



COMMISSION OF THE EUROPEAN COMMUNITIES

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RECOMMENDATION FROM THE COMMISSION TO THE COUNCIL

**on the approval of an Agreement for cooperation in the peaceful uses of nuclear energy
between the European Atomic Energy Community (Euratom) and the Government of
the Republic of Kazakhstan**

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1. INTRODUCTION

The Partnership and Cooperation Agreement¹ concluded between the EU and the Republic of Kazakhstan (hereinafter Kazakhstan) states in Article 18 that the European Atomic Energy Community and Kazakhstan should conclude an Agreement on trade in nuclear materials.

On 27 June 2000 the Council adopted a Decision issuing directives² to the Commission for the negotiation of a nuclear cooperation agreement between Euratom and Kazakhstan.

On 18 January 2001, the Commission submitted to the Kazakh authorities a first draft of the agreement, proposing to start negotiations.

The negotiations lasted until September 2006, when the text was agreed by both Parties.

The aim of the agreement is to complete the existing cooperation in nuclear safety and nuclear fusion by establishing collaboration in the peaceful uses of nuclear energy between the EU and Kazakhstan, which is a potentially major supplier of uranium.

2. IMPORTANCE OF THE AGREEMENT

The importance of the conclusion of this Agreement is mainly based on commercial needs. Kazakhstan holds approximately 20% of the world's known reserves of uranium, what makes it the third largest world producer of uranium, in volume. It has also developed nuclear activities in several fields, mainly in the uranium industry and research.

For Euratom, the interest in signing this Agreement is based on the fact that Kazakhstan is one of its potentially main suppliers of natural uranium. Today, the direct import of Kazakh uranium to the EU represents only 3% of total uranium imports. However, in recent years, the volume of imports of Kazakh uranium has been increasing (in 2005 it almost tripled comparing to the year 2004) and it is expected to continue to rise. The duration of the Agreement is initially for ten years. This would represent potentially some hundreds of millions of euros in commercial value.

Facilitating trade in the nuclear domain contributes to the Community's policy of security of energy supply and diversification of energy sources. The Agreement would permit European companies active in uranium mining and trade to have easier access to the Kazakh market. Currently only one European company has succeeded in concluding a partnership with a Kazakh company in uranium mining.

¹ OJ L 196, 28.7.1999.

² Decision 91114/1/00 (C), 19.6.2000.

Furthermore, the conclusion of the present Agreement would reaffirm the non-proliferation commitment of the Republic of Kazakhstan, the Community and the Governments of the Member States of the European Union, the strengthening and strict application of safeguards and export control as well as physical protection arrangements.

3. GENERAL SCHEME OF THE AGREEMENT

The Agreement has as its objective cooperation in the peaceful uses of nuclear energy between Euratom and Kazakhstan. The scope of cooperation mainly comprises nuclear safety, controlled nuclear fusion, nuclear research and development as well as trade in nuclear materials and the provision of nuclear fuel cycle services (Article 3). This scope may be extended upon the agreement of both Parties (Article 8).

The present Agreement builds on two Agreements in the domains of nuclear safety and nuclear fusion that entered into force in June 2003³ and April 2004⁴, respectively (Articles 4 and 5).

The Agreement specifies the methods and the extent of cooperation between Euratom and Kazakhstan in nuclear research and development (Article 6). The cooperation covers nuclear activities, mainly in the fields of medicine and industry. It also applies to the evaluation of the environmental impact of nuclear energy. This cooperation may take the form of exchange of information, experts and nuclear equipment as well as of joint studies and activities. Concrete projects may be preceded by the implementation of more detailed arrangements covering different provisions. Costs resulting from these activities will be covered by the Party that incurs them.

Special attention is given to trade in nuclear materials (Article 7). The Agreement contains a series of provisions determining criteria for the transfer of nuclear material as well as the way of resolving conflicting situations. It is underlined that nuclear material shall be used for peaceful purposes and in compliance with the safeguards agreements (for the Community: the Euratom safeguards pursuant to the Euratom Treaty and to the IAEA safeguards and its Additional Protocols⁵, as well as separate trilateral agreements Euratom and IAEA with Member States⁶, France⁷ and the UK⁸; for Kazakhstan: the IAEA safeguards⁹ and its Additional Protocols), and its transfers should be in conformity with the provisions of the International Convention on the Physical Protection of Nuclear Material¹⁰.

