

Information Circular

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Communication dated 22 September 2008 received from the Permanent Mission of Germany to the Agency regarding the German proposal on a Multilateral Enrichment Sanctuary Project

The Secretariat has received a communication dated 22 September 2008 from the Permanent Mission of Germany, forwarding a paper outlining the German proposal on “the Multilateral Enrichment Sanctuary Project (MESP)”.

As requested in the communication, the paper, entitled “the Multilateral Enrichment Sanctuary Project (MESP) – a Fresh Look at Ensuring Nuclear Fuel Supply” is circulated herewith for the information of Member States.

The Multilateral Enrichment Sanctuary Project (MESP) – a Fresh Look at Ensuring Nuclear Fuel Supply

In response to the IAEA Director General's 2006 initiative on multilateral approaches for assurances of supply, the Government of the Federal Republic of Germany, on 4 May 2007, submitted a discussion paper to the IAEA proposing a multilateral uranium-enrichment plant in an area administered by the IAEA (INFCIRC/704). After discussions at the expert level with the IAEA Secretariat, presentations to various audiences and further refinement of the proposal, Germany offered an update entitled "Ensuring Access to Nuclear Fuel and Enrichment Services – Multilateral Enrichment Sanctuary Project (MESP)" on 30 May 2008 (INFCIRC/727) and began to draft suggestions for two model agreements that are necessary to implement the proposal.

The proposal provides an opportunity for interested States that would like to have their own access to enrichment capacities independent from the technology holders. The German proposal does not conflict with, but complements other proposals on assurances of supply of nuclear fuel as described in GOV/INF/2007/11. It further diversifies the menu offered by the various proposals from which a State can choose. In the long term, the interface between the various proposals can be constructed so as to create synergies. For example, the Enrichment Company created under MESP could host and manage a buffer stock or a physical reserve of nuclear fuel, inter alia, for the use by the IAEA.

The German proposal would be based on two pillars:

- Interested States would establish one or several multilateral enrichment companies. The company or companies would operate under regular market conditions as new actors in the international enrichment market.
- The enrichment company or companies would be located in an area administered by the IAEA.

Encouraged by the international interest in its proposal, the German Government now wishes to elaborate in more detail on the main features of the project.

The German Government invites all interested States to participate in discussions with the goal to shape the proposal further and ultimately implement it.

I. Introduction to MESP

States choosing to exercise their inalienable right to make use of nuclear energy for peaceful purposes need to be able to procure nuclear fuel in a predictable and cost efficient manner. However, States differ in their assessment as to the reliability of fuel supply. There is concern that the supply could be interrupted for political reasons. The German proposal attempts to secure the reliable and assured supply of nuclear fuel by allowing interested States to create a new competitive actor in the enrichment market that uses efficient, modern and safe enrichment technology. It provides States with a maximum of security of supply without the cost, unpredictability and proliferation risk involved in creating national enrichment capabilities. The proposal foresees the construction of one or more enrichment facilities under the exclusive supervision of the IAEA and aims at minimizing the influence of the technology holder on the operation of these facilities.

Under the German proposal, interested States (the so-called “Group of Interested States”) set up a commercial enrichment company (the “Enrichment Company”) as a new competitive actor in the market for enrichment services. The Group of Interested States organizes its cooperation according to its own preferences, and concludes an Agreement (the so-called “MESP Agreement”, described in detail below) to participate in the Multilateral Enrichment Sanctuary Project.

The Enrichment Company offers its services using the proven technology of one of the existing holders of uranium enrichment technology (the “Technology Provider”). As is not uncommon in many modern industrial production processes, the Enrichment Company uses the licensed technology in its business without the necessity of the technical details other than for normal production being shared with others.

In order to avoid the influence of other States on the project and to minimize the risk of proliferation, the enrichment facilities of the Enrichment Company would be located in a “Multilateral Enrichment Sanctuary” (or “MES”) administered by the IAEA. The MES would be established by an Agreement between the IAEA and a Host State (the so-called “Host State Agreement”).

As a further assurance for the supply of nuclear fuel, the Enrichment Company would establish and maintain a buffer stock or a physical reserve of nuclear fuel available to the Director General of the IAEA on conditions established by the Board of Governors.

The MESP thus offers several levels of assurance of supply:

- It introduces a new player in the enrichment market.
- It offers for States or their national industries an opportunity to actively participate in a newly established Enrichment Company; and
- it provides an emergency reserve mechanism for the assured supply of nuclear fuel.

II. The MESP Agreement

At the core of the German proposal is the establishment of a Group of Interested States and, by them, of a market-oriented Enrichment Company. Participating States would be free as to how to organize the various components of the Enrichment Company, e.g., where to base the Company, what form of entity to choose and whether their national industries or the States themselves own the Company. However, in the so-called MESP Agreement the Participating States and the IAEA would agree on certain basic rules that the IAEA and the States would follow. Some of the key features are set out below.

