



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 29 May 2012  
(OR. en)**

**9729/12**

**ATO 71**

**LEGISLATIVE ACTS AND OTHER INSTRUMENTS**

---

Subject: COUNCIL DECISION approving the conclusion, by the Commission, of the Agreement between the European Atomic Energy Community (Euratom) and the Government of South Africa for co-operation in the peaceful uses of nuclear energy

---

**COUNCIL DECISION**

**of**

**approving the conclusion, by the Commission, of the Agreement between  
the European Atomic Energy Community (Euratom) and  
the Government of South Africa  
for co-operation in the peaceful uses of nuclear energy**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular the second paragraph of Article 101 thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) The Commission has, in accordance with Council directives adopted by the Council Decision of 8 October 2010, negotiated an Agreement between the European Atomic Energy Community (Euratom) and the Government of South Africa for co-operation in the peaceful uses of nuclear energy (hereinafter "the Agreement").
- (2) The conclusion, by the Commission, of the Agreement should be approved,

HAS ADOPTED THIS DECISION:

*Sole Article*

The conclusion by the Commission of the Agreement between the European Atomic Energy Community (Euratom) and the Government of South Africa for co-operation in the peaceful uses of nuclear energy is hereby approved.

The text of the Agreement is attached to this Decision.

Done at Brussels,

*For the Council*

*The President*

---

**AGREEMENT BETWEEN THE GOVERNMENT OF SOUTH AFRICA  
AND THE EUROPEAN ATOMIC ENERGY COMMUNITY (EURATOM)  
FOR CO-OPERATION IN THE PEACEFUL USES OF NUCLEAR ENERGY**

*PREAMBLE*

The Government of the Republic of South Africa, hereinafter referred to as "South Africa", and the European Atomic Energy Community (Euratom), hereinafter referred to as "the Community", and hereinafter jointly referred to as the "Parties",

CONSIDERING the friendly relations and co-operation existing between the two Parties;

NOTING with satisfaction the fruitful outcome of economic, technical and scientific co-operation between the Parties;

TAKING into account the Agreement on Trade, Development and Cooperation between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part, done on 11 October 1999;

TAKING into account the Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States on the one part, and the European Community and its Member States, on the other Part, done on 23 June 2000;

DESIRING to promote their cooperation in the use of nuclear energy for peaceful purposes;

REAFFIRMING the strong commitment of the Republic of South Africa, the Community and the Governments of its Member States to nuclear non-proliferation including the strengthening and efficient application of the related safeguards and export control regimes under which co-operation in the peaceful uses of nuclear energy between the Republic of South Africa and the Community should be carried out;

REAFFIRMING the support of the Republic of South Africa, the Community and the Governments of its Member States for the objectives of the International Atomic Energy Agency, hereinafter referred to as "IAEA", and its safeguards system;

REAFFIRMING the strong commitment of the Republic of South Africa, the Community and its Member States to the Convention on the Physical Protection of Nuclear Material done on 3 March 1980;

WHEREAS the Republic of South Africa and all Member States of the Community are Parties to the Treaty on the Non-Proliferation of Nuclear Weapons done on 1 July 1968, hereinafter referred to as "NPT";

NOTING that nuclear safeguards are applied in all Member States of the Community pursuant to both the Treaty establishing the European Atomic Energy Community, hereinafter referred to as "the Euratom Treaty", and the safeguards agreements concluded between the Community, its Member States and the IAEA;

TAKING into account the African Nuclear-Weapon-Free zone treaty (Pelindaba Treaty), done on 11 April 1996 and entered into force on 15 July 2009;

NOTING that the Republic of South Africa and the Governments of all Member States of the Community participate in the Nuclear Suppliers Group;

NOTING that account should be taken of the commitments made by the Republic of South Africa and the Government of each Member State of the Community in the framework of the Nuclear Suppliers Group;

RECOGNISING the fundamental principle of free movement in the internal market within the European Union;

AGREEING that this Agreement should be in compliance with international obligations of the European Union and the Republic of South Africa under the World Trade Organisation;

REITERATING commitments of the Republic of South Africa and the Governments of Member States of the Community to their bilateral agreements in the peaceful uses of nuclear energy;

