

99/0046(CNS)

Proposal for a
COUNCIL DECISION

of ...

concerning the Community position within the Association Council on the association of the Republic of Slovenia to Community programmes in the field of research, technological development and demonstration (1998 to 2002) and to programmes for research and training activities

(1998 to 2002)

(1999/C 75/07)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130m, in conjunction with Article 228(3), first subparagraph thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 101(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Slovenia, of the other part, entered into force on ...;

Whereas according to Article 106 and Annex XI of the Europe Agreement, Slovenia may participate in Community framework programmes, specific programmes, projects or other actions notably in the field of research and the terms and conditions for the participation of the Republic of Slovenia in the activities referred to in the said Article shall be decided by the Association Council;

Whereas, by Decision No .../.../EC, the European Parliament and the Council of the European Union adopted a Framework Programme of European Community activities in the field of research, technological development and demonstration (1998-2000), hereinafter called the fifth framework programme ⁽¹⁾,

Whereas, by Decision No .../.../Euratom, the Council of the European Union adopted a Framework Programme of the European Atomic Energy Community for research and training activities (1998-2002), hereinafter called the fifth Euratom framework programme ⁽²⁾,

HAS DECIDED AS FOLLOWS:

The position to be taken by the Community within the Association Council established by the Europe Agreement between the European Communities and their Member States, of the one part, and the Republic of Slovenia, of the other part, concerning the participation of the Republic of Slovenia in the fifth framework programme and in the fifth Euratom framework programme is that set out in the attached draft decision of the Association Council.

Done at ...

For the Council

...

The Chairman

⁽¹⁾ OJ L ...

⁽²⁾ OJ L ...

Proposal for

DECISION No .../... OF THE ASSOCIATION COUNCIL

between the European Communities and their Member States of the one part, and the Republic of Slovenia, of the other part

of ...

adopting the terms and conditions for the participation of Slovenia in Community programmes in the field of research, technological development and demonstration (1998-2002) and in programmes for research and training activities (1998-2002)

THE ASSOCIATION COUNCIL,

Having regard to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Slovenia of the other part ⁽¹⁾,

Whereas according to Article 106 and Annex XI of the Europe Agreement, Slovenia may participate in Community framework programmes, specific programmes, projects or other Community actions notably in the fields of research and technological development;

Whereas the European Council at its meeting in Luxemburg on 12 and 13 December 1997 calls for the opening of certain Community programmes (such as in the field of research) to the candidate countries, as a way of familiarising themselves with the policies and working methods of the Union, each candidate country being expected to make a steadily increasing financial contribution of its own (PHARE will, if necessary, be able to part-finance the applicant States' national contributions);

Whereas the aforementioned conclusions also call for the participation of the candidate countries, as observers and for the points which concern them, in the committees assisting the Commission in the implementation of the programmes to which they contribute financially;

Whereas, by Decision No .../.../EC, the European Parliament and the Council of the European Union adopted a Framework Programme of European Community activities in the field of research, technological development and demonstration (1998-2002), hereinafter called the 'fifth framework programme';

Whereas, by Decision No .../.../Euratom, the Council of the European Union adopted a Framework Programme of the European Atomic Energy Community for research and training activities (1998-2002), hereinafter called the 'fifth Euratom framework programme';

Whereas according to Article 106 of the Europe Agreement the terms and conditions for the participation of Slovenia in the activities referred to in Annex XI of the said Agreement are to be decided by the Association Council;

⁽¹⁾ OJ L ... 199., p. ...

HAS DECIDED AS FOLLOWS:

Article 1

Slovenia may participate in the specific programmes of the Framework Programme of European Community activities in the field of research, technological development and demonstration (1998-2002), hereinafter called the 'fifth framework programme', and in the specific programmes of the fifth framework programme of the European Atomic Energy Community for research and training activities (1998-2002), hereinafter called the 'fifth Euratom framework programme', according to the terms and conditions set out in Annexes I, II and III which shall form an integral part of this Decision.

