

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2001 Nr. 166

A. TITEL

*Verklaring van bepaalde Europese Regeringen inzake de productiefase van de Ariane-draagruket;
Parijs, 7 juni 2001*

B. TEKST¹⁾

Declaration by certain European governments on the Ariane launcher production phase

The governments of the Republic of Austria, the Kingdom of Belgium, the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, Ireland, the Italian Republic, the Kingdom of the Netherlands, the Kingdom of Norway, the Kingdom of Spain, the Kingdom of Sweden, the Swiss Confederation, the United Kingdom of Great Britain and Northern Ireland,

parties to the Declaration by certain European governments on the Ariane launcher production phase, opened for accession on 14 January 1980, which entered into force on 14 April 1980 and was renewed on 21 May 1992, its application having been extended on 10 May 1999 until the end of the year 2001,

and the governments of the Republic of Finland and of the Portuguese Republic,

hereinafter referred to as the "Participants", being Member States of the European Space Agency, hereinafter referred to as the "Agency",

Having regard to the Arrangement signed on 21 September 1973 between certain European governments and the European Space Research Organisation concerning the execution of the Ariane launcher programme, hereinafter referred to as "the Ariane Arrangement", and in

¹⁾ De Duitse en de Franse tekst zijn niet afgedrukt.

particular Articles I, III.1 and V thereof, which provide for a new Arrangement defining the production phase of the Ariane programme,

Having regard to the Convention for the establishment of a European Space Agency, which was opened for signature on 30 May 1975 and entered into force on 30 October 1980, hereinafter referred to as the “ESA Convention”,

Considering that by virtue of its Resolution ESA/C/XXXIII/Res. 3 of 26 July 1979, the Council of the Agency agreed that production was to be entrusted to an industrial structure, and that by virtue of its Resolutions ESA/C/XXXIX/Res. 8 of 24 January 1980, ESA/C/XCII/Res. 1 (Final) of 17 October 1990 and ESA/C/CXLIII/Res. 1 (Final) of 20 October 1999, the said Council agreed that, on the basis of Article V.2 of the ESA Convention, the Agency would carry out the mission provided for in chapter II of the Declaration on the Ariane launcher production phase including its renewals referred to above,

Considering that the Ariane launcher is a major element of European space policy,

Having regard to Declaration ESA/C/XLII/Dec. 1 (Final), concerning an Ariane launcher (Ariane 2/3) follow-on development programme, drawn up on 26 June 1980,

Having regard to Declaration ESA/PB-ARIANE/XLIV/Dec. 1 (Final), rev. concerning a programme for the development of an updated version of the Ariane launcher (Ariane-4), drawn up on 10 December 1981 and amended on 15 June 1984,

Having regard to Declaration ESA/PB-ARIANE/LXXXV/Dec. 1 (Final), rev. 5, on the Ariane-5 development programme, drawn up on 4 December 1987,

Having regard to Resolutions ESA/C/LXXXIII/Res. 1 (Final), ESA/C/XCIX/Res. 1 (Final), and ESA/C/CXL/Res. 1 (Final) on Ariane launch prices, adopted by the Council of the Agency,

Having regard to Resolution ESA/C/CIX/Res. 2 (Final), rev. 2 (Final) on the funding of the CSG (1993-2001), adopted by the Council of the Agency on 24 June 1993 and amended on 28 September 1995 and 19 October 2000,

Having regard to the Agreement between the French Government and the Agency on the Guiana Space Centre (CSG) (1993–2000), which entered into force on 1 January 1993,

Having regard to the Resolution on the CSG fee (ESA/C/CXXI/Res.2, rev.3 (Final)) adopted by the Council of the Agency on 28 September 1995 and amended on 16 December 1997 and 10 May 1999,

Considering that the Arianespace group is presently formed by the French companies Arianespace Participation S.A. with its registered

office at Evry (Essonne, France) and Arianespace S.A. (hereinafter referred to as "Arianespace"), with its registered office at Evry (Essonne, France) and that the shares of the said companies are held by European entities, including the industrial firms involved in the manufacture of the Ariane launchers,

Have agreed as follows:

I. COMMITMENTS OF THE PARTICIPANTS

I.1 The Participants decide to entrust Arianespace with the execution of the Ariane launcher production phase provided for in Articles I and V of the Ariane Arrangement.

