



Brussels, 9.11.2012
COM(2012) 651 final

2012/0310 (NLE)

Proposal for a

COUNCIL DECISION

Approving the conclusion by the European Commission on behalf of the European Atomic Energy Community of an Agreement on scientific and technological cooperation between the European Atomic Energy Community, of the one part, and the Swiss Confederation, of the other part, associating the Swiss Confederation to the Framework Programme of the European Atomic Energy Community for nuclear research and training activities (2012-2013)

EXPLANATORY MEMORANDUM

CONTEXT OF THE PROPOSAL

Switzerland was associated to the previous Euratom research framework programme (2007-2011) on the basis of a scientific and technological cooperation agreement which was signed on 25 June 2007, with effect from 1 January 2007. By letter of 14th March 2011 Switzerland expressed its interest to become associated to the Euratom Framework Programme for 2012 and 2013.

The Council has authorised the Commission to negotiate a new agreement to that effect on 24 April 2012. The negotiations of the new agreement were conducted in line with the directives issued by the Council.

This agreement will provide for the Swiss association to the Euratom research framework programme for the years 2012-2013, without prejudice to the terms of the Cooperation Agreement between the Swiss Confederation and the European Atomic Energy Community in the field of controlled thermonuclear fusion and plasma physics of 1978. The new agreement will apply from 1st January 2012.

Pursuant to Art.101 of the Treaty Establishing the European Atomic Energy Community the agreements are concluded by the Commission with the approval of the Council which shall act by a qualified majority. The new agreement should be concluded on behalf of Euratom.

In light of the above considerations, the Commission requests the Council:

- to approve the conclusion on behalf of the European Atomic Energy Community, of an Agreement on scientific and technological cooperation between the European Atomic Energy Community, of the one part, and the Swiss Confederation, of the other part, associating the Swiss Confederation to the Framework Programme of the European Atomic Energy Community for nuclear research and training activities (2012-2013).

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

- (1) The European Commission has, on behalf of the European Atomic Energy Community and in accordance with the directives from the Council, negotiated an Agreement with Switzerland associating the Swiss Confederation to the Framework Programme of the European Atomic Energy Community for nuclear research and training activities (2012-2013),
- (2) It is consequently advisable to approve the conclusion by the European Commission of this Agreement,

HAS ADOPTED THIS DECISION:

Sole Article

The conclusion by the European Commission on behalf of the European Atomic Energy Community of a scientific and technological cooperation between the European Atomic Energy Community, of the one part, and the Swiss Confederation, of the other part, associating the Swiss Confederation to the Framework Programme of the European Atomic Energy Community for nuclear research and training activities (2012-2013) is hereby approved. Upon conclusion of this Agreement the representative of the European Commission shall make the declaration of the European Commission on behalf of the European Atomic Energy Community attached in Annex I to this Decision.

The text of this Agreement is attached in Annex II to this Decision.

Done at Brussels,

*For the Council
The President*

ANNEXES

ANNEX I

Declaration of the European Commission on behalf of the European Atomic Energy Community

The representatives of the Swiss Confederation have asked the Commission to confirm that the total amount of contributions expected of the Swiss Confederation for the year 2012 in relation to all Euratom research activities will not exceed CHF 55 million. The Commission confirms that on the basis of the relevant statistical data and having regard to the proportionality factors governing the calculation of contributions expected of the Swiss Confederation for the year 2012 in relation to all Euratom research activities, including before the conclusion of this agreement, the total amount payable by the Swiss Confederation for the year 2012 will not exceed CHF 55 million.

ANNEX II
AGREEMENT

on scientific and technological cooperation between the European Atomic Energy Community, of the one part, and the Swiss Confederation, of the other part, associating the Swiss Confederation to the Framework Programme of the European Atomic Energy Community for nuclear research and training activities (2012-2013)

THE EUROPEAN ATOMIC ENERGY COMMUNITY,

(hereinafter referred to as ‘Euratom’),

Represented by the European Commission (hereinafter referred to as the Commission),

of the one part,

and

THE SWISS CONFEDERATION,

(hereinafter referred to as ‘Switzerland’), represented by the Swiss Federal Council,

of the other part,

hereinafter referred to as ‘the Parties’,

CONSIDERING that the close relationship between Switzerland and Euratom is of benefit to the Parties;

CONSIDERING the importance of scientific and technological research for the Parties and their mutual interest in cooperating in this matter in order to make better use of resources and to avoid unnecessary duplication;

WHEREAS the Parties are currently implementing research programmes in fields of common interest;

WHEREAS the Parties have an interest in cooperating on these programmes to their mutual benefit;

CONSIDERING the interest of the Parties in encouraging the mutual access of their research entities to research, technological development and training activities;

WHEREAS the European Atomic Energy Community and Switzerland concluded a Cooperation Agreement in 1978 in the field of controlled thermonuclear fusion and plasma physics (hereinafter referred to as 'the Fusion Agreement');

WHEREAS the Parties concluded a Framework Agreement on 8 January 1986 for scientific and technical cooperation (hereinafter referred to as 'the Framework Agreement'), which entered into force on 17 July 1987;

CONSIDERING that Article 6 of the Framework Agreement states that the cooperation aimed at by the Framework Agreement is to be carried out through appropriate agreements;

WHEREAS on 25 June 2007 the European Union and Switzerland signed an Agreement on Scientific and Technological Cooperation, which entered into force on 28 February 2008 and was retroactively applied as of 1 January 2007;

CONSIDERING that Article 9(2) of the abovementioned Agreement provides for renewal or renegotiation of the Agreement with a view to participation in new multi-annual Framework Programmes for research and technological development, under mutually agreed conditions;

WHEREAS the Framework Programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities (2012-2013), also contributing to the creation of the European Research Area was adopted by Council Decision 2012/93/Euratom¹, Regulation (Euratom) No 139/2012² and Council Decisions 2012/94/Euratom³ and 2012/95/Euratom⁴ (hereinafter referred to as the 'Euratom Framework Programme 2012-2013');

WHEREAS subject to the provisions of the Treaty establishing the European Atomic Energy Community, this Agreement and any activities entered into under it will not affect the powers vested in the Member States to undertake bilateral activities with Switzerland in the fields of science, technology, research and development, and to conclude, where appropriate, agreements to that end;

WHEREAS Euratom concluded the Agreement on the establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER project. Pursuant to its Article 21 and the Agreements in the form of an Exchange of Letters between the European Atomic Energy Community and the Swiss Confederation on the application of the ITER Agreement, the Agreement on Privileges and Immunities for ITER and the Broader Approach Agreement to the territory of Switzerland and on Switzerland's membership in the European Joint Undertaking for

¹ OJ L 47, 18.2.2012, p. 25.

