

FINAL ACT

OF THE CONFERENCE OF PLENIPOTENTIARIES FOR THE ESTABLISHMENT OF A EUROPEAN X-RAY FREE-ELECTRON LASER FACILITY

- (1) In October 2002 the Deutsches Elektronen-Synchrotron (DESY) published, as a supplement to the Technical Design Report for the TeV-Energy Superconducting Linear Accelerator (TESLA), the Technical Design Report for an X-Ray Free-Electron Laser laboratory with a dedicated linear accelerator in a separate tunnel.

In February 2003, the Federal Ministry of Education and Research of the Federal Republic of Germany suggested that the X-Ray Laser laboratory be realised as a European project at DESY (Hamburg), and that the Federal Republic of Germany would bear approximately half of the costs.

By the end of 2004 the Governments of eight European countries (France, Germany, Greece, Italy, Spain, Sweden, Switzerland, and the United Kingdom) had signed a Memorandum of Understanding, in which they agreed to jointly prepare the foundation of the European X-Ray Free-Electron Laser Facility, and, in particular, to prepare the ground for a governmental agreement on the construction and operation of this research facility until mid-2006. The Governments of another five countries (China, Denmark, Hungary, Poland and Russia) joined the Memorandum of Understanding during 2005. The Government of the Slovak Republic joined in late 2007. Together with the Netherlands and the European Union, assuming the role of observers, the signatory Governments are represented in an International Steering Committee (ISC), which coordinates the preparations for the construction of the XFEL Facility.

Two Working Groups were established, one on Science and Technical Issues, the other on Administrative and Funding Issues. In mid-2005 the ISC began to set up a European XFEL Project Team, which, in close collaboration with the XFEL Project Group of DESY, worked on an updated Technical Design Report including detailed cost estimations as well as on the legal texts (Intergovernmental Convention, Articles of Association of the future XFEL Company, bylaws). The final XFEL Technical Design Report was approved by the ISC on 25 July 2006 and the legal texts in their quasi final form on 22 September 2008.

- (7) The Conference agreed that the Convention be applied provisionally pending its entry into force, provided that the provisional application is in line with the national legislation of the Contracting Parties, and, to this purpose, adopted a Resolution attached to this Final Act.
- (8) The Conference took note of the Declarations of
- the Government of the Kingdom of Denmark,
 - the Government of the French Republic,
 - the Government of the Republic of Hungary,
 - the Government of the Republic of Poland,
 - the Government of the Russian Federation,
 - the Government of the Kingdom of Spain,
 - the Government of the Kingdom of Sweden,
 - the Swiss Confederation,
 - the Government of the United Kingdom of Great Britain and Northern Ireland,
- attached to this Final Act.
- (9) The Conference invited all the signatory Governments to complete as soon as possible their constitutional procedures, if any, with a view to the entry into force of the Convention and to inform the depositary Government (Federal Republic of Germany) accordingly.
- (10) The Conference noted favourably that other signatories of the Memorandum of Understanding may accede to the Convention within the next six months under the same conditions.
- (11) The Conference invited further Governments to accede to the Convention.

In witness whereof, the Plenipotentiaries have signed this Final Act.

Done at Berlin on [date] in the English, French, German, Italian, Russian and Spanish languages, all texts being equally authentic, in a single original, which shall be deposited in the archives of the Government of the Federal Republic of Germany, which shall transmit certified true copies to the Governments having signed this Final Act and to the Governments that become Contracting Parties to the Convention.

