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Framework Agreement

between the French Republic, the Federal Republic of Germany, the Italian Republic, the Kingdom of Spain, the Kingdom of Sweden, and the United Kingdom of Great Britain and Northern Ireland

concerning Measures to Facilitate the Restructuring and Operation of the European Defence Industry

Farnborough, 27 July 2000

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by Command of Her Majesty
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FRAMEWORK AGREEMENT BETWEEN THE FRENCH REPUBLIC, THE FEDERAL REPUBLIC OF GERMANY, THE ITALIAN REPUBLIC, THE KINGDOM OF SPAIN, THE KINGDOM OF SWEDEN, AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND CONCERNING MEASURES TO FACILITATE THE RESTRUCTURING AND OPERATION OF THE EUROPEAN DEFENCE INDUSTRY

Preamble

The French Republic, The Federal Republic of Germany, The Italian Republic, The Kingdom of Spain, The Kingdom of Sweden, and The United Kingdom of Great Britain and Northern Ireland, (hereinafter referred to as the "Parties"):

Recalling the Statement signed by the Heads of State and Government of the French Republic and the Heads of Government of the Federal Republic of Germany and the United Kingdom of Great Britain and Northern Ireland on 9 December 1997, and supported by the Heads of Government of the Italian Republic, the Kingdom of Spain, and the Kingdom of Sweden, designed to facilitate the restructuring of the European aerospace and defence electronics industries;

Recalling the Joint Statement of 20 April 1998 by the Minister of Defence of the French Republic, the Federal Minister of Defence of the Federal Republic of Germany, the Minister of Defence of the Italian Republic, the Minister of Defence of the Kingdom of Spain and the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, and also supported by the Minister for Defence of the Kingdom of Sweden;

Recalling the Letter of Intent concerning Measures to Facilitate the Restructuring of European Defence Industry of 6 July 1998 signed by the Minister of Defence of the Parties and wishing to define a framework of co-operation to facilitate the restructuring of the European defence industry;

Recognising that creation of Transnational Defence Companies is a matter for industry to determine, in accordance with competition regulations. Noting in this connection that a degree of interdependency already exists in Europe as a result of current co-operation on major defence equipment;

Wishing to create the political and legal framework necessary to facilitate industrial restructuring in order to promote a more competitive and robust European defence technological and industrial base in the global defence market and thus to contribute to the construction of a common European security and defence policy;

Recognising that industrial restructuring may lead to the creation of Transnational Defence Companies and the acceptance of mutual dependence. Emphasising, in this connection, that industrial restructuring in the field of defence must take account of the imperative of ensuring the Parties' security of supply, and a fair and efficient distribution and maintenance of strategically important assets, activities and skills;

Desiring to simplify Transfers of Defence Articles and Defence Services between them and to increase co-operation in Exports, and acknowledging that this will help foster industrial restructuring and maintain industry's capacity to export; wishing to ensure that the Export of Equipment produced in co-operation between them will be managed responsibly in accordance with each participating State's international obligations and commitments in the export control area, especially the criteria of the European Union Code of Conduct;

Wishing to adapt procedures relating to security clearances, transmission of Classified Information and visits, with a view to facilitating industrial co-operation without undermining the security of Classified Information;

Acknowledging the need to improve the use of the limited resources devoted to defence research and technology by each Party and wishing to increase their co-operation in this field;

Acknowledging the need, in order to make possible the efficient functioning and the restructuring of the European defence industry, to simplify the transfer of Technical Information, to harmonise national conditions relating to treatment of Technical Information, and to reduce restrictions put upon the disclosure and use of Technical Information;

Recognising that European armed forces must be of a sufficient quality, quantity and level of readiness to meet future requirements for flexibility, mobility, deployability, sustainability and interoperability, reflecting also the additional challenges and possibilities provided for by future developments in research and technology. Also recognising that these forces must be capable of operating jointly or as a part of a coalition in a wide range of roles with, in particular, assured augmentation and effective command, control, communications and support;

Desiring, in this field, to organise consultations between the Parties in order to harmonise the military requirements of their armed forces and acquisition procedures, by co-operating at the earliest possible stage and in the definition of the specifications for the weapon systems to be developed or acquired;

Recognising that this Agreement does not require any modification of their Constitutions;

Acknowledging that any activity undertaken under this Agreement shall be compatible with the Parties' membership of the European Union and their obligations and commitments resulting from such membership;

Have agreed as follows:

PART 1

Objectives, Use of Terms and General Organisation

ARTICLE 1

The objectives of this Agreement are to:

(a) establish a framework to facilitate restructuring of the defence industry in Europe;

(b) ensure timely and effective consultation over issues arising from the restructuring of the European defence industrial base;

(c) contribute to achieving security of supply for Defence Articles and Defence Services for the Parties;

(d) bring closer, simplify and reduce, where appropriate, national export control procedures for Transfers and Exports of military goods and technologies;

(e) facilitate exchanges of Classified Information between the Parties of their defence industries under security provisions which do not undermine the security of such Classified Information;

(f) foster co-ordination of joint research activities to increase the advanced knowledge base and thus encourage technological development and innovation;

(g) establish principles for the disclosure, transfer, use and ownership of Technical Information to facilitate the restructuring and subsequent operation of the Parties' defence industries; and

(h) promote harmonisation of the military requirement of their armed forces.

ARTICLE 2

For the purposes of this Agreement:

(a) "Co-operative Armament Programme" means any joint activities including, inter alia, study, evaluation, assessment, research, design, development, prototyping, production, improvement, modification, maintenance, repair and other post design services carried out under an international agreement or arrangement between two or more Parties for the purpose of procuring Defence Articles and/or related Defence Services. For the purpose of Part 3 of this Agreement (Transfer and Export procedures), this definition relates only to activities subject to export licensing.

(b) "Classified Information" means any information (namely, knowledge that can be communicated in any form) or Material determined to require protection against unauthorised disclosure which has been so designated by security classification.

