

Proposal for a Council Decision concluding the Additional Protocol to the Agreement establishing an Association between the European Economic Community and the Republic of Malta, to associate the Republic of Malta with the fifth framework programme of the European Community for research, technological development and demonstration activities (1998-2002)

(2002/C 103 E/14)

COM(2001) 777 final — 2001/0303(CNS)

(Submitted by the Commission on 18 December 2001)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The Agreement establishing an association (hereinafter 'the Association Agreement') between the European Economic Community and the Republic of Malta, (hereinafter 'Malta') entered into force on 1 April 1971.
- (2) The conclusions of the Luxembourg European Council of 12 and 13 December 1997 confirmed the possibility of associating candidate countries with the Community's framework programme in the field of research and technological development, as one of the instruments of the pre-accession strategy to be applied to those countries.
- (3) By Decision No 182/99/EC ⁽¹⁾ the European Parliament and the Council of the European Union adopted the fifth framework programme of the European Community for research, technological development and demonstration activities (1998-2002) (hereinafter 'the fifth framework programme').
- (4) The Helsinki European Council of 10 and 11 December 1999 decided to convene a bilateral intergovernmental conference in February 2000 on Malta's accession to the European Union.
- (5) Malta formally informed the European Commission that it wished such an association with the fifth framework programme from 1 January 2001.

(6) By Decision of 17 October 2000, the Council authorised the Commission to negotiate on behalf of the European Community an additional protocol to the Association Agreement, to associate Malta with the fifth framework programme (hereinafter 'the Additional Protocol').

(7) By Decision of 22 May 2001, the Council authorised, subject to its subsequent conclusion, the signature of the Additional Protocol resulting from these negotiations and its entry into force, on a provisional basis, on 1 March 2001.

(8) The Additional Protocol was signed on 20 June 2001 in Brussels.

(9) The Additional Protocol should be concluded, and its definitive entry into force notified to the Maltese authorities,

HAS ADOPTED THIS DECISION:

Article 1

The Additional Protocol to the Association Agreement between the European Economic Community and the Republic of Malta, to associate the Republic of Malta with the fifth framework programme of the European Community for research, technological development and demonstration activities (1998-2002), is hereby approved on behalf of the Community.

The text of the Additional Protocol and its two Annexes is attached to this Decision.

Article 2

In accordance with Article 10 of the Additional Protocol, the President of the Council will notify the Republic of Malta of the fact that the European Commission has completed the procedures necessary for the Additional Protocol to enter into force.

⁽¹⁾ OJ L 26, 1.2.1999, p. 1.

ADDITIONAL PROTOCOL**to the Agreement establishing an Association between the European Economic Community and the Republic of Malta**

THE EUROPEAN COMMUNITY, hereinafter referred to as 'the Community',

on the one part, and

THE REPUBLIC OF MALTA, hereinafter referred to as 'Malta',

on the other part,

WHEREAS the Agreement establishing an Association between the European Economic Community and the Republic of Malta (hereinafter referred to as 'the Association Agreement'), has entered into force on 1 April 1971;

WHEREAS the European Council at its meeting in Helsinki on 10 and 11 December 1999 decided to convene a bilateral intergovernmental conference on the admission of Malta to the European Union;

WHEREAS the European Council at its meeting in Luxembourg on 12 and 13 December 1997 had called for the opening of certain Community programmes (such as in the field of research) to the candidate countries, as a way of familiarising themselves with the policies and working methods of the Union, each candidate country being expected to make a steadily increasing financial contribution of its own;

WHEREAS the aforementioned conclusions had also called for the participation of the candidate countries, as observers and for the points which concern them, in the committees assisting the Commission in the implementation of the programmes to which they contribute financially;

WHEREAS, by Decision No 182/99/EC, the Council of the European Union and the European Parliament adopted a Framework Programme of the European Community activities in the field of research and technological development and demonstration (1998-2002), hereinafter called the 'Fifth Framework Programme';

WHEREAS the Government of Malta requested by letter dated 3 April 2000 its association to the Fifth Framework Programme from the 1 January 2001,

HAVE AGREED AS FOLLOWS:

Article 1

1. Research entities established in Malta, in accordance with the laws of Malta, may participate in all the specific programmes of the Fifth Framework Programme. Maltese scientists or research entities may participate in the activities of the Joint Research Centre.

