

Agreement

between

the Governments of Denmark, Finland, Norway and
Sweden

concerning

Cooperation in the Defence Materiel Area

Final Draft April 2014

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Agreement between the Governments of Denmark, Finland, Norway and Sweden concerning Cooperation in the Defence Materiel Area

Preamble

The Government of the Kingdom of Denmark,
The Government of the Republic of Finland,
The Government of the Kingdom of Norway and
The Government of the Kingdom of Sweden,
(hereinafter referred to as the “Parties”)

recalling the Memorandum of Understanding between the Ministry of Defence of the Kingdom of Denmark and the Ministry of Defence of the Republic of Finland and the Ministry for Foreign Affairs of Iceland and the Ministry of Defence of the Kingdom of Norway and the Government of the Kingdom of Sweden on Nordic Defence Cooperation (NORDEFECO MoU), signed on 5 November 2009;

recognizing the Defence and Security Procurement Directive (2009/81/EC) and the Intra-Community Transfer Directive for defence-related products (2009/43/EC) and the Parties’ respective legislation on public procurement and export control;

recalling that the Ministers of Defence of the Parties expressed on 15 November 2011 their wish to revise the Agreement between Denmark, Finland, Norway and Sweden concerning Support for Industry Cooperation in the Defence Materiel Area, signed on 9 June 2001;

recalling the decision of the Ministers of Defence of the Parties of 14 March 2013 regarding a revised model for the structure of the Agreement;

recognizing the desire for a further development of Nordic industry cooperation and a continued development of a competitive Nordic Defence Industry in the future, especially taking into consideration the Defence and Security Procurement Directive (2009/81/EC) and the Intra-Community Transfer Directive for defence-related products (2009/43/EC);

acknowledging that any activity undertaken under this Agreement shall be compatible with the EU membership of Denmark, Finland and Sweden as well as with Norway's membership of the EEA and the membership of Denmark and Norway of NATO, and with the obligations and commitments resulting from such membership;

acknowledging the advantages of maintaining a strong Nordic Defence Industry from a security of supply perspective;

recognizing the General Security Agreement on the Mutual Protection and Exchange of Classified Information between Denmark, Finland, Iceland, Norway and Sweden, hereinafter referred to as the "GSA", signed in Oslo on 7 May 2010 with a view to facilitating industry cooperation without undermining the security of Classified Information;

recalling the Parties' need to safeguard the supply of defence Materiel to the national defence forces in times of peace, Crisis and war and taking into account each Party's other international commitments;

taking into account the relevant agreements concluded between the Parties concerning security of supply;

have agreed as follows:

ARTICLE 1 DEFINITIONS

For the purpose of this Agreement:

"Annex Participants" means those Parties that have agreed upon an Annex;

"Classified Information" means information, regardless of its form, that under the laws of either Party requires protection against loss, unauthorised disclosure or other compromise and has been so designated;

"Crisis" means any situation in which a harmful event has occurred which clearly exceeds the dimensions of harmful events in everyday life and which substantially endangers or restricts the life and health of people, has a substantial impact on property values, or requires measures in order to supply the population with necessities; a Crisis is also deemed to have arisen if the occurrence of such a harmful event is considered impending; armed conflicts are regarded as Crises;

"Defence Industry" means all corporate, industrial and other legal entities having assets located within the territories of the Parties and producing or supplying Materiel and related Services for Defence Purposes;

“Defence Purposes” means use by or for the armed forces in any part of the world and includes, but is not limited to, study, evaluation, assessment, research, design, development, manufacture, improvement, modification, maintenance, repair and other post-design Services, and product deployment. This does not include sales or transfer to Third Parties;

“Disclosing Party” means the Party, as well as any other State bodies or public or private legal entities under its jurisdiction, releasing Information, including Classified Information;

“Information” means any information used in areas of cooperation within this Agreement, regardless of form and type;

“Materiel” means any equipment for Defence Purposes;

“Personnel” means military members or civilian employees of a Party;

“Receiving Party” means the Party, as well as other State bodies or public or private legal entities under its jurisdiction, to which Information, including Classified Information, is released by the Disclosing Party;

“Services” means any work, test, inspection, maintenance and repair, and other post-design services, training, technical or other assistance, including the provision of technical Information, directly connected to any Materiel or any other service for Defence Purposes;

“Third Party” means any institution, international or national organization, legal entity or State that is not a Party to this Agreement.

