

ARRANGEMENT FOR COOPERATION  
BETWEEN  
THE EUROPEAN DEFENCE AGENCY  
AND  
THE ATHENA MECHANISM

**1. Introduction**

- 1.1. The Treaty on European Union (TEU) tasks the European Defence Agency (“the Agency” or “EDA”), inter alia, to promote harmonisation of operational needs and to adopt effective, compatible procurement methods (Article 45 paragraph 1 b TEU).
- 1.2. The Agency should contribute to the implementation of the Common Foreign and Security Policy (CFSP), in particular the Common Security and Defence Policy (CSDP). Council Decision (CFSP) 2015/1835<sup>1</sup> of 12 October 2015 defining the statute, seat and operational rules of the European Defence Agency tasks the Agency in its Article 2 to support the Council and the Member States in their effort to improve the EU’s defence capabilities in the field of crisis management and to sustain the CSDP as it currently stands and as it develops in the future. In its Article 25, this Council Decision also allows for arrangements to be concluded with Union institutions, bodies, offices and agencies in order to establish and maintain cooperative relations with such entities.
- 1.3. ATHENA is the mechanism established to administer the financing of the common costs of European Union operations having military or defence implications governed by Council Decision (CFSP) 2015/528<sup>2</sup> of 27 March 2015. In Article 11, this Council Decision allows for arrangements to be negotiated with Union bodies to facilitate procurement and/or the financial aspects of mutual support in operations in the most cost-effective manner. These arrangements will be signed by the administrator or, where appropriate, the respective operation commander, acting on behalf of ATHENA.

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<sup>1</sup> OJ L 266, 13.10.2015, p.55.

<sup>2</sup> Council Decision (CFSP) 2015/528 of 27 March 2015 establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications (Athena) and repealing Decision 2011/871/CFSP (OJ L 84, 28.3.2015, p.39).

## 2. Objective

- 2.1. The present arrangement establishes the framework for cooperation between EDA and ATHENA (hereinafter "the participants") in conformity with the respective EDA and ATHENA Council Decisions.
- 2.2. This arrangement opens the option for authorities who may act on behalf of ATHENA, i.e. the Administrator or the Operation/Mission Force Commanders, to call upon EDA to provide technical and administrative support for procurement by ATHENA.
- 2.3. This may include procurement:
  - 2.3.1. on behalf of the Administrator of infrastructure works, services or supplies through direct contracts or pre-mission solutions, e.g. through framework contracts;
  - 2.3.2. on behalf of an Operation/Mission Force Commander of infrastructure works, services or supplies to support the Operation/Mission.
- 2.4. Upon request, the Agency will consider, on a case by case basis, according to its means, capabilities and resources the possibility to provide the requested support.
- 2.5. The support from EDA to the Administrator or the Operation/Mission Force Commander will conclude with a recommendation concerning the award of the contract.

## 3. Modalities

- 3.1. EDA will be entrusted with the overall administration of the procurement procedure it has accepted to conduct on behalf of the Contracting Authority, in accordance with the provisions of ATHENA Financial Rules Part II, Rules on Procurement.
- 3.2. To coordinate all administrative formalities associated to a given procurement procedure, EDA will chair a board comprising at least one representative from EDA and one representative from the Operation/Mission or ATHENA as applicable.
- 3.3. The board will validate the following key documents, taking decisions by unanimity:
  - 3.3.1. the invitation to tender, including the technical specifications;
  - 3.3.2. the draft contract;

3.3.3. the evaluation report to be submitted to the Contracting Authority.

3.4. EDA will submit the “recommendation to award” and the proposed contract, to the Contracting Authority i.e. the Administrator or the Operation/Mission Commander, as applicable, who will take the final decision to award the contract.

3.5. EDA will inform on behalf of the Contracting Authority the successful and unsuccessful tenderers of the outcome of the procurement procedure.

3.6. Management of the contract will be done by the Contracting Authority.

#### **4. Financial Provisions**

4.1. This arrangement will not entail any financial commitment for the participants.

4.2. Each participant will bear the costs associated with the participation of its own personnel to this arrangement.

4.3. EDA will not seek to recover any administrative costs associated with the implementation of this arrangement.

4.4. Payments associated with the implementation of contracts will be handled by the Contracting Authority as applicable in accordance with the ATHENA Financial Rules.

#### **5. Duration, Effective Date and Review**

5.1. This arrangement is concluded for an indefinite period and will come into effect upon signature by both participants.

5.2. This arrangement may be reviewed at any time, upon request of the participants, in the light of lessons learned and experience gained.

5.3. Any amendment to this arrangement will be agreed in writing between the participants.

#### **6. Termination**

6.1. Either participant may notify the other in writing of its intention to terminate this arrangement.

6.2. In such a case, the arrangement will be terminated six months after the date of delivery of the notice or after completion of any ongoing procurement launched in the

framework of this arrangement, whichever comes later, and after all obligations arising from it have been fulfilled.

6.3. After the date of delivery of the notice, no new procurement in the framework of this arrangement will be launched.

## 7. Liability

7.1. Any claims concerning the awarding of a contract, for non-performance of a contract or any other disagreement concerning the fulfilment of contractual obligations will be the responsibility of the Contracting Authority.

7.2. Within the limits of its means, capabilities and resources, EDA will assist the Contracting Authority in handling claims related to the procurement procedures managed by EDA on its behalf.

## 8. Security Matters, Disclosure and Use of Information

8.1. Activities conducted under this arrangement will be governed by the Council's security regulations as set out in Council Decision 2013/488/EU of September 2013 on the security rules for protecting EU classified information.

8.2. The participants hereby agree that this arrangement may be published by each of them.

## 9. Settlement of Disputes

Any dispute regarding the interpretation or application of this arrangement will be resolved through consultations between the participants.

For the European Defence Agency



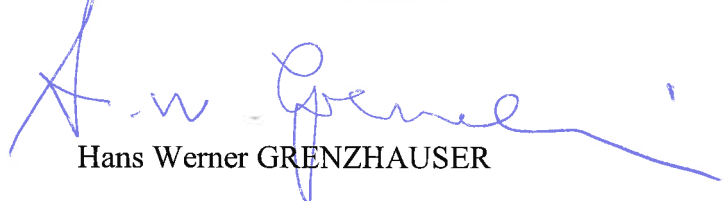
Jorge DOMEcq

EDA Chief Executive

Place : Brussels

Date : 31 Jan 2019

For the ATHENA Mechanism



Hans Werner GRENZHAUSER

ATHENA Administrator

Place : Brussels

Date : 1 Feb 2019