

Proposal for a Council Decision on the signing of the Agreement for scientific and technological cooperation between the European Community and Ukraine

(2002/C 203 E/10)

COM(2002) 178 *final*

(Submitted by the Commission on 15 April 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 170 (2) thereof, in conjunction with the first sentence of the first subparagraph of Article 300 (2) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) A Partnership and Cooperation Agreement between the European Communities and their Member States of the one part, and Ukraine of the other part, was signed on 16 June 1994 and has entered into force on 1 March 1998 ⁽¹⁾.
- (2) A European Council Common Strategy on Ukraine was adopted on 11 December 1999 ⁽²⁾ at the Helsinki European Council.
- (3) The European Community and Ukraine are pursuing specific RTD programmes in areas of common interest.

On the basis of past experience, both sides have expressed a desire to establish a deeper and broader framework for the conduct of collaboration in science and technology.

This cooperation agreement in the field of science and technology forms part of the global cooperation between the European Community and Ukraine.

- (4) By its Decision of 8 October 2001, the Council authorised the Commission to negotiate on behalf of the European Community an agreement for scientific and technological cooperation between the European Community and Ukraine. The negotiations, conducted in line with the negotiating directives, resulted in the attached draft Agreement and its two annexes.
- (5) Subject to its possible conclusion at a later date, the Agreement initialled on 13 November 2001 in Kiev should be signed,

HAS DECIDED AS FOLLOWS:

Sole Article

Subject to a possible conclusion at a later date, the President of the Council is hereby authorised to designate the person empowered to sign, on behalf of the European Community, the Agreement for scientific and technological cooperation between the European Community and Ukraine.

⁽¹⁾ OJ L 49, 19.2.1998, p. 3.

⁽²⁾ OJ L 331, 23.12.1999.

AGREEMENT**on cooperation in science and technology between the European Community and Ukraine**

THE EUROPEAN COMMUNITY (hereinafter 'the Community'),

of the one part,

and

UKRAINE,

of the other part,

hereinafter referred to as the 'Parties',

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

RECOGNISING that the Community and Ukraine are pursuing research and technological activities in a number of areas of common interest, and that participation in each other's research and development activities on a basis of reciprocity will provide mutual benefits,

HAVING REGARD to the Partnership and Cooperation Agreement concluded between the European Communities and their Member States of the one part, and Ukraine of the other part, signed on 16 June 1994, and in particular to Article 58 thereof,

DESIRING to establish a formal basis for cooperation in scientific and technological research which will extend and strengthen the conduct of cooperative activities in areas of common interest and encourage the application of the results of such cooperation to the economic and social benefits of the Parties,

HAVE AGREED AS FOLLOWS:

*Article 1***Purpose**

The Parties shall encourage, develop and facilitate cooperative activities in fields of common interest where they are pursuing research and development activities in science and technology.

*Article 2***Definitions**

For the purpose of this Agreement:

- (a) 'Cooperative activity' means any activity which the Parties undertake or support pursuant to this Agreement, and includes joint research;
- (b) 'Information' means scientific or technical data, results or methods of research and development stemming from joint research and any other data relating to cooperative activities;
- (c) 'Intellectual property' shall have the meaning defined in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm on 14 July 1967;

(d) 'Joint research' means research implemented with financial support from one or both Parties and that involves collaboration by participants from both the Community and Ukraine;

(e) 'Participant' means any person, legal entity, university, research institute or any other body participating in a cooperative activity, including, where appropriate, Agencies and official bodies of the Parties themselves.

*Article 3***Principles**

Cooperative activities shall be conducted on the basis of the following principles:

- (a) mutual benefit;
- (b) timely exchange of information which may affect cooperative activities;
- (c) balanced realisation of economic and social benefits by the Community and Ukraine in view of the contribution made to cooperative activities by the respective participants and/or Parties.

*Article 4***Areas of cooperative activities**

(a) Cooperation may be pursued in research, technological development and demonstration activities, including basic research, in the following:

- environment and climate research, including earth observation,
- biomedical and health research,
- agriculture, forestry and fisheries research,
- industrial and production technologies,
- materials research and metrology,
- non-nuclear energy,
- transportation,
- information society technologies,
- social sciences research,
- science and technology policy,
- training and exchange of scientists.

(b) Other areas may be added to this list upon review and recommendation by the Joint Community-Ukraine Committee mentioned in Article 6 of this Agreement.

*Article 5***Forms of cooperative activities**

(a) Cooperation may include the following activities:

1. participation of Ukrainian entities in Community projects, in the areas of cooperative activities, and a reciprocal participation of entities established in the Community in Ukrainian projects in those areas. Such participation shall be subject to the laws, rules, regulations and procedures in force for each Party. Projects may also include a Party's scientific and technological organisations; projects may also be undertaken in cooperation with the Agencies and official bodies of the Parties;

2. free access to, and shared use of research facilities, including installations and sites for monitoring, observation and experimentation, as well as data collections, relevant to the cooperative activities;

3. visits and exchanges of scientists, engineers, or other appropriate personnel for the purposes of participating in seminars, symposia and workshops relevant to cooperation under this Agreement;

4. exchange of information on practices, legislation, regulations and programmes relevant to cooperation under this Agreement;

5. other activities as may be mutually determined by the Parties in accordance with the applicable policies and programmes of the Parties.

