



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 04.09.1996
COM(96)423 final

Recommendation for a

COUNCIL DECISION

approving the signature of an Agreement for scientific and technological
cooperation between the European Community and the Republic of
South Africa

(presented by the Commission)

Recommendation for a Council Decision approving the signature of an Agreement for scientific and technological cooperation between the European Community and the Republic of South Africa

1. In the framework of the new relationship between the European Union and South Africa, the South African authorities have repeatedly requested the development of closer relations with the European Union in the area of science and technology.

The Commission reacted favourably to these requests by sending, in October 1994, an exploratory mission to South Africa. It led to the conclusion that there was a mutual interest in cooperation in a wide variety of research sectors. The mission also concluded that closer collaboration with South Africa in the area of science and technology might have positive effects on the larger region of Southern Africa, taking into account South Africa's pivotal role in the Southern African Development Community (SADC).

2. After having received on 22 December 1994 a proposal for a cooperation agreement in science and technology from the South African Government and after further exploratory discussions and consultation among Commission services concerned, the Commission asked the Council for negotiating directives for a S&T cooperation agreement covering all activities related to the European Community's multi-annual Framework Programme for RTD (1994-1998). On 22 January 1996 the Council authorised the Commission to negotiate the agreement in question.
3. The negotiations resulted in the attached draft agreement, including its annex on the dissemination and utilization of information and management, allocation and exercise of intellectual property rights.

The draft Agreement provides for :

- the participation of research entities, including the Parties themselves, in RTD projects conducted by South Africa or the Community in research areas covered by the European Community's Fourth Framework Programme;
- the shared use of research facilities;
- visits and exchanges of researchers, engineers and technicians;
- the exchange of information;
- other activities as may be jointly determined by the Joint Science and Technology Cooperation Committee in accordance with the applicable policies and programmes of the Parties;

- the endorsement by the Parties of Technology Management Plans as a condition for research projects to proceed, as described in the Annex to the draft Agreement;
 - cooperative activities to be subject to the availability of funds and to the applicable laws and regulations, policies and programmes of South Africa and the Community; no transfer of funds will take place, except for the purpose of participation by South African research entities in the specific programme of RTD in the field of cooperation with third countries and international organisations, for which South Africa is considered a developing country.
4. The draft Agreement has been initialled on 7 May 1996. The results of the negotiations are in conformity with the negotiating directives as adopted by the Council on 22 January 1996.
5. In the light of the above mentioned considerations the Commission proposes that the Council, without prejudice to the conclusion of the Agreement after consultation of the European Parliament :
- decide that the Agreement be signed on behalf of the Community and
 - authorize the President of the Council to appoint the persons duly empowered to sign on behalf of the Community.

Draft

AGREEMENT

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

THE COUNCIL OF THE EUROPEAN UNION acting on behalf of the European Community (hereinafter "the Community"), of the one part, and

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA acting on behalf of the Republic of South Africa (hereinafter "South Africa"), of the other part,

hereinafter referred to as the "Parties";

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

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

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

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

WHEREAS South Africa, on the one hand, and the Community and its Member States, on the other hand, are negotiating an agreement referring inter alia to the negotiation of a cooperation agreement in the field of science and technology;

WHEREAS, by Decision No 1110/94/EC, the European Parliament and the Council of the European Union adopted a Framework Programme of European Community activities in the field of research and technological development and demonstration (1994-1998), hereinafter called the "Fourth Framework Programme";

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

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Objectives

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

ARTICLE 2

Definitions

For the purposes of this Agreement:

- a) "Cooperative activity" means any activity carried out under this Agreement and includes joint research;
- b) "Information" means scientific or technical data, results or methods of research and development stemming from the joint research and any other information deemed necessary by the participants engaged in cooperative activity, including, where necessary, the Parties themselves;
- c) "Intellectual Property" shall have the meaning defined in Article 2 of the Convention establishing the World Intellectual Property Organization, done at Stockholm, 14 July, 1967;
- d) "Joint research" means research, technological development and demonstration that is implemented with or without financial support from either or both Parties and that involves collaboration by participants from both the Community and South Africa;
- e) "Participant" or "Research entity" means any person, legal entity, university, research institute or any other body or undertaking participating in a cooperative activity, including the Parties themselves.

