



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.10.1998  
COM(98) 575 final

Proposal for a

COUNCIL DECISION

**approving the conclusion by the Commission of an Agreement between the European Atomic Energy Community (EURATOM) and Canada for cooperation in the area of nuclear research**

(presented by the Commission)



## EXPLANATORY MEMORANDUM

**Subject : Proposal for a Council Decision approving the conclusion by the Commission of an Agreement between the European Atomic Energy Community (EURATOM) and Canada for cooperation in the area of nuclear research**

1. On 22 July 1997, the Council authorized the Commission to negotiate an Agreement between the European Atomic Energy Community (EURATOM) and Canada for cooperation in the area of nuclear research.

On that basis negotiations took place which resulted in the attached draft agreement, including its annex on intellectual property treatment, which was initialled in the course of April 1998.

2. The draft agreement, to be concluded for an indefinite period of time, was negotiated against the background of the 1959 Agreement between the Government of Canada and EURATOM for Cooperation in the Peaceful Uses of Atomic Energy, as amended, the 1976 Canada-European Communities Framework Agreement for Commercial and Economic Cooperation, the EC-Canada Agreement for Scientific and Technological Cooperation of 1996 and the Declaration on EC-Canada Relations of 1990 as well as the Joint Political Declaration on EU-Canada Relations and the Joint EU-Canada Action Plan of December 1996.
3. The draft Agreement is based on the principles of mutual benefit, reciprocal opportunities for access to each other's programmes and activities relevant to the purpose of the draft Agreement, non-discrimination, and the effective protection of intellectual property and equitable sharing of intellectual property rights.

Cooperation shall be conducted subject to applicable laws and regulations in force on each side.

4. The draft Agreement provides for :
  - the participation of persons and legal entities, including the Parties themselves, universities, research institutions, and other bodies or undertakings, in each other's research projects or in agreed multilateral projects, the latter under certain conditions and this in a restricted number of nuclear research areas
  - specific bilateral cooperative research projects established by the Parties themselves, possibly on the basis of an implementing arrangement;
  - shared use of research facilities;
  - exchange and provision of information and data;

- exchange of reference materials, samples, fuels, equipment and instrumentation;
  - visits and exchanges of scientists, engineers or other appropriate personnel for the purposes of participating in meetings, seminars, symposia, workshops and other research activities relevant to cooperation under this Agreement;
  - exchange of information on practices, laws, regulations and programmes relevant to cooperation under the Agreement;
  - such other activities as may be mutually determined by the Joint Science and Technology Cooperation Committee in accordance with the applicable policies and programmes of the Parties;
  - the endorsement by the Parties of Technology Management Plans as a condition for research projects to proceed, as described in the Annex to the draft Agreement;
  - cooperation activities to be subject to the availability of funds and to the applicable laws and regulations, policies and programmes of Canada and the Community; no transfer of funds will take place;
  - provisions with regard to existing sectoral agreements.
5. As far as the Annex on the dissemination and utilization of information and management, allocation and exercise of intellectual property rights is concerned, both sides have agreed to the same set of rules as annexed to the 1996 EC-Canada Cooperation Agreement for Science and Technology. This text, it may be recalled, reflects the guiding principles laid down in the Joint Declaration of the Council and the Commission of 26 June 1992. The allocation of intellectual property rights under Section I of the Annex shall be in accordance with the applicable laws and regulations on each side, i.e. for the Community, the rules applicable to the EURATOM research programmes.
- The principle of non-discrimination agreed under Article 3 c) should protect Community participants in Canadian programmes and activities against any discriminatory treatment, also in respect of the dissemination and utilization of results, including intellectual property rights. The Joint Science and Technology Cooperation Committee shall, inter alia, review the efficient and effective functioning of the Agreement, including the non-discriminatory treatment of participants.
6. In the light of the above-mentioned considerations the Commission proposes that Council approve the draft Decision set out in Annex.

