

**National Interest Analysis [2011] ATNIA 20**

**with attachment on consultation**

**Agreement between the Government of Australia and  
the European Atomic Energy Community (Euratom) for Co-operation in the Peaceful  
Uses of Nuclear Energy**

**(Date and place of signature to be confirmed)**

**[2011] ATNIF 13**

## NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

### SUMMARY PAGE

**Agreement between the Government of Australia and  
the European Atomic Energy Community (Euratom) for  
Co-operation in the Peaceful Uses of Nuclear Energy  
(Date and place of signature to be confirmed)  
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#### **Nature and timing of proposed treaty action**

1. It is proposed that Australia enter into the *Agreement between the Government of Australia and the European Atomic Energy Community (Euratom) for Co-operation in the Peaceful Uses of Nuclear Energy* (the proposed Agreement). Under the terms of the proposed Agreement, upon entry into force it will replace the *Agreement between the Government of Australia and the European Atomic Energy Community concerning Transfers of Nuclear Material from Australia to the European Atomic Energy Community* done on 21 September 1981 ([1982] ATS 26, hereinafter referred to as “the 1982 Agreement”), which is due to expire on 15 January 2012. It will also replace: the *Exchange of Notes constituting an Implementing Arrangement, concerning International Obligation Exchanges, to the Agreement between the Government of Australia and the European Atomic Energy Community (Euratom) concerning Transfers of Nuclear Material* done on 8 September 1993 ([1993] ATS 27); the *Exchange of Notes constituting an Implementing Arrangement, concerning Plutonium Transfers, to the Agreement between the Government of Australia and the European Atomic Energy Community (Euratom) concerning Transfers of Nuclear Material* done on 8 September 1993 ([1993] ATS 27); and the *Exchange of Notes constituting an Implementing Arrangement between the Government of Australia and the European Atomic Energy Community (Euratom) concerning Plutonium Transfers under the Agreement between the Government of Australia and Euratom concerning Transfers of Nuclear Material from Australia to Euratom, and accompanying Side Letter No. 2, of 21 September 1981, and the Implementing Arrangement concerning Plutonium Transfers of 8 September 1993* ([1999] ATS 8). Further, the provisions of any bilateral nuclear co-operation agreements in force between Australia and Member States of the European Atomic Energy Community (hereinafter “Member States of the Community”) would be regarded as complementary to the proposed Agreement and would, where appropriate, be superseded by the provisions of the proposed Agreement.

2. Subject to Executive Council approval, Australia expects to sign the proposed Agreement in August or September 2011. The agreed treaty text is being tabled prior to signature to allow sufficient time for the Joint Standing Committee on Treaties (JSCOT) to consider and make a recommendation on binding treaty action prior to the expiry of the 1982 Agreement on 15 January 2012.

3. Pursuant to Article XVIII of the proposed Agreement, the proposed Agreement will enter into force on the date of the latter written notification that internal procedures necessary for its entry into force have been completed by the Parties. It is anticipated that Australia will advise Euratom of its readiness to ratify as soon as practicable after consideration of the proposed Agreement by JSCOT. It is proposed that an exchange of diplomatic notes will be arranged to coincide as closely as possible with, but before, expiry of the 1982 Agreement.

## **Overview and national interest summary**

4. Nuclear co-operation agreements such as the proposed Agreement serve Australia's national interests by enhancing our commercial position as a supplier of uranium and by setting high international standards for its use through the application of strict conditions. All of Australia's bilateral nuclear agreements, including this proposed Agreement with Euratom, provide stringent safeguards and security arrangements designed to ensure Australian uranium is used exclusively for peaceful purposes. By virtue of our extensive network of such agreements, Australia's strict conditions apply to a significant proportion of uranium in peaceful use worldwide, hence contributing to raising overall standards.

5. The proposed Agreement will expand on the provisions of the 1982 Agreement and also take into account the provisions of existing separate bilateral agreements Australia has concluded with Member States of the Community: the United Kingdom ([1979] ATS 11); France ([1981] ATS 23); Finland ([1980] ATS 4); Sweden ([1981] ATS 13); Hungary ([2002] ATS 10) and the Czech Republic [2002] ATS 8). The proposed Agreement also updates the 1982 Agreement to provide for reciprocal obligations on transfers of nuclear material, equipment and technology.

