

Letter of Intent between 6 Defence Ministers on Measures to facilitate the Restructuring of the European Defence Industry

signed in London, 6 July 1998

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Introduction

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 Republic of Italy, the Minister of Defence of the Kingdom of Spain, the Minister of Defence of the Kingdom of Sweden and the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, hereinafter known as the "Participants";

Having a common interest in defence;

Recognising 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 Republic of Italy, of the Kingdom of Spain, and of the Government of 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 (a copy of which is attached at Annex A of this Letter of Intent) 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 Republic of Italy, 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 of Defence of the Kingdom of Sweden;

Have reached understanding on the intentions laid out in this Letter of Intent (LoI).

Section 1. Objectives and Principles

General

1.1 The Participants desire to establish a co-operative framework to facilitate the restructuring of European defence industry.

1.2 The aim of this Lol (Letter of Intent) is:

1.2.1 to indicate the areas in which the participants intend to find common solutions to the problems identified;

1.2.2 to that end, to define the principles, organisation and responsibilities, in order to negotiate appropriate follow-on arrangements and agreements, which could imply the amendment of national regulations where appropriate.

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Security of Supply

1.3 The Participants require assurance that the restructuring of European defence industry will not hinder the supply of Defence Articles and Defence Services necessary to discharge their military commitments. Moreover, industry will wish to be reassured that supplies will be maintained when rationalisation across national boundaries is achieved.

1.4 Consequently the Participants will accept mutual interdependence and the possibility of abandoning industrial capacity. To this end, they will examine solutions for achieving Security of Supply under the same conditions for each of the Participants. This will include obtaining commitments, some of which may be legally binding, from each of the Participants involved either in the constitution of a Transnational Defence Company, or in the jointly determined abandonment of activities by a company located within the territory of one Participant to the benefit of a company located within the territory of one or more of the other Participants.

1.5 Through these commitments, the Participant(s), on whose territory is located the Transnational Defence Company or the company which has benefited from the abandonment of certain activities by a company located on the territory of another Participant, undertake(s) in respect of the other Participant(s) involved:

1.5.1 not to hinder the supply to them in peace-time, times of crisis and in war. To that end, the control procedures for the transfer of armaments amongst the Participants should be simplified, with the aspiration gradually to reduce and, where appropriate, remove them in due course;

1.5.2 to ensure that the full or partial take-over of a defence company on their territory by any legal entity outside the Participants territory will not hinder the Security of Supply to, or any other legitimate national security interest of, the other Participants;

1.5.3 to co-ordinate with them in respect of strategic activities, assets and installations belonging to the Transnational Defence Company;

1.5.4 to take protective measures to enable the transfer of the Transnational Defence Company's activities assessed as strategic to at least one of the other Participants on a case-by-case basis.

Export Procedures

1.6 The restructuring of European defence industry should not hinder the ability of the Participants to export Defence Articles and Defence Services.

1.7 The Participants confirm their wish to maintain a defence industry as part of their industrial base and the ability to export Defence Articles and Defence Services. In view of the high sensitivity of defence exports, they will refer to the EU Code of Conduct on Arms Exports agreed to in the framework of the Common Foreign and Security Policy in order to seek greater transparency and efficiency in the export procedures for Defence Articles and Defence Services.

1.8 The Participants will reinforce their co-operation and promote convergence in the field of conventional arms exports. They will take the necessary measures to develop common rules about defence exports, including the harmonisation of their control policies (procedures, lists and authorisation levels), and examine the scope for establishing a standard procedure.

1.9 They will seek means of simplifying the circulation of Defence Articles and Defence Services between themselves, with limited exceptions, for their own use or for any subsequent re-export within the European Union, with the aspiration gradually to reduce and, where appropriate, remove control procedures for transfers between them in due course.

1.10 They will apply their existing national laws and regulations for defence exports to third parties in a spirit of co-operation and in a more efficient way.

1.11 Moreover, they will deal with the issue of recognising the political responsibility of the final exporter, taking into account the need for prior consultation with the Participants involved, within the ambit of the EU Code of Conduct on Arms Exports.

Security of Information

1.12 The Participants recognise the need to ensure that adequate security provisions for the protection of classified information are in force in a Transnational Defence Company without placing unnecessary restrictions on the movement of staff, information and material.