1. Separation of Functions, Territory and Release of Nuclear Material

The Enrichment Company would contract with the Technology Provider to deliver, assemble, set up, maintain and to decommission and dismantle the enrichment equipment. Protection of the technology would be provided through an obligation of the Parties to the MESP Agreement (and thereby of the Group of Interested States, the Enrichment Company and its sub-contractors) to abide by the obligations of an agreement between the IAEA and the Technology Provider and/or its Home State on technology protection. (see Chapter IV below)

The Enrichment Company would provide enrichment services for peaceful purposes to all States provided the States comply with a predetermined and fixed set of criteria relating to assurances of supply as determined by the IAEA Board of Governors. The Director General of the IAEA would assure the release of the relevant nuclear material if this set of agreed criteria is met. Finally, the Enrichment Company would maintain a buffer stock or physical reserve of nuclear fuel available on notice for the Director General of the IAEA.

2. Requirements for the Enrichment Company

Regarding ownership of the Enrichment Company, the Agreement would provide that all States of the Group of Interested States or commercial entities nominated by them may own shares of the Company, provided they comply with the criteria relating to assurances of supply, mentioned above. No single State

may hold a majority share. With the consent of the Group of Interested States, other States or their industries may buy shares if they comply with the criteria relating to assurances of supply and become parties to the Agreement.

The Group of Interested States ensures compliance of the Company with a number of further requirements, the most important of which are: the Company has to abide by international financial standards including obtaining insurance or other financial security. It has to submit to an annual audit. Furthermore, it has to comply with free market principles, relevant IAEA safety standards and security and safeguards requirements.

3. Costs, Liability and other Provisions

The Agreement would contain a number of additional technical and administrative provisions, e.g. on dispute settlement. Regarding costs and liability, the Agreement would provide that the cost of the administration of the territory allocated to the MES, to the extent that administrative fees do not cover it, shall be borne by the Group of Interested States. The Agreement would also contain a clause whereby the Groups of Interested States would hold the Host State and the IAEA harmless against claims for compensation of nuclear damage.

III. The Host State Agreement

The Agreement between the IAEA and the Host State – the Host State Agreement - would to a large extent resemble regular headquarters agreements, in which the Host State grants certain rights – including rights over a defined territory – to international organizations. Examples for such agreements are the IAEA's Headquarters Agreement with Austria or parts of the agreements regarding the establishment of ITER. Differences may occur, however, due to the fact that under MESP private companies would operate sensitive facilities on an "internationalized" territory. A potential Host State would have to comply with certain criteria set in advance by the IAEA.

1. The MES and its Legal Regime

Much like the IAEA's Headquarters Agreement, the Host State Agreement would define the relevant territory, where the MES will be located, declare it as inviolable and grant the IAEA the right to regulate access to it. In principle, Host State law would apply in the MES and in fact, as an incentive, taxes could even be levied by the Host State on the companies operating in the MES. However, the IAEA may (as its headquarters in Austria), for the purposes of the project, pass certain regulations in the MES overriding Host State law. The IAEA would ensure that activities in the MES will comply with, inter alia, the applicable IAEA standards of safety and the relevant security and safeguards requirements. It would be

responsible for licensing, inspection, enforcement, and import and export controls in the MES. As the IAEA would not have the administrative capacity to grant all the licenses such an operation requires, the Agreement allows the delegation of these tasks, in particular to appropriate Host State or other State Authorities. As a consequence, the IAEA might either delegate all licensing until commissioning of the facility to the Host State or alternatively it can be envisaged that the IAEA delegates the licensing procedure to the Home State of the Technology Provider. However, the IAEA would have to keep control over the day to day supervision of the facility in order to avoid undue influence on the operation by the Host State or others.

2. Liability

The risks involved in uranium enrichment are small compared to those involved in operating nuclear power plants. Nevertheless the Agreement has to provide a legal framework for such a potential contingency. Civil liability would follow the 1997 Vienna Convention on Civil Liability for Nuclear Damage. The Host State would agree to join this Convention and other relevant agreements. In terms of the 1997 Vienna Convention, the Host State would be the installation state and the Enrichment Company is the operator of the nuclear installation. Generally, this means that liability would exclusively lie with the Enrichment Company and adequate insurance or other financial security would be guaranteed through the MESP Agreement. As is common in headquarters agreements, the Host State itself would not incur responsibility or liability for activities in the “internationalized” territory.

3. Joint Committee

The functioning of the Host State Agreement would be supervised by a Joint Committee composed of a representative of the IAEA, the Host State and, for discussions on topics where interests of the Enrichment Companies are concerned, a representative of each of the operating Enrichment Companies.

4. Other Provisions

The Agreement would also contain other provisions that are common to most headquarters agreements, i.e. public services to be provided by the Host State, on protection of the MES, on emergencies, on security of the Host State, on privileges and immunities of the IAEA, its staff, experts and representatives to the Agency and on transit and residence of individuals operating the MES.

IV. Protection of Enrichment Technology and Nuclear Material

The Project would require provisions on the protection of the technology between the Home State of the Technology Provider and the IAEA as the entity in control of the territory. These provisions would need to be reflected in both the MESP and the Host State Agreement and would control access to certain technology areas and information, that the Host State and IAEA agree to abide by in the Host State

Agreement. Agreements of such a nature are already in place between the United Kingdom, the Netherlands and Germany on one side and the USA and France respectively on the other.

Sensitive information and goods would be transported to and from the MES in "MESP Bags" (modeled on the diplomatic bag), containers marked as such that are inviolable and may not be opened, searched or detained. The Host State would facilitate the transport of such bags, the transit of its couriers and of other goods essential for the project through its territory.