



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.11.2003
COM(2003) 656 final

Proposal for a

DECISION OF THE COUNCIL AND OF THE COMMISSION

on the signature on behalf of the European Community and of the European Atomic Energy Community of the Agreement on Scientific and Technological Cooperation between the European Communities of the one part and the Swiss Confederation of the other part

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. By their joint decision of 4 April 2002 the Council and the Commission concluded the 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. This Agreement entered into force on 1 June 2002.
2. This Agreement associated Switzerland in the specific programmes of the Fifth (EC and Euratom) Framework Programmes. Article 9(2) thereof provided for renewal of the Agreement should the Community adopt new Framework Programmes.
3. On 7 June 2002, as the Sixth (EC and Euratom) Framework Programmes were being adopted by the Communities, the Swiss Confederation officially requested the Commission to renew the abovementioned Agreement with a view to being associated in them.
4. It is in the interest of the Communities to renew this Agreement in order to associate the Swiss Confederation in the Sixth (EC and Euratom) Framework Programmes and thereby expand the European Research Area.
5. Consequently, on 26 November 2002 the Commission proposed that the Council authorise it to negotiate the renewal of this Agreement with a view to associating the Swiss Confederation in the Sixth (EC and Euratom) Framework Programmes. On 20 February 2003 the Council gave the Commission a mandate to negotiate renewal of the Agreement, including the possibility of provisional application so as to allow legal entities from the Swiss Confederation to participate, as early as possible, in the calls under the Sixth (EC and Euratom) Framework Programmes.
6. Renewal of this Agreement has been negotiated in line with the negotiating directives annexed to the Council decision of 20 February 2003. These negotiations were completed on 5 September 2003, when the authorised representatives of the two parties initialled the annexed draft Agreement.
7. This new Agreement is based on the principles laid down in its predecessor, particularly with regard to the contribution from the Swiss Confederation to the budgets for the Sixth (EC and Euratom) Framework Programmes. However, it has been adapted to take account of the specifics of the Sixth (EC and Euratom) Framework Programmes. In addition, Annex C contains new provisions on cooperation between the Communities and the Swiss Confederation on control of Community funds.
8. Finally, following the entry into force of the Sixth Framework Programmes, in view of the fact that the associated States make annual contributions to their individual budgets and of the time needed for negotiation of this renewal, it is proposed that this Agreement should enter into force on 1 January 2004 and, if it is not concluded in time, should apply provisionally from that date on, subject to signature at a later date.
9. In the light of the foregoing, the Commission proposes that the Council:
 - approve, on behalf of the European Community, together with the Commission, acting on behalf of the European Atomic Energy Community, the

signature of the Agreement on Scientific and Technological Cooperation between the European Communities of the one part and the Swiss Confederation of the other part; and

- on this basis, authorise provisional application of the Agreement with effect from 1 January 2004, under the terms laid down therein, if the Agreement has not been concluded by that date.

Proposal for a

DECISION OF THE COUNCIL AND OF THE COMMISSION

on the signature on behalf of the European Community and of the European Atomic Energy Community of the Agreement on Scientific and Technological Cooperation between the European Communities of the one part and the Swiss Confederation of the other part

THE COUNCIL OF THE EUROPEAN UNION,

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular the second subparagraph of Article 101 thereof,

Having regard to the proposal from the Commission¹,

Whereas:

- (1) The Commission has negotiated, on behalf of the Communities, an Agreement on Scientific and Technological Cooperation with the Swiss Confederation.
- (2) This Agreement was initialled by the representatives of the Parties on 5 September 2003.
- (3) Subject to conclusion at a later date, the Agreement should be signed on behalf of the Communities.
- (4) Subject to reciprocity, this Agreement should be applied on a provisional basis as from 1 January 2004 pending the completion of the procedures for its conclusion, as provided for by Article 14(2) thereof,

HAVE DECIDED AS FOLLOWS:

Article 1

Subject to 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 on Scientific and Technological Cooperation between the European Communities and the Swiss Confederation.

¹ OJ C [...] [...], p. [...]

Subject to conclusion at a later date, the President of the Commission is hereby authorised to designate the person empowered to sign, on behalf of the European Atomic Energy Community, the Agreement on Scientific and Technological Cooperation between the European Communities and the Swiss Confederation.

Article 2

Subject to reciprocity, the Agreement on Scientific and Technological Cooperation between the European Communities and the Swiss Confederation shall be applied on a provisional basis as from 1 January 2004 pending the completion of the procedures for its conclusion.

The text of the Agreement is annexed to this Decision.

