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THE EUROPEAN UNION**

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**LEGISLATIVE ACTS AND OTHER INSTRUMENTS**

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Subject: Agreement on scientific and technological cooperation between the European Atomic Energy Community, of the one part, and the Swiss Confederation, of the other part, associating the Swiss Confederation to the Framework Programme of the European Atomic Energy Community for nuclear research and training activities (2012-2013)

**COMMON GUIDELINES**

**Consultation deadline for Croatia: 3.12.2012**

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AGREEMENT  
ON SCIENTIFIC AND TECHNOLOGICAL COOPERATION  
BETWEEN THE EUROPEAN ATOMIC ENERGY COMMUNITY, OF THE ONE PART,  
AND THE SWISS CONFEDERATION, OF THE OTHER PART,  
ASSOCIATING THE SWISS CONFEDERATION TO THE FRAMEWORK PROGRAMME  
OF THE EUROPEAN ATOMIC ENERGY COMMUNITY  
FOR NUCLEAR RESEARCH AND TRAINING ACTIVITIES (2012-2013)

THE EUROPEAN ATOMIC ENERGY COMMUNITY, (hereinafter referred to as 'Euratom'),

Represented by the European Commission (hereinafter referred to as the Commission),

of the one part, and

THE SWISS CONFEDERATION, (hereinafter referred to as 'Switzerland'),

represented by the Swiss Federal Council,

of the other part,

hereinafter referred to as 'the Parties',

CONSIDERING that the close relationship between Switzerland and Euratom is of benefit to the Parties;

CONSIDERING the importance of scientific and technological research for the Parties and their mutual interest in cooperating in this matter in order to make better use of resources and to avoid unnecessary duplication;

WHEREAS the Parties are currently implementing research programmes in fields of common interest;

WHEREAS the Parties have an interest in cooperating on these programmes to their mutual benefit;

CONSIDERING the interest of the Parties in encouraging the mutual access of their research entities to research, technological development and training activities;

WHEREAS the European Atomic Energy Community and Switzerland concluded a Cooperation Agreement in 1978 in the field of controlled thermonuclear fusion and plasma physics (hereinafter referred to as 'the Fusion Agreement');

WHEREAS the Parties concluded a Framework Agreement on 8 January 1986 for scientific and technical cooperation (hereinafter referred to as 'the Framework Agreement'), which entered into force on 17 July 1987;

CONSIDERING that Article 6 of the Framework Agreement states that the cooperation aimed at by the Framework Agreement is to be carried out through appropriate agreements;

WHEREAS on 25 June 2007 the European Union and Switzerland signed an Agreement on Scientific and Technological Cooperation, which entered into force on 28 February 2008 and was retroactively applied as of 1 January 2007;

CONSIDERING that Article 9(2) of the abovementioned Agreement provides for renewal or renegotiation of the Agreement with a view to participation in new multi-annual Framework Programmes for research and technological development, under mutually agreed conditions;

WHEREAS the Framework Programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities (2012-2013), also contributing to the creation of the European Research Area was adopted by Council Decision 2012/93/Euratom<sup>1</sup>, Regulation (Euratom) No 139/2012<sup>2</sup> and Council Decisions 2012/94/Euratom<sup>3</sup> and 2012/95/Euratom<sup>4</sup> (hereinafter referred to as the 'Euratom Framework Programme 2012-2013');

WHEREAS subject to the provisions of the Treaty establishing the European Atomic Energy Community, this Agreement and any activities entered into under it will not affect the powers vested in the Member States to undertake bilateral activities with Switzerland in the fields of science, technology, research and development, and to conclude, where appropriate, agreements to that end;

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<sup>1</sup> OJ L 47, 18.2.2012, p. 25.

<sup>2</sup> OJ L 47, 18.2.2012, p. 1.

<sup>3</sup> OJ L 47, 18.2.2012, p. 33.

<sup>4</sup> OJ L 47, 18.2.2012, p. 40.

