



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.12.1998  
COM(1998) 746 final

Proposal for a

COUNCIL DECISION

issuing directives to the Commission for the  
negotiation of a nuclear co-operation agreement  
between the European Atomic Energy Community  
and Ukraine

(presented by the Commission)

## Explanatory Memorandum

### I. Introduction

1. In its communication to the Council of 28 July 1994, the Commission proposed a Council decision issuing directives to the Commission for the negotiation of bilateral agreements for nuclear co-operation between the European Atomic Energy Community (Euratom) and Kazakhstan, Kyrgyzstan, Tajikistan, Ukraine and Uzbekistan (SEC(94)1167 final and final/2). To date the Council has only adopted mandates for the negotiation of agreements with Kazakhstan and Ukraine regarding nuclear safety and nuclear fusion.
2. With regard to the subject of nuclear trade, in particular the following questions have been considered by the relevant Council Working Group (Atomic Questions Group):
  - what is the added value of the proposed co-operation agreements on matters connected with trade in nuclear materials?
  - is it possible to go ahead with Ukraine only?
  - can a broader mandate be considered for such an agreement with Ukraine?
  - can or should the mandates for the nuclear trade agreements with the five Newly Independent States (NIS) be considered independently from a possible new mandate for nuclear trade with the Russian Federation?<sup>1</sup>
3. The discussions in the Atomic Questions Group did not lead to clear results: some delegations were in favor of further examining the draft negotiating directives, some thought that these nuclear trade agreements were neither necessary nor urgent, while others were prepared to envisage the possibility of concluding a "global" agreement with Ukraine. Under these circumstances, the Presidency invited the Commission to reflect further on this matter (see results of the meeting of the Atomic Questions Group of 10 September 1997 in SN 3700/97 (ATO) of 12 September 1997).

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<sup>1</sup> The Russian side had recently tried again to suggest that the issue of nuclear trade be dealt with in the context of the Energy Charter Treaty while the Commission insists on a specific nuclear trade agreement according to Article 22 of the Partnership and Co-operation Agreement (PCA) with Russia. Under these circumstances, the Commission has not yet proposed a new negotiation mandate to the Council, replacing the earlier mandate by the Council of 17 June 1991, which was not yet acceptable to the Russians.

## II. Case for a nuclear co-operation agreement with Ukraine

1. The absence of a nuclear trade agreement with Ukraine has not created obstacles to trade in nuclear material with that country. It should also be noted that Ukraine's uranium production is not sufficient to cover its own needs. Ukraine itself has repeatedly expressed its interest in the conclusion of a nuclear trade agreement and even tabled a draft agreement at the meeting of the Ukraine/EC Trade Working Group in March 1997. The Commission, for its part, has for many years expressed its wish to conclude a nuclear trade agreement with Ukraine.
2. The Commission sees no reason why precedence should be given to the conclusion of a nuclear trade agreement with Russia, in particular since a short-term solution of the present problems with Russia in this respect seems unlikely.
3. Upon further reflection, the Commission would see an advantage in integrating the "nuclear trade agreement" into a wider "nuclear co-operation agreement". This would:
  - underline the importance attached to co-operation with Ukraine. Strengthening of co-operation with Ukraine is of particular political importance in view of the G7/8 efforts to deal with the consequences of the Chernobyl accident;
  - demonstrate why Ukraine is dealt with separately from the other 4 NIS countries (although this model could possibly be used as well for some other countries at a later stage);
  - avoid a possible negative feed-back which an early specific nuclear trade agreement with Ukraine might have on the relations with Russia;
  - make it possible to extend the scope of nuclear co-operation to other areas than those foreseen so far.

## III. Scope of the proposed nuclear co-operation agreement

1. Co-operation in the fields of nuclear safety and controlled nuclear fusion is dealt with in two specific agreements, which have been initialled in the margins of the EU-Ukraine Summit on 16 October 1998. It is intended to conclude these agreements as planned and refer to them in the new nuclear co-operation agreement as implementing agreements for the relevant activities.
2. There are other peaceful nuclear uses not covered under paragraph 1 above, e.g. nuclear applications in the fields of agriculture, medicine and industry, interactions between nuclear energy and environment, and other areas as outlined in Article 62,2 on 'co-operation in the civil nuclear sector' of the Partnership and Co-operation Agreement. In these areas co-operation could be

foreseen for individual projects subject to implementing arrangements between the contracting parties (similar to the nuclear co-operation agreement between Euratom and Argentina<sup>2</sup>).