Done at Brussels,

For the Council
The President

For the Commission
The President

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

THE COUNCIL OF THE EUROPEAN UNION, acting on behalf of the European Community, and THE COMMISSION OF THE EUROPEAN COMMUNITIES (hereinafter referred to as "the Commission"), acting on behalf of the European Atomic Energy Community, hereinafter referred to collectively as "the Communities",

of the one part, and

THE SWISS FEDERAL COUNCIL, acting on behalf of the Swiss Confederation, hereinafter referred to as "Switzerland",

of the other part,

hereinafter referred to as "the Parties",

CONSIDERING that the close relationship between Switzerland and the Communities is of benefit to the Parties;

CONSIDERING the importance of scientific and technological research for the Communities and for Switzerland and their mutual interest in cooperating in this matter in order to make better use of resources and to avoid unnecessary duplication;

WHEREAS Switzerland and the Communities are currently implementing research programmes in fields of common interest;

WHEREAS the Communities and Switzerland have an interest in cooperating on these programmes to their mutual benefit;

CONSIDERING the interest of the Parties in encouraging the mutual access of their research entities to research and technological development activities in Switzerland, on the one hand, and to the Communities' Framework Programmes for research and technological development, on the other;

WHEREAS the European Atomic Energy Community and Switzerland concluded a Cooperation Agreement in 1978 in the field of controlled thermonuclear fusion and plasma physics (hereinafter referred to as the "Fusion Agreement");

WHEREAS the Parties concluded a Framework Agreement on 8 January 1986 for scientific and technical cooperation, which entered into force on 17 July 1987 (hereinafter referred to as "the Framework Agreement");

CONSIDERING that Article 6 of the Framework Agreement states that the cooperation aimed at by the Framework Agreement is to be carried out through appropriate agreements;

WHEREAS on 21 June 1999 the Communities and Switzerland signed an Agreement on Scientific and Technological Cooperation,² which expired on 31 December 2002;

CONSIDERING that Article 9(2) of the abovementioned Agreement provides for renewal of the Agreement with a view to participation in new multiannual Framework Programmes for research and technological development, under mutually agreed conditions;

WHEREAS the Sixth Framework Programme of the European Community for research, technological development and demonstration activities (2002 to 2006) (hereinafter referred to as "the Sixth EC Framework Programme") was adopted by Decision No 1513/2002/EC³ and Regulation (EC) No 2321/2002⁴ of the European Parliament and of the Council, and by Council Decisions 2002/834/EC,⁵ 2002/835/EC⁶ and 2002/836/EC⁷ and the Sixth Framework Programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities, also contributing to the creation of the European Research Area (2002 to 2006) was adopted by Council Decision 2002/668/Euratom,⁸ Council Regulation (Euratom) No 2322/2002⁹ and Council Decisions 2002/837/Euratom¹⁰ and 2002/838/Euratom¹¹ (hereinafter referred to as "the Sixth EC and Euratom Framework Programmes");

WHEREAS without prejudice to the provisions of the Treaties establishing the Communities, 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 Switzerland in the fields of science, technology, research and development, and to conclude, where appropriate, agreements to that end,

HAVE AGREED AS FOLLOWS:

Article 1

Subject matter

1. The form and conditions of Swiss participation in the implementation of the whole of the Sixth EC and Euratom Framework Programmes shall be as laid down in this Agreement, without prejudice to the terms of the Fusion Agreement. Legal entities established in Switzerland may participate in all the specific programmes of the Sixth EC and Euratom Framework Programmes.
2. Swiss legal entities may participate in the activities of the Joint Research Centre of the Communities, as far as this participation is not covered by paragraph 1.

² OJ L 114, 30.4.2002, p.468.

³ OJ L 232, 29.8.2002, p.,1.

⁴ OJ L 355, 30.12.2002, p. 23.

⁵ OJ L 294, 29.10.2002, p. 1.

⁶ OJ L 294, 29.10.2002, p. 44.

⁷ OJ L 294, 29.10.2002, p. 60.

⁸ OJ L 232, 29.8.2002, p. 34.

⁹ OJ L 355, 30.12.2002, p. 35.

¹⁰ OJ L 294, 29.10.2002, p. 74.

¹¹ OJ L 294, 29.10.2002, p. 86.

3. Legal entities established in the Communities, including the Joint Research Centre, may participate in research programmes and/or projects in Switzerland on themes equivalent to those of the programmes of the Sixth EC and Euratom Framework Programmes.
4. For the purposes of this Agreement "legal entity" means any natural or any legal person created under the national law at its place of establishment or under Community law, having legal personality and being entitled to have rights and obligations of any kind in its own name. This shall include, inter alia, universities, research organisations, industrial companies, including small and medium-sized enterprises, and individuals.

Article 2

Forms and means of cooperation

Cooperation shall take the following forms:

1. Participation of legal entities established in Switzerland in all specific programmes adopted under the Sixth EC and Euratom Framework Programmes, in accordance with the terms and conditions laid down in the rules for the participation of undertakings, research centres and universities both in research, technological development and demonstration activities of the European Community and in research and training activities of the European Atomic Energy Community.

Switzerland shall be taken into consideration, alongside the Member States of the European Union, for any indirect action under the Sixth EC Framework Programme based on Article 169 of the Treaty establishing the European Community, subject to participation in the same indirect action by at least two Member States or associated candidate countries.

