

## QUESTIONS AND ANSWERS ON

### EDA PARTICIPATING MEMBER STATES' POLITICAL COMMITMENT ON SECURITY OF SUPPLY<sup>1</sup>

- **Question:** What is the background behind the EDA participating Member States' (pMS) Political Commitment on Security of Supply (henceforth "Commitment")?
- **Answer:** The main background elements behind the Commitment are as follows:
  - The December 2013 European Council highlighted the importance of Security of Supply (SoS) arrangements for the development of long-term planning and cooperation, and for the functioning of the internal market for defence. It called on the Commission to develop with Member States and in cooperation with the High Representative and the EDA a roadmap for a comprehensive EU-wide Security of Supply regime. The May 2015 Foreign Affairs Council reiterated the importance of SoS.
  - EDA's contribution to the SoS regime roadmap, endorsed by Ministers in May 2015, showed that **SoS is essentially inter-governmental in nature**, and could benefit from measures to enhance trust and confidence-building at political level and mutual support between EDA pMS. On this basis, specific inter-governmental actions were endorsed, including to seek a political commitment that Member States will aim to facilitate transfers to each other throughout the life-cycle of a defence capability. In parallel, some EDA pMS proposed that consideration could be given to developing potential Council-level instruments to facilitate such commitment at the highest possible level. Following the above mentioned, the Agency initiated work on the Commitment, with its participating Member States.
  - On 14 November 2016, the Foreign Affairs Council (FAC) in its Conclusions on implementing the EU Global Strategy (EUGS) in the area of Security and Defence, called on the EDA, in close cooperation with Member States, to develop proposals to strengthen European defence cooperation by "improving Security of Supply through a holistic approach based on Member States' political commitment..."
- **Question:** What is the added-value of the Commitment?
- **Answer:** The Commitment facilitates a more overarching and comprehensive approach towards SoS, the importance of which has been widely acknowledged by all stakeholders. It complements ongoing activities conducted by EDA and its participating Member States to reinforce Security of Supply. It constitutes an incremental step towards enhanced SoS at European level, thus fostering European defence collaboration. It also ensures

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<sup>1</sup> Adopted by the Representatives of the Governments of EDA participating Member States meeting within the Council at its 3551st meeting held on 19 June 2017 (ref. European Council doc. 10237/17, CFSP/PESC 523, CSDP/PSDC 321, COPS 195, POLMIL 72, 22 June 2017). <http://data.consilium.europa.eu/doc/document/ST-10237-2017-INIT/en/pdf>

necessary coordination between relevant Ministries, at national level. Furthermore, the Commitment enhances EDA pMS' mutual SoS support building on existing tools, such as the EDA Framework Arrangement on SoS and the tools established under the Defence Transfers Directive 2009/43/EC (e.g. General Transfer Licenses). Finally, it constitutes a solid response to the related tasking of the November 2016 FAC Conclusions on implementing the EU Global Strategy in the area of Security and Defence, on Security of Supply.

- **Question:** What is the main scope of the Commitment?
- **Answer:** The Commitment encompasses two main areas for EDA pMS' assistance and support:
  - supporting other EDA pMS' SoS requests regarding critical supplies and services for defence, stemming from exceptional and urgent SoS situations.
    - Such "supplies" to be provided as support, could for example be: equipment/spare parts from Member State's own (governmental) stocks;
    - Such "services" to be provided as support, could for example be: technical assistance services provided by the Member State's own trained personnel having the expertise required.
  - facilitating and expediting transfers/transits required for the delivery to other EDA pMS, of supplies and services needed, throughout the life cycle of the relevant defence capability.
- **Question:** Why previous EDA established mechanisms for pMS' mutual support, such as the Framework Arrangement for Security of Supply and associated Code of Conduct on Prioritisation, were considered not sufficient. What more does the Commitment provide?
- **Answer:** On the area of EDA pMS' mutual support, the commitment builds on the EDA Framework Arrangement for Security of Supply (FA) and associated Code of Conduct on Prioritisation (CoC), subscribed to by all EDA pMS and Norway (subscribing Member States), but goes further than these instruments. It mentions that when EDA pMS will consider other EDA pMS' requests for support "*...Member States will best utilise relevant tools, mechanisms and agreements established at bilateral, multilateral, regional or European level*". The EDA FA and CoC are indeed available mechanisms that can be utilised by subscribing Member States at European level, but EDA pMS when considering how to best support other EDA pMS on SoS, on the basis of the recently adopted Commitment, are called to best utilise also other existing tools, mechanisms and agreements, at all levels. A few non-exhaustive indicative examples of such tools, mechanisms and agreements, at different levels, are provided below:
  - Bilateral level: existing bilateral (government to government) agreements on mutual support, Security of Supply, or Defence Cooperation in general, or bilateral mechanisms/cooperation;

