Agreement on defence export controls

The States Parties to this Agreement, hereinafter referred to as the 'Contracting Parties',

Recalling their European and international commitments in the field of the control of exports of military technology and equipment and the authorisation of exports, in particular the Arms Trade Treaty of 2 April 2013 and, for the Member States of the European Union, Council Common Position 2008/944/CFSP of 8 December 2008, as amended by Council Decision 2019/1560/CSFP of 16 September 2019, defining common rules governing control of exports of military technology and equipment,

Recognising their respective competence to authorise the transfer or export, from their territory, of defence-related products from intergovernmental programmes or developed by their industries,

Recognising that each Contracting Party shall carry out the national control of its exports of defence-related products on the basis of its national laws and regulations, in particular the national political principles regarding the control of exports,

Recognising the importance of having a reliable agenda with regard to transfers and exports in order to ensure the economic and political success of their industrial and intergovernmental cooperation,

Confirming their desire to reduce the administrative burden on the control of exports of defence-related products in order to ensure the success of their joint programmes and to facilitate industrial partnerships between the Contracting Parties,

Referring to various cooperation agreements and bilateral security agreements between the Contracting Parties,

Have agreed as follows:

Article 1

Intergovernmental programmes and their subsystems

(1) If two or more Contracting Parties participate in the same intergovernmental programmes, the principles set out in this article shall apply to those intergovernmental programmes and their subsystems, between the Contracting Parties concerned.

(2) The Contracting Parties shall inform the other Contracting Parties concerned, well in advance of the start of formal negotiations, of the possibility of sales to third parties, and shall transfer the necessary information for their analysis. That transfer of information shall include discussions concerning the conditions, from the point of view of the Contracting Party carrying out the transfer or export, for carrying out that transaction in compliance with the European and international commitments of each of the Contracting Parties concerned.

(3) A Contracting Party concerned shall not oppose a transfer or export to a third party that is desired by another Contracting Party apart from in exceptional situations in which that transfer or export compromises its direct interests or its national security.

(4) If a Contracting Party concerned intends to oppose a transfer or export, it shall inform the other Contracting Parties concerned as soon as possible and within a period of a maximum of two months from the date on which it is informed of the proposed transfer or export. Those Contracting Parties shall organise high-level consultations immediately in order to share their analyses and find appropriate solutions. The Contracting Party which opposes a transfer or export shall make every effort to propose alternative solutions.

Article 2

Defence-related products from industrial cooperation

(1) A Contracting Party shall not oppose the export or transfer by another Contracting Party to a third party of an armament system of a manufacturer of the other Contracting Party integrating defence-related products developed on its territory in the context of increased integration of their defence industries, apart from in exceptional situations in which that transfer or export compromises its direct interests or its national security.

(2) If a Contracting Party intends to oppose a transfer or export, it shall inform the other Contracting Party concerned as soon as possible and within a period of a maximum of two months from the date on which it is informed of the proposed transfer or export. Those Contracting Parties shall organise high-level consultations immediately in order to share their analyses and find appropriate solutions.

(3) The detailed rules for the application of this article are laid down in Annex 1 to this Agreement, which forms an integral part of it.

Article 3

'*De minimis*' principle

(1) Defence-related products developed by a manufacturer of one of the Contracting Parties which fall outside the scope of Articles 1 and 2 of this Agreement, and which are intended to be integrated into an armament system of a manufacturer of another Contracting Party (hereinafter referred to as 'products intended for integration') are governed by the '*de minimis*' principle.

(2) Under the '*de minimis*' principle, referred to in the preceding paragraph, where the proportion of products intended for integration by manufacturers of a Contracting Party into a final system transferred or exported by another Contracting Party outside the territory of the Contracting Parties remains below a percentage decided on in advance by mutual agreement between all Contracting Parties, the requested Contracting Party shall issue the corresponding export, transfer or re-export authorisations without delay, apart from in exceptional situations in which that transfer, export or re-export compromises its direct interests or its national security.

