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Agreement

between the Government of the United Kingdom of Great Britain and
Northern Ireland and the Government of the French Republic Concerning
Centres of Excellence Implemented as part of the “One Complex
Weapons” Sector Strategy

Paris, 24 September 2015

[The Agreement entered into force on 12 October 2016]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
November 2016*

Cm 9358



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**AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED
KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE
GOVERNMENT OF THE FRENCH REPUBLIC CONCERNING CENTRES
OF EXCELLENCE IMPLEMENTED AS PART OF THE “ONE COMPLEX
WEAPONS” SECTOR STRATEGY**

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PREAMBLE

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic, hereinafter referred to collectively as “the Parties” and

- Regarding the Treaty on the functioning of the European Union and relevant secondary Law, particularly Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community;
- Recalling 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 dated 27 July 2000 (hereinafter referred to as the “Framework Agreement”);
- Recalling the long term intent and objectives of the Treaty between the United Kingdom of Great Britain and Northern Ireland and the French Republic for Defence and Security Co-operation of 2 November 2010 (hereinafter referred to as the “Lancaster House Treaty”), including its pursuance of a joint approach between the Parties with the aim to deliver effective military equipment in the most efficient manner while minimising national constraints and strengthening industrial competitiveness, and to develop defence technological and industrial bases (and Centres of Excellence) around key Technologies on the territory of both Parties, thus creating inter-dependence between them;
- Noting the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic concerning the Mutual Protection of Classified Information dated 27 March 2008 and its amendments (hereinafter referred to as the “Security Agreement”);
- Considering the intention set out in the Communiqués from the Summits on 17 February 2012 and 31 January 2014 that MBDA-UK and MBDA-France will implement industrial Centres of Excellence in the United Kingdom and France under the One Complex Weapons sector strategy, and that the Centres of Excellence shall be considered to be a co-operative initiative under the auspices of the Framework Agreement;

- Recognising that implementation of MBDA Centres of Excellence is an initial response to the need to rationalise existing industrial capabilities, and is an important and tangible step towards establishing and testing new ways of sharing Technologies under the One Complex Weapons sector strategy being developed by the Parties;
- Recognising the intention initially to establish four Predominant Specialisation Centres of Excellence (one each for missile-based data-link Technologies (“data-links”) and actuators in the territory of the UK Party, and weapons controllers and test equipment in the territory of the French Party) and four Federated Centres of Excellence (covering complex warheads, inertial navigation systems, algorithms, and software);
- Noting that the industrial rationalisation of MBDA-UK and MBDA-France using Centres of Excellence is the first step towards a progressive and controlled inter-dependence between the Parties on Complex Weapons Technologies, and that it will mean the cessation of some related national industrial capability in these Technologies;
- Noting that MBDA Centres of Excellence have been developed to provide efficiencies through balanced rationalisation of industrial resources and Technologies undertaken within MBDA sites located in the UK and France that will deliver long term mutual benefits and industrial sustainability in Complex Weapons in both countries;
- Accepting that the implementation of MBDA Centres of Excellence shall require greater cross-working than hitherto of employees from MBDA-UK working on French national Complex Weapons programmes and MBDA-France employees working on British national Complex Weapons programmes;
- Noting that the implementation of Centres of Excellence will create, develop, manufacture and support Technologies and components for a range of current and future Complex Weapons programmes for the British and French Armed Forces and in relation to Export sales on the global market, and that joint success in Exports is a common goal of the Parties;
- Recognising that successful implementation of MBDA Centres of Excellence and the pursuance of the One Complex Weapons sector strategy will benefit from the re-use, by future programmes, of Information and Technologies developed by MBDA-UK and MBDA-France for legacy and current Complex Weapons programmes undertaken by either of the Parties; and