I.2 The Participants agree that the objective of this production phase will be to meet launch requirements of the world market subject to:

- a) the proviso that it is carried out for peaceful purposes in conformity with the obligations under the ESA Convention and with the provisions of the Treaty on Principles governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, which entered into force on 10 October 1967 (hereinafter referred to as "the Outer Space Treaty"), and
- b) the provisions of section III.7.

I.3 The Participants agree to entrust Arianespace with the manufacture, marketing and launch of the Ariane launcher on the basis of the production master files stemming from the Agency's development programmes.

I.4 a) The Participants declare that the Ariane launcher will be used for the Agency's activities in conformity with the provisions of Article VIII.1 of the ESA Convention.

b) The Participants agree to take the Ariane launcher into account when defining and executing their national programmes and to grant preference to its utilisation except where such use compared to the use of other launchers or space transport facilities available at the envisaged time is unreasonably disadvantageous with regard to cost, reliability or mission compatibility.

c) The Participants shall endeavour to support the use of the Ariane launcher within the framework of the international programmes in which they participate and shall consult together to that end.

I.5 In the case of sales to a non-member State or to a customer that does not come under the jurisdiction of a Member State of the Agency:

a) The Participants agree to set up a Committee, hereinafter referred to as "the Sales Control Committee", with responsibility for determining whether a projected launch sale constitutes use that runs counter to the provisions of section I.2a).

The Sales Control Committee shall comprise one representative of

each participating government. The members of the Sales Control Committee shall be kept informed by the Director General of the Agency of projected sales of Arianespace launches to non-member States and to customers that come under the jurisdiction of such States.

The Sales Control Committee shall be convened as follows: one-third of the members may request a meeting on the grounds that the use of a launcher would run counter to the provisions of section I.2(a).

This request must be made not more than four weeks after the members of the Sales Control Committee have been informed of the proposed contract. The Sales Control Committee must then be convened within two weeks. Within four weeks at the most, it may decide to prohibit the projected launch sale on the grounds that it is incompatible with the provisions of section I.2a), doing so by a two-thirds majority of its members.

This decision shall be binding on Arianespace. The French Government, in the exercise of the competences that France holds by virtue of the Outer Space Treaty, undertakes to take the necessary steps to ensure the proper implementation of the prohibition decisions taken by the Sales Control Committee.

b) Without prejudice to the obligations devolving upon it under this Declaration, any Participant shall retain the right to declare that for reasons of its own, it does not associate itself with a particular launch.

c) If a Participant considers that the sale of a launch is not compatible with its adherence to this Declaration, it must, after such consultations as it may deem necessary, inform the Director General of the Agency.

If, after the Director General has informed Arianespace, the sale goes through, the Participant may immediately suspend its adherence to this Declaration in respect of the sale in question, on condition that it formally notifies the Agency and the other Participants thereof within one month and that it respects the commitments it has entered into with regard to other sales. The Participant shall keep available the national industrial facilities used for the production of the launcher and shall not oppose their use.

Should the Participant concerned object to making available, for the purposes of the launch in question, equipment and subsystems manufactured by its national industry, it shall be bound, within the framework of its powers, to facilitate the transfer of the manufacture of the relevant supplies to the industries of the other Participants, and may not under any circumstances oppose the manufacture of the supplies in question by the industries of the other Participants.

I.6 The Participants undertake to make available to Arianespace, when required for the purposes of the production or launch of Ariane:

- free of charge, the facilities, equipment and tooling acquired within the framework of the Ariane development programmes and of which the Agency is the owner on behalf of the participants in these programmes;

- under financial conditions limited to the costs incurred on that account, the facilities owned by certain Participants and which have been used for the Ariane development programmes, with the exception of the Guiana Space Centre (CSG) to which the specific provisions of section I.8 shall apply;
- free of charge, the intellectual property rights belonging to them and deriving from the Ariane development programmes; Arianespace shall have access free of charge to technical information in their possession resulting from the said programmes.