ARTICLE 2 OBJECTIVES

1. This Agreement constitutes a framework for the Parties’ cooperation to facilitate further development within the defence Materiel area.
2. The Parties shall work to minimize regulatory hindrance and encourage dialogue within the Defence Industry between the Nordic countries.

ARTICLE 3 SCOPE OF COOPERATION

1. This Agreement is applicable to Nordic cooperation on Materiel and Services for Defence Purposes between two or more Parties in times of peace or Crisis.
2. The cooperation within this Agreement includes, but is not limited to, the following areas:
 - studies, analyses and research and technology/development;
 - capability development;
 - procurement;
 - export control;

- Industrial participation;
- security of supply and
- disposal of Materiel.

ARTICLE 4 ANNEXES

1. Two or more Parties may agree upon Annexes to this Agreement to regulate specific areas of cooperation between the Annex Participants. An Annex shall lay down the provisions and further details regarding the area of cooperation in question, including the responsibility for the execution and supervision of the cooperation under the Annex.
2. An Annex shall, as a minimum, identify the Annex Participants and regulate the scope, management and termination of the Annex.
3. New Annex Participants shall be admitted on conditions to be agreed upon by unanimous decision of the existing Annex Participants.
4. An Annex shall form an integral part of the Agreement in relation to the Annex Participants.
5. In case of differences of interpretation between provisions of the Agreement and the Annexes, the Agreement shall govern.

ARTICLE 5 MANAGEMENT

1. A Nordic Consultation Group (NCG), appointed by the Parties, shall exercise overall responsibility for the guidance, execution and supervision of this Agreement. The NCG shall be established within the existing structures of Nordic defence cooperation.
2. Responsibility for the guidance, execution and supervision of the cooperation under a specific Annex shall be exercised by the relevant Annex Participants, unless otherwise stipulated in the Annex.
3. The NCG shall be composed of one representative designated by each Party. The representatives in the NCG may be assisted by national experts.
4. Decisions of the NCG shall be made unanimously. If the NCG is unable to reach a timely decision on an issue, each NCG representative shall refer the issue to its represented authority for resolution.
5. Decisions regarding specific Annexes shall be made unanimously by the relevant Annex Participants.
6. The NCG shall establish and approve terms of reference for the NCG.

ARTICLE 6 EXCHANGE OF INFORMATION

1. The Parties shall enter into arrangements to facilitate the exchange of Information, including Classified Information, for the purpose of cooperation under this Agreement, subject to the provisions of the GSA.
2. Any Materiel and related technology covered by this Agreement, which is determined by the Disclosing Party to require protection from unauthorised disclosure, shall be handled accordingly by the Receiving Party, subject to its national laws and regulations.
3. Parties to this Agreement who are not Annex Participants to a specific Annex (non-Annex Participants), shall be considered Third Parties with regard to disclosure and use of Information generated in cooperation under a specific Annex.