2. Research entities established in the Community may participate in research programmes and projects in Malta in themes equivalent to those of the programmes of the Fifth Framework Programme.

3. 'Research entities', as referred to in this protocol, shall include inter alia: universities, organisations engaged in research activities, industrial companies, including small and medium-sized enterprises, or natural persons.

Article 2

Co-operation may take the following forms:

1. participation of research entities established in Malta in the implementation of all specific programmes adopted under the Fifth Framework Programme, in accordance with the terms and conditions laid down in the 'Rules for the participation of undertakings, research centres and universities and for the dissemination of research results for the implementation of the Fifth Framework Programme of the European Community'.

2. financial contribution by Malta to the budgets of the programmes adopted for the implementation of the Fifth Framework Programme on the basis of the ratio of the GDP of Malta to that of the Member States of the European Union.

3. participation of research entities established in the Community in Maltese research projects and rights to their results, in accordance with the laws of Malta in every case, and shall require the joint participation of at least one Maltese research entity. Research entities established in the Community participating in Maltese research projects within research and development programmes shall cover their own costs, including their relative share of the project's general management and administrative costs.
4. timely provision of information concerning the implementation of RTD programmes in Malta and the Community, and concerning the results of work undertaken within the framework of co-operation.
5. co-operation may be adapted and developed at any time by mutual agreement between the Parties.

Article 3

1. Research entities established in Malta participating in Community research programmes, shall, as regards ownership, exploitation and dissemination of information and intellectual property arising from such participation, have the same rights and obligations as those of research entities established in the Community, subject to the provisions of Annex A.
2. Research entities established in the Community, taking part in Maltese research projects within research and development programmes, shall, as regards ownership, exploitation and dissemination of information and intellectual property arising from such participation, have the same rights and obligations as those of Maltese research entities in the project in question.

Article 4

A joint committee shall be established under this Protocol, to be called 'EC-Malta Research Committee', whose functions shall include:

- reviewing, evaluating and discussing measures to ensure the implementation of this Protocol,
- examining any measure of a nature to improve and develop co-operation,

The committee, which shall be composed of representatives of the Commission and of Malta, shall adopt its rules of procedure.

It shall meet at the request of any of the Parties and at least once a year.

Article 5

1. The financial contribution of Malta deriving from participation in the implementation of the specific programmes shall be established in proportion to, and in addition to, the amount available each year in the general budget of the European Union for commitment appropriations to meet the Commission's financial obligations stemming from work to

be carried out in the forms necessary for the implementation, management and operation of these programmes.

2. The proportionality factor governing the contribution of Malta shall be obtained by establishing the ratio between the gross domestic product of Malta, at market prices, and the sum of gross domestic products, at market prices, of the Member States of the European Union and Malta. This ratio shall be calculated on the basis of the latest statistical data from the Statistical Office of the European Communities (Eurostat) pertaining on the same year, available at the time of publication of the preliminary draft budget of the European Union.

3. In order to facilitate its participation in the specific programmes, the contribution of Malta will be implemented as follows:

Year 2001: contribution according to the proportionality factor fixed in accordance with paragraph 2 multiplied by 0,5

Year 2002: contribution according to the proportionality factor fixed in accordance with paragraph 2 multiplied by 0,9.

4. The rules governing the financial contribution of Malta are set out in Annex B.

5. The rules for financial participation by the Community are set out in Annex IV of Decision No 182/99/EC of the Council of the European Union and the European Parliament of 22 December 1998.

Article 6

1. Without prejudice to the provisions of Article 3, research entities established in Malta participating in the Fifth Framework Programme shall have the same contractual rights and obligations as entities established in the Community, taking into account the mutual interests of the Community and Malta.

2. For Maltese research entities, the terms and conditions applicable for the submission and evaluation of proposals and those for the granting and conclusion of contracts under Community programmes shall be the same as those applicable for contracts concluded under the same programmes with research entities in the Community, taking into account the mutual interests of the Community and Malta.

3. Maltese experts shall be taken into consideration, alongside Community experts, in the selection of evaluators or experts under the Community's RTD programmes and as members of the advisory groups and other consultative bodies which assist the Commission in the implementation of the Fifth Framework Programme.

