



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.01.1998
COM(1998) 13 final

Proposal for a
COUNCIL DECISION

approving amendments to the Statutes of the Joint European Torus (JET), Joint Undertaking

(presented by the Commission)

EXPLANATORY MEMORANDUM

JET is a Joint Undertaking within the meaning of Chapter V of Title Two of the Euratom Treaty, established by Decision 78/471/Euratom¹ of the Council of the European Communities. The Statutes of the Joint Undertaking, Joint European Torus (JET) were adopted by the same Decision. The Joint Undertaking is currently established (Council Decision 96/305/Euratom²) until 31 December 1999.

Amendments to the Statutes

Amendment of the regulations applicable to the staff of the Project Team

1. In its judgment of 12 December 1996 (Joined Cases T-177/94 and T-377/94, the Court of First Instance held that *"Article 8.4 and 8.5 of the Statutes, the supplementary provisions implementing them and the administrative rules intended to give effect to them are illegal in so far as they establish or help to maintain a difference in treatment that is without objective justification and is thus unlawful, as between two categories of JET staff, depending on the member organization making the staff concerned available to the Joint Undertaking, in particular as regards prospects of recruitment to the service of the Communities"*. The JET Council has confirmed that the JET statutes should be amended.

Acting on the judgment of the Court of First Instance, at its meeting of 22 and 23 October 1997, the JET Council approved a proposal to amend Articles 4 and 8 of the JET Statutes, aimed at replacing the provisions concerning the composition of the Project Team by a new uniform system of secondment of personnel from the Members of the Joint Undertaking having Association Contracts with Euratom, or limited duration contracts in the framework of the Euratom Fusion Programme in Member States where there is no Association. This personnel will remain in the employment of these organizations. These provisions, which will apply only to new personnel made available by the organizations concerned, will have no effect on the situation of the staff currently assigned to the Project Team by the Commission and by the UKAEA.

The JET Council invited the Commission to submit the proposed amendments to the Council of the European Union for approval.

2. It should be noted that the supplementary implementing provisions (entitled "Supplementary Rules concerning the Assignment and Management of the Staff of the JET Joint Undertaking") should also be amended to bring these provisions into line with

¹ OJ No L 151, 7.6.1978, p.10.

² OJ No L 117, 14.5.96, p.9.

the proposed amendments to Article 8 of the JET Statutes when the latter have been adopted. The proposed new Article 8.5 provides that the adoption of these supplementary provisions should remain in the competence of the JET Council as in the past. These provisions should also cover the transitional provisions for Project Team staff assigned to the Joint Undertaking by the Commission and by the UKAEA, as well as the rules applicable to the secondment of personnel from the Parent Organizations to the Joint Undertaking.

Amendments of the membership of the Joint Undertaking JET

3. The Forschungszentrum Jülich GmbH (KFA, Federal Republic of Germany), a Member of the Joint Undertaking, gave notice to the Project Director on 9 December 1996 of its intention to withdraw from the Joint Undertaking. Under Article 20.2 of the JET Statutes this withdrawal should take effect on 31 December 1997, i.e. at the end of the financial year following that in which notice of withdrawal was given. At its meeting of 19 - 20 March 1997, in accordance with Article 20.3 of the JET Statutes, the JET Council decided that the Joint Undertaking should continue.

At the same time, the Forschungszentrum Karlsruhe (FZK, Federal Republic of Germany) sent to the Director of the JET Project a request for membership of the Joint Undertaking with effect from 1 January 1998. As provided for in Article 18 of the Statutes, this request was transmitted to the JET Council.

At its meeting of 19-20 March 1997, the JET Council agreed and invited the Commission to submit to the Council of the European Union the proposal to amend the Statutes required for this withdrawal and this new membership.

4. Following the conclusion of a Contract of Association between Euratom and the Dublin City University (DCU) which was concluded on 19 August 1996, the Irish authorities requested the Director of the Project the replacement of Ireland, a current member of the Joint Undertaking, by the DCU.

