



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL**

**concerning the conclusion of an agreement for R&D co-operation in the peaceful uses  
of nuclear energy between the European Atomic Energy Community (Euratom)  
and the government of the People's Republic of China**

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### **concerning the conclusion of an agreement for R&D co-operation in the peaceful uses of nuclear energy between the European Atomic Energy Community (Euratom) and the government of the People's Republic of China**

By its decision of 11th June 2003, the Council issued directives to the Commission to negotiate with the Chinese authorities a cooperation agreement between Euratom and China, mainly centered on research and development, but also containing provisions on possible trade of nuclear material.

During a negotiating session held mid-October in Beijing, the Chinese authorities confirmed their position, already expressed twice before, to see this agreement entirely and exclusively devoted to scientific and technical cooperation between China and the Community. On this basis an agreed text was established.

This draft agreement, based on mutual interest, envisages access of each Party to the research activities of the other Party. It covers all the fields of research appearing in the Euratom Framework programme<sup>1</sup>.

The agreement envisages the possibility for each Party to use for the purpose of R&D facilities of the other Party. This is particularly interesting for the Community, whose nuclear research plants are ageing while China develops and builds new and powerful facilities.

The present agreement contains specific provisions on aspects connected with non-proliferation and control of nuclear materials, physical protection, nuclear safety and the conditions of retransfer of nuclear material.

The agreement will respect existing bilateral agreements between China and certain Member States.

At the time of the adoption of the mandate, the Council and the Commission agreed that the Council would informally be kept informed on the development of the negotiations based of the texts under discussion. A presentation of the draft agreement therefore took place in the Council on Wednesday 27 October.

The Council is invited to approve the text of the agreement in view of its conclusion by the Commission on behalf of the European Atomic Energy Community and in accordance with Article 101, subparagraph 2 of the Euratom Treaty.

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<sup>1</sup> 2002/668/Euratom: Council Decision of 3 June 2002 concerning the sixth framework programme of the European Atomic Energy Community for nuclear research and training activities, also contributing to the creation of the European Research Area (2002 to 2006).

## ANNEX

### **Agreement for R&D co-operation in the peaceful uses of nuclear energy between the European Atomic Energy Community (Euratom) and the government of the People's Republic of China**

THE EUROPEAN ATOMIC ENERGY COMMUNITY (EURATOM),

hereinafter referred to as 'the Community',

on the one part, and

THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA,

hereinafter referred to as 'China'

on the other part,

hereinafter referred to as the 'Parties';

DESIRING to further develop a long-term, stable co-operation which may benefit to China, the Community and its Member States in the peaceful and non-explosive uses of nuclear energy on the basis of mutual benefit and reciprocity;

CONSIDERING the 1985 Agreement on trade and economic cooperation between the European Economic Community and the People's Republic of China and noting that there has also been active co-operation and information exchange in a number of scientific and technological areas under the Agreement for scientific and technological cooperation between the European Community and the Government of the People's Republic of China signed in 1998;

CONSIDERING the importance of science and technology for their economic and social development and desiring to establish a formal basis for cooperation in scientific and technological research which will extend and strengthen the conduct of cooperative activities in the fields of common interest in the peaceful uses of nuclear energy and encourage the application of the results of such cooperation to their economic and social benefit;

WHEREAS co-operation in the peaceful uses of nuclear energy between the Community and China should further enhance research in areas of common interest as well as economic co-operation;

CONSIDERING that the Community and China are currently pursuing research and development activities in the area of peaceful uses of nuclear energy and that participation in each other's research and development activities on a basis of reciprocity will provide mutual benefits;

CONSIDERING, in particular, the willingness of both the Community and China to strengthen their co-operation in the field of controlled thermonuclear fusion within the present agreement and if appropriate within a dedicated agreement.

