Proposal for a Council Decision concerning the conclusion of the Agreement for scientific and technological cooperation between the European Community and the Republic of India

(2001/C 304 E/17)

COM(2001) 448 final — 2001/0175(CNS)

(Submitted by the Commission on 30 July 2001)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 170, 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) A cooperation Agreement between the European Economic Community and the Republic of India on Partnership and Development was signed on 20 December 1993 [1].

(2) The European Community and the Republic of India are pursuing specific RTD programmes in areas of common interest.

(3) 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.

(4) This cooperation agreement in the field of science and technology forms part of the global cooperation between the European Community and the Republic of India.

(5) By its Decision of 12 February 2001, the Council authorised the Commission to negotiate an agreement for scientific and technological cooperation between the European Community and the Republic of India.

(6) By its Decision of . . . 2001, the Council decided that the Agreement be signed on behalf of the European Community.

(7) The Agreement was signed on . . . 2001.

(8) The Agreement should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement for scientific and technological cooperation between the European Community and the Republic of India is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

Article 2

Pursuant to Article 11 of the Agreement, the President of the Council shall notify the Republic of India that the procedures necessary for the entry into force of the Agreement have been completed on the part of the European Community.

[1] OJ L 223, 27.8.1994, p. 23.

AGREEMENT

for scientific and technological cooperation between the European Community and the Government of the Republic of India

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

on the one part,

and

THE GOVERNMENT OF THE REPUBLIC OF INDIA, hereinafter referred to as 'India' on the other part,

hereinafter referred to as the 'Parties';

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

RECOGNISING that the Community and India are pursuing joint research and technological programmes in a number of areas of common interest, and that mutual benefits may be derived if the Parties facilitate further cooperation;

NOTING that there has been active cooperation and information exchange in a number of scientific and technological areas under the Cooperation Agreement between the Community and India on Partnership and Development signed on December 20, 1993;

HAVING REGARD to the EU-India Summit Joint Declaration agreed on 28 June 2000;

DESIRING to expand the cooperation in scientific and technological research with a view to strengthening the conduct of cooperative activities in areas of common interest and to encourage the application of the results of such cooperation to their economic and social benefit,

HAVE AGREED AS FOLLOWS:

Article 1

Purpose

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

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;

(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 India and is designated as joint research in writing by the Parties or the Executive Agents. In the case where there is funding by only one Party the designation is made by that Party and the participant in that project;

(e) 'Participant' or 'research entities' means any person, any academic institution, research institute or any other legal entity or undertaking or firm established in the Community or in India involved in cooperative activities including the Parties themselves.

Article 3

Principles

Cooperation 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

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 India in the corresponding scientific and technological fields.

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

Article 5

Modalities of cooperation

Cooperative activities may take the following forms:

— Participation of Indian research entities in RTD projects under the first activity of the framework programme and reciprocal participation of research entities established in the Community in Indian projects in similar sectors of RTD. Such a participation is subject to the rules and procedures applicable in each Party.

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

— Pooling of RTD projects already implemented according to the procedures applicable in the RTD programmes of each Party;

— Visits and exchanges of scientists and technical experts;

— Joint organisation of Scientific Seminars, Conferences, Symposia and Workshops, as well as participation of experts in those activities;

— Concerted actions for dissemination of results/exchange of experience on joint RTD projects that have been funded,

— Exchanges and sharing of equipment and materials including shared use of advanced research facilities;

— Exchanges of information on practices, laws, regulations and programmes relevant to cooperation under this Agreement;

— 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 India, by the Ministry of Science and Technology (Department of Science & Technology) and, on behalf of the Community, by the services of the Commission of the European Communities (Directorate General for Science, Research & Development), acting as executive 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 an equal 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 Article 4 as well as those that would be implemented in the framework of Community's activities in the field of research for development;

2. (a) Recommending Joint RTD projects, to be sponsored on a cost sharing basis by the Parties, received in response to approved text of Joint Call for Proposals issued simultaneously by the Executive Agents;

(b) The Joint projects, which have been submitted by the scientists of one side for participation in the programs of the other side, will be selected by each Party according to the respective selection process of each Party with possible participation of the experts from both sides.