In addition, the Portuguese authorities requested the Director of the project the replacement of the Junta Nacional de Investigação Científica e Tecnológica (JNCIT), a current member of the Joint Undertaking, by the Instituto de Cooperação Científica e Tecnológica Internacional (ICCTI).

The JET Council approved these requests (at its meetings of 19-20 June and 22-23 October 1997 respectively) and invited the Commission to submit to the Council of the European Union the corresponding amendments to the Statutes.

5. Following the accession of Austria to the European Union on 1 January 1995, the Österreichische Akademie der Wissenschaften (ÖAW) applied for membership of the Joint Undertaking. In accordance with Article 18 of the Statutes, this request was transmitted to the Project Director, who transmitted it to the JET Council. After consultation of its Members by written procedure in accordance with Article 6.2 of the

Rules of Procedure of the JET Council, the latter agreed to the amendments of the Statutes required for the admission of the new Member and invited the Commission to submit these amendments to the Council of the European Union.

Other amendments

6. Article 22.2 of the JET Statutes refers to the UK Companies Act 1948 and 1967. These Acts were replaced by the UK Companies Act 1985 and 1989. In its report on the 1996 accounts of JET, the Court of Auditors recommended that this amendment be made to the JET Statutes. At its meeting of 22-23 October 1997, the JET Council invited the Commission to submit to the Council of the European Union the necessary modifications to the JET Statutes.

7. The proposed amendments refer to the following Articles of the JET Statutes:

a) In the list of members of the Joint Undertaking referred to in Article 1.3:

the Forschungszentrum Jülich GmbH (KFA) should be replaced by the Forschungszentrum Karlsruhe (FZK);

Ireland should be replaced by the Dublin City University (DCU);

the Junta Nacional de Investigação Científica e Tecnológica (JNICT) should be replaced by the Instituto de Cooperação Científica e Tecnológica Internacional (ICCTI);

the name of the Austrian Member, the Österreichische Akademie der Wissenschaften (ÖAW), should be inserted.

b) Article 4.1.1 which stipulates the composition of, and the voting rights in the JET Council should be modified as follows:

Changes that do not affect the number of representatives or the number of votes

In the line "IPP and KFA jointly", the acronym KFA is replaced by the acronym FZK.

In the line "Ireland", Ireland is replaced by the acronym DCU.

In the line "JNICT", the acronym JNICT is replaced by the acronym ICCTI.

Changes that affect the number of representatives and the number of votes

The acronym ÖAW shall be inserted in the "Representing" list. Like all States represented in the JET Joint Undertaking, Austria will have two representatives. These two representatives will together have two votes. This change will bring the total number of votes in the JET Council from 45 to 47.

- c) The total votes required for the adoption of acts, as stipulated in Article 4.1.2, will be increased from 30 to 31.
 - d) Article 4.2.2 (d) should be amended to bring it into line with the new provisions of Article 8. Articles 8.1, 8.3, 8.4, 8.5, and 8.7 should be replaced by the proposed new provisions. Articles 8.8 and 8.9 should be deleted.
 - e) In Article 22.2 the reference to the UK Companies Act 1948 and 1967 will be replaced by a reference to the UK Companies Act 1985 and 1989.
8. Pursuant to Article 24.2 of the JET Statutes (in accordance with Article 50 of the Euratom Treaty), only the Commission is empowered to submit these amendments to the Statutes of the JET Joint Undertaking to the Council of the European Union for approval.

Participation by Euratom in the financing

9. These amendments have no financial impact on the Community budget

Proposed Decision

Pursuant to Article 24.2 of the JET Statutes (in accordance with Article 50 of the Euratom Treaty, these amendments to the Statutes require the approval of the Council of the European Union.

Consequently, the Commission proposes that the Council:

- adopts the attached Decision approving the amendments to the Statutes of the Joint European Torus (JET), Joint Undertaking.

