

Council Decision (CFSP) 2016/2001 of 15 November 2016 on a Union contribution to the establishment and the secure management of a Low Enriched Uranium (LEU) Bank under the control of the International Atomic Energy Agency (IAEA) in the framework of the EU Strategy against the Proliferation of Weapons of Mass Destruction

COUNCIL DECISION (CFSP) 2016/2001

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on a Union contribution to the establishment and the secure management of a Low Enriched Uranium (LEU) Bank under the control of the International Atomic Energy Agency (IAEA) in the framework of the EU Strategy against the Proliferation of Weapons of Mass Destruction

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 28 thereof,

Having regard to the proposal of the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) On 12 December 2003, the European Council adopted the EU Strategy against the Proliferation of Weapons of Mass Destruction ('the Strategy'), Chapter III of which contains a list of measures to combat such proliferation and which need to be taken both within the Union and in third countries.
- (2) The Union is actively implementing the Strategy and is giving effect to the measures listed in Chapter III thereof, in particular through releasing financial resources to support specific projects conducted by multilateral institutions, such as the International Atomic Energy Agency (IAEA).
- (3) Article IV of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) stipulates the inalienable right of all the Parties to the NPT to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of the NPT. It also stipulates that all the Parties to the NPT undertake to 'cooperate in contributing alone or together with other States or international organizations to the further development of the applications of nuclear energy for peaceful purposes, especially in the territories of non-nuclear-weapon States Party to the Treaty, with due consideration for the needs of the developing areas of the world'.
- (4) Multilateral approaches to the nuclear fuel cycle have the potential to provide countries which have decided to resort to nuclear energy for peaceful uses with an alternative to the development of national nuclear fuel cycles, while avoiding proliferation risks.
- (5) Under Article III of its Statute, the IAEA is authorised to perform any operation, including acquiring nuclear fuel, services and equipment and establishing its own

facilities and plants, in order to facilitate the practical application of nuclear energy for peaceful purposes.

- (6) In September 2006, the Nuclear Threat Initiative (NTI), an independent non-governmental organisation based in the United States, offered a grant of USD 50 000 000 to the IAEA to help create a low enriched uranium stockpile owned and managed by the IAEA on the condition that the Agency should be able to collect an additional amount of USD 100 000 000, including grants from other IAEA Member States and donors, and set up a nuclear fuel reserve.
- (7) On 8 December 2008, the Council adopted conclusions in support of the establishment and the secure management of a nuclear fuel bank placed under the control of the IAEA. It also stated that the Union was planning to contribute up to EUR 25 000 000 to that project, once the conditions and modalities for the Bank have been defined and approved by the IAEA Board of Governors. The European Commission has already provided EUR 20 000 000 for the acquisition of the LEU.
- (8) On 3 December 2010, the IAEA Board of Governors adopted resolution GOV/2010/70 approving the establishment of an IAEA Low-Enriched Uranium (LEU) Bank and affirmed that the IAEA LEU Bank's operations would be funded exclusively through extra-budgetary contributions.
- (9) Paragraph 15 of GOV/2010/67, entitled 'Assurance of Supply': Establishment of an IAEA Low Enriched Uranium (LEU) Bank for the Supply of LEU to Member States provides 'the Agency shall be the owner of the LEU in the IAEA LEU bank and the LEU shall be under its control and in its formal legal possession. The Agency shall be responsible for storing and protecting materials in its possession by ensuring, through any Host State Agreement, that the LEU is safeguarded against natural and other hazards, unauthorized removal or diversion, damage or destruction, including sabotage, and forcible seizure. In addition, the Agency through any Host State Agreement shall ensure the application of IAEA safeguards to the LEU in the IAEA LEU bank, as well as the application of the safety standards and measures, and the physical protection measures by the Host State or States'. Paragraph 16 of GOV/2010/67 further provides that '[t]he Agency, with Board approval, shall conclude with any Host State a Host State Agreement, similar to the present IAEA Headquarters Agreement, that shall provide for the safety and security and appropriate liability coverage of the storage facility and shall afford those privileges and immunities to the Agency that are necessary for the independent operation of the IAEA LEU bank, including the right to transport LEU to and from the IAEA LEU bank as determined by the Agency in accordance with the Statute and the Host State(s) agreement. In addition, if necessary, guaranteed transit arrangements shall be concluded with States neighbouring the Host State'.
- (10) The IAEA LEU Bank will be a stock of up to 60 Type 30B cylinders containing standard commercial low-enriched uranium hexafluoride. The IAEA LEU Bank will be located in the IAEA LEU storage facility, operated by Ulba Metallurgical Plant, and regulated by the Committee for Atomic and Energy Supervision and Control of the Republic of Kazakhstan.

