

*Chaillot Papers*

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April 2003

n° **59**

# European armaments cooperation

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Core documents

*compiled by Burkard Schmitt*



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*A French version is also available*

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**Institute for Security Studies**

*European Union*

*Paris*

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*Since it was relaunched at St-Malo – and, as from 1999, included among the European Union’s legitimate areas of competence – European defence has followed two quite distinct routes forward. It has followed a high road of intergovernmental cooperation thanks to the quite spectacular rapprochement among the 15 on the Union’s responsibility for crisis management and the need to give it a minimum of military capability to do this. The low road has followed a market logic as a result of equally spectacular industrial restructuring that has in particular transformed the aerospace sector in Europe. Yet between these two paths there has been a gaping chasm: the absence of a common European armaments policy. Not that member states have failed to take a certain number of initiatives: OCCAR and the LoI demonstrate the political determination of governments that are most concerned to preserve a truly competitive European industry. But when it has come to their national defence industries, these same states have always preferred to act outside the European Union, through ad hoc collaboration and different institutional frameworks, systematically excluding armaments questions from the Union’s legitimate areas of competence.*

*Whereas, therefore, the idea of a European armaments agency was included as from 1993 in the Maastricht Treaty, ESDP was developed in lofty ignorance of all of these questions. It was only recently, in 2002, as a result of discussions within the Convention on the Future of Europe, that the project of a European armaments agency saw the light of day once more, this time with a modicum of seriousness.*

*To assess the risks and difficulties entailed in the idea of European armaments integration, it seemed to us useful to publish a special Chaillot Paper bringing together the basic documents relating to European cooperation in this field over the last six years. This reference work, edited by Burkard Schmitt, represents the first stage in a wider study of the missions and modalities of the future European armaments agency, by the same author, which will shortly be published in this series.*

*Of course, divisions within Europe resulting from the Iraq crisis could once again slow down the creation of such an armaments agency. At the time of going to press, no one can foresee with any accuracy either the outcome of the crisis or the impact – constructive or destructive – that it could have on European security and defence policy overall. However, with or without the Iraq question, for the arms industries, as for states themselves, budgetary constraints are already a stark reality. It is therefore hard to see, in terms of the future competitiveness or even survival*

*of the European defence industry, and in terms of the military capabilities available to meet the challenges of this century, how European states, no matter how divided they may be at the political level, can conceive other solutions than to make a start on integration.*

*Nicole Gnesotto  
Paris, March 2003*



There is a long tradition of armaments cooperation in Europe. The first cooperative programmes were launched in the 1960s, and their number increased considerably over the following decades. Projects such as *Transall*, *Tornado*, *HOT*, *Milan* and *Eurofighter* – to name just a few – have illustrated both the political will and the technological capability to develop and produce high-tech weapons systems jointly.

However, European armaments cooperation is not entirely a success story. First, it has been limited mainly to aerospace, whereas land armaments and naval shipbuilding have remained by and large nationally focused. Second, armaments cooperation has traditionally been organised on a purely intergovernmental, ad hoc basis, which has implied complex institutional and industrial arrangements, leading to delays and cost overruns. Last but not least, these programme-specific arrangements have not changed the fundamental weakness of Europe's armaments sector: market fragmentation, which results in costly and unnecessary duplication.

## Dissipation of effort

Since the early 1990s, the combination of budget constraints and spiralling costs for complex weapons systems has put European countries under increasing pressure to develop a more ambitious and systematic approach. As long ago as 1991, the WEU Declaration annexed to the Maastricht Treaty spoke of the requirement to examine further 'proposals for enhanced cooperation in the field of armaments with the aim of creating a European armaments agency'. However, up until now, deep-rooted national traditions, bureaucratic inertia, diverging industrial interests and different procurement philosophies have made any agreement on the principles and methods of such an agency, let alone on the scope and nature of a common armaments policy, impossible.

What we have seen instead is a dissipation of effort, with a multitude of initiatives at different levels and with varying memberships. In 1997, the Western European Armaments Group (WEAG) member states created the Western European Armaments Organisation (WEAO) for the promotion of cooperation on research and technology. At the same time, France, Germany, Italy and the United Kingdom set up a separate programme management agency, the Organisation for Joint Armaments Cooperation (OCCAR). From a legal point of view, both WEAO and OCCAR could be transformed into a fully-fledged armaments agency. However, both initiatives had, for different reasons, a rather difficult and cumbersome start, and neither has been taken forward.

Facing a deadlock on the political side, on the one hand, and increasing competition from US industries, on the other, European aerospace companies decided to go ahead on their own and to launch a process of cross-border consolidation. The initial project of merging all national champions into a single European company failed, but gave birth to two big groups, the European Aeronautic, Defence and Space Company (EADS) and BAE Systems. The latter are linked with each other and with the remaining big players through a multitude of transnational joint ventures.

The growing internationalisation of industry has in turn given new impetus to political initiatives. After two years of preparation, in July 2000 the six major European arms-producing countries signed a Framework Agreement aimed at facilitating industrial cooperation and restructuring. Although the agreement has not yet been implemented, it could represent an important step towards a more homogenous defence economic 'space' in Europe.

All these initiatives have been taken outside the EU framework. Due to Article 296 of the Treaty establishing the European Community, defence items have been exempt from the rules of the internal market. Nor does European Security and Defence Policy (ESDP) cover armaments. However, there are certain armaments-related issues where the EU has developed at least limited competence. In 1998, the EU Council adopted a Code of Conduct on Arms Exports in the framework of the Common Foreign and Security Policy. The Code is not legally binding, but its consultation mechanism and annual reports have become useful tools for narrowing the differences between national export policies. The Commission has become an important player in the field of dual-use technology and has its word to say on mergers and acquisitions of defence companies whenever civil activities are also concerned. Since the failure of its 1997 communication proposing a Common Position and an Action Plan for a common armaments policy, the Commission has maintained an interest in commercial aspects of armaments. That interest has been seen, *inter alia*, in its Strategic Aerospace Review for the 21st Century (STAR 21) report, but above all in its most recent communication 'European Defence - Industrial and Market Issues'.

This short overview shows that Europe's armaments sector is still at the construction stage. There is very little coordination between the various initiatives and no generally agreed blueprint for an overall architecture that could bring the various components together.

### **The EU – an appropriate framework for action?**

However, there seems to be recently a growing awareness that (a) greater coherence and a more consistent policy are indispensable, and that (b) the EU might be the appropriate framework in which to achieve this objective. There are several reasons for this change. First, the EU has started to develop its ESDP, which creates *per se* a more positive climate for considering an EU armaments policy. Second, as the European Capabilities Action Plan process has illustrated, there is a logical link between ESDP, military capabilities

and armaments. A credible policy needs the necessary means, and common procurement would make sense from both an operational and a financial point of view. Third, in Europe the post-Cold War security challenges have led to a growing convergence of national military concepts and requirements. This tendency, reflected in the 'Petersberg tasks' and the Headline Goal, facilitates armaments cooperation considerably. Fourth, cross-border link-ups and mergers of defence companies have increased the need for a common regulatory framework and reduced the traditional industrial rivalry between arms-producing countries, which will facilitate more cost-effective arrangements. Finally, the widening transatlantic gap in defence spending makes a quantum leap in European cooperation indispensable if an autonomous industrial base in key strategic areas is to be maintained.

All this seems to be producing a growing consensus to put armaments – again – on the agenda of the forthcoming Intergovernmental Conference. The European Convention's Working Group on Defence has put forward a new proposal for an armaments agency, and many member states now seem to be overcoming their traditional reluctance to involve the EU in armaments matters.

However, this is no guarantee that member states will actually come to an agreement to bring armaments into the EU framework. In fact, many of the above-mentioned obstacles persist, and current circumstances (political divergences over Iraq, growing diversity through enlargement) do not make things any easier. What is sure is that the stakes are high, the difficulties enormous and the solutions necessarily complex. The Institute is therefore preparing a study that will try to develop some options for an EU armaments policy and analyse how the obstacles could be overcome.

In the meantime, this *Chaillot Paper* provides a selection of key documents that are essential for an informed discussion on the future of Europe's armaments sector. Documents are presented in chronological order, except for the EU's fourth annual report on arms exports, which comes immediately after the EU Code of Conduct. In order to make this publication as useful as possible for experts and practitioners, documents have been reproduced in their entirety, with the exception of the statistical part of the report on arms exports, certain annexes to the WEAO Charter and the OCCAR Convention, and some minor elements of the STAR 21 report.

## Article 296

March 1957

Armaments activities covering production, trade and procurement have been deliberately excluded from the European integration process by member states who, until now, have preferred to maintain purely national controls on these activities. That policy has been legally based on Art. 296 (ex Art. 223) of the Treaty establishing the European Community (TEC), which allows member states to derogate from treaty rules where they can demonstrate that their security interests are at stake. The essential security interests of member states referred to in that article have often been broadly interpreted in order to override the disciplines of the Community policies.

### **Article 296 (Ex article 223) of the Treaty establishing the European Community**

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1. The provisions of this Treaty shall not preclude the application of the following rules:
  - a) no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security;
  - b) any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or the trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the common market regarding products which are not intended for specifically military purposes.
2. The Council may, acting unanimously on a proposal from the Commission, make changes to the list, which it drew up on April 1958, of the products to which the provisions of paragraph 1 b) apply.

# WEAO Charter

October 1997

Subsequent to the Maastricht initiative on a Common Foreign and Security Policy (CFSP), the Western European Armaments Group (WEAG)\* established an Ad Hoc Study Group (AHSG) to review the possibilities of creating a European Armaments Agency (EAA). Because the necessary political, legal and economic conditions were lacking, the group did not recommend the implementation of a fully fledged EAA at that time. However, the AHSG continued its studies and prepared the necessary legal and organisational framework for such an agency. On this basis, in 1997 the WEAG ministers established the Western European Armaments Organisation (WEAO) as a formal subsidiary body of WEU. For the time being, WEAO's executive body, the Research Cell, is restricted to research and technology only. However, the Research Cell is a potential 'precursor' for the proposed agency, since Article 7 of the WEAO Charter provides for a broad range of possible activities.

\*WEAG full members are: Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Luxembourg, the Netherlands, Norway, Poland, Portugal, Spain, Sweden, Turkey and the United Kingdom.

## Charter of the Western European Armaments Organisation (WEAO)

### *Section I: General Provisions*

1. For the purposes of this Charter, the Council of Western European Union (hereinafter called the WEU Council) decides, in accordance with Part III of the Petersberg Declaration of 19th June 1992 (Annex I) and pursuant to the 'Six Principles' outlined in the Bonn Communiqué of 4th December 1992 (Annex II) [*annexes are not reproduced in this paper*], that all members of the Western European Armaments Group (at present Belgium, Denmark, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, the United Kingdom)<sup>1</sup> will be considered as having equal rights and responsibilities in relation to all matters arising from this Charter.

2. The WEU Council recognises that the Maastricht Declaration by the WEU nations spoke of the requirement, in the context of enhancing the operational role of the WEU, to examine further proposals for enhanced co-operation in the field of armaments with the aim of creating a European Armaments Agency.

3. The Western European Armaments Organisation (hereinafter called the WEAO) is a subsidiary body:

- a. created within the framework of the Western European Union for the implementation of tasks arising out of the Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defence, signed in Brussels on 17th March 1948, as amended by the “Protocol Modifying and Completing the Brussels Treaty” signed in Paris on 23rd October 1954, and established by the WEU Council pursuant to Article VIII of the Treaty and within the meaning of the Agreement on the Status of Western European Union, National Representatives and International Staff, signed in Paris on 11th May 1955 (hereinafter referred to as the Paris Agreement);
- b. established with a view to meeting requirements of members of the WEAG, in the field of armaments under the conditions specified hereafter, to which the WEU Council decides to grant, within the framework and the juridical personality of the WEU, the organisational, administrative, contractual, financial and accounting independence specified below. The Paris Agreement will apply to the WEAO.

4. The principles for the operation and administration of the WEAO will be set out in the WEAO Memorandum of Understanding (hereinafter referred to as the WEAO MOU). Participation in the WEAO will be effected by signature of the WEAO MOU by Ministers of Defence (hereinafter referred to as the Participants).

#### 5. Modification and Dissolution Procedures

Only the WEU Council, at the joint request of the participating states, can dissolve the WEAO or amend or revoke this Charter.

### *Section II: Aim and Functions*

#### 6. Aim

The aim of the WEAO is to assist in promoting and enhancing European armaments cooperation, strengthening the European defence technology base and creating a European defence equipment market, in accordance with policies agreed by the WEAG.

#### 7. Functions

In order to carry out the aim defined in paragraph 6 above and in compliance with the provisions of Section IV below, the WEAO may undertake, in the name of the WEU and on behalf of one or more participants, the following functions:

- a. defence research and technology activities;
- b. procurement of defence equipment;
- c. studies;

- d. management of assets and facilities;
- e. other functions necessary to carry out the aim of the Organisation.

### *Section III: Legal Status*

#### 8. Juridical Personality

- a. The WEAO will constitute an integral part of the WEU;
- b. The WEAO will share in the international personality of the WEU, as well as in the juridical personality possessed by the WEU by virtue of Article 3 of the Paris Agreement on the status of the WEU, National Representatives and International Staff. The juridical personality of the WEAO will be subsumed in that of the WEU and cannot be distinguished from it.
- c. The exchange of letters at Annex V is an integral part of this Charter.

#### 9. Privileges and Immunities

By virtue of the definitions contained in Articles 1(a) and 1(c) of the Paris Agreement and in accordance with, inter alia, Articles 8, 9, 12 to 15, 20, 21 and 22 of the Paris Agreement, all pertinent provisions of that agreement will be effected in the WEAO.

#### 10. Exercise of Rights

The WEAO will exercise those rights and enjoy those privileges within the limits and subject to the terms and conditions specified by this Charter, taking into account host nation arrangements agreed between the participating state or participating states where the Executive Body will be settled and the other participating states.

#### 11. Responsibility

- a. Responsibility for the activities of the WEAO, including any agreement or contract concluded in accordance with Section V below, will be borne by the WEU. However, the participating states will assume this responsibility vis-à-vis the WEU and will bear any resulting cost. In the event of dissolution of the WEAO, the participating states will continue to assume this responsibility vis-à-vis the WEU and will bear any resulting cost.
- b. Whenever it proves necessary to insert an arbitration clause in a contract concluded by the WEAO with a firm, in order to allow the WEAO to fulfil the functions entrusted to it in this Charter, this clause will be drawn up as set forth in Annex III which is an integral part of this Charter.
- c. The WEAO will comply with any provision which the WEU Council may make, in accordance with Article 26 of the Paris Agreement, for appropriate modes of settlement of disputes of a private character of an origin other than contractual.

## *Section IV: Organisation and Operation*

### **Sub-Section A. General**

12. The WEAO will comprise:

- a. a Board of Directors; and
- b. an Executive Body. Initially the Executive Body will be a Research Cell charged with support to the WEAG on all research and technology activities and the placement of contracts, in accordance with this Charter, and which is the precursor to the Western European Armaments Agency. When WEAG Ministers decide that conditions to move to a full European Armaments Agency are met, it is the intention that this Agency will become the Executive Body and will absorb the Research Cell.

### **Sub-Section B. Board of Directors**

13. Membership

- a. The Board of Directors will be composed of one representative of each Participant. Representatives will be the National Armaments Directors of the Participants, or their representatives. Each Participant will have the right to one vote.
- b. Each Participant will communicate through the usual channels to the Secretary General of WEU and to the Chairman of the Board of Directors the names of its representative and any alternate representative(s) on the Board.

14. Chairman

- a. The Board of Directors will elect its Chairman from among its members. The tenure of duty will be one year, and no Chairman may be re-elected more than twice.
- b. The Chairman may delegate his authority as representative including his right to vote to another authorised representative of that Participant.
- c. The Chairman will derive his authority from the Board of Directors. He must account to that Board for all actions which he may take in accordance with this Charter and the decisions taken by the Board of Directors.

15. Advisers

Each representative on the Board of Directors may be assisted by national experts, who may participate in discussions at Board meetings. With due regard to the provisions of paragraph 35 below, the Board of Directors may agree to invite any individual or individuals to attend particular meetings of the Board of Directors.

16. Organisation

- a. The Board of Directors will establish its own organisation and internal rules in accordance with this Charter.



- b. The Board of Directors will meet regularly at such intervals as will allow it to carry out effectively its responsibilities and as soon as possible in response to a specific request by any Participant.
- c. The Board of Directors, with due regard for paragraph 35 of this Charter, may restrict as appropriate, the distribution of documents and material covering special technical information and proprietary rights, or other commercial or industrial matters of a confidential nature.

#### 17. Committees

The Board of Directors may establish, as appropriate, committees of experts and working groups. It will, in any case, establish a Finance Committee and a Research and Technology Committee. These committees and working groups will advise and assist the Board of Directors in carrying out its duties and will submit to it their recommendations.

#### 18. Decisions

All decisions of the Board of Directors on questions for which no other decision-making procedure has been agreed will be taken unanimously.

#### 19. Authority

The Board of Directors, as the directing organ of the WEAO will, inter alia, be solely responsible for:

- a. determining the functions and activities to be undertaken by the Organisation, within the general aim of the WEAO;
- b. general policy decisions and the issuing of directives enabling the WEAO to carry out its mission;
- c. providing guidance for the operation and administration of the Executive Body;
- d. the policy to be followed for placing contracts;
- e. the organisation of the Executive Body, the schedule of positions and the approval of selections of personnel to posts of grade A-5 or equivalent and above;
- f. budgetary, financial, accounting and contractual decisions;
- g. exercising management control.

#### 20. Availability of the Services Provided by the Organisation

Any WEAO participating state, or any subsidiary body created under Article VIII of the Modified Brussels Treaty, may, as a matter of right, avail itself, totally or partially, of the services provided by the Organisation.

## Sub-Section C. Executive Body

### 21. Composition

The Executive Body will comprise the General Manager and the staff provided for in its establishment approved by the Board of Directors.

### 22. General Manager

#### a. Nomination

The General Manager will be nominated by the Board of Directors, after consultation with the Secretary General of the WEU; the terms of his appointment will be approved by the Board of Directors and the Secretary General.

#### b. Authority

In directing the operations of the Executive Body, the General Manager will:

- (i) implement the decisions of the Board of Directors and execute the general policy established by the Board;
- (ii) prepare plans for organisation and operation and submit them for approval to the Board of Directors;
- (iii) prepare draft budgets and financial reports to the Board of Directors, in accordance with paragraphs 33 and 34 below;
- (iv) exercise the contract authority delegated to him by the Board of Directors;
- (v) prepare the annual report mentioned in paragraph 36 below;
- (vi) attend all meetings of the Board of Directors unless otherwise decided, in special cases, by that Board; in no case will he have the right to vote;
- (vii) appoint the necessary personnel to fill positions within the approved establishment and submit in due time his selections for positions at and above A-5 level to the Board of Directors for approval.

#### c. Responsibility

The General Manager will be directly responsible to the Board of Directors for the operations of the Executive Body, even in the case where he has delegated a portion of his authority to his staff.

### 23. Staff

The Executive Body may comprise:

- a. those categories of personnel who, by virtue of the agreements signed between the Secretary General of WEU and the Government of the host states of any permanent centres or Executive Body installations, in accordance with Article 19 of the Paris Agreement, constitute WEU international personnel. Such personnel will, in the absence of express decision of the WEU Council to the contrary, be subject to the same staff rules as members of the WEU Secretariat General of corresponding grade, including those provisions relating to the Social Security System and the Pension Scheme. The Board of Directors will ensure that the number of positions

established within such categories will be restricted to those requiring the concomitant privileges and immunities for their performance;

- b. those personnel seconded and paid directly by a Participant. The regulations covering such personnel will be prescribed by the Board of Directors, in consultation with the Secretary General of WEU and in agreement with the participating state or participating states where the Executive Body will be settled.

#### 24. Incompatibility

The nomination as a staff member of the Executive Body of a person who has served as a representative on the Board of Directors for any period during the three years preceding the nomination, should be made only in exceptional circumstances and, in any event, must be approved by the Board.

### Sub-Section D. WEAO Partnerships

25. Partnerships may be established within the WEAO, under arrangements to be determined, on the initiative of two or more Participants wishing jointly to organise specific activities, including, but not limited to, research, development, production, procurement, support, and joint operation of facilities. All Participants should be informed in a timely manner of a prospective Partnership to enable them to express their interest.

26. The Partnerships constitute an integral part of the WEAO and share in the juridical personality enjoyed by the WEAO under the terms of paragraph 8 above.

27. A Partnership may be established by the Board of Directors on the initiative of two or more Participants presenting to the Board of Directors a Partnership Arrangement. 28. Decisions relating to the operation of any Partnership will be taken by the Participants in that Partnership. The Partnership will inform the Chairman of the Board of all its decisions which would otherwise have required approval by the Board.

29. The Participants in a Partnership will bear the costs and responsibilities, and enjoy the benefits, arising from the activities of that Partnership.

30. A distinct part of the assets of the WEAO may be allocated for the activities of Partnerships. At the time of the establishment of a Partnership, the Participants of that Partnership will have concluded financial arrangements specifying:

- a. methods for managing this part of the assets;
- b. the benefits and responsibilities of each Participant in the Partnership;
- c. the financial provisions for dissolving the Partnership, or for the withdrawal from it of any of its members.

31. WEAG Research and Technology (R&T) activities may be executed through the WEAO. For EUCLID programmes, the activities will be governed by the provisions of the modified EUCLID PMOU. Other R&T programmes may be conducted through the WEAO under appropriate arrangements. EUCLID Research and Technology Projects will be considered as Partnerships under the terms of this Charter.

### **Sub-Section E. Financial Management**

#### **32. General Provisions**

- a. The financial management of the WEAO will be separate and distinct from those of the WEU Secretariat-General, the other WEU Programme Offices or other WEU organs.
- b. The cost of the activities of the WEAO, covering both its administrative and operating functions, will be borne by the Participants as specified in the WEAO MOU, with special arrangements to be made for activities of Partnerships, a single Participant, and other WEU bodies.
- c. The WEAO will adopt a set of financial regulations in conformity with this paragraph and in conformity with WEU financial regulations.
- d. All funds of the WEAO, namely:
  - (i) the funds appropriated to the WEAO by the normal contributions of the Participants;
  - (ii) the funds generated by the WEAO's authorised activities;
  - (iii) the funds otherwise made available to, or administered by the WEAO on behalf of the Participants;will be itemised in the administrative budget or the operating budget of the WEAO.
- e. The competent authorities of the WEAO will not engage WEU beyond the funds mentioned in sub-paragraph (d) above, nor will they engage WEU by concluding contracts, the financing of which would require recourse to a contribution by all Participants in the WEAO beyond the provisions of the budget.

#### **33. Budget**

- a. The annual programme objectives and operating plans of the WEAO, which in no way commit national finances, will be translated into an annual budget. The budget will comprise two sections:
  - (iv) an administrative budget, covering all expenditure to be made for the internal functioning of the Executive Body;
  - (v) an operational budget, showing financial plans made to cover the activities of the Executive Body in achieving its aim.
- b. The budget of the WEAO will specify expenditure and indicate the sources from which these expenditures will be financed.
- c. The draft administrative budget will be prepared by the General Manager and forwarded by him to the Finance Committee, at such date and accompanied by such

explanations as directed by the Board of Directors. The Finance Committee will review the draft budget and make its recommendations to the Board of Directors with a view to the final approval by the Board.

- d. The draft operational budget will comprise sections covering activities involving all Participants, Partnerships, single Participants, and other WEU bodies. The section dealing with activities involving all Participants will be reviewed and approved in accordance with the procedures set out at paragraph 33c above. The sections of the budget covering the activities of Partnerships will be approved by the Participants in those Partnerships in accordance with paragraph 28 above. The budget for activities on behalf of a single Participant will be approved by that Participant.
- e. The General Manager will operate in conformity with the budget.

#### 34. Annual Financial Statements

- a. The General Manager will submit annual balance sheets, profit and loss statements, where appropriate, and detailed accounts indicating actual expenditures and income in terms of the items contained in both the administrative and operational budgets.
- b. The Board will approve the annual financial statements of the General Manager only after taking into account the report of the WEU Board of Auditors mentioned in paragraph 37 below and the comments of the Finance Committee on both the statements and the report.

#### Sub-Section F. Security

- 35.a. The WEAO will be bound by the WEU security regulations and by such other security rules approved or authorised by the WEU Council as may apply to them.
- b. The WEAO will draw up its internal security regulations on the basis of those applicable to the WEU Secretariat-General and the other WEU subsidiary bodies and a member of the Executive Body will be tasked with the implementation and supervision of the security regulations applicable to the Executive Body.
- c. The WEU Security Bureau will maintain such relationships with the WEAO and the Participants concerned as are set forth in the WEU security regulations.
- d. In connection with sub-paragraph (c) above, the WEU Security Bureau will provide advice as necessary to the Board of Directors and, where appropriate, to the Secretary General of WEU, who is responsible for co-ordinating security within WEU.

#### Sub-Section G. Reporting and Auditing

36. Every year the Board of Directors will provide to the WEU Council of Ministers, through WEAG Defence Ministers, a report of the activities of the past year and a forecast of activities for the coming year. Upon request, additional information as appropriate

will be provided to the WEU Permanent Council through normal WEAG procedures.

37. The Chairman of the Board of Directors will give the Secretary General of the WEU all necessary information and assistance to enable him to fulfil his administrative responsibilities set out in this Charter.

38. The WEU Board of Auditors will audit the accounts of the WEAO under the conditions set out at Annex IV which is an integral part of this Charter. Appropriate arrangements for access by national auditors designated by the Participants will be set out in the WEAO MOU.

### *Section V: Agreements and Contracts*

39. Within the scope of its functions, and in the name of the WEU, the WEAO will have authority to:

- a. conclude contracts and agreements on behalf of and for the account of one or more of the Participants;
- b. conclude administrative agreements with other WEU subsidiary bodies;
- c. acquire and dispose of movable and immovable property;
- d. institute legal proceedings.

40. However, advance approval by the WEU Council will be required before the WEAO concludes:

- a. Any agreement or contract involving an international organisation. For the purposes of this Charter a body established pursuant to Article VIII of the Modified Brussels Treaty is not an international organisation;
- b. any international agreement requiring parliamentary approval by a participating state.

41. The authority defined in paragraph 39 above will normally be exercised, with due observance of the requirement stated in paragraph 40 above, by the Board of Directors which may delegate this authority to the General Manager. However, the Board of Directors will not:

- a. delegate its authority to the General Manager to approve contracts beyond the purview of routine management and business intercourse, except on a case-by-case basis;
- b. authorise the General Manager to approve or sign international agreements.

42. The provisions of paragraphs 40 and 41 above will not prevent the Board of Directors from delegating to an individual the performance of the executive act of signing a contract appropriately approved.

## *Section VI: Ownership of Assets*

### 43. General Provisions

- a. All assets acquired by the WEAO or, after special decision of the Board of Directors, by a Participant on behalf of the WEAO and through joint financing, will be acquired in the name and as the property of the WEU. However, all rights enjoyed by the WEU in respect of such assets will be exercised by the WEAO or, on specific delegation from the WEAO, by a specified Participant or Participants.
- b. Assets acquired by a Participant, or by the agent of such Participant, which are jointly financed by the Participants, may be used and disposed of only in accordance with the agreement of the Board of Directors.

### 44. Assets acquired from the Administrative Budget of the Executive Body

The allocation of any proceeds derived from the exploitation or sale of assets acquired by the WEAO, in accordance with the administrative budget of the Executive Body, will be decided upon by the Board of Directors. In the event of dissolution of the WEAO, the difference between the proceeds derived from the sale of such assets and any liabilities incurred by the WEAO will be shared or borne by the Participants in accordance with a formula to be established in advance by the Board of Directors.

### 45. Assets acquired by other funds

Whenever assets are to be acquired on behalf of a Participant or Participants, special financial arrangements will be concluded by the interested Participants and will specify, in accordance with this Charter, the methods of financing, managing, selling and disposing.

## *Section VII: Participation in the WEAO*

### 46. Admission of New Participating States

Any member of the WEAG may become a participating state in the WEAO. The admission of a new participating state in the WEAO will be subject to such provisions as the then-existing participating states and the prospective participating state agree.

## *Section VIII: Dissolution and Withdrawal*

### 47. Dissolution of the WEAO

Should the participating states decide they wish to dissolve the WEAO they will consult together to determine the arrangements which will apply.

#### 48. Withdrawal of a Participating State

- a. Any participating state wishing to withdraw from the WEAO will consult with the other participating states on the consequences of and arrangements for its withdrawal. If this participating state still wishes to withdraw, it will give notice of withdrawal to the WEU Council which will transmit the notice to the other participating states and to the General Manager. The withdrawal will be effective six months after that notification.
- b. The withdrawing participating state will meet in full its commitments incurred up to the effective date of withdrawal. The withdrawing participating state will also continue to assume its responsibilities for liabilities incurred as a result of its commitments entered into before the effective date of withdrawal. These commitments, especially those related to damages borne by the WEAO on its property located in the territory of the withdrawing participating state, will be mutually assessed by this participating state and the WEAO.
- c. Subject to appropriate amendments to the appropriate arrangements, the withdrawing participating state will be allowed to remain associated with WEAO members on particular programmes.

49. The rights and responsibilities of the participating states regarding security and any other ongoing commitments will continue irrespective of any participating state's withdrawal or termination of the WEAO or expiration of the WEAO MOU.

<sup>1</sup> hereinafter called the WEAG



## Code of Conduct

**June 1998**

The EU Code of Conduct on Arms Exports was adopted on 8 June 1998 by the General Affairs Council as a Council Declaration in the framework of the CFSP. It is a politically – not legally – binding instrument that sets common minimum standards for the control of conventional arms exports by member states to third countries. Moreover, the Code establishes an exchange and consultation mechanism, the first ever applied by any group of states in this field. The overall objective of the Code is to achieve greater transparency in arms transactions and to lead to a growing convergence of national export policies. Several Central and East European states, Canada and South Africa have subscribed to the EU Code's principles.

### **European Union Code of Conduct on arms exports**

**European Council 8675/2/98, DG E - PESC IV, Brussels, 5 June 1998**

The Council of the European Union,

Building on the Common Criteria agreed at the Luxembourg and Lisbon European Councils in 1991 and 1992,

Recognizing the special responsibility of arms exporting states,

Determined to set high common standards which should be regarded as the minimum for the management of, and restraint in, conventional arms transfers by all Member States, and to strengthen the exchange of relevant information with a view to achieving greater transparency,

Determined to prevent the export of equipment which might be used for internal repression or international aggression or contribute to regional instability,

Wishing within the framework of the Common Foreign and Security Policy (CFSP) to reinforce cooperation and to promote convergence in the field of conventional arms exports,

Noting complementary measures taken against illicit transfers, in the form of the EU Programme for Preventing and Combating Illicit Trafficking in Conventional Arms,

Acknowledging the wish of Member States to maintain a defence industry as part of their industrial base as well as their defence effort,

Recognizing that States have a right to transfer the means of self-defence, consistent with the right of self-defence recognized by the UN Charter,

Has drawn up the following Code of Conduct together with Operative Provisions:

#### **Criterion One**

**Respect for the international commitments of Member States, in particular the sanctions decreed by the UN Security Council and those decreed by the Community, agreements on non-proliferation and other subjects, as well as other international obligations**

An export licence should be refused if approval would be inconsistent with, inter alia:

- (a) the international obligations of Member States and their commitments to enforce UN, OSCE and EU arms embargoes;
- (b) the international obligations of Member States under the Nuclear Non-Proliferation Treaty, the Biological and Toxin Weapons Convention and the Chemical Weapons Convention;
- (c) the commitments of Member States in the framework of the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group and the Wassenaar Arrangement;
- (d) the commitment of Member States not to export any form of anti-personnel landmine.

#### **Criterion Two**

**The respect of human rights in the country of final destination**

Having assessed the recipient country's attitude towards relevant principles established by international human rights instruments, Member States will:

- (a) not issue an export licence if there is a clear risk that the proposed export might be used for internal repression.
- (b) exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the equipment, to countries where serious violations of human rights have been established by the competent bodies of the UN, the Council of Europe or by the EU.

For these purposes, equipment which might be used for internal repression will include, inter alia, equipment where there is evidence of the use of this or similar equipment for internal repression by the proposed end-user, or where there is reason to believe that the equipment will be diverted from its stated end-use or end-user and used for internal repression. In line with paragraph 1 of the Operative Provisions of this Code, the nature of the equipment will be considered carefully, particularly if it is intended for internal security purposes. Internal repression includes, inter alia, torture and other cruel, inhuman and degrading treatment or punishment, summary or arbitrary executions, disappearances, arbitrary detentions and other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.

**Criterion Three**

**The internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts**

Member States will not allow exports which would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination.

**Criterion Four**

**Preservation of regional peace, security and stability**

Member States will not issue an export licence if there is a clear risk that the intended recipient would use the proposed export aggressively against another country or to assert by force a territorial claim.

When considering these risks, Member States will take into account inter alia:

- (a) the existence or likelihood of armed conflict between the recipient and another country;
- (b) a claim against the territory of a neighbouring country which the recipient has in the past tried or threatened to pursue by means of force;
- (c) whether the equipment would be likely to be used other than for the legitimate national security and defence of the recipient;
- (d) the need not to affect adversely regional stability in any significant way.

**Criterion Five**

**The national security of the Member States and of territories whose external relations are the responsibility of a Member State, as well as that of friendly and allied countries**

Member States will take into account:

- (a) the potential effect of the proposed export on their defence and security interests and those of friends, allies and other Member States, while recognizing that this factor cannot affect consideration of the criteria on respect for human rights and on regional peace, security and stability;
- (b) the risk of use of the goods concerned against their forces or those of friends, allies or other Member States;
- (c) the risk of reverse engineering or unintended technology transfer.

