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COMMISSION

HIGH REPRESENTATIVE
OF THE UNION FOR
FOREIGN AFFAIRS AND
SECURITY POLICY

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Joint Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement continuing the International Science and Technology Center between the European Union and Euratom acting as one Party and Georgia, Japan, the Kingdom of Norway, the Kyrgyz Republic, the Republic of Armenia, the Republic of Kazakhstan, the Republic of Korea, the Republic of Tajikistan, and the United States of America

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

REASONS FOR AND OBJECTIVES OF THE PROPOSAL

The overall objective of the non-proliferation policy is to prevent, detect and respond to WMD ('Weapons of Mass Destruction') proliferating activities. There are multilateral conventions and verification mechanisms, bilateral and national legislative frameworks, safeguards, sanctions, export controls, cooperative threat reduction and emergency and response plans in place in order to deal with the proliferation challenges.

Another element of this policy is a set of measures dealing with WMD know-how and high-risk materials and technologies that have the potential for inappropriate and unauthorized use that could result in great harm.

In this context the International Science and Technology Centre ('ISTC') was set up in 1994 after the collapse of the Soviet Union. It was funded together with other Parties (USA, Canada, and Japan) through an international multilateral agreement for the purpose of non-proliferation of scientific and technical expertise related to WMD. Over time, other Parties joined the Agreement, i.e. Armenia, Belarus, Georgia, Kazakhstan, Kirghizstan, Republic of Korea, Norway, Russian Federation and Tajikistan.

The ISTC works at the crossroads between scientific research and non-proliferation, and has funded almost 3000 projects with a total value of over 550 million Euros. The Union contribution amounts to approximately 270 million Euros. In the latest years the concept and the work of the ISTC as a science centre evolved to take into account the changing proliferation landscape, the results of threat analyses and the evolving needs of the parties. The Center increasingly focused on supporting projects aiming at mitigation of broader Chemical, Biological, Radiological and Nuclear risks, not necessarily focused on scientists' redirection, but on promoting bio safety and biosecurity, physical upgrades of laboratories as well as stimulation of networking activities among relevant scientific communities.

Following the 2010 announced withdrawal of the Russian Federation, that becomes effective on 15 July 2015, the Parties agreed that a new Agreement needs to be put in place in order for the Center to effectively fulfil its mandate under changed circumstances.

On 21 October 2013 the Council authorised the Commission to start negotiations, on behalf of the European Union and The Euratom Community (acting as one Party) for the negotiation of an Agreement continuing the International Science and Technology Center ('the Agreement') between the European Union and EURATOM acting as one Party, Georgia, Japan, the Kingdom of Norway, the Kyrgyz Republic, the Republic of Armenia, the Republic of Kazakhstan, the Republic of Korea, the Republic of Tajikistan, and the United States of America, and issued corresponding negotiating directives .

The aims set out in the negotiating directives have been fully met and the comments from the Member States have been taken into account during the negotiations. The draft continuation Agreement was presented at the Council Non-Proliferation Working Group ('CONOP') on 24 February 2014 and to the Atomic Questions Group on 5 February 2014.

Subsequently, the Commission proceeded to the initialling of the draft continuation Agreement. The initialling phase was delayed by some internal procedures in Kazakhstan. In September 2015 the Agreement was initialled by all of the Parties.

Following the initialling of the Agreement, the Commission and the High Representative of the Union for Foreign Affairs and Security Policy made a joint proposal for a Council Decision to approve the signature of the continuation Agreement and to designate the person to sign on the behalf of the Union. In parallel, a similar procedure was launched based on the Euratom treaty. The signature of the Agreement was approved by the Council Decision (EU) 2015/1989[1].

The continuation Agreement was signed by all the Parties on 9 December 2015 in Astana, Kazakhstan.

This current proposal is the last step in the process of the conclusion of the Agreement continuing the International Science and Technology Center. Two parallel procedures are proposed, one for the conclusion of the Agreement under the TEU/TFEU legal bases and a parallel procedure for the conclusion of the Agreement under the EURATOM treaty.