(c) "Consignee" means the contractor, Facility or other organisation receiving the Material from the Consignor either for further assembly, use, processing or other purposes. It does not include carriers or agents.

(d) "Consignor" means the individual or organisation responsible for supplying Material to the Consignee.

(e) "Defence Article" means any weapon, weapon system, munitions, aircraft, vessel, vehicle, boat, or other implement of war and any part of component thereof and any related Document.

(f) "Defence Services" means any service, test, inspection, maintenance and repair, and other post design services, training, technical or other assistance, including the provision of Technical Information, specifically involved in the provision of any Defence Article.

(g) "Document" means any recorded information regardless of physical form or characteristics, eg written or printed matter (inter alia, letter, drawing, plan), computer storage media (inter alia, fixed disc, diskette, chip, magnetic tape, CD), photograph and video recording, optical or electronic reproduction of them.

(h) "Export" means any movement of Defence Articles or Defence Services from a Party to a non-Party.

(i) "Facility" means an installation, plant, factory, laboratory, office, university or other educational institution or commercial undertaking (including any associated warehouses, storage areas, utilities and components which when related by function and location, form an operating entity), and any government department and establishment.

(j) "Material" means any item or substance from which information can be derived. This includes Documents, equipment, weapons or components.

(k) "National Security Authority/Designated Security Authority (NSA/DSA)" means the government department, authority or agency designated by a Party as being responsible for the co-ordination and implementation of national industrial security policy.

(l) "Security Official" means an individual designated by a NSA/DSA to implement industrial security requirements at a government establishment or contractor's premises.

(m) "Technical Information" means recorded or documented information of a scientific or technical nature whatever the format, documentary characteristics or other medium of presentation. The information may include, but is not limited to, any of the following: experimental and test data, specifications, designs and design processes, inventions and discoveries whether or not patentable or otherwise protectable by law, technical

descriptions and other works of a technical nature, semiconductor topography/mask works, technical and manufacturing data packages, know-how and trade secrets and information relating to industrial techniques. It may be presented in the form of Documents, pictorial reproductions, drawings and graphic representations disk and film recordings (magnetic, optical and laser), computer software both programmatic and data base, and computer memory printouts or data retained in computer memory, or any other form.

(n) "Transfer" means any movement of Defence Articles or Defence Services among the Parties.

(o) "Transnational Defence Company (TDC)" means a corporate, industrial or other legal entity formed by elements of defence industries from two or more of the Parties, or having assets located within the territories of two or more of the Parties, producing or supplying Defence Articles and Defence Services. This includes joint ventures created by legally binding arrangements of a kind acceptable to the Parties. That also means any assets producing or supplying Defence Articles and Defence Services located within the territories of the Parties and under the control of such a corporate, industrial or other legal entity or joint venture. There is control when, as defined by European Community regulation on concentrations, the rights, contracts or other means give, alone or jointly, the ability to exercise a decisive influence on the use of these assets.

ARTICLE 3

1. The Parties shall establish an Executive Committee. It shall be composed of one member representing each Party, who may be assisted by additional staff as necessary.

2. The Executive Committee shall be responsible for the following tasks:

(a) exercising executive-level oversight of this Agreement, monitoring its effectiveness, and providing an annual status report to the Parties;

(b) recommending amendments to this Agreement to the Parties;

(c) proposing additional international instruments pursuant to this Agreement.

3. The Executive Committee shall take its decisions by consensus among all the Parties.

4. The Executive Committee shall meet as frequently as necessary for the efficient fulfilment of its responsibilities, or when requested by one of its members. It shall adopt its own rules and procedures, and may establish sub-committees as needed.

PART 2

Security of Supply

ARTICLE 4

1. The Parties recognise that the likely consequences of industrial restructuring will be the creation of TDCs, possible abandonment of national industrial capacity and thus the acceptance of mutual dependence. Therefore, they shall establish measures to achieve security of supply for the mutual benefit of all Parties as well as a fair and efficient distribution and maintenance of strategically important assets, activities and skills. These measures shall be based on the requirement for prior information and consultation, and the use of national regulations, amended as necessary.

2. The Parties may include their requirements, inter alia, in legally binding agreements, contracts or options licences to be concluded with defence companies on a fair and reasonable basis.

3. Further measures may include the development of common instruments and the harmonisation of national regulations.

ARTICLE 5

The Parties recognise the benefits that will accrue from an open market in Defence Articles and Defence Services between them. They will ensure that nothing done under this Agreement will result in unfair trade practices or discrimination between industries of the Parties.

ARTICLE 6

1. The Parties shall not hinder the supply of Defence Articles and Defence Services produced, assembled or supported in their territory, to the other Parties. In doing so they shall act in accordance with the rules set forth in Part 3 of this Agreement.

2. They shall seek to further simplify and harmonise their existing rules and procedures with the aim of achieving the unimpeded Transfer of Defence Articles and Defence Services amongst them.

ARTICLE 7

1. To ensure the security of supply and other legitimate interests of the Parties on whose territory the companies involved in the restructuring are located and those of any other Party who relies on those companies for its supply of Defence Articles and Defence Services, the Parties shall consult in an effective and timely manner on industrial issues arising from the restructuring of the European defence industry.

2. In order to start the consultation process as soon as possible, the Parties shall encourage their industries to inform them in advance of their intention to form a TDC or of any significant change which may affect its situation. Significant change means, inter alia, passing under direct or indirect foreign control, or the abandonment, transfer or relocation of part or whole of key strategic activities. As soon as a Party becomes aware of such an intention, that Party will inform the other involved Parties. In any case, all the other Parties may raise any reasonable concerns with the involved Parties. In any case, all the other Parties may raise any reasonable concerns with the involved Parties, who will then consider them on their merits during any national regulatory investigation. This consultation may need to be completed within a set period in accordance with national laws and procedures. That said, and when applicable, the decisions on mergers and acquisitions of defence companies will continue to be taken by the Parties where the transaction qualifies for consideration according to their own national laws and regulations.

