

AGREEMENT

for scientific and technological cooperation between the European Community and the Federative Republic of Brazil

THE EUROPEAN COMMUNITY (hereinafter referred to as the Community),

of the one part,

and

THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL (hereinafter referred to as Brazil),

of the other part,

hereinafter together referred to as the 'Parties',

CONSIDERING the Framework Agreement on Cooperation between the Parties concluded on 29 June 1992, which entered into force on 1 November 1995;

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

CONSIDERING the present scientific and technological cooperation between the Parties;

CONSIDERING that the Parties are currently carrying out and supporting research activities, including demonstration projects in a number of areas of common interest, as defined in Article 2(d) of this Agreement, and that mutual benefits may be derived from joint participation in research and development activities based on reciprocity;

DESIRING to create a formal basis for cooperation in scientific and technological research with a view to extending and intensifying the conduct of cooperative activities in areas of common interest and to encouraging the application of the results of such cooperation to the economic and social benefit of both Parties;

CONSIDERING that the present Scientific and Technological Cooperation Agreement is part of the general cooperation between Brazil and the Community,

HAVE AGREED AS FOLLOWS:

Article I

Purpose

The Parties shall encourage, develop and facilitate cooperative activities in areas of common interest by carrying out and supporting scientific and technological research and development activities.

research and any other data deemed necessary by the participants to cooperative activities, including, as necessary, by the Parties themselves;

(c) '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;

Article II

Definitions

For the purposes of this Agreement:

(a) 'cooperative activity' means any activity which the Parties undertake or support, pursuant to this Agreement, including joint research;

(b) 'information' means scientific or technical data, and research and development results or methods stemming from joint

(d) 'joint research' means research, technological development or demonstration projects that are implemented with or without financial support from one or both Parties and that involve collaboration between participants from both Brazil and the Community. 'Demonstration projects' are projects aimed at demonstrating the viability of new technologies which offer a potential economic advantage but which cannot be directly commercialised. The Parties shall keep each other regularly informed on activities regarded as joint research activities under Article VI;

- (e) 'participant' or 'research entities' means any person or group of persons, research institute or any other legal entity or undertaking established in Brazil or in the Community involved in cooperative activities, including the Parties themselves.

Article III

Principles

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

- (a) mutual benefit based on an overall balance of advantages;
- (b) reciprocal access to the activities of research and technological development undertaken by each Party;
- (c) timely exchange of information which may affect cooperative activities;
- (d) appropriate protection of intellectual property rights.

Article IV

Cooperative activity areas

Cooperation under this Agreement may cover all the areas of mutual interest in which both Parties are implementing or supporting research and technological development activities (hereinafter referred to as RTD), in accordance with Article VI(3)(b). Such activities shall be designed to promote the advancement of science, industrial competitiveness, and economic and social development, with emphasis on the following areas:

- biotechnology,
- information and communication technologies,
- bioinformatics,
- space,
- micro- and nanotechnologies,
- materials research,
- clean technologies,
- management and sustainable use of environmental resources,
- biosafety,
- health and medicine,
- aeronautics,
- metrology, standardisation and conformity assessment, and
- human sciences.

Article V

Cooperation arrangements and cooperative activities

1. The Parties shall encourage:
 - (a) the participation of research entities in the cooperative activities covered by this Agreement, in accordance with their own internal policies and regulations, with a view to providing comparable opportunities for participation in their scientific research and technological development activities and making good use of the benefits thereof;
 - (b) reciprocal access to the activities promoted by each Party under current national programmes or policies.
2. Cooperative activities may take the following forms:
 - (a) joint RTD projects;
 - (b) visits and exchanges of scientists, researchers and technical experts;
 - (c) joint organisation of scientific seminars, conferences, symposia and workshops, as well as the participation of experts in those activities;
 - (d) concerted actions such as the pooling of RTD projects already implemented in accordance with the procedures applicable to the RTD programmes of each Party and scientific networks;
 - (e) exchange and sharing of equipment and materials;
 - (f) exchanges of information on practices, laws, regulations and programmes relevant to cooperation under this Agreement, including information on policy in the field of science and technology;
 - (g) any other arrangements recommended by the Steering Committee to be established pursuant to Article VI, which are deemed compliant with the policies and procedures applicable in both Parties.
3. Joint RTD projects shall be carried out only after the participants have concluded a Joint Technology Management Plan, as indicated in the Annex to this Agreement.

