



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL**

**concerning the negotiation of the accession of the European Atomic Energy Community (Euratom) to an international Framework Agreement among the Members of the Generation IV International Forum in the field of nuclear-related research**

Proposal for a

**COUNCIL DECISION**

**concerning the negotiation of the accession of the European Atomic Energy Community (Euratom) to an international Framework Agreement among the Members of the Generation IV International Forum in the field of nuclear-related research**

(presented by the Commission)

## **COMMUNICATION FROM THE COMMISSION TO THE COUNCIL**

### **concerning the negotiation of the accession of the European Atomic Energy Community (Euratom) to an international Framework Agreement among the Members of the Generation IV International Forum in the field of nuclear-related research**

The "Generation IV" initiative was launched by the US DOE at the beginning of 2000. It concerns concepts for one or more nuclear energy systems that can be operated in a manner that will provide a competitive and reliable supply of energy, while satisfactorily addressing nuclear safety, waste, proliferation and public perception concerns. Several European countries (United Kingdom, France and Switzerland), as well as Japan, Korea, South Africa, Argentina, Brazil and Canada, have joined. To this end, these countries signed the Charter of the Generation IV International Forum (GIF). The Commission decided on 4 November 2002 (Commission decision number C(2002)4287) that the Euratom Atomic Energy Community (Euratom) should adhere to the Charter. The Charter was subsequently signed on behalf of Euratom on 30 July 2003. Several Member States strongly supported this adhesion because they were also interested to participate in the research. Their participation is now possible through Euratom membership. This will provide the possibility for all interested Member States, as well as to countries associated to the Euratom Framework Programmes, to build competence and knowledge and gain information about the technical and safety issues connected to the next generation of nuclear reactor systems.

The "Technology Roadmap", the main document describing the technical content of the research to be performed, identified six different nuclear energy systems for further development. The actual research work will take place at the level of individual projects performed by research institutes, industrial partners etc. and the integration of the results of these projects into one nuclear energy system will need to be monitored and steered at the appropriate level.

The performance of the research work necessitates a legal framework. Informal discussions have taken place from the beginning of the Generation IV initiative on what this framework should be. Issues such as governance of the research projects, use of existing know-how and intellectual property rights, creation of new intellectual property rights, dispute settlement, accession of new members etc. were addressed. The parties have now come to the conclusion that one legally binding framework agreement is necessary. Six arrangements, one for each system, and arrangements for each project within the GIF systems will be concluded as implementing instruments for the Framework Agreement.

The draft texts of the envisaged framework agreement and of a template for the six system arrangements were circulated and commented upon without a clear conclusive outcome.

At the end of November 2004, the US Chair of the GIF Policy Group, which is the highest Governance Committee, declared that, based on these discussions, it was able to issue a draft Framework Agreement and that this draft has been endorsed through the internal US inter-agency procedure. The Policy Group Chair tabled this Framework Agreement still as a draft, but its main elements were considered as no longer negotiable. The discussion on the text continued for a while, only for clarifying the wording of few articles.

After having been postponed twice, the Winter meeting of the Policy Group took place mid-January 2005 and, relatively soon after this meeting, a finalised version of the Framework Agreement was open for signature on 11 February 2005. The sole purpose of this Framework Agreement being to create a legally binding framework to allow R&D work at the project level, none of the other Parties objected to its opening for signature.

However, in this process, the Commission was confronted with the systematic request from the US Department of State aiming to prevent multi-governmental organisations, including the Community, to take part to deliberation to which one or more of their Member States participate. Finally, the Commission informed the US authorities that if the wording was not deleted, neither the Community, nor UK and France would be allowed to sign the agreement. As a consequence, the signing event has been delayed for two weeks. A compromise being necessary in order to facilitate UK and France signature, the Commission agreed to make the following declaration if and when it will adhere to the Agreement:

"In becoming a Party to this Framework Agreement, Euratom shall fully participate in all collaboration and deliberations under this Framework Agreement and any System Arrangement to which it is a signatory, but it shall not block consensus reached by the other Parties to this Framework Agreement or by the other signatories to System Arrangements where both it and one or more of its member states are signatories."