3. The Parties agree that TDCs shall be free to use their commercial judgement to distribute industrial capabilities according to economic logic. Nevertheless, the Parties may exceptionally wish to retain certain defined key strategic activities, assets and installations on national territory for reasons of national security. Therefore, the Parties in whose territory such activities, assets or installations are located shall consult together and with the TDCs in order to establish their requirements in this regard. The Parties will enshrine such requirements in appropriate agreements with the TDCs on a fair and reasonable basis.

ARTICLE 8

1. The Parties recognise that, with regard to certain critical Defence Articles and Defence Services, there may be a requirement, in certain exceptional circumstances, to reconstitute a national key strategic activity. The Parties will proceed with any such reconstitution in a spirit of co-operation with industry. The full cost of any such reconstitution shall be borne

by the Parties concerned. The Parties requiring such reconstitution will conclude appropriate arrangements with the relevant defence company on a fair and reasonable basis.

2. The Parties shall contemplate measures for the reconstitution of supply Facilities for Defence Articles and Defence Services only for reasons of national security. These measures shall be a method of last resort to restore security of supply, and will not be used to undermine the national laws and policies of the Parties on non-proliferation and arms export.

ARTICLE 9

Each Party undertakes to assist another Party, upon request, by providing price investigation services and government quality assurance services when such request is made in connection with a purchase of Defence Articles or Defence Services from a company of the former Party, in accordance with international agreements or arrangements already applicable or to be concluded between them, or, when such agreements or arrangements do not exist, national regulations.

ARTICLE 10

1. The Parties agree that prioritisation of supplies of Defence Articles and Defence Services in peace time will be according to schedules negotiated under normal commercial practices. Parties jointly acquiring Defence Articles and Defence Services shall consult together in a spirit of co-operation in order to conclude a mutually satisfactory delivery schedule to meet their requirements, taking also into account the long term viability and interests of the company.

2. In the event of a Party requesting Defence Articles or Defence Services in times of emergency, crisis or armed conflict, the Parties shall immediately consult together, at the appropriate level, in a spirit of co-operation, to:

(a) enable the requesting Party to receive priority in ordering, or reallocation of, supplies of Defence Articles and Defence Services. In practice, this may entail amending existing contracts. Consequently, the Party requesting this assistance will have to meet any additional costs to the other Party or the company.

(b) enable the requesting Party to receive priority if existing Defence Articles need to be quickly modified for a new role. The Party requiring these modifications will have to meet any additional costs to the other Party or the company.

(c) facilitate, in accordance with any applicable international arrangements between them and with due regard to their international commitments, the delivery of the required Defence Articles and Defence Services to the requesting Party in a timely manner.

ARTICLE 11

1. In a time of emergency, crisis or armed conflict, the Parties, in accordance with any applicable arrangements between them and with due regard to their international commitments, shall consult with a view to providing, if required, Defence Articles, mainly on a reimbursement basis, from each Party's own stocks.

2. The Parties shall seek to conclude, if possible and where appropriate, arrangements laying down the procedures for such Transfers or loans between them of Defence Articles from their own stocks.

PART 3

Transfer and Export Procedures

ARTICLE 12

1. This article deals with Transfers between Parties of Defence Articles and related Defence Services in the context of a Co-operative Armament Programme.

2. Global Project Licences shall be used as the necessary authorisation, if required by the national regulations of each of the Parties, when the Transfer is needed to achieve the programme or when it is intended for national military use by one of the Parties.

3. The granting of a Global Project Licence has the effect of removing the need for specific authorisation, for the Transfer of the concerned Defence Articles and related Defence Services to the destinations permitted by the said licence, for the duration of that licence.

4. The conditions for granting, withdrawing and cancelling the Global Project Licence shall be determined by each Party, taking into consideration their obligations under this Agreement.

ARTICLE 13

1. This article deals with Exports to a non-party of Defence Articles and the related Defence Services developed or produced in the context of a Co-operative Armament Programme carried out according to Article 12.

2. Parties undertaking a Co-operative Armament Programme shall agree basic principles governing Exports to non-parties from that programme and procedures for such Export decisions. In this context, for each programme, the participating Parties shall set out, on the basis of consensus:

(a) The characteristics of the equipment concerned. These can cover final specifications or contain restrictive classes for certain functional purposes. They shall detail, when necessary, the agreed limits to be imposed in terms of function, maintenance or repairs for Exports to different destinations. They shall be updates to take into account technical improvements to the Defence Article produced within the context of the programme.

(b) Permitted Export destinations established and revised according to the procedure detailed in paragraph 3 of the present article.

(c) References to embargoes. These references shall be automatically updated in the light of any additions or changes to relevant United Nations resolutions and/or European Union decisions. Other international embargoes could be included on a consensus basis.

3. The establishment and revision of permitted Export destinations shall follow the procedures and principles below:

(a) Establishment of permitted Export destinations and later additions is the responsibility of the participating Parties in the Co-operative Armament Programme. Those decisions shall be made by consensus following consultations. These consultations will take into account, inter alia, the Parties' national export control policies, the fulfilment of their international commitments, including the EU code of conduct criteria, and the protection of the Parties defence interests, including the preservation of a strong and competitive European defence industrial base. If, later, the addition of a permitted destination is desired by industry, it should, as early as possible, raise this issue with relevant Parties with a view to taking advantage of the procedures set out in this article.

(b) A permitted Export destination may only be removed in the event of significant changes in its internal situation, for example full scale civil war or a serious deterioration of the human rights situation, or if its behaviour becomes a threat to regional or international peace, security and stability, for example as a result of

aggression or the threat of aggression against other nations. If the participating Parties in the programme are unable to reach consensus on the removal of a permitted Export destination at the working level, the issue will be referred to Ministers for resolution. This process should not exceed three months from the time removal of the permitted Export destination was first proposed. Any Party involved in the programme may require a moratorium on Exports of the product to the permitted destination in question for the duration of that process. At the end of that period, that destination shall be removed from the permitted destinations unless consensus has been reached on its retention.

