

**IMPLEMENTING ARRANGEMENT PURSUANT TO PARTS 6 AND 8 OF
THE FRAMEWORK AGREEMENT DATED 27TH JULY 2000**

between

THE MINISTRY OF DEFENCE OF THE FRENCH REPUBLIC

and

THE FEDERAL MINISTRY OF DEFENCE OF THE FEDERAL REPUBLIC OF
GERMANY

and

THE MINISTRY OF DEFENCE OF THE ITALIAN REPUBLIC

and

THE MINISTRY OF DEFENCE OF THE KINGDOM OF SPAIN

and

THE GOVERNMENT OF THE KINGDOM OF SWEDEN REPRESENTED BY THE
MINISTRY OF DEFENCE

and

THE MINISTRY OF DEFENCE OF THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND

concerning

**THE TREATMENT OF TECHNICAL INFORMATION ARISING FROM
CONTRACTS FOR RESEARCH**

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INTRODUCTION

- A. Recognising Article 59 of the Framework Agreement between the French Republic, the Federal Republic of Germany, the Italian Republic, the Kingdom of Spain, the Kingdom of Sweden, and the United Kingdom of Great Britain and Northern Ireland concerning Measures to Facilitate the Restructuring and Operation of the European Defence Industry signed at Farnborough on 27 July 2000 (hereinafter referred to as the "Framework Agreement"), the Ministry of Defence of the French Republic, the Federal Ministry of Defence of the Federal Republic of Germany, the Ministry of Defence of the Italian Republic, the Ministry of Defence of the Kingdom of Spain, the Government of the Kingdom of Sweden represented by the Ministry of Defence, and the Ministry of Defence of the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as "Participants") have concluded this Implementing Arrangement as an international instrument as directed by Article 59 of the Framework Agreement.
- B. Noting Article 36 of the Framework Agreement and the aim of European defence industry restructuring, the Participants, through this Implementing Arrangement are adopting measures to encourage the flow of research information, especially from contracts for research let on behalf of the Participants, to the Participants and to industry established in the territory of the Participants to encourage awareness and mutual reliance on defence research programmes. Such awareness and mutual reliance should avoid duplication of effort and resources by government and industry and eventually lead to restructuring by industry.
- C. Noting Articles 39 and 40 of the Framework Agreement and the aim of European defence industry restructuring, the Participants, through this Implementing Arrangement, are adopting measures to simplify the transfer of Technical Information in the Participants' territories by reducing intellectual property related barriers.
- D. Noting Article 42 of the Framework Agreement, the Participants, through this Implementing Arrangement, are adopting measures to ensure that their practices relating to the treatment of Technical Information meet these objectives in a harmonised way.
- E. Noting Article 44 and Part 8 of the Framework Agreement, the Participants, through this Implementing Arrangement are adopting measures to protect commercially sensitive information of both a technical and non-technical nature supplied in respect of contracts for research.

SECTION 1 – SCOPE

- (1) The scope of this Implementing Arrangement extends to Technical Information and intellectual property matters arising from national defence contracts for research. Implementation will have regard to the Framework Agreement including its Preamble.
- (2) The scope of this Implementing Arrangement does not extend to include contracts relating to the design or development of systems, subsystems or components.
- (3) The principles in this Implementing Arrangement may be subject to negotiation of specific provisions:

- (a) in the case of explicit and formalised co-funded contracts, or
- (b) where the contractor can demonstrate that the exercise of rights described in this Implementing Arrangement would cause him significant commercial harm;

provided that such non-standard provisions are not in contravention of Article 8 of the Framework Agreement relating to the reconstitution of a national Key Strategic Activity.

- (4) For co-operative programmes between any of the Participants, contracts relating to research will, as far as possible, take into account the principles of this Implementing Arrangement.
- (5) The Participants will also consider applying the principles of subsection 1(3) to arrangements to be put in place with international organisations established to place contracts for co-operative research programmes on behalf of all or some of the Participants.
- (6) To avoid doubt, and except as under Section 7(2), Participants recognise that any matter concerning liabilities arising from a Contracting Participant's use of Research Results is not the subject of this Implementing Arrangement.

SECTION 2 – COMMON DEFINITIONS

"Background Technical Information" means Technical Information needed to achieve the objectives of the contract concerned, but which was generated otherwise than in the performance of the contract.