² OJ L 47, 18.2.2012, p. 1.

³ OJ L 47, 18.2.2012, p. 33.

⁴ OJ L 47, 18.2.2012, p. 40.

ITER and the Development of Fusion Energy of 22 November 2007 the Agreement applies to Switzerland participating in the Euratom fusion programme as fully associated third State;

WHEREAS Euratom is a member of the European Joint Undertaking for ITER and the Development of Fusion Energy established by the Council Decision of 27 March 2007. Pursuant to Article 2 of this Decision and the Agreements in the form of an Exchange of Letters between the European Atomic Energy Community and the Swiss Confederation on the application of the ITER Agreement, the Agreement on Privileges and Immunities for ITER and the Broader Approach Agreement to the territory of Switzerland and on Switzerland's membership in the European Joint Undertaking for ITER and the Development of Fusion Energy of 22 November 2007 Switzerland became a member of the Joint Undertaking as a third State having associated its research programme to the Euratom fusion programme;

WHEREAS Euratom concluded the Agreement between the European Atomic Energy Community and the Government of Japan for the Joint Implementation of the Broader Approach Activities in the Field of Fusion Energy Research. Pursuant to its Article 26 the Agreement applies to Switzerland participating in the Euratom fusion programme as fully associated third State.

HAVE AGREED AS FOLLOWS:

Article 1

Subject matter

1. The Swiss participation in the implementation of the Euratom Framework Programme 2012-2013 shall be as laid down in this Agreement, without prejudice to the terms of the Fusion Agreement.

Legal entities established in Switzerland may participate in all the specific programmes of the Euratom Framework Programme 2012-2013.

2. Swiss legal entities may participate in the activities of the Joint Research Centre of the European Union, as far as this participation is not covered by paragraph 1.

3. Legal entities established in the European Union, including the Joint Research Centre, may participate in research programmes and/or projects in Switzerland on themes equivalent to those of the programmes of the Euratom Framework Programme 2012-2013.

4. For the purposes of this Agreement 'legal entity' means any natural or any legal person created under the national law at its place of establishment or under European Union law, having legal personality and being entitled to have rights and obligations of any kind in its own name. This shall include, *inter alia*, universities, research organisations, industrial companies, including small and medium-sized enterprises, and individuals.

Article 2

Forms and means of cooperation

Cooperation shall take the following forms:

1. Participation of legal entities established in Switzerland in all specific programmes adopted under the Euratom Framework Programme 2012-2013, in accordance with the terms and conditions laid down in the rules for the participation of undertakings, research centres and universities in research and training activities of the European Atomic Energy Community.

2. Financial contribution by Switzerland to the budget of the programmes adopted for the implementation of the Euratom Framework Programme 2012-2013, as defined in Annex B.

3. Participation of legal entities established in the European Union in Swiss research programmes and/or projects decided by the Federal Council on themes equivalent to those of the Euratom Framework Programme 2012-2013, in accordance with the terms and conditions laid down in the relevant Swiss regulations and with the agreement of the partners in the specific project and the management of the corresponding Swiss programme. Unless relevant Swiss regulations foresee otherwise, legal entities established in the European Union and participating in Swiss research programmes and/or projects shall cover their own costs, including their relative share of the project's general management and administrative costs.

4. In addition to timely provision of information and documentation concerning the implementation of the Euratom Framework Programme 2012-2013 and of the Swiss programmes and/or projects, the cooperation between the Parties may include the following forms and means:

(a) regular exchanges of views on research policy guidelines and priorities and plans in Switzerland and in Euratom;

(b) exchanges of views on the prospects and development of cooperation;

(c) timely exchanges of information on the implementation of the research programmes and projects in Switzerland and in Euratom and on the results of the work undertaken under this Agreement;

(d) joint meetings;

(e) visits and exchanges of researchers, engineers and technicians;

(f) regular contacts and follow-up between programme or project leaders in Switzerland and in Euratom;

(g) participation by experts in seminars, symposia and workshops.

Article 3

Adaptation

Cooperation may be adapted and developed at any time by mutual agreement between the Parties.

Article 4

Intellectual property rights and obligations

1. Subject to Annex A and applicable law, legal entities established in Switzerland participating in the Euratom Framework Programme 2012-2013 shall, as regards ownership, exploitation and dissemination of information and intellectual property arising from such participation, have the same rights and obligations as legal entities established in the European Union.

2. Subject to Annex A and applicable law, legal entities established in the European Union taking part in Swiss research programmes and/or projects, as provided for in Article 2(3), shall, as regards ownership, exploitation and dissemination of information and intellectual property arising from such participation, have the same rights and obligations as legal entities established in Switzerland participating in the programmes and/or projects in question.

Article 5

Financial provisions

The rules governing Switzerland's financial contribution are set out in Annex B.

Article 6

Switzerland/Communities Research Committee

1. The Switzerland/Communities Research Committee set up in the Framework Agreement shall review, evaluate and ensure the proper implementation of this Agreement. Any issues arising from the implementation or interpretation of this Agreement shall be referred to this Committee.