**Criterion Six**

**The behaviour of the buyer country with regard to the international community, as regards in particular its attitude to terrorism, the nature of its alliances and respect for international law**

Member States will take into account inter alia the record of the buyer country with regard to:

- (a) its support or encouragement of terrorism and international organized crime;
- (b) its compliance with its international commitments, in particular on the non-use of force, including under international humanitarian law applicable to interna-

- tional and non-international conflicts;
- (c) its commitment to non-proliferation and other areas of arms control and disarmament, in particular the signature, ratification and implementation of relevant arms control and disarmament conventions referred to in point (b) of Criterion One.

#### **Criterion Seven**

**The existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions**

In assessing the impact of the proposed export on the importing country and the risk that exported goods might be diverted to an undesirable end-user, the following will be considered:

- (a) the legitimate defence and domestic security interests of the recipient country, including any involvement in UN or other peace-keeping activity;
- (b) the technical capability of the recipient country to use the equipment;
- (c) the capability of the recipient country to exert effective export controls;
- (d) the risk of the arms being re-exported or diverted to terrorist organizations (anti-terrorist equipment would need particularly careful consideration in this context).

#### **Criterion Eight**

**The compatibility of the arms exports with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources**

Member States will take into account, in the light of information from relevant sources such as UNDP, World Bank, IMF and OECD reports, whether the proposed export would seriously hamper the sustainable development of the recipient country. They will consider in this context the recipient country's relative levels of military and social expenditure, taking into account also any EU or bilateral aid.

#### **Operative Provisions**

1. Each Member State will assess export licence applications for military equipment made to it on a case-by-case basis against the provisions of the Code of Conduct.
2. The Code of Conduct will not infringe on the right of Member States to operate more restrictive national policies.
3. Member States will circulate through diplomatic channels details of licences refused in accordance with the Code of Conduct for military equipment together with an explanation of why the licence has been refused. The details to be notified are set out in the form of a draft pro-forma set out in the Annex hereto. Before any Member State

grants a licence which has been denied by another Member State or States for an essentially identical transaction within the last three years, it will first consult the Member State or States which issued the denial(s). If following consultations, the Member State nevertheless decides to grant a licence, it will notify the Member State or States issuing the denial(s), giving a detailed explanation of its reasoning. The decision to transfer or deny the transfer of any item of military equipment will remain at the national discretion of each Member State. A denial of a licence is understood to take place when the Member State has refused to authorize the actual sale or physical export of the item of military equipment concerned, where a sale would otherwise have come about, or the conclusion of the relevant contract. For these purposes, a notifiable denial may, in accordance with national procedures, include denial of permission to start negotiations or a negative response to a formal initial enquiry about a specific order.

4. Member States will keep such denials and consultations confidential and not use them for commercial advantage.
5. Member States will work for the early adoption of a common list of military equipment covered by the Code of Conduct, based on similar national and international lists. Until then, the Code of Conduct will operate on the basis of national control lists incorporating where appropriate elements from relevant international lists.
6. The criteria in the Code of Conduct and the consultation procedure provided for by paragraph 3 of these Operative Provisions will also apply to dual-use goods as specified in Annex 1 to Council Decision 94/942/CFSP<sup>1</sup>, where there are grounds for believing that the end-user of such goods will be the armed forces or internal security forces or similar entities in the recipient country.
7. In order to maximize the efficiency of the Code of Conduct, Member States will work within the framework of the CFSP to reinforce their cooperation and to promote their convergence in the field of conventional arms exports.
8. Each Member State will circulate to other Member States in confidence an annual report on its defence exports and on its implementation of the Code of Conduct. These reports will be discussed at an annual meeting held within the framework of the CFSP. The meeting will also review the operation of the Code of Conduct, identify any improvements which need to be made and submit to the Council a consolidated report, based on contributions from Member States.
9. Member States will, as appropriate, assess jointly through the CFSP framework the situation of potential or actual recipients of arms exports from Member States, in the light of the principles and criteria of the Code of Conduct.
10. It is recognized that Member States, where appropriate, may also take into account the effect of proposed exports on their economic, social, commercial and industrial interests, but that these factors will not affect the application of the above criteria.

11. Member States will use their best endeavours to encourage other arms exporting states to subscribe to the principles of the Code of Conduct.
12. The Code of Conduct and Operative Provisions will replace any previous elaboration of the 1991 and 1992 Common Criteria.

# Code of Conduct: Fourth Annual Report

November 2002

## Fourth Annual Report according to operative provision 8 of the European Union Code of Conduct on arms exports

Council of the European Union, 13779/02, PESC 446, COARM 14, Brussels, 11 November 2002

### *Introduction*

The European Code of Conduct on Arms Exports was adopted on 8 June 1998, setting high minimum standards for the management of, and restraint in, conventional arms transfers by all Member States of the European Union. The Code sets up eight criteria for the export of conventional arms and a denial notification procedure obliging Member States to consult on possible undercuts.

Operative Provision 8 of the Code provides for an annual review of its implementation and identification of any necessary improvements. This document constitutes the fourth annual report and covers developments during the fourth year of operation of the Code.

Decisions by Member States on practices relating to the Code of Conduct and its application by member states are recorded in subsequent annual reports. With each report the body of such decisions grows. In the interest of transparency it was therefore decided to publish a Compendium of Agreed Practices listing all decisions in a systematic way. Together with the Code itself the Compendium gives a comprehensive view of the Code and the way it is applied by Member States. The Compendium is annexed to this report and will be updated with each subsequent report.

### *I. Review of the Fourth Year of Implementation of the Code*

During the fourth year of operation the European Union Code of Conduct on Arms Exports consolidated its position as the most comprehensive international arms export control regime, providing for a high degree of internal and external transparency, dialogue, respect for denial notifications and dynamism.

Priority objectives identified in earlier reports were achieved. However, many issues are not settled once and for all but are subject to a continuous dialogue on responsibility in arms transfers and ways to promote it.

When adopting the third annual report it was felt that although the fundamental elements of a common approach to the control of conventional arms exports by Member States of the European Union were in place much remained to be done. Also work needed to begin in certain areas which had not been addressed in the past.

This feeling was echoed in the Explanatory statement of the Committee on Foreign affairs, Human Rights and CFSP of the European Parliament, concerning the Council Third annual report of the Code of Conduct (EP Doc. A5\_0286/2002), which acknowledged that the annual report revealed the extent to which the Code of Conduct had its own built-in dynamics and noted that progress was being made in areas regarded by the Parliament as important, but concluded with the words “a lot done, a lot more to do”.

In specific terms, the substantive increase in the number of notified denials and consultations has produced a sizeable body of information which testifies to the growing confidence in this instrument. The Code’s unique notification and consultation procedures and the continued exchange of views between Member States on aspects of national export policies including policies on exports to specific countries or regions contribute decisively to transparency, dialogue and convergence between Member States in the field of conventional arms exports.

Dialogue takes place not only between Member States, but also through Troika meetings in the framework of the political dialogue of the EU with candidate countries and non-member states and by way of EU Member States’ participation in other international and multilateral fora.

The dialogue with third countries which have aligned themselves with the Code’s principles, particularly the Associated Countries of Central and Eastern Europe, as well as Cyprus, Malta and Turkey, was stepped up during the fourth year as a result of new initiatives aimed at improving the application of the Code in these countries both at the legislative level and in actual implementation by the operators concerned. Ad hoc expert meetings between all Member States and Associated Countries are now held on a regular basis.

On 9 May 2002 the Republic of Croatia aligned itself with the Code by announcing its acceptance of the principles contained of the Code.

A meeting of the Presidency and the Commission with the United States, attended by a number of EU Member States, was held in June 2002 on the subject of export control assistance, including in the field of arms exports.

Member States have been conscious of the increased need to prevent arms from falling into the hands of terrorists and have supported the inclusion of a terrorist clause in the Initial Elements of the Wassenaar Arrangement, of which all EU Member States are members. The clause was adopted at the Wassenaar Plenary meeting in December 2001. EU Member States have contributed to the subsequent work on the issue in the Arrangement.

The next two sections of the report covers work on specific issues addressed by



Member States during the fourth year of operation of the Code. The decisions reported in these sections are also reflected in the annexed Compendium of Agreed Practices (see Annex I).

## *II. State of play as regards the implementation of priority measures identified in the Third Annual Report*

### **Harmonisation of national reports**

Reporting procedures in Member States are different and do not necessarily produce comparable statistical data. Substantial efforts were therefore made to provide an agreed and uniform basis for national reporting providing greater transparency and comparability between data from individual Member States. Since national reporting procedures may take considerable time to change it is important to establish a uniform set of reporting requirements that can be implemented by all Member States. Some work remains to achieve this, but considerable progress was made increasing both the scope of reporting and the comparability of the data.

Member States agreed that the public report will provide, if available, data broken down by recipient country on the number and value of licences granted and the value of actual exports. It will also provide the total number of denials issued by each Member State and the total number of denials by all Member States for each recipient country and indicate the criteria invoked for denials and the number of times these criteria were invoked (see Annex II).

### **Controlling exports of non-military security and police equipment**

Throughout the year, COARM kept this item under review. The Commission announced its intention to present a proposal for a Community Regulation covering such items and presented its preliminary ideas for the structure and content of such a proposal, which would ban altogether equipment used solely for torture and introduce strict control with equipment that may be used for internal repression. COARM will continue following this issue.

### **Arms brokering**

In the framework of COARM, Member States have collected and discussed relevant data concerning the control of brokering in their respective national legislation. Several Member States already have controls on brokering and others are in the process of introducing such controls. Member States have discussed ways of strengthening the political commitment to control arms brokering both among Member States and in a wider context. A draft Common position on the control of arms brokering was presented by the Spanish Presidency and is now under examination.

## End user certificates

Member States agreed on a common core of elements that should be found in a certificate of final destination when it is required by a Member State, concerning the export of goods included in the Common List of Military Equipment. They also identified an additional set of elements, which might also be required in accordance with their national legislation.

The following are the minimal details to be set out in an end user certificate:

- ▶ Exporter's details, at least name, address and business name.
- ▶ End-user's details, at least name, address and business name. In the case of an export to a firm which resells the goods on the local market, the firm will be regarded as the end-user.
- ▶ Final destination country.
- ▶ A description of the goods being exported (type, characteristics), or reference to the contract concluded with the authorities of the final destination country.
- ▶ Quantity and/or value of the exported goods.
- ▶ Signature, name and position of the end user.
- ▶ The date of the end user certificate.
- ▶ End use and/or non re-export clause.

Moreover, in accordance with their national legislation, Member States can require, *inter alia*:

- ▶ A clause prohibiting re-export of the goods covered in the end-user certificate. Such a clause could, among other things:
  - ▮ contain a pure and simple ban on re-export;
  - ▮ provide that re-export will be subject to agreement in writing of the authorities of the original exporting country;
  - ▮ allow for re-export without the prior authorisation of the authorities of the exporting country, to certain countries identified in the end-user certificate.
- ▶ Indication of the end-use of the goods.
- ▶ An undertaking, where appropriate, that the goods being exported will not be used for purposes other than the declared use.
- ▶ An undertaking, where appropriate, that the goods will not be used in the development, production or use of chemical, biological or nuclear weapons or for missiles capable of delivering such weapons.
- ▶ Full details, where appropriate, of the intermediary.
- ▶ If the end user certificate comes from the government of the destination country of the goods, the certificate will be authenticated by the authorities of the exporting country in order to check the authenticity of the signature and the capacity of the signatory to make commitments on behalf of their government. (2002).

### **Production of military goods under licence**

Member States have agreed that, when considering licence applications for the exports of controlled technology or goods for the purposes of production overseas of equipment on the Common Military List, account will be taken of the potential use of the finished product in the country of production and of the risk that the finished product might be diverted or exported to an undesirable end user.

### **Promoting the principles and criteria of the Code among non-member countries and international organisations**

The Code of Conduct was a primary subject of all political dialogue consultations with non-member states carried out. Consultations are ongoing with the United States on ways to follow-up on the December 2000 Declaration by the European Union and the United States on the responsibility of states and on transparency regarding arms exports.

### **Involvement of Associated countries in denial notifications**

Member States agreed to share information on denials on an aggregate basis with Associated Countries and encourage these countries to similarly inform Member States about their denials. The information will be shared through the Presidency and contain the following details: country of destination, short description of equipment and military list rating of items, classification of end user as government agency or private entity, and reasons for refusal (criteria of the EU Code of Conduct).

## ***III. Further questions addressed by the COARM Working Party in connection with the implementation of the Code of Conduct***

Member States have continued their efforts to upgrade practices relating to the Code of Conduct in the following areas:

### **EU Common list of Military Equipment**

COARM agreed that Presidencies should periodically convene special meetings (at technical expert level) with a view to deciding on the possible update of the EU Common list in order to take account of modifications of the WA list and co-ordinating Member States' positions and agreeing on possible common proposals for modifications of the WA list.

## Transit

In those cases where Member States require a licence for transit or transshipment of any of the goods on the European Union Common List, the criteria of the European Union Code of Conduct on arms exports should be duly taken into consideration by Member States when deciding on applications for such licences.

### *IV. Priority guidelines for the near future*

The first three annual reports established the practice of identifying a number of guidelines on topics requiring consideration or action in the near future, enabling Member States and their partners within and outside the European Union to monitor and measure progress in the implementation of the Code.

Following this example Member States have identified the following guidelines:

1. Continue efforts to increase harmonisation of national reports with the aim of increasing their transparency and producing clearer summary tables.
2. Pressing for definitive adoption of a system for controlling exports of non-military security and police equipment.
3. Continue deliberations in the area of arms brokering on the basis of the guidelines already approved, with a view to adopting a Common Position on the subject. Promote regulation of arms brokering in other relevant fora.
4. Continue work on standardising the information to appear in the certificates of final destination.
5. Continue work on issues related to manufacture under license in non-member countries.
6. Establish how best the authorities of each Member State should control electronic transfers of the software and technology associated with equipment on the common list.
7. Continue efforts to promote the principles and criteria of the Code among third countries and international organisations.
8. Work towards even greater involvement of the candidate countries in the implementation of the Code of Conduct and provide practical assistance to this effect, including by sharing information on denials.
9. Consider practical measures to improve the implementation of the denial and consultation mechanism in national decision making taking into account Member States' experiences and the handling of the growing volume of denials circulated among Member States.

## **ANNEX I**

### **Compendium of Member States agreed practices within the framework of the Code of Conduct**

#### *I. Introduction*

Since the adoption of the Code of Conduct in 1998 the Member States of the European Union have agreed on a number of practices relating to the Code and its Operative Provisions with a view to clarifying, detailing and sometimes broadening the scope of the Code's principles and operative provisions.

Agreed practices have been reported in the annual reports on the operation of the Code of Conduct by member states. This compendium gathers them in a systematic way and will be updated and published on a yearly basis as an annex to the annual report. Together with the Code itself the compendium provides a transparent and comprehensive view of the Code of Conduct and its application by member states.

The compendium contains two parts. The first concerns general practices related to the operation of the Code, the second practices linked to specific operative provisions of the Code. The year of publication in the annual reports is indicated in brackets. The Compendium does not cover issues under discussion or identified as priorities for future discussions.

#### *II. General practices related to the operation of the Code of Conduct*

##### **1. Export of equipment for humanitarian purposes**

The issue of the desirability of allowing exports of controlled equipment for humanitarian purposes in circumstances that might otherwise lead to a denial on the basis of the Code of Conduct has been addressed by the COARM Working Party. In post-conflict areas, certain types of controlled equipment can make important contributions to the safety of the civilian population and to economic reconstruction. Member States have come to the conclusion that such exports are not inconsistent with the EU Code of Conduct. These exports, like all others, must be dealt with on a case-by-case basis, taking full account of the criteria set out in the Code. Member States will require adequate safeguards against misuse of such exports and, where appropriate, provisions for repatriation of the equipment. (2001)

##### **2. Control of Arms brokering activities**

In the context of the implementation of the Code of Conduct, the issue of arms brokering was raised and was discussed on several occasions by COARM. In accordance with the intention expressed in the second annual report, Member States have continued and deepened their discussions on the procedures for monitoring arms brokering activities.

To that end, they have reached agreement on a set of guidelines for controlling brokering that could be a basis for national legislation.

Residents and entities within the EU must be prevented from engaging in arms transfer activities circumventing national, European Union, United Nations or OSCE embargoes or export criteria of the EU Code of Conduct on arms exports; it is also desirable to establish the necessary tools for information exchange on both licit and illicit brokering activities, thereby enhancing co-operation within the EU with a view to preventing and combating arms trafficking. Member States have thus agreed that arms brokers resident or established within the territory of the EU and/or brokering activities that take place within the territory of Member States should be controlled. Such controls should cover the activities of persons and entities that act as agents, traders or brokers in negotiating or arranging transactions that involve the transfer of arms and military equipment from one foreign country to another. These measures will also establish a clear framework for legitimate brokering activities.

In order to prevent loopholes stemming from different national approaches and to facilitate the work of Member States wishing to develop or further elaborate national regulations, some suggestions for controls on arms brokers were evaluated and the following conclusions were drawn.

For transactions involving the activities of buying and selling (where the arms or military equipment enter into the legal possession of the arms-brokering agent) or mediating (without direct acquisition of property), a licence or written authorisation should be obtained from the competent authorities in the Member State where the brokering activities take place or where the brokers are resident or legally established. Such licence applications should be assessed on a case-by-case basis against the criteria of the EU Code of Conduct on Arms Exports.

Additionally, Member States should seriously consider registering brokers or requiring them to obtain a written authorisation from the competent authorities of the Member State where they are resident or established. In the assessment of an application for authorisation to act as a broker, records of involvement in illicit activities should be taken into account. Such a system of registration or authorisation should not be construed as implying any form of official approval of brokering activities, a fact that is made clear also by the maintenance of a system of individual or global licences authorising transactions.

Legal controls in this important area should be supported by effective penalties. Member States could exchange information on legislation, registered brokers and brokers who have a history of proven involvement in illicit activities and could continue discussions in the COARM Working Party to further define, inter alia, possible criteria for the assessment of applications to register as a broker or obtain authorisation to act as a broker. (2001)

In the framework of COARM, Member States have collected and discussed relevant data concerning the control of brokering in their respective national legislation. Several

Member States already have controls on brokering and others are in the process of introducing such controls. Member States have discussed ways of strengthening the political commitment to control arms brokering both among Member States and in a wider context. A draft Common position on the control of arms brokering was presented by the Spanish Presidency and is now under examination. (2002)

### **3. Intangible transfers of technology**

COARM endorsed the importance of considering effective legal controls on electronic transfers of the software and technology associated with items on the common list, which is already done in certain Member States. It agreed to pursue its deliberations on this issue, taking into consideration the work done in the dual-use area. (2001)

### **4. Transit**

In those cases where Member States require a licence for transit or transshipment of any of the goods on the European Union Common List, the criteria of the European Union Code of Conduct on arms exports should be duly taken into consideration by Member States when deciding on applications for such licences. (2002)

### **5. Production of Military Goods under licence**

Concerned by the consequences of uncontrolled flows and destabilising accumulations of arms and other military equipment, and the proliferation of the technology and means to produce such equipment, the EU has adopted measures to consolidate and strengthen controls on arms exports, to promote international co-operation in this area and as a contribution to the prevention of conflicts. In this respect the EU recognises the special responsibility of arms exporting States. Recalling the EU Code of Conduct on Arms Exports of 8 June 1998, Member States have agreed that, when considering licence application for the exports of controlled technology or goods for the purposes of production overseas of equipment on the Common Military List, account will be taken of the potential use of the finished product in the country of production and of the risk that the finished product might be diverted or exported to an undesirable end-user. (2002)

## *III. Practices related to the Operative Provisions of the Code of Conduct*

### **Operative Provision 3**

EU Member States will circulate through diplomatic channels details of licences refused in accordance with the Code of Conduct for military equipment together with an explanation of why the licence has been refused. The details to be notified are set out in the form of a draft pro-forma at Annex A. Before any Member State grants a licence which has been denied by another Member State or States for an essentially identical transaction within the last three years, it will first consult the Member State

or States which issued the denial(s). If following consultations, the Member State nevertheless decides to grant a licence, it will notify the Member State or States issuing the denial(s), giving a detailed explanation of its reasoning.

The decision to transfer or deny the transfer of any item of military equipment will remain at the national discretion of each Member State. A denial of a licence is understood to take place when the member state has refused to authorise the actual sale or physical export of the item of military equipment concerned, where a sale would otherwise have come about, or the conclusion of the relevant contract. For these purposes, a notifiable denial may, in accordance with national procedures, include denial of permission to start negotiations or a negative response to a formal initial enquiry about a specific order.

### **1. Denial Notifications and Consultations**

Serial number indicating the country of origin and the number of the denial will be introduced for denial notifications (accompanied by the Community acronym of the Member State concerned and indication of the year).

Denials still subject to appeal under national procedures will be notified under the Code of Conduct with an indication to that effect.

Decisions to revoke extant licenses will be dealt with in the same way as refusals of licence applications.

Denial notifications that have been circulated in the international export control regimes will also be circulated as Code of Conduct denial notifications if relevant to the scope of the Code.

A period of two to four weeks from the date the request for consultations has been received is established for the consultation procedure envisaged in operative paragraph 3 of the Code, unless a different time period is agreed upon between the parties concerned.

When an arms embargo is lifted, denials solely based on the embargo will expire unless they are renewed by the denying country within a period of one month on the basis of other criteria of the Code.

Denial notifications should include the following particulars:

- ▶ country of destination;
- ▶ full description of the goods concerned (with their matching Common List number);
- ▶ buyer (specifying whether the buyer is a government agency, police, army, navy, air force, or paramilitary force, or whether it concerns a private natural or legal person and, if denial is based on criterion 7, the name of the natural or legal person);
- ▶ description of the end-use;



- ▶ reasons for denial (these should include not only the number(s) of the criteria, but also the elements on which the assessment is based);
- ▶ date of the denial (or information on the date when it takes effect unless it is already in force).

A denial of a licence for a transaction deemed essentially identical to a transaction already subject to a denial notified by another Member State should also be notified.

The consulting State should always provide feedback on its final decision to the notifying State, irrespective of whether that decision is to grant or deny a license.

On denials issued more than three years previously, even though the obligation to consult ends after three years, as laid down in the Code of Conduct, such a denial does not expire but could be the subject of exchanges of information. (2000)

## 2. Dialogue on undercuts

Licensing cases in which denial consultations lead to a positive decision could be of particular use in enhancing the dialogue on the interpretation of the criteria of the Code and thus in promoting convergence in the field of conventional arms exports.

Such cases might be based on developments concerning the destination in question and/or highlight different interpretations of the criteria. Member States deciding an undercut therefore agree to share, to the extent compatible with national considerations and on a confidential basis, information on the undercut decision not only (as specified in the Operative Provisions) with the State responsible for the relevant denial, but, in the context of COARM deliberations, with all Member States. (2001)

## 3. The concept of “Essentially identical transactions”

Discussions within COARM has led to the following common approach:

Daily operation of the Code’s denial mechanism will result in an accumulation of experience that will provide the basis for a clear understanding of what is meant by an “essentially identical transaction”.

This process will be facilitated by the adoption of a comprehensive approach to assessing transactions, and by initially using a broad interpretation of the concept of “essentially identical”. The resulting consultation will provide the experience needed to gradually evolve a more precise definition of the term.

In order to accelerate the process further, the consulting Member State will, to the extent compatible with national considerations and on a confidential basis, endeavour to share with other EU Member States, in the context of COARM deliberations, information on the occasions in which consultations result in the conclusion that two transactions are not essentially identical. According to the logic of the consultation mechanism, these cases are not considered as undercuts. (2000)

### Operative provision 4

EU Member States will keep such denials and consultations confidential and not to use them for commercial advantage.

#### 1. Confidentiality in Consultations

Member States have looked at the arrangements for the consultation procedures and, in particular, problems relating to the necessary confidentiality of such contacts, which should not, however, thwart the objective of transparency underlying the Code of Conduct. (2000)

### Operative provision 5

EU Member States will work for the early adoption of a common list of military equipment covered by the Code, based on similar national and international lists. Until then, the Code will operate on the basis of national control lists incorporating where appropriate elements from relevant international lists.

#### 1. The Common list

The Common List of Military Equipment was adopted by the Council on 13 June 2000 and published in the Official Journal of 8 July 2000. The Council decided to publicise the list in accordance with the principle of wide-ranging transparency underlying the Code. Member States will now use the Common List's references in denial notifications (with retroactive effect for earlier denial notifications), thereby clarifying and simplifying their information exchanges on these matters.

Denials on items subject to national controls by Member States, but not included in the above-mentioned list, will continue to be notified to all Member States. Member States that do not control these items will inform others.

The Common List of Military Equipment has the status of a political commitment in the framework of the Common Foreign and Security Policy. In this sense, all Member States have made a political commitment to ensure that their national legislation enables them to control the export of all the goods on the list. The Common List of Military Equipment will act as reference point for Member States' national military equipment lists, but will not directly replace them.

Since the list has an evolutionary character, Member States will continue updating it on a regular basis within the COARM Working Party.

Member States have made it known that they would endorse efforts for any items from the Common List of Military Equipment which are not contained in the Wassenaar List, to be put forward for consideration within the Wassenaar Arrangement. (2000)

COARM agreed that Presidencies should periodically convene special meetings (at technical expert level) with a view to deciding on the possible update of the EU Common list in order to take account of modifications of the WA list and co-ordinating Member

States' positions and agreeing on possible common proposals for modifications of the WA list. (2002)

## **2. Controlling exports of non-military and police equipment**

COARM undertook to draw up a common list of non-military security and police equipment, the export of which should be monitored in accordance with Criterion Two of the Code "Respect for human rights in the country of final destination". The Commission has now announced a proposal for a Community mechanism for controlling exports of non-military equipment that may be used for internal repression. (2001)

The Commission announced its intention to present a proposal for a Community Regulation covering such items and presented its preliminary ideas for the structure and content of such a proposal, which would ban altogether equipment used solely for torture and introduce strict control with equipment that may be used for internal repression. (2002)

## **Operative provision 7**

**In order to maximise the efficiency of this Code, EU Member States will work within the framework of the CFSP to reinforce their cooperation and to promote their convergence in the field of conventional arms exports.**

### **1. Appeal procedures**

The COARM Working Party discussed possible appeal procedures relating to exports of military equipment. (2001)

### **2. End user certificates**

Member States agreed on a common core of elements that should be found in a certificate of final destination when it is required by a Member State, concerning the export of goods included in the Common List of Military Equipment. They also identified an additional set of elements, which might also be required in accordance with their national legislation.

The following are the minimal details to be set out in an end user certificate:

- ▶ Exporter's details, at least name, address and business name.
- ▶ End-user's details, at least name, address and business name. In the case of an export to a firm which resells the goods on the local market, the firm will be regarded as the end-user.
- ▶ Final destination country.
- ▶ A description of the goods being exported (type, characteristics), or reference to the contract concluded with the authorities of the final destination country.
- ▶ Quantity and/or value of the exported goods.
- ▶ Signature, name and position of the end user.

- ▶ The date of the end user certificate.
- ▶ End use and/or non re-export clause.

Moreover, in accordance with their national legislation, Member States can require, inter alia:

- ▶ a clause prohibiting re-export of the goods covered in the end-user certificate. Such a clause could, among other things:
  - ▶ contain a pure and simple ban on re-export;
  - ▶ provide that re-export will be subject to agreement in writing of the authorities of the original exporting country;
  - ▶ allow for re-export without the prior authorisation of the authorities of the exporting country, to certain countries identified in the end-user certificate.
- ▶ Indication of the end-use of the goods.
- ▶ An undertaking, where appropriate, that the goods being exported will not be used for purposes other than the declared use.
- ▶ An undertaking, where appropriate, that the goods will not be used in the development, production or use of chemical, biological or nuclear weapons or for missiles capable of delivering such weapons.
- ▶ Full details, where appropriate, of the intermediary.
- ▶ If the end user certificate comes from the government of the destination country of the goods, the certificate will be authenticated by the authorities of the exporting country in order to check the authenticity of the signature and the capacity of the signatory to make commitments on behalf of their government. (2002)

### 3. Member States' Co-ordination

Co-ordination within the European Union was exemplary at the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons held in New York from 9 to 20 July 2001, where the European Union was the only group of States to submit an overall plan of action.

The EU also established a high profile at the Conference's preparatory committee meetings where it showed no hesitation in clearly articulating its ambitions in this area with one voice (that of the Presidency). (2001)

#### Operative provision 8

Each EU Member State will circulate to other EU Partners in confidence an annual report on its defence exports and on its implementation of the Code. These reports will be discussed at an annual meeting held within the framework of the CFSP. The meeting will also review the operation of the Code, identify any improvements which need to be made and submit to the Council a consolidated report, based on contributions from Member States.

### **1. Harmonisation of National Reports**

Member States agreed that the public report will provide data broken down by recipient country on the number and value of licences granted and the value of actual exports (if available). It will also provide the total number of denials issued by each Member State and the total number of denials by all Member States for each recipient country and indicate the criteria invoked for denials and the number of times these criteria were invoked. (2002)

#### **Operative provision 9**

EU Member States will, as appropriate, assess jointly through the CFSP framework the situation of potential or actual recipients of arms exports from EU Member States, in the light of the principles and criteria of the Code of Conduct.

### **1. Consultations within COARM**

Any individual case of arms exports can be raised for discussion by delegations in the COARM Working Group, if it is considered to be useful for national licensing deliberations. (1999)

Member States continue to exchange information on national interpretations of embargoes imposed by the United Nations, the European Union and the Organisation for Security and Co-operation in Europe.

Member States also concert on national policies to control arms exports to certain embargo-free countries or regions that are being closely monitored (existence of an internal or external conflict, human rights situation, etc.). (2000)

### **2. The Development of exchanges of information on national control policies for the export of arms to certain countries or regions regarded as requiring special vigilance**

A substantial body of denials, notified in the framework of the mechanism of the Code, is the concrete basis for such exchanges. The exchanges have also been supplemented by exchanges of views and information amongst all Member States undertaken on a regular and systematic basis within COARM, focusing on specific countries and regions. (2001)

#### **Operative provision 11**

EU Member States will use their best endeavours to encourage other arms exporting states to subscribe to the principles of this Code of Conduct.

### **1. Third Countries**

Non-EU countries which have declared their adherence to the principles and criteria of the Code, and which have become involved in the restructuring of the European defence

industry, shall be allowed to gain access to the evolving interpretation of the Code's principles and criteria. This shall not entail access to information made available in the course of the procedures referred to in the operative provisions of the Code.

The European Union and the Member States continue to encourage other arms-exporting countries to subscribe to the principles of the Code. (2001)

The Code of Conduct was a primary subject of all political dialogue consultations with non-member states carried out. Consultations are ongoing with the United States on ways to follow-up on the December 2000 Declaration by the European Union and the United States on the responsibility of states and on transparency regarding arms exports. (2002)

## **2. Involvement of Associated Countries in denial notifications**

Member States agreed to share information on denials on an aggregate basis with Associated Countries and encourage these countries to similarly inform Member States about their denials. The information will be shared through the Presidency and contain the following details: country of destination, short description of equipment and military list rating of items, classification of end user as government agency or private entity, and reasons for refusal (criteria of the EU Code of Conduct). (2002)

*[Annex II is not reproduced here. It gives information on conventional arms exports and implementation of the Code of Conduct by the Member States over the period 1 January to 31 December 2001. The attached tables contain country by country breakdowns for each Member State, Total exports per Member States and total EU exports to each destination (TABLE A), total number of consultations initiated and total number of consultations received by each Member State (TABLE B), and Internet addresses for national reports on arms exports (TABLE C).]*

# OCCAR Convention

September 1998

The Organisation for Joint Armaments Cooperation (OCCAR) was created on 12 November 1996 by France, Germany, Italy and the United Kingdom. The OCCAR Convention was signed on 9 September 1998, ratification of the Convention was completed in December 2000 and OCCAR attained legal status on 28 January 2001. OCCAR's objective is to achieve greater efficiency in the management of collaborative defence equipment programmes. Its working methods and procedures are based on a number of innovative principles, in particular a more flexible calculation of industrial *juste retour*, replacing the strict application of 'cost-share equals work-share' on a project-by-project basis by a multi-year/multi-programme balance. OCCAR currently manages several programmes, mainly the *Tiger* attack helicopter (FR/GE), the Future Surface-to-Air missile Family (FSAF-FR/IT) and the A400M transport aircraft (B/E/FR/GE/T/UK). The latter is of particular importance for OCCAR, not only because of its sheer size but also because it is be a test case for the involvement of non-OCCAR members. According to Article 8 of the Convention, OCCAR could cover a whole range of activities and become a fully-fledged armaments agency. However, up until now a lack of political commitment on the part of member states has prevented full exploitation of its potential.

## **Convention on the establishment of the organisation for joint armaments cooperation OCCAR (Organisation conjointe de coopération en matière d'armement)**

The Government of the French Republic,  
The Government of the Federal Republic of Germany,  
The Government of the Italian Republic, and  
The Government of the United Kingdom of Great Britain and Northern Ireland,

Wishing to increase their armaments cooperation in order to improve efficiency and reduce costs,

Considering that the attainment of the best ratio between cost (understood as life cycle cost) and efficiency for current and future co-operative programmes is an absolute necessity; and that to this end, new programme management methods must be developed and optimised, procedures for the granting of contracts made more effective, and the creation of transnational and truly integrated industrial prime contractors encouraged,

Wishing to achieve co-ordination of their long term requirements, wherever military imperatives allow this, as well as a common technology investment programme, based on the principles of complementarity, reciprocity and balance,

Deeming it necessary, in cooperative programmes, in order to improve the competitiveness of the European defence technological and industrial base, to take advantage of their industrial poles of excellence, to promote links between companies, and for competition to be organised in accordance with uniform rules adopted in accordance with the provisions of this Convention,

Convinced that a strengthening of their co-operation in defence equipment will contribute to the establishment of a European security and defence identity and is a practical step towards the creation of a European Armaments Agency,

Wishing to associate other European states which accept all the provisions of this Convention,

Have agreed as follows:

### *Chapter I: General Provisions*

#### **Article 1**

A European organisation, the “Organisation for Joint Armament Co-operation” (Organisation Conjointe de Coopération en matière d’Armement (OCCAR)) is hereby established.