**Proposal for a  
Council Decision approving the conclusion by the Commission  
of an Agreement between the European Atomic Energy Community (EURATOM)  
and Canada for cooperation in the area of nuclear research**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal presented by the Commission<sup>2</sup>,

WHEREAS the Commission has carried out negotiations in accordance with Council directives, adopted by Council Decision of 22.07.1997, for an Agreement between the European Atomic Energy Community (EURATOM) and Canada for cooperation in the area of nuclear research,

WHEREAS the conclusion by the Commission of that Agreement should be approved,

HAS DECIDED AS FOLLOWS

Sole Article

The conclusion by the Commission of an Agreement between the European Atomic Energy Community (EURATOM) and Canada for cooperation in the area of nuclear research is hereby approved.

The text of the Agreement is attached to this Decision.

Done in Brussels,

For the Council,  
The President

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<sup>2</sup> O.J. No. ....

DRAFT

AGREEMENT  
BETWEEN CANADA AND  
THE EUROPEAN ATOMIC ENERGY COMMUNITY  
FOR COOPERATION  
IN THE AREA OF NUCLEAR RESEARCH

THE GOVERNMENT OF CANADA of the one part hereinafter referred to as "Canada", and the European Atomic Energy Community, hereinafter referred to as "the Community", of the other part both, hereinafter referred to as the "Parties";

CONSIDERING the importance of science and technology for their economic and social development;

RECOGNIZING that Canada and the Community, are pursuing research and technological programmes of common interest in a number of areas of nuclear research, and that mutual benefits may be derived if the Parties facilitate further cooperation;

RECOGNIZING that the Agreement for Scientific and Technological Cooperation Between Canada and the European Community entered into force on 26 February 1996;

NOTING that there has been active cooperation and information exchange in a number of scientific or technological areas under the Canada-European Communities Framework Agreement for Commercial and Economic Cooperation signed in 1976;

NOTING that there has also been active cooperation and information exchange in the area of the peaceful uses of nuclear energy under the Agreement between the Government of Canada and EURATOM for Cooperation in the Peaceful Uses of Atomic Energy signed in 1959, as amended, hereinafter referred to as the "Canada/EURATOM Agreement of 1959";

REAFFIRMING their commitment to mutual cooperation in nuclear research and development as provided for in the Canada/EURATOM Agreement of 1959;

Having regard to the Declaration on European Community-Canada Relations adopted on November 22, 1990 as well as the Joint Political Declaration on Canada-EU Relations and Joint Canada-EU Action Plan of December 17, 1996;

RECALLING that Canada and the Member States of the Community are parties to the Treaty on the Non-Proliferation of Nuclear Weapons and members of the International Atomic Energy Agency;

DESIRING to strengthen cooperation in the peaceful, non-explosive, non military uses of nuclear research and encourage the application of the results of such cooperation to their economic and social benefit;

HAVE AGREED AS FOLLOWS:

## ARTICLE 1

### Purpose

The purpose of this Agreement is to encourage and facilitate cooperation, in fields of common interest in the peaceful, non-explosive, non-military uses of nuclear energy where the Parties are supporting research and development activities to advance science and/or technology relevant to those fields of interest.

## ARTICLE 2

### Definitions

For the purposes of this Agreement:

- a) "Cooperative activity" means any activity carried on under this Agreement, and includes joint research;
- b) "Information" means scientific or technical data, results or methods of research and development stemming from the joint research, and any other information deemed necessary by the participants engaged in cooperative activity, including, where necessary, the Parties themselves;
- c) "Intellectual Property" shall have the meaning defined in Article 2 of the Convention establishing the World Intellectual Property Organization, done at Stockholm, 14 July, 1967;
- d) "Joint research" means research that is financially supported by either or by both Parties and that involves collaboration by participants from both Canada and the Community. All research carried out pursuant to this Agreement shall be joint research;
- e) "Participant" means any person, legal entity, university, research institute or any other body and undertaking participating in a cooperative activity, including the Parties themselves.



## ARTICLE 3

### Principles

Cooperation shall be conducted subject to applicable laws and regulations and on the basis of the following principles:

- a) mutual benefit;
- b) reciprocal opportunities for access to each other's programmes and activities relevant to the purpose of this Agreement;
- c) non-discrimination;
- d) timely exchange of information which may affect the actions of participants in cooperative activities;
- e) effective protection of intellectual property and equitable sharing of intellectual property rights;
- f) balanced realization of economic and social benefits by Canada and the Community in view of the contributions made to cooperative activities by the respective participants and/or Parties.