2. The Committee may decide to amend the references to European Union/Euratom acts in Annex C.

Article 7

Participation

1. Without prejudice to the provisions of Article 4, legal entities established in Switzerland participating in the Euratom Framework Programme 2012-2013 shall have the same contractual rights and obligations as entities established in the European Union.

2. For legal entities established in Switzerland, the terms and conditions applicable for the submission and evaluation of proposals and those for the granting and conclusion of grant agreements and/or contracts under the Euratom Framework Programme 2012-2013 shall be the same as those applicable for grant agreements and/or contracts concluded under the same programmes with legal entities established in the European Union.

3. Switzerland shall be entitled, as an associated State, to propose evaluators under the Euratom Framework Programme 2012-2013, in accordance with the Council Regulation (Euratom) No 139/2012 laying down the rules for participation of undertakings, research centres and universities in indirect actions under the Framework Programme of the European Atomic Energy Community and for the dissemination of research results (2012-2013).

4. Without prejudice to the provisions of Article 1(3), Article 2(3) and Article 4(2) and to existing regulations and rules of procedure, legal entities established in the European Union may participate under equivalent terms and conditions to Swiss partners in programmes and/or projects of the Swiss research programmes mentioned in Article 2(3). The Swiss authorities may make participation in a project by one or more legal entities established in the European Union subject to joint participation by at least one Swiss entity.

Article 8

Mobility

Each Party shall undertake, in accordance with existing regulations and agreements in force, to guarantee the entry and stay - as far as indispensable for successful accomplishment of the activity concerned - of a limited number of their researchers participating, in Switzerland and in the European Union, in the activities covered by this Agreement.

Article 9

Revision and future collaboration

1. Should Euratom revise or extend its research programmes, this Agreement may be revised or extended under mutually agreed conditions. The Parties shall exchange information and views concerning any such revision or extension, as well as on any matters which affect directly or indirectly Switzerland's cooperation in the fields covered by the Euratom Framework Programme 2012-2013. Switzerland shall be notified of the exact content of the revised or extended programmes within two weeks of their adoption by Euratom. In case of such revision or extension of the research programme, Switzerland may terminate this Agreement by giving six months' notice. The Parties shall give notice of any intention to terminate or to extend this Agreement within three months after the adoption of Euratom's decision.

2. Should Euratom adopt a new multi-annual research and training programme, an Agreement may be renewed or renegotiated under conditions agreed mutually between the Parties. The Parties shall exchange information and views on the preparation of such programmes or other current and future research activities through the Switzerland/European Union Research Committee referred to in Article 6.

Article 10

Relation to other international agreements

1. The provisions of this Agreement shall apply without prejudice to the advantages envisaged by other international agreements binding one of the Parties and reserved only for legal entities established on the territory of that Party.

2. A legal entity established in a State associated to the Euratom Framework Programme 2012-2013 (Associated State) enjoys the same rights and obligations under this Agreement as legal entities that are established in a Member State provided that the Associated State in which the entity is established has agreed to award legal entities from Switzerland the same rights and obligations.

Article 11

Territorial application

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Atomic Energy Community applies and under the conditions laid down in that Treaty and, on the other, to the territory of Switzerland.

Article 12

Annexes

Annexes A, B and C shall form an integral part of this Agreement.

Article 13

Entry into force and application

1. This Agreement shall be ratified or concluded by the Parties in accordance with their respective rules. It shall enter into force on the date of the last notification of completion of the internal procedures necessary to this end.

2. This Agreement shall apply from the beginning of the Euratom Framework programme 2012-2013 until 31 December 2013. Notwithstanding paragraph 5 below, during the period from 1

January 2013 until 30 June 2013 each Party may terminate this Agreement by written notice. In this case the Agreement shall cease to apply on 31 December 2012.

3. If this Agreement ceases to apply on 31 December 2012 pursuant to paragraph 2, Euratom shall honour its commitments to Swiss beneficiaries entered into until the time one of the Parties received the notification pursuant to paragraph 2 from the other Party. In case Switzerland terminates this Agreement pursuant to paragraph 2, Switzerland shall pay Euratom compensation corresponding to the amount of Euratom's 2013 commitments to Swiss beneficiaries until the time Euratom has received the Swiss notification. This compensation shall be paid not later than 45 days after the receipt of the request issued by the Commission. Paragraph II.2 of Annex B shall apply accordingly. The Parties shall settle by common consent any other consequences.

4. This Agreement may be amended only in writing by common consent between the Parties. The procedure for entry into force of amendments shall be the same as the procedure applicable to the entry into force of this Agreement.

5. Each Party may terminate this Agreement at any time, subject to six months' written notice.

6. Projects and activities in progress at the time of termination and/or expiry of this Agreement shall continue until their completion under the conditions laid down in this Agreement. The Parties shall settle by common consent any other consequences of termination.

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

ANNEX A

PRINCIPLES ON THE ALLOCATION OF INTELLECTUAL PROPERTY RIGHTS

I. Scope

For the purposes of this Agreement, ‘intellectual property’ shall have the meaning defined in Article 2 of the Convention establishing the World Intellectual Property Organisation, signed at Stockholm on 14 July 1967.

For the purposes of this Agreement, ‘knowledge’ means the results, including information, whether or not they can be protected, as well as copyrights or rights pertaining to such information, following applications for, or the issue of, patents, designs, plant varieties, supplementary protection certificates or similar forms of protection.

II. Intellectual property rights of the legal entities of the Parties

1. Each Party shall ensure that the intellectual property rights of the legal entities of the other Party participating in the activities undertaken under this Agreement and the rights and obligations resulting from such participation are treated in a manner compatible with the relevant international conventions applicable to the Parties, notably the TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights administered by the World Trade Organisation), the Berne Convention (Paris Act 1971) and the Paris Convention (Stockholm Act 1967).

2. Legal entities established in Switzerland participating in indirect actions under the Euratom Framework Programme 2012-2013 shall have intellectual property rights and obligations under the conditions set out, in Council Regulation (Euratom) No 139/2012 of 19 December 2011⁵ and in the grant agreement and/or contract concluded with the Euratom, in accordance with point 1.