This declaration underlines that the Community will be full Party to the agreement, but will systematically stick together with its Member States. In order to ensure this solidarity, the Commission and Member State Parties to this Framework Agreement will make the declaration hereunder, that will be attached to the Council Minutes:

“The Commission and the Member State Parties to the Framework Agreement – currently, France and UK – will co-ordinate closely and harmonise their positions before any significant decision is taken in the implementation of the Framework Agreement and the relevant System Arrangements.“

The Commission will pursue the organisation of regular meetings, at least twice a year, open to any Member State or research organisation willing to contribute to the R&D undertaken within GIF. This co-ordination process will involve countries associated to the Euratom FP and thus include Switzerland, which is also a GIF Member.

The Commission considers that the proposed Framework Agreement should be acceptable for the Community and thus decided to submit it to the Council in accordance with the article 101.2 of the Euratom Treaty.

The Framework Agreement represents a step forward in the definition of the international co-operation in the field of Generation IV systems and translates the provisions of the GIF Charter, whose content marked a political agreement without financial implication and which was thus signed directly by the Commission, into a legally binding document. The accession to the Framework Agreement requires endorsement by the Council as it will constitute the premise of concrete research collaboration, which could not yet start in the absence of clear setting of conditions governing such collaboration. In addition, the duration of the Framework Agreement will cover more than two Framework Programmes, and at least two Council decisions will be needed to guide the Community contribution to GIF that shall match the Council decisions on the existing and future Framework Programmes.

Finally, it should be noted that there is no compulsory provision for financial exchanges or special budgetary allocations between the Parties. The existing provisions in this respect are

subject to individual rules, practice and will of the partners. The only costs involved are not direct research costs, but refer to the technical highly specialised services of the NEA that will ensure the knowledge management of GIF. They can be covered to a large extent by the secondment of adequate staff to the Technical Secretariat, on a voluntary basis, from R&D organisations interested in the participation in specific GIF projects. Only a limited amount may be needed to cover the remaining part of the costs incurred by the secretarial services of the NEA. Therefore, the direct Community contribution to GIF will be designated by the R&D Framework Programmes and limited to possibilities offered by the Council decision adopting these Programmes. This will ensure the matching of the Euratom contribution to R&D activities under GIF projects with the priorities defined in the Framework Programmes. However, this will not prevent any Member State or national R&D organisation that wishes to contribute to GIF with its own means to channel its contribution through the Community, including in areas that are not covered by the Euratom contribution.

The last point on which the Commission wishes to draw the attention of the Council is the language regime. All partners were ready to accept the sole English version issued by the US-DOE as being authentic. However, because it will be signed by the Government of Canada a French version was necessary. It has been issued by the Canadian authorities and revised by the NEA.

In the light of the above, the Council is invited to adopt the attached draft decision.

## **EXPLANATORY MEMORANDUM**

The "Generation IV" International Forum (GIF) initiative, launched at the beginning of 2000 by the US-DOE, concerns concepts for one or more nuclear energy systems that can be operated in a manner that will provide a competitive and reliable supply of energy, while satisfactorily addressing nuclear safety, waste, proliferation and public perception concerns. Currently there are eleven members of GIF, signatories of the GIF Charter: Argentina, Brazil, Canada, Euratom, France, Japan, Korea, South Africa, Switzerland, United Kingdom, and the United States of America.

The GIF Charter was signed on behalf of Euratom on 30 July 2003 based on the Commission decision number C(2002)4287. Several Member States strongly supported this adhesion because they were also interested to participate in the research to be undertaken under GIF. Euratom membership provides the opportunity for all interested Member States, as well as to countries associated to the Euratom Framework Programmes, to participate in GIF R&D activities, to build competence and knowledge and gain information about the technical and safety issues connected to the next generation of nuclear reactor systems.

The technology aspects related to GIF are dealt with in the "Technology Roadmap", finalised at the end of 2002, which identified six nuclear energy systems to pursue research on.

The performance of the research work necessitates a legal framework. The envisaged GIF legal architecture will include three levels of agreements (a Framework Agreement, System Arrangements and, respectively, Project Arrangements within each System) to allow for the performance of the research and sharing of the results.