In addition, the Agreement restates the principles of free movement of nuclear materials within the Community, guarantees that their trade and the provision of relevant services between the Parties will be carried out at market-related prices and removes administrative barriers, such as import or export authorisations, that would impede movements of nuclear material in the territories of the Parties.

³ OJ L 89, 26.3.2004.

⁴ OJ L 143, 7.6.2005.

⁵ INFCIRC/540.

⁶ Not published. INFCIRC 193 of 14.9.1973.

⁷ Not published. INFCIRC 290 of December 1981.

⁸ Not published. INFCIRC 263 of October 1978.

⁹ INFCIRC/504.

¹⁰ IAEA document INFCIRC/274/Rev.1.

Intellectual property issues (Article 10) are dealt with in detail in the Agreements on cooperation in the areas of nuclear safety and controlled nuclear fusion.

The Parties commit themselves to hold regular consultations within the framework of the Partnership and Cooperation Agreement (PCA) framework (Article 11). The PCA will also be used to solve any dispute related to the application or interpretation of this Agreement.

The initial duration of the Agreement will be 10 years, and its suspension or termination, in whole or in part, will be possible in the case of a violation of any of its material provisions (Article 13).

4. CONCLUSION

The Commission considers that the Agreement for cooperation in the peaceful uses of nuclear energy between the European Atomic Energy Community and the Republic of Kazakhstan, the adoption of which is proposed:

- is in conformity with the negotiating directive issued by the Council on 26 June 2000;
- confirms the clear commitment of the two parties in favour of non-proliferation and a high level of nuclear safety in order to guarantee the peaceful and safe use of nuclear energy;
- is in line with the Community's policy on energy security of supply;
- will constitute, together with the Agreements already signed in nuclear fusion and nuclear safety between the two Parties, a whole package of cooperation in the nuclear domain;
- will strengthen commercial and political relations between the EU and the Republic of Kazakhstan.

The Commission therefore recommends to the Council to approve, pursuant to the second paragraph of Article 101 of the Treaty establishing the European Atomic Energy Community, the Agreement for cooperation in the peaceful uses of nuclear energy between the European Atomic Energy Community and the Government of the Republic of Kazakhstan, in Annex.

ANNEX

AGREEMENT FOR COOPERATION IN THE PEACEFUL USES OF NUCLEAR ENERGY BETWEEN THE EUROPEAN ATOMIC ENERGY COMMUNITY AND THE GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN

The European Atomic Energy Community, hereinafter referred to as “the Community”,

and the Government of the Republic of Kazakhstan, hereinafter referred to as “Government of Kazakhstan”;

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

MINDFUL that the Partnership and Cooperation Agreement (PCA) between the European Communities and their Member States and the Republic of Kazakhstan, which entered into force on 1 July 1999, establishes that trade in nuclear materials shall be subject to the provisions of a specific Agreement to be concluded between the European Atomic Energy Community and the Government of Kazakhstan,

WHEREAS the Parties have signed the Agreement between the European Atomic Energy Community and the Republic of Kazakhstan for cooperation in the field of nuclear safety and the Agreement between the European Atomic Energy Community and the Republic of Kazakhstan for cooperation in the field of controlled nuclear fusion, which came into force on 1 June 2003 and 13 April 2004, respectively,

WHEREAS all Member States of the Community and the Republic of Kazakhstan are Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, hereinafter referred to as NPT,

WHEREAS the Community, its Member States and the Republic of Kazakhstan are committed to ensuring that the research, development and use of nuclear energy for peaceful purposes are carried out in a manner consistent with the objectives of the NPT,

WHEREAS nuclear safeguards are applied in the Community both under Chapter VII of Title II of the Treaty establishing the European Atomic Energy Community, hereinafter referred as “the Euratom Treaty” and under safeguards agreements concluded between the Community, its Member States and the International Atomic Energy Agency, hereinafter referred to as “the IAEA”, and in the Republic of Kazakhstan under the Agreement between the Republic of Kazakhstan and the International Atomic Energy Agency on application of safeguards in connection with the NPT, which came into force on 11 August 1995, hereinafter referred to as “Agreement on application of safeguards”,

WHEREAS the Community, its Member States and the Government of Kazakhstan reaffirm their support of the IAEA and of its strengthened safeguards system,

WHEREAS the Parties shall facilitate nuclear trade between themselves or between authorized persons or undertakings established in the respective territories of the Community and the Republic of Kazakhstan in the mutual interest of producers, the nuclear fuel cycle industry, utilities and consumers,

