

AGREEMENT
ON SCIENTIFIC AND TECHNOLOGICAL COOPERATION
BETWEEN THE EUROPEAN COMMUNITY
AND THE GOVERNMENT OF NEW ZEALAND

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

and

THE GOVERNMENT OF NEW ZEALAND,

hereinafter jointly referred to as "the Parties",

CONSIDERING that the Parties are pursuing research, technological development and demonstration activities in a number of areas of common interest, and being aware of the rapid expansion of scientific knowledge and its positive contribution in promoting bilateral and international cooperation;

NOTING that there has been cooperation and information exchange in a number of scientific and technological areas under the Arrangement between the Commission of the European Communities and the Government of New Zealand for Cooperation in Science and Technology of 17 May 1991;

WISHING to broaden the scope of scientific and technological cooperation in a number of areas of common interest through the creation of a productive partnership for peaceful purposes and mutual benefit;

NOTING that such cooperation and the application of the results of such cooperation will contribute to the economic and social development of the Parties; and

DESIRING to establish a formal framework to implement the overall cooperative activities that will strengthen cooperation in "science and technology" between the Parties;

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Definitions

For the purposes of this Agreement:

- 1) "Cooperative Activities" means both Direct Cooperative Activities and Indirect Cooperative Activities.
- 2) "Direct Cooperative Activities" means cooperative activities carried out in the areas of science and technology between the Parties or their executive agents.
- 3) "Indirect Cooperative Activities" means cooperative activities, other than Direct Cooperative Activities, in the areas of science and technology carried out between the Government of New Zealand or Participants of New Zealand on the one hand, and the Community or Participants of the Community on the other, through:
 - (a) the participation of the Government of New Zealand or New Zealand Participants in the Community Framework Programme under Article 166 of the Treaty establishing the European Community (hereinafter referred to as "the Framework Programme"); and
 - (b) the participation of the Community or Participants of the Community in New Zealand research programmes or projects in science and technology fields similar to those covered by the Framework Programme.

- 4) "Intellectual Property" shall have the meaning given in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm on 14 July 1967.

- 5) "Participant" means any natural person ordinarily resident in New Zealand or the Community, or any legal person established in New Zealand or in the Community having legal personality and being entitled to rights and subject to obligations of any kind in its own name and does not include the Parties. For the avoidance of doubt, New Zealand Crown Entities are Participants and are not included within the meaning of "a Party". The EC Joint Research Centre (JRC) will be both, a Participant, for the purpose of participating in Indirect Cooperative Activities, and an executive agent, for the purpose of carrying out Direct Cooperative Activities.

ARTICLE 2

Purpose and Principles

1. The Parties shall encourage, develop and facilitate Cooperative Activities for peaceful purposes in accordance with this Agreement and the laws and regulations of both Parties.

2. Cooperative Activities shall be carried out on the basis of the following principles:
 - (a) mutual and equitable contributions and benefits;
 - (b) mutual access for Participants to research programmes or projects operated or funded by the other Party;
 - (c) timely exchange of information which may concern Cooperative Activities;
 - (d) promotion of knowledge-based societies for the economic and social development of both Parties; and
 - (e) protection of intellectual property rights in accordance with Article 8.

ARTICLE 3

Cooperative Activities

1. Direct Cooperative Activities under this Agreement may include:
 - (a) meetings of various forms, including those of experts, to discuss and exchange information on scientific and technological topics of a general or specific nature and to identify research and development projects and programmes that may be undertaken on a cooperative basis;

- (b) exchange of information on activities, policies, practices, laws and regulations concerning research and development;
- (c) visits and exchanges of scientists, technical personnel and other experts on general or specific subjects; and
- (d) other forms of activities in the areas of science and technology, including implementation of cooperative projects and programmes, which may be decided upon by the Joint Committee referred to in Article 6, in accordance with the respective laws and regulations of the Parties.

2. For the purpose of developing Indirect Cooperative Activities, any New Zealand Participant or Participant of the Community may collaborate in any research programme or project operated or funded by the other Party, with the agreement of the other Participants in that programme or project and in accordance with the respective laws and regulations of the Parties and the relevant rules of participation in such programmes or projects.

3. Within the framework of this Agreement, in case one Party concludes a contract with a Participant of the other Party for an Indirect Cooperative Activity, the other Party, upon request, shall endeavour to provide any reasonable and feasible assistance as may be necessary or helpful to the former Party for smooth implementation of such contract.

4. The coordination and facilitation of Cooperative Activities under this Agreement shall be carried out, on behalf of New Zealand, by the Ministry of Research, Science and Technology or its successor agency and, on behalf of the Community, by the services of the Commission of the European Communities, who shall act as executive agents.