## ARTICLE 4

### Areas of Cooperation

Cooperation may be pursued in the following areas of research and development:

- 1) nuclear safeguards;
- 2) radioactive waste management, including disposal;
- 3) decommissioning of nuclear facilities;
- 4) radiation protection;
- 5) nuclear reactor safety;
- 6) controlled nuclear fusion.

## ARTICLE 5

### Modalities of Cooperation

- a. Cooperation may include but is not limited to the following activities:
- 1) participation of persons and legal entities, including the Parties themselves, universities, research institutions, and other bodies or undertakings, in each other's research projects or in agreed multilateral projects, in accordance with the rules governing such projects, subject to the consent if required, of the third parties involved;
  - 2) specific bilateral cooperative research projects established by the Parties themselves; possibly on the basis of an implementing arrangement;
  - 3) shared use of research facilities;
  - 4) exchange and provision of information and data;
  - 5) exchange of reference materials, samples, fuels, equipment and instrumentation;
  - 6) visits and exchanges of scientists, engineers or other appropriate personnel for the purposes of participating in meetings, seminars, symposia, workshops and other research activities relevant to cooperation under this Agreement;
  - 7) exchange of information on practices, laws, regulations and programmes relevant to cooperation under the Agreement;
  - 8) such other activities as may be mutually determined by the Joint Science and Technology Cooperation Committee in accordance with the applicable policies and programmes of the Parties.
- b. Except as otherwise agreed by the Parties, joint research projects shall proceed under this Agreement only after the participants in a project have concluded a Joint Technology Management Plan, as indicated in the Annex to this Agreement.

## ARTICLE 6

### Joint Science and Technology Cooperation Committee (JSTCC)

- a) This Agreement shall be administered by the Joint Science and Technology Cooperation Committee composed of representatives of each Party.
- b) The functions of the JSTCC shall be to:
  - 1) promote and review the activities envisaged under the Agreement;
  - 2) authorize activities falling under Article 5 (a.8) as being cooperation to which this Agreement applies;
  - 3) advise the Parties on ways to enhance cooperation consistent with the principles set out in this Agreement;
  - 4) provide a report annually to the Parties on the level, status and effectiveness of cooperation undertaken under this Agreement;
  - 5) review the efficient and effective functioning of the Agreement, and address any disputes between the Parties concerning the interpretation of this Agreement;
  - 6) maintain a list of contact persons for a given area of research.
- c) The JSTCC shall meet approximately once a year, meetings being held alternatively in Canada and the Community. Other meetings may be held as mutually agreed.
- d) Decisions of the JSTCC shall be reached by consensus. Minutes, comprising a record of the decisions and principal points discussed, shall be taken at each meeting. These minutes shall be agreed by those persons selected from each side to jointly chair the meetings. The JSTCC annual report shall be made available to the Joint Cooperation Committee established under the 1976 EC-Canada Framework Agreement for Commercial and Economic Cooperation and appropriate authorities of each Party.

## ARTICLE 7

### Funding

- a) Cooperative activities shall be subject to the availability of funds and to the applicable laws and regulations, policies and programs of Canada and the Community.
- b) Costs incurred by participants in cooperative activities subject to this Agreement shall not require any transfer of funds from one Party to the other.

## ARTICLE 8

### Entry of Personnel and Equipment

Each Party shall take all reasonable steps and use its best efforts, within applicable laws and regulations, to facilitate entry to and exit from its territory of personnel, material and equipment of the participant(s) engaged in or used in cooperative activities under this Agreement.

## ARTICLE 9

### Dissemination and Utilization of Information

The dissemination and utilization of information, and the management, allocation and exercise of intellectual property rights, resulting from joint research under this Agreement, shall be subject to laws and regulations applicable on each side and to the principles set out in the Annex which forms an integral part of this Agreement.

## ARTICLE 10

### Other Agreements and Transitional Provisions

- a) This Agreement shall supersede and replace those provisions of the Canada-European Communities Framework Agreement for Commercial and Economic Cooperation governing existing science and technology collaboration.
- b) This Agreement shall complement the provisions of the Canada/EURATOM Agreement of 1959.