4. Once agreement has been reached on the Export principles mentioned in paragraph 2, the responsibility for issuing an Export licence for the permitted Export destinations lies with the Party within whose jurisdiction the Export contract falls.

5. Parties who are not participants in the Co-operative Armament Programme shall obtain approval from the Parties participating in the said programme before authorising any re-Export to non-Parties of Defence Articles produced under that programme.

6. Parties shall undertake to obtain end-user assurances for Exports of Defence Articles to permitted destinations, and to exchange views with the relevant Parties if a re-export request is received. If the envisaged re-export destination is not among permitted export destinations, the procedures defined in paragraph 13.3(a) shall apply to such consultations.

7. The Parties shall also undertake to review on a case by case basis existing Co-operative Armament Programme agreements or arrangements and the commitments relating to current Co-operative Armament Programmes, with a view to agreeing, where possible, to apply to these programmes the principles and procedures outlined in Article 12 and the present article.

ARTICLE 14

1. This article deals with Transfers and Exports relating to a programme which has been carried out in co-operation between manufacturers within the jurisdiction of two or more Parties.

2. When TDCs or other defence companies carry out a programme of development or production of Defence Articles on the territory of two or more Parties, which is not conducted pursuant to an inter-governmental programme, they can ask their relevant national authorities to issue an approval that this programme qualifies for the procedures outlined in Articles 12 and 13.

3. If approval is obtained from all Parties concerned, the procedures outlined in Article 12 and Article 13 paragraphs 2, 3, 4 and 6 shall be fully applied to the programme in question. The Parties concerned shall inform the other Parties of the status of the programme resulting from this approval. There other Parties shall then be committed to apply the provisions of Article 13, paragraph 5.

ARTICLE 15

At early stage of development of an industrial co-operation, Transfers between Parties for the exclusive use of the industries involved can by authorised on the basis of Global Project Licences granted by the respective Parties.

ARTICLE 16

1. The Parties commit themselves to apply simplified licensing procedures for Transfers, outside the framework of an intergovernmental or an approved industrial co-operation programme, of components of sub-systems produced under sub-contractual relations between industries located in the territories of the Parties.

2. Parties shall minimise the use of governmentally issued End-User Certificate and international import certificate requirements on Transfers of components in favour of, where possible, company certificates of use.

ARTICLE 17

1. This article deals with Transfers between Parties of Defence Articles and related Defence Service that are nationally produced and do not fall within the scope of Articles 12 or Articles 13 to 16.

2. As a contribution to security of supply, Parties shall make their best efforts to streamline national licensing procedures for such Transfers of Defence Articles and related Defence Services to another Party.

ARTICLE 18

The granting of a Global Project Licence shall not exempt related Transfers of Defence Articles between Parties from other relevant regulations, for example transit requirements or customs documentation requirements. Parties agree to examine the possibility of simplifying or reducing administrative requirements for Transfers covered by this Agreement.

PART 4

Security of Classified Information

ARTICLE 19

All Classified Information exchanged between the Parties or their defence industries pursuant to this Agreement shall be handled in accordance with the national laws and regulations of the Parties and the provisions of this Part stated below and the Annex to this Agreement. Without undermining the security of Classified Information, the Parties shall ensure that no unnecessary restrictions are placed on the movement of staff, information and Material, and facilitate access taking into account the principle of a need-to-know.

ARTICLE 20

1. For the purposes of this Agreement the Parties shall use the national security classifications and their equivalent as stated in the chart in the Annex on security of Classified Information.

2. When a Party amends its national classification, it shall notify the other Parties as soon as possible.

ARTICLE 21

1. All persons who require access to Classified Information at Confidential level and above must hold an appropriate security clearance. The clearance procedure must be in accordance with national laws/regulations. If a clearance is issued by a Party for a national of another Party, this other Party shall be shortly notified.

2. Personal Security Clearances for nationals of the Parties residing, and requiring access to Classified Information, in their own country shall be undertaken by their NSA/DSA.

3. However, Personal Security Clearance for nationals of the Parties who are legally resident in the country of another Party and apply for a job in that country shall be undertaken by the competent security authority of that country conducting overseas checks as appropriate, and notifying the parent country.

4. A Personal Security Clearance issued by one NSA/DSA shall be accepted by the other NSAs/DSAs of the Parties for employment involving access to Classified Information within a company in their country.

ARTICLE 22

The security clearance of TDCs and other defence companies' facilities (Facility Security Clearance) shall be undertaken in accordance with the national security regulations and requirements of the Party where this facility is located. If necessary, consultations between the Parties shall be considered.

ARTICLE 23

1. This article deals with access to Classified Information by individuals.

2. Access to Classified Information under this Agreement shall be limited to individuals having a need-to-know and having been granted a security clearance to the level appropriate to the classification of the information to be accessed.

3. Authorisation for access shall be requested from the relevant authorities of the Party where it is necessary to have access to Classified Information.

4. Access to Classified Information either Confidential or Secret by a person holding the sole nationality of a Party shall be granted without prior authorisation of the originating Party.

5. Access to Classified Information either Confidential or secret by a person holding the dual nationality of both a Party and a European Union country shall be granted without the prior authorisation of the originating Party. Access not covered by this paragraph shall follow the consultation process as described in the Annex on security of Classified Information.

6. Access to Classified Information either Confidential or Secret by a person not holding the nationality of a Party shall be subject to prior consultation with the originating Party. The consultation process concerning such individuals shall be as described in the Annex on security of Classified Information.

7. However, in order to simplify access to such Classified Information, the Parties shall endeavour to agree in Programme Security Instructions (PSI) or other appropriate documentation approved by the NSAs/DSAs concerned, that such access limitations may be less stringent or not required.

8. For special security reasons, where the originating Party requires access to Classified Information at Confidential or Secret level to be limited to only those holding the sole nationality of the Parties concerned, such information shall be marked with its classification and an additional "For (XY) Eyes Only" caveat.