- Accepting that the MBDA Centres of Excellence cover Technologies that are core to MBDA's capabilities in the United Kingdom and France and which have historically been considered fundamental to its ability to develop and manufacture Complex Weapons and that these Technologies have been developed, through time, within the various MBDA national entities, with little involvement of the Complex Weapon supply chain used by either in the UK or in France;

Have agreed as follows:

ARTICLE 1

Definitions

1. "Background Information" means Information not generated in the performance of programmes falling within the scope of this Agreement.
2. "Centres of Excellence" are technical centres located in MBDA-UK and MBDA-France that consolidate those companies' expertise in order to secure improvements in efficiency to the benefit of both Parties and include, for the purposes of this Agreement, the "Federated Centres of Excellence" and the "Predominant Specialisation Centres of Excellence".
3. "Complex Weapons" are strategic and tactical weapons reliant upon guidance systems to achieve precision effects. Complex Weapons include the missiles that provide the terminal effect and the weapons systems (but not the platform) that fire them.
4. "Defence Purposes" means the use by, or for, the Armed Forces of a Party in any part of the world and includes, but is not limited to, study, test, assessment, research, design, development, production, training, improvement, inspection, maintenance, repair and other post-design services and product deployment. This does not extend to Exports and Transfers to a Third Party.
5. "Defence-related Products" refers to any product listed in the EU Common Military List annexed to Directive 2009/43/EC and as supplemented by the Parties in accordance with their national laws.
6. "Export" means any transmission or movement, through tangible or intangible means, of Information, Technologies and industrial capacities, including Defence-related Products, from a supplier located in the territory of a Party to a recipient located in the territory of a Third Party outside the European Union (EU).

7. “Federated Centre of Excellence” is a type of Centre of Excellence that combines technological expertise and skills located in MBDA-UK and MBDA-France to secure increased efficiencies through more effective use of these resources. The Federated Centres of Excellence will retain a significant and balanced level of skills on the territories of both Parties.

8. “Foreground Information” means Information that is generated through the activities of the MBDA Predominant Specialisation and Federated Centres of Excellence on legacy and future Complex Weapons programmes undertaken and funded by either of the Parties.

9. “Global Balance” means the principle of an overall and flexible multi-programme and multi-year balance of work share against cost share.

10. “Global Licence” is a type of Licence created under the Parties’ respective national law, consistent with Part 3 of the Framework Agreement and with Article 6 of Directive 2009/43/EC.

11. “High Level Working Group” is the senior joint defence-related group operated by the Parties.

12. “Information” means all 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, 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 other 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.

13. “Licence” means an authorisation to Transfer or Export, issued by national authorities of a Party.

14. “MBDA” represents the company MBDA SAS or any legal succeeding entity, and its British and French subsidiaries, individually referred to in this Agreement as “MBDA-UK” and “MBDA-France”.

15. “One Complex Weapons” means the joint strategy announced by the Parties as part of the Summit Declaration on defence of 2 November 2010 to achieve synergies and efficiencies in the British and French Complex Weapons sectors.

16. “Predominant Specialisation Centre of Excellence” is a type of Centre of Excellence that will consolidate the skills and expertise relating to certain chosen Technologies largely on the territory of one of the Parties, leaving only a residual capability, if any, on the territory of the other Party to deal with legacy weapons and nationally sensitive activities. The Predominant Specialisation Centres of Excellence have been chosen to offer balanced high technological effort in each territory.

17. “Programme Purposes” means use by the Parties for their respective programmes falling within the scope of this Agreement.

18. “Security of Supply” means the ability of a Party to guarantee and to be guaranteed a supply of Information and Technologies from the Centres of Excellence included within the scope of this Agreement, sufficient for the Party to discharge its obligations pertaining to its international commitments regarding foreign and security policy matters.

19. “Senior Level Group” is the highest level joint official body between the Parties, which is led by the respective National Security Advisers of each Party, and encompassing membership from the UK Cabinet Office and the French “Présidence de la République”, as defined in Article 4 of the Lancaster House Treaty.

