

# Defence G2G Agreements: National Strategies Supporting Export and Cooperation

by Alessandro Marrone and Ester Sabatino

## ABSTRACT

Government-to-Government agreements (G2G) represent a widely used instrument for the sale of arms within the defence market, complementary to those occurring on the market. Such instruments bring advantages to both the purchaser and the seller and contribute towards building and strengthening a network of alliances and partnerships with foreign states. Thanks to the G2G, the acquiring state receives government guarantees on the performance of the contract which might be more advantageous than sales contract concluded directly with the selling company. At the same time, the seller state manages to better support the export of its national defence industries. With the exception of Germany, the leading arms exporters in the world have equipped themselves with G2G systems which reflect the peculiarities and meet the national sectoral demands.

*Defence industry | Arms trade | USA | France | Germany | United Kingdom | Spain | Sweden*

**keywords**

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by Alessandro Marrone and Ester Sabatino\*

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## Executive summary

### *The relevance of G2G agreements in the defence market*

The peculiar configuration of the international defence market, where the purchasers are exclusively states, precludes the sector from operating according to purely market-oriented paradigms and requires also to resort to peculiar mechanisms, such as Government-to-Government (G2G) agreements.

The G2G should be conceived, on the one hand, as an instrument to strengthen the military capabilities of the acquiring state. On the other, such agreement plays also a pivotal role for the state of the manufacturer company supplying the weapon system covered by the agreement: its importance hinges upon two strictly inter-connected politico-military and industrial-technological levels. As far as the politico-military level is concerned, the objective is to consolidate and strengthen bilateral relations between the involved states. This becomes even further pronounced when considering that G2G agreements do not only pertain the supply of military equipment, but they are also geared towards building up a network of relations between the respective armed forces in the fields of training, maintenance and logistics connected to the equipment bought. G2G have acquired increased relevance following the continuous extension of the operational life of weapons systems, due to upgrades and subsequent versions which are inserted in the agreement thanks to the inclusion of the Maintenance Repair Overhaul Upgrade activities (MROU).

The interchange in a sector of such great importance for states as that of defence contributes considerably towards building a network of alliances and/or partnerships, hence it acts as a multiplier of influence and provides a significant support for the foreign and defence policy of states.

As regards the industrial-technological level, G2G agreements are important because they are capable of addressing wider and more long-term programmes, placing supplies at the centre of a strategic collaboration and representing a driving force for innovation. Such agreements expand and/or consolidate new markets, thus increasing production volumes and keeping the supply chain active for the benefit of the industrial and technological base of the state concerned, which, especially in Europe, can no longer be economically sustained with only the domestic demand. Both in the case of dual-use technologies and of products which are exclusively for the benefit of the Armed Forces there is a pressing need to remain at the forefront of the development of cutting-edge technologies in order to maintain the strategic advantage of one's own military instrument with respect to the adversaries, and also to maintain the interoperability with more technologically advanced allies such as the United States and, more generally, NATO members.

Significant implications resulting from the G2G agreement concern also the acquiring state, which receives, in this way, additional guarantees and services as compared to those it would get by entering into a contract with the industry. The possibility of receiving government support often influences the final decision of the purchaser who, when carrying out his evaluation, takes also into consideration the bureaucratic and procedural aspects of the different types of G2G agreements, thereby pushing countries to compete among each other.

Given the overall advantages deriving from G2G agreements, the main European countries have organised themselves on time from a legal, institutional and political perspective, in order to further support their exports. In Europe, those states equipped with a G2G system have had over the years increasingly better performances than those countries, like Italy, which lag behind because they have not availed themselves of this instrument, thus leaving their industries to compete also with the government guarantees provided by other states.

G2G can be used to safeguard the seller country and also to set limits on the requests from purchasers to transfer technologies and know-how, which would over time enable new competitors to enter the international market. The United States, well aware of such a possibility, have long established a system of inter-governmental agreements which significantly limits the transfer of competences. As regard individual European countries, adopting such a barrier is less feasible, given the small scale of their respective political, military and industrial bases and the fact that they are often in competition with each other on third-country markets. In this context, the G2G agreement gives importance to the role of the concerned government during the negotiations on the technological transfer, by obviously favouring the supplier industry, but also by better safeguarding the national interest in a strategic perspective.

Apart from resorting to G2G agreements in order to sell new armaments, the transfer or the sale of surplus weapons can be conceived as a further instrument to promote export in the defence sector. Regardless of the potential economic return, the free transfer or selling of those products no longer meeting the demands of the armed forces of a country can represent an effective instrument of foreign policy which allows the building of mutual trust among parties and the cooperation among the respective armed forces, besides also reducing the costs for storing and/or dismantling them. Moreover, a transfer agreement may also include clauses for the development of special partnerships or further political commitments among the parties, with the aim of inducing, for example, the purchasing state to buy the latest version of an equipment, once the seller has introduced it on the market.

### *The main actors within the field of G2G agreements*

In the United States, G2G agreements are made by means of the Foreign Military Sales (FMS) system. The US legislation recognises the need to curb the arms trade, but highlights the complex economic effort required from a country if it decides to produce weapon systems independently.

The well-structured American G2G purposes itself as support instrument not only for its own defence apparatus, but also for that of third countries, thanks to the use of instruments such as the Foreign Military Financing (FMF), which allows the financing of the purchase of defence-related goods and services through a G2G agreement. Even if a purchasing state chooses not to resort to the intermediation and the guarantees offered by the American government, the central administration is nonetheless able to provide support to varying degrees, through hybrid forms of agreements, in order to better meet the needs of the purchaser. This plethora of possibilities does not only revolve around the supply of arms and the resulting operational training, but also concerns the improvement of structures and capacities of the partner country in order to maintain and strengthen its own national security. In this way, the US, taking full advantage of the political dimension of G2G agreements, is the top arms exporter for export volumes at the global level.

France considers the defence export as a fundamental element to support the national industry and to guarantee a constant investment in the development of competences and technologies geared towards ensuring a cutting-edge defence system. At the operational level, the G2G system is managed by the *Direction générale de l'armement* (DGA), in particular by the *Direction du développement international* (DGA/DI), whose task is carried out in cooperation with other divisions of the Ministry of Armed Forces and by external companies which verify whether the requirements necessary for signing the G2G are met, by considering the potential politico-strategic implications resulting from the agreement.

In order to better support its own aerospace, security and defence industry, France has also recently introduced the possibility of signing an "inter-governmental partnership". Such type of agreement, developed along the lines of the US FMS, is reached only when the contract has a longer duration and wider contents – including training, logistics support and maintenance – as compared with the traditional French G2G agreements.

Germany constitutes an exception within the general European framework. Despite the absence of a G2G system and the existence of a restrictive national policy on the exports of arms and dual-use goods, Berlin is very well positioned in the global market. This state of affairs may reflect the efficiency and the competitiveness of its industrial system, especially in the production of land vehicles and sub-marines, the two German areas of excellence.

Companies in Germany, as in all the other countries, can proceed with the export after having undergone a review of the requirements carried out by the Federal Office in charge of issuing licences. Nevertheless, the export of weapons systems is prohibited when it can favour the autonomous and additional development of armaments in the countries of destination. This also applies to the exports of the military equipment produced within the framework of a European cooperation. In order to safeguard the possibility of maintaining a restrictive approach towards

exports, the Federal government has recently updated the “political principles” lying at the core of exports, thus making difficult to export armaments produced at the international level without the prior consent of Berlin.

The importance of the defence and security export sector in the United Kingdom is highlighted in the National Security Strategy and Strategic Defence and Security Review, which states that higher levels of export can generate economies of scale that reduce the unit costs of defence goods produced and used at the national level. To this end, the United Kingdom has equipped itself with a legislative and bureaucratic framework geared towards promoting national industries abroad and attracting the interest of potential acquiring states. The English system allows also to gear the investment towards specific products and technologies that maximise the national export, by offering manifold opportunities for dialogue between the industry concerned and the government. Even in the case a G2G agreement is not reached, the government offers support to the industries in all the phases of export, ranging from the signing of the contract to its implementation.

The reference legislative framework, at the moment, still includes and reflects European legislation on this matter. Nevertheless, once the United Kingdom’s exit from the European Union will be completed, it remains to be seen whether the European dispositions adopted so far and transposed into national law will continue to be in full force and effect or whether they will be amended.

Spain has paid increasing attention to the national industry of aerospace, security and defence, leading to the introduction of the G2G system in 2011, which has subsequently become fully operative with the adoption of new laws in 2015. This choice has proved successful. Comparing the data of 2011, when Spain was not equipped with a G2G system, with those of 2017, when a fully-fledged G2G system was in place, exports have more than doubled.

The Spanish G2G agreement can take place in two different ways, depending on whether the contract is totally managed, or only supervised, by the Ministry of Defence. In this latter case, the government is not charged with the definition of the contractual terms, the economic-financial management and the risk management related to the execution of the agreement.

Sweden lacks a legally defined G2G system. However, exports in the defence sector are of such great importance for national industries that are supported through a long-established system. G2G agreements are carried out by a joint action of the Inspectorate of Strategic Products (ISP), an independent administrative authority, and the Agency for Defence Material (*Försvarets materielverk*, FMV), headed by the Ministry of Defence.

Also in the Swedish case, the public administration deals with the full management of the G2G or acts in support of the aerospace, security and defence industries.

## 1. The importance of G2G agreements in the defence market

by Alessandro Marrone

The international defence market is unique compared to all the other sectors of the globalised economy. Indeed, the purchasers are exclusively states, whilst the suppliers in almost all cases are authorised to provide supplies by their respective governments (with the exception, of course, of illegal sales). Moreover, the aerospace, security and defence industries are often directly or indirectly state-controlled, such as through shares or through the golden power mechanism in so far as these companies are considered to be strategic.<sup>1</sup>

Given such involvement of the state, the defence market cannot therefore be considered an “open” market. On the contrary, the rules and dynamics of economic competition coexist with legislation and practices guided by a politico-strategic approach which is aimed mainly at the national security, the technological and operational sovereignty and at the building of bilateral and multilateral alliances, whilst also taking into account the context of local, regional and global security and international law.

The outcome is a dynamic balance, influenced by the worldwide context. The post-Cold War period has witnessed, to a certain degree, globalisation also in this sector, with the opening up of national markets previously closed, the breaking down of some rigid alliances – especially in the soviet sphere – and the multiplication of cooperation arrangements on the basis of a variable geometry, with an increased dynamism not only of the American superpower and of its Russian and Chinese competitors, but also of regional middle powers and emerging economies.<sup>2</sup> This has in some way increased the overall degree of trade competition in the international defence market, but the role of states has nevertheless remained central both on the demand side and on the supply side – in the latter through the simultaneous control and support of exports.

The peculiar configuration of the international defence market is the starting point for analysing the importance of bilateral agreements between the acquiring government and the government to whom the company supplying a given weapon system is related. The importance of such agreements, commonly known as Government-to-Government or G2G, hinges upon two strictly inter-connected levels: the politico-military level and the industrial-technological one.

<sup>1</sup> See in this regard, among others: Michele Nones, “La vera difesa delle attività strategiche”, in *AffarInternazionali*, 23 March 2020, <https://www.affarinternazionali.it/?p=79769>.

<sup>2</sup> See in this regard, among others: Germano Dottori and Alessandro Marrone, “Il mercato mondiale della Difesa tra geopolitica e globalizzazione”, in Claudio Catalano (ed.), *Baricentri: lo shift globale degli equilibri politici, economici e tecnologici?*, Rome, Ufficio studi Finmeccanica, October 2010, p. 72-86.

### *1.1 The importance at the politico-military level*

International relations obviously involve several aspects, whose importance concerning bilateral partnerships varies according to the circumstances. When one of the two states has an important national defence industry, which is the case for all the great and for some of the middle powers – European ones in particular – the procurement of military equipment within a G2G framework is also a very significant component of the bilateral relation. The supplier state does indeed authorise the export, sell – or even donate – these products for a variety of purposes, which go beyond the important economic return.

