

AGREEMENT

on Scientific and Technological Cooperation between the European Communities and the Swiss Confederation

THE COUNCIL OF THE EUROPEAN UNION, acting on behalf of the European Community, and THE COMMISSION OF THE EUROPEAN COMMUNITIES, hereinafter called the 'Commission', acting on behalf of the European Atomic Energy Community, hereinafter called collectively the 'European Communities',

of the one part, and

THE SWISS FEDERAL COUNCIL, acting on behalf of the Swiss Confederation, hereinafter called 'Switzerland',

of the other part,

hereinafter referred to as the 'Contracting Parties',

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

CONSIDERING the importance of scientific and technological research for the European 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 European Communities are currently implementing research programmes in fields of common interest;

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

CONSIDERING the interest of both Contracting 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 European 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 called the 'Fusion Agreement';

WHEREAS the Contracting Parties concluded a Framework Agreement on 8 January 1986 for scientific and technical cooperation, which entered into force on 17 July 1987;

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

WHEREAS, by Decision No 1821/1999/EC of 22 December 1998, the European Parliament and the Council of the European Union adopted the Fifth Framework Programme of the European Community for research, technological development and demonstration activities (1998-2002), hereinafter called the 'Fifth Framework Programme'; whereas, by Decision 99/64/Euratom of 22 December 1998, the Council of the European Union adopted the Fifth Framework Programme of the European Atomic Energy Community (Euratom) for research and training activities (1998-2002), hereinafter referred to as the 'Nuclear Framework Programme', both programmes being referred to hereinafter collectively as 'the two Framework Programmes';

WHEREAS, without prejudice to the relevant provisions of the Treaties establishing the European Communities, this Agreement and any activities entered into under it will in no way affect the powers vested in the Member States of the European Union 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 two Framework Programmes shall take the form laid down in this Agreement, without prejudice to the terms of the Fusion Agreement.

Research entities established in Switzerland may participate in all the specific programmes of the two Framework Programmes.

2. Swiss scientists or research entities may participate in the activities of the Joint Research Centre of the European Communities, as far as this participation is not covered by paragraph 1.

3. Research entities established in the European Communities, including the Joint Research Centre, may participate in research programmes and projects in Switzerland in themes equivalent to those of the programmes of the two Framework Programmes.

4. 'Research entities' as referred to in this Agreement 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 research entities established in Switzerland in all specific programmes adopted under the two 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.
- 2) Financial contribution by Switzerland to the budgets of the programmes adopted for the implementation of the two Framework Programmes as defined in Article 5(2).
- 3) Participation of research entities established in the European Communities in publicly-financed Swiss research projects, in particular within priority programmes financed by Switzerland, in accordance with the terms and conditions laid down in the respective Swiss regulations and with the agreement of the partners in the specific project and the management of the corresponding Swiss programme. European Communities' entities participating in Swiss research programmes and projects shall cover their own costs, including their relative share of the project's general management and administrative costs.

- 4) Timely provision of information and documentation concerning the implementation of the two Framework Programmes and the Priority Programmes in Switzerland.

*Article 3***Adaptation**

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

*Article 4***Intellectual property rights and obligations**

1. Subject to Annex A and applicable law, research entities established in Switzerland participating in European 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 those of research entities established in the European Communities. This provision shall not concern results derived by projects started before entry into force of this Agreement.

2. Subject to Annex A and applicable law, research entities established in the European Communities taking part in Swiss research projects, as set out in Article 2, point 3, shall, as regards ownership, exploitation and dissemination of information and intellectual property arising from such participation, have the same rights and obligations as those of research entities established in Switzerland, in the project in question.

*Article 5***Financial provisions**

1. Without prejudice to the corresponding provisions of the Fusion Agreement, the financial provisions shall enter into force from 1 January of the year following the entry into force of this Agreement. Before the entry into force of the financial provisions, the financial participation of research entities established in Switzerland will be on a project-by-project basis.

Commitments entered into by the European Communities prior to 1 January of the year following 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 specific 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 implement, management and operation of those programmes and activities covered by this Agreement.

2. The proportionality factor governing Switzerland's contribution to the Fifth Framework Programme and to the Nuclear Framework Programme, 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 will 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 the Organisation for Economic Cooperation and Development (OECD), available at the time of publication of the general budget of the European Communities.

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

Article 6

Switzerland/Communities Research Committee

The 'Switzerland/Communities Research Committee', set up in the Framework Agreement of 1986, 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.

Article 7

Participation

1. Without prejudice to the provisions of Article 4, research entities established in Switzerland participating in the two Framework Programmes shall have the same contractual rights and obligations as those of entities established in the European Communities.

2. For research 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 Communities programmes shall be the same as those applicable for contracts concluded under the same programmes with research entities established in the European Communities.

3. An appropriate number of Swiss experts shall be taken into consideration in the selection of evaluators or referees under the European Communities' research and technological development programmes.

4. Without prejudice to the provisions of Article 1(3), Article 2 points 3 and 4 and Article 4(2) and to existing regulations and rules of procedure, research entities established in the European Communities may participate under equivalent terms and conditions as Swiss project partners in the projects of Swiss research programmes as mentioned in point 3 of Article 2.