WHEREAS Euratom concluded the Agreement on the establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER project. Pursuant to its Article 21 and the Agreements in the form of an Exchange of Letters between the European Atomic Energy Community and the Swiss Confederation on the application of the ITER Agreement, the Agreement on Privileges and Immunities for ITER and the Broader Approach Agreement to the territory of Switzerland and on Switzerland's membership in the European Joint Undertaking for ITER and the Development of Fusion Energy of 22 November 2007 the Agreement applies to Switzerland participating in the Euratom fusion programme as fully associated third State;

WHEREAS Euratom is a member of the European Joint Undertaking for ITER and the Development of Fusion Energy established by the Council Decision of 27 March 2007. Pursuant to Article 2 of this Decision and the Agreements in the form of an Exchange of Letters between the European Atomic Energy Community and the Swiss Confederation on the application of the ITER Agreement, the Agreement on Privileges and Immunities for ITER and the Broader Approach Agreement to the territory of Switzerland and on Switzerland's membership in the European Joint Undertaking for ITER and the Development of Fusion Energy of 22 November 2007 Switzerland became a member of the Joint Undertaking as a third State having associated its research programme to the Euratom fusion programme;

WHEREAS Euratom concluded the Agreement between the European Atomic Energy Community and the Government of Japan for the Joint Implementation of the Broader Approach Activities in the Field of Fusion Energy Research. Pursuant to its Article 26 the Agreement applies to Switzerland participating in the Euratom fusion programme as fully associated third State.

HAVE AGREED AS FOLLOWS:

## ARTICLE 1

### Subject matter

1. The Swiss participation in the implementation of the Euratom Framework Programme 2012-2013 shall be as laid down in this Agreement, without prejudice to the terms of the Fusion Agreement.

Legal entities established in Switzerland may participate in all the specific programmes of the Euratom Framework Programme 2012-2013.

2. Swiss legal entities may participate in the activities of the Joint Research Centre of the European Union, as far as this participation is not covered by paragraph 1.

3. Legal entities established in the European Union, including the Joint Research Centre, may participate in research programmes and/or projects in Switzerland on themes equivalent to those of the programmes of the Euratom Framework Programme 2012-2013.

4. For the purposes of this Agreement 'legal entity' means any natural or any legal person created under the national law at its place of establishment or under European Union law, having legal personality and being entitled to have rights and obligations of any kind in its own name. This shall include, *inter alia*, universities, research organisations, industrial companies, including small and medium-sized enterprises, and individuals.



## ARTICLE 2

### Forms and means of cooperation

Cooperation shall take the following forms:

1. Participation of legal entities established in Switzerland in all specific programmes adopted under the Euratom Framework Programme 2012-2013, in accordance with the terms and conditions laid down in the rules for the participation of undertakings, research centres and universities in research and training activities of the European Atomic Energy Community.
2. Financial contribution by Switzerland to the budget of the programmes adopted for the implementation of the Euratom Framework Programme 2012-2013, as defined in Annex B.
3. Participation of legal entities established in the European Union in Swiss research programmes and/or projects decided by the Federal Council on themes equivalent to those of the Euratom Framework Programme 2012-2013, in accordance with the terms and conditions laid down in the relevant Swiss regulations and with the agreement of the partners in the specific project and the management of the corresponding Swiss programme. Unless relevant Swiss regulations foresee otherwise, legal entities established in the European Union and participating in Swiss research programmes and/or projects shall cover their own costs, including their relative share of the project's general management and administrative costs.

4. In addition to timely provision of information and documentation concerning the implementation of the Euratom Framework Programme 2012-2013 and of the Swiss programmes and/or projects, the cooperation between the Parties may include the following forms and means:

- (a) regular exchanges of views on research policy guidelines and priorities and plans in Switzerland and in Euratom;
- (b) exchanges of views on the prospects and development of cooperation;
- (c) timely exchanges of information on the implementation of the research programmes and projects in Switzerland and in Euratom and on the results of the work undertaken under this Agreement;
- (d) joint meetings;
- (e) visits and exchanges of researchers, engineers and technicians;
- (f) regular contacts and follow-up between programme or project leaders in Switzerland and in Euratom;
- (g) participation by experts in seminars, symposia and workshops.

## ARTICLE 3

### Adaptation

Cooperation may be adapted and developed at any time by mutual agreement between the Parties.