20. “Technologies” means Complex Weapons sub-system hardware, firmware and software created, developed and manufactured by the MBDA Centres of Excellence.

21. “Third Party” means an individual, legal entity or Government that is not a Party to this Agreement.

22. “Third Party State” means a State that is not a Party to this Agreement.

23. “Transfer” means any transmission or movement, through tangible or intangible means, of Information, Technologies and industrial capacities, including Defence-related Products, from a supplier located in the territory of one Party to a recipient located in the territory of the other Party or another EU Member State.

ARTICLE 2

Objectives

1. This Agreement builds on the existing strong links between the respective defence communities and Armed Forces of the Parties in the field of Complex Weapons and the provisions outlined in Article 3 of the Lancaster House Treaty to create other written co-operative Agreements and arrangements under its scope.

2. The objectives of this Agreement are to:
 - set out the Parties' obligations to each other relating to MBDA implementing Centres of Excellence, particularly with respect to consequences of inter-dependence and the need for Security of Supply;
 - provide a framework under which the Parties shall work together to enable MBDA efficiently to implement Centres of Excellence within the territories of the Parties.

ARTICLE 3

Scope

1. This Agreement is limited to cover the obligations and requirements of the Parties related to the implementation by MBDA of Predominant Specialisation and Federated Centres of Excellence.
2. In this regard, the Parties consider that Centres of Excellence shall, as a matter of principle, be the preferred supplier of MBDA-UK and MBDA-France for the provision of sub-system Information and Technologies to be used in any Complex Weapons programme managed by MBDA.

ARTICLE 4

Funding

This Agreement creates no financial obligations for either Party.

ARTICLE 5

Governance

1. This Agreement shall come under the provisions of Article 4 of the Lancaster House Treaty.
2. Under these overall governance arrangements, the Parties shall take decisions relating to implementation and operation of this Agreement. These decisions shall be taken by the Committee responsible for the One Complex Weapons sector strategy ("the Committee").

3. The Committee comprises one member representing each of the Parties. For the purpose of this Agreement, the Committee shall also include one associate member from each of MBDA-UK and MBDA-France. The members representing the Parties and the associate members may be assisted by additional staff whenever this is deemed necessary.

4. The Committee shall report to the National Armaments Directors of the Parties and to the High Level Working Group, which reports to the Senior Level Group. It shall make decisions relating to this Agreement by consensus. As associate members, the representatives of MBDA-UK and MBDA-France shall not take part in the decision making process.

5. For the purpose of this Agreement, the Committee shall be responsible for a range of activities including, but not limited to:

- exercising executive-level oversight of this Agreement;
- monitoring the activities of the Centres of Excellence, including their implementation process;
- making appropriate decisions relating to the implementation of this Agreement;
- referring unresolved issues relating to the implementation of the Agreement to the High Level Working Group;
- assessing MBDA's annual status report on the activities of the Centres of Excellence and subsequently reporting to the High Level Working Group;
- assessing the opportunity to extend the application of the present Agreement to new Centres of Excellence, and making recommendations to the High Level Working Group; any such extension shall not require an amendment to the present Agreement;
- recommending amendments to this Agreement to the Parties.

ARTICLE 6

Security of Supply

1. The Parties shall ensure that no obstacles or obstructions shall be put in the way of the supply of Information and Technologies being developed and manufactured by the Centres of Excellence covered by this Agreement in times of peace, crisis or armed conflict.

2. In accordance with the provisions of Articles 4 to 11 of the Framework Agreement, the Parties shall establish measures to achieve Security of Supply for their mutual benefit and to achieve the efficient maintenance of the assets, activities and skills associated with the Centres of Excellence covered by this Agreement.

3. Each Party shall make available to the other Party any facility, equipment, component and support function which falls within the scope of the Centres of Excellence covered by this Agreement and shall ensure unhindered access to them under the conditions and terms set out by the provisions of Article 6 of the Lancaster House Treaty.

