

No. 17520

**SPAIN
and
FEDERAL REPUBLIC OF GERMANY**

Agreement on co-operation in the peaceful uses of atomic energy (with annex). Signed at Bonn on 5 December 1978

Authentic texts: German and Spanish.

Registered by Spain on 30 January 1979.

**ESPAGNE
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

Accord relatif à la coopération dans le domaine de l'utilisation de l'énergie nucléaire à des fins pacifiques (avec annexe). Signé à Bonn le 5 décembre 1978

Textes authentiques : allemand et espagnol.

Enregistré par l'Espagne le 30 janvier 1979.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE KINGDOM OF SPAIN AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY ON CO-OPERATION IN THE PEACEFUL USES OF ATOMIC ENERGY

The Government of the Kingdom of Spain and the Government of the Federal Republic of Germany,

On the basis of the friendly relations existing between the two countries;

Considering article 1, paragraph 3, of the Basic Agreement on co-operation in the field of scientific research and technological development (hereinafter referred to as the "Basic Agreement") concluded between the two governments on 23 April 1970;²

Considering their common interest in the development of the peaceful use of atomic energy;

And desiring to strengthen and develop existing co-operation, especially within the framework of the special agreements signed between the Junta de Energía Nuclear and the Gesellschaft für Kernforschung mbH;

Have agreed as follows:

Article 1. 1. The Contracting Parties shall promote co-operation between the Kingdom of Spain and the Federal Republic of Germany in the peaceful use of atomic energy, and especially co-operation in the following fields:

- (a) Scientific and technological research and development;
- (b) Nuclear energy technology;
- (c) Safety of nuclear facilities and protection against radiation;
- (d) Design, construction and operation of nuclear plants and research centres.

2. The content and scope of co-operation as well as the special measures adopted for its implementation shall, in each case, be the subject of special agreements to be concluded between the Contracting Parties or other public or private bodies in accordance with this Agreement.

3. Nuclear material, substances specially prepared for the production or use of nuclear material as well as the equipment, facilities and information transferred between the Kingdom of Spain and the Federal Republic of Germany, whether such transfer is effected before or after the entry into force of this Agreement, shall be deemed to have been supplied under this Agreement.

Article 2. 1. Co-operation shall be promoted through:

- (a) The exchange of information;
- (b) The exchange of scientific and technical personnel;

¹ Came into force on 13 December 1978, the date of the latter of the notifications (effected on 7 and 13 December 1978) by which the Contracting Parties informed each other of the completion of their respective internal formalities, in accordance with article 12 (1).

² Registered with the Secretariat of the United Nations on 29 April 1981 under No. I-19761.

- (c) Meetings of experts and other joint activities;
- (d) Making available or providing advisory or other services;
- (e) Carrying out joint or co-ordinated research and development activities and other nuclear projects;
- (f) The exchange of material, facilities and equipment.

2. The Contracting Parties shall facilitate such co-operation as far as possible by making the necessary material and equipment available.

3. Matters connected with the juridical status of the personnel exchanged under this Agreement shall be settled in the most favourable manner possible.

4. The apportionment of the costs of joint activities shall be provided for in special agreements to be concluded in accordance with article 1, paragraph 2.

Article 3. 1. In keeping with their policy of countering the spread of nuclear weapons, the Contracting Parties declare that their international co-operation in the peaceful use of atomic energy shall not contribute in any way to the spread of nuclear weapons or other explosives.

2. The equipment, nuclear material, substances specially prepared for the production or use of nuclear material as well as the facilities and information supplied under this Agreement and the nuclear material produced, processed or derived from the use of any of the above-mentioned supplies, including all subsequent generations of fissionable material obtained therefrom, shall not be used to obtain an explosive nuclear device.

3. Each Contracting Party shall guarantee the physical protection of all nuclear materials and facilities in order to prevent their unauthorized use or operation.

For this purpose, each Contracting Party shall adopt through its competent authorities effective measures for physical protection during the use, storage and transport of nuclear material supplied in the amounts specified in the table appended to this Agreement.

4. The International Atomic Energy Agency shall adopt safeguard procedures in respect of such equipment, nuclear material, substances specially prepared for the production or use of nuclear material as well as such facilities and specific technological information as may be supplied under this Agreement.

For this purpose, the Contracting Parties shall sign a trilateral agreement with the Agency, in conformity with its system of safeguards, to the extent that no safeguard agreement with the Agency applicable to all nuclear material is already in force.

Such safeguards shall cover and continue to cover the nuclear material, including all successive generations thereof, supplied, produced, processed or derived from the use of any of the above-mentioned supplies.