Article VI

Coordination and implementation of cooperative activities

1. The coordination and expediting of cooperative activities under this Agreement shall be accomplished on behalf of the Community by the services of the European Commission and on behalf of Brazil by the Ministry of Foreign Affairs, acting as executive agents.

2. The executive agents shall establish a Steering Committee on scientific and technical cooperation which shall be responsible for the management of this Agreement. The committee shall be made up of official representatives of each Party, and shall draw up its own rules of procedure.

3. The duties of the Steering Committee shall include:

- (a) proposing and supporting cooperative activities under this Agreement, in accordance with Article V;
- (b) indicating, for the following year, pursuant to Article V(1)(b), among the potential sectors for RTD cooperation, those priority sectors or subsectors of mutual interest in which cooperation is sought;
- (c) proposing the pooling of projects of mutual interest or complementary projects to researchers in both Parties;
- (d) making recommendations pursuant to Article V(2)(g);
- (e) advising the Parties on ways to enhance and improve cooperation consistent with the principles set out in this Agreement;
- (f) reviewing the efficient implementation and functioning of this Agreement;
- (g) providing an annual report to the Parties on the status, the level reached and the effectiveness of cooperation undertaken under this Agreement. This report shall be transmitted to the Joint Committee established under the Framework Cooperation Agreement concluded between the Parties on 29 June 1992.

4. The Steering Committee, which reports to the Joint Committee, shall, as a general rule, meet annually, preferably before the meeting of the Joint Committee, according to a schedule agreed jointly in advance. The meetings should be held alternately in the Community and in Brazil. Extraordinary meetings may be held at the request of either Party.

5. The costs incurred by representatives in attending the Steering Committee meetings shall be borne by the Party they represent.

Article VII

Funding

Cooperative activities shall be subject to the availability of sufficient funds and to the applicable laws, regulations, policies and programmes of the Parties. The costs incurred by the participants in cooperative activities shall not, as a general rule, be settled by the transfer of funds from one Party to the other.

Article VIII

Entry of personnel and equipment

1. Each Party shall take all appropriate steps and use its best efforts, within the laws and regulations applicable in the territories of each Party, to facilitate entry to, sojourn in, and exit from its territory, of persons, material, data and equipment related to or used in cooperative activities developed by the Parties under the provisions of this Agreement, which shall be granted exemptions from taxes and customs duties, pursuant to the legislative and regulatory provisions applicable in the territories of each Party.

2. Where the specific cooperation arrangements of one Party provide for financial aid to be granted to the participants of the other Party, the grants, financial contributions or similar given by one Party to the participants of the other Party in support of these activities shall be given tax and customs exemptions, pursuant to the legislation applicable in the territories of each Party.

Article IX

Intellectual property

Matters of intellectual property arising under this Agreement shall be handled in accordance with the Annex which forms an integral part of this Agreement.

Article X

Community activities in favour of developing countries

This Agreement shall not affect the participation of Brazil, as a developing country, in Community activities in the field of research for development.

Article XI

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 the Federative Republic of Brazil.

Article XII

Entry into force, termination and dispute settlement

1. This Agreement shall enter into force on the date on which both parties have notified each other in writing that the respective internal procedures necessary for it to enter into force have been completed.

2. This Agreement shall initially be valid for a period of five years and may be renewed by agreement between the Parties after evaluation during the penultimate year of each subsequent renewal period.

3. This Agreement may be amended by agreement of the Parties. Amendments shall enter into force under the same conditions as those mentioned in paragraph 1.

4. This Agreement may be terminated at any time by either Party upon six months' written notice to the other Party sent through diplomatic channels. The expiry or termination of this Agreement shall not affect the validity or duration of any joint

research projects in progress under it, or any specific rights and obligations which have accrued in compliance with the Annex.

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

Done at Brasilia, on the nineteenth day of January in the year two thousand and four, in two originals, in Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish, all versions being equally authentic. In the event of a difference in interpretation between any of these languages, the English text shall take precedence.

Por la Comunidad Europea
For Det Europæiske Fællesskab
Für die Europäische Gemeinschaft
Για την Ευρωπαϊκή Κοινότητα
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

Por la República Federativa de Brasil
For Den Føderative Republik Brasilien
Für die Föderative Republik Brasilien
Για την Ομοσπονδιακή Δημοκρατία της Βραζιλίας
For the Federative Republic of Brazil
Pour la République fédérative du Brésil
Per la Repubblica Federativa del Brasile
Voor de Federale Republiek Brazilië
Pela República Federativa do Brasil
Brasilian liittotasavallan puolesta
För Förbundsrepubliken Brasilien

ANNEX

INTELLECTUAL PROPERTY

In accordance with Article IX of this Agreement:

The Parties shall ensure that the intellectual property created under this Agreement is protected appropriately and effectively.