I.7 The Participants shall do their utmost to provide Arianespace with the assistance required with regard to industrial quality surveillance and price surveys.

I.8 The Participants undertake, for their part, to contribute to the fund of the Guiana Space Centre (CSG) in accordance with arrangements agreed among themselves.

I.9 If, in connection with an export sale, it proves desirable to lay down special arrangements regarding guarantees and export financing, the Participants shall consult together to determine how such a request can be met on the basis of the principle of equitable distribution of the risk and the funding, pro rata to participation in production.

I.10 The Participants agree that they will consult together on the steps to be taken if technical or financial difficulties arise which call into question the future of Arianespace or that of Ariane production.

II. MANDATE ENTRUSTED TO THE AGENCY

II.1 Without prejudice to the functions entrusted to the Ariane Launcher Programme Board under the terms of section II.9, the Participants request the Agency to ensure in their name and on their behalf that the provisions of this Declaration are complied with and applied and that their rights are safeguarded.

II.2 The Participants request the Council of the Agency to agree to the mandate given to the Agency under the terms of this Declaration and to agree that the Agency shall carry out, in conformity with Article V.2 of the ESA Convention, the operational activity associated with the Ariane launcher production phase.

To this end, they invite the Agency and Arianespace to conclude a convention implementing the provisions of this Declaration and organising their relations.

II.3 The Participants note that the Agency, in its capacity as the authority responsible for the development of the launcher and its constituent elements, has delegated to the Centre national d'études spatiales (CNES), the role of design authority. Participants therefore agree that

CNES, on behalf of the Agency, be formally involved in the procedures concerning changes and, with regard to design changes, shall give its agreement in consultation with the Agency.

II.4 The Participants invite the Agency, to make available to Ariane-space, to the extent necessary for the production or launch of Ariane:

- free of charge, the launcher production master files stemming from the Ariane development programmes, as a basis for carrying out the production of the operational launchers;

- free of charge, the facilities, equipment and tooling acquired within the framework of the Ariane development programmes and of which the Agency is the owner. These assets may also, in agreement with Ariane-space, be made available to its suppliers;

- free of charge, its intellectual property rights deriving from the Ariane development programmes; Ariane-space shall have access free of charge to the technical information in the Agency's possession, resulting from the said programmes.

If the assets owned by the Agency that are made available to Ariane-space prove to be of use to other programmes of the Agency, they may be so used by the latter in agreement with Ariane-space and in accordance with arrangements to be defined in respect of each programme, on the understanding that Ariane-space will continue to have priority in the use of the assets in question.

II.5 The Participants invite the Agency to:

- a) assist Ariane-space in the promotion of the Ariane launcher export activities, in particular in approaching international organisations;

- b) do its utmost to provide Ariane-space with the assistance required with regard to industrial quality surveillance and price surveys.

II.6 The Participants invite the Agency to maintain an active dialogue with Ariane-space in order to ensure that the objectives of the launcher development programmes undertaken within the framework of the Agency, reflect foreseeable trends on the launch market.

The Participants invite the Agency to conclude with Ariane-space separate riders to the convention referred to in section II.2, on the technical, contract and financial arrangements applicable to each launcher development programme referred to in this Declaration.

II.7 The Participants invite the Council of the Agency to authorise the Director General to negotiate as soon as possible with Ariane-space a renewal of the convention signed between the Agency and Ariane-space on 24 September 1992 and submit it to the Council of the Agency for agreement.

II.8 The Participants invite the Council of the Agency to authorise the Director General of the Agency to exercise the duties of depositary of this Declaration, together with those described in section IV.2.