#### **Article 2**

The members of OCCAR, hereinafter referred to as the “Member States”, are those States which become parties to this Convention in accordance with the provisions of Chapter XV.

#### **Article 3**

The headquarters of OCCAR shall be in Bonn, Federal Republic of Germany.

#### **Article 4**

The official languages of OCCAR shall be English, French, German and Italian.

### *Chapter II: Objectives of Cooperation and the Role of OCCAR*

#### **Article 5**

To enable a strengthening of the competitiveness of European defence technological and the industrial base, the Member States renounce, in their cooperation, the analytical



calculation of industrial juste retour on a programme-by-programme basis, and replace it by the pursuit of an overall multi-programme/multi-year balance. Transparency shall be ensured by annual progress reports for each programme. During an initial period, the transitional provisions in Annex III shall apply. This co-operation will enhance the creation, between Member States, of genuine industrial and technological complementarity in the relevant fields, thereby guaranteeing support for their armed forces under all circumstances, in both the short and medium term.

### **Article 6**

When meeting the requirements of its armed forces, each Member State shall give preference to equipment in whose development it has participated within OCCAR.

### **Article 7**

OCCAR shall coordinate, control and implement those armament programmes that are assigned to it by Member States, and coordinate and promote joint activities for the future, thereby improving the effectiveness of project management in collaborative projects, in terms of cost, schedule and performance.

### **Article 8**

OCCAR shall fulfil the following tasks, and such other functions as the Member States may assign to it:

- (a) management of current and future cooperative programmes, which may include configuration control and in-service support, as well as research activities;
- (b) management of those national programmes of Member States that are assigned to it;
- (c) preparation of common technical specifications for the development and procurement of jointly defined equipment;
- (d) coordination and planning of joint research activities as well as, in cooperation with appropriate military staffs, studies of technical solutions to meet future operational requirements;
- (e) coordination of national decisions concerning the common industrial base and common technologies;
- (f) coordination of both capital investments and the use of test facilities.

## ***Chapter III: General Organisation***

### **Article 9**

OCCAR consists of the Board of Supervisors (BoS), and the Executive Administration (EA).

## *Chapter IV: The Board of Supervisors*

### **Article 10**

The BoS shall be the highest decision-making level within OCCAR.

### **Article 11**

The BoS shall direct and supervise the EA and all committees.

### **Article 12**

The BoS shall decide all matters concerning the implementation of this Convention including:

- (a) recommendations for the admission of new Member States;
- (b) assignment of a programme to OCCAR;
- (c) establishment or dissolution of committees referred to in Article 17;
- (d) preparations for future tasks and programmes, where these cannot be prepared by the committees;
- (e) decisions concerning any financial questions affecting OCCAR, in particular approval of the administrative and operational budgets and the annual financial reports, as well as decisions connected with the financial and accounting regulations and the management of the organisation;
- (f) procedures and rules for the awarding of contracts, as well as the standard contract clauses and conditions. The BoS is responsible for decisions concerning the awarding of contracts and approves them when such decisions have not been delegated to a competent committee created for this purpose;
- (g) security procedures;
- (h) principles and operating rules for OCCAR, including the staff and financial regulations for the EA;
- (i) monitoring the application of OCCAR regulations, including regulations on open competition and respect for the reciprocity principle in Article 24 (3); and
- (j) appointment of auditors under Article 36.

### **Article 13**

The BoS shall adopt such regulations consistent with the provisions of this Convention as are necessary for the fulfilment of its responsibilities.

### **Article 14**

1. The BoS shall meet twice a year, and otherwise as required at the request of one or more Member States. It shall elect from amongst its members a chairperson who shall serve for a term of one year renewable only once. It shall adopt its own rules of procedures.
2. The BoS secretariat functions shall be performed by the EA.

### Article 15

1. Each Member State shall have a representative on the BoS with the right to vote. The representatives of the Member States shall be the ministers of defence or their delegates, who shall be entitled to be accompanied by staff, including representatives from their Armed Forces staffs. The Director of the EA and the Deputy Director of the EA shall be entitled to attend BoS meetings, but not vote. The BoS may, if necessary, invite specialists from Member States, from the EA or other organisations involved in multilateral defence cooperation in which the Member States are participating;

2. When the BoS has to take decisions concerning a programme in which not all OCCAR Member States are participating, the decisions shall be taken by the representatives of those Member States which are participating in the programme.

### Article 16

The BoS shall appoint the Director of the EA and his/her Deputy as well as other senior EA personnel. It shall approve the stafflist of the EA. The Director shall be appointed for three years, renewable once for up to three years.

### Article 17

1. The BoS may delegate certain functions to the appropriate committees, except those referred to in Article 12 (a), (b) and (c) and (j). The committees include, in particular, a future task committee and the programme committees. Decisions concerning the execution of each individual programme shall be taken only by the representatives of those Member States that participate in the programme.

2. The programme committees shall supervise for the Member State participants in a programme, the running of one or several programmes.

### Article 18

1. Subject to paragraph 2 below, all decisions referred to in this Convention shall be taken by the Member States unanimously, including questions for which no decision-making procedure has been or may be agreed.

2. The specific provisions in Annex IV shall apply.

## *Chapter V: Executive Administration*

### Article 19

The EA is the standing executive body responsible for the implementation of the decisions of the BoS. It shall be headed by a Director appointed by the BoS.

### Article 20

The EA shall comprise:

- (a) The Central Office, located in the headquarters of OCCAR, which consists of:
- the Directorate, which includes the Director, his/her Deputy and appropriate support staff,
  - divisions with responsibility for:
    - future tasks,
    - acquisitions, contracts and finance matters,
    - administration.
- (b) The programme divisions, to each of which shall be assigned one or more programmes.
- The programme divisions, in which there shall be no dual manning of posts, shall have the powers needed to undertake day-to-day management with the greatest possible degree of autonomy, top priority being given to performance and risk management, value engineering and cost containment, in accordance with regulations adopted by the BoS.
- (c) To facilitate the operation of the programme divisions not co-located with the Central Office, staff from the Central Office may be deployed to the programme divisions.

### **Article 21**

The Director of the EA shall be directly responsible to the BoS for the operation of the EA. His/her detailed responsibilities shall be specified in a document approved by the BoS.

### **Article 22**

1. The staff of OCCAR shall be accorded the privileges and immunities set out in Annex I to this Convention. The BoS shall ensure that the number of posts established is limited to those whose functions require the concomitant privileges and immunities. "Staff" do not include seconded personnel not under contract to OCCAR who shall, for the purposes of Annex I, have the status of experts.
2. The staff regulations, and the pay and pension schemes of OCCAR, shall be based on the rules of the Coordinated Organisations (eg NATO, WEU).
3. Posts within the EA shall be filled by personnel who have the competence needed to enable the Organisation to fulfil its mission as efficiently as possible, taking due account of the participation of the Member States in current or future programmes.
4. No member of EA staff shall hold paid government employment or have other activities incompatible with their status as employees of OCCAR.
5. Members of EA staff shall each make a written declaration confirming their intention to conscientiously fulfil the tasks for which they are responsible as well as their willingness neither to seek nor to accept instructions associated with their functions from any government nor from any authority outside of OCCAR, and to refrain from any act that is incompatible with their status as employees of OCCAR. The Director and the Deputy Director of the EA shall make this declaration in front of the BoS.

6. Each Member State undertakes to respect the exclusively international character of the functions of Director and of the other staff of the EA.

## *Chapter VI: Procurement Principles*

### **Article 23**

1. The detailed OCCAR rules and procedures for procurement shall be the subject of a regulation adopted by the BoS following proposals by the Director of the EA or by Member States. They shall apply to all contracts awarded by OCCAR.
2. For the conduct of programmes that OCCAR manages, and particularly in relation to the armament-related activities (research, development, industrialisation, production, acceptance into service and in-service support), the rules contained in contracts and procedures shall comply with the procurement principles laid down in Articles 24 to 30.

### **Article 24**

1. Subject to the provisions of this article, contracts and sub-contracts shall generally be awarded after competitive tendering.
2. Competitive tendering shall be conducted in accordance with the objectives and principles set out in Chapter II of this Convention.
3. With the unanimous agreement of the participants in a programme, competitive tendering may be extended outside the Western European Armament Group States provided the principle of reciprocity applies.
4. To comply with defence and security requirements, or to improve the competitiveness of the European defence technological and industrial base, competitive tendering and the award of contracts, and especially contracts for armament-related research and technology activities, may be limited to companies, institutes, agencies or appropriate institutions under the jurisdiction of a Member State participating in the programme concerned.
5. OCCAR shall aim to adopt best practices for procurement and shall work with Member States to benchmark procurement practices against the highest standards.
6. The BoS shall monitor the application of the competitive tendering regulations, and decide if the reciprocity principle is being respected in practice by states that are not members of the Western European Armament Group.

### **Article 25**

When open to competitive tendering, contracts shall be awarded generally on the basis of the competitiveness of the offers received rather than on the financial contributions made by the participants. However, in the initial phase, the transitional arrangements in Annex III shall apply.

**Article 26**

Any potential orders liable to be awarded on the basis of competitive tendering shall be notified by publication via appropriate channels.

**Article 27**

The criteria for qualification and selection of bidders and for evaluation of bids shall be defined in precise terms before the bidding process is initiated and published.

**Article 28**

Firm or fixed prices shall be sought wherever possible.

**Article 29**

When required, OCCAR may request the competent authorities of the Member States to carry out price or cost and quality assurance audits for those contracts which it places in execution of its role as defined in Article 7. Member States shall, in particular, make every effort to harmonise pricing structure methods.

**Article 30**

Companies not invited to bid, and companies whose bid was not successful shall, at their request, be given the reasons for their exclusion or for the rejection of their bid.

***Chapter VII: Programmes*****Article 31**

Where appropriate, existing collaborative programmes between Member States shall be incorporated into OCCAR. The detailed arrangements for such an incorporation, including transitional arrangements, shall be subject to agreement between the Member States concerned and OCCAR, and the act of incorporation shall be subject to the approval of the BoS.

***Chapter VIII: Ownership and Disposal of Property*****Article 32**

1. All assets acquired by OCCAR under the administrative sub-head of the budget or, after special decision by the BoS, by a Member State on behalf of OCCAR or using joint funding, shall be the property of OCCAR.
2. The allocation of any proceeds derived from the exploitation or sale of assets acquired by OCCAR under the administrative budget of the Organisation, shall be decided by the

BoS. In the event of dissolution of OCCAR, the difference between the proceeds derived from the sale of such assets and any liabilities incurred by OCCAR shall be shared or borne by the Member States in accordance with a formula to be established in advance by the BoS.

### Article 33

1. Whenever assets are acquired under the operational sub-head of the budget on behalf of one or several Member States, special financial arrangements shall be agreed by the Member States concerned; and the arrangements shall specify the methods of funding, management, sale and disposal.
2. Assets acquired (material assets) or created (mock-ups, prototypes, tooling, test beds) under the operational budget of OCCAR shall remain the property of the Member States which funded them, but shall be for common use between them.

## *Chapter IX: Financial Administration*

### Article 34

The BoS shall adopt detailed financial rules which shall be the subject of specific regulations in accordance with the following provisions:

- (a) The cost of OCCAR activities, covering both its administrative and operating functions, shall be borne by the Member States.
- (b) All OCCAR funds, namely:
  - those arising from the routine contributions of Member States;
  - those generated by authorised OCCAR activities; and
  - other funds available to OCCAR, or those administered by it on behalf of the Member States;

shall be itemised, by sub-head, in the administrative or operational budget of OCCAR.

- (c) The competent authorities of OCCAR shall operate within the authorisations agreed annually by the BoS.
- (d) The form, frequency and treatment of the Member State contributions shall be set out in appropriate detailed rules and agreements.

### Article 35

1. The funds required for OCCAR programmes and operational plans shall be the subject of an annual budget, prepared in Euros containing:
  - an administrative section, covering all expenditure incurred for the internal functioning of OCCAR;
  - an operational section containing financial plans in respect of programmes and operations carried out by OCCAR in the pursuit of its objectives.

2. The budget shall specify, section by section, the planned expenditure and the sources of funding.
3. The draft annual budget shall be prepared by the EA and submitted to the BoS for approval in accordance with the OCCAR financial rules and regulations.

### **Article 36**

The annual accounts shall be submitted to the audit authorities appointed by the BoS. The audit report, accompanied by detailed financial statements using the nomenclature defined in the accounting and financial regulations, shall be submitted to the BoS for approval by the Director at the latest 6 months after the end of the financial year.

## *Chapter X: Cooperation with non-Member States and International Organisations*

### **Article 37**

OCCAR may cooperate with other international organisations and institutions, and with the governments, organisations and institutions of non-Member states, and conclude agreements with them.

### **Article 38**

Such cooperation may take the form of participation by non-Member States or international organisations in one or more programmes. Such arrangements may make provision for matters associated exclusively with the programme in which a non-Member State or international organisation is participating to be the subject of decisions taken by the BoS with the agreement of the said non-Member State or organisation concerned.

## *Chapter XI: Legal Status, Privileges and Immunities*

### **Article 39**

OCCAR shall have full legal personality and, in particular, the capacity to:

- (a) contract;
- (b) acquire and dispose of immovable and movable property, and
- (c) institute legal proceedings.

### **Article 40**

1. OCCAR, its staff and experts, as well as the representatives of its Member States, shall enjoy the privileges and immunities set out in Annex I.
2. Agreements concerning the headquarters of OCCAR, its programme divisions and its facilities set up in accordance with the provisions of this Convention, shall be concluded



between OCCAR and the Member states on whose territories the headquarters, its programme divisions and its facilities are situated.

#### **Article 41**

1. The powers defined in Articles 39 and 40 shall be exercised by the BoS, which may delegate them to the Director. When the BoS has not delegated a power to the Director, that shall not prevent the BoS authorising the Director, or any staff members designated by the BoS, to sign a contract or adopt or sign an international agreement.
2. Programme contracts shall be negotiated and concluded by OCCAR in accordance with the detailed contractual procedures and regulations referred to in articles 23 and 24 of this Convention, the law of the contract being then determined by the parties.

### *Chapter XII: Security*

#### **Article 42**

The BoS shall adopt security regulations. The regulations shall avoid any unnecessary restrictions on the movement of staff, information and material, in particular concerning the release of information to third parties and the involvement of the security authorities in visiting procedures.

### *Chapter XIII: Reports and Audits*

#### **Article 43**

Each year, the Director shall submit to the BoS a report on activities performed in the preceding year and a forecast of activities for the coming year.

#### **Article 44**

To enable them to discharge their audit functions as regards their national administrations, and to report to their parliaments as provided in their statutes, national auditors may obtain all information and examine all documents held by the EA which relate to the programmes in which their Member States are participating, and to the operation of the Central Office.

#### **Article 45**

The national auditors shall, except in exceptional circumstances, consult together and with the Director of the EA, before exercising their rights of access to the EA with the objectives of avoiding the unnecessary interruption of activities within OCCAR and protecting information relating to other Member States.

**Article 46**

Member States shall coordinate their actions aimed at protecting the financial interests of OCCAR against fraud. To this end, with the aid of the EA, they shall organise regular collaboration between the competent services within their administrations.

**Article 47**

The BoS may order any inspection or audit of OCCAR which it considers necessary to improve the functioning of the Organisation and the conduct of programmes.

***Chapter XIV: Settlement of Disputes*****Article 48**

1. Any dispute between the Member States, concerning the interpretation or application of this Convention should, if possible, be settled by consultation.
2. If a dispute cannot be settled by consultation, at the request of any party to the dispute, it shall be submitted to arbitration under the conditions laid down in Annex II.

**Article 49**

1. Any disputes arising from contracts concluded by OCCAR for the implementation of the programmes which have been assigned to it may be submitted, by agreement, to a conciliation committee within the BoS, which shall devise appropriate procedures.
2. Each contract to be concluded by OCCAR for the implementation of programmes assigned to it, other than employment contracts, should provide for conciliation and include an arbitration clause.
3. Any dispute between OCCAR and a member of its staff concerning an employment contract or working conditions shall be settled in accordance with the staff rules and regulations.

**Article 50**

If it is claimed by a third party that damage or injury has been caused by OCCAR, its staff members or experts, and OCCAR does not waive immunity, the BoS shall take all appropriate steps to deal with the claim and, if the claim is justified, to settle it.

***Chapter XV: Final Provisions*****Article 51**

1. The BoS may recommend to Member States amendments to this Convention and to its Annexes. Any Member State that wishes to propose an amendment shall notify the

Director of EA thereof. The Director shall inform the Member States of any amendment proposal so notified at least three months before it is discussed by the BoS.

2. Any amendment recommended by the BoS shall enter into force thirty days after the depositary has received notification of acceptance from all Member States who were Member States at the date of the recommendation. The depositary shall notify all Member States of the date of entry into force of any amendment.

### **Article 52**

This Convention, including the Annexes to it and which form an integral part of it, shall be subject to ratification by the four founding signatory States and shall enter into force 30 days after deposit of the fourth instrument of ratification or acceptance.

### **Article 53**

Once this Convention has entered into force, a European State which wishes to become a Member State may be invited by the BoS to accede to this Convention. This Convention shall enter into force for such a new Member State 30 days after the deposit of its instrument of accession.

### **Article 54**

The Government of the French Republic shall be the depositary of this Convention.

### **Article 55**

1. If the Member States decide to dissolve OCCAR, they shall discuss with OCCAR and agree amongst themselves the provisions required to satisfactorily manage the consequences of the dissolution, notably in respect of third parties and contractual partners of OCCAR. The agreement shall also cover, whenever it is necessary, the conditions under which the rights and responsibilities of OCCAR shall be transferred to Member States following dissolution.

2. The dissolution of OCCAR shall be effective once the arrangements decided between the Member States referred to above have come into force.

### **Article 56**

1. If one of the Member States wishes to withdraw from the Convention, it shall examine the consequences of such withdrawal with the other Member States. If on completion of these consultations the Member State concerned still wishes to withdraw, it shall notify its withdrawal in writing to the depositary who shall forward this notification to the other Member States and to the Director. The withdrawal shall take effect six months following the date the notification was received by the depositary.

2. The withdrawing Member State shall fulfil all its commitments up to the effective date of withdrawal. The commitments shall be assessed by the Member States.

3. The rights and responsibilities of the withdrawing Member State concerning security, the settlement of damages, the resolution of disputes and other outstanding commitments shall remain in force after its withdrawal.

#### **Article 57**

Any Member State which fails to fulfil its obligations under this Convention shall cease to be a member of OCCAR on a unanimous decision by the BoS. The Member State concerned shall not participate in the vote.

#### **Article 58**

This Convention shall be deposited in the archives of the Government of the French Republic which shall forward certified copies to the Governments of signatory and acceding States.

In witness whereof, the undersigned Representatives, having been duly authorised, have signed this Convention.

Done at Farnborough on 9 September 1998, in a single original, in the English, French, German and Italian languages, each text being equally authentic.

(...)

### **Annex I: Privileges and Immunities**

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(...)

### **Annex II: Arbitration**

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(...)

### **Annex III: Transitional Arrangements**

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1. Contracts shall, in principle, be awarded more on the basis of competitiveness rather than on the financial contributions made by each of the Member States.

However, in accordance to Article 5 of the present Convention, during the three years following entry into force of this Convention :

- (a) if the industry of a Member State has received a volume of orders smaller than 66% of its financial contribution, either concerning a programme, a certain phase or a certain sub-assembly of a programme (as far as the complexity of a weapon system justifies that this system is divided beforehand into sub-assemblies),

- (b) if a global imbalance of more than 4% is identified in relation to all programmes, appropriate actions will be taken by the BoS in order to restore the balance.
2. The efficiency of this procedure, and in particular the percentage rates quoted above shall first be reviewed a year after entry into force and subsequently at regular intervals.
  3. After the three-year period, there must be an examination of whether this procedure can be repealed.
  4. BoS shall adopt detailed arrangements to implement the above provisions.

#### **Annex IV: Decision-Making Process**

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1. The following decisions taken by all the Member States will be adopted
  - (a) by a reinforced qualified majority
    - (i) admission of new Member States
    - (ii) rules and regulations of OCCAR
    - (iii) organisation of OCCAR-EA
    - (iv) appointment of the directorA reinforced qualified majority means that a decision cannot be taken if there are ten voting rights in opposition.
  - (b) by a majority of the voting rights
    - (i) establishing or dissolving of committees
2. The decision-making process within a programme shall be set out in a specific programme agreement, with due reference to the guidelines established by the BoS.
3. Weighting for the decisions listed in paragraph 1:
  - (a) The initial number of voting rights of each founding Member State is equal to 10.
  - (b) Any new Member State in OCCAR will have an appropriate number of voting rights as decided by the existing Member States.
4. When this Convention makes no provision for how a decision shall be taken, or there is a dispute whether there is a provision or as to which provision applies, the decision shall be taken by unanimity.
5. After an initial period of three years, the decision-making process may be re-examined to take account of all relevant factors.
6. This Annex may be revised by unanimous decision of the BoS made at ministerial level.

## Declaration of Principles

February 2000

In the late 1990s, industrial consolidation in Europe, together with the Lol (Letter of Intent) process and the development of ESDP, caused alarm in Washington over the possibility of an emerging 'Fortress Europe'. The perceived threat of a closed European market, combined with the risk of the lack of any true competition in the US market, led the Clinton administration to launch two initiatives: (a) the Defense Trade Security Initiative (DTSI), aimed at streamlining the US export control system, and (b) bilateral negotiations with certain allies on a 'Declaration of Principles for defence equipment and industrial cooperation' (DOP). The DOP is de facto a bilateral version of the European Lol, covering a broad range of defence trade issues. Up until now, DOPs have been signed with the United Kingdom (reproduced below), Australia, Norway, Spain and the Netherlands. The DOP with Sweden is ready to be signed and negotiations with Italy seem to be well advanced, whereas discussions with Germany and France are, at best, at an early stage. As long as there is no concrete transatlantic arrangement based on a DOP, it remains an open question whether the bilateral DOP approach is compatible in practice with the multilateral Lol – Framework Agreement (see document 7).

### **Declaration of principles for defence equipment and industrial cooperation between the Department of Defense of the United States of America and the Ministry of Defence of the United Kingdom of Great Britain and Northern Ireland**

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The Governments of the United States of America and the United Kingdom of Great Britain and Northern Ireland have a longstanding cooperative relationship across a broad spectrum of defense activities, including strict enforcement of export policies for armaments and technologies; strong industrial security systems and compatible industrial security practices; close relationships in law enforcement and cooperation on industrial security matters and export control violations; and close relationships in intelligence sharing on matters of counterintelligence and industrial security, and countering economic espionage and export control violations. Moreover, the Department of Defense of the United States of America (U.S. DoD) and the Ministry of Defence of the United Kingdom of Great Britain and Northern Ireland (U.K. MOD) desire to maximize value for money in defense equipment acquisition, based on the principle of competition.

Our relationship is underpinned by the Memorandum of Understanding between the Department of Defense of the United States of America and the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland concerning Principles for Research, Development, Production and Procurement, dated December 13, 1994, and other bilateral arrangements and agreements.

Our past efforts to improve the level of defense equipment cooperation and trade have not realized their full potential. Nonetheless, we believe that it is fundamental to our common interests to enhance the environment for mutual defense equipment and industrial cooperation. We therefore intend to improve significantly the cooperative framework that will facilitate both traditional and new types of collaboration by our defense companies and a more integrated and stronger industrial base. It is also our intention to take the necessary steps to ensure that U.K. industry doing business in the United States will be treated no less favorably than U.S. industry doing business in the United Kingdom. We believe that this initiative will provide an important and welcome opportunity to enhance our mutual interdependence in the defense equipment field.

The U.S. DoD and U.K. MOD intend to apply the provisions of this Declaration and Annex to those matters within their respective areas of responsibility. They affirm the prerogatives of other agencies of their respective governments on certain matters related to this Declaration and Annex and note that in the case of the United States, the provisions of the Declaration and Annex do not apply to matters that are under the jurisdiction of other agencies of the government including the Department of State. They also note that within their respective governments there is ongoing work related to such matters to further the objective of cooperation between their governments, the outcome of which is not prejudiced by the provisions of this Declaration and Annex. They also affirm their desire to promote similar cooperation between each of them and other allies, both bilaterally and multilaterally.

Therefore, the U.S. DoD and U.K. MOD have reached the understandings reflected in this Declaration of Principles and its Annex attached hereto. The principles established in this Declaration and in the Annex to this Declaration, which is an integral part of the Declaration, are not intended to be legally binding, nor to entail new fiscal obligations on the part of either the U.S. DoD or the U.K. MOD, but to point the way to arriving at future arrangements or agreements which may be legally binding. It is further understood that these future arrangements or agreements may entail amendments to national laws or regulations.

Signed in duplicate at Munich, Federal Republic of Germany,  
on the 5th day of February 2000.

William S. Cohen, Secretary of Defense, United States of America  
Geoffrey Hoon, Secretary of State for Defence, United Kingdom of Great Britain and Northern Ireland

## **ANNEX**

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### *Purpose*

1. The purpose of this Annex to the Declaration of Principles (Declaration) is to indicate the areas in which the U.S. DoD and the U.K. MOD (“the Participants”) intend to find common solutions to the problems identified; to define the principles on which appropriate follow-on arrangements or agreements, or amendments to existing arrangements or agreements, will be based; and to establish a process and intended timescale for the negotiation of follow-on arrangements or agreements, or amendments to existing arrangements or agreements, to implement these principles.
2. This Declaration is intended to establish principles for future arrangements or agreements, or amendments to existing arrangements or agreements, which may cover the industrial, investment, and export sectors of defense in both countries.
3. The Participants have the firm intention to pursue the objectives of this Declaration and to adopt, where appropriate, specific arrangements or agreements, or amendments to existing arrangements or agreements between them, to underpin the effective application of the principles specified in this Declaration.

### *Harmonization of Military Requirements and Acquisition Processes*

1. The Participants will seek better means to harmonize the military requirements of their armed forces. To this end, and proceeding from identified capabilities of common interest, the Participants will identify areas in which better harmonization is considered possible. In doing so, they will seek to make use of existing fora, wherever practicable.
2. The Participants will identify projects at an early stage for cooperative research, development, production, and procurement. (See Research and Development, below.)
3. The Participants will examine the possibility of harmonizing the procedures applicable to armaments acquisition, so as to remove impediments to effective cooperation.

### *Meeting National Defense Requirements*

1. Each Participant will require assurance that the other Participant will facilitate the supply of certain specified defense articles and defense services necessary to discharge their national security and foreign policy commitments. The Participants acknowledge that this assurance of supply is as important for industry as it is for governments, if industry is to adapt to the process of globalization.



2. The Participants recognize the potential for a degree of interdependence of supplies needed for national security. In order to achieve acceptance of this concept, the Participants will explore solutions for achieving assurance of supply for both Participants. These solutions may include obtaining assurances, some of which may be legally binding, relating to the supply of defense articles and defense services, including technical data, agreed upon by the Participants.

3. To further enhance this assurance, and with due consideration for the right of each Participant's government to control the disclosure and use of technical information, arrangements will be considered to enable the other Participant to reconstitute, in exceptional circumstances to be defined, an indigenous supply of a particular defense article or defense service.

### *Export Procedures*

1. The Participants confirm their desire to maintain a strong defense industrial capability as part of their industrial bases and the ability to export defense articles and defense services. Consistent with the intent of this Declaration, they will explore possible approaches to achieving greater transparency and efficiency in their national procedures for exports of defense articles and defense services.

2. The Participants will explore means of simplifying the procedures for export of defense articles and defense services between themselves for their own use.

3. The Participants desire to see an improvement in the efficiency of the procedures for exports of jointly produced military goods to third parties. They will therefore examine the scope for establishing a procedure based on mutually agreed lists of acceptable export destinations for jointly developed and produced military goods and technologies on a project by project basis. These lists would be updated on a continuing basis.

4. The Participants will seek to ensure that their national laws and regulations for defense exports to third parties are implemented in a spirit of cooperation and with maximum efficiency. They will reinforce their cooperation and promote convergence in the field of conventional arms exports. They will pursue necessary measures to harmonize their conventional arms export policies as far as possible and examine means of establishing common standards of implementation.

5. The Participants will establish a high-level council on export control and coordination measures, with a view towards accomplishing the preceding measures.

6. Pending agreements reached pursuant to paragraph 5, above, re-transfers by a Participant of defense articles and services, including technical information, originating in the territory of the other Participant will be made in accordance with existing agreements, arrangements, contracts and procedures between the Participants.

## *Security*

1. The Participants recognize the need to ensure that adequate and appropriate security provisions for the protection of classified information are in force in any relevant U.S. or U.K. company, regardless of any multinational aspects of a company's ownership or management structure. The Participants will endeavor to avoid placing unnecessary restrictions on the movement of staff, information, or material between the Participants or their industry.
2. The Participants will examine means to expedite the transmission of classified information between themselves or between their industries while maintaining the requisite degree of security protection.
3. In doing so, consistent with the General Security Agreement of 1961 between the Governments of the United States of America and the United Kingdom of Great Britain and Northern Ireland, the Participants will ensure that no classified information is passed to companies or persons not suitably cleared or needing to receive it; that no classified information originated by one Participant is passed to a third country national without the consent of the originating Participant; and no information carrying national caveats is passed to foreign nationals.
4. Consistent with the preceding paragraphs, the Participants will use their best efforts, both individually and working together, to lessen the administrative burdens placed on their industry in the establishment and oversight of industrial security measures.
5. The Participants intend to develop procedures to streamline the process for approving visits to government or contractor facilities by employees of the government or contractors of the other Participant that may involve access to classified information.
6. The Participants will jointly address security vulnerabilities posed by new technologies.
7. The Participants will endeavor to harmonize and streamline their security regulations.

## *Ownership and Corporate Governance*

1. The Participants believe that the ownership of defense companies sited in the United States and the United Kingdom is a matter for the companies to determine, subject to the application of the relevant national merger control, anti-trust and other relevant laws. They wish to encourage the freest possible cross-border investment in defense-related industry.
2. While considering the implications for national security of any proposed international merger or acquisition, the Participants will not place unreasonable or unnecessary security restrictions on corporate governance.

3. The Participants will seek to establish arrangements or agreements whereby, on a reciprocal basis, each Participant will apply substantially the same standards in the granting of facility security clearances to companies that are organized and incorporated within its territory but are owned or controlled by entities within the territory of the other Participant, considering, among other factors, any connection with entities owned, controlled, or influenced by entities of any third country. These arrangements or agreements will include measures to address issues of corporate governance as well as security of information held by companies and compliance with national export control regimes.

### *Research and Development*

1. The Participants recognize that technology, research and development are indispensable for maintaining an effective defense industrial base and therefore recognize the need to use the limited resources available for defense-related research and development in an efficient and effective manner.

2. In the context of this Declaration, the Participants intend to establish arrangements or agreements and make use of existing fora to:

- (a) harmonize research and development programs and exchange information about national research activities where there are common interests with a view towards setting common objectives for research and development, avoiding unnecessary duplication of effort or major gaps in technology and technical capability, and making the most effective use of dual-use and commercial off-the-shelf (COTS) technology;
- (b) increase cooperation in programs that follow-on from research activity, in particular by undertaking technological developments with each other; and
- (c) ensure the adequate funding, and efficient cost sharing, of cooperative research and development.

### *Technical Information*

1. The Participants confirm their desire to maximize the flow of technologies and technical information between themselves and between their defense-related industries. Accordingly, they will explore methods that could facilitate the flow of technologies and technical information between them and between their defense-related industries, while ensuring that the further flow of these technologies and technical information is strictly regulated by the governments. (See Export Procedures, above.)

2. These methods could include, where appropriate, the removal of unnecessary controls on the flow of technology and technical information, different ways to authorize the flow of technology, and different ways to optimize the exploitation for defense of technology investments.
3. The Participants will seek the establishment of arrangements relating to the disclosure, transfer, and use of technical information which will facilitate the efficient operation of U.S. and U.K. defense companies, consistent with proper safeguards. The Participants recognize that technical information received from the other Participant shall not be further disclosed without the authority of the owner and, in the case of classified or export controlled unclassified information, without the authority of that Participant under whose authority the information was created.
4. The Participants will encourage the harmonization of their laws, regulations, and procedures for controlling disclosure and use of technical information in the field of defense.

### *Promoting Defense Trade*

1. The Participants will, on a reciprocal basis, endeavor to diminish legislative and regulatory impediments to optimizing market competition.
2. The Participants will endeavor to revise their acquisition practices to remove impediments to efficient global market operations and to support reciprocity of international market access for each other's companies.
3. The Participants will give full consideration to all qualified sources in each other's country in accordance with the policies and criteria of the purchasing government.
4. Each Participant will explore means to eliminate laws, regulations, practices and policies that require or favor national industrial participation in its defense acquisitions.

### *Timetable*

1. Policy-level discussions concerning the principles underlying this Declaration and its Annex and the intended U.S.-U.K. cooperation and collaboration in facilitating the restructuring of their defense industry will be carried out by appropriate national authorities.
2. Working-level discussions will be held by working groups of subject matter experts, which may include representatives from other government agencies. These working groups may consult with the Participants' defense industries, as appropriate.
3. It is the intent of the Participants that the agreements and arrangements, or amendments to existing agreements or arrangements, envisioned by this Declaration and its

Annex be put in place as expeditiously as possible. Accordingly, they will endeavor to develop such agreements and arrangements so that they can be presented to the Secretary of Defense and the Secretary of State for Defence within one year after signature of this Declaration and its Annex. In addition, they will make periodic reports to the Secretary of Defense and the Secretary of State for Defence on the progress that is being made on achieving the goals of this Declaration and its Annex.