Such purposes include, first of all, the strengthening of military capabilities of the recipient state in respect to a common threat with a view to establish an alliance. This is what happens, for instance, when South Korea purchases American equipment as part of its defensive posture towards North Korea, or when Poland acquires American products in an anti-Russian stance.

Always in the context of bilateral relations, there are two great powers, Russia and China, which manage supplies of military equipment as part of wider politico-military collaboration agreements.

Supplies, resulting from such agreements, include training, maintenance and logistic support even in a medium-long term, thereby strengthening the relations with the countries concerned.

Russia has developed over time an approach geared towards building politico-military partnerships, inside which the supply of weapon systems is directly managed by the Russian Ministry of Defence, to ensure it is completely in line with the overall foreign and defence policy of Moscow. Also in the post-Cold war context, Russia has maintained a network of relations with several countries in Asia, Africa and South America, which severely restrain the “contestability” of that market for western exports.

China has followed a path similar to that of Russia, albeit with a few decades of delay, but with a dramatic acceleration over the last ten years, following the impetuous economic, industrial and technological development. In China, the state control over defence industries takes more elaborate forms than in Russia, but it is substantiated by an equally strong strategic rationale. Such control influences the building up of politico-military partnerships within which lies the supply of military equipment that offers an increasingly competitive quality-price ratio. Once more, the Chinese geopolitical weight, especially in Asia and Africa, makes various national markets less and less open to western exports.

A further objective, especially for the Intelligence, Surveillance and Reconnaissance (ISR) systems, is to strengthen local capacities in terms of borders control, thus better countering international terrorism or the illicit trafficking in arms, drugs or migrants. This is for instance the case of various supplies from European countries



to the armed and security forces of African and Middle Eastern states, including those from Italy to Libya before the revolts of 2011. Obviously, the interests pursued vary from one country to another and from one agreement to another, with some governments being more focused on the politico-strategic rationale and others relying on the G2G mainly as a support measure for exports in a purely commercial perspective. Regardless of the goals pursued, exports, also through G2G agreements, remain subject to international norms applicable to the defence market.<sup>3</sup>

Third, supplying military equipment through a G2G agreement also means building up a network of relations, ranging from training to maintenance and logistics, between the respective armed forces. Taking into account that in recent decades the operational life of complex system has steadily increased, with frequent updates and numerous versions of the same platform, the politico-military relations connected with a G2G agreement have increasingly been framed within a longer-term perspective. Such relations contribute to interoperability in case of multinational operations, to exchanges of information and to formal or informal consultations both in peacetime or during a crisis. Sometimes it may happen that these relations reach the highest political level, as in the case of French supplies to Egypt, especially in the shipbuilding sector, and to Qatar, thus significantly contributing towards strengthening their bilateral relations. In other words, one of main reasons underlying a G2G agreement often lies in the politico-strategic assessment of the importance of a given country for the national interests, and hence on the need to build up/strengthen bilateral relations also in the field of defence. It is no coincidence that in the timeframe of 2015–2019 Saudi Arabia was the first recipient state of American exports in the defence sector. This type of negotiation usually takes place between the political leaders at the highest level. Likewise, during the same period, Pakistan was the main purchaser of Chinese military exports, given their common interest in counterbalancing the regional influence of India.

Overall, the interchange in a sector of such great importance for states as that of defence does, therefore, contribute considerably towards building a network of alliances and/or partnerships, both bilaterally and mini-multi-laterally, and hence it acts as a multiplier of influence and provides a significant support for the foreign and defence policy of states. The extent of these effects is directly proportional to the strength of a country's aerospace, security and defence industry, to its competitiveness and technological level, and to the capacity of the state concerned to exploit the politico-strategic potential.

This is not however a zero-sum game. The acquiring state also benefits in various ways from the partnership established through the G2G: it implements an

<sup>3</sup> Gregory Alegi, "Esportazione dei sistemi d'arma: G2G, modelli comparati, opzioni per l'Italia", in *Approfondimenti dell'Osservatorio di politica internazionale*, No. 150 (July 2019), p. 11, <http://www.parlamento.it/documenti/repository/affariinternazionali/osservatorio/approfondimenti/PI0150.pdf>.

acquisition process much faster than that of the international tender, it obtains an additional government guarantee on the reliability of the industrial supply; it can exploit new opportunities of cooperation, not only at the industrial level, but also at the military and political ones.<sup>4</sup> The G2G framework is used for the implied political warranty in terms of stability of the relation, managerial simplification and absence of commercial intermediaries.<sup>5</sup> All in all, not only the interaction, but also the inter-dependence between the two partners increases, offering important advantages and potentialities to both parties concerned.

It should finally be noted that the 2015 Italian White Paper for international security and defence has already acknowledged the importance of G2G agreements, stating that "Exports represent important resources useful in intergovernmental relations important to military cooperation. With these, partnership policies and technology transfer can be developed, focusing on 'intergovernmental' agreements."<sup>6</sup>

### *1.2 The importance at the industrial-technological level*

In order to evaluate the importance of G2G agreements at the industrial and technological level, it is first necessary to better define what they represent from the perspective of the supplier industries. When positioning themselves on a foreign market, European companies, rather than American ones – to remain within the scope of analysis of the present study – often make arrangements, at the request of the acquiring government, with industrial realities at the local level, which are sometimes indicated by the government itself. Such agreements revolve around, for instance, the supply of components, the creation of a production line for the systems offered, or their in-place maintenance and upgrade. These are all practices in various ways connected to offset arrangements, which do not necessarily involve a G2G agreement if the process is directly managed by the supplier industry with the local industrial partners.

Obviously, the more complex the sold system is, the bigger are the chances to negotiate offset arrangements on the components or on the Maintenance Repair Overhaul Upgrade (MROU) activities. The above-mentioned extension of the operational life increases in turn the economic value of the MROU and logistics against the unit value of the mere acquisition, and it is not by chance that today most acquiring governments ask suppliers a comprehensive package, ranging from turn-key equipment, training, operational, logistic support and, above all, to MROU.

<sup>4</sup> Alessandro R. Ungaro, "I regimi di esportazione G2G di sistemi d'arma: uno studio comparativo", in *Approfondimenti dell'Osservatorio di politica internazionale*, No. 131 (May 2017), p. 7, <http://www.parlamento.it/documenti/repository/affariinternazionali/osservatorio/approfondimenti/PI0131App.pdf>.

<sup>5</sup> Gregory Alegi, "Esportazione dei sistemi d'arma: G2G, modelli comparati, opzioni per l'Italia", cit., p. 5.

<sup>6</sup> Italian Ministry of Defence, *White Paper for International Security and Defence*, July 2015, p. 109, [https://www.difesa.it/Primo\\_Piano/Documents/2015/07\\_Luglio/White%20book.pdf](https://www.difesa.it/Primo_Piano/Documents/2015/07_Luglio/White%20book.pdf).

There is a case of G2G when is the government to whom the supplier industry is related that concludes an inter-governmental agreement with the purchaser. Conditions and terms of such agreements vary widely. Some, following a more minimalist line, are only focused on training to be performed on platforms which are in the process of being acquired; others, instead, include the entire contractual management (also with economic guarantees on the supply itself). The American Foreign Military Sales (FMS) programme is a special case, not particularly comparable with the European reality. In the performance of the FMS, the American government purchases equipment in order to sell it directly to the foreign customer. In any event, the cornerstone of G2G agreements is the politico-military support of the government for its own defence industry's offer. Such support, most generally, comes for supplies which are important in terms of economic value, rather than in technological terms or for the military posture of a given purchasing country. In other words, not every military supply is worth a G2G agreement, also because the significance of the support of the government concerned, which undertakes a political and legal responsibility, would be devalued if such support were granted indistinctly for all exports in the international defence market. Indeed, the agreements for the joint development of a new weapon system fall outside the scope of the G2G framework, but rather fall into international cooperation schemes on research, development and procurement.

G2G agreements, defined in these terms, are of paramount importance at the industrial and technological level, since they deal with wider and more long-term programmes and represent a driving force for innovation. Indeed, such agreements, when it comes to competing with other offers of comparable quality and cost, can often make a great difference by granting the added value of the government support. It is no coincidence that all the main European countries, ranging from France and Great Britain, to Spain and Sweden, have organised themselves on time from a legal, institutional and political perspective, in order to support their exports also in this way. Whilst the government support is not new, the last twenty years have witnessed a dramatic acceleration in this regard. In view of the opening and the globalisation of the defence markets, of the increased international competition and the growth in demand from outside Europe, the governments of the Old Continent have resorted to G2G agreements on a more frequent basis and in a more articulated and more timely manner. States are indeed increasingly committed to support export: in the context of increased competition, it should be noted that, when it comes to deciding which supply to order, the purchasing country also considers which is the most "attractive" G2G system either because it costs less and/or it involves a quicker and simpler bureaucratic procedure. In other words, the purchasing country considers which system offers the best value for money. It is no coincidence that the United States, in order to make their system more competitive, have recently reduced the FMS administration costs borne by the purchaser to 1 per cent.

Those countries – European, but not only – which have improved the G2G instrument have thus increased the commercial advantage of their industries also with respect to their Italian competitors who have not so far availed themselves

of such support, and hence, because of the absence of a national G2G framework, have been penalised in certain tenders.<sup>7</sup> It is therefore even more pressing for Italy to keep pace with the other countries because, indeed, not doing so is not simply equivalent to standing still, but rather to moving backwards with respect to competitors who proceed in an increasingly faster way. In this regard, it is worrying that the percentage of Italian exports on the world total in the defence sector over the five-year period 2015–2019 has diminished to 2.1 per cent compared with 2.7 per cent of the period 2009–2013, whilst, as illustrated by the table below, the French, the German and the Spanish exports have increased, with the French one which has almost doubled.

**Table 1** | The 25 largest exporters of major arms and their main clients, 2015–2019

	Exporter	Share of arms exports (%)		Per cent change from 2010-14 to 2015-19*	Main clients (share of exporter's total exports, %), 2015–2019		
		2015-19	2010-14		first	second	third
1	USA	36	31	23	Saudi Arabia (25)	Australia (9.1)	UAE (6.4)
2	Russia	21	27	-18	India (25)	China (16)	Algeria (14)
3	France	7.9	4.8	72	Egypt (26)	Qatar (14)	India (14)
4	Germany	5.8	5.3	17	South Korea (18)	Greece (10)	Algeria (8.1)
5	China	5.5	5.5	6.3	Pakistan (35)	Bangladesh (20)	Algeria (9.9)
6	UK	3.7	4.6	-15	Saudi Arabia (41)	Oman (14)	USA (9.1)
7	Spain	3.1	2.9	13	Australia (33)	Singapore (13)	Turkey (11)
8	Israel	3.0	1.8	77	India (45)	Azerbaijan (17)	Viet Nam (8.5)
9	Italy	2.1	2.7	-17	Turkey (20)	Pakistan (7.5)	Saudi Arabia (7.2)
10	South Korea	2.1	0.9	143	UK (17)	Iraq (14)	Indonesia (13)
11	Netherlands	1.9	2.0	-2.8	Indonesia (17)	USA (14)	Jordan (13)
12	Ukraine	1.0	2.8	-63	China (31)	Russia (20)	Thailand (17)
13	Switzerland	0.9	0.9	2.6	Australia (18)	China (14)	Saudi Arabia (14)
14	Turkey	0.8	0.5	86	Turkmenistan (25)	Oman (12)	Pakistan (12)
15	Sweden	0.6	1.8	-65	USA (22)	Algeria (12)	UAE (10)
16	Canada	0.6	0.9	-33	Saudi Arabia (34)	India (11)	UAE (10)
17	Norway	0.4	0.6	-30	Oman (35)	USA (20)	Finland (14)
18	UAE	0.4	0.2	86	Egypt (41)	Algeria (13)	Unidentified (12)
19	Australia	0.3	0.3	11	USA (42)	Indonesia (18)	Canada (18)
20	Belarus	0.3	0.5	-23	Viet Nam (31)	Sudan (16)	Serbia (15)
21	Czechia	0.3	0.1	453	Iraq (39)	USA (17)	Ukraine (9.0)
22	South Africa	0.3	0.5	-36	USA (23)	UAE (20)	Malaysia (11)
23	India	0.2	0.0	426	Myanmar (46)	Sri Lanka (25)	Mauritius (14)
24	Brazil	0.2	0.2	6,8	Afghanistan (38)	Indonesia (17)	Lebanon (11)
25	Portugal	0.2	0.0	1,239	Romania (95)	Uruguay (2.9)	Cabo Verde (1.2)

