

AGREEMENT on scientific and technological cooperation between the European Community and the Republic of South Africa

THE EUROPEAN COMMUNITY (hereinafter 'the Community'), on the one hand, and THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA acting on behalf of the Republic of South Africa (hereinafter 'South Africa'), on the other hand, hereinafter referred to as the 'Parties',

CONSIDERING the importance of science and technology for their economic and social development;

WHEREAS the Community and South Africa are pursuing research and technological development including demonstration in a number of areas of common interest and mutual benefit may be derived if the Parties engage in cooperative activities;

WHEREAS such cooperation should also be to the benefit of the Southern African Development Community where possible and justified;

WHEREAS, for this purpose, it is desirable that a framework for cooperation be established;

WHEREAS this scientific and technological cooperation Agreement forms part of the global cooperation between the Community and its Member States, on the one hand, and South Africa, on the other hand;

WHEREAS, by Decision No 1110/94/EC, the European Parliament and the Council of the European Union adopted a framework programme of European Community activities in the field of research and technological development and demonstration (1994-98), hereinafter called the 'Fourth Framework Programme';

WHEREAS, without prejudice to the relevant provisions of the Treaty establishing the European Community, this Agreement and any activities entered into under it will in no way affect the powers vested in the Member States to undertake bilateral activities with South Africa in the fields of science, technology, research and development, and to conclude, where appropriate, agreements to that end,

HAVE AGREED AS FOLLOWS:

Article 1

Objectives

The Parties shall encourage and facilitate cooperation between the Community and South Africa in fields of common interest where they are supporting research and development including demonstration activities to advance science and/or technology.

Article 2

Definitions

For the purposes of this Agreement:

(a) 'cooperative activity' means any activity carried out under this Agreement and includes joint research;

(b) 'information' means scientific or technical data, results or methods of research and development stemming from the joint research and any other information deemed necessary by the participants engaged in cooperative activity, including, where necessary, the Parties themselves;

(c) 'intellectual property' shall have the meaning defined in Article 2 of the Convention establishing the World Intellectual Property Organization, done at Stockholm, 14 July 1967;

(d) 'joint research' means research, technological development and demonstration that is implemented with or without financial support from either or both Parties and that involves collaboration by participants from both the Community and South Africa;

(e) 'participant' or 'research entity' means any person, legal entity, university, research institute or any other body or undertaking participating in a cooperative activity, including the Parties themselves.

Article 3

Principles

Cooperation shall be conducted on the basis of the following principles:

(a) mutual benefit;

(b) timely exchange of information which may affect the actions of participants in cooperative activities; and

(c) within the framework of applicable laws and regulations, effective protection of intellectual property and equitable sharing of intellectual property rights, as set out in the Annex, which forms an integral part of this Agreement.

Article 4

Scope of the cooperation

Cooperation under this Agreement may cover all research and technological development and demonstration (hereinafter referred to as RTD) activities related to the Fourth Framework Programme and all similar RTD activities in South Africa.

Article 5

Modalities of cooperation

Cooperation may take the following forms:

(a) (i) participation of South African research entities in RTD projects related to the Fourth Framework Programme and a reciprocal participation of research entities of the European Community in South African projects in similar areas of research; as regards South African participation in Community RTD projects, such participation shall be subject to the rules applicable for the participation of undertakings, research centres and universities in the specific programmes of RTD of the Community ⁽¹⁾;

(1) Council Decision 94/763/EC of 21 November 1994 concerning the rules for the participation of undertakings, research centres and universities in the research, technological development and demonstration activities of the European Community (OJ L 306, 30. 11. 1994, p. 8).

(ii) for the purpose of participation by South African research entities in the specific programme of RTD in the field of cooperation with third countries and international organizations (1994-98) South Africa is considered a developing country;

(b) shared use of research facilities;

(c) visits and exchanges of research workers, engineers and technicians;

(d) participation by experts in seminars, symposia and workshops;

(e) scientific networks and training of researchers;

(f) exchange of information on practices, laws, regulations and programmes relevant to cooperation under this Agreement;

(g) other modalities as may be recommended by the Joint Science and Technology Cooperation Committee in accordance with the applicable policies and programmes of the Parties.