3. Legal entities established in a European Union Member State participating in Swiss research programmes and/or projects shall have the same intellectual property rights and obligations as legal entities established in Switzerland participating in these research programmes or projects, in accordance with point 1.

III. Intellectual property rights of the Parties

1. Unless otherwise agreed between the Parties, the following rules shall apply to the knowledge generated by the Parties in the course of the activities undertaken in accordance with Article 2(4) of this Agreement:

⁵ OJ L 47, 18.2.2012, p. 1.

(a) the Party generating the knowledge shall have ownership thereof. Where their respective shares in the work cannot be determined, the Parties shall co-own the knowledge;

(b) the Party holding ownership shall grant the other Party rights of access to the knowledge with a view to the activities referred to in Article 2(4) of this Agreement. No charge shall be made for granting rights of access to the knowledge.

2. Unless otherwise agreed between the Parties, the following rules shall apply to scientific literature from the Parties:

(a) where a Party publishes data, information and technical or scientific results arising from the activities undertaken under this Agreement in journals, articles, reports and books, including audiovisual works and software, a worldwide, non-exclusive, irrevocable royalty-free licence to translate, adapt, transmit and publicly distribute the works in question shall be granted to the other Party;

(b) all copies of copyrighted data and information to be publicly distributed and prepared under this section shall indicate the names of the author or authors, unless an author expressly declines to be named. Copies shall also bear a clearly visible acknowledgement of the cooperative support of the Parties.

3. Unless otherwise agreed between the Parties, the following rules shall apply to undisclosed information of the Parties:

(a) at the time of submission to the other Party of information relating to the activities undertaken under this Agreement, each Party shall identify the information which it wishes to remain undisclosed;

(b) for the specific purposes of application of this Agreement, the receiving Party may, on its own responsibility, communicate undisclosed information to bodies or persons under its authority;

(c) with the prior written consent of the Party providing undisclosed information, the receiving Party may disseminate such information more widely than otherwise permitted by subparagraph (b). The Parties shall cooperate in developing procedures for requesting and obtaining prior written consent for wider dissemination, and each Party shall grant such approval to the extent permitted by its domestic policies, regulations and laws;

(d) non-documentary undisclosed or other confidential information provided in seminars or other meetings of the representatives of the Parties arranged under this Agreement, or information arising from the attachment of staff, use of facilities or indirect actions must remain confidential, where the recipient of such undisclosed or other confidential or privileged information was made aware of the confidential character of the information before it was communicated, in accordance with subparagraph (a);

(e) each Party shall ensure that undisclosed information which it acquires in accordance with subparagraphs (a) and (d) shall be controlled as provided for in this Agreement. If one of the Parties becomes aware that it will be, or may be expected to become, unable to meet the non-dissemination provisions of subparagraphs (a) and (d), it shall immediately inform the other Party. The Parties shall thereafter consult to define an appropriate course of action.

ANNEX B

FINANCIAL RULES GOVERNING THE CONTRIBUTION OF SWITZERLAND

I. Determination of financial participation

1. The proportionality factor governing Switzerland's contribution to the Euratom Framework programme 2012-2013, except the Euratom Fusion Programme, shall be obtained by establishing the ratio between Switzerland's gross domestic product, at market prices, and the sum of gross domestic products, at market prices, of the Member States of the European Union. The proportionality factor governing the Swiss contribution to the Fusion Programme shall continue to be governed on the basis of the Fusion Agreement. These ratios shall be calculated on the basis of the latest statistical data from Eurostat, available at the time of publication of the draft budget of the European Union for the same year.

2. The Commission shall communicate as soon as possible to Switzerland together with relevant background material:

(a) the amounts in commitment appropriations in the statement of expenditure of the draft budget of the European Union corresponding to the Euratom Framework Programme 2012-2013 in the year 2013;

(b) the estimated amount of the contributions derived from the draft budget, corresponding to the possible participation of Switzerland in the Euratom Framework Programme 2012-2013 in the year 2013.

3. As soon as the general budget for 2013 has been finally adopted, the Commission shall communicate to Switzerland the above mentioned amounts in the statement of expenditure.

4. Switzerland's financial contribution deriving from participation in the Euratom Framework Programme 2012-2013 shall be established in addition to the amount available each year in the general budget of the European Union for commitment appropriations to meet the Commission's financial obligations stemming from work to be carried out in the forms necessary for the implementation, management and operation of the programmes and activities covered by this Agreement.

II. Payment procedures

1. The Commission shall issue, at the latest on 31 December 2012 a call for funds to Switzerland corresponding to its contribution under this Agreement for 2012. This call for funds shall provide for the payment of Switzerland's contribution not later than 30 days after receipt of the corresponding call for funds. For the purpose of calculating the amount in Swiss francs in 2012 the

exchange rate between the Swiss franc and Euro to be used by the Commission shall be the market rate for the penultimate day of the previous month quoted by the European Central Bank or, depending on the availability, provided by the delegations or other appropriate sources close to that date.

Unless this Agreement ceases to apply on 31 December 2012 in accordance with Art.13(2), the Commission shall issue after 1st July and not later than November 2013, a call for funds to Switzerland corresponding to the contribution under this Agreement for 2013 and established on the basis of Point I.1 of this annex. This call for funds shall provide for the payment of the said contribution not later than 30 days after the receipt of the call.

2. The contributions of Switzerland for the year 2012 shall be paid in Swiss francs and for the year 2013 shall be expressed and paid in Euro to the bank account indicated by the Commission in the calls for payments.

3. Switzerland shall pay its contribution under this Agreement according to the schedule in paragraph 1. Any delay in payment shall give rise to the payment of interest at a rate equal to the one-month inter-bank offered rate (EURIBOR) as on page EURIBOR01 of Reuters (Telerate page 248). This rate shall be increased by 1.5 percentage point for each month of delay. The increased rate shall be applied to the entire period of delay. However, the interest shall be due only if the contribution is paid after the scheduled payment dates mentioned in paragraph 1.

