NUCLEAR SAFETY

Agreement Between the
UNITED STATES OF AMERICA
and the EUROPEAN ATOMIC ENERGY
COMMUNITY

Signed at Vienna November 2, 2010

with

Annexes

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

EUROPEAN ATOMIC ENERGY COMMUNITY

Nuclear Safety

Agreement signed at Vienna November 2, 2010;
Entered into force November 2, 2010.
With annexes.

AGREEMENT

Between

THE UNITED STATES DEPARTMENT OF ENERGY

and

THE EUROPEAN ATOMIC ENERGY COMMUNITY

Represented by

THE EUROPEAN COMMISSION

in the field of

NUCLEAR MATERIAL SAFEGUARDS AND SECURITY RESEARCH AND DEVELOPMENT

The United States Department of Energy (USDOE) and the European Atomic Energy Community (EURATOM), represented by the European Commission, hereinafter called the "Parties";

Acknowledging their cooperation under the Agreement between the United States Department of Energy and the European Atomic Energy Community Represented by the Commission of the European Communities in the Field of Nuclear Material Safeguards Research and Development of 6 January 1995 (the "1995 Agreement"), and desiring to expand their cooperation to include nuclear security;

Having a mutual interest that nuclear material is managed worldwide in the most secure way, in full respect of the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968, and the Additional Protocol;

Noting United Nations Security Council Resolution 1540 of 28 April 2004 on the non-proliferation of weapons of mass destruction (WMD);

Sharing the view that nuclear material safeguards should apply worldwide and meet the highest possible standards;

Desiring to take all necessary steps to prevent dissemination of nuclear WMD and the material, technologies and know-how related to them, as well as nuclear terrorism;

Noting that coordination of the programmes implemented to this end by the Parties, in particular those aiming to support third countries worldwide, should be better coordinated in order to improve the efficiency of those programmes;

Noting that both Parties are members of the Generation IV International Forum which is aiming, inter alia, to strengthen nuclear safety and security through the conduct of research on and development of new proliferation-resistant reactor and fuel cycle technologies;

Noting that USDOE has launched the Next Generation Safeguards Initiative (NGSI);

Noting that EURATOM intends to contribute to the objectives of NGSI, building upon EURATOM's longstanding experience in safeguarding the entire fuel cycle;

Intending to coordinate closely with the International Atomic Energy Agency (IAEA);

Noting that any European Union (EU) Member State or any organisation of an EU Member State willing to cooperate with USDOE in the field of nuclear security may contribute to the implementation of this Agreement through EURATOM; and

Noting that nuclear safeguards are applied in all Member States of EURATOM pursuant both the Treaty establishing the European Atomic Energy Community and under safeguards agreements concluded between EURATOM, its Member States and the IAEA;

HAVE AGREED AS FOLLOWS:

Article 1 – Objective

The objective of this Agreement is to provide a framework for cooperation between USDOE and EURATOM on mutually agreed upon research and development (R&D) topics, and training, in the field of nuclear material safeguards and security. Cooperation between the Parties shall be conducted on the basis of mutual benefit, equality, and reciprocity.

Article 2 - Areas of Cooperation

The areas of cooperation in the field of nuclear material safeguards and security research and development covered by this Agreement shall mainly focus on:

1. Safeguards systems analysis for part of or the complete fuel cycle;

2.
   (a) Equipment and technologies for measurement of nuclear and other radioactive materials;
   (b) Accountancy and control of nuclear materials and other radioactive materials;

3. Improved analytical methods and methodologies;

4. Containment and surveillance technology for nuclear materials and nuclear facilities;

5. Secure access and communication of data, in particular safeguards-related data;

6. Remote monitoring technologies;

7. R&D in proliferation resistance and physical protection technologies and methodologies;

8. Nuclear safeguards and security training courses;

9. Technologies and methodologies related to combating the illicit trafficking (including border monitoring and physical security) in nuclear and other radioactive materials, and its potential consequences;

10. Analytical tools and methodologies in nuclear forensics, including physical and chemical methods for forensics analyses and related data bases;

11. Open source information tools;

12. Technical aspects of export controls including technical training;

13. Emergency management;

14. Coordination of both Parties' efforts to cooperate with third countries and relevant international organisations that may contribute to the improvement of nuclear security;

15. Coordination of both Parties' efforts to cooperate with third countries willing to improve the effectiveness of their national safeguards systems and on other nuclear security issues;

16. Coordination of both Parties' IAEA support programmes.

Other areas of cooperation may be added by mutual written agreement of the Parties.

