

EUROPEAN COMMISSION

> Brussels, 25.10.2013 COM(2013) 731 final

2013/0351 (NLE)

Proposal for a

COUNCIL DECISION

concerning the extension of the Agreement for scientific and technological cooperation between the European Community and the Government of the United States of America

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The Agreement on cooperation in science and technology between the European Community and the Government of the United States of America was signed in Washington on 5 December 1997 and entered into force on 14 October 1998. Article 12(b) of the Agreement provides as follows: "This Agreement is concluded for an initial period of five years. Subject to review by the Parties in the final year of each successive period, the Agreement may be extended with possible amendments, thereafter for additional period of five years by mutual written agreement by the Parties".

By Council Decision 2009/306/EC of 30 March 2009, the Agreement was extended for a further period of five years. The Agreement is due to expire on 14 October 2013.

Extension of the Agreement would be in the interest of both Parties so as to maintain continuity in the scientific and technological relations between the US and the European Union leading to socio-economic benefits for both Parties.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The Commission published in June 2013 a review of the Agreement in 2012-2013 conducted by independent experts.

Both sides confirmed their interest in extending the Agreement in order to continue to facilitate cooperation between the Union and the United States of America in common science and technology areas.

However, during exploratory talks and an exchange of letters with Dr Kerri-Ann Jones, Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs, the USA made the extension of the current Agreement conditional upon negotiation of some amendments. In a letter from 19 March 2013, Dr Jones identified the intellectual property rights annex as a potential area for negotiation. The USA is preparing an official note identifying all the areas which they would like to negotiate.

Considering that engagement in negotiations could lead to a lengthy process, which would most certainly go beyond the expiration date of the current Agreement, it was commonly decided to proceed on two parallel tracks:

- (1) start by extending the current Agreement under its existing provisions, in order to avoid any disruptions;
- (2) In parallel, the two parties will engage in a process which will lead to the negotiation of an amended Agreement. Such negotiations will require the Council to adopt a decision authorising the opening of negotiations in accordance with Article 218 (3) of the TFEU upon the Commission's recommendation.¹

3. LEGAL ELEMENTS OF THE PROPOSAL

The material content of the extended Agreement will be identical to that of the current Agreement.

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A Commission recommendation for the Council to adopt such a decision will be submitted separately.

4. **BUDGETARY IMPLICATION**

The Legislative Financial Statement presented with this decision sets out the indicative budgetary implications. The provisions of the Decision shall ensure that the financial interests of the Union are protected.

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

- To approve, on behalf of the Union, and following the consent of the European Parliament, the extension of the Agreement for scientific and technological cooperation between the European Community and the Government of the United States of America for an additional period of five years;
- To authorise the President of the Council to designate the person(s) empowered to notify the Government of the United States of America that the Union has completed its internal procedures necessary for the entry into force of this extended Agreement.

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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 point (v) of Article 218(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) By its Decision 98/591/EC of 13 October 1998, the Council approved the conclusion of the Agreement for scientific and technological cooperation between the European Community and the Government of the United States of America.
- (2) By Council Decision 2009/306/EC of 30 March 2009, the Agreement was extended for a further period of five years.
- (3) Article 12(b) of the Agreement provides as follows: 'This Agreement is concluded for an initial period of five years. Subject to review by the Parties in the final year of each successive period, the Agreement may be extended with possible amendments, thereafter for additional periods of five years by mutual written agreement by the Parties'.
- (4) The Parties to the Agreement consider that rapid extension of this Agreement would be in their mutual interest.
- (5) The content of the extended Agreement will be identical to the content of the Agreement, which expires on 14 October 2013.
- (6) The extension of the Agreement for scientific and technological cooperation between the European Community and the Government of the United States of America should be approved on behalf of the European Union.

HAS ADOPTED THIS DECISION:

Article 1

The extension of the Agreement for scientific and technological cooperation between the European Community and the Government of the United States of America, for an additional period of five years, is hereby approved on behalf of the European Union.