## Framework Agreement

July 2000

In July 1998, defence ministers of the six major arms-producing countries in Europe signed a Letter of Intent (LoI) aimed at facilitating cross-border restructuring of defence industries. Six ad hoc working groups were set up to establish a catalogue of measures in the following areas: security of supply, security of information, research and technology, harmonisation of military requirements, treatment of technical information and export procedures. The working groups presented their reports in July 1999 and, on the basis of their findings, an executive committee produced a final document that was signed by ministers in July 2000 as the Framework Agreement. The latter is a legally binding international treaty that lies outside the EU context. It is an attempt to adapt key elements of national procurement policies and regulatory frameworks to an industrial landscape that is becoming increasingly transnational. The overall objective of the Framework Agreement is to create the basis for a homogeneous defence economic ‘space’. However, how its provisions will work in practice remains to be seen.

### Framework agreement 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 Ministers 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 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 or 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 requirements 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 or 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, e.g. 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, equipments, 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, 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 authorisations, 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. and the related Defence Services.
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 clauses 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 updated 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. These 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 be 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 or 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 requires 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 measures 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 measures 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 Depository.
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 Depository of the second instrument.
4. For other signatory States, this Agreement shall enter into force on the thirtieth day following the date of receipt by the Depository 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 Depository shall transmit a certified copy of the Agreement to each signatory State.
7. The Depository shall notify the signatory States of:
  - (a) the date of receipt of each instrument of ratification, acceptance or approval 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 Depository 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 Art 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 [ ] on [XX/YY/ZZ], in one original, in English, French, German, Italian, Spanish and Swedish, each text being equally authentic.

## 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-Party 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 visitors 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)



## EUROPA MOU

May 2001

On 15 May 2001, the defence ministers of 18 of the 19 WEAG member states signed a Memorandum of Understanding (MOU) entitled ‘European Understandings for Research Organisation, Programmes and Activities’, known as the EUROPA MOU.\* EUROPA is a general umbrella: it does not contain detailed rules for the conduct of projects, but it allows participants to develop their own rules, with a large degree of flexibility. Any two or more EUROPA signatories can propose the creation of a European Research Grouping (ERG) to carry out either a number of individual R&T projects or a single major programme. Membership of ERGs is variable – depending on who is interested in joining the grouping, and on who agrees on the content of the ERG arrangement in which the particular rules for that ERG are set out. These rules cover the usual necessary subjects in the area of R&T cooperation, such as contracting, finance, security and intellectual property rights. The EUROPA MOU itself explains in detail how ERGs can be set up.

\* *The Republic of Poland joined the EUROPA MOU later that year.*

### **Memorandum of Understanding concerning European understandings for research organisation, programmes and activities (EUROPA)**

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#### *Preamble*

The Government of the Republic of Austria represented by the Federal Minister of Defence, the Minister of National Defence of the Kingdom of Belgium, the Minister of Defence of the Czech Republic, the Minister of Defence of the Kingdom of Denmark, the Minister of Defence of the Republic of Finland, 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 Hellenic Republic, the Government of the Republic of Hungary represented by the Minister of Defence, the Minister of Defence of the Italian Republic, the Minister of Defence of the Grand Duchy of Luxembourg, the Minister of Defence of the Kingdom of The Netherlands, the Minister of Defence of the Kingdom of Norway, the Minister of Defence of the Portuguese Republic, the Minister of Defence of the Kingdom of Spain, the Government of the Kingdom of Sweden represented by the Minister for Defence, the Minister of National Defence of the Republic of Turkey, and the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, hereinafter called the Participants;

recognising the benefits of co-operation in the field of defence research and technology (R&T) within the WEAG;

wishing to be able to achieve the stated aim of making WEAG the forum of choice for R&T co-operation in Europe;

wishing to create conditions for greater transparency and flexibility through the new mechanisms in this MOU;

wishing to encourage greater opportunities for co-operation among all the Participants by the creation of, in addition to the existing R&T tools within WEAG and in other fora, European Research Groupings (ERGs) which in principle will be open to all Participants;

recognising that increasing co-operation in the R&T field would also increase the possibilities of common development programmes;

seeking to make the best use of their respective R&T development capabilities, to eliminate unnecessary duplication of work, to encourage interdependency, and to obtain the most efficient and cost-effective results through co-operation in joint research activities in their government research facilities and through government-funded or jointly-funded Programmes in their respective industries;

wishing to co-ordinate their co-operative defence research activities in an organised and systematic manner in order to increase the opportunities for all Participants to have access to information about each other's proposed Research and Technology (R&T) Plans thus enhancing the potential for more co-operative R&T programmes;

wishing to allow the existing bodies concerned with R&T within WEAG to have a role in the above activities;

having benefited from co-operative defence research carried out under other co-operative arrangements, wishing to be able under this MOU to continue to carry out bilateral or multilateral Programmes in sub-sets of Participants, including work that would otherwise be dealt with under other existing R&T arrangements, and wishing to be able to replace, when appropriate, those other arrangements;

recognising the necessary involvement of European industry in co-operative R&T and the resultant benefit of the strengthening of the Defence Technology and Industrial Base (DTIB), and wishing to manage R&T appropriately against the background of a restructured defence industry, and deal appropriately with such industries, including transnational industrial groupings;

recognising that dialogue with industry concerning R&T issues will be a significant element in the creation of a European Defence Equipment Market (EDEM);

have reached the following understandings:

## *Section I – Definitions and Abbreviations*

Background Information	Means any Information not generated or conceived under a specific Research and Technology Project under this MOU
DDI	Means Developing Defence Industry
Disclosing Participant	Means a Participant who discloses Information to another under this MOU, or any ERG under this MOU
ERG	Means European Research Grouping: A group of Participants who wish to carry out either a Research and Technology Programme or an individual Research and Technology Project
ERG Member	Means a signatory to an ERG arrangement under this MOU
Foreground Information	Means any Information which is generated or conceived under a specific Research and Technology Project under this MOU
Information	Means any information, knowledge or data, regardless of form or characteristics including but not limited to: that of a scientific or technical nature, experimental and test data, designs, improvements, photographs, software (including source code), reports, manuals, specifications, processes, techniques, inventions (whether patented or not), technical writings, sound recordings, semiconductor topography, pictorial reproductions, drawings and other graphical representations, whether on magnetic tape, in computer memory, or in whatever form presented, and whether or not subject to copyright or other legal protection
Participant	Means a signatory to this MOU
Receiving Participant	Means a Participant who receives Information from the Disclosing Participant
Research and Technology (R&T) Plan	Means a description (which may be in the form of a list) of co-operative research and technology work which a Participant intends to carry out over a given period, or of research and technology areas in which a Participant is interested in establishing new co-operative work proposals
Research & Technology (R&T) Programme	Means a range of co-operative research activities on both exploratory and advanced technologies whose maturation may lead to the development of technologically superior conventional military systems
Research and Technology (R&T) Project	Means an individual co-operative research activity, which may be within a Research and Technology Programme, and which has a clearly defined objective, duration, cost, and expected output
Technology Taxonomy	Means a common framework or system, mutually accepted by all the Participants, by which the content of each Participant's Research and Technology Plan is described
Third Party	Means any person, entity or government other than that of the Participants. Government agencies of the Participant are not considered to be Third Parties
WEAG	Means Western European Armaments Group

## *Section II – Scope*

2.1 The Participants recognise that all provisions that follow in this MOU will be carried out by them in accordance with their respective national laws, regulations and procedures.

2.2 This MOU is an umbrella arrangement for research and technology co-operation. Under it, the Participants may carry out bilateral and multilateral defence research and technology demonstration and testing of conventional defence related technologies through:

- systematic and comprehensive studies of a theoretical and experimental nature, including technical and operational analysis;
- the practical application of engineering and scientific knowledge to defence objectives;
- the development of ideas, procedures and experimental hardware with a defence application, including the planning and realisation of simulations, scientific processes and technology demonstrators.

To carry out such research and technology activities, the Participants will develop suitable European Research Grouping (ERG) arrangements in accordance with the provisions of this MOU.

2.3 All Participants will keep each other informed about their R&T Plans, with a view to increasing opportunities to identify potential areas for further co-operation. Participants will make available the information necessary to meet this aim, except in those cases where the sensitivity of the potential areas requires a limitation on the amount to be released. The Participants will therefore establish among themselves a central database of information about their R&T Plans, to which each Participant has access and to which each Participant will contribute in a timely manner, and on a regular basis. Arrangements will be made to inform industry about those Plans in a timely manner.

2.4 The central database of information will use the approved WEAG Technology Taxonomy. However, Participants may submit their R&T Plans using their national Technology Taxonomy.

2.5 The Participants will investigate how their national R&T Programmes and Projects can be more effectively co-ordinated to reduce duplication of effort, to increase capability and to facilitate interdependency.

2.6 Bilateral or multilateral defence research and technology co-operation within the scope of paragraph 2.2 above may be implemented in the following forms:

- a) exchange of Information,
- b) joint research and technology, including technology demonstrators,
- c) conduct of joint trials and/or experiments,
- d) exchange of materials and/or equipment,
- e) provision of time on special national research facilities,

- f) attachment or exchange of scientific personnel,
- g) other forms of research and technology co-operation as may be mutually arranged.

## *Section III – Management*

### **General**

3.1 The Participants will be jointly responsible for the operation of this MOU, and for ensuring compliance with its provisions.

3.2 The functions of the Participants with regard to the operation of this MOU will be exercised through WEAG Panel II, which will have general oversight of this MOU and will be responsible for resolving any issues on general matters that arise under it. Panel II will be the body responsible for setting up and maintaining the database of information about R&T Plans referred to at paragraph 2.3 and 2.4. This will include the conversion of national Technology Taxonomies into the WEAG Technology Taxonomy, and arrangements to pass the appropriate information to industry. Panel II will regularly review and assess the information arising from the database in order to identify collaboration opportunities and will do everything possible to promote the translation of these opportunities into joint R&T Programmes or Projects. Panel II will consider any matter in connection with the compliance of any ERG arrangement with this MOU. When dealing with the above matters, each Participant's representative in Panel II will have one vote and all decisions will be taken unanimously.

### **European Research Groupings (ERGs)**

3.3 ERGs may be established by two or more Participants who wish to carry out either an R&T Programme or an individual Research and Technology Project. Provisions governing the operation of each ERG will be set out in an ERG arrangement which will be compliant with this MOU. ERG arrangements will be signed by a designated representative of each of the Participants concerned.

3.4 All Participants must be informed in a timely manner of a proposal to form a new ERG, so that any Participant who wishes to do so may express an interest in joining. Such information must cover, at a minimum, the information in subparagraphs 3.6 a to c below. In principle, ERGs will be open to all other Participants to this MOU, and in the interests of increasing opportunities for co-operation to the maximum extent, the Participants will endeavour to make membership of all ERGs as wide as possible. Measures should be taken to facilitate the active participation of DDI nations. The Participants recognize, however, that the membership of each ERG will be established on a case by case basis, and that therefore the number of Participants who finally join an ERG may vary.

3.5 Once a proposal to form a new ERG has been issued, the Participants who made the proposal (the originating Participants), and any other potential members that have expressed a firm intention to join from the outset, may begin work to negotiate an appropriate ERG arrangement. In the course of the negotiations the originating Participants and any other potential members that are ready to sign the arrangement may do so and begin work under it. However, they will continue discussions with any other Participants who maintain an interest in joining the ERG, at any time either before or after that arrangement is signed.

3.6 ERG arrangements will contain, at a minimum:

- a. the names of the Participants taking part in the ERG;
- b. the objectives and scope of the ERG;
- c. provisions governing the admission of new members;
- d. management arrangements for the ERG;
- e. details of the benefits and responsibilities, in addition to those already set out in this MOU, which will apply to the members of the ERG;
- f. provisions dealing with work-share, financing, contracting, claims and liabilities and intellectual property rights specific to the ERG;
- g. specific provisions for working with DDI nations, including DDI-specific work sharing and cost sharing arrangements, if necessary;
- h. provisions covering the resolution of disputes within the ERG, in accordance with SECTION XIII (Settlement of Disputes) of this MOU;
- i. provisions governing the duration of or amendment of the ERG arrangement, and the dissolution of an ERG or the withdrawal of any of its members;
- j. provisions covering the issue of contractual liability in accordance with
- k. paragraph 5.1.

3.7 Notwithstanding the provisions of paragraph 3.2 above, decisions concerning the operation of a specific ERG will be a matter for the members of that ERG only and only members of that ERG will have voting rights.

#### *Section IV – Financial Matters*

4.1 Each Participant will bear its own costs associated with management and administration of this MOU. The cost of running the database of Information about R&T Plans as required in paragraphs 2.3, 2.4 and 3.2 above, will be shared between the Participants on the basis of the WEAG cost-sharing key.

4.2 Each ERG arrangement will contain provisions, determined by the ERG Members, covering their financial responsibilities under that ERG. However, the following provisions will in principle apply:

- a) each Participant will bear its own costs as determined in any ERG arrangement, or any R&T Project, including the costs of its contracts, whether let nationally, let on its

behalf by another Participant, or let on its behalf by an international organisation;

b) a Participant will promptly notify any other Participants concerned if funds are not available to meet its commitments under any ERG arrangement or any R&T Project; the Participants concerned will then consult and may continue on a changed or reduced basis if they so wish.

4.3 If one Participant incurs contractual obligations on behalf of other Participant(s), those other Participant(s) will pay their share of such obligations, and will make funds available in such amounts and at such times as may be required by those obligations. A transfer of funds to the contracting Participant before such contractual obligations are due may be required.

4.4 Where industrial part-funding of activities within an ERG is envisaged, the members of that ERG must include the necessary provisions in their ERG arrangement to cover all aspects of their rights and obligations towards their industrial partners.

## *Section V – Contracts and Relationships with Industry*

### **Contracts**

5.1 ERG Members may decide that contracts will be let nationally or be let by one ERG Member on behalf of the other(s) or be let by an international organisation with which they have an appropriate legal relationship. The necessary provisions for contracting will be set out in the relevant ERG arrangement. These provisions will always include the question of liability arising from such contracts.

5.2 If any ERG Member determines that national contracting is necessary to fulfil its responsibilities under an ERG, or any R&T Project, then that Member will contract in accordance with its respective national laws, regulations and practices with such waivers and deviations as its practices permit and as are deemed necessary. It will be solely responsible for its own contracting, and the other Participant(s) will not be subject to any liability arising from such contracts without their prior written consent.

5.3. If the ERG Members determine that one Member should let a contract on behalf of the other Member(s), that Member will let a contract in accordance with its own national laws, regulations and practices with such waivers and deviations as its practices permit and as are deemed necessary.

5.4 Contracts will in principle be let by competition.

### **Relationships with Industry**

5.5 The Participants will endeavour to allow industry to contribute to the processes for the formulation of a European research and technology strategy and the conduct of co-operative R&T Programmes and Projects in the following areas:

a) by taking into account overall European defence industrial technology capability at all stages in developing ERG arrangements or R&T Projects;

- b) by ensuring that civil technologies are appropriately assessed for the solution of defence problems, including the management of dual-use technologies;
- c) by ensuring that business issues involved in an ERG arrangement are appropriately addressed in the arrangement. These issues will include, but are not limited to:
- Intellectual property rights;
  - Recognition of economic interests;
  - Access to information;
  - Eligibility to bid for work;
  - Competition;
  - Trans-national companies, their ownership and control, location and access to research facilities;
  - Visit procedures.
- d) by seeking advice on the possible impact of future industrial restructuring in Europe, both inside and outside of the defence industrial base.

## *Section VI – Security and Visits*

### **Security**

6.1 All classified information exchanged by the Participants when guiding, controlling and supervising this MOU, and when keeping one another informed of their R&T Plans, will be used, transmitted, stored, handled and safeguarded in accordance with the Participants' applicable national security laws and regulations, to the extent that they provide a degree of protection no less stringent than that provided for WEU classified information as set forth in WEU Security Regulations (RS100).

6.2 When establishing ERGs, the ERG Members may require classified material to be protected in accordance the WEU Security Regulations RS 100, or they may require it to be protected in accordance with the provisions of any bilateral or multilateral security agreement available to all Members of that particular ERG. Such security agreements called upon in this way will be described in the relevant ERG arrangement as appropriate.

6.3 The Participants will take all lawful steps available to them to investigate all cases in which it is known or where there are grounds for suspecting that classified information provided or generated pursuant to this MOU has been lost or disclosed to unauthorised persons. Each Participant will also promptly and fully inform the other Participants of the details of any such occurrences, and of the final results of the investigation and of the corrective action taken to preclude recurrences. ERG Members will investigate loss and disclosure of classified information in a similar way, in accordance with the security agreements or arrangements that are being used by that ERG.

6.4 The maximum level of security classification of material exchanged between the Participants for the purposes of this MOU, any ERG arrangement or any R&T Project will be Focal TOP SECRET.



6.5 All classified information exchanged or generated under this MOU, any ERG arrangement or any R&T Project will continue to be protected in the event of withdrawal by any Participant or upon termination of this MOU.

### Visits

6.6 All visiting personnel will comply with the security regulations of the Participant hosting the visit and will be subject to the provisions of this MOU. Any information, materials or equipment disclosed or made available to visitors will be treated as if supplied to the Participant sponsoring the visiting personnel and will be subject to the provisions of this MOU.

6.7 Requests for visits by personnel of one Participant to a facility of another Participant will conform to the established visit procedures of the Participant hosting the visit. Requests for visits will bear the name of the relevant ERG arrangement and any subsidiary document (such as a project annex) that is applicable to the visit. Such requests will be submitted in accordance with normal International Visit Control Procedures as described by the WEU Security Regulations (RS 100).

6.8 Lists of personnel of each Participant required to visit facilities of other Participants on a continuing basis will be submitted through official channels.

## *Section VII – Claims and Liabilities*

7.1 Except as covered in paragraph 5.1 above each Participant waives any claim it may have against any other Participant(s) in respect of loss or damage caused to its personnel and/or its property by personnel or agents (which do not include contractors) of the other Participant(s) arising out of, or in connection with, the execution of this MOU, any ERG arrangement or R&T Project of which it is a member. If, however, such loss or damage results from the reckless (culpa) acts or reckless omissions, wilful misconduct (dolus malus) or gross negligence (culpa lata) of a Participant, its personnel or agents, the costs of any liability will be borne by that Participant alone.

7.2 Unless otherwise specified in an ERG arrangement, the costs incurred in satisfying claims from third parties for loss or damage of any kind arising out of, or in connection with, the execution of this MOU, any ERG arrangement or any R&T Project, caused by one of the Participants' personnel or agents (which do not include contractors) will be borne by the Participants on a pro-rata basis reflecting the level of contributions by the Participants to the activity in question. If, however, such liability results from the reckless (culpa) acts or reckless omissions, wilful misconduct (dolus malus) or gross negligence (culpa lata) of a Participant, its personnel or agents, the costs of any liability will be borne by that Participant alone.

7.3 In the case of loss or damage caused to or by the common property of the Participants, where the cost of making good such damage is not recoverable from a third party, such cost will be borne by the Participants in the same manner as set out in paragraph 7.2 above.

### *Section VIII – Disclosure and Use of Information*

8.1 The Participants may disclose Information to one another either for the purposes of carrying out the provisions of this MOU, any ERG arrangement or any R&T Project.

8.2 When the Participants exchange Information in order to inform one another of their R&T Plans in accordance with paragraph 2.3 and 2.4 above, or to inform one another about the creation of new ERGs in accordance with paragraph 3.3 and 3.4 above, or for any other purpose, the Disclosing Participant will determine the amount of Information to be released, and the Receiving Participants will use the Information solely for the purpose of determining whether they wish to apply to join in a particular ERG or any R&T Project. The Disclosing Participant will be responsible for marking documented Information, which will include:

- a) the identity of the Disclosing Participant, and the owner of the Information;
- b) a statement whether the Information may be released to contractors, or contractor personnel working in the Receiving Participants' establishments;
- c) the security classification of the Information.

8.3 ERG arrangements will contain detailed provisions describing the rights and responsibilities of the ERG Members with regard to the disclosure and use of both Background and Foreground Information, including provisions covering the disposition of rights arising from inventions. ERG arrangements will contain provisions dealing with the proprietary rights of contractors, taking into account the provisions of paragraph 4.4 above.

### *Section IX – Sales and Transfers of Information*

9.1 A Participant receiving Information in accordance with paragraphs 2.3, 2.4 and 3.4 above will not sell, transfer title to, transfer possession of or otherwise disclose the Information to a Third Party without the prior written consent of the Participant(s) which provided such Information. In the case of Information concerning Participants' R&T Plans, the Disclosing Participant may indicate its consent to a further transfer of the Information by adding whatever marking to the Information is necessary to describe the consent given, in addition to the standard markings set out in paragraph 8.2 above. The Disclosing Participant may also specify the method and conditions for implementing any transfers that have been approved.

9.2 ERG arrangements will contain detailed provisions describing the rights and responsibilities of the ERG Members with regard to the sale or transfer of Background or Foreground Information used or generated in the course of activities within that ERG. ERG Members will determine whether and in what circumstances Information may be sold, transferred or otherwise disclosed to other Participants who are not ERG Members. ERG arrangements will also contain provisions dealing with the sale or transfer of Information to Third Parties.

9.3 Unless otherwise determined by the ERG Members, consent for sales and transfers of Foreground Information to other Participants or Third Parties will not be withheld except for reasons of foreign policy, national security, or national laws. If an ERG Member is asked to approve a sale or transfer to another Participant or a Third Party it will not refuse such approval if it would be willing itself to sell or transfer the Information.

### *Section X – Custom Duties, Taxes and Similar Charges*

10.1 For any activities established or contracts let by members of the Western European Armaments Organisation utilising the legal personality of the Western European Union (WEU), Participants will apply all pertinent provisions of the Agreement on the Status of the WEU, signed in Paris on 11 May 1955, to any ERG, recognising that all research and technology activities so conducted be considered to be for the official use of the WEU in order to strengthen the economic ties by which its members are already united, and to cooperate and co-ordinate their efforts to create a firm technology base consistent with the aims of the modified Brussels Treaty.

10.2 If the provisions of paragraph 10.1 above do not apply, and unless otherwise specified in an ERG arrangement, each Participant will endeavour to ensure that readily identifiable taxes, customs duties and similar charges or quantitative restrictions on imports and exports will not be imposed in connection with any activities conducted under this MOU.

10.3 Unless otherwise specified in an ERG arrangement, the Participants will administer all taxes, duties and/or other similar charges in the manner most favourable to the satisfactory execution of the arrangements described in this MOU. If customs duties, identifiable taxes or similar charges are levied, they will be borne by the Participant in whose country they are levied.

10.4 In the event that taxes or customs duties are imposed on behalf of the European Union, the costs will be borne by the Participant whose country is the final destination. The components and equipment connected with the activity will be accompanied during movement up to their final destination by documents enabling settlement of duties to take place.

## *Section XI – Admission of New Members*

11.1 Any non-Participant wishing to become a Participant to this MOU may do so provided that the existing Participants give their unanimous consent. A new Participant will be admitted by the signature of an amendment to this MOU to be signed by the existing and new Participant(s).

## *Section XII – Duration, Amendment, Termination, and Withdrawal*

### **Duration**

12.1 This MOU will come into effect on the date of last signature. However when signing this MOU, a Participant may declare that in respect of that Participant, this MOU will come into effect upon notification that Parliamentary approval/necessary domestic legal procedures have taken place. It will continue in effect until terminated by unanimous written consent of the Participants. The Participants will review the status of this MOU at regular intervals and will decide at each review whether it should continue or be terminated.

### **Amendment**

12.2 This MOU may be amended at any time by the unanimous consent of the Participants.

### **Termination**

12.3 If this MOU is terminated all ERGs established under it will terminate also. In such circumstances the Participants will consult together to decide upon the most appropriate arrangements to be made for any existing ERG arrangement and any R&T Projects.

### **Withdrawal**

12.4 If one Participant decides to withdraw from this MOU it will give the other Participants at least six months advance notification in writing of its intentions. It will also consult with the other Members of any ERGs in which it is involved about the most satisfactory arrangements to be made for those ERGs.

12.5 The provisions of this MOU in respect of Section VI (Security and Visits), Section VII (Claims and Liabilities), Section VIII (Disclosure and Use of Information), Section IX (Sales & Transfers of Information), and Section XIII (Settlement of Disputes), and any responsibilities which may arise under paragraphs 12.2 and 12.3 above will remain in effect notwithstanding withdrawal from, termination, or expiry of this MOU.

### *Section XIII – Settlement of Disputes*

13.1 Any disputes regarding the interpretation or application of this MOU will be resolved by consultation between the Participants and will not be referred to any national or international tribunal or any other third party for settlement.

### *Section XIV – Signature*

14.1 The foregoing represents the understandings reached among the Participants and is signed by the Participants in two copies, one in the French language and one in the English language, both texts being equally valid.

14.2 The original texts will be retained, for administrative convenience, by the Western European Armaments Organisation Research Cell. A certified true copy of both texts will be sent to all Participants.

## ERG 1

December 2001

The first European research grouping (ERG) under the EUROPA MOU was launched in late 2001, with 14 members. It contains all provisions necessary for the conduct of individual R&T projects. As compared with earlier R&T MOUs like THALES and EUCLID, ERG No. 1 provides for greater flexibility: two or more ERG members can agree to take part in projects without needing to seek permission from the whole group ('closed projects'); there is no automatic *juste retour*; work-share and/or cost-share will be decided on a case-by-case basis; participants in a project can choose who is to let contracts for them. There is no need to submit outline descriptions of projects to WEAG Panel II for approval, and participants can decide what services they want from the WEAO Research Cell (full support for a project, including development of the Technical Arrangement (TA), or just the letting of a contract). The first TA setting up a cooperative project under ERG No. 1 was signed by Italy and the United Kingdom in March 2002.

### **European research grouping arrangement (ERG) No. 1 concerning cooperative defence research and technology projects**

ERG 1 Final version 18/12/01

#### *Preamble*

The Minister of National Defence of the Kingdom of Belgium, the Minister of Defence of the Kingdom of Denmark, the Minister of Defence of the Republic of Finland, 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 Hellenic Republic, the Minister of Defence of the Italian Republic, the Minister of Defence of the Kingdom of The Netherlands, the Minister of Defence of the Kingdom of Norway, the Ministry of Defence of the Portuguese Republic, the Minister of Defence of the Kingdom of Spain, the Government of the Kingdom of Sweden represented by the Ministry for Defence, the Minister of National Defence of the Republic of Turkey, and the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, hereinafter called the European Research Grouping (ERG) Members:

recognising that this is an ERG arrangement created under the EUROPA Memorandum of Understanding (MOU) signed 15 May 2001, and that all rights and obligations provided for in that MOU also apply to this arrangement;

wishing to create a framework under which bilateral and multilateral co-operative defence Research and Technology (R&T) can be carried out by any two or more Members; have reached the following understandings.

### *Section I – Definitions and Abbreviations*

The following definitions are in addition to those which appear in the EUROPA MOU, which also apply to this ERG arrangement.

Contributing Member	means an ERG Member that contributes resources under a TA to this ERG arrangement.
Defence Purposes	means any purposes of the armed forces of a Contributing Member acting in any part of the world, whether alone or in concert with others or on behalf of some other nation, or multinational or international organisation, and anything done by or for the Contributing Member in support of those purposes. The term “Defence Purposes” does not embrace the transfer of articles by sale or other disposal to ERG 1 Third Parties nor R&T Projects or development or the like conducted in co-operation with a Participant which is not a Contributing Member (see SECTION IX).
Disclosing Contributing Member	means a Contributing Member who discloses Information under a specific TA to this ERG arrangement.
ERG 1 Third Party	means any person, entity or government who are not a Contributing Member or a contractor in the specific TA. Government agencies of the Contributing Members are not considered to be ERG 1 Third Parties.
Government Purposes	means use, other than Defence Purposes use, by or for any Government organisation of a Contributing Member. The term “Government Purposes” does not embrace the transfer of articles by sale or other disposal to ERG 1 Third Parties nor R&T Projects or development or the like conducted in co-operation with a Participant which is not a Contributing Member (see SECTION IX).
Host Contributing Member	means a Contributing Member receiving personnel for attachments or exchanges under this ERG arrangement.
Parent Contributing Member	means a Contributing Member providing personnel for attachments or exchanges under this ERG arrangement.
Receiving Contributing Member	means a Contributing Member who receives Information under a specific TA to this ERG arrangement.
TA Management Group (TAMG)	means a Management Group made up of the Project Officers nominated by the Contributing Members in a TA.
Technical Arrangement (TA)	means a specific arrangement setting the principles applying to a specific R&T Project to be carried out under this ERG arrangement.
Technology Demonstrator Project (TDP)	means a Project in which a combination of technologies is intended to validate either a proposed technology capability or operational requirement. The products of a TDP may include, but are not necessarily limited to: equipment, materials, and software (including system architecture and source codes).

## *Section II - Scope and Objectives*

2.1 This ERG arrangement allows any two or more ERG Members to conduct individual R&T Projects. They may be initiated and developed using information from the database of R&T Plans set up under paragraphs 2.3 and 2.4 of the EUROPA MOU, or they may be initiated and developed using information obtained from other sources.

2.2 All activities of the ERG Members under this ERG arrangement will be carried out in accordance with their national laws, regulations, and procedures.

2.3 For all R&T Projects carried out pursuant to this ERG arrangement, the ERG Members will not seek to apply *juste retour* on an individual Project basis, but will seek a global return.

2.4 The ERG Members will use this ERG arrangement to set up bilateral or multilateral co-operative R&T activities in accordance with the list at sub-paragraphs 2.6a) to 2.6g) of the EUROPA MOU. Such co-operative R&T activities will normally require the completion of a Technical Arrangement (TA) by the ERG Members concerned. However, exchanges of information among ERG Members in order to utilise the database of R&T Plans, or to initiate and develop R&T activities, will not require the completion of a TA.

## *Section III - Management*

### **General**

3.1 The ERG Members will be jointly responsible for the operation of this ERG arrangement and will be responsible for resolving any issues on any matter set up under it. They will also consider any matter concerning the compliance with this ERG arrangement of any TA set up under it. When dealing with the above matters each ERG Member will have one vote and all decisions will be taken unanimously.

3.2 Any two or more ERG Members may decide to carry out an R&T Project in accordance with paragraph 2.4 above without seeking the approval of the other ERG Members. They must, however, provide the other ERG Members with a summary description of the proposed activity. A copy of the summary will also be provided for inclusion in the database referred to in paragraph 2.3 of the EUROPA MOU.

3.3 On completion of an R&T Project under this ERG arrangement, an executive summary of the results will be provided to the other ERG Members.

### **TAs**

3.4 TAs will, as appropriate, contain provisions to cover the following:

- a) objectives;
- b) work schedule;
- c) list of tasks;
- d) costs, and financial arrangements between the Contributing Members;



- e) contractual arrangements (if any);
- f) project management and principal government organisations involved;
- g) industrial involvement (if any);
- h) arrangements for reporting progress to the Contributing Members;
- i) details of equipment loaned;
- j) personnel attachments and exchanges;
- k) special provisions specific to the TA on such subjects as disclosure and use of information, security, claims and liabilities, or customs duties, taxes and similar charges.

3.5 The ERG Members will issue a mutually approved “TA Guide” containing more detailed instructions for the completion of TAs.

3.6 TAs will be signed by a designated representative of each Contributing Member.

3.7 TAs will be signed pursuant to the provisions of this ERG arrangement. In the event of any conflict between a TA and this ERG arrangement, this ERG arrangement will rule.

3.8 The Contributing Members in a TA will determine the detailed management arrangements for that TA including the formation of a TAMG for that TA.

#### *Section IV - Finance*

4.1 Each ERG Member will bear its own costs associated with the management and administration of this ERG arrangement, and this ERG arrangement in and of itself creates no financial responsibilities with respect to any individual TA.

4.2 Each Contributing Member will bear the costs of its share in any R&T Project as described in a TA, including the costs of its contracts, whether let nationally, or let on its behalf by the other Contributing Member(s) or by any other contracting agency. The cost share will be determined by the Contributing Members on a case-by-case basis. Contributing Members may set cost shares on a basis of equality, or equitability, or any other ratio that they mutually determine, taking into account the relevant provisions of paragraph 3.6g) of the EUROPA MOU. One ERG Member will promptly notify the other if funds are not available to meet its commitments under this ERG arrangement or any TA; the ERG Members concerned will then consult with a view to continuing on a changed or reduced basis. The currency exchange rates and economic conditions to be used when calculating the cost shares for each TA will be determined by the Contributing Members and stated in the relevant TA.

4.3 Where a Contributing Member carries out work on behalf of the other(s) on a repayment basis, full details will be set out in the relevant TA to this ERG arrangement.

4.4 If a Contributing Member incurs contractual obligations on behalf of other Contributing Member(s) the other(s) will pay their share of such obligations, and will make funds available in such amounts and at such times as may be required by the obligations.

4.5 For each TA, the relevant TAMG will be responsible for establishing adequate financial management procedures under which the work will be performed. These procedures will, if national policies and procedures of at least one of the Contributing Members require it, be detailed in a financial management policies and procedures document proposed by the TAMG and subject to the approval of the Contributing Members. The financial management policies and procedures document will contain an estimated schedule of the financial contributions each Contributing Member will make to the R&T Project concerned.

4.6 When funds are transferred from one Contributing Member to the other(s) for the purpose of carrying out work under a TA, the Contributing Member who receives the funds will be responsible for the internal audit regarding their administration in accordance with its own national practices. Audit reports will be promptly made available to the other Contributing Member(s).

### *Section V - Contracting*

5.1 Competition will be the preferred method for letting contracts pursuant to this ERG arrangement, taking into account the national regulations and procedures of the Contributing Members concerned, except when a Contributing Member determines that such competition could be critical to its national security interests.

5.2 If a Contributing Member determines that national contracting is necessary to fulfil its responsibilities under a TA then that Contributing Member will contract in accordance with its respective national laws, regulations and practices with such waivers and deviations as its practices permit and as are deemed necessary to implement the provisions of this ERG arrangement and the relevant TA.

5.3 When a Contributing Member contracts nationally to carry out a task that is part of its own work programme as specified in a TA, it will be solely responsible for its own contracting, and the other Contributing Member(s) will not be subject to any liability arising from such contracts without their prior written consent.