HAVE AGREED AS FOLLOWS:

## Article I

### Definitions

For the purpose of this Agreement, except as otherwise specified therein,

1. "competent authority" means:

(a) for the Republic of South Africa, the Department of Energy;

(b) for the Community, the European Commission

or such other authority as the Party concerned may at any time notify in writing to the other Party;

2. "equipment" means those items listed in Sections 1, 3, 4, 5, 6 and 7 of Annex B of IAEA Information Circular INFCIRC/254/Rev.10/Part 1 (Guidelines for Nuclear Transfers);

3. "information" means scientific or technical data, results or methods of research and development stemming from the joint research projects and any other information deemed necessary by the Parties and/or participants engaged in the joint research projects to be provided or exchanged under this Agreement or research pursuant thereto;

4. "intellectual property" shall have the meaning set out in Article 2 of the Convention establishing the World Intellectual Property Organization, done on 14 July 1967, as amended on 28 September 1979, and may include other subject matter as mutually determined by the Parties;



5. "joint research projects" means research or technological development that is implemented with or without financial support from one or both Parties and that involves collaboration by participants from both the Community and South Africa and is designated as joint research in writing by the Parties or their scientific and technological organisations and agencies implementing the scientific research programmes. In the case where there is funding by only one Party the designation is made by that Party and the participant in that project;
6. "nuclear material" means any source material or special fissionable material as those terms are defined in Article XX of the Statute of the IAEA. Any determination by the Board of Governors of the IAEA under Article XX of the IAEA Statute that amends the list of material considered to be "source material" or "special fissionable material", shall only have effect under this Agreement when the Parties have informed each other in writing that they accept that determination;
- 7 "non-nuclear material" means:
- (a) deuterium and heavy water (deuterium oxide) and any other deuterium compound in which the ratio of deuterium to hydrogen exceeds 1:5000, for use in a nuclear reactor, as defined in paragraph (1.1) of Annex B of IAEA Information Circular INFCIRC/254/Rev.10/Part 1,
  - (b) nuclear grade graphite: graphite, for use in a nuclear reactor, as defined in paragraph (1.1) of Annex B of IAEA Information Circular INFCIRC/254/Rev.10/Part 1, having a purity level better than 5 parts per million boron equivalent and with a density greater than 1.50 grams per cubic centimetre;

8. "participant" means any person, any research institute, any legal entity or firm or any other body otherwise allowed by either Party to participate in cooperative activities and or joint research projects under this Agreement including the Parties themselves;
9. "person" means any natural person, undertaking or other entity governed by the applicable laws and regulations in the respective territorial jurisdiction of the Parties, but does not include the Parties;
10. "results of intellectual activity" (RIA) means information and/or intellectual property;
11. "Parties" means the Republic of South Africa on the one hand and the Community on the other hand;  
  
"the Community" means both:
  - (a) the legal person created by the Euratom Treaty; and
  - (b) the territories to which the Euratom Treaty applies;
12. "technology" has the meaning defined in Annex A of IAEA Information Circular INFCIRC/254/Rev.10/Part 1.

## **Article II**

### **Objective**

1. The objective of this Agreement is to encourage and to facilitate, on the basis of mutual benefit, equality and reciprocity, cooperation in the peaceful uses of nuclear energy with a view to strengthening the overall co-operative relationship between the Community and South Africa, in accordance with the needs and priorities of their respective nuclear programmes.
2. This Agreement aims to foster the scientific cooperation between the Community and South Africa, in particular to facilitate the participation of South African research entities in research projects carried out in the framework of the relevant Community research programmes and to ensure a reciprocal participation of research entities of the Community and its Member States in South African projects in similar areas of research.
3. Nothing contained in this Agreement shall be construed as binding the Parties to any form of exclusivity and each Party shall be entitled to conduct business independent of the other where market requirements so dictate.

