



EUROPEAN COMMISSION

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Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement between the European Union, on the one hand, and the People's Democratic Republic of Algeria, on the other, on cooperation in science and technology

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The Euro-Mediterranean Agreement establishing an association (hereinafter referred to as ‘the association agreement’) between the European Community and its Member States, on the one hand, and the People's Democratic Republic of Algeria (hereinafter referred to as ‘Algeria’), on the other, was signed on 22 April 2002. Article 50(d) of the Agreement identifies cooperation in scientific and technological research as an area of particular interest and potential, while Article 51(a), in particular, provides for the establishment of permanent links between the two parties’ scientific communities.

The European Neighbourhood Policy, to which Algeria is not party but which provides a framework for relations between the European Union and its neighbours, establishes a new framework for implementing the association agreement. Commission Communication COM(2004) 373 final of 12 May 2004 defines scientific and technological cooperation and R&D as one of the priorities of our relations with the Mediterranean countries. In line with the European Neighbourhood Policy, a strategy document for 2007-13 describes scientific research as an essential element that contributes to building a knowledge society and to reducing unemployment as the economy becomes more open.

In a letter of 30 May 2006 the Algerian authorities expressed their interest in launching negotiations with a view to concluding an agreement between the EC and Algeria on cooperation in science and technology. In a letter of 8 January 2007 the Commission accepted to make an exploratory and evaluation visit to Algeria to prepare for the negotiations. Exploratory talks took place in 2008. Upon a proposal of the Commission, the Council authorised the Commission on 16 November 2009 to negotiate on behalf of the European Union an agreement on cooperation in science and technology with the People's Democratic Republic of Algeria and issued the relevant negotiating directives. The negotiations resulted in the attached draft agreement text initialled on 14 October 2010.

Concluding an agreement in the field of science and technology would serve the mutual interests of the European Union and Algeria, as it would enable continuing and strengthening cooperation with that country. Such cooperation would promote the development and competitiveness of Algeria and the entire region and would create closer ties between the two parties, to the benefit of the European Union. A science and technology cooperation agreement would be the most appropriate tool for reinforcing Algeria's cooperation with and participation in the framework programme and for intensifying dialogue related to science and technology.

In light of the above considerations, the Commission invites the Council:

- to adopt the conclusion of the Agreement between the European Union, on the one hand, and the People's Democratic Republic of Algeria, on the other, on cooperation in science and technology;
- to notify the Algerian authorities that the European Union has completed the procedures necessary for the entry into force of the Agreement.

2. LEGAL ELEMENTS OF THE PROPOSAL

Article 186 in conjunction with Article 218(6) of the Treaty on the Functioning of the European Union.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 186 in conjunction with Article 218(6) and (7) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament¹,

Whereas:

- (1) on 16 November 2009 the Council authorised the Commission to negotiate, on behalf of the European Union, an agreement on cooperation in science and technology with the People's Democratic Republic of Algeria. The negotiations resulted in an agreement initialled on 14 October 2010.
- (2) this Agreement was signed by the representatives of the parties on, subject to its conclusion at a later date, and provisionally applied upon its signature, pursuant to Article 218(5) of the Treaty on the Functioning of the European Union.
- (3) The Agreement should be concluded on behalf of the European Union,

HAS ADOPTED THIS DECISION:

Article 1

1. The Agreement between the European Union, on the one hand, and the People's Democratic Republic of Algeria, on the other, on cooperation in science and technology is concluded on behalf of the European Union.
2. The text of the Agreement is attached to this Decision.

¹ OJ C [...] [...], p. [...]

Article 2

The President of the Council, on behalf of the European Union, shall make the notification provided for in Article 7(2) of the Agreement.

Article 3

The Commission shall adopt the position of the European Union to be taken in the Joint Committee established by Article 4(2) of the Agreement with regard to technical amendments to the Agreement in accordance with Article 4(2)(a) of the Agreement.

