

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

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Annex concerning Joint Procurement to the 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 **Swedish Defence Materiel Administration, (FMV) authorized by the** Government of the Kingdom of Sweden,

(hereinafter referred to as the “Annex Participants”)

recalling the Agreement between the Governments of Denmark, Finland, Norway and Sweden concerning Cooperation in the Defence Materiel Area, signed on March 10, 2015, (hereinafter referred to as “the Cooperation Agreement”);

recognizing that all Joint Procurements shall be carried out in accordance with the relevant EU/EEA legislation as implemented in respective national legislation of each Annex Participant;

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;

desiring to make the most cost effective and rational use of the resources allocated to Defence Purposes;

desiring to promote the objectives of rationalization, standardization, interoperability and mutual life-cycle management for Defence Purposes;

seeking to, when applicable, achieve and maintain fair and equitable opportunities for the Defence Industry of each Annex Participants’ country to participate in the Materiel and/or Services procurement programs of the other Annex Participant;

acknowledging that successful Joint Procurements depend on prompt and efficient exchange of Information among Annex Participants;

acknowledging that this Annex is not intended to and does not create any authority to authorize the export of Materiel, including technical data, controlled by the respective authorities according to the implementation of the European Union (EU) Common List of Military Equipment (Directive 2009/43/EC) and any other applicable laws and regulations governing exports. Any exports must be compliant with such laws, decrees, regulations, and guidelines; and

agreeing that enhancing Joint Procurement among the Annex Participants could be means to achieve objectives identified in Article 2 of this Annex

have agreed as follows:

ARTICLE 1 DEFINITIONS

In addition to those Definitions defined in the Cooperation Agreement the Annex Participants agree on the following definitions for the purpose of this Annex:

“Actual Joint Tender” means a procedure where Procuring Participants cooperatively prepare all relevant documents, and publish one single contract notice, if publication is required by the EU law or national law. Under this procedure the Procuring Participants can choose to have one common contract/framework agreement or separate contracts/framework agreements.

“Coordinated Tender” means a procedure where Procuring Participants cooperatively prepare all relevant documents and each publish their own contract notice, if publication is required by the EU law or national law. Under this procedure the Procuring Participants shall have each their own separate contracts/framework agreements.

“Exclusion” means an exclusion to the Directive 2004/18/EC or the Directive 2014/24/EU on public procurement, or the Directive 2009/81/EC on public procurement in the defense and

security sector, an application of negotiated procedure without prior publication of a contract notice in accordance with Article 31 of the Directive 2004/18/EC, Article 32 of the Directive 2014/24/EU or Article 28 of the Directive 2009/81/EC, or application of TFEU Article 346/EEA Article 123 and any relevant successive amendments to the aforementioned regulation.

“Government-to-Government Joint Procurement Procedure” means a procedure where the Lead Procuring Participant conducts the procurement on behalf of all the Procuring Participants and thereafter resells the Materiel or Services in question to the other Procuring Participants. Under this procedure only the Lead Procuring Participant and the contractor shall be parties to the relevant contract/framework agreement.

“Implementing Arrangement” means arrangement(s) done between the Procuring Participants which sets the provisions for a specific Joint Procurement.

“Intellectual Property” means, in accordance with the World Trade Organization Agreement on Trade-related Aspects of Intellectual Property Rights of April 15, 1994, all copyright and related rights, all rights in relation to inventions (including Patent rights), all rights in registered and unregistered trademarks (including service marks), registered and unregistered designs, undisclosed Information (including trade secrets and know-how), layout designs of integrated circuits, geographical indications, and any other rights resulting from creative activity in the industrial, scientific, literary, and artistic fields.

“Lead Procuring Participant” means Procuring Participant who shall be appointed by all the Procuring Participants to conduct the relevant procurement procedure on behalf of all the Procuring Participants. Lead Procuring Participant’s responsibilities shall be agreed on a case-by-case basis in an Implementing Arrangement.

“Joint Procurement” means a cooperative procurement procedure under an Implementing Arrangement among two or more Annex Participants.

“Procuring Participants” mean two or more Annex Participants and/or their competent procuring authorities, as applicable, deciding to perform a Joint Procurement by concluding an Implementing Arrangement.

“Security of Information” means Annex Participants’ interest and ability to protect and secure Classified Information. In this context an Annex Participant may require, in particular, commitments from both contractors and subcontractors to protect Classified Information against unauthorized access, as well as sufficient Information regarding their capability to do so.

