industrial property rights, patents and copyrights connected with the cooperation activities under this Agreement shall be in accordance with the Annexes which form an integral part of this Agreement.

Article 8

Nothing in this Agreement shall be construed to prejudice existing or future arrangements for cooperation between the Parties.

Article 9

1. Performance of the Parties under this Agreement shall be subject to the availability of appropriated funds.

2. Cooperation under this Agreement shall be in accordance with the laws and regulations in force as well with the international agreements entered into by the Parties.

3. Each Party shall use its best endeavours, within the framework of the laws and regulations applicable, to facilitate the accomplishment of formalities involved in the movement of persons, the transfer of materials and equipment and the transfer of currency required to conduct the cooperation.

Article 10

The Parties shall endeavour to settle all questions connected with this Agreement through consultations between themselves.

Article 11

1. This Agreement shall enter into force on the date on which the Parties exchange diplomatic notes informing each other that their respective internal procedures necessary for its entry into force have been completed and shall remain in force for an initial period of 10 year [1].

2. Thereafter, this Agreement shall be automatically renewed for five-year periods, unless either Party, by written notice, requests its termination or renegotiation not later than six months prior to the expiry date.

3. This Agreement may be terminated at any time by either Party upon six month's written notice.

4. Termination of this Agreement shall not affect rights and obligations under Article 7.

Article 12

1. This Agreement may be amended by mutual written agreement of the Parties, in accordance with their respective laws and regulations. Amendments shall form an integral part of this Agreement.

2. In the event of amendment, termination or renegotiation, this Agreement shall remain in force in its previous form with respect to cooperation activities effectively entered into prior to the entry into force of the amendment or prior to the request for termination or renegotiation until the end of such activities and relative implementing arrangements but not more than for one calendar year after the expiry of this Agreement in its previous form.

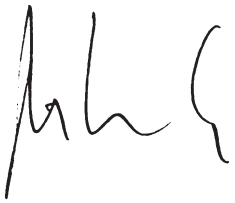
[1] This Agreement shall come into force on 13 November 2002.

Article 13

This Agreement shall apply, in so far as the Community is concerned, to the territories in which the Treaty establishing the European Atomic Energy Community applies and to the territories of the countries participating in the Community fusion programme as fully associated third States.

Done at Kiev on 23 July 1999 in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish and Ukrainian languages, each text being equally authentic.

Por la Comunidad Europea de la Energía Atómica
På Det Europæiske Atomenergifællesskabs vegne
Für die Europäische Atomgemeinschaft
Για την Ευρωπαϊκή Κοινότητα Ατομικής Ενέργειας
For the European Atomic Energy Community
Pour la Communauté européenne de l'énergie atomique
Per la Comunità europea dell'energia atomica
Voor de Europese Gemeenschap voor Atoomenergie
Pela Comunidade Europeia da Energia Atómica
Euroopan atomienergiayhteisön puolesta
På Europeiska atomenergigemenskapens vägnar
Від Європейської спільноти по атомній енергії



Por el Consejo de Ministros de Ucrania
På vegne af Ukraines ministerkabinet
Für das Ministerkabinett der Ukraine
Για το Υπουργικό Συμβούλιο της Ουκρανίας
For the Cabinet of Ministers of Ukraine
Pour le Cabinet des ministres de l'Ukraine
Per il Consiglio dei ministri dell'Ucraina
Voor de Ministerraad van Oekraïne
Pelo Gabinete de Ministros da Ucrânia
Ukrainan hallituksen puolesta
På Ukrainas regerings vägnar
Від кабінету міністрів України



ANNEX I

GUIDING PRINCIPLES ON THE ALLOCATION OF INTELLECTUAL PROPERTY RIGHTS (*) RESULTING FROM JOINT RESEARCH UNDER THE AGREEMENT FOR COOPERATION BETWEEN THE EUROPEAN ATOMIC ENERGY COMMUNITY AND THE CABINET OF MINISTERS OF UKRAINE IN THE FIELD OF CONTROLLED NUCLEAR FUSION

I. OWNERSHIP, ALLOCATION AND EXERCISE OF RIGHTS

1. All research carried out pursuant to this Agreement shall be 'joint research'. The participants shall jointly develop joint technology management plans (TMPs) (**) in respect of the ownership and use, including publication, of information and Intellectual Property (IP) to be created in the course of joint research. Those plans shall be approved by the responsible funding agency or department of the Party involved in financing the research, before the conclusion of the specific research and development cooperation contracts to which they are attached. The TMPs shall be developed taking into account the aims of the joint research, the relative contributions of the participants, the advantages and disadvantages of licensing by territory or for fields of use, requirements imposed by laws applicable and other factors deemed appropriate by the participants. The rights and obligations concerning the research generated by visiting researchers in respect of IP shall also be addressed in the joint technology management plans.

2. Information or IP created in the course of joint research and not addressed in the TMP plan shall be allocated, with the approval of the Parties, according to the principles set out in the technology management plan. In case of disagreement, such information or IP shall be owned jointly by all the participants involved in the joint research from which the information or IP results. Each participant to whom this provision applies shall have the right to use such information or IP for his own commercial exploitation with no geographical limitation.

3. Each Party shall ensure that the other Party and its participants have the rights to IP allocated to them in accordance with these principles.

