

Turkey

MEMORANDUM OF UNDERSTANDING

between the European Community and the Republic of Turkey

on Turkey's association

with the sixth framework programme of the European Community for research, technological development and demonstration activities, contributing to the creation of the European Research Area and to innovation (2002-2006)

The European Commission, hereinafter referred to as "the Commission", on behalf of the European Community,

of the one part, and

the Government of the Republic of Turkey, hereinafter referred to as "Turkey",

of the other part,

Whereas the Framework Agreement of 26 February 2002¹ between the European Community and Turkey establishes the general principles for the participation of Turkey in Community programmes, leaving the Commission and the competent authorities of Turkey to determine the specific terms and conditions, including financial contribution, with regard to such participation in each particular programme;


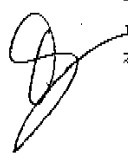
Whereas the sixth framework programme of the European Community for research, technological development and demonstration activities, contributing to the creation of the European Research Area and to innovation (2002-2006) was established by Decision of the European Parliament and of the Council No 1513/2002/EC of 27 June 2002²,

HAVE AGREED AS FOLLOWS:

Article 1

Programme

Turkey shall be associated with the sixth framework programme of the European Community for research, technological development and demonstration activities, contributing to the creation of the European Research Area and to innovation (2002-2006) (hereinafter called "the EC Framework Programme"), as established by


¹ OJ L 61, 2.3.2002, p. 27-28
² OJ L 232, 29.8.2002, p. 1

the Decision of the European Parliament and of the Council adopting this Framework Programme, the Regulation of the European Parliament and of the Council concerning the rules for the participation of undertakings, research centres and universities and for the dissemination of research results for the implementation of the European Community sixth Framework Programme 2002-2006,

the Council Decision adopting a specific programme for research, technological development and demonstration: "Integrating and strengthening the European Research Area" (2002-2006), the Council Decision adopting a specific programme for research, technological development and demonstration: "Structuring the European Research Area" (2002-2006) and the Council Decision adopting a specific programme of research, technological development and demonstration to be carried out by means of direct actions by the Joint Research Centre (2002-2006);

in accordance with the conditions laid down in the Framework Agreement between the European Community and Turkey, and under the terms and conditions established by, or referred to in this Memorandum of Understanding and the Annexes thereto.

Article 2

Terms and conditions with respect to the association of Turkey with the EC Framework Programme

1. Turkey shall participate in the activities of the EC Framework Programme subject to the terms and conditions established by, or referred to in this Memorandum of Understanding and the Annexes thereto.
2. Legal entities of Turkey shall participate in indirect actions of the EC Framework Programme under the same conditions as those applicable to legal entities of Member States of the European Communities, subject to the terms and conditions established by, or referred to in this Memorandum of Understanding and the Annexes thereto.
3. Representatives of Turkey shall participate as observers in the committees of the EC Framework Programme established by
the Council Decision adopting a specific programme for research, technological development and demonstration: "Integrating and strengthening the European Research Area" (2002-2006) and
the Council Decision adopting a specific programme for research, technological development and demonstration: "Structuring the European Research Area" (2002-2006).

These committees shall meet without the presence of representatives of Turkey at the time of voting. Turkey will be informed of the result.

Participation as referred to in this paragraph shall take the same form, including procedures for receipt of information and documentation, as that applicable to representatives from Member States.

4. Representatives of Turkey shall participate as observers in the Board of Governors of the Joint Research Centre.

Participation as referred to in this paragraph shall take the same form, including procedures for receipt of information and documentation, as that applicable to representatives from Member States.

5. Travel costs and subsistence costs incurred by representatives of Turkey participating in meetings of the committees and bodies referred to in this Memorandum of Understanding, or to meetings related to the implementation of the EC Framework Programme or of this Memorandum of Understanding, shall be reimbursed by the Commission on the same basis as and in accordance with the procedures currently in force for representatives of the Member States of the European Union.
6. One of the official languages of the Community shall be used for the procedures related to requests, contracts and reports, as well as for other administrative aspects of the EC Framework Programme.

Article 3

Financial contribution of Turkey,

1. Turkey shall pay for every year of the EC Framework Programme duration a financial contribution to the General Budget of the European Union.
2. The financial contribution of Turkey shall be added to the amount earmarked each year in the General Budget of the European Union for commitment appropriations to meet the financial obligations arising out of different forms of measures necessary for the execution, management and operation of the EC Framework Programme.
3. The rules governing the calculation and the payment of the financial contribution of Turkey are set out in Annex III.
4. Part of the financial contribution of Turkey may be financed under the relevant Community external aid instrument, if Turkey so requests.

Article 4

Reporting and evaluation

Without prejudice to the responsibilities of the Commission and the Court of Auditors of the European Communities in relation to the monitoring and evaluation of the EC Framework Programme, the participation of Turkey in the EC Framework Programme shall be continuously monitored on a partnership basis involving the Commission and Turkey. Turkey shall submit to the Commission relevant reports and take part in other specific activities provided for by the Community in the context of the EC Framework Programme.