WHEREAS account shall be taken of the commitments made by the Government of each Member State of the Community and the Government of the Republic of Kazakhstan in the framework of the Nuclear Suppliers Group,

WHEREAS it is appropriate to strengthen the basis for cooperation between the Parties in the civil nuclear sector by a framework agreement,

HAVE AGREED AS FOLLOWS:

Article 1 DEFINITIONS

For the purpose of this Agreement

1. “nuclear material” means any source material or special fissionable material as those terms are defined in Article XX of the Statute of the IAEA;
2. “Community” means both:
 - a) the legal person created by the Treaty establishing the European Atomic Energy Community, Party to this Agreement;
 - b) the territories to which this same Treaty applies;
3. “competent authorities of the Parties” means:
 - a) for the Community, the European Commission;
 - b) for the Government of Kazakhstan, the Committee for Atomic Energy of the Ministry of Energy and Mineral Resources of the Republic of Kazakhstan.

In case of any change, the Parties shall notify each other through diplomatic communication channels.

Article 2 OBJECTIVE

The objective of this Agreement is to provide a framework for cooperation between the Parties in the peaceful uses of nuclear energy with a view to strengthening the overall cooperation relationship between the Community and the Republic of Kazakhstan on the basis of mutual benefit and reciprocity and without prejudice to the respective powers of each Party.

Article 3 SCOPE OF COOPERATION

1. The Parties may cooperate in the way as specified in Articles 4 to 8 below in the peaceful uses of nuclear energy in the following areas:

- a) nuclear safety (Article 4);
 - b) controlled nuclear fusion (Article 5);
 - c) research and development in other areas of peaceful uses of nuclear energy than those foreseen under a) and b) of paragraph 1 of this Article (Article 6);
 - d) trade in nuclear materials and provision of nuclear fuel cycle services (Article 7);
 - e) other areas relevant to the subject of this Agreement (Article 8).
2. The cooperation referred to in this Article, as between the Parties, may also take place between authorised persons and undertakings established in the Community and the Republic of Kazakhstan.

Article 4 NUCLEAR SAFETY

The cooperation in the field of nuclear safety shall be implemented according to the Agreement for Cooperation between the European Atomic Energy Community and the Republic of Kazakhstan in the Field of Nuclear Safety, which entered into force on 1 June 2003.

Article 5 CONTROLLED NUCLEAR FUSION

The cooperation in the field of controlled nuclear fusion shall be implemented according to the Agreement for Cooperation between the European Atomic Energy Community and the Republic of Kazakhstan in the Field of Controlled Nuclear Fusion, which entered into force on 13 April 2004.

Article 6 RESEARCH AND DEVELOPMENT IN OTHER AREAS OF PEACEFUL USES OF NUCLEAR ENERGY

1. Cooperation shall extend to nuclear research and development activities of mutual interest to the Parties other than those provided for in Articles 4 and 5 above, as agreed between the Parties, insofar as they are covered by their respective programmes.
2. The cooperation may include, in particular, the following areas:
 - a) applications of nuclear energy in the fields of medicine and industry, including generation of electricity;
 - b) environmental impact of nuclear energy;

- c) any other area of nuclear research and development as agreed between the Parties and insofar as they are covered by their respective programmes.
3. The cooperation shall be implemented in particular through:
- a) exchange of technical information by means of reports, visits, seminars, technical meetings, etc.;
 - b) exchange of personnel between laboratories and/or bodies involved, including for training purposes;
 - c) exchange of samples, materials, instruments and apparatus for experimental purposes;
 - d) balanced participation in joint studies and activities.
4. a) To the extent necessary, the scope, terms and conditions for cooperation in concrete projects will be laid down in implementing arrangements, entered into by the competent authorities of the Parties which will proceed according to respective requirements of the legislation of the Community and the legislation of the Republic of Kazakhstan.
- b) Such implementing arrangements may, inter alia, cover financing provisions, assignment of management responsibilities and detailed provisions on dissemination of information and intellectual property rights.
5. Costs resulting from cooperation activities shall be borne by the Party that incurs them, unless otherwise specifically agreed by the parties.