(3) The detailed rules for the application of this article are laid down in Annexes 2 and 3 to this Agreement, which form an integral part of it.

Article 4

Permanent Body

(1) The Contracting Parties shall create a permanent body to consult on all general issues governed by this Agreement in order to resolve differences in respect of operational implementation.

(2) The Contracting Parties shall designate national contact points and share that information with each other.

(3) The Contracting Parties concerned shall establish *ad hoc* bodies for the consultations referred to in Article 1(4) and Article 2(2) of and Annexes 1 and 2 to this Agreement, or for any other specific issue governed by this Agreement which does not concern all Contracting Parties.

Article 5

Exchange of classified information

All classified or protected information communicated or generated under this Agreement shall be stored, handled, transmitted and retained in accordance with the bilateral security agreement applicable between the Contracting Parties concerned. In the absence of a bilateral security agreement applicable between the Contracting Parties concerned, classified information shall not be exchanged or generated.

Article 6

Final provisions

(1) This Agreement shall apply provisionally from the date of its signature. It shall enter into force on the date on which the last signatory State submits to the Government of the French Republic, designated as the Depositary, notification that its domestic procedures required for entry into force have been completed.

(2) If this Agreement has not entered into force within a period of two years after its signature in accordance with paragraph 1 of this article, the Contracting Parties which notified the Depositary that their domestic procedures required for its entry into force have been completed may, by joint and unanimous agreement, allow other Member States of the European Union (EU) or the European Free Trade Association (EFTA) or parties to the Framework Agreement concerning measures to facilitate the restructuring and operation of the European defence industry to accede to the Agreement. In that case, this Agreement shall enter into force on the date on which the first State authorised to accede to it in accordance with the first sentence of this paragraph submits to the Depositary notification that its domestic procedures required for entry into force have been

completed. After its entry into force, the Agreement shall continue to apply provisionally to the signatory State which has not notified that its domestic procedures have been completed where it has not informed the other Contracting Parties of its intention not to become a Party to the Agreement.

(3) After the entry into force of this Agreement, the Contracting Parties which notified the Depositary that their domestic procedures required for entry into force have been completed may, by unanimous decision, authorise other Member States of the European Union (EU) or the European Free Trade Association (EFTA) or parties to the Framework Agreement concerning measures to facilitate the restructuring and operation of the European defence industry to accede to this Agreement.

(4) For any new Contracting Party, the Agreement shall enter into force on the date of deposit of its instrument of accession with the Depositary.

(5) Any Contracting Party may at any time denounce this Agreement by giving six months' written notice to the other Contracting Parties.

(6) The Contracting Party which has denounced this Agreement shall continue to fulfil its commitments and obligations set out therein regarding the transfer or export of defence-related products for which the corresponding transfer or export authorisation has been requested before that denunciation becomes effective. The Contracting Party which has denounced this Agreement and the other Contracting Parties shall hold consultations within the permanent body created in accordance with Article 4(1) for as long as they deem necessary in order to address the issues related to the denunciation.

(7) The original of this Agreement shall be deposited with the Depositary.

(8) The registration of this Agreement with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations shall be carried out by the Depositary immediately after its entry into force. The other Contracting Parties shall be informed of the registration and the United Nations registration number upon confirmation by the Secretariat.

Annex 1: Article 2 – Defence-related products from industrial cooperation

I. Definitions for the purposes of applying Article 2

For the purposes of this annex, the following definitions shall apply:

(1) 'Parties concerned' means the Contracting Parties which receive a request during the Project recognition phase (see scope below). During the subsequent phase of authorising export operations, that expression shall designate the Contracting Parties which have recognised a Project as eligible under Article 2.

(2) 'Export Operation' means a specific export or transfer operation to States other than the Parties concerned (hereinafter referred to as 'third countries of destination'), usually consisting of fulfilling obligations arising from a contract or order.