5.4 If the Contributing Members determine that one of them should let a contract on behalf of one or more of the other(s), that Contributing Member will let a contract in accordance with its own national laws, regulations and practices with such waivers and deviations as its practices permit and as are deemed necessary to implement the provisions of this ERG arrangement and the relevant TA. The contractual arrangements will be detailed in the relevant TA. The Contributing Member letting the contract will nominate a contracting officer who will be the exclusive source for providing contractual direction and instruction to the contractors. The TAMG however, will be responsible for the co-ordination of activities relating to contracting under the relevant TA, and will cooperate with the contracting officer in the area of evaluation of offers, contract procedures, and contract negotiations. The contracting officer will let the contract only with

the approval of the TAMG. The contracting officer will keep the TAMG advised of all financial arrangements with contractors.

5.5 Each Contributing Member will include in its contracts and require its contractors to insert in their sub-contracts suitable provisions to satisfy the requirements of this ERG arrangement and the relevant TA. Contributing Members letting contracts will instruct prospective contractors that they should notify the Contributing Members if any license or agreement affecting the contractor will limit the Contributing Members' freedom to disclose the Information or permit its use. A Contributing Member letting a contract will also instruct prospective contractors not to enter into any new agreement or arrangement that will result in such limitations without prior consultation with that Contributing Member.

5.6 In the event that a Contributing Member letting a contract is unable to secure suitable provisions to satisfy the requirements of this ERG arrangement and the relevant TA as set out in paragraph 5.5 above, that Member will notify the other Contributing Member(s) of the restrictions.

5.7 Each Contributing Member letting a contract will promptly advise the other Contributing Member(s) of any cost growth, schedule delay, or performance problems in connection with a contract placed by that Contributing Member.

5.8 Contributing Members may mutually determine that contracts will be let on their behalf by an international organisation with which they have an appropriate legal relationship. Provisions applicable to such contracting arrangements will be set out in the relevant TA.

5.9 Where a contract is let on behalf of Contributing Members by an international organisation, those Contributing Members will determine how to meet the costs arising in any case of contractual liability for which the international organisation itself is not responsible. Such costs will normally be borne on a pro-rata basis according to each Contributing Member's contribution to the Project, unless otherwise determined in the relevant TA.

## *Section VI - Security and Visits*

### **General**

6.1 All classified Information exchanged or generated in connection with this ERG arrangement and any TAs under it will be used, transmitted, stored, handled and safeguarded in accordance with the provisions of SECTION VI of the EUROPA MOU.

6.2 Classified Information will be transferred only through official channels approved by the National Security Authority/Designated Security Authorities (NSA/DSA) of the ERG Members. Such Information will be marked with the level of classification and the country of origin.

## TAs

6.3 Where the Contributing Members in a TA are signatories to, and wish to use, a suitable Security Agreement or Arrangement other than the WEU Security Regulations RS 100, they may do so. Use of such an Agreement or Arrangement will be specified in the relevant TA. Notwithstanding this, the following provisions will always apply to any Project carried out under this ERG arrangement.

6.4 Each Contributing Member will take all lawful steps available to it to ensure that Information provided or generated pursuant to this ERG arrangement is protected from further disclosure except as provided for by paragraph 6.8 below, unless the other Contributing Member(s) consents to such disclosure.

6.5 Accordingly, each Disclosing Contributing Member will require that:

- a) a Receiving Contributing Member does not release the classified Information to any ERG 1 Third Party without the prior written consent of the originator.
- b) a Receiving Contributing Member does not use the classified Information for other than the purposes provided for in this ERG arrangement or a TA under it.
- c) a Receiving Contributing Member complies with any distribution and access restrictions on Information that is provided under this ERG arrangement or a TA under it.

6.6 When a classified contract is awarded to a contractor within the territory of one of the Contributing Members, the NSA/DSA of the Contributing Member concerned will assume responsibility for administering within its territory security measures for the protection of the classified Information, in accordance with its national laws and regulations. Prior to the release to a contractor, prospective contractor, or sub-contractor of any classified Information received under this ERG arrangement or TA, the NSA/DSAs will:

- a) ensure that such a contractor, prospective contractor, or sub-contractor and their facilities have the capability to protect the Information adequately.
- b) grant a security clearance to the facilities, if appropriate.
- c) grant a security clearance for all personnel whose duties require access to classified Information, if appropriate.
- d) ensure that all persons having access to the Information are informed of their responsibilities to protect the Information in accordance with national security laws and regulations, and the provisions of this ERG arrangement and/or any TA under it.
- e) carry out periodic security inspections of cleared facilities to ensure that the classified Information is properly protected.
- f) ensure that access to the classified Information is limited to those persons who have a need-to-know for the purposes of this ERG arrangement and/or any TA under it.

6.7 Classified contracts may be awarded to contractors located outside the territory of the Contributing Members. In such a case, the contractors, prospective contractors, or sub-contractors determined by the NSA/DSAs of the Contributing Members to be under financial, administrative, policy or management control of nationals or entities of an ERG 1 Third Party may participate in a contract or sub-contract requiring access to

classified Information only when enforceable measures are in effect to ensure that nationals or entities of an ERG 1 Third Party will not have access to classified Information, unless the Contributing Members mutually determine that they should have such access.

6.8 For any facility wherein classified Information is to be used, the responsible Contributing Member or contractor will approve the appointment of a person or persons of sufficient rank to exercise effectively the responsibilities for safeguarding at such a facility the Information pertaining to this ERG arrangement and/or any TA under it. These officials will be responsible for limiting access to classified Information under this ERG arrangement and/or TA to those persons who have been properly approved for access and have a need-to-know. The Contributing Members will ensure that personnel who have a need for access to classified Information in order to participate in a Project possess the requisite security clearances.

6.9 When taking part in an R&T Project Contributing Members will require the TAMG to prepare a Project Security Instruction (PSI) and a Classification Guide for the Project. The PSI and the Classification Guide will describe the methods by which Information will be classified, marked, used, transmitted, and safeguarded. The Contributing Members will review and forward the PSI and Classification Guide to the appropriate NSA/DSAs for approval. Upon approval, the documents will be applicable to all Contributing Members' and contractors' personnel participating in the Project, and subject to review and revision.

## Visits

6.10 Visit procedures will, at a minimum, be carried out in accordance with SECTION VI of the EUROPA MOU. Each Contributing Member will permit visits to its establishments, agencies, and laboratories, and contractor industrial facilities, by employees of the other Contributing Member(s) or by employees of the other Contributing Members' contractors provided that the visit is authorised and the employees have appropriate security clearances and a need-to-know. Where visits are to be made to contractor's facilities, the permission of the relevant contractor will be sought in advance.

6.11 All visiting personnel will comply with security regulations of the Host Contributing Member, and if visiting a contractor's premises, with appropriate security or health and safety regulations applicable to those premises. Any Information which is disclosed or made available to visitors will be treated as if supplied to the Contributing Member sponsoring the visiting personnel, and will be subject to the provisions of this ERG arrangement and/or any TA under it.

6.12 Requests for visits by personnel of one Contributing Member to a facility of another Contributing Member will be co-ordinated through official channels and will conform with the established visit procedures of the Host Contributing Member. Requests for visits will bear the name of the relevant TA and will be submitted in accordance with either the International Visits Procedures described by the WEU Security

Regulations (RS100), or by any other appropriate visit procedures contained in any Security Agreement or Arrangement being used by the Contributing Members in a particular TA.

6.13 Lists of personnel of each Contributing Member required to visit, on a continuing basis, facilities of the other Contributing Member(s) will be submitted through official channels in accordance with Recurring International Visit Procedures.

6.14 All classified Information exchanged or generated under this ERG arrangement or any TA under it will continue to be protected in the event of withdrawal by any ERG Member from this ERG arrangement or the withdrawal of a Contributing Member from a TA, or upon termination or expiry of this ERG arrangement, or one of its TAs.

6.15 Unclassified matter resulting from any TA under this ERG arrangement which may be suitable for publication in scientific or technical journals will first be specifically cleared for public disclosure by the TAMG.

### *Section VII - Claims and Liabilities*

7.1 All claims and liabilities arising from or in connection with the execution of this ERG arrangement or any TA under it will be dealt with as specified in SECTION VII of the EUROPA MOU unless the relevant TA specifies changes permitted under paragraph 7.2 of that MOU.

### *Section VIII - Disclosure and Use of Information*

#### **General**

8.1 Two or more ERG Members may disclose Information to one another under this ERG arrangement for the purposes of co-ordinating their respective R&T requirements and for formulating, developing and negotiating TAs to this ERG arrangement. In such cases the ERG Members will observe their normal national security and disclosure regulations and any other pre-existing obligations of confidentiality.

8.2 Whenever Information is disclosed by one ERG Member to another, for whatever purpose, the disclosing ERG Member will be responsible for marking all documented Information that it provides with a legend that refers to the EUROPA MOU and this ERG arrangement, and which indicates the following:

- a) the identity of the disclosing ERG Member and of the owner of the Information;
- b) the security classification of the Information;
- c) whether the Information may be used for information and evaluation purposes only, for Defence Purposes, or for Government Purposes;

d) whether or not the receiving ERG Member may release the Information to its contractors, or may release it to contractor personnel working within its organisation and any of its establishments;

e) whether any pre-existing obligations of confidentiality apply to the Information.

8.3 Should an ERG Member receive from other(s) Information which is not marked as aforesaid, then the recipient will consult with the ERG Member(s) disclosing the Information, and in the meantime, treat the Information as if it had been disclosed in an Information Exchange.

### **Information Exchange**

8.4 Background Information may be exchanged under any TA, in accordance with Paragraph 2.6a) of the EUROPA MOU. No transfer of ownership of Background Information between Contributing Members will take place under a TA to this ERG arrangement unless specific alternative provisions, which should take into account any applicable proprietary rights, are included in the relevant TA.

8.5 Background Information will only be exchanged where it may be so exchanged without incurring liability to holders of proprietary rights and where disclosure is consistent with the national disclosure procedures and regulations of the Disclosing Contributing Member(s).

8.6 The Receiving Contributing Member(s) may use Background Information received under a TA for information and evaluation purposes only, and will not use the Information for any purpose other than the purpose for which it was furnished without the prior written consent of the Disclosing Contributing Member(s). However, and subject to any pre-existing rights in the Background Information, where the Contributing Members mutually determine in advance that exchanged Background Information may be used for purposes other than information and evaluation then the provisions determining such use will be included in the TA covering the Information exchange.

8.7 Should the Receiving Contributing Member(s) acknowledge, or should the Disclosing Contributing Member believe, that misuse of Background Information has occurred, then they will confer to investigate the matter and decide whether the Receiving Contributing Member(s) should make financial or other reparation to the injured owner of the Background Information (whether the Disclosing Contributing Member or its contractor).

### **Co-operative R&T Projects**

8.8 R&T Projects may be established under TAs to this ERG arrangement in accordance with paragraphs 2.6b) to 2.6g) of the EUROPA MOU. The following provisions will apply to such Projects, unless specific alternative provisions are included in the relevant TA.

## **Projects Fully Funded by the Contributing Members**

### *Background Information*

8.9 The Disclosing Contributing Member, upon request, will disclose to the Receiving Contributing Member(s) promptly and without charge, all Background Information which is or has been generated by it, or which has been delivered by its contractors, which is necessary for the performance of that R&T Project and for the use of the results of that R&T Project, provided that:

- a) the Background Information is required in the R&T Project, as determined by the Disclosing Contributing Member;
- b) the Background Information may be made available without incurring liability to holders of proprietary rights;
- c) disclosure of the Background Information is consistent with the national procedures and regulations of the Disclosing Contributing Member.

8.10 Each Contributing Member will use its best efforts to identify to the other Contributing Member(s) before concluding each TA, all of the Background Information that it will disclose and such Background Information will be identified in the relevant TA. However, additional Background Information may also be provided to satisfy the needs of an R&T Project after it has commenced, without amending the TA. In any case, the members of the TAMG will draw up and maintain a record of disclosed information.

8.11 The Receiving Contributing Member(s), subject to any pre-existing rights in the Information, may use received Background Information or have it used without charge for the purpose of performing work under the relevant TA and for using results of that TA for Defence Purposes, unless the use of such Background Information is specifically limited by the provisions of the TA. Where contractor's proprietary rights would normally limit the use that the Receiving Contributing Member(s) can make of Background Information, the Receiving Contributing Member(s) may be allowed to use the Information or have it used upon fair and reasonable terms to be agreed with the contractor holding the proprietary rights. Where a Receiving Contributing Member wishes to use the results of the TA for Government Purposes, provisions governing access to the relevant Background Information, including the question of contractor's proprietary rights, will be set out in the relevant TA.

### *Foreground Information*

8.12 All Foreground Information generated by or for a Disclosing Contributing Member will be disclosed to the Receiving Contributing Member(s) promptly and without charge.

8.13 The Receiving Contributing Member(s) receiving Foreground Information may use it and have it used without charge for its Defence Purposes and may use it and have it used for its Government Purposes under provisions set out in the relevant TA.

8.14 Where Foreground Information is jointly generated by or for all Contributing



Members, then all Contributing Members will have the right to receive that Foreground Information, promptly and without charge, and to use it and have it used without charge for their Defence Purposes and may use it and have it used for their Government Purposes under provisions set out in the relevant TA.

### **Projects Funded Jointly by the Contributing Members and Contractors**

#### *Background Information*

8.15 The provisions of Paragraphs 8.9 to 8.11 will apply to all Background Information which is owned by Contributing Members, or in which Contributing Members have already secured sufficient user rights to comply with those provisions.

#### **Disclosure Subject to Proprietary Rights**

8.16 Where sufficient user rights have not previously been secured, a Disclosing Contributing Member will require its contractors to make Background Information available without charge to the Receiving Contributing Member(s), or to that Contributing Member's contractors, if that Background Information is required to enable them to carry out their respective share of work under a TA. This will be subject to appropriate obligations of confidence. What Background Information will be required by the Receiving Contributing Members' contractors will be mutually determined by the Contributing Members and their respective contractors and included in the appropriate contract(s).

#### **Use Subject to Proprietary Rights**

8.17 The Receiving Contributing Member(s) will have, subject to any pre-existing rights in the Information, the right to use or have used by a contractor other than the Disclosing Contributing Member's contractor, Background Information in order to make use of Foreground Information generated under a TA as follows:

- a) for information and evaluation of the results of the relevant TA, without charge;
- b) disclosure of necessary Information for tender purposes, without charge;
- c) for other Defence Purposes, on fair and reasonable terms;
- d) for Government Purposes, on fair and reasonable terms.

8.18 The Receiving Contributing Member(s) will in all cases give the Disclosing Contributing Member's contractor 30 days notice of its intention to make use of received Background Information under sub-paragraphs a) to d) above, and will consider any representations made by that contractor with regard to the proposed use. The Receiving Contributing Member(s) will give that contractor, if it is capable of doing so, the opportunity to bid for work that is part of the proposed use. If the Receiving Contributing Member(s) intend to use the Information for Defence Purposes, and have made a fair and reasonable offer to the contractor, use may commence 3 months from expiry of notice to the contractor whilst negotiation of fair and reasonable terms continues.

8.19 If the Receiving Contributing Member(s) intend to use the Information for Government Purposes, prior agreement of terms must be reached with the relevant contractor before the Information is used.

8.20 In all cases, however, the Receiving Contributing Member(s) will require the intended recipient of the Information to sign a confidentiality agreement before the Information is disclosed should the Disclosing Contributing Member's contractor require it.

### *Foreground Information*

#### **Disclosure**

8.21 The Disclosing Contributing Member will require its contractor(s) to make available to the Receiving Contributing Member(s), without charge, all Foreground Information generated by that contractor under a TA.

#### **Use**

8.22 The Receiving Contributing Member(s) may use, or have used, Foreground Information generated by a contractor under a TA as follows:

- a) for information and evaluation, without charge;
- b) for the purpose of issuing tenders, without charge;
- c) for Defence Purposes, without charge unless otherwise determined and set out in the relevant TA;
- d) for Government Purposes, on fair and reasonable terms.

8.23 The Receiving Contributing Member(s) will in all cases give the Disclosing Contributing Member's contractor 30 days notice of its intention to make use of received Foreground Information under sub-paragraphs (a) to (d) above.

8.24 If the Receiving Contributing Member(s) intend to use the Foreground Information for Government Purposes, prior agreement of terms must be reached with the relevant contractor before the Foreground Information is used.

8.25 In all cases, however, the Receiving Contributing Member(s) will require the intended recipient of the Foreground Information to sign a confidentiality agreement before the Foreground Information is disclosed should the Disclosing Contributing Member's contractor require it.

### **Technology Demonstrator Projects**

8.26 Detailed provisions covering Technology Demonstrator Projects (TDP) will be set out in the relevant TA.

8.27 Unless otherwise specified in the relevant TA, the disclosure of Background and Foreground Information under a TDP will take place in accordance with Paragraphs 8.9 to 8.25 above.

8.28 Unless otherwise specified in the relevant TA, any loans of equipment or material will take place in accordance with SECTION XII (LOANS AND TRANSFERS OF EQUIPMENT AND MATERIAL) of this ERG arrangement.

8.29 Where a TDP is carried out and equipment or materials (including items of software media) are produced as part of the results, the relevant TA will contain details of the ownership, holding, maintenance and rights of use by the Contributing Members and their contractors. Any changes in those details will either require an amendment to the TA in question, or the establishment of a new arrangement between the Contributing Members, as appropriate.

### **Inventions and Patents**

8.30 Each Contributing Member will include in all its contracts a provision governing the disposition of rights in regard to inventions arising from R&T Projects and patents relating thereto, which either:

- a) provides that the Contributing Member will hold title to all inventions under those contracts, together with the right to make Patent applications for the same, free of encumbrance from the contractor; or
- b) provides that the contractor will hold title (or may elect to retain title) to inventions under those contracts, together with the right to make patent applications for the same, whilst securing for Contributing Members non-exclusive royalty-free licences under all patents secured for those inventions to practice or have practised the patented inventions for Defence Purposes throughout the world.

8.31 The provisions of paragraphs 8.32 to 8.38 will apply in regard to patent rights for all inventions made by a Contributing Member's military or civilian personnel in performance of their work under a R&T Project including those within Government facilities and for all inventions resulting from contracts placed by a Contributing Member for which the Contributing Member holds title or is entitled to acquire title. Where no R&T Project is involved, the provisions of paragraphs 8.39 to 8.42 will apply.

8.32 Where a Contributing Member has or can secure the right to file a patent application with regard to an invention, the Contributing Member will consult the other Contributing Member(s) regarding the filing of such patent application. If a Contributing Member, having filed or caused to be filed a patent application in the country of one of the other Contributing Members, decides to stop prosecution of the application, that Contributing Member will notify the other Contributing Member(s) of that decision and permit the other Contributing Member(s) to continue the prosecution.

8.33 Where an invention is made jointly by or on behalf of more than one Contributing Member in a R&T Project the Contributing Members may mutually decide that one Contributing Member should hold all patent rights therein. In this event the other

Contributing Member(s) will take all steps necessary at their own expense to assign their rights in the invention to the filing Contributing Member for the purpose of the patent application. Decisions on filing and prosecuting such patent applications, maintaining and enforcing patent rights, exploiting patent rights and allocating costs associated with these activities will be made by mutual consent of the Contributing Members.

8.34 Each Contributing Member will furnish the other Contributing Member(s) with copies of any patent applications filed and patents granted.

8.35 Unless otherwise mutually decided in writing by the Contributing Members, each Contributing Member will grant to the other Contributing Member(s) a non-exclusive, irrevocable, royalty-free licence under its patents for inventions made in R&T Projects to practice and have practised the patented inventions for Defence Purposes throughout the world.

8.36 Each Contributing Member will notify the other Contributing Member(s) of any patent infringement claims made in its territory arising in the course of work performed under R&T Projects. Insofar as possible, the other Contributing Members will provide Information available to them that may assist in defending the claim. Each Contributing Member will be responsible for handling all patent infringement claims made in its territory and will consult with the other Contributing Member(s) during the handling and prior to any settlement, of such claims. The Contributing Members will in accordance with their national laws and practice, give their authorization and consent for all use and manufacture in the course of work performed of any invention covered by a patent issued by their respective countries.

8.37 Other than as provided for in paragraph 8.33 above, no transfer of ownership of Information will take place between the Contributing Members under this ERG arrangement.

### **Staff Attachments or Exchanges**

8.38 Where an attachment or exchange is arranged under a TA covering an R&T Project, paragraphs 8.9 to 8.37 will apply to all Information, inventions and patents resulting from the work of the attached person, while engaged on the R&T Project, whether generated solely or jointly. In such circumstances, solely generated Information, inventions and patents will be considered to be Foreground Information belonging to the Host Contributing Member.

8.39 Where a staff attachment or exchange is established outside the context of a specific R&T Project, or work by the attached person takes place outside a specific R&T Project, the following provisions will apply.

8.40 Information generated by personnel during an attachment or exchange, and any rights therein, will belong to the Host Contributing Member who may use the Information for any purpose.

8.41 The Host Contributing Member will disclose, promptly and without charge, all Information generated by attached or exchanged personnel to the Parent Contributing

Member. This Contributing Member will be entitled to use such Information and have it used without charge for its Defence Purposes, unless both Contributing Members mutually decide otherwise.

8.42 The right to secure patents in all countries of the world for inventions made by attached or exchanged personnel during an exchange will fall to the Host Contributing Member subject to that Contributing Member's national laws and regulations. The Host Contributing Member will grant to the Parent Contributing Member non exclusive, irrevocable, royalty-free licence under its Patents for such inventions made by attached or exchanged personnel during an attachment or exchange, to practice or have practised such patented inventions for Defence Purposes throughout the world.

## *Section IX - Sales and Transfers to ERG 1 Third Parties*

### **Information Exchange**

9.1 The following provisions will apply to Information Exchanges established under paragraph 2.6a) of the EUROPA MOU, unless specific alternative provisions are included in the relevant TA.

9.2 A Contributing Member will not sell, transfer title to, transfer possession of or otherwise disclose Information received under a TA to any ERG 1 Third Party without the prior written consent of the Disclosing Contributing Member or his contractor if the contractor owns the information. The Disclosing Contributing Member or where relevant, his contractor will be solely responsible for authorising any transfers and where applicable, specifying the method and conditions for implementing any transfers.

### **Co-operative Projects**

9.3 The following provisions will apply to R&T Projects established under paragraphs 2.6b) to 2.6g) of the EUROPA MOU, unless specific alternative provisions are included in the relevant TA.

9.4 Each Contributing Member will retain the right to sell, transfer title to, disclose or transfer possession of Foreground Information which:

- a) is generated solely by either that Contributing Member or by that Contributing Member's contractors in the performance of that Contributing Member's work allocation as described in the relevant TA, where that Contributing Member has secured sufficient rights in the relevant contracts.
- b) does not include any Background Information of the other Contributing Member(s) or the other Contributing Member's contractors.

9.5 In the event questions arise whether the Foreground Information that a Contributing Member intends to sell, transfer title to, disclose or transfer to an ERG 1 Third Party is within the scope of 9.4a) above, the matter will be brought to the immediate attention of the other Contributing Member(s). Those Contributing Members will

resolve the matter prior to any sale or other transfer of such Foreground Information to an ERG 1 Third Party. Where work has been carried out on behalf of two or more Contributing Members, it will be assumed that Foreground Information was not generated solely by one Contributing Member, unless that Contributing Member can demonstrate otherwise.

9.6 Except to the extent permitted in paragraph 9.4 above, Contributing Members taking part in an R&T Project will not sell, transfer title to, disclose or transfer possession of Foreground Information to an ERG 1 Third Party without the prior written consent of the other Contributing Member(s). Furthermore, Contributing Members will not permit any such sale, disclosure, or transfer, including by the owner of the item, without the prior written consent of the other Contributing Member(s). Such consent will not be given unless the government of the intended recipient agrees in writing with the disclosing Contributing Member that it will:

- a) not retransfer, or permit the further retransfer of, any equipment or Information provided; and
- b) only use, or permit the use of, the equipment or Information provided for the purposes specified by the Contributing Members.

9.7 A Contributing Member will not sell, transfer title to, disclose or transfer possession of equipment or Background Information provided by another Contributing Member or their contractor(s) to a ERG 1 Third Party without the prior written consent of the Contributing Member which provided such equipment or Information. The originating Contributing Member or their contractor(s) will be solely responsible for authorising such transfers and, as applicable, specifying the method and conditions for implementing such transfers.

9.8 Consent for ERG 1 Third Party sales and transfers of Foreground Information will not be withheld except for reasons of foreign policy, national security, or national laws. No Contributing Member will refuse approval of a sale or transfer to an ERG 1 Third Party when it would be willing to sell or transfer such Information to the same ERG 1 Third Party.

### *Section X - Customs Duties, Taxes and Similar Charges*

10.1 Unless otherwise specified in a TA to this ERG arrangement, the provisions of SECTION X of the EUROPA MOU will apply to this ERG arrangement and any TA under it.

### *Section XI - Attachment and Exchange of Personnel*

11.1 All attachments or exchanges of personnel to be carried out under a TA to this ERG arrangement will be subject to the provisions of this Section.

11.2 Attachments and exchanges will be restricted to the military and civilian employees of the Contributing Members.

11.3 Attached or exchanged personnel will not act in a liaison capacity, but will perform work and duties as mutually determined by each Contributing Member.

11.4 The Host Contributing Member will be responsible for the following:

- a) travel and subsistence costs in connection with the performance of any duty carried out pursuant to a requirement of the Host Contributing Member;
- b) costs incurred as a result of a change in location of work ordered by the Host Contributing Member.

11.5 The Parent Contributing Member's responsibilities will include all other costs and expenses of attached personnel including:

- a) all pay and allowances;
- b) travel to and from the country of the Host Contributing Member, except for travel covered by sub-paragraph 11.4a);
- c) all temporary duty costs, including travel costs, when the duty is carried out at the request of the Parent Contributing Member;
- d) compensation for loss of, or damage to, the personal property of attached or exchanged personnel or their dependants;
- e) the movement of dependants and household effects of attached or exchanged personnel;
- f) all expenses in connection with the return of attached or exchanged personnel whose assignment has been terminated, along with their dependants;
- g) preparation and shipment of remains and funeral expenses in the event of the death of attached or exchanged personnel or their dependants.

11.6 The Host Contributing Member will not charge for the use of facilities and equipment necessary for the performance of tasks assigned by the Host Contributing Member to attached or exchanged personnel.

11.7 Attached or exchanged personnel will at all times be required to comply with the security laws, regulations and procedures of the government of the Host Contributing Member, and all classified Information made available to attached or exchanged personnel will be subject to all the provisions and safeguards of SECTION VI (SECURITY AND VISITS) of this ERG arrangement together with any relevant security and classification guide relating to the activity upon which the attached officer is engaged.

11.8 The Host Contributing Member will advise the Parent Contributing Member in advance of medical and dental care (if any) that may be afforded to attached or exchanged personnel and/or their dependants.

11.9 Consistent with the laws and regulations applicable on the territory of the Host Contributing Member, the Host Contributing Member will provide, if available, housing and messing facilities for attached or exchanged personnel and their dependants. Attached or exchanged personnel will pay housing and messing charges to the same extent as personnel of the Host Contributing Member. At locations where facilities are

not provided by the Host Contributing Member for its own personnel, the Parent Contributing Member will make suitable arrangements for attached or exchanged personnel.

11.10 The general restrictions, conditions and privileges applicable to attached or exchanged personnel (such as leave entitlements) will be mutually determined in advance by the Contributing Members. The Host Contributing Member will be responsible for advising attached or exchanged personnel of any orders, regulations, customs or practices with which they will be required to comply by virtue of their exchange.

11.11 The Host Contributing Member will ensure that attached or exchanged personnel are fully cognisant of applicable laws and regulations concerning the protection of proprietary Information (such as patents, copyrights, know-how and trade secrets), and classified information to which access might be gained both during and after termination of an attachment or exchange.

11.12 Attached or exchanged personnel and their dependants will be required to obtain motor vehicle liability insurance coverage in accordance with applicable laws and regulations of the government of the Host Contributing Member, or its political subdivision, in which they are located.

### *Section XII - Loans and Transfers of Equipment and Material*

12.1 Any loan of equipment and material will be described in a TA to this arrangement. Each Contributing Member may loan, in accordance with its national regulations, without charge to other Contributing Member(s), equipment and material necessary for carrying out activities within the scope of this ERG arrangement.

12.2 Equipment and material loaned will be used by the receiving Contributing Member only for the purposes of that activity. Equipment and material will remain the property of the providing Contributing Member. In addition, the receiving Contributing Member will maintain the equipment and material in good working order and state of repair, and return it in as good condition as received, normal wear and tear excepted, unless the providing Contributing Member has approved the expenditure or consumption of the equipment or material as necessary for the purposes of that activity. Such expenditure or consumption will be without reimbursement to the providing Contributing Member. However, the receiving Contributing Member will bear the cost of any damage to (other than normal wear and tear) or loss of the equipment or material loaned to it that is not approved for expenditure or consumption. In no event will such cost exceed replacement cost less an amount determined by the Contributing Members concerned to represent reasonable wear and tear.

12.3 Contributing Members will make every effort to ensure that the equipment and material is furnished in a serviceable and usable condition according to its intended purpose. However, the providing Contributing Member makes no warranty or guarantee of



fitness of the equipment or material for a particular purpose or use, and makes no commitment to alter, improve or adapt the equipment or material or any part thereof.

12.4 The providing Contributing Member will transfer the equipment or material for the stated loan period. The providing Contributing Member may terminate a loan at any time.

12.5 The providing Contributing Member will make available the equipment and material to the receiving Contributing Member at the location(s) mutually approved. Responsibility for the equipment and material will pass from the providing Contributing Member to the receiving Contributing Member at the time of receipt. Any further transportation is the responsibility of the receiving Contributing Member. The responsibility for meeting any costs arising from this process will be detailed in the relevant TA.

12.6 The providing Contributing Member will furnish the receiving Contributing Member with Information necessary to enable the equipment and material to be used.

12.7 The receiving Contributing Member will inspect and inventory the equipment and material upon receipt. The receiving Contributing Member will also inspect and inventory the equipment and material prior to its return (unless the equipment and material is to be expended or consumed).

12.8 The receiving Contributing Member will provide written notice of consumption or expenditure of the equipment or material. In the event that intended consumption or expenditure does not occur, or upon expiry or termination of the loan, the receiving Contributing Member will, unless otherwise determined by the providing Contributing Member, return the equipment and material to the providing Contributing Member at the mutually approved location.

12.9 Any equipment and material which is jointly acquired for use under a TA to this ERG arrangement will be disposed of as mutually approved by the Contributing Members.

12.10 The loan or transfer of equipment or material in support of a Technology Demonstrator Project will be carried out in accordance with Paragraphs 12.1 to 12.9 above, unless otherwise specified in the relevant TA. Ownership and use of equipment or material (including software media) that is incorporated in a technology demonstrator will be subject to the provisions of Section VIII (Disclosure and Use of Information) And Section IX (Sales and Transfers to Erg 1 Third Parties) of this ERG arrangement.

### *Section XIII – Admission of new members*

13.1 Any Participant in the EUROPA MOU may become a signatory to this ERG arrangement, provided that the existing ERG Members give their unanimous consent. A new ERG Member will be admitted by the signature of an amendment to this ERG arrangement to be signed by the existing and new ERG Members.

## *Section XIV– Entry into Effect, Duration, Amendment, Termination and Withdrawal*

### **Entry into Effect, Duration**

14.1 This ERG arrangement will come into effect on the date of last signature. However, when signing this arrangement, an ERG Member may declare that in respect of that ERG Member, this ERG arrangement will come into effect upon notification that Parliamentary approval/necessary domestic legal procedures have taken place. It will continue in effect until terminated by unanimous written consent of the ERG Members or upon termination of the EUROPA MOU, whichever is the sooner. Similar arrangements will apply to each TA under this ERG arrangement, unless otherwise specified in the TA itself.

14.2 The ERG Members will regularly review the status of this ERG arrangement and will decide at each review whether it should continue or be terminated.

### **Amendment**

14.3 This ERG arrangement may be amended at any time by the mutual written consent of the ERG Members. Any TA under this arrangement may likewise be amended by mutual written consent of the Contributing Members.

### **Termination**

14.4 This ERG arrangement may be terminated by mutual written consent of the ERG Members, in which case all TAs under it will terminate also. Any TA under this ERG arrangement may be terminated by mutual written consent of the Contributing Members. In such cases each Contributing Member will be responsible for the termination of its own national contracts, or other arrangements, for work undertaken in accordance with Section V (Contracting) of this ERG arrangement. The responsibility for, and cost of, termination of joint contracts, of contracts let on behalf of one Contributing Member by the other, or of contracts let by an international organisation on behalf of the Contributing Members will be mutually determined by the Contributing Members concerned before termination of the TA can take place.

### **Withdrawal**

14.5 If an ERG Member decides to withdraw from this ERG arrangement, it will give the other ERG Members at least six months advance notification, in writing, of its intentions and will consult with the other ERG Members about the most satisfactory arrangements to be made for continuation, transfer, and completion of any continuing work. In order to achieve satisfactory arrangements for withdrawal, the withdrawing ERG Member will, until the effective date of withdrawal, make available to the other ERG Members all Foreground Information arising from R&T Projects in which it has participated.

14.6 If a Contributing Member wishes to withdraw from one or more TA under this ERG arrangement, but not from the ERG arrangement itself, that Contributing Member will give three months written notice to the other Contributing Member(s). The principles outlined in paragraphs 14.4 and 14.5 will apply. If the withdrawing Member has let a contract on behalf of other Contributing Member(s) in accordance with the provisions of Section V paragraph 5.4 of this ERG arrangement, the Contributing Members will consult to determine whether the contract should be allowed to continue on the same basis, and the level of contract support (if any) required to be provided by the withdrawing Member.

14.7 From the effective date of withdrawal from a TA, a Contributing Member will no longer be permitted to receive further Information but it will continue to enjoy the benefits it has acquired up to that date.