## Article III

### Scope and forms of co-operation

1. Nuclear material, equipment, non-nuclear material or nuclear material produced as a by-product shall be used only for peaceful purposes; and shall not be used for any nuclear explosive device, for research or for development of any such device, nor for any military purpose.
2. The co-operation intended by this Agreement relates to the peaceful uses of nuclear energy and may include, inter alia:
  - (a) research and development in the field of nuclear energy (including fusion technologies);
  - (b) use of nuclear materials and technologies such as applications in health, agriculture;
  - (c) transfers of nuclear materials and equipment;
  - (d) nuclear safety, radioactive waste and spent fuel management, decommissioning, radiation protection including emergency preparedness and response;
  - (e) nuclear safeguards;
  - (f) other areas to be agreed by the Parties, insofar as they are covered by the Parties' respective programmes.

3. The co-operation referred to in paragraph 2 of this Article may be undertaken in the following forms:
- (a) supply of nuclear and non-nuclear materials, equipment and related technologies;
  - (b) provision of nuclear fuel cycle services;
  - (c) establishment of Working Groups, if necessary, to implement specific studies and projects in the area of scientific research and technological development;
  - (d) exchange of experts, scientific and technological information, organization of scientific seminars and conferences, training of administrative, scientific and technical personnel;
  - (e) consultations on research and technological issues and performing joint research under agreed programmes;
  - (f) co-operation activities in promoting nuclear safety; and
  - (g) other forms of cooperation as may be determined by the Parties in writing.
4. The co-operation referred to in paragraph 2 of this Article may also take place between authorised persons and undertakings established in the respective territories of the Parties.

## Article IV

### Items subject to the Agreement

1. This Agreement shall apply to nuclear material, non-nuclear material or equipment, transferred between the Parties or their respective persons, whether directly or through a third country. Such nuclear material, non-nuclear material or equipment shall become subject to this Agreement upon its entry into the territorial jurisdiction of the receiving Party, provided that the supplying Party has notified the receiving Party in writing of the intended transfer, in accordance with procedures defined in the Administrative Arrangements, and that the proposed recipient, if other than the receiving Party, is an authorised person under the territorial jurisdiction of the receiving Party.
2. Nuclear material, non-nuclear material or equipment, referred to in paragraph 1 of this Article, shall remain subject to the provisions of this Agreement until it has been determined, in accordance with the procedures set out in the Administrative Arrangements:
  - (a) that such item has been retransferred beyond the jurisdiction of the receiving Party in accordance with the relevant provisions of this Agreement; or
  - (b) that nuclear material is no longer usable for any nuclear activity relevant from the point of view of safeguards referred to in paragraph 1 of Article VI of this Agreement or has become practically irrecoverable; or

- (c) that equipment or non-nuclear material is no longer usable for nuclear purposes; or
  - (d) that the Parties mutually determine that it should no longer be subject to this Agreement.
3. Technology transfer shall be subject to this Agreement for the Member States of the Community that have expressed their willingness to place such transfers in the framework of this Agreement through a written notification from the Member State concerned to the European Commission. A prior notification between the Member State(s) concerned and the European Commission, on one side, and South Africa, on the other, should be given before each transfer.

## **Article V**

### **Trade in nuclear material, non-nuclear material or equipment**

1. Any transfer of nuclear material, non-nuclear material or equipment carried out pursuant to the co-operation activities shall be made in accordance with the relevant international commitments of the Community, the Member States of the Community, and the Republic of South Africa in relation to peaceful uses of nuclear energy as listed in Article VI of this Agreement.
2. The Parties shall, to such extent as is practicable, assist each other in the procurement, by either Party or by persons within the Community or under the jurisdiction of the Republic of South Africa, of nuclear material, non-nuclear material or equipment.

3. The continuation of the co-operation envisaged in this Agreement shall be contingent upon the mutually satisfactory application of the system for safeguards and control established by the Community in accordance with the Euratom Treaty and of the system for safeguards and control of nuclear material, non-nuclear material or equipment established by the Republic of South Africa.
4. The provisions of this Agreement shall not be used to impede the implementation of the principle of free movement in the internal market within the EU.
5. Transfers of nuclear material subject to this Agreement and the provision of relevant services shall be carried out under fair commercial conditions and not jeopardise the international obligations of the Parties under the World Trade Organisation. The implementation of this paragraph shall be without prejudice to the Euratom Treaty and its derived legislation, and to South African laws and regulations.
6. Any retransfers of any nuclear material, non-nuclear material, equipment or technology subject to this Agreement outside the jurisdiction of the Parties shall only be made in the framework of the commitments undertaken by the Governments of individual Member States of the Community and the Republic of South Africa within the group of nuclear supplier countries known as the Nuclear Suppliers Group. In particular, the Guidelines for Nuclear Transfers, as set out in IAEA Information Circular INFCIRC/254/Rev.10/Part 1, shall apply to retransfers of any nuclear material, non-nuclear material, equipment or technology subject to this Agreement.



