

CODE OF CONDUCT ON PRIORITISATION
AGREED BY SUBSCRIBING MEMBER STATES TO THE FRAMEWORK ARRANGEMENT
FOR SECURITY OF SUPPLY

INTRODUCTION

1. In furtherance of the Framework Arrangement (FA) for Security of Supply (SoS) between subscribing Member States approved by the EDA Steering Board of 19 November 2013 and in order to involve industry in the EDA SoS framework, the subscribing Member States of the FA (FA SMS) have decided to conclude this Code of Conduct (CoC) on Prioritisation.
2. This CoC is subject to the principles and provisions of the FA and is open to subscription by all FA SMS.

OBJECTIVE

3. The purpose of this CoC is to provide a mechanism between CoC SMS and CoC SMS industry to establish arrangements for prioritisation of defence goods or services in accordance with the FA. The CoC is applicable to all economic operators based in a CoC SMS territory willing to comply with its provisions for a given contract with any CoC SMS.

PRINCIPLES

4. Adhering to this CoC is voluntary. No economic operator will by reason of not complying with the CoC be precluded from awards of defence contracts from the CoC SMS.
5. An economic operator may, when requested by a CoC SMS to comply with SoS requirements, refer in his tender to this CoC in order to demonstrate its commitment to comply with such requirements. In such a case the economic operator acknowledges that the responsibilities deriving from this CoC will become binding in respect of that specific contract, provided that a relevant provision is incorporated into the contract in question.
6. To the greatest extent possible, the economic operator will do all that can reasonably be done to maintain the Security of Supply of the CoC SMS in line with the responsibilities deriving from this CoC and the relevant provisions incorporated into the contract under implementation.
7. The economic operator will accept that when applying this CoC to a contract it is entering into, this contract will be treated as falling under this CoC.
8. Nothing in this CoC shall:
 - a) require an economic operator to breach any contract into which it has previously entered or violate any interest in such contract;
 - b) oblige an economic operator to suffer a loss in order to fulfil the responsibilities detailed in this CoC;

- c) prevent an economic operator from entering into any undertaking or co-operation regarding SoS with other parties;
 - d) in itself involve a financial commitment by the contracting CoC SMS;
 - e) be taken to affect any right to take a legal action available under national or international law.
9. Where an economic operator decides not to accept to apply this CoC for a new contract, or is party to a contract falling under this CoC and rejects a contracting CoC SMS request for change, that decision or rejection will be without prejudice to the economic operator's possible application of this CoC for future contracts.

CONTRACTUAL CONSIDERATIONS

10. When a contract is considered to fall under this CoC, the economic operator will:
- a) use its best commercial efforts to insert into the subcontracts provisions designed to ensure due performance of all responsibilities related to this CoC;
 - b) inform, in a timely manner, the relevant CoC SMS of any problems that the economic operator may encounter in maintaining an adequate continuity of supply to discharge its contractual and other legal commitments;
 - c) respond in a timely manner to requests from the contracting SMS, exercising best efforts to establish appropriate SoS measures, based on fair and reasonable commercial solutions, in support of critical and urgent defence requirements or should any need for prioritisation of supplies arise;
 - d) subject to relevant commercial laws, and in line with standard business rules and contractual provisions, negotiate in good faith with the contracting SMS the contract amendment terms and conditions and any other measures to facilitate such additional, accelerated, re-allocated or modified supply;
 - e) engage also in consultation with the SMS on which territory the economic operator is located, if so requested by such SMS, to ensure that appropriate priority is given to the needs of the contracting SMS in matters of ordering, re-allocating supplies of defence goods or services or modifying existing defence goods; and
 - f) bring to the attention of and consult in a timely manner with the relevant CoC SMS conflicts between contracts related to the CoC and other contracts.
11. The payment arrangements for accommodating a prioritisation request will be a matter of consultation and contract amendment negotiation between the contracting CoC SMS and the economic operator.
12. If compliance with a prioritisation request from the contracting CoC SMS would seriously imperil future client-customer relations and/or endanger future business or would otherwise unfairly burden the economic operator, the economic operator will be entitled to inform the

sMS that the economic operator is located in through its national sMS PoC referred to in the FA. Further consultation between the sMS will be done in line with the provision of the FA.

13. If an economic operator encounters difficulties in transshipment or transit arrangements, or in acquiring transfer licenses in order to comply with its responsibilities under any contract applying this CoC, its national sMS PoC will facilitate that his Member State will provide in consistence with national legislation any reasonable assistance to the economic operator.

IMPLEMENTATION OF THE CODE OF CONDUCT

14. The EDA in close consultation with the sMS, will monitor the implementation of the CoC in view of further improving the CoC, its implementation and application. In this process also input from the industry, either directly or through the sMS, will be sought and will be taken into account.