

AGREEMENT

for Scientific and Technological Cooperation between the European Community and the United Mexican States

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

of the one part, and

THE UNITED MEXICAN STATES, hereinafter referred to as 'Mexico',

of the other part,

hereinafter referred to as 'the Parties',

CONSIDERING the Economic Partnership, Political Coordination and Cooperation Agreement between the United Mexican States and the European Community and its Member States of 8 December 1997;

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

CONSIDERING the ongoing scientific and technological cooperation between the Community and Mexico;

CONSIDERING that the Community and Mexico are currently pursuing research and technological development activities, including projects as defined in Article 2(e), in areas of common interest and that participation in each other's research and development activities on the basis of reciprocity will provide mutual benefits;

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

CONSIDERING that this Agreement for scientific and technological cooperation is part of the general cooperation between Mexico and the Community,

HAVE AGREED AS FOLLOWS:

Article 1

Purpose

The Parties shall encourage, develop and facilitate cooperative research and development activities in fields of science and technology of common interest between the Community and Mexico.

Article 2

Definitions

For the purpose of this Agreement:

- (a) 'cooperative activity' means any activity which the Parties undertake or support, pursuant to this Agreement, and includes joint research and training of human resources;
- (b) '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;
- (c) 'intellectual property' shall have the meaning defined in Article 2 of the Convention establishing the World Intellectual Property Organisation, signed in Stockholm on 14 July 1967;
- (d) 'joint research' means research, technological development and/or demonstration projects implemented with or without financial support from one or both Parties and which involves collaboration between participants from both the Community and Mexico;
- (e) 'demonstration projects' means projects aimed at demonstrating the viability of new technologies which offer a potential economic advantage but which cannot be commercialised without a prior study of their viability on the market. The Parties shall keep each other mutually and regularly informed about the joint research activities in the context of the coordination and facilitation of cooperative activities (Article 6);
- (f) 'participant' or 'research entities' means any physical or legal person, research institute, or any other firm or legal entity established in the Community or in Mexico involved in cooperative activities, including the Parties themselves.

*Article 3***Principles**

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

- (a) mutual benefit based on an appropriate balance of advantages;
- (b) reciprocal opportunities to participate in the research and technological development activities undertaken by each Party;
- (c) timely exchange of information which may affect cooperative activities;
- (d) within the framework of the applicable laws and regulations, effective protection of intellectual property and equitable sharing of intellectual property rights, in accordance with the Annex on intellectual property rights, which forms an integral part of this Agreement.

*Article 4***Areas of cooperative activities**

(a) Cooperation under this Agreement may cover all the activities on research, technological development, demonstration and high-level scientific and technological training, hereinafter referred to as 'RTD', included in the RTD Framework Programme of the European Community, including fundamental research. The abovementioned activities must be directed towards promoting scientific progress, industrial competitiveness and economic and social development, in particular in the following areas:

- research on the environment and climate, including Earth observation,
- biomedical and health research,
- agriculture, forestry and fisheries,
- industrial and manufacturing technologies,
- research on electronics, materials and metrology,
- non-nuclear energy,
- transport,
- information society technologies,
- research on economic and social development,

- biotechnologies,
- aeronautics and space research and applied research, and
- science and technology policy.

(b) Other areas of cooperation may be added to this list subject to prior examination and recommendation by the Joint Committee referred to in Article 6(c)(7), in accordance with the procedures in force for each party, together with all similar RTD activities undertaken in Mexico in the corresponding fields.

This Agreement does not affect the participation of Mexico, as a developing country, in Community activities in the field of research for development.

*Article 5***Forms of cooperative activities**

(a) The Parties shall foster the participation of institutes of higher education, research and development centres and research and development entities in cooperative activities under this Agreement in conformity with their internal policies and regulations, with a view to providing opportunities for participation in their scientific and technological research and development activities.

(b) Cooperative activities may take the following forms:

- establishment of networks and long-term institutional alliances between research centres and research and technology institutes and joint implementation of projects of common interest,
- implementation of RTD projects between research and business centres in Mexico and Europe, including technology-based undertakings,
- participation of Mexican research institutes in RTD projects under the existing Framework Programme and reciprocal participation of research institutes established in the Community in Mexican projects in similar fields of RTD. Such participation shall be subject to the rules and procedures applicable in the RTD programmes of each Party,
- visits and exchanges of scientists, RTD policy-makers and technical experts, including scientific training through research,
- joint organisation of scientific seminars, conferences, workshops and symposia, as well as participation of experts in such activities,

- exchanges and sharing of equipment and materials, including shared use and/or loans of laboratory infrastructure and equipment,
- exchanges of information on procedures, laws, regulations and programmes relevant to cooperation under this Agreement, exchanges of experience and studies on best practice on science and technology policy,
- any other form recommended by the Steering Committee, as provided for in Article 6(b), and considered to be in conformity with the policies and procedures applicable in both Parties.

