

No. 11409

NETHERLANDS
and
FEDERAL REPUBLIC OF GERMANY

Agreement supplementing the NATO Agreement, signed at Paris on 21 September 1960, for the mutual safeguarding of secrecy of inventions relating to defence and for which applications for patents have been made—*Netherlands-German Supplementary Agreement to the NATO Agreement of 21 September 1960 (with procedural regulations)*. Signed at The Hague on 16 May 1961

Authentic texts: Dutch and German.

Registered by the Netherlands on 18 November 1971.

PAYS-BAS
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE

Accord destiné à compléter l'Accord de l'OTAN, signé à Paris le 21 septembre 1960, pour la sauvegarde mutuelle du secret des inventions intéressant la défense et ayant fait l'objet de demandes de brevet — *Accord germano-néerlandais complétant l'Accord de l'OTAN du 21 septembre 1960 (avec règlement sur les questions de procédure)*. Signé à La Haye le 16 mai 1961

Textes authentiques: néerlandais et allemand.

Enregistré par les Pays-Bas le 18 novembre 1971.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY SUPPLEMENTING THE NATO AGREEMENT, SIGNED AT PARIS ON 21 SEPTEMBER 1960,² FOR THE MUTUAL SAFEGUARDING OF SECRECY OF INVENTIONS RELATING TO DEFENCE AND FOR WHICH APPLICATIONS FOR PATENTS HAVE BEEN MADE (NETHERLANDS-GERMAN SUPPLEMENTARY AGREEMENT TO THE NATO AGREEMENT OF 21 SEPTEMBER 1960)

The Government of the Kingdom of the Netherlands and the Government of the Federal Republic of Germany,

Endeavouring to further the co-operation between the two States provided for in the North Atlantic Treaty of 4 April 1949,³

Desiring to create possibilities for the mutual safeguarding of secrecy of inventions relating to defence and of technical material which extend beyond the regulations set forth in the NATO Agreement, signed at Paris on 21 September 1960,² for the mutual safeguarding of secrecy of inventions relating to defence and for which applications for patents have been made,

Have agreed as follows:

Article 1

The provisions of the Agreement signed at Paris on 21 September 1960 for the mutual safeguarding of secrecy of inventions relating to defence and for which applications for patents have been made (NATO Agreement) shall also apply to inventions

- (a) on which secrecy has been imposed in one of the two States in the interest of national defence but for which no application for a patent or for the use of a design has been made in that State and for which an application for a patent is being made in the other State,

¹ Came into force on 8 October 1971, one month after the date on which the Government of the Netherlands notified the Government of the Federal Republic of Germany that existing national requirements had been met, in accordance with article 5 (1).

² United Nations, *Treaty Series*, vol. 394, p. 3.

³ *Ibid.*, vol. 34, p. 243; vol. 126, p. 350, and vol. 243, p. 308.

- (b) on which secrecy has been imposed in the Federal Republic of Germany in the interest of national defence and for which an application for the use of a design has been made, and for which an application for a patent is being made in the Kingdom of the Netherlands, or
- (c) on which secrecy has been imposed in the Kingdom of the Netherlands in the interest of national defence and for which an application for the use of a design is being made in the Federal Republic of Germany.

provided that the documents pertaining to the application for a patent or for the use of a design are transmitted to the other State in accordance with the procedural regulations referred to in article 3.

Article 2

The provisions of the NATO Agreement shall also apply, *mutatis mutandis*, to technical material on which secrecy has been imposed in the interest of national defence in one of the two States and which, by virtue of agreements and treaties

- (a) between the two Governments,
- (b) between the Government of one of the two States and individuals or bodies corporate which are resident or have their headquarters in the other State or
- (c) between individuals or bodies corporate of whom (which) one is resident or has (its) headquarters in one of the two States and the other in the other State,

has been transmitted to the other State, provided that the relevant documents are transmitted in accordance with the procedural regulations referred to in article 3.

Article 3

(1) This Agreement and the NATO Agreement shall be implemented in accordance with the procedural regulations set forth in the appendix and constituting an integral part of this Agreement.

(2) As soon as the procedural regulations for implementing the NATO Agreement (NATO Procedural Regulations) enter into force as between the two Parties, the two Governments shall begin negotiations with a view to adapting the procedural regulations referred to in paragraph (1) above to the NATO procedural regulations.