- Multilateral level: Letter of Intent (LoI) nations (SoS Implementing Arrangement);
- Regional level: agreements under NORDEFECO or Visegrad V4;
- European Level (further to the EDA FA and CoC): specific support agreement/projects at the EDA framework that a number of EDA pMS participate in, such as Sharing of Spare Parts (SoSP), or support mechanisms established under NATO (applicable if both EDA pMS submitting and receiving the request for support, are also NATO, or in some cases even NATO Partnership for Peace (PfP), members).

Further to the above mentioned which relate to the area of EDA pMS' mutual support, the Commitment covers also an area that was not previously covered by the EDA FA at all: the area of facilitating and expediting defence transfers/transits. The issue is very relevant because movement of supplies could be hindered or delayed due to transfer/transit permits and clearances required between the country that the movement originates and the country of the final destination, thus negatively impacting Security of Supply.

- **Question:** Why was the Commitment adopted at Council level and not within EDA framework?
- **Answer:** It is a fact that, unlike the area of providing potential support between EDA pMS on supplies and services, defence transfers/transits are, in most cases, not under the remit of Ministries of Defence at national level, but of other Ministries (Economy, Finance, Industry, etc.). As a result, the EDA, whose shareholders are only the Ministries of Defence (MoDs), would not be the appropriate forum to endorse a political commitment such as the one adopted, which includes the element of defence transfers/transits. Therefore, while EDA, with its participating Member States (MoDs), undertook and implemented all the required preparatory work, the Commitment itself being a topic of relevance to several ministerial portfolios, had to be elevated for adoption at Council level, taking eventually the form of a declaration adopted by the Representatives of the Governments of EDA pMS meeting within the Council.
- **Question:** Is the Commitment legally-binding for EDA pMS?
- **Answer:** No. As clearly mentioned within the Commitment text, the purpose of the Commitment/declaration is only to set forth EDA pMS' intent in respect of their potential Security of Supply support. Therefore, no provision or statement in the Commitment/declaration will be construed as legally binding upon the EDA pMS. While clearly not legally-binding, the Commitment, having been approved by Representatives of the Governments of EDA pMS meeting within the Council, is considered as politically binding for EDA pMS.
- **Question:** Does the Commitment impact in any way EDA pMS' prerogative under Article 346(1)(b) of the Treaty on the Functioning of the European Union (TFEU)?

- **Answer:** No. The Commitment adopted is without prejudice to Article 346(1)(b) TFEU, which constitutes EDA pMS' prerogative to take such measures as they consider necessary for the protection of their essential interests of their security, including related to Security of Supply.
- **Question:** Does the Commitment oblige EDA pMS to provide support to other EDA pMS, if there is a request to do so, regardless of the specific circumstances?
- **Answer:** No. EDA pMS retain fully sovereign national decision-making, consistent with their national laws and international obligations, in regards to transfer licences and to provision of support and assistance requested by other EDA pMS.
- **Question:** What is the relation between the Commitment and the current European legal framework on defence procurement and defence transfers?
- **Answer:** The Commitment is fully aligned with related EU instruments, including in particular the mechanisms available under the Defence and Security Procurement Directive 2009/81/EC and the Transfers Directive 2009/43/EC. When EDA pMS are requested by other EDA pMS to provide support for supplies/services and/or facilitate transfers, on the basis of the adopted Commitment, such actions are to be implemented in full compliance with the mentioned EU instruments.
- **Question:** Is the Commitment in any way binding for industry?
- **Answer:** No. The Commitment was adopted by EDA pMS and is applicable only to them. While the importance of the industrial dimension of Security of Supply, especially considering the global nature of supply chains, is clearly reflected in the Commitment, no obligations for industry stem from the Commitment itself.
- **Question:** What would be the potential involvement of industry during future implementation of the Commitment by EDA pMS?
- **Answer:** Economic operators are encouraged to use their best efforts to support the implementation of related EDA pMS' actions and measures stemming from the Commitment. However, and any such actions/involvement/efforts would be clearly with due regard to their existing commercial agreements and best practices. In conclusion, it would be for industry itself to assess potential actions, in a case-by-case basis, depending on the issue at hand.
- **Question:** What would be potential benefits for industry from the Commitment?
- **Answer:** Potential benefits for industry are envisaged especially for the area of the Commitment related to defence transfers/transits. More specifically, for urgent situations, industry can utilise the Commitment as one additional tool in the toolbox, to be able to

