

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 11 May 1992

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

Proposal for a Joint Declaration of the Council and the Commission in respect of negotiations concerning the IPR aspects of agreements for scientific and technological cooperation between the European Community and third countries

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

SUBJECT: Proposal for a Joint Declaration of the Council and the Commission in respect of negotiations concerning the IPR aspects of agreements for scientific and technological cooperation between the European Community and third countries.

1. An increasingly important and difficult aspect of cooperation agreements in the field of science and technology is the allocation and management of intellectual property rights. This aspect is important because the object of such co-operation increasingly involves industrial and commercial aspects; consequently exploitation of results is a more immediate objective than was formerly the case. It is difficult because of the increasing realisation by industrialists and governments that intellectual property is a crucial, and perhaps, the most crucial component in modern international trade.
2. The elements outlined above have grown in significance relatively recently. Formerly, intellectual property rights occupied a less controversial role in such agreements, and could be treated on an "ad hoc" basis without fear that conditions governing their exploitation could result in distortions of trade or competition. This led to a more relaxed but ultimately fragmented and contradictory approach from different institutions within the Community. The new attitudes governing the exploitation of intellectual property rights worldwide have changed the situation, and demand a more careful and coherent approach.
3. The Commission has in the first place approached the problem pragmatically from the point of view of the Commission's own needs notably in the context of the EURATOM treaty and has concluded, in the light of these changing circumstances, that a standard framework is needed within which intellectual property rights created under the Communities' own cooperation agreements can be managed. Such a framework needs to incorporate two elements: in the first place it needs to ensure that participants are rewarded for their efforts and will make maximum use of results for the benefit of the world as a whole; at the same time it needs to provide the certainty that the Community's important interests will be protected however the results of cooperation should be allocated.
4. Working to the above criteria, the Commission has in consequence prepared the attached text which it is proposed will in future be used as a basis for negotiating the IPR aspects of all cooperation agreements in the field of science and technology between the Community and third countries or institutions thereof.
5. At the same time, the Commission has concluded that a coordinated and coherent approach in this area would be of considerable benefit to the Community, notably in strengthening the negotiating power of individual Member States in their dealings with third countries, and thus reinforcing the Community's objective under Article 130f EC. The Commission proposes for this purpose the text attached, which whilst providing general principles of general application in the Community's interest, is nevertheless sufficiently flexible to encompass a wide variety of needs and objectives. It is compatible with the general rules and procedures of contracting in this area, including, *inter alia* the harmonised contract for the Framework Programme and the Council Decision on the Valorisation of Results (VALUE 2)
6. Both the United States and Japan are reviewing the standard terms on which they propose to deal with intellectual property rights in such agreements; several of the

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Member States have already been offered terms by the United States that could be prejudicial to the Community's interests. The Commission proposes that the attached text would help to provide a united Community response to that approach. The text is, however, of potentially wider application, as it is intended to form the basis of the Community's negotiating position on the intellectual property aspects of agreements for scientific and technological cooperation with third countries.

It is therefore proposed that the Council and the Commission

adopt the Declaration attached declaring that they will follow the general guiding principles set out in the attached text when negotiating with third countries the intellectual property aspects of agreements for scientific and technological cooperation.

**DECLARATION OF THE COUNCIL AND THE COMMISSION IN RESPECT OF THE
INTELLECTUAL PROPERTY ASPECTS OF SCIENTIFIC AND TECHNOLOGICAL
COOPERATION AGREEMENTS WITH THIRD COUNTRIES**

The Council and the Commission declare it to be desirable that the Community adopt a coherent approach in respect of the intellectual property aspects of scientific and technological cooperation agreements with third countries with a view to ensuring fair, adequate and effective protection of all intellectual property rights resulting from or employed in joint research.

Consequently they agree that the general guiding principles on this matter set out in the text annexed will be followed when negotiating such agreements.

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**NEGOTIATING APPROACH FOR THE COMMISSION IN RESPECT OF THE IP ASPECTS OF S&T
COOPERATION AGREEMENTS WITH THIRD COUNTRIES**

The aim of this document is to ensure fair, adequate and effective protection of all intellectual property (IP) resulting from joint research on the basis of S&T cooperation agreements in accordance with the mutual interests of the Parties.

The part of the text of such agreements that deals with IP aspects may not always reflect the text of the guidelines set out in this document in its entirety because international agreements in general constitute the result of negotiations between parties with different priorities, approaches and objectives and are therefore often a compromise between originally differing positions.

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IP ANNEXE

The Parties agree on the allocation of rights to IP resulting from joint research under this Agreement according to the Procedures laid out in this text and subject to the General Rules below.