Article 2

Acting in accordance with Article 12 of the above Agreement and on behalf of the Union, the President of the Council shall notify the Government of the United States of America that the Union has completed its internal procedure necessary for the extension of the above Agreement.

Article 3

This Decision shall enter into force on \dots^2 .

Done at Brussels,

For the Council The President

² The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

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LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Proposal for a Council Decision concerning the extension of the Agreement for scientific and technological cooperation between the European Community and the Government of the United States of America

1.2. Policy area(s) concerned in the ABM/ABB structure³

Policy strategy and coordination of, in particular, the Directorates-General RTD, JRC, AGRI, CNECT, EAC, ENER, ENTR, MARE and MOVE.

1.3. Nature of the proposal/initiative

□ The proposal/initiative relates to **a new action**

 \Box The proposal/initiative relates to a new action following a pilot project/preparatory $action^4$

 \blacksquare The proposal/initiative relates to **the extension of an existing action**

 \Box The proposal/initiative relates to an action redirected towards a new action

1.4. Objectives

1.4.1. The Commission's multiannual strategic objective(s) targeted by the proposal/initiative

The present initiative will allow both parties to improve and intensify their cooperation in science and technology in areas of common interest.

1.4.2. Specific objective(s) and ABM/ABB activity(ies) concerned

Specific objective No 1

It will allow a further exchange of specific knowledge and a transfer of know-how to the benefit of the scientific communities, industry and the citizens.

ABM/ABB activity(ies) concerned

3

4

ABM: Activity-Based Management - ABB: Activity-Based Budgeting.

As referred to in Article 49(6)(a) or (b) of the Financial Regulation.

1.4.3. Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

This decision will allow the EU and the USA to derive mutual benefit from the scientific and technological progress achieved through research cooperation in their respective specific research programmes and facilitate further increased cooperation.

1.4.4. Indicators of results and impact

Specify the indicators for monitoring implementation of the proposal/initiative.

The Commission services will regularly monitor all actions carried out under the Agreement, which will include a review by the EU. The review will consist of the following elements;

(a) Number of new joint initiatives / activities carried out under the agreement.

(b) Cooperation through the Framework Programme – number of submitted proposals with US participants compared with number of proposals with US participants selected for funding under the programme.

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term

This decision will allow both parties to continue to improve and intensify their cooperation in mutually beneficial areas of science and technology.

1.5.2. Added value of EU involvement

The Agreement is based on the principles of mutual benefit, reciprocal access to programmes and activities of the other party, in connection with the subject of the Agreement, non-discrimination, effective protection of intellectual property and equitable sharing of IPR and effective exploitation of results. The extension of this Agreement will allow for increased scientific knowledge leading to market access opportunities.

1.5.3. Lessons learned from similar experiences in the past

Based on experience thus far in the S&T cooperation it is considered mutually beneficial to continue this cooperation with the USA by extending the Agreement.

1.5.4. Compatibility and possible synergy with other appropriate instruments

The extension of the Agreement with the USA is fully coherent with the opening up of participation in the EU Framework Programmes to the world.

1.6. Duration and financial impact

☑ Proposal/initiative of **limited duration**

- \square Proposal/initiative in effect from 14/10/2013 to 13/10/2018
- ☑ Financial impact from 2013 to 2018

\Box Proposal/initiative of **unlimited duration**

- Implementation with a start-up period from YYYY to YYYY,
- followed by full-scale operation.

1.7. Management mode(s) envisaged⁵

\blacksquare Centralised direct management by the Commission

 \Box Centralised indirect management with the delegation of implementation tasks to:

- \Box executive agencies
- \Box bodies set up by the Communities⁶
- − □ national public-sector bodies/bodies with public-service mission
- □ Shared management with the Member States
- Decentralised management with third countries
- □ Joint management with international organisations (*to be specified*)

If more than one management mode is indicated, please provide details in the "Comments" section.