3. Indicating, for the following year, pursuant to Article 5, first and second indents, among the potential sectors for RTD cooperation, those priority sectors or subsectors of mutual interest in which cooperation is sought;

4. Proposing, pursuant to Article 5, third indent, to the scientists of both Parties the pooling of their projects which would be of mutual benefit and complementary;

5. Making recommendations pursuant to Article 5, fourth through eight indent;

6. Advising the Parties on ways to enhance and improve cooperation consistent with the principles set out in this Agreement;

7. Reviewing the efficient functioning and implementation of this Agreement including evaluation of on-going cooperative projects involving India as a developing country under Community's activities in the field of research for development.

8. Annually providing a 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 in the framework of the Cooperation Agreement between the European Community and India on Partnership and Development.

(d) The Steering Committee shall, as a general rule, meet annually, preferably before the meeting of the Joint Commission established in the framework of the Cooperation Agreement between the European Community and India on Partnership and Development, and according to a jointly agreed schedule; the meetings should be held alternatively in the Community and in India. 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 designated Co-chairpersons of the Steering Committee.

(f) For the Steering Committee Meeting, the expenses on 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 and regulations (including those on tax and customs exemption) applicable in territories of each Party and in accordance with policies and programmes of the Parties.

(b) Costs incurred on selected cooperative activities will be shared by the participants without any transfer of funds from one Party to the other.

(c) An implementing arrangement would specify in greater details the precise administrative and financial modalities for cooperative activities.

(d) RTD projects, involving India 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 b and c.

Article 8

Entry of personnel and 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 and equipment involved in or used in cooperative activities identified by the Parties under the provisions of this Agreement.

Article 9

Diffusion and utilisation of information

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. This Annex on 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 India. 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 11

Entry into force, termination and dispute settlement

(a) 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.

(b) This Agreement shall be concluded for an initial period of five years and may be renewed by mutual agreement between the Parties after evaluation during the last year of each successive period.

(c) 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.

(d) This Agreement may be terminated at any time by either Party upon six months' written notice. 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.

(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 Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish and Hindi languages, each of these texts being equally authentic.

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

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

For the Council of the European Union

For the Government of the Republic of India

ANNEX

INTELLECTUAL PROPERTY RIGHTS

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

APPLICATION

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

I. **Ownership, allocation and exercise of rights**

1. For the 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 royalties 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 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 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, with regard to ownership, utilisation and dissemination of information and ownership, allocation and exercise of Intellectual Property Rights;

   (d) protection of confidential business 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.

   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. 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, requirements imposed by applicable laws, the need for dispute settlement procedures and other factors deemed appropriate by the participants. The rights and obligations concerning the research generated by visiting 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. 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 cooperation contracts to which they are attached.

5. Information or intellectual property created in the course of joint research and not addressed in a TMP will be allocated according to the principles set out in the TMP. In case of disagreement, which cannot be resolved by the agreed dispute settlement procedure, 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. In accordance with applicable laws, each Party will ensure that the other Party and its participants may have the rights to IP allocated to them.

7. While maintaining the condition of competition in areas affected by the Agreement, each Party shall endeavor 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.

8. Termination or expiry of the Agreement will not affect rights or obligations of participants with regard to Intellectual Property under approved on-going projects in accordance with this Annex.

II. **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.

Without prejudice to Section III, and unless otherwise agreed in the TMP, publication of results of research shall be made jointly by the Parties or participants. Subjects 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 the Agreement, the other Party will 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 endeavor 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.

III. **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 concerned departments or 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 under this Agreement, 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 to be communicated.

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 an appropriate course of action.