I. GENERAL RULES ON OWNERSHIP, ALLOCATION AND EXERCISE OF RIGHTS

1. All research carried out pursuant to this Agreement shall be "joint research". The Parties or their designees shall jointly develop joint technology management plans in respect of information and IP to be created in the course of joint research. Those plans shall be approved by the Parties before the conclusion of any specific R&D cooperation contracts to which they refer. In other cases they shall be approved in parallel with this Agreement¹. The technology management plans shall be developed bearing in mind the relative contributions of the Parties, the advantages and disadvantages of licensing by territory or for field of use, requirements imposed by applicable laws and other factors deemed appropriate by the Parties. The rights and obligations of visiting researchers shall also be addressed in the joint technology management plans.
 2. Information or IP created in the course of joint research and not addressed in the technology management plan shall be allocated, with the approval of the Parties, according to the principles set out in the technology management plan. In case of disagreement such information or IP shall be owned jointly by the Parties or by all the Participants involved in the joint team from which the information or IP results as appropriate. Notwithstanding the rights of other Participants, each Participant to whom this provision applies shall have the right to use such information or IP including for commercial exploitation with no geographical limitation.
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3. Each Party shall ensure within the limits of its applicable laws that the other Party and its Participants can obtain the rights to IP allocated to them in accordance with this Annexe.
4. Each Party shall use its best endeavours to ensure that rights acquired pursuant to this Agreement are exercised in such a way as to encourage :
 - i. the dissemination and use of non-confidential information created, provided or exchanged under this Agreement;
 - ii. the adoption and implementation of international standards;
 - iii. competition in areas affected by the Agreement;

II. PROCEDURES FOR SCIENTIFIC LITERARY WORKS

1. In the case of publication by a Party or public bodies of that Party of scientific and technical journals, articles, reports and books arising from joint research pursuant to this Agreement, the other Party shall be entitled to a non-exclusive, irrevocable, royalty-free licence in all countries to translate, reproduce, adapt and publicly distribute such works.
2. The Parties shall ensure that literary works of a scientific character arising from joint research pursuant to this Agreement and published by independent publishers can be disseminated as widely as possible.
3. All publicly distributed copies of a copyright work 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. They shall also bear a clearly visible acknowledgement of the cooperative support of the Parties

III. PROCEDURES FOR OTHER COPYRIGHT WORKS

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

IV. PROCEDURES FOR DOCUMENTARY UNDISCLOSED INFORMATION

1. Each Party or its designees as appropriate shall identify at the earliest possible moment and preferably in the technology management plan the information that it wishes to remain undisclosed in relation to this Agreement. In this identification the following criteria shall in particular be taken into account:
 - secrecy of the information in the sense that the information is not, as a body or in the precise configuration 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;
2. A party receiving undisclosed information pursuant to this Agreement shall respect the privileged nature thereof, provided such undisclosed information is clearly marked with the following (or substantially similar) restrictive legend:

"This document contains undisclosed information furnished in confidence under the Agreement dated ... betweenand the European Community and shall not be disseminated beyond the designated Participants of the Parties and their permitted licensees, and the concerned departments and agencies of and the European the

Community without prior approval of the transmitting Party. This notice shall be marked on any reproduction of the said information, in whole or in part. These limitations shall automatically terminate when this information is disclosed by the owner without restriction to experts in the field

3. Undisclosed information received 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 needing to know it for the specific purposes of the joint research underway, provided that any undisclosed information so disseminated shall be pursuant to an agreement of confidentiality and shall be marked with a restrictive legend similar to that appearing in paragraph IV.2 above.
4. With the prior written consent of the Party providing undisclosed information under this Agreement, the receiving Party may disseminate such undisclosed information more widely than otherwise permitted in the foregoing paragraph (IV.3). 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.
5. Each Party shall exercise its best efforts to ensure that undisclosed information received by it under this Agreement shall be controlled as provided herein. 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 this Article, it shall immediately inform the other Party. The Parties shall thereafter consult to define an appropriate course of action.

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 this Agreement provided, however, that the recipient of such undisclosed or other confidential or privileged information is aware of the confidential character of the information communicated at the time such communication is made.

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APPENDIX

DEFINITIONS

1. **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.
2. **PARTICIPANT:** Any individual or legal entity participating in a project.
3. **JOINT RESEARCH:** Cooperative research funded wholly or partly by the joint contributions of the Parties and with collaboration from Participants of both Parties where appropriate.
4. **INFORMATION:** Scientific or technical data, results or methods of research and development stemming from the JOINT RESEARCH and any other information deemed necessary by the Parties and /or Participants engaged in the JOINT RESEARCH to be provided or exchanged under this Agreement or co-operative research pursuant thereto.

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