Comments

⁵ Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: <u>http://www.cc.cec/budg/man/budgmanag/budgmanag en.html</u>

⁶ As referred to in Article 185 of the Financial Regulation.

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

Participation of research entities from the USA in the Framework Programme (Horizon 2020) and other cooperative activities under the Agreement will be regularly followed through meetings of the Joint Consultative Group established under Art. 6(b) of the Agreement.

2.2. Management and control system

2.2.1. Risk(s) identified

Meetings and bilateral contacts occur regularly, allowing for a systematic sharing of information. No risks have been identified in the control system.

- 2.2.2. Control method(s) envisaged
- 2.2.3. Costs and benefits of controls and probable non-compliance rate

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures.

When the implementation of the Framework programme calls for the use of external contractors or entails granting financial contributions to third parties, the Commission will carry out, where appropriate, financial audits, in particular if it has reason to doubt the realistic nature of work performed or described in the activity reports.

The Union's financial audits will be carried out either by its own staff or by accounting experts approved according to the law of the audited party. The Union will choose the latter freely, while avoiding any risks of conflicts of interest which might be indicated to it by the party subject to the audit. In addition, the Commission will make sure, in carrying out the research activities, that the financial interests of the Union are protected by effective checks and, where irregularities are detected, by deterrent and proportionate measures and penalties.

In order to achieve this aim, rules on checks, measures and penalties, with reference to Regulations No 2988/95, No 2185/96 and No 1073/99 will be incorporated in all contracts used in the implementation of the Framework programme.

In particular, the following points will have to be provided for in the contracts:

- the introduction of specific contractual clauses to protect the financial interests of the EU in carrying out checks and controls in relation to the work performed;

- the carrying out of administrative checks as part of anti-fraud measures, in accordance with Regulations No 2185/96, No 1073/1999 and No 1074/1999;

- the application of administrative penalties for all intentional or negligent irregularities in the implementation of the contracts, in accordance with the Framework Regulation No 2988/95, including a blacklisting mechanism;

- the fact that any recovery orders in the event of irregularities and fraud must be enforceable according to Article 299 of the Treaty on the Functioning of the European Union. In addition and as a routine measure, a control programme in respect of scientific and budgetary aspects will be carried out by the responsible staff in the DG for Research and Innovation; an internal audit will be carried out by the Internal Audit unit of DG Research and Innovation; and local inspections will be undertaken by the European Court of Auditors.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

• Existing budget lines

In order of multiannual financial framework headings and budget lines.

	Budget line	Type of expenditure		Con	tribution	
Heading of multiannual financial framework	Number [Description]	Diff./non- diff. (7)	from EFTA countries ⁸	from candidate countries ⁹	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
1a	08.01.05	Non- diff.	YES	YES	YES	YES
1a	08.01.05.01	Non- diff.	YES	YES	YES	YES
1a	08.01.05.03	Non- diff.	YES	YES	YES	YES

• New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of	Budget line	Type of expenditure		Con	tribution	
multiannual financial framework	Number [Heading]	Diff./non- diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

⁷ Diff. = Differentiated appropriations / Non-Diff. = Non-differentiated appropriations.

⁸ EFTA: European Free Trade Association.

⁹ Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

3.2. Estimated impact on expenditure

This part must be completed on the spread sheet on budget data of an administrative nature (second document in the annex to this financial statement) to be uploaded to CISNET for interdepartmental consultation purposes.