3. As already proposed by the Commission in its Communication to the Council of 28 July 1994 (see paragraph I.1 above), the chapter on nuclear trade should define the framework for nuclear trade, in particular by:

- defining nuclear non-proliferation conditions governing transfers of nuclear material;
- ensuring free movement of nuclear material within the Community;
- requiring that trade in nuclear material and provision of relevant services be carried out at market-related prices and under fair market conditions;
- ensuring that the activities be carried out under conditions that will not jeopardize the viability of the basic installations necessary for the development of nuclear energy in the Community.

#### IV. Conclusion

The Commission withdraws its proposal regarding a mandate to negotiate a nuclear trade agreement with Ukraine as contained in its Communication to the Council of 28 July 1994 and instead proposes that the Council adopt the decision hereafter, authorising it to negotiate a comprehensive nuclear co-operation agreement with that country in accordance with the attached negotiating directives.

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<sup>2</sup>

OJ N° L 296, 30.10.1997, p.32

**Council Decision**  
**of** \_\_\_\_\_

issuing directives to the Commission for the negotiation  
of a nuclear co-operation agreement between the  
European Atomic Energy Community and  
Ukraine

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The Council of the European Union,

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

Considering the importance of a close co-operation in nuclear matters between the  
European Atomic Energy Community and Ukraine,

Considering the Partnership and Co-operation Agreement between the European  
Communities and their Member States, and Ukraine, in particular Articles 23 and 62,

Having regard to the proposal from the Commission,

has decided as follows:

**Sole Article**

The Commission is hereby authorised to negotiate, in accordance with the directives  
contained in the annex, a nuclear co-operation agreement between the European  
Atomic Energy Community and Ukraine.

## Annex

### Negotiating Directives for a nuclear co-operation agreement between the European Atomic Energy Community and Ukraine

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#### I. General considerations

Within the overall framework of the Partnership and Co-operation Agreement (PCA) with Ukraine, this agreement should combine the elements and strengthen the basis for co-operation in the peaceful use of nuclear energy, namely with regard to:

- the activities of Euratom in the field of nuclear safety and nuclear fusion;
- other nuclear research and development activities of Euratom;
- the trade in nuclear materials between the Parties and provision of relevant services.

This agreement would not set up new co-ordination mechanisms but rather refer to the relevant procedures foreseen in the PCA and the specific agreements for co-operation in the field of nuclear safety and fusion.

#### II. Nuclear safety and controlled nuclear fusion

Specific agreements on these issues have been initialled in the margins of the EU-Ukraine Summit on 16 October 1998. The new agreement would give an overview on these areas of co-operation and refer to the specific agreements as implementing agreements.

The agreement will also refer to the provisions of the Convention on Nuclear Safety and the Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management.

#### III. Other areas of nuclear research and development

A general clause should be included giving the possibility for co-operation in Community activities in nuclear research and development not yet covered by the specific agreements on safety and fusion. At present this would mainly relate to research in some nuclear applications in the fields of agriculture, medicine and industry, -and interactions between nuclear energy and environment, as well as to areas of co-operation in the civil nuclear sector outlined in Article 62,2 of the Partnership and Co-operation Agreement.

The co-operation should be implemented, in particular, through:

- exchange of technical information;
- exchange of personnel;
- balanced participation in joint studies and activities.

To the extent necessary, details for concrete projects would have to be laid down in implementing arrangements by the contracting parties acting through their competent institutions.