ARTICLE 24

1. The Parties shall not release, disclose, use or permit the release, disclosure or use of any Classified Information except for the purpose and limitations stated by the originating Party.

2. The Parties shall not release, disclose or permit the release or disclosure of Classified Information related to a programme to another government or international organisation, or any entity not participating in this programme other than the ones for which access is subject to the provisions in Article 23, without prior written consent of the originating Party.

ARTICLE 25

1. Classified Information at Confidential and Secret levels shall normally be transferred between the Parties through Government-to-Government diplomatic bag channels or through channels approved by the NSAs/DSAs of the Parties. Such information shall bear the level of classification and denote the country of origin.

2. Alternative means for transmission of information classified Restricted or Confidential are described in the Annex on security of Classified Information.

ARTICLE 26

1. Each Party shall permit visits involving access to Classified Information specified in a security protocol or made available by a Party on a case by case basis to its government establishments, agencies and laboratories and Contractor industrial Facilities, by civilian or military representatives of the other Party or by their contractor employees, provided that the visitor has an appropriate security clearance and a need-to-know.

2. Subject to the provisions described in the Annex on security of Classified Information, such visits shall be arranged directly between the sending Facility and the receiving Facility.

ARTICLE 27

In case the application of the above provisions required modifications to the national laws and regulations which are in force in the Parties or to general security agreements applicable exclusively between two or more of them, as far as they apply to industrial security, the Parties shall take the necessary measure to implement these modifications.

PART 5

Defence Related Research and Technology

ARTICLE 28

1. The Parties shall provide each other with information on their respective defence related Research and Technology (R&T) programmes in order to facilitate harmonisation of those programmes.

2. The exchange of information shall cover:

(a) Defence related R&T strategies and policies;

(b) Current and planned defence related R&T programmes.

3. The Parties shall agree on the modalities for communication and exchange of information provided under paragraph 2(a) and (b) above.

4. Information on defence related R&T policies or programmes regarded by a Party as pertaining to its critical security interests, or which is about its relationships with third parties, need not be communicated. Each Party shall notify to the other Parties categories of information which it judges does not have to be communicated.

ARTICLE 29

The Parties shall develop a common understanding of what technologies are needed with the objective of establishing a co-ordinated approach to fulfil those needs.

ARTICLE 30

In order to foster co-operation in defence related R&T to the greatest possible extent the Parties agree that:

(a) two or more of the Parties may undertake a defence related R&T programme or project without the participation or approval of the other Parties;

(b) entry of additional Parties shall require the agreement of all the original Parties;

(c) rights of use of results shall be agreed by the Parties involved in the R&T programme or project;

(d) means should be sought in the context of (a) to (c) above to establish common contracting methods and procedures for defence related R&T contracts.

ARTICLE 31

The Parties shall co-ordinate by means of an agreed code of conduct their respective relationships with, and activities towards, TDCs and, as appropriate, other defence companies and research entities, in respect of defence related R&T. To that end, the Parties shall organise consultations between themselves and dialogue between themselves and the TDCs and, as appropriate, other defence companies and research entities, to co-ordinate the handling of proposals and establish common defence related R&T programmes where appropriate and shall seek to harmonise their methods of negotiating, funding and letting defence related R&T contracts.

ARTICLE 32

The Parties shall seek the ways and means to task an organisation with legal personality and to which funds may be delegated by the Parties, where appropriate, to contract and manage defence related R&T programmes or projects.

ARTICLE 33

Competition should be the preferred method for letting defence related R&T contracts, taking into account national regulations and procedures, except when a Party judges that such competition could be detrimental to its critical security interests.

ARTICLE 34

For common defence related R&T activities pursuant to this Agreement, the Parties shall seek a global return without requiring juste retour on an individual project basis.

ARTICLE 35

The Parties shall agree the policies and procedures to be followed when undertaking R&T programmes or projects with any third party.

ARTICLE 36

The Parties shall develop appropriate international instruments pursuant to Articles 28 to 35.

PART 6

Treatment of Technical Information

ARTICLE 37

1. Treatment of Technical Information is subject to the need-to-know of the intended recipient and subject to compliance with laws and regulations concerning national security.

2. Each Party, in considering granting access to and use of government owned Technical Information, or Technical Information to which it has access, shall treat the defence industries of the other Parties as it treats its own domestic industry.

3. The Parties shall examine the scope for extending the measure detailed in Part 6 of this Agreement to other industrial entities which are legally bound in arrangements effective in the territories of two or more Parties for the purposes of defence industry restructuring.

ARTICLE 38

1. The ownership of Technical Information shall, as a general rule, vest in the generator of that Technical Information; this is subject to the Parties having sufficient rights for disclosure and use of Technical information generated under contracts placed by them.

2. In particular, the Parties concerned shall not require the transfer of ownership of Technical Information from industry to a Party as a condition for permitting the creation or restructuring of a legal entity that can be regarded by them as a TDC or for permitting the transfer of a contract to such a legal entity.

3. Parties shall acquire ownership of Technical Information only when they deem it impracticable to do otherwise, and by legal or contractual means.

4. Nothing in this Agreement shall affect legal rights existing in respect of employer-employee relationships.

ARTICLE 39

Subject to the rights of any third parties, each Party shall:

(a) disclose government owned Technical Information free of charge to the other Parties and/or their defence industries for information purposes to facilitate the creation or restructuring of a legal entity that can be regarded by that Party as a TDC;

(b) consider favourably the disclosure of government owned Technical Information and the grant of licences for the commercial purposes of a legal entity that can be regarded by that Party as a TDC, on fair and reasonable terms;

(c) provide government support and technical assistance for the implementation of paragraph (a) and (b) on fair and reasonable terms.