The Framework Agreement, finalised at the beginning of 2005, represents a step forward in the definition of the international co-operation in the field of Generation IV systems and translates into a legally binding document the provisions of the GIF Charter. (The latter, whose content marked a political agreement without financial implication, was thus signed directly by the Commission.)

The accession to the Framework Agreement requires endorsement by the Council as it will provide a clear setting of conditions governing the concrete research collaboration within GIF. In addition, the duration of the Framework Agreement will cover more than two Framework Programmes, and at least two Council decisions will be needed to guide the Community contribution to GIF that shall match the Council decisions on the existing and future Framework Programmes.

Proposal for a

## COUNCIL DECISION

### **concerning the negotiation of the accession of the European Atomic Energy Community (Euratom) to an international Framework Agreement among the Members of the Generation IV International Forum in the field of nuclear-related research**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community (hereinafter Euratom), and in particular Article 101(2) thereof,

Whereas;

- (1) the United States of America, the United Kingdom, France, Switzerland, Japan, South Korea, South Africa, Argentina and Canada have created the Generation IV International Forum (GIF) with the purpose of developing concepts for one or more nuclear energy systems that can be operated in a manner that will provide a competitive and reliable supply of energy, while satisfactorily addressing nuclear safety, waste, proliferation and public perception concerns;
- (2) Euratom has acceded to the Generation IV International Forum on 30 July 2003;
- (3) the international co-operation and exchange in the R&D of nuclear-related technology, envisaged under the GIF, necessitates a legal framework in view of the management of the research work in a way that provides legal security to the participants and in particular in view of the protection of rights generated under the research work, such as intellectual property rights;
- (4) to this end, the parties to GIF have agreed upon the conclusion of a framework agreement setting the framework conditions for the co-operation and for subsequent system and project arrangements;
- (5) the Community contribution to GIF R&D projects shall remain within the scope of the Council decisions on Euratom Framework Programme;
- (6) any Member State, its public or private research organisations or its industry may channel its direct contribution to these R&D works through the accession of the Community to the Framework Agreement;

HAS DECIDED AS FOLLOWS:

#### *Article 1*

The European Commission is authorised to negotiate the accession of the European Atomic Energy Community (Euratom) to the attached Generation IV International Forum Framework

Agreement in order to allow both a direct contribution of the Community to the GIF R&D activities and the possibility, for any Member State, its public or private research organisations or its industry, to channel their contributions to GIF R&D work.

*Article 2*

If the Parties to the Generation IV International Forum accept this accession without any further comment, the Commission is authorised to sign the attached Framework Agreement on behalf of the Community.

Done at Brussels,

*For the Council  
The President*

**ANNEX**  
FRAMEWORK AGREEMENT  
FOR  
INTERNATIONAL COLLABORATION ON  
RESEARCH AND DEVELOPMENT O  
GENERATION IV NUCLEAR ENERGY SYSTEMS

The Parties to the present Framework Agreement,

CONSIDERING the expected increase in energy demand worldwide, and the contribution that the development and deployment of innovative technologies and fuels can make to meet future global energy demand in a sustainable manner;

CONSIDERING that collaboration on research and development by many countries on the development of advanced next generation nuclear energy systems will aid progress toward the realization of such systems;

CONSIDERING that Parties or their ministries, departments, agencies or other entities have signed a Charter for the Generation IV International Forum (hereinafter referred to as “GIF”) as a basis for international collaboration on research and development for the next generation of nuclear energy systems (hereinafter referred to as “Generation IV Systems”);

CONSIDERING that GIF members have created a standing governance structure composed of a Policy Group, Experts Group, and Secretariat, to implement the Charter;

CONSIDERING that the GIF has completed “A Technology Roadmap for Generation IV Nuclear Energy Systems: Technical Roadmap Report” (December 2002) (hereinafter referred to as “Technology Roadmap”) which identifies the six most promising Generation IV Systems as well as the research and development necessary to advance these Systems to technical maturity;