2. Financial contribution by Switzerland to the budgets of the programmes adopted for the implementation of the Sixth EC and Euratom Framework Programmes, as defined in Article 5(2).
3. Participation of legal entities established in the Communities in Swiss research programmes and/or projects decided by the Federal Council on themes equivalent to those of the Sixth EC and Euratom Framework Programmes, in accordance with the terms and conditions laid down in the relevant Swiss regulations and with the agreement of the partners in the specific project and the management of the corresponding Swiss programme. Legal entities established in the Communities participating in Swiss research programmes and/or projects shall cover their own costs, including their relative share of the project's general management and administrative costs.
4. In addition to timely provision of information and documentation concerning the implementation of the Sixth EC and Euratom Framework Programmes and of the Swiss programmes and/or projects, the cooperation between the Parties may include the following forms and means:
 - (a) regular exchanges of views on research policy guidelines and priorities and plans in Switzerland and in the Communities;

- (b) exchanges of views on the prospects and development of cooperation;
- (c) timely exchanges of information on the implementation of the research programmes and projects in Switzerland and in the Communities and on the results of the work undertaken under this Agreement;
- (d) joint meetings;
- (e) visits and exchanges of researchers, engineers and technicians;
- (f) regular contacts and follow-up between programme or project leaders in Switzerland and in the Communities;
- (g) participation by experts in seminars, symposia and workshops.

Article 3

Adaptation

Cooperation may be adapted and developed at any time by mutual agreement between the Parties.

Article 4

Intellectual property rights and obligations

1. Subject to Annex A and applicable law, legal entities established in Switzerland participating in the Communities' research programmes shall, as regards ownership, exploitation and dissemination of information and intellectual property arising from such participation, have the same rights and obligations as legal entities established in the Communities. This provision shall not apply to the results obtained from projects started before the entry into force of this Agreement.
2. Subject to Annex A and applicable law, legal entities established in the Communities taking part in Swiss research programmes and/or projects, as provided for in Article 2(3), shall, as regards ownership, exploitation and dissemination of information and intellectual property arising from such participation, have the same rights and obligations as legal entities established in Switzerland participating in the programmes and/or projects in question.

Article 5

Financial provisions

1. Commitments entered into by the Communities prior to the entry into force of this Agreement - as well as the payments which result from these - shall give rise to no contribution on the part of Switzerland. Switzerland's financial contribution deriving from participation in the implementation of the Sixth EC and Euratom Framework Programmes shall be established in proportion to and in addition to the amount available each year in the general budget of the European Union for commitment appropriations to meet the Commission's financial obligations stemming from work

to be carried out in the forms necessary for the implementation, management and operation of the programmes and activities covered by this Agreement.

2. The proportionality factor governing Switzerland's contribution to the Sixth EC and Euratom Framework Programmes, except the Fusion Programme, shall be obtained by establishing the ratio between Switzerland's gross domestic product, at market prices, and the sum of gross domestic products, at market prices, of the Member States of the European Union. The Swiss contribution to the Fusion Programme shall continue to be calculated on the basis of the corresponding agreement.

This ratio shall be calculated on the basis of the latest statistical data from Eurostat, available at the time of publication of the preliminary draft budget of the European Union for the same year.

3. The rules governing Switzerland's financial contribution are set out in Annex B.

Article 6

Switzerland/Communities Research Committee

1. The "Switzerland/Communities Research Committee" set up in the Framework Agreement shall review, evaluate and ensure the proper implementation of this Agreement. Any issues arising from the implementation or interpretation of this Agreement shall be referred to this Committee.
2. The Committee may decide to amend the references to Community acts in Annex C.

Article 7

Participation

1. Without prejudice to the provisions of Article 4, legal entities established in Switzerland participating in the Sixth EC and Euratom Framework Programmes shall have the same contractual rights and obligations as entities established in the Communities.
2. For legal entities established in Switzerland, the terms and conditions applicable for the submission and evaluation of proposals and those for the granting and conclusion of contracts under the Communities' programmes shall be the same as those applicable for contracts concluded under the same programmes with legal entities established in the Communities.
3. An appropriate number of Swiss experts shall be taken into consideration in the selection of evaluators or referees under the Communities' research and technological development programmes.
4. Without prejudice to the provisions of Article 1(3), Article 2(3) and Article 4(2) and to existing regulations and rules of procedure, legal entities established in the Communities may participate under equivalent terms and conditions to Swiss partners in programmes and/or projects of the Swiss research programmes mentioned in Article 2(3). The Swiss authorities may make participation in a project by one or

more legal entities established in the Communities subject to joint participation by at least one Swiss entity.

Article 8

Mobility

Each Party shall undertake, in accordance with existing regulations and agreements in force, to guarantee the entry and stay - as far as indispensable for successful accomplishment of the activity concerned - of a limited number of their researchers participating, in Switzerland and in the Communities, in the activities covered by this Agreement.

Article 9

Revision and future collaboration

1. Should the Communities revise or extend their research programmes, this Agreement may be revised or extended under mutually agreed conditions. The Parties shall exchange information and views concerning any such revision or extension, as well as on any matters which affect directly or indirectly Switzerland's cooperation in the fields covered by the Sixth EC and Euratom Framework Programmes. Switzerland shall be notified of the exact content of the revised or extended programmes within two weeks of their adoption by the Communities. In case of such revision or extension of the research programmes, Switzerland may terminate this Agreement by giving six months' notice. The Parties shall give notice of any intention to terminate or to extend this Agreement within three months after the adoption of the Communities' decision.
2. Should the Communities adopt new multiannual Framework Programmes for research and technological development, this Agreement may be renewed or renegotiated under conditions agreed mutually between the Parties. The Parties shall exchange information and views on the preparation of such programmes or other current and future research activities through the Switzerland/Communities Research Committee.