ARTICLE 7 CLAIMS AND LIABILITIES

1. For any liability arising out of or in connection with this Agreement, the following provisions shall apply.
2. Each Party shall waive all claims against another Party with respect to damage caused to the former's Personnel or property by the latter's Personnel. If, however, such damage results from wilful misconduct or gross negligence of a Party, or its Personnel, the costs of any liability shall be borne by that Party alone.
3. Each Party shall deal with, settle and bear the full costs of all Third Party claims, where such a claim arises due to an act or omission of that Party or its Personnel which results in injury, death, loss or damage in connection with this Agreement. If a Third Party claim is caused by a collaborative act or omission by two or more Parties in connection with this Agreement, the most appropriate Party, as determined by all the involved Parties, shall deal with and settle the claim; the costs of such liability shall be borne by the involved Parties in accordance with an agreed ratio to be agreed upon by the Parties in each case. Without prejudice to the foregoing principle of this paragraph, if such a claim results from wilful misconduct or gross negligence of a Party or its Personnel, the costs of this liability shall be borne by that Party.
4. The provisions in paragraphs 1-3 shall apply correspondingly to the respective Annex Participants for any liability arising out of or in connection with any of the Annexes to this Agreement.
5. Notwithstanding the above, the relevant Annex Participants may, as appropriate and taking into account paragraphs 2 and 3 above, agree in the Annex on separate implementing arrangements in regard to dealing with claims and liabilities arising out of or in connection with the Annex.

ARTICLE 8 AMENDMENTS

1. The Parties may amend this Agreement by common consent. The amendments shall be submitted to all Parties for approval.
2. Annexes may be amended by common consent of the Annex Participants.

ARTICLE 9 DISPUTES

1. Any disputes regarding the interpretation or implementation of this Agreement shall be resolved through consultation in the NCG and shall not be referred to any national or international tribunal or Third Party for settlement.
2. Any disputes regarding the interpretation or implementation of Annexes to this Agreement shall be resolved through consultation between the Annex Participants and shall not be referred to any national or international tribunal or Third Party for settlement.

ARTICLE 10 TERMINATION AND WITHDRAWAL

1. If the Parties decide unanimously to terminate this Agreement, they shall consult with each other to ensure its prompt termination on the most equitable terms. They shall jointly determine the settlement required to satisfactorily manage the consequences of the termination. The Agreement shall terminate on a date to be approved by the Parties in writing.
2. If a Party considers it necessary to withdraw from this Agreement, the withdrawing Party shall consult with the other Parties on the consequences of any such withdrawal. If, on completion of these consultations, the withdrawing Party still wishes to withdraw from the Agreement, the Party shall then notify the Depositary in writing of its withdrawal. The withdrawal shall take effect one year after the date of receipt of the notification by the Depositary or on such later date as may be specified in the notification of withdrawal. The withdrawing Party shall continue its participation in the cooperation under the Agreement until the effective date of withdrawal.
3. The same procedures shall apply for the Annex Participants with regard to termination of or withdrawal from an Annex.

ARTICLE 11
FINAL PROVISIONS

1. This Agreement and any subsequent Annexes, as well as their amendments, shall be subject to ratification, approval or acceptance as may be required by national legislation.
2. Instruments of ratification, approval or acceptance shall be deposited with the Government of Norway, which is the Depository of the Agreement and the Annexes.
3. This Agreement and any subsequent Annexes, as well as their amendments, shall enter into force for a Party or an Annex Participant respectively on the thirtieth day following the date of receipt by the Depository of the last instrument of ratification, approval or acceptance.
4. From the date of its entry into force, this Agreement shall replace the Agreement between Denmark, Finland, Norway and Sweden Concerning Support for Industry Cooperation in the Defence Materiel Area, signed on 9 June 2001.
5. Notwithstanding the replacement, the provisions of Section 2 (Security of supply) of the Agreement signed on 9 June 2001 and Annex 1 thereto relating to NAMMO AS shall continue to be in force between the Annex Participants until otherwise agreed between them.
6. The Depository shall transmit a certified copy of this Agreement and any subsequent Annexes to each Party.
7. The Depository shall notify each Party of, in particular:
 - a) the date of receipt of each instrument of ratification, approval or acceptance referred to in paragraph 2 above;
 - b) the notification of withdrawals referred to in paragraph 2 of Article 10 above, and
 - c) the date of entry into force of this Agreement and any subsequent Annexes, as well as their amendments.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed the present Agreement.

Done in (place) this (date) of (month) (year) in a single original in the English language.