4. Travel costs incurred by Swiss representatives and experts for the purposes of taking part in the work of the research committees and those involved in the implementation of the Euratom Framework Programme 2012-2013 shall be reimbursed by the Commission on the same basis as, and in accordance with, the procedures currently in force for the representatives and experts of the Member States of the European Union.

III. Conditions for implementation

1. The financial contribution of Switzerland to the Euratom Framework Programme 2012-2013 in accordance with this Annex shall normally remain unchanged for the financial year in question.

2. The Commission, at the time of the closure of the accounts relating to each financial year (n), within the framework of the establishment of the revenue and expenditure account, shall proceed to the regularisation of the accounts with respect to the participation of Switzerland, taking into consideration modifications which have taken place, either by transfer, cancellations, carry-overs, or by supplementary and amending budgets during the financial year. This regularisation shall occur at the time of the first payment for the year (n+1). However, the final such regularisation shall occur not later than July of the fourth year following the end of the Euratom Framework Programme 2012-2013. Payment by Switzerland shall be credited to the Euratom programmes as budget receipts allocated to the appropriate budget heading in the statement of revenue of the general budget of the European Union.

IV. Information

1. At the time of the payment for the year 2013, the statement of appropriations for the Euratom Framework Programme 2012-2013, related to the year 2012, shall be prepared and transmitted to Switzerland for information, according to the format of the Commission's revenue and expenditure account.

At the latest on 30 April 2014, the statement of appropriations for the Euratom Framework Programme 2012-2013, related to the year 2013, shall be prepared and transmitted to Switzerland for information, according to the format of the Commission's revenue and expenditure account.

2. The Commission shall communicate to Switzerland statistics and all other general financial data relating to the implementation of the Euratom Framework Programme which is made available to the Member States.

ANNEX C

FINANCIAL CONTROL OF SWISS PARTICIPANTS IN THE EURATOM FRAMEWORK PROGRAMME 2012-2013

I. Direct communication

The Commission shall communicate directly with the participants in the Euratom Framework Programme 2012-2013 established in Switzerland and with their subcontractors. They shall submit directly to the Commission all relevant information and documentation which they are required to submit on the basis of the instruments referred to in this Agreement and of the grant agreements and/or contracts concluded to implement them.

II. Audits

1. In accordance with Council Regulation (EC, Euratom) No 1605/2002⁶, as last amended Regulation (EU Euratom) No 1081/2010⁷ and Commission Regulation (EC, Euratom) No 2342/2002⁸, as last amended by Regulation (EC Euratom) No 478/2007⁹ and with the other rules referred to in this Agreement, the grant agreements and/or contracts concluded with participants in the programme established in Switzerland may provide for scientific, financial, technological or other audits to be conducted at any time on the premises of the participants and of their subcontractors by Commission agents or by other persons mandated by the Commission.

2. Commission agents and other persons mandated by the Commission shall have appropriate access to sites, works and documents and to all the information required in order to carry out such audits, including in electronic form. This right of access shall be stated explicitly in the grant agreements and/or contracts concluded to implement the instruments referred to in this Agreement.

3. The European Court of Auditors shall have the same rights as the Commission.

4. The audits may be conducted after the Euratom Framework Programme 2012-2013 or this Agreement expires, on the terms laid down in the grant agreements and/or contracts in question.

5. The Swiss Federal Audit Office shall be informed in advance of the audits conducted on Swiss territory. Such notification shall not be a legal precondition for carrying out such audits.

III. On-the-spot checks

⁶ OJ L 248, 16.9.2002, p. 1.

⁷ OJ L 311, 26.11.2010, p. 9.

⁸ OJ L 357, 31.12.2002, p. 1.

⁹ OJ L 111, 28.4.2007, p. 13.

1. Within the framework of this Agreement, the Commission (OLAF) shall be authorised to carry out on-the-spot checks and inspections on Swiss territory, in accordance with the terms and conditions laid down in Council Regulation (Euratom, EC) No 2185/96¹⁰ and Regulation (EC) No 1073/1999¹¹ of the European Parliament and the Council.

2. On-the-spot checks and inspections shall be prepared and conducted by the Commission in close collaboration with the Swiss Federal Audit Office or with the other competent Swiss authorities designated by the Swiss Federal Audit Office, which shall be notified in good time of the object, purpose and legal basis of the checks and inspections, so that they can provide all the requisite help. To that end, the officials of the competent Swiss authorities may participate in the on-the-spot checks and inspections.

3. If the Swiss authorities concerned so wish, the on-the-spot checks and inspections may be carried out jointly by the Commission and them.

4. Where the participants in the Euratom Framework Programme 2012-2013 resist an on-the-spot check or inspection, the Swiss authorities, acting in accordance with national rules, shall give Commission inspectors such assistance as they need to allow them to discharge their duty in carrying out an on-the-spot check or inspection.

5. The Commission shall report as soon as possible to the Swiss Federal Audit Office any fact or suspicion relating to an irregularity which has come to its notice in the course of the on-the-spot check or inspection. In any event the Commission shall be required to inform the abovementioned authority of the result of such checks and inspections.

IV. Information and consultation

1. For the purposes of proper implementation of this Annex, the competent Swiss and Community authorities shall regularly exchange information and, at the request of one of the Parties, shall conduct consultations.

2. The competent Swiss authorities shall inform the Commission without delay of any fact or suspicion which has come to their notice relating to an irregularity in connection with the conclusion and implementation of the grant agreements and/or contracts concluded in application of the instruments referred to in this Agreement.

V. Confidentiality

Information communicated or acquired in any form under this Annex shall be covered by professional secrecy and protected in the same way as similar information is protected by Swiss law and by the corresponding provisions applicable to the Community institutions. Such information

¹⁰ OJ L 292, 15.11.1996, p. 2.