4. Without prejudice to the provisions of Article 3, research entities established in the Community participating in research projects within research and development programmes shall have the same contractual rights and obligations as Maltese entities, taking into account the mutual interests of the Community and Malta.

5. A Maltese research entity may be co-ordinator of a project under the same terms and conditions applicable to entities established in the Community. In conformity with the Community's Financial Regulations, contractual arrangements concluded with, or by, Maltese research entities shall provide for controls and audits to be carried out by, or under the authority of, the Commission and the Court of Auditors. As far as financial audits are concerned, they may be carried out with the purpose of controlling such entities' income and expenditures, related to the contractual obligations towards the Community. In a spirit of co-operation and mutual interest, the relevant Maltese authorities shall provide any reasonable and feasible assistance as may be necessary or helpful under the circumstances to perform such controls and audits.

6. For research entities from the Community, the terms and conditions applicable for the submission and evaluation of proposals and those for the granting and conclusion of contracts for projects within Maltese programmes shall be equivalent to those applicable for contracts concluded under the same research and development programmes with research entities in Malta, taking into account the mutual interests of the Community and Malta.

Article 7

1. Each Party undertakes, in accordance with its own rules and regulations, to facilitate the movement and residence of research workers participating, in Malta and in the Community, in the activities covered by this Protocol and to facilitate cross border movement of goods intended for use in such activities.

2. Co-operation under this Protocol shall be exempt from Maltese indirect taxes, customs duties, prohibitions and restrictions on imports and exports in respect of goods and services intended for use under such co-operation.

Article 8

1. Maltese representatives will, for the points which concern them, participate as observers in the programme committees of the Fifth Framework Programme. These committees shall meet without the presence of Maltese representatives at the time of voting. Malta will be informed.

2. Participation as referred to in paragraph 1 of this Article shall take the same form, including procedures for receipt of information and documentation, as that applicable to participants from Member States.

Article 9

1. This Protocol is hereby concluded for the years 2001 and 2002.

2. Subject to paragraph 1, either of the Parties may terminate this Protocol at any time upon twelve months' notice in writing. Projects and activities in progress at the time of termination and/or expiry of this Protocol shall continue until their completion under the conditions laid down in this Protocol.

3. Should the Community decide to revise one or more Community programmes, this Protocol may be terminated under mutually agreed conditions. Malta shall be notified of the exact content of the revised programmes within one week of their adoption by the Community. The Parties shall notify one another, within one month after the adoption of the Community decision, of any intention to terminate this Protocol.

4. Where the Community adopts a new multi-annual framework programme for research and development, this Protocol may be renegotiated or renewed under mutually agreed conditions.

Article 10

This Protocol shall enter into force on the date on which the Parties have notified each other of the completion of the procedures necessary for the purpose.

In the meantime, the Protocol shall be applied provisionally in all its elements from 1 March 2001, subject to reciprocity.

Article 11

This Protocol including Annexes A and B thereto forms an integral part of the Agreement establishing an Association between the European Economic Community and the Republic of Malta.

Article 12

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

ANNEX A

PRINCIPLES ON THE ALLOCATION OF INTELLECTUAL PROPERTY RIGHTS

Rights to intellectual property created or furnished under the Protocol shall be allocated as provided in this Annex.

I. Application

This Annex is applicable to joint research undertaken pursuant to this Protocol, except as otherwise specifically agreed by the Parties.

II. Ownership, Allocation and Exercise of Rights

1. For purposes of this Protocol 'intellectual property' shall have the meaning found in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm, 14 July 1967.
2. This Annex addresses the allocation of rights, interests and royalties of the Parties and their participants. Each Party and its participants shall ensure that the other Party and its participants may obtain the rights to intellectual property allocated to it in accordance with this Annex. This Annex does not otherwise alter or prejudice the allocation of rights, interests and royalties between a Party and its nationals or participants, which shall be determined by the laws and practices applicable to each party.
3. The following principles shall apply and shall be provided for in the contractual arrangements:
 - (a) Adequate protection of intellectual property. The Parties, their agencies and/or their participants, as appropriate, shall ensure that they notify one another within a reasonable time of the creation of any intellectual property arising under this Protocol or implementing arrangements and to seek protection for such intellectual property in a timely fashion.
 - (b) Taking account of the contributions of the Parties or their participants in determining the rights and interests of the Parties and participants.
 - (c) Effective exploitation of results.
 - (d) Non-discriminatory treatment of participants from the other party as compared with the treatment given to its own participants.
 - (e) Protection of Business-Confidential information.
4. The participants shall jointly develop a Technology Management Plan (TMP) in respect of the ownership and use, including publication, of information and intellectual property to be created in the course of joint research. The indicative features of a TMP are contained in the Appendix to this Protocol. The TMP shall be approved by the responsible funding agency or department of the Party involved in financing the research, before the conclusion of the specific research and development co-operation contract to which it is attached.