II.9 The Participants invite the Council of the Agency to agree that for the purposes of this Declaration, the Ariane Launcher Programme

Board, set up under Article IV of the Ariane Arrangement, shall be entrusted with the following functions:

a) it shall examine and recommend to the Participants the arrangements for the funding of the Guiana Space Centre (CSG), referred to in section I.8;

b) it shall regularly receive reports on the world launch services market so as to provide it with the assistance it needs in order to carry out its remit and give opinions as appropriate;

c) it shall examine, on a regular basis, the geographical distribution of industrial work related to production among the Participants and shall be consulted if a Participant objects to changes, as mentioned in section III.3, made by Arianespace in this distribution, so that it may make a recommendation. It shall be for the Participant concerned to refer the subject of its objection to the Ariane Launcher Programme Board;

d) it shall hear and examine a detailed annual report presented by the Chairman of Arianespace on the company's activities. On that occasion it may make any recommendation to Arianespace that it considers useful for attaining the objectives of this Declaration. It may request Arianespace to supply it with further reports, which Arianespace shall supply, subject, where applicable, to their strict confidentiality;

e) it shall be kept informed at each meeting of Arianespace's activities by the Director General of the Agency or his representative, such information including, where applicable, any development in the structure and/or the composition of the shareholdings of the Arianespace group;

f) it shall receive an annual report from the Chairman of the Sales Control Committee.

Only the Participants in this Declaration shall have the right to vote on matters concerning its implementation. Decisions or recommendations made by them in this capacity within the Ariane Launcher Programme Board shall be adopted by a simple majority.

The reports and information referred to above may be confidential, and the Participants and the Agency undertake to treat them as such.

For that purpose, the Ariane Launcher Programme Board may meet in restricted session, in which case only the Participants in this Declaration shall be represented.

II.10 The representatives of the Participants may take the opportunity at a meeting of the Council of the Agency to reach agreement on any matters relating to implementation of this Declaration.

III. COMMITMENTS TO BE ENTERED INTO BY ARIANESPACE

In exchange for the commitments they enter into under this Declaration, the Participants request Arianespace to enter into the following commitments, which will be embodied in the convention between the Agency and Arianespace provided for in section II.2.

III.1 The activity entrusted to Arianespace shall be carried out for peaceful purposes in conformity with the obligations of the ESA Convention and with the provisions of the Outer Space Treaty.

Arianespace shall be required to conform to the decisions taken by the Sales Control Committee set up under section I.5.

III.2 Arianespace shall agree that its primary mission consists in the manufacturing, marketing and launch of the Ariane launcher. Other activities carried out by Arianespace shall support this primary mission and shall not be in competition with the Ariane launcher.

III.3 Arianespace shall respect the industrial distribution of work resulting from all the Ariane launcher development programmes undertaken by the Agency.

If Arianespace considers that this distribution cannot be maintained because industrial proposals are unreasonable in terms of price, quality or delivery dates, it shall put the work out to competitive tender.

Before taking any such measures, Arianespace shall notify the Participant concerned and the Director General of the Agency of its intention to do so, providing reasoned grounds in support of it so that together a solution can be found within reasonable time. The Agency shall be associated with the procedure leading to any change of the industrial distribution of work resulting from all the Ariane launcher development programmes undertaken by the Agency. The procedures shall be as set out in the convention concluded between the Agency and Arianespace in accordance with the provisions of section II.2.

The previous contractor may match the best financial offer and shall have priority in relation to all industrial proposals that are equivalent in terms of prices, delivery dates and quality.

III.4 Arianespace shall have technical and financial responsibility for maintaining in good operational order the assets made available to it under the terms of sections I.6 and II.4.

Arianespace may, after consulting the owners, make such modifications to these assets, as it deems necessary for its activities. Failing agreement, Arianespace may carry out such modifications, guaranteeing that the assets will be restored to their initial state at the time of returning them. The management and maintenance arrangements relating to the assets shall be defined in the convention between the Agency and Arianespace, provided for in section II.2.

III.5 Arianespace shall restrict use of the rights and information made available to it under sections I.6 and II.4 to the requirements of the launcher production.

Rights and information of which the Agency is the owner may not be passed on to third parties without the Agency's agreement in accordance with the provisions of the ESA Convention and of the Ariane Arrangement.

Rights and information that are the property of a Participant may not be passed on without prior agreement of the latter.

Arianespace shall give an undertaking to inform the Agency as soon as possible of any formal request for the supply of products and know-how (technology transfer) acquired during the Ariane development programmes, from persons and/or entities under the jurisdiction of States not members of the Agency or from international organisations, which may come to its notice in the course of its commercialisation activities. Arianespace shall undertake to comply in its own activities with, and cite in contracts with its suppliers, the Agency's procedures which apply to technology transfers outside the Member States of the Agency or which stem from the Ariane Arrangement or from the texts governing the Ariane development programme, together with any other relevant international agreements which apply between Participants.