Article 2

This Decision shall apply for the duration of the fifth framework programme and of the fifth Euratom framework programme.

Article 3

This Decision shall enter into force on the first day of the month following its adoption.

Done at . . .

For the Association Council

...

The Chairman

ANNEX I

TERMS AND CONDITIONS FOR THE PARTICIPATION OF SLOVENIA IN THE SPECIFIC PROGRAMMES OF THE FIFTH FRAMEWORK PROGRAMME AND OF THE FIFTH EURATOM FRAMEWORK PROGRAMME

1. Research entities established in Slovenia may participate in all the specific programmes of the fifth framework programme and of the fifth Euratom framework programme. Slovenian scientists or research entities may participate in the activities of the Joint Research Centre.

'Research entities' as referred to in this Decision, shall include *inter alia* universities, research organisations, industrial companies, including small and medium-sized enterprises, or natural persons.

2. This will imply the following:
 - participation of research entities established in Slovenia in the implementation of all specific programmes adopted under the fifth framework programme, in accordance with the terms and conditions laid down in the 'rules for the participation of undertakings, research centres and universities and for the dissemination of research results for the implementation of the fifth framework programme of the European Community'.
 - participation of research entities established in Slovenia in the implementation of all specific programmes adopted under the fifth Euratom framework programme in accordance with the terms and conditions laid down in the 'rules for participation of undertakings, research centres and universities and for the implementation of the fifth framework programme of the European Atomic Energy Community'.
 - financial contribution by Slovenia to the budgets of the programmes adopted for the implementation of the fifth framework programme and the fifth Euratom framework programme on the basis of the ratio of the GDP of Slovenia to the sum of the GDP of the Member States of the European Union and that of Slovenia.
3. Research entities established in Slovenia participating in Community research programmes, shall, as regards ownership, exploitation and dissemination of information and intellectual property arising from such participation, have the same rights and obligations as those of research entities established in the Community, subject to the provisions of Annex II.
4. The relevant sub-committee set up by the Association Council under the Europe Agreement shall review and evaluate the implementation of this Decision.
5. The financial contribution of Slovenia deriving from participation in the implementation of the specific programmes shall be established in proportion to, and in addition to, the amount available each year in the general budget of the European Union for commitment appropriations to meet the Commission's financial obligations stemming from work to be carried out in the forms necessary for the implementation, management and operation of these programmes.
 - The proportionality factor governing the contribution of Slovenia shall be obtained by establishing the ratio between the gross domestic product of Slovenia, at market prices, and the sum of gross domestic products, at market prices, of the Member States of the European Union and Slovenia. This ratio shall be calculated on the basis of the latest statistical data pertaining to the same year from the Statistical Office of the European Communities (Eurostat), available at the time of publication of the preliminary draft budget of the European Union.
 - In order to facilitate its participation in the specific programmes, the contribution of Slovenia will be implemented as follows:
 - Year 1 of FP 5: contribution according to the proportionality factor fixed in accordance with the preceding indent, multiplied by 0,4.

- Year 2 of FP 5: contribution according to the proportionality factor fixed in accordance with the preceding indent, multiplied by 0,6.
- Year 3 of FP 5: contribution according to the proportionality factor fixed in accordance with the preceding indent, multiplied by 0,8.
- Year 4 of FP 5: contribution according to the proportionality factor fixed in accordance with the preceding indent.

- The rules for financial participation by the Community are set out in Annex . . . of the European Parliament and the Council Decision No . . . /EC, and in Annex III of the Council Decision No . . . /Euratom.
- The rules governing the financial contribution of Slovenia are set out in Annex III.

6. Without prejudice to the provisions of paragraph 3, research entities established in Slovenia participating in the fifth framework programme and in the fifth Euratom framework programme shall have the same contractual rights and obligations as entities established in the Community, taking into account the mutual interests of the Community and Slovenia.

