

Proposal for a Council Decision on the signing of the agreement for scientific and technological cooperation between the European Community and the Republic of Chile

(2002/C 181 E/15)

COM(2002) 151 final

(Submitted by the Commission on 19 March 2002)

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) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) A Framework Cooperation Agreement between the European Community and its Member States, on the one part, and the Republic of Chile, of the other part entered into force on 1 February 1999 ⁽¹⁾.
- (2) In its resolution of 14 March 1997 on the Commission communication entitled 'Promoting RTD cooperation with the world's emerging economies' — COM(96) 344 final — the European Parliament 'calls on the Commission to negotiate, with due regard for the circumstances in each country, bilateral agreements establishing a legal framework for the promotion of RTD cooperation' ⁽²⁾.
- (3) The European Community and the Republic of Chile are pursuing specific RTD programmes in areas of common interest.
- (4) On the basis of past experience, both sides have expressed a desire to establish a deeper and broader framework for the conduct of collaboration in science and technology.
- (5) This cooperation agreement in the field of science and technology forms part of the global cooperation between the European Community and the Republic of Chile.
- (6) By its decision of 10 July 2001, the Council authorised the Commission to negotiate an agreement for scientific and technological cooperation between the European Community and the Republic of Chile. The negotiations, conducted in line with the negotiating directives, resulted in the attached draft agreement and its annex on intellectual property rights.
- (7) Subject to its possible conclusion at a later date, the agreement initialled on 11 December 2001 should be signed,

HAS DECIDED AS FOLLOWS:

Sole Article

Subject to a possible conclusion at a later date, the President of the Council is hereby authorised to designate the person empowered to sign, on behalf of the European Community, the Agreement for scientific and technological co-operation between the European Community and the Republic of Chile.

⁽¹⁾ OJ L 42, 16.2.1999, p. 46.

⁽²⁾ OJ C 115, 14.4.1997, p. 236.

AGREEMENT

for scientific and technological cooperation between the European Community and the Republic of Chile

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

on the one part,

and

THE REPUBLIC OF CHILE (hereinafter referred to as 'Chile') on the other part,

hereinafter referred to as the 'Parties';

CONSIDERING the Framework Agreement of Cooperation between the Government of the Republic of Chile and the European Economic Community concluded on 20 December 1990;

CONSIDERING the importance of science and technology for their economic and social development and article 16 of the Framework Agreement signed in Florence on 21 June 1996;

CONSIDERING the present scientific and technological cooperation between the Community and Chile;

CONSIDERING that the Community and Chile are carrying out research and technological development activities, including demonstration projects referred to as letter d) of Article 2, in a number of areas of common interest, and that mutual benefits may be derived from the participation of one Party in the research and development of the other based on the reciprocity criteria;

DESIRING to create a formal cooperation basis in scientific and technological research with a view to extend and intensify the conduct of cooperative activities in areas of common interest and to encourage the application of the results of such cooperation to the economic and social benefit of both Parties;

CONSIDERING that the present Scientific and Technological Cooperation Agreement between Chile and the Community is part of the general cooperation between Chile and the Community,

HAVE AGREED AS FOLLOWS:

Article 1

Purpose

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

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;
- (b) 'information' means scientific or technical data, results or methods of research and development stemming from joint

research carried out under this agreement 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, done at Stockholm, 14 July 1967 and the TRIPS Agreement;
- (d) 'joint research' means research, technological development or demonstration project that is implemented with financial support from one or both Parties and that involves collaboration between participants from both the Community and Chile;
- (e) 'demonstration project' means the project aimed at demonstrating the viability of new technologies, processes, services or products that offer a potential economic advantage, but that cannot be directly commercialised;

- (f) 'research and Development' (R & D) means creative work carried out in a systematic way so as to increase the human, cultural, social and technological knowledge volume and the use of this knowledge to stem new applications;
- (g) 'participant' or 'research entities' means any physical or legal person, research institute, firms, or any other legal entity or undertaking established in the Community or in Chile 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 overall balance of advantages;
- (b) reciprocal access to the activities of research and technological development undertaken by each Party;
- (c) timely exchange of information which may affect cooperative activities;
- (d) appropriate protection of intellectual property rights.

Article 4

Scope of cooperation

1. Cooperation under this Agreement may cover all the activities of research, technological development and demonstration, hereinafter referred to as 'RTD', included in the first activity of the framework programme under Article 164 of the Treaty establishing the European Community and all similar RTD activities in Chile in the corresponding scientific and technological fields.

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

Article 5

Modalities of cooperation

The Parties will foster the participation of the research and technological development bodies in the cooperation activities under this Agreement in compliance with their internal dispositions and politics, so as to offer similar opportunities in their own research and scientific development and technological activities.