REAFFIRMING the strong commitment of the Government of China, the Community and the Governments of its Member States to nuclear non-proliferation including the strengthening and efficient application of the related safeguards and export control regimes under which co-operation in the peaceful uses of nuclear energy between China and the Community should be carried out;

REAFFIRMING the support of the Government of China, the Community and the Governments of its Member States for the objectives of the International Atomic Energy Agency (IAEA, hereinafter referred to as “the Agency”), including its safeguards system and their desire to promote universal adherence to the Treaty on the Non-Proliferation of Nuclear Weapons, done on July 1, 1968 (hereinafter referred to as “the Non-Proliferation Treaty”);

NOTING that nuclear safeguards are applied in the Community both under Chapter VII of the Euratom Treaty and under safeguards agreements concluded between the Community, its Member States and the IAEA;

WHEREAS it is appropriate to provide a legal framework for promoting co-operation in all potential peaceful uses of nuclear energy, focusing particularly on present opportunities of mutual benefit,

RECOGNIZING that China, the Community and its Member States have attained a comparably advanced level in the peaceful uses of nuclear energy and in the security afforded by their respective laws and regulations concerning health, safety, the peaceful uses of nuclear energy and the protection of the environment;

CONSIDERING that this Agreement for co-operation in the peaceful uses of nuclear energy is within the context of the global cooperation between China and the Community,

HAVE AGREED AS FOLLOWS:

#### *Article 1*

##### **Purpose**

The overall purpose of this Agreement is to encourage and facilitate cooperation, in fields of common interest in the peaceful, non-explosive, non-military uses of nuclear energy with a view to strengthening the overall co-operative relationship between the Community and China.

The main objective of the Agreement is to foster scientific and technical co-operation between the Community and China and, in particular to facilitate the participation of Chinese research entities in research projects carried out in the framework of the relevant Community research programmes and to ensure a reciprocal participation of research entities of the Community and its Member States in Chinese projects in similar areas of research.

## *Article 2*

### **Definitions**

For the purpose of this Agreement:

1. ‘Parties’ means the Government of China and the European Atomic Energy Community. ‘Party’ means one of the above ‘Parties’.
2. ‘The Community’ means both:
  - (a) the legal person created by the Treaty establishing the European Atomic Energy Community (Euratom); and
  - (b) the territories to which the Euratom Treaty applies.
3. ‘cooperative activity’ means any activity which the Parties undertake or support, pursuant to this Agreement, and includes joint research;
4. ‘information’ means scientific or technical data, results or methods of research and development stemming from joint research and any other data deemed necessary by the participants to cooperative activities; including, as necessary, by the Parties themselves;
5. ‘intellectual property’ shall have the meaning defined in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm, 14 July 1967;
6. ‘joint research’ means research or technological development that is implemented with or without financial support from one or both Parties and that involves collaboration by participants from both the Community and China and is designated as joint research in writing by the Parties or their scientific and technological organisations and agencies implementing the scientific research programmes. In the case where there is funding by only one Party the designation is made by that Party and the participant in that project;
7. ‘Participant’ or ‘research entities’ means any person moral or private, any research institute or any other legal entity or firm established in the Community or in China involved in cooperative activities including the Parties themselves;
8. ‘Results of intellectual activity’ means information and/or intellectual property;
9. The term “nuclear material” means
  - (a) “source material”, namely, uranium containing the mixture of isotopes occurring in nature; uranium depleted in the isotope 235; thorium; any of the foregoing in the form of metal, alloy, chemical compound, or concentrate; any other material containing one or more of the foregoing in such concentration as the Board of Governors of the Agency determines under Article XX of the Statute of the Agency, done on October 26, 1956 (hereinafter referred to as “the Statute”), and the appropriate authorities of both Parties inform each other, in writing, to accept; and such other material as the Board of Governors of the Agency determines under Article XX of the Statute and the appropriate authorities of the Parties inform each other, in writing, to accept.

(b) “special fissionable material”, namely, plutonium; uranium-233; uranium enriched in the isotope 233 or 235; any material containing one or more of the foregoing; and such other material as the Board of Governors of the Agency determines under Article XX of the Statute and the appropriate authorities of both Parties inform each other, in writing, to accept. The term “special fissionable material” does not include “source material”.

10. "Sensitive nuclear material" means separated plutonium (including plutonium contained in mixed oxide fuel) or uranium enriched to more than 20 % in the isotope 235 and/or uranium 233.