- c) Subject to paragraph 10 (a) above, this Agreement is without prejudice to other existing Agreements or arrangements between the Parties or any Agreement or arrangement between the Parties and third parties.
- d) The activities covered by existing sectoral cooperation agreements and memoranda of understanding between the Parties shall continue to fall under the scope of these agreements or memoranda.
- e) Upon termination of existing sectoral cooperation agreements and memoranda of understanding between the Parties, as provided for in these agreements and memoranda, the Parties will review the situation with a view to including the activities covered by such agreements and memoranda within this Agreement.

## ARTICLE 11

### Territorial Application

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

## ARTICLE 12

### Entry Into Force and Termination

- a) This Agreement shall enter into force on the date on which the Parties have notified each other in writing that their legal requirements for entry into force of this Agreement have been fulfilled.
- b) This Agreement may be amended by agreement of the Parties. Amendments shall enter into force on the date on which the Parties have notified each other in writing that their legal requirements have been fulfilled.
- c) This Agreement may be terminated at any time by either Party upon twelve months written notice. The expiration or termination of the Agreement shall not affect the validity or duration of any arrangements made under it, or any specific rights and obligations that have accrued in compliance with the Annex.

ARTICLE 13

This Agreement is drawn up in duplicable in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, each of those texts being equally authentic.

IN WITNESS WHEREOF the undersigned have signed this Agreement

DONE AT           , this day of           , One thousand nine hundred and ninety

FOR THE GOVERNMENT OF CANADA

FOR THE EUROPEAN  
ATOMIC ENERGY  
COMMUNITY

## ANNEX

### ANNEX ON THE DISSEMINATION AND UTILIZATION OF INFORMATION AND MANAGEMENT, ALLOCATION AND EXERCISE OF INTELLECTUAL PROPERTY RIGHTS

#### I. OWNERSHIP, ALLOCATION AND EXERCISE OF RIGHTS

1. Participants performing joint research shall develop Joint Technology Management Plans (JTMPs) which shall contain, as a minimum, principles in respect of the ownership and use, including publication, of information and Intellectual Property (IP) to be created in the course of the joint research<sup>1</sup>. The JTMPs may be reviewed by the Parties and shall be approved by the responsible funding agency or department of the party involved in financing the research, before the conclusion of any specific research and development cooperation contracts to which they refer. The JTMPs shall be developed taking into account the aims of the joint research, the relative contributions of the participants, the advantages and disadvantages of licensing by territory or for fields of use, requirements imposed by applicable laws, the need for dispute settlement procedures and other factors deemed appropriate by the participants. The rights and obligations concerning the research and information generated by visiting researchers in respect of IP shall also be addressed in the JTMPs.
2. Information or IP created in the course of joint research and not addressed in a JTMP shall be allocated according to the principles set out in I,1 according to the principles set out in that JTMP. In case of disagreement, which cannot be resolved by the agreed dispute resolution procedure, such unallocated information or IP shall be owned jointly by all the participants involved in the joint research from which the information or IP results, and each participant to whom this provision applies shall have the right to use such information or IP for his/her own commercial exploitation with no geographical limitation.
3. In accordance with applicable laws and regulations, each Party shall ensure that the other Party and its participants may have the rights to IP allocated to them in accordance with the principles set out in Section I of this Annex.
4. While maintaining the conditions of competition in areas affected by the Agreement, each Party shall endeavour to ensure that rights acquired pursuant to the Agreement, and arrangements made under it are exercised in such a way as to encourage in particular:

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1. The indicative features of such JTMPs are set out in the Appendix.

- (i) the dissemination and use of information created, disclosed, or otherwise made available, under the Agreement;
- (ii) the adoption and implementation of international standards.

## II. COPYRIGHT WORKS

Copyright belonging to the Parties or to their participants shall be accorded treatment consistent with the Agreement on Trade Related Aspects of Intellectual Property Rights administered by the World Trade Organization.