Cooperative activities may take the following forms:

1. Participation of Chilean research and technological development entities to RTD projects of the framework programme and reciprocal participation of research and technological development entities established in the Community to Chilean projects in similar sectors of RTD. Such a participation is subject to the rules and procedures applicable in each Party;
2. Pooling of RTD projects already implemented according to the procedures applicable in the RTD programmes of each Party;
3. Joint RTD Projects under the framework of their scientific and technological policies, especially those relating to scientific and technological prospective activities;
4. Visits and exchanges of scientists and technical experts, as well as public, university and private specialists in the field of design and application of scientific and technological policies;
5. Joint organisation of seminars, conferences, symposia and workshops, as well as participation of experts to those activities;
6. Scientific networks and researchers training;
7. Concerted actions for dissemination of results, exchange of experience on joint RTD projects that have been funded or for their coordination;
8. Exchanges and sharing of equipment and materials including shared use of advanced research facilities;
9. Exchanges of information on practices, laws, regulations and programmes relevant to cooperation under this Agreement;
10. Any other modality that would be recommended by the Steering Committee and deemed in conformity with the policies and procedures applicable in both Parties.

Article 6

Coordination and facilitation of cooperative activities

- (a) The coordination and facilitation of cooperative activities under this Agreement shall be accomplished on behalf of Chile, by the National Scientific and Technological Research Commission (CONICYT), decentralised body of the Ministry of Education, with its own juridical personality, or other organisms which Chile could notify at any moment with previous written notice and, on behalf of the Community, by the services of the European Commission, in charge of Community RTD policies and activities, acting as executives agents.

(b) The executive agents shall establish a Steering Committee on S & T Cooperation, 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 and shall have co-chairpersons from Parties; 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 as mentioned in Articles 2 and 4 of this Agreement, as well as those that will be implemented in the framework of RTD for development;
2. Indicating, for the following year, pursuant to Article 5, first and second indents, among the potential sectors for RTD cooperation, those priority sectors or sub sectors of mutual interest in which cooperation is sought;
3. Proposing, pursuant to Article 5, second indent, to the scientists of both Parties the pooling of their projects which would be of mutual benefit and complementary;
4. Making recommendations pursuant to Article 5, tenth indent;
5. Advising the Parties on ways to enhance and improve cooperation consistent with the principles set out in this Agreement;
6. Reviewing the efficient functioning and implementation of this Agreement including evaluation of on-going cooperative projects involving Chile as a developing country under Community's activities in the field of research for development;
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 will be transmitted to the Joint Commission established within the Framework Cooperation Agreement between the European Community and Chile of June 1996.

(d) The Steering Committee shall, as a general rule, meet annually, preferably before the meeting of the Joint Committee established within the Framework Cooperation Agreement of 1996, according to a jointly agreed schedule, and will refer to it. The meetings should be held alternately in the Community and in Chile. Extraordinary meetings may be organised at the request of either Party.

(e) Decisions of the Steering Committee shall be reached by consensus. Minutes, comprising of a record of decisions and principal points discussed, shall be taken at each

meeting. These minutes shall be agreed upon by the co-chairpersons of the Steering Committee.

(f) Each Party will support the cost of its participation to the Steering Committee meetings. For the Steering Committee Meeting, the expenses, travel and accommodation, of the participants, will be borne by the Parties to whom they relate. Any other cost associated with the Steering Committee Meeting will be borne by the host Party.

Article 7

Funding

- (a) Cooperative activities shall be subject to the availability of appropriated funds and to the laws, regulations, policies and programmes applicable in territories of each Party. Costs incurred on selected cooperative activities will be shared by the participants without any transfer of funds from one Party to the other.
- (b) When a specific cooperative mechanism of one Party confers economic support to the participants of the other, such subventions, financial or other contributions of one Party to the participants of the other, in support to those activities, will be granted free of charges and customs duties, pursuant to the laws and dispositions applicable in territories of each Party.
- (c) RTD projects, involving Chile as developing country, sponsored under Community's activities in the field of research for development will be excluded from the provisions specified under Article 7 letter (a).

Article 8

Entry of personnel and equipment

Each Party shall take all appropriate steps and use its best efforts, within the laws and regulations applicable in the territories of each Party, to facilitate entry to, sojourn and exit from its territory of persons, material, data and equipment related to or used in cooperative activities developed by the Parties under the provisions of this Agreement.

Article 9

Diffusion and utilisation of information

1. The dissemination and utilisation of information, and the management, allocation and exercise of intellectual property rights resulting from joint research under this Agreement shall be subject to the requirements of Annex to this Agreement.