Article 4

The two Governments agree to inform each other immediately of any changes in their domestic legal situation which affects, or could affect, the implementation of this Agreement or of the procedural regulations referred to in article 3, specifying the effect of such changes on this Agreement and on the procedural regulations.

Article 5

(1) This Agreement shall enter into force one month after the day on which the Government of the Kingdom of the Netherlands notifies the Government of the Federal Republic of Germany that existing national requirements have been met, but not before the date on which the NATO Agreement enters into force as between the two Parties.

(2) With regard to the Kingdom of the Netherlands, this Agreement applies to the whole Kingdom unless the Government of the Kingdom of the Netherlands, simultaneously with the notification referred to in paragraph (1) above, indicates that the Agreement shall not apply in one or more of the non-European parts of the Kingdom.

Article 6

(1) This Agreement may be denounced at any time by either of the two Governments; it shall cease to have effect one year after such denunciation. It shall also cease to have effect on the date on which the NATO Agreement ceases to have effect as between the two Parties.

(2) Termination of this Agreement shall not, however, affect obligations already entered into and rights acquired by the two Governments by virtue of this Agreement.

IN WITNESS WHEREOF the plenipotentiaries of the two Parties, having exchanged their full powers, found in good and due form, have signed this Agreement.

DONE at The Hague on 16 May 1961 in two original copies, each in the Dutch and German languages, both texts being equally authentic.

For the Government
of the Kingdom
of the Netherlands:

J. LUNS

For the Government
of the Federal Republic
of Germany:

Dr. J. LÖNS

PROCEDURAL REGULATIONS FOR IMPLEMENTING THE NATO AGREEMENT, SIGNED AT PARIS ON 21 SEPTEMBER 1960, FOR THE MUTUAL SAFEGUARDING OF SECRECY OF INVENTIONS RELATING TO DEFENCE AND FOR WHICH APPLICATIONS FOR PATENTS HAVE BEEN MADE (NATO AGREEMENT) AND OF THE NETHERLANDS-GERMAN SUPPLEMENTARY AGREEMENT TO THE NATO AGREEMENT

The Government of the Kingdom of the Netherlands and the Government of the Federal Republic of Germany undertake to ensure compliance with the following procedural regulations for the implementation of the NATO Agreement and of the Netherlands-German Supplementary Agreement to the NATO Agreement:

(1) The following shall be competent (competent authorities) to approve, in respect of an invention on which secrecy has been imposed in one of the two States (originating State), an application for a patent or the use of a design in the other State or the transmittal of technical material on which secrecy has been imposed in one of the two States (originating State) to the other State:

- (a) In the Federal Republic of Germany, the Federal Minister of Defence;
- (b) In the Kingdom of the Netherlands, the Minister of Defence.

(2) The documents relating to inventions and technical material shall be delivered by the competent authorities of the originating State to the Embassy of that State in the other State by diplomatic courier. A statement by the competent authorities of the originating State, in duplicate, shall be attached to the documents to the effect that

- (a) secrecy has been imposed on the invention or the technical material in the originating State in the interest of national defence; the security classification of the inventions or technical material shall be specified in the statement;
- (b) the application in the other State for a patent or for the use of a design in respect of the invention, or for the transmittal of the technical material has been approved.

(3) The competent authorities of the originating State shall ensure that statements by the applicant are attached to the documents to the effect that

- (a) he undertakes, if he intends to file an application for a patent or for the use of a design in the other State, to ensure that his agent in the other State transmits to the competent authorities there, for their information, a copy of the application filed with the patent office in that State; where technical material is to be transmitted, he agrees that the competent authorities of the other State will, in the course of the transmittal, retain for their information a copy of the documents which he attaches to the application;

- (b) he waives any claim to compensation against the Government of the other State for damage due solely to the imposition there of secrecy on the invention or technical material;
- (c) he agrees that the documents will be delivered to the designated agent or to the intended recipient of technical material only if such agent or recipient is authorized to process applications or technical material on which secrecy has been imposed and if it is established that he has taken the necessary action to safeguard their secrecy.

(4) The obligation to transmit a copy of the application for a patent or for the use of a design and to attach a copy of the documents relating to technical material for retention shall apply also to cases in which the Government of one of the two States applies for a patent or for the use of a design in respect of an invention, or transmits technical material.

(5) (a) The embassy of the originating State shall ask the competent authorities of the other State whether the designated agent or intended recipient of technical material is authorized to process applications or technical material on which secrecy has been imposed and whether he has fulfilled the requirements for safeguarding their secrecy. This inquiry shall be made even in the case of a previously designated agent or recipient.

