



Brussels, 05.11.1997  
SEC(97) 2068 final

Recommendation for a

COUNCIL DECISION

authorizing the signature of an

Agreement for scientific and technological cooperation between the  
European Community and the Government of the United States of America

(presented by the Commission)

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1. The European Union and the United States of America have been cooperating for many years in the area of science and technology. It was therefore logical that the broadening of science and technology cooperation and the negotiation by 1997 of a comprehensive science and technology cooperation agreement were explicitly mentioned among the objectives of the New Transatlantic Agenda (December 1995) and its EU/US Action Plan.

2. On the basis of the Council's mandate of 25 June 1996 the Commission started negotiations with the US Government which have led to the attached draft Agreement, including an Annex on the protection of intellectual property and accompanied by two statements, one on plant and animal varieties research, the other holding clarifications of the Agreement.

3. The draft Agreement, to be concluded for a five year period, is based on the principles of mutual benefit, reciprocal opportunities for cooperation and equitable and fair treatment. It provides for :

- the reciprocal participation of research entities and their respective subsidiaries including the Parties themselves, in RTD activities implemented with financial support from one or both Parties in research areas covered by the European Community's Framework Programme for RTD and similar research areas in the USA; the participation in reciprocal cooperation activities, including joint research, will be subject to the written consent of both Parties; in this connection the application of the principle of equitable and fair treatment to European subsidiaries in the United States and the effective access of European research entities to US research programmes and activities will have to be closely monitored;

- in addition to reciprocal participation in each other's research activities, cooperation may also take place through coordinated and joint research projects, joint task forces, joint studies, the joint organization of scientific seminars, etc., the training of scientists and technical experts; the exchange or the sharing of equipment and materials, visits and exchanges of scientific personnel, and exchanges of information; when appropriate, cooperative activities shall take place pursuant to implementing arrangements;

- the coordination and facilitation of cooperative activities through the Joint Consultative Group;

- cooperation activities to be subject to the availability of appropriated funds and to the applicable laws and regulations, policies and programmes of the Community and the United States of America;
  - the appropriate allocation and protection of intellectual property rights; and
  - the possible extension, with possible amendments, for further five year periods, subject to review by the Parties in the final year of each successive period.
4. Even if this Agreement does not meet all our objectives set at the start of the negotiations, it constitutes a satisfactory result of the negotiations because it promotes access of interested European research entities to a package of US research programmes much more important than the Community's Framework Programme. Moreover, the draft Agreement constitutes an official recognition by the United States of the importance of the Community's research efforts at world level. Furthermore, several control and monitoring mechanisms built into the draft Agreement should help us to reach a balanced transatlantic cooperation in terms of RTD, more beneficial to European interests than presently is the case.
5. During the negotiations Commission services have regularly informed and consulted the Member-States as well as the representatives from the European industry through its Industrial Research and Development Advisory Committee (IRDAC).
6. In the light of the above-mentioned considerations the Commission hereby proposes that the Council, without prejudice to the conclusion of the Agreement after consultation of the European Parliament :
- decide that the attached draft Agreement be signed on behalf of the European Community; and
  - authorize the President of the Council to appoint the person(s) duly empowered to sign it on behalf of the European Community.

for scientific and technological cooperation between the European Community and the Government of the United States of America

**DRAFT AGREEMENT**

THE EUROPEAN COMMUNITY (hereinafter "the Community"), of the one part, and THE GOVERNMENT OF THE UNITED STATES OF AMERICA, of the other part, hereinafter referred to as the "Parties";

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

RECOGNIZING that the Community and the Government of the United States of America are pursuing research and technological activities in a number of areas of common interest, and that participation in each other's research and development activities on a basis of reciprocity will provide mutual benefits;

HAVING REGARD to the Declaration on EC-US Relations of November 23, 1990 and the New Transatlantic Agenda and the Joint EU-US Action Plan adopted in Madrid on December 3, 1995;

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

HAVE AGREED AS FOLLOWS :

**ARTICLE 1**

**Purpose**

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

- (a) Mutual benefit based on an overall balance of advantages;
- (b) Reciprocal opportunities to engage in cooperative activities;
- (c) Equitable and fair treatment;
- (d) Timely exchange of information which may affect cooperative activities.