2. This Annex called 'Intellectual Property Rights' is an integral part of 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 is applied and under the conditions laid down in that Treaty, and on the other hand to the territory of the Republic of Chile. This shall not exclude cooperative activities on the high seas, outer space, or the territory of third countries, in accordance with international law.

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

- (a) This Agreement shall enter into force on the date on which both parties have notified each other in writing that their respective necessary internal procedures have been completed.
- (b) This Agreement shall be concluded for an initial period of five years and may be tacitly renewed after evaluation during the next to last year of each successive period.
- (c) This Agreement may be amended by decision of the Parties. Amendments shall enter into force within the same conditions as the mentioned in letter (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 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.

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

Article 12

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

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

Done at . . . on the day of . . . in the year . . . , in two copies, in the German, Danish, Spanish, Finnish, French, Greek, English, Italian, Dutch, Portuguese and Swedish languages, with each text being equally authentic.

For the European Community

For the Republic of Chile

ANNEX

INTELLECTUAL PROPERTY RIGHTS

This Annex is part of the 'Agreement for Scientific and Technological Cooperation between the European Community and the Republic of Chile', 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. For purpose of this Annex 'intellectual property' is defined in Article 2 (c) of the Agreement.
2. 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 intellectual property between a Party and its nationals or participants, and the rules of diffusion and utilisation of information, which will be determined by the laws and practices of each Party.
3. The Parties will also be guided by, and contractual arrangements should provide for, the following principles:
 - (a) effective protection of intellectual property. The Parties and their participants shall ensure that they notify one another within a reasonable time of the creation of any intellectual property arising under the Agreement or implementation arrangements and to 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;
 - (c) non-discriminatory treatment of participants from the other Party as compared with the treatment given to its own participants;
 - (d) protection of business-confidential information.
4. The participants shall jointly develop a Technology Management Plan (TMP). TMP is a specific agreement to be concluded between the participants in joint research defining their respective rights and obligations, including those 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 will be approved by the responsible funding agency of the Party involved in financing the research, before the conclusion of the corresponding specific research and development cooperation contracts. 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 relative financial or other contributions of the Parties and participants, the advantages and disadvantages of licensing by territory or for fields of use, transfers of data, goods or services submitted to export controls, requirements imposed by applicable laws, and other factors deemed appropriate by the participants. The rights and obligations concerning the research and information generated by invited researchers (i.e. researchers not coming from a Party or a participant) in respect of IP shall also be addressed in the joint technology management plans.

With respect to IP, 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 shall also address foreground and background information, licensing and deliverables.

5. Information or intellectual property created in the course of joint research and not regulated in the TMP will be allocated, with the agreement of the Parties, according to the principles set out in the TMP. In case of disagreement, such information or IP shall be owned jointly by all the participants involved in the joint research from which the information or IP results. Each participant to whom this provision applies shall have the right to use such information or IP for his own commercial exploitation with no geographical limitation.

6. Each Party will ensure that the other Party and its participants may have the rights to IP allocated to them in accordance with the present principles.
7. 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, 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.
8. Termination or expiry of the Agreement will not affect rights or obligations of participants 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) and the TRIPS Agreement. The IP rights will protect the expression but not the ideas, procedures, methods or mathematical concepts as such. Only limitations or exceptions may be introduced to exclusive rights in specific special cases that do not obstruct the normal exploitation of results nor unduly endanger the legitimate interests of the right titular.

Without prejudice to Section IV and V, and unless otherwise agreed in the TMP, publication of results of research shall be made 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 journals, articles, reports, books, including video and software arising from joint research pursuant to the Agreement, the other Party will be entitled to a worldwide, non-exclusive, irrevocable, royalty-free license to translate, reproduce, adapt, transmit and publicly distribute such works.
2. The Parties shall endeavour to disseminate literary works of a scientific character arising from joint research pursuant to the Agreement and published by independent publishers will 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 AND OTHER SCIENTIFIC AND TECHNOLOGICAL RESULTS

The inventions and other scientific and technological results arising from cooperative activities between Parties will be owned by them, unless otherwise agreed by them.

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 TMP the information that 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.

A Party receiving undisclosed information pursuant to the Agreement will 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 within or employed by the receiving Party and other governmental departments or concerned agencies of 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 written 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 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 the Agreement; provided, however, that the recipient of such undisclosed or other confidential or privileged information has been made aware in advance and in written form of the confidential character of the information at the moment of its communication.

C. Control

Each Party shall endeavour to ensure that undisclosed information received by it under this Agreement shall be controlled as provided herein. If one of the Parties becomes aware that it will be, or may 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 will thereafter consult to define the most appropriate course of action.