For research entities of Slovenia, the terms and conditions applicable for the submission and evaluation of proposals and those for the granting and conclusion of contracts under Community programmes shall be the same as those applicable for contracts concluded under the same programmes with research entities in the Community, taking into account the mutual interests of the Community and Slovenia.

Experts of Slovenia shall be taken into consideration, alongside Community experts, in the selection of evaluators or experts under the Community's research and technological development and demonstration programmes and as members of the advisory groups and other consultative bodies which assist the Commission in the implementation of the fifth framework programme and the fifth Euratom framework programme.

A research entity of Slovenia may be coordinator of a project under the same terms and conditions applicable to entities established in the Community. In conformity with the Community's Financial Regulations, contractual arrangements concluded with, or by, research entities of Slovenia shall provide for controls and audits to be carried out by, or under the authority of, the Commission and the Court of Auditors. As far as financial audits are concerned, they may be carried out with the purpose of controlling such entities income and expenditures, related to the contractual obligations towards the Community. In a spirit of cooperation and mutual interest, the relevant authorities of Slovenia shall provide any reasonable and feasible assistance as may be necessary or helpful under the circumstances to perform such controls and audits.

7. The Community and Slovenia will make every effort, within the framework of the existing provisions, to facilitate the free movement and residence of research workers participating, in Slovenia and in the Community, in the activities covered by this Decision and to facilitate cross border movement of goods intended for use in such activities.

Activities covered by this Decision shall be exempt from imposition by Slovenia of indirect taxes, customs duties, prohibitions and restrictions on imports and exports in respect of goods and services intended for use under such activities.

8. Representatives of Slovenia will, for the points which concern them, participate as observers in the programme committees of the fifth framework programme and in the Consultative Committee of the fifth Euratom framework programme. These committees shall meet without the presence of representatives of Slovenia at the time of voting. Slovenia will be informed. Participation shall take the same form, including procedures for receipt of information and documentation, as that applicable to participants from Member States.

9. The Community and Slovenia may terminate activities under this Decision at any time upon 12 months' notice in writing. Projects and activities in progress at the time of termination shall continue until their completion under the conditions laid down in this Decision.

Should the Community decide to revise one or more Community programmes, activities under this Decision may be terminated under mutually agreed conditions. Slovenia shall be notified of the exact content of the revised programmes within one week of their adoption by the Community. The Community and Slovenia shall notify one another, within one month after the adoption of the Community decision, of any intention to terminate the activities.

Where the Community adopts a new multi-annual framework programme for research and development and/or for research and training activities, the Association Council may decide the terms and conditions for the participation of Slovenia.

ANNEX II

PRINCIPLES ON THE ALLOCATION OF INTELLECTUAL PROPERTY RIGHTS

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

I. Application

This Annex is applicable to research carried out pursuant to this Decision (hereinafter referred to as 'joint research'), except as, otherwise specifically agreed by the Community and Slovenia, (hereinafter referred to as 'the parties').

II. Ownership, allocation and exercise of rights

1. For purposes of this Decision 'intellectual property' shall have the meaning found in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm, 14 July 1967.
2. This Annex addresses the allocation of rights, interests and royalties 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 the Annex. This Annex does not otherwise alter or prejudice the allocation of rights, interests and royalties between a party and its nationals or participants, which shall be determined by the laws and practices applicable to each party.
3. The following principles shall apply and shall be provided for in the contractual arrangements:
 - (a) Adequate protection of intellectual property. The parties, their agencies and/or their participants, as appropriate, shall ensure that they notify one another within a reasonable time of the creation of any intellectual property arising under this Decision or implementing arrangements and to seek protection for such intellectual property in a timely fashion.
 - (b) Taking account of the contributions of the parties or their participants in determining the rights and interests of the parties and participants.
 - (c) Effective exploitation of results.
 - (d) Non-discriminatory treatment of participants from the other party as compared with the treatment given to its own participants.
 - (e) Protection of Business-Confidential information.
4. The participants shall jointly develop a Technology Management Plan (TMP) in respect of the ownership and use, including publication, of information and intellectual property to be created in the course of joint research. The indicative features of a TMP are contained in the Appendix to this Annex. 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 contract to which it is attached.