14.8 The provisions of this ERG arrangement in respect of Section VI (Security And Visits), Section VII (Claims and Liabilities), Section VIII (Disclosure and Use of Information), Section IX (Sales and Transfers to Erg 1 Third Parties), and Section XV (Settlement of Disputes), and any responsibilities which may arise under paragraphs 14.5 or 14.6 above will remain in effect notwithstanding withdrawal from, termination, or expiry of this ERG arrangement or any TA under it.

### *Section XV - Settlement of Disputes*

15.1 Any disputes regarding the interpretation or application of this ERG arrangement will be resolved by consultation between the ERG Members and will not be referred to any national or international tribunal or any other third party for settlement.

### *Section XVI - Signature*

16.1 The foregoing represents the understandings reached among the ERG Members and is signed in two copies, one in the French language and one in the English language, both texts being equally valid.

16.2 The original texts will be retained, for administrative convenience, by the Western European Armaments Organisation Research Cell. A certified true copy of both texts will be sent to all ERG Members.

## STAR 21

July 2002

The European Advisory Group on Aerospace comprises six European commissioners, seven aerospace industry chairmen, the EU High Representative for the CFSP and two members of the European Parliament. The group was set up in 2001 to analyse the adequacy of the existing political and regulatory framework for aerospace in Europe. On 16 July 2002, the group presented a report entitled 'Strategic Aerospace Review for the 21st Century' (STAR 21) to the President of the European Commission, Romano Prodi. The report identifies and assesses the key areas which will determine the future competitiveness of the industry.

### **Strategic Aerospace Review for the 21st Century**

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Creating a coherent market and policy framework for a vital European industry

#### *Executive Summary*

##### **Europe's needs**

In recent years Europe's leaders have defined far reaching goals for the European Union which have major implications for the aerospace industry setting, on the one hand, ambitious targets for Europe's competitiveness and, on the other hand, key objectives for the EU's foreign and security policy.

In its *Strategic Aerospace Review for the 21st Century (STAR 21)* the European Advisory Group on Aerospace argues that these goals can only be met if the economic and industrial structures in Europe are capable of responding to the new requirements. A flourishing and competitive aerospace industry is essential to ensuring a secure and prosperous Europe. Apart from its contribution to sustainable growth, the aerospace industry is a home to key skills and technologies and an important driver of innovation; it guarantees the means for delivering services from space, and makes an essential contribution to security and defence, thereby helping to safeguard Europe's freedom of action in its external policies.

##### **Industry characteristics**

The European aerospace industry is a world leader in several key market sectors, accounting for one third of the world's aerospace business in terms of turnover, compared with almost one half for its US counterpart.

The wellbeing of the industry depends on twin pillars, namely, civil and defence. They are both complementary and mutually dependent. Operating in civil and defence markets means sharing skills and technologies, and enjoying economies of scale and the benefits from a broad product range. Civil and defence requirements both rely on the application of advanced technologies, while serving private and public customers with different needs.

Entry for newcomers to the aerospace industry is very difficult, especially at prime level. This stems from the interdependence of the civil and defence sectors as well as the highly cyclical and capital-intensive nature of the industry. This means also that once the technology, skills and infrastructure are eroded or disappear, they are extremely difficult to re-create.

As regards international competition, US companies operate in the world's single largest home market and benefit from a highly supportive operating framework which is designed to underpin a declared policy aim to maintain US supremacy in aerospace. The direct linkages between defence and civil uses, and the heavy investments in defence to fund research and innovation bring clear advantages to the US industry in terms of beneficial spin-off effects in non-defence aerospace applications. This situation poses a constant challenge to European industry and cannot but affect its competitive position.

Since for most markets, US and European companies will continue to supply the needs of customers worldwide, strong European aerospace capabilities are indispensable to maintaining competition for a wide range of civil and defence products.

Within Europe major restructuring has taken place in recent years, leading to an industry organised on a European scale, as a competitor and partner of its powerful US counterpart. Yet, the policy framework which governs its activities is too fragmented. It is appropriate that, as the aerospace industry itself has restructured on a European level, the issues that will determine its future competitiveness and contribution should be addressed from a European perspective.

## Key findings

In considering the issues from a European perspective, STAR 21 has identified four key findings:

- I. Aerospace is vital to meeting Europe's objectives for economic growth, security and quality of life. It is directly associated with, and influenced by a broad range of European policies such as trade, transport, environment and security and defence.
- II. A strong, globally competitive industrial base is essential to provide the necessary choices and options for Europe in its decisions as regards its presence and influence on the world stage.
- III. European aerospace must maintain a strong competitive position if it is to play a full role as an industrial partner in the global aerospace marketplace.
- IV. Europe must remain at the forefront of key technologies if it is to have an innovative and competitive aerospace industry.

STAR 21 notes that while some progress has already been made in a number of areas, the current political and regulatory framework is insufficient to bridge the gap between Europe's ambitions and the capacity to deliver the required results.

### Policy recommendations

A coherent, long-term perspective is essential for planning and investment by the aerospace industry. STAR 21 identifies a number of areas in which the European Institutions, the EU Member States and the industry itself must act to maintain Europe's position as a world-class aerospace producer and to provide the capabilities in defence, security and space which will allow Europe to make essential political choices and to be an effective partner for friends and allies.

The main recommendations of STAR 21 cover world markets, the operating environment, governance of civil aviation, European security and defence, and space capabilities. In many of these areas, for example the coordination of civil aeronautics research and the regulation of civil aviation, solid progress has already been made or will be achieved through the implementation of measures already proposed. In other areas, for example defence, space and the level and structure of research and technology in all market segments, which are vital for the development of industry, early decisions are required to avert a closing off of policy options for the future.

As far as access to world markets is concerned, Europe's goal should be to secure a level playing field which will favour competitive enterprises. This will require pushing for further market opening, especially by seeking changes to 'Buy America' practices and convergence in export control policies. At the same time Europe should build and develop its relations with third countries, including through international cooperation programmes.

With respect to the operating environment, STAR 21 highlights the key role of research for industry's competitiveness. While welcoming the creation of the Advisory Council for Aeronautics Research in Europe (*ACARE*), STAR 21 draws attention to the huge challenge involved in mobilising the estimated €100 billion from private and public sources needed to fund a coordinated civil research strategy over the next 20 years. In a related area, the importance of the impact of tax incentives as a driver for research is acknowledged and more detailed analysis of this aspect is called for. As regards human resources, STAR 21 stresses the need for appropriate actions, especially at the level of Member States, to ensure the availability of a highly skilled and mobile workforce.

As regards areas in which good progress is being made the report cites in particular the issue of governance of civil aviation, adding, however that the full benefits from relevant developments will only be obtained by allowing the EU to become the policy-maker and regulator. This requires a wider role for Community bodies including the European Aviation Safety Agency (*EASA*), as well as the development and implementation of a master plan for air traffic management in Europe. It also leads to the Community becoming a member of the International Civil Aviation Organisation (*ICAO*) alongside the Member States.

It is in the areas of security and defence and related research that the most pressing need for added efforts to secure the future of the European industry is identified.

- ▶ Such efforts are needed to ensure a highly capable European industrial and technological base which is an essential prerequisite to guaranteeing the industry's overall future competitiveness. Yet the mismatch between, on the one hand Europe's goals and requirements and, on the other hand, the policy framework within which the aerospace industry is called upon to contribute to the delivery of the necessary capabilities, needs to be addressed urgently.
- ▶ Putting in place the arrangements for delivering the agreed capabilities requires commitment, resources and coherent organisation. There has recently been encouraging progress in defining and agreeing capability requirements as part of the European Security and Defence Policy. Bearing in mind that this is only a first step towards meeting the future requirements of the new European security policies, it is essential that adequate financial resources be committed to enable plans to be realised, and that necessary rules and procedures be put in place to ensure that such resources are spent efficiently. This will also require a more coordinated approach to armament at European level, leading eventually to a European armament policy.
- ▶ But while there is still some reticence about agreeing that key questions such as defence procurement and associated research - traditionally matters for national decision - should also be addressed at a European level, there is growing recognition that decisions on the level of spending on defence equipment, re-setting priorities within existing defence budgets and the appropriate response to new threats need to be approached in a European context. Thus, welcome efforts to improve the coordination of research programmes and towards more cost efficient procurement arrangements, mainly through more intensified cooperation among certain Member States, are now being formalised through a number of different agreements.

Independently of the overall level of ambition which must necessarily be determined at the highest political level, failure to optimise expenditure on aerospace including its key components, research and defence, will limit future political options for Europe. Apart from the overall level of resources, fully coordinated investments in research and development and efficient procurement are key to delivering the necessary European capabilities, and to ensuring the contribution of a competitive aerospace industry.

Despite recent advances, progress is insufficient. To help overcome this problem, all available means have to be explored, including action, where appropriate at Community level, in order to remove the impediments to the competitiveness of European industry. Taking due account of the special characteristics of the defence and security sector, Community experience should be utilised in the situation in which the products and processes derived from technological development and innovation in practice do not distinguish between civil and security and defence applications.

On space capabilities, STAR 21 welcomes moves to develop a consolidated European space policy and a European space plan with adequate resources, in line with the joint

strategy between the European Space Agency (*ESA*) and the European Commission (*EC*). The Galileo satellite positioning system must, however, be deployed on schedule with development of downstream activities, providing opportunities for early involvement of the private sector. Development of Global Monitoring for Environment and Security (*GMES*) must be continued with support from *ESA* and *EC* programmes. Equally important is the need for early action to sustain European launch capabilities and to explore applications of space technologies especially for communication and monitoring, including those required for security and defence.

Europe's political leaders are invited to seriously consider how to bring about the needed commitment to the increased resources and more coherent European framework required to meet Europe's existing and future political goals.

(...)

### *1. Achieving Europe's long-term goals*

Europe faces the 21st century with high ambitions. It aims for a better quality of life and higher living standards, which in turn depend on its competitive strength. Its citizens are aware that events far from their own borders can have a profound effect on their lives, and they wish to exert greater influence for good in world affairs, as valued partners to friends and allies.

A flourishing aerospace industry is a key component in enabling Europe to realise its political and economic ambitions. Strong European aerospace capabilities have become indispensable to maintaining competition in world markets for a wide range of civil and defence products and safeguarding Europe's freedom of action in its external policies. The aerospace industry itself has restructured on a European level, so the issues which affect it should also be addressed from a European perspective.

Over the last few years European leaders have defined far-reaching goals which have major implications for the aerospace industry, setting targets for Europe's economic competitiveness and for the EU's foreign and security policy.

#### **Competitiveness**

The Lisbon Summit in 2000 set the ambition for Europe to become the most competitive knowledge-based economy in the world, achieving new levels of competitiveness by 2010. The 2002 Barcelona Summit took stock of progress in implementing the Lisbon Strategy and gave it new impetus. The development of the European Research Area following the Lisbon Council testified to Europe's continuing commitment to strengthening its technological capabilities by undertaking more effective research in common. This was also reaffirmed in Barcelona.



## Security and defence

Since the end of the 1980s the geopolitical situation has changed dramatically. The end of the Cold War, the impact of regional conflicts such as that in ex-Yugoslavia and the emergence of the global terrorist threat leading to the war in Afghanistan illustrate the new challenges confronting Europe. The aim of strengthening Europe's role on a changing world scene was expressed in the Maastricht Treaty of 1994, which established the European Union's Common Foreign and Security Policy (CFSP). The structure was further refined in the 1997 Amsterdam Treaty.

A European Security and Defence Policy was launched at the Cologne European Council in 1999, with plans elaborated in subsequent Councils at Helsinki, Feira, Nice and Laeken. Today's agreed goal of the European Union is to build up capabilities for humanitarian assistance, rescue, civil protection, policing, peacekeeping and combat-force tasks related to peace-making. The immediate aim is the creation of sustainable forces capable of the full range of Petersberg tasks (up to 60 000-strong), deployable world-wide within sixty days by 2003.

The implementation of such ambitious goals will depend on the availability of adequate structures and access to the equipment required. To safeguard its political independence Europe's industrial and technological capabilities – specifically in aerospace must be strengthened.

(...)

## Matching ambitions and capabilities

These ambitions can only be met if the European economic and industrial structure is capable of responding to the challenges that lie ahead. Fulfilling these ambitions means looking into the future, anticipating developments and taking the appropriate policy decisions in the near term that will enable Europe to meet medium and long-term needs. Much remains to be done if Europe's capabilities are to match its political goals.

Aerospace is an industry accustomed to looking far into the future: a new generation of aircraft can take a decade or more from conception to realisation; a space project may take even longer; research into a new composite may mean a generation of work before it is ready for practical application. By the same token a long-term policy framework is essential if the aerospace industry is to provide the capabilities which are required to match Europe's goals. This is especially true of the defence side of the business, where governments are the sole customers.

The wellbeing of the industry depends on the twin pillars, civil and defence. They are complementary to each other but mutually dependent. Operating in civil and defence markets means sharing know-how, skills and products, enjoying economies of scale and the benefits of a broad product range. Both rely on the application of advanced technologies while serving private and public customers with different needs.

## The STAR 21 analysis

Over the last 12 months the European Advisory Group on Aerospace has analysed these questions in depth, identifying the key areas which will determine the future of the industry. The Group welcomes progress which has already been made, but the political and regulatory framework which currently exists cannot effectively resolve the wide disparities between Europe's aspirations and its capacity to deliver the required results.

Based upon an assessment of the strategic role of the aerospace industry (chapter 2) and its profile (chapter 3), the Strategic Aerospace Review for the 21st Century (*STAR21*) has identified five main areas that deserve specific attention: competing on world markets (chapter 4), the operating environment for European aerospace (chapter 5), European governance of civil aviation (chapter 6), the vital need for European security & defence capabilities (chapter 7) and safeguarding Europe's role in space (chapter 8).

STAR 21 aims to broaden understanding of aerospace-related issues in Europe and trigger action which will ensure that its aerospace industry can play a full part in securing Europe's economic and political future. Some of its recommendations require quick policy decisions, while others will be seen in a longer time-scale, but it is important to ensure that the necessary measures are taken. The monitoring and periodic assessment of progress in the areas examined in this report should help identify where further action is needed.

## *2. Strategic role of the aerospace industry*

The aerospace industry has a key strategic role in ensuring a secure and prosperous Europe:

### **A generator of wealth**

In 2000, the European aerospace industry employed 429 000 persons directly and many more indirectly, with a consolidated turnover of €72 300 million. Almost 15 per cent of turnover was spent on research and development. Exporting more than half its output, the industry provided a positive trade balance of about €1 900 million for the EU as a whole. Aerospace depends on an extended supply chain, including many small and medium-sized companies located in all 15 countries of the Union. This complex industrial structure makes aerospace a leading contributor to wealth and employment all across the EU.

### **Maintaining global competition**

Strong European aerospace capabilities have become indispensable to maintaining global competition across a wide range of products. The outstanding example is Airbus, in whose absence airlines would be left with no choice in the most important market segment of the civil aerospace industry. Choice of supplier is also vital for cost-effective government procurement programmes for defence and security.

## Home to key skills and key technologies

Aerospace integrates and promotes the development of a wide range of skills, processes and technologies vital to maintaining a broad-based and prosperous economy. Prime manufacturers depend on a network of second and third tier specialist companies to meet their needs. These firms, operating at many different levels of the industry, are home to the key technologies essential for Europe's future.

## Driver of innovation

The aerospace industry is a powerful driver of innovation in the economy as a whole. It makes extreme demands on its products, requiring simultaneously safety and reliability, low weight, good economics and minimal environmental impact, enhanced power and high efficiency. The technologies developed for aerospace products provide spin-off in many different sectors.

## Services from space

European industry has played a leading role in developing new services which rely heavily on space infrastructures, ranging from telecommunications to navigation and earth observation. Transport, telecommunications, media and other sectors of the economy including public bodies benefit from these capabilities, stimulating in turn innovative downstream activities.

## Security and defence

Aerospace is an essential contributor to any national or supra-national system of security and defence. Its products, which include aircraft, space technologies, electronics, engineering systems and sub-systems, are crucial for domestic security as well as providing the capabilities for realising policy aims in neighbouring and in more distant parts of the world. A competitive aerospace sector is vital for any nation or region wishing to maintain full sovereignty over its territory, to exercise political influence beyond its borders and to have available to it the necessary range of political choices and options.

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## *3. The aerospace industry profile*

The European aerospace industry is one of the world's leaders in large civil aircraft, business jets and helicopters, aero-engines and defence electronics. It accounts for one third of all aerospace business world-wide in terms of turnover compared with almost half for US industry.

The industry is difficult for new participants to enter, especially at prime level. Where the technology, the skills and the infrastructure are eroded or disappear, they are extremely difficult to re-create. New entrants are not therefore expected to play an important

role in the foreseeable future. In most markets it will be US and European companies which will continue to supply the needs of customers world-wide in what is a highly competitive marketplace.

Certain key factors give the industry its distinctive character:

- ▶ close links between civil and defence activities
- ▶ cyclical nature of the industry
- ▶ high level of capital intensity
- ▶ consolidation
- ▶ privatisation
- ▶ EU-US relationships

### Civil and defence links

The two sides of the business are closely intertwined. Major components such as electronics, engines and materials, and also key processes, use similar technologies. The synergy between civil and defence work brings major industrial benefits, creating economies of scale through the absorption of high fixed and non-recurring costs. While the civil aerospace sector has traditionally been dependent on technologies developed for military applications, military technologies are increasingly being derived from the civil side, which has a much higher rate of new product introduction. Sustaining a viable aerospace industry to serve the needs of civil markets is intimately linked to maintaining its capabilities in the security and defence fields – and vice versa.

The links between the civil and defence aerospace sectors are poorly understood and recognized within Europe, especially compared to the US.

### The industry's cyclical nature

Aerospace is a highly cyclical industry, dependent mainly on the investment decisions of the airlines and on the fluctuating patterns of defence programmes. The strong inter-relationship between the civil and defence sectors in many firms means that in addition to the technological synergies, the different cycles of civil and defence programmes allow companies to balance their development resources more effectively.

The development and increasing market penetration of the Airbus family was an invaluable counterbalance to declining defence budgets in the 1990s. The slump in air transport following 11 September 2001 may pose a similar but opposite challenge, with defence and security requirements offering de facto some counterweight to the slowdown in airline orders.

### **A capital-intensive industry**

Aerospace is a highly capital-intensive industry investing for the long term. The level of investment in research and technology, product development and capital facilities as a proportion of turnover for airframes, engines, ground and airborne equipment exceeds that in many other industries. At the same time, returns are inherently long-term and high risk, which restricts the appetite of the financial markets. As a result government support, including research and development funding, repayable loans and risksharing partnerships, has become an essential feature of the business world-wide.

### **Consolidation in the European industry**

The aerospace industry continues to consolidate. The concentration process which began in the US, leaving Boeing, for example, as the only US manufacturer of large civil aircraft, has since extended to Europe, reflecting the call from French, German and British leaders in December 1997 for major industrial consolidation. Companies have seen the need to combine resources in new configurations to meet the challenges of global competition and to respond to orders for transnational projects, both civil and defence, which are increasingly being undertaken on a pan-European basis.

### **Privatisation**

In several countries relations between governments and aerospace companies have changed significantly. Formerly state-owned companies are now partly or wholly in the private sector, quoted on stock markets and committed to providing value for their private shareholders. These companies clearly cannot exist only on their restricted home markets and increasingly have developed long-term strategies that make best use of their resources and secure market access on a global scale. This will often lead European companies to strengthen their non-European links through takeover, merger or outward investment, which could in turn lead to the disappearance of European capability in some sectors and might even endanger European security of supply. Such action can be influenced strongly by access to more attractive funding or taxation regimes.

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### **EU-US relationships**

US aerospace companies account for about half of the industry's global turnover. The sales of Europe's industry are just over two-thirds those of US manufacturers. The global dominance of the US industry is particularly evident at prime contractor level.

This industrial structure reflects the advantages of the US aerospace environment. American companies operate in the world's single largest home market. They also benefit from a highly supportive operating framework, which is designed to underpin a declared policy aim which dates back many decades: to maintain US supremacy in aerospace.

It is evident that Europe's policy aims are different from those of the US. This translates into fundamentally different levels of government purchases from the aerospace industry, with the US Department of Defense and government agencies buying \$60 300 million of goods and services from US manufacturers in 2000 as against \$15 900 million spent by the 15 EU governments on European contracts.

Another beneficial aspect of US policy is the spin-off from military research and development to civil aircraft programmes and in some cases the direct derivation of civil planes from military projects.

#### US spin-off from military to civil use

Examples of directly transferring design of military aircraft to civil projects are the B 707 and B 747, where the design teams which had worked on the KC-135 tanker and the C-5A military transport bid transferred to development of the civil aircraft. Another is the civil freighter MD-17, which was derived from the C-17. Design tools used by Boeing in preparing to bid for the Joint Strike Fighter contract were also to be used in civil programmes, according to the company's Chief Executive. In the aero-engine sector, US government funded development of turbine technology applicable for both civil and military engines may well result in more civil than defence sales.

European companies cannot afford to ignore the tremendous potential that the American market offers. They have to rethink their own future investments. But intense transatlantic competition, especially between Airbus and Boeing, should not obscure the high degree of transatlantic cooperation. This is particularly true for civil aerospace products. Subcontracting and procurement, production, joint ventures and mergers across the Atlantic are natural developments in an industry serving global markets. It is expected and welcomed that such links will play an even bigger role in the future.

#### The Transatlantic Relationship

- ▶ Airbus procures a large amount of equipment in the US, including engines (GE and P&W) and systems. As a result, up to 40 per cent of a new Airbus may well be made in the US. Development of the A 380 could sustain up to 60 000 jobs there.
- ▶ European companies are developing and producing major components and sub-systems for Boeing aircraft.
- ▶ European engine manufacturers like Rolls-Royce, SNECMA, MTU and FiatAvio are involved in engine programmes in both the EU and the US, even on competing products.
- ▶ CFMI, which is a 50/50 subsidiary of SNECMA and GE, manufactures a highly successful range of aeroengines.
- ▶ THALES and Raytheon created a joint US-based, 50/50 company (TRS) in 2001.
- ▶ BAE Systems has an overall \$4 billion business in the US. The company will also have an 8 per cent share in the Joint Strike Fighter (JSF) programme and its development.
- ▶ Rolls-Royce has significant operations in the US and will also be involved with the JSF development.

#### 4. *Competing on world markets*

Fair conditions in international trade and access to markets are essential pre-conditions for ensuring competitiveness-based growth in aerospace.

##### **Fair conditions in international trade: a level playing field**

Operating in a global market place, the European aerospace industry faces strong competition from companies located in other parts of the world, mainly in the US. Given the profile of aerospace, governments have always played an important role in this business. Public support takes differing forms such as protection of domestic markets, support for exports, taxation or direct/indirect funding. Against this background, a fair balance in international support practices and rules is crucial to guarantee a level playing field.

International trade agreements play a key role in this respect. As far as civil aircraft are concerned, two agreements are predominant: The *1979 GATT Agreement on Trade in Civil Aircraft*, and the (bilateral) *1992 EU-US Agreement on Trade in Large Civil Aircraft*. This agreement regulates precisely the forms and level of government support for both sides, provides for transparency and commits the parties to avoiding trade disputes.

Mutual recognition and respect of international trade obligations, including the implementation of WTO rulings, is necessary to allow balanced competition among aerospace companies in different parts of the world.

Access to markets can be substantially hindered through import and export barriers for foreign companies. This is a particular problem if the protected market is a major one, such as the US defence equipment market. European manufacturers face two particular problems with US policy:

1. Due to restrictive rules which are embedded in many individual pieces of legislation at both federal and state level, such as the Defense Federal Acquisition Regulations, the US market is difficult to access. In practice this reflects a 'Buy American' policy.

In 2001, US Congress approved legislation in which it explicitly limited the procurement choice of the Department of Defense to commercial Boeing aircraft (Section 8159 of the Defense Appropriation Bill - HR 3338). This piece of legislation would effectively exclude the purchase of an Airbus air tanker even if the enterprise offered a competitive product.

For the foreseeable future, any US Government space payload will have to be launched on equipment manufactured in the US, unless it is exempted by the President or his designated representative.

2. The US has stringent export rules which forbid unrestricted export of equipment by foreign countries if this equipment includes components covered by the US military and dual use regulations. These export controls are being reviewed by the US authorities, but so far on a bilateral basis with selected countries like Australia, Canada and the UK.

As the European industry becomes increasingly transnational, US export control rules need to be relaxed through a dialogue which brings together as many European countries as practicable. This transatlantic dialogue should initially be based upon ongoing bilateral discussions at industry level with six European countries (UK, France, Germany, Italy, Spain and Sweden) which were signatories of the European Defence Industry Restructuring Framework Agreement established in 2000 by a Letter of Intent (LoI) for cooperation in the defence field.

- ▶ Shipment to China of an Astrium APR3 satellite for launch by a Chinese rocket in July 2001 was blocked by delayed provision of export clearance from the US authorities because the satellite included US components. Six receivers on the satellite were to be used by a Chinese operator.
- ▶ Exported US-built warplanes which are to be equipped with non-US Electronic Warfare Systems must have the equipment installed by the US contractor, which must also supply certain key components. The US Air Force must have insight into total system capabilities and approve the installation.
- ▶ Dassault Aircraft was denied the licence to integrate the AMRAAM air to air missile on the Rafale for sales to South Korea, thus weakening the offer in the ongoing competition with US competitors.

Although the European and American industry associations have been working together to resolve some of these issues, further progress can only be made with a clear political will and the involvement of governments. Wherever barriers to trade exist, they should be relaxed to guarantee fair reciprocal market access.

### Developing international cooperation

Over the next decades, experts predict a significant change in regional demand patterns. Almost half the demand for civil aircraft over the next 20 years is projected to arise outside the large but relatively mature markets of the US and Europe.

Market access everywhere depends on commercial factors such as quality, price and service, but also on the building of more broadly based political and diplomatic relations. Given its role in international relations, a major responsibility for these issues rests with the EU. The aviation cooperation agreements between the EU and China and the EU and India are examples of strengthening relations. Another is the recently launched EU-Asian Civil Aviation Cooperation project.

Changing market patterns will have an impact on the structure of the aerospace industry. Achieving better access to growing markets may well require moving manufacturing capacity there. As mainly lower added-value manufacturing might move to these



markets in the first instance, the established aerospace countries will need to concentrate on sophisticated technologies.

A joined-up approach, which links competitive products and effective marketing from industry with strengthening relationships at the political level, has proven important for aerospace to strengthen its position in world markets. European policies have a major role to play in this respect.

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### *5. The operating environment for European aerospace*

A broad range of policies determines the operating environment for Europe's aerospace industry. Some emanate from the European Union, while others are largely determined at the national level. Areas of major concern for the industry are competition policy, taxation, skills and mobility, enlargement and research.

#### **Competition policy**

The process of restructuring in the defence and aerospace industries has led to an increasing number of mergers and other cooperative agreements between companies within the European Union. These industries have passed from a phase of consolidation at national level to a new phase of pan-European consolidation. This development enables European industry to meet the requirements of dynamic competition and increases the competitiveness of European industry, in both civil and defence areas.

European Union competition policy and in particular the Merger Control Regulation provides for a clear framework and quick decisions, facilitating those concentrations and cooperative agreements between companies which do not call into question effective competition. Moreover, EU control of state aids makes it possible to distinguish between those aids necessary for research and technology development and unlawful aids designed to protect uncompetitive firms.

In applying EU competition policy to aerospace there are particular features to be taken into account in individual cases. Such features concern specificities such as market definition, possible dominance, or negative influence on future innovation. In particular as far as defence-related activities are concerned, relevant aspects might include:

- National government limits on the geographical scope of the markets by procurement rules and administrative procedures (although competition may increasingly be at a European or even a global scale).
- Exercise of the countervailing power of the State as sole customer.
- Instances where Europe may only be able to sustain a single entity capable of competing globally in a phase of pan-European and worldwide consolidation.

### **Tax incentives for innovation**

As part of a wider policy mix, tax incentives for research investment are a stimulus for innovative work which will not deliver immediate returns. Such tax concessions are part of national corporation tax regimes. They vary significantly, both within Europe and compared with other parts of the world. They are an important policy instrument to promote innovation in industries with high research and technology investments such as aerospace.

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European countries must recognise the impact which tax incentives for research have on industry's decision where and how much to invest.

A useful avenue would be to analyse the impact of different taxation schemes on aerospace within Europe and to compare them with jurisdictions outside Europe. The long lead times common to high-tech industries and the pan-European nature of aerospace should be taken into account, as substantial differences in European research tax regimes might also distort investment decisions. Possibilities for applying tax and other incentives to promote innovation on a Europe-wide basis should be considered, if necessary through coordinated national actions so as to avoid distortions of competition.

### **Safeguarding skills**

A 'skills gap' in aerospace could prove a major obstacle to the industry's future growth and competitiveness in Europe. Rapid technological change and increased competition underline the need for a creative, innovative and adaptable workforce. Safeguarding and further developing a strong European skills base will be a key factor in maintaining global competitiveness and retaining investment in Europe. The overall performance of education and training systems must therefore be improved, within a lifelong learning perspective, to provide a better balance between initial and continuous vocational training, and to build bridges between different learning contexts. As such, full use should be made of knowledge and skills acquired in both formal and non-formal settings. Signs that highly qualified personnel are proving increasingly difficult to recruit raises particular concerns.

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Actions to tackle the threat of a skills gap need therefore:

- ▶ Increased cooperation between a broad range of relevant actors, including public bodies and the industrial partners on different levels to develop and implement measures aimed at improving transparency and recognition of diplomas and certificates, as well as the overall quality of European vocational education and training in terms of standing and reputation. Such measures should include life-long learning schemes and vocational training programmes.
- ▶ An effective inter-link between research institutes and the training system.

## Facilitating mobility

As the industry consolidates on a European scale, personnel mobility becomes a significant factor. Although workers may be asked to relocate to another country as the tasks move, the absence of a common set of labour laws and regulations in Europe and the limited recognition of foreign academic diplomas are serious obstacles to such cross-border mobility. European aerospace companies with activities in several Member States feel the effects of such inconsistencies. Cross-border programmes such as Eurofighter require considerable worker mobility between specialized production centres located in various European countries. Exemption periods are short and the bilateral character of the existing agreements does not reflect the reality of a truly European industry.

The European Commission addressed these issues in its recent Action Plan for Skills and Mobility and called for immediate action to remove practical, administrative and legal barriers to mobility. The need to improve recognition of qualifications through the development of mutual trust and transparency was highlighted as a priority for action at European level. Aimed at addressing this issue, a process of increased cooperation between the Member States, other European countries and the social partners has been initiated following a mandate from the Barcelona European Council in March 2002.

The Commission also specifically pointed out the negative effect which the existing social security and pension schemes can produce.

However, as common European social security and taxation systems are not expected to emerge in the near future, targeted remedies which reflect the particular nature of the aerospace industry are needed to improve the existing situation. With regard to taxation systems, thus far only bilateral agreements between individual Member States (e.g. France-Germany) exist, and they are limited in time. They allow the transferred worker to pay taxes in her/his country of residence. With regard to social security systems a Community coordination system is in place guaranteeing social security rights for persons moving within the Union and determining the systems to which they are subject. This is in principle the system of the Member State where they work. There are however some exceptions, such as in case of posting staff from one Member State to another (up to 12 or 24 months). This coordination system is now under review and should be simplified and adapted to new situations.

Security clearance of staff working on defence programmes in different Member States imposes further problems. Existing national legislation has not yet been adapted to the cross-border nature of major aerospace programmes. Such regulation must be streamlined to prevent unnecessary bureaucratic burdens.

Security clearance for personnel working on multinational programmes such as Eurofighter is complicated by different procedures and delays in their countries of origin, which have to provide the clearance for the individuals concerned. The LoI Framework Agreement for Defence Restructuring has provided some relief for visiting staff, but the clearance provided is still not sufficient to meet NATO requirements.

To facilitate the cross-border mobility of the European aerospace workforce several actions are needed:

- ▶ Posting periods for social security schemes need to be extended. Airbus experience suggests that at least 12 years would be appropriate.
- ▶ The existing bilateral agreements between the social security schemes of individual Member States should be broadened into a wider crossborder European context.
- ▶ European aerospace staff working on defence projects in different European countries should be subject to harmonised security clearance procedures.

### **Enlargement of the EU**

Accession to the European Union of countries in Central and Eastern Europe will present challenges and opportunities for Europe's aerospace sector. There is an aerospace industry tradition in countries such as Poland, the Czech Republic and Romania. EU firms have already developed specific business relationships with local companies. Opportunities for risk-sharing and partnership in new programmes have also been discussed.

Sharing common standards is key to strengthening the dialogue. Work is already under way with the aerospace industries of Poland and the Czech Republic to share in-depth knowledge and best practices in areas such as quality control, standardisation and airworthiness. Mutual recognition in these fields and compliance with EU standards is a prerequisite to closer business relationships.

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The goal must be to develop fruitful long-term commercial and industrial partnerships, to pave the way for strong collaboration and integration with European industry and assist the industry in these countries to become effective partners in the aerospace business. The European Union should look at ways of further fostering this integration process, through, for example, support for training in foreign languages or management skills.

### **Civil aeronautics research: key to long-term viability**

Aerospace requires significant, long-term research commitments, as today's innovation is key to future competitiveness. More than half of the EU Member States support national aeronautics research programmes while at the same time European funding has become increasingly important. European research framework programmes now account for about 30 per cent of all public spending on civil aeronautics research in Europe.

However, the pan-European structure of the aerospace industry and the importance of crossborder projects are not yet reflected in the approach to research funding in Europe. The 6th European Framework Programme, running over five years, proposes to allocate €1 075 million to aeronautics and space research, but Member States will also

continue funding their national programmes. More coordination between all different research schemes is needed to overcome the current fragmentation of civil research activities in aeronautics and to minimise unnecessary duplication of effort. As funding levels are tight, such efforts are essential to guarantee the resources needed for major research projects.

