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**COVER NOTE**

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From: European External Action Service (EEAS)  
To: European Union Military Committee (EUMC)  
Subject: EU Concept for Contractor Support to EU-led military operations

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Delegations will find attached the EEAS document with reference EEAS 00754/14.

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Encl.: EEAS 00754/14

EUROPEAN EXTERNAL ACTION SERVICE



**EUROPEAN UNION  
MILITARY STAFF**

**Brussels, 04 April 2014**

**EEAS 00754/14**

**COSDP  
CSDP/PSDC**

**CONCEPT**

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From: European External Action Service

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To: European Union Military Committee

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No. Prev. doc.: -

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Subject: **EU Concept for Contractor Support to EU-led military operations**

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Delegations will find attached the **EU Concept for Contractor Support to EU-led military operations**, which was agreed by the EUMC on 04 April 2014.

**EU CONCEPT**  
**FOR**  
**CONTRACTOR SUPPORT**  
**TO**  
**EU-LED MILITARY OPERATIONS**

**"The lack of contract training for operational commanders, customers, and others with responsibility to use, manage, and oversee logistics support contracts has adversely impacted the use of such contracts to support deployed forces in contingency operations. Commanders and other senior leaders must understand that they have a key role in identifying requirements, assuring that the contractor works in a cost effective manner, and evaluating contractor performance. Without such an understanding the ability to control contract costs and ensure quality service at the best possible price is severely limited."**<sup>1</sup>

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<sup>1</sup> According to the conclusion in the GAO report "DOD's Extensive Use of Logistics Support Contracts Requires Strengthen Oversight" see Ref. A  
EEAS 00754/14

## **TABLE OF CONTENTS**

<b>REFERENCES</b> .....	<b>6</b>
<b>A. INTRODUCTION</b> .....	<b>8</b>
<b>B. AIM</b> .....	<b>10</b>
<b>C. SCOPE</b> .....	<b>11</b>
<b>D. DEFINITIONS</b> .....	<b>11</b>
<b>E. PRINCIPLES</b> .....	<b>15</b>
<b>F. POLICIES</b> .....	<b>18</b>
<b>G. RISK ANALYSIS</b> .....	<b>29</b>
<b>H. LEGAL FRAMEWORK</b> .....	<b>31</b>
<b>I. CONSIDERATIONS DURING THE PLANNING PROCESS</b> .....	<b>33</b>
<b>J. ROLES AND RESPONSIBILITIES</b> .....	<b>35</b>
<b>K. ATHENA MECHANISM AS REGARDS CSO</b> .....	<b>41</b>
<b>L. CONCLUSION</b> .....	<b>42</b>

<b>ANNEX A</b> .....	<b>44</b>
CSO in the Crisis Management Process (example without activation of an OHQ)	
<b>ANNEX B</b> .....	<b>45</b>
Purpose & Structure of the European Union Contractor Support to Operations Platform	
<b>ANNEX C</b> .....	<b>47</b>
Effective Procurement Methods Pooling demand through common off-the-shelf procurement	
<b>ANNEX D</b> .....	<b>49</b>
ATHENA regulations (abridgements) Common Costs & Rules of Procurement (abridgments)	
<b>ANNEX E</b> .....	<b>53</b>
Activity based contracts versus performance based contracts	

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<sup>2</sup> **Web page:**

<https://digitalndulibrary.ndu.edu/cdm4/document.php?CISOROOT=/ndupress&CISOPTR=43003&REC=1>

<sup>3</sup> **Web page:** [http://www.consilium.europa.eu/policies/common-security-and-defence-policy-\(csdp\)/financing-of-csdp-military-operations/regulation?lang=en](http://www.consilium.europa.eu/policies/common-security-and-defence-policy-(csdp)/financing-of-csdp-military-operations/regulation?lang=en)

<sup>4</sup> **Web page:** <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:343:0035:0053:EN:PDF>

<sup>5</sup> **Purpose and General Principles:** <https://cso.eda.europa.eu/Pages/Home.aspx> (*chapter: Library/Basic Documents, but accessible only for registered users*)

<sup>6</sup> **Factsheet:** <http://www.eda.europa.eu/docs/documents/factsheet-epm.pdf>

<sup>7</sup> **Web page:** [http://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0996.pdf](http://www.icrc.org/eng/assets/files/other/icrc_002_0996.pdf)

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<sup>8</sup> See also public version: Partial declassification, (dated 2 February 2010)  
EEAS 00754/14



## **A. INTRODUCTION**

1. On 12 December 2003 the European Council adopted the European Security Strategy (ESS)<sup>9</sup>. The strategy calls upon the EU to become more capable and more coherent, and to work closely with partners. It identifies broader