“Security of Supply” means a guarantee of supply of Materiel and Services sufficient for an Annex Participant to discharge its defence and security commitments in accordance with its foreign and security policy requirements.

“Sensitive Information” means Information to which access or distribution limitations have been applied in accordance with applicable national laws and regulations. Such Information is

for example commercial Information, Information protected by Intellectual Property rights or export controlled Information.

“Third Party” means any institution, international or national organization, legal entity or State that is not a Party to the Cooperation Agreement and any Party to the Cooperation Agreement that is not an Annex Participant to this Annex. Annex Participants’ competent procuring authorities are not considered as Third Parties.

ARTICLE 2 OBJECTIVES

2.1. The objectives of this Annex are to:

- 2.1.1. Give general guidelines when two or more Annex Participants consider or have decided to perform a Joint Procurement for Defence Purposes.
- 2.1.2. Provide examples of possible procurement models applicable for Joint Procurements (Appendix A/Article 6).
- 2.1.3. Elaborate key elements to be considered in a Joint Procurement (Appendix A/Article 6).
- 2.1.4. Provide practical advice for Annex Participants aiming to perform a Joint Procurement.
- 2.1.5. Harmonize the Annex Participants’ requirements to a Joint Procurement process, taking into account their respective national rules, regulations and policies.

ARTICLE 3 ANNEX PARTICIPANTS’ UNDERTAKINGS

3.1. Consistent with its laws, regulations, policies, and international obligations each Annex Participant shall:

- 3.1.1. Give due consideration to all requests from the other Annex Participants for cooperation in Joint Procurements.
- 3.1.2. Promote Joint Procurement taking into consideration the capabilities of their defence industrial and research and development bases.
- 3.1.3. As far as possible give full protection to any Sensitive Information. Subject to national laws and regulations, such Sensitive Information shall not be transferred to a Third Party without the prior written consent of the disclosing

Annex Participant. In case Sensitive Information has to be disclosed to a Third Party in accordance with national laws or regulations of an Annex Participant that Annex Participant shall notify the disclosing Annex Participant without delay. The specific provisions for exchange of Sensitive Information shall be agreed in the Implementing Arrangements.

- 3.1.4. As deemed necessary make arrangements to facilitate the protection and exchange of the Classified Information, for the purpose of cooperation under this Annex, subject to the provisions of the GSA.
- 3.1.5. As deemed necessary, provide appropriate policy guidance and administrative procedures within its respective defense organizations to implement the provisions of this Annex.
- 3.2. Detailed terms and conditions of each Joint Procurement shall be agreed on a case-by-case basis between the Procuring Participants in Implementing Arrangements. Formats set in Appendix A may be used as a template for Implementing Arrangements.

ARTICLE 4 MANAGEMENT

- 4.1 Responsibility for the guidance, execution and supervision of the cooperation under this Annex shall be exercised by the Annex Participants. For this purpose, each Annex Participant shall appoint a Point of Contact (PoC). All decisions by the Annex Participants regarding this Annex shall be made unanimously.
- 4.2 The Annex Participants shall on a regular basis:
 - 4.2.1 consult on needs for Materiel and Services of each Annex Participant and the likely areas for Joint Procurements;
 - 4.2.2 upon NCG request conduct and/or review reports on Joint Procurements carried out under this Annex; and
 - 4.2.3 review possible or necessary amendments to the Annex.
- 4.3 The Annex Participants shall every fifth year, or as deemed appropriate, consult on the relevance of this Annex and its Appendices.

ARTICLE 5 FINANCIAL PROVISIONS

- 5.1 This Annex does not create any financial commitments for the Annex Participants.
- 5.2 Annex Participants shall each bear their own administration costs for this Annex.

5.3 Financial provisions for each Joint Procurement shall be agreed separately on a case-by-case basis in the Implementing Arrangement.

ARTICLE 6 PROCEDURES

6.1 The Procuring Participants may use the following cooperation models when conducting Joint Procurements: Actual Joint Tender, Coordinated Tender or Government-to-Government Joint Procurement Procedure. However, other cooperation models may be applied if appropriate and subject to unanimous agreement among Procuring Participants. All joint procurements under this Annex shall be conducted in compliance with the Procuring Participants' laws and regulations on public procurement, including EU-law, if applicable.