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

Principles

ARTICLE 3

- (a) "Cooperative activity" means any activity which the Parties undertake, or support, pursuant to this Agreement, and includes joint research;
- (b) "Information" means scientific or technical data, results or methods of research and development stemming from joint research, and any other data relating to cooperative activities;
- (c) "Intellectual Property" shall have the meaning defined in Article 2 of the Convention establishing the World Intellectual Property Organization, done at Stockholm, 14 July 1967;
- (d) "Joint research" means research that is implemented with financial support from one or both Parties and that involves collaboration by participants from both the Community and the United States of America, and is designated as joint research in writing by the Parties or their scientific and technological organizations and agencies, or in the case where there is funding by only one Party, by that Party and the participants in that project;
- (e) "Participants" means any individual or entity, including *inter alia*, the Parties' scientific and technological organizations and agencies, private persons, undertakings, research centres, universities, subsidiaries of European and U.S. entities, or any other form of legal entity involved in cooperative activities.

For the purposes of this Agreement:

Definitions

ARTICLE 2

**ARTICLE 4**

**Areas of cooperative activities**

(a) Sectors for cooperative activities are :

- environment (including climate research);
- biomedicine and health (including research on AIDS, infectious diseases and drug abuse);
- agriculture;
- fisheries science;
- engineering research;
- non-nuclear energy;
- natural resources;
- materials sciences and metrology;
- information and communication technologies;
- telematics;
- biotechnology;
- marine sciences and technology;
- social sciences research;
- transportation;
- science and technology policy, management, training and mobility of scientists;

(b) The Parties may modify this list upon recommendation by the Joint Consultative Group mentioned in Article 6, in accordance with procedures in force for each Party.

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

Forms of cooperative activities

ARTICLE 5

(a) Subject to applicable laws, regulations and policies, the Parties shall foster, to the fullest extent practicable, the involvement of participants in cooperative activities under this Agreement with a view to providing comparable opportunities for participation in their scientific and technological research and development activities.

(b) Cooperative activities may take the following forms:

- 1. coordinated research projects and joint research projects;
- 2. joint task forces;
- 3. joint studies;
- 4. joint organization of scientific seminars, conferences, symposia and workshops;
- 5. training of scientists and technical experts;
- 6. exchanges or sharing of equipment and materials;
- 7. visits and exchanges of scientists, engineers or other appropriate personnel;
- 8. exchanges of scientific and technological information as well as on practices, laws, regulations and programmes relevant to cooperation under this Agreement.

Where appropriate, such cooperative activities shall take place pursuant to implementing arrangements concluded between the Parties' executive agents, or their scientific and technological organizations and agencies. These arrangements may describe the nature and the duration of cooperation for a specific area or purpose, treatment of intellectual property as provided for in the Annex, funding, allocation of costs, and other relevant matters.



Coordination and Facilitation of Cooperative Activities

ARTICLE 6

(a) The coordination and facilitation of cooperative activities under this Agreement shall be accomplished on behalf of the Government of the United States of America by the Department of State and on behalf of the Community by the European Commission, acting as Executive Agents.

(b) The Executive Agents shall establish a Joint Consultative Group (hereinafter referred to as the "JCG") for the oversight of scientific and technological cooperation under this Agreement. The JCG shall consist of a limited equal number of official representatives of each Party.

(c) The JCG may hold consultations on general science and technology issues; exchange information; establish task forces and working groups as appropriate; consult experts as appropriate and needed; and otherwise work to increase mutual understanding of the Parties' activities and programmes related to science and technology.

(d) The functions of the JCG shall include :

1. overseeing and recommending activities under the Agreement;
2. making recommendations pursuant to Article 4 (b);
3. advising the Parties on ways to enhance cooperation consistent with the principles set out in this Agreement;
4. annually providing a report on the status and effectiveness of cooperation undertaken under this Agreement;
5. reviewing the efficient and effective functioning of the Agreement.

(e) The JCG shall meet annually, unless otherwise agreed by the Parties. Meetings should be held alternately in the Community and the United States of America. The JCG shall establish its own rules of procedure, subject to approval by the Parties.