ARTICLE 4

Implementing Arrangements

1. Where appropriate, Cooperative Activities may take place pursuant to implementing arrangements between the Parties or between the Commission and New Zealand organisations that fund research programmes or projects on behalf of the New Zealand Government. These arrangements may set out:

- (a) the nature and duration of cooperation in a specific area or for a specific purpose;
- (b) the treatment of Intellectual Property generated by the cooperation, consistent with this Agreement;

- (c) any applicable funding commitments;
- (d) the allocation of costs associated with the cooperation; and
- (e) any other relevant matters.

2. Cooperative Activities ongoing at the entry into force of this Agreement shall be incorporated under this Agreement as of that date.

ARTICLE 5

Entry of Personnel and Equipment

Each Party shall, in accordance with the relevant laws and regulations of the Parties and EU Member States, facilitate entry to and exit from its territory of personnel, material and equipment of the Participants engaged in or used in Cooperative Activities.

ARTICLE 6

Joint Committee

1. For the purpose of ensuring the effective implementation of this Agreement, the executive agents shall establish a Joint Committee on Scientific and Technological Cooperation (hereinafter referred to as "the Joint Committee"). The Joint Committee shall consist of representatives of each Party and shall be co-chaired by representatives of both Parties.
2. The Joint Committee shall meet, at least every two years, alternately in New Zealand and the Community.
3. The functions of the Joint Committee shall be to:
 - (a) exchange views and information on scientific and technological policy issues;
 - (b) make recommendations to the Parties with regard to the implementation of this Agreement, including the identification and recommendation of additions to the Cooperative Activities referred to in Article 3 and concrete measures to improve the mutual access provided for under Article 3(2);
 - (c) make, subject to each Party's domestic approval processes, technical amendments to this Agreement as may be required; and

(d) at each meeting, review and provide a report to the Parties on the status, the achievements and the effectiveness of Cooperative Activities, including the mutual access provided for under Article 3(2) and each Party's arrangements for visiting researchers.

4. The Joint Committee shall establish its own rules of procedure. Its decisions shall be reached by consensus.

5. The expenses of representatives to Joint Committee meetings, such as travel costs and accommodation, shall be borne by the Party to which they relate. Any other costs associated with these meetings shall be borne by the host Party.

ARTICLE 7

Funding

1. Each Party's implementation of this Agreement shall be subject to the availability of appropriated funds and the applicable laws and regulations of that Party.

2. The costs of Cooperative Activities shall be borne as decided by the Participants or the Parties involved.

3. When one Party provides financial support to Participants of the other Party in connection with Indirect Cooperative Activities, any grants and financial or other contributions from the funding Party to Participants of the other Party in support of those activities shall be granted tax exemption in accordance with the relevant laws and regulations in force in the territories of each Party at the time such grants and financial or other contributions are made.

ARTICLE 8

Information and Intellectual Property Rights

1. Scientific and technological information of a non-proprietary nature arising from Cooperative Activities may be made available to the public by either Party through customary channels and in accordance with its general procedures.

2. Each Party shall ensure that its treatment of the Intellectual Property rights and obligations of Participants in Indirect Cooperative Activities, and the related rights and obligations arising from such participation, shall be consistent with the relevant laws and regulations and international conventions, including the Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C of the Marrakech Agreement Establishing the World Trade Organisation as well as the Paris Act of 24th July 1971 of the Berne Convention for the Protection of Literary and Artistic Works and the Stockholm Act of 14th July 1967 of the Paris Convention for the Protection of Industrial Property.

3. Each Party shall ensure that the Participants in Indirect Cooperative Activities of the other Party shall have the same treatment with regard to Intellectual Property as is accorded to the Participants of the first Party under the relevant rules of participation of each research programme or project, or its applicable laws and regulations.

ARTICLE 9

Territorial Application

This Agreement shall apply:

- (a) to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty; and
- (b) to the territory of New Zealand.

This shall not prevent the conduct of Cooperative Activities on the high seas, in outer space or the territory of third countries, in accordance with international law.

ARTICLE 10

Other Agreements and Dispute Settlement

1. The provisions of this Agreement shall not prejudice the rights and obligations of the Parties under existing and/or future agreements between the Parties, or between any Member State of the Community and the Government of New Zealand.
2. Any questions or disputes related to the interpretation or implementation of this Agreement shall be settled by consultation between the Parties.

ARTICLE 11

Status of the Annex

The Annex to this Agreement constitutes a non-binding arrangement between the executive agents regarding Intellectual Property rights and other proprietary rights created or introduced in the course of Direct Cooperative Activities.

ARTICLE 12

Amendment

Except for the technical amendments made by the Joint Committee under Article 6(3)(c), this Agreement may be amended with the mutual consent of the Parties through the exchange of diplomatic notes. Except as otherwise agreed by the Parties, an amendment shall enter into force on the date on which the Parties exchange diplomatic notes informing each other of the completion of their respective internal procedures for entry into force of the amendment.