6. The proposed Agreement would govern co-operation in peaceful uses of nuclear energy between the Parties, including reciprocal obligations on transfers and the use and application of non-proliferation safeguards on nuclear material, dual use materials, equipment and technology supplied by the Parties. The proposed Agreement is consistent with Australia's other bilateral nuclear co-operation agreements. This is Australia's first nuclear co-operation agreement to include specific provisions on nuclear safety.

## **Reasons for Australia to take the proposed treaty action**

7. The purpose of the proposed Agreement is to provide a framework for co-operation between the Parties in the peaceful uses of nuclear energy on the basis of mutual benefit and reciprocity and without prejudice to the respective competences of each Party. The proposed Agreement will replace the 1982 Agreement and associated implementing arrangements. Any bilateral nuclear co-operation agreements in force between Australia and Member States of the Community would be regarded as complementary to the proposed Agreement and would, where appropriate, be superseded by the provisions of the proposed Agreement.

8. In addition to maintaining strict safeguards and security arrangements concerning nuclear material and equipment already transferred under the 1982 Agreement, the Government considers that continued co-operation with Euratom under the proposed Agreement will provide clear economic benefits to Australia. Euratom is an international organisation which establishes and administers safeguards designed to ensure that special nuclear materials and other related nuclear facilities, equipment and material are not diverted from peaceful purposes to non-peaceful purposes. Euratom is legally distinct from the European Union (EU) but has the same membership.

9. Euratom has a central place in Australia's network of nuclear co-operation agreements. All of the member states of the European Union accept the jurisdiction of Euratom over their peaceful nuclear activities. All of the non-nuclear-weapon member states of the European Union are signatories to a comprehensive safeguards agreement with the

International Atomic Energy Agency (IAEA) and its associated Additional Protocol which strengthens safeguards. As nuclear-weapon states, France and the United Kingdom have their own separate voluntary offer agreements with the IAEA.

10. Of Australia's total uranium exports, Australia supplies just under one third to the European Union. The European Union is also a major processor of uranium that Australia supplies to other countries. The proposed Agreement will also strengthen the international legal framework supporting ongoing technical co-operation with Euratom by the Australian Nuclear Science and Technology Organisation.

11. More broadly, the proposed Agreement adds to the strong joint commitment of Australia and the European Union to nuclear non-proliferation and to nuclear security, as well as to renewed efforts on nuclear safety. The proposed Agreement refers explicitly to the IAEA Additional Protocol (AP) as part of the proposed Agreement's safeguards framework. This underscores the diplomatic efforts of both Australia and the European Union to promote the AP as part of the internationally recognised safeguards standard.

#### *Nuclear safeguards*

12. Australian uranium and nuclear material derived from its use (such as plutonium) are termed Australian Obligated Nuclear Material (AONM). Australia's bilateral safeguards agreements provide assurance that AONM is used solely for peaceful purposes and is not diverted to nuclear weapons or other military uses. At present, Australia has 22 bilateral safeguards agreements in place, providing for the transfer of AONM to up to 39 countries, plus Taiwan. These agreements complement the IAEA's safeguards system in order to assure the peaceful and non-explosive use of AONM. The agreements also serve Australia's nuclear non-proliferation security interests by establishing a high standard of bilateral safeguards conditions and controls over a significant proportion of the world's uranium in peaceful use. These bilateral agreements require that AONM be subject to IAEA safeguards for the full life of the AONM.