(f) Decisions of the JCG shall be reached by consensus. Minutes, comprising a record of the decisions and principal points discussed, shall be taken at each meeting. These minutes shall be agreed upon by those persons selected from each side to jointly chair the meetings.

- (a) Cooperative activities shall be subject to the availability of appropriated funds and to the applicable laws and regulations, policies and programs of the Community and the United States of America.
- (b) Each Party shall bear the costs of discharging its responsibilities under this Agreement, including costs of participation in meetings of the JCG. However, costs, other than those for travel and accommodation, which are directly associated with meetings of the JCG, shall be borne by the host Party.

Funding and Legal Considerations

ARTICLE 7

Entry of Personnel and Equipment

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

ARTICLE 9

Treatment of Intellectual Property

The allocation and protection of intellectual property rights under this Agreement shall be in accordance with the provisions of the Annex, which forms an integral part of this Agreement.

ARTICLE 10

Other Agreements and Transitional Provisions

- (a) The Parties shall endeavour, where appropriate, to bring under the terms of this Agreement new arrangements for scientific and technological cooperation between the Community and the Government of the United States of America that fall under the scope of Article 4.
- (b) This Agreement is without prejudice to rights and obligations under other agreements between the Parties and any agreement or arrangement between either of the Parties and non-participant third parties, including agreements or arrangements between their scientific and technological organizations or agencies and a Member State of the Community.

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 United States of America. This shall not prevent the conduct of cooperative activities on the high seas, outer space, or the territory of third countries, in accordance with international law.

Territorial Application

ARTICLE 11

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 United States of America. This shall not prevent the conduct of cooperative activities on the high seas, outer space, or the territory of third countries, in accordance with international law.

Entry into Force, Termination and Dispute Settlement

(a) This Agreement shall enter into force on the date on which the Parties have notified each other in writing that their respective internal procedures necessary for its entry into force have been completed.

(b) This Agreement is concluded for an initial period of five years. Subject to review by the Parties in the final year of each successive period, the Agreement may be extended, with possible amendments, thereafter for additional periods of five years by mutual written agreement between the Parties.

(c) This Agreement may be terminated at any time by either Party upon 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.

(d) 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 respective internal procedures necessary for amending this Agreement have been completed.

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

ARTICLE 13

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

## ANNEX - INTELLECTUAL PROPERTY

Pursuant to Article 9 of this Agreement:

The Parties shall ensure adequate and effective protection of intellectual property created or furnished under this Agreement and relevant implementing arrangements. The Parties agree to notify one another in a timely fashion of any inventions or copyrighted works arising under this Agreement and to seek protection for such intellectual property in a timely fashion. Rights to such intellectual property shall be allocated as provided in this Annex.

### I. SCOPE

A. This Annex is applicable to all cooperative activities undertaken by the Parties or their participants pursuant to this Agreement, except as otherwise specifically agreed by the Parties.

B. For purposes of this Agreement, "intellectual property" shall have the meaning found in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm, July 14, 1967.

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

D. Disputes concerning intellectual property arising under this Agreement should be resolved through discussions between the relevant participants, or, if necessary, the Parties. Upon mutual agreement of the Parties, the participants may submit a dispute to an arbitral tribunal for binding arbitration. Unless the participants agree otherwise in writing, the arbitration rules of UNCITRAL shall govern.

E. Termination or expiration of this Agreement shall not affect rights or obligations under this Annex.

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II. ALLOCATION OF RIGHTS

A. Each Party shall be entitled to a non-exclusive, irrevocable, royalty-free license in all countries to reproduce, publicly distribute and translate scientific and technical journal articles, non-proprietary scientific reports, and books directly arising from cooperation under this Agreement. All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names of the authors of the work unless an author explicitly declines to be named. Each Party or its participants shall have the right to review a translation prior to public distribution.

B. Rights to all forms of intellectual property, other than those rights described in paragraph II (A) above, shall be allocated as follows :

1. Visiting researchers, for example, scientists visiting primarily in furtherance of their education, shall receive intellectual property rights under arrangements with their host institutions. In addition, each visiting researcher named as an inventor shall be entitled to treatment as a national of the host country with regard to awards, bonuses, benefits, or any other rewards, in accordance with the policies of the host institution.