ARTICLE 13

Entry into Force and Termination

1. This Agreement shall enter into force on the date on which the Parties exchange diplomatic notes informing each other of the completion of their respective internal procedures necessary for the entry into force of this Agreement.
2. This Agreement shall remain in force for an initial period of five years. Unless either Party notifies the other that this Agreement terminates at the end of the initial period, this Agreement shall continue in force after the initial period until such time as either Party gives notice in writing to the other Party of its intention to terminate this Agreement. In such case this Agreement shall cease to have effect six months after the receipt of such notification.

3. The termination of this Agreement shall be without prejudice to any Cooperative Activities not fully executed at the time of the termination of this Agreement or to any specific rights and obligations that have accrued in compliance with the Annex to this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by the European Community and the Government of New Zealand respectively, have signed this Agreement.

DONE in duplicate at Brussels on the sixteenth day of July in the year two thousand and eight, in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic.

Arrangement regarding Intellectual Property rights
and other proprietary rights created or introduced
in the course of Direct Cooperative Activities
between New Zealand
and the European Community

The Ministry of Research, Science and Technology, and the Commission of the European Communities ("the executive agents"), consistent with Article 11 of the Agreement on Scientific & Technological Cooperation between the European Community and the Government of New Zealand ("the Agreement") have reached the following understandings regarding the protection of Intellectual Property rights created or introduced in the course of Direct Cooperative Activities (as defined in Article 1 of the Agreement) under the Agreement:

1. Unless otherwise mutually decided by the executive agents, the following rules will apply to Intellectual Property rights created or introduced by the Parties in the course of Direct Cooperative Activities:
 - (a) The Party creating the Intellectual Property will have full ownership. In cases where the Intellectual Property has been jointly created and the respective share of the work by the two Parties cannot be ascertained, the Parties will have joint ownership of the Intellectual Property.

- (b) Except as set out in paragraph 2, the Party owning or introducing the Intellectual Property will grant the other Party the access rights necessary to carry out any Direct Cooperative Activities. Such access rights will be granted on a royalty-free basis.
 - (c) Except as set out in paragraph 2, where the Parties jointly own the Intellectual Property, each Party will grant the other Party a non-exclusive, irrevocable, royalty-free license to use and exploit that Intellectual Property for the other Party's own purposes.
2. Unless otherwise mutually decided by the executive agents, the following rules will apply to copyrights and related rights of the Parties created or introduced by the Parties in the course of Direct Cooperative Activities:
- (a) When a Party publishes scientific and technical data, information or results arising from and relating to Cooperative Activities, by means of journals, articles, reports, books, the internet, or in other forms, including video tapes and electronic storage devices, the publishing Party will make utmost efforts to obtain for the other Party, non-exclusive, irrevocable, royalty-free licences in all countries where copyright protection is available, in order to translate, reproduce, adapt, transmit and publicly distribute such works. However, the publishing Party has no obligation to obtain such licenses from third parties that the publishing Party did not know, at the time of first publication, owned any Intellectual Property in such works.

- (b) All publicly distributed copies of a copyrighted work under the provisions of paragraph 2(a) will indicate the name(s) of the author(s) of the work unless the author(s) explicitly declines to be named. They will also display a clearly visible acknowledgement of the cooperative support of the Parties.

- 3. Unless otherwise mutually decided by the executive agents, all Intellectual Property under paragraphs 1 and 2 will be provided without any warranty, express or implied, including warranties as to fitness for a particular purpose, title or non-infringement.

- 4. Unless otherwise mutually decided by the executive agents, the following rules will apply to the undisclosed information of the Parties:
 - (a) When communicating to the other Party information necessary to carry out Direct Cooperative Activities, each Party will identify the information which it wishes to remain undisclosed ("undisclosed information").

 - (b) A Party receiving undisclosed information may communicate that information to its agencies, or persons employed through these agencies, for the specific purpose of carrying out Direct Cooperative Activities. The receiving Party will impose an obligation of confidentiality for such undisclosed information on the agencies, their employees and third parties, including contractors and sub-contractors.

- (c) Only with the prior written consent of the Party providing the undisclosed information, should the other Party disseminate such undisclosed information more widely than is permitted in paragraph 4(b). The Parties will cooperate to develop procedures for the request and obtaining of prior written consent for such wider dissemination. Upon request, each Party will grant such consent to the extent permitted by its laws and regulations.
 - (d) Information arising from seminars, meetings, assignments of staff and of the use of facilities arranged under the Agreement will be treated as undisclosed information when the Party providing the information identifies it as such, according to paragraph 4(a).
 - (e) If one Party becomes aware that it will be, or expects to become, unable to meet the restrictions and conditions of dissemination of this Annex, it will immediately inform the other Party. The Parties will thereafter consult to define an appropriate course of action.
5. This Arrangement can be modified with the written mutual consent of the executive agents.
 6. This Arrangement will enter into effect on the day the Agreement enters into force.