Article 3 - Forms of Cooperation

Cooperation under this Agreement may include, but is not limited to, the following forms:

1. Exchange of scientists, engineers and other specialists, researchers and trainers for agreed periods for participation in activities conducted by the Parties or their contractors. Such exchange of staff shall be in accordance with Article 8 of this Agreement;

2. The use by one Party of facilities which are owned by the other Party or in which research and development activities are being sponsored by the other Party;

3. Exchange of scientific and technical information, including results of research and development;

4. Exchange and provision of samples, materials and equipment (e.g. for testing), subject in each case to a separate written agreement;

5. Seminars and other meetings on specific topics, including training courses and workshops;

6. Short visits by specialist teams or individuals of a Party to the facilities of the other Party;

7. Studies dealing with the areas of cooperation referred to in Article 2;

Other specific forms of cooperation may be added by mutual written agreement of the Parties.

Article 4 - Management

The Parties shall each name one individual to act as coordinator in order to supervise the execution of this Agreement.

1. A Joint Steering Committee (JSC) is established in order to:

    a. ensure the appropriate coordination for the implementation of this Agreement;

    b. evaluate the status of cooperation under this Agreement;

    c. identify priority areas of cooperation among those described in Article 2 of this Agreement;

    d. define the specific tasks to be undertaken in each of the areas of cooperation listed in Article 2;

    e. assess the work done within each specific area and task, and decide on their follow-up (e.g., completion, prolongation, cancellation).

2. The JSC is co-chaired by the coordinators and shall meet, on an annual basis, alternatively in the European Union and in the United States of America. The JSC will be composed of the coordinators and the project managers invited by them.

3. As appropriate, cooperative projects may be defined and listed on action sheets. New cooperative projects may be defined and added to this list after approval by the JSC. These action sheets shall specify the tasks to be undertaken, the time schedule, and the resources involved on either side. Each cooperative project that may involve the sharing of costs or that may give rise to the creation of intellectual property shall be set forth in a written implementing arrangement, which shall be subject to this Agreement.

4. Day-to-day management of the cooperation under this Agreement shall be carried out by project managers designated by the coordinators. The managers shall agree on specific research activities in accordance with Articles 1 and 2 of this Agreement and within policy guidelines set by the coordinators. Managers shall be responsible for the working contacts between the Parties.

Article 5 - Availability and Dissemination of Information

1. Subject to applicable laws and regulations and to its obligations to third parties, and to provisions of this Agreement, each Party and its designees shall undertake to make freely available to the other Party and its designees any information at its disposal which is required for the execution of this Agreement.

2. The Parties support, subject to the provisions of the Intellectual Property Annex to this Agreement (Annex A), the widest possible dissemination of information which they have the right to disclose, either in their possession or available to them, and which is either developed jointly or intended to be provided or exchanged pursuant to this Agreement.

3. The term "information" means unclassified nuclear energy-related regulatory, safety, security (safeguards), waste management, scientific, or technical data, including information on results or methods of assessment, research and any other knowledge provided, created or exchanged under this Agreement.

4. The term "proprietary information" as used in this Agreement and its annexes means information provided, created, or exchanged under this Agreement which contains trade secrets or other privileged or sensitive commercial information (such that the person having the information may derive a commercial benefit from it or may have a commercial advantage over those who do not have it), and may only include information which :

   (a) has been held in confidence by its owner

   (b) is of a type which is customarily held in confidence by its owner

   (c) has not been transmitted by the owner to other entities (including the receiving party) except on the basis that it be held in confidence

   (d) is not otherwise available to the receiving party from another source without restriction on its further dissemination and

   (e) is not already in the possession of the receiving party.