In January 2001, a High Level Group led by Commissioner Busquin presented its analysis of the existing situation (*“European aeronautics: A vision for 2020” - Vision 2020*) stressing the need for action. The report called for the realisation of a European Research Area in aeronautics, based upon a common understanding of priorities between all stakeholders. First concrete steps have been taken through the work of the Advisory Council for Aeronautical Research in Europe (*ACARE*).

ACARE’s mission is to establish and maintain a Strategic Research Agenda that will influence all European stakeholders in the planning of their research programmes at both national and EU level, so that they are consistent with the goals of the High Level Group. ACARE will also recommend measures for optimising the use of existing research infrastructures and improving educational policies to attract the workforce that the sector needs.

In addition to improved mechanisms of research and technology acquisition combined with more efficient and effective sharing of tasks, an overall increase in resources is required. The High Level Group estimated that over the next 20 years some €100 billion from all public and private sources would be needed to meet society’s needs and to make European industry a world leader in civil aeronautics. This will also be consistent with the general commitment made by EU leaders in Barcelona to boost Europe’s R&D and innovation effort and so close the gap between the EU and its major competitors.

The goals set in Vision 2020 to meet the safety, environmental and operational challenges are very demanding and can only be attained with breakthrough technologies that will need to be fully researched and validated before being committed to production. This will require a significant increase over the current levels of expenditure in civil aeronautics research to a total of €100 billion up to 2020. This investment is in line with the growth of R&D and innovation spending in Europe up to 3% of GDP by 2010 called for at the 2002 Barcelona summit and the projected expansion in civil aeronautics research by the US over the same period.

## *6. European governance of civil aviation*

It was thought in the past that the European Community could limit itself to creating the internal market for the provision of air transport services and leave other regulatory aspects to Member States, but this approach has created an unnecessarily complex environment for the industry as a whole. Caught between Member State and European regulation, it weighs on the efficiency of the European air transport system. Experience has shown that it also weakens Europe’s influence in international bodies.

It is therefore time to establish a truly integrated regulatory framework for civil aviation, with particular emphasis on key areas such as air traffic management, safety regulation, security and environmental standards. In the longer term that should lead to European Community membership of the International Civil Aviation Organisation (ICAO), acting under the general UN-framework, so that the EU, together with its Member States, can defend its interests in that forum.

### **Air Traffic Management and the European Single Sky**

The crowded and inadequately managed skies of Europe impose huge problems for the efficiency of Europe's airlines which in turn adversely affect the economics of the aerospace manufacturing industry. The diminished productivity of equipment on predominantly short-haul European services exacerbates the burden of ownership costs, reducing profits and raising fares, while the associated delays make life intolerable for passengers. A High Level Group chaired by Commission Vice-President Loyola de Palacio has already called for a strong, independent regulator capable of managing European airspace across national borders. The Group has also stressed the importance of using new technologies. Based upon this work the European Commission proposed a package of measures on air traffic management in October 2001 which is currently being discussed in the Council and the European Parliament.

Implementation of these recommendations would help overcome the chronic delays that already affect European air transport and could affect it even more in the future in view of its predicted growth.  
(...)

The European aerospace industry has already developed advanced technologies and operational concepts that could help to build up a coherent European Air Traffic Management (*ATM*) system that is interoperable with existing systems in other parts of the world.

An appropriate forum to develop technical specifications together with industry would be the Industry Consultation Group, which was proposed to provide input from industry and other interested parties under the Single Sky Initiative. This group should be set up without delay. All different activities should be incorporated into an overall master plan.

An effective European ATM approach will be essential if Europe is to be more influential in international bodies.

### **A single safety regulator**

Until now, national agencies have dealt with safety in air transport including the certification of aircraft and components. These activities are coordinated through the Joint Aviation Authorities (*JAA*) system. The JAA is an institutionalised framework for

Europe's civil aviation authorities to discuss and harmonise national policies. It is not a juridical body with the power to take binding decisions.

As industry has consolidated on a European level, this inter-governmental approach is no longer adequate. It causes bureaucratic burdens for industry without improving safety levels. The European Commission proposal for a regulation establishing common rules in civil aviation and creating a European Aviation Safety Agency (*EASA*) which is undergoing final adoption in the Council of Ministers and European Parliament is an essential move. In contrast to the JAA system, this will allow for a single entity to take binding decisions.

With the correct level of empowerment, appropriate delegation from the Member States and operational efficiency, *EASA* should as soon as possible be established as the European one-stop shop for certification, and appropriate agreements should be concluded to enable it to build on the tradition of cooperation with other European countries and major global regulators, such as the US Federal Aviation Administration (*FAA*).

However, national authorities would remain able to pursue their own policy objectives in domains not yet covered by the *EASA* regulation. These include air operations, flight crew licensing, airports and air traffic safety regulation. Industry seeks an agency that over time will be able to play a strong role on an international scene that has so far been dominated by the *FAA*, so improving Europe's strategic position as transatlantic industrial links continue to grow. In a long-term perspective this could lead to the regulation of safety issues in a transatlantic organisational framework, but to ensure that fair regulations are established, Europe must have sufficient weight to counterbalance the power of the *FAA*.

*EASA*'s remit must therefore be quickly extended to cover the responsibilities which are currently in the hands of national agencies in the individual Member States.

### **Ensuring security in air transport**

In the wake of the events of 11 September 2001, Member States realised the extent of their interdependence and the need to extend their work together to protect civil aviation effectively against terrorist threats.

As a first step, the Community has been given the task of ensuring that common standards of prevention are developed and applied, but more must be done to adapt the means of prevention to the threat, using the resources that new technologies can provide in areas such as cockpit security and encryption.

Such actions should be closely coordinated with the US, so that preventive measures decided on each side of the Atlantic are compatible and do not impose insoluble problems on the industry. In this way European technology would have a new window of opportunity in parallel with American industry, which has been active in proposing solutions.

## European approach to environmental issues

Aviation affects the environment mainly through aircraft noise and engine emissions. Aircraft noise is mostly a local issue. It is a major obstacle to the future expansion of many existing airports and thus to growth in the capacity of the air transport system. Gaseous emissions from aviation represented 2 per cent of the overall CO<sub>2</sub> emissions in 1992, and are expected to increase to around 3 per cent of the global total in 2015. Other emissions, including NO<sub>x</sub>, have implications with regard to local air quality and climate change, and the altitude at which such emissions occur tends to increase their radiative (global warming) effect.

Significant steps have already been taken to reduce aircraft noise and emissions, but to ensure sustainable development in the industry continued efforts are essential to reduce them further. *Vision 2020* already set the goals for aircraft and engine development over the next two decades with the target of halving specific fuel consumption and reducing NO<sub>x</sub> emissions by 80 per cent.

Aviation is a global industry. To avoid distortions of competition between carriers and between manufacturers, environmental issues should be addressed on a global level within ICAO. Europe and its Member States should seek to strengthen their role in that structure to allow effective influence on related decision-making processes.

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## 7. *Vital need for European security & defence capabilities*

A primary responsibility of government is to protect the citizen. It is now accepted that in many circumstances the provision of this security must be undertaken at European level. Events outside the EU's borders can have profound consequences within the Union. Turbulence in the Balkans has provoked major migratory movements with a direct impact on EU countries, while the events of 11 September 2001 have demonstrated the need to be prepared to meet new kinds of security threat, both internally and on a global basis.

European countries have approached these security and defence needs from three different but interrelated angles:

- ▶ The national territorial defence commitments of all Member States continue to play a primary role in their security and defence policies.
- ▶ Eleven EU Member States are also members of NATO, which has given high priority to the need to strengthen the capabilities of the European allies so they can be fully effective partners in the Alliance.
- ▶ By the Treaty on European Union the EU Member States have agreed to define and implement a common foreign and security policy including the progressive framing of a European Security and Defence Policy (*ESDP*), thereby reinforcing the European



identity and independence in order to promote peace, security and progress in Europe and in the world.

Each of these three approaches calls for increasingly demanding technological solutions. The events of 11 September 2001 further underlined the need for more intensive measures to protect the citizen on both the civil and the defence fronts and complicated the task further. But for Europe to meet more of these needs in civil protection and defence as signalled in the EU Treaty it must have the capabilities to do so. To a large extent it is the aerospace sector which is required to supply them.

The European or Helsinki Headline Goal already identifies what is needed to deploy the 60 000- strong Rapid Reaction Force. It is too early to make assumptions as to the other goals to be set by the EU Member States for the ESDP, but it is clear that commitments already entered into in the NATO context and at the national level imply major new requirements in a medium and longer-term perspective, bearing in mind that any forces deployed would be available for national, NATO or EU purposes.

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### **Identifying the capability gap**

The EU's immediate concerns are to conduct crisis management operations across the whole spectrum of the so-called Petersberg missions: humanitarian and rescue operations, peacekeeping functions and tasks of combat forces in crisis management, including peace-making. In parallel, the Member States concerned will provide the necessary defence means to secure national, European and transatlantic interests within the existing security architecture, in particular NATO.

The need for increased capabilities to meet the European Headline Goal is fully recognised at the EU level and is closely linked with the future of the aerospace industry in Europe. EU Member States have signalled their determination to improve operational capabilities under the European Capabilities Action Plan so they can carry out in full all Petersberg tasks, in particular as regards availability, deployability, sustainability and interoperability. Specifically, they have agreed to pursue their efforts in the areas of command, control, communications and intelligence (C3I), and strategic air and sea transport.

It has been agreed that within the EU context the progressive framing of a common defence policy will be supported, as Member States consider appropriate, by cooperation between them in the field of armaments. The Laeken European Council in December 2001 acknowledged the importance of improved harmonisation of military requirements and the planning of arms procurement, recording that the EU and the ministers responsible would seek solutions and new forms of cooperation in order to develop the necessary capabilities, making optimum use of the resources available.

Aerospace is thus a key component, both as regards defence applications, and to remedy the capability gap - an essential step for the credibility of the European Security and Defence Policy.

## A challenge for Europe

Defence budgets in European countries need to be spent in a more coherent manner. The effectiveness of the traditional coordination and cooperation mechanisms among Europeans is inadequate. European military requirements are not harmonised, markets and purchases are consequently fragmented and too small to allow industry to develop long production runs and become more competitive.

As a consequence of the fragmentation of the defence market, research and technology are neither shared nor of sufficient scale to allow European industry to exploit the best technologies in a consistent way. And whereas European companies are expected to co-fund much of their military research and development, US industry R&D is fully supported, a policy reaffirmed in May 2001.

This combination of factors places huge constraints on European industry in its efforts to remain competitive in key markets. The additional \$40 billion package that the US administration has granted mainly to its defence industry as a consequence of the events of 11 September 2001, in addition to the \$400 billion + budget proposed for fiscal year 2003, could exacerbate this situation further.

The great imbalance between the US and Europe not only distorts competition, but also makes any cooperation or partnership across the Atlantic more difficult.

If Europe is to be credible in foreign and security policy, it requires appropriate European defence capabilities. Military systems need 15 to 20 years from technology assessment to operational deployment. In areas where no significant R&D programmes are undertaken, Europe will have no choice but to give up operational capability in these fields or depend on non-European providers.

Recent events underline the importance for both civil and military crisis management of having efficient and speedy intelligence, command and control processes and accurate weapons systems with no collateral effects. Such requirements call for innovative and complex solutions, whose development may involve feasibility experiments and demonstrators, leading to a new generation of equipment in key areas such as search and rescue, reconnaissance, C3I systems, unmanned air vehicles and smart munitions. Unless Europe maintains these capabilities and develops them further, there is a real risk that Europe's ability to act will be determined by the US through its dominance over the supply of certain types of equipment, or support to systems already delivered.

There is a high risk that if the EU Member States do not increase their commitment to their aerospace industry and address these issues at a European level, they will limit the Union's autonomous ability to carry out even the basic Petersberg Tasks, to say nothing of obligations which individual Member States have in NATO.

## The new electronic environment

The nature of warfare is going through fundamental change, driven by the need to maximise the efficient deployment of military forces, increase surveillance against the threat of terrorism, give a flexible response to such a threat and recognise the vital need to minimise military and civilian casualties resulting from military action. This scenario involves the use of unmanned aircraft systems for both surveillance and force projection.

Much of the technology required for this new capability is generic. Deployment of unmanned systems can provide a reliable and cost effective means of surveillance and data management for fisheries protection, border patrols, law and order enforcement, civilian search and rescue and many other applications with considerable market potential. Both civil and defence applications can and should be met by the European aerospace industry.

The US has so far made the greatest advances towards building this electronic environment and in development and deployment of unmanned systems. Unless Europe can build its own independent capability in this area, albeit at an affordable lower capability level, there will be severe limitations both in terms of being able to play a significant role in military operations alongside the US or, most significantly, being able to mount independent actions. The key issue here will be interoperability amongst the European countries as well as with the US and NATO.

## A new approach to Europe's defence needs

Of all economic sectors, defence equipment is the only one within the European Union to remain largely governed by national policies. Definition of future requirements and procurement of current needs are frequently carried out on a purely national basis with little regard to common interests. This is expensive and inefficient, duplicating effort and raising costs at a time when budgets are squeezed. It is clear that:

- ▶ A fragmented market denies Europe the economies of scale necessary to reduce costs, fund R&D and ensure the effective application of technology.
- ▶ Traditional methods of cooperation within Europe do not provide best value for money.

Development of common objectives in foreign policy and cooperation in security operations need to be matched by common objectives and cooperation in the design and the acquisition of the tools. Work should accelerate on harmonizing military requirements and the planning of arms procurement, as recommended at the 2001 Laeken Summit, with the aim of developing a comprehensive armament policy at the EU level. Initiatives for common procurement in organisations such as the Joint Armament Cooperation Organisation (OCCAR) and the Western European Armaments Group (WEAG) need to develop more quickly.

Rationalisation of spending will not however be enough to cover the needs of the new security agenda. Additional resources will be needed and these new demands come just as several European governments have set out to restructure their armed forces to adapt them to a new strategic environment where the military demands are different. Restructuring costs money though, and any potential savings will not materialise for

some time. The comprehensive approach to crisis management which is a feature of the Common Foreign and Security Policy will call for expensive new capabilities, including policing.

European freedom of action comes at a price in terms of the appropriate equipping of European armed forces as well as the creation of a strong industrial and technological base. This is why decisions on the level of national spending on defence equipment, re-setting of priorities within existing defence budgets and the appropriate response to new threats should all be approached in a European context. Furthermore, the current limited commitments to pooled defence R&D projects should be expanded and should include large collaborative demonstrator programmes which bring together activities from different Member States to create a strong defence research framework.

The commitment of the Member States and the EU to an efficient defence structure, appropriate to Europe's new strategies and priorities and increasingly autonomous, call for a European armament process which comprises:

- ▶ Formulation of a common European armaments policy based on a sustainable defence technological and industrial base, with development of effective R&D programmes to meet the defence and security needs identified for Europe's Common Foreign and Security Policy and to enhance European capabilities within the North Atlantic Alliance.
- ▶ Promotion at the level of all Member States of efficient arrangements for armaments cooperation based on best examples derived from the LoI Framework Agreement for Defence Restructuring.
- ▶ Creation of a coherent EU framework to shape an integrated European defence equipment market allowing industry to exploit economies of scale and to deliver at an affordable price the equipment and services required by the European common policies and the export market.

However, such structural improvements will not be sufficient in themselves to provide the new capabilities needed to meet the strategic goals of Europe's leaders. The ever-widening defence and security commitments of European countries call for the allocation of increased resources. The inevitable conclusion is that overall spending must be increased.

### **An internal market in defence equipment**

Since the competitiveness of the European aerospace and defence industry is vital to the credibility of European security and defence objectives, existing instruments should be used wherever possible to eliminate those policies and practices that prevent European defence companies from working more efficiently.

Consolidation of the European aerospace and defence industry goes together with growing transfers of products, components, intermediate goods and raw materials, whether between independent companies linked by a customer/supplier relationship or between undertakings or factories belonging to the same group. In either case it is

important to ensure that goods can circulate within the single market in such a way that the competitiveness of restructured European companies is not compromised. As well as administrative simplification, this is a matter of introducing procedures which allow goods and components to circulate more rapidly – a necessity for the modern, flexible management of enterprises.

Action to facilitate the free circulation of defence goods through simplification of the controls associated with intra-Community transfers and the harmonisation of customs duties is a pre-requisite for the creation of the integrated Single Market which is a cornerstone of the added value of the EU dimension.

Policies developed for the Single Market where the EU has extensive regulatory experience, such as public procurement principles, may also be relevant for creating a single market in defence equipment, especially in the context of a developing European armaments policy, where the special characteristics of defence equipment are taken into account.

The European Parliament has supported this approach. In April 2002 it adopted a Resolution on European defence industries reiterating its view that a strong, efficient and viable European armaments industry and an effective procurement policy were vital to the development of the ESDP. It also reaffirmed its support for the Action Plan contained in the Commission's 1997 *Communication on Implementing European Union Strategy on Defence-Related Industries*, which called for urgent restructuring in the sector and the creation of a European defence equipment market.

In calling for an updated Action Plan to be submitted to the Council and Parliament as soon as possible, Parliament has asked the Commission to consider how far the common commercial policy and single market disciplines should be applied to defence industries, the possibility of developing a multi-institution and defence industry body to pool and coordinate research in the defence field in a similar way to ACARE, and whether further measures are needed to facilitate the establishment of transnational companies and integrate the industries in the accession countries.

For the longer term, the Convention on the future of the European Union provides an opportunity to identify the most effective institutional and operational arrangements to achieve the Union's objectives in the defence field and thus also reinforce the competitiveness of the European aerospace and defence industry.

(...)

## ***8. Safeguarding Europe's role in space***

Over the past 40 years Europe has developed significant space capabilities through its spacecraft and launchers and the ground infrastructure to support them. These are now essential tools for the well-being and the security of European citizens. They are key to many applications in both the civil and the defence fields and their importance contin-

ues to grow rapidly. Space applications are making an essential and expanding contribution to EU policies, such as environment, transport, agriculture, and development. The evolving Common Foreign and Security Policy and implementation of Petersberg Tasks also call for capabilities which require the use of space technologies.

These applications depend upon European capabilities in three inter-related areas:

- ▶ use of space for earth observation, navigation, telecommunications
- ▶ space science
- ▶ access to space

### Importance of space applications

The strategic importance of space for Europe has been widely recognised. Since the European Space Agency (*ESA*) was created for European collaboration in civil space activities in 1975, one of its main goals has been to deliver a better understanding of the earth and of the universe by developing and operating specific programmes. Through such multilateral programmes, combined with national efforts, Europe has developed significant capabilities in spacecraft technology. Similarly, the Ariane family of launchers has been developed to provide an autonomous access to space.

(...)

In 2000 the European Commission (*EC*) and *ESA* set out a joint European Strategy for Space and created an *EC/ESA* taskforce. Two joint programmes are particularly important in the near term, the Galileo global positioning system and Global Monitoring for Environment and Security (*GMES*).

*Galileo* is a European satellite radio-navigation programme based upon a constellation of 30 satellites across the globe, with local ground receivers to provide services to users in virtually all locations. It will be compatible and complementary with GPS, the system operated by the US Department of Defense. EU ministers have approved the development phase of the project, which will run until 2005, to be followed by deployment and operational phases. Operational target is 2008. *GMES* is a European initiative launched in 1998 which will benefit from existing and planned satellite research facilities to create an operational system for spacebased information. The monitoring capabilities will include global change, environmental pressures and possible security applications if these are required under the EU Common Foreign and Security Policy.

### Challenges facing Europe's space industry

Space activities include applications of purely commercial interest in the civil sector, especially telecommunication satellites. For the past 10 years, the space sector in Europe has invested heavily to benefit from significant growth generated by this commercial market, while in the US the profitable programmes have been essentially institutional. The recent rapid decline in the market for telecommunications – and consequently in the launcher market – is endangering the European space industry's viability. The decline

coincides with a decrease in government space budgets which threatens funding to space agency programmes in Europe.

The European space industry's high level of dependency on the commercial market contrasts with the US, where the major share of income is derived from government-funded programmes. Increasing US public investment in its space industry will continue to put pressure on Europe's industry – global dominance in space equipment and applications is a declared US policy goal.

The figures highlight the situation: in 1999, turnover of US aerospace companies from space activities was €33 700 million, of which €26 000 million – more than three-quarters – was funded by the Department of Defense and NASA. European companies, by contrast, had turnover of less than €5 500 million, of which only half came from institutional sources, the rest coming from the competitive, commercial market-place.

Moreover, defence programmes have been conducted nationally or bilaterally (and only rarely multilaterally) in Europe, with some major successes but limited budgets – less than 5 per cent of the US total for industry even when combined. Efforts to give more support to European collaborative projects have not so far led to results and their future remains uncertain. As a consequence, in contrast to civil space programmes, there is as yet no structure at the European or multi-lateral level to address Member States' security and defence space technology needs.

If Europe does not respond to these challenges, the consequences will be profound and quite possibly, irreversible. It could lose its independence in key strategic and commercial satellite technologies, such as navigation, communications, or earth observation, both civil and military, as well as in access to space. The EU's choice of policy options and its major industrial role in this strategic high technology field would be put at risk and it would become dependent on others. It could in turn lose its position in commercial and service sectors which depend on space capabilities.

### **Need for a dynamic policy for space**

A dynamic long-term European Space Policy, as advocated by the EC/ESA Joint Strategy, should comprise certain key elements:

**Galileo:** Now that the go-ahead for Galileo has been given by the Council of the European Union, the next step is to ensure that the infrastructure is completed and then to move on to operation and exploitation. Careful attention must be given to the resulting implementation by clearly identifying the additional infrastructure and the service definitions for the project in terms of public funding for the infrastructure and industry participation for the services.

Galileo will bring a wide range of benefits to aerospace industries and to the European economy as a whole and keep European industry at state-of-the-art level in space technologies. It will also provide a world-wide operating system complementary to other existing navigation systems, which could provide a secure fallback if needed.

**GMES:** This key initiative should be developed rapidly to ensure that Europe has an independent, autonomous and operational global monitoring capability for policy needs relating to environment and to security.

A full GMES programme must be established by the beginning of 2004 in accordance with the Council Resolution of December 2001 if goals are to be met for an operational and sustainable capability by 2008. As a first step, early large-scale prototypes are required through networking between space and non-space infrastructure, supported by the necessary budgets in the European research framework programme and ESA programmes and by actions to ensure that a suitable institutional structure is established for gathering and making accessible space-based information for environment and security.

**Meeting EU security objectives:** Space applications could support several objectives under the Common Foreign and Security Policy, supplementing the Member States' own resources, including information-gathering, communication and verification, but an integrated approach will be needed from all the interested parties – Member States, European Commission, Council and NATO – if specific or shared capabilities are to be developed. The priorities are:

- ▶ to make use of the existing and planned infrastructure, which is mainly national but includes the EU Satellite Centre, to support the Petersberg tasks of humanitarian aid, rescue and peace keeping. The security elements of GMES should be dedicated to that objective;
- ▶ to continue building a space defence and security information capacity in Europe for surveillance, reconnaissance, command and control, telecommunications and positioning, benefiting from Europe's space assets and broadening the experience of the Satellite Centre;
- ▶ to encourage NATO to consider a European solution when commissioning its military telecommunications satellite and launch needs.

**Space science and R&D:** Space science should be supported, such as space exploration, earth sciences and micro-gravity sciences (e.g. biotechnology research) as well as its applications based on innovative data processing, models, etc. which are needed to develop new operational space missions and services. Space agencies and the EU should support wide-scale demonstrators integrating the various space and ground technologies.

**Sustaining European launch capabilities:** An independent and competitive launch capability to provide access to space is a pre-requisite for achieving a consolidated European Space Policy and successfully exploiting space. Unfortunately, due to the marked decline in telecommunications satellite launches which represent most of the Ariane market, commercial launches together with the limited complement of launch contracts from European governments are insufficient to sustain a viable business case for the Ariane system. Public support from ESA and the EU Member States is therefore vitally important as regards Ariane launcher upgrades, new developments and launch facilities, while industry works to reduce costs and to improve the efficiency of



production. Rapid action is essential at European level if Europe is to compete on level terms with the government-funded US launcher industry.

**EC/ESA framework:** Having defined an overall strategy for the short and medium term, the EC and ESA must implement it as soon as possible. For defining a European Space Programme, EC/ESA should also develop a long-term approach with adequate funding, establishing appropriate institutional mechanisms taking full account of user needs and providing visibility to such users, investors and third countries.

(...)

### *Summary of STAR 21 recommendations*

#### **Competing on world markets**

- ▶ Ensure a level playing field so Europe's industry can compete fairly in world markets.
- ▶ Improve access to world markets, especially that of the US.
- ▶ Seek wider agreements to simplify export controls on products with US components.
- ▶ Ensure fair reciprocal market access.
- ▶ Continue developing international cooperation programmes.

#### **The operating environment for European aerospace**

- ▶ The application of European competition policy should continue taking account of specific aerospace features, particularly in defence-related activities.
- ▶ The impact of different taxation schemes to promote innovation world-wide should be analysed. Possibilities for applying tax and other incentives to promote innovation on a Europe-wide basis should be considered, if necessary through coordinated national actions so as to avoid distortions of competition.
- ▶ The education and training needs of a long-term skilled work force should be recognised.
- ▶ Cross-border mobility of staff should be facilitated. Existing problems, particularly concerning social security schemes and security clearance procedures in defence projects should be overcome.
- ▶ Schemes of practical training in accession countries should be developed to accelerate industrial integration.
- ▶ For civil aeronautics research key stakeholders should define long-term priorities. Future research programmes on European, national, regional and industry levels need better coordination and joint planning where appropriate.
- ▶ Allocation of sufficient public resources to sustain a long-term civil aeronautics research strategy requiring an estimated total investment of €100 billion for the next 20 years from all sources, both public and private.

## European governance of civil aviation

There is an urgent need for a strong European organisation to drive the overall policy of the sector. Europe's influence will have to extend beyond its boundaries, working with aviation regulators worldwide. Key recommendations to achieve this aim are:

- ▶ **Civil Aviation Authority:** The European Union must take on the role of policy maker and regulator in all areas of civil aviation, speaking with one voice on behalf of Europe in all relevant international organisations and specifically in ICAO. Ultimately this should lead to Community membership in these bodies, together with its Member States. A fully empowered EASA, with rapid extension of its remit, is a first step in that direction.
- ▶ **Air Traffic Management:** A master plan for a Single European Sky initiative should be developed within the framework currently discussed in the European Parliament and the Council.

## Vital need for European security and defence capabilities

- ▶ Ultimate goal: a European armaments policy to provide structure for European defence and security equipment markets, and to allow a sustainable and competitive technological and industrial base.
- ▶ Harmonisation of military requirements and planning of procurement budgets and of arms procurement.
- ▶ Increased resources, used more effectively, with encouragement for European collaborative programmes and more effective task-sharing between Member States.
- ▶ More coherent defence research spending between Member States.
- ▶ Work towards establishment of a European defence equipment market and an armament agency responsible for a wide range of activities related to acquisition, common research and development, off-the-shelf procurement, etc.
- ▶ Promotion of EU-wide actions similar to the Framework Agreement for Defence Restructuring.
- ▶ Bridging the gaps identified in the European Headline Goal and in the collective capability goals.

## Safeguarding Europe's role in space

- ▶ Develop a consolidated European space policy in line with the ESA-EC communication on space, to include a plan of action and adequate funding.
- ▶ Deploy Galileo on schedule, devoting adequate resources to world-wide promotion and development of downstream activities, providing opportunities for an early involvement of the private sector.
- ▶ Develop GMES to ensure autonomous global monitoring capability, through a significant support from EC and ESA programmes.
- ▶ Develop a fully European-based space defence and security capability for surveillance, reconnaissance, command/control including telecommunications and positioning.

- ▶ Adapt public support for maintaining a European independent and competitive access to space.
- ▶ Adapt public support to space science and the development of its applications.
- ▶ Support wide scale demonstrators integrating the various space and ground technologies.

## Commission Communication

March 2003

In November 1997, the European Commission sent a communication to the Council including a 'draft Common Position on the Framing of a European Armaments Policy' and an 'Action Plan' intended to foster the emergence of a European defence market. This initiative, however, did not lead to any substantial progress, since member states disagreed on both the substance and the advisability of a common armaments policy. More than five years later, in March 2003, the Commission revived the concept and again launched a communication on defence industries and markets. The underlying assumption is that recent industrial consolidation, on the one hand, and the development of ESDP, on the other, have opened the way for progress that was impossible to achieve a few years ago. Published in the run-up to the next Intergovernmental Conference, the communication sends a strong signal to member states that the Commission is ready to contribute with its expertise on industrial and market issues to a possible EU defence equipment policy.

### **European Defence - industrial and market issues Towards an EU Defence Equipment Policy**

European Commission Communication COM(2003) 113 final, Brussels, 11 March 2003

#### *Executive Summary*

In 1996 and 1997 the Commission produced two Communications to encourage industrial restructuring and greater efficiency in the European Defence Equipment Market. Some of these ideas came to fruition. But Member States did not act in a number of essential areas – feeling, perhaps, that the proposals were before their time. Following a period of transformation in this sector and in the institutional framework of the EU, including the beginnings of a real European Security and Defence Policy (ESDP) the European Parliament, in a Resolution of 10 April 2002, invited the Commission to present a new Communication.

These issues have been brought into sharper focus by the Convention on the future of Europe. A working group on defence has made substantive recommendations which will be the subject of further work over the coming months.

Strengthening the industrial and market situation of European defence companies will greatly improve the EU's ability to fulfil the Petersberg tasks in the accomplishment of ESDP. It will also benefit collective defence by strengthening Europe's contribution to NATO.

Whatever the long-term prospects for a full common European defence equipment policy, the Commission is determined to make progress at once wherever this may be possible. The present Communication therefore proposes action in the following fields:

- **Standardisation:** Stakeholders recognise the need for harmonised European approach to defence standardisation. The Commission is working on this issue with CEN to assist co-operation between Ministries of Defence and industry to develop, by the end of 2004, a handbook cataloguing standards commonly used for defence procurement.
- **Monitoring of defence related industries:** Stakeholders need a clearer picture of the defence industrial and economical landscape in Europe. To achieve this, the Communication proposes to launch a monitoring activity on defence-related industries.
- **Intra-community transfers:** It has long been argued that a simplified European licence system could help to reduce the heavy administrative procedures, which impede the circulation of components of defence equipment between EU countries. The Commission proposes to launch an impact assessment study in 2003 and, depending on its results, start elaborating at the end of 2004 the appropriate legal instrument.
- **Competition:** Competition improves market efficiency and protects innovation. Consequently, and without excluding the possibility of exceptions consistent with the Treaty, the Commission intends to continue its reflection on the application of competition rules in the defence sector.
- **Procurement rules:** Harmonised procurement rules for defence equipment would also increase market efficiency. On this basis, a reflection on how to optimise defence procurement at national and EU levels should be initiated in the EU. The end goal would be to have a single set of rules for procuring defence equipment in Europe. There have been several important Court judgements in recent years that are relevant to this work – especially in helping to define the scope of Art. 296. The Commission will issue an Interpretative Communication by the end of 2003 on the implications of these judgements. In parallel, it will work on a Green Paper which might be issued in 2004 as a basis for discussion with stakeholders.
- **Export control of dual use goods:** International export control regimes exist – but in most cases, the EC is not a member. The consequence is that Member States often adopt uncoordinated positions, which may unnecessarily limit export opportunities for EU civil industries and may affect the functioning of the internal market after enlargement. The Communication proposes to raise this issue in relevant Council bodies.
- **Research:** The Communication proposes to consult Member States and industry in 2003 to identify common needs and to establish a security-related research agenda. In this respect, the Commission intends to launch a pilot project.

The Commission has followed the debate on a possible EU Defence Equipment Framework overseen by an Agency (or Agencies). Such a framework could help to co-ordinate national collaborative programmes and provide a basis for drawing in Member States, which are not presently engaged. Until now, Member States have chosen to conduct most of this work outside the EC Treaty, but there may also be a place for certain Community instruments and mechanisms.

### *Introduction*

In 1996 and 1997 the European Commission produced two Communications<sup>1</sup> on defence-related industries to encourage restructuring and the setting up of an efficient European defence equipment market. Concrete proposals and actions followed with respect to some of these issues. However, as regards the most essential reforms, Member states considered action on the European level premature.

Following a period of considerable change in the industrial armaments sector and in the institutional framework of the EU, including developments in ESDP, the European Parliament, in a Resolution of 10 April 2002, invited the Commission to address the issue of armaments in a new Communication.

In autumn 2002 the Convention on the Future of Europe set up a working group on defence chaired by the European Commissioner, Michel Barnier. The working party's report<sup>2</sup> stressed that the credibility of European defence policy depends on the existence and development of a European capacity and a strengthening of the industrial and technological base of the defence sector.

Taken together, EU Member States spend less than half of what the U.S. spends on defence<sup>3</sup>. The total US budget comes to an annual \$390 billion, compared to a cumulative budget of €160 billion for EU Member States together. For many years, defence investment in Europe has been significantly smaller than in the USA in procurement (€40bn per annum in Europe compared to \$100bn in USA) and in research (€10bn in Europe compared to \$50bn in USA). But apart from absolute levels of spending which are necessarily a function of their respective objectives, Europe yield much less in terms of operational capabilities. The real military capability of EU Member States is estimated at about 10 per cent of that in the US<sup>4</sup>. This issue has repercussions for the transatlantic relationship. A reinforced European defence and technological industrial base can provide an important contribution to collective security in the context of NATO and other partnerships. Taxpayers should get the most out of the investment they make in security. There is ample evidence that this is not the case at present and that a European defence equipment market would bring significant savings in costs. It is crucial for both civil and defence sectors of the economy that we create an environment in which European companies can give better value for money. That is why the Commission wishes to set the questions of arms trade and production in their industrial context. The scope of concern

encompasses all industrial activity in Europe related to components, which may end up in civil and/or military products.

Cost efficiency of defence spending, the maintenance of a competitive defence and technological industrial base, better access for EU manufactured goods to third markets, ethics and fairness in the arms trade, security of supply, and also the need to respect Member States prerogatives in this sensitive area are all important considerations when defining an EU armaments<sup>5</sup> policy.