Article 10

Relation to other international agreements

The provisions of this Agreement shall apply without prejudice to the advantages envisaged by other international agreements binding one of the Parties and reserved only for legal entities established on the territory of that Party.

Article 11

Territorial application

This Agreement shall apply, on the one hand, to the territories in which the Treaties establishing the Communities are applied and under the conditions laid down in those Treaties and, on the other, to the territory of Switzerland.

Article 12

Annexes

Annexes A, B and C shall form an integral part of this Agreement.

Article 13

Amendment and termination

1. This Agreement shall apply for the duration of the Sixth EC and Euratom Framework Programmes.
2. This Agreement may be amended only in writing by common consent between the Parties. The procedure for entry into force of the amendments shall be the same as the procedure applicable to this Agreement.
3. Each Party may terminate this Agreement at any time, subject to six months' written notice.
4. Projects and activities in progress at the time of termination and/or expiry of this Agreement shall continue until their completion under the conditions laid down in this Agreement. The Parties shall settle by common consent any other consequences of termination.

Article 14

Entry into force and provisional application

1. This Agreement shall be ratified or concluded by the Parties in accordance with their respective rules. It shall enter into force on the dates of the final notification of completion of the procedures necessary to this end and shall come into effect on 1 January 2004.
2. Should the procedures for ratification or conclusion of the Agreement signed not be completed in 2003, the Parties shall apply this Agreement provisionally from 1 January 2004 until its entry into force.

Should one of the Parties inform the other that it will not conclude the Agreement, it is hereby agreed that:

- the Communities shall reimburse to Switzerland its contribution to the general budget of the European Union, as provided for in Article 2(2);
- however, the funds committed by the Communities for participation by legal entities established in Switzerland in indirect action, including the reimbursements provided for in Article 2(1), shall be deducted by the Communities from the abovementioned reimbursement;
- projects and activities started during this provisional application and still in progress at the time of the abovementioned notification shall continue until their completion under the conditions laid down in this Agreement.

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

Done at ... , ...

For the European Communities

For the Swiss Confederation

ANNEX A

Principles on the allocation of intellectual property rights

I. SCOPE

For the purposes of this Agreement, "intellectual property" shall have the meaning defined in Article 2 of the Convention establishing the World Intellectual Property Organisation, signed at Stockholm on 14 July 1967.

For the purposes of this Agreement, "knowledge" means the results, including information, whether or not they can be protected, as well as copyrights or rights pertaining to such information, following applications for, or the issue of, patents, designs, plant varieties, supplementary protection certificates or similar forms of protection.

II. INTELLECTUAL PROPERTY RIGHTS OF THE LEGAL ENTITIES OF THE PARTIES

1. Each Party shall ensure that the intellectual property rights of the legal entities of the other Party participating in the activities undertaken under this Agreement and the rights and obligations resulting from such participation are treated in a manner compatible with the relevant international conventions applicable to the Parties, notably the TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights administered by the World Trade Organisation), the Berne Convention (Paris Act 1971) and the Paris Convention (Stockholm Act 1967).
2. Legal entities established in Switzerland participating in indirect action under the Sixth EC and Euratom Framework Programmes shall have intellectual property rights and obligations under the conditions set out in Regulation (EC) No 2321/2002 of the European Parliament and of the Council,¹² in Council Regulation No 2322/2002 (Euratom)¹³ and in the contract concluded with the European Community, in accordance with paragraph 1.

Where Switzerland participates in indirect action under the Sixth EC Framework Programme, implemented in accordance with Article 169 of the Treaty establishing the European Community, Switzerland shall have the same intellectual property rights and obligations as the Member States participating therein, as set out in the relevant decision of the European Parliament and of the Council and in the contract concluded with the European Community, in accordance with paragraph 1.

3. Legal entities established in a European Union Member State participating in Swiss research programmes and/or projects shall have the same intellectual property rights and obligations as legal entities established in Switzerland participating in these research programmes or projects, in accordance with paragraph 1.

¹² OJ L 355, 30.12.2002, p. 23.

¹³ OJ L 355, 30.12.2002, p. 35.