- (11) The basic legal framework between the IAEA and the host State Kazakhstan has been concluded. The Transit Agreement with the Russian Federation, approved by the IAEA Board of Governors (GOV/2015/36) has been signed. The design of a new IAEA LEU storage facility has been completed and the IAEA has concluded that it meets the applicable provisions of the IAEA safety standards and security guidance. A detailed cost estimate of the new IAEA LEU storage facility has been undertaken and has been independently validated. A Partnership Agreement between the IAEA and the facility operator that establishes the terms and conditions of cooperation for the construction of the IAEA LEU storage facility has been finalised. The IAEA is now planning activities in preparation for the acquisition of LEU.
- (12) According to the Project and Financial Plan as described in the updated report by the IAEA Director-General (GOV/INF/2016/8) ‘Assurance of Supply: Establishment of an IAEA Low Enriched Uranium (LEU) Bank for the Supply of LEU to Member States’, the total cost of the LEU project is expected to be EUR 118 863 000,

HAS ADOPTED THIS DECISION:

Article 1

1 For the purposes of giving immediate and practical implementation to some elements of the EU Strategy against the Proliferation of Weapons of Mass Destruction, the Union shall contribute to the establishment and the secure management of a Low-Enriched Uranium (LEU) Bank placed under the control of the International Atomic Energy Agency (‘IAEA’, or ‘the Agency’) in order to reduce the growing proliferation risks caused by the spread of sensitive nuclear fuel cycle technologies. The Union shall undertake activities to support the IAEA LEU Bank, in the form of a LEU reserve with the following objectives:

- a to enable countries to enjoy their rights under Article IV of the NPT while avoiding proliferation risks; and
- b to serve as a mechanism of last resort to support the commercial market without distorting it, in the event that an IAEA member state's supply of LEU is disrupted and cannot be restored by commercial means and that such IAEA Member State fulfils the eligibility criteria.

2 In order to achieve the objectives referred in paragraph 1, the Union shall contribute to the establishment and the secure management of the LEU Bank, under the control of the IAEA, by financing security-related activities, including physical protection, transport, safe guarding, and contributions to the secure management of the LEU Bank. The project shall be carried out for the benefit of all countries which have decided to resort to nuclear energy for peaceful uses.

A detailed description of the project is set out in the Annex.

Article 2

1 The High Representative of the Union for Foreign Affairs and Security Policy (HR) shall be responsible for the implementation of this Decision.

2 The technical implementation of the project referred to in Article 1(2) shall be carried out by the IAEA. It shall perform this task under the control of the HR. For this purpose, the HR shall enter into the necessary arrangements with the IAEA.

Article 3

1 The financial reference amount for the implementation of the activities referred to in Article 1(2) shall be EUR 4 362 200.

2 The expenditure financed by the amount stipulated in paragraph 1 shall be managed in accordance with the procedures and rules applicable to the Union budget.

3 The Commission shall supervise the proper management of the expenditure referred to in paragraph 1. For this purpose, it shall conclude a financing agreement with the IAEA. The agreement shall stipulate that the IAEA is to ensure visibility of the Union contribution, appropriate to its size.

4 The Commission shall endeavour to conclude the financing agreement referred to in paragraph 3 as soon as possible after the entry into force of this Decision. It shall inform the Council of any difficulties in that process and of the date of conclusion of the financing agreement.

Article 4

1 The HR shall report to the Council on the implementation of this Decision on the basis of regular reports prepared by the IAEA. Those IAEA reports shall form the basis for the evaluation carried out by the Council.

2 The Commission shall provide information on the financial aspects of the implementation of the project referred to in Article 1(2).

Article 5

This Decision shall enter into force on the date of its adoption.