CONSISTENCY WITH EXISTING POLICY PROVISIONS IN THE POLICY AREA

As mentioned in the Thematic Strategy Paper 2014-2020 under the Instrument Contributing to Stability and Peace, there is a need due to the spread of dual use knowledge to focus support from "redirection of scientists" to the development of the concept of "scientists' engagement". Since then, the EU approach has been adapted accordingly, taking also into account the emergence of new information and communication tools allowing easier access to sensitive knowledge and know-how by potential proliferators.

During the years the “human dimension” aspect gradually increased in importance within overall security policy and focused not only on redirection activities but also on towards the need to contain of dual use knowledge and expertise at global level. These aspects became more relevant in the post 9/11 era and ultimately led to the adoption of the UNSCR 1540 of 2004. These developments were also discussed within the framework in the G8 Global Partnership program. In 2009, a G8 Working Group as endorsed by the Summit meeting, adopted a set of recommendations for a coordinated approach in the field of global weapons of mass destruction knowledge proliferation and scientist engagement. It identified the proliferation of WMD expertise or any sensitive knowledge in CBRN ('Chemical, biological, radiological and nuclear') areas as a matter of serious concern. The recommendations made reference to the lessons learned from ISTC to shape appropriate projects outside the G8 countries as a way to contribute to global non-proliferation efforts. The Deauville G8 Declaration extended the Global Partnership Program beyond 2012 identifying scientists’ engagement as a focal area.

The various recommendations were taken into account during the negotiations on the new ISTC continuation Agreement. Its content is in line with the objectives of the UNSCR 1540.

CONSISTENCY WITH OTHER UNION POLICIES

The new continuation Agreement is in line with the EU Security Strategy of 2003 and its revision in 2008 as well as with the Council Conclusions of 2013 on ensuring the continued pursuit of an effective EU policy on the new challenges presented by the proliferation of weapons of mass destruction and their delivery systems. The conclusions call for further strengthening of protection against transfers of sensitive technology and know-how, including dual-use items.

[1] Council Decision (EU) 2015/1989 of 26 October 2015 on the signing, on behalf of the European Union, of the Agreement continuing the International Science and Technology Center (OJ L 290, 6.11.2015, p. 7).

The new Agreement is also consistent with Horizon 2020, in particular the Secure Societies Work Programme promoting applied security research in different sensitive areas. It is also compliant with the content of the relevant Euratom research programmes.

The funding of ISTC is part of the new Instrument contributing to Stability and Peace (IcSP) in particular its Article 5(2). The IcSP has a number of provisions to ensure that overlap of activities and double funding will be avoided. The Commission is under a legal obligation to ensure that measures adopted are consistent with Union and national assistance measures to prevent overlapping in activities and double funding.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

LEGAL BASIS

The legal base for the current proposal was decided after the exchange of view on the proposal of the negotiation directives in relevant Council Working Groups (CONOP, Atomic Questions Group) and COREPER.

This current proposal is based on Article 37 of TEU and on Articles 180 and 218 of TFEU.

A parallel procedure is launched based on Articles 4 and 101 of the Euratom Treaty.

SUBSIDIARITY (FOR NON-EXCLUSIVE COMPETENCE)

The Member States invited the European Union to be a Party to the Agreement due to its capacity to mobilize expertise across the Union, as well as its long standing experience in this field since 1992. The Member States agreed the Union is able to ensure better coordination as well as networking between the stakeholders, especially the scientists, beyond the capability of individual Member States. Some of the risks addressed know no borders (i.e. epidemics or smuggling of dangerous materials) and need to be managed from a regional or a global scale.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND COLLECTION AND USE OF EXPERTISE

EX-POST EVALUATIONS/FITNESS CHECKS OF EXISTING LEGISLATION

The choice was made to continue with an international agreement because it provides a maximum of legal certainty for the Union including financing procedures based on international standards that would guarantee the protection of the financial interests of European Union funds.

Moreover, a number of privileges are obtained which could only be arranged in the framework of a new international agreement such as related to immunities and privileges of EU staff working at the Secretariat in Kazakhstan. Equally, access to institutes to monitor the implementation of EU funded activities is guaranteed, as well as a number of privileges allowing the delivery of the assistance free of taxes such as VAT, duties and other taxes.

STAKEHOLDER CONSULTATIONS

In 2014 the ISTC's Scientific Advisory Committee started a series of meetings with representatives of the scientific communities of the European Union, Japan, USA, and other countries currently members of the ISTC. A number of priorities for future support were

identified in the nuclear, bio and chemical security sectors, but also related to climate change and further scientific networking opportunities.