(3) 'Re-Exportation' means transfers between the Parties concerned which are subsequently exported or transferred to third countries of destination. That term shall also designate any subsequent export or transfer from one third country of destination to another.

(4) 'Project' means an industrial cooperation project between companies in the defence sector of the Parties concerned, which may subsequently lead to one or more Export Operations.

(5) 'Industrial Partners' means the companies of the Parties concerned participating in a Project.

(6) 'Armament system' means, in the context of Article 2, any item on the Common Military List of the European Union.

II. Scope – a two-stage process

In order to promote and support the increased integration of the defence industries of the Parties concerned, Article 2 introduces a two-stage process for the export licences required for a previously recognised industrial cooperation Project:

1. Process for the recognition of Projects

(1) A combined governmental recognition process is required before exporters can have recourse to the simplified authorisation procedures established under Article 2. All of the Parties concerned shall agree on whether or not a Project may be identified as an industrial cooperation Project in accordance with Article 2. The process for the recognition of Projects shall not take the place of the subsequent procedure for the authorisation of Export Operations.

(2) Each Project shall be analysed on a case-by-case basis. Projects must be in the interest of all Parties concerned and contribute to the integration of their respective defence industries. They must be characterised by an element of continued cooperation. Eligible Projects may be existing or new cooperation Projects.

(3) Companies which decide to engage in a Project and wish to benefit from the rules laid down in Article 2 are required to submit a joint description of their Project drawn up on the basis of jointly agreed elements.

(4) If all Parties concerned agree that the Project is entirely or partially eligible under Article 2, they shall inform the respective Industrial Partners on their territory. That notification shall also stipulate the exact scope and application of the recognition.

(5) Industrial Partners are required to notify their respective export control authorities of any change affecting the nature of the Project. If they are deemed significant by a Party concerned, changes shall be subject to a new analysis by all the Parties concerned in order to determine whether the Project is still eligible under Article 2.

2. Procedure for the authorisation of Export Operations

(1) Once a Project is recognised as eligible under Article 2, subsequent decisions regarding authorisation shall be taken in accordance with that article. Industrial Partners shall submit their corresponding licence applications to their national export control authorities with specific reference to Article 2 of the Agreement and their Project. If a Party concerned wishes to oppose the Re-Exportation or transfer by another Party concerned, Article 2(2) shall apply.

(2) The Export Operation examined in the context of licence applications must comply with the description of the Project recognised as eligible under Article 2.

(3) The scope of licence applications examined under Article 2 is as follows:

- **If the end-users of the final end products are known**: all transfers (including technology) between the Industrial Partners and subsequent deliveries to recipients involved in the production and development process and to the final end-users;
- **If the end-users were not known by the Industrial Partners at the time of the licence application or if the end-users have changed**: all decisions on the basis of Re-Exportation authorisation requirements or non-Re-exportation clauses, if these have not been waived beforehand.

(4) The decision to grant or refuse the licence for the export of the final product shall fall to the Party from whose territory that export is carried out, and shall not fall within the scope of Article 2.

(5) Licences shall be granted in accordance with the respective national regulations and practices. This includes national requirements relating to the presentation of end-use certificates, including national provisions concerning the requirements for Re-Exportation authorisation.

(6) The Parties concerned may exchange information on licence applications in connection with cooperation Projects, in accordance with national data protection rules.

Annex 2

Article 3 – '*De minimis*' principle

(1) The simplified authorisation procedures subject to the '*de minimis*' principle shall apply exclusively to products intended for integration, defined in Article 3(1) of this Agreement, which are on the Common Military List of the European Union, in the version in force, with the exception of products specified in Annex 3.

(2) The Contracting Parties shall apply the '*de minimis*' principle with a threshold of a single percentage set at 20 % of the total value of the final system which is exported or transferred outside the territory of the Contracting Parties. That total value shall not include maintenance activities, spare parts, training or repairs.

(3) The Contracting Parties shall review on a regular basis the implementation of the '*de minimis*' principle and the percentage threshold fixed in paragraph 2 above within the permanent body described in Article 4(1) and, in exceptional situations, at the request of one of the Contracting Parties.