The TMPs shall be developed taking into account the aims of the joint research, the relative financial or other contributions of the parties or participants, the advantages and disadvantages of licensing by territory or for fields of use, requirements imposed by the applicable laws including those of the parties concerning IP rights and other factors deemed appropriate by the participants. The rights and obligations concerning the research generated by visiting researchers in respect of IP shall also be addressed in the joint technology management plans.

5. Information or IP created in the course of joint research and not addressed in the technology management plan shall be allocated, with the approval of the parties, according to the principles set out in the technology management plan. 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 shall ensure that the other party and its participants may have the rights to IP allocated to them in accordance with these principles.
7. While maintaining the conditions of competition in areas affected by this Decision, each party shall endeavour to ensure that rights acquired pursuant to this Decision 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 this Decision, and (ii) the adoption and implementation of international standards.
8. Termination of the cooperation shall not affect rights or obligations under this Annex.

III. Copyright works

Copyright belonging to the parties or to their participants shall be accorded treatment consistent with the TRIPS Agreement (Agreement on Trade Related Aspects of Intellectual Property Rights administered by the World Trade Organisation) as well as the Berne Convention (Paris Act 1971).

IV. Scientific literary works

Without prejudice to Section V, and unless otherwise agreed in the TMP, publication of results of research shall be made jointly by the parties or participants to that joint research. Subject to the foregoing general rule, the following procedures shall apply:

1. In the case of publication by a party or public bodies of that party of scientific and technical journals, articles, reports, books, including video and software arising from joint research pursuant to this Decision, the other party shall be entitled to a world-wide, non-exclusive, irrevocable, royalty-free licence to translate, reproduce, adapt, transmit and publicly distribute such works.
2. The parties shall ensure that literary works of a scientific character arising from joint research pursuant to this Decision and published by independent publishers shall be disseminated as widely as possible.
3. All copies of a copyright work to be publicly distributed and prepared under this provision shall indicate the names of the author(s) of the work unless an author explicitly declines to be named. They shall also bear a clearly visible acknowledgement of the cooperative support of the parties.

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 technology management plan the information that they wish to remain undisclosed, taking into account *inter alia* the following criteria:
 - (a) confidentiality 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 field;
 - (b) the actual or potential commercial value of the information by virtue of its confidentiality;
 - (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 confidentiality.

The parties, their agencies and their participants, as appropriate, 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 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 and a participant receiving undisclosed information shall respect the privileged nature thereof. These limitations shall automatically terminate when this information is disclosed by the owner into the public domain.

3. Undisclosed information communicated under this Decision may be disseminated by the receiving party or its organisation to persons within or employed by the receiving party or organisation authorised for the specific purposes of the joint research under way, provided that any undisclosed information so disseminated shall be pursuant to an agreement of confidentiality and shall be readily recognisable as such, as set out above.
4. With the prior written consent of the party providing undisclosed information, the receiving party may disseminate such undisclosed information more widely than otherwise permitted in paragraph 3. The parties shall cooperate in developing procedures for requesting and obtaining prior written consent for such wider dissemination, and each party 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 information provided in seminars and other meetings arranged under this Decision, 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 Decision; 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.

C. *Control*

Each party shall endeavour to ensure that undisclosed information received by it under this Decision shall be controlled as provided herein. If one of the parties becomes aware that it will be, or may be reasonably expected to become, unable to meet the non-dissemination provisions of Sections A and B, it shall immediately inform the other party. The parties shall thereafter consult to define an appropriate course of action.

Appendix to Annex II

Indicative features of a Technology Management Plan (TMP)

The TMP is a specific agreement to be concluded between the participants about the implementation of joint research and the respective rights and obligations of the participants.

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 may also address foreground and background information, licensing and deliverables.