Joint RTD projects shall be implemented when the participants have developed a technology management plan, as indicated in the Annex to this Agreement.

Article 6

Coordination and facilitation of cooperative activities

(a) For the purposes of this Agreement, the Parties appoint the following authorities, acting as co-signatory executive agents, for the coordination and facilitation of cooperative activities: on behalf of the United Mexican States, el Consejo Nacional de Ciencia y Tecnología (National Science and Technology Council) and, on behalf of the Community, the representatives of the European Commission.

(b) The executive agents shall establish a bilateral RTD Cooperation Steering Committee, hereinafter referred to as the 'Steering Committee', for the management of this Agreement; this Committee shall consist of a similar number of official representatives of each Party; it shall establish its own rules of procedure.

(c) The functions of the Steering Committee shall include:

1. promoting and overseeing the different cooperative activities referred to in Article 4 as well as those that could be implemented in the framework of RTD cooperation for development and any others which arise in the future;
2. identifying, pursuant to the first indent of Article 5(b), among the potential sectors for RTD cooperation, those priority sectors or subsectors of mutual interest in which cooperation is sought;

3. promoting, pursuant to the second indent of Article 5(b), together with the scientific communities of the two Parties, identification of projects which would be of mutual benefit, complementary and/or priorities;

4. making recommendations, pursuant to the fifth indent of Article 5(b);

5. advising the Parties on ways to enhance and improve cooperation and dissemination thereof consistent with the principles set out in this Agreement;

6. monitoring and reviewing the efficient functioning and implementation of this Agreement;

7. providing an annual report to the Parties on the status, the level reached and the effectiveness of cooperation undertaken under this Agreement. This report shall be submitted to the Joint Committee established under the Association Agreement of 8 December 1997.

(d) The Steering Committee shall, as a general rule, meet once a year, preferably before the meeting of the Joint Committee, according to a jointly agreed schedule, and shall report to the Joint Committee; the meetings shall be held alternately in the Community and in Mexico. Extraordinary meetings may be organised at the request of either Party.

(e) Each Party shall bear the costs of its participation in the meetings of the Steering Committee. 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 7

Funding

(a) Cooperative activities shall be subject to the availability of appropriated funds and to the applicable laws, regulations, policies and programmes of the Parties. Costs incurred by the participants in cooperative activities shall, in principle, give rise to no transfer of funds from one Party to the other.

(b) When cooperative schemes of one Party provide for financial support to participants from the other Party, any such grants, financial or other contributions shall be granted free of tax and customs duties in accordance with the laws and regulations applicable in the territories of each Party.

*Article 8***Entry of personnel and equipment**

Each Party shall take all necessary steps and provide the necessary facilities for participants officially involved in cooperative activities under this Agreement to enter, stay in and leave its territory. They shall also make the efforts necessary to provide the necessary facilities, in the national migration, tax, customs, health and safety regulations in force in the receiving country, for the material, data and equipment used in the activities covered by the Agreement.

*Article 9***Dissemination and use of information**

The research entities established in Mexico which are involved in Community RTD projects shall follow, as regards the ownership, dissemination and use of information and as regards the intellectual property stemming from this involvement, the rules on dissemination of research results stemming from the specific Community RTD programmes as well as the provisions in the Annex to this Agreement. The research entities established in the Community which are involved in Mexican RTD projects shall have, as regards the ownership, dissemination and use of information and as regards the intellectual property stemming from this involvement, the same rights and the same obligations as the Mexican research entities and shall be subject to the provisions in the Annex to this Agreement.

*Article 10***Territorial application**

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community applies and under the conditions laid down in that Treaty and, on the other hand, to the territory of Mexico.

*Article 11***Entry into force, termination and dispute settlement**

(a) This Agreement shall enter into force on the date of the last written communication by which the Parties notify each

other that their respective internal procedures necessary for its entry into force have been completed.

(b) This Agreement shall be concluded for an initial period of five years and may be tacitly renewed after full evaluation, based on the results, during the penultimate year of each successive five-year period.

(c) This Agreement may be amended by decision of the Parties. Amendments shall enter into force under the same conditions as defined in paragraph (a).

(d) This Agreement may be terminated at any time by either Party upon six months' written notice to the other Party through diplomatic channels. The expiration or termination of this Agreement shall not affect the validity or duration of any arrangements made under it, or any specific rights and obligations that have accrued in compliance with the Annex to this Agreement.

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

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Agreement.

Done at Brussels on the third day of February in the year two thousand and four in two copies, in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, all texts being equally authentic. The English version will prevail whenever there is a divergent interpretation between these texts.