Article 5

Final provisions

1. This Memorandum of Understanding shall apply for the duration of the EC Framework Programme. Nevertheless, should the European Community decide to extend the duration without any substantial change within the EC Framework Programme, this Memorandum would also be extended correspondingly and automatically if no Party denounces it.

Projects and activities in progress at the time of termination and/or expiry of this Memorandum of Understanding shall continue until their completion under the conditions laid down in this Memorandum.

2. The Annexes I, II and III form an integral part of this Memorandum of Understanding.
3. This Memorandum of Understanding may only be amended in writing by common consent of the Parties.
4. This Memorandum of Understanding shall take effect on the date on which Turkey informs the Commission through diplomatic channels that its internal ratification has been completed.

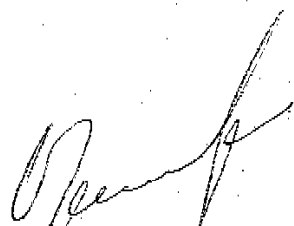
Should this date be after the 1st of January 2003, this Memorandum of Understanding shall take effect from the first day of the budgetary year of the EC Framework Programme to which Turkey pays its financial contribution.

Done at Brussels
on 29th October 2002




Done at Brussels
on 29th October 2002

For the Government of Turkey,

*For the Commission,
on behalf of the European Community,*



Oğuz DEMIRALP
Ambassador
Permanent Delegate of Turkey
to the European Union



Philippe BUSQUIN
Member of the Commission
for Research

ANNEX I

Terms and conditions for the participation of legal entities of Turkey in indirect actions of the specific programmes of the EC Framework Programme

1. For the purpose of the association of Turkey with the EC Framework Programme, a legal entity of Turkey is defined as any natural person of Turkey or any legal person created under the law of Turkey.
2. Participation of legal entities of Turkey in indirect actions of the EC Framework Programme shall follow the conditions laid down for "candidate associated countries" in the Regulation of the European Parliament and of the Council concerning the rules for the participation of undertakings, research centres and universities and for the dissemination of research results for the implementation of the European Community sixth Framework Programme 2002-2006.
3. Legal entities of Turkey shall be taken into consideration, alongside Community's ones, for the selection of independent experts for the tasks and under the conditions foreseen in the Regulation of the European Parliament and of the Council concerning the rules for the participation of undertakings, research centres and universities and for the dissemination of research results for the implementation of the European Community sixth Framework Programme 2002-2006.
4. In conformity with the above mentioned Regulation of the European Parliament and of the Council concerning the rules for the participation in the sixth Framework Programme of the European Community and the Community's Financial Regulation, contracts concluded by the Community with any legal entity of Turkey in order to perform an indirect action shall provide for controls and audits to be carried out by, or under the authority of, the Commission and the Court of Auditors of the European Communities. In a spirit of cooperation and mutual interest, the relevant Authorities of Turkey shall provide any reasonable and feasible assistance as may be necessary or helpful under the circumstances to perform such controls and audits.
5. The Parties will make every effort, within the framework of the existing provisions, to facilitate the free movement and residence of research workers participating in the activities covered by this Memorandum of Understanding and to facilitate cross-border movement of goods intended for use in such activities.
6. A joint committee shall be established under this Memorandum of Understanding, to be called "EC-Turkey Research Committee", whose functions shall include:
 - reviewing, evaluating and discussing measures to ensure the implementation of this Memorandum of Understanding,
 - examining any measure of a nature to improve and develop cooperation.

The committee, which shall be composed of representatives of the Commission and of Turkey, shall adopt its rules of procedure.

It shall meet at the request of any of the Parties and at least once a year.

ANNEX II

Principles on the allocation of intellectual property rights

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

I. Application

This Annex is applicable to research carried out pursuant to this Memorandum of Understanding (hereinafter referred to as "joint research"), except as otherwise specifically agreed by the Community and Turkey (hereinafter referred to as "the Parties").

II. Ownership, allocation and exercise of rights

1. For purposes of this Memorandum of Understanding, "intellectual property" (hereinafter referred to as "IP") shall have the meaning given in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm on 14 July 1967.
2. This Annex deals with 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 IP allocated to it in accordance with this 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 be provided for in the contractual arrangements:
 - (a) adequate protection of IP. 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 IP arising under this Memorandum of Understanding or implementing arrangements and that they 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 confidential business information.
4. The participants shall jointly develop a Technology Management Plan (TMP) in respect of the ownership and use, including publication, of information and IP 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 dealt with in the joint TMPs.

5. Information or IP created in the course of joint research and not dealt with 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 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 Memorandum of Understanding, each Party shall endeavour to ensure that rights acquired pursuant to this Memorandum of Understanding 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 Memorandum of Understanding, and (ii) the adoption and implementation of international standards.
8. Termination of cooperation shall not affect rights or obligations under this Annex.

III. International conventions

IP belonging to the Parties or to their participants shall be accorded treatment consistent with the relevant international conventions that are applicable to the Parties, including 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) and the Paris Convention (Stockholm Act 1967).

