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Protocol

to the Convention concerning the Construction and Operation of a
European X-Ray Free-Electron Laser Facility on the Accession of the
United Kingdom of Great Britain and Northern Ireland

Berlin, 19 March 2018

[The Protocol has not been approved by the United Kingdom]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
October 2019*



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**PROTOCOL TO THE CONVENTION CONCERNING THE
CONSTRUCTION AND OPERATION OF A EUROPEAN X-RAY
FREE-ELECTRON LASER FACILITY ON THE ACCESSION OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND**

The Governments of

the Kingdom of Denmark,

the French Republic,

the Federal Republic of Germany,

the Hellenic Republic,

Hungary,

the Republic of Italy,

the Republic of Poland,

the Russian Federation,

the Slovak Republic,

the Kingdom of Sweden,

the Swiss Confederation,

Hereinafter referred to as “the previous Contracting Parties”,

Having signed the Convention concerning the Construction and Operation of a European X-Ray Free-Electron Laser Facility (hereinafter “Convention”) on 30 November 2009 in Hamburg and (Government of the French Republic) on 4 February 2010 in Paris, and the Protocol to the Convention concerning the Construction and Operation of a European X-Ray Free-Electron Laser Facility on the Accession of the Government of the Kingdom of Spain on 6 October 2011 in Berlin,

on the one hand,

and

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

on the other hand,

Whereas the Government of the United Kingdom of Great Britain and Northern Ireland signed the Memorandum of Understanding on the Preparatory Phase of the European X-Ray Free-Electron Laser Facility agreed in Berlin on 23 September 2004;

Whereas representatives of the United Kingdom of Great Britain and Northern Ireland participated in the preparatory work carried out under that Memorandum of Understanding;

Whereas the Governments, having signed the Convention, expressed in the Convention's preamble the expectation that other countries participate in the activities undertaken together under the Convention;

Whereas the Council of the European XFEL GmbH, said company having been established in accordance with the Convention, on 27 April 2017, recommended unanimously that

- the Government of the United Kingdom of Great Britain and Northern Ireland should be offered to accede to the Convention under the same conditions as the previous Contracting Parties, and
- the commitment of the Government of the United Kingdom of Great Britain and Northern Ireland to contribute 26 241 142 € (referring to 2005 prices) towards the construction costs should be accepted;

Have agreed in accordance with Article 14 (1) of the Convention as follows:

ARTICLE 1

The Government of the United Kingdom of Great Britain and Northern Ireland accedes to the Convention as a Contracting Party. It does so under the same conditions as the previous Contracting Parties.

ARTICLE 2

In derogation from Article 5 (3) of the Convention, the United Kingdom of Great Britain and Northern Ireland contributes 26 241 142 € (referring to 2005 prices) towards construction costs.

ARTICLE 3

This Protocol shall enter into force on the first day of the second month after all Governments stated in the preamble to this Protocol have notified the Government of the Federal Republic of Germany as depositary of the Convention that the national approval process for this Protocol has been completed.

The Governments stated in the preamble to this Protocol agree that from 19 March 2018 onwards the clauses of the Protocol be applied provisionally, it being understood that the entry into force of the Protocol is subject to the fulfilment of appropriate constitutional procedures in each of the Contracting and Signatory States and the entry into force of the Convention of 30 November 2009 concerning the Construction and Operation of a European X-Ray Free-Electron Laser Facility.

ARTICLE 4

The Government of the United Kingdom of Great Britain and Northern Ireland agrees with the provisions in the Final Act of the Conference of Plenipotentiaries for the Establishment of a European X-Ray Free-Electron Laser Facility, signed in Hamburg on 30 November 2009.

The Conference of Plenipotentiaries assembled for signing this Protocol took note of the Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland attached to this Protocol.

Done at Berlin this 19 March 2018 in the English, French, German, Italian and Russian 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 a certified true copy to the Governments having signed this Protocol 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 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 Sweden

For the Government of the Swiss Confederation

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

DECLARATION OF THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

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. Nevertheless, the United Kingdom of Great Britain and Northern Ireland's obligations on signing the Protocol to the Convention concerning the Construction and Operation of a European X-Ray Free-Electron Laser Facility on the Accession of the Government of the United Kingdom of Great Britain and Northern Ireland shall be as follows:

1. This Declaration shall replace any previous Declaration of the United Kingdom of Great Britain and Northern Ireland (the 'UK').
2. The UK's contribution to construction costs of the XFEL shall not exceed the amount set out in this Protocol to the Convention and the UK's contribution to operating costs prior to its first review shall not exceed 3.3 M€ per year.
3. The UK will participate in XFEL in accordance with Article 15 of the Convention. Nonetheless, the UK will review its active participation and annual contribution and shall have the option, should it wish to do so following that review, to withdraw without penalty on 31 March 2020 after giving one year's written notice. However, in case of a significant overuse of the European XFEL Facility by the UK scientific community (compared to the UK share in the operating budget) in the three years preceding UK withdrawal, an agreement on an adequate compensation shall be concluded.
4. In the event that the UK's first review recommends continued participation in the project, the UK will accept its full decommissioning liability under the Convention. Should the UK decide to withdraw from participation following its first review, it will accept liability of fifty percent of its share of the decommissioning costs 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 UK's Freedom of Information Act 2000: the UK's shareholder in European XFEL GmbH will not breach Article 24 in circumstances where (i) it is compelled to disclose confidential information in response to a relevant request under the Freedom of Information Act 2000, (ii) following consultation with the European XFEL GmbH, none of the exceptions to that Act can be applied to the requested confidential information and (iii) to refuse to disclose the information requested

would result in a breach of the Freedom of Information Act 2000 by the UK authority serving as the UK's shareholder.

6. In the event of a conflict of terms of the various documentation relating to the UK's participation in XFEL, the following order of precedence shall apply: 1. This Declaration, 2. Protocol to the Convention concerning the Construction and Operation of a European X-Ray Free-Electron Laser Facility on the Accession of the Government of the United Kingdom of Great Britain and Northern Ireland, 3. The Convention, 4. The Articles of Association of the European XFEL GmbH.

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