7. Where the Guidelines for Nuclear Transfers referred to in paragraph 6 of this Article require the supplier Party's consent for a retransfer, such consent shall be obtained in writing prior to any retransfer to a country not figuring upon the supplier Party's list of third countries established in accordance with paragraph 8 of this Article.
8. Upon entry into force of this Agreement, the Parties shall exchange lists of the third countries to which retransfers pursuant to paragraph 7 of this Article are authorised without the need to obtain prior authorisation from the supplier Party. Each Party shall notify the other Party of changes to its list of third countries.

## **Article VI**

### **Applying conditions to nuclear material subject to the Agreement**

1. Nuclear material subject to this agreement shall be subject to the following conditions:
  - (a) In the Community, to the Euratom safeguards pursuant to the Euratom Treaty and to the IAEA safeguards pursuant to the following safeguards agreements, as relevant, and as they may be revised and replaced, so long as coverage as required by the Non-Proliferation Treaty is provided for:
    - (i) the Agreement between the Community's non-nuclear weapon Member States, European Atomic Energy Community and the International Atomic Energy Agency, which entered into force on 21 February 1977 (published as INFCIRC/193);

- (ii) the Agreement between France, European Atomic Energy Community and the International Atomic Energy Agency, which entered into force on 12 September 1981 (published as INFCIRC/290);
  - (iii) the Agreement between the United Kingdom, European Atomic Energy Community and the International Atomic Energy Agency, which entered into force on 14 August 1978 (published as INFCIRC/263);
  - (iv) the Additional Protocols signed on 22 September 1998 which entered into force on 30 April 2004 on the basis of the document published as INFCIRC/540 (Strengthened Safeguards System, Part II);
- (b) in South Africa, to the IAEA safeguards pursuant to the Agreement between the Government of the Republic of South Africa and the IAEA for the Application of Safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons, which was signed and entered into force on 16 September 1991 and was published as INFCIRC/394, supplemented by the Additional Protocol, which was signed and entered into force on 13 September 2002, and to the African Nuclear-Weapon-Free Zone Treaty which was signed on 11 April 1996 and entered into force on 15 July 2009.

2. In the event of the application of any of the Agreements with the IAEA referred to in paragraph 1 of this Article being suspended or terminated for any reason within the Community or South Africa, the relevant Party shall enter into an agreement with the IAEA which provides for effectiveness and coverage equivalent to that provided by the safeguards agreements referred to in provisions a) or b) of paragraph 1 of this Article, or, if that is not possible,
- (a) the Community, as far as it is concerned, shall apply safeguards based on the Euratom safeguards system, which provides for effectiveness and coverage equivalent to that provided by the safeguards agreements referred to in provision a) of paragraph 1 of this Article or, if that is not possible,
  - (b) the Parties shall enter into arrangements for the application of safeguards, which provide for effectiveness and coverage equivalent to that provided by the safeguards agreements referred to in provisions a) or b) of paragraph 1 of this Article.

3. Application of physical protection measures shall be at all times at levels which satisfy as a minimum the criteria set out in Annex C of IAEA Information Circular INFCIRC/254/Rev.10/Part 1; supplementary to this document, the Member States of the Community, the European Commission, as appropriate, and South Africa will refer when applying physical protection measures to their obligations under the Convention on the Physical Protection of Nuclear Material done on 3 March 1980, including any amendments that are in force for each Party and the recommendations in Nuclear Security Recommendations on Physical Protection of Nuclear Material and Nuclear Facilities (INFCIRC/225/Revision 5), IAEA Nuclear Security Series No. 13. International transport shall be subject to the provisions of the International Convention on the Physical Protection of Nuclear Material done on 3 March 1980, including any amendments that are in force for each Party, and to the IAEA Regulations for the Safe Transport of Radioactive Materials (IAEA Safety Standards Series No. TS-R-1).
  