(b) Joint research projects shall proceed under this Agreement only after the participants in a project have concluded a joint technology management plan, as indicated in the Annex 1 to this Agreement which forms an integral part thereof.

(c) The Parties may jointly pursue cooperative activities with third parties.

*Article 6***Coordination and promotion of cooperative activities**

(a) In order to coordinate and facilitate cooperation activities under this Agreement the Parties will establish a Joint Community-Ukraine Committee on cooperation in the field of science and technology, hereinafter called the 'Committee'.

The Committee shall meet in the framework of the relevant Sub-Committee established under the Partnership and Cooperation Agreement between the European Communities and their Member-States, and Ukraine.

(b) The function of the Committee shall include:

1. overseeing and promoting the activities envisaged under the Agreement;

2. making recommendations pursuant to Article 4(b);

3. proposing activities pursuant to Article 5, 5(a);

4. advising the Parties on ways of enhancing cooperation consistent with the principles set out in this Agreement;

5. providing an annual report on the status and effectiveness of cooperation undertaken under this Agreement;
 6. reviewing the efficient and effective functioning of the Agreement;
 7. taking account of the importance of regional aspects of the cooperation.
- (c) The Committee shall meet once a year, meetings being held alternately in the Community and Ukraine. Extraordinary meetings may be held as mutually agreed.
- (d) The Committee shall consist of a limited equal number of official representatives of each Party; it shall establish its own rules of procedure, subject to approval by the Parties. Decisions of the Committee shall be reached by consensus. Minutes, comprising a record of decisions and principal points discussed, shall be taken at each meeting and shall be agreed by those persons selected from each side to chair jointly the meeting. The Committee annual report will be submitted to the Cooperation Council and the Cooperation Committee established under the Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine, and appropriate authorities of each Party.

Article 7

Funding and taxes exemptions

- (a) Cooperative scientific and technological activities shall be subject to the availability of funds and to the applicable laws and regulations, policies and programmes of the Community and Ukraine. As a rule, each Party shall bear the costs of discharging its responsibilities under this Agreement, including costs of participation in meetings of the Committee.
- (b) When specific scientific and technological cooperative forms benefit from financial support of the European Community, either directly or indirectly through organisations set up with the participation of the European Community, provided to participants of Ukraine, any such grants, financial or other contributions from the European Community to participants of Ukraine in support of their scientific and technological activities, shall be granted tax and customs preferences. Any such grants shall be exempt by Ukraine from customs payments, any customs duties and fees, value added taxes, income taxes and any other taxes and duties of an equivalent effect.

Article 8

Entry of personnel and equipment

Each Party shall take all reasonable steps and use its best efforts, in accordance with its laws and regulations, to facilitate entry to, stay in and exit from its territory of persons, material, data and equipment involved in or used in cooperative activities under this Agreement.

Article 9

Information and intellectual property

The dissemination and utilisation of information, and management, allocation and exercise of intellectual property rights, resulting from joint research under this Agreement, shall be subject to the provisions of the Annex 2 to this Agreement.

Article 10

Other agreements and transitional provisions

1. This Agreement is without prejudice to other existing Agreements or arrangements between the Parties or any Agreement or arrangement between the Parties and third parties.
2. The Parties shall endeavour to bring under the terms of this Agreement those existing arrangements for scientific and technological cooperation between the Community and Ukraine that fall under the scope of Article 4 of this Agreement.

Article 11

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 Ukraine. This shall not prevent the conduct of cooperative activities on the high seas, outer space on the territory of third countries, in accordance with international laws.

Article 12

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 respective internal procedures necessary for its entry into force have been completed.

- (b) This Agreement shall be concluded for an initial period ending 31 December 2002 and will be renewable by common agreement between the Parties for additional periods of five years.
- (c) This Agreement can be terminated at any time by either Party upon a six month's 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 Annexes.
- (d) This Agreement may be amended by the written agreement of the Parties. Amendments shall enter into force on the date on which the Parties have notified each other in writing that their respective internal procedures necessary for amending this Agreement have been completed.

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

Article 13

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

Done at ... on the ... day of ... in the year ...

For the European Community

For Ukraine

ANNEX 1

INDICATIVE FEATURES OF A TECHNOLOGY MANAGEMENT PLAN

The Technology Management Plan (TMP) is a specific agreement to be concluded between the participants about the implementation of joint research and the respective rights and obligations of the participants.

With respect to intellectual property, the TMP will normally address, among other things, 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 TMP may also address foreground and background information, licensing and deliverables.

The TMPs shall be developed taking into account the aims of the joint research, the relative financial or other contributions of the Parties or participants, the advantages and disadvantages of licensing by territory or for fields of use, the transfer of export-controlled data, goods or services, requirements imposed by the applicable laws and other factors deemed appropriate by the participants.