5. The reprocessing of nuclear material found in the reactor fuels supplied by either Contracting Party shall be carried out only in facilities proposed by the receiving country and acceptable to the other Contracting Party and only after IAEA has determined that effective safeguard measures will be applied with respect to this nuclear material during its reprocessing, including the case of transfer to a third country for such reprocessing. In the case of nuclear material

contained in fuels used in a reactor supplied by one of the Contracting Parties, the receiving Party shall notify the other Contracting Party of the facility in which such reprocessing is to take place, after IAEA has determined that effective safeguard measures will be applied with respect to this nuclear material during its reprocessing, including the case of transfer to a third country for such reprocessing.

6. Further, all material capable of use in nuclear weapons and obtained from material supplied by one of the Contracting Parties may be stored, modified, used, transferred or retransferred only to or in facilities proposed by the receiving country and acceptable to the other Contracting Party, and provided that IAEA has determined that effective safeguard measures will be applied.

7. Equipment, nuclear material, substances specially prepared for the production or use of nuclear equipment as well as facilities and relevant technological information supplied under this Agreement shall be re-exported, and products obtained from such supplies exported, only if the recipient country has adopted the same safeguard measures as have been established in this article.

Article 4. Each Contracting Party shall be responsible *vis-à-vis* the other for ensuring that the provisions of this Agreement are accepted and complied with by all of its governmental institutions and by all juridical and private persons under its jurisdiction.

Article 5. 1. In order to facilitate compliance with this Agreement and the special agreements provided for in article 1, paragraph 2, a mixed commission shall be set up comprising representatives of the Contracting Parties, who may be accompanied by advisers.

2. The mixed commission shall meet regularly to monitor the progress achieved in the activities of mutual interest and to hold consultations on such additional measures as may become necessary for facilitating co-operation under this Agreement, as well as on such amendments to it as may be proposed by either Contracting Party in order to achieve in the most effective manner the objectives of their co-operation, particularly on matters relating to articles 1, 2 and 3. Groups of experts may be set up to deal with particular matters.

Article 6. 1. The exchange of information shall take place either between the Contracting Parties or between such entities as are designated by them.

2. The Contracting Parties or designated entities may transmit the information obtained to public institutions or to non-profit institutions or enterprises receiving governmental assistance. The transmission of information to these or other entities or persons shall be prohibited or restricted if one of the Contracting Parties or designated entities so decides before or during such transmission.

3. Each Contracting Party shall ensure that those who may be authorized to receive information under this Agreement, or under such special agreements as may be concluded for its implementation, do not transmit the said information to entities or persons not authorized to receive it under this Agreement or under the special agreements concluded pursuant to article 1, paragraph 2.

Article 7. 1. This Agreement shall not apply to:

(a) Information which cannot be communicated by reason of the rights of third parties or agreements signed with third parties;

(b) Secret official information, unless the competent authorities of the country in question have previously given their authorization. The use of such information shall require a special agreement specifying the transmission procedure.

2. The supply of information of commercial value shall be governed by the special agreements concluded pursuant to article 1, paragraph 2.

3. The special agreements concluded pursuant to article 1, paragraph 2, shall determine who shall have the rights to information of commercial value obtained from joint research and development.

Article 8. 1. The Contracting Parties shall seek to ensure that the participants in co-operation activities communicate to each other, wherever possible, the degree of reliability and applicability of the information exchanged or of the material and equipment provided. The fact that the Contracting Parties may later participate in the transmission of information within the framework of such co-operation shall not, in itself, be sufficient to determine the responsibility of the Contracting Parties.

2. The special agreements concluded pursuant to article 1, paragraph 2, shall incorporate, where necessary, particular provisions pertaining to liability for such damage as may be suffered by the Contracting Parties or by third parties in the course of the co-operation which is the subject of this Agreement.

Article 9. Co-operation under this Agreement shall be carried out in conformity with the laws and legal norms in force in the territory over which each of the Contracting Parties has sovereignty.

The obligations of the Federal Republic of Germany under the treaties establishing respectively the European Economic Community¹ and the European Atomic Energy Community² shall remain unchanged.

Article 10. Disputes arising from the interpretation or implementation of this Agreement shall be settled by mutual consultation between the Contracting Parties, in accordance with the norms of international law, except as otherwise determined in the special agreements concluded pursuant to article 1, paragraph 2.

Article 11. The provisions of this Agreement shall also apply to *Land Berlin* unless the Government of the Federal Republic of Germany declares otherwise to the Government of the Kingdom of Spain within three months from the date of the entry into force of this Agreement.

Article 12. 1. This Agreement shall enter into force as soon as the Contracting Parties have notified each other that the internal formalities for its entry into force have been completed.

2. This Agreement shall remain in force for a period of 15 years. It may subsequently be extended for periods of five years at a time. No extension shall be possible if either Contracting Party gives notice to the other at least 12 months before the end of one of the periods indicated. The validity of the special agreements concluded pursuant to article 1, paragraph 2, shall not be affected by the expiry of this Agreement. After the expiry of this Agreement, such of its provisions as may be required for carrying out the special agreements concluded under article 1, paragraph 2, shall remain in force for the time necessary. The

¹ United Nations, *Treaty Series*, vol. 298, p. 3.

