

C O N V E N T I O N
concerning the construction and operation of a
EUROPEAN SYNCHROTRON RADIATION FACILITY

The Government of the Kingdom of Belgium,

The Government of the Kingdom of Denmark,

The Government of the Republic of Finland,

The Government of the French Republic,

The Government of the Federal Republic of Germany,

The Government of the Italian Republic,

The Government of the Kingdom of the Netherlands,

The Government of the Kingdom of Norway,

The Government of the Kingdom of Spain,

The Government of the Kingdom of Sweden,

The Government of the Swiss Confederation,

The Government of the United Kingdom of Great Britain and Northern Ireland,

Hereinafter referred to as 'Contracting Parties',

It being agreed that the Governments of the Kingdom of Denmark, the Republic of Finland, the Kingdom of Norway and the Kingdom of Sweden shall act jointly as one single Contracting Party,

And it being agreed that the Governments of the Kingdom of Belgium and of the Kingdom of the Netherlands shall act jointly as one single Contracting Party;

Desiring to consolidate further Europe's position in research in the world, and to intensify scientific co-operation across disciplinary and national boundaries;

Recognizing that synchrotron radiation will in future be of great significance in many different fields and for industrial applications;

In the hope that other European countries shall participate in the activities which they intend to undertake together under this Convention;

Building on the successful co-operation of European scientists in the framework of the European Science Foundation and the preparatory work carried out under its auspices and under the Memorandum of Understanding agreed in Brussels on 10 December 1985 and having regard to the Protocol dated 22 December 1987;

Having decided to promote the construction and operation of a European synchrotron radiation facility housing a high performance source of X-rays for the use of their scientific communities;

Have agreed as follows:

Article 1
ESTABLISHMENT OF THE FACILITY

The construction and operation of the European Synchrotron Radiation Facility shall be entrusted to a *Société Civile* hereinafter referred to as "the Company" which shall be subject to French law, unless otherwise provided under the Convention and the Statutes annexed hereto. The Company shall undertake activities for peaceful ends only. The corporate members of the Company, hereinafter referred to as "the Members", shall be appropriate bodies designated for the purpose by each Contracting Party.

Article 2
NAME AND SEAT

The Company shall be known as the European Synchrotron Radiation Facility (ESRF) and shall have its registered office in Grenoble.

Article 3
ORGANS

- (1) The organs of the Company shall be the Council and the Director General.
- (2) Delegates to the Council shall be appointed and have their appointments terminated in accordance with a procedure determined by the relevant Contracting Party. This procedure shall ensure that the Council can act as the Meeting of the Members of the Company. Each Contracting Party shall arrange to inform the Council Secretariat in writing of each appointment or termination.
- (3) The Company shall have as its Director General a distinguished scientist appointed by the Council.

Article 4
MOVEMENT OF PERSONS AND SCIENTIFIC EQUIPMENT

- (1) Subject to the requirements of public order and security, each Contracting Party undertakes within its jurisdiction to facilitate the movement and residence of nationals of the States of the Contracting Parties employed by or seconded to the Company or doing research using the Company's facilities.
- (2) Each Contracting Party undertakes within its jurisdiction to simplify the issue of transit documents for temporary imports of scientific equipment and samples to be used for research using the Company's facilities.

Article 5
FINANCE

- (1) Each Contracting Party undertakes to make available to the Members for which it is responsible an annual grant covering their contributions to the cost of the Company.
- (2) The construction costs as defined in paragraph 3 below cover a facility with thirty beam lines, the target specifications of which are set out in Annex 2. The construction period shall be divided into two phases. During phase I the Company shall construct and commission the source of synchrotron radiation and at least seven beam lines. During phase II the Company shall operate the source and

progressively commission the remaining beam lines. Phase I is expected to extend over not more than six and a half years from the date of start of the construction. It shall end at the date decided by the Council, with reference to the target specification set out in Annex 2, or at the date at which the cost limit specified in paragraph 4(a) below has been reached whichever happens first. Phase II is expected to extend over a further four and a half years from the end of phase I.

