



A CODE OF CONDUCT ON OFFSETS AGREED BY THE EU MEMBER STATES
PARTICIPATING IN THE EUROPEAN DEFENCE AGENCY
VERSION APPROVED ON 3 MAY 2011

Introduction

Participating Member States (pMS) of the European Defence Agency strive to ensure that their Armed Forces are supported, and, indeed, that the European Security and Defence Policy is underpinned by a strong and globally competitive defence technological and industrial base. To this end, the European Defence Ministers adopted on 14 May 2007 a landmark Strategy for the European Defence Technological and Industrial Base (EDTIB). This Strategy reflects the clear and unequivocal objective of the pMS to develop and sustain a DTIB in Europe that is capability-driven, competent and competitive. Moreover, pMS have agreed to develop a truly open and competitive European Defence Equipment Market (EDEM) as a key means to strengthen the EDTIB, “which ensures security of supply and dependably supplies pMS Armed Forces’ needs even in times of conflict, and which provides for appropriate national sovereignty and EU autonomy”.¹

The pMS share the ultimate aim to create the market conditions, and develop a European DTIB in which offsets may no longer be needed. Nonetheless, the present structure of the European DTIB and our early open market efforts require, in the short term, evolving offsets, compatible with EU law, whilst mitigating any adverse impact they may have on cross-border competition.

Objectives and scope

The Code of Conduct on Offsets sets out a framework for evolving offsets, whilst ensuring the right balance between developing the EDTIB and the need to achieve a level playing field in the European and global defence market.

This voluntary, non-legally binding Code of Conduct on offsets applies to all practices required as a condition of purchase or resulting from a purchase of defence goods or defence services and covered by Article 346 TFEU. It is therefore an integral part of the European Defence Agency's Regime to encourage competition in the European Defence Equipment Market and it also encompasses Government-to-Government off-the-shelf defence sales.

The principles and guidelines of this Code will be applied equally to all bidders from SMS and non-SMS including third countries.

Overarching Principles

Within the framework of EU law, the subscribing Member States (SMS) commit themselves to implement this Code on the basis of the following principles:

Procurement in the defence market remains different than procurement in purely commercial markets and is strongly influenced by political considerations that affect the level playing field.

In a perfectly functioning market offset would not exist. Nevertheless, we recognise that today's defence market is not perfect. Therefore, as a first step, we have to develop and implement measures to both mitigate any adverse effects of offset in our collective endeavour towards developing a fair and competitive EDEM and to use offsets mainly to help shape the aspired EDTIB of the future.

The effects of offset on EDEM and EDTIB should not be considered in isolation. There are other, not offset-related, practices distorting the European and global defence market and influencing the development of the EDTIB that need to be addressed by the Agency and pMS through various work-strands.

Offsets are a global phenomenon, required and offered for many purposes, and unlikely to abate in the foreseeable future. Hence, while addressing offset on the EU level, cognisance will need to be taken of the global practice of offset and in particular the involvement of third parties and their effect on European industry competitiveness.

¹ EDA Doc. No. 2006/08 (agreed by the Steering Board on 20 September 2006).

Guidelines

This Code of Conduct on Offsets sets out the guidelines that will help us progress towards closer convergence of offset policies and practices and to gradually reduce the use of offsets. The following guidelines will apply equally to all practices within the scope of the Code.

Increased transparency:

- To increase transparency and mutual confidence, the sMS will provide to other sMS through the Agency information on national offset practices and underpinning policies, where they exist. Each sMS will regularly review the information it has provided to ensure that it remains current.
- The sMS will provide the Agency with information on all offset commitments (including the percentage and types of accepted offset) with effect from the implementation date of this Code, whether part of the procurement contract or agreed upon otherwise.

Evolving use of offsets:

- Offsets will be used to help develop industrial capabilities that are competent, competitive and capability driven. Therefore, offsets will help shape the aspired EDTIB of the future, notably by facilitating the development of globally competitive Centres of Excellence and avoiding unnecessary duplication.
- Offsets should, wherever possible, contribute to developing depth and diversity of the European defence-related supplier base, in particular by supporting the full involvement of SMEs and non-traditional suppliers in the EDTIB, fostering the industrial cooperation and help promote efficient and responsive lower tier suppliers in line with the principles of the CoBPSC.
- Evolving use of offsets by the sMS will help ensure the right balance between developing the aspired EDTIB and the need to achieve the level playing field in the EDEM. Therefore:

- Those sMS requiring offsets as part of the defence equipment contract will clearly stipulate offset requirements in the contract notice.
 - Those sMS accepting offsets will make clear from the outset if offset is a factor in the consideration of a company's bid during the procurement process.
 - When used as a criterion for tenderer selection or award of contract, offsets will be considered of a less significant weight (or used as a subsidiary criteria in case of offers with the same weight) in order to ensure that a procurement process is based on the best available and most economically advantageous solution for the particular requirement.
 - Offsets, both required and accepted, will not exceed the value of the procurement contract.
 - The sMS will allow foreign suppliers providing offsets to select the most cost effective business opportunities within the purchasing country for the offset fulfilment, enabling fair and open competition within supply chains where it is efficient, practical and economically or technically appropriate.
 - The sMS will use, wherever practicable and on a voluntary basis, mutual abatements to reduce reciprocal offset commitments.
-