



EUROPEAN DEFENCE AGENCY

21 NOVEMBER, 2005

QUESTIONS AND ANSWERS ON THE INTERGOVERNMENTAL REGIME TO ENCOURAGE COMPETITION IN THE EUROPEAN DEFENCE EQUIPMENT MARKET

What is the purpose of the Code of Conduct?

The purpose of the Code is to inject transparency and competition into defence procurement, an area where, on the basis of the application of Article 296 of the EC Treaty, a majority of defence contracts are currently exempt from cross-border competition.

Why does this matter?

No EU country can any longer sustain a national Defence Technological and Industrial Base (DTIB) to meet all of its needs. An open market is a vital instrument for the long-term competitiveness and strength of the European DTIB, and a fundamental aspect of support for the European Security and Defence Policy (ESDP).

When will the Code come into effect?

Ministers agreed to implement the Code from 1 July 2006.

How many EU Member States will be covered by it?

The 24 European Defence Agency (EDA) participating Member States (pMS) (all EU members except Denmark) have until 30 April 2006 to decide whether or not to participate.

What kind of defence contracts are covered by the Code?

All defence procurement contracts, except those specifically excluded from the Code, with a value of at least one million Euros, for which the conditions for application of Article 296 of the EC Treaty are met.

Is anything excluded from the Code?

Some areas will be excluded from the Code: procurements of chemical, bacteriological and radiological goods and services, nuclear weapons and nuclear propulsion systems and cryptographic equipment. Some others, exceptionally and for obvious reasons, might not follow the rules of the Code: cases of pressing operational

urgency, follow-on work or supplementary goods and services and for extraordinary and compelling reasons of national security. In these exceptional cases, an explanation must be provided to the EDA, in its capacity as monitor of the regime.

How exactly will procurement contracts covered by the Code now work?

All relevant new defence procurement opportunities will be published on a single online portal operated by the Agency. Fair and equal treatment of all companies will be assured through evaluation of the offers on the basis of transparent and objective standards. The fundamental criterion for the selection of the contractor will be the most economically advantageous solution for a particular requirement, taking into account, among other things, considerations such as compliance, costs (both acquisition and life cycle), and security of supply.

What role will the EDA play in implementing the Code?

The EDA will act as an instrument of the subscribing Member States to monitor the implementation of the Code and to report back to the Agency Steering Board on its achievements and make proposals for improvements.

If the Code is not legally-binding, why will it have any effect?

The Code of Conduct will operate on the basis of sovereign Member States voluntarily choosing to align their policies and practices, on a reciprocal basis. Regular reports by the EDA will help to show whether the Code is being interpreted and implemented on a uniform basis and, if not, why not. That will allow for “peer pressure” to be exercised.

How is this related to the work of the European Commission on the defence equipment market?

The EDA welcomed in March of this year the efforts of the Commission through their Green Paper on Defence Procurement, as it identifies a number of important reasons for the creation of a European Defence Equipment Market (EDEM) and it illustrates the limits of the existing legal framework. The Commission is now in the process of analysing the responses to its questionnaire with regard to the two proposed community instruments -- an interpretative Communication and a Directive – which the Agency considers as complementary actions to the Code.

Does this mean that non-EU firms will not be able to compete for EU defence contracts?

There is nothing in this plan about “European preference”, or denying access to any third party defence companies. The aim is to get each Member State to accept bids to satisfy its defence equipment requirements from other EU countries, and then to evaluate them on a par with bids from its own national suppliers. Whether the Member State concerned also wishes to invite any third-party to a competition will remain entirely a matter for the individual Member State to decide.

How can governments be sure that supplies are secure if contracts are won by companies in other EU Member States?

The Code includes within its key principles the idea of mutual support: in return for the privilege of improved opportunities to sell into each others' defence markets, there is a reciprocal obligation to do everything possible, consistent with national legislation and international obligations, to ensure, assist and expedite each others' contracted defence requirements. The full effective operation of the regime will depend on strong mutual confidence and interdependence and each government will work to improve the predictability and dependability of its regulations and policies. They will also support efforts to simplify amongst them intra-community transfers and transits of defence goods and services. The Agency has been tasked to work further on Security of Supply and to present for adoption roadmaps for this work to the next meeting of the EDA Steering Board in National Armaments Directors formation.

How will small companies and the defence industries of smaller Member States benefit from the Code?

The Code recognises, as part of the key principle of mutual benefit, that an important part of this benefit is the expansion of opportunities for Small and Medium Enterprises (SMEs) from across Europe to sell into a continental-scale market. The Code will seek to ensure that fair competition and the benefits of the regime are driven down the supply chain. The Steering Board has also directed the Agency to develop a Code of Best Practice in the Supply Chain to ensure fair opportunities, especially for SMEs, for adoption at the same time as implementation of the regime and as an integral part of it. The Code of Best Practice will be about influencing behaviour through improving the quality, effectiveness and efficiency of supply chain relationships. It will enhance opportunities for specialist companies, in particular SMEs. It will also provide for appropriate benchmarking and observance and will be regarded as complementary to any similar codes that may apply at national level.

Will additional initiatives be developed to support the regime?

The Steering Board has directed the Agency to work further with participating Member States and other stakeholders to keep the operation of the regime under continuous review, to consider adaptation and possible expansion of the regime and to pursue progressively closer alignment of participating Member States policies and practices over time. In particular, the Agency has been tasked to work on security of supply, harmonisation of offset requirements at a European level and on common minimum standards for the security of information, and to present roadmaps for this work for adoption at the next meeting of the Steering Board in National Armaments Directors formation.

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