### *Article 3*

#### **Principles**

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

1. mutual benefit based on an overall balance of advantages;
2. reciprocal access to the activities of research and technological development undertaken by each Party;
3. timely exchange of information which may affect the actions of participants in cooperative activities;
4. effective protection of intellectual property and equitable sharing of intellectual property rights.

### *Article 4*

#### **Areas of cooperative activities**

Cooperation under this Agreement may cover all the activities of research, technological development, hereinafter referred to as ‘R&D’, included in the Framework Programme of the European Atomic Energy Community for nuclear research and training activities under Article 7 of the Treaty establishing the European Atomic Energy Community and all similar R&D activities in China in the corresponding scientific and technological fields.

Co-operation under this Agreement shall be carried out within the scope of the respective competences of each Party, and shall include the following areas:

- (a) radiation protection and radiological monitoring;
- (b) nuclear safeguards;
- (c) nuclear safety and nuclear technology;
- (d) innovative concepts;
- (e) nuclear metrology and reference materials;
- (f) nuclear medicine ;

- (g) decommissioning of nuclear installations;
- (h) management of radioactive waste;
- (i) controlled thermonuclear fusion;
- (k) nuclear education and training;
- (l) other areas of co-operation as may be mutually agreed upon by the Parties.

#### *Article 5*

#### **Forms of cooperative activities**

1. Subject to their 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.

2. Cooperative activities may take the following forms:

(a) participation of Chinese research entities to R&D projects under the Framework Programmes of the European Atomic Energy Community for nuclear research and training activities and participation of research entities established in the Community to Chinese projects in similar sectors of R&D. Such a participation is subject to the rules and procedures applicable in each Party,

(b) pooling of R&D projects already implemented according to the procedures applicable in the R&D programmes of each Party,

(c) visits and exchanges of scientists and technical experts,

(d) joint organisation of scientific seminars, conferences, symposia and workshops, as well as participation of experts to those activities,

(e) exchanges, sharing and transfer of samples, materials, instruments and apparatus for experimental purposes,

(f) exchanges of information on practices, laws, regulations and programmes relevant to cooperation under this Agreement,

(g) any other modality that would be recommended by the Steering Committee, established in accordance with Article 12 of this Agreement, and deemed in conformity with the policies and procedures applicable in both Parties. The joint R&D projects shall be implemented when the participants have developed a technology management plan, as indicated in the Annex B to this Agreement.

Any transfers of nuclear material carried out pursuant to the co-operation referred to this Article shall be made in accordance with the relevant international commitments of the Parties and of the Member States of the Community in relation to peaceful uses of nuclear energy.

## *Article 6*

### **Items subject to the Agreement**

1. Nuclear material transferred between China and the Community, whether directly or through a third country, shall become subject to this Agreement upon its entry into the territorial jurisdiction of the receiving Party, provided that the supplying Party has notified the receiving Party in writing of the intended transfer and the receiving Party has confirmed in writing that such item will be held subject to this Agreement and that the proposed recipient, if other than the receiving Party, will be an authorised person under the territorial jurisdiction of the receiving Party.

2. Nuclear material subject to this Agreement shall remain subject to this Agreement until:

(a) such items have been transferred beyond the territorial jurisdiction of the receiving Party in accordance with the relevant provisions of this Agreement;

(b) the Parties agree that such items should no longer be subject to this Agreement;

or

(c) in the case of nuclear material, it is determined in accordance with the provisions for the termination of safeguards in the relevant agreements referred to in paragraph 1. of Article 8 of this Agreement, that the nuclear material has been consumed, or has been diluted in such a way that it is no longer usable for any nuclear activity relevant from the point of view of safeguards, or has become practicably irrecoverable.

3. The appropriate authorities of the Parties shall establish and if necessary amend operational procedures for the purpose of the effective implementation of the provisions of this Agreement and in particular the written notifications and confirmations required under paragraphs 1. and 2. above.

## *Article 7*

### **Peaceful use**

1. Co-operation under this Agreement shall be carried out only for peaceful and non-explosive purposes.

2. Nuclear material, transferred pursuant to this Agreement shall not be used other than for peaceful purposes; nor shall it be used for any nuclear explosive device, for research on or for development of any such device.