## III. SCIENTIFIC LITERARY WORKS

Without prejudice to Section IV, unless otherwise agreed in the JTMP, any publication of results of the joint research shall be made jointly by the participants. In addition to the foregoing general rule, the following procedure shall apply:

1. In the case of publication by a Party or public bodies of that Party, of scientific and technical journals, articles, reports, books, including video and software arising from joint research pursuant to the Agreement, the other Party shall be entitled, with written permission from the publisher, to a world-wide, non-exclusive, irrevocable, royalty-free licence to translate, reproduce, adapt and publicly distribute such works.
2. The Parties shall endeavour to disseminate literary works of a scientific character arising from joint research pursuant to the Agreement and published by independent publishers as widely as possible.
3. All copies of a copyright work to be publicly distributed and prepared under this provision shall indicate the names of the author(s) of the work unless an author or authors expressly declines or decline to be named. Copies shall also bear a clearly visible acknowledgement of the cooperative support of the Parties.



#### IV. UNDISCLOSED INFORMATION

##### A. Documentary undisclosed information

1. Participants shall identify at the earliest possible moment, and preferably in the JTMP, the information that it wishes to remain undisclosed in relation to this Agreement, taking into account, among other things, the following criteria:
  - secrecy of the information in the sense that the information is not, as a body or in the precise configuration or assembly of its components, generally known among or readily accessible by lawful means to experts in the field;
  - the actual or potential commercial value of the information by virtue of its secrecy;
  - previous protection of the information in the sense that it has been subject to steps that were reasonable under the circumstances by the person lawfully in control, to maintain its secrecy.
2. Participants shall not normally be required to provide undisclosed information to the Parties. Should the Parties become aware of such information, they shall respect the privileged nature thereof, and It shall not be further disclosed by, within, or between the Parties, without the written consent of the participant(s) to whom the information belongs. These limitations shall automatically terminate when such information is disclosed by the owner, without restriction, to experts in the field.
3. Each Party shall ensure that undisclosed information, communicated between them under the Agreement, and its ensuing privileged nature is readily recognizable as such by the other Party, for example, by means of an appropriate marking or restrictive legend. This also applies to any reproduction of the said information, in whole or in part.
4. Undisclosed information communicated under the Agreement, and received from the other Party, may be disseminated by the receiving Party to persons within or employed by the receiving Party and other concerned departments or agencies of the receiving Party authorized for the specific purposes of the joint research underway, provided that any undisclosed information so disseminated shall be pursuant to a written agreement of confidentiality and shall be readily recognizable as such, as set out above.
5. With the prior written consent of the Party providing undisclosed information under the Agreement, the receiving Party may disseminate such undisclosed information more widely than otherwise permitted in Paragraph 4 above. The Party shall cooperate in developing procedures for requesting and obtaining prior written

consent for such wider dissemination, and each Party will grant such approval to the extent permitted by its domestic policies, regulations and laws.

B. Non documentary undisclosed information

Non-documentary undisclosed or other confidential or privileged information provided in seminars and other meetings arranged under the Agreement, or information arising from the attachment of staff, use of facilities, or joint projects, shall be treated by the Parties or their participants according to the principles specified in Section IV A above, provided, however, that the recipient of such undisclosed or other confidential or privileged information has been made aware in advance and in written form of the confidential character of the information to be communicated.

C. Control

Each Party shall make its best efforts to ensure that undisclosed information received by it under the Agreement shall be controlled as provided therein. If one of the Parties becomes aware that it will be, or may reasonably be expected to become, unable to meet the non-dissemination provisions of Paragraphs A and B above, it shall immediately inform the Party likely to be affected by the dissemination. The Parties involved shall thereafter consult to define an appropriate course of action.

INDICATIVE FEATURES OF A JOINT TECHNOLOGY MANAGEMENT PLAN (JTMP)

The JTMP is a specific contract to be concluded between the participants in joint research defining their respective rights and obligations. With respect to Intellectual Property Rights, the JTMP will normally address, inter alia: ownership, protection, user rights for research and development purposes, exploitation and dissemination, including arrangements for joint publication, the rights and obligations of visiting researchers and dispute settlement procedures. The JTMP may also address foreground and background information, the rules governing disclosure of undisclosed information, licensing and deliverables.



## FINANCIAL STATEMENT

### 1. Title of the operation

International scientific cooperation : Agreement with Canada for cooperation in the area of nuclear research.