4. While maintaining the conditions of competition in areas affected by this Agreement each Party shall endeavour to ensure that rights acquired pursuant to this Agreement are exercised in such a way as to encourage in particular:

   (i) the dissemination and use of information created, disclosed, or otherwise made available, under the Agreement;

   (ii) the adoption and implementation of international standards.

II. COPYRIGHT WORKS

Copyright belonging to the Parties or to their participants shall be accorded treatment consistent with the Bern Convention (1971 Paris Act).

III. SCIENTIFIC LITERARY WORKS

Without prejudice to Section IV, unless otherwise agreed in the TMP, publication of results of research shall be made jointly by the Parties or participants to that joint research. Subject to the foregoing general rule, the following procedures shall apply:

1. In the case of publication by a Party or public bodies of that Party of scientific and technical journals, articles, reports, books, including video and software, arising from joint research pursuant to this Agreement, the other Party shall be entitled to a worldwide, non-exclusive, irrevocable, royalty-free licence to translate, reproduce, adapt, transmit and publicly distribute such works.

2. The Parties shall ensure that literary works of a scientific character arising from joint research pursuant to this Agreement and published by independent publishers shall be disseminated as widely as possible.

3. All copies of a copyright work to be publicly distributed and prepared under these provisions shall indicate the names of the author(s) of the work unless an author or authors expressly declines or decline to be named. They shall also bear a clearly visible acknowledgement of the cooperative support of the Parties.

(*) Definitions of the concepts referred to in these guiding principles are set out in Annex II.
(**) The indicative features of such TMPs are set out in Annex III.

IV. UNDISCLOSED INFORMATION

A. **Documentary undisclosed information**

1. Each Party or its participants, as appropriate, shall identify at the earliest possible moment and preferably in the TMP the information that it wishes to remain undisclosed in relation to this Agreement, taking account, *inter alia*, of the following criteria:

   — secrecy of the information in the sense that the information is not, as a body or in the precise configuration or assembly of its components, generally known among or readily accessible by lawful means to experts in the field;

   — the actual or potential commercial value of the information by virtue of its secrecy;

   — previous protection of the information in the sense that it has been subject to steps that were reasonable under the circumstances by the person lawfully in control, to maintain its secrecy.

   The Parties and the participants may in certain cases agree that, unless otherwise indicated, parts or all of the information provided, exchanged or created in the course of joint research pursuant to the Agreement may not be disclosed.

2. Each Party shall ensure that undisclosed information under this Agreement and its ensuing privileged nature is readily recognisable as such by the other Party, for example by means of an appropriate marking or restrictive legend. This also applies to any reproduction of the said information, in whole or in part.

   A Party receiving undisclosed information pursuant to the Agreement shall respect the privileged nature thereof. These limitations shall automatically terminate when this information is disclosed by the owner without restriction to experts in the field.

3. Undisclosed information communicated under this Agreement may be disseminated by the receiving Party to persons within or employed by the receiving Party, and other concerned departments or agencies in the receiving Party authorised for the specific purposes of the joint research under way, provided that any undisclosed information so disseminated shall be pursuant to an agreement of confidentiality and shall be readily recognisable as such, as set out above.

4. With the prior written consent of the Party providing undisclosed information under this Agreement, the receiving Party may disseminate such undisclosed information more idly than otherwise permitted in paragraph 3 above. The Parties shall cooperate in developing procedures for requesting and obtaining prior written consent for such wider dissemination, and each Party will grant such approval to the extent permitted by its domestic policies, regulations and laws.

B. **Non-documentary undisclosed information**

Non-documentary undisclosed or other confidential or privileged information provided in seminars and other meetings arranged under this Agreement, or information arising from the attachment of staff, use of facilities, or joint projects, shall be treated by the Parties or their participants according to the principle specified for documentary information in the Agreement, provided, however, that the recipient of such undisclosed or other confidential or privileged information has been made aware of the confidential character of the information communicated at the time such communication is made.

C. **Control**

Each Party shall ensure that undisclosed information received by it under this Agreement shall be controlled as provided therein. If one of the Parties becomes aware that it will be, or may reasonably be expected to become, unable to meet the non-dissemination provisions of paragraphs A and B above, it shall immediately inform the other Party. The Parties shall thereafter consult to define an appropriate course of action.

ANNEX II

DEFINITIONS

1. INTELLECTUAL PROPERTY: shall have the meaning found in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm on 14 July 1967.
2. PARTICIPANT: any natural or legal person, including the Parties themselves, participating in a project under this Agreement.
3. JOINT RESEARCH: research implemented and/or funded by the joint contributions of the Parties and with collaboration from participants of both Parties, where appropriate.
4. INFORMATION: scientific or technical data, results or methods of research and development stemming from the JOINT RESEARCH and any other information deemed necessary by the Parties and/or participants engaged in the JOINT RESEARCH to be provided or exchanged under this Agreement or research pursuant thereto.

ANNEX III

INDICATIVE FEATURES OF A TECHNOLOGY MANAGEMENT PLAN (TMP)

The TMP is a specific to be concluded between the participants, about the implementation of joint research and the respective rights and obligations of the participants. With respect to IPR, the TMP will normally address, *inter alia*: ownership, protection, user rights for R&D purposes, exploitation and dissemination, including arrangements for joint publication, the rights and obligations of visiting researchers and dispute settlement procedures. The TMP may also address foreground and background information, licensing and deliverables.