(b) If the designated agent does not meet the requirements specified in paragraph (a) above or if it is unlikely to be established in good time that these requirements have been met, the embassy shall so inform the applicant, through the competent authorities or direct, so as to enable him, if necessary, to select another agent.

(c) If the recipient of technical material does not meet the requirements specified in paragraph (a) above or is not prepared to accept the documents, the embassy shall return all the documents to the competent authorities by diplomatic courier.

(d) If the requirements specified in paragraph (a) are met, the embassy shall forward to the competent authorities of the other State all the documents which were transmitted to it, complying with the provisions for the safeguarding of security in force in that State.

In the Federal Republic of Germany, the Federal Minister of Defence shall, in cases where application is forthcoming for a patent or the use of a design, after retaining the statements referred to in paragraph 3 and a copy of the statement referred to in paragraph 2 (a) and (b), forward the documents and the additional copy of the statement referred to in paragraph 2 (a) and (b) to the Federal Minister of Justice, who shall be responsible for transmitting the documents and the statement to the agent designated by the applicant and who shall specifically enjoin the agent to safeguard the secrecy of the documents.

Where technical material is to be transmitted, the Federal Minister of Defence shall, after retaining copies of the documents, the statements referred to in paragraph 3 and the statement referred to in paragraph 2 (a) and (b), forward the additional copy of the documents and the additional copy of the statement referred to in paragraph 2 (a) and (b) to the recipient, specifically enjoining him to safeguard the secrecy of the documents.

Where technical material is to be transmitted, if the applicant has designated an agent and if the agent meets the requirements specified in paragraph (a) above, the Federal Minister of Defence shall forward the additional copy, referred to in the preceding paragraph, of the documents and the additional copy of the statement referred to in paragraph 2 (a) and (b) to the Federal Minister of Justice, who shall be responsible for transmitting them to the agent and who shall specifically enjoin the agent to safeguard their secrecy.

In the Kingdom of the Netherlands, the Minister of Defence, in cases where an application is forthcoming for a patent, shall, after retaining the statements referred to in paragraph 3 and a copy of the statement referred to in paragraph 2 (a) and (b), forward the supporting documents and the additional copy of the last-mentioned statement to the agent designated by the applicant, and shall enjoin him to safeguard the secrecy of the documents.

Where technical material is to be transmitted, the Minister of Defence shall, after retaining copies of the documents, the statements referred to in paragraph 3 and the statement referred to in paragraph 2 (a) and (b), forward the additional copy of the documents and the additional copy of the statement referred to in paragraph 2 (a) and (b) to the agent designated by the applicant or to the recipient, enjoining the agent or recipient to safeguard the secrecy of the documents.

(6) Inventions for which applications for a patent or for the use of a design have been or are to be made and technical material shall be immediately classified as secret in the other State by the competent authorities and assigned a security classification corresponding to that assigned to them in the originating State. The security classifications used in the two States shall be as follows:

In the Federal Republic of Germany:	In the Kingdom of the Netherlands:
STRENG GEHEIM	ZEER GEHEIM (top secret)
GEHEIM	GEHEIM (secret)
VS-VERTRAULICH	CONFIDENTIEEL OF VERTROUWELIJK (confidential)
VS-NUR FÜR DEN DIENSTGEBRAUCH	DIENSTGEHEIM (for official use only)

The security measures provided for in the administrative regulations of each State shall be applied to the above-mentioned inventions and technical material.

(7) The agent filing an application for a patent or for the use of a design with the patent office of the other State shall attach to the application the copy which was transmitted to him of the statement referred to in paragraph 2 (a) and (b).

(8) The agent shall, at the same time as he files an application for a patent or for the use of a design with the patent office of the other State, transmit to the competent authorities in that State a duplicate of the application stating, if applicable, the reference number and date of the relevant original application.

(9) All further correspondence between the applicant in one State and the patent office or agent in the other State or between the parties in an exchange of technical material shall, in so far as it deals with inventions for which an application for a patent or for the use of a design has been made or with the transmitted technical material, comply with the procedures for the transmittal of documents set forth in these regulations and with the provisions for safeguarding security in force in each State.

Non-confidential correspondence which may be delivered in the normal way shall include formal decisions of the patent offices, payments of fees and the correspondence relating thereto, provided that it contains no information concerning the nature of the invention.

(10) The Government of the originating State shall be notified by the competent authorities of the other State of any proposed or actual declassification.