For the Government of the Kingdom of Denmark

For the Government of the French Republic

For the Government of the Federal Republic of Germany

For the Government of the Hellenic Republic

For the Government of the Republic of Hungary

For the Government of the Republic of Italy

For the Government of the Republic of Poland

For the Government of the Russian Federation

For the Government of the Slovak Republic

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

RESOLUTION
OF THE CONFERENCE OF PLENIPOTENTIARIES
FOR THE ESTABLISHMENT OF A
EUROPEAN X-RAY FREE-ELECTRON LASER FACILITY

Provisional application of the XFEL Convention

THE CONFERENCE

AGREES that from [date] onwards the clauses of the Convention be applied provisionally, it being understood that the final coming into force of the Convention is subject to the fulfilment of appropriate constitutional procedures in each of the countries concerned;

NOTES that the Shareholder designated by the Government of the Federal Republic of Germany, DESY, founded the European XFEL GmbH on [date];

INVITES the Shareholders designated by the other Contracting Parties to join as soon as possible the European XFEL GmbH. Joining the Company shall be on the basis of the Articles of Association (Annex to the Convention).

DECLARATION OF THE GOVERNMENT OF THE KINGDOM OF DENMARK
WITH REGARD TO ITS FINANCIAL OBLIGATIONS

THE CONFERENCE

TAKES NOTE of the declaration of the Government of the Kingdom of Denmark, which reads as follows:

Denmark is willing to contribute as a participating state to the establishment and utilisation of the European XFEL Facility. However, Denmark's obligations, on signing the XFEL Convention, will be as follows:

1. Notwithstanding Articles 4(8) and 5(7) of the Convention Denmark will contribute towards the construction costs of the European XFEL Facility with 1 percent of the total costs or a maximum of 11 million Euro (in 2005 prices). The Danish contribution shall be comprised of both cash and in-kind contributions with a priority given to in-kind contributions.
2. With respect to the procedure described in Article 5(5) of the Convention Denmark's contribution towards the operating costs of the European XFEL Facility shall not exceed 1 percent of the total operating costs.

DECLARATION OF THE GOVERNMENT OF THE FRENCH REPUBLIC
WITH REGARD TO ITS FINANCIAL OBLIGATIONS

THE CONFERENCE

TAKES NOTE of the declaration of the Government of the French Republic, which reads as follows:

In accordance with paragraph 7 of the Final Act, in which Contracting Parties assume that the Convention can be applied provisionally until it enters into force, provided that the provisional application is in line with the national legislation of the Contracting Parties, France hereby declares that it cannot apply the Convention provisionally from the date of its signature. According to the French Constitution, including Article 53 on international treaties committing the finances of the State, the authorisation of provisional application can only be given in the legal act promulgating the Convention.

With respect to the procedure described in Article 5(5) of the Convention, France declares that the French share in the annual operating costs of the XFEL Facility should not exceed 2 %.

DECLARATION OF THE GOVERNMENT OF THE REPUBLIC OF
HUNGARY WITH REGARD TO THE PROVISIONAL APPLICATION

THE CONFERENCE

TAKES NOTE of the Declaration of the Government of the Republic of Hungary, which reads as follows:

In accordance with paragraph 7 of the Final Act, in which the Contracting Parties assume that the Convention can be applied provisionally until it enters into force, provided that the provisional application is in line with the national legislation of the Contracting Parties, Hungary hereby declares that it cannot apply the Convention provisionally from the date of its signature. According to the Hungarian Act L of 2005 on procedures regarding international treaties the authorisation of provisional application can only be given in the legal act promulgating the Convention. This legal act can be published only after the signature of the Convention. The above procedure is expected to be accomplished within one month from the signature.

DECLARATION OF THE GOVERNMENT OF THE REPUBLIC OF POLAND
WITH REGARD TO ITS FINANCIAL OBLIGATIONS

THE CONFERENCE

TAKES NOTE of the declaration of the Government of the Republic of Poland, which reads as follows:

The Republic of Poland will take part in the construction of the European XFEL Facility with an amount of 21.6 million Euro (in 2005 prices). This will comprise contributions both in kind and in cash. The spending priority shall be on in-kind contribution, and in-cash contribution shall not exceed 10.8 million Euro (in 2005 prices).