Article 6 - Disclaimer

Information transmitted by one Party to the other Party under this Agreement and any related implementing arrangements shall be accurate to the best knowledge and belief of the transmitting Party. Any equipment or materials transferred by one Party to the other Party under this Agreement shall be suitable for its or their intended use to the best knowledge and belief of the transmitting Party. The transmitting Party does not warrant the suitability of the information, equipment or materials transmitted for any particular use or application by the receiving Party or by any third party. Information developed jointly by the Parties shall be accurate, and jointly developed equipment and materials shall be suitable for their intended use, to the best knowledge and belief of both Parties. Neither Party warrants the accuracy of the jointly developed information or the appropriateness of jointly developed equipment or materials, nor their suitability for any particular use or application by either Party or by any third party.

Article 7 - Intellectual Property Rights

The protection and allocation of intellectual property created or furnished under this Agreement shall be governed by the Intellectual Property Rights Annex (Annex A) and the Technology Management Plan (Annex B) attached hereto and constituting integral parts hereof.

Article 8 – Exchange of Personnel

Unless otherwise agreed in writing, the following provisions shall apply concerning assignments and exchanges of personnel under this Agreement:

1. Each Party may, at its own expense, and subject to agreement of the other Party, observe test activities and analytical work of the other Party. Such observation may be accomplished by short-term visits or by the assignment of personnel, subject to the prior agreement of the receiving Party on each occasion.

2. Whenever an assignment or exchange of personnel is contemplated under this Agreement, each Party shall select qualified staff for assignment to the other Party to conduct the activities planned under this Agreement. Each such exchange of personnel shall be mutually agreed in advance by an exchange of letters between the Parties, referencing this Agreement and its pertinent intellectual property provisions.

3. Each Party shall be responsible for the salaries, insurance, and allowances to be paid to its staff or contractors.

4. Each Party shall pay for the travel and living expenses of its staff while on assignment to the host Party.

5. Each Party shall assist in arranging adequate accommodations for the other Party's assigned staff or its contractors (and their families) on a mutually agreeable reciprocal basis.

6. The host Party shall provide all necessary assistance to the assigned staff or its contractors (and their families) of the other Party regarding administrative formalities, such as making travel arrangements and obtaining work permits.

7. The staff of each Party and its contractors shall be subject to the general and special rules of work and safety regulations in force at the host establishment.

Article 9 – Equipment

Unless otherwise agreed in writing, the following provisions shall apply to the provision of equipment by one Party to the other Party under this Agreement:

1. The sending Party shall supply to the other Party as soon as possible a detailed list of the equipment to be provided, together with the associated specifications and technical and informational documentation.

2. The equipment, spare parts, and documentation supplied by the sending Party shall remain the property of the sending Party and shall be returned to the sending Party upon completion of the mutually agreed upon activity. .

3. The host establishment shall provide the necessary premises and shelter for the equipment, and shall provide for electric power, water and gas, as appropriate, in accordance with all technical requirements, which shall be as mutually agreed upon by the Parties.

4. The sending Party, or its designee(s), shall be responsible for expenses, safekeeping and insurance during the transport of the equipment from the original location in the country, or its establishments in the case of EURATOM, of the sending Party to the place of entry in the country of the receiving Party, or its establishments in the case of EURATOM. If the sending Party elects to have the equipment returned, the sending Party shall be responsible for expenses, safekeeping, and insurance during the transport of the equipment from the original point of entry in the country of the receiving Party, or its establishment in the case of EURATOM, to the final destination in the country of the sending Party, or its establishment in the case of EURATOM.

5. The receiving Party, or its designee(s), shall be responsible for expenses, safekeeping, and insurance during the transport of the equipment from the place of entry in the country of the receiving Party, or its establishments in the case of EURATOM, to the final destination in the country of the receiving Party, or its establishments in the case of EURATOM. If the sending Party elects to have the equipment returned, the receiving Party shall be responsible for expenses, safekeeping, and insurance during the transport of the equipment from the final destination in the country of the receiving Party, or its establishment in the case of EURATOM, to the original point of entry in the country of the receiving Party, or its establishment in the case of EURATOM.

6. The equipment provided by the sending Party for carrying out mutually agreed-upon activities shall be considered to be scientific, not having a commercial character, and the receiving Party shall endeavour to obtain duty-free entry.

Article 10 – Samples and Materials

Unless otherwise agreed in writing, the following provisions shall apply to the transportation and use of samples and materials under this Agreement:

1. Unless otherwise agreed by the Parties prior to delivery, samples and materials provided by the sending Party to the receiving Party shall be used

for experiments, testing and evaluation and shall not be returned to the sending Party.