ANNEX 2

INTELLECTUAL PROPERTY RIGHTS

Pursuant to Article 9 of the present Agreement, rights to information and intellectual property created or furnished under the Agreement shall be allocated as provided in this Annex.

I. APPLICATION

This Annex is applicable to joint research undertaken pursuant to this Agreement, except as otherwise agreed by the Parties.

II. OWNERSHIP, ALLOCATION AND EXERCISE OF RIGHTS

1. This Annex addresses the allocation of rights and interests of the Parties and their participants. Each Party and its participants shall ensure that the other Party and its participants may obtain the rights to intellectual property allocated to it in accordance with this Annex. This Annex does not otherwise alter or prejudice the allocation of rights, interests and royalties between a Party and its nationals or participants, which shall be determined by the laws and practices applicable to each Party.

2. The following principles shall apply and shall be provided for in the contractual arrangements:
 - (a) Adequate protection of intellectual property. The Parties and/or their participants, as appropriate, shall ensure that they notify one another within a reasonable time of the creation of any intellectual property arising under this Agreement or implementing arrangements and to seek protection for such intellectual property in a timely fashion.
 - (b) Taking account of the contributions of the Parties or their participants in determining the rights and interests of the Parties and participants.
 - (c) Effective exploitation of results.
 - (d) Non-discriminatory treatment of participants from the other party as compared with the treatment given to its own participants.
 - (e) Protection of confidential information.
3. The participants shall jointly develop a Technology Management Plan (TMP) in respect of the ownership and use, including publication, of information and intellectual property to be created in the course of joint research. The indicative features of a TMP are contained in the Annex 1 to this Agreement. The TMP 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.
4. Information or intellectual property created in the course of joint research and not addressed in the TMP shall be allocated, with the approval of the Parties, according to the principles set out in the TMP. In case of disagreement, such information or intellectual property shall be owned jointly by all the participants involved in the joint research from which the information or intellectual property results. Each participant to whom this provision applies shall have the right to use such information or intellectual property for his own exploitation with no geographical limitation.
5. While maintaining the conditions of competition in areas affected by the Agreement, each Party shall endeavour to ensure that rights acquired pursuant to this Agreement and arrangements made under it are exercised in such a way as to encourage, in particular:
 - (a) the dissemination and use of information created, disclosed or otherwise made available, under the Agreement, and
 - (b) the adoption and implementation of international technical standards.
6. Termination or expiry of this Agreement shall not affect rights or obligations under this Annex.

III. COPYRIGHT WORKS

Contractual and other implementing arrangements shall provide for treatment of copyright belonging to the Parties or to their participants consistent with the Berne Convention for the protection of literary and artistic work (Paris Act 1971).

IV. SCIENTIFIC LITERARY WORKS

Without prejudice to Section V, and unless otherwise agreed in the TMP, publication of results of research shall be made jointly by the Parties or participants to that joint research. Subject to the foregoing general rule, the following procedures 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 this Agreement, the other Party or public bodies of that Party shall be entitled within the limits specified within the TMP to a worldwide, non-exclusive, irrevocable, royalty-free licence to translate, reproduce, adapt, transmit and publicly distribute such works.
2. The Parties shall ensure that literary works of a scientific character arising from joint research pursuant to this Agreement shall be disseminated 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(s) explicitly declines to be named. They shall also bear a clearly visible acknowledgement of the cooperative support of the Parties.

V. UNDISCLOSED INFORMATION

A. *Documentary undisclosed information*

1. Each Party and its participants, as appropriate, shall identify at the earliest possible moment and preferably in the technology management plan the information that they wish to remain undisclosed, taking into account, inter alia, the following criteria:
 - (a) confidentiality of the information in the sense that it 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;
 - (b) the actual or potential commercial value of the information by virtue of its confidentiality;
 - (c) 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 confidentiality.

The Parties and their participants, as appropriate, may in certain cases agree that, unless otherwise indicated, parts or all of the information provided, exchanged or created in the course of joint research may not be disclosed.

2. Each Party shall ensure that it and its participants clearly identify undisclosed information, 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.

A Party and a participant receiving undisclosed information shall respect the privileged nature thereof. These limitations shall automatically terminate when this information is disclosed by the owner into the public domain.

3. 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 authorised for the specific purposes of the joint research underway, provided that any undisclosed information so disseminated shall be pursuant to an agreement of confidentiality and shall be readily recognisable as such, as set out above.
4. With the prior written consent of the Party providing undisclosed information, the receiving Party may disseminate such undisclosed information more widely than otherwise permitted in point 3 of the present section. 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 information provided in seminars and other meetings arranged under this 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 for documentary information in this Annex provided however that the recipient of such undisclosed or other confidential or privileged information has been made aware of the confidential character of the information communicated at the time such communication is made.

C. *Control*

Each Party shall endeavour to ensure that undisclosed information received by it under this Agreement shall be controlled as provided herein. If one of the Parties becomes aware that it will be, or may be reasonably expected to become, unable to meet the non-dissemination provisions of subsections A and B of the present Section, it shall immediately inform the other Party. The Parties shall thereafter consult to define an appropriate course of action.