Por la Comunidad Europea
For Det Europæiske Fællesskab
Für die Europäische Gemeinschaft
Για την Ευρωπαϊκή Κοινότητα
For the European Community
Pour la Communauté européenne
Per la Comunità europea
Voor de Europese Gemeenschap
Pela Comunidade Europeia
Euroopan yhteisön puolesta
På Europeiska gemenskapens vägnar





Por los Estados Unidos Mexicanos
For De Forenede Mexicanske Stater
Für die Vereinigten Mexikanischen Staaten
Για τις Ηνωμένες Πολιτείες του Μεξικού
For the United Mexican States
Pour les États-Unis mexicains
Per gli Stati Uniti messicani
Voor de Verenigde Mexicaanse Staten
Pelos Estados Unidos Mexicanos
Meksikon yhdysvaltojen puolesta
För Mexikos förenta stater



ANNEX

INTELLECTUAL PROPERTY RIGHTS

This Annex is an integral part of the 'Agreement for scientific and technological cooperation between the European Community and the United Mexican States', hereinafter referred to as 'the Agreement'.

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

I. APPLICATION

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

II. OWNERSHIP, ALLOCATION AND EXERCISE OF RIGHTS

1. This Annex addresses the allocation of rights and interests 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.
2. The Parties shall also be guided by, and contractual arrangements shall provide for, the following principles:
 - (a) effective protection of intellectual property. The Parties shall ensure that they and/or their participants notify one another within a reasonable time of the creation of any intellectual property arising under the Agreement or implementation arrangements and seek protection for such intellectual property in a timely fashion;
 - (b) effective exploitation of results, taking into account the contributions of the Parties and their participants and the provisions of Article 9 of the Agreement;
 - (c) non-discriminatory treatment of participants from the other Party as compared with the treatment given to its own participants without prejudice to Article 9 of the Agreement;
 - (d) protection of business-confidential information.
3. The Parties or 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 TMP shall be approved by the responsible funding agency or other relevant agencies involved in financing the technology, taking account of the opinion of the Steering Committee, before the conclusion of the corresponding specific research and development cooperation contracts of research institutes. The TMP shall be developed within the rules and regulations in force in each Party taking into account the aims of the joint research, the financial or other contributions of the Parties and 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 applicable laws 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.

With respect to intellectual property, the TMP shall 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 general and specific information, licensing and deliverables.

4. Information or intellectual property 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 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.
5. Each Party shall ensure that the other Party and its participants have the rights to intellectual property allocated to them in accordance with these principles.

6. While maintaining the conditions of competition in areas affected by the Agreement, each Party shall endeavour to ensure that rights acquired pursuant to the 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 or otherwise made available, under the Agreement, and

(ii) the adoption and implementation of international standards.

7. Termination or expiry of the Agreement shall not affect rights or obligations in accordance with this Annex.

III. COPYRIGHT WORKS AND SCIENTIFIC LITERARY WORKS

Copyright belonging to the Parties or to their participants shall be accorded treatment consistent with the Berne Convention (Paris Act 1971). The copyright shall protect the expressions but not the ideas, procedures, methods of operation or mathematical concepts as such. Limitations or exceptions to exclusive rights may be introduced only in certain special cases which do not obstruct normal exploitation of results nor unduly endanger the legitimate interests of the right-holder.

Without prejudice to Section II, and unless otherwise agreed in the TMP, results of joint research shall be published jointly by the Parties or participants. 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 videos and software arising from joint research pursuant to the Agreement, the other Party shall be entitled to a worldwide, 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 the 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. Copies shall also bear a clearly visible acknowledgement of the cooperative support of the Parties.

IV. INVENTIONS, DISCOVERIES AND OTHER SCIENTIFIC AND TECHNOLOGICAL ACHIEVEMENTS

Inventions, discoveries and other scientific and technological achievements arising from cooperative activities between the Parties themselves shall be owned by the Parties unless otherwise agreed by the Parties.

V. UNDISCLOSED INFORMATION

A. Documental undisclosed information

1. Each Party, its agencies or its participants, as appropriate, shall identify at the earliest possible moment, and preferably in the TMP, the information which they wish to remain undisclosed in relation to the Agreement, taking into account, *inter alia*, the following criteria:

(a) secrecy 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 fields;

(b) the actual or potential commercial value of the information by virtue of its secrecy;

(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 secrecy.

The Parties and their participants 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 pursuant to the Agreement 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.

Any Party receiving undisclosed information pursuant to the Agreement 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 Agreement may be disseminated by the receiving Party to persons linked to 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 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. The Parties shall cooperate in developing procedures for requesting and obtaining prior written consent for such wider dissemination, and each Party shall 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 the Agreement, or information arising from the attachment of staff, use of facilities, or participation in joint projects, shall be treated by the Parties or their participants according to the principles specified for documentary information in the Agreement, 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 at the time it was communicated.

C. Control

Each Party shall endeavour to ensure that undisclosed information received by it under the Agreement 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, it shall immediately inform the other Party. The Parties shall thereafter consult to define the most appropriate course of action.