- (3) The "construction costs" shall be the sum of:
 - (a) all expenditure during phase I;
 - (b) that part of expenditure during phase II which is attributed to the completion of commissioning of the source and construction of the remaining beam lines and related modification of the source.
- (4) The construction costs shall not exceed, at 1 January 1987 prices:
 - (a) during phase I, 2200 million French francs;
 - (b) during phase II, 400 million French francs.
- (5) A table showing the estimated annual incidence of expenditure is attached as Annex 3.
- (6) The Council shall review at least annually the actual and forecast construction costs. If at any time it appears to the Council that the source and beam lines may not be satisfactorily completed, taking account of the cost limits defined in paragraph 4 above and the target specifications set out in Annex 2, then the Council, on the advice of the Director General, shall decide cost constraint measures to ensure that the limits are not exceeded.
- (7) In exceptional circumstances the Council acting unanimously may approve a modification of the construction costs.

Article 6 CONTRIBUTIONS

- (1) The French Contracting Party shall make available for the Company's use, free of charge and ready to build on, the site in Grenoble marked on the plan attached as Annex 4.
- (2) Members shall contribute to construction costs exclusive of value added tax in the following proportions:

33 per cent for Members of the French Republic (including a site premium of 10 per cent),

23 per cent for Members of the Federal Republic of Germany,

14 per cent for Members of the Italian Republic,

12 per cent for Members of the United Kingdom,

6 per cent in total for Members of the Kingdom of Belgium and the Kingdom of the Netherlands,

4 per cent for Members of the Kingdom of Spain,

4 per cent in total for Members of the Kingdom of Denmark, the Republic of Finland, the Kingdom of Norway, and the Kingdom of Sweden,

4 per cent for Members of the Swiss Confederation,

Increases in contributions from Contracting Parties or contributions from Governments acceding to this Convention in accordance with Article 12 shall be applied to reduce the contribution of Members of each Contracting Party contributing more than 4 per cent by an amount proportional to their current contribution, not taking into account the site premium of 10 per cent.

- (3) Members shall contribute to operating costs exclusive of value added tax in the following proportions:

27.5 per cent for Members of the French Republic (including a site premium of 2 per cent),

25.5 per cent for Members of the Federal Republic of Germany,

15 per cent for Members of the Italian Republic,

14 per cent for Members of the United Kingdom,

6 per cent in total for Members of the Kingdom of Belgium and the Kingdom of the Netherlands.

4 per cent for Members of the Kingdom of Spain,

4 per cent in total for Members of the Kingdom of Denmark, the Republic of Finland, the Kingdom of Norway, and the Kingdom of Sweden,

4 per cent for Members of the Swiss Confederation,

Increases in contributions from Contracting Parties or contributions from Governments acceding to this Convention in accordance with Article 12 shall be applied to reduce equally the contributions of the French Members to 26 per cent

and of the German Members to 25 per cent, and after these levels have been reached, to reduce the contribution of Members of each Contracting Party by an amount proportional to their current contribution, except that the contribution of Members of any one Contracting Party shall not be reduced below 4 per cent.

- (4) If it appears to the Council that there is a lasting and significant imbalance between the proportional use made of the facility by the scientific community of a Contracting Party and the contribution of that Party's Members, then the Council may decide measures to limit that use, unless the Contracting Parties agree to an appropriate re-adjustment of the contribution rates set out in paragraph 3 above.

Article 7
TAXES

- (1) The Company is subject to French value added tax. Contributions by Members established outside France shall not be subject to value added tax in France. This provision does not limit the right of the Company to deduct.
- (2) Goods imported by the Company from other countries shall benefit from exemption from customs duties in accordance with the regulations of the European Community.

Article 8
ARRANGEMENTS WITH OTHER USERS

Arrangements for long-term use of synchrotron radiation by Governments or groups of Governments not acceding to this Convention, or by establishments or organizations thereof, may be made by the Company subject to the unanimous agreement of its Council.

Article 9
SCHOOL

- (1) The French Contracting Party shall set up progressively and operate free of charge a school or schools providing non-French children with free education adapted to allow their reintegration into the educational system of their country of origin.
- (2) To this end the other interested Contracting Parties shall have the possibility to make available to the French Contracting Party non-French teachers.
- (3) If the Council decides that the above arrangements do not sufficiently meet the needs of non-French children, then the Contracting Parties shall make arrangements to find a fully satisfactory alternative.