NOTING that the Generation IV Systems are: Gas-Cooled Fast Reactor System, Lead-Cooled Fast Reactor System, Molten Salt Reactor System, Sodium-Cooled Fast Reactor System, Supercritical-Water-Cooled Reactor System, and Very-High-Temperature Reactor System;

DESIRING to facilitate the pursuit of collaborative research and development of the Generation IV Systems by the Parties and their ministries, departments, agencies and other entities, together with the industrial, academic, governmental and non-governmental sectors of the international research community, to advance the Generation IV Systems identified in the Technology Roadmap; and

NOTING the Paris Convention for the Protection of Industrial Property of 20 March 1883, as revised and amended;



HAVE AGREED AS FOLLOWS:

## *ARTICLE I*

### *Objective*

1. The objective of this Framework Agreement is to establish a framework for international collaboration to foster and facilitate achievement of the purpose and vision of the GIF: the development of concepts for one or more Generation IV Systems that can be licensed, constructed, and operated in a manner that will provide a competitively-priced and reliable supply of energy to the country(ies) where such systems may be deployed, while satisfactorily addressing nuclear safety, waste, proliferation and public perception concerns.
2. Collaboration under this Framework Agreement shall be conducted only for peaceful purposes and in accordance with non-proliferation objectives and the Parties' international obligations relating thereto; and on the basis of equality, mutual benefit, and reciprocity.

## *ARTICLE II*

### *Forms of Collaboration*

The forms of collaboration under this Framework Agreement may include, but are not limited to:

- (a) joint research and technology development;
- (b) exchange of technical information and data on scientific and technical activities and methods and results of research and development;
- (c) support for the organization of technological demonstrations;
- (d) conduct of joint trials/experiments;
- (e) participation of staff (including scientists, engineers, and other specialists) in experiments, analysis, design and other research and development activities conducted at research centres, academic institutions, laboratories and other facilities;
- (f) exchange or loan of samples, materials and equipment for experiments, testing and evaluation;
- (g) organization of, and participation in, seminars, scientific conferences and other meetings;
- (h) monetary contributions to the deployment of necessary experimental facilities; and
- (i) training and enhancing the skills of scientists and technical experts

## ARTICLE III

### *Implementation*

1. The Parties shall encourage and facilitate, where appropriate, the development of direct contacts and collaboration between government agencies, academies of science, universities, science and research centres, institutes and institutions, private sector firms, and intergovernmental organizations.
2. Each Party shall, upon signature or deposit of an instrument of accession, designate itself or one or more of its ministries, departments, agencies or other entities as its Implementing Agent(s) to accomplish the objective set forth in Article I of this Framework Agreement. The Implementing Agents are identified in the Annex, which constitutes an integral part of this Framework Agreement.
3. A Party may designate additional Implementing Agent(s) or change its Implementing Agent(s) by written notification to the Depository (identified in Article XI). The additional or changed Implementing Agent designations shall take effect in accordance with paragraph 4 of Article XII.

## ARTICLE IV

### *System Arrangements*

1. Implementing Agents of two or more Parties may enter into a System Arrangement for each of the six Generation IV Systems identified in the Technology Roadmap; provided, however, that:
  - (a) there shall be only one System Arrangement for each Generation IV System; and
  - (b) if a Party has more than one Implementing Agent, only one of them may be a signatory to a System Arrangement.
2. Each System Arrangement, which shall be consistent with and governed by the provisions of this Framework Agreement, shall establish a framework for collaboration to plan and conduct the research and development work necessary to establish the viability and performance of the Generation IV System concerned.
3. Each System Arrangement shall include implementing provisions concerning, *inter alia*:
  - a) collaboration to be undertaken;
  - b) management of the research and development activities undertaken to realize the objective of the GIF;
  - c) financial arrangements;

- d) protection, use and disclosure of background proprietary information; and
  - e) adequate and effective protection and allocation of intellectual property created or furnished in the course of the collaboration under this Framework Agreement, including provisions for the resolution of disputes concerning intellectual property rights.
4. In the event of any inconsistency between a System Arrangement and this Framework Agreement, the provisions of this Framework Agreement shall prevail.