1.13 The Participants will decide the minimum amount of measures that are necessary to protect classified information. The national security arrangements for each Transnational Defence Company will be laid out in a security protocol between the relevant Designated Security Authorities and the Transnational Defence Company. In addition to this, the Participants will examine methods to enable:

1.13.1 classified information, held by a Transnational Defence Company, to be exchanged between appropriately cleared employees of different nationalities on a need to know basis;

1.13.2 national personnel clearances in respect of Transnational Defence Companies to be completed expeditiously and be accepted by the other Participant;

1.13.3 international visits procedures to be made more efficient.

To this end, the Participants will examine the possibility for harmonising and streamlining their regulations.

Research and Technology

1.14 The Participants are aware that Research and Technology are indispensable for maintaining an effective European defence industry and therefore recognise the need to use the limited resources available for defence-related Research and Technology in an efficient and effective manner.

1.15 The Participants recognise the work on Research and Technology that has been undertaken in other European fora. In the context of this Lol, they intend to establish arrangements, and to make use of work in existing fora, as appropriate, to:

1.15.1 harmonise research and development programmes and exchange information about national research activities with a view to setting common objectives for Research and Technology, avoiding unnecessary duplication of effort, major gaps in technology and technical capability, and maximising the employment of dual use technology;

1.15.2 initiate co-operation to follow on from research activity, in particular by undertaking technological developments with each other;

1.15.3 ensure the adequate funding, and efficient cost-sharing, of Research and Technology by the Participants involved, and allow access to the results to the Participants under fair and reasonable conditions.

Treatment of Technical Information

1.16 The Participants recognise that current restrictions on the disclosure and use of Technical Information could impair the efficient working of a Transnational Defence Company. In doing so the Participants recognise that Technical Information cannot be disclosed by the Participants without the authority of the owner.

1.17 For the purposes of facilitating the restructuring of the European defence industry, the Participants will, therefore, consider arrangements that will embody the following principles and objectives:

1.17.1 ownership of Technical Information will, as a general rule, vest in the generator of that Technical Information;

1.17.2 subject to the Participant having the right to authorise disclosure and use of Technical Information, the disclosure and use of that Technical Information will be considered favourably taking into account any legal constraints for the protection of that Technical Information.

1.17.3 subject to the rights of any third party, the Participants will facilitate the transfer of any relevant Technical Information;

1.17.4 the pre-existing rights of the Participants with regard to Technical Information held by Transnational Defence Companies will be adequately preserved;

1.17.5 arrangements will be considered to enable a Participant to reconstitute, in exceptional circumstances to be defined, an indigenous supply of a particular Defence Article or Defence Service to further protect Security of Supply.

1.18 The Participants will encourage the harmonisation of their laws, regulations and procedures for controlling disclosure and use of Technical Information in the field of defence.

Harmonisation of Military Requirements

1.19 The Participants intend to conduct an analysis of their military capabilities geared to the spectrum of missions of the armed forces that takes account of the different characteristics of those missions. Based on this analysis the Participants will seek to harmonise the military requirements of their armed forces.

1.19.1 Future force capabilities must reflect the challenges posed by possible operations (including peacekeeping and peace support operations), interoperability, and developments in technology. Proceeding from identified capabilities of common interest, the Participants should identify areas in which harmonisation is considered possible.

1.19.2 The Participants will identify projects at an early stage for co-operative research, development and procurement.

1.19.3 The Participants will examine the possibility of harmonising the basic procedures applicable to armaments projects (defence materiel acquisition cycle).

Legal Framework

1.20 The Participants have the firm intention to pursue the objectives of this Lol and to adopt, where appropriate, and in accordance with the timetable in section 2.5, specific arrangements to underpin the effective application of the principles laid out in this Lol.

1.21 does not represent a legally binding commitment between them under international or national law; and

1.21.2 involves no financial commitment on their behalf.

Section 2. Organisation and Timetable

2.1 The only permanent organisation envisaged is the Executive Committee. The Executive Committee will be composed of a high level representative of each Participant, who may be represented and assisted by additional experts, as necessary. Each member should act as a focal point in his country for the purposes of this Lol. The Participants intend that the Executive Committee will be responsible for:

2.1.1 co-ordinating the drafting of any arrangements and agreements pursuant to this Lol;

2.1.2 monitoring the effectiveness of the implementation of any international instrument established pursuant to this Lol;

2.1.3 establishing ad hoc Working Groups to carry out tasks pursuant to this Lol;

2.1.4 co-ordinating, reviewing and evaluating tasks undertaken by the Working Groups;

2.1.5 preparing periodic reports to the Participants, as necessary.