Article 8

Mobility

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

Article 9

Revision and future collaboration

1. Should the European Communities revise or extend their research programmes, this Agreement may be revised or extended under mutually agreed conditions. The Contracting 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 two Framework Programmes beforehand. Switzerland shall be notified of the exact content of the revised or extended programmes within two weeks of their adoption by the European Communities. In such a case of revision or extension of the research programmes, Switzerland may terminate this Agreement by giving six months' notice; Article 14 (3) and (4) shall not apply. Such notice of any intention to terminate or to extend this Agreement shall be given within three months after the adoption of the Communities' decision.

2. Should the European Communities adopt new multiannual Framework Programmes for research and technological development, this Agreement may be renewed or renegotiated under mutually agreed conditions. The Contracting 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

Continuation of projects

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.

Article 11

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 Contracting Parties and reserving the benefit of their advantages for only those research entities established in the territory of that Contracting Party.

*Article 12***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, to the territory of Switzerland.

*Article 13***Annexes**

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

*Article 14***Entry into force and duration**

1. This Agreement shall be ratified or approved by the Contracting Parties in accordance with their own procedures. It shall enter into force on the first day of the second month following the final notification of the deposit of the

instruments of ratification or approval of all the following seven Agreements:

- Agreement on scientific and technological cooperation,
- Agreement on the free movement of persons,
- Agreement on air transport,
- Agreement on the carriage of goods and passengers by rail and road,
- Agreement on trade in agricultural products,
- Agreement on mutual recognition in relation to conformity assessment,
- Agreement on aspects of Government procurement.

2. This Agreement shall apply for the period between its entry into force and the expiry of the two Framework Programmes.

3. The Communities or Switzerland may terminate this Agreement by notifying its decision to the other party. Where such notification is given, paragraph 4 shall apply.

4. The seven Agreements referred to in paragraph 1 shall cease to apply six months after receipt of the notification of termination as referred to in paragraph 3.

Hecho en Luxemburgo, el veintiuno de junio de mil novecientos noventa y nueve.

Udfærdiget i Luxembourg, den enogtyvende juni nitten hundrede og nioghalvfems.

Geschehen zu Luxemburg am einundzwanzigsten Juni neunzehnhundertneunundneunzig.

Έγινε στο Λουξεμβούργο, στις είκοσι μία Ιουνίου χίλια εννιακόσια ενενήντα εννέα.

Done at Luxembourg on the twenty-first day of June in the year one thousand and ninety-nine.

Fait à Luxembourg, le vingt-et-un juin mil neuf cent quatre-vingt dix-neuf.

Fatto a Lussemburgo, addì ventuno giugno millenovecentonovantanove.

Gedaan te Luxemburg, de eenentwintigste juni negentienhonderd negenennegentig.

Feito em Luxemburgo, em vinte e um de Junho de mil novecentos e noventa e nove.

Tehty Luxemburgissa kahdentenkymmenentenäensimmäisenä päivänä kesäkuuta vuonna tuhatyhdeksänsataayhdeksänkymmentäyhdeksän.

Som skedde i Luxemburg den tjugoförsta juni nittonhundra nittonio.

Por las Comunidades Europeas
For De Europæiske Fællesskaber
Für die Europäischen Gemeinschaften
Για τις Ευρωπαϊκές Κοιότητες
For the European Communities
Pour les Communautés européennes
Per le Comunità europea
Voor de Europese Gemeenschappen
Pelas Comunidades Europeias
Euroopan yhteisöjen puolesta
For Europeiska gemenskaperna



Por la Confederación Suiza
For Det Schweiziske Edsforbund
Für die Schweizerische Eidgenossenschaft
Για την Ελβετική Συνομοσπονδία
For the Swiss Confederation
Pour la Confédération suisse
Per la Confederazione svizzera
Voor de Zwitserse Bondsstaat
Pela Confederação Suíça
Sveitsin valaliiton puolesta
På Schweiziska edsförbundets vägnar



ANNEX A

GUIDING PRINCIPLES ON THE ALLOCATION OF INTELLECTUAL PROPERTY RIGHTS

1. OWNERSHIP, ALLOCATION AND EXERCISE OF RIGHTS

- 1.1. The contractual arrangements agreed on by the participants under the rules set out to implement Article 167 of the EC Treaty shall address, in particular, the ownership and use, including publication of information and intellectual property (IP) to be created in the course of joint research, taking into account the aims of the joint research, the relative contributions of the participants, the advantages and disadvantages of licensing by territory or for fields of use, requirements imposed by applicable laws, dispute settlement procedures, and other factors deemed appropriate by the participants.

The rights and obligations concerning the research generated by visiting researchers, if any, in respect of IP shall also be addressed in the said arrangements.

- 1.2. In the implementation of this Agreement, information and IP shall be exploited in conformity with the mutual interests of the Communities and Switzerland, and the contractual arrangements shall provide accordingly. These shall provide for the rights specified in Article 4 of this Agreement to be granted only concerning information and IP arising after the effective date of Switzerland's financial contributions.
- 1.3. Subject to the approval of the Parties, information or IP created in the course of joint research and not addressed in the contractual arrangements shall be allocated according to the principles set out in the contractual arrangements, including dispute settlement.