### 2. Relevant budget headings

Travel costs for EC officials will be charged to the specific budget headings of the programmes within the Framework Programme of Community activities in the field of research and training for the European Atomic Energy Community (1994-1998) and possible subsequent similar Framework Programmes.

Budget items concerned :    B6-8111 : Nuclear fission safety  
                                      B6-8121 : Controlled thermonuclear fusion

### 3. Legal basis

Article 101, paragraph 2, Euratom Treaty  
Council Decision 96/253/Euratom of 4 March 1996  
Council Decision 94/268/Euratom of 26 April 1994

### 4. Description of the operation

#### 4.1. Specific objectives of the operation

The essential objective is to stimulate RTD cooperation between EURATOM and Canada in terms of research projects covered by the framework programme and in the sectors covered by the Agreement.

#### 4.2. Duration

Unspecified : ongoing annual budget entry (the cooperation agreement includes a clause by which either or both parties can give notice of terminating the agreement), but subject to annual budget disponibilities.

### 5. Classification of the expenditure

#### 5.1. Non-compulsory expenditure

#### 5.2. Differentiated appropriations

## 6. Type of expenditure

Financing of missions to Canada by Commission officials; organisation of workshops, seminars and meetings in Europe and Canada.

## 7. Financial impact

### 7.1. Method of calculating the total annual cost of the operation (estimate)

Implementing activities, technical information exchange meetings and workshops, review of the cooperation : meetings of the Joint Science and Technology Cooperation Committee, visits of officials and experts to Canada Estimate : 55.000 Ecus/year

### 7.2. Multi-annual schedules of the EAEC Framework Programme (MECU)<sup>1</sup>

	1995	1996	1997	1998	1999	2000 +	TOTAL
C.A.	418.034	346.296	285.147	286.523	-	-	1.336.000
P.A.	227.459	331.576	278.645	281.587	123.661	93.072	1.336.000

## 8. Anti-fraud measures

There are many administrative and financial controls at each stage of the signature and implementation of research contracts. Among these controls are the following :

### At the stage prior to the conclusion

- Initial selection of proposals based on the scientific merit of the project and on the realism of research costs relative to the content, duration of the project and its potential implications.
- Analysis of financial details submitted by the proposers in the contract negotiation form.

### After signature of the contract

- Examination of expenditure at a number of levels (financial officer, scientific officer) before payment.
- Internal audit performed by the Financial Controller.

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<sup>1</sup> As proposed in the Preliminary Draft General Budget of 1997.

- On-site audit, which should allow the detection of errors and other irregularities by examination of supporting documents. In order to improve the efficiency of these controls, the Commission services have established an audit unit which coordinates all controls taking place. These controls are carried out either by members of this audit unit or by audit firms with which the Commission has concluded a contract, under the supervision of personnel from this audit unit.
- On the spot inspections made by the Financial Controller of the Commission and by the Court of Auditors of the European Union.

## 9. Cost-effectiveness analysis

### 9.1. Specific objectives, target population

- The agreement is designed to enable the Community and Canada to profit on the basis of the principle of mutual benefit, from the scientific and technical progress achieved under their reciprocal research programmes, via the participation of the Canadian scientific community and industrial sector in the Community's research projects and via the independent and non-subsidised participation of bodies established in the Community in Canadian research projects;
- beneficiaries in the EAEC and Canada will be the scientific communities, the industrial sector and the general public, thanks to the direct and indirect effects of cooperation.

### 9.2. Justification of the operation

Community budget intervention is indispensable because the planned cooperation comes under the implementation of the framework programme, including the budgetary section : participation by Canada in certain specific programmes and administrative expenditure on the European side (missions by Community officials, organisation of seminars in the Community and Canada).

### 9.3. Monitoring and evaluation of the operation

An evaluation of all the cooperation activities in the context of this agreement will be made by the Commission's departments at the end of each year.

## 10. Implications for administrative expenditure

- The Commission is not requesting any additional posts for the management of the Agreement.
- No officials are being specifically assigned to manage the Agreement. It will be managed by the staff authorised for the specific programmes of the EAEC Framework Programme.



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# DOCUMENTS

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