ANNEX III

FINANCIAL RULES GOVERNING THE FINANCIAL CONTRIBUTION OF SLOVENIA REFERRED TO IN ANNEX I, PARAGRAPH 5 OF THIS DECISION

1. The Commission shall communicate to Slovenia, and shall inform the sub-committee referred to in Annex I, paragraph 4 of this Decision, together with relevant background material, as soon as possible, and at the latest on 1 September, of each financial year:
 - the amounts in commitment appropriations, in the statement of expenditure of the preliminary draft budget of the European Union corresponding to the fifth framework programme and to the fifth Euratom framework programme;
 - the estimated amount of the contributions derived from the preliminary draft budget, corresponding to the participation of Slovenia in the fifth framework programme and in the fifth Euratom framework programme.

Nonetheless, in order to facilitate internal budgetary procedures, the Commission services shall provide corresponding indicative figures at the latest on 30 May of each year.

As soon as the general budget has been finally adopted the Commission shall communicate to Slovenia the above amounts in the statement of expenditure corresponding to the participation of Slovenia.

2. The Commission shall issue, at the latest on 1 January and 15 June of each financial year, a call for funds to Slovenia corresponding to its contribution under this Decision. These calls for funds shall provide, respectively, for the payment:
 - of six-twelfths of the contribution of Slovenia not later than 20 February,
 - and six-twelfths of its contribution not later than 15 July.

However, the six-twelfths, to be paid not later than 20 February are calculated on the basis of the amount set out in the statement of revenue of the preliminary draft budget: the regularisation of the amount thus paid shall occur with the payment of the six-twelfths not later than 15 July.

For the first year of implementation of this Decision, the Commission shall issue a first call for funds within 30 days of its entry into force. Should this call be issued after 15 June, it shall provide for the payment of twelve/twelfths of the contribution of Slovenia within 30 days, calculated on the basis of the amount set out in the statement of the revenue of the budget.

The contribution of Slovenia shall be expressed and paid in Euros.

Slovenia shall pay its contribution under this Decision according to the schedule in this paragraph. Any delay in payment shall give rise to the payment of interest at a rate equal to the one-month interbank offered rate (IBOR) in Euros as quoted by the International Swap Dealers' Association on the page ISDA of Reuters. This rate shall be increased by 1,5 % for each month of delay. The increased rate shall be applied to the entire period of delay. However, the interest shall be due only if the contribution is paid more than 30 days after the scheduled payment dates mentioned in this paragraph.

Travel costs incurred by representatives and experts of Slovenia for the purposes of taking part in the work of the committee referred to in Annex I, paragraphs 6 and 8 and those involved in the implementation of the fifth framework programme and the fifth Euratom framework programme shall be reimbursed by the Commission on the same basis as and in accordance with the procedures currently in force for the representatives and experts of the Member States of the European Union.

3. The financial contribution of Slovenia to the fifth framework programme and the fifth Euratom framework programme in accordance with Annex I, paragraph 5 shall normally remain unchanged for the financial year in question.

The Commission, at the time of the closure of the accounts relating to each financial year (n), within the framework of the establishment of the revenue and expenditure account, shall proceed to the regularisation of the accounts with respect to the participation of Slovenia, taking into consideration modifications which have taken place, either by transfer, cancellations, carry-overs, decommitments, or by supplementary and amending budgets during the financial year. This regularisation shall occur at the time of the second payment for the year n+1. Further regularisation shall occur every year until July 2006.

Payment by Slovenia shall be credited to the Community programmes as budget receipts allocated to the appropriate budget heading in the statement of revenue of the general budget of the European Union.

The financial regulation applicable to the general budget of the European Union shall apply to the management of the appropriations.

4. At the latest on 31 May of each financial year (n+1), the statement of appropriations for the fifth framework programme and the fifth Euratom framework programme related to the previous financial year (n), shall be prepared and transmitted to Slovenia for information, according to the format of the Commission's revenue and expenditure account.
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