



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.12.1995
SEC(95) 2275 final

**Draft Council decision approving the conclusion
by the Commission of an Exchange of Notes between
the European Atomic Energy Community (Euratom)
and the Government of the United States of America
on transfers of nuclear components.**

(Presented by the Commission)

EXPLANATORY MEMORANDUM

1. Transfers of nuclear components between the U.S.A. and the Community for peaceful use are currently carried out under an Exchange of Notes between the US government and the Commission dating back to 1979 and which complemented the current Euratom/USA Agreement which expires on 31.12.95.
2. The Commission has negotiated a new Agreement for peaceful nuclear co-operation between Euratom and the U.S.A. to replace the current Agreement. The Council gave its approval to the text on 3 August 1995 and the Agreement was signed on 7 November 1995¹ by Mr. Papoutsis and Sir Leon Brittan on behalf of the Commission.
3. The Agreement was negotiated on the basis of Negotiating Directives adopted by the Council on 16 December 1991, which contained provisions aimed at including in the scope of the co-operation, exchanges of nuclear equipment which included nuclear components.
4. During the course of the negotiations it became evident that the inclusion of such specialised components in a framework type agreement was inappropriate. Both Commission and US negotiators concluded therefore that transfers of such components could best be addressed in a separate particular Exchange of Notes outside the main Agreement. The Council, consulted on this conclusion, endorsed it and a relevant Commission statement² was entered into the Council Minutes at the time of the approval of the conclusion of the main Agreement.
5. Thereafter Commission Services re-contacted the U.S. Administration and negotiated the text of an Exchange of Notes (see Attachment). This text provides a framework for transfers between the United States and the Community of nuclear components which are important to industry in a number of Member States, most notably, and as a matter of commercial and practical necessity, by providing the United States with the peaceful use and retransfer assurances it needs for exports of such components. The conclusion of the Exchange of Notes is urgent as it is designed to replace the existing Exchange of Notes which expires on 31.12.1995. As nuclear components were included already with the Directives issued by the Council it is now necessary to

return to the Council for approval of the corresponding Exchange of Notes.

6. In conclusion the Commission considers that the Exchange of Notes complements the new Agreement and complies with negotiating Directives issued by the Council on 16.12.1991 as regards components and therefore invites the Council to approve the Decision set out in the Annex.

1) The texts in languages other than English will be signed shortly.

2) Statement Ad Article 1.1 of the Agreement (Transfers of components). "The Commission confirms that, according to U.S. legislation currently in force, transfers of components from the United States of America to the European Atomic Energy Community can take place outside the framework of an Agreement for co-operation. In this context, "components" do not include major components of a nuclear reactor as defined by the relevant United States export regulations namely reactor pressure vessels, reactor primary coolant pumps, "on line" reactor fuel charging and discharging machines and complete reactor control rod systems"."

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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 draft decision presented by the Commission,

WHEREAS the Commission has carried out negotiations in accordance with Council directives, adopted by Council Decision of 16.12.1991, for an Agreement between the European Atomic Energy Community (Euratom) and the Government of the United States of America,

WHEREAS the conclusion by the Commission of that Agreement has been approved by the Council on 3 August 1995,

WHEREAS, during the negotiations, it was agreed that provisions relating to transfers of nuclear components are to be dealt with by means of a separate Agreement,

WHEREAS, accordingly the Commission has negotiated with the Government of the United States of America such provisions in a separate Exchange of Notes on components,

HAS DECIDED AS FOLLOWS

Sole Article

The conclusion by the Commission of an Exchange of Notes between the European Energy Community (Euratom) and the Government of the United States of America on transfers of nuclear components is hereby approved.

The text of the Exchange of Notes and its Attachments is attached to this Decision.

Done in Brussels

**For the Council,
The President**

Euratom/USA
Exchange of Notes

A. Commission Text

Sir,

I have the honour to refer to the new Agreement for co-operation in the peaceful uses of nuclear energy between the European Atomic Energy Community, hereinafter referred to as the "Community", and the United States of America, which is expected to enter into force early in 1996.

I note that the new Agreement does not provide for the transfers of nuclear components such as reactor pressure tubes, zirconium tubes, reactor internals, reactor control rod drive mechanisms and other components specially designed or prepared for use in a nuclear reactor.

On the other hand, I also note that exports of the above-mentioned components can be carried out outside an Agreement for co-operation provided that certain written assurances are given from the recipient countries.

Therefore in order to set up the conditions for such exports to take place, the Community hereby confirms that these nuclear components, when transferred directly or indirectly from the United States of America to the Community will not be:

1. used for any non-peaceful purpose or for any nuclear explosive device or for research on or development of any nuclear explosive device;
2. retransferred to the jurisdiction of a third country which is not on the list of third countries attached hereto, without the prior consent of the United States of America.

Either Party may propose addition of eligible third countries to the list attached hereto at any time. Additions to the list will be the subject of a joint designation by both the Community and the United States of America. Either Party may delete third countries from the list following consultations with the other Party.

It is understood that nothing in this exchange of notes shall impede the free movement of such nuclear components within the territory of the Community.

I propose that this exchange of notes enter into force on 1 January 1996 and that it remain in force until terminated by joint agreement between the Parties.

I would appreciate your confirmation that you share the understandings recorded in this letter.

Done at Brussels, on 1995.

For the European Atomic Energy Community

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of the Commission of the European Communities

B. Text (confirmation proposed by the U.S.)

The Mission of the United States of America to the European Union presents its compliments to the European Commission and has the honour to acknowledge receipt of Note N° from the European Commission which reads as follows: (*Commission text in A. above*).

The Mission has the honour to confirm that the Government of the United States of America shares the foregoing understandings and agrees that the Commission's Note and this reply shall enter into force on 1 January 1996 and shall remain in force until terminated by joint agreement between the Parties.

The Mission of the United States of America avails itself of this opportunity to renew to the European Commission the assurance of its highest consideration.

Attachment 1

**THIRD COUNTRIES ELIGIBLE TO RECEIVE RETRANSFERS OF
U.S.-OBLIGATED NUCLEAR COMPONENTS**

Australia
Bulgaria
Canada
Czech Republic
Japan
Lithuania
Philippines
Korea, Republic of
Romania
Slovakia (components for VVER Power Stations only)
Switzerland

Taiwan is also an eligible recipient for retransfers of nuclear components.

Note to the Attachment

Neither Party shall delete a recipient from the above list for the purpose of obtaining commercial advantage or of delaying, hampering or hindering the peaceful nuclear programme of the other Party or its peaceful nuclear co-operation with those recipients.