6.2 For each Joint Procurement, the Procuring Participants shall as a minimum consider:

6.2.1 Appointment of a Lead Procuring Participant and Lead Procuring Participant's responsibilities;

6.2.2 Relevant procurement procedure, including whether an Exclusion can be applied;

6.2.3 Legal requirements, such as corporate social responsibility requirements and other requirements arising from national laws or international commitments and regulations of the Annex Participants;

6.2.4 Establishment of appropriate management structure and decision making process;

6.2.5 Identification, harmonization and prioritization of:

6.2.5.1 Technical requirements, such as performance, quality and other relevant requirements (technical requirement specification, identifying mandatory and non-mandatory requirements);

6.2.5.2 Commercial requirements, such as warranty, Intellectual Property rights (IPR) and terms of delivery (contract/framework agreement draft, identifying mandatory and non-mandatory requirements);

6.2.5.3 Requirements to Security of Supply (SOS); and

6.2.5.4 Requirements to Security of Information (SOI).

6.2.6 Disclosure and use of the background and foreground Information relevant for the Joint Procurement.

6.2.7 Requirements for audit, if applicable;

- 6.2.8 Industrial participation requirements, if applicable;
 - 6.2.9 Joint Procurement time schedule, taking into account the Procuring Participants' national decision making processes;
 - 6.2.10 Export control related issues;
 - 6.2.11 Evaluation method, evaluation criteria and evaluation model;
 - 6.2.12 An appropriate procedure for handling of complaints, lawsuits and claims from or against Third Parties;
 - 6.2.13 Procedures for changes in the Joint Procurement, withdrawal and termination;
 - 6.2.14 Cooperation on contract/framework agreement administration;
 - 6.2.15 Cooperation on life-cycle support; and
 - 6.2.16 Administration fee for handling Joint Procurement on behalf of all Procuring Participants
- 6.3 Based on the considerations in the paragraph 6.2 of this Article, the Procuring Participants shall make appropriate Implementing Arrangements for a specific Joint Procurement. For this purpose, formats set in Appendix A1, A2 and A3 may be used.

ARTICLE 7 CUSTOM DUTIES, TAXES AND SIMILAR CHARGES

- 7.1 If consistent with their national laws and regulations and international obligations, including EU law, if applicable, the Annex Participants agree that they shall, to the extent possible, waive their charges for custom duties, taxes and similar charges towards each other for Joint Procurements to which this Annex applies.
- 7.2 If any such custom duties, taxes or similar charges are levied, the Annex Participant in whose country they are levied shall bear such costs over and above that Annex Participant's share of costs of an applicable Implementing Arrangement.
- 7.3 If, in order to apply EU regulations, it is necessary to levy custom duties, then these shall be met by the EU/EEA member end recipients. To this end, parts or components of the equipment coming from outside the EU shall proceed to their final destination accompanied by the relevant customs document enabling settlement of duties to take place. The duties shall be levied as a cost over and above the relevant EU/EEA member end recipient's share of costs under an applicable Implementing Arrangement.

ARTICLE 8 INDUSTRIAL PARTICIPATION

The Annex Participants may require an industrial participation arrangement with a contractor, if required by their national laws and regulations. Should an Annex Participant require an industrial participation arrangement that Annex Participant shall individually bear any increase in costs that such an arrangement may entail. An Annex Participant may only ask for an industrial participation arrangement for its own share of the Joint Procurement. The Annex Participants shall in the Implementing Arrangement identify their requirements for an industrial participation arrangement.

ARTICLE 9 FINAL PROVISIONS

- 9.1 Implementing Arrangements etc. governing Joint Procurements under this Annex may be concluded by appropriate representatives of each Annex Participant. Provisions of any Implementing Arrangement should be consistent with the Cooperation Agreement and with this Annex. In the event of conflict between this Annex and any Implementing Arrangement, this Annex shall govern. However, if the provisions of the Annex do not fully support the objectives of an Implementing Arrangement, the Procuring Participants may formulate specific provisions as deemed necessary in the given Implementing Arrangement.
- 9.2 The procedures in Article 8, Article 10 and Article 11 of the Cooperation Agreement shall be applied to amendment of, termination of, withdrawal from and entry into force of this Annex.
- 9.3 The Procuring Participants may decide specific provisions for termination of or withdrawal from an Implementing Arrangement and that an Implementing Arrangement shall remain in force notwithstanding termination of this Annex.
- 9.4 In all other respects the relevant provisions of the Cooperation Agreement shall apply.

SIGNATURES

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

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

For the Government of the Kingdom of Denmark

For the Government of the Republic of Finland

NPA FINAL VERSION

For the Government of the Kingdom of Norway

For the Government of the Kingdom of Sweden