ARTICLE 7

Security Provisions

1. The implementation of Centres of Excellence shall require both Parties to take a collective view on the protection or classification of Information and Technologies developed by the Centres of Excellence to ensure that the exchange of relevant and necessary data between the Parties and MBDA-UK and MBDA-France are not unnecessarily constrained by national security caveats.

2. Accordingly, for all future Information and Technologies created by the Centres of Excellence that is deemed to be sensitive and where access by Third Parties needs to be limited to those persons holding the nationality of one or both Parties, the aforementioned information is marked with the corresponding security classification and an additional caveat “For UK/French Eyes Only” or “Spécial France/Royaume-Uni” rather than the national “For UK Eyes Only” or “Spécial France” caveats, except where one or other of the Parties determine that the national caveats need to be retained.

3. For legacy nationally caveated data, and where this is relevant and necessary to be shared to allow future development, manufacture and support of Information and Technologies within the Centres of Excellence, the Parties shall review with diligence the security sensitivities associated with such material potentially to allow its release to the other Party and the corresponding national subsidiary of MBDA. In such circumstances, the Party owning the Information shall re-mark it appropriately.

4. In all cases, and in accordance with Article 11 of the Lancaster House Treaty, the Parties shall facilitate the exchange of information, including of classified information, for the purposes of co-operation under this Agreement, and shall protect such information subject to the provisions of the Security Agreement. Information provided by one Party to the other Party shall be used only for the purposes for which it was provided.

ARTICLE 8

Transfer between the Parties

1. For the implementation of Centres of Excellence, the Parties shall, to the greatest extent possible, facilitate the Transfer of Defence-related Products between them.
2. In this respect, the Parties agree to offer MBDA-UK and MBDA-France the use of the most appropriate means, including Global Licences. These Licences shall be reciprocal through the achievement of the same outcome, and shall cover the full range of activities of each of the Federated and Predominant Specialisation Centres of Excellence.
3. Where MBDA-UK and MBDA-France seek Global Licences for each of the Federated and Predominant Specialisation Centres of Excellence, as well as for co-operative and national Complex Weapons programmes in due course, the Parties shall examine promptly the applications in order to grant the appropriate Global Licences required to achieve efficient and uninhibited Transfers on a reciprocal and equal basis.
4. The Parties undertake to inform each other, should they subsequently intend to revoke an existing Global Licence relating to Centres of Excellence taking into account any obligation under Article 6 of this Agreement.

ARTICLE 9

Transfer and Export to Third Parties

1. Any request regarding the Transfer or Export sale of a Complex Weapon to a Third Party that includes Defence-related Products created by MBDA Centres of Excellence shall not be refused by the other Party except for reasons of foreign policy and national security. In particular, a Party shall not refuse to the other Party a request for a Transfer or an Export sale of a Complex Weapon to a Third Party while they are promoting a Transfer or an Export of an equivalent Complex Weapon or a platform capable of carrying an equivalent Complex Weapon to that Third Party.
2. The Parties agree the need for the MBDA Centres of Excellence to be able to provide relevant Defence-related Products as integral elements of Complex Weapons to meet the requirements of Transfer or Export to Third Parties. Specifically, the Parties agree the principles governing Transfer and Export to Third Parties across the range of current and future Complex Weapons programmes of MBDA-UK and MBDA-France and shall develop procedures to be applied for such Transfer or Export decisions.