On the military side, the efficiency of multinational corps such as Eurocorps, Eurofor, and Euromarfor requires the highest degree of interoperability of their armaments. To achieve this in a cost-effective way, the solution would be to equip the national units that make up these forces increasingly with the same equipment.

On the industrial side, the survival of a European defence industrial base able to support the ESDP will depend on successful national and trans-European consolidation of the industry as well as transatlantic partnerships between companies. The currently fragmented legal and regulatory framework places limits on the adjustment capabilities of companies or pushes them towards strategies and alliances which put the Union in a disadvantageous position. Failure to safeguard a competitive defence industrial base, and the loss of autonomous design and innovation capabilities, limits available choice and is bound to lead in the long run to higher procurement costs.

For all these reasons, there is a strong case for a more co-ordinated EU defence equipment policy. Just as the ESDP complements, national defence policies and NATO, an EU Defence Equipment Policy would complement corresponding national policies.

One key contribution that the Commission can make in this field is in seeking to improve the quality of the EU regulatory framework governing the treatment of armaments in Europe. This is the purpose of the present communication.

European defence industries compete on a global market. The Commission acknowledges the need to address at a later stage some particular issues such as the improvement of the functioning of the existing Code of Conduct on Arms and wider opening of third country markets to European defence products.

## ***1. Recent developments strengthen the case for a European Defence Equipment Policy***

### **1.1. Recent developments inside and outside the EU**

The 1999 European Councils of Cologne and Helsinki gave new impetus to European security and defence policy through the definition of a headline goal to be achieved by 2003; and with the creation of new EU structures such as the Political and Security Committee, the EU Military Committee and the EU Military Staff. The European Capability Action Plan (ECAP), which seeks to fill EU capability shortfalls, is likely to include off-the-shelf procurement and collaborative programmes as well as defence

research and technology measures.

A close co-operation is being established with NATO to enable the EU to have assured access to NATO planning assets for ESDP operations. Extensive consultations are taking place in this context in order to ensure maximum compatibility of EU and NATO concepts for this purpose.

Meanwhile, outside the EU institutional framework there has been further substantial restructuring of defence-related industries. Companies – faced by ever-stronger competition, notably from the US – are crying out for a more open and efficient market to improve the competitiveness of the European defence technological and industrial base. Groups of Member States have responded to the new challenges by entering into ad hoc agreements such as the Letter of Intent (LoI)<sup>6</sup> and its Framework Agreement which aim to facilitate industrial restructuring; and the “Joint Armaments co-operation organisation” known as OCCAr (*Organisme Conjoint de Coopération en matière d’Armement*)<sup>7</sup>, which aims to improve the management of co-operative armament programmes.

These various initiatives in the field of European armaments trade and production need to be underpinned by a more coherent overall framework in order to bring more legal certainty and attract participation by a larger number of Member States.

The recent adoption of Council regulation (EC) No 150/2003<sup>8</sup> suspending import duties on certain weapons and military equipment constitutes a step forward towards setting up a European Defence Market.

These objectives have been brought into even sharper focus by the Convention on the future of Europe. One of its working groups had a fundamental debate on defence, and made substantive recommendations<sup>9</sup> which will be the subject of further scrutiny and debate in the course of the Convention’s deliberations over the coming months.

## 1.2 European Armaments and industrial policies

There is an intrinsic unity of purpose in the European Union’s internal policy, including the Lisbon targets, and external goals to which all policies and instruments must contribute. The Commission considers that the dynamism of industry is essential for Europe to be able to sustain and increase its prosperity while meeting its wider social, environmental and international ambitions<sup>10</sup>. One of the aims of its Communication of 11 December 2002 on Industrial Policy in an Enlarged Europe is to place industry back on the policy agenda. A key message is that Industrial Policy, while being horizontal in nature, needs to take into account the specific characteristics and needs of every individual sector. In that context, the STAR 21 report published in July 2002 contained an in-depth analysis of the situation and challenges facing Europe’s aerospace sector with particular emphasis on the need to address the defence dimension. A similar exercise concerning maritime industries (LeaderSHIP 2015) was launched in January 2003.

In that spirit and with a view to the Spring European Council on 21 March 2003, proposals were made by the Commission and also by Member States on structural reform and modernisation in Europe with a view to strengthening economic competitiveness



and guaranteeing employment opportunities for all. *Inter alia*, measures were proposed to lift barriers regarding market and competition conditions, to rapidly conclude legislation on the internal market which is currently being reviewed, with a view to obtaining results that truly open up the markets, to enhance research results and to establish clearer links between research institutes and business creation.

Failure to enhance the contribution of Community policies, especially on trade, development, internal market, research, and competition policy will result in sub-optimal solutions in terms of the effectiveness of the ESDP. In turn failure to develop a European dimension to the defence equipment market, and to invest in research, is certain to have a negative effect on the competitiveness of high technology enterprises. Knowledge and innovation are essential elements in enabling those enterprises to compete and to co-operate on an equal footing with international competitors such as U.S. companies which themselves enjoy a far higher level of backing of their governments.

Although some EU companies are world-class innovators, a low share of European patent and R&D activity vis-à-vis the EU's main competitors means that, overall, Europe's innovative performance remains too weak. These facts lie behind the less encouraging competitiveness performance of the EU in some of the highest value added segments of the economy. Different measures of comparative advantage reveal that the EU tends to specialise in medium-high technology and mature capital-intensive industries. If it is essential to keep the strengths in these sectors, which represent a higher share of total output and employment, the EU should seek to improve its position in enabling technologies such as ICT, electronics, biotechnology or nano-technology, where it often lags behind its main competitors. Technology-driven industries are not only a source of knowledge and technological spill over throughout the economy, they are also the ones which exhibit greater productivity growth. The European industry's relative weakness in these fields as well as their low share in the economy weigh on the overall growth and productivity performance of the EU.

The reality is that a major contribution to security and defence systems now comes from industries and SMEs developing their products and services primarily for civil applications.

The defence-related industries could benefit from the approach proposed in the EU industrial policy communication

### 1.3 European armaments policy and the Treaty provisions

Questions of trade and production of armaments lie at the intersection of defence and industrial policies. In the past, it has proved difficult to reconcile industrial and defence imperatives. The European armaments industry has suffered as a consequence. A more appropriate framework needs to be defined.

Over the years wide application of Art. 296 TEC<sup>11</sup> has led to fragmentation of markets and industries at national level. However, it should be possible to improve the situation within the provision of the current Treaties. With sufficient will, it should be

possible to frame a common set of rules on defence equipment, which will take due account of the specificities of armaments thereby progressively limiting recourse to Art. 296. Some of the rules required may either fall under pillar one (the EC treaty) or pillar two (Common Foreign and Security Policy) of the EU treaty<sup>12</sup>.

## 2. Objectives of a European Defence Equipment Policy

Armament policy issues<sup>13</sup> can be conveniently grouped under four headings:

- (1) **Defence equipment demand:** harmonisation of the military and other security-related requirements as well as the planning and procurement of defence-related equipment.
- (2) **Defence equipment supply:** completion of the industrial consolidation process (primarily the responsibility of industries themselves); supportive policies and actions by the Commission and Member States towards the creation and maintenance of a competitive industrial structure in Europe.
- (3) **Defence equipment market:** an appropriate regulatory framework addressing internal and external aspects; appropriate rules for cost-efficient procurement of goods and services both by member states defence procurement Agencies and by any future European Agency(ies); and economically efficient export controls. All this needs to be developed while preserving ethical standards and promoting reciprocal market access.
- (4) **Research:** co-operation and coherence of defence-related research at European level; exploitation of civil-military synergies.

Community action is most likely to be able to add value in the third and fourth areas above.

### 2.1 Defence equipment demand

New common security risks will increasingly be dealt with by multinational coalitions, requiring interoperability between national forces.

In the ESDP context, in consistency with NATO, there is also an urgent need to enhance the harmonisation of defence equipment requirements. To be beneficial in economic terms, this should be translated into common defence equipment programmes with common technical characteristics and seamless procurement schedules. The number of defence equipment programmes and subsequent procurements that could be undertaken jointly by the largest possible number of Member States should be increased.

That process should help to deliver economies of scale in production and savings from increased bargaining power in acquisition leading to reduced costs, in addition to

the advantages which arise from increased interoperability. More predictability and consistency at European level on planning and acquisition would enable industry to anticipate and better adjust its production capability.

Given the long lifetime of defence equipment, harmonisation of the planning and procurement of equipment will also depend on an improvement in the current European Capabilities Action Plan (ECAP) which should help to bring a longer-term perspective.

Overall guidance, monitoring of progress and matching financing methods to ECAP proposals will require the active involvement of both the European Council and Defence Ministers in order to maintain impetus and to provide the necessary political authority to ensure rapid decisions.

## 2.2 Defence equipment supply

As noted above, there has been steady consolidation in defence-related industries in recent years. This is especially so in aerospace which, in the course of its rationalisation, has reinforced its European dimension. There have not yet been comparable levels of rationalisation of land-based systems and naval shipyards. Major consolidation in these sectors is now required in order to maintain Europe's capacity in areas, where Europe has traditionally been strong and technologically advanced.

Enlargement will bring special challenges in that the defence industries in the new Member States are for the most part loss-making. Restructuring and rationalisation are necessary to bring them to viability. This process could be facilitated by social and regional policies using the Community Structural Funds in accordance with existing modalities.

The need to share the huge development costs of new systems, and to gain insight into essential technologies, has driven European and American firms into partnerships, such as the Lockheed Martin-led Joint Strike Fighter, now renamed F-35: the biggest defence programme in history, worth \$200bn over the next 30 years. It is a programme that is likely to dominate defence industrial relations across the Atlantic for many years to come. The project offers participating countries the prospect of work for their local industry in advanced aerospace technology. Four EU member states have signed up to participate in the programme and committed around €4bn to it. The Pentagon has ordered 2900 aircraft. To illustrate the gap in transatlantic purchasing power, the largest European order amounts to only 150 aircraft.

However, in the meantime, three fighter jets are currently produced in Europe: the Eurofighter, which is a joint venture between Germany, Italy, Spain and the UK; the French Rafale; and the Swedish-British Gripen.

Such European projects do have certain advantages. They can also enter service more quickly than the F-35, as Rafale and Gripen are already in service, and Eurofighter is scheduled to arrive in 2003.

Such choices on key defence equipment programmes may have negative industrial policy consequences regarding the ability of Europe to sustain a competitive and indigenous fighter jet industry. This is likely to have an impact on civil business and commercial transport aircraft industries.

The results for European firms are very variable. Non-US firms are generally treated less favourably when they seek to supply or partner US firms in supplying to US procurement agencies. Firms from Europe also have to adopt special local arrangements in order to observe rules on ownership of defence firms in the United States. And even where European firms, or in some cases their governments, have invested heavily in new weapons systems to be developed in the US, their level of access to the key design and development phases is rarely satisfactory. In addition to the potential loss of the ability to keep companies with prime contracting status within the EU, the future of thousands of SMEs throughout Europe which are directly or indirectly linked to these contractors will be adversely affected.

There is a danger that European industry could be reduced to the status of sub-supplier to prime US contractors, while the key know-how is reserved for US firms.

Decisions on restructuring in Europe will be taken in the first place by firms themselves as a function of market realities, including the interests of their shareholders. But there are limits to what companies alone can deliver in terms of further efficiency as long as the framework in which they operate remains unchanged. The interests of security of supply mean that Member States individually and collectively have a clear interest in a competitive industrial structure for the needs of national armed services and ESDP. Public interest also requires us to take account of the important spin off effects in terms of civil applications of these high tech industries.

### **2.3. Regulating the EU defence equipment market**

European defence-related industries are currently at a critical stage in their development, and decisions taken now can be expected to determine their future prospects and strengths for decades to come. A further complication is that many of the same companies are involved in producing for both the civil and defence markets, which are governed by two separate regulatory frameworks.

It is vital to reduce the handicap of European companies vis-à-vis their competitors, in particular from the US, arising from the fact that the regulations governing defence-related activities are not homogeneous at EU level but fragmented at national level. As regards market access outside the EU, the fact that problems are normally dealt with at the level of individual Member States means an important loss of negotiating strength. The collective inability of European firms and their governments fully to exploit the weight of the Union, which comes from acting together, can only be to the detriment of European industry.

To overcome these problems Member States should aim to create a genuine European Defence Equipment Market. This would be in line with the objective already set by Member States which are members of Western European Armaments Group WEAG<sup>14</sup>. In practice, the absence of binding commitments has weakened the achievement of this objective. That deficiency could be remedied by an EU framework of rules bringing legal certainty and uniform implementation of legislation. Such a framework could also pave the way for the involvement of a larger number of Member States.

#### **2.4. Research**

European Armament Organisation (WEAO)<sup>15</sup> has any responsibility for managing cooperative defence-related research programmes but it handles only 2.5% of European investment in this area. Neither OCCAR nor the LoI cover research at present.

European countries invest four to five times less than the US, and this gap is accentuated by the fragmentation and compartmentalisation of European research. This allows the Americans to impose quality standards that Europeans often find hard to meet because of the failure to invest in certain key technologies.

In Europe there is a fairly strict divide between civil and military research. Technology transfers from the civilian sector to the defence sector remain low while there are significant transfer from European defence research to civilian activities. We need to multiply such synergies by creating a snowball effect that will strengthen European industrial competitiveness and help achieve the goal laid down by the Barcelona European Council of March 2002, namely 3% of GDP devoted to financing research by 2010.<sup>16</sup>

Defence-related research plays a major role in innovation in the US; it benefits the whole of industry, including the civilian sector. This interpenetration of defence and civilian research has benefited both the American arms industry and civilian users in terms of market access and costs. Note that the US military's procurement of advanced technology, whereby it shoulders the risk and the costs of demonstration and depreciation, has also benefited American suppliers and facilitated the integration of such technologies into civilian applications: the internet, the "Windows-icons-pointer" interface, the RISC microprocessor (found today in mobile telephones) and GPS (Global Positioning System) are all systems that were originally financed by American military research, notably through DARPA (Defence Advanced Research Project Agency).

### ***3. Proposals for Action***

Developing an EU defence equipment policy will be a long-term process involving many different stakeholders. The present Communication focuses on a number of specific measures, which the Commission believes can make a contribution to achieving broader

EU objectives. The proposed measures are intended to encourage industrial restructuring and consolidation, to promote the establishment of a European defence equipment market and to enhance competitiveness of the European industry, and to achieve broader socio-economic objectives.

### **3.1 Towards a European defence equipment market**

#### **3.1.1. Standardisation**

While work on standardisation of defence equipment is largely a technical matter, it is an important precondition for the opening-up of national markets and the gradual establishment of a single European market. Both manufacturers and public authorities (Ministries of Defence) will benefit from a common reference regarding standards elaborated in consistency with NATO works. It will help to enhance cost efficiency and interoperability. That necessity has been recognised by all those stakeholders who are participating on a voluntary basis in the development of a "Defence Standardisation Handbook". It will contain references to standards and standard-like specifications commonly used to support defence procurement contracts as well as guidelines on the optimum selection of such standards.

The action currently under way with the participation of the MoDs and industry and with the assistance of CEN is funded under the framework contract for standardisation of 1998. The Commission will ensure that the European Handbook is ready in its initial phase by the end of 2003 and in a first operational version around the end of 2004.

The next phase should be to give formal status to the Handbook so that, once approved in terms of content, its use will be systematic in defence procurement contracts. The Commission would then propose appropriate complementary measures to ensure the upkeep of the Handbook and its use.

#### **3.1.2. Monitoring of defence-related industries**

In accordance with the Community's task to ensure the conditions for competitiveness of industry (Art. 130 TEC), the Commission should keep the situation under permanent review in all industrial sectors. In order to monitor the economic situation of the defence industrial base at EU level (including new Member States), including its ability to support the supply requirements of ESDP, the Union needs regular access to the relevant data. Levels of competitiveness and design expertise, geographic distribution of expertise, R&D investment, etc. need to be known and measured in order to allow benchmarking and to contribute to the development of relevant policies. Moreover, producers need a better knowledge of the market conditions in which restructuring can take place.

For this purpose, it is proposed that a monitoring activity be launched on defence-related industries using data available in EUROSTAT and in the European Statistical System (ESS) as well as other relevant sources of information, including industrial associations, while respecting existing rules of confidentiality.

### 3.1.3. Intra-Community transfers

The Commission is all too aware that intra-Community transfers of defence equipment are time-consuming and involve a lot of red tape because of the number of national procedures. These procedures take the form of individual licences for firms, import/export licences, checks on delivery and in some cases end user certificates. What is more, these procedures apply equally to transfers of defence equipment to Member States as to exports to non-member countries. One of the reasons for these complications is the desire of Member States to control the final destination of defence equipment, especially in the case of non-member countries.

The Commission has therefore tried, working with national experts to identify possible ways of simplifying intra-Community transfers of defence-related goods. For example, one possible way would be to align national licensing systems by adopting the principle of a global authorisation that would apply to intergovernmental programmes and industrial cooperation programmes.

An impact analysis is thus needed to establish the value added of any Community-level legislative initiative. This would also be an opportunity to draw lessons from the transfer arrangements for military equipment for the armed forces under the relevant NATO agreements. In the light of its findings the Commission will propose an appropriate legislative instrument (Regulation or Directive). Work on this will start at the end of 2004.

### 3.1.4. Competition policy

Competition policy is an essential element of the common market and does not represent an obstacle to technological change or a hindrance to private initiative. Moreover, it must ensure that changes brought about by market forces, such as through mergers and acquisitions, do not lead to the creation or strengthening of dominant positions, but result instead in benefits in terms of innovation and value for money.

Insofar as purely military mergers have been notified to the Commission under the EC Merger Control Regulation (ECMR), the Commission has not objected to such operations. Recently however, complex cross-border mergers have occurred, which call for a thorough assessment of their overall impact on competition, notably with respect to dual-use or civil products. Both industry and governments would appreciate greater clarity. Producers need a stable and transparent framework in which restructuring can take place. Equally, the interests of other market participants, and in particular customers, competitors and subcontractors from other Member States, also need to be taken into account.

Due to its specificities and in particular to the close relationship with public authorities, the defence sector may benefit, directly or indirectly, from public support constituting State aid. Under the provisions of Art. 296 TEC, to the extent that the companies concerned produce only military equipment, Art. 87 TEC concerning State aids control

has not so far been applied. Neither has there has been any notification of such aid based on the argument that it contributed to the “execution of an important project of common European interest” as set out by Art. 87(3)(b) TEC. Public financial support for defence production should in any case not alter competitive conditions in the common market of goods, which do not have a specific military purpose. This aspect is of particular relevance when the companies in question manufacture both strictly military and non-military products. It is necessary in particular to ensure that there is no cross-subsidisation between these two activities. Aid to non-specifically military products falls within the ambit of the standard provisions regarding State Aid.

The Commission intends to continue its reflection on the application of competition rules in the defence sector taking due account of the specificities of this field and the provisions of Art. 296 TEC.

#### **3.1.5. Spending better in defence procurement**

Removing inefficiencies in the European defence equipment markets would bring benefits from increased competition, from international trade, less duplication in R&D and both economies of scale and learning effects in manufacturing.

Further opening of defence procurement at EU level will ensure that all companies would be dealing with the same interfaces and processes for developing, delivering and supporting equipment as well as bidding for contracts. EU Member States that are also members of WEAG have already endorsed this approach and attempted to open their respective markets by establishing national procurement focal points and by publishing their defence procurement needs in national “Official Journals”. However, the lack of any binding commitment has weakened that effort.

A first step towards harmonising public procurement rules should be to look into the various practices and develop a common approach.

On this basis, a reflection on how to optimise defence procurement at national and EU levels should be initiated in the EU. This would concern products procured by Ministries of Defence in the Member States, or by any European Agency that might be created in the future. The end goal would be to have a single set of rules for procuring defence equipment in Europe.

There have been several important Court judgements in recent years that are relevant to this work – especially in helping to define the scope of Art. 296. The Commission will issue an Interpretative Communication by the end of 2003 on the implications of these judgements.

In parallel, it will work on a Green Paper which might be issued in 2004 as a basis for discussion with stakeholders. The aim would be to seek an agreement on procurement rules to apply to defence goods depending on the level of sensitivity of the equipment. With the creation of a European defence equipment market operating on the basis of fair competition among European companies, offsets (i.e. practices involving industrial



compensation required as a condition for purchases of defence equipment and/or services) would no longer be required. However, due to existing contractual obligations, transitional arrangements would need to be put in place. The above-mentioned Green Paper will also address the issue of offsets in both its intra-EU and external dimensions.

### **3.1.6. Export Control of dual-use goods and technologies.**

Dual-use items are goods, software and technologies likely to have both civilian and military uses<sup>17</sup>. Member States control exports of these items and participate individually in a number of informal (politically, but not legally binding) international export control regimes<sup>18</sup>

The Community Regulation (1334/2000) based on the Art. 133 TEC, while supporting the principle of the free circulation of goods inside the EU, provides for legally binding common principles and rules for the national implementation and enforcement of dual-use export controls by Member States. There is a strict link with the export control regimes, as the Regulation comprises a common list of items subject to control, which is directly derived from the consensus decisions taken in the regimes.

Due to differences in the implementation of dual-use export control commitments by the countries participating in the export control regimes (not to mention those countries which are not part of the regimes), great care must be taken to prevent civil industrial sectors such as nuclear, chemical, biological, pharmaceutical, space and aeronautics, information technologies, which are potentially affected by the controls, from being constrained unnecessarily or unequally.

The Community, by transposing in legal terms the decisions taken by the Member States in the export control regimes, imposes export control restrictions on European industries. The Commission is not a member (with the exception of the Australia Group) of the regimes. There is a need for greater Commission involvement in order more effectively to make more effective co-ordination of Member States' positions in the various regimes and to represent Community interests. In particular, the Commission, while supporting the central objective of the security of EU citizens, would also look at the functioning of the single market and the economic interests of a variety of civil industrial sectors.

While the EC imposes export controls on dual use items for security purposes and in accordance with decisions taken in export control fora, consideration should be given to their impact on the competitiveness of the EU defence and dual use industries. There is a need to ensure that all these aspects will be adequately addressed in the perspective of enlargement to ensure that both the dual use single market and the Community Export control regime are not adversely affected.

The Commission will bring up the issue of how to achieve these aims with Member States in the relevant Council working bodies, including the particular challenges stemming from enlargement.

### **3.2. Towards a more coherent European advanced security research effort**

The Commission has had a great deal of experience in managing Community research programmes and coordinating national research activities and programmes. It is willing to offer its expertise for an initiative to promote cooperation on advanced research in the field of global security.

The setting-up of the European Research Area demonstrated that the Union and the Member States would derive greater benefits from national research programmes if they were better coordinated, something which is also true of advanced security-related research. By harnessing efforts at European level with an eye to medium to long-term requirements, advanced technologies that are crucial for Europe could be better developed and a real European value-added gained.

To this end, and as suggested by Parliament in its resolution of 10 April 2002, the Commission will ask national administrations, industry and research institutions with extensive activity in this area to identify in the course of this year an European agenda for advanced research relating to global security and the most appropriate ways of tackling it jointly.

To prepare for the implementation of this advanced research agenda, the Commission intends to launch a preparatory project that it would implement with the Member States and industry to implement some specific aspects that would be particularly useful in carrying out Petersberg tasks. This preliminary operation lasting no longer than three years would constitute a pilot phase for acquiring the experience for evaluating the conditions and arrangements needed for effective cooperation between national research programmes in the field of global security. It will cover just a few carefully selected subjects of advanced technology together with specific accompanying measures.

## ***4. Themes for further reflection for the EU and Member States***

### **4.1 EU Defence Equipment Agency proposals**

Art. 17 of the Treaty on European Union provides that “the progressive framing of a common defence policy will be supported, as Member States consider appropriate, by cooperation between them in the field of armaments.” The possibility of creating a European Armaments Agency is foreseen in the declaration on WEU annexed to the Treaties of Maastricht and Amsterdam. The defence working group of the Convention included in its recommendations the creation of an agency on an intergovernmental basis, which would deal with armaments and strategic research and could also contribute to ensuring that capabilities are improved. This proposal has been supported by the Franco-British declaration issued in the context of the summit which was held in Le Touquet on 4 February 2003.

Various Member States have already established joint procurement and research initiatives such as OCCAr, the LoI and WEAO. Any EU initiative should build on this base. We should seek to create an **EU Defence Equipment Framework**, including:

- **collaborative programmes** on the basis of OCCAr, progressively associating countries that wish to join in such co-operation in accordance with OCCAr rules (i.e. abandoning “juste-retour”);
- **research and technology**: The Europa MoU agreed within the Western Europe Armament Organisation framework includes a number of valuable ideas that could be further explored; in a longer term the EU should consider the creation of a European DARPA (Defence Advance Research Project Agency);
- **off-the-shelf procurement**. This issue is not currently addressed at a European level. It is time that it was.

Any Agency (or Agencies) established to oversee such an EU Framework should reflect Member States’ political choice that much of this work should continue to be conducted outside the current EC Treaty. It would be sensible nevertheless to draw upon Community mechanisms and instruments where Member States agree that the Community has a contribution to make (for example where the work touches on market mechanisms; or where it may be possible to build, in the research area, on experience with the civil Framework Programmes). In the longer run, too, Member States may decide to develop some central financial mechanism to ensure that Member States with disproportionately small national defence budgets nevertheless contribute their fair share to EU capacities.

An additional advantage of an EU Defence Equipment Framework of this kind is that it could, in some cases, would reinforce EU’s position when negotiating commercial agreements, thereby strengthening the EU’s hand.

## 4.2 Security of supply

Until recently the issue of security of supply has been addressed primarily by Member States individually. The process of consolidation in the defence field, which is necessary for Europe to maintain a competitive industrial base, is likely to lead to increased sectoral concentration. Governments will be required to accept the loss of some domestic capabilities, to procure directly from foreign or trans-national companies, and to allow changes to the ownership of defence companies. Mutual dependency between nations for the supply of certain armament materials already exists. Some countries buy entire systems from foreign firms, and even where a nation procures from national suppliers, most complex equipment includes some components from non-domestic sources.

By moving towards an EU-wide approach to security of supply Governments could:

- avoid keeping non competitive excess capacity by placing work with national companies,
- be able to allow trans-national mergers involving a change of ownership,

- ▶ facilitate trans-national movement and transfers of personnel working on classified matters,
  - ▶ allow the trans-national transfer of goods and technology.
- Such an approach would, *de facto*, help to diversify sources of supply and thereby reduce dependency on any single supplier, such as the United States.
- EU progress in this field should build on work already undertaken in other forums such as LoI, NATO and WEAG.

### 4.3 Defence trade issues

A wider opening of foreign markets, especially the US, to European defence products is a major objective as it is essential for the EU defence industries to maintain and further develop their design expertise and competence in the most advanced technologies. If this does not happen, most of the national European markets will remain open to US manufacturers, while the US market will remain closed, except for a few European-owned but US-based companies.

Greater credibility in this area could be achieved by consolidating national defence markets and exploiting the potential of the combined EU defence procurement budget (national and EU level). This process would create greater negotiating capital for the purpose of working towards enhanced reciprocity and achieving a more level playing field for European companies seeking access to US markets.

Further work is needed on the some these aspects. The Commission will revert to this at a later stage.

On the question of ethics in arms trade, the Council adopted in 1998 the EU code of conduct on arms exports. This Code of Conduct is a politically binding instrument that seeks to create “high common standards” for Member States to use when making arms export decisions and to increase transparency on conventional arms exports. It also has a specific operative mechanism designed to discourage individual Member States from undercutting sales denied by other EU states. A common list of military goods to which the Code applies has been agreed and serves as a guideline; Member States are free to use their own lists.

A first step towards a practical solution to streamlining export decisions regarding the products of multinational companies has been made by the six signatory nations of the Letter of Intent (LoI). The ideas developed there should serve as a basis for future EU rules. In particular, a decision to export outside the European Union should take account of the need for prior consultation with the Member States involved in authorisations while recognising the political responsibility of the final exporting state.

## 5. Conclusion

This Communication is intended as a further contribution to greater efficiency in the defence equipment industry, which is both an objective in itself and an important challenge if the Union is to develop a successful ESDP. The Commission proposes to:

- provide the necessary financial resources to ensure that the European Standardisation Handbook is ready by 2004 and then propose appropriate complementary measures to ensure the upkeep of this Handbook and its use;
- launch a monitoring activity on defence-related industries using data available in EUROSTAT and in the European Statistical System framework; as well as other relevant sources of information, while respecting existing rules of confidentiality.
- launch an impact assessment study in 2003 and, depending on its results, start elaborating at the end of 2004 the appropriate legal instrument to facilitate intra-Community transfer of defence equipment.
- continue its reflection the application of competition rules in the defence sector taking due account of the specificities of this field and the provisions of Art. 296 TEC.
- initiate a reflection on how to optimise defence procurement at national and EU levels. Given the important Court judgements in recent years, especially in helping to define the scope of Art. 296, the Commission will issue an Interpretative Communication by the end of 2003 on the implications of these judgements. In parallel, it will work on a Green Paper, which might be issued in 2004 as a basis for discussion with stakeholders.
- bring up, in the relevant Council working bodies, the issue of the Commission's involvement in export controls regimes.
- launch a preparatory action for advanced research in the field of global security with a view to implementing with the Member States and industry specific practical aspects that would be useful for carrying out Petersberg tasks in particular;
- to pursue work on a possible EU Defence Equipment Framework overseen by an Agency (or Agencies). This framework will pull together national initiatives – especially in collaborative programmes in Research and development, and in off-the-shelf procurement. It will encourage more Member States to join such programmes and it will enable the EU to draw, where appropriate, on Community mechanisms and instruments.

1. COM(96)10 and COM(97)583.

2 Final report of working group 8 on Defence: CONV461/02 dated 16 December 2002.

3. Regardless of the increase in the US defence budget from 2003 totalling some 100 billion \$ over a three year period.

4. Cf. European Parliament Resolution of 10 April 2002.

5. For the purpose of this Communication synonymous with defence equipment policy.

6. The Letter of Intent and its Framework Agreement include six countries namely: France, Germany, Italy, Spain, Sweden, and the United Kingdom. Its aims at facilitating the industrial restructuring process.

7. The OCCAr includes four countries, namely: France, Germany, Italy, and the United Kingdom. This international organisation aims at improving the management of co-operative programs.

8. A Council Regulation on the basis of Art. 26 TEC was adopted in January 2003 suspending import duties on certain weapons and military equipment OJ n° L25 of 30.1.2003, p. 1.

9. Final report of Working Group VIII - Defence of 16 December 2002; CONV 461/02

10. COM (2002) 714 on Industrial Policy in an Enlarged Europe dated 11 December 2002.

11. TEC Article 296 :

1. The provisions of this Treaty shall not preclude the application of the following rules:

(a) no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security;

(b) any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the common market regarding products which are not intended for specifically military purposes.

2. The Council may, acting unanimously on a proposal from the Commission, make changes to the list, which it drew up on 15 April 1958, of the products to which the provisions of paragraph 1(b) apply.

12. TEU Article 17

1. The common foreign and security policy shall include all questions relating to the security of the Union, including the progressive framing of a common defence policy, which might lead to a common defence, should the European Council so decide. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

The policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework.

The progressive framing of a common defence policy will be supported, as Member States consider appropriate, by co-operation between them in the field of armaments.

2. Questions referred to in this Article shall include humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking.

3. Decisions having defence implications dealt with under this Article shall be taken without prejudice to the policies and obligations referred to in paragraph 1, second subparagraph.

4. The provisions of this Article shall not prevent the development of closer co-operation between two or more Member States on a bilateral level, in the framework of the Western European Union (WEU) and NATO, provided such co-operation does not run counter to or impede that provided for in this title.

5. With a view to furthering the objectives of this Article, the provisions of this Article will be reviewed in accordance with Article 48.

13. These were already addressed in the Commission's 1997 Communication on armaments which findings and recommendations are still valid.

14. Their Defence Ministers have already approved a set of principles laid down in the Coherent Policy Document (CPD) in 1990 and in an updated CPD in 1999 aimed at making their armaments activities WEAG-wide.

15. The WEAO has 19 members (European members of NATO): Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Luxembourg, the Netherlands, Norway, Poland, Portugal, Spain, Sweden, Turkey, United Kingdom. The Netherlands took over the chair on 1 January 2003 for two years.

16. COM(2002) 499 final.

17. Definition taken from EC regulation n° 1334/2000 of June 22, 2000.

18. The Australia Group controls exports and transshipments that could result in proliferation of chemical and biological weapons.

The Missile Technology Control Regime aims at preventing proliferation of unmanned delivery systems for weapons of mass destruction by controlling exports of missiles and related technologies.

The Nuclear Suppliers' Group controls transfers of nuclear-related dual-use equipment, material and technology in order to prevent civilian nuclear trade from contributing to nuclear weapons acquisition.

The Wassenaar Arrangement controls transfers of conventional weapons and sensitive dual-use goods and technologies, primarily electronic products defined widely.




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The work of the Convention on the Future of Europe and the final report of its working group on defence have illustrated that armaments might well become one of the key issues on the agenda of the next Intergovernmental Conference (IGC).

There are indeed good reasons to use the EU as a framework for action in this field. On the demand side, the growing dilemma posed by rising costs and budget constraints in Europe makes more and better cooperation indispensable. On the supply side, an increasingly trans-national defence industry needs harmonised rules and regulations to organise its work in a competitive way. The EU offers a broad range of instruments both to achieve greater cost-effectiveness and to set up a common regulatory framework.

Whether member states will actually use the IGC as an occasion to bring the armaments sector into the EU and, if so, what the solution will look like, are still open questions. However, the debate is open and promises to be an interesting one.

The purpose of this *Chaillot Paper* is to provide practitioners, experts and policy-makers with necessary background information. As a special issue of our 'European defence – core documents' series, it presents 11 key documents on European armaments cooperation. Most of them are legally, or at least politically binding instruments, others are declaratory in nature, but all of them are essential references for an informed discussion of the issue.

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