## ARTICLE 4

### Intellectual property rights and obligations

1. Subject to Annex A and applicable law, legal entities established in Switzerland participating in the Euratom Framework Programme 2012-2013 shall, as regards ownership, exploitation and dissemination of information and intellectual property arising from such participation, have the same rights and obligations as legal entities established in the European Union.
2. Subject to Annex A and applicable law, legal entities established in the European Union taking part in Swiss research programmes and/or projects, as provided for in Article 2(3), shall, as regards ownership, exploitation and dissemination of information and intellectual property arising from such participation, have the same rights and obligations as legal entities established in Switzerland participating in the programmes and/or projects in question.

## ARTICLE 5

### Financial provisions

The rules governing Switzerland's financial contribution are set out in Annex B.

## ARTICLE 6

### Switzerland/Communities Research Committee

1. The Switzerland/Communities Research Committee set up in the Framework Agreement shall review, evaluate and ensure the proper implementation of this Agreement. Any issues arising from the implementation or interpretation of this Agreement shall be referred to this Committee.
2. The Committee may decide to amend the references to European Union/Euratom acts in Annex C.

## ARTICLE 7

### Participation

1. Without prejudice to the provisions of Article 4, legal entities established in Switzerland participating in the Euratom Framework Programme 2012-2013 shall have the same contractual rights and obligations as entities established in the European Union.
  
2. For legal entities established in Switzerland, the terms and conditions applicable for the submission and evaluation of proposals and those for the granting and conclusion of grant agreements and/or contracts under the Euratom Framework Programme 2012-2013 shall be the same as those applicable for grant agreements and/or contracts concluded under the same programmes with legal entities established in the European Union.
  
3. Switzerland shall be entitled, as an associated State, to propose evaluators under the Euratom Framework Programme 2012-2013, in accordance with the Council Regulation (Euratom) No 139/2012 laying down the rules for participation of undertakings, research centres and universities in indirect actions under the Framework Programme of the European Atomic Energy Community and for the dissemination of research results (2012-2013).

4. Without prejudice to the provisions of Article 1(3), Article 2(3) and Article 4(2) and to existing regulations and rules of procedure, legal entities established in the European Union may participate under equivalent terms and conditions to Swiss partners in programmes and/or projects of the Swiss research programmes mentioned in Article 2(3). The Swiss authorities may make participation in a project by one or more legal entities established in the European Union subject to joint participation by at least one Swiss entity.

## ARTICLE 8

### Mobility

Each Party shall undertake, in accordance with existing regulations and agreements in force, to guarantee the entry and stay - as far as indispensable for successful accomplishment of the activity concerned - of a limited number of their researchers participating, in Switzerland and in the European Union, in the activities covered by this Agreement.

## ARTICLE 9

### Revision and future collaboration

1. Should Euratom revise or extend its research programmes, this Agreement may be revised or extended under mutually agreed conditions. The Parties shall exchange information and views concerning any such revision or extension, as well as on any matters which affect directly or indirectly Switzerland's cooperation in the fields covered by the Euratom Framework Programme 2012-2013. Switzerland shall be notified of the exact content of the revised or extended programmes within two weeks of their adoption by Euratom. In case of such revision or extension of the research programme, Switzerland may terminate this Agreement by giving six months' notice. The Parties shall give notice of any intention to terminate or to extend this Agreement within three months after the adoption of Euratom's decision.
2. Should Euratom adopt a new multi-annual research and training programme, an Agreement may be renewed or renegotiated under conditions agreed mutually between the Parties. The Parties shall exchange information and views on the preparation of such programmes or other current and future research activities through the Switzerland/European Union Research Committee referred to in Article 6.

## ARTICLE 10

### Relation to other international agreements

1. The provisions of this Agreement shall apply without prejudice to the advantages envisaged by other international agreements binding one of the Parties and reserved only for legal entities established on the territory of that Party.
2. A legal entity established in a State associated to the Euratom Framework Programme 2012-2013 (Associated State) enjoys the same rights and obligations under this Agreement as legal entities that are established in a Member State provided that the Associated State in which the entity is established has agreed to award legal entities from Switzerland the same rights and obligations.

## ARTICLE 11

### Territorial application

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



## ARTICLE 12

### Annexes

Annexes A, B and C shall form an integral part of this Agreement.