3. The Parties shall accordingly:

- ask MBDA to create and share with them an initial list of potential end users for Complex Weapons incorporating Technologies being developed within the Centres of Excellence, in order that both Parties are aware where these future Transfer or Export prospects might lie;
- decide on and set out to each other initial lists of authorised end users for Complex Weapons, based on the lists of potential end users submitted by MBDA. These lists shall be revised whenever deemed necessary. Once agreed, these lists shall be disclosed to MBDA. Although providing an initial list of authorised end users aims to give an indication of the acceptability of a Transfer or an Export of Complex Weapons to a Third Party, these lists shall not be regarded as a definitive decision. The Parties continue to reserve the right to refuse a planned Transfer or Export of Complex Weapons, should the end user subsequently become unacceptable in accordance with the Parties' national security and foreign policies;
- update automatically references to embargoes and sanctions in the light of any additions or changes to relevant United Nations resolutions and/or restrictive measures established by the Council of the European Union;
- inform each other when a sale to a previously identified potential end user of their respective national projects that include sub-systems developed within the Centres of Excellence within the territory of the other, becomes firm and before the contract is signed;
- explain to each other the rationale behind any modifications made to the initial lists of authorised end users for Complex Weapons or any revocation, suspension, modification or refusal of a Licence in this regard, at any stage of the Transfer or Export process.

4. The responsibility for issuing a Transfer or Export Licence for Complex Weapons lies with the Party within whose territory the Complex Weapons are located at the time of Transfer or Export, in accordance with its international commitments and its laws and regulations.

ARTICLE 10

Disclosure and Use of Information between the Parties

1. In order to give functional effect to the MBDA Centres of Excellence, the Parties shall not impede disclosure of Information between MBDA-UK and MBDA-France nor impede any necessary assignments, transfer or licensing of intellectual property created by these Centres of Excellence unless substantive national security restrictions apply.
2. To ensure consistency in the Parties' contractual arrangements involving the Centres of Excellence, the Parties, as part of this contracting process, shall acquire for one another equivalent rights of use, within the scope of the activities under this Agreement, to Foreground Information and Background Information necessary for the use of Foreground Information, where it is owned by MBDA and provided by a MBDA Centre of Excellence covered by this Agreement.
3. The Parties agree that MBDA-UK and MBDA-France can share Foreground Information for the Defence Purposes of the Parties and that this shall be free of levy between the Parties.
4. The Parties shall not disclose Information that is owned by MBDA-UK or MBDA-France to Third Parties without the prior written consent of MBDA-UK and MBDA-France as the relevant owners of the Information.
5. The Parties agree not to impede the re-use, for their respective Programme Purposes, of Background Information that is owned by MBDA-UK or MBDA-France and which falls within the scope of the Centres of Excellence. This re-use shall be free of levy between the Parties. The re-use of Background Information that is owned by MBDA-UK or MBDA-France for the benefit of future Complex Weapons programmes involving the Parties shall be determined by the MBDA Centres of Excellence. The Parties shall ask MBDA to report such Transfers to them. The principle of overall Global Balance shall apply. The Parties shall use the governance arrangements set out in Article 5 of this Agreement to monitor those Transfers and apply corrective action as they jointly agree to be necessary.
6. Disclosure and use of Background Information owned by one of the Parties to the other Party shall be agreed by the Parties on a case-by-case basis and formalized by a prior written authorisation of the Party that owns the Background Information.
7. Nothing in this Agreement authorises the release, use, exchange or disclosure of Information, whether classified or not, in which intellectual property rights are owned by a Third Party until the specific written consent of the owner of those rights has been obtained.

8. Where MBDA-UK and MBDA-France, either jointly or separately, hold title to an invention, patent or patent application embodying Foreground Information, the Parties shall ensure that MBDA grants to each Party, on the same basis, a non-exclusive, irrevocable and royalty-free licence in respect of that invention and any patent or patent application with respect to it. Classified patents and patent applications relating to them shall be dealt with in accordance with the Framework Agreement and its relevant Implementing Arrangements.

9. The Parties shall establish how levies should be applied to the Export sale and Transfer to EU States of weapons developed by MBDA-UK or MBDA-France which includes Information that has been created in the Centres of Excellence through the funding by either of the Parties.