DECLARATION BY THE GOVERNMENT OF THE RUSSIAN FEDERATION
REGARDING THE PARTICIPATION OF THE RUSSIAN FEDERATION IN THE
PROJECT TO BUILD AND OPERATE A EUROPEAN X-RAY FREE-ELECTRON
LASER FACILITY

THE CONFERENCE

TAKES NOTE of the declaration of the Government of the Russian Federation, which reads as follows:

The Government of the Russian Federation declares that the Russian Federation is willing to participate in the project to build and operate a European X-Ray Free-Electron Laser Facility (XFEL). In this regard:

1. The Russian legal person which will act as Shareholder in the limited liability company "European X-Ray Free-Electron Laser Facility GmbH" (hereinafter referred to as "the Company") shall contribute 250 million Euro (in 2005 prices) to the construction of the European X-Ray Free-Electron Laser Facility, with consideration being given to the following:

the share of the Russian Shareholder in the capital of the Company must ensure a volume of voting rights whereby, without approval from this Shareholder, no decision which requires a qualified majority according to the Articles of Association of the Company may be taken by the Council of the Company;

the list of matters subject to approval by a qualified majority shall in any case remain unchanged.

2. With regard to the procedure set out in Article 5(5) of the Convention concerning the Construction and Operation of a European X-Ray Free-Electron Laser Facility to stipulate the level of the Russian Federation's share in the operating costs of the European X-Ray Free-Electron Laser Facility, it must be borne in mind that in line with the principle of proportionality this is to be calculated on the basis of the period of time the facility is used by scientists of Russian research organizations.

DECLARATION OF THE GOVERNMENT OF THE KINGDOM OF SPAIN
WITH REGARD TO ITS FINANCIAL OBLIGATIONS

THE CONFERENCE

TAKES NOTE of the declaration of the Government of the Kingdom of Spain, which reads as follows:

Spain is willing to contribute as a participating state to the establishment and utilisation of the European XFEL Facility. Nevertheless, Spain's obligations, on signing the XFEL Convention, shall be as follows:

1. Spain will review its active participation in the operational phase two years after the beginning of such phase, and have the option of withdrawing without penalty, provided that it gives one year's notice.
2. Following a positive review, Spain may extend its participation for a further three year period, subject to the corresponding review cycle, and may continue to participate for the whole duration of the project.
3. Should Spain choose to carry on with the project following its first review, it will assume its full liability for decommissioning under the Convention. In the event that a decision to withdraw from participation is made by Spain on the basis of such first review, Spain will only bear fifty percent of its decommissioning liability under the Convention.

DECLARATION OF THE GOVERNMENT OF THE KINGDOM OF SWEDEN
WITH REGARD TO ITS FINANCIAL OBLIGATIONS AND CONFIDENTIALITY

THE CONFERENCE

TAKES NOTE of the declaration of the Government of the Kingdom of Sweden, which reads as follows:

Sweden is willing to contribute as a participating state to the establishment and utilisation of the European XFEL Facility. However,

1. The Swedish authority serving as the Swedish shareholder in the XFEL Company, which will contribute towards the construction costs with an amount of 12 million Euro (in 2005 prices), will be designated by the Government of the Kingdom of Sweden after parliamentary approval.
2. Sweden's participation in the construction of XFEL would be on the basis that Sweden will participate in the operational phase of XFEL for a minimum period of three years but Sweden will review its continued participation in the operational phase after the first two years and have the option, should it wish to do so following that review, to withdraw without penalty, after giving one year's notice.
3. Following a successful review Sweden may offer to extend its participation for a further three (or five) year period subject to a corresponding review cycle and may continue to participate for the whole life of the project.
4. In the event that Sweden's first review recommends continued participation in the project, Sweden will accept in full its decommissioning liability under the Convention. Should Sweden decide to withdraw from participation following its first review, it will accept liability for fifty per cent of its share of the decommissioning cost under the Convention.
5. Article 24 on Confidentiality in the Articles of Association (Annex to the Convention) should be interpreted as follows in order to meet the requirements of the regulation in the Swedish constitution of the principle of public access to documents:

The Swedish authority serving as the Swedish shareholder in the XFEL Company (European XFEL GmbH, based in the Federal Republic of Germany) shall always consult the conveying Shareholder before taking any decision to grant third parties access to confidential information as defined in Article 24 of the Articles of Association. Sweden is aware that if, after such mandatory consultation, the Shareholder has made it clear that it does not consent to the disclosure of information and, nevertheless, a Swedish authority would disclose the information, Sweden's action would disturb relations between Sweden and the Parties to this Convention.