III. INTELLECTUAL PROPERTY RIGHTS OF THE PARTIES

1. Unless otherwise agreed between the Parties, the following rules shall apply to the knowledge generated by the Parties in the course of the activities undertaken in accordance with Article 2(4) of this Agreement:
 - (a) The Party generating the knowledge shall have ownership thereof. Where their respective shares in the work cannot be determined, the Parties shall co-own the knowledge.
 - (b) The Party holding ownership shall grant the other Party rights of access to the knowledge with a view to the activities referred to in Article 2(4) of this Agreement. No charge shall be made for granting rights of access to the knowledge.
2. Unless otherwise agreed between the Parties, the following rules shall apply to scientific literature from the Parties:
 - (a) Where a Party publishes data, information and technical or scientific results arising from the activities undertaken under this Agreement in journals, articles, reports and books, including audiovisual works and software, a worldwide, non-exclusive, irrevocable royalty-free licence to translate, adapt, transmit and publicly distribute the works in question shall be granted to the other Party.
 - (b) All copies of copyrighted data and information to be publicly distributed and prepared under this section shall indicate the names of the author or authors, unless an author expressly declines to be named. Copies shall also bear a clearly visible acknowledgement of the cooperative support of the Parties.
3. Unless otherwise agreed between the Parties, the following rules shall apply to undisclosed information of the Parties:
 - (a) At the time of submission to the other Party of information relating to the activities undertaken under this Agreement, each Party shall identify the information which it wishes to remain undisclosed.
 - (b) For the specific purposes of application of this Agreement, the receiving Party may, on its own responsibility, communicate undisclosed information to bodies or persons under its authority.
 - (c) With the prior written consent of the Party providing undisclosed information, the receiving Party may disseminate such information more widely than otherwise permitted by paragraph 3(b). The Parties shall cooperate in developing procedures for requesting and obtaining prior written consent for wider dissemination, and each Party shall grant such approval to the extent permitted by its domestic policies, regulations and laws.
 - (d) Non-documentary undisclosed or other confidential information provided in seminars or other meetings of the representatives of the Parties arranged under this Agreement, or information arising from the attachment of staff, use of facilities or indirect action must remain confidential, where the recipient of such undisclosed or other confidential or privileged information was made aware of the confidential

character of the information before it was communicated, in accordance with paragraph 3(a).

- (e) Each Party shall ensure that undisclosed information which it acquires in accordance with paragraphs 3(a) and 3(d) shall be controlled as provided for in this Agreement. If one of the Parties becomes aware that it will be, or may be expected to become, unable to meet the non-dissemination provisions of paragraphs 3(a) and 3(d), it shall immediately inform the other Party. The Parties shall thereafter consult to define an appropriate course of action.

ANNEX B

Financial rules governing the contribution of Switzerland referred to in Article 5 of this Agreement

I. DETERMINATION OF FINANCIAL PARTICIPATION

1. The Commission shall communicate to Switzerland together with relevant background material as soon as possible and at the latest on 1 September of each year:
 - (a) the amounts in commitment appropriations in the statement of expenditure of the preliminary draft budget of the European Union corresponding to the two Framework Programmes;
 - (b) the estimated amount of the contributions derived from the preliminary draft budget, corresponding to the participation of Switzerland in the two Framework Programmes.

Nonetheless, in order to facilitate internal budgetary procedures, the Commission services shall provide corresponding indicative figures at the latest on 30 May of each year.

2. As soon as the general budget has been finally adopted, the Commission shall communicate to Switzerland the abovementioned amounts in the statement of expenditure corresponding to the participation of Switzerland.

II. PAYMENT PROCEDURES

1. The Commission shall issue, at the latest on 15 June and 15 November of each financial year, a call for funds to Switzerland corresponding to its contribution under this Agreement. These calls for funds shall provide respectively for the payment of:
 - six twelfths of Switzerland's contribution not later than 20 July, and
 - six twelfths of its contribution not later than 15 December.

However, in the last year of the two Framework Programmes, the full amount of Switzerland's contribution shall be paid not later than 20 July.

2. The contributions of Switzerland shall be expressed and paid in euros.
3. Switzerland shall pay its contribution under this Agreement according to the schedule in paragraph 1. Any delay in payment shall give rise to the payment of interest at a rate equal to the one-month inter-bank offered rate (EURIBOR) as on page 248 of Telerate. This rate shall be increased by 1.5% for each month of delay. The increased rate shall be applied to the entire period of delay. However, the interest shall be due only if the contribution is paid more than 30 days after the scheduled payment dates mentioned in paragraph 1.
4. Travel costs incurred by Swiss representatives and experts for the purposes of taking part in the work of the research committees and those involved in the implementation of the two Framework Programmes shall be reimbursed by the Commission on the

same basis as, and in accordance with, the procedures currently in force for the representatives and experts of the Member States of the Communities.

III. CONDITIONS FOR IMPLEMENTATION

1. The financial contribution of Switzerland to the two Framework Programmes in accordance with Article 5 of this Agreement shall normally remain unchanged for the financial year in question.
2. The Commission, at the time of the closure of the accounts relating to each financial year (n), within the framework of the establishment of the revenue and expenditure account, shall proceed to the regularisation of the accounts with respect to the participation of Switzerland, taking into consideration modifications which have taken place, either by transfer, cancellations, carry-overs, or by supplementary and amending budgets during the financial year. This regularisation shall occur at the time of the first payment for the year n+1. However, the final such regularisation shall occur not later than July of the fourth year following the end of the two Framework Programmes.

Payment by Switzerland shall be credited to the European Communities' programmes as budget receipts allocated to the appropriate budget heading in the statement of revenue of the general budget of the European Union.

IV. INFORMATION

1. At the latest on 31 May of each financial year (n + 1), the statement of appropriations for the two Framework Programmes, related to the previous financial year (n), shall be prepared and transmitted to Switzerland for information, according to the format of the Commission's revenue and expenditure account.
2. The Commission shall communicate to Switzerland all other general financial data relating to the implementation of the two Framework Programmes which is made available to the associated States.

ANNEX C

Financial control of Swiss participants in the Community programmes covered by this Agreement

I. DIRECT COMMUNICATION

The Commission shall communicate directly with the participants in the Sixth EC and Euratom Framework Programmes established in Switzerland and with their subcontractors. They may submit directly to the Commission all relevant information and documentation which they are required to submit on the basis of the instruments referred to in this Agreement and of the contracts concluded to implement them.