(4) Where the national proportion of a Contracting Party's products intended for integration does not exceed the threshold fixed in paragraph 2 above, that Contracting Party shall issue the corresponding export, transfer or re-export authorisations without delay, apart from in exceptional situations in which that transfer, export or re-export compromises its direct interests or its national security.

(5) If the '*de minimis*' principle applies:

– the Contracting Party from whose territory the final system is transferred or exported outside the territory of the Contracting Parties has sole responsibility for assessing compliance with shared commitments taken at international level and within the framework of the European Union by each of the Contracting Parties concerned;

– no end-user certificate or non-Re-exportation certificate shall be requested to support the transfer licence between the Contracting Parties concerned. A certificate of integration of the product into the final system may be requested by the relevant Contracting Party.

(6) Maintenance activities, spare parts, training and repairs of products intended for integration which are exported or transferred under the '*de minimis*' principle shall be treated as applications for export or transfer authorisation benefiting from the '*de minimis*' principle.

(7) The proportion of products intended for integration originating from a Contracting Party in a final system that is exported or transferred is established as follows:

– the recipient company, if it wishes to benefit from the '*de minimis*' principle, shall notify its national export control authority and its suppliers of the corresponding proportions of the products intended for integration originating from each Contracting Party that have been integrated into the final system intended for export or transfer;

– the supplier company, if it wishes to benefit from the '*de minimis*' principle, shall notify its national export control authority of the corresponding proportion of products intended for integration which must be integrated into the final system intended for export or transfer;

– the final integrator shall establish the respective proportion of products originating from each Contracting Party concerned in the final system. To that end, it shall take into consideration all parts received through other Contracting Parties. The final integrator shall take into consideration for each of its direct suppliers representing over 2 % of the total final value the products which that supplier procured directly from a Contracting Party concerned.

(8) The national export control authority of a Contracting Party may at any point ask the national export control authority of another Contracting Party to confirm the information given by the recipient company.

Annex 3: Article 3 - Goods to which the "*de minimis*" principle shall not apply

CL1 Smooth-bore weapons with a calibre of less than 20 mm, other arms and automatic weapons with a calibre of 12.7 mm (calibre 0.50 inches) or less: 1. Machine guns; 2. Sub-machine guns; 3. Fully automatic rifles specially designed for military use.
CL2 Smooth-bore weapons with a calibre of 20 mm or more, other weapons or armament with a calibre greater than 12.7 mm (calibre 0.50 inches): 4. Guns; 5. Howitzers; 6. Cannons; 7. Mortars; 8. Anti-tank weapons; 9. Launchers of lethal projectiles; 10. Rifles; 11. Recoilless rifles; 12. Smooth-bore weapons.
CL3 Ammunition and items listed below: 13. Ammunition for weapons specified by CL1, CL2; 14. Separate propelling charges and projectiles for weapons specified by 5, 6 or 7; 15. Separate fuzes for weapons specified by 5, 6, 7 or 11.
CL4 Bombs, torpedoes, rockets, missiles, other explosive devices and charges and items listed below: 16. Bombs; 17. Torpedoes; 18. Grenades; 19. Rockets; 20. Mines; 21. Missiles; 22. Depth charges; 23. Demolition-charges and demolition-kits, specially designed for military use; 24. Fuzes for weapons specified in 16 to 20, 22, 23; 25. Warheads and homing seekers for weapons specified in 17 or 19; 26. Propulsion systems for weapons specified in 16 or 19; 27. Fuzes, homing seekers, warheads and propulsion systems for ground-targeting missiles.
CL5 Items listed below to be integrated into battle tanks: 28. Chassis specially designed for battle tanks; 29. Turrets specially designed for battle tanks.
CL6 Items listed below to be integrated into military manned aircraft: 30. Propulsion aero-engines; 31. Complete cells for combat aircrafts.