Article 4

This Decision shall enter into force on the date of its adoption. It shall be published in the Official Journal of the European Union.

Done at

*For the Council
The President*

ANNEX

AGREEMENT

**between the European Union and the People's Democratic Republic of Algeria on
scientific and technological cooperation**

the European Union

(hereinafter referred to as 'the Union')

of the one part,

AND

the People's Democratic Republic of Algeria

(hereinafter referred to as 'Algeria')

of the other part,

hereinafter referred to as 'the Parties',

HAVING REGARD TO the importance of science and technology for the economic and social development of the two Parties and the reference made in Article 51 of the Euro-Mediterranean Agreement establishing an association between the European Community and its Member States, on the one hand, and the People's Democratic Republic of Algeria, on the other hand, which came into force on 1 September 2005;

HAVING REGARD to the European Neighbourhood Policy and the European Union's strategy for strengthening its relations with neighbouring countries;

WHEREAS the Union and Algeria have undertaken joint research, technological development and demonstration activities, in various fields of common interest, and it would be to their mutual advantage for each to take part in the other party's research and development activities, on a reciprocal basis;

WISHING to establish a formal framework for cooperation in scientific and technological research which would make it possible to extend and intensify cooperative efforts in the fields of common interest and to encourage the use of the results of this cooperation to further the Parties' mutual economic and social interests;

WISHING to open the European Research Area to non-member countries and in particular to the Mediterranean partner countries;

Have agreed as follows:

Article 1

Scope and principles

1. The Parties shall encourage, develop and facilitate cooperation activities between the Union and Algeria in fields of common interest where they are pursuing research and development activities in science and technology.
2. Cooperation activities shall be conducted on the basis of the following principles:
 - (a) promotion of a knowledge-based society to foster the social and economic development of both Parties;
 - (b) mutual benefit based on an overall balance of advantages;
 - (c) reciprocal access to the activities of research programmes and technological developments undertaken by each Party;
 - (d) timely exchange of information which may facilitate cooperative activities;
 - (e) appropriate exchange and protection of intellectual property rights;
 - (f) participation and funding in compliance with the relevant laws and regulations of the Parties.

Article 2

Means of cooperation

1. Legal entities established in Algeria, as defined in Annex I, including either physical persons or private or public legal persons, shall participate in indirect cooperation activities of the European Union's Framework Programme for research and technological development and demonstration activities (hereinafter referred to as the 'Framework Programme'), in accordance with the terms and conditions established by or referred to in Annexes I and II.

Legal entities established in the Member States of the Union, as defined in Annex I, shall participate in Algeria's research programmes and projects in thematic areas equivalent to those of the Framework programme under the same terms and conditions established by, or referred to in Annexes I and II.

2. Cooperation may also take the following forms:
 - (a) regular discussions on the guidelines and priorities for research policies and planning in Algeria and the Union;
 - (b) discussions on cooperation, developments and future prospects;
 - (c) the timely provision of information concerning the implementation of programmes and research projects of Algeria and of the Union, and concerning the results of work undertaken within the framework of this Agreement;
 - (d) joint meetings;

- (e) visits and exchanges of research workers, engineers and technicians, including for training purposes;
- (f) exchanges and sharing of equipment, materials and testing services;
- (g) contacts between programme or project managers of Algeria and the Union;
- (h) participation of experts in seminars, symposia and workshops;
- (i) exchanges of information on practices, laws, regulations, and programmes relevant to cooperation under this Agreement;
- (j) research and technological development training;
- (k) reciprocal access to scientific and technologic information in the framework of this cooperation;
- (l) any other means to be adopted by the European Union-Algeria Joint Scientific and Technological Cooperation Committee, as defined in Article 4, and deemed in conformity with the policies and procedures applicable in both Parties;
- (m) supporting the optimum exploitation of the results of research and development by innovating companies in order to promote the spread of new knowledge and innovation;
- (n) assisting the management of scientific research and supporting the setting up of an information system on research;
- (o) examining the possibility of cooperation in setting up incubators and nurseries and the start-up and creation of research centres, including by means of European programmes other than the Framework Programme;
- (p) promoting cooperation by means of research and development projects;
- (q) access to research infrastructures;
- (r) possibility of co-financing and coordinating research activities.