"Commercial Item" means anything which:

- (a) has been sold or licensed in the commercial (civil or military) market;
- (b) has not been sold or licensed, but has been offered for sale or licence in the commercial (civil or military) market;
- (c) is not yet available in the commercial (civil or military) market, but will be available for commercial delivery in a reasonable period of time; or
- (d) is described in definitions (a), (b) or (c) above and would require only minor modification in order to meet the requirements of the Contracting Participant.

"Contracting Participant" means a Participant who is placing a contract or on behalf of whom a contract is placed.

"Contracting Participant Purposes" means Government Purposes or if required by law, regulation or national practice Defence Purposes of a Contracting Participant.

"Defence Purposes" means the use by or for the armed forces, or the security or intelligence forces of a Contracting Participant in any part of the world and includes but is not limited to study, evaluation, assessment, research, design, development, manufacture, improvement, modification, maintenance, repair, refurbishment, and product acceptance and certification, operation, training, disposal and other post design services and product deployment. This

includes the sale, loan or transfer by a Contracting Participant of obsolete or surplus equipment and associated material solely for the support of that equipment, but does not include any other sale, loan or transfer.

"Existing Implementing Arrangement" means The Implementing Arrangement dated 16 April 2004 entered into by the Participants and relating to the Treatment of Technical Information.

"Foreground Technical Information" means Technical Information that is generated in the performance of a contract.

"Government Purposes" means use by or for any governmental organisation or an administration of a government.

"IPNR" means Intellectual Property National Representative appointed in accordance with Section 11 of the Existing Implementing Arrangement.

"Implementation Date" means 12 months from the effective date of this Implementing Arrangement.

"Key Strategic Activity" means certain limited areas of technological capability considered necessary by the Participants for the essential interests of their security.

"Research" means any work to improve scientific or technical knowledge, covering

- Level 1: basic principles of science and technology, including observation and reporting;
- Level 2: technology concepts and application formulation;
- Level 3: analytical and experimental critical function and/or characteristic proof-of-concept;
- Level 4: technology component and/or basic technology subsystem validation in laboratory environment;
- Level 5: technology component and/or basic subsystem validation in a relevant environment.

"Research", in this context, does not cover the design of system or subsystems or components or the building and testing of prototype equipment in relevant operational environments. Work at levels 4 and 5 occurring in a contract concerned predominately with development is excluded from this Implementing Arrangement and covered by the Existing Implementing Arrangement.

"Research Results" means Technical Information including, among others:

- a) data and information resulting from studies, analyses or tests that are conducted in the performance of work under a research contract;
- b) a requirement document or specification which is required to be delivered under a research contract;
- c) any other item which is required to be delivered under a research contract, such as a mathematical model, algorithm or software program,

containing Foreground Technical Information and that Background Technical Information necessary for the understanding and use of the Foreground Technical Information by a person of competence in the relevant field.

By way of clarification, "Research Results" does not include Background Technical Information relating to contractors' specific products, materials and processes extant at the time the contract is let.

"Technical Information" has the meaning ascribed by the Framework Agreement.

SECTION 3 – IMPLEMENTATION

- (1) Participants will achieve compliance with this Implementing Arrangement by the Implementation Date. Except as in subsection 4(1), this Implementing Arrangement will not apply in respect of Technical Information that arises from contracts already let at the Implementation Date.
- (2) The provisions of this Implementing Arrangement are all subject to national laws and regulations relating to security and export control, and will not prevent the use of the Research Results for Government Purposes where this is in accordance with national practices.
- (3) Any implementation of this Implementing Arrangement through a contract will always be subject to the existing rights of other parties who are not subject to the contract.

SECTION 4 – GENERAL ARRANGEMENTS TO PROMOTE INDUSTRY RESTRUCTURING UNDER PART 6 OF THE FRAMEWORK AGREEMENT

- (1) To promote industrial restructuring Participants will waive restrictions on contractors regarding disclosure or use of contractor owned Foreground Technical Information. Subject to Article 41 of the Framework Agreement, a waiver of such restrictions may be made without prejudice to any levy or royalty arrangements.
- (2) Subsection 4(1) applies in respect of relevant Technical Information arising from research contracts past, present and future.