2. (a) For intellectual property which is or may be created during joint research, the Parties or their participants shall jointly develop a technology management plan. The technology management plan shall consider the relative contributions of the Parties and their participants, the benefits of licensing by territory or for fields of use, requirements imposed by the Parties' domestic laws, and other factors deemed appropriate.

(b) If the parties or their participants did not agree to a joint technology management plan in the initial research cooperation agreement and cannot reach an agreement within a reasonable time, not to exceed six months, from the time a Party becomes aware of the creation or likely creation of the intellectual property in question as a result of the joint research, the Parties or their participants shall resolve the matter in accordance with the provisions of paragraph I (D). Pending resolution of the matter, such intellectual property shall be owned jointly by the Parties or their participants, but shall be commercially exploited (including product development) only by mutual agreement.

If one of the Parties becomes aware that, under its laws or regulations, it will be, or may reasonably be expected to become, unable to meet the non-disclosure provisions, it shall immediately inform the other Party. The Parties shall thereafter consult to define an appropriate course of action. Information may be identified as proprietary if it is secret in the sense that it is not, as a body or in the precise configuration or assembly of its components, generally known or readily accessible by lawful means; has actual or potential commercial value by virtue of its secrecy; has been subject to steps that were reasonable under the circumstances by the person lawfully in control, to maintain its secrecy; and not already in the possession of the recipient without an obligation concerning its confidentiality.

In the event that information identified in a timely fashion as proprietary is furnished or created under the Agreement, each Party and its participants shall protect such information in accordance with applicable laws, regulations, and administrative practice. Without prior written consent, none of the Parties shall disclose any proprietary information except to employees, government personnel, and prime and subcontractors. Such disclosures shall be for use only within the terms of their permits or licenses with the Parties or the scope of work of their contracts with the Parties and in work relating to the subject matter of the information so disseminated. The Parties shall impose, or shall have imposed, through appropriate arrangements such as research contracts, grant documents, technology management plans, etc, an obligation on all participants receiving such information to keep it confidential.

### III. PROPRIETARY INFORMATION

(d) In the event that either Party believes that a particular joint research project under this Agreement has led or will lead to the creation or furnishing of a type of intellectual property that it protects but is not protected throughout the territory of the other Party, the Parties shall immediately hold discussions to determine the allocation of the rights to the said intellectual property. The joint activities in question will be suspended during the discussions, unless otherwise agreed by the Parties thereto. If no agreement can be reached within a three month period from the date of the request for discussions, cooperation on the project in question will be suspended or terminated at the request of either Party.

(c) "Joint research" means research that is implemented with financial support from one or both Parties and that involves collaboration by participants from both the Community and the United States of America and is designated as joint research in writing by the Parties or their scientific and technological organizations and agencies, or in the case where there is funding by only one Party, by that Party and the participants in that project.

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Statement on plant and animal varieties  
(for signature by US)

Dear

With reference to the Agreement concluded between the European Community and the United States of America on scientific and technological cooperation and its annex on intellectual property rights, I wish to note the following:

It is the understanding of the Government of the United States of America that joint research that might lead to the creation of inventions in the areas of plant or animal varieties or essentially biological processes for the production of plants or animals will not be conducted until such inventions are protected throughout the territory of both Parties.

I would appreciate if you would confirm by return letter that the understanding of your authorities is the same as ours.

Sincerely,

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Statement on plant and animal varieties  
(for signature by EC)

Dear

With reference to your letter of (fill in the date), which reads as follows:

“With reference to the Agreement concluded between the European Community and the United States of America on scientific and technological cooperation and its annex on intellectual property rights, I wish to note the following:

It is the understanding of the Government of the United States of America that joint research that might lead to the creation of inventions in the areas of plant or animal varieties or essentially biological processes for the production of plants or animals will not be conducted until such inventions are protected throughout the territory of both Parties.”

I am pleased to confirm that the understanding of my authorities is the same as that stated in your letter.

Sincerely,



Statement of Clarification of the Agreement  
(for signature by US)

Dear

With reference to the Agreement concluded between the European Community and the United States of America on scientific and technological cooperation and its annex on intellectual property rights, I wish to confirm on behalf of my authorities that our joint understanding is as follows:

It is the intention of the Parties to expand significantly cooperative activities between their respective scientific and technological organizations and agencies as well as private participants. Both Parties anticipate a substantial and timely exchange of information on the opportunities for cooperative activities to facilitate this expansion.