## ARTICLE 13

### Entry into force and application

1. This Agreement shall be ratified or concluded by the Parties in accordance with their respective rules. It shall enter into force on the date of the last notification of completion of the internal procedures necessary to this end.
2. This Agreement shall apply from the beginning of the Euratom Framework programme 2012-2013 until 31 December 2013. Notwithstanding paragraph 5 below, during the period from 1 January 2013 until 30 June 2013 each Party may terminate this Agreement by written notice. In this case the Agreement shall cease to apply on 31 December 2012.

3. If this Agreement ceases to apply on 31 December 2012 pursuant to paragraph 2, Euratom shall honour its commitments to Swiss beneficiaries entered into until the time one of the Parties received the notification pursuant to paragraph 2 from the other Party. In case Switzerland terminates this Agreement pursuant to paragraph 2, Switzerland shall pay Euratom compensation corresponding to the amount of Euratom's 2013 commitments to Swiss beneficiaries until the time Euratom has received the Swiss notification. This compensation shall be paid not later than 45 days after the receipt of the request issued by the Commission. Paragraph II.2 of Annex B shall apply accordingly. The Parties shall settle by common consent any other consequences.

4. This Agreement may be amended only in writing by common consent between the Parties. The procedure for entry into force of amendments shall be the same as the procedure applicable to the entry into force of this Agreement.

5. Each Party may terminate this Agreement at any time, subject to six months' written notice.

6. Projects and activities in progress at the time of termination and/or expiry of this Agreement shall continue until their completion under the conditions laid down in this Agreement. The Parties shall settle by common consent any other consequences of termination.

This Agreement shall be drawn up in duplicate in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish and Swedish languages, each of those texts being equally authentic.

## PRINCIPLES ON THE ALLOCATION OF INTELLECTUAL PROPERTY RIGHTS

### I. Scope

For the purposes of this Agreement, 'intellectual property' shall have the meaning defined in Article 2 of the Convention establishing the World Intellectual Property Organisation, signed at Stockholm on 14 July 1967.

For the purposes of this Agreement, 'knowledge' means the results, including information, whether or not they can be protected, as well as copyrights or rights pertaining to such information, following applications for, or the issue of, patents, designs, plant varieties, supplementary protection certificates or similar forms of protection.

### II. Intellectual property rights of the legal entities of the Parties

1. Each Party shall ensure that the intellectual property rights of the legal entities of the other Party participating in the activities undertaken under this Agreement and the rights and obligations resulting from such participation are treated in a manner compatible with the relevant international conventions applicable to the Parties, notably the TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights administered by the World Trade Organisation), the Berne Convention (Paris Act 1971) and the Paris Convention (Stockholm Act 1967).

2. Legal entities established in Switzerland participating in indirect actions under the Euratom Framework Programme 2012-2013 shall have intellectual property rights and obligations under the conditions set out, in Council Regulation (Euratom) No 139/2012 of 19 December 2011<sup>1</sup> and in the grant agreement and/or contract concluded with the Euratom, in accordance with point 1.
3. Legal entities established in a European Union Member State participating in Swiss research programmes and/or projects shall have the same intellectual property rights and obligations as legal entities established in Switzerland participating in these research programmes or projects, in accordance with point 1.

### III. Intellectual property rights of the Parties

1. Unless otherwise agreed between the Parties, the following rules shall apply to the knowledge generated by the Parties in the course of the activities undertaken in accordance with Article 2(4) of this Agreement:
  - (a) the Party generating the knowledge shall have ownership thereof. Where their respective shares in the work cannot be determined, the Parties shall co-own the knowledge;
  - (b) the Party holding ownership shall grant the other Party rights of access to the knowledge with a view to the activities referred to in Article 2(4) of this Agreement. No charge shall be made for granting rights of access to the knowledge.

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<sup>1</sup> OJ L 47, 18.2.2012, p. 1.