## *Article 8*

### **Nuclear Safeguards**

Co-operation under this Agreement shall require the application, as appropriate, of safeguards by the Community and acceptance of the application of safeguards by the Agency. Therefore, nuclear material transferred pursuant to this Agreement shall be subject to safeguards by the

Community while on its territory, pursuant to the Euratom Treaty and by the Agency pursuant to the following safeguards agreements (as they may be revised and replaced):

1. the Agreement between the Republic of Austria, the Kingdom of Belgium, the Kingdom of Denmark, the Republic of Finland, the Federal Republic of Germany, the Hellenic Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Portuguese Republic, the Kingdom of Spain, the Kingdom of Sweden, the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic, the Community and the Agency in implementation of Article III (1) and (4) of the Treaty on the Non-Proliferation of Nuclear Weapons done on April 5, 1973 (hereinafter referred to as "the Safeguards Agreement for the non-nuclear weapon Member States of the Community"), as supplemented by an Additional Protocol, done on September 22, 1998 (INFCIRC/193);
2. the Agreement between the United Kingdom of Great Britain and Northern Ireland, the Community and the Agency for the application of safeguards in the United Kingdom of Great Britain and Northern Ireland in connection with the Non-Proliferation Treaty, done on September 6, 1976 (hereinafter referred to as "the Safeguards Agreement for the United Kingdom"), as supplemented by an Additional Protocol done on September 22, 1998; and
3. the Agreement between France, the Community, and the Agency for the application of safeguards in France, done on July 27, 1978 (hereinafter referred to as "the Safeguards Agreement for France"), as supplemented by an Additional Protocol done on September 22, 1998.
4. The Agreement between the People's Republic of China and the IAEA (INFCIRC/369), which entered into force on 18 September 1989 and was supplemented, by the Additional Protocol which entered into force in March 2002.

Implementation of relevant provisions of the Agreement shall not impose upon Member States obligations additional to those resulting from the application by the IAEA of the above mentioned agreements or those resulting from their bilateral agreements, where appropriate.

#### *Article 9*

#### **Physical protection**

1. In respect of nuclear material transferred pursuant to this Agreement, the Government of China, the Governments of the Member States of the Community and, as appropriate, the European Commission, shall apply measures of physical protection according to the criteria which they have individually adopted. Furthermore, the Parties recognise that the recommendations laid down in IAEA document INFCIRC/225/rev.4 ('Physical protection of nuclear material and nuclear facilities'), as they may be updated from time to time, serve as useful orientations for setting up systems for the physical protection of nuclear materials coming under this Agreement while in use, storage and transit.
2. In respect of international transport of nuclear material subject to this Agreement, China, the Member States of the Community and, as appropriate, the Community shall act in conformity with the provisions of the Convention on the Physical Protection of Nuclear

Material, which entered into force on February 8, 1987 (INFCIRC/274/Rev 1), to which they are parties.

#### *Article 10*

#### **Nuclear safety**

The provisions of the “Convention on Nuclear Safety” (CSN - IAEA document INFCIRC/449) to which China, EURATOM and its Member States are parties shall apply. No additional obligations to those assumed under the CNS on the parties to the Agreement and the Member States shall arise.

#### *Article 11*

#### **Retransfers**

1. Nuclear material, transferred pursuant to this Agreement shall not be retransferred beyond the territorial jurisdiction of the receiving Party, except into the territorial jurisdiction of the supplying Party, unless the receiving Party is provided with the assurances of fulfilment of the conditions set out in Annex A of this Agreement in an appropriate way, or unless, in the absence of such assurances, the prior written consent of the supplying Party is obtained.

2. In addition to complying with the provisions of paragraph 1 above, the sensitive nuclear material transferred pursuant to this Agreement shall not be retransferred beyond the territorial jurisdiction of the Parties, except into the territorial jurisdiction of the supplying Party, without the prior written consent of the supplying Party unless, in the case of sensitive nuclear material transferred from China to the Community, it will be subject to the appropriate bilateral agreement for co-operation in the peaceful uses of nuclear energy between China and the receiving third country or, in the case of transfers from the Community to China, the receiving third country is included on a list to be drawn up by the Community, and notification of such retransfers has been given by the receiving Party to the supplying Party.