2. Where one Party requests that a sample or material be provided by the other Party, the Party making the request shall bear all costs and expenses associated with the transportation of the sample or material from the location of the sending Party to the final destination.

3. Each Party shall promptly disclose to the other Party all information arising from the examination or testing of samples or materials exchanged under this Agreement. Proprietary information, as defined in Article 5, paragraph 4, which was developed prior to or outside the scope of this Agreement, shall remain proprietary information even though it is contained in the results of an examination or testing of samples or materials. Such information shall be identified as proprietary by the Party asserting its proprietary nature as soon as possible after disclosure of all information arising from the examination or testing is made to such Party and the other Party shall be immediately advised of that identification. All information identified as proprietary shall be controlled as provided under Annex A, section III. It is further understood and agreed that one Party providing samples or materials to the other Party may also provide a partial or complete list of the types of information which will arise from the examination or testing of such samples or materials and which is proprietary information as defined in Article 5, paragraph 4, and all such proprietary information is to be controlled as set out in Annex A, section III.

Article 11 - Applicable Law

Each Party shall conduct the activities contemplated by this Agreement in accordance with the applicable laws to which it is subject.

Article I2 - Settlement of Disputes

1. All questions or disputes related to activities carried out under this Agreement shall be settled by consultations between the Parties.

2. Compensation for damages arising from activities under this Agreement shall be in accordance with the Parties' applicable laws.

Article 13 - Costs

Except when otherwise specifically agreed in writing, all costs resulting from cooperation under this Agreement shall be borne by the Party that incurs them. It is understood that the ability of the Parties to carry out the activities contemplated by this Agreement shall be subject to the appropriation of funds by the appropriate authority, where necessary.

Article 14 - Additional Entities and Organisations

By mutual agreement, the Parties may invite entities and organisations in the public and private sectors to participate, at their own expense unless one or both Parties elect to fund such participation, in the cooperative activities contemplated by this Agreement.

Article 15 – Entry into Force, Amendment and Termination

1. This Agreement shall enter into force upon signature, shall remain in force for five years, and be automatically renewed for further five-year periods unless either Party notifies the other in writing three months prior to the expiration of the first five-year period or any succeeding five-year period of its intent to terminate the Agreement. This Agreement may be amended by mutual written agreement of the Parties.

2. This Agreement supersedes the 1995 Agreement.

DONE at Vienna , in duplicate, this 2 . day of November 2010.

For the
UNITED STATES
DEPARTMENT OF ENERGY:

Assistant Deputy Administrator

For the
EUROPEAN ATOMIC ENERGY
COMMUNITY:

Roland Schenkel
Director General

Annex A

Intellectual Property Rights

Pursuant to Article 7 of this Agreement, this Annex addresses the protection and allocation of rights, interests and royalties between the Parties.

I. Ownership Allocation and Exercise of Rights

1. This Annex is applicable to all cooperative activities undertaken pursuant to this Agreement, except as otherwise specifically agreed by the Parties or their designees. The Parties shall ensure adequate and effective protection of intellectual property created or furnished under this Agreement and relevant implementing arrangements. The Parties agree to seek protection for such intellectual property in a timely fashion.

2. For purposes of this Agreement, "intellectual property" shall have the meaning found in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm, July 14, 1967, and may include other subject matter as agreed by the Parties.

3. Each Party shall ensure that the other Party may obtain the rights to intellectual property allocated to it in accordance with this Annex by obtaining those rights from its own participants through contracts or other legal means if necessary. This Annex does not otherwise alter or prejudice the allocation between a Party and its nationals, which shall be determined by that Party's laws and practices.

4. Disputes concerning intellectual property shall be resolved through discussions between the concerned participating institutions or, if necessary, the Parties or their designees. Upon mutual agreement of the Parties, a dispute shall be submitted to an arbitral tribunal for binding arbitration in accordance with the applicable rules of international law. Unless the Parties or their designees agree otherwise in writing, the arbitration rules of the United Nations Commission of International Trade Law (UNCITRAL) shall govern.