¹¹ OJ L 136, 31.5.1999, p. 1.

may not be communicated to persons other than those within the Community institutions or in the Member States or Switzerland whose functions require them to know it nor may it be used for purposes other than to ensure effective protection of the Parties' financial interests.

VI. Administrative measures and penalties

Without prejudice to application of Swiss criminal law, administrative measures and penalties may be imposed by the Commission in accordance with Regulations (EC, Euratom) No 1605/2002, as last amended by Regulation (EU Euratom) No 1081/2010¹² and (EC, Euratom) No 2342/2002 as last amended by Regulation (EC Euratom) No 478/2007¹³ and with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests¹⁴.

VII. Recovery and enforcement

Decisions taken by the Commission under the Euratom Framework Programme 2012-2013 within the scope of this Agreement which impose a pecuniary obligation on persons other than States shall be enforceable in Switzerland. The enforcement order shall be issued, without any further control than verification of the authenticity of the act, by the authorities designated by the Swiss government, which shall inform the Commission thereof. Enforcement shall take place in accordance with the Swiss rules of procedure. The legality of the enforcement decision shall be subject to control by the Court of Justice of the European Union. Judgments given by the Court of Justice of the European Union pursuant to an arbitration clause in a contract under the Euratom Framework Programme 2012-2013 shall be enforceable on the same terms.

¹² OJ L 311, 26.11.2010, p. 9.

¹³ OJ L 111, 28.4.2007, p. 13.

¹⁴ OJ L 312, 23.12.1995, p. 1.

LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Proposal for a decision of the Council on the signature and conclusion on behalf of the European Atomic Energy Community of the "Agreement on scientific and technological cooperation between European Union and the European Atomic Energy Community, of the one part, and the Swiss Confederation, of the other part, associating the Swiss Confederation to the Framework Programme of the European Atomic Energy Community for nuclear research and training activities (2012-2013)", or Euratom FP7+2.

1.2. Policy area(s) concerned in the ABM/ABB structure

Title 08 - Research

Title 10 – Direct Research

1.3. Nature of the proposal/initiative

The proposal/initiative relates to **a new action**

The proposal/initiative relates to **a new action following a pilot project/preparatory action**¹⁵

The proposal/initiative relates to **the extension of an existing action**

The proposal/initiative relates to **an action redirected towards a new action**

Legislative proposal, secondary acquis - International agreement between Euratom and a Third State pursuant to Art 101 of the Treaty establishing Euratom.

1.4. Objective(s)

1.4.1. *The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

To associate Switzerland to the indirect and direct actions under Euratom Framework Programme for nuclear research and training activities (2012-2013), by conferring the status of associated third state to ensure institutional representation of Switzerland in the respective bilateral, multilateral and international Committees and bodies, by virtue of this association; to receive Swiss financial and technical contribution for the implementation of the Euratom Framework Programme (2012-2013).

Policy measure to encourage cooperation between Euratom and the Swiss Confederation under the form of association of Switzerland to the Euratom Framework Programme for nuclear research and training activities (2012-2013), in view of the importance of nuclear scientific and technological research for the Parties, the on-going joint implementation of research programmes in fields of reciprocal interest and the mutual interest of Euratom and Switzerland to cooperate in fission and fusion nuclear research and to give reciprocal

¹⁵ As referred to in Article 49(6)(a) or (b) of the Financial Regulation.

access of their research entities to research technological development and training activities.

1.4.2. *Specific objective(s) and ABM/ABB activity(ies) concerned*

Specific objective No.

NA

ABM/ABB activity(ies) concerned

NA

1.4.3. *Indicators of results and impact*

Specify the indicators for monitoring implementation of the proposal/initiative.

NA

1.5. Grounds for the proposal/initiative

1.5.1. *Requirement(s) to be met in the short or long term*

Primary Law: Art 101 of the Treaty establishing Euratom, Chapter X "External relations"

Secondary law, as follows:

- the 1978 "Cooperation Agreement between the European Atomic Energy community and the Swiss Confederation in the field of controlled thermonuclear fusion and plasma physics;
- the Framework Agreement on 8 January 1986 for scientific and technical cooperation, which entered into force on 17 July 1987;
- the Agreement on Scientific and Technological Cooperation, which entered into force on 28 February 2008 and was retroactively applied as of 1 January 2007;
- the Agreement on the establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER project;
- the exchange of Letters between Euratom and the Swiss Confederation on the European Joint Undertaking for ITER and the Development of Fusion Energy; and
- the exchange of Letters between Euratom and the Swiss Confederation on the Agreement between the Euratom and the Government of Japan for the Joint Implementation of the Broader Approach Activities in the Field of Fusion Energy Research between Euratom and Japan

1.5.2. *Added value of EU involvement*

NA

1.5.3. *Lessons learned from similar experiences in the past*

NA

1.5.4. *Coherence and possible synergy with other relevant instruments*

NA

1.6. Duration and financial impact

Proposal/initiative of **limited duration**

– Proposal/initiative in effect from **01/01/2012** to **31/12/2013**

– Financial impact from YYYY to YYYY

Proposal/initiative of **unlimited duration**

– Implementation with a start-up period from YYYY to YYYY,

– followed by full-scale operation.

1.7. Management method(s) envisaged

Centralised direct management by the Commission

Centralised indirect management with the delegation of implementation tasks to:

– executive agencies

– bodies set up by the Communities¹⁶

– national public-sector bodies/bodies with public-service mission

– persons entrusted with the implementation of specific actions pursuant to Title V of the Treaty on European Union and identified in the relevant basic act within the meaning of Article 49 of the Financial Regulation

Shared management with the Member States

Decentralised management with third countries

Joint management with international organisations (*to be specified*)

If more than one management mode is indicated, please provide details in the "Comments" section

Comments

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

¹⁶ As referred to in Article 185 of the Financial Regulation.