The TMPs shall be developed taking into account the aims of the joint research, the relative financial or other contributions of the Parties or participants, the advantages and disadvantages of licensing by territory or for fields of use, the transfer of export-controlled data, goods or services, requirements imposed by the applicable laws including those of the Parties concerning intellectual property rights and other factors deemed appropriate by the participants.

The rights and obligations concerning the research generated by visiting researchers in respect of intellectual property shall also be addressed in the joint technology management plans.
5. Subject to the specific provisions of the Parties concerning intellectual property rights, information or intellectual property 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 intellectual property shall be owned jointly by all the participants involved in the joint research from which the information or intellectual property results. Each participant to whom this provision applies shall have the right to use such information or intellectual property for his own commercial exploitation with no geographical limitation.
6. Each Party shall ensure that the other Party and its participants may have the rights to intellectual property allocated to them in accordance with these principles.

7. While maintaining the conditions of competition in areas affected by the Protocol, each Party shall endeavour to ensure that rights acquired pursuant to this Protocol and arrangements made under it are exercised in such a way as to encourage, in particular:
 - (i) the dissemination and use of information created, disclosed or otherwise made available, under the Protocol, and
 - (ii) the adoption and implementation of international standards.
8. Termination or expiry of this Protocol shall not affect rights or obligations under this Annex.

III. Copyright works

Copyright belonging to the Parties or to their participants shall be accorded treatment consistent with the TRIPS Agreement (Agreement on Trade Related Aspects of Intellectual Property Rights administered by the World Trade Organisation) as well as the Berne Convention (Paris Act 1971).

IV. Scientific literary works

Without prejudice to Section V, and 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:

1. In the case of publication by a Party or public bodies of that Party of scientific and technical journals, articles, reports, books, including video and software arising from joint research pursuant to this Agreement, the other Party shall be entitled to a world-wide, non-exclusive, irrevocable, royalty-free licence to translate, reproduce, adapt, transmit 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 shall be disseminated as widely as possible.
3. All copies of a copyright work to be publicly distributed and prepared under this provision shall indicate the names of the author(s) of the work unless an author explicitly declines to be named. They shall also bear a clearly visible acknowledgement of the co-operative support of the Parties.

V. Undisclosed information

A. *Documentary undisclosed information*

1. Each Party, its agencies or its participants, as appropriate, shall identify at the earliest possible moment and preferably in the technology management plan the information that they wish to remain undisclosed, taking into account inter alia the following criteria:
 - (a) confidentiality of the information in the sense that it 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;
 - (b) the actual or potential commercial value of the information by virtue of its confidentiality;
 - (c) 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 confidentiality.

The Parties, their agencies and their participants, as appropriate, may in certain cases agree that, unless otherwise indicated, parts or all of the information provided, exchanged or created in the course of joint research may not be disclosed.

2. Each Party shall ensure that it and its participants clearly identify undisclosed information, 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 and a participant receiving undisclosed information shall respect the privileged nature thereof. These limitations shall automatically terminate when this information is disclosed by the owner into the public domain.

3. Undisclosed information communicated under this Protocol may be disseminated by the receiving Party or its organisation to persons within or employed by the receiving Party or organisation authorised for the specific purposes of the joint research under way, provided that any undisclosed information so disseminated shall be pursuant to an agreement of confidentiality and shall be readily recognisable as such, as set out above.
4. With the prior written consent of the Party providing undisclosed information, the receiving Party may disseminate such undisclosed information more widely than otherwise permitted in paragraph 3 above. The Parties shall cooperate in developing procedures for requesting and obtaining prior written consent for such wider dissemination, and each Party will grant such approval to the extent permitted by its domestic policies, regulations and laws.

B. *Non-documentary undisclosed information*

Non-documentary undisclosed or other confidential information provided in seminars and other meetings arranged under this Protocol, 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 the Protocol; 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.