Article 7

TRADE IN NUCLEAR MATERIALS AND PROVISION OF RELEVANT SERVICES

1. Nuclear material transferred between the Parties, whether directly or through a third country, shall become subject to this Agreement upon its entry into the territorial jurisdiction of the Community or the Republic of Kazakhstan, provided that the supplying Party has notified the receiving Party in writing prior to, or at the time of, shipment, in accordance with procedures defined in an Administrative Arrangement to be established by the competent authorities of the Parties.
2. Nuclear material referred to in paragraph 1 of this Article shall remain subject to the provisions of this Agreement until
- a) it is determined in accordance with the provisions for the termination of safeguards in the relevant agreement referred to in paragraph 6.b) of this Article, that it is no longer usable for any nuclear activity relevant from the point of view of safeguards, or has become practicably irrecoverable;
 - b) it has been transferred beyond the jurisdiction of the Community or the Republic of Kazakhstan in accordance with paragraph 6.e) of this Article; or

- c) the Parties agree in writing that it should no longer be subject to this Agreement.
3. Any nuclear transfers carried out pursuant to the cooperation activities shall be made in accordance with the relevant international commitments of the Community, its Member States and the Republic of Kazakhstan in relation to peaceful uses of nuclear energy as listed in paragraph 6 of this Article.
4. Trade in nuclear materials and provision of relevant services between the Parties shall be carried out at market-related prices.
5. The Parties shall try to avoid conflictual situations requiring commercial safeguard measures in their mutual trade in nuclear materials. If problems nevertheless arise in their mutual trade in nuclear materials which would seriously jeopardize the viability of the nuclear industry, including uranium mining, of the Community or the Republic of Kazakhstan, either Party may request consultations which shall be held as soon as possible in the framework of an ad hoc Committee, the procedure for convocation, period and level of participants to carry out consultations shall be defined by the Parties.

If no mutually acceptable solution to these problems can be found in such consultations, the Party having requested the consultations may take the appropriate commercial safeguard measures to solve them or mitigate their effects in accordance with the legislation of the Community and the Republic of Kazakhstan and with the relevant principles of international law.

The implementation of paragraph 5 of this Article shall be without prejudice to the Euratom Treaty and secondary legislation thereunder.

6. Transfers of nuclear material shall be subject to the following conditions:
- a) the nuclear material shall be used for peaceful purposes and not for any nuclear explosive device or for research on, or development of, any such device;
- b) the nuclear material shall be subject:
- 1) in the Community, to the Euratom safeguards pursuant to the Euratom Treaty and to the IAEA safeguards pursuant to the following safeguards agreements, as relevant, and as they may be revised and replaced, so long as coverage as required by the Non-Proliferation Treaty is provided for:
- the Agreement between the Community's non-nuclear weapon Member States, Euratom and the IAEA, 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);

supplemented in due course by Additional Protocols entered in the force on 30 April 2004 on the basis of the document published as INFCIRC/540 (Model Protocol Additional to the Agreement(s) between State(s) and the IAEA for the Application of Safeguards);

- 2) in the Republic of Kazakhstan, to the safeguards agreement, which entered into force on 11 August 1995 (published as INFCIRC/504); and supplemented by an Additional Protocol to the Agreement between the Republic of Kazakhstan and the IAEA on application of safeguards in compliance with NPT, concluded on 6 February 2004 on the basis of the document published as INFCIRC/540 (Model Protocol Additional to the Agreement(s) between State(s) and the IAEA for the Application of Safeguards) if it is in force;
- c) in the event of the application of any of the Agreements with the IAEA referred to in paragraph 6.b) of this Article being suspended or terminated for any reason within the Community or the Republic of Kazakhstan, the relevant party shall enter into an agreement with the IAEA which provides for effectiveness and coverage equivalent to that provided by the safeguards agreements referred to in paragraphs 6.b 1) or 6.b 2), or, if that is not possible,
- the Community, as far as it is concerned, shall apply safeguards based on the Euratom safeguards system, which provides for effectiveness and coverage equivalent to that provided by the safeguards agreements referred to in paragraphs 6.b 1) or, if that is not possible,
- the Parties shall enter arrangements for the application of safeguards which provide for effectiveness and coverage equivalent to that provided by the safeguards agreements referred to in paragraph 6.b 1) or 6.b 2);
- 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.6/Part 1 (Guidelines for Nuclear Transfers) as it may be revised; supplementary to this document, the Member States of the Community, the European Commission, as appropriate, and the Republic of Kazakhstan will refer, when applying physical protection measures, to the recommendations in IAEA document INFCIRC/225/Rev.4 corrected (Physical Protection of Nuclear Material and Nuclear Facilities), 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 and accepted by the Parties and the Member States of the Community, and to the IAEA Regulations for the Safe Transport of Radioactive Materials (IAEA Safety Standards Series TS-R-1/ST-1, Revised), as they may be revised and transposed to the legislation of the Community and the Republic of Kazakhstan;
- e) re-transfers of any items subject to this Article outside the jurisdiction of the Community or the Republic of Kazakhstan shall only be made under the conditions of the Guidelines for Nuclear Transfers, as set out in IAEA document INFCIRC/254/Rev.6/Part 1, as it may be revised.