In this context, Sweden recalls the Swedish Secrecy Act 1980, in particular Chapter 2, Section 1, paragraph 1 which reads: "Secrecy shall apply to any information concerning Sweden's relations with another state, or any information otherwise concerning another state, an international organisation, or an authority, a citizen, or a legal person in another state, or a stateless person, if it can be assumed that disclosure of the information would disturb Sweden's international relations or would otherwise cause damage to the country".

DECLARATION OF THE SWISS CONFEDERATION
WITH REGARD TO ITS FINANCIAL OBLIGATIONS
AND TO THE INTELLECTUAL PROPERTY

THE CONFERENCE

TAKES NOTE of the declaration of the Swiss Confederation, which reads as follows:

Switzerland is disposed to contribute as a participating state to the establishment and utilisation of the European XFEL Facility through permanent participation. However, due to the national legislation in force, the XFEL Convention, the Articles of Association and the Final Act (hereinafter referred to as the “XFEL Agreements”) will apply provisionally to Switzerland from the day of their signing until the completion of the national approval procedure. The XFEL Agreements will come into force on the day of their signing, subject to the national approval referred to above.

Furthermore, Switzerland's obligations, on signing the XFEL Agreements, will be as follows:

1. Subject to the above-mentioned approval, Switzerland will contribute the sum of EUR 15 million (in 2005 prices) to phase I of the construction of the European XFEL Facility.
2. Should it not be in a position to participate, as envisaged, in phase II of the European XFEL Facility as a participating state, Switzerland will have the option to withdraw at the end of phase I without penalty, after giving one year's notice.
3. Following phase II, Switzerland may offer to extend its participation in successive periods of four years.
4. In the event that Switzerland continues its participation in the project, Switzerland will accept in full its decommissioning obligations under the Convention.

5. In the event of litigation regarding intellectual property involving a Swiss party, Switzerland will consider the legal texts below as relevant in the following order:
- first: the Articles of Association of the XFEL Company
 - second: Swiss legislation
 - third: the agreement governing cooperation between the European Communities and Switzerland for the current Framework Programme¹.

¹ “Agreement on scientific and technological cooperation between the European Community and the European Atomic Energy Community, of the one part, and the Swiss Confederation, of the other part”, in force for the duration of the 7th Framework Programme, from 1 January 2008 to 31 December 2012; after 2013, a new agreement for the next Framework Programme should be defined according to Art. 7 of the Framework Agreement for scientific and technical cooperation between the European Communities and Switzerland (in force since 17 July 1987).

DECLARATION OF THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
WITH REGARD TO ITS FINANCIAL OBLIGATIONS

THE CONFERENCE

TAKES NOTE of the declaration of the Government of the United Kingdom of Great Britain and Northern Ireland, which reads as follows:

The United Kingdom of Great Britain and Northern Ireland is willing to contribute as a participating state to the establishment and utilisation of the European XFEL Facility. However, the United Kingdom of Great Britain and Northern Ireland's obligations, on signing the XFEL Convention, will be as follows:

1. Notwithstanding Articles 4(8) and 5(7), the United Kingdom of Great Britain and Northern Ireland will take part in the construction phase of the European XFEL Facility with an amount of no more than 30 million Euro (in 2005 prices).
2. Notwithstanding Article 15, UK participation in the construction of XFEL would be on the basis that the UK will participate in the operational phase of XFEL for a minimum period of three years but the UK will review its continued participation in the operational phase after the first two years and have the option, should it wish to do so following that review, to withdraw without penalty, after giving one year's notice.
3. Following a successful review the United Kingdom may offer to extend its participation for a further three year period subject to the same two-yearly review cycle and may continue to participate for the whole life of the project.
4. UK is ready to discuss the financial consequences resulting from termination of its participation.