II. AUDITS

1. In accordance with Regulations (EC, Euratom) No 1605/2002 of 25 June 2002 and (EC, Euratom) No 2342/2002 of 23 December 2002 and with the other rules referred to in this Agreement, the contracts concluded with participants in the programme established in Switzerland may provide for scientific, financial, technological or other audits to be conducted at any time on the premises of the participants and of their subcontractors by Commission agents or by other persons mandated by the Commission.
2. Commission agents and other persons mandated by the Commission shall have appropriate access to sites, works and documents and to all the information required in order to carry out such audits, including in electronic form. This right of access shall be stated explicitly in the contracts concluded to implement the instruments referred to in this Agreement.
3. The European Court of Auditors shall have the same rights as the Commission.
4. The audits may be conducted after the Sixth EC and Euratom Framework Programmes or this Agreement expire, on the terms laid down in the contracts in question.
5. The Swiss Federal Audit Office shall be informed in advance of the audits conducted on Swiss territory. Such notification shall not be a legal precondition for carrying out such audits.

III. ON-THE-SPOT CHECKS

1. Within the framework of this Agreement, the Commission (OLAF) shall be authorised to carry out on-the-spot checks and inspections on Swiss territory, in accordance with the terms and conditions laid down in Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996.
2. On-the-spot checks and inspections shall be prepared and conducted by the Commission in close collaboration with the Swiss Federal Audit Office or with the other competent Swiss authorities designated by the Swiss Federal Audit Office, which shall be notified in good time of the object, purpose and legal basis of the checks and inspections, so that they can provide all the requisite help. To that end,

the officials of the competent Swiss authorities may participate in the on-the-spot checks and inspections.

3. If the Swiss authorities concerned so wish, the on-the-spot checks and inspections may be carried out jointly by the Commission and them.
4. Where the participants in the Sixth EC and Euratom Framework Programmes resist an on-the-spot check or inspection, the Swiss authorities, acting in accordance with national rules, shall give Commission inspectors such assistance as they need to allow them to discharge their duty in carrying out an on-the-spot check or inspection.
5. The Commission shall report as soon as possible to the Swiss Federal Audit Office any fact or suspicion relating to an irregularity which has come to its notice in the course of the on-the-spot check or inspection. In any event the Commission shall be required to inform the abovementioned authority of the result of such checks and inspections.

IV. INFORMATION AND CONSULTATION

1. For the purposes of proper implementation of this Annex, the competent Swiss and Community authorities shall regularly exchange information and, at the request of one of the Parties, shall conduct consultations.
2. The competent Swiss authorities shall inform the Commission without delay of any fact or suspicion which has come to their notice relating to an irregularity in connection with the conclusion and implementation of the contracts concluded in application of the instruments referred to in this Agreement.

V. CONFIDENTIALITY

Information communicated or acquired in any form under this Annex shall be covered by professional secrecy and protected in the same way as similar information is protected by Swiss law and by the corresponding provisions applicable to the Community institutions. Such information may not be communicated to persons other than those within the Community institutions or in the Member States or Switzerland whose functions require them to know it nor may it be used for purposes other than to ensure effective protection of the Parties' financial interests.

VI. ADMINISTRATIVE MEASURES AND PENALTIES

Without prejudice to application of Swiss criminal law, administrative measures and penalties may be imposed by the Commission in accordance with Regulations (EC, Euratom) No 1605/2002 of 25 June 2002 and (EC, Euratom) No 2342/2002 of 23 December 2002 and with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests.

VII. RECOVERY AND ENFORCEMENT

Decisions taken by the Commission under the Sixth EC Framework Programme within the scope of this Agreement which impose a pecuniary obligation on persons other than States shall be enforceable in Switzerland. The enforcement order shall be issued, without any further control than verification of the authenticity of the act, by the authorities designated by

the Swiss government, which shall inform the Commission thereof. Enforcement shall take place in accordance with the Swiss rules of procedure. The legality of the enforcement decision shall be subject to control by the Court of Justice of the European Communities .

Judgments given by the Court of Justice of the European Communities pursuant to an arbitration clause in a contract under the Sixth EC and Euratom Framework Programmes shall be enforceable on the same terms.

LEGISLATIVE FINANCIAL STATEMENT

Policy area(s): RESEARCH AND TECHNOLOGICAL DEVELOPMENT

Activit(y/ies): International scientific and technical cooperation

TITLE OF ACTION: PROPOSAL FOR A DECISION OF THE COUNCIL AND OF THE COMMISSION ON THE SIGNATURE ON BEHALF OF THE EUROPEAN COMMUNITY AND OF THE EUROPEAN ATOMIC ENERGY COMMUNITY OF THE AGREEMENT ON SCIENTIFIC AND TECHNOLOGICAL COOPERATION BETWEEN THE EUROPEAN COMMUNITIES AND THE SWISS CONFEDERATION