2.2 The Executive Committee will take its decisions by unanimous consent of its members. Where such consent cannot be reached, the matter in dispute will be referred to the Participants for resolution. Exceptionally, the Executive Committee may unanimously decide in advance that certain specific decisions may not require the unanimous consent of its members.

Working Groups

2.3 Working Groups, when established, will be responsible for providing policy advice to, or undertaking specific tasks for, the Executive Committee. Members, who may include representatives from each Participant's industries nominated by industry, will be appointed by the Executive Committee. The Executive Committee will determine the terms of reference for each Working Group.

Relationship with Other Organisations

2.4 The Executive Committee, and its Working Groups, will have due regard to any similar work being carried out in other fora, in order to avoid different evaluations of the same problem and to establish, where possible, a consistent and common position. This will particularly apply to the similar work being undertaken by the respective Industry Ministries.

Timetable

2.5 The work will be scheduled as follows:

- July 1998 to June 1999 - The Executive Committee and Working Groups will meet in order to negotiate the follow-on arrangements and agreements pursuant to this Lol;
- July to December 1999 - Finalisation and signature of these arrangements and agreements.

2.6 Each arrangement and agreement will, where appropriate, describe the time scale for its incorporation into national laws and regulations.

Annex A Joint Statement of 20 April 1998

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 Republic of Italy, the Minister of Defence of the Kingdom of Spain and the Secretary of State for Defence of Great Britain and Northern Ireland, met on April 20 in order to discuss their common interest in the area of defence and restructuring of defence industry.

Ministers consider that a strong, competitive and efficient defence industry is a key element of European security and identity as well as of the European scientific and technological base. If the full benefits from restructuring are to be realised, a number of conditions need to be met. There is a need to harmonise the requirements of their armed forces, to pursue co-operative solutions where possible, and avoid unnecessary duplication of development and production. In this context, there should be full consultation before major decisions are taken. The defence-related aspects of procurement policies, including policies of competition and policies on research and technology, and of export procedures should be harmonised. Participation in the European armaments base should be balanced and should reflect the principle of interdependence.

Ministers recalled the Declaration signed by Heads of State and Government of the French Republic, the Federal Republic of Germany and the United Kingdom of Great Britain and

Northern Ireland on 9 December 1997, supported by the Heads of Government of the Republic of Italy and the Kingdom of Spain, the objective of which is to facilitate the restructuring of the European aerospace and defence electronics industries.

They took note of the considerable progress underway in the rationalisation of the defence industries in their countries and in the various European fora which activities they stimulate, as well as their determination to develop a strong, competitive and efficient European industry.

They acknowledged that it was primarily for industry to establish a rationalised industrial base for European defence, and welcomed the recent report on industrial restructuring in European aerospace and its related defence industries. They encouraged defence industries in their countries to focus on the goals and means of restructuring and to keep up momentum.

Ministers agreed that, in order to capitalise fully on industrial restructuring at European level, it will be a priority for them to seek to harmonise the requirements of their armed forces, their procurement, research and technological development policies and defence-related aspects of their export procedures. In order to meet these objectives, they give high priority to the elimination of certain obstacles to industrial restructuring that fall primarily to them, in the areas of:

- security of supply;
- export procedures;
- research and technology funding;
- security of information and personnel clearances;
- intellectual property rights.

Ministers decided that they would approve in June 1998 a Letter of Intent which spelt out the objectives and principles for handling these issues and set for the the organisation and timetable for the tasks involved.

Annex B Definition of Terms

The Participants have decided on the following definitions for terms used in this Lol:

Defence Article	Any weapon, weapon system, munitions, aircraft, vessel, vehicle, boat, or other implement of war and any part or component thereof.
Defence Services	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.
Transnational Defence Company	A corporate, industrial or other legal entity within the territories of the Participants, formed by, or consisting of, elements of Defence Industry from two or more of the Participants national defence industries for the purpose of supplying Defence Articles or performing Defence Services.
Security of Supply	A nation's ability to guarantee a supply of Defence Articles and Defence Services sufficient to discharge its military commitments in accordance with its foreign and security policy requirements.

Technical Information

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 patentable or otherwise protectable by law or not, 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.

Signatories

The Minister of Defence of the French Republic,
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B. Andreatta

The Minister of Defence for the Kingdom of Sweden,
B. von Sydow

The Federal Minister of Defence of the Federal Republic of Germany
V. Ruhe

The Minister of Defence of the Kingdom of Spain
E. Serra

The Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland
G. Robertson

Signed in London on 6th of July 1998 in French, English, German, Spanish and Italian.