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ARTICLE 3

Principles

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

- a) mutual benefit;
- b) timely exchange of information which may affect the actions of participants in cooperative activities; and
- c) within the framework of applicable laws and regulations, effective protection of intellectual property and equitable sharing of intellectual property rights, as set out in the Annex, which forms an integral part of this Agreement.

ARTICLE 4

Scope of the cooperation

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

ARTICLE 5

Modalities of cooperation

Cooperation may take the following forms:

- (a) (i) participation of South African research entities in RTD projects related to the Fourth Framework Programme and a reciprocal participation of research entities of the European Community in South African projects in similar areas of research; as regards South African participation in Community RTD projects, such participation shall be subject to the rules applicable for the participation of undertakings, research centres and universities in the specific programmes of RTD of the Community¹;

¹ Council Decision of 21 November 1994 concerning the rules for the participation of undertakings, research centres and universities in the research, technological development and demonstration activities of the European Community (O.J. nr L306 of 30.11.1994, p. 8).

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- (ii) for the purpose of participation by South African research entities in the specific programme of RTD in the field of cooperation with third countries and international organizations (1994-1998) South Africa is considered a developing country;
- (b) shared use of research facilities;
- (c) visits and exchanges of research workers, engineers and technicians;
- (d) participation by experts in seminars, symposia and workshops;
- (e) scientific networks and training of researchers;
- (f) exchange of information on practices, laws, regulations and programmes relevant to cooperation under this Agreement;
- (g) other modalities as may be recommended by the Joint Science and Technology Cooperation Committee in accordance with the applicable policies and programmes of the Parties.

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

ARTICLE 6

Joint Science and Technology Cooperation Committee (JSTCC)

- (a) A Joint Science and Technology Cooperation Committee will be established in order to administer this Agreement; it will be composed of representatives of the Commission and of South Africa; it shall adopt its rules of procedure.
- (b) The functions of the JSTCC shall be to:
 - 1. promote and review the various cooperation activities envisaged under this Agreement;
 - 2. make recommendations pursuant to Article 5 (g);
 - 3. advise the Parties on ways to enhance cooperation consistent with the principles set out in this Agreement;
 - 4. review the efficient and effective functioning of the Agreement;
 - 5. provide a report annually to the Parties on the level, status and effectiveness of cooperation undertaken under this Agreement.

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- (c) ~~The JSTCC shall meet as mutually agreed, meetings being held alternately in the Community and South Africa.~~
- (d) Costs incurred by or on behalf of the Committee shall be met by the Party to whom the members are responsible. Costs, other than those of travel and accommodation, which are directly associated with meetings of the Committee, shall be met by the host Party.

ARTICLE 7

Funding

- (a) Cooperative activities shall be subject to the availability of funds and to the applicable laws and regulations, policies and programmes of the Parties.
- (b) Costs incurred by participants in cooperative activities shall not require any transfer of funds from one Party to the other, except for the participation referred to under Article 5 (a) (ii).

ARTICLE 8

Entry of Personnel and Equipment

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

ARTICLE 9

Dissemination and Utilization of Information

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

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

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ARTICLE 10

Territorial Application

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

ARTICLE 11

Entry into Force; Termination; Settlement of Disputes

- (a) This Agreement shall enter into force on the date on which the Parties have notified each other in writing that their legal requirements have been fulfilled.
- (b) This Agreement shall be concluded for the duration of the Fourth Framework Programme and will be renewable by common agreement between the Parties (tacit renewal) for the specific programmes implementing subsequent Framework Programmes of the Community.
- (c) This Agreement may be amended by agreement of the Parties. Amendments shall enter into force on the date on which the Parties have notified each other in writing that their legal requirements have been fulfilled.
- (d) This Agreement may be terminated at any time by either Party upon a six months written notice. The expiration or termination of this Agreement shall not affect the validity or duration of any arrangements made under it, or any specific rights and obligations that have accrued in compliance with the Annex.
- (e) All questions or disputes related to the interpretation or implementation of this Agreement shall be settled between the Parties by mutual agreement.