The Parties undertake to inform each other in a timely fashion of any inventions or other works produced under this Agreement which may generate intellectual property rights.

I. SCOPE

- A. 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 (WIPO), signed at Stockholm on 14 July 1967.
- B. This Annex does not otherwise alter or prejudice the allocation of rights, interests and intellectual property between a Party and its nationals or participants, which will be determined by the laws and practices of each Party.
- C. Intellectual property disputes arising will be settled by consultation between the participating institutions concerned or, if necessary, by the Parties or their authorised representatives. If agreed by the Parties, disputes may be submitted to an arbitration tribunal, in accordance with the international law provisions applicable in the case. Unless decided otherwise and approved in writing by the Parties or by their authorised representatives, the arbitration standards of the United Nations Commission on International Trade Law (UNCITRAL) will apply.
- D. Should either Party believe that a particular joint research project under this Agreement has led, or will lead, to the creation or granting of a type of intellectual property that is not protected by the legislation applicable in the territory of the other Party, the Parties shall immediately hold discussions to find a mutually acceptable solution in accordance with the applicable legislation.

II. ALLOCATION OF RIGHTS

- A. Each Party, subject to the terms of their own national legislation, may, by means of a contract, have non-exclusive, irrevocable, royalty-free licence to translate, reproduce, adapt, transmit and publicly distribute the articles, reports and technical and scientific books generated directly by the cooperative activities covered by this Agreement, provided that the legal provisions on the ownership and transfer of copyright for the creation of the work are respected. All the copies of works subject to copyright produced in line with these provisions and publicly distributed must mention the names of the authors, except where the authors have specifically declined that right.
- B. Rights for all forms of intellectual property not described in Section II A will be allocated as follows:
 1. Visiting researchers, such as scientists visiting primarily in furtherance of their education, shall receive intellectual property rights under arrangements with their host institutions in accordance with the provisions of the relevant national legislation on the subject. In addition, each visiting researcher named as an inventor shall be entitled, in the same way that the researchers of the host institution are entitled, to a proportional share of any royalties received by the host institution under the licence for the use of the intellectual property.
 2. Regarding the intellectual property which is or may be created by joint research, the participants will draw up a joint technology management plan to be negotiated in the form of a written contract between the participants in joint research projects establishing in advance the fair and balanced distribution of results or any benefits deriving from the cooperation, considering the relative contribution of the Parties or their participants, and strictly complying with the laws on intellectual property in force in each Party and the international agreements on intellectual property to which the Parties are signatories.
 - (a) If the Parties or their participants did not adopt a joint technology management plan in the initial phase of cooperation and if they cannot reach an agreement within a reasonable period, not more than six months, of a Party becoming aware of the creation or likely creation of the intellectual property in question as a result of the joint research, then the Parties must immediately hold discussions in order to find a mutually acceptable solution. Pending resolution of the matter, such intellectual property shall be owned jointly by the Parties or their participants, unless jointly agreed otherwise.

- (b) If a joint research project carried out under this Agreement leads to a creation likely to be protected by intellectual property rights which are not covered by the legislation in force in one of the Parties, the Parties must immediately hold discussions in order to find a mutually acceptable solution in accordance with the applicable legislation.

III. CONFIDENTIAL INFORMATION

- A. Each Party and its participants must protect any business and/or industrial secrets identified as confidential generated or supplied under this Agreement in accordance with the applicable laws, regulations and practices, as agreed between the Parties.
- B. No Party or participant may divulge information identified as confidential without prior authorisation, except to employees that belong to the categories of officials, contractors or subcontractors; the release of information must be strictly limited to the parties involved in the joint research project agreed between the participants, and/or authorised personnel of government bodies associated with the project or this Agreement.
- C. The information may be divulged only to parties with written authorisation and must, in no case, be released more widely than is strictly necessary for the execution of tasks, duties or contracts associated with the information released.
- D. The recipients of confidential information shall undertake in writing to keep such information confidential, and the Parties must ensure that this obligation is fulfilled.
- E. A Party must immediately notify the other Party if it is, or is likely to be, unable to guarantee not to divulge confidential information. The Parties will consult each other to determine what measures are appropriate in such a case.
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