ARTICLE 11

Monitoring of Joint Industrial Capabilities

1. In accordance with Article 7 of the Framework Agreement, the Parties recognise that any trans-national defence company has the ability to use its commercial judgement to distribute its industrial capabilities according to economic logic.

2. The Parties recognise that the implementation of MBDA Centres of Excellence will increase dependency on the other for the provision of certain Technologies, except where the Parties have identified where they wish to retain key strategic defence activities, assets and installations on national territory for reasons of national security.

3. To manage these aims and to ensure sustainable and mutually beneficial Centres of Excellence that incorporate inter-dependence into the future, the Parties request that MBDA consults them in advance in case of any changes considered to the industrial capabilities sustained within the Centres of Excellence where there might be a negative impact to either or both of the Parties.

4. Any proposed changes to Centres of Excellence, including to the balance of industrial capability, technological value and maintenance of core skills within the Centres of Excellence within the territories of each of the Parties shall therefore be monitored by the Committee, under the conditions set out in Article 5 of this Agreement.

5. In order to maintain the principle of inter-dependence through the Centres of Excellence, the Parties shall restrict themselves from funding projects or taking decisions which contribute to the regeneration or re-establishment on their territory of industrial capabilities that have been transferred to the territory of the other Party within the Centres of Excellence, unless conditions set out in Article 16.5 of this agreement apply. In the event that one of the Parties wishes to depart from this principle, it shall, under the governance arrangements in Article 5 of this Agreement, set out to the other Party its plans and the rationale behind this decision. The Parties agree to examine the consequences of such plans jointly.

ARTICLE 12

Participation of Third Party States

Noting that MBDA SAS with all its subsidiaries is a trans-national defence company, the Parties accept that there is the potential for the Centres of Excellence to be expanded to selected Third Party States to accommodate other national elements of MBDA in due course. The Parties shall conclude a new Agreement with relevant Third Party States in order to address such a new participation.

ARTICLE 13

General Provisions

This Agreement shall be implemented in accordance with the international obligations the Parties are bound to, as well as with European Union laws and with their respective national laws and regulations.

ARTICLE 14

Resolution of Disputes

Any dispute regarding the interpretation or application of the provisions of this Agreement shall be resolved by consultation between the Parties.

ARTICLE 15

Amendments

This Agreement may be amended at any time by written consent of the Parties.

ARTICLE 16

Entry into Force, Duration and Termination

1. This Agreement shall enter into force on the date of receipt of the last notification by which the Parties notify each other in writing that their respective internal procedures for entry into force of this Agreement have been fulfilled.
2. This Agreement shall continue in force until such time as either Party decides to terminate it after having given the other Party at least twenty four months' written notice of its intention to do so.
3. During the notice period, the Parties shall decide on satisfactory arrangements for the settlement of any outstanding liabilities and obligations arising from this Agreement. All provisions of this Agreement shall continue to apply during the notice period.
4. In the event of termination of this Agreement, the Parties shall continue to meet any liabilities and obligations that formed part of the Agreement for as long as those liabilities and obligations remain operative.
5. In the event of termination of this Agreement, both Parties agree the need for each other to be able to regenerate, re-establish or gain access to an alternative facility or to an alternative source of such components, equipment and support, including personnel, incorporated in MBDA Centres of Excellence. Each Party shall give the other Party appropriate opportunity in advance of any such termination to secure such re-generation or access.
6. In line with this requirement, the Parties shall explore all reasonable measures to determine how Information and Technologies generated by a Predominant Specialisation Centre of Excellence located on the territory of a Party may be retained and disclosed on request to the other Party to enable the other Party to re-generate that specialisation within its own territory should that be judged to be necessary.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto
, have signed this Agreement

Done at Paris on this twenty-fourth day of September 2015 in two copies in the English and French languages, both texts being equally authentic.

**For the Government of the United
Kingdom of Great Britain and
Northern Ireland:**

MICHAEL FALLON

**For the Government of the French
Republic:**

JEAN YVES LE DRIAN

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