



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 4 November 2004

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COVER NOTE

from: Secretary-General of the European Commission,
signed by Ms Patricia BUGNOT, Director

date of receipt: 4 November 2004

to: Mr Javier SOLANA, Secretary-General/High Representative

Subject: Proposal for a Council Decision on the conclusion of the Agreement for
scientific and technological co-operation between the European Community
and the Federative Republic of Brazil

Delegations will find attached Commission document COM(2004) 625 final.

Encl.: COM(2004) 625 final



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 04.10.2004
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Proposal for a

COUNCIL DECISION

**on the conclusion of the Agreement for scientific and technological co-operation
between the European Community and the Federative Republic of Brazil**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. The Framework Agreement for cooperation between the European Community and the Federative Republic of Brazil (hereinafter: Brazil), which entered into force on 1 November 1995, identified scientific and technological cooperation as an area of particular interest and potential.
2. In its communication of 19 July 1996 entitled “Promoting RTD cooperation with the world’s emerging economies” (COM(96) 344 final) the Commission recommended, inter alia, that the Union should envisage concluding scientific and technological cooperation Agreements with selected emerging economies and added that “the implementation of this procedure is not only the ultimate expression of a political will to foster RTD collaboration. It also allows the parties to tailor country-specific RTD cooperation frames and orient the scientific communities towards selected RTD themes and technological challenges of common interest”.
3. In its resolution of 14 March 1997 on the Commission communication entitled “Promoting RTD cooperation with the world’s emerging economies” the European Parliament “calls on the Commission to envisage mechanisms for cooperation in the fields of advanced scientific and technological research that characterise the emerging economies, while maintaining the mechanisms intended specifically for assisting the developing countries” and “calls on the Commission to negotiate, with due regard for the circumstances in each country, bilateral agreements establishing a legal framework for the promotion of RTD cooperation”. This position was reinforced in the Commission’s Communication to Council and Parliament entitled *The International Dimension of the European Research Area* (COM (2001) 346 final).
4. On the 19 November 2002, the EC and Brazil signed a Memorandum of Understanding on Cooperation, in Brussels, reflecting the priorities for bilateral EC-Brazilian cooperation until the end of 2006. This memorandum concentrates on five priority areas, namely public administration, economic cooperation, social development, research and technology and the environment, along the lines described in the Commission’s Country Strategy Paper adopted in August 2002.
5. On 14 February 2000, the Council authorised the Commission to negotiate an Agreement for scientific and technological co-operation between the European Community and Brazil. The negotiations resulted in the attached Agreement, initialled on 3 December 2002, in Brussels.
6. The Agreement was negotiated against the background of an upgraded and intensifying co-operation between Brazil and the European Union, considering the importance of science and technology for economic and social development and the mutual wish to extend and strengthen the conduct of co-operative activities in areas of common interest as diverse as:
 - 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.

On 27 June 2003, the Commission submitted to the Council a proposal for a Council Decision authorising the signing of the abovementioned agreement. The Council adopted this decision on 22 September 2003 and the attached agreement and the annexes thereto were signed on 19 January 2004 in Brasilia.

7. The Agreement is based on the principles of mutual benefit, reciprocal opportunities for access to each other's programmes and activities relevant to the purpose of the Agreement, non-discrimination, the effective protection of intellectual property and equitable sharing of intellectual property rights. It shall be concluded for an initial period of five years and will be renewable for additional periods of five years by mutual written agreement of the Parties.

8. The Agreement provides for :
 - participation of Brazilian research and technological development entities in RTD projects of the framework programme and reciprocal participation of research and technological development entities established in the Community in Brazilian projects in similar sectors of RTD. Such a participation is subject to the rules and procedures applicable in each Party;
 - joint RTD projects,
 - visits and exchanges of scientists, researchers and technical experts,
 - joint organisation of scientific seminars, conferences, symposia and workshops, as well as the participation of experts in those activities;
 - 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;
 - exchange and sharing of equipment and materials;
 - 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;
 - 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. In principle, no transfer of funds will take place.