2. Unless otherwise agreed between the Parties, the following rules shall apply to scientific literature from the Parties:
  - (a) where a Party publishes data, information and technical or scientific results arising from the activities undertaken under this Agreement in journals, articles, reports and books, including audiovisual works and software, a worldwide, non-exclusive, irrevocable royalty-free licence to translate, adapt, transmit and publicly distribute the works in question shall be granted to the other Party;
  - (b) all copies of copyrighted data and information to be publicly distributed and prepared under this section shall indicate the names of the author or authors, unless an author expressly declines to be named. Copies shall also bear a clearly visible acknowledgement of the cooperative support of the Parties.
  
3. Unless otherwise agreed between the Parties, the following rules shall apply to undisclosed information of the Parties:
  - (a) at the time of submission to the other Party of information relating to the activities undertaken under this Agreement, each Party shall identify the information which it wishes to remain undisclosed;

- (b) for the specific purposes of application of this Agreement, the receiving Party may, on its own responsibility, communicate undisclosed information to bodies or persons under its authority;
- (c) with the prior written consent of the Party providing undisclosed information, the receiving Party may disseminate such information more widely than otherwise permitted by subparagraph (b). The Parties shall cooperate in developing procedures for requesting and obtaining prior written consent for wider dissemination, and each Party shall grant such approval to the extent permitted by its domestic policies, regulations and laws;
- (d) non-documentary undisclosed or other confidential information provided in seminars or other meetings of the representatives of the Parties arranged under this Agreement, or information arising from the attachment of staff, use of facilities or indirect actions must remain confidential, where the recipient of such undisclosed or other confidential or privileged information was made aware of the confidential character of the information before it was communicated, in accordance with subparagraph (a);
- (e) each Party shall ensure that undisclosed information which it acquires in accordance with subparagraphs (a) and (d) shall be controlled as provided for in this Agreement. If one of the Parties becomes aware that it will be, or may be expected to become, unable to meet the non-dissemination provisions of subparagraphs (a) and (d), it shall immediately inform the other Party. The Parties shall thereafter consult to define an appropriate course of action.

FINANCIAL RULES GOVERNING THE CONTRIBUTION OF SWITZERLAND

I. Determination of financial participation

1. The proportionality factor governing Switzerland's contribution to the Euratom Framework programme 2012-2013, except the Euratom Fusion Programme, shall be obtained by establishing the ratio between Switzerland's gross domestic product, at market prices, and the sum of gross domestic products, at market prices, of the Member States of the European Union. The proportionality factor governing the Swiss contribution to the Fusion Programme shall continue to be governed on the basis of the Fusion Agreement. These ratios shall be calculated on the basis of the latest statistical data from Eurostat, available at the time of publication of the draft budget of the European Union for the same year.
2. The Commission shall communicate as soon as possible to Switzerland together with relevant background material:
  - (a) the amounts in commitment appropriations in the statement of expenditure of the draft budget of the European Union corresponding to the Euratom Framework Programme 2012-2013 in the year 2013;

- (b) the estimated amount of the contributions derived from the draft budget, corresponding to the possible participation of Switzerland in the Euratom Framework Programme 2012-2013 in the year 2013.
- 3. As soon as the general budget for 2013 has been finally adopted, the Commission shall communicate to Switzerland the above mentioned amounts in the statement of expenditure.
- 4. Switzerland's financial contribution deriving from participation in the Euratom Framework Programme 2012-2013 shall be established in addition to the amount available each year in the general budget of the European Union for commitment appropriations to meet the Commission's financial obligations stemming from work to be carried out in the forms necessary for the implementation, management and operation of the programmes and activities covered by this Agreement.

## II. Payment procedures

- 1. The Commission shall issue, at the latest on 31 December 2012 a call for funds to Switzerland corresponding to its contribution under this Agreement for 2012. This call for funds shall provide for the payment of Switzerland's contribution not later than 30 days after receipt of the corresponding call for funds. For the purpose of calculating the amount in Swiss francs in 2012 the exchange rate between the Swiss franc and Euro to be used by the Commission shall be the market rate for the penultimate day of the previous month quoted by the European Central Bank or, depending on the availability, provided by the delegations or other appropriate sources close to that date.



Unless this Agreement ceases to apply on 31 December 2012 in accordance with Art.13(2), the Commission shall issue after 1<sup>st</sup> July and not later than November 2013, a call for funds to Switzerland corresponding to the contribution under this Agreement for 2013 and established on the basis of Point I.1 of this annex. This call for funds shall provide for the payment of the said contribution not later than 30 days after the receipt of the call.