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 Memorandum of Understanding, the other Party shall be entitled to a worldwide, 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 Memorandum of Understanding and published by independent publishers are disseminated as widely as possible;

3. all copies of a copyright work 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. 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 TMP the information 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. Such respect shall automatically terminate when this information is revealed by the owner to the public domain.

3. Undisclosed information communicated under this Memorandum of Understanding 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 is pursuant to an agreement of confidentiality and 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 Memorandum of Understanding, 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 Memorandum of Understanding; this is on the understanding, however, that the recipient of such undisclosed or other confidential or privileged information was made aware of the confidential character of the information communicated at the time such communication was made.

C. CONTROL

Each Party shall endeavour to ensure that undisclosed information received by it under this Memorandum of Understanding is 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

Indicative features of a TMP

The TMP is a specific agreement to be concluded between the participants on the implementation of joint research and the respective rights and obligations of the participants. With respect to IP, the TMP will normally deal with, 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 deal with foreground and background information, licensing and deliverables.

ANNEX III

Rules governing the financial contribution of Turkey to the EC Framework Programme

I. Calculation of Turkey's financial contribution

1. The financial contribution of Turkey to the EC Framework Programme shall be established on a yearly basis in proportion to, and in addition to, the amount available each year in the general budget of the European Union for commitment appropriations needed for the implementation, management and operation of the EC Framework Programme.
2. The proportionality factor governing the contribution of Turkey shall be obtained by establishing the ratio between the gross domestic product of Turkey, at market prices, and the sum of gross domestic products, at market prices, of the Member States of the European Union and Turkey. 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.
3. In order to facilitate its participation in the specific programmes, the contribution of Turkey will be implemented as follows for each financial year:
 - Financial year 2003: contribution according to the proportionality factor fixed in accordance with paragraph 2, multiplied by 0,7;
 - Financial year 2004: contribution according to the proportionality factor fixed in accordance with paragraph 2, multiplied by 0,8;
 - Financial year 2005: contribution according to the proportionality factor fixed in accordance with paragraph 2, multiplied by 1,0;
 - Financial year 2006: contribution according to the proportionality factor fixed in accordance with paragraph 2, multiplied by 1,0.

The Commission may, in due time, propose the amendment of this Memorandum of Understanding to reduce the factor of 1,0 that is applicable to the financial years 2005 and 2006 pursuant to this Annex.

4. The Commission shall communicate to Turkey, as soon as possible and at the latest on 1 September of the year before each financial year, the following information together with relevant background material:
 - the amounts in commitment appropriations, in the statement of expenditure of the preliminary draft budget of the European Communities corresponding to the EC Framework Programme;
 - the estimated amount of the contributions derived from the preliminary draft budget, corresponding to the participation of Turkey in the EC Framework Programme according to paragraph 1, 2 and 3.

Once the general budget has been finally adopted, the Commission shall communicate to Turkey, in the statement of expenditure corresponding to Turkey's participation, the final amounts referred to in the first subparagraph.

II. Payment of Turkey's financial contribution

1. The Commission shall issue, at the latest on 1 January and 15 June of each financial year, a call for funds to Turkey corresponding to its contribution under this Memorandum of Understanding. These calls for funds shall provide, respectively, for the payment:

- of six-twelfths of Turkey's contribution not later than 20 February;
- and six-twelfths of Turkey's contribution not later than 15 July.

However, the six-twelfths to be paid not later than 20 February shall be 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 Memorandum of Understanding, the Commission shall issue a first call for funds within 30 days of its coming into effect. Should this call be issued after 15 June, it shall provide for the payment of twelve-twelfths of Turkey's contribution within 30 days, calculated on the basis of the amount set out in the statement of revenue of the budget.

2. The contribution of Turkey shall be expressed and paid in Euro. Payment by Turkey 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 Communities. The financial regulation applicable to the general budget of the European Communities shall apply to the management of the appropriations.
3. Turkey shall pay its contribution under this Memorandum of Understanding according to the schedule in this paragraph.

Any delay in the payment of the contribution shall give rise to the payment of default interest by Turkey on the outstanding amount from the due date. The interest rate shall be the rate applied by the European Central Bank to its main refinancing operations in Euro, as published in the C series of the Official Journal of the European Communities on the first working day of the month in which the debt is due, increased by three and a half percentage points.

In case the delay in the payment of the contribution is such that it may significantly jeopardise the implementation and management of the programme, participation in the programme of Turkey for the concerned financial year will be suspended by the Commission following the absence of payment 20 working days after a formal letter of reminder sent to, without prejudice to the Community's obligations according to contracts already concluded pertaining to the implementation of selected indirect actions.

4. At the latest on 31 May of the year following a financial year, the statement of appropriations for the EC Framework Programme that financial year, shall be prepared and transmitted to Turkey for information, according to the format of the Commission's revenue and expenditure account.
5. The Commission, at the time of the closure of the accounts relating to each financial year, 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 Turkey.

This regularisation shall take 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 next financial year, and for the last financial year in July 2007. Further regularisation shall occur every year until July 2010.