9. As regards dissemination and utilisation of information and management, allocation and exercise of intellectual property rights, resulting from joint research under the Agreement, they shall be subject to the provisions of the annex to this Agreement entitled "Intellectual Property" which forms an integral part thereof.
10. The principle of non-discrimination agreed under article III of the Agreement should protect Community participants in Brazilian programmes and activities against any discriminatory treatment, also in respect of the dissemination and utilisation of results, including intellectual property rights. The Steering Committee shall, inter alia, review the efficient and effective functioning of the Agreement, including the non-discriminatory treatment of participants.
11. Closer collaboration with Brazil on science and technology will also contribute directly to strengthening ties between the two parties and will, in particular, bring substantial benefits for Europeans, by improving the Community's position in Brazil and, consequently, within MERCOSUR, with whom the EC is currently negotiating an Association Agreement.

This negotiated Agreement for scientific and technical cooperation would be the appropriate instrument for considerably expanding and supplementing current cooperation under the FP6 specific activities for International Cooperation with Developing Countries.

12. In the light of the above-mentioned considerations, the Commission proposes that the Council should:
 - approve on behalf of the European Community, and after the consultation of the European Parliament, the Agreement on scientific and technological cooperation between the European Community and the Federative Republic of Brazil;
 - notify the Brazilian authorities that the procedures necessary for the entry into force of the Agreement have been completed by the European Community.

Proposal for a

COUNCIL DECISION

**on the conclusion of the Agreement for scientific and technological co-operation
between the European Community and the Federative Republic of Brazil**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 170 (2), in conjunction with the first sentence of the first subparagraph of Article 300 (2) and Article 300(3) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Whereas:

- (1) The Commission has negotiated, on behalf of the Community, an Agreement for scientific and technological cooperation with the Federative Republic of Brazil;
- (2) Subject to its possible conclusion at a later date, the Agreement initialled on 3 December 2002 was signed on 19 January 2004,
- (3) The Agreement should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement for scientific and technological co-operation between the European Community and the Federative Republic of Brazil is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

¹ OJ C , , p. .
² OJ C , p.

Article 2

The President of the Council shall, acting on behalf of the Community, give the notification provided for in article XII of the Agreement.

Done at Brussels,

*For the Council
The President*

AGREEMENT

FOR SCIENTIFIC AND TECHNOLOGICAL COOPERATION

BETWEEN THE FEDERAL REPUBLIC OF BRAZIL

AND THE EUROPEAN COMMUNITY

The **Government of the Federal Republic of Brazil** (hereinafter referred to as "Brazil"), of the one part, and the **European Community** (hereinafter referred to as "the Community"), of the other part, hereinafter referred to as the "Parties",

Considering the Framework Agreement on Cooperation between Brazil and the European Community 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 Brazil and the Community;

Considering the present scientific and technological cooperation between Brazil and the Community;

Considering that Brazil and the Community are currently carrying out and supporting research activities, including demonstration projects in a number of areas of common interest, as defined in Article II(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.

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 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;
- 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 the Community and Brazil. "Demonstration projects" are projects aimed at demonstrating the viability of new technologies that offer a potential economic advantage but that cannot be directly commercialised. The parties shall keep each other regularly informed on activities regarded as joint research activities under Article VI - Coordination and implementation of cooperative activities.
- e) 'Participant' or 'research entities' means any person or group of persons, research institute or any other legal entity or undertaking established in the Community or in Brazil 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) of this Agreement. Such activities must 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 Brazil, by the Ministry of Foreign Affairs and, on behalf of the Community, by the services of the European Commission, 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 cooperation 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 will be transmitted to the Joint Committee established under the Framework Cooperation Agreement concluded between Brazil and the European Community 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 will 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 will 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 does 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 Federal 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. The agreement shall initially be valid for a period of five years and may be renewed by mutual 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 point 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 that 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 mutual agreement between the Parties.

Done at, 2002, in two originals, in Portuguese, Danish, Dutch, English, Finnish, French, German, Greek, Italian, 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.

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 mutually 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. 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 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 of this Annex 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.