Article 3

Enhancement of cooperation

The Parties shall make every effort, within the framework of their applicable legislation, to facilitate the free movement and residence of research workers participating in the activities covered by this Agreement and to facilitate cross-border movement of goods intended for use in such activities.

Article 4

Management of the Agreement

European Union-Algeria Joint Scientific and Technological Cooperation Committee

1. The coordination and facilitation of activities under this Agreement shall be performed on behalf of Algeria, by the Ministry of Higher Education and Scientific Research and, on behalf of the Union, by the European Commission, acting as executive agents of the Parties (hereinafter referred to as 'executive agents').

2. The executive agents shall establish a joint committee called the 'European Union-Algeria Joint Scientific and Technological Cooperation Committee' (hereinafter 'the Joint Committee'), whose functions shall include:

(a) ensuring, evaluating and reviewing the implementation of this Agreement, as well as modifying its Annexes or adopting new ones to take account of developments in the Parties' scientific policies, subject to the fulfilment by each of the Parties of its internal procedures for that purpose;

(b) identifying, on an annual basis, potential sectors where cooperation should be developed and improved and examine any measure which could be taken to that end;

(c) regularly examining the future orientations and priorities of research policies and research planning in Algeria and the Union and the prospects for future cooperation within the framework of this Agreement;

(d) making recommendations to the Parties with regard to the implementation of this Agreement, including the identification and recommendation of additions to the activities referred to in Article 2(2) and specific measures to improve the mutual access provided for under Article 1(2);

(e) making, subject to each Party's domestic approval processes, technical amendments to this Agreement as may be required.

3. The Joint Committee, which shall be formed of representatives of the Executive Agents, shall adopt its rules of procedure.

4. The Joint Committee shall normally meet once a year, with the location of that meeting alternating between the EU and Algeria. Extraordinary meetings shall be held whenever necessary and agreed between the Parties. The conclusions and recommendations of the Joint Committee shall be sent for information to the Association Committee of the Euro-Mediterranean Agreement between the European Union and the People's Democratic Republic of Algeria.

Article 5

Financing

The level of participation in research activities under this Agreement is set according to the conditions defined in Annex I and is subject to the legislation, regulations, policies and conditions of implementation of the programmes in force in the territory of each Party.

When one Party grants financial support to participants of the other Party in connection with indirect cooperative activities, any grants and financial or other contributions made by the funding Party to participants of the other Party in support of those activities shall be granted tax and customs duty exemption in accordance with the relevant laws and regulations in force

in the territory of each Party at the time such grants and financial or other contributions are made.

Article 6

Dissemination and use of the results and information

The dissemination and the use of the results and information obtained and/or exchanged and the management, allocation and exercise of intellectual property rights resulting from the research activities undertaken under this Agreement shall be subject to the conditions provided for in Annex II.

Article 7

Final provisions

1. Annexes I and II shall form an integral part of this Agreement. Any questions or disputes relating to the interpretation or implementation of this Agreement shall be settled by mutual agreement of the Parties.
2. This Agreement shall enter into force once the Parties have notified each other of the completion of their internal procedures for its conclusion. Pending the completion of these procedures by the Parties, the Parties shall provisionally apply this Agreement upon its signature. Should a Party notify the other that it will not conclude the Agreement, the projects and activities commenced during the period of provisional application and which are still ongoing at the time of the aforementioned notification shall continue until their completion under the conditions laid down in this Agreement.
3. Either of the Parties may terminate this Agreement at any time by giving six months' notice. Projects and activities in progress at the time of termination of the Agreement shall continue until their completion under the conditions laid down therein.
4. This Agreement shall remain 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 it. In this event, the Agreement shall cease to have effect six months after the receipt of such notification.
5. If one of the Parties decides to modify its research programmes or projects referred to in Article 1(1), the executive agent of that Party shall notify the executive agent of the other Party of the precise content of the amendments in question. By way of derogation from paragraph 3 of this Article, this Agreement may be terminated under mutually agreed conditions should either of the Parties notify the other within one month after the adoption of the amendments referred to in this paragraph of its intention to terminate this Agreement.
6. This Agreement shall apply, on the one hand, to the territories in which the Treaty on European Union and the Treaty on the Functioning of the European Union apply and under the conditions laid down in these Treaties, and, on the other hand, to the territory of the People's Democratic Republic of Algeria. This shall not prevent the conduct of cooperative activities on the high seas, in space, or the territory of third countries, in accordance with international law.