13. The proposed Agreement includes all the essential elements of Australia's policy for the control of nuclear materials. These elements are:

- a) an assurance that AONM supplied to Member States of the Community will be used exclusively for peaceful purposes and will not be used for any military purpose (Article III);
- b) assurance that AONM supplied to Member States of the Community will be subject to the range of safeguards agreements and Additional Protocols established by Euratom in accordance with the Treaty establishing the European Energy Community and the Treaty on the Non-Proliferation of Nuclear Weapons (Article VII);
- c) the provision for fallback safeguards which will apply in the event that, for any reason, IAEA safeguards no longer apply (Article VII);
- d) an assurance that adequate and effective physical protection measures which satisfy accepted international standards are applied to all AONM during use, storage and transport (Article VII);
- e) the requirement for prior Australian consent before any transfer by Euratom of AONM to a third party (Article VII.5 and 6) and for any enrichment to 20% or

more in the isotope uranium-235 (Article V), or reprocessing of AONM (Article VIII and Annex A);

- f) the provision for administrative arrangements to be established between the appropriate governmental authorities of the Parties to ensure the effective implementation of the provisions of the proposed Agreement (including to set out a system of accounting and control for material, equipment and components subject to the proposed Agreement (Article XII);
- g) the right to suspend or terminate in whole or in part co-operation under the proposed Agreement, including the right of the supplier Party to require the return of nuclear material, non-nuclear material, equipment and technology subject to the proposed Agreement if either Party or any Member State of the Community violates any of the material provisions of the proposed Agreement (Article XIV); and
- h) the provision for consultation between the Parties on the application of the proposed Agreement, including prior to the commencement of new enrichment or reprocessing projects relevant to nuclear material subject to the proposed Agreement (Article XV).

14. The Australian Government regards these aspects of the proposed Agreement as integral elements of its broader policy against the proliferation of nuclear weapons. The maintenance of multilateral, regional and bilateral arrangements that operate to counter nuclear proliferation is a matter of high priority for Australia.

### **Obligations**

15. Article III would confirm that nuclear material, non-nuclear material, equipment and technology subject to the proposed Agreement, together with all such items produced as a by-product, would be used for peaceful purposes and would not be used for any military purpose. Article III also outlines the areas and forms of co-operation covered by the proposed Agreement. Among other things, co-operation would include the supply of nuclear material, non-nuclear material and equipment; technology transfer; nuclear safety and radiation protection; safeguards; nuclear research and development activities; organisation and establishment of joint ventures and bilateral working groups; and trade and commercial co-operation relating to the nuclear fuel cycle. Article IX would oblige the Parties to ensure the adequate protection of intellectual property created and technology transferred pursuant to such co-operation.

16. Article IV would oblige the Parties to apply the requirements of the proposed Agreement to all items (i.e. nuclear material, non-nuclear material or equipment) transferred between the Parties, regardless of whether it is transferred directly or through a third country. Article IV would also oblige the Parties to apply the requirements of the proposed Agreement to nuclear material principally or wholly produced or processed from material or items subject to the proposed Agreement or principally or wholly used in equipment subject to the proposed Agreement.

17. Article V would require the written consent of both Parties before enriching uranium to 20% or greater in the isotope uranium-235. (Uranium-235 enriched to 20% or more is known as highly enriched uranium (HEU). HEU is considered a special fissionable material and a direct use material.) Such consent would include the conditions under which the

uranium enriched to 20% or more may be used. This provision is included in all of Australia's safeguards agreements to provide additional controls on this proliferation-sensitive activity.

18. Article VI would oblige any transfer of nuclear material, non-nuclear material or equipment to be carried out in accordance with the relevant international commitments of Euratom, the Member States of the Community and Australia in relation to peaceful uses of nuclear energy and confirms that co-operation under the proposed Agreement is contingent upon the mutually satisfactory application of safeguards and control of nuclear material, non-nuclear material or equipment.

19. Article VI would also require the Parties to assist each other in procurement of nuclear material, non-nuclear material or equipment (to the extent practicable), undertake transfers under fair commercial conditions and not impede implementation of the principle of free movement in the internal market of the European Union. Article VI would also oblige the Parties to only permit retransfers of any items subject to the proposed Agreement in accordance with the framework of the Nuclear Suppliers Group and the Guidelines for Nuclear Transfers prepared by the IAEA.

20. Article VII would oblige the Parties to place all nuclear material subject to the proposed Agreement under their respective safeguards agreements with the IAEA. In the event that IAEA safeguards cease to apply in either Party's jurisdiction, the Parties would be required to arrange immediately for the application of alternative ('fallback') safeguards which conform to IAEA principles and procedures to provide reassurance equivalent to that of the IAEA safeguards system.