SECTION 5 – HARMONISATION OF CONTRACT CONDITIONS UNDER ARTICLE 42 OF THE FRAMEWORK AGREEMENT – GENERAL PRINCIPLES

- (1) Without prejudice to Article 38(3) of the Framework Agreement and subsection 5(2) below:
 - (a) ownership of Foreground Technical Information will vest in contractors generating that Foreground Technical Information. The Contracting Participants will acquire the rights envisaged by Article 38(1) of the Framework Agreement, and with regard to such Foreground Technical Information the exercise of the rights will be free of charge;

- (b) in placing contracts, a Participant will not acquire ownership of Background Technical Information.
- (2) By exception to the general principles outlined in Section 5(1), ownership of the intellectual property in the Foreground Technical Information may vest in a Contracting Participant when necessary, for example:
- (a) when the contract concerned is to provide:
 - (i) Research Results that are central to the operation of a Contracting Participant or to the development of policy; or
 - (ii) Research Results that are intended to be openly published or released by the Contracting Participant; or
 - (iii) Research Results of a highly sensitive nature from a national security point of view; or
 - (b) when Participant's ownership of intellectual property in the overall research programme is necessary to avoid fragmented ownership and to ensure adequate exploitation.

Except in the case of (2)(a)(iii), the contract concerned will not normally preclude the use of the Research Results by the contractor concerned.

- (3) A Contracting Participant may provide that where a contractor seeks a patent or like protection, or a registered design in respect of Foreground Technical Information arising as a result of a contract or its solicitation, the Contracting Participant will have an irrevocable, non-exclusive right, free of charge, to use or have used, in any part of the world, the invention the subject of the patent or like protection, or the registered design for its Contracting Participant Purposes. Participants may take reasonable steps to ensure notification and recording of such rights.
- (4) As appropriate, Contracting Participants may require prompt notification by contractors of patents or like protection or registered designs, together with any application therefor, owned or controlled by the contractor that have not arisen from a contract but are necessarily used in its execution or in the use of the Research Results.

SECTION 6 -USE AND DISCLOSURE OF TECHNICAL INFORMATION

- (1) Without prejudice to Section 5(2), a Contracting Participant will secure an irrevocable, non-exclusive right, free of charge, to disclose, copy, modify, use or have used the Research Results, whether modified or not, for its own Contracting Participant Purposes. To avoid doubt, Background Technical Information cannot in any event be disclosed or used by Contracting Participants otherwise than as part of the Research Results.
- (2) Without prejudice to the generality of Section 6(1), Contracting Participants will also secure the following rights:

- (a) to disclose Research Results to their suppliers and potential suppliers (including sub-contractors) for information purposes;
 - (b) to disclose and permit use of the Research Results for tendering and /or performing any contract let for Contracting Participant Purposes;
 - (c) to disclose Research Results for information to and for use by other Participants with whom the Participant has (at the time of the contract or at any time in the future) co-operative defence research programmes or defence information programmes to the extent required by the programme;
 - (d) to disclose for use to the extent set out in a relevant co-operative defence agreement or arrangement, Research Results to any Participant or international organisation established by two or more Participants, and, in confidence, to allow the onward release to, and use by a contractor or agent. Any use will be in accordance with, and solely for the purposes of the co-operative defence agreement or arrangement. A Participant should inform industry of the proposed disclosure and invite comments, but the Participant's decision will be final.
- (3) Contracting Participants may make reasonable arrangements for:
- (a) the contractor to retain the Research Results after completion of the contract;
 - (b) delivery of the Research Results, including delivery after the end of the contract;
 - (c) provision by the contractor of assistance in understanding the Research Results.
- (4) Participants are not required under this Implementing Arrangement to seek delivery of Background Technical Information relating to Commercial Items that is not part of the Research Results.
- (5) The provisions of this Section represent the requirements in research contracts to meet the aims of the Framework Agreement. The provisions do not preclude individual Participants seeking wider rights to use Technical Information:
- (a) for disclosure to non-participants and international organisations, or
 - (b) to ensure the possibility of developing and using Research Results in future;

to reflect national policies and contract requirements. Contracting Participants may seek additional Background Technical Information identified or agreed to in a contract, for further stages (for example development contracts) on fair and reasonable terms.

SECTION 7 – MEASURES UNDER ARTICLE 44 AND PART 8 OF THE FRAMEWORK AGREEMENT – PROTECTION AND MARKING OF INFORMATION

- (1) Insofar as it is of a commercially sensitive nature, information provided by industry will be treated by a Contracting Participant as if supplied commercial-in-confidence and will not be disclosed outside the Contracting Participant unless permitted by contractual provisions. Any permitted disclosure will be on terms that maintain the

confidentiality of the information. Any permitted disclosure will be limited, as far as possible, to that part of the information relevant to the purpose.

- (2) Contracts and pre-contractual solicitations will recommend that all information to be provided to a Contracting Participant be marked by the bidder or contractor with an appropriate legend regarding further disclosure and the right of use of the information.