#### *Article 12*

#### **Coordination and facilitation of cooperative activities**

1. The coordination and facilitation of cooperative activities under this Agreement shall be accomplished on behalf of China, by the Ministry of Science and Technology and, on behalf of the Community, by the services of the Commission of the European Communities, acting as executive agents.

2. The executive agents shall establish a Steering R&D Cooperation Committee, hereinafter referred to as the ‘Steering Committee’ for the management of this Agreement; this Committee shall consist of an equal number of official representatives of each Party; it shall establish its own rules of procedure.

3. The functions of the Steering Committee shall include:

(a) promoting and overseeing the different cooperative activities as mentioned in Article 4 as well as those that would be implemented in the framework of R&D cooperation for development;

(b) indicating, for the following year, pursuant to Article 5.2, first indent, among the potential sectors for R&D cooperation, those priority sectors or sub-sectors of mutual interest in which cooperation is sought;

(c) proposing, pursuant to Article 5.2, second indent, to the scientists of both Parties the pooling of their projects which would be of mutual benefit and complementary;

(d) making recommendations pursuant to Article 5.2, seventh indent;

(e) advising the Parties on ways to enhance and improve cooperation consistent with the principles set out in this Agreement;

(f) reviewing the efficient functioning and implementation of this Agreement;

(g) providing, every three years, a report to the Parties on the status, the level reached and the effectiveness of cooperation undertaken under this Agreement.

4. The Steering Committee shall, as a general rule, meet annually, according to a jointly agreed schedule; the meetings should be held alternatively in the Community and in China. Extraordinary meetings may be organised at the request of either Party.

5. The costs incurred by the Steering Committee or in its name shall be borne by the Party to whom members relate. The costs other than those for travel and accommodation which are directly associated with meetings of the Steering Committee shall be borne by the host Party.

### *Article 13*

#### **Funding**

1. Cooperative activities shall be subject to the availability of appropriate funds and to the applicable laws and regulations, policies and programmes of the Parties. The costs incurred by the participants to cooperative activities will not lead to any transfer of funds from one Party to the other.

2. When specific cooperative schemes of one Party provide for financial support to participants from the other Party, any such grants, financial or other contributions from one Party to the participants of the other Party in support of those activities shall be granted tax and customs exemption in accordance with the laws and regulations applicable in the territories of each Party.

#### *Article 14*

### **Entry of personnel and experimental equipment**

Each Party shall take all reasonable steps and use its best efforts, within the laws and regulations applicable in the territories of each Party, to facilitate entry to, sojourn and exit from its territory of persons, material, data, samples, instruments and apparatus for experimental purposes involved in or used in cooperative activities identified by the Parties under the provisions of this Agreement. In particular, goods imported into the territory of one of the parties for the purpose of the agreement shall be exempted from customs duties and levies.

#### *Article 15*

### **Diffusion and utilisation of information**

The research entities established in China which are involved in Community R&D projects shall follow, as regards the ownership, diffusion and utilisation of information and as regards the intellectual property stemming from this involvement, the rules of diffusion of research results stemming from the Community R&D specific programmes as well as the provisions of the Annex B to this Agreement, which is an integral part of this agreement.

The research entities established in the Community which are involved in Chinese R&D projects have, as regards the ownership, diffusion and utilisation of information and as regards the intellectual property stemming from this involvement, the same rights and the same obligations as the Chinese research entities and are subject to the provisions of the Annex B to this Agreement.

The provisions of this Agreement shall not be used for the purpose of seeking commercial or industrial advantages, nor of interfering with the commercial or industrial interests, whether domestic or international, of either Party or authorised persons, nor of interfering with the nuclear policy of either Party or of the Governments of the Member States of the Community, nor of hindering the promotion of the peaceful and non-explosive uses of nuclear energy, nor of hindering the movement of items subject to or notified to be made subject to this Agreement either within the respective territorial jurisdiction of the Parties or between the Parties.

#### *Article 16*

### **Confidentiality**

Without prejudice to application of Article 15, each Party undertakes to keep secret, even after the termination or end of this Agreement, any information, facts or events concerning the other Party and not directly related to the subject of the Agreement that they may have become acquainted with in the course of its execution.