ARTICLE 40

Disclosure and use of Technical Information owned by contractors and generated in respect of a contract awarded by Parties shall be governed by the following provisions:

(a) The Parties concerned shall permit the release of Technical Information and the necessary licensing or assignment of rights from their contractors to enable the latter to create or restructure a legal entity that can be regarded by these Parties as a TDC and to operate such an entity, notwithstanding anything in the contract with these contractors to the contrary, and subject to the obligations of each Party concerned towards any third party and the non-existence of any legal impediments.

(b) Parties shall assist as appropriate in facilitating the disclosure of Technical Information between contractors.

ARTICLE 41

The Parties concerned shall not claim any levy arising from national defence contracts for the purpose of creating or restructuring a legal entity that can be regarded by them as a TDC generating a transfer of Technical Information from the contractor to this entity, providing the entity and/or contractor concerned undertake all levy obligations under the national defence contracts signed by the Parties with the contractor.

ARTICLE 42

In support of European defence industry restructuring, the Parties shall establish arrangements leading to the harmonisation of standard provisions appearing in the defence contracts of the Parties relating to the treatment of Technical Information. This harmonisation shall take into account any necessary modification or supplement required to cover the treatment of Technical Information in Co-operative Armament Programmes between Parties. This work shall take into account other European initiatives in the field of Technical Information treatment.

ARTICLE 43

1. Parties shall consider establishing arrangements safeguarding and harmonising provisions and procedures in their territories relating to inventions incorporating Technical Information which arises in the territories of Parties, which are classified and for which protection by patent or like protection is required. Such arrangements shall also aim to establish streamlined procedures for the transmission of the documents associated with the filing and prosecution of such rights.

2. If changes to the provisions of international agreements that bind Parties or to the laws and regulations of Parties are identified as being necessary, Parties shall take the necessary measures for these changes to be handled according to national legislative and other relevant procedures.

ARTICLE 44

Where Technical Information is received from a third party or another Party, nothing in this Agreement shall prejudice the rights of that third party or other Party with regard to that Technical Information. Furthermore, nothing in this Agreement shall be construed as requiring a Party to disclose Technical Information contrary to national security laws and regulations or laws and regulations on export controls or contrary to any end user agreements where an appropriate waiver has not been secured.

PART 7

Harmonisation of Military Requirements

ARTICLE 45

The Parties recognise the need to harmonise the military requirements of their armed forces by establishing a methodology that improves co-ordination across all collaborative bodies and sets out a permanent process for:

(a) agreeing on the definition of a common concept for force employment and developing a common understanding of the corresponding military capabilities to be implemented;

(b) developing harmonised force development and equipment acquisition planning;

(c) establishing a profile of investment for defence and industry;

(d) developing common user requirements in order to facilitate further co-operation on equipment acquisition;

(e) conducting a common dialogue with defence industry.

ARTICLE 46

1. The Parties recognise the need to co-operate in establishing a long term master-plan that would present a common view of their future operational needs. This would constitute a framework for harmonised equipment acquisition planning and would provide orientation for a harmonised defence related R&T policy.

2. To that effect, the Parties shall undertake regular and comprehensive exchanges of Documents and other relevant information and shall undertake co-operative work. This shall cover:

(a) a detailed force development process, with strong supporting rationale to which the Parties shall be prepared to subscribe;

(b) a detailed analysis of military capabilities;

(c) the national planning status and priority of equipment and system programmes.

ARTICLE 47

1. The Parties recognise the need to co-operate as early as possible in the genesis of the requirement up to and including the specification of the systems they want to develop and/or purchase.

2. To that effect, at each stage of the acquisition process, the Parties shall undertake regular and comprehensive exchanges of Documents and other relevant information and shall undertake co-operative work. This shall cover:

(a) the establishment of staff targets;

(b) the performance of simulations, technical-operational studies, pre-feasibility and risk reduction studies in order to compare the efficiency of different solutions and optimise their specifications;

(c) the realisation of technological demonstrators and their experimentation in the field;

(d) the establishment of common staff requirements and specifications.

3. The Parties shall identify projects that may have the potential for co-operation in the areas of research, development, procurement and logistic support, in order to improve overall military capability, especially in the field of Intelligence, Strategic Transport and Command and Control.

ARTICLE 48

1. The Parties shall organise consultation between them in order to harmonise their programme management and equipment acquisition procedures.

2. The Parties shall seek the ways and means to task and fund an organisation with legal personality to manage programmes and proceed to common equipment acquisition.

ARTICLE 49

The Parties shall define and implement the methods, means and organisation to undertake and support the tasks envisaged in Articles 45 to 48, and shall set out detailed objectives and procedures in a specific international instrument.

PART 8

Protection of Commercially Sensitive Information

ARTICLE 50

Consultations between the Parties pursuant to Part 2 of this Agreement shall be subject to restrictions regarding information provided to the other Parties due to the confidential nature of some information which is of commercial value or market sensitive. For the purposes of this Part, information includes, inter alia, Technical Information.

ARTICLE 51

1. Information which is of commercial value or market sensitive shall be accepted in confidence and safeguarded accordingly. To assist in providing the desired protection, each Party shall make sure that any information provided to other Parties in confidence is adequately marked to signal its commercial value.

2. The Parties shall also be prepared to enter into direct confidentiality agreements with industry or other owners of information in respect of disclosures involving information which is of commercial value or market sensitive.

ARTICLE 52

The Party receiving information which is of commercial value or market sensitive from another Party shall not use or disclose such information for any purpose other than the purpose for which it was provided, unless it has received the prior written consent of the providing Party. Unless otherwise specified by the providing Party, distribution shall be limited to those within the government of the receiving Party having a need-to-know. In addition, information marked as having commercial value shall be protected, in the absence of specific instructions, on the basis that it has been supplied solely for information purposes.

ARTICLE 53

Each Party shall ensure that information received in confidence or jointly generated under this Agreement remains free from disclosure, unless the providing Party consents to such disclosure. In the event of disclosure without the consent of the providing Party, or if it becomes probable that such disclosure may take place, immediate notification shall be given to the providing Party.