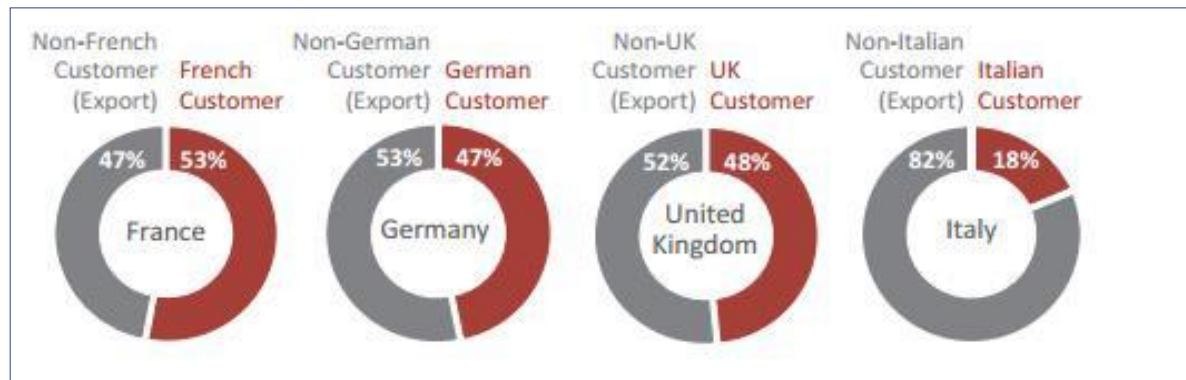
Note: Percentages below 10 are rounded to 1 decimal place; percentages over 10 are rounded to whole numbers.  
\* The figures show the variation of the total export volume of arms for each exporter country over the two periods.

Source: Pieter D. Wezeman et al., "Trends in International Arms Transfers, 2019", in *SIPRI Fact Sheets*, March 2020, p. 2, <https://www.sipri.org/node/5075>.

<sup>7</sup> Gregory Alegi, "Esportazione dei sistemi d'arma: G2G, modelli comparati, opzioni per l'Italia", cit., p. 5.

The importance of G2G agreements is first of all of a commercial nature, in the sense of support to exports in the international defence market, and, as such, it has a high industrial significance. Indeed, exports, for all the large European companies of the aerospace, security and defence sector, including the Italian ones, constitute a major proportion of their total turnover, as reflected in the following comparison for the 2010–2015 period.

**Figure 1** | Exports to France, Germany, Italy and the United Kingdom (2010–2015)



Source: Alessandro R. Ungaro, “I regimi di esportazione G2G di sistemi d’arma: uno studio comparativo”, cit., p. 7.

Looking in particular at the Italian case, in 2018, the 85 per cent of the revenues of Leonardo derived from foreign orders.<sup>8</sup> The competitiveness on international markets has thus become a *conditio sine qua non* for maintaining an industrial and technological base in the aerospace, security and defence sector at the national level. If the state concerned is no longer able to guarantee the availability of such a base with only the domestic demand, as happened in several cases during the Cold War, the G2G framework becomes a fundamental instrument for the industrial policy of the defence sector.

This policy has important technological implications. The defence sector is indeed among those with the highest technological level, and over time it has led to key innovations – ranging from propulsion to avionics, from the space sector to the cyber one, from the composite materials to process innovations – which subsequently had positive spill-over effects for the civilian economy. Albeit today the technological process concerning Information Communication Technologies (ICT) is driven above all by the civilian market, the aerospace and defence industry plays an important role in the development of technologies and products which are dual-use,<sup>9</sup> that is to say that they are used both by the civil and military sector:

<sup>8</sup> Alessandro Marrone, “Così si può tutelare la Difesa italiana”, in *Airpress*, No. 110 (April 2020), p. 16, <https://docplayer.it/185474003-La-prima-guerra-ibrida-mondiale.html>.

<sup>9</sup> Michele Nones, “L’innovazione tecnologica nei settori civile e militare: oltre il dual use”, in *Affari*

prominent examples in this regard are the helicopters,<sup>10</sup> aeronautics, space<sup>11</sup> and shipbuilding sector. Even when products and technologies are exclusively for the benefit of the armed forces, as for instance in the missile sector, there is a continuing need to remain at the forefront of the development of cutting-edge technologies in order to maintain the strategic advantage of one's own military instrument with respect to the adversaries, and also to maintain the interoperability with more technologically advanced allies such as the United States and, more generally, NATO members.<sup>12</sup> The aerospace, security and defence sector is considered a "hostile environment", where products' and process' technologies must meet particularly complex challenges and where, hence, innovations contributing towards the technological development of one's own country-system can be developed.

In the case of most European countries, G2G agreements, contribute, on the one hand, towards increasing the overall rate of commercial successes and therefore towards fostering investments of the defence industry in new technologies. On the other, such agreements help the supplier companies to set limits on the requests from purchasers to transfer technologies and know-how under the sales contract. Indeed, countries which have growing defence budgets and ambitions of achieving a greater industrial and operational autonomy, such as Brazil, India or Turkey, have strongly insisted on the fact that western suppliers had to contribute in some form towards the development of their local industrial base. This growth will presumably lead, in the medium-term, to a scenario in which non-European competitors will be able to compete in some sectors with those very same industries which have transferred them technologies in the first place.

The United States, given their experience and their unique position in the defence market, have long established a legislative and political framework designed to limit as much as possible the technological transfer, in so far as this is compatible with the need for export and for maintaining their competitive advantage also with respect to their western allies.<sup>13</sup> As regard individual European countries, building such a barrier is a much more difficult task, given the small scale of their respective political, military and industrial bases and the fact that they are often in competition with each other.

esteri, Vol. 51, No. 187 (Winter 2019), p.147-156, <http://www.affari-esteri.it/ae2019.html#1>.

<sup>10</sup> See in this regard: Alessandro Marrone and Michele Nones (eds), "The Role of Dual-Use Helicopters in the Security and Defence Field", in *IAI Research Papers*, No. 20 (July 2015), <https://www.iai.it/en/node/4431>.

<sup>11</sup> See, among others, Michele Nones, "L'innovazione tecnologica nei settori civile e militare: oltre il dual use, cit.

<sup>12</sup> As pointed out in the study carried out by IAI: Michele Nones, Paola Sartori and Andrea Aversano Stabile, "La difesa missilistica e l'Italia: vecchie minacce e nuove sfide per la sicurezza nazionale", in *Documenti IAI*, No. 19|17 (September 2019), <https://www.iai.it/en/node/10712>.

<sup>13</sup> See in this regard, among others: Alessandro Marrone, "Cooperazione transatlantica nella difesa e trasferimento di tecnologie sensibili", in *IAI Quaderni*, No. 30 (June 2008), <https://www.iai.it/en/node/2479>.

In this context, the G2G agreement gives importance to the government concerned during the negotiations on the technological transfer, by obviously favouring the supplier industry, but also by better safeguarding the national interest in a strategic perspective. What is more, focusing on important aspects but less related to technology in the strictest sense, such as training and/or security of supplies also in the event of a crisis, the G2G makes the offer as a whole more convincing, compensating perhaps the tougher and more restrictive policy on the technologies and know-how to be transferred. The recent Indian order for fighter aircraft clearly demonstrates how much the French Dassault had to promise in terms of offset and technological transfer in order to prevail upon the European competitors of the Eurofighter consortium. In this case, India and France have eventually signed an intergovernmental agreement for the supply of 36 Rafale fighter jets, worth over 7 billion euro.<sup>14</sup>

In a nutshell, the ability to support the export of national products becomes a decisive factor for strengthening technological and industrial growing capacities within the context of a competitive market, where major industrial transnational groups prevail and where companies are pushed to look beyond their national borders.<sup>15</sup>

### *1.3 The transfer and the sale of surplus weapons*

The weapons which no longer meet the demands of the armed forces of a country, rather than being kept in stock or dismantled, can represent a further instrument available to promote the arms export through the sale or the transfer of the equipment. Such a possibility brings benefits both to the recipient state and to the seller or donor.

In the scenario of a free transfer, the recipient state receives a military equipment which, despite not being a cutting-edge product both in capability and in technological terms, can still meet its operational needs. These kinds of free transfer take place frequently, as for instance those occurred in 2019 when France made donations to Lebanon, Jordan and the countries of the G5 Sahel, following the modernisation of the platforms at the expenses of France,<sup>16</sup> or the donation of about 60 Bradley M2A2 infantry fighting vehicles by the US Department of Defence to Croatia.<sup>17</sup> The recipient country, even though it receives the armament

<sup>14</sup> Pierre Tran and Vivek Raghuvanshi, "India Inks Deal With France for 36 Rafale Fighter Jets", in *Defense News*, 23 September 2016, <https://www.defensenews.com/global/asia-pacific/2016/09/23/india-inks-deal-with-france-for-36-rafale-fighter-jets>.

<sup>15</sup> Alessandro R. Ungaro, "I regimi di esportazione G2G di sistemi d'arma: uno studio comparativo", cit., p. 6.

<sup>16</sup> Ministère des Armées, *Rapport au Parlement sur les exportations d'armement de la France 2020*, June 2020, <https://www.defense.gouv.fr/content/download/585023/9955531>.

<sup>17</sup> Dylan Malyasov, "U.S. Government to Donate Bradley Infantry Fighting Vehicles to Croatia", in *Defence Blog*, 11 December 2019, <https://defence-blog.com/?p=47602>. The transfer of surplus weapons is so important in the USA that there is a system in place dedicated to the management of

against payment, not only would have the advantage to buy an equipment at a considerably reduced price, but it would also have the possibility to reach specific agreements for its modernisation.

The advantages are manifold also for the country selling or donating the military equipment. From a political point of view, the free transfer towards other countries is an effective instrument of foreign policy. Such course of action, indeed, allows the building of mutual trust among the parties and the cooperation among the respective armed forces. Moreover, as for the above-mentioned case of the US donation to Croatia, free transfer agreements may also include further commitments among the parties. In that case, Zagreb has agreed to take part in the European Recapitalization Incentive Program (ERIP),<sup>18</sup> geared towards assisting European partners and Allies transition away from Russia-manufactured equipment, towards those produced in western countries (particularly in the USA).

A free transfer can bring benefits also from an economic point of view: the manpower costs and the costs for storing and/or dismantling the surplus weapons can be higher than the potential charges for updating them for the purpose of giving them away. The economic returns can increase if the military surplus is sold rather than supplied free of charge. Lastly, the use by the two countries of the same type of armaments enhances synergies between their respective armed forces. In this regard, the exporter country aims at inducing the other country to buy, at the end of the operational life of the transferred equipment, its latest version. This is the case of the Leopard tanks which Germany has transferred free of charge to other European countries over the last decades, thus paving the way for further acquisitions of subsequent versions of the same tanks which in the meantime have been produced by German companies.