4. Nuclear safety and waste management shall be subject to the Convention on Nuclear Safety (IAEA Information Circular INFCIRC/449), the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (IAEA Information Circular INFCIRC/546), the Convention on Assistance in the case of a Nuclear Accident or Radiological Emergency (IAEA Information Circular INFCIRC/336), and the Convention on Early Notification of a Nuclear Accident (IAEA Information Circular INFCIRC/335).

## **Article VII**

### **Exchange of information and intellectual property**

Utilisation and diffusion of information and intellectual property rights, including industrial property, patents and copyrights, and technology transferred pursuant to the cooperative activities under this Agreement shall be in accordance with provisions in Annex A.

## **Article VIII**

### **Implementation of the Agreement**

1. The provisions of this Agreement shall be implemented in good faith in such a manner as to avoid hampering, delay or undue interference in the nuclear activities in South Africa and in the Community and so as to be consistent with the prudent management practices required for the economic and safe conduct of nuclear activities.
2. The provisions of this Agreement shall not be used for the purpose of seeking commercial or industrial advantages, nor of interfering with the commercial or industrial interests, whether domestic or international, of either Party or authorised persons, nor of interfering with the nuclear policy of either Party or of the Governments of the Member States of the Community, nor of hindering the promotion of the peaceful and non-explosive uses of nuclear energy, nor of hindering the movement of items subject to or notified to be made subject to this Agreement either within the respective territorial jurisdiction of the Parties or between South Africa and the Community.

3. Nuclear material subject to this Agreement shall be handled based on the principles of proportionality, fungibility and the equivalence of nuclear materials.
4. Any amendment to the documents published by the IAEA mentioned in Articles I, V or VI of this Agreement shall have effect under this Agreement only when the Parties have informed each other in writing through diplomatic channels that they accept such amendment.

## **Article IX**

### **Administrative Arrangements**

1. The competent authorities of both Parties shall establish Administrative Arrangements to ensure the effective implementation of the provisions of this Agreement.
2. Such Administrative Arrangements may, inter alia, cover financing provisions, assignment of management responsibilities, and detailed provisions on dissemination of information and intellectual property rights.
3. Administrative Arrangements established pursuant to paragraph 1 of this Article may be amended as mutually determined in writing by the competent authorities.

## **Article X**

### **Applicable law**

The co-operation provided for in this Agreement shall be in accordance with the laws and regulations in force in South Africa and within the European Union as well as with the international agreements entered into by the Parties. In the case of the Community the applicable law includes the Euratom Treaty and its derived legislation.

## **Article XI**

### **Non-compliance**

1. If either Party or any Member State of the Community violates any of the material provisions of this Agreement, the other Party may, on giving written notice to that effect, suspend or terminate in whole or in part co-operation under this Agreement.
2. Before either Party takes action to that effect, the Parties shall consult with a view to reaching a decision on whether corrective measures are needed, and if so, the corrective measures to be taken and the time-scale within which such measures shall be taken. Such action shall be taken only if there has been failure to take decided measures within the time decided by the Parties or, in the event of failure to find a solution, after the lapse of a period of time defined by the Parties.
3. Termination of this Agreement shall not affect the implementation of any arrangements and/or contracts made during the period of its validity but still not completed by the date of its termination, unless otherwise agreed upon by the Parties.