With the exception of projects under (a) (ii) above, joint RTD projects shall proceed once the participants have concluded a joint technology management plan (JTMP), as indicated in the Annex to this Agreement.

Article 6

Joint Science and Technology Cooperation Committee (JSTCC)

(a) A Joint Science and Technology Cooperation Committee will be established in order to administer this Agreement; it will be composed of representatives of the Commission and of South Africa; it shall adopt its rules of procedure.

(b) The functions of the JSTCC shall be to:

1. promote and review the various cooperation activities envisaged under this Agreement;
2. make recommendations pursuant to Article 5 (g);
3. advise the Parties on ways to enhance cooperation consistent with the principles set out in this Agreement;
4. review the efficient and effective functioning of the Agreement;
5. provide a report annually to the Parties on the level, status and effectiveness of cooperation undertaken under this Agreement.

(c) The JSTCC shall meet as mutually agreed, meetings being held alternately in the Community and South Africa.

(d) Costs incurred by or on behalf of the Committee shall be met by the Party to whom the members are responsible. Costs, other than those of travel and accommodation, which are directly associated with meetings of the Committee, shall be met by the host Party.

Article 7

Funding

(a) Cooperative activities shall be subject to the availability of funds and to the applicable laws and regulations, policies and programmes of the Parties.

(b) Costs incurred by participants in cooperative activities shall not require any transfer of funds from one Party to the other, except for the participation referred to under Article 5 (a) (ii).

Article 8

Entry of personnel and equipment

Each Party shall take all reasonable steps and use its best efforts, within existing laws and regulations, to facilitate entry to and exit from its territory of personnel, material and equipment of the participant(s) engaged in or used in cooperative activities under this Agreement.

Article 9

Dissemination and utilization of information

Research entities established in South Africa, participating in Community RTD projects, shall, as regards ownership, dissemination and utilization of information and intellectual property arising from such participation, be subject to the rules for the dissemination of the research results from the specific programmes of RTD of the Community, and the Annex to this Agreement.

Research entities established in the Community, taking part in South African RTD projects, shall, as regards ownership, dissemination and utilization of information and intellectual property arising from such participation, have the same rights and obligations as those of South African research entities, and be subject to the Annex to this Agreement.

Article 10

Territorial application

This Agreement shall apply, on the one hand to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and, on the other hand, to the territory of South Africa.

Article 11

Entry into force; termination; settlement of disputes

(a) This Agreement shall enter into force on the date on which the Parties have notified each other in writing that their legal requirements have been fulfilled.

(b) This Agreement shall be concluded for the duration of the Fourth Framework Programme and will be renewable by common agreement between the Parties (tacit renewal) for the specific programmes implementing subsequent framework programmes of the Community.

(c) This Agreement may be amended by agreement of the Parties. Amendments shall enter into force on the date on which the Parties have notified each other in writing that their legal requirements have been fulfilled.

(d) This Agreement may be terminated at any time by either Party upon six months written notice. The expiration or termination of this Agreement shall not affect the validity or duration of any arrangements made under it, or any specific rights and obligations that have accrued in compliance with the Annex.

(e) All questions or disputes related to the interpretation or implementation of this Agreement shall be settled between the Parties by mutual agreement.

Article 12

This Agreement is drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, each of these texts being equally authentic.

Hecho en Bruselas, el cinco de diciembre de mil novecientos noventa y seis.

Udfærdiget i Bruxelles den femte december nitten hundrede og seksoghalvfems.

Geschehen zu Brüssel am fünften Dezember neunzehnhundertsechsunneunzig.

„ãéíá óóèò Æñöÿëëâð, óóèò ðÝíôâ Äâêâîâñβïö ÷-βëéá áííéáéüóéá áíáíβíôá Ýíé.

Done at Brussels on the fifth day of December in the year one thousand nine hundred and ninety-six.

Fait à Bruxelles, le cinq décembre mil neuf cent quatre-vingt-seize.

Fatto a Bruxelles, addì cinque dicembre millenovecentonovantasei.

Gedaan te Brussel, de vijfde december negentienhonderd zesennegentig.

Feito em Bruxelas, em cinco de Dezembro de mil novecentos e noventa e seis.

Tehty Brysselissä viidentenä päivänä joulukuuta vuonna tuhatyhdeksänsataayhdeksänkymmentäkuusi.