It shall expire 60 months after the date of the conclusion of the financing agreement referred to in Article 3(3). However, it shall expire 6 months after its entry into force if no financing agreement has been concluded by that time.

Article 6

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, 15 November 2016.

For the Council

The President

I. KORČOK

ANNEX

Union contribution to the establishment and the secure management of a Low Enriched Uranium (LEU) Bank under the control of the International Atomic Energy Agency (IAEA) in the framework of the EU Strategy against the Proliferation of Weapons of Mass Destruction

I. INTRODUCTION

Background

In December 2010, the IAEA Director-General received a mandate from the Board of Governors to launch the setting-up of a Low Enriched Uranium (LEU) Bank and has presented a detailed plan for its establishment and secure management.

On 20 December 2011, the IAEA confirmed to the Permanent Mission of Kazakhstan to the IAEA that, based on the information provided to the Agency by Kazakhstan in its 'Expression of Interest' and with reference to the requirements set out in document GOV/INF/2011/7, the Ulba Metallurgical Plant (UMP) was suitable as a host site for the IAEA LEU Bank.

Several missions were conducted by the IAEA to Kazakhstan between 2011 and 2016, aimed at assessing the UMP facility and the national regulatory framework, to ensure that the LEU Bank would be able to fulfil the applicable provisions of the IAEA safety standards and security guidance. The assessments were performed in the areas of facility safety, seismic safety, emergency preparedness and response, transport safety and security, and physical protection.

A Host State Agreement (HSA) was signed between the IAEA and Kazakhstan on 27 August 2015. That agreement establishes Kazakhstan as the host state for the IAEA LEU Bank, and provides the legal framework for Kazakhstan to ensure that the IAEA LEU Bank will be managed and regulated in accordance with the laws and regulations of Kazakhstan and in compliance with the applicable provisions of the IAEA safety standards and security guidance.

A facility operator agreement was signed between the IAEA and UMP on 27 August 2015. That agreement establishes UMP as the facility where the IAEA LEU Bank will be located, and provides the legal framework for UMP to operate and manage the IAEA LEU Bank, in accordance with its license, the national regulatory framework, and the applicable provisions of the IAEA safety standards and security guidance.

In addition, the IAEA and Kazakhstan Ministry of Energy signed a Technical Agreement on the specific arrangements to be implemented for the establishment of the IAEA LEU Bank in Kazakhstan ('Technical Agreement'). The Technical Agreement ensures that each party provides the necessary resources for the implementation of its respective activities for the timely establishment of the IAEA LEU Bank, including activities to comply with the applicable provisions of the IAEA safety standards and security guidance. Under the Technical Agreement, the parties established a joint coordination committee (JCC) to facilitate implementation of the Technical Agreement and approved a plan of specific activities (PSA), to ensure the establishment and operation of the IAEA LEU Bank in compliance with the applicable provisions of the IAEA safety standards and security guidance. The Technical Agreement requires that activities be completed in two years following the signing of the legal agreements, or by September 2017.

In November 2015, UMP began designing a new IAEA LEU storage facility to house the IAEA LEU Bank. An IAEA mission visited UMP from 29 February to 4 March 2016 to review design progress. The IAEA mission examined whether or not the applicable provisions of the IAEA safety standards and security guidance had been properly taken into account in the design process. The IAEA mission's review focused on five technical areas: building structure, safety analysis, radiation protection, emergency preparedness and response, and nuclear security.

The review of the proposed design and relevant supporting documentation led to the general conclusion that the design provides adequate measures to ensure nuclear safety and security guidance.

Following the completion of the design and its review by the IAEA, in May 2016 a partnership agreement between the IAEA and UMP was signed. That agreement provides for the technical and financial terms of the establishment of the IAEA LEU Storage Facility. It marks a significant milestone in the establishment of the IAEA LEU Bank.

In May 2016, the Board of Governors report GOV/INF/2016/8 highlighted the significant progress achieved. It also provides the first baseline comprehensive Project and Financial Plan.