5. Termination or expiration of this Agreement shall not affect rights or obligations under this Annex.

6. Intellectual property arising from joint research, i.e., cooperative research supported by both Parties and whose scope is agreed in advance by them, and jointly created, shall be jointly owned by both Parties unless otherwise agreed. There shall be joint ownership of intellectual property when created by both Parties and when the features of such intellectual property cannot be separated for purposes of applying for, obtaining and/or maintaining in force the protection of the relevant intellectual property right. In such a case, the Parties shall agree between themselves by means of a co-ownership agreement on the allocation and the terms of exercising the ownership of said

intellectual property, consistent with the provisions of this Annex. This co-ownership agreement may be part of the technology management plan set forth in Annex B or a separate document. This plan shall also cover the treatment of scientists visiting primarily for their education or training (i.e., visiting researchers).

7. If either Party determines that a particular project is likely to lead to or has led to the creation of intellectual property not protected by the laws of the other Party, the Parties shall immediately hold discussions to determine the allocation of rights to the intellectual property. If an agreement cannot be reached within three months of the date of the initiation of the discussions, cooperation on the project in question shall be terminated at the request of either Party.

II. SCIENTIFIC LITERARY WORKS

Subject to the treatment provided for undisclosed information in Section III of this Annex, the following procedures shall apply:

1. Each Party shall be entitled to a non-exclusive, irrevocable, royalty-free license in all countries to translate, reproduce, and publicly distribute information contained in scientific and technical journals, articles, reports, books, or other media, directly arising from joint research pursuant to this Agreement.

2. All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names of the authors of the work unless an author explicitly declines to be named. They shall also bear a clearly visible acknowledgment of the cooperative support of the Parties.

III. PROPRIETARY INFORMATION

A. Documentary Proprietary Information

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

   (a) 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 or readily accessible by lawful means;

   (b) the actual or potential commercial value of the information by virtue of its secrecy;

   (c) 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;

(d) The Parties or their designees 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 this Agreement may not be disclosed.

2. Each Party shall ensure that proprietary information under this Agreement and its 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) A Party receiving proprietary information pursuant to such agreement shall respect the privileged nature thereof. These limitations shall automatically terminate when this information is disclosed by the owner without restriction.

3. Proprietary information communicated under this Agreement may be disseminated by the receiving Party to persons employed by the receiving Party including its contractors, and other concerned departments of the Party authorised for the specific purposes of the joint research underway, provided that any Proprietary information so disseminated shall be protected to the extent provided by the laws and regulations to which each Party is subject and shall be readily recognisable as such, as set out above.

4. The Parties shall apply appropriate marking procedures for documentary proprietary information.

B. Non-documentary Proprietary Information

Non-documentary proprietary 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, will be treated by the Parties or their designees according to the principles specified for documentary proprietary information in this Agreement; provided, however, that the recipient of such proprietary or other confidential or privileged information has been made aware in writing of the confidential character of the information communicated not later than the time such a communication is made.

C. Control

Each Party shall endeavour to ensure that undisclosed information received by it under this Agreement shall be controlled as provided herein. If one of the Parties becomes aware that it will be, or may be reasonably 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.

IV. OTHER CONSIDERATIONS

In the event that computer codes, that are identified in a timely fashion as proprietary, are furnished or created in the course of cooperative activities under this Agreement, each Party shall protect such codes in accordance with applicable laws, regulations and administrative procedures.

Annex B

Technology Management Plan

1. The Parties shall notify each other within a reasonable time of any intellectual property rights arising under this Agreement (or relevant implementing arrangements).

2. Each Party becomes the owner of any intellectual property it creates in performing cooperative work under this Agreement. The other Party shall have a non-exclusive, irrevocable, royalty-free license to use such intellectual property arising under the Agreement for research and development purposes only.

3. For intellectual property jointly created during research and in conformity with I-6 of Annex A above, each Party shall be entitled to obtain the rights and interests in its own territory. Rights in all other territories shall be jointly exploited by the Parties.

4. For intellectual property created during joint research, the Parties can agree to allocate and exploit rights differently from what is provided for under paragraph 3.

5. Each Party shall seek protection for the intellectual property to which it obtains rights and interests under the Technology Management Plan in a timely fashion.

6. Visiting researchers (as defined in I.6. of Annex A) may receive intellectual property rights and royalty shares earned by the host institutions from licensing of such intellectual property rights under the policies of the host institutions.