PROPOSAL
for a
COUNCIL DECISION

approving amendments to the Statutes of the Joint European Torus (JET), Joint Undertaking

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 50 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament¹,

Having regard to the opinion of the Economic and Social Committee²,

Whereas, for the purpose of implementing the JET Project, the Council, by Decision 78/471/Euratom³, established the Joint European Torus (JET), Joint Undertaking, and adopted the Statutes thereof, as last amended by Decision 96/305/Euratom⁴;

Whereas, Articles 4 and 8 of the JET Statutes should be amended following the judgment of the Court of First Instance of 12 December 1996 in Joined Cases T-177/94 and T-377/94;

Whereas, the Forschungszentrum Jülich GmbH (KFA) has given notice of its withdrawal from the Joint Undertaking from 31 December 1997; whereas the Forschungszentrum Karlsruhe (FZK) has applied for membership of the Joint Undertaking from 1 January 1998; whereas the JET Council has approved this withdrawal from and application for membership of the Joint Undertaking and the amendments required thereby;

Whereas, following the conclusion of a Contract of Association between Euratom and the Dublin City University (DCU), the Dublin City University is replacing Ireland as Member of the Joint Undertaking; whereas the Instituto de Cooperação Científica e Tecnológica Internacional (ICCTI) is replacing the Junta Nacional de Investigação Científica has approved the amendments to the Statutes required by these changes;

Whereas, following the accession of Austria to the European Union, the Österreichische Akademie der Wissenschaften (ÖAW) has applied for membership of the Joint Undertaking; whereas the JET Council has approved this application for membership of the Joint Undertaking and the amendments to the Statutes required thereby;

¹ OJ No..

² OJ No.....

³ OJ No L 151, 7.6.1978, p.10.

⁴ OJ No L 117, 14.5.1996, p.9.

Whereas the JET Council has approved another amendment to the Statutes required by the adoption of the new UK Companies Act 1985 and 1989,

HAS DECIDED AS FOLLOWS:

Article 1

The amendments to the Statutes of the 'Joint European Torus (JET), Joint Undertaking', annexed to this Decision, are hereby approved.

Article 2

This Decision shall enter into force on the day following that of its publication in the Official Journal of the European Communities.

Done at,.....

For the Council

The President

ANNEX

1. Article 1.3 of the Statutes of the 'Joint European Torus (JET), Joint Undertaking' shall be replaced by the following:

'1.3 The Joint Undertaking shall have the following Members:

The European Atomic Energy Community (hereinafter referred to as "Euratom"),

The Belgian State (hereinafter referred to as "Belgium"), acting for its own part ("Laboratoire de physique des plasmas of the Ecole Royale Militaire - Laboratorium voor plasmaphysica van de Koninklijke Militaire School") and on behalf of the "Université libre de Bruxelles" ("Service de physique statistique, plasmas et optique non linéaire de l'ULB") and of the "Centre d'Etude de l'Energie Nucléaire" (CEN)/"Studiecentrum voor Kernenergie" (SCK),

the "Centro de Investigaciones Energéticas Medioambientales y Tecnológicas", Spain (hereinafter referred to as "CIEMAT"),

the "Commissariat à l'Energie Atomique", France (hereinafter referred to as "CEA"),

the "Ente per le Nuove Tecnologie, l'Energia e l'Ambiente" (hereinafter referred to as "ENEA" which since 1 January 1986, has represented all Italian activities falling within the Euratom Fusion Programme including that of the "Consiglio Nazionale delle Ricerche", CNR),

the Hellenic Republic (hereinafter referred to as "Greece"),

the "Forschungszentrum Karlsruhe", Federal Republic of Germany (hereinafter referred to as "FZK"),

the "Forskningscenter Risø", Denmark, (hereinafter referred to as "Risø"),

the Grand Duchy of Luxembourg (hereinafter referred to as "Luxembourg"),

the "Instituto de Cooperação Científica e Tecnológica Internacional, Portugal, (hereinafter referred to as "ICCTI"),

the "Dublin City University", Ireland (hereinafter referred to as "DCU")

the "Max-Planck-Gesellschaft zur Förderung der Wissenschaften e.V.- Institut für Plasmaphysik", Federal Republic of Germany (hereinafter referred to as "IPP"),

the "Swedish Natural Science Research Council" (hereinafter referred to as "NFR"),

the Swiss Confederation (hereinafter referred to as "Switzerland"),

the "Stichting voor Fundamenteel Onderzoek der Materie", the Netherlands (hereinafter referred to as "FOM"),

the "United Kingdom Atomic Energy Authority" (hereinafter referred to as "the Authority" or "the Host Organization"),