#### IV. Trade in nuclear materials and provision of relevant services

The provisions of this part of the agreement should follow the directives already proposed in the Communication of the Commission to the Council of July 1994, namely:

1. The agreement should apply to trade in nuclear materials for peaceful use between the Parties.
2. It must be ensured that the Treaty establishing the European Atomic Energy Community and implementing regulations thereof, in particular the provisions of those texts, which specify the rights, powers and responsibilities of the Euratom Supply Agency and of the Commission of the European Communities, fully apply to trade in nuclear materials with Ukraine.
3. The agreement should take account of commitments made by Community Member States and Ukraine in the framework of the Nuclear Suppliers Group.
4. Transfers under the agreement should be subject to the following conditions:
  - (a) peaceful and non-explosive use excluding research on or development of any nuclear explosive device;
  - (b) application in the Community of the Euratom and International Atomic Energy Agency (I.A.E.A.) safeguards pursuant to the Euratom Treaty and to the following agreements<sup>3</sup>:
    - the Agreement between the Community's non-nuclear weapon Member States, Euratom and the I.A.E.A.,

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<sup>3</sup> These agreements are to be supplemented by additional protocols negotiated on the basis of the document published as INFCIRC/540 (Strengthened Safeguards System, Part II).

which entered into force on 21 February 1977 (published as INFCIRC/193);

- the Agreement between France, Euratom and the IAEA, which entered into force on 12 September 1981 (published as INFCIRC/290);
- the Agreement between the United Kingdom, Euratom and the IAEA, which entered into force on 14 August 1978 (published as INFCIRC/263);

(c) application in Ukraine of the full-scope safeguards agreement concluded with the IAEA in implementation of Article III (1) and (4) of the NPT, which entered into force on 22 January 1998 (published as INFCIRC/550).

(d) application of physical protection measures at levels which satisfy as a minimum the criteria set out in Annex C to IAEA document INFCIRC/254/Rev.3/Part 1 (Guidelines for Nuclear Transfers) as it may be revised; supplementary to this document, the Member States of the Community and Ukraine will, as appropriate, refer when applying physical protection measures to the recommendations of IAEA document INFCIRC/225/Rev.3 (Physical Protection of Nuclear Material) as it may be revised.

International transport shall be subject to the provisions of the International Convention on the Physical Protection of Nuclear Material (IAEA document INFCIRC/274/ Rev. 1), as it may be revised.

(e) application of the Guidelines for Nuclear Transfers, as set out in IAEA document INFCIRC/254/Rev.3/Part 1 as it may be revised, in case of retransfers outside the jurisdiction of the Parties;

(f) the Commitments made by Member States of the Community and by Ukraine in the framework of the Nuclear Suppliers Group shall define the rules applicable to retransfers referred to under (e) above;

(g) full compliance with the principle of free movement within the Community;

(h) trade in nuclear materials and provision of relevant services between the Parties at market-related prices and under fair market conditions;



- (i) provision for appropriate measures if the above trade and services were carried out under conditions which could jeopardize the viability of the basic installations necessary for the development of nuclear energy in the Community or in Ukraine;
- (j) provision for regular consultations between the Parties to monitor the application of this part of the agreement as well as other relevant provisions and the application of nuclear safeguards and physical protection measures on the territory of Ukraine;

V General and final clauses

- (a) The agreement will include a provision excluding any use of it to hinder the commercial interests of either Party on the peaceful use of nuclear energy both internationally and domestically.
- (b) The agreement will refer to the specific agreements on nuclear safety and fusion regarding treatment of information and intellectual property rights including industrial property and copyrights connected with the cooperation activities under this agreement
- (c) The agreement will be concluded for a period of 10 years with tacit renewal for five-year periods thereafter. Termination by either Party shall be possible after the initial period with six months notice by either Party. Suspension or termination of cooperation under the agreement, in whole or in part, will be possible in the event of a material violation of any of its key provisions, notably those concerning peaceful use and nuclear safeguards.

## **Financial Statement**

Proposed negotiating directives  
for a nuclear co-operation agreement  
between the European Atomic Energy Community and Ukraine

1. The proposed agreement including its administration does not lead to financial commitments.

2. Costs for the negotiation of the agreement:

DG XVII : up to 3 persons on two missions during 3 days each : +/- 12000 ECU

DG I : 1 person on two missions during 3 days each : +/- 4000 ECU

DG IA : up to 2 persons on two missions during 3 days each : +/- 8000 ECU

Total costs : +/- 24000 ECU. The costs will be met from budget heading AO 7030.

3. The Euratom Supply Agency (ESA) would participate in the negotiations with 2 persons on two missions during 3 days each: +/- 8000 ECU (budget line A-300).

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