III.6 Arianespace shall contribute to the funding of the costs associated with the use of the Guiana Space Centre (CSG), according to modalities to be defined in the arrangements referred to in section I.8.

III.7 Arianespace shall supply the Agency and the Participants, giving them priority over third-party customers, with the launch services and slots required, under the following conditions:

- the Agency and the Participants shall communicate to Arianespace their requests for services as their requirements arise, taking up cost-free options; in the event of a conflict of priorities between the Agency and a Participant, the Agency shall have priority;

- when a third-party customer requests a free-paying option, or wishes to place a firm order, in respect of a slot reserved cost-free by the Agency or a Participant, the Agency or the Participant in question may convert its cost-free option into a free-paying option or a firm order and retain its priority;

- the convention between the Agency and Arianespace shall contain a model clause, which is to be included in the launch sale contracts, defining the procedure to be applied in the event of a slippage of the launch slot.

These matters shall be the subject of consultation between the Agency and Arianespace, under arrangements to be defined in the convention referred to in section II.2.

III.8 Arianespace shall undertake to afford the Agency the visibility it needs in order to carry out the mandate assigned to it in chapter II.

III.9 In discharging its responsibilities for marketing the launcher, Arianespace shall undertake, in its relations with outside parties, with its customers and with the public, to emphasise the European and multilateral character of the development and production of the Ariane launcher, by mentioning, especially on written and audio-visual materials, that the

Ariane development programmes have been carried out by the Agency and by drawing attention to the role played in such development by the Participants in this Declaration.

III.10 In the event of proceedings being taken by the victims of damage caused by Ariane launches, Arianespace shall be required to reimburse the French Government, within a ceiling of 400 million French francs per launch, the amount of any damages it may be required to pay under the terms of section IV.1.

III.11 The Participants note that Arianespace, in discharging its responsibility in the production of the launcher, has started work aimed at making improvements to production and to the product, for which purpose it is using its own resources. The Participants invite Arianespace and the industrial suppliers to continue and intensify their endeavours. Arianespace shall involve CNES on behalf of the Agency in procedures concerning changes as foreseen in Section II.3.

III.12 The Participants invite Arianespace to:

- a) take cognisance of this Declaration;
- b) negotiate and conclude with the Agency the convention referred to in section II.2;
- c) take any measures, within the applicable laws and regulations, to reinforce the company's European character, and in particular study and actively seek, using appropriate means, to convert the company into a European company as soon as the legal conditions making such conversion possible have been met; ensure, as far as possible, that its structure, its internal organisation and the composition of its shareholdings reflect the present and future participation of the governments in the Ariane launcher development programmes and in the recurrent work stemming therefrom and the needs of competitiveness of Ariane.

IV. MISCELLANEOUS PROVISIONS

IV.1 In the event of proceedings being instituted by the victims of damage caused by any Ariane launch carried out by Arianespace, the French Government shall be responsible for the payment of any damages that may be awarded.

IV.2 a) Effective date

This Declaration shall take effect once two thirds of the parties to the Declaration by certain European governments on the Ariane launcher production phase, which entered into force on 21 May 1992 and which was further extended on 10 May 1999, referred to in the preamble, have notified the Director General of the Agency in writing of their acceptance. It shall enter into force for the other parties, referred to in the preamble, on the date on which they notify their acceptance in writing to the Director General of the Agency.

b) Accession

This Declaration shall be open for accession by the Member States of the Agency for a period of three months starting on its effective date. During this period any Member State of the Agency shall be free to accede to it. Any subsequent request to accede shall be addressed to the Director General of the Agency and shall require the agreement of all the States that have either notified their acceptance to the Director General of the Agency as specified in a) above, or acceded by the date of such request. This Declaration shall enter into force for the Member States that have acceded to it, 30 days after the date on which they notify the Director General of the Agency of the completion of their national agreement or approval procedures.

c) Duration

This Declaration shall apply up to the end of 2006. If need be, its provisions shall remain in force beyond that date in order to allow, where appropriate, for the execution of launch contracts concluded up to the end of 2006. The Participants shall consult together on the conditions for its renewal in good time and not less than one year before the Declaration is due to expire.

d) Review

The Participants agree that they shall meet, at the request of one third of the Participants or of the Director General, for the purpose of reviewing the provisions of this Declaration and their implementation. In the context of these reviews, the Director General may formulate proposals to the Participants in order to amend the content of this Declaration. Amendments to the provisions of this Declaration shall be adopted by a unanimous decision of the Participants.