IN WITNESS WHEREOF, the undersigned, being duly authorised to that end by the European Union and the People's Democratic Republic of Algeria respectively, have signed this agreement.

DONE in duplicate at....., this ... day of, in the Bulgarian, Spanish, Czech, Danish, German, Estonian, Greek, English, French, Italian, Latvian, Lithuanian, Hungarian, Maltese, Dutch, Polish, Portuguese, Romanian, Slovak, Slovenian, Finnish, Swedish and Arabic languages, each text being equally authentic.

FOR THE EUROPEAN UNION

FOR THE PEOPLE'S
DEMOCRATIC REPUBLIC OF
ALGERIA

ANNEX I

Terms and conditions for the participation of legal entities established in Member States of the European Union and in Algeria

For the purpose of this Agreement, a ‘legal entity’ means any natural person, or any legal person created under the national law of its place of establishment or under European Union law or international law, having legal personality and being entitled to have rights and obligations of any kind in its own name.

I. Terms and conditions for the participation of legal entities established in Algeria in indirect actions of the Framework Programme

1. The participation of legal entities established in Algeria in indirect actions of the Framework Programme shall follow the conditions laid down by the European Parliament and the Council according to Article 183 of the Treaty on the Functioning of the European Union.

2. The Union may grant funding to legal entities established in Algeria participating in the indirect actions referred to in paragraph 1 in accordance with the terms and conditions laid down by the decision(s) taken by the European Parliament and the Council in accordance with Article 183 of the Treaty on the Functioning of the European Union, the European Community’s Financial Regulation and other applicable EU legislation.

3. Provision must be made for the performance of controls and audits carried out by, or under the authority of, the European Commission and the European Court of Auditors in either a grant agreement or contract entered into by the Union with a legal entity established in Algeria in order to conduct indirect action or in the grant decision issued by the Union.

In the spirit of cooperation and mutual interest, the relevant Algerian authorities shall provide any reasonable and feasible assistance as may be necessary or helpful in order to perform such controls and audits and recovery measures.

II. Terms and conditions for the participation of legal entities established in Member States of the Union in Algerian research programmes and projects

1. Any legal entity established in the Union, created under the national law of one of the Member States of the European Union or under EU law, may participate in Algerian research and development programmes and projects jointly with Algerian legal entities.

2. The rights and obligations of legal entities established in the Union participating in Algerian research projects in the context of research and development programmes, as well as the terms and conditions applicable for the submission and evaluation of proposals and for the granting and conclusion of contracts in such projects shall be subject to Algerian laws, regulations and government directives governing the implementation of research and development programmes, as applicable to Algerian legal entities and ensuring equal treatment, taking into account the nature of the cooperation between Algeria and the Union in this area.

The financing of legal entities established in the Union participating in Algerian projects as part of research and development programmes shall be subject to Algerian laws,

regulations and government directives governing the operation of these programmes, as applicable to non-Algerian legal entities.

III. Information on participation opportunities

Algeria and the European Commission shall regularly make available information on current programmes and participation opportunities for the benefit of legal entities established in the two Parties.