ARTICLE 54

The restrictions on use and disclosure of information which is of commercial value or market sensitive shall not apply where such information:

(a) was in the possession of a Party, without any written or implied restriction, prior to its receipt under any confidentiality agreement;

(b) can be shown by a Party to have been independently conceived or developed by or for that Party without reference to such information supplied in confidence;

(c) is in the public domain or subsequently comes into the public domain, other than by any breach of confidence by a Party; provided the receiving Party consults with the providing Party prior to any use or disclosure;

(d) has been made legitimately available to a Party through another source;

(e) is otherwise available to the Parties as a result of contracts placed by a Party.

PART 9

Final Provisions

ARTICLE 55

1. This Agreement shall be subject to ratification, approval or acceptance.

2. Instruments of ratification, acceptance or approval shall be deposited with the Government of the United Kingdom of Great Britain and Northern Ireland, which is hereby designated the Depositary.

3. This Agreement shall enter into force, between the first two signatory States to deposit their instruments of ratification, acceptance or approval, on the thirtieth day following the date of receipt by the Depositary of the second instrument.

4. For other signatory States, this Agreement shall enter into force of the thirtieth day following the date of receipt by the Depositary of the instrument of ratification, acceptance or approval.

5. Until such time as all six signatory States have deposited their instruments of ratification, acceptance or approval, the Executive Committee shall be composed of those signatory States for whom this Agreement has entered into force, with the remaining signatory States participating as observers. Article 3.2 (b), Article 57, Article 58.1, and Article 58.2 (b) of this Agreement shall not enter into force until all six signatory States have deposited their instruments, or until 36 months have passed after the date of signature, whichever shall occur first.

6. The Depositary shall transmit a certified copy of the Agreement to each signatory State.

7. The Depositary shall notify the signatory States of:

(a) the date of receipt of each instrument of ratification, approval or acceptance referred to in paragraph 2 above;

(b) the date of entry into force of this Agreement for each Party.

ARTICLE 56

1. Once this Agreement has entered into force for all signatory States, any Member State of the European Union may send an application to accede to the Depositary of this Agreement. The Parties shall consider such an application. Accession shall be subject to the unanimous approval of the Parties. The accession of any other European State may be considered by the Parties. An invitation shall be issued only if they reach a unanimous decision.

2. This Agreement shall enter into force for an acceding Party on the thirtieth day following the date of receipt by the Depositary of the instrument of accession. The Depositary shall transmit a certified copy of this Agreement to the Government of the acceding Party. The Depositary shall notify the Parties of the date of receipt of each instrument of accession and the date of entry into force of this Agreement for each acceding Party.

ARTICLE 57

1. If the Parties agree to jointly terminate this Agreement, they shall immediately consult and agree amongst themselves the arrangements required to satisfactorily manage the consequences of the termination. This Agreement shall then terminate on a date to be agreed by the Parties in writing.

2. If one of the Parties wishes to withdraw from this Agreement, it shall examine the consequences of any such withdrawal with the other Parties. If on completion of these consultations the Party concerned still wishes to withdraw, it shall notify its withdrawal in writing to the Depositary, which shall inform all the other Parties of such notification. Withdrawal shall take effect six months after receipt of notification by the Depositary.

3. Neither termination nor withdrawal shall affect obligations already undertaken and the rights and prerogatives previously acquired by the Parties under the provisions of this Agreement, in particular regarding Part 4 (Security of Information), Part 6 (Treatment of Technical Information), Part 8 (Protection of Commercially Sensitive Information), and Part 9, Article 60 (Settlement of Disputes).

ARTICLE 58

1. Any Party may propose amendments to this Agreement. The text of any proposed amendment shall be submitted in writing to the Depositary who shall circulate it to all signatory States for consideration by the Executive Committee and any State which has acceded. Once an amendment has been agreed in writing by all the Parties, each of those Parties shall forward to the Depositary its instrument of ratification, acceptance or approval. The amendment shall enter into force on the thirtieth day following the date of receipt by the Depositary of instruments from all of those Parties. The Depositary shall notify all signatory States and any State which has acceded of the date of entry into force of any amendment. Any amendment, which enters into force before all six signatory States have become Parties, shall be binding on the other signatory States when they become Parties. Any amendment, which enters into force, shall be binding to any State which has acceded when it becomes a Party.

2.(a) The Annex on security of Classified Information shall form an integral part of this Agreement. Its content shall remain restricted to administrative or technical matters concerning the security of Classified Information.

(b) Any modification of this Annex may be decided by the Executive Committee. Such modifications shall enter into force on the thirtieth day following the date of receipt by the Depositary of the Executive Committee's decision. The Depositary shall notify all signatory States and States which have acceded of the date of entry into force of any such modification.

3. Any State which has applied to accede, or has been invited to accede, under the terms of Article 56.1 shall be informed by the Depositary of any agreed amendment or modification, and of the date of entry into force.

ARTICLE 59

The Parties shall record their understandings regarding the administrative and technical details of their co-operation under this Agreement in international instruments which may incorporate by references, the provisions of this Agreement.

ARTICLE 60

If a dispute arises between two or more Parties about the interpretation or application of this Agreement, they shall seek a solution by consultation or any other mutually acceptable method of settlement.

In witness whereof, the undersigned Representatives, being duly authorised, have signed this Agreement.

Done at Farnborough on 27 July 2000, in one original, in English, French, German, Italian, Spanish and Swedish, each text being equally authentic.

[HERE FOLLOW THE SIGNATURES]

ANNEX
Security of Classified Information

1. National Security classifications, referred to in Article 20

For the purposes of this Agreement, the equivalent security classifications of the Parties are the following:

States			
France	SECRET DEFENSE	CONFIDENTIEL DEFENSE	DIFFUSION RESTREINTE
Germany	GEHEIM	VS-VERTRAULICH	VS-NUR FÜR DEN DIENSTGEBRAUCH
Italy	SEGRETO	RISERVATISSIMO	RISERVATO
Spain	RESERVADO	CONFIDENCIAL	DIFUSION LIMITADA
Sweden	HEMLIG /SECRET	HEMLIG /CONFIDENTIAL	HEMLIG /RESTRICTED
United Kingdom	SECRET	CONFIDENTIAL	RESTRICTED

2. Consultation process, referred to in Article 23

1.(a) The participants in a given project/programme shall notify and consult each other when access to classified project/programme information requires to be granted to non-Party nationals.