C. *Control*

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

Appendix

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 intellectual property, the TMP will normally address, among other things, ownership, protection, user rights for research and development purposes, exploitation and dissemination, including arrangements for joint publication, the rights and obligations of visiting researchers and dispute settlement procedures. The TMP may also address foreground and background information, licensing and deliverables.

ANNEX B

FINANCIAL RULES GOVERNING THE FINANCIAL CONTRIBUTION OF MALTA REFERRED TO IN ARTICLE 5 OF THIS PROTOCOL**1. Determination of the financial participation**

1.1. The Commission of the European Communities shall communicate to Malta, and shall inform the sub-committee referred to in Article 4 of this Protocol, together with relevant background material, as soon as possible, and at the latest on 1 September, of each financial year:

- (a) the amounts in commitment appropriations, in the statement of expenditure of the preliminary draft budget of the European Union corresponding to the Fifth Framework Programme;
- (b) the estimated amount of the contributions derived from the preliminary draft budget, corresponding to the participation of Malta in the Fifth Framework Programme.

Nonetheless, in order to facilitate internal budgetary procedures, the Commission services shall provide corresponding indicative figures at the latest on 30 May of each year.

1.2. As soon as the general budget has been finally adopted the Commission shall communicate to Malta the above amounts in the statement of expenditure corresponding to the participation of Malta.

2. Payment procedures

2.1. The Commission shall issue, at the latest on 1 January and 15 June of each financial year, a call for funds to Malta corresponding to its contribution under this Protocol. These calls for funds shall provide, respectively, for the payment:

- of six-twelfths of the contribution of Malta not later than 20 February,
- and six-twelfths of its contribution not later than 15 July.

However, the six-twelfths, to be paid not later than 20 February are calculated on the basis of the amount set out in the statement of revenue of the preliminary draft budget: the regularisation of the amount thus paid shall occur with the payment of the six-twelfths not later than 15 July.

2.2. For the first year of implementation of this protocol, the Commission shall issue a first call for funds within 30 days of its entry into force. Should this call be issued after 15 June, it shall provide for the payment of twelve-twelfths of the contribution of Malta within 30 days, calculated on the basis of the amount set out in the statement of the revenue of the budget.

2.3. The contribution of Malta shall be expressed and paid in euro.

2.4. Malta shall pay its contribution under this Protocol according to the schedule in paragraphs 2.1 and 2.2 above. Any delay in payment shall give rise to the payment of interest at a rate equal to the one-month interbank offered rate (EURIBOR) in euro as quoted on Telerate. This rate shall be increased by 1,5 % for each month of delay. The increased rate shall be applied to the entire period of delay. However, the interest shall be due only if the contribution is paid more than thirty days after the scheduled payment dates mentioned in paragraphs 2.1 and 2.2 above.

2.5. Travel costs incurred by Maltese representatives and experts for the purposes of taking part in the work of the committee referred to in Articles 4, 6.3 and 8.1 of this Protocol and those involved in the implementation of the Fifth Framework Programme shall be reimbursed by the Commission on the same basis as and in accordance with the procedures currently in force for the representatives and experts of the Member States of the European Union.

3. Conditions for the implementation

3.1. The financial contribution of Malta to the Fifth Framework Programme in accordance with Article 5 of the Protocol shall normally remain unchanged for the financial year in question.

3.2. The Commission, at the time of the closure of the accounts relating to each financial year (n), within the framework of the establishment of the revenue and expenditure account, shall proceed to the regularisation of the accounts with respect to the participation of Malta, taking into consideration modifications which have taken place, either by transfer, cancellations, carry-overs, decommitments, or by supplementary and amending budgets during the financial year. This regularisation shall occur at the time of the second payment for the year n+1. Further regularisations shall occur every year until July 2006.

Payment by Malta shall be credited to the Committee programmes as budget receipts allocated to the appropriate budget heading in the statement of revenue of the general budget of the European Union.

The financial regulation applicable to the general budget of the European Union shall apply to the management of the appropriations.

4. Information

At the latest on 31 May of each financial year (n+1), the statement of appropriations for the Fifth Framework Programme related to the previous financial year (n), shall be prepared and transmitted to Malta for information, according to the format of the Commission's revenue and expenditure account.