IV.3 Settlement of disputes

Any dispute arising between two or more Participants over the interpretation or implementation of this Declaration and not settled through the intervention of the Agency's Council, shall be settled in accordance with the provisions of Article XVII of the ESA Convention.

DONE in Paris, on 7 June 2001, in the English, French and German languages, all these texts being equally authentic, in a single original to be deposited in the archives of the European Space Agency, which shall transmit certified copies to all the Participants.

D. PARLEMENT

De Verklaring behoeft ingevolge artikel 7, onderdeel e, van de Rijkswet goedkeuring en bekendmaking verdragen niet de goedkeuring van de Staten-Generaal, alvorens het Koninkrijk aan de Verklaring kan worden gebonden.

E. BEKRACHTIGING

Aanvaarding van de Verklaring is voorzien in artikel IV, tweede lid, onderdeel a.

G. INWERKINGTREDING

De bepalingen van de Verklaring zullen ingevolge artikel IV, tweede lid, onderdeel a, in werking treden zodra twee derde van de staten die deelnemen aan de in rubriek J hieronder genoemde Verklaring van 4 oktober 1990 de Directeur-Generaal van het Europees Ruimteagentschap schriftelijk van de aanvaarding in kennis heeft gesteld.

J. GEGEVENS

Van het op 27 januari 1967 te Londen/Moskou/Washington tot stand gekomen Verdrag inzake de beginselen waaraan de activiteiten van Staten zijn onderworpen bij het onderzoek en gebruik van de kosmische ruimte, met inbegrip van de maan en andere hemellichamen, naar welk Verdrag in artikel I, tweede lid, onderdeel a, van de onderhavige Verklaring wordt verwezen, zijn de Engelse en Franse tekst alsmede de vertaling geplaatst in *Trb.* 1967, 31. Zie ook, laatstelijk, *Trb.* 1990, 87.

Van de op 21 september 1973 te Neuilly-sur-Seine tussen bepaalde Europese Regeringen en de Europese Organisatie voor Ruimteonderzoek tot stand gekomen Overeenkomst betreffende de uitvoering van het Ariane draagraketprogramma, naar welke Overeenkomst in de preambule tot de onderhavige Verklaring wordt verwezen, zijn de Engelse en Franse tekst alsmede de vertaling geplaatst in *Trb.* 1974, 192. Zie ook, laatstelijk, *Trb.* 1980, 4.

Van het op 30 mei 1975 te Parijs tot stand gekomen Verdrag tot oprichting van een Europees Ruimte-Agentschap, naar welk Verdrag in de preambule tot de onderhavige Verklaring wordt verwezen, is de tekst geplaatst in *Trb.* 1975, 123. Zie ook, laatstelijk, *Trb.* 1990, 43.

Van de op 14 januari 1980 te Parijs tot stand gekomen Verklaring van bepaalde Europese Regeringen inzake de productiefase van de Ariane draagraket, naar welke Verklaring in de preambule tot de onderhavige Verklaring wordt verwezen, zijn tekst en vertaling geplaatst in *Trb.* 1982, 1. Zie ook, *Trb.* 1982, 194.

Van de op 4 oktober 1990 te Parijs tot stand gekomen Verklaring van bepaalde Europese Regeringen inzake de productiefase van de Ariane draagraket, tot vervanging van welke de onderhavige Verklaring strekt, zijn tekst en vertaling geplaatst in *Trb.* 1991, 137. Zie ook *Trb.* 2000, 43.

Uitgegeven de tweede oktober 2001.

De Minister van Buitenlandse Zaken,

J. J. VAN AARTSEN