2. The contributions of Switzerland for the year 2012 shall be paid in Swiss francs and for the year 2013 shall be expressed and paid in Euro to the bank account indicated by the Commission in the calls for payments.
3. Switzerland shall pay its contribution under this Agreement according to the schedule in paragraph 1. Any delay in payment shall give rise to the payment of interest at a rate equal to the one-month inter-bank offered rate (EURIBOR) as on page EURIBOR01 of Reuters (Telerate page 248). This rate shall be increased by 1.5 percentage point for each month of delay. The increased rate shall be applied to the entire period of delay. However, the interest shall be due only if the contribution is paid after the scheduled payment dates mentioned in paragraph 1.
4. Travel costs incurred by Swiss representatives and experts for the purposes of taking part in the work of the research committees and those involved in the implementation of the Euratom Framework Programme 2012-2013 shall be reimbursed by the Commission on the same basis as, and in accordance with, the procedures currently in force for the representatives and experts of the Member States of the European Union.

### III. Conditions for implementation

1. The financial contribution of Switzerland to the Euratom Framework Programme 2012-2013 in accordance with this Annex shall normally remain unchanged for the financial year in question.
  
2. The Commission, at the time of the closure of the accounts relating to each financial year (n), within the framework of the establishment of the revenue and expenditure account, shall proceed to the regularisation of the accounts with respect to the participation of Switzerland, taking into consideration modifications which have taken place, either by transfer, cancellations, carry-overs, or by supplementary and amending budgets during the financial year. This regularisation shall occur at the time of the first payment for the year (n+1). However, the final such regularisation shall occur not later than July of the fourth year following the end of the Euratom Framework Programme 2012-2013. Payment by Switzerland shall be credited to the Euratom programmes as budget receipts allocated to the appropriate budget heading in the statement of revenue of the general budget of the European Union.

#### IV. Information

1. At the time of the payment for the year 2013, the statement of appropriations for the Euratom Framework Programme 2012-2013, related to the year 2012, shall be prepared and transmitted to Switzerland for information, according to the format of the Commission's revenue and expenditure account.

At the latest on 30 April 2014, the statement of appropriations for the Euratom Framework Programme 2012-2013, related to the year 2013, shall be prepared and transmitted to Switzerland for information, according to the format of the Commission's revenue and expenditure account.

2. The Commission shall communicate to Switzerland statistics and all other general financial data relating to the implementation of the Euratom Framework Programme which is made available to the Member States.

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FINANCIAL CONTROL OF SWISS PARTICIPANTS  
IN THE EURATOM FRAMEWORK PROGRAMME 2012-2013

I. Direct communication

The Commission shall communicate directly with the participants in the Euratom Framework Programme 2012-2013 established in Switzerland and with their subcontractors. They shall submit directly to the Commission all relevant information and documentation which they are required to submit on the basis of the instruments referred to in this Agreement and of the grant agreements and/or contracts concluded to implement them.

## II. Audits

1. In accordance with Council Regulation (EC, Euratom) No 1605/2002<sup>1</sup>, as last amended Regulation (EU Euratom) No 1081/2010<sup>2</sup> and Commission Regulation (EC, Euratom) No 2342/2002<sup>3</sup>, as last amended by Regulation (EC Euratom) No 478/2007<sup>4</sup> and with the other rules referred to in this Agreement, the grant agreements and/or contracts concluded with participants in the programme established in Switzerland may provide for scientific, financial, technological or other audits to be conducted at any time on the premises of the participants and of their subcontractors by Commission agents or by other persons mandated by the Commission.
2. Commission agents and other persons mandated by the Commission shall have appropriate access to sites, works and documents and to all the information required in order to carry out such audits, including in electronic form. This right of access shall be stated explicitly in the grant agreements and/or contracts concluded to implement the instruments referred to in this Agreement.
3. The European Court of Auditors shall have the same rights as the Commission.
4. The audits may be conducted after the Euratom Framework Programme 2012-2013 or this Agreement expires, on the terms laid down in the grant agreements and/or contracts in question.