ARTICLE 12

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

For the Council of the European Union

For the Government of the Republic of South Africa

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

I. OWNERSHIP, ALLOCATION AND EXERCISE OF RIGHTS

1. All research carried out pursuant to this Agreement shall be "joint research". The participants performing the joint research shall develop Joint Technology Management Plans (JTMPs) which shall contain, as a minimum, principles in respect of the ownership and use, including publication, of information and Intellectual Property (IP) to be created in the course of the joint research*.

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

2. Information or IP created in the course of joint research and not addressed in a JTMP shall be allocated following the procedures set out in I.1 according to the principles set out in that JTMP. In case of disagreement, which cannot be resolved by the agreed dispute resolution procedure, such unallocated information or IP shall be owned jointly by all the participants involved in the joint research from which the information or IP results, and each participant to whom this provision applies shall have the right to use such information or IP for his/her own commercial exploitation with no geographical limitation.
3. In accordance with applicable laws, each Party shall ensure that the other Party and its participants may have the rights to IP allocated to them in accordance with the principles set out in section I of this Annex.
4. While maintaining the conditions of competition in areas affected by the Agreement, each Party shall endeavour to ensure that rights acquired pursuant to the Agreement, and arrangements made under it, are exercised in such a way as to encourage in particular:
- (i) the dissemination and use of information created, disclosed, or otherwise made available, under the Agreement;
 - (ii) the adoption and implementation of international standards.

* The indicative features of such JTMPs are set out in Appendix.

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II. COPYRIGHT WORKS

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

III. SCIENTIFIC LITERARY WORKS

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

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

IV. UNDISCLOSED INFORMATION

A. Documentary undisclosed information

1. Each Party or its participants shall identify at the earliest possible moment, and preferably in the JTMP, the information that it wishes to remain undisclosed in relation to this Agreement, taking into account, among other things, the following criteria:
 - secrecy of the information in the sense that the information is not, as a body or in the precise configuration or assembly of its components, generally known among or readily accessible by lawful means to experts in the field;
 - the actual or potential commercial value of the information by virtue of its secrecy;
 - previous protection of the information in the sense that it has been subject to steps that were reasonable under the circumstances by the person lawfully in control, to maintain its secrecy.

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2. Participants shall not normally be required to provide undisclosed information to the Parties. Should the Parties become aware of such information, they shall respect the privileged nature thereof, and it shall not be further disclosed by, within, or between the Parties, without the written consent of the participant(s) to whom the information belongs. These limitations shall automatically terminate when such information is disclosed by the owner, without restriction, to experts in the field.
3. Each Party shall ensure that undisclosed information, communicated between them under the Agreement, and its ensuing privileged nature is readily recognizable as such by the other Party, for example, by means of an appropriate marking or restrictive legend. This also applies to any reproduction of the said information, in whole or in part.
4. Undisclosed information communicated under the Agreement, and received from the other Party, may be disseminated by the receiving Party to persons within or employed by the receiving Party and other concerned departments or agencies of the receiving Party authorized for the specific purposes of the joint research underway, provided that any undisclosed information so disseminated shall be pursuant to a written agreement of confidentiality and shall be readily recognizable as such, as set out above.
5. With the prior written consent of the Party providing undisclosed information under the Agreement, the receiving Party may disseminate such undisclosed information more widely than otherwise permitted in Paragraph 3 above. The Parties shall cooperate in developing procedures for requesting and obtaining prior written consent for such wider dissemination, and each Party will grant such approval to the extent permitted by its domestic policies, regulations and laws.

B. Non-documentary undisclosed information

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

C. Control

Each Party shall make its best efforts to ensure that undisclosed information received by it under the Agreement shall be controlled as provided therein. If one of the Parties becomes aware that it will be, or may reasonably be expected to become, unable to meet the non-dissemination provisions of Paragraphs A and B above, it shall immediately inform the Party likely to be affected by the dissemination. The Parties involved shall thereafter consult to define an appropriate course of action.

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**INDICATIVE FEATURES OF A
JOINT TECHNOLOGY MANAGEMENT PLAN (JTMP)**

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

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FINANCIAL STATEMENT

1. Title of the operation

International scientific cooperation : cooperation agreement in science and technology with the Republic of South Africa.

2. Relevant budget headings

Travel costs for EC officials and EC experts will be charged to the specific budget headings of the programmes within the Community RTD IV Framework Programme/EC part.