3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework:	1a	[Heading]: Competitiveness for Growth and Jobs
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DG: <research and="" innovation.=""></research>			Year 2013 ¹⁰	Year 2014	Year 2015	Year 2016	Year 2017	Year 2018	TOTAL
• Operational appropriations									
Number of hudget line	Commitments	(1)							
Number of budget line	Payments	(2)							
Number of budget line	Commitments	(1a)							
Number of budget line	Payments	(2a)							
Appropriations of an administrative natu envelope of specific programmes ¹¹	re financed fro	m the							
Number of budget line	08.01.05	(3)							
TOTAL appropriations	Commitments	=1+1a +3	0.044	0.175	0.175	0.175	0.175	0.131	0.875
for DG $<$ Research and Innovation $>^{12}$	Payments	=2+2a +3	0.044	0.175	0.175	0.175	0.175	0.131	0.875

¹⁰ Year N is the year in which implementation of the proposal/initiative starts.

¹¹ Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

¹² Appropriations for the period 2014-2020 and related legal basis are still to be adopted by the European Parliament and the Council and the Draft Budget 2014 is yet to be approved by the budget authority.

Number of budget line	08.01.05.01	(3a)							
TOTAL appropriations	Commitments	=1+1a +3a	0.033	0.131	0.131	0.131	0.131	0.098	0.655
for DG <research and="" innovation="">¹³</research>	Payments	=2+2a +3a	0.033	0.131	0.131	0.131	0.131	0.098	0.655
Number of budget line	08.01.05.03	(3b)							
TOTAL appropriations for DG <research and="" innovation="">¹⁴</research>	Commitments	=1+1 a +3b	0.011	0.044	0.044	0.044	0.044	0.033	0.220
	Payments	=2+2 a+3b	0.011	0.044	0.044	0.044	0.044	0.033	0.220
	Commitments	(4)							
• TOTAL operational appropriations	Payments	(5)							
• TOTAL appropriations of an admini financed from the envelope for specific progra		(6)	0.044	0.175	0.175	0.175	0.175	0.131	0.875
TOTAL appropriations	Commitments	=4+ 6	0.044	0.175	0.175	0.175	0.175	0.131	0.875
under HEADING <1a.> of the multiannual financial framework	Payments	=5+ 6	0.044	0.175	0.175	0.175	0.175	0.131	0.875

If more than one heading is affected by the proposal / initiative:

• TOTAL operational appropriations	Commitments	(4)				
• TOTAL operational appropriations	Payments	(5)				
• TOTAL appropriations of an admini financed from the envelope for specific progr	(6)					

¹³ Appropriations for the period 2014-2020 and related legal basis are still to be adopted by the European Parliament and the Council and the Draft Budget 2014 is yet to be approved by the budget authority.

¹⁴ Appropriations for the period 2014-2020 and related legal basis are still to be adopted by the European Parliament and the Council and the Draft Budget 2014 is yet to be approved by the budget authority.

TOTAL appropriations	Commitments	=4+ 6				
under HEADINGS 1 to 4 of the multiannual financial framework (Reference amount)	Payments	=5+ 6				

Hea	ding of multiannual fin framework	nancial	5	'Adr	ninistrativ	e expendi	ture'					
										EUR milli	on (to three decimal pl	laces
			Year N	Year N+1	Year N+2	Year N+3	necessar	r as many ye y to show th mpact (see p	e duration	TOTAL		
DC	G: <>					I						
Human resource	es											
• Other administr	Other administrative expenditure											
ТОТА	TOTAL DG <> Appropriations											

TOTAL appropriations for HEADING 5 of the multiannual financial framework	(Total commitments = Total payments)								
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EUR million (to three decimal places)

		2013 ¹⁵	2014	2015	2016	2017	2018	TOTAL
TOTAL appropriations	Commitments	0.044	0.175	0.175	0.175	0.175	0.131	0.875

¹⁵ Year N is the year in which implementation of the proposal/initiative starts.

under HEADINGS 1 to 5of the multiannual financial frameworkPayments	0.044	0.175	0.175	0.175	0.175	0.131		0.875	
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3.2.2. Estimated impact on operational appropriations

- \square The proposal/initiative does not require the use of operational appropriations
- \square The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