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<sup>1</sup> OJ L 248, 16.9.2002, p. 1.

<sup>2</sup> OJ L 311, 26.11.2010, p. 9.

<sup>3</sup> OJ L 357, 31.12.2002, p. 1.

<sup>4</sup> OJ L 111, 28.4.2007, p. 13.

5. The Swiss Federal Audit Office shall be informed in advance of the audits conducted on Swiss territory. Such notification shall not be a legal precondition for carrying out such audits.

### III. On-the-spot checks

1. Within the framework of this Agreement, the Commission (OLAF) shall be authorised to carry out on-the-spot checks and inspections on Swiss territory, in accordance with the terms and conditions laid down in Council Regulation (Euratom, EC) No 2185/96<sup>1</sup> and Regulation (EC) No 1073/1999<sup>2</sup> of the European Parliament and the Council.
2. On-the-spot checks and inspections shall be prepared and conducted by the Commission in close collaboration with the Swiss Federal Audit Office or with the other competent Swiss authorities designated by the Swiss Federal Audit Office, which shall be notified in good time of the object, purpose and legal basis of the checks and inspections, so that they can provide all the requisite help. To that end, the officials of the competent Swiss authorities may participate in the on-the-spot checks and inspections.
3. If the Swiss authorities concerned so wish, the on-the-spot checks and inspections may be carried out jointly by the Commission and them.

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<sup>1</sup> OJ L 292, 15.11.1996, p. 2.

<sup>2</sup> OJ L 136, 31.5.1999, p. 1.

4. Where the participants in the Euratom Framework Programme 2012-2013 resist an on-the-spot check or inspection, the Swiss authorities, acting in accordance with national rules, shall give Commission inspectors such assistance as they need to allow them to discharge their duty in carrying out an on-the-spot check or inspection.
5. The Commission shall report as soon as possible to the Swiss Federal Audit Office any fact or suspicion relating to an irregularity which has come to its notice in the course of the on-the-spot check or inspection. In any event the Commission shall be required to inform the abovementioned authority of the result of such checks and inspections.

#### IV. Information and consultation

1. For the purposes of proper implementation of this Annex, the competent Swiss and Community authorities shall regularly exchange information and, at the request of one of the Parties, shall conduct consultations.
2. The competent Swiss authorities shall inform the Commission without delay of any fact or suspicion which has come to their notice relating to an irregularity in connection with the conclusion and implementation of the grant agreements and/or contracts concluded in application of the instruments referred to in this Agreement.

## V. Confidentiality

Information communicated or acquired in any form under this Annex shall be covered by professional secrecy and protected in the same way as similar information is protected by Swiss law and by the corresponding provisions applicable to the Community institutions. Such information may not be communicated to persons other than those within the Community institutions or in the Member States or Switzerland whose functions require them to know it nor may it be used for purposes other than to ensure effective protection of the Parties' financial interests.

## VI. Administrative measures and penalties

Without prejudice to application of Swiss criminal law, administrative measures and penalties may be imposed by the Commission in accordance with Regulations (EC, Euratom) No 1605/2002, as last amended by Regulation (EU Euratom) No 1081/2010<sup>1</sup> and (EC, Euratom) No 2342/2002 as last amended by Regulation (EC Euratom) No 478/2007<sup>2</sup> and with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests<sup>3</sup>.

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<sup>1</sup> OJ L 311, 26.11.2010, p. 9.

<sup>2</sup> OJ L 111, 28.4.2007, p. 13.

<sup>3</sup> OJ L 312, 23.12.1995, p. 1.



## VII. Recovery and enforcement

Decisions taken by the Commission under the Euratom Framework Programme 2012-2013 within the scope of this Agreement which impose a pecuniary obligation on persons other than States shall be enforceable in Switzerland. The enforcement order shall be issued, without any further control than verification of the authenticity of the act, by the authorities designated by the Swiss government, which shall inform the Commission thereof.

Enforcement shall take place in accordance with the Swiss rules of procedure. The legality of the enforcement decision shall be subject to control by the Court of Justice of the European Union. Judgments given by the Court of Justice of the European Union pursuant to an arbitration clause in a contract under the Euratom Framework Programme 2012-2013 shall be enforceable on the same terms.

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