(b) This process shall be initiated before the start or, as appropriate, in the course of a project/programme

2. The information shall be limited to the nationality of the individuals concerned.

3. A Party receiving such notification shall examine whether access to its Classified Information by non-Part nationals is acceptable or not.

4. Such consultations shall be given urgent consideration with the objective of reaching consensus. Where this is not possible the originator's decision shall be accepted.

3. Alternative means for transmission of information, referred to in Article 25

Information classified Confidential or Restricted may be transmitted through the different channels described below.

1. In cases of urgency, i.e. only when the use of government-to-government diplomatic bag channels cannot meet the needs of industry, Classified Information at Confidential level may be transmitted via commercial courier companies, provided that the following criteria are met:

(a) The courier company is located within the territory of the Parties and has established a protective security program for handling valuable items with a signature service, including a record of continuous accountability on custody through either a signature and tally record, or an electronic tracking/tracing system.

(b) The courier company must obtain and provide to the Consignor proof of delivery on the signature and tally record, or the courier must obtain receipts against package numbers.

(c) The courier company must guarantee that the consignment will be delivered to the Consignee prior to a specific time and date within a 24-hour-period.

(d) The courier company may charge a commissioner or sub-contractor. However, the responsibility for fulfilling the above requirements must remain with the courier company.

2. Classified Information at Restricted level shall be transmitted between the Parties in accordance with the sender's national regulations, which may include the use of commercial couriers.

3. Classified Information at Confidential level and above shall not be transmitted electronically in clear text. Only cryptographic systems approved by the NSAs/DSAs concerned shall be used for the encryption of information classified Confidential and above, irrespective of the method of transmission. Restricted information shall be transmitted or accessed electronically (e.g. point to point computer links) via a public network like the Internet, using commercial encryption devices mutually accepted by the relevant national authorities. However, telephone conversations, video conferencing or facsimile transmissions containing Restricted information may be in clear text, if an approved encryption system is not available.

4. Provisions for visits, referred to in Article 26

A-Visit procedure

1. All visiting personnel shall comply with security regulations of the host Party. Any Classified Information disclosed or made available to visitors shall be treated as if supplied to the Party sponsoring the visiting personnel, and shall be protected accordingly.

2. The arrangements described in these paragraphs apply to contractors and military or civilian representatives of the Party who need to undertake visits to the following facilities:

(a) a government department or establishment of another Party, or

(b) the facilities of a transnational or other defence company or their sub-contractors located in one or more of the Parties,

and need access to Classified Information at Confidential and Secret level.

3. These visits are also subject to the following conditions:

(a) the visit has an official purpose related to defence activities of one or more of the Parties,

(b) the facility to be visited has the appropriate Facility Security Clearance in accordance with the provisions set forth in Article 22.

4. Prior to arrival at a Facility identified above, confirmation of the visitor's Personal Security Clearance must be provided direct to the receiving Facility, in the form below, by the Security Official of the sending facility. To confirm identity the visitor must be in possession of an ID card or passport for presentation to the security authorities at the receiving Facility.

5. It is the responsibility of the Security Officials of:

(a) the sending Facility to ensure with their NSA/DSA that the company Facility to be visited is in possession of an appropriate Facility Security Clearance.

(b) both the sending and receiving facilities to agree that there is a need for the visit.

6. The receiving Facility Security Official must ensure that records are kept of all visitors, including their name, the organisation they represent, date of expiry of the Personal Security Clearance, the date(s) of the visit(s) and the name(s) of the person(s) visited. Such records are to be retained for a period no less than five years.

7. The NSA/DSA of the host Party has the right to require prior notification from their facilities to be visited for visits of more than 21 days duration. This NSA/DSA may then grant approval, but should a security problem arise it will consult with the NSA/DSA of the visitor.

8. Visits relating to information classified Restricted shall also be arranged directly between the sending Facility and the receiving Facility.

B-Format for security clearance assurance:

ASSURANCE OF SECURITY CLEARANCE

This is to certify that:

name/surname/title:

place and date of birth (country):

national of (country/countries):

holder of passport/identity card (number):

employed with (company, authority, organisation):

is the holder of a security clearance issued by the NSA/DSA of:

in conformity with national laws and regulations and may have access to classified information up to and including:

☐ CONFIDENTIAL ☐ SECRET

The current security clearance expires on: (date)

Issuing:

Company/Authority (address or stamp)

Security Official (full name, rank)

(date) (signature)

Ratifications, Accessions, Effective Dates and Declarations

State	*Action*	*Date*	*Effective Date*
France	Signature	27 Jul 2000	26 Apr 2001
	Ratification	27 Mar 2001	
Germany	Signature	27 Jul 2000	18 Apr 2001
	Declaration[1]	27 Jul 2000	
	Ratification	19 Mar 2001	
Italy	Signature	27 Jul 2000	
Spain	Signature	27 Jul 2000	
Sweden	Signature	27 Jul 2000	6 May 2001
	Ratification	6 Apr 2001	
United Kingdom	Signature	27 Jul 2000	18 Apr 2001
	Ratification	14 Mar 2001	

NOTES:

[1] [Translation]

1. "As a supplement to the last recital of the preamble of the Framework Agreement, the Federal Government understands that this Agreement does not affect the obligations and commitments of defence companies resulting from European Law."

2. "In awareness of Article 16, paragraph 2 of the Framework Agreement, the Federal Government will, when exporting war weapons and other military goods of significance for a war weapon, continue in future to insist upon governmentally issued End-User Certificates."

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