## Article XII

### Consultation and dispute resolution

1. At the request of either Party, representatives of the Parties shall meet when necessary to consult with each other on matters arising out of the interpretation or the implementation of this Agreement, to supervise its operation and to discuss arrangements for co-operation additional to those provided in this Agreement. Such consultations may take also the form of an exchange of correspondence.
2. Any dispute arising out of the interpretation, the application or the implementation of this Agreement which is not settled by negotiation or as may otherwise be agreed between the Parties shall, on the request of either Party, be submitted to an arbitral tribunal which shall be composed of three arbitrators. Each Party shall designate one arbitrator and the two arbitrators so designated shall elect a third, not a national of either Party, who shall be the Chairman. If within thirty days of the request for arbitration either Party has not designated an arbitrator, the other Party to the dispute may request the President of the International Court of Justice to appoint an arbitrator to the Party which has not designated an arbitrator. If within thirty days of the designation or appointment of arbitrators for both the Parties the third arbitrator has not been elected, either Party may request the President of the International Court of Justice to appoint the third arbitrator. A majority of the members of the arbitral tribunal shall constitute a quorum, and all decisions shall be made by majority vote of all the members of the arbitral tribunal. The arbitral procedure shall be fixed by the tribunal. The decisions of the tribunal shall be binding on both Parties and implemented by them. The remuneration of the arbitrators shall be determined on the same basis as that for ad hoc judges of the International Court of Justice.



3. For dispute resolution purposes, the English version of this Agreement shall be used.

### **Article XIII**

#### **Complementary provisions**

1. This Agreement is without prejudice to the right of the Member States to conclude bilateral agreements with South Africa, respecting the competences of the Member States on the one hand and the Community on the other, and in so far as such bilateral agreements are in full conformity with the aims and terms of this Agreement. Bilateral agreements concluded by certain Member States before the entry into force of this Agreement between the Community and South Africa may continue to apply.
2. Provisions for articulating those agreements and this Agreement should be projected, where appropriate, in accordance with the respective competence of the Parties, and subject to the agreement of concerned parties.

### **Article XIV**

#### **Amendments and status of the Annex**

1. The Parties may consult, at the request of either Party, on possible amendments to this Agreement, particularly to take account of international developments in the field of nuclear safeguards.

2. This Agreement may be amended if the Parties so agree.
3. Any amendment shall enter into force on the date the Parties, by exchange of diplomatic notes, specify for its entry into force.
4. The Annex to this Agreement forms an integral part of this Agreement and may be amended in accordance with paragraphs 1 to 3 of this Article.

## **Article XV**

### **Entry into force and duration**

1. This Agreement shall enter into force on the date of the latter written notification that internal procedures necessary for its entry into force have been completed by the Parties.
2. This Agreement shall remain in force for a period of ten years. Thereafter this Agreement shall be automatically renewed for additional periods of five years, unless, at least six months before the expiration of any such additional period, a Party notifies the other Party of its intention to terminate this Agreement.

3. Notwithstanding the suspension, termination or expiration of this Agreement or any co-operation hereunder for any reason, the obligations in Articles III, IV, V, VI, VII, VIII, IX and X of this Agreement shall continue in effect so long as any nuclear material, non-nuclear material or equipment subject to these Articles remains in the territory of the other Party or under its jurisdiction or control anywhere or until it is determined in accordance with the provisions of Article IV of this Agreement that such nuclear material is no longer usable, or is practicably irrecoverable for processing into a form in which it is usable, for any nuclear activity relevant from the point of view of safeguards.

Done at \_\_\_\_\_ in duplicate, 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.

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

*For the European Atomic Energy Community  
represented by the European Commission*

*For the Government  
of the Republic of South Africa*

\_\_\_\_\_

## ANNEX A

### **Guiding principles on the allocation of intellectual property rights resulting from joint research activities under the Agreement for cooperation in the peaceful uses of nuclear energy**

#### I. OWNERSHIP, ALLOCATION AND EXERCISE OF RIGHTS

1. This Annex shall apply to cooperative activities under this Agreement except as otherwise agreed by the Parties. The participants shall jointly develop technology management plans (TMPs) in respect of the ownership and use, including publication, of information and intellectual property, to be created in the course of cooperative activities. The TMPs shall be approved by the Parties before the conclusion of any specific Research and Development cooperation contracts to which they refer.

The TMPs shall be developed taking into account the aims of the cooperative activities, the relative contributions of the participants, peculiarities of licensing by territory or for a specific field of use, requirements imposed by laws applicable and other factors deemed appropriate by the participants. The rights and obligations concerning the research generated by visiting researchers under this Agreement in respect of RIA shall also be addressed in the joint TMPs.

