

No. 18039

**UNITED STATES OF AMERICA
and
FEDERAL REPUBLIC OF GERMANY**

**Memorandum of Understanding relating to coproduction
and sale of the Sidewinder (AIM-9L) missile system.
Signed at Washington on 7 October 1977**

**Amendment No. 1 to the above-mentioned Agreement.
Signed at Washington on 17 March 1978 and at Bonn
on 21 April 1978**

Authentic texts: English and German.

Registered by the United States of America on 14 November 1979.

**ÉTATS-UNIS D'AMÉRIQUE
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

**Mémorandum d'accord relatif à la coproduction et à la
vente du système de missiles Sidewinder (AIM-9L).
Signé à Washington le 7 octobre 1977**

**Amendement n° 1 à l'Accord susmentionné. Signé à Wash-
ington le 17 mars 1978 et à Bonn le 21 avril 1978**

Textes authentiques : anglais et allemand.

Enregistrés par les États-Unis d'Amérique le 14 novembre 1979.

MEMORANDUM OF UNDERSTANDING¹ BETWEEN THE FEDERAL REPUBLIC OF GERMANY REPRESENTED BY THE MINISTRY OF DEFENSE AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA REPRESENTED BY THE DEPARTMENT OF DEFENSE FOR COPRODUCTION AND SALE OF THE SIDEWINDER (AIM-9L) MISSILE SYSTEM

PREAMBLE

To achieve standardization of weapon systems for the air-to-air role the Federal Republic of Germany (FRG) decided to terminate the development of the viper missile system and adopt the Sidewinder AIM-9L as the common system. This decision was based on the declaration and willingness on the part of the Government of the United States (USG), as borne out in the Agreement between the United States Department of the Navy and the Federal Minister of Defense on AIM-9L dated 14 February 1975,² to provide the necessary technical data and support for coproduction in Europe of the AIM-9L Missile System as soon as the weapon was designated as the primary short-range air-to-air missile for the U.S. Air Force and the U.S. Navy.

Referring to the letter from Secretary of Defense Rumsfeld, dated 2 December 1976, to Bundesminister Leber, this Memorandum of Understanding (MOU) between the USG, represented by the Department of Defense (DOD), and the FRG, represented by the Ministry of Defense (MOD), concerns the coproduction and sale of the Sidewinder (AIM-9L) Missile System and its components, as defined in Annex A* for the purpose of equipping the German and Norwegian Armed Forces with a missile system standard to the armed forces of these Governments.

Article I. SCOPE AND OBJECTIVE

The USG authorizes, and agrees to support as stipulated herein, the FRG to evaluate for national purposes and to buy and produce or have produced, together with the Government of Norway and such other NATO governments (coproducers) as may be authorized by the USG pursuant to the provisions of this MOU, the complete AIM-9L system, with the exception of the production of the Active Optical Target Detector (AOTD) fuze.

Article II. SALE AND COPRODUCTION OF THE AIM-9L MISSILE SYSTEM

A. Subject to U.S. laws and regulations:

1. The USG agrees to sell to the FRG the Production Technical Data Package (hereinafter referred to as the PTDP) pertaining to the components listed in Annex B* hereto. The PTDP will not include the fuze (AOTD) manufacturing data. Technical and cost information to be used for the purposes of evaluation of system effectiveness including cost and performance will be provided by the USG upon request of the FRG. Fuze (AOTD) information less manufacturing data will be supplied for the purposes of system evaluation and integration.

* Not printed.

¹ Came into force on 14 October 1977, the date on which the Government of the United States of America had notified the Federal Republic of Germany that its legal procedures had been fulfilled, in accordance with article XIX.

² United Nations, *Treaty Series*, vol. 1120, p. 23.

2. The USG agrees to extend to the FRG the right to use this PTDP for production purposes without payment to the USG of any royalty and/or share of development including test and evaluation costs. The USG will make every effort to meet FRG AOTD delivery requirements.
3. The USG agrees to sell Sidewinder AIM-9L Missile Systems, components, and related supplies and services, including the fuze (AOTD), to the FRG. The delivery schedule for the AOTD will be agreed upon by the parties hereto and be set forth in the applicable Letter of Offer and Acceptance (LOA). No royalty and/or share of development, including test and evaluation costs, will be included in the price.
4. The USG undertakes, subject to reimbursement by the FRG, to supply technical assistance for the production and maintenance program for the duration of the FRG program.

B. In accordance with the Arms Export Control Act, all supplies and services including the PTDP to be furnished by the USG to the FRG will be the subject of separate Letters of Offer and Acceptance (LOA) (DD Form 1513) and to the extent of any inconsistencies between this MOU and such LOA, the LOA will govern. However, the USG agrees that the provisions of this MOU will prevail over any additional terms, notes and conditions that may be appended to the LOA's specifically to implement this program.

C. The FRG agrees that technical information and data covered by this MOU will not be transferred to any third country, organization or person, other than to Norway and such other NATO coproducers as referred to in Article 1, except that, in regard to the Guidance and Control Section (GCS), there will be no transfer to any third country of technical information and data on the Refrigerated Detector Unit and the Gyro Assembly.

D. The FRG agrees that no items covered by this MOU will be manufactured by the FRG for sale or transfer to any person, organization, or third country without the prior written consent of the USG, except that the USG hereby consents to such sale or transfer to the Government of Norway and any subsequent agreed-to NATO coproducers so long as the particular government is a participant in such manufacture. The USG agrees, however, to give sympathetic consideration to proposed FRG transfers of items produced under this MOU to NATO countries for their defense purposes.

Article III. MANUFACTURE

The USG recognizes that direct contractual arrangements may be made between manufacturers involved in the coproduction program in furtherance of this MOU. The USG will use its best efforts to facilitate the negotiation of such contracts provided the contracts are not inconsistent with the terms of this MOU and are in accordance with U.S. laws.

Article IV. SECURITY

A. To the extent that any items, plans, specifications, or information furnished in connection with this transaction are classified by the USG for security purposes, the FRG shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the USG throughout the period during which the USG may maintain such classification.

B. The operating procedures for the implementation of the General Security Agreement between the two Governments, including the Industrial Security Agreement between the U.S. Department of Defense and the FRG Ministry of Defense, apply to activities under this MOU.

Article V. AUTHORIZED USE OF DOCUMENTATION

A. All technical data provided pursuant to Article II above for the AOTD and Guidance Control Section (GCS) will be kept separate from that pertaining to all other missile components.

B. 1. The USG will use its best efforts to furnish the FRG a PTDP that is accurate, adequate, and complete; however, the USG does not guarantee the accuracy or completeness of the PTDP drawings and production data provided to the FRG by the USG.

2. Any procurement by the FRG directly from USG contractors will be subject to U.S. laws and regulations. The USG cannot guarantee the accuracy, adequacy, or completeness of any documentation provided by a U.S. contractor(s) under terms of direct agreements between the FRG and/or their selected contractor(s).

C. Within the scope of Article II, the FRG is authorized to use for evaluation, production, maintenance, repair, training and overhaul purposes documentation furnished by the USG to the extent of the rights of the USG therein, except that technical data pertaining to fuze (AOTD) may be used only for evaluation, organizational and intermediate maintenance, and training.

D. This authorization (paragraph C above) does not in any way constitute a license to make, use, or sell the subject matter of any inventions, technical information, or know-how owned by third parties which may be embodied or described in the documentation.

E. As to the technical data and other information, reproduction rights, inventions and licenses therefor, not owned or controlled by the United States, the USG will use its best efforts to assist the FRG, Norway, and subsequently agreed-to NATO coproducers in identifying and negotiating production and license rights on fair and reasonable terms, to produce or have produced by the FRG, Norway, and subsequently agreed-to NATO coproducers, in accordance with this program, AIM-9L Missile Systems including components, assemblies and parts therefor.

F. The FRG agrees that all technical data and documentation provided by the USG, in accordance with this MOU and related LOA's, or by U.S. manufacturers as mentioned under Article III, will be used, subject to paragraph C above, only for the coproduction purposes of this MOU. To achieve this end, the FRG may release the technical data and documentation to the Government of Norway, and to subsequently agreed-to NATO coproducers as may be authorized in accordance with the provision of this MOU, and all contractors involved in the coproduction under this MOU, provided that the FRG and Norway and each authorized recipient will not further release or use such data and documentation for any purpose other than the coproduction purposes of this MOU without the written approval of the USG.

Article VI. EXCHANGE OF TECHNICAL INFORMATION AND UTILIZATION OF INVENTIONS

A. The FRG will periodically report to, and at the request of the United States Administrative Representative, furnish in the existing format, at no cost except reproduction costs, to the USG all technical information and data concerning design

and manufacturing changes, development modifications, and improvements developed under this coproduction program and incorporated into the AIM-9L Missile System by the FRG, or the Government of Norway, or subsequently agreed-to NATO coproducers in accordance with Article X (Standardization).

B. The FRG agrees to furnish, at no cost except reproduction cost, to the USG technical information and data on inventions or discoveries, whether or not patentable, conceived or first actually reproduced to practice in the performance of contracts for the production of the AIM-9L Missile System and/or components thereof in the FRG, Norway, and in the countries of other subsequently agreed-to NATO coproducers and a royalty-free right to use the same world-wide for defense purposes, including Security Assistance Programs of the USG.

C. Subject to U.S. laws and regulations, the USG will periodically report to, and at the request of the German Administrative Representative, furnish, at no cost except reproduction cost, to the FRG, Norway, and subsequently agreed-to NATO coproducers, except as it pertains to the fuze (AOTD) and major performance changes not intended to be incorporated in the AIM-9L (the ongoing USG AIM-9L Product Improvement Program), technical information and data concerning design and manufacturing changes, development modification, and improvements incorporated into the AIM-9L Missile System.

D. Subject to U.S. laws and regulations, the USG agrees to furnish, insofar as it has the right to do so, at no cost except reproduction costs, to the FRG and Norway technical information and data information on inventions or discoveries whether or not patentable, conceived or first actually reduced to practice in the performance of contracts in the U.S. for the production of the AIM-9L Missile System and/or components thereof except for the fuze (AOTD) and major performance changes (the ongoing USG AIM-9L Product Improvement Program), and, insofar as it has the right to do so, a royalty-free right to use the same for the coproduction program.

E. The FRG agrees to require Norway and all FRG and Norwegian contractors and any subsequently agreed-to coproducers and all contractors involved in this program to furnish to the FRG or the USG, as appropriate, such data as the FRG has agreed to furnish or caused to be furnished to the USG under this Article VI.

Article VII. USG PURCHASES

A. The FRG agrees that the USG will have the right to make purchases in the FRG of AIM-9L Missile components, assemblies and parts thereof. In addition, the FRG agrees to use its good offices to assist the USG in obtaining Norwegian-produced items from Norwegian sources.

B. Prices of items purchased by or for the USG, or with funds derived through the Security Assistance Program or other USG programs, will not include royalties or other payments for the use [or] practice of inventions, designs, patents, technical data, etc., which the USG already has the right to use, disclose, or practice, which are in the public domain or which the USG has been given without restriction upon its use or disclosure to others, or is otherwise entitled to use without the payment of royalties and/or other fees.

Article VIII. USE OF USG-OWNED PRODUCTION AND RESEARCH PROPERTY

In accordance with U.S. laws and regulations, the USG may approve the use of USG-owned production and research property in the possession of U.S. contractors

on direct contracts between U.S. contractors and the FRG and Norway or subcontracts thereunder.

Article IX. LEASE OF AIM-9L SYSTEMS AND COMPONENTS

The USG agrees to consider the lease of AIM-9L Systems and/or components to the FRG. The terms and conditions will be set forth in a separate arrangement to be negotiated by the two Governments and will conform to standard policies and regulations of the USG.

Article X. STANDARDIZATION

The USG and FRG agree to seek an optimum level of standardization (form, fit and function) of the AIM-9L system with the objective of maintaining a common configuration, and at least, physical interchangeability to the maximum extent feasible.

A. The FRG agrees that consistent with its national security prerogatives, the AIM-9L Missile System will be produced in the FRG in conformance with drawings, specifications and changes thereto furnished for its production as set forth in Annex A.

B. The authorities to be nominated and authorized pursuant to Article XI will determine and continually monitor interchangeability and compatibility of the elements of the system.

C. Modifications and improvements to the U.S. baseline configuration of the type affecting interchangeability or functional compatibility will be performed only upon consultation by the appropriate authorities of the two countries except when national security prerogatives demand unilateral decision to be taken by one government for its armed forces. A representative of the FRG shall be a member of the AIM-9L Configuration Control Board (CCB) for the duration of this program. Under the authority of the U.S. Navy, this board will consider, evaluate and make decisions on behalf of the parties to this MOU.

Article XI. IMPLEMENTATION

As soon as possible after signature of this MOU, the authorized representatives of the USG (DOD) and the FRG (FMOD) shall meet and agree upon an implementing arrangement. This arrangement will include procedures necessary to comply with provisions of this MOU such as joint responsibilities, exchange of information and communication, and may provide for liaison offices within each country as needed.

Article XII. DEVIATIONS

The USG shall not be responsible for deviations proposed and/or implemented by the FRG or its authorized manufacturers from drawings, specifications, or data furnished by the United States or its manufacturers or for quality assurance of any FRG authorized modified component of the AIM-9L Missile System.

Article XIII. REPORTS

The FRG agrees to furnish such information and progress reports as may be required by the USG to assure, in the mutual interest of the parties, orderly and successful completion of this coproduction program including, but not limited to, reports of all deviations and periodic reports of components and missiles produced.

Article XIV. IDENTIFICATION

Items manufactured by the FRG and subsequently agreed to by NATO coproducers will be so identified by appropriate markings.

Article XV. RESOLUTION OF DIFFERENCES

The procedure for the resolution of differences will be covered by an implementing arrangement mentioned in Article XI. Major differences will be reported to the respective national authorities.

Article XVI. TRANSFER TO NORWAY AND COPRODUCERS

To the extent that any items, plans, specifications, or information furnished in connection with this transaction are transferred to Norway, or subsequently agreed-to NATO coproducers, the FRG shall impose the same requirements and restrictions as the FRG has agreed to accept under this MOU.

Article XVII. TERMINATION

A. It is the intention of both Governments to implement the terms of this MOU to its completion. However, if the two Governments decide by common consent to terminate the arrangements made in this MOU before the completion of all the actions envisaged and provided for, such termination will be carried out under arrangements to be made at the time by the two Governments in consultation with the coproducers.

B. Either Government (USG or FRG) may withdraw from this MOU at any time subject to giving the other Government notice in writing of its intention to do so. In this event, the USG will use its normal procedures for termination. The USG will use its best endeavors to ensure that the termination costs for which the FRG may be liable are restricted to a minimum. In the event of termination by the USG it will, in addition, subject to U.S. laws and regulations, use its best efforts to assure continued support of FRG production requirements by U.S. contractors.

C. In the event of termination of this MOU, the arrangements for disposal of assets arising from the program will be the subject of separate negotiation at the time.

D. The provisions of Articles II,C, II,D, IV, V, VII and XVI above and royalty-free rights identified in Articles VI,B, VI,D and VI,E in existence at the date of termination shall continue in full force and effect after the termination of this MOU.

Article XVIII. OTHER NATO COPRODUCERS

Other NATO European countries wishing to participate in this coproduction program on terms and conditions as laid down both in this MOU and in corresponding agreements between the FRG and its NATO coproducers will be invited to address their application to the FRG which, in turn, together with its coproducers, will duly consider the application. The FRG will then make appropriate recommendations to the USG as to whether the admission of the candidate coproducer would be of mutual benefit to all parties concerned.