In February 2015 the Commission organized a meeting deepening the discussions with a team of experts from all the partner countries, including from the Union. The set of priorities were further defined and recommendations were received on funding mechanisms and working modalities, in particular to strengthen the networking approach.

COLLECTION AND USE OF EXPERTISE

The Union position was formulated on the basis of recommendations by in house scientific knowledge at the Commission, as well as by the EEAS. Moreover, advice was provided by a number of high level of Union experts active in this field, in particular those that are participating on the behalf of the Union in the ISTC Scientific Advisory Committee.

Furthermore, a number of expert studies were financed to assess the risks and threats in this field present in the Caucasus and in Central Asia. The results were discussed in a Working Group on Scientist Engagement chaired by the Commission. Its recommendations were followed up.

4. DETAILED EXPLANATION OF THE SPECIFIC PROVISIONS OF THE PROPOSAL

The Center's core objectives as laid down in Article 2 of the continuation Agreement. These objectives are:

(i) to promote the improvement of international mechanisms for the prevention of the proliferation of WMD and their delivery systems, as well as of technologies, materials, and expertise that are key elements directly related to the development, production, use, or enhancement of WMD or their delivery systems (including dual-use technology, materials, and expertise);

(ii) to give scientists and engineers with knowledge and skills applicable to WMD and their delivery systems, including dual-use knowledge and skills, opportunities for training and alternative employment where their knowledge and skills can be used for peaceful activities;

(iii) to promote a culture of security with respect to the handling and use of materials, equipment, and technology which could be used for the design, development, production, or use of WMD or their means of delivery; and

(iv) to contribute through its activities: to the development of international scientific partnership, strengthening global security, and fostering economic growth through innovation; to basic and applied research and technology development and commercialization, inter alia, in the fields of environment, energy, health, and nuclear, chemical, and biological safety and security; and to promoting the further integration of scientists with technologies, material, and expertise applicable to WMD into the international scientific community.

In line with the negotiations directives, the Agreement (Article 10) foresees that all the activities will benefit from the tax-free regime and other tax privileges in the recipient countries.

The funding Parties will have full access to monitor, audit, evaluate and inspect EU funded projects, including inspection of the facilities benefiting from the funding, as set in Article 8 of the Agreement.

Article 12 of the Agreement sets the immunities and privileges for the ISTC staff, including for the staff working on the behalf of the European Union. The text of Article 12 of the Agreement is fully compliant with the provision of Vienna Convention on diplomatic relations of 18 April 1961.

A direct reference to the Vienna Convention cannot be used due to some legal matters raised by Kazakhstan. Therefore, during negotiations this reference was replaced by the exact wording of the relevant provisions of the Vienna Convention.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 37,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 180 and Article 218(6)(a),

Having regard to the proposal from the Commission,

Having regard to the consent of the European Parliament,

Whereas:

(1) In accordance with the Council Decision (EU) 2015/1989[2] the Agreement continuing the International Science and Technology Center between the European Union and Euratom acting as one Party and Georgia, Japan, the Kingdom of Norway, the Kyrgyz Republic, the Republic of Armenia, the Republic of Kazakhstan, the Republic of Korea, the Republic of Tajikistan, and the United States of America ('the Agreement') was signed on 9 December 2015, subject to its conclusion at a later date.

(2) The Agreement should be approved on behalf of the Union.,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement continuing the International Science and Technology Center between the European Union and Euratom acting as one Party and Georgia, Japan, the Kingdom of Norway, the Kyrgyz Republic, the Republic of Armenia, the Republic of Kazakhstan, the Republic of Korea, the Republic of Tajikistan, and the United States of America is concluded on behalf of the European Union.

The text of the Agreement is attached to this Decision.

[2] Council Decision (EU) 2015/1989 of 26 October 2015 on the signing, on behalf of the European Union, of the Agreement continuing the International Science and Technology Center (OJ L 290, 6.11.2015, p. 7).

Article 2

The President of the Council shall designate the person empowered to proceed, on behalf of the European Union, to the notification provided for in Article 17 of the Agreement.

Done at Brussels,

For the Council
The President