2. RIA created in the course of cooperative activities 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 RIA shall be owned jointly by all the participants involved in the joint research from which the RIA results. Each participant to whom this provision applies shall have the right to use such RIA for his own commercial exploitation with no geographical limitation.
3. Each Party shall ensure that the other Party and its participants shall have the rights to RIA allocated to them in accordance with these principles.
4. While maintaining the conditions of competition in areas affected by this Agreement each Party shall endeavor to ensure that rights acquired pursuant to this 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 legally, or otherwise legally made available, under this Agreement;
  - (ii) the adoption and implementation of international technical standards.

## II. COPYRIGHT WORKS

Under this Agreement, copyright belonging to the Parties or to their participants shall be accorded treatment consistent with the Berne Convention for the protection of literary and artistic work (Paris Act 1971).

### III. SCIENTIFIC LITERARY WORKS

Without prejudice to section IV of this Annex, unless otherwise agreed in the TMP, publication of results of research shall be made jointly by the Parties or participants to those cooperative activities. Subject to the foregoing general rule, the following procedures shall apply:

- (a) in the case of publication by a Party or its other participants, of scientific and technical journals, articles, reports, books, including video and software, of the results arising from cooperative activities pursuant to this Agreement, the other Party or its other participants shall be entitled to a worldwide, non-exclusive, irrevocable, royalty-free license to translate, reproduce, adapt, transmit and publicly distribute such works;
- (b) the Parties shall ensure that literary works of a scientific character arising from cooperative activities pursuant to this Agreement and published by independent publishers shall be disseminated as widely as possible;
- (c) all copies of a copyright work to be publicly distributed and prepared under the provisions of this Agreement shall indicate the names or pseudonyms of the author(s) of the work unless an author or authors expressly declines or decline to be named. The copies shall also bear a clearly visible acknowledgment of the cooperative support of the Parties and/or their representatives and/or organizations.

#### IV. UNDISCLOSED INFORMATION

##### 1. Documentary undisclosed information

- (a) Each Party or its participants, as appropriate, shall identify, at the earliest possible moment and preferably in the TMP, the information that it wishes to remain undisclosed in relation to this Agreement, taking account, *inter alia*, of the following criteria:
- secrecy of the information in the sense that the information is not, as a body or in the precise configuration or assembly of its components, generally known among or readily accessible by lawful means to experts in the field,
  - the actual or potential commercial value of the information by virtue of its secrecy,
  - 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 of or all the information provided, exchanged or created in the course of cooperative activities pursuant to this Agreement shall not be disclosed;

- (b) each Party shall ensure that undisclosed information under this Agreement and its ensuing privileged nature is readily recognizable as such by the other Party, 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.

Party receiving undisclosed information pursuant to this Agreement shall respect the privileged nature thereof. These limitations shall automatically terminate when this information is disclosed by the owner without restriction to experts in the field;

- (c) 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 in the receiving Party authorized for the specific purposes of the cooperative activities under way, provided that any undisclosed information so disseminated shall be pursuant to a specific agreement on confidentiality and shall be readily recognizable as such, as set out above;
- (d) 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 (c). 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.



## 2. 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 this Annex, provided, however, that the recipient of such undisclosed or other confidential or privileged information has been made aware of the confidential character of the information communicated at the time such communication is made.

## 3. Control

Each Party shall endeavor to ensure that undisclosed information received by it under this Agreement shall be controlled as provided therein. If one of the Parties becomes aware that it will be, or may reasonably be, expected to become unable to meet the non-dissemination provisions of paragraphs 1 and 2, it shall immediately inform the other Party. The Parties shall thereafter consult to define an appropriate course of action.

## V. INDICATIVE FEATURES OF A TECHNOLOGY MANAGEMENT PLAN (TMP)

The TMP is a specific agreement to be concluded between the participants, about the implementation of cooperative activities and the respective rights and obligations of the participants. With respect to RIA, the TMP will normally address, inter alia: ownership, protection, user rights for R & D purposes, exploitation and dissemination, including arrangements for joint publication, the rights and obligations of visiting researchers and dispute settlement procedures. The TMP may also address foreground and background information, licensing and deliverables.