3. Legal basis

Article 130i and 130m in conjunction with Article 228 of the EC Treaty.
Council and Parliament Decisions 1110/94/EC of 26 April 1994 and 616/96/CE of 25 March 1996.

4. Description of the operation

4.1. Specific objectives of the operation

The essential objective is to stimulate RTD cooperation between the EC and South Africa in terms of research projects covered by the Framework Programme.

4.2. Duration

The agreement shall be concluded for the duration of the Framework Programme (1994-1998) and will be renewable by common agreement between the parties (tacit renewal) for all the specific programmes implementing subsequent Framework Programmes. It may be terminated at any time by either Party upon a six months' written notice.

5. Classification of the expenditure

5.1. Non-compulsory expenditure

5.2. Differentiated appropriations

6. Type of expenditure

Financing missions to South Africa by Commission officials; organization of workshops, seminars and meetings in Europe and South Africa.

7. Financial impact

7.1. Method of calculating the total annual cost of the operation (estimate)

a. **Preparatory activities, review of the cooperation** : meetings of the Joint Science and Technology Cooperation Committee, exchange of information, visits of officials and experts to South Africa 50.000 Ecus

b. **Scientific and technical workshops/meetings** 60.000 Ecus

Total : 110.000 Ecus/year

7.2. Indicative multi-annual schedules (MECU)

FP IV-EC

	1995	1996	1997	1998	1999 +	2000 +	TOTAL
Commitments	2599,467	2836,804	3164,853	3162,876	-	-	11764,000
Payments	694,567	2010,940	2402,509	3284,733	2054,287	1316,964	11764,000

8. Anti-fraud measures

There are many administrative and financial controls at each stage of the signature and implementation of research contracts. Among these controls are the following :

At the stage prior to the conclusion

- Initial selection of proposals based on the scientific merit of the project and on the realism of research costs relative to the content, duration of the project and its potential implications.
- Analysis of financial details submitted by the proposers in the contract negotiation form.

After signature of the contract

- Examination of expenditure at a number of levels (financial officer, scientific officer) before payment.
- Internal audit performed by the Financial Controller.
- On-site audit, which should allow the detection of errors and other irregularities by examination of supporting documents. In order to improve the efficiency of these controls, the Commission services have established an audit unit which coordinates all controls taking place. These controls are carried out either by members of this audit unit or by audit firms with which the Commission has concluded a contract, under the supervision of personnel from this audit unit.
- On the spot inspections made by the Financial Controller of the Commission and by the Court of Auditors of the European Union.

9. Cost-effectiveness analysis

9.1. Specific objectives, target population

- the agreement is designed to enable the Community and South Africa to profit on the basis of the principle of mutual benefit, from the scientific and technical progress achieved under their reciprocal research programmes, via the participation of the South African scientific community and industrial sector in the Community's research projects and via the independent and non-subsidized participation of bodies established in the Community in South African research projects;
- beneficiaries in the EC and South Africa will be the scientific communities, the industrial sector and the general public, thanks to the direct and indirect effects of cooperation.

9.2. Justification of the operation

Community budget intervention is indispensable because the planned cooperation comes under the implementation of the Framework Programme, including the budgetary section : participation by South Africa in certain specific programmes and administrative expenditure on the European side (missions by Community officials, organization of seminars in the Community and South Africa).

9.3. Monitoring and evaluation of the operation

The cooperation agreement will be evaluated regularly by the Commission services concerned. The evaluation will comprise the following elements :

- a. Collection of information :
On the basis of data from the specific programmes of the framework programmes.
- b. Overall evaluation of the operation :
An evaluation of all the cooperation activities in the context of this agreement will be made by the Commission's departments at the end of each year.

10. Implications for administrative expenditure

- The Commission is not requesting any additional posts for the management of the Agreement.
- No officials are being specifically assigned to manage the Agreement. Cooperation activities and the implementation of the Agreement will be managed by the staff authorized for the specific programmes under the present Framework Programme and possible subsequent Framework Programmes.

ISSN 0254-1475

COM(96) 423 final

DOCUMENTS

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Catalogue number : CB-CO-96-418-EN-C

ISBN 92-78-07898-0

Office for Official Publications of the European Communities

L-2985 Luxembourg