The "Technology Development Centre of Finland" (hereinafter referred to as "TEKES"),

the "Österreichische Akademie der Wissenschaften" (hereinafter referred to as "ÖAW").

2. Article 4.1.1 and 4.1.2 shall be replaced by the following:

4.1.1 The Members of the Joint Undertaking shall be represented in the JET Council as follows, the vote of each pair of representatives being weighted as indicated:

Representing	Number of representatives	Weighting of vote
Euratom	2	5
Belgium	2	2
CIEMAT	2	3
CEA	2	5
ENEA	2	5
Greece	2	1
Risø	2	2
Luxembourg	2	1
DCU	2	1
ICCTI	2	2
IPP and FZK jointly	2	5
NFR	2	2
Switzerland	2	2
FOM	2	2
Authority	2	5
TEKES	2	2
ÖAW	2	2

4.1.2 For their adoption, acts of the JET Council shall require at least 31 votes in favour.'

3. Article 4.2.2. (d) shall be replaced by the following:

'(d) nominate the Director and the senior staff of the Project and determine their period of secondment, approve the main structure of the Project Team and decide the procedures for the secondment and management of staff;'

4. Articles 8.1, 8.3, 8.4, 8.5, and 8.7 shall be replaced by the following:

'8.1 The Project Team shall assist the Director of the Project in the performance of his duties. Its staff shall be fixed in the staff establishment as defined in the annual budget. It shall be composed of staff coming from the Members of the Joint Undertaking as provided for in Article 8.3.'

8.3 The Members of the Joint Undertaking having association contracts with Euratom, or limited duration contracts in the framework of the Euratom Fusion Programme in Member States where there is no association (hereafter referred to as the Parent Organisation) shall make available to the Joint Undertaking qualified scientific, technical and administrative staff.

8.4 Staff made available by Parent Organisations shall be seconded to the Joint Undertaking and shall:

(a) remain throughout the period of secondment in the employment of their Parent Organisations on the terms and conditions of service of those Organisations;

(b) be entitled, throughout the period of their secondment to an allowance as specified in the "Rules applicable to Secondment of Personnel from Parent Organisations to the Joint Undertaking" adopted by the JET Council under Article 8.5.'

8.5 The JET Council shall adopt the detailed procedures for the management of staff (including "Rules applicable to Secondment of Personnel from Parent Organisations to the Joint Undertaking") as well as transitional provisions for Project Team staff assigned to the Joint Undertaking by the Commission and the host organisation prior to the entry into force of the above provisions.'

8.7 All staff expenditure, including reimbursement of staff expenditure incurred by the seconding Parent Organisations and expenditure related to staff assigned to the Joint Undertaking by the Commission and the host organisation prior to the entry into force of the above provisions, shall be borne by the Joint Undertaking.'

5. Articles 8.8 and 8.9 shall be deleted.

6. Article 22.2 shall be replaced by the following:

'22.2. Without prejudice to the provisions of the third paragraph of Article 49 of the Euratom Treaty, for the avoidance of doubt the Joint Undertaking shall not be regarded as a company within the meaning of the Companies Act 1985 and 1989 of the United Kingdom.'

ISSN 0254-1475

COM(98) 13 final

DOCUMENTS

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08 10 15 16

Catalogue number : CB-CO-98-010-EN-C

ISBN 92-78-30103-5

Office for Official Publications of the European Communities

L-2985 Luxembourg