It is understood that the provisions of the Agreement will apply to a cooperative activity, which may include joint research projects and other specific activities noted in Article 5 of the Agreement, only when both sides give their assent.

In order to ensure the timely initiation of cooperative activities, the assent of the Parties can be reflected in a variety of ways, including in a call for proposals, an exchange of letters, a memorandum of understanding, or grant documents.

When applying the principle of equitable and fair treatment to the initiation and conduct of cooperative activities under the Agreement, each Party expects that the opportunities it provides to the other Party's entities, including their subsidiaries, in its own scientific and technological activities will be taken into account by the other Party.

When reviewing the efficient and effective functioning of the Agreement, the Parties will consider, when appropriate, ways to enhance cooperation consistent with the principles upon which this cooperation is based.

I would appreciate if you would confirm by return letter that the understanding of your authorities is the same as ours.

Sincerely,

Statement of Clarification of the Agreement  
(for signature by EC)

Dear

With reference to your letter of (fill in the date), which reads as follows:

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When reviewing the efficient and effective functioning of the Agreement, the Parties will consider, when appropriate, ways to enhance cooperation consistent with the principles upon which this cooperation is based."

I am pleased to confirm that the understanding of my authorities is the same as that stated in your letter.

Sincerely,

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**FINANCIAL STATEMENT**

1. Title of the operation  
International scientific cooperation : Draft cooperation agreement in science and technology between the European Community and the United States of America.

2. Relevant budget headings  
Travel costs for EC officials and EC experts will be charged to specific budget headings of the programmes within the Community's RTD Framework Programme.

3. Legal basis  
Art. 130M, EC.

4. Description of the operation

4.1. Specific objectives of the operation

The essential objective is to stimulate RTD cooperation between the European Community and the United States in terms of research projects covered by the Community's RDT Framework Programmes.

4.2. Duration

This Agreement is concluded for an initial period of five years. Subject to review by the Parties in the final year of each successive period, the Agreement may be extended, with possible amendments, thereafter for additional periods of five years by mutual written agreement between the Parties.

5. Classification of the expenditure

5.1. Non-compulsory expenditure

5.2. Differentiated appropriations

6. Type of expenditure  
 Financing of missions to the United States by Commission officials and EC experts; organization of joint workshops, seminars and meetings in Europe and the United States; joint studies; joint research projects; joint task forces; training of scientists and technical experts; exchanges or sharing of equipment, materials and research facilities.

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

Travel expenses for visits to the United States by EC officials and experts; costs for joint actions :

Estimate :

120.000 ECU

7.2. Indicative multi-annual schedules (ECU)

	1998	1999	2000	2001	2002+
Payments	120.000	120.000	120.000	120.000	120.000
Commitments	120.000	120.000	120.000	120.000	120.000

8. Anti-fraud measures

Administrative and financial controls by officials technically responsible for the action (scientific and budgetary aspects). These include :

- Examination of the statements of expenditure before payment at various levels (financial control and scientific manager).

- Internal audit performed by the Financial Controller.

- 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 European Community and the US to profit, on the basis of the principle of mutual benefit, from the scientific and technical progress achieved under their reciprocal research programmes;

- 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.

10. Implications for administrative expenditure

An evaluation of all the cooperation activities under this agreement will be made by the Commission's departments and independent experts in the framework of the specific programmes of RTD.

9.3. Monitoring and evaluation of the operation

Community budget intervention is indispensable because the planned cooperation comes under the implementation of the framework programme, including the budgetary section : administrative expenditure on the European side (missions by Community officials, organization of workshops; joint studies; joint research projects; joint task forces; training of scientists and technical experts; exchanges or sharing of equipment, materials and research facilities in the Community and the United States).

9.2. Justification of the operation

- beneficiaries in the European Community and the US will be the scientific communities, the industrial sector and the general public, thanks to the direct and indirect effects of cooperation.
- the agreement will help to maintain and develop access to RTD know-how in these countries in order to improve the performance of Community RTD and the competitiveness of European economies.