Where no binding decision is reached by the agreed dispute settlement technique chosen by the participants, the dispute may be referred to the Joint Switzerland/Communities Research Committee, which shall endeavour to mediate between the participants. Should the participants fail to reach agreement following such mediation, such information or IP shall be owned jointly by all the participants involved in the joint research from which the information or IP results.

Failing agreement on exploitation, each participant to whom this provision applies shall have the right to use such information or IP for his own commercial exploitation with no geographical limitation.

- 1.4. Each Party shall ensure that the other Party and its participants may have the rights to IP allocated in accordance with the principles set out in this Section.
- 1.5. While maintaining the conditions of competition in areas affected by this 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:
 - (i) the dissemination and use of information created, disclosed, or otherwise made available, under this Agreement;
 - and
 - (ii) the adoption and implementation of international standards.

2. INTERNATIONAL CONVENTIONS

IP belonging to the Parties or to their participants shall be accorded treatment consistent with the relevant applicable international conventions including the TRIPS Agreement of the GATT-WTO, the Berne Convention (Paris Act 1971) and the Paris Convention (Stockholm Act 1967).

3. SCIENTIFIC LITERARY AND AUDIOVISUAL WORKS PROTECTED BY COPYRIGHT

Subject to Section 4, unless otherwise agreed in the contractual arrangements, publication of results of research shall be made jointly by the Parties or participants in that joint research.

Subject to this general rule, the following procedures shall apply:

- 3.1. In the case of publication by a Party or public bodies of that Party of scientific and technical journals, articles, reports, books, including audiovisual works and software, arising from joint research pursuant to this Agreement, the other Party shall be entitled to a world-wide, non-exclusive, irrevocable royalty-free license to translate, reproduce, adapt, transmit and publicly distribute such works.
- 3.2. The Parties shall ensure that literary and audiovisual works of a scientific character arising from joint research pursuant to this Agreement and published by independent publishers shall be disseminated as widely as possible.
- 3.3. All copies of a copyright work to be publicly distributed and prepared under this provision shall indicate the names of the author or authors of the work unless an author or authors expressly declines or decline to be named. Copies shall also bear a clearly visible acknowledgement of the cooperative support of the Parties.

4. UNDISCLOSED INFORMATION

A. Documentary undisclosed information

1. Each Party or its participants, as appropriate, shall identify at the earliest possible moment and preferably in the contractual arrangements the information that it wishes to remain undisclosed in relation to this Agreement, taking into account, among other things, the following criteria:
 - (i) secrecy of the information in the sense that the information is not, as a body or in the precise configuration or assembly of its components, generally known among, or readily accessible by lawful means to, experts within the circles that normally deal with the kind of information in question,
 - (ii) the actual or potential commercial value of the information by virtue of its secrecy,
and
 - (iii) 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 of the information to maintain its secrecy.

The Parties and the participants 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 pursuant to this Agreement may not be disclosed.

2. Each Party shall ensure that undisclosed information under this Agreement and its privileged nature is readily recognisable as such by the other Party, for example by means of an appropriate marking or restrictive legend. This also applies to any reproduction of the said information, in whole or in part.
3. A Party receiving undisclosed information pursuant to this Agreement shall respect its privileged nature. These limitations shall automatically terminate when this information is disclosed by the owner without restriction to experts in the field.
4. Undisclosed information communicated under this Agreement may be disseminated by the receiving Party to persons within or employed by the receiving Party, and other concerned departments or agencies in the receiving Party authorised for the specific purposes of the joint research under way, provided that any such undisclosed information is disseminated only on conditions of confidentiality and is readily recognisable as such, as set out above.
5. With the prior written consent of the Party providing undisclosed information under this Agreement, the receiving Party may disseminate such information more widely than otherwise permitted in paragraph 4. The Parties shall cooperate in developing procedures for requesting and obtaining prior written consent for such wider dissemination, and each Party shall grant such approval to the extent permitted by its domestic policies, regulations and laws.

B. Non-documentary undisclosed information

Non-documentary undisclosed or other confidential or privileged information provided in seminars and other meetings arranged under 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 the Agreement, 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 therein. If one of the Parties becomes aware that it will be, or may reasonably be expected to become, unable to meet the non-dissemination provisions of Subsections A or B, 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

1. DETERMINATION OF FINANCIAL PARTICIPATION

1.1. 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.

1.2. 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.

2. PAYMENT PROCEDURES

2.1. 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.

2.2. The contributions of Switzerland shall be expressed and paid in euros.

2.3. Switzerland shall pay its contribution under this Agreement according to the schedule in paragraph 2.1. Any delay in payment shall give rise to the payment of interest at a rate equal to the one-month Euro 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 thirty days after the scheduled payment dates mentioned in paragraph 2.1.

2.4. 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 European Communities.

3. CONDITIONS FOR IMPLEMENTATION

3.1. 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.

3.2. 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.

Payments 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.

4. INFORMATION

- 4.1. 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.
 - 4.2. 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 EFTA-EEA States.
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