SECTION 8 – MANAGEMENT (ORGANISATION, RESPONSIBILITIES AND PROCEDURES)

- (1) The management arrangements in the Existing Implementing Arrangement apply to this Implementing Arrangement. A copy of the current Annex A of the Existing Implementing Arrangement is annexed to this Implementing Arrangement for information, but does not form part of this Implementing Arrangement.

SECTION 9 – SETTLEMENT OF DISPUTES

- (1) Any dispute regarding the interpretation or application of this Implementing Arrangement will be resolved in accordance with Article 60 of the Framework Agreement.
- (2) In the case of differences of interpretation between the provisions of the Framework Agreement and this Implementing Arrangement, the Framework Agreement will govern.
- (3) For the avoidance of doubt, where they appear in this Implementing Arrangement, section headings should not be used to interpret the meaning of the text.

SECTION 10 – ADMISSION OF NEW PARTICIPANTS

- (1) No other nation may become a Participant to this Implementing Arrangement without first acceding to the Framework Agreement under Article 56.

SECTION 11 – AMENDMENT, TERMINATION, WITHDRAWAL, EFFECTIVE DATE AND DURATION

- (1) This Implementing Arrangement may be amended at any time upon the written approval of all of the Participants. These amendments will come into effect fourteen (14) days from the date of the receipt of the amendment, having been approved by all the Participants, by the nominated representative of the United Kingdom of Great Britain and Northern Ireland.
- (2) Except as provided in subsection 11(1), the text of any proposed amendment will be submitted in writing to the IPNRs, who will consult to provide a recommendation to the Executive Committee. The amendment and recommendation from the IPNRs will be circulated to the Executive Committee for consideration. This Implementing Arrangement may then be amended upon unanimous written approval of the Executive Committee, each member of which will be taken to have obtained the

appropriate national authorisation. The amendment will enter into effect on the thirtieth (30) day following the written approval of the Executive Committee.

- (3) The Participants may record their understandings on further measures in Annexes to this Implementing Arrangement. In the case of a conflict between the provisions of this Implementing Arrangement and an Annex, this Implementing Arrangement will govern.

Termination and Withdrawal

- (4) In the event of a unanimous decision by the Participants to terminate this Implementing Arrangement, they will consult to ensure its prompt termination on the most equitable terms. They will jointly determine the settlement required and the satisfactory management of the consequences of termination. The Implementing Arrangement will then terminate on a date to be approved by the Participants in writing.
- (5) Withdrawal from the Framework Agreement itself will result in withdrawal from this Implementing Arrangement. If a Participant considers it necessary for compelling national reasons, to withdraw from this Implementing Arrangement, then the withdrawing Participant will examine the consequences of any such withdrawal with the other Participants. If on completion of these consultations the withdrawing Participant still wishes to withdraw, then it will simultaneously notify its wish to withdraw from the Implementing Arrangement and the Framework Agreement to the Depository. The procedures set out in Article 57.2 apply to withdrawal from the Framework Agreement. The Depository of the Framework Agreement will notify the Participants of the date of withdrawal from the Implementing Arrangement, which will be the same as the date of withdrawal from the Framework Agreement. The withdrawing Participant will continue its participation until its effective date of withdrawal.

Effective Date and Duration

- (6) This Implementing Arrangement will enter into force on the date of the signature of the last Participant to sign. Unless the Participants decide to terminate the Implementing Arrangement earlier, it will remain in effect for as long as the Framework Agreement continues in force.
- (7) Neither termination nor withdrawal will affect obligations already undertaken and the rights and prerogatives previously acquired by the Participants under the provision of this Implementing Arrangement and/or any provision in force binding the Participants. The respective rights and responsibilities of the Participants regarding Security, Protection of Classified Information and Visits, Claims and Liabilities, Settlement of Disputes, and Termination and Withdrawal will continue irrespective of the termination of this Implementing Arrangement or any Participant's withdrawal.

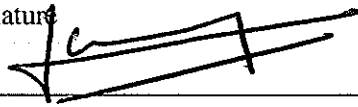
SECTION 12 – SIGNATURE

The foregoing represents the understandings of the Ministry of Defence of the French Republic, the Federal Ministry of Defence of the Federal Republic of Germany, the Ministry of Defence of the Italian Republic, the Ministry of Defence of the Kingdom of Spain, the Government the Kingdom of Sweden represented by the Ministry of Defence, and the Ministry of Defence of the United Kingdom of Great Britain and Northern Ireland on matters referred to herein.

Signed in English, French, German, Italian, Spanish and Swedish, each text being equally valid.