Board of Governors Document GOV/2010/67, both authorised the IAEA Director-General to establish the IAEA LEU Bank, and required that the costs (including the human resources costs) related to the establishment and operation of the IAEA LEU Bank must be exclusively covered by extra-budgetary voluntary contributions, with no impact to the regular budget of the IAEA. To that end, the IAEA LEU Bank project reimburses various divisions of the IAEA for the technical input and support provided to the project experts and specialists through the use of Service Level Agreements (SLAs). Those agreements, which define the services to be provided by the divisions to the project to execute the project plan (including the PSA), as well as the costs for the level of support provided from each Division, were finalised and agreed in March 2016.

From 1 April 2016, a number of Member States, the Commission, the Nuclear Threat Initiative (NTI) and the World Nuclear Transport Institute (WNTI) have pledged funds totalling approximately USD 124 900 000 and EUR 25 000 000, and the contributions received by the Agency as of this date are USD 124 900 000 and EUR 20 000 000. Financial contributions have been provided by the Nuclear Threat Initiative (USD 50 000 000), US (USD 50 000 000), UAE (USD 10 000 000), Norway (USD 5 000 000), Kuwait (USD 10 000 000), WNTI (EUR 10 000 000) Kazakhstan (USD 400 000). EUR 20 000 000 donated by the Commission is dedicated to purchase of LEU for the IAEA LEU Bank and up to EUR 5 000 000 have been pledged for security related upgrades. The funds for security related upgrades (up to EUR 5 000 000) are the subject to this Annex.

The next key stages for the IAEA LEU Bank are:

- (a) Finalisation of the establishment of the IAEA LEU storage facility, including completing construction; confirmation that the building and equipment correspond to the design intent and the applicable safety and security provisions;
- (b) Agreement on a cylinder management programme with UMP to ensure long-term safety and security of the cylinders and their readiness for transport;
- (c) Commissioning of the facility;
- (d) Acquisition of the IAEA LEU and transporting it to the storage facility;
- (e) Start of operations.

Objectives of the project

Contributing to the establishment and the secure management of the IAEA LEU Bank, in particular by ensuring high levels of security and safety during transport and storage, in line with the IAEA safety standards and security guidance.

Benefits

The following benefits will be achieved:

- (a) enhancing the assurance of supply of nuclear fuel in a secure and safe manner; and

- (b) assisting the IAEA with ensuring the security and safety of transport of LEU from procurement to supply, as well as during storage at the site of the LEU Bank.

II. DESCRIPTION OF THE ACTIVITIES

The LEU Bank

The IAEA LEU Bank will consist of a physical stock of roughly 90 tonnes of LEU, the quantity needed for one initial load for a modern light water reactor (equivalent to approximately 3 core reloads) for electricity generation, along with related equipment and services. The stock will be owned by the IAEA. The IAEA LEU Bank will operate in accordance with certain non-discriminatory criteria for the release of the LEU to a recipient country. Those criteria are fully compatible with the IAEA Statute and have been approved by the Board of Governors. The nuclear facility using the LEU must be covered by a safeguards agreement with the IAEA, and be in full compliance with that agreement.

Union support

The Union will support the IAEA LEU Bank in a complementary manner through different instruments. A financial contribution of EUR 20 000 000 for LEU acquisition was already provided in 2011 from the Instrument for Stability.

This Decision will contribute to the safe and secure operation and management of the IAEA LEU Bank. Relevant activities foreseen by the IAEA, to which this Decision will contribute financially, may include:

1. Supporting the Safe and Secure Establishment of storage for the 90 tonnes of LEU

This item covers the cost of implementation of the project plan activities, including the plan of specific activities (PSA) for the year 2017 and follow-up activities in 2018. The PSA, agreed between the IAEA, UMP, and the Committee for Atomic and Energy Supervision and Control of Kazakhstan, is a list of activities considered necessary for the upgrading of facilities, equipment, procedures, and practices to ensure that the IAEA LEU Bank will be established, stored, operated and protected in accordance with the relevant provisions of the IAEA safety standards and security guidance. These activities were developed on the basis of several assessments, conducted from 2012 to 2016. In particular, an Agency mission in January 2016 also identified some further extrinsic equipment that will be required to enable the storage facility to be operated in accordance with IAEA Standards for emergency preparedness and response.

Activities include the development of procedures for safe and secure operations, procurement of emergency preparedness and response and radiation protection equipment, and provision of associated training; conducting workshops on security topics relevant for the IAEA LEU Bank (e.g. nuclear security culture); observation of emergency exercises at the facility; and follow-up assessment activities to validate the compliance of upgrades with the relevant IAEA safety standards and security guidance prior to commissioning.