Som skedde i Bryssel den femte december nittonhundraiosex.

Por la Comunidad Europea

For Det Europæiske Fællesskab

Für die Europäische Gemeinschaft

Āéá ôçĭ Āõñùðáúéþ Êíéíúôçóá

For the European Community

Pour la Communauté européenne

Per la Comunità europea

Voor de Europese Gemeenschap

Pela Comunidade Europeia

Euroopan yhteisön puolesta

På Europeiska gemenskapens vägnar

(Signature)

For the Government of the Republic of South Africa

(Signature)

ANNEX

ANNEX ON THE DISSEMINATION AND UTILIZATION OF INFORMATION AND MANAGEMENT, ALLOCATION AND EXERCISE OF INTELLECTUAL PROPERTY RIGHTS

I. OWNERSHIP, ALLOCATION AND EXERCISE OF RIGHTS

1. All research carried out pursuant to this Agreement shall be 'joint research'. The participants performing the joint research shall develop joint technology management plans (JTMPs) which shall contain, as a minimum, principles in respect of the ownership and use, including publication, of information and intellectual property (IP) to be created in the course of the joint research (1).

(1) The indicative features of such JTMPs are set out in the Appendix.

The JTMPs shall be approved by the responsible funding agency or department of the Party involved in financing the research, before the conclusion of the specific research and development cooperation contracts to which they are attached. The JTMPs shall be developed taking into account the aims of the joint research, the relative contributions of the participants, the advantages and disadvantages of licensing by territory or for fields of use, requirements imposed by applicable laws, the need for dispute settlement procedures and other factors deemed appropriate by the participants. The rights and obligations concerning the research and information generated by visiting researchers in respect of IP shall also be addressed in the JTMPs.

2. Information or IP created in the course of joint research and not addressed in a JTMP shall be allocated following the procedures set out in section I (1) according to the principles set out in that JTMP. In case of disagreement, which cannot be resolved by the agreed dispute resolution procedure, such unallocated information or IP shall be owned jointly by all the participants involved in the joint research from which the information or IP results, and each participant to whom this provision applies shall have the right to use such information or IP for his/her own commercial exploitation with no geographical limitation.

3. In accordance with applicable laws, each Party shall ensure that the other Party and its participants may have the rights to IP allocated to them in accordance with the principles set out in section I of this Annex.

4. While maintaining the conditions of competition in areas affected by the Agreement, each Party shall endeavour to ensure that rights acquired pursuant to the Agreement, and arrangements made under it, are exercised in such a way as to encourage in particular:

(i) the dissemination and use of information created, disclosed, or otherwise made available, under the Agreement;

(ii) the adoption and implementation of international standards.

II. COPYRIGHT WORKS

Copyright belonging to the Parties or to their participants shall be accorded treatment consistent with the Berne Convention (Paris Act 1971).

III. SCIENTIFIC LITERARY WORKS

Without prejudice to section IV, unless otherwise agreed in the JTMP, any publication of results of the joint research shall be made jointly by the participants. In addition to the foregoing general rule, the following procedure shall apply:

1. in the case of publication by a Party or public bodies of that Party of scientific and technical journals, articles, reports, books, including video and software, arising from joint research pursuant to the Agreement, the other Party shall be entitled, with written permission from the publisher, to a worldwide, non-exclusive, irrevocable, royalty-free licence to translate, reproduce, adapt, transmit and publicly distribute such works;

2. the Parties shall endeavour to disseminate literary works of a scientific character arising from joint research pursuant to the Agreement and published by independent publishers as widely as possible.

3. all copies of a copyright work to be publicly distributed and prepared under this provision shall indicate the names of the author(s) of the work unless an author or authors expressly declines or decline to be named. Copies shall also bear a clearly visible acknowledgement of the cooperative support of the Parties.

IV. UNDISCLOSED INFORMATION

A. Documentary undisclosed information

1. Each Party or its participants shall identify at the earliest possible moment, and preferably in the JTMP, the information that it wishes to remain undisclosed in relation to this Agreement, taking into account, among other things, the following criteria:

- secrecy of the information in the sense that the information is not, as a body or in the precise configuration or assembly of its components, generally known among or readily accessible by lawful means to experts in the field,
- the actual or potential commercial value of the information by virtue of its secrecy,
- previous protection of the information in the sense that it has been subject to steps that were reasonable under the circumstances by the person lawfully in control, to maintain its secrecy.