For the Ministry of Defence of the French Republic

Signature



Name

COLLET-BILLON Laurent

Title

Délegué général pour l'armement

Location

Bagnoux

Date

21-07-2011

For the Federal Ministry of Defence of the Federal Republic of Germany

Signature



Name

Detlef Seifhausen

Title

Ministerialdirektor

Location

Bonn

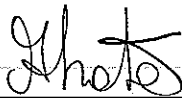
Date

25. März 2011

25/03/2011

For the Ministry of Defence of the Republic of Italy

Signature



Name

GEN.C.A. BIAGIO ABRATE

Title

SEGRETARIO GENERALE DELLA DIFESA E DIRETTORE NAZIONALE DEGLI ARMAMENTI

Location

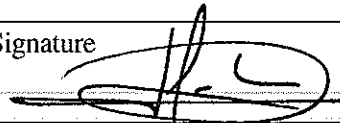
ROMA

Date

3/11/2010

For the Ministry of Defence of the Kingdom of Spain

Signature



Name

D. JOSÉ MANUEL GARCÍA SIERO

Title

DIRECTOR GENERAL DE ARMAMENTO Y MATERIAL

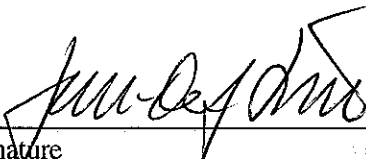
Location

SP MOD MADRID

Date

24/09/2010

For the Government of the Kingdom of Sweden Represented by the Ministry of Defence


Signature

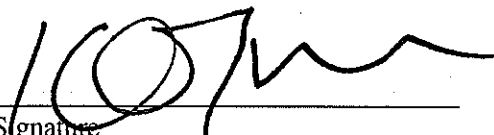
JAN-OLOF LIND
Name

DIRECTOR GENERAL
Title

Stockholm
Location

24/JUN/2010
Date

For the Ministry of Defence of the United Kingdom of Great Britain and Northern Ireland


Signature

General Sir Kevin O'Donoghue KCB CBE
Name

Chief of Defence Material
Title

MOD ABBEYWOOD BRISTOL UK
Location

17-June 2010
Date

Annex A

TREATMENT OF TECHNICAL INFORMATION - REPRESENTATIVES AND POINTS OF CONTACT

The Participants have nominated the following national representatives who will be IPNRs as set out in Section 11 of the Implementing Arrangement. This Annex will be up-dated by the nominated representative of the Ministry of Defence of the United Kingdom of Great Britain and Northern Ireland.

Nominated Representatives

For the Ministry of Defence of the French Republic, the IPNR is as follows:

Phillippe Le Louarn
DGA/DO/SCA
7 rue des Mathurins. 92 221 Bagneux Cedex.
00470 ARMEES

Tel: 0033 1 46 19 54 22

Fax: 0033 1 46 19 83 99

For the Federal Ministry of Defence of the Federal Republic of Germany, the IPNR is as follows:

Mechthild Kürten,
BMVg - Rue II 2,
Bundesministerium der Verteidigung
Postfach 13 28
53003 Bonn

Tel: 0049 228 12 7907

Fax: 0049 228 12 1588

For the Ministry of Defence of the Republic of Italy, the IPNR is as follows:

Vincenzo Sanfilippo
Ministero della Difesa
Segretariato Generale della Difesa e Direzione Nazionale degli Armamenti
V Reparto – Ricerca Tecnologica
Servizio Brevetti e Proprietà Intellettuale
presso il Ministero dello Sviluppo Economico
Via Molise 2
00187 ROMA
Italy

Tel: 0039 06 4735 3651

Fax: 0039 06 4735 4213

For the Ministry of Defence of the United Kingdom, the IPNR is as follows:

Thomas Phillips
Defence Intellectual Property Rights
Ministry of Defence
Poplar 2a, Abbey Wood #2218
Bristol BS34 8JH

Tel: 0044 30 679 32876
Fax: 0044 117 91 32929

For the Ministry of Defence of the Kingdom of Spain, the IPNR is as follows:

Carlos Avanzini González- Llanos
Ministerio de Defensa
Dirección General de Armamento y Material.
Paseo de la Castellana 109
28071 Madrid

Tel: 0034 91 395 5209
Fax:0034 91 395 5161

For the Government of Sweden, the IPNR is as follows:

Carl-Mikael Schlyter
Försvarets materielverk
SE-115 88 Stockholm
Sweden

Tel: 0046 8 782 68 99
Fax: 0046 8 782 43 87