expedite an urgently needed asset. For example, there may be cases that economic operators contracted by an EDA participating Member State (A) to provide supplies and services, face defence transfers/transits challenges for supplies required from an industry within their supply chain located in another EDA participating Member State (B), the timely delivery of which is necessary to fulfil their contractual obligations to EDA participating Member State (A). In such cases, the economic operators may inform EDA participating Member State A (with which they have the contract) and request that EDA participating Member State A submits to EDA participating Member State B (which is responsible for issuing defence transfers/transit licenses for the delivery of the equipment) a request for support on the basis of the adopted Commitment, in order for EDA participating Member State B to facilitate and expedite the required defence transfers/transits.

- **Question:** How will national implementation be organised?
- **Answer:** It is up to the EDA pMS to decide on the procedures that will be followed for implementation of the adopted Commitment, at national level, based among others on their internal regulations and organisational structure. To this end, EDA pMS could utilise national Point(s) of Contact (PoC(s)) nominated previously for the EDA Framework Arrangement for SoS, to act as national focal points, to support the implementation and application of the Commitment.
- **Question:** What should EDA pMS do when need arises to utilise the Commitment in practice?
- **Answer:** When need arises to utilise the Commitment in practice, the requesting EDA participating Member State(s) is/are encouraged to take the following actions:
  - Draft a list of requirements for supplies/services and/or defence transfers/transits, for which support by other EDA pMS is required;
  - Forward the list to the relevant EDA pMS (in cases of request for supplies/services support, especially to the EDA pMS that have common systems in their inventory and/or proven ability to provide the requested services), with a request for support under the Commitment, utilising whenever possible previously established networks of Points of Contacts (e.g. PoCs network established for EDA FA implementation);
  - The EDA pMS receiving the request for support, should review internally and respond to the requesting EDA pMS, on the basis of the Commitment, as soon as possible. In cases that the issue is under the responsibility of other authorities at national level (e.g. other (than MoD) Ministries in case of defence transfers/transits), EDA pMS (MoDs) to forward to/coordinate with the relevant authorities /Ministries;
  - In case the EDA pMS receiving the request, decide to provide the requested support (assisting EDA pMS), the requesting and assisting EDA pMS will need to

proceed to agree bilaterally the exact terms and conditions for the provision of support/facilitation of defence transfers/transits. Relevant third party transfer/transit requests may need to be processed and agreed before delivery;

- EDA pMS to request future EDA support on application of Commitment in practice, in a case-by-case basis, if required.
  
- **Question:** What is EDA's role after the adoption of the Commitment?
  
- **Answer:** Firstly, EDA has disseminated/raised awareness of stakeholders on the Commitment adopted by its pMS, as described further below. Moreover, EDA, with support from EDA pMS' experts, has developed this Q&A document for further elaboration of the Political Commitment document adopted, which could be amended in the future, based on potential feedback (additional questions) received from stakeholders. EDA is ready to support its pMS in the future in the implementation of the Commitment, as needed, on basis of EDA pMS' request, in a case by case basis. If requested, EDA can act as an interlocutor to facilitate better communication between EDA pMS involved, including the use of the established network of PoCs.
  
- **Question:** What actions have been taken to disseminate/raise awareness of stakeholders on the Commitment?
  
- **Answer:** Further to EDA pMS who are the owners of the Commitment, EDA has disseminated the document/raised awareness of Commission expert groups related to the Transfers Directive, on the adopted Commitment, in coordination with the Commission. EDA pMS (MoDs) are encouraged to disseminate the document to/raise awareness of authorities responsible for defence transfers, at national level. Finally, EDA is in the process of raising awareness of EU defence industry through related publications and meetings.
  
- **Question:** Will the EDA monitor the implementation of the Commitment by EDA pMS, at national level?
  
- **Answer:** No. No dedicated EDA monitoring mechanism for the future implementation of the Commitment by EDA pMS, at national level, is envisaged. EDA pMS are encouraged to provide to EDA potential feedback on experiences/best practices/lessons learned from actual application of the Commitment in practice, for further dissemination within EDA fora, and among EDA pMS.