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these negotiations. For further information see the website of the US Defense Security Cooperation Agency (DSCA): *Excess Defense Articles (EDA)*, <https://www.dsca.mil/node/299>.

<sup>18</sup> US Department of State, *European Recapitalization Incentive Program (ERIP)*, 17 March 2020, <https://www.state.gov/european-recapitalization-incentive-program-erip>.



## 2. The main actors within the field of military G2G agreements

by Ester Sabatino

### 2.1 United States

#### 2.1.1 Legal framework

In the United States, G2G agreements are made by means of the Foreign Military Sales (FMS) system,<sup>19</sup> which is included in the wider legal framework of the Arms Export Control Act (AECA) enacted in 1976 and modified in 2018 by the US Congress.<sup>20</sup>

The legal framework concerning the FMS, primarily based on the AECA, has been integrated into other laws, such as the Foreign Assistance Act<sup>21</sup> and the Financial Management Regulation.<sup>22</sup>

The AECA recognises the need to curb the arms trade, but highlights the complex economic effort required from a country if it decides to produce weapon systems independently. Exports from the US are conceived as an instrument to support both the American defence apparatus and that of third countries, possibly also thanks to the use of instruments other than the FMS, but still connected therewith.

The FMS allows the state concerned to proceed with the acquisition of the desired product, resorting to the same procedures used by the US government for the acquisition of its own defence equipment. This state of affairs, however, also implies the application of the same laws and rules applying to the US administration, such as the Federal Acquisition Regulation (FAR)<sup>23</sup> and the Defence Federal Acquisition Regulation Supplement (DFARS).<sup>24</sup>

<sup>19</sup> DSCA website: *Foreign Military Sales (FMS)*, <https://www.dsca.mil/node/102>.

<sup>20</sup> *Public Law 90-629, amended by Export Controls Act (Public Law 115-232)*, 13 August 2018, <https://www.govinfo.gov/pkg/COMPS-1067/pdf/COMPS-1061.pdf>. See also Congressional Research Service, "The U.S. Export Control System and the Export Control Reform Initiative", in *CRS Reports*, No. R41916 (28 January 2020), <https://fas.org/spp/crs/natsec/R41916.pdf>.

<sup>21</sup> USA, "Title 22: Foreign Relations and Intercourse, Subchapter II: Military Assistance and Sales", in *United States Code 2010 Edition*, <https://www.govinfo.gov/content/pkg/USCODE-2010-title22/html/USCODE-2010-title22-chap32-subchapII.htm>.

<sup>22</sup> US Department of Defense, *Financial Management Regulation, Vol. 15: Security Cooperation Policy (DOD 7000.14-R)*, September 2019, [https://comptroller.defense.gov/Portals/45/documents/fmr/Volume\\_15.pdf](https://comptroller.defense.gov/Portals/45/documents/fmr/Volume_15.pdf).

<sup>23</sup> US Government Procurement Federal Acquisition Regulation (FAR) website: *Federal Acquisition Regulation*, <https://www.acquisition.gov/browse/index/far>.

<sup>24</sup> US Defense Pricing and Contracting (DPC) website: *Defense Federal Acquisition Regulation Supplement (DFARS) and Procedures, Guidance, and Information (PGI)*, <https://www.acq.osd.mil/dpap/dars/dfarspgi/current>.

In addition to the FMS system, the US government relies on further instruments allowing bilateral forms of cooperation, which can eventually lead to or be connected with G2G agreements for the acquisition of arms. The added value of G2G partnerships is twofold: on the one hand, they require a political commitment of the countries involved, on the other, they allow the US to ensure orders of military equipment to its own national defence industry.

In order to have access to the sale of arms by the US government through interstate agreements, one way, which is pointed out in the AECA, is the sale by means of the Foreign Military Financing (FMF).<sup>25</sup> This type of agreement provides for the granting of credit or funding for the benefit of a third country: without such credit or funding the country concerned could not proceed to the purchase of defence-related goods and services from the United States neither through the FMS nor through the direct contracting with the industry. Albeit the AECA explicitly refers to Egypt and Israel as recipients of the FMS, funding has been awarded, to varying degrees, to several African<sup>26</sup> and Middle Eastern states, among which Jordan stands out for being the third country in terms of funds received.<sup>27</sup>

The differences between the FMS in the “pure sense” and the FMS agreed following the FMF are minimal: in the case of a non-repayable FMF granted for the purchase of arms through the FMS, the additional costs covering the expenses incurred by the Defense Security Cooperation Agency (DSCA) are not applied.

The intergovernmental agreements which can be underwritten with the US Administration do not concern only the supply of arms and the resulting operational training, but they can also revolve around the improvement of structures and capacities of the partner country in order to maintain and strengthen its own national security. This is the case of the Building Partner Capacity Programs, which are managed as if they were FMS agreements.<sup>28</sup>

The procedures for the purchase of military goods are not exhausted with a G2G agreement, but they can also be completed through Direct Commercial Sales (DCS) agreements. In the case of DCS in the “pure sense”, the US government acts as a third party in the negotiation process and it is not involved in the contract management. Nevertheless, the US Department of Defence gives contractors the possibility of resorting to hybrid agreements, with an involvement of the government, which varies in order to better meet the needs of the purchaser.<sup>29</sup>

<sup>25</sup> DSCA website: *Foreign Military Financing*, <https://www.dsca.mil/programs/foreign-military-financing-fmf>.

<sup>26</sup> MSS Defence website: *FMF – Foreign Military Financing – Africa*, <https://www.mssdefence.com/?p=3495>.

<sup>27</sup> US Department of State, *U.S. Security Cooperation with Jordan*, 8 April 2020, <https://www.state.gov/u-s-security-cooperation-with-jordan>.

<sup>28</sup> DSCA, “Chapter 15: Building Partner Capacity Programs”, in *Security Assistance Management Manual*, <https://www.samm.dsca.mil/node/83>.

<sup>29</sup> For a clear and detailed overview of the different types of agreements, see: Derek Gilman et al.,

By using these modalities, in 2019, the United States have signed export contracts for a total of approximately 55.4 billion US dollars.<sup>30</sup> Such export volumes not only confirm the country as the top arms exporter at the global level,<sup>31</sup> but also underscore the high dynamism of the sector. In order to better grasp it, it is sufficient to mention that between January and May 2020 the DSCA has initiated procedures for the signing of 22 potential FMS agreements with 14 countries of the African, Asian, European and Oceanic continent.<sup>32</sup>

### 2.1.2 Procedures and functioning of the system

The conclusion of a G2G agreement consists of several steps, which have been consolidated over time and which include, beyond the delivery of equipment, also support and training. Not surprisingly, the FMS is referred to as a Total Package Approach.<sup>33</sup>

The conclusion of a G2G agreement takes the form of a Letter of Offer and Acceptance (LOA):<sup>34</sup> a contract between the US government and the US contractor that can be, depending on the case, an armed force or the industry charged with the production of the armament. During the performance of the contract, indeed, the government acts in the name and on behalf of the foreign state, the final recipient of the service. Albeit the AECA identifies the US President as the qualified entity to reach an agreement with the third party, this authority has been delegated to DSCA,<sup>35</sup> which in turn identifies a Country Program Director.<sup>36</sup>

The G2G agreement can be distinguished in Defined Order, Blanket Order or Cooperative Logistics Supply Support Arrangement (CLSSA), depending on the retail level and on the type of equipment that is being sold.<sup>37</sup> While the Defined Order specifies the number and the type of armament/equipment, the Blanket Order only indicates the specific category of the items or services concerned for a ceiling on expenditure. The CLSSA, instead, is a request for the supply of a support service to US equipment already in possession of the purchasing country.

*Foreign Military Sales, Direct Commercial Sales, DSCA, 30 September 2014, [https://www.dsca.mil/sites/default/files/final-fms-dcs\\_30\\_sep.pdf](https://www.dsca.mil/sites/default/files/final-fms-dcs_30_sep.pdf).*

<sup>30</sup> DSCA, *Fiscal Year 2019 Arms Sales Total of \$55.4 Billion Shows Continued Strong Sales*, 15 October 2019, <https://www.dsca.mil/node/1254>.

<sup>31</sup> Pieter D. Wezeman et al., "Trends in International Arms Transfers, 2019", cit.

<sup>32</sup> DSCA website: *Major Arms Sales: May 2020*, <https://www.dsca.mil/major-arms-sales/archives/202005>.

<sup>33</sup> DSCA website: *Security Cooperation Overview*, <https://www.dsca.mil/node/687>.

<sup>34</sup> DSCA, "The Letter of Offer and Acceptance (LOA)", in DSCA, *Foreign Customer Guide*, 15 July 2018, p. 13-17, <https://www.dsca.mil/node/690>.

<sup>35</sup> Derek Gilman et al., *Foreign Military Sales, Direct Commercial Sales*, cit.

<sup>36</sup> For a detailed description of the main US government bodies involved in the execution of the FMS see DSCA website: *Major USG Stakeholders in FMS*, <https://www.dsca.mil/node/688>.

<sup>37</sup> DSCA, "The Letter of Offer and Acceptance (LOA)", cit.

It is important to underline that the whole cost of the agreement included in the LOA is a cost estimate and, as such, it may depart from the value inserted in the acquisition contract in both positive and negative terms. The final cost also comprises a compensation share of the DSCA for all the cost items concerning the contract management,<sup>38</sup> which amounts to 1 per cent of the total contract value<sup>39</sup> and which must generally be financed by an advance payment at the moment of the signing of the contract. Nevertheless, the provisions included in the AECA cover cases where it is possible to proceed with different payment methods, provided that the purchasing country actually needs so.<sup>40</sup> This is the case, for instance, when the compensation share is not applied to the administration managing an FMS financed through the FMF.<sup>41</sup>

The well-defined administrative process<sup>42</sup> leading to the signing of the G2G agreement comprises three phases or "cases": the pre-case development, the case development and the case execution.

The pre-case development focuses on defining the security needs of the importing country, the operational and numerical requirements and the specific timeline. In this phase, the purchasing country can rely on the collaboration of the Security Cooperation Officer (SCO) which guides it in defining its own priorities, which will eventually flow into the Letter of Request (LOR). The LOR may also include the request for information on price and availability of the service or the required equipment.<sup>43</sup>

Once presented, such request will be handled by the Implementing Agency (IA) that will manage the case development. The timelines and procedures for approval concerning this phase of the FMS depend on the subject of the contract, on its own economic value, and on the purchaser. The FMS can be subject, already at this stage, to scrutiny of the US Congress if the G2G concerns an equipment whose export is regulated by the International Traffic in Arms Regulations (ITAR)<sup>44</sup> or if it exceeds a specific economic threshold. Lastly, the timelines for the communication of the outcome of the procedure vary depending on whether the purchasing country

<sup>38</sup> DSCA, "Table C9.5. - FMS Charges", in *Security Assistance Management Manual*, <https://www.samm.dsca.mil/chapter/chapter-9#C9.5>.

<sup>39</sup> DSCA, *Fiscal Year 2019 Arms Sales Total of \$55.4 Billion Shows Continued Strong Sales*, 15 October 2019, <https://www.dsca.mil/node/1254>.

<sup>40</sup> *Arms Export Control Act* [Public Law 90-629], May 2019, sections 21 and 23. For a detailed analysis of the different payment modalities and grants disposed by the USA see: Derek Gilman et al., *Foreign Military Sales, Direct Commercial Sales*, cit.

<sup>41</sup> DSCA, "Chapter 9, Financial Policies and Procedures", in *Security Assistance Management Manual*, <https://www.samm.dsca.mil/node/51>.

<sup>42</sup> For an overview of the phases and of the timelines see LMDefense website: *The FMS Timeline*, <https://wp.me/P2FYsq-8e>.

<sup>43</sup> Alessandro R. Ungaro, "I regimi di esportazione G2G di sistemi d'arma: uno studio comparativo", cit.