1. BUDGET LINE(S) + HEADING(S)

- Participation in indirect action by Swiss entities, as well as costs in connection with the implementation of the Agreement (travelling expenses of European experts and of Commission officials on mission, workshops, seminars and meetings) will be charged to the specific budget headings for the specific programmes of the Framework Programmes of the European Community and of the European Atomic Energy Community (B6 1/1001 and B6 601/08 01).
- Swiss participation
Chapter 60 (revenue), Articles B6 451/10 0205, 10 0304 and B6 551/02 0303, 06 0604, 08 1203, 09 0404, 11 0502 (expenditure).
Switzerland's contribution to the Framework Programmes budget will be proportionate to its GDP compared with that of the Union (see point 2.5), with the exception of its contribution to the budget of the priority thematic area of research "Controlled thermonuclear fusion" in the Euratom Framework Programme, where its contribution will be proportionate to its GDP compared with the sum of its GDP plus that of the Union. It will be allocated to the various specific programmes of the Framework Programme in proportion to their budgets.

2. OVERALL FIGURES

2.1. Total allocation for action (Part B): € million for commitment

2.2. Period of application:

1 January 2004 – 31 December 2006. Renewal arrangements are laid down in Article 9 of the Agreement.

2.3. Overall multiannual estimate of expenditure:

- (a) Schedule of commitment appropriations/payment appropriations (financial intervention) (see point 6.1.1))

€ million (to three decimal places)

	2003	2004	2005	2006
Commitments		0.156	0.156	0.156
Payments		0.156	0.156	0.156

(b) Technical and administrative assistance and support expenditure (see point 6.1.2)

	2003	2004	2005	2006
Commitments	0	0	0	0
Payments	0	0	0	0

Subtotal				
Commitments		0.156	0.156	0.156

(c) Overall financial impact of human resources and other administrative expenditure (see points 7.2 and 7.3)

Commitments/payments	0	0	0	0
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TOTAL a+b+c				
Commitments		0.156	0.156	0.156
Payments		0.156	0.156	0.156

2.4. Compatibility with financial programming and financial perspective

Proposal is compatible with existing financial programming.

2.5. Financial impact on revenue

Financial impact: The effect on revenue is as follows:

Switzerland's contribution to the EC and Euratom Framework Programmes will be proportionate to its GDP compared with that of the Union, with the exception of its contribution to the budget of the priority thematic area of research "Controlled thermonuclear fusion" in the Euratom Framework Programme, where its contribution will be proportionate to its GDP compared with the sum of its GDP plus that of the Union. This distinction laid down in Article 5(2) of the Agreement is maintained.

Estimated contribution to 6th FPs based on 2001 GDP (EUROSTAT, statistics in focus – theme 2):

GDP 2001 (million €)

GDP EUR 15	8 859 870.929
GDP Switzerland	274 662.029
Ratio (except Fusion)	3.100 %
Ratio (Fusion)	3.007 %

Estimated contribution (million €)

Year	Budget (EC + Euratom except Fusion)	Contribution (EC + Euratom except Fusion)	Budget (Fusion)	Contribution (Fusion)	Total estimated contribution
2004	4 156.7	128.9	153.3	4.6	133.5
2005	4 344.6	134.7	155.4	4.7	139.4
2006	4 476.0	138.7	159.0	4.8	143.5
Total	12 977.3	402.3	467.7	14.1	416.4

N.B.:

- The calculation is based on the 2004 preliminary draft budget for EUR15, pending adoption of the definitive budget for 2004 and revision of the legal bases. In the long term, enlargement will have an effect both on calculation of the proportionality factor (EUR 25) and on the total budgets for 2004 to 2006 (adaptation of the Sixth Framework Programme).
- The proportionality factors for 2005 and 2006 will also be adjusted in line with GDP trends at the time of publication of each preliminary draft budget.
- Only operating expenditure is counted in the case of the Fusion Programme. The corresponding administrative expenditure is not charged action by action, but for the Euratom Framework Programme as a whole, in accordance with the ABB structure.

3. BUDGET CHARACTERISTICS

Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
Non-comp.	Diff.	NO	YES	YES	No 3

4. LEGAL BASIS

Articles 170 and 300 of the EC Treaty and Article 101(2) of the Euratom Treaty.

5. DESCRIPTION AND GROUNDS

5.1. Need for Community intervention

Community funding is indispensable as the planned cooperation forms part of the implementation of the Framework Programmes, including the budget section: participation by Switzerland in the specific programmes and administrative expenditure by the Community side (missions by experts and EU officials; organisation of workshops, seminars and meetings in the European Community and Switzerland).

5.1.1. Objectives pursued

The Agreement should enable Switzerland and the Community to derive mutual benefit from the scientific and technical progress achieved through their reciprocal research programmes, with participation by the Swiss scientific community and industry in programmes under the Framework RTD Programmes of the European Communities and non-subsidised participation in Swiss publicly financed research activities by entities established in the Community.

Beneficiaries in the European Community and Switzerland will be the scientific community, industry and the population generally, thanks to the direct and indirect impact of cooperation.

5.2. Action envisaged and budget intervention arrangements

Budgetary arrangements will be based on the type of cooperation proposed (association of a non-member country in specific programmes of Community research).

5.3. Methods of implementation

Direct management by the Commission.