## *ARTICLE V*

### *Project Arrangements*

1. Each System Arrangement will be implemented through one or more Project Arrangements for research and development (R&D) projects designed to contribute to establishment of the viability and performance of the Generation IV System to which the project relates.
2. Implementing Agents may be signatories to Project Arrangements. Other entities in the public and private sectors may be signatories to Project Arrangements subject to the unanimous approval of a System Steering Committee to be established by the signatories to each System Arrangement to manage R&D collaboration for each Generation IV System.
3. Each Project Arrangement should address matters such as, but not limited to, scope of work, estimated cost, proposed schedule, project management responsibilities, intellectual property rights, reporting requirements, and provisions concerning withdrawal of signatories.
4. Each Project Arrangement shall be consistent with and governed by the provisions of the System Arrangement to which the subject project relates and of this Framework Agreement.
5. In case of any inconsistency between a System Arrangement and a Project Arrangement, the provisions of the System Arrangement shall prevail. In case of any inconsistency between a System Arrangement or Project Arrangement on the one hand, and this Framework Agreement on the other hand, the provisions of this Framework Agreement shall prevail.

## *ARTICLE VI*

### *Facilitation of Movement of Persons, Equipment and Materials; and Use of Data*

With respect to collaboration under this Framework Agreement, each Party shall, to the extent permitted by its international obligations, national laws and regulations:

- a) facilitate entry into and exit from its territory of appropriate personnel, equipment and materials of the other Parties used in collaboration under this Framework Agreement; and
- b) facilitate the exchange and use of scientific and technical data resulting from R&D conducted under this Framework Agreement.

## *ARTICLE VII*

### *Availability of Resources*

The activities of each Party under this Framework Agreement are subject to the availability of appropriated funds, personnel, and other resources.

## *ARTICLE VIII*

### *Applicable Law*

Each Party shall conduct the collaboration under this Framework Agreement in accordance with the applicable laws and regulations to which it is subject.

## *ARTICLE IX*

### *Disclosure of Information*

Scientific and technological information resulting from collaboration under this Framework Agreement, other than information which is not made available to the public for national security, commercial, or industrial reasons, shall be made available to the world scientific community through customary channels and in accordance with normal procedures of the Parties and their respective participating ministries, departments, agencies and other entities.

## *ARTICLE X*

### *Settlement of Disputes*

1. Any dispute regarding the interpretation or application of this Framework Agreement shall be resolved through consultation between or among the Parties concerned.
2. Any dispute between two or more Project Arrangement signatories may be resolved in accordance with any method(s), set forth in a Project Arrangement, to which the Project Arrangement signatories concerned mutually agree in writing.

## *ARTICLE XI*

### *Depositary*

1. The original of this Framework Agreement shall be deposited with the Secretary-General of the Organisation for Economic Co-operation and Development, who is hereby designated as Depositary. The Depositary shall fulfil his duties in accordance with Article 77 of the Vienna Convention on the Law of Treaties of 23 May 1969.
2. Following entry into force of this Framework Agreement in accordance with paragraph 2 of Article XII, the Depositary shall transmit a certified true copy of this Framework Agreement to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations; and likewise shall transmit certified copies of any amendments to this Framework Agreement which enter into force.

## *ARTICLE XII*

### *Entry into Force, Amendment, Extension and Termination*

1. This Framework Agreement shall be open for signature only on 28 February 2005. A state, one or more of whose ministries, departments, agencies or other entities is a GIF member, or any GIF member composed of more than one state may become a Party to this Framework Agreement:
  - a) by signature not subject to ratification, acceptance or approval; or
  - b) by signature subject to ratification, acceptance or approval followed by deposit of an instrument of ratification, acceptance or approval; or
  - c) by deposit of an instrument of accession, in accordance with paragraph 1 of Article XIV.
2. This Framework Agreement shall enter into force when three Parties have indicated their consent to be bound: by signature not subject to ratification, acceptance or approval; or by deposit of an instrument of ratification, acceptance or approval. Thereafter, this Framework Agreement shall enter into force for a signatory on the

date of deposit of its instrument of ratification, acceptance or approval; and shall enter into force for additional Parties in accordance with the provisions of paragraph 3 of Article XIV.