² *Ibid.*, p. 167.

special provisions of this Agreement, on the transfer of equipment, substances specially prepared for the production or use of nuclear material as well as of facilities and information, shall remain unchanged if this Agreement is no longer in force.

3. Amendments to this Agreement shall be adopted by agreement of both Contracting Parties and shall enter into force through an exchange of notes.

DONE at Bonn, on 5 December 1978, in two originals, in the German and Spanish languages, both texts being equally authentic.

For the Government
of the Kingdom of Spain:

[Signed]

EMILIO GARRIGUES Y DÍAZ-CAÑABATE
Ambassador of Spain in Bonn

For the Government
of the Federal Republic of Germany:

[Signed]

PETER HERMES
Under-Secretary for Foreign Affairs

[Signed]

U. HAUNSCHILD
Under-Secretary in the Federal
Ministry of Research and Technology

ANNEX

The agreed levels of physical protection which the competent official authorities are to ensure for the use, storage and transport of the materials indicated in the attached table, shall include, as a minimum, the following safety features:

Category III

- Use and storage within an area to which access is controlled.
- Transport subject to the adoption of special precautions, including prior agreement between the sender, the addressee and the carrier, and prior agreement between the States in the case of international transport, concerning the time, place and procedures for assigning responsibility for the transport operation.

Category II

- Use and storage within a protected area to which access is controlled, i.e., in an area under the constant surveillance of security personnel or equipped with electronic devices, surrounded by a physical barrier and with a limited number of points of access subject to proper control, or any area which offers an equivalent degree of physical protection.
- Transport subject to the adoption of special precautions, including prior agreement between the sender, the addressee and the carrier, and prior agreement between the States in the case of international transport, concerning the time, place and procedures for assigning responsibility for the transport operation.

Category I

The materials in this category shall be protected by highly reliable systems from the risk of unauthorized use, as follows:

- Use and storage in a securely protected area, as defined for category II above, to which access is also limited to persons of established integrity and which is under the surveillance of security personnel in touch at all times with appropriate emergency

teams. The purpose of the specific measures adopted in this connection shall be to discover and prevent any attack, unauthorized access or unauthorized removal of materials;

—Transport subject to the adoption of special measures, as described above for the transport of materials in categories II and III, and under the constant surveillance of appropriate emergency teams.

The Government of the Kingdom of Spain and the Government of the Federal Republic of Germany shall specify the entities or authorities to be responsible for guaranteeing the level of protection in whatever manner is considered adequate and, moreover, to be responsible for the internal co-ordination of recovery and emergency measures in the event of unauthorized use or operation of protected materials. The Government of the Kingdom of Spain and the Government of the Federal Republic of Germany shall specify the liaison offices under their respective jurisdictions, which are to co-operate in matters pertaining to transport out of the country and in other matters of common interest.

Table. CLASSIFICATION OF NUCLEAR MATERIAL

<i>Material</i>	<i>Form</i>	<i>Category I</i>	<i>Category II</i>	<i>Category III</i>
Plutonium ^a	Non-irradiated ^b	2 kg or more	Less than 2 kg but more than 500 g	500 g or less ^c
Uranium-235	Non-irradiated ^b			
	—Uranium enriched to a ²³⁵ U concentration of 20% or more	5 kg or more	Less than 5 kg but more than 1 kg	1 kg or less ^c
	—Uranium enriched to a ²³⁵ U concentration of more than 10% but less than 20%	—	10 kg or more	Less than 10 kg
	—Uranium enriched to a ²³⁵ U concentration higher than that of natural uranium but less than 10% ^d	—	—	10 kg or more
Uranium-233	Non-irradiated ^b	2 kg or more	Less than 2 kg but more than 500 g	500 g or less
Irradiated fuel			Natural or depleted uranium, thorium or slightly enriched fuel (less than 10% of fissionable content) ^{e, f}	

^a As indicated in IAEA document INFCIRC 209.

^b Non-irradiated material in a reactor or irradiated material in it but whose radiation intensity at a distance of 1 metre, unprotected, is equal to or less than 100 rads/hour.

^c Materials in less than radiologically significant quantities shall be excluded.

^d Natural uranium, depleted uranium and thorium, as well as quantities of uranium whose degree of enrichment is less than 10% and which cannot be included in category III, shall be protected by prudent management.

^e Although this level of protection is recommended, States are free to apply other categories of physical protection, taking into account prevailing circumstances.

^f Any other fuel which, because of its original content of fissionable material before irradiation, was classified in category I or II, may be moved down to the level immediately below, provided that the radiation intensity at a distance of 1 metre, unprotected, exceeds 100 rads/hour.