The LEU will only be placed in the IAEA LEU storage facility when the IAEA is satisfied that the IAEA LEU Bank has been established and complies with the applicable provisions of the IAEA safety standards and security guidance. Therefore, the IAEA will undertake a confirmation mission, planned for the summer of 2017, to confirm that the completed building and its key equipment correspond to the design intent and that the full infrastructure needed to meet the applicable safety and security provisions is in place.

Over a period of two years the budget will include the cost of planning, executing, supporting, and reporting on the project plan and PSA activities, inclusive of costs to cover IAEA human resources to ensure that, in accordance with the mandate of the IAEA LEU Bank project, no regular budget funds are used.

2. Ensuring the secure transport of 90 tonnes of LEU

It is expected that the LEU 90 tonnes will be transported from the facility of the vendor, or vendors, to the Ulba Metallurgical Plant, in Oskemen, Kazakhstan, where the IAEA LEU Bank will be located. Shipments of LEU moving through various jurisdictions, must satisfy all documentation, insurance, transit approval, and marking requirements, including States' requirements related to physical protection which are contained in relevant conventions and recommendations developed under the auspices of the IAEA, and the security requirements of the International Maritime Organisation (IMO). Expenditure associated with the transport of the LEU will depend on the geographic location of the LEU vendor and the maritime and overland transport distances between the vendor and Ulba Metallurgical Plant (UMP) in Kazakhstan, and the number of ports of call and border transits required for completing delivery. The item includes the development of technical specifications with IAEA officials and external experts specialist input; the planning and supervision of the transport; insurance; chartering of a maritime transport vessel for enhanced security; consultation on transport route security risk assessment and planning; as well as guarding during maritime transport, ports of call and transit locations.

3. Ensuring the long term storage of the 90 tonnes of LEU

The LEU will be located at a dedicated storage facility within the UMP territory, located in Oskemen, Kazakhstan. The IAEA LEU will be stored in 30B cylinders. The facility operator, on behalf of the IAEA, will be responsible for storing and protecting the LEU, in compliance with the IAEA safety standards and security guidance. This includes the purchase of the 30B cylinders, which will provide physically safe and secure storage of the LEU. Safety studies indicate that these containment vessels provide robust, safe storage for up to 50 years. In addition to providing safety, the thickness of the walls of the cylinders and the overall design of the cylinders contributes to physical protection from sabotage and theft.

A key activity in ensuring the long term storage of the LEU is the implementation of a cylinder management programme, including routine inspection and recertification of 30B cylinders in storage, for compliance with the ISO 7195 standard, as well as for assurance of readiness for transport to Member States. This requires procurement of services for re-certification of cylinders by authorised inspectors as well as services from UMP staff to support the performance of the testing.

In addition, during long-term storage of the IAEA LEU, the IAEA will undertake routine and ad-hoc monitoring activities, including receipt, review, and verification of annual reports from UMP. This will include annual meetings with UMP to review the safety and security activities related to the IAEA LEU Bank, as well as other types of missions to UMP to ensure that the relevant provisions of the IAEA safety standards and security guidance continue to be applied to the IAEA LEU Bank.

This item will cover a period of 5 years.

III. DURATION

The estimated duration of the implementation period of the project is 60 months, starting with the signing of the financing agreement referred to in Article 3.

IV. BENEFICIARIES

The beneficiaries of the project in this Decision are all eligible recipient states of services of the IAEA LEU Bank, fulfilling the conditions for access to the LEU Bank as established by the IAEA Board of Governors.

V. IMPLEMENTING ENTITY

The IAEA will be entrusted with the technical implementation of the project, as described above, under the control of the HR. The project will be implemented directly by staff of the IAEA, experts from other national nuclear authorities and contractors. In the case of contractors, the procurement of any goods, works or services by the IAEA in the context of this Decision will be carried out as detailed in the financing agreement to be concluded by the Commission with the IAEA.

VI. REPORTING

The implementing entity will prepare:

- (a) regular reports on the implementation of the project;
- (b) a final report not later than two months after the end of the implementation of the project.

Reports will be sent to the HR.