<sup>44</sup> US Directorate of Defense Trade Controls (DDTC) website: *Understand the ITAR and Export Controls*, [https://www.pmdtct.state.gov/ddtc\\_public?id=ddtc\\_public\\_portal\\_itar\\_landing](https://www.pmdtct.state.gov/ddtc_public?id=ddtc_public_portal_itar_landing).

belongs to the NATO+5 group<sup>45</sup> or is a third country.<sup>46</sup> If countries of the NATO+5 group are concerned, the timelines, normally lasting thirty days, are halved. The outcome of this phase leads to the proposal of the LOA. Once the purchaser has accepted and signed the LOA, the approval of the US Congress has been received and the contract has been honoured, the FMS can be executed by the competent authority.

## 2.2 France

### 2.2.1 Legal framework

The French approach to the armaments export policy and to the use of the G2G instrument gives substantial support to the national defence industry, in a perspective of constant investment in the development of competences and technologies necessary to ensure a cutting-edge defence system.<sup>47</sup> All this can be deduced both from the trade volume, which makes France the third country at the global level<sup>48</sup> with exports higher than 9 billion euro,<sup>49</sup> and from its well-established system of intergovernmental agreements.

The strategic nature of the export has been reiterated in the Annual Report to the Parliament on the French export of arms in 2019, in which export is considered essential to support the defence industry and to ensure continuity to the orders and to the production activity.

By comparing the data on exports of 2018 with those of 2017, an increase of 30 per cent is recorded, amounting to approximately 9 billion euro.<sup>50</sup>

The importance attached to the export of arms can be also grasped by taking into consideration the number of employees involved in guaranteeing an efficient and complete support to French exports. As defined by the Military Programming Law (*Loi de programmation militaire*) for the time-period 2019–2025,<sup>51</sup> the structure of the French exports system requires 400 people to ensure its smooth functioning.

<sup>45</sup> For all NATO members, Australia, Israel, Japan, South Korea and New Zealand.

<sup>46</sup> DSCA, "FMS – What Happens First", in *Foreign Customer Guide*, July 2018, <https://www.dsca.mil/node/689>.

<sup>47</sup> Ministère des Armées, *Rapport au Parlement sur les exportations d'armement de la France 2019*, June 2019, <https://www.vie-publique.fr/sites/default/files/rapport/pdf/194000491.pdf>.

<sup>48</sup> Pieter D. Wezeman et al., "Trends in International Arms Transfers, 2019", cit.

<sup>49</sup> Ministère des Armées, *Rapport au Parlement sur les exportations d'armement de la France 2019*, cit.

<sup>50</sup> Pieter D. Wezeman et al., "Trends in International Arms Transfers, 2019", cit.

<sup>51</sup> Ministère des Armées, *Loi de programmation militaire 2019-2025: textes officiels*, 16 February 2018, <https://www.defense.gouv.fr/english/portail-defense/issues2/la-lpm-2019-2025/les-actualites2/loi-de-programmation-militaire-2019-2025-textes-officiels>.

The legislative apparatus regulating the functioning of the G2G instrument has undergone several changes over the years, culminating in the current double-headed system, introduced in 2018.

As it happens for the other EU countries, France had to align its own national legislation with regulations, directives and administrative acts enacted or followed by the Union, as is the case for the Arms Trade Treaty (ATT).<sup>52</sup>

In adapting national legislation, Directive 2009/43/EC has been transposed by Law 2011-702 of 22 June 2011,<sup>53</sup> which has led to a substantial change of the French procedures, particularly of the granting procedure for export licenses.<sup>54</sup> Further specifications on the licenses for those products that need them,<sup>55</sup> as well as for the tasks of the licensing authority, are at the core of Decree No. 2012-901 of 20 July 2012.<sup>56</sup> Moreover, the rules pertaining to the classification of weapons and the relevant export procedures have been implemented by Decree No. 2013-700,<sup>57</sup> in accordance with Law No. 2012-304.<sup>58</sup> Lastly, when it comes to designating the materials and arms, which can be exported, France complies<sup>59</sup> with the definition given in the common list on the military equipment of the European Union.<sup>60</sup>

<sup>52</sup> Official website: <https://thearmstradetreaty.org>.

<sup>53</sup> France, *Loi n. 2011-702 du 22 juin 2011 relative au contrôle des importations et des exportations de matériels de guerre et de matériels assimilés, à la simplification des transferts des produits liés à la défense dans l'Union européenne et aux marchés de défense et de sécurité*, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000024228630>.

<sup>54</sup> For an overview of the amendments on the granting of procedures and the French position in regard to the transposal of Directive 2009/43/CE see: Lucie Béraud-Sudreau, "French Adaptation Strategies for Arms Export Controls since the 1990s", in *Paris Papers*, No. 10 (October 2014), [https://www.irsem.fr/data/files/irsem/documents/document/file/1000/Paris\\_paper\\_n%C2%B010\\_En.pdf](https://www.irsem.fr/data/files/irsem/documents/document/file/1000/Paris_paper_n%C2%B010_En.pdf).

<sup>55</sup> The list of products for whom the licence is required is specified in the Decree of 27 June 2012. See Ministère de la Défense, *Arrêté du 27 juin 2012 relatif à la liste des matériels de guerre et matériels assimilés soumis à une autorisation préalable d'exportation et des produits liés à la défense soumis à une autorisation préalable de transfert*, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000026088164>.

<sup>56</sup> Ministère de la Défense, *Décret n. 2012-901 du 20 juillet 2012 relatif aux importations et aux exportations hors du territoire de l'Union européenne de matériels de guerre, armes et munitions et de matériels assimilés et aux transferts intracommunautaires de produits liés à la défense*, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000026209273>.

<sup>57</sup> France, *Décret n. 2013-700 du 30 juillet 2013 portant application de la loi n. 2012-304 du 6 mars 2012 relative à l'établissement d'un contrôle des armes moderne, simplifié et préventif*, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027792819>.

<sup>58</sup> France, *Loi n. 2012-304 du 6 mars 2012 relative à l'établissement d'un contrôle des armes moderne, simplifié et préventif*, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000025445727>.

<sup>59</sup> The transposal of the common list was carried out by the Decree of Ministry of Defence of 27 June 2012.

<sup>60</sup> Council of the European Union, *Common Military List of the European Union*, 18 February 2019, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52019XG0312\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52019XG0312(01)).

## 2.2.2 Procedures and functioning of the system

The French G2G is implemented through two channels: the G2G system and the recently introduced system of governmental partnership contracts.

As far as the former is concerned, the main role in the export system for defence equipment is played by the *Direction générale de l'armement* (DGA), which, through the *Direction du développement international* (DGA/DI),<sup>61</sup> carries out one of its four functions, supporting the defence industries.<sup>62</sup> The DGA/DI is charged with the task of supporting such industries, providing them export-oriented guidance services by carrying out market analysis, facilitating negotiations and participation in meeting with potential clients, with an eye always turned to the consistency of the French export policy with the European one. The DGA/DI is supported in this task by the French company ODAS<sup>63</sup> and by the *Défense Conseil International* (DCI).<sup>64</sup>

The granting of export licenses is guaranteed by the Prime Minister,<sup>65</sup> who bases his decision on the indications provided by the Inter-ministerial Commission on the study of exports of weapons of war (*Commission Interministérielle pour l'étude des exportations de matériels de guerre*, CIEEMG),<sup>66</sup> chaired by the Secretary General for National Defence and Security (*Secrétaire général de la défense et de la sécurité nationale*, SGDSN) and composed of representatives of the Ministries of Defence, Foreign Affairs and Economy.<sup>67</sup> Because of its composition, the CIEEMG, when providing its indications, ensures the weighting of the different interests involved.

Another important player in the process of the French G2G is the Inter-ministerial Commission for supporting exports (*Commission interministérielle d'appui aux contrats internationaux*, CIACI)<sup>68</sup> which, as of 2012, plays a significant political role: it coordinates the administrative services pertaining to export and approves the national plan for defence exports (*Plan national stratégique des exportation de*

<sup>61</sup> The tasks of the DGA/DI are defined in Article 6 of Decree 2009-1180 of 5 October 2009: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000021113897>.

<sup>62</sup> Ministry of Armed Forces website: *Présentation de la direction générale de l'armement*, 1 July 2020, <https://www.defense.gouv.fr/english/dga/la-dga2/missions/presentation-de-la-direction-generale-de-l-armement>.

<sup>63</sup> For an analysis of the corporate activities see: Alessandro R. Ungaro, "I regimi di esportazione G2G di sistemi d'arma: uno studio comparativo", cit.

<sup>64</sup> Lucie Béraud-Sudreau, "La politique française de soutien à l'export de défense. Raisons et limites d'un succès", in *Focus stratégique*, No. 73 (June 2017), <https://www.ifri.org/en/node/13987>.

<sup>65</sup> Ministère de la Défense, *France and Arms Trade Control 2016 (FY 2014)*, 2016, <https://www.defense.gouv.fr/content/download/453467/7156832/2016-FranceControlArmTrade.pdf>.

<sup>66</sup> The commission was formally established in 1949 and subsequently modified by Decree No. 55-965 of 16 July 1955, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000521432>.

<sup>67</sup> SGDSN website: *Contrôler les exportations de matériel de guerre*, <http://www.sgdsn.gouv.fr/missions/contrôler-les-exportations-de-materiel-de-guerre>.

<sup>68</sup> Lucie Béraud-Sudreau, "La politique française de soutien à l'export de défense", cit.

défense, PNSED) which gives an overall view of the international market.<sup>69</sup>

The export support by the French government also includes a special form of aid for small and medium-sized enterprises (SMEs). Thanks to the so-called “article 90” procedure, SMEs are given the option to request funds in order to complete an export project and also to terminate the contract under certain conditions, provided that the export contract is not performed.<sup>70</sup>

G2G agreements can also be implemented through partnership contracts undertaken by the French government. The inter-governmental partnership, included in the 2019 Annual Report on Armaments Exports, is considered as a solution in order to better meet the needs of foreign states, along the lines of the US FMS.<sup>71</sup>

The contracts stipulated according to this type of agreement are considered as equivalent to international treaties: hence, in line with ex. art 53 of the French Constitution, they require prior parliamentary approval.<sup>72</sup> The solid framework of inter-governmental partnership contracts is reflected in their longer duration and in their wider contents as compared with the traditional French G2G agreements.

The Franco-Belgian CaMo programme, signed in October 2019, and amounting to 1.5 billion euro,<sup>73</sup> represents the first application of the partnership contracts: such instruments have led to an increase of about 30 per cent of exports in 2019 compared to 2018, with an economic return of about 9 billion euro for the French economy.<sup>74</sup>

The added value of this new system lies in providing a strong state support pertaining not only to the sale of armaments, but also including the possibility of achieving an operational cooperation, hence establishing a strategic partnership with the recipient state.<sup>75</sup> Within this context, another example is represented by the 31 billion-euro Franco-Australian agreement, formalised in February 2019,

<sup>69</sup> Alessandro R. Ungaro, “I regimi di esportazione G2G di sistemi d’arma: uno studio comparativo”, cit.

<sup>70</sup> Assemblée Nationale, *Defense: Environnement et prospective de la politique de défense*, Avis No. 2305 (10 October 2019), [http://www.assemblee-nationale.fr/dyn/15/rapports/cion\\_def/l15b2305-tii\\_rapport-avis](http://www.assemblee-nationale.fr/dyn/15/rapports/cion_def/l15b2305-tii_rapport-avis).

<sup>71</sup> Ministère des Armées, *Rapport au Parlement sur les exportations d’armement de la France 2019*, cit., p. 38.

<sup>72</sup> Assemblée Nationale, *Avis autorisant l’approbation de l’accord entre le Gouvernement de la République française et le Gouvernement du Royaume de Belgique relatif à leur coopération dans le domaine de la mobilité terrestre*, 21 May 2019, [http://www.assemblee-nationale.fr/dyn/15/rapports/cion\\_def/l15b1954\\_rapport-avis](http://www.assemblee-nationale.fr/dyn/15/rapports/cion_def/l15b1954_rapport-avis).

<sup>73</sup> Ministère des Armées, *Rapport au Parlement sur les exportations d’armement de la France 2019*, cit., p. 20.

<sup>74</sup> Marie-Madeleine Courtial, “Le contrat belge CaMo est un contrat emblématique pour les industries de défense françaises à l’export”, in *À l’Avant-Garde*, 7 June 2019, <https://wp.me/p7J3Qc-JU>.

<sup>75</sup> Ministère des Armées, *Rapport au Parlement sur les exportations d’armement de la France 2019*, cit.



which concerns the supply of 12 sub-marines and lasts over 50 years.<sup>76</sup>

### 2.3 Germany

Unlike the major arms exporters, Germany, albeit ranking as the fourth country in the world, is not equipped with a G2G system. Moreover, the export of such products is a highly sensitive subject: the political class is concerned, above all, with the mechanisms of export control.

Despite the absence of a G2G system and the existence of a restrictive national policy on the export of arms and dual-use goods, Germany is very well positioned in the global market. This situation may reflect the efficiency and the competitiveness of its industrial system, especially in the production of land vehicles (in particular the Main Battle Tank) and sub-marines, the two German areas of excellence.

Among the top 100 arms-producing and military services companies in the world,<sup>77</sup> four are German: Hensoldt, Krauss-Maffei Wegmann, Rheinmetall and ThyssenKrupp. In particular, Rheinmetall and Krauss-Maffei Wegmann are among the main European production industries of wheeled and tracked land vehicles, and both are among the top 60 companies worldwide. Moreover, the land defence sector is the one where in 2018 the highest number of export licences, representing around 18 per cent of total licences, for an overall value of 1.47 billion euro, has been granted.<sup>78</sup> As far as the submarine sector is concerned, licences issued in 2018 for the export of spare parts and components of submarines have interested countries such as Brazil, Columbia, South Korea, India, Pakistan, Peru and South Africa.<sup>79</sup>

Aggregated export statistics for the years 2015–2019 indicate an increase of about 17 per cent compared to the aggregated data for the years 2010–2015.<sup>80</sup> Nevertheless, it should be underlined that, because of the adoption of new restrictive provisions, the export volume of 2018 (4.82 billion euro) is in sharp decline compared with 2017 (6.24 billion euro).<sup>81</sup>

<sup>76</sup> France, *Armées: l'Australie achète 12 sous-marins français*, 11 February 2019, <https://www.gouvernement.fr/armees-l-australie-achete-12-sous-marins-francais>.

<sup>77</sup> SIPRI Arms Industry Database: *Data for the SIPRI Top 100 for 2002-2018*, <https://www.sipri.org/databases/armsindustry>.

<sup>78</sup> Federal Ministry for Economic Affairs and Energy (BMWi), *2018 Military Equipment Export Report*, June 2019, <https://www.bmwi.de/Redaktion/EN/Publikationen/Aussenwirtschaft/report-on-the-exports-of-conventional-military-equipment-in-2018.html>.

<sup>79</sup> Ibid.

<sup>80</sup> Pieter D. Wezeman et al., "Trends in International Arms Transfers, 2019", cit.

<sup>81</sup> BMWi, *2018 Military Equipment Export Report*, cit.

### 2.3.1 Legal framework

In accordance with article 26 (2) of the German Constitution,<sup>82</sup> production, transport and export of arms can take place only after obtaining an authorisation from the government. The law implementing article 26 of the Constitution (*Kriegswaffenkontrollgesetz*, KrWaffKontrG) defines the cases in which consent for export can be granted,<sup>83</sup> while specific principles govern the export of light weapons, small arms and the corresponding ammunition.<sup>84</sup>

The export licence, which is issued following the rules designed to ensure that the transfer of equipment is done in accordance with the national and international laws signed by Germany, governs the export.<sup>85</sup> In general terms, the sale is not allowed when it can be diverted from its intended use,<sup>86</sup> when it can lead to a breach of international obligations, or when the underlying sale contract cannot be funded by the other party.

The “restrictive and responsible” approach<sup>87</sup> adopted by Germany with regard to the arms export is also reflected in the “political principles” updated in 2019.<sup>88</sup>

The last amendment of such principles has introduced provisions concerning the possibility of exports of arms and the relevant arms components produced within the framework of European cooperation. In the case of intergovernmental projects, the German government commits to promptly express its position, provided that there exists the possibility of objecting to the export should it be incompatible with the national principles. As regard trade with third countries,<sup>89</sup> instead, the arms export is prohibited when it can favour the autonomous development of armaments in the country of destination. Moreover, as a matter of principle, the exports of light weapons and small arms to third countries can no longer be

<sup>82</sup> *Basic Law for the Federal Republic of Germany*, [https://www.gesetze-im-internet.de/englisch\\_gg](https://www.gesetze-im-internet.de/englisch_gg).

<sup>83</sup> Germany, *Ausführungsgesetz zu Artikel 26 Abs. 2 des Grundgesetzes*, 20 April 1961, <https://www.gesetze-im-internet.de/krwaffkontrg/BJNR004440961.html>.

<sup>84</sup> BMWi, *Principles of the German Federal Government governing the export of small arms and light weapons, corresponding ammunition and production equipment to third countries (“Small Arms Principles”)*, May 2015, <https://www.bmwi.de/Redaktion/EN/Downloads/small-arms-export-principles-german-federal-government.html>.

<sup>85</sup> BMWi website: *FAQs on Exports of Military Equipment*, <https://www.bmwi.de/Redaktion/EN/FAQ/Export-controls-on-military/faq-export-control-for-military-equipment.html>.

<sup>86</sup> In order to limit cases of sales diverted from their intended use, Germany has introduced in 2015 principles to carry out controls after the sale occurred. For further information see: BMWi, *Key Points for the Introduction of Post-Shipment Controls for German Arms Exports*, 8 July 2015, <https://www.bmwi.de/Redaktion/EN/Downloads/eckpunkte-einfuehrung-post-shipment-kontrollen-deutsche-ruestungsexporte.html>.

<sup>87</sup> BMWi, *2018 Military Equipment Export Report*, cit.

<sup>88</sup> BMWi, *Politische Grundsätze der Bundesregierung für den Export von Kriegswaffen und sonstigen Rüstungsgütern*, 26 June 2019, <https://www.bmwi.de/Redaktion/DE/Downloads/P-R/politische-grundsätze-fuer-den-export-von-kriegswaffen-und-sonstigen-ruestungsguetern.html>.

<sup>89</sup> Member States of the European Union, NATO members and NATO partner countries are excluded from the definition of third countries.

authorised.

What is more, the control on arms exports and relevant arms components has been the subject of a bilateral agreement between Paris and Berlin in October 2019.<sup>90</sup> In the context of bilateral cooperation on the production of defence systems,<sup>91</sup> the two countries have consented to the autonomous decision of the parties to export military goods with a maximum percentage of arms components produced by the other party equal to 20 per cent of the total. If this percentage is exceeded, the authorisation of the counter-party is required.

### 2.3.2 Procedures and functioning of the system

The strict control on exports is reflected in the granting of licences. The procedures for the issuing of licences are set out in the regulation concerning the foreign payments and trade (*Außenwirtschaftsverordnung, AWW*),<sup>92</sup> which takes into consideration Directive 2009/43/EC. The office in charge of issuing licences on behalf of the government is the Federal Office for Economic Affairs and Export Control (*Bundesamt für Wirtschaft und Ausfuhrkontrolle, BAFA*). Before proceeding with the issuing of the licence, various offices are tasked with verifying whether well-defined criteria, primarily concerning the observance of human rights in the country of destination, the regional stability and the international relations with Germany, are complied with. Moreover, exports to third embargoed countries are not allowed.

The Federal Security Council (*Bundessicherheitsrat*)<sup>93</sup> is called to take a decision in all the cases in which the export can have significant politico-strategic implications or when there are disagreements on the political, strategic and economic considerations at stake. In these cases, as introduced by the 2014 amendment to the rules of procedure of the Federal Security Council,<sup>94</sup> a parliamentary debate is required, in which the type and the quantity of armaments are disclosed, as well as the implications for the German industries involved in the export.<sup>95</sup> After all

<sup>90</sup> France, *Décret 2019-1168 du 13 novembre 2019 portant publication de l'accord sous forme d'échange de lettres entre le Gouvernement de la République française et le Gouvernement de la République fédérale d'Allemagne relatif au contrôle des exportations en matière de de défense (ensemble une annexe), signées à Paris le 23 octobre 2019*, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000039373201>.

<sup>91</sup> See the sixth-generation fighter aircraft (FCAS) and the new tank (MGCS).

<sup>92</sup> Germany, *Foreign Trade and Payments Ordinance of 2 August 2013*, [https://www.gesetze-im-internet.de/englisch\\_awv/englisch\\_awv.html](https://www.gesetze-im-internet.de/englisch_awv/englisch_awv.html).

<sup>93</sup> The Federal Security Council is composed by the Chancellor and by the Minister of the Foreign Office, Finance, Interior, Justice and Consumer Protection, Defence, Economics and Energy and of Economic Cooperation and Development.

<sup>94</sup> Bundestag, *Beschluss der Bundesregierung zur Änderung der Geschäftsordnung des Bundessicherheitsrates vom 4. Juni 2014*, Drucksache 18/1626, <http://dip21.bundestag.de/dip21/btd/18/016/1801626.pdf>.

<sup>95</sup> BMWi, *Bericht der Bundesregierung über ihre Exportpolitik für konventionelle Rüstungsgüter im ersten Halbjahr 2019*, 13 November 2019, <https://www.bmwi.de/Redaktion/DE/Publikationen/>

these steps are completed and the monitoring of compliance is carried out by the KrWaffKontrG and by *Außenwirtschaftsgesetz* (AWG), the licence can be issued.<sup>96</sup>

In particular cases, there is the possibility to derogate from the criterion of regional stability. Thanks to the Enable & Enhance Initiative, Germany can also export war materials and dual-use technologies to those countries whose stability is at risk. The rationale that lies at the core of this initiative, in place since 2011, is to provide certain states, also through exports of military equipment, the support necessary to carry out effective crisis-prevention, crisis-management, post-conflict and peacebuilding operations.<sup>97</sup>

Lastly, the granting of an authorisation can be conditional upon the importer's consent to be subject to controls aimed at verifying the final use of the arms in order to limit diversion cases.<sup>98</sup>

### 2.4 United Kingdom

#### 2.4.1 Legal framework

The defence and security industry is a highly strategic sector in the United Kingdom, which makes the country one of the world's first top ten arms exporters,<sup>99</sup> with an export volume that has reached a total of 19.2 billion pound, showing a marked increase compared to the defence procurement ensured in 2017 (13.2 billion pound).<sup>100</sup>

The British G2G system, defined by the British government itself as one of the most robust arms export control regimes in the world,<sup>101</sup> takes into consideration several national and international rules and regulates the export of all those items designed for military use and all those dual-use products which can also have applications in the field of defence and security.

Aussenwirtschaft/ruestungsexport-zwischenbericht-2019.html.

<sup>96</sup> BMWi website, *Infografik: Genehmigungsprozess bei Rüstungsexporten*, <https://www.bmwi.de/Redaktion/DE/Infografiken/genuehmigungsprozess-bei-ruestungsexporten.html>.

<sup>97</sup> BMWi, *2018 Military Equipment Export Report*, cit. For a specific focus on the Enable & Enhance Initiative see Jana Puglierin, "Germany's Enable & Enhance Initiative What Is It About?", in *Security Policy Working Papers*, n. 1/2016, <https://www.baks.bund.de/en/node/1586>.

<sup>98</sup> BMWi, *Bericht der Bundesregierung über ihre Exportpolitik für konventionelle Rüstungsgüter im ersten Halbjahr 2019*, cit.

<sup>99</sup> According to a study carried out by SIPRI, the United Kingdom is the sixth arms exporter worldwide. For further information see: Pieter D. Wezeman et al., "Trends in International Arms Transfers, 2019", cit.

<sup>100</sup> Department for International Trade-Defence and Security Organisation (DIT-DSO), *UK Defence and Security Export Statistics for 2018*, 18 May 2018, <https://www.gov.uk/government/collections/uk-defence-and-security-export-figures>.

<sup>101</sup> Louisa Brooke-Holland, "An Introduction to UK Arms Export", in *Commons Research Briefings*, No. 8312 (16 May 2018), <https://commonslibrary.parliament.uk/research-briefings/cbp-8312>.

In 2015, the importance of the defence and security export sector was reiterated in the National Security Strategy and Strategic Defence and Security Review, which states that “responsible defence and security exports [...] generate economies of scale that reduce the cost of equipment to the Government and taxpayer”.<sup>102</sup> This justifies the particular focus that London placed on the development of its technological expertise: as mentioned in the 2020 budget proposal, the government will invest 100 million pound in the technological development of defence-related products and will establish a new 1 billion pound facility to support overseas buyers of UK defence and security goods and services.<sup>103</sup>

The British G2G legal framework is long-established, although it has been modified over the years. In addition to the changes made to the national system following the publication of the Scott Report in 1996,<sup>104</sup> the G2G system has been further amended in order to include the European provisions in the national legislation. In 2000, the Consolidated EU and National Arms Export Licensing Criteria,<sup>105</sup> containing the EU Code of Conduct on Arms Export of 1998, has modified the process for granting export authorisations for the products included in the Strategic Export Control List,<sup>106</sup> namely in the list of those goods that, for their particular dual nature and for their potential use, require a particular control. Moreover, in 2002, the Export Control Act<sup>107</sup> – entered into force in 2004 – has replaced the legislative framework of the Import, Export and Customs Powers (Defence) Act of 1939, expanding the control powers of the government,<sup>108</sup> but also imposing new obligations upon it.<sup>109</sup>

<sup>102</sup> United Kingdom, *National Security Strategy and Strategic Defence and Security Review 2015. A Secure and Prosperous United Kingdom*, November 2015, p. 77, <https://www.gov.uk/government/publications/national-security-strategy-and-strategic-defence-and-security-review-2015>.

<sup>103</sup> United Kingdom, *Budget 2020. Delivering on Our Promises to the British People*, 11 March 2020, sections 2.22 and 2.24, <https://www.gov.uk/government/publications/budget-2020-documents>. It should be noted that, apart from the existing initiatives, the British government is formulating a new industrial strategy for Defence and Security, in order to support the competitiveness and innovation of the sector. For further information see: Ministry of Defence, *Review into the UK's Defence and Security Industrial Strategy*, 13 March 2020, <https://www.gov.uk/guidance/review-into-the-uks-defence-and-security-industrial-strategy>.

<sup>104</sup> The Scott Report, published in 1996, is based on the findings of an inquiry into the sale of dual-use defence materials to Iraq in the eighties. For further information see: Richard Scott, *Report of the Inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq and Related Prosecution*, HC115, 15 February 1996.

<sup>105</sup> Department for Business, Innovation & Skills and Export Control Joint Unit, Consolidated EU and National Arms Export Licensing Criteria, 21 November 2012, <https://www.gov.uk/government/publications/consolidated-eu-and-national-arms-export-licensing-criteria>.

<sup>106</sup> Department for International Trade and Export Control Joint Unit, *UK Strategic Export Control List*, 3 August 2012, <https://www.gov.uk/guidance/uk-strategic-export-control-lists-the-consolidated-list-of-strategic-military-and-dual-use-items>.

<sup>107</sup> United Kingdom, *Export Control Act 2002*, 24 July 2002, <http://www.legislation.gov.uk/ukpga/2002/28/contents>.

<sup>108</sup> Jon Lunn, “The Legal and Regulatory Framework for UK Arms Exports”, in *Commons Research Briefings*, No. 2729 (4 September 2017), p. 8, <https://commonslibrary.parliament.uk/research-briefings/sn02729>.

<sup>109</sup> The law has introduced the formal obligation for the government to report to the Parliament, on an annual basis, all the controls imposed. This obligation has been formalised in the annual report Strategic Export Controls. For further information see: Foreign & Commonwealth Office (FCO) and

The Council Common Position 2008/944/CFSP,<sup>110</sup> defining common rules governing control of exports of military technology and equipment, as well as the Council Regulation EU 428/2009 on the brokering and transit of dual-use items and the Regulation EU 2016/2134 of the European Parliament and of the Council are an integral part of the current legislation on arms export.

However, with the United Kingdom's exit from the EU, it is probable that these criteria will no longer be taken into account by the British government. Indeed, such criteria would no longer be considered legislative requirements, as has been the case so far, but they would instead assume the status of mere "international obligations".<sup>111</sup> Nevertheless, the provisions included in the international treaties which have been implemented at the European level, as for instance the ATT and the Wassenaar Arrangement, will continue to be applied to the British national legislation.

#### 2.4.2 Procedures and functioning of the system

In 2018, the London government has published its updated Export Strategy.<sup>112</sup> Although the document is not exclusively focused on the field of analysis, the strategy provides guidelines for the best possible use of the British industrial capacities also in the sectors of defence and security by employing the G2G instrument. Moreover, the Export Strategy outlines support activities to national consortia, such as the Defence Growth Partnership (DGP).<sup>113</sup>

The DGP is a form of collaboration between the government and the defence industries, jointly administered by the Department for Business Energy and Industrial Strategy (BEIS) and by the defence industry, through the support of the Ministry of Defence and the Department for International Trade (DIT).<sup>114</sup> The objective of the DGP is to strengthen the defence industry and the export of its products, thanks to the collaboration with the world of technological research and with the UK Defence Solution Centre (UKDSC), which is charged with improving the value of UK investments.<sup>115</sup> In the exercise of its functions, the DGP also

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Export Control Joint Unit, *UK Strategic Export Controls Annual Report 2018*, 18 July 2019, <https://www.gov.uk/government/publications/uk-strategic-export-controls-annual-report-2018>.

<sup>110</sup> Council of the European Union, *Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment*, <http://data.europa.eu/eli/compos/2008/944/2019-09-17>.

<sup>111</sup> Jon Lunn, "The Legal and Regulatory Framework for UK Arms Exports", cit.

<sup>112</sup> Department for International Trade and UK Export Finance, *Export Strategy: Supporting and Connecting Businesses to Grow on the World Stage*, 21 August, 2018, <https://www.gov.uk/government/publications/export-strategy-supporting-and-connecting-businesses-to-grow-on-the-world-stage>.

<sup>113</sup> Official website: <https://www.defencegrowthpartnership.co.uk>.

<sup>114</sup> DIT-DSO, *Helping UK Companies to Export*, February 2018, <https://www.gov.uk/government/publications/ukti-dso-helping-uk-companies-to-export>.

<sup>115</sup> UK Defence Solutions Centre website: *What We Do*, <https://www.ukdsc.org/?p=10>.

supports the strengthening of the works and activities undertaken by the Defence & Security Organisation (DSO) of the DIT.

Within the DIT department for foreign trade promotion, the DSO mainly assists the defence and security industries and, acting as the DIT's operating arm, deals with the finalisation of G2G agreements,<sup>116</sup> thanks to the work of around 100 staff members and the support of regional experts abroad.<sup>117</sup>

The department's priorities for the two-year period 2019–2020 can be traced to two main categories: assistance and support for the organisation of international fairs and assistance and specialist support to UK defence and security companies for the export of their products.<sup>118</sup> As regard this second priority, the DSO can draw on the knowledge of its two regional teams, which, apart from providing specific information on the British industrial capacities, can offer an in-depth knowledge on their region in order to make full use of the possibilities of export.<sup>119</sup> Moreover, the Export Support Team (EST) of the DIT DSO also helps companies in the management of the phases following the conclusion of the contract. Thanks to its experience, the team can help companies in the definition of the armament training associated with the sale.<sup>120</sup>

Beyond offering support to companies through G2G agreements, the British government allows the signing of G2G agreements for the sale of surplus materials of the armed forces. In this regard, in 2018, the United Kingdom has reached an agreement with Bangladesh, Brazil, Chile, Jordan and Hungary.<sup>121</sup>

In order to carry out the export transaction – regardless of whether the equipment is exported by a company or through the signing of a G2G agreement – it is necessary to have the licence<sup>122</sup> issued by the Export Control Joint Unit (ECJU), which is charged with granting licences both for military and dual-use items.<sup>123</sup>

<sup>116</sup> Defence Growth Partnership, *Delivering Growth. Implementing the Strategic Vision for the UK Defence Sector*, July 2014, [https://www.defencegrowthpartnership.co.uk/wp-content/uploads/sites/30/2019/08/DGP\\_Delivering\\_Growth-1.pdf](https://www.defencegrowthpartnership.co.uk/wp-content/uploads/sites/30/2019/08/DGP_Delivering_Growth-1.pdf).

<sup>117</sup> DIT-DSO website: *About Us*, <https://www.gov.uk/government/organisations/department-for-international-trade-defence-and-security-organisation/about>.

<sup>118</sup> Ibid.

<sup>119</sup> DIT-DSO, *Contacts Directory 2020*, May 2020, <https://www.gov.uk/government/publications/dit-dso-contact-directory>.

<sup>120</sup> DIT-DSO, *Defence and Security: Exporting Guide*, 13 November 2014, <https://www.gov.uk/guidance/defence-and-security-exporting-guide>.

<sup>121</sup> FCO and Export Control Joint Unit, *UK Strategic Export Controls Annual Report 2018*, cit.

<sup>122</sup> Louisa Brooke-Holland, "An Introduction to UK Arms Export", cit.

<sup>123</sup> ECJU website: *About Us*, <https://www.gov.uk/government/organisations/export-control-organisation/about>.

## 2.5 Spain

### 2.5.1 Legal framework

In Spain, the G2G system for exports in defence and security, introduced in 2011<sup>124</sup> following the enactment of the first law on the matter, is relatively new.

A second step towards the establishment of the G2G system was the adoption of laws geared to liberalising the market. The Spanish Government, by means of Law 12/2012 of 26 December 2012, has set out the tasks of the Ministry of Defence acting in the name and on behalf of the foreign government who is willing to carry out arms export procedures through G2G agreements.<sup>125</sup>

In order to complete the legal framework, the following laws – which conform with the existing legislation at the European level – were adopted: Royal Decree No. 33/2014, which better defines the contract requirements;<sup>126</sup> Royal Decree No. 679/2014 on the licences required for export<sup>127</sup> and Order No. DEF/503/20 containing further indications for the good management of the G2G contract.<sup>128</sup>

As the Defence Industrial Strategy of 2015 emphasises,<sup>129</sup> in recent years increasing attention has been paid by the government to the defence industry: Spain has thus become the seventh country in the world in terms of exports.<sup>130</sup> According to the estimates of the Ministry of Defence, the revenues from the defence sector in 2017 have reached 6.2 billion euro, of which the 81 per cent, namely around 5 billion euro, came from the exports of these materials.<sup>131</sup> When comparing data for 2017 with the data for 2011, that is the year preceding the introduction of the G2G instrument designed to promote the national industry, a significant increase in

<sup>124</sup> Spain, *Ley 24/2011, de 1 de agosto, de contratos del sector público en los ámbitos de la defensa y de la seguridad*, <https://www.boe.es/boe/dias/2011/08/02/pdfs/BOE-A-2011-13239.pdf>.

<sup>125</sup> Spain, *Ley 12/2012, de 26 de diciembre, de medidas urgentes de liberalización del comercio y de determinados servicios*, <https://www.boe.es/eli/es/l/2011/08/01/24>.

<sup>126</sup> Ministerio de Defensa, *Real Decreto 33/2014, de 24 de enero, por el que se desarrolla el Título II de la Ley 12/2012, de 26 de diciembre, de medidas urgentes de liberalización del comercio y de determinados servicios*, <https://www.boe.es/eli/es/rd/2014/01/24/33>.

<sup>127</sup> Ministerio de la Presidencia, *Real Decreto 679/2014, de 1 de agosto, por el que se aprueba el Reglamento de control del comercio exterior de material de defensa, de otro material y de productos y tecnologías de doble uso*, <https://www.boe.es/eli/es/rd/2014/08/01/679>.

<sup>128</sup> Ministerio de Defensa, *Orden DEF/503/2015, de 16 de marzo, por la que se dictan normas para la aplicación del Real Decreto 33/2014 ..., de medidas urgentes de liberalización del comercio y de determinados servicios*, <https://www.boe.es/eli/es/o/2015/03/16/def503>.

<sup>129</sup> Ministerio de Defensa, *Defence Industrial Strategy, September 2016*, <https://www.defensa.gob.es/Galerias/dgamdocs/defence-industrial-strategy-2015.pdf>.

<sup>130</sup> Pieter D. Wezeman et al., "Trends in International Arms Transfers, 2019", cit.

<sup>131</sup> Ministerio de Defensa-Dirección General de Armamento y Material (DGAM), *Spanish Defence Industries. 2019-2020 Catalogue*, April 2019, <https://publicaciones.defensa.gob.es/catalogue-spanish-defence-industry-2019-2026.html>.



exports can be observed: in 2011 exports amounted to approximately the 43 per cent of total sales, for a total value of about 2.3 billion euro.<sup>132</sup>

### 2.5.2 Procedures and functioning of the system

Law 12/2012 of 26 December 2012, as integrated by Royal Decree No. 33/2014, establishes that the Ministry of Defence is in charge of the management of the G2G contract on behalf of the foreign government.<sup>133</sup> In doing so, the Ministry must ensure adequate supervision, logistics support and the transfer of technology required to meet the terms of the contract. Nevertheless, it is only with the adoption of Order No. DEF/503/2015 by the Ministry of Defence that the Secretariat of the State of Defence is identified as the body responsible for the management of the G2G.<sup>134</sup>

The Spanish G2G agreement can take place in two different ways, depending on whether the contract is totally managed, or only supervised by the Ministry of Defence.<sup>135</sup>

In case the Ministry only supervises the G2G agreement the main difference with the complete procedure lies in the inaction of the Secretariat of State for Defence in the definition of the contractual terms, the economic-financial management and the risk management related to the execution of the agreement, given that these phases are defined directly by the purchasing government and the pre-selected company.<sup>136</sup>

In addition to acting as interface with third countries for contracts, the Ministry of Defence, in particular the Foreign Support Office (*Oficina de Apoyo Exterior*, OFICAEX) headed by the Directorate-General for Armaments and Material, engages in the active promotion of industries operating in the defence and security sectors. In this regard, by way of example can be mentioned the "Spanish Defence Industries Catalogue", in which, every two years, the largest companies and associations of undertakings are listed and categorised by sector of activity.<sup>137</sup> Moreover, the Spanish Government has also provided funds that can be used as guarantee and support for G2G contracts.<sup>138</sup>

<sup>132</sup> Ibid.

<sup>133</sup> Spain, *Ley 12/2012, de 26 de diciembre...*, cit.

<sup>134</sup> Ministerio de Defensa, *Orden DEF/503/2015, de 16 de marzo...*, cit.

<sup>135</sup> For an illustration of the different parts constituting the two types of contract see: Arturo Alfonso Meiriño, *The International Relations in the Field of Armaments: New Challenges for the Spanish NAD* (presentation), 18 May 2015, [https://www.defensa.gob.es/agredwas/en/Galerias/novedades/files/20150521\\_NAD.pdf](https://www.defensa.gob.es/agredwas/en/Galerias/novedades/files/20150521_NAD.pdf).

<sup>136</sup> Gregory Alegi, "Esportazione dei sistemi d'arma: G2G, modelli comparati, opzioni per l'Italia", cit.

<sup>137</sup> Ministerio de Defensa-DGAM, *Spanish Defence Industries. 2019-2020 Catalogue*, cit.

<sup>138</sup> Infodefensa, *Spain Defence & Security Industry 2014*, February 2014, <http://www.infodefensa.com/es/publicaciones/spain-defence-security-industry-2014.html>.

## 2.6 Sweden

### 2.6.1 Legal framework

Sweden lacks a legally defined G2G system. However, exports in the defence sector are of such great importance for national industries that are supported, nevertheless, through a long-established system. Without the export of its products, the Swedish defence national industry would not be able to maintain its strategic nature and the degree of competitiveness reached.<sup>139</sup>

The export volume of military equipment has amounted to 11.4 billion Swedish kronor in 2018, remaining relatively stable (+ 1 per cent) compared to the previous year.<sup>140</sup>

The arms export is mainly based upon two legislative documents: Law 1300/1992<sup>141</sup> and Decree 1303/1992,<sup>142</sup> as amended in 2018. In accordance with these provisions, arms exports can be carried out only if they are compatible with national principles and international obligations.<sup>143</sup> In this regard, it is stressed that in 2017 the country has undertaken a legislative reform, entered into force in April 2018, which envisages a more restrictive approach towards arms exports. Such reform aims at ensuring that export licences are issued taking into account the democratic status of the recipient country.<sup>144</sup>

### 2.6.2 Procedures and functioning of the system

G2G agreements are carried out by two state bodies: the Inspectorate of Strategic Products (ISP), an independent administrative authority, and the Defence Material Administration (*Försvarets materielverk*, FMV), headed by the Ministry of Defence.

One of the main tasks of FMV is to support the defence export, provided that such export also brings benefits to the national defence apparatus.<sup>145</sup> Such benefits not

<sup>139</sup> FMV website, *Defence Export*, updated on 20 February 2020, <https://www.fmv.se/english/supplier-information/defence-export>.

<sup>140</sup> Inspectorate of Strategic Products (ISP), *Annual Report 2018*, December 2019, [https://isp.se/media/1327/isp\\_annualreport2018\\_web.pdf](https://isp.se/media/1327/isp_annualreport2018_web.pdf).

<sup>141</sup> Sweden, *The Military Equipment Act (1992:1300)*, [http://www.opbw.org/nat\\_imp/leg\\_reg/sweden.htm](http://www.opbw.org/nat_imp/leg_reg/sweden.htm). For the full text with amendments up to 2018 see: *Lag (1992:1300) om krigsmateriel*, [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-19921300-om-krigsmateriel\\_sfs-1992-1300](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-19921300-om-krigsmateriel_sfs-1992-1300).

<sup>142</sup> Sweden, *The Military Equipment Ordinance (1992:1303)*, [http://www.opbw.org/nat\\_imp/leg\\_reg/sweden.htm](http://www.opbw.org/nat_imp/leg_reg/sweden.htm).

<sup>143</sup> Ministry for Foreign Affairs, *Strategic Export Controls in 2018 – Military Equipment and Dual-Use Items*, 11 April 2019, <https://www.government.se/legal-documents/2020/01/strategic-export-controls-in-2018--military-equipment-and-dual-use-items>.

<sup>144</sup> Ibid.

<sup>145</sup> FMV website: *Defence Export*, updated on 20 February 2020, <https://www.fmv.se/english/supplier-information/defence-export>.

only pertain the maintenance and development of technical-industrial capabilities, but also the strengthening of the relations with the recipient state.

When supporting the defence export, the FMV can take on two roles: acting in the name and on behalf of the foreign government that gives it a mandate on the basis of a G2G agreement, and supporting the defence industries in the cases where such support is possible.<sup>146</sup>

In the former scenario, the Swedish and the foreign government, in order to reach an agreement, must obtain a prior authorisation from ISP. Indeed, the task of the ISP<sup>147</sup> is to carry out the necessary controls to guarantee that the export licences are issued in accordance with national law and international obligations undertaken by Sweden. The ISP may eventually avail itself of the advice of the Export Control Council (ECC)<sup>148</sup> for assessing the most difficult cases. Once obtained the authorisation from the ISP, the FMV can proceed with the negotiations of the G2G agreement with the counter-party.

Resorting to the instrument of the G2G agreement is an established practice in Sweden. Such instrument does not pertain only the arms export, but also the lease of armaments,<sup>149</sup> the research and development (R&D), the training and user groups and protection of the sources of supply. Nevertheless, without the final authorisation from the government, the agreement with the other country is not deemed valid.<sup>150</sup>

*Updated 1 March 2020*

<sup>146</sup> Ibid.

<sup>147</sup> ISP website: *About the ISP*, updated on 2 March 2020, <https://isp.se/eng/about-the-isp>.

<sup>148</sup> ISP website: *Our Councils*, updated on 2 March 2020, <https://isp.se/eng/about-the-isp/our-councils>.

<sup>149</sup> Saab AB, "Agreement Between Hungary and Sweden Concerning the Lease of JAS 39 Gripen Now Finalized", in *Defense-Aerospace.com*, 20 December 2001, [http://www.defense-aerospace.com/articles-view/release/3/8042/hungary-signs-gripen-lease,-offsets-\(dec.-21\).html](http://www.defense-aerospace.com/articles-view/release/3/8042/hungary-signs-gripen-lease,-offsets-(dec.-21).html).

<sup>150</sup> Gregory Alegi, "Esportazione dei sistemi d'arma: G2G, modelli comparati, opzioni per l'Italia", cit.

## List of acronyms

AECA	Arms Export Control Act
ATT	Arms Trade Treaty
AWG	Außenwirtschaftsgesetz
AWV	Außenwirtschaftsverordnung
BAFA	Bundesamt für Wirtschaft und Ausfuhrkontrolle
BEIS	Department for Business Energy and Industrial Strategy
CIACI	Commission interministérielle d'appui aux contrats internationaux
CIEEMG	Commission interministérielle pour l'étude des exportations de matériels de guerre
CLSSA	Cooperative Logistics Supply Support Arrangement
DCI	Défense Conseil International
DCS	Direct Commercial Sales
DFARS	Defence Federal Acquisition Regulation Supplement
DGA	Direction générale de l'armement
DGA/DI	DGA/Direction du développement international
DGP	Defence Growth Partnership
DIT	Department for International Trade
DSCA	Defense Security Cooperation Agency
DSO	Defence & Security Organisation
ECC	Export Control Council
ECJU	Export Control Joint Unit
ERIP	European Recapitalization Incentive Program
EST	Export Support Team
EU	European Union
FAR	Federal Acquisition Regulation
FMF	Foreign Military Financing
FMS	Foreign Military Sales
FMV	Försvarets materielverk
G2G	Government to Government
IA	Implementing Agency
ICT	Information Communication Technologies
ISP	Inspectorate of Strategic Products
ISR	Intelligence, Surveillance and Reconnaissance
ITAR	International Traffic in Arms Regulation
Krwaflkontrg	Kriegswaffenkontrollgesetz
LOA	Letter of Offer and Acceptance
LOR	Letter of Request

MROU	Maintenance Repair Overhaul Upgrade
OFICAEX	Oficina de Apoyo Exterior
PNSD	Plan national stratégique des exportation de défense
R&D	Research and development
SCO	Security Cooperation Officer
SGDSN	Secrétaire général de la défense et de la sécurité nationale
SME	Small and medium-sized enterprise
UAE	United Arab Emirates
UKDSC	UK Defence Solution Centre
USA	United States of America

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