3. Subject to paragraph 5 of this Article, this Framework Agreement shall remain in force for a period of 10 years, and may be extended for additional periods by agreement of the Parties, in accordance with procedures to be elaborated by the Parties.
4. This Framework Agreement may be amended at any time by agreement of all Parties. Except as provided in paragraph 2 of Article XIV, an amendment shall enter into force for all Parties 30 days following the date of receipt by the Depository of the last written notification of acceptance of the amendment.
5. This Framework Agreement may be terminated at any time by agreement of all Parties. Termination shall be effective 30 days following the date of receipt by the Depository of the last written notification of acceptance of the termination.

### *ARTICLE XIII*

#### *Withdrawal*

1. A Party may withdraw from this Framework Agreement upon six months' written notice to the Depository. The Annex shall thereafter be amended to delete the name of the Party and that of its Implementing Agent(s), in accordance with procedures to be elaborated by the Parties.
2. A Party's withdrawal from this Framework Agreement shall constitute withdrawal by its Implementing Agent from any System Arrangement to which that Implementing Agent is a signatory.

### *ARTICLE XIV*

#### *Additional Parties*

1. After entry into force of this Framework Agreement, any state, one or more of whose ministries, departments, agencies or other entities is a GIF member, and any GIF member composed of more than one state, may become a Party to this Framework Agreement by depositing with the Depository an instrument of accession and a written notification of the Implementing Agent(s) to be designated in accordance with paragraph 2 of Article III.
2. When an additional Party deposits its instrument of accession and notification in accordance with paragraph 1 of this Article, the Depository shall circulate a proposed amendment to the Annex to specify the Implementing Agent(s) notified by that Party. Such amendment shall enter into force 90 days after the date of receipt by the Depository of that Party's notification, provided that no other Party has notified the Depository that it objects to the proposed amendment. In the event that the

Depositary receives an objection, the proposed amendment shall not enter into force, and the additional Party shall submit to the Depositary a revised written notification of its Implementing Agent(s), which shall be subject to the same procedure.

3. This Framework Agreement shall enter into force as to each additional Party 90 days following the Depositary's receipt of the instrument of accession of a state, one or more of whose ministries, departments, agencies or other entities is a GIF member, or of a GIF member composed of more than one state.
4. Each Party that accedes to this Framework Agreement after the entry into force of any amendment shall become a Party to the Framework Agreement as amended.

#### *ARTICLE XV*

##### *Final Provision*

Any collaboration initiated under this Framework Agreement but not completed at the expiration or termination of this Framework Agreement may continue to completion under the provisions of this Framework Agreement.

**IN WITNESS WHEREOF**, the undersigned, being duly authorized, have signed this Framework Agreement.

**DONE** at Washington, in a single original, on the twenty-eighth day of February 2005, in the English and French languages, each text being equally authentic.

## Annex

### Designated Implementing Agents of the Parties

<u>Party</u>	<u>Designated Implementing Agent</u>
Government of Canada	Department of Natural Resources
Government of the French Republic	Commissariat à l'Énergie Atomique
Government of Japan	Agency for Natural Resources and Energy Japan Atomic Energy Research Institute Japan Nuclear Cycle Development Institute
Government of the United Kingdom of Great Britain and Northern Ireland	Department of Trade and Industry
Government of the United States of America	Department of Energy



FOR THE GOVERNMENT OF CANADA:

POUR LE GOUVERNEMENT DU CANADA:

FOR THE GOVERNMENT OF THE FRENCH REPUBLIC:

POUR LE GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE:

FOR THE GOVERNMENT OF JAPAN:

POUR LE GOUVERNEMENT DU JAPON:

FOR THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND  
NORTHERN IRELAND:

POUR LE GOUVERNEMENT DU ROYAUME-UNI DE GRANDE-BRETAGNE ET  
D'IRLANDE DU NORD:

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

POUR LE GOUVERNEMENT DES ÉTATS-UNIS D'AMÉRIQUE: