

No. 18651

**UNITED STATES OF AMERICA
and
PORTUGAL**

Memorandum of Understanding concerning the principles governing mutual co-operation in the research, development, production, procurement and logistic support of defense equipment. Signed at Lisbon on 18 December 1978, and at Washington on 28 March 1979

Authentic text: English.

Registered by the United States of America on 18 April 1980.

**ÉTATS-UNIS D'AMÉRIQUE
et
PORTUGAL**

Mémorandum d'accord relatif aux principes devant régir la coopération mutuelle dans la recherche, le développement, la production, l'achat et l'entretien logistique de matériels de défense. Signé à Lisbonne le 18 décembre 1978, et à Washington le 28 mars 1979

Texte authentique : anglais.

Enregistré par les États-Unis d'Amérique le 18 avril 1980.

MEMORANDUM OF UNDERSTANDING¹ BETWEEN THE GOVERNMENT OF PORTUGAL AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH, DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT

PREAMBLE

The Government of the United States of America and the Government of Portugal, duly represented by their Ministers of Defense,

Intending to increase their respective defense capabilities through more efficient cooperation in the fields of research, development, production, procurement and logistic support in order to:

- Make the most cost-effective and rational use of the resources available for defense,
- Ensure the widest possible use of standard or interoperable equipment,
- Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding (MOU), and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements. They therefore agree that in the event of a possible conflict between agreements entered into between the IEPG and the Government of the United States, and this MOU, the parties hereto will consult with a view to amending this MOU.

The two Governments further agree that this MOU should be viewed in the larger context of the cooperation between Europe and North America within the Alliance.

Article I. PRINCIPLES GOVERNING MUTUAL DEFENSE COOPERATION

1. Both Governments intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies.

¹ Came into force on 28 March 1979, the date of the last signature, in accordance with article VIII.

This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

2. This MOU is intended to cover areas in which possible bilateral cooperation could be achieved in research, development, production, procurement and logistic support of conventional defense equipment, complementing the work of the Conference of National Armament Directors (CNAD), the Independent European Program Group (IEPG), and the Senior NATO Logisticians Conference (SNLC).

3. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Alliance.

4. In the interests of standardization and the effective utilization of scarce resources, the two Governments shall, to the extent possible, adopt qualified defense items that have been developed or produced in the other country to meet their requirements.

5. The two Governments shall mutually determine the counting procedures to be laid down in an Annex to this MOU that will apply to all defense items and defense services purchased by them directly or through their relevant industries under this MOU.

6. Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to facilitate achievement of the aims of this MOU.

8. Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each other's country for use by either country's defense establishment.

9. The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

- a. Offers or proposals will be evaluated without applying price differentials under buy national laws and regulations and without applying the costs of import duties;
- b. Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;
- c. Offers or proposals will be required to satisfy requirements of the purchasing Government for performance, quality, delivery, and costs.

10. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

11. Each Government will ensure that the technical data packages (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on and performing a prospective defense contract, without the prior agreement of those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent of the originating Government.

12. Third party transfers of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments.

13. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights.

14. Arrangements and procedures will, at the request of the purchasing government, be established concerning follow-on logistic support for items of defense equipment purchased pursuant to this MOU. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

Article II. IMPLEMENTING PROCEDURES

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this MOU and the terms of reference for a Portugal-U.S. Committee for Mutual Cooperation.

2. The Under-Secretary of Defense for Research and Engineering will be the responsible authority in the United States Government for the development of implementing procedures under this MOU.

3. The Director General of Armaments and the Secretary of State for Light Industry will be the responsible authorities of the Government of Portugal for the development of the implementing procedures under this MOU.

Article III. INDUSTRY PARTICIPATION

1. Each Government will be responsible for calling to the attention of the relevant industries within its territory the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this MOU will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and objectives of this MOU. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industries in each nation.

Article IV. SECURITY

1. To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this Memorandum of

Understanding are classified by the furnishing Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classifications.

2. Information that has been provided by the Government of Portugal to the United States in confidence, or produced by the United States pursuant to a written joint arrangement with the Government of Portugal requiring confidentiality, shall either retain its original classification designation, or be assigned a United States classification designation that shall ensure a degree of protection against disclosure equivalent to that required by the Government of Portugal. To assist in providing the desired protection, the Government of Portugal will mark such information furnished to the U.S. Government with a legend indicating that the information is of Portuguese Government origin, that the information relates to the MOU and that the information is furnished in confidence.

Article V. ADMINISTRATION

1. The Portugal-U.S. Committee for Mutual Cooperation, referred to in article II above, will meet as agreed or at the request of either Government to review progress in implementing the MOU. They will discuss research and development, production and procurement needs of each nation and the likely areas of cooperation; agree to the basis of and keep under review, the financial statement referred to below; and consider any other matters relevant to this MOU.

2. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency under the Ministries of Defense.

3. An annual United States-Portugal statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two nations will be prepared on a basis to be mutually agreed.

Article VI. ANNEXES

Annexes negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this MOU.

Article VII. DURATION

1. This MOU will remain in effect for a ten-year period and will be extended for successive five-year periods, unless the Governments mutually decide otherwise.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOU may be terminated by the

Parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

Article VIII. IMPLEMENTATION

This MOU will come into effect on the date of the last signature.

For the Government
of the United States of America:

The Secretary of Defense,

[Signed — Signé]¹

Date: 28 March 1979

For the Government
of Portugal:

The Minister of Defense,

[Signed — Signé]²

Date: 18 December 1978

¹ Signed by Harold Brown — Signé par Harold Brown.

² Signed by José Alberto Loureiro dos Santos — Signé par José Alberto Loureiro dos Santos.