6. FINANCIAL IMPACT

6.1. Total financial impact on Part B (over the entire programming period)

6.2. Calculation of costs by measure envisaged in Part B (over the entire programming period)¹⁴

7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

7.1. Impact on human resources

7.2. Overall financial impact of human resources

The Commission is not requesting any additional posts for the management of the Agreement.

¹⁴ For further information, see separate explanatory note.

7.3. Other administrative expenditure deriving from the action

The amounts are total expenditure for twelve months.

Expenditure on management of the Agreement (estimate)		
Travel expenses per year		
EU experts' missions to Switzerland		
within the framework of the specific programmes covering the four activities		
50 EU experts (for 100 projects) x 3 nights = 50 experts x 3 nights		
Prices per mission:		
1 return travel	(around €800)	€800
per diem	(€150 x 3)	€450
expert fees	(€250 x 3)	€750
	TOTAL	€2000
	Total costs for 50 missions	€100 000
		+ 10% margin
		€110 000
EU officials' missions to Switzerland		
(DG RTD, INFSO, ENTR, AGRI, FISH, TREN, JRC)		
14 missions per year (management of the Agreement as a whole) (2 per DG)		
+ 14 missions per year (specific programmes)		
Total: 28 missions per year		
return travel Brussels-Berne	(around €800)	€800
nights in hotel:	1 night (€140/night)	€140
per diem:	1 day x €150	€150
	TOTAL	€1090
	Total costs for 28 missions	€30 520
		+ 10% margin
		€33 572
Workshops/seminars		
2/year (estimate)		€12 000
		+ 10% margin
		€13 200
	Total	€156 772/year

The amounts are total expenditure for twelve months.

⁽¹⁾ Specify the type of committee and the group to which it belongs.

I.	Annual total (7.2 + 7.3)	€156 722
II.	Duration of action	3 years
III.	Total cost of action (I x II)	€470 166

8. FOLLOW-UP AND EVALUATION

8.1. Follow-up arrangements

The cooperation agreement will be regularly evaluated by the relevant Commission departments and will be subject to one joint evaluation by the Community and Switzerland each year. Evaluation will cover:

(a) Performance indicators

- number of proposals put forward by Switzerland per specific programme compared with the number of proposals selected for funding under the programme;
- number of proposals put forward by Switzerland compared with the number of proposals selected for funding under the Framework Programmes;
- number of proposals put forward under the specific programmes of the Framework Programmes compared with the relative share (1%) of Switzerland's participation in those programmes;
- number of Swiss proposals selected for funding in the specific programmes of the Framework Programme compared with Switzerland's relative participation in those programmes.

(b) Gathering information:

On the basis of data on the specific programmes of the Framework Programmes.

(c) Overall evaluation:

At the end of the 6th Framework Programmes the Commission will evaluate all cooperation activities covered by the Agreement.

(d) Corrections:

Through information to the relevant partners on both sides on practical arrangements for taking part in the specific programmes under the Framework Programmes. The information will be passed on in accordance with the recommendations of the Joint Cooperation Committee.

8.2. Arrangements and schedule for the planned evaluation

The Parties to the Agreement will evaluate application thereof annually in the meetings of the joint committee referred to in Article 6 thereof. Renewal of this Agreement will also be submitted for evaluation by each of the Parties, which could include an impact assessment entrusted to third parties.

9. ANTI-FRAUD MEASURES

When the implementation of the Framework Programmes calls for the use of external contractors or implies granting financial contributions to third parties, the Commission will carry out, where appropriate, financial audits, in particular if it has reasons to doubt the realistic nature of work performed or described in the activity reports.

The Community's financial audits will be carried out either by its own staff or by accounting experts approved according to the law of the audited party. The Community will choose the latter freely, while avoiding any risks of conflicts of interest which might be indicated to it by the party subject to the audit.

In addition, the Commission will make sure, in carrying out the research activities, that the financial interests of the European Communities are protected by effective checks and, in case of detected irregularities, deterrent and proportionate measures and sanctions.

In order to achieve this aim, rules on checks, measures and sanctions, with reference to Regulations No 2988/95, 2185/96, 1073/99 and 1074/99, will be incorporated in all contracts used in the implementation of the Framework Programmes.

In particular, the following points will have to be provided for in the contracts:

- the introduction of specific contractual clauses to protect the financial interests of the EC in carrying out checks and controls in relation to the work performed;
- the participation of administrative inspectors in the field of fraud-fighting, in accordance with Regulations No 2185/96, 1073/1999 and 1074/1999;
- the application of administrative sanctions for all intentional or negligent irregularities in the implementation of the contracts, in accordance with Framework Regulation No 2988/95, including a black listing mechanism;
- the fact that possible recovery orders in case of irregularities and fraud be enforceable according to Article 256 of the EC Treaty and Article 164 of the EAEC Treaty.

In addition and as routine measures, a control programme in respect of scientific and budgetary aspects will be carried out by the DG Research staff responsible. Local inspections will be carried out by the European Court of Auditors.

Finally, Annex C to the draft Agreement provides for recognition by Switzerland of the Community's right to conduct on-the-spot inspections on the premises of Swiss entities receiving funds from the Framework Programmes, together with recognition of the enforceability of recovery orders issued on the basis of Article 256 of the EC Treaty, the enforceability of judgments of the Court of Justice of the European Communities and arrangements for cooperation between the Swiss and Community authorities.