7. No administrative provision related to trade, industrial operations or nuclear material movements on the territories of the Community or the Republic of Kazakhstan shall be used to restrict trade or hinder the commercial interests of either Party on the peaceful use of nuclear energy both internationally and domestically.

Provisions of this Agreement shall not be used to impede the free movement of nuclear material within the territory of the Community.

The implementation of paragraph 7 of this Article shall be without prejudice to the Euratom Treaty and secondary legislation thereunder.

8. Notwithstanding the suspension or termination of this Agreement for any reason, paragraph 6 of this Article shall continue to apply so long as any nuclear material subject to these provisions remains under the jurisdiction of either Party or until a determination is made in accordance with paragraph 2 of this Article.

Article 8

OTHER AREAS RELEVANT TO THE SUBJECT OF THIS AGREEMENT

1. The Parties may agree within the scope of their respective competences to cooperation in other activities in the field of nuclear energy.
2. On the Community side, the activities would have to be covered by relevant programmes of action and correspond to the conditions specified for it, e.g. in areas such as nuclear security, the safe transport of nuclear material, safeguards or industrial cooperation to promote certain aspects of the safety of nuclear installations.
3. The provisions of Article 6(4), are equally applicable to this cooperation.

Article 9

APPLICABLE LAW

Cooperation under this Agreement shall be in accordance with the laws and regulations in force within the Community and the Republic of Kazakhstan as well as with the international agreements entered into by the Parties.

Article 10

INTELLECTUAL PROPERTY

The utilisation and diffusion of information and intellectual property rights, patents and copyrights connected with the cooperation activities under this Agreement shall be in accordance with the Annexes to the Agreements on cooperation in the areas of nuclear safety and controlled nuclear fusion that are referred to above in Articles 4 and 5, respectively, of this Agreement.

Article 11
CONSULTATION AND ARBITRATION

1. The Parties will hold regular consultations within the PCA framework to monitor the cooperation under this Agreement, unless specific consultation mechanisms are foreseen by the Parties.
2. Any dispute relating to the application or interpretation of this Agreement may be dealt with according to Article 88 of the PCA.

Article 12
Bilateral nuclear cooperation agreements

1. The provisions of this agreement shall supersede the provisions in existing bilateral agreements between individual Member States of the Community and the Republic of Kazakhstan providing for rights and obligations contained in this agreement.
2. To the extent that the provisions in the said bilateral agreements between individual Member States of the Community and the Republic of Kazakhstan provide for rights and obligations for the Republic of Kazakhstan and of the respective Member States beyond those contained in this agreement, those rights and obligations will continue to be implemented under the respective bilateral agreements.

Article 13
ENTRY INTO FORCE AND DURATION

1. The Agreement shall enter into force on the date the Parties, through an exchange of diplomatic notes on completion of appropriate procedures, specify its entry into force and shall remain in force for a period of ten years.
2. Thereafter this Agreement shall be automatically renewed for five-year periods, unless either Party, by written notice, requests the termination of the Agreement. The Agreement shall expiry within six months from the date of receiving of notification of the relevant Party.
3. If either Party or any Member State of the Community violates any of the material provisions of this Agreement, the other Party may, on giving written notice to that effect, suspend or terminate in whole or in part cooperation under this Agreement. Before either Party takes action to that effect the Parties shall consult with a view to reaching agreement on the corrective measures to be taken and on the time-scale within which such measures shall be taken. Such action shall be taken only if there has been failure to take the agreed measures within the agreed time or, in the event of failure to reach agreement, after the lapse of a period of time defined by the Parties.

Article 14

Upon mutual agreement of the Parties, the amendments and changes in the form of minutes could be included in the Agreement that shall be integral part of the Agreement.

This Agreement shall be drawn up in duplicate in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovenian, Spanish, Swedish and Kazakh languages, each text being equally authentic. {Romanian and Bulgarian}

Done aton

**For the EUROPEAN ATOMIC ENERGY
COMMUNITY**

**For the Government of THE REPUBLIC
OF KAZAKHSTAN**