## *Article 17*

### **Territorial application**

This Agreement shall apply, on the one hand to the territories in which the Treaty establishing the European Atomic Energy Community is applied and under the conditions laid down in that Treaty, and on the other hand to the territory of the People's Republic of China. 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.

## *Article 18*

### **Bilateral nuclear co-operation agreements**

This agreement shall be without prejudice to existing bilateral agreements between individual Member States of the Community and China.

Furthermore, this Agreement shall be without prejudice to existing agreements or agreements to be concluded in the future between individual Member States of the Community and China covering the transfer of other nuclear items (equipment, non-nuclear material and sensitive technology).

## *Article 19*

### **Entry into force, termination and dispute settlement**

1. 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.

2. This Agreement shall remain in force for a period of thirty years and shall continue in force thereafter for additional periods of five years each.

3. 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.

4. Either Party may, by giving six months' written notice to the other Party, terminate this Agreement at the end of the initial thirty-year period or at the end of any subsequent five-year period.. The expiry 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 B.

5. If either Party or a Member State of the Community at any time following the entry into force of this Agreement takes action of any kind which results in a material violation of its obligations under this Agreement and in particular its obligations under Articles 7, 8, 9 and 11, the other Party shall have the right to cease further co-operation under this Agreement or to suspend or terminate, in whole or in part, this Agreement.

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

7. Notwithstanding cessation of further co-operation under this agreement in whole or in part, the termination of this Agreement for any reason, the provisions of Articles 7, 8, 9, 11, 15 and 16 of this Agreement shall continue to apply.

8. This agreement is drawn up in duplicates in 21 languages (Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish, Czech, Estonian, Hungarian, Lithuanian, Latvian, Maltese, Polish, Slovak, Slovenian and Chinese. English and Chinese shall be the authentic languages.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Agreement.

Done at, ....., in two copies, in the English and Chinese languages.

*For the European Atomic  
Energy Community*

*For the Government of the  
People's Republic of China*

## ANNEX A

1. Items retransferred will be used only for peaceful and non-explosive purposes in the receiving third country.
2. If the receiving third country is a non-nuclear weapon state, all nuclear material in that country is and will be subject to the application of safeguards by the Agency.
3. In the case that nuclear material is retransferred, safeguards by the Agency will be applied to the nuclear material in the receiving third country.
4. In the case that nuclear material is retransferred, adequate measures of physical protection of the nuclear material will be maintained in the receiving third country, as a minimum, at levels set out in Article 9 of this Agreement.
5. Items retransferred will not be further retransferred beyond the receiving third country to another country unless the latter country provides assurances equivalent to those set out in this Annex A.

## **ANNEX B-1**

### **Guiding principles on the allocation of intellectual property rights resulting from joint research activities under the Agreement**

#### *I. OWNERSHIP, ALLOCATION AND EXERCISE OF RIGHTS*

1. This Annex shall apply to joint research activities under this Agreement except as otherwise agreed by the Parties. The participants shall jointly develop technology management plans (TMPs) in respect of the ownership and use, including publication, of information and intellectual property, hereinafter referred to as results of intellectual activities (RIA), to be created in the course of joint research. The TMPs shall be approved by the Parties before the conclusion of any specific R & D cooperation contracts to which they refer. The TMPs shall be developed taking into account the aims of the joint research, the relative contributions of the participants, peculiarities of licensing by territory or for a specific field of use, requirements imposed by laws applicable and other factors deemed appropriate by the participants. The rights and obligations concerning the research generated by visiting researchers under this Agreement in respect of RIA shall also be addressed in the joint TMPs.

2. RIA created in the course of joint research and not addressed in the TMP shall be allocated, with the approval of the Parties, according to the principles set out in the TMP. In case of disagreement, such RIA shall be owned jointly by all the participants involved in the joint research from which the RIA results. Each participant to whom this provision applies shall have the right to use such RIA for his own commercial exploitation with no geographical limitation.

3. Each Party shall ensure that the other Party and its participants shall have the rights to RIA allocated to them in accordance with these principles.