ANNEX II

Principles governing the allocation of intellectual property rights

I. Request

For the purposes of this Agreement, ‘intellectual property’ shall have the meaning given in Article 2 of the Convention establishing the World Intellectual Property Organisation, signed at Stockholm on 14 July 1967.

For the purposes of this Agreement, ‘knowledge’ shall mean the results, including information, irrespective of whether or not it can be protected, as well as copyrights or rights pertaining to such information, resulting from applications for, or the issue of, patents, designs, plant varieties, supplementary protection certificates or similar forms of protection.

II. Intellectual property rights of legal entities of the Parties participating in indirect cooperation activities

1. Each Party shall ensure that its treatment of the intellectual property rights and obligations of legal entities established in the other Party’s territories participating in indirect cooperation activities carried out pursuant to this Agreement, and the related rights and obligations arising from such participation, is consistent with the relevant laws and regulations and international conventions that are applicable to the Parties, including the Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C to the Marrakech Agreement Establishing the World Trade Organisation as well as the Paris Act of 24 July 1971 of the Berne Convention for the Protection of Literary and Artistic Works and the Stockholm Act of 14 July 1967 of the Paris Convention for the Protection of Industrial Property.

2. Each Party shall ensure that the participants in indirect cooperation activities of the other Party have the same treatment with regard to intellectual property as is accorded to the participants of the first Party under the rules of participation of each research programme or project, or its applicable laws and regulations.

III. Intellectual property rights of the Parties

1. Unless otherwise specifically agreed by the Parties, the following rules shall apply to knowledge generated by the Parties in the course of activities carried out in accordance with Article 2 of this Agreement:

(a) The Party generating such knowledge shall be the owner of that knowledge. Where their respective share of the work cannot be ascertained, the Parties shall have joint ownership of such knowledge;

(b) The Party owning that knowledge shall grant access rights to it to the other Party for carrying out activities referred to in Article 2 of this Agreement. Such access rights shall be granted on a royalty-free basis.

2. Unless otherwise agreed between the Parties, the following rules shall apply to scientific literature from the Parties:

(a) Where a Party publishes data, information and technical or scientific results arising from the activities undertaken under this Agreement in journals, articles, reports and books, including audiovisual works and software, a worldwide, non-exclusive, irrevocable royalty-free licence to translate, reproduce, adapt, transmit and publicly distribute the works in question shall be granted to the other Party;

(b) All copies of data and information, protected by copyright, which have to be publicly distributed and prepared under this section shall indicate the name(s) of the author(s) of the work unless an author explicitly declines to be named. Each copy shall also bear a clearly visible acknowledgement of the cooperative support of the Parties.

3. Unless otherwise specifically agreed by the Parties, the following rules shall apply to confidential information of the Parties:

(a) When communicating to the other Party information relating to activities carried out pursuant to this Agreement, each Party shall identify the information it wishes to remain undisclosed through confidentiality insignias or legends;

(b) The receiving Party may under its own responsibility communicate undisclosed information to bodies or persons under its authority for the specific purposes of implementing this Agreement;

(c) 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 (b). The Parties shall cooperate in developing procedures for requesting and obtaining prior written consent for such wider dissemination, and each Party shall provide such approval to the extent permitted by its domestic policies, regulations and laws;

(d) Non-documentary undisclosable or other confidential information provided in seminars and other meetings between representatives of the Parties arranged under this Agreement, or information arising from the secondment of staff, use of facilities or indirect cooperation activities, shall remain confidential when the recipient of such undisclosable or other confidential or privileged information was made aware of the confidential character of the information communicated prior to such communication being made, pursuant to paragraph (a);

(e) Each Party shall endeavour to ensure that the undisclosed information received by it under paragraphs (a) and (d) is protected as provided herein. If one of the Parties becomes aware that it will be, or may become, unable to comply with the non-dissemination provisions laid down in paragraphs (a) and (d), it shall immediately inform the other Party thereof. The Parties shall thereafter consult to define an appropriate course of action.