Indicate			Ŋ	lear N		∕ear N+1		ear + 2	Yea N+		Enter d	as many uration o	years f the i	as necess mpact (see	ary to sl e point	how the 1.6)	то	OTAL
objectives and outputs									OUTPU	JTS								
Û	Type ¹⁶	Avera ge cost	Number	Cost	Number	Cost	Number	Cost	Number	Cost	Number	Cost	Number	Cost	Number	Cost	Total numbe r	Total cost
SPECIFIC OBJ	ECTIVE N	NO 1 ¹⁷																
- Output																		
- Output																		
- Output																		
Subtotal for speci	fic objecti	ve No 1																
SPECIFIC OBJ	ECTIVE N	Jo 2																
- Output																		
Subtotal for speci	fic objectiv	ve No 2																
ΤΟΤΑΙ	TOTAL COST																	

¹⁶ Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

¹⁷ As described in point 1.4.2. 'Specific objective(s)...'

3.2.3. Estimated impact on appropriations of an administrative nature

3.2.3.1. Summary

- The proposal/initiative does not require the use of appropriations of an administrative nature
- ☑ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

Year 2013 ¹⁸	Year 2014	Year 2015	Year 2016	Year 2017	Year 2018	TOTAL]
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HEADING 5 of the multiannual financial framework				
Human resources				
Other administrative expenditure				
Subtotal HEADING 5 of the multiannual financial framework				

Outside HEADING 5 ¹⁹ of the multiannual financial framework							
Human resources	0.033	0.131	0.131	0.131	0.131	0.098	0.655
Other expenditure of an administrative nature	0.011	0.044	0.044	0.044	0.044	0.033	0.220
Subtotal outside HEADING 5 of the multiannual financial framework							

The administrative appropriations required will be met by the appropriations of the DG which are already assigned to management of the action and/or which have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

¹⁸ Year N is the year in which implementation of the proposal/initiative starts.

¹⁹ Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

3.2.3.2. Estimated requirements of human resources

- \square The proposal/initiative does not require the use of human resources.
- \square The proposal/initiative requires the use of human resources, as explained below:

		Year 2013	Year 2014	Year 2015	Year 2016	Year 2017	Year 2018	Enter as many years as necessary to show the duration of the impact (see point 1.6)
• Establishment p	lan posts (officials and tempor	ary agents))					
XX 01 01 01 (Headquarters Representation Offices)	XX 01 01 01 (Headquarters and Commission's Representation Offices)							
XX 01 01 02 (Delegations)								
08 01 05 01 (Indirect resear	08 01 05 01 (Indirect research)		1	1	1	1	1	
10 01 05 01 (Direct research)								
• External personnel (i	• External personnel (in Full Time Equivalent unit: I							
XX 01 02 01 (CA, INT, SN	E from the "global envelope")							
XX 01 02 02 (CA, INT, JED, LA and SNE in the delegations)								
XX 01 04 yy ²¹	- at Headquarters							
	- in delegations							
XX 01 05 02 (CA, SNE, INT - Indirect research)								
10 01 05 02 (CA, SNE, INT - Direct research)								
Other budget lines (specify)								
TOTAL	TOTAL		1	1	1	1	1	

Estimate to be expressed in full time equivalent units

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	Preparation and management of the Joint Consultative Group meetings foreseen under Art. 6 of the Agreement, and missions ensuring the good functioning and implementation of the Agreement and regular review of the Agreement.
External staff	

²⁰ CA= Contract Agent; LA = Local Agent; SNE = Seconded National Expert; INT = agency staff ('Intérimaire'); JED= 'Jeune Expert en Délégation' (Young Experts in Delegations).

²¹ Sub-ceiling for external staff covered by operational appropriations (former "BA" lines).

3.2.4. Compatibility with the current multiannual financial framework

- ☑Proposal/initiative is compatible the current multiannual financial framework.

3.2.5. Third-party contributions

- The proposal/initiative does not provide for co-financing by third parties.

3.3. Estimated impact on revenue

- \square Proposal/initiative has no financial impact on revenue.