Article 10
DISPUTES

- (1) The Contracting Parties shall endeavour to settle by negotiations any dispute concerning the interpretation or application of the present Convention.
- (2) If the Contracting Parties cannot reach agreement on the settlement of a dispute, each of the Contracting Parties concerned may submit the dispute for decision to an arbitral tribunal.
- (3) Each party to the dispute shall appoint an arbitrator; nevertheless, if the dispute is between one of the Contracting Parties and two or more other Contracting Parties the latter shall choose one arbitrator in common. The arbitrators thus appointed shall choose a national of a State other than the States of the Contracting Parties in dispute to act as umpire and to assume the functions of Chairman of the arbitral tribunal, with a casting vote in the event of votes of the arbitrators being equally divided. The arbitrators shall be appointed within two months from the date of the request for a settlement by means of arbitration, the Chairman within three months from that date.
- (4) If the time limits specified in the foregoing paragraph are not observed and no other arrangement is made, each party to the dispute may request the President of the Court of Justice of the European Communities to make the necessary appointments.
- (5) The arbitral tribunal shall take its decisions by a simple majority.

- (6) The arbitral tribunal shall take its decisions on the basis of paragraph 1 of Article 38 of the Statute of the International Court of Justice. Its decisions shall be binding.
- (7) The tribunal shall determine its rules of procedure in accordance with Chapter III of Part IV of the Convention for the Pacific Settlement of International Disputes signed at The Hague on 18 October 1907.
- (8) Each party to the dispute shall bear its own costs and an equal share of the costs of the arbitral proceedings.
- (9) The provisions of the present Article, except those of paragraph 6 above, shall also apply to any disputes which arise between the Members concerning the activities of the Company and which must be submitted to the Contracting Parties under Article 26 of the Statutes. The tribunal shall base its decisions on the rules of law applicable to the dispute under consideration.

Article 11
ENTRY INTO FORCE

- (1) This Convention shall enter into force one month after all the signatory Governments have notified the Government of the French Republic that the necessary constitutional procedures have been completed, or two months after signatory Governments contributing at least 80 per cent of the construction costs as specified in Article 5 have notified the Government of the French Republic that they have decided to put the Convention into force between themselves.
- (2) The Government of the French Republic shall promptly inform all signatory Governments of the date of each notification provided for in the foregoing paragraph and the date of entry into force of this Convention.
- (3) Before the entry into force of this Convention any Contracting Party may put into effect the provisions of Articles 1 and 3 to designate Members of the Company and appoint delegates to the Council.

Article 12
ACCESSION

After the entry into force of this Convention, any Government or group of Governments acting together may accede thereto with the consent of all the Contracting Parties. The conditions of accession shall be the subject of an agreement between the Contracting Parties and the acceding Government or group of Governments.

Article 13
DURATION

- (1) The present Convention is concluded for an initial period ending on 31 December 2007 and shall remain in force after that date. It may be denounced with three years notice, such notice to be given to the Government of the French Republic. Withdrawal can only take effect on 31 December 2007 or at the end of each successive period of three years.
- (2) The conditions and effects of withdrawal or termination, in particular the costs of dismantling the company's plant and buildings and compensation for losses, shall be settled by agreement among the Contracting Parties before this withdrawal or termination.

In witness whereof, the undersigned representatives, having been duly authorized thereto by their respective Governments, have signed the present Convention.

Done in Paris this 16th day of December 1988¹/at Paris on 9 December 1991² in the Dutch, English, French, German, Italian, and Spanish languages, all texts being equally authentic, in a single original, which shall be deposited in the archives of the Government of the French Republic, which shall transmit a certified copy to all Contracting Parties and acceding Governments, and subsequently notify them of any amendments.

For the Government of the Kingdom of Belgium

For the Government of the Kingdom of Denmark

For the Government of the Republic of Finland

For the Government of the French Republic

For the Government of the Federal Republic of Germany

For the Government of the Italian Republic

For the Government of the Kingdom of the Netherlands³

For the Government of the Kingdom of Norway

For the Government of the Kingdom of Spain

For the Government of the Kingdom of Sweden

For the Government of the Swiss Confederation

For the Government of the United Kingdom of Great Britain and Northern Ireland

¹ Original ESRF Convention

² Protocol of accession by the Kingdom of the Netherlands

³ Protocol of accession by the Kingdom of the Netherlands only