Article XIX. EFFECTIVE DATE

This MOU, done in the English and German languages, each equally authentic, shall become effective on the date that the United States Government notifies the

Federal Republic of Germany of approval of this Memorandum of Understanding in accordance with United States Government legal procedures.

For the Federal Republic of Germany,
the Bundesminister der Verteidigung
im Auftrag:¹

HANS EBERHARD

Date: October 7, 1977

Effective Date: October 14, 1977

The Department of Defense
for the United States Government:

WILLIAM J. PERRY

Date: October 7, 1977

¹ Federal Minister of Defence *ad interim* — Le Ministre fédéral de la défense par intérim.

AMENDMENT No. 1¹

Whereas it is in the mutual interests of the parties hereto to further standardization of weapon systems within the NATO alliance, and to resolve questions (1) and (2) reserved by the October 7, 1977, understanding signed by Mr. Eberhard and Dr. Perry, the Memorandum of Understanding for the Coproduction and Sale of the Sidewinder (AIM-9L) Missile System² is hereby amended as follows:

Change Article VI, Exchange of technical information and utilization of inventions, to read:

“A. Subject to FRG laws and regulations, the FRG will periodically report to, and at the request of the United States Administrative Representative, furnish in the existing format, at no cost except reproduction costs, to the USG all technical information and data concerning design and manufacturing changes, development modifications, and improvements developed under this coproduction program and incorporated into the AIM-9L Missile System by the FRG, or the Government of Norway, or subsequently agreed-to NATO coproducers in accordance with Article X (Standardization).

“B. Subject to FRG laws and regulations, the FRG agrees to furnish, at no cost except reproduction cost, to the USG technical information and data on inventions or discoveries, whether or not patentable, conceived or first actually reduced to practice in the performance of contracts for the production of the AIM-9L Missile System and/or components thereof, except as they pertain to major performance changes not intended to be incorporated in the AIM-9L, in the FRG, Norway, and in the countries of other subsequently agreed-to NATO coproducers and a royalty-free right to use the same world-wide for defense purposes, including Security Assistance Programs of the USG.

“C. Subject to U.S. laws and regulations, the USG will periodically report to, and at the request of the German Administrative Representative, furnish, at no cost except reproduction cost, to the FRG, Norway, and subsequently agreed-to NATO coproducers, except as it pertains to the fuze (AOTD) and major performance changes not intended to be incorporated in the AIM-9L (the ongoing USG AIM-9L Product Improvement Program), technical information and data concerning design and manufacturing changes, development modification, and improvements incorporated into the AIM-9L Missile System.

“D. Subject to U.S. laws and regulations, the USG agrees to furnish, insofar as it has the right to do so, at no cost except reproduction costs, to the FRG and Norway technical information and data information on inventions or discoveries whether or not patentable, conceived or first actually reduced to practice in the performance of contracts in the U.S. for the production of the AIM-9L Missile System and/or components thereof except for the fuze (AOTD) and major performance changes (the ongoing USG AIM-9L Product Improvement Program), and, insofar as it has the right to do so, a royalty-free right to use the same for the coproduction program.

¹ Came into force on 21 April 1978 by signature.

² See p. 118 of this volume.

“E. The FRG agrees to require Norway and all FRG and Norwegian contractors and any subsequently agreed-to coproducers and all contractors involved in this program to furnish to the FRG or the USG, as appropriate, such data as the FRG has agreed to furnish or caused to be furnished to the USG under this Article VI.”

For the Federal Republic of Germany:
The Bundesminister der Verteidigung,¹

HANS EBERHARD

Date: 21 April 1978

For the United States Government:
The Department of Defense,

WILLIAM J. PERRY

Date: 17 March 1978

¹ Federal Minister of Defence — Le Ministre fédéral de la défense.