Monitoring system

The Commission will regularly evaluate all the actions carried out under the Agreement, which will also be subject to a regular monitoring of the implementation of this Agreement in the Switzerland/Communities Research Committee under this Agreement. This evaluation will cover:

(a) Performance indicators under the specific programmes of Euratom Framework Programme (2012-2013):

- number of proposals compared with the relative share of Switzerland's participation in those programmes;
- number of Swiss proposals selected for funding compared with Swiss relative participation in those programmes;
- numbers of Swiss contracts concluded and implemented with ITER IO and F4E.

(b) Gathering of information:

On the basis of data from the specific Euratom FP7+2 programmes; upon request and on the basis of information exchanged at the Switzerland/Communities Research Committee under this Agreement.

(c) Overall evaluation:

The Commission will evaluate Switzerland's overall participation under Euratom FP7+2, namely in the light of the duration of this association at the expiration of this Agreement.

2.2. Management and control system

2.2.1. Risk(s) identified

On the basis of data from the specific Euratom FP7+2 programmes; upon request and on the basis of information exchanged at the Switzerland/Communities Research Committee, as provided for under Art 6 of the Agreement.

Other measures, as provided for by the Annex C on "Financial control of Swiss Participants in the Euratom FP (2012-2013)", also including communication and gathering of information.

2.2.2. Control method(s) envisaged

NA

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures.

Such measures are laid down in Annex C on "Financial control of Swiss Participants in the Euratom FP (2012-2013)", namely

- Audits: the grant agreements and/or contracts concluded with participants in the programme established in Switzerland may provide for scientific, financial, technological

or other audits to be conducted at any time on the premises of the participants and of their subcontractors by Commission agents or by other persons mandated by the Commission, in accordance with Council Regulation (EC, Euratom) No 1605/2002¹⁷, as last amended Regulation (EU Euratom) No 1081/2010¹⁸ and Commission Regulation (EC, Euratom) No 2342/2002¹⁹, as last amended by Regulation (EC Euratom) No 478/2007²⁰ and with the other rules referred to in this Agreement

The European Court of Auditors shall have the same rights as the Commission as far as the audits are concerned.

The audits may be conducted after the Euratom Framework Programme 2012-2013 for this Agreement expires, on the terms laid down in the grant agreements and/or contracts in question.

- On-the-spot checks and inspections: Within the framework of this Agreement, the Commission (OLAF) shall be authorised to carry out on-the-spot checks and inspections on Swiss territory, in accordance with the terms and conditions laid down in Council Regulation (Euratom, EC) No 2185/96²¹ and Regulation (EC) No 1073/1999²² of the European Parliament and the Council

- Administrative measures and penalties: Without prejudice to application of Swiss criminal law, administrative measures and penalties may be imposed by the Commission in accordance with Regulations (EC, Euratom) No 1605/2002, as last amended by Regulation (EU Euratom) No 1081/2010²³ and (EC, Euratom) No 2342/2002 as last amended by Regulation (EC Euratom) No 478/2007²⁴ and with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests.

- Recovery measures are envisaged and are enforceable in the Swiss territory

¹⁷ OJ L 248, 16.9.2002, p.1.
¹⁸ OJ L 311, 26.11.2010, p.9.
¹⁹ OJ L 357, 31.12.2002, p.1.
²⁰ OJ L 111, 28.4.2007, p.13.
²¹ OJ L 292, 15.11.1996, p.2.
²² OJ L 136, 31.5.1999, p.1.
²³ OJ L 311, 26.11.2010, p.9.
²⁴ OJ L 111, 28.4.2007, p.13.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing expenditure budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Description.....]	DA/NDA (25)	from EFTA ²⁶ countries	from candidate countries ²⁷	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
1 a	Operational expenditure					
	08 01 Administrative expenditure Research 08 01 05 01 Expenditure related to Research Staff 08 01 05 03 Other management expenditure for Research	NDA	NO	NO	YES	NO

-
- New budget lines requested
- Not applicable

²⁵ DA= Differentiated appropriations / DNA= Non-Differentiated Appropriations

²⁶ EFTA: European Free Trade Association.

²⁷ Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure EUR million (to 3 decimal places)

Heading of multiannual financial framework:		1 a		Competitiveness for Growth and Employment			
Indirect Research				Year	Year	Year	TOTAL
• Operational appropriations			2012	2013	≥ 2014		
Number of budget line: 08 2x total	Commitments	(1)					
	Payments	(2)					
Appropriations of an administrative nature financed from the envelop of specific programs ²⁸							
08 01 xx xx total			0.237	0.154			0.391
08 01 05 01 Expenditure related to Research Staff			0.127	0.089			0.216
08 01 05 03 Other management expenditure Research			0.110	0.065			0.175
Number of budget line: 08 01		(3)	0.237	0.154			0.391
TOTAL appropriations for DG Research		Commitments	=1+1a+3	0.237	0.154		0.391
		Payments	=2+2a+3	0.237	0.154		0.391

• TOTAL operational appropriations	Commitments	(4)	0	0	0	0
	Payments	(5)				
• TOTAL appropriations of an administrative nature financed from the envelop of specific programs		(6)	0.237	0.154		0.391

²⁸ Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

TOTAL appropriations under HEADING 1 a of the multiannual financial framework	Commitments	=4+ 6	0.237	0.154		0.391
	Payments	=5+ 6	0.237	0.154		0.391

If more than one heading is affected by the proposal / initiative:

• TOTAL operational appropriations	Commitments	(4)				
	Payments	(5)				
• TOTAL appropriations of an administrative nature financed from the envelop of specific programs		(6)	0.237	0.154		0.391
TOTAL appropriations under HEADINGS 1 to 4 of the multiannual financial framework (Reference amount)	Commitments	=4+ 6	0.237	0.154		0.391
	Payments	=5+ 6	0.237	0.154		0.391

Heading of multiannual financial framework:	5	" Administrative expenditure "
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EUR million (to 3 decimal places)

		Year 2012	Year 2013	TOTAL
DG: Research / Direct Research				
• Human resources		0	0	0
• Other administrative expenditure		0	0	0
TOTAL DG <.....>	Appropriations	0	0	0