2. Participants shall not normally be required to provide undisclosed information to the Parties. Should the Parties become aware of such information, they shall respect the privileged nature thereof, and it shall not be further disclosed by, within, or between the Parties, without the written consent of the participant(s) to whom the information belongs. These limitations shall automatically terminate when such information is disclosed by the owner, without restriction, to experts in the field.

3. Each Party shall ensure that undisclosed information, communicated between them under the Agreement, and its ensuing privileged nature is readily recognizable as such by the other Party, for example, by means of an appropriate marking or restrictive legend. This also applies to any reproduction of the said information, in whole or in part.

4. Undisclosed information communicated under the Agreement, and received from the other Party, may be disseminated by the receiving Party to persons within or employed by the receiving Party and other concerned departments or agencies of the receiving Party authorized for the specific purposes of the joint research underway, provided that any undisclosed information so disseminated shall be pursuant to a written agreement of confidentiality and shall be readily recognizable as such, as set out above.

5. With the prior written consent of the Party providing undisclosed information under the Agreement, the receiving Party may disseminate such undisclosed information more widely than otherwise permitted in paragraph 3 above. The Parties shall cooperate in developing procedures for requesting and obtaining prior written consent for such wider dissemination, and each Party will grant such approval to the extent permitted by its domestic policies, regulations and laws.

B. Non-documentary undisclosed information

Non-documentary undisclosed or other confidential or privileged information provided in seminars and other meetings arranged under the Agreement, or information arising from the attachment of staff, use of facilities, or joint projects, shall be treated by the Parties or their participants according to the principles specified in section IV (A) above, provided, however, that the recipient of such undisclosed or other confidential or privileged information has been made aware in advance and in written form of the confidential character of the information to be communicated.

C. Control

Each Party shall make its best efforts to ensure that undisclosed information received by it under the Agreement shall be controlled as provided therein. If one of the Parties becomes aware that it will be, or may reasonably be expected to become, unable to meet the non-dissemination provisions of paragraphs A and B above, it shall

immediately inform the Party likely to be affected by the dissemination. The Parties involved shall thereafter consult to define an appropriate course of action.

Appendix

Indicative features of a joint technology management plan (JTMP)

The JTMP is part of the contract to be concluded between the participants in joint research defining their respective rights and obligations. With respect to intellectual property Rights, the JTMP will normally address, inter alia, ownership, protection, user rights for research and development purposes, exploitation and dissemination, including arrangements for joint publication, the rights and obligations of visiting researchers and dispute settlement procedures. The JTMP may also address foreground and background information, the rules governing disclosure of undisclosed information, licensing and deliverables.

FINAL ACT

The plenipotentiaries of:

THE COUNCIL OF THE EUROPEAN UNION,

of the one part, and

THE REPUBLIC OF SOUTH AFRICA,

of the other part,

meeting at Brussels, on the fifth day of December in the year one thousand nine hundred and ninety-six for the purpose of signing the Agreement on Scientific and Technological Cooperation between the European Community and the Republic of South Africa,

have, on signing this Agreement,

adopted the following Joint Declaration of the Contracting Parties:

Joint Declaration on the Scientific and Technological Agreement between the European Community and South Africa.

The Declaration referred to above is annexed to this Final Act.

JOINT DECLARATION ON THE SCIENTIFIC AND TECHNOLOGICAL AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND SOUTH AFRICA

The European Community and South Africa reiterate their firm will to strengthen scientific and technological cooperation and welcome the conclusion of this Agreement which will permit even closer collaboration between the two Parties to the advantage of research and technological development activities, including demonstration, in various areas of common interest.

The European Community and South Africa declare their commitment to do their utmost to ensure that the activities developed within the framework of this Agreement should also have a favourable impact in the wider Southern Africa region, thus contributing to harmonious and sustainable economic and social development, as envisaged in the European Union-SADC declaration adopted at the Ministerial Conference in Berlin in September 1994, and confirmed at the time of the Ministerial Conference in Windhoek in October 1996.

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For the European Community

Pour la Communauté européenne

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Voor de Europese Gemeenschap

Pela Comunidade Europeia

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(Signature)

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