4. While maintaining the conditions of competition in areas affected by this Agreement each Party shall endeavour to ensure that rights acquired pursuant to this Agreement and arrangements made under it are exercised in such a way as to encourage in particular:

(i) the dissemination and use of information created, disclosed legally, or otherwise legally made available, under the Agreement;

(ii) the adoption and implementation of international technical standards.

#### *II. COPYRIGHT WORKS*

1. Copyright belonging to the Parties or to their participants shall be accorded treatment consistent with the Berne Convention for the protection of literary and artistic work (Paris Act 1971).

2. Without prejudice to section III of this Annex, unless otherwise agreed in the TMP, publication of results of research shall be made jointly by the Parties or participants to that joint research. Subject to the foregoing general rule, the following procedures shall apply:

(a) in the case of publication by a Party or its other participants, of scientific and technical journals, articles, reports, books, including video and software, of the results arising from

joint research pursuant to this Agreement, the other Party or its other participants shall be entitled to a worldwide, non-exclusive, irrevocable, royalty-free licence to translate, reproduce, adapt, transmit and publicly distribute such works;

(b) the Parties shall ensure that literary works of a scientific character arising from joint research pursuant to this Agreement and published by independent publishers shall be disseminated as widely as possible;

(c) all copies of a copyright work to be publicly distributed and prepared under the provisions of this Agreement shall indicate the names or pseudonyms of the author(s) of the work unless an author or authors expressly declines or decline to be named. The copies shall also bear a clearly visible acknowledgment of the cooperative support of the Parties and/or their representatives and/or organisations.

### III. UNDISCLOSED INFORMATION

#### 1. Documentary undisclosed information

(a) Each Party or its participants, as appropriate, shall identify at the earliest possible moment and preferably in the TMP, the information that it wishes to remain undisclosed in relation to this Agreement, taking account, *inter alia*, of 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 for the third party,

— 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,

the Parties and their participants may, in certain cases, agree, that, unless otherwise indicated, parts of or all the information provided, exchanged or created in the course of joint research pursuant to the Agreement shall not be disclosed;

(b) each Party shall ensure that undisclosed information under this Agreement and its ensuing privileged nature is readily recognisable as such by the other Party, for example by means of an appropriate marking or restrictive legend. This also applies to any reproduction of the said information, in whole or in part;

a Party receiving undisclosed information pursuant to this Agreement shall respect the privileged nature thereof. These limitations shall automatically terminate when this information is disclosed by the owner without restriction to experts in the field;

(c) undisclosed information communicated under this Agreement may be disseminated by the receiving Party to persons within or employed by the receiving Party, and other concerned departments or agencies in the receiving Party authorised for the specific purposes of the joint research under way, provided that any undisclosed information so disseminated shall be

pursuant to a specific agreement on confidentiality and shall be readily recognisable as such, as set out above;

(d) 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 paragraph (c). 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.

## 2. Non-documentary undisclosed information

Non-documentary undisclosed or other confidential or privileged information provided in seminars and other meetings arranged under this Agreement, or information arising from the attachment of staff, use of facilities, or joint projects, shall be treated by the Parties or their participants according to the principles specified for documentary information in this Annex, provided, however, that the recipient of such undisclosed or other confidential or privileged information has been made aware of the confidential character of the information communicated at the time such communication is made.

## 3. Control

Each Party shall endeavour to ensure that undisclosed information received by it under this Agreement shall be controlled as provided therein. If one of the Parties becomes aware that it will be, or may reasonably be, expected to become unable to meet the non-dissemination provisions of paragraphs 1 and 2, it shall immediately inform the other Party. The Parties shall thereafter consult to define an appropriate course of action.

## **ANNEX B-2**

### **Indicative features of a technology management plan (TMP)**

The TMP is a specific agreement to be concluded between the participants, about the implementation of joint research and the respective rights and obligations of the participants. With respect to RIA, the TMP will normally address, *inter alia*: ownership, protection, user rights for R & D purposes, exploitation and dissemination, including arrangements for joint publication, the rights and obligations of visiting researchers and dispute settlement procedures. The TMP may also address foreground and background information, licensing and deliverables.