21. Article VII would also oblige the Parties to apply physical protection measures in accordance with international guidelines. Furthermore, nuclear safety and waste management will be subject to relevant international conventions. Article VII would also oblige the Parties not to transfer nuclear material subject to the proposed Agreement beyond their territorial jurisdiction unless they have received prior written consent from the other Party or the recipient is included in a pre-approved list of third countries.

22. Article VIII would confirm the Parties' consent to the reprocessing of nuclear fuel containing nuclear material subject to the proposed Agreement, provided such reprocessing takes place in accordance with conditions mutually determined between the Parties (as set out in Annex A).

23. Article X would require the Parties to encourage and facilitate information exchange and to take all appropriate precautions to preserve the confidentiality of information received as a result of the proposed Agreement.

24. Article XII would require the Parties to establish administrative arrangements to ensure the effective implementation of the provisions of the proposed Agreement.

### **Implementation**

25. The legislative framework already in place in relation to nuclear transfers will be sufficient to provide for the terms of the proposed Agreement. However, it will be necessary to promulgate regulations pursuant to the *Nuclear Non-Proliferation (Safeguards) Act 1987* to add the proposed Agreement to the list of 'prescribed agreements' under that Act and to take

similar action under the *Australian Radiation Protection and Nuclear Safety Act 1998*. No changes to the existing roles of the Commonwealth or the States and Territories will arise as a consequence of implementing the proposed Agreement.

### **Costs**

26. The costs associated with the proposed Agreement would be limited to travel to Europe by ASNO officers to facilitate proper operation of the nuclear material accounting system. ASNO expects to be able to manage these costs within its departmental allocation by the Department of Foreign Affairs and Trade.

### **Regulation Impact Statement**

27. The Office of Best Practice Regulation, Department of Finance and Deregulation, has been consulted and confirms that a Regulation Impact Statement is not required.

### **Future treaty action**

28. Article XVII of the proposed Agreement provides that it may be amended by agreement between the Parties. Amendments will enter into force on the date specified by the Parties in an exchange of diplomatic notes confirming that the Parties have completed their respective internal processes. Such amendments would be subject to Australia's domestic treaty-making processes, including tabling in Parliament and consideration by JSCOT.

29. No future legally binding instruments connected with the proposed Agreement are envisaged at this stage. As noted at paragraph 24 above, the proposed Agreement contains provision for the conclusion of administrative arrangements to deal with the details of implementing the proposed Agreement. This provision is standard Australian practice where bilateral nuclear co-operation agreements are in place.

### **Entry into force and duration**

30. Article XVIII of the proposed Agreement provides that it will enter into force upon exchange of notes confirming the completion by the Parties of their respective internal procedures, will remain in force for an initial period of thirty years and will be automatically renewed thereafter for additional periods of ten years each. Either Party is able to terminate the proposed Agreement at the end of the initial 30 year period, or at the conclusion of any additional ten year period, by giving six months' advance written notification to the other Party. Any decision to terminate the proposed Agreement would be subject to Australia's domestic treaty processes. Termination would not release either Party from obligations in respect of nuclear material, non-nuclear material or equipment transferred while the proposed Agreement was in force.

### **Contact details**

Nuclear Security Section  
Bilateral Safeguards Section  
Australian Safeguards and Non-Proliferation Office  
Department of Foreign Affairs and Trade.

## **ATTACHMENT ON CONSULTATION**

### **Agreement between the Government of Australia and the European Atomic Energy Community (Euratom) for Co-operation in the Peaceful Uses of Nuclear Energy (Date and place of signature to be confirmed) [2011] ATNIF 13**

#### **CONSULTATION**

31. The proposed Agreement would not have any general impact on businesses or Commonwealth Government agencies in Australia.

32. A pre-meeting briefing was provided to the States and Territories through the Commonwealth-State/Territory Standing Committee on Treaties for its meeting on 22 September 2010. No comments with respect to this proposed Agreement were registered by the Committee.