TOTAL appropriations under HEADING 5 of the multiannual financial framework	(Total commitments = Total payments)	0	0	0
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EUR million (to 3 decimal places)

		Year 2012	Year 2013	Year ≥ 2014	TOTAL
TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework	Commitments	0.237	0.154		0.391
	Payments	0.237	0.154		0.391

3.2.2. *Estimated impact on operational appropriations*

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to 3 decimal places)

Indicate objectives and outputs ↓			Year 2012	Year 2013		TOTAL		
	OUTPUTS							
	Type of output ²⁹	Average cost of the output	Number of outputs	Cost	Number of outputs	Cost	Total number of outputs	Total cost
SPECIFIC OBJECTIVE No 1 ³⁰ ...								
- Output – EURATOM Fusion								
- Output – EURATOM Fission								
Sub-total for specific objective N°1								
SPECIFIC OBJECTIVE No 2...								
- Output – EURATOM Direct research- JRC								
Sub-total for specific objective N°2								
TOTAL COST								

(*) estimated number of outputs

²⁹ Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

³⁰ As described in Section 1.4.2. "Specific objective(s)..."

3.2.3. Estimated impact on appropriations of an administrative nature

3.2.3.1. Summary

- The proposal/initiative does not require the use of administrative appropriations
- The proposal/initiative requires the use of administrative appropriations, as explained below:

EUR million (to 3 decimal places)

	Year 2012 - N ³¹	Year 2013 - N+1	TOTAL
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HEADING 5 of the multiannual financial framework			
Human resources			
Other administrative expenditure			
Subtotal HEADING 5 of the multiannual financial framework			

Outside HEADING 5³² of the multiannual financial framework	2012	2013	TOTAL
Human resources	0.127	0.089	0.216
Other expenditure of an administrative nature	0.110	0.065	0.175
Subtotal outside HEADING 5 of the multiannual financial framework	0.237	0.154	0.391

TOTAL	0.237	0.154	0.391
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³¹ Year N is the year in which implementation of the proposal/initiative starts.

³² Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

3.2.3.2. Estimated requirements of human resources

- The proposal/initiative does not require the use of human resources
- The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full amounts (or at most to one decimal place)

	Year 2012 - N	Year 2013 - N+1
• Establishment plan posts (officials and temporary agents)		
X 01 01 01 (Headquarters and Commission's Representation Offices)		
xx 01 01 02 (Delegations)		
08 01 05 01 (Indirect research)	1	0.7
• External personnel (in Full Time Equivalent unit: FTE)³³		
XX 01 02 01 (CA, INT, SNE from the "global envelope")		
XX 01 02 02 (CA, INT, JED, LA and SNE in the delegations)		
08 01 04 40³⁴ - at Headquarters ³⁵		
08 01 05 02 (CA, INT, SNE - Indirect research)		
Other budget lines (specify)		
TOTAL	1	0.7

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary agents	Preparation and management of Joint committee meetings foreseen and several missions ensuring the good functioning and implementation of the Agreement, as well as regular review and follow up.
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³³ CA= Contract Agent; INT= agency staff ("*Intérimaire*"); JED= "*Jeune Expert en Délégation*" (Young Experts in Delegations); LA= Local Agent; SNE= Seconded National Expert;

³⁴ Under the ceiling for external personnel from operational appropriations (former "BA" lines).

³⁵ Essentially for Structural Funds, European Agricultural Fund for Rural Development (EAFRD) and European Fisheries Fund (EFF).

3.2.4. *Compatibility with the current multiannual financial framework*

- Proposal/initiative is compatible the current multiannual financial framework.
- Proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Not applicable

- Proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework³⁶.

Not applicable

3.2.5. *Third-party contributions*

- The proposal/initiative does not provide for co-financing by third parties
- The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to 3 decimal places)

	Year 2012	Year 2013
<i>Specify the co-financing body</i>		
TOTAL appropriations co-financed *		

³⁶ See points 19 and 24 of the Inter institutional Agreement.

3.3. Estimated impact on revenue

- Proposal/initiative has no financial impact on revenue.
- Proposal/initiative has the following financial impact:
 - on own resources
 - on miscellaneous revenue

EUR million (to 3 decimal places)

Budget revenue line:	Appropriations available for the ongoing budget exercise	Impact of the proposal/initiative ³⁷	
		Year 2012*	Year 2013*
6013	pm	42.833	41.524

*the amounts for 2012 and 2013 are in MEURO and are to be considered as indicative figures. The contribution finally requested will take account of corrections over the previous year.

For miscellaneous assigned revenue, specify the budget expenditure line(s) affected.

08 22 04 Appropriations accruing from contributions from (non-European Economic Area) third parties to research and technological development
10 03 02 Appropriations accruing from contributions from (non-European Economic Area) third parties to research and technological development

Specify the method for calculating the impact on revenue.

The proportionality factor governing Switzerland's contribution for the year 2012 and 2013 to the Euratom Research programme, except the Euratom Fusion Programme, shall be obtained by establishing the ratio between Switzerland's gross domestic product, at market prices, and the sum of gross domestic products, at market prices, of the Member States of the European Union.

The proportionality factor governing the Swiss contribution to the Fusion Programme for the year 2012 and 2013 shall continue to be governed on the basis of the Fusion Agreement (Art.11.1) The financial contribution of Switzerland to the EURATOM programme under this Agreement ('78 Agreement) shall be fixed annually at a sum which bears the same relation to Euratom 's share of the cost of the Euratom programme as the Swiss gross domestic product bore to the total gross domestic product of both Euratom and Switzerland in the antepenultimate year.

These ratios shall be calculated on the basis of the latest statistical data from Eurostat, available at the time of publication of the draft budget of the European Union for the same year.

Finally the proportionality factors will be applied to the EU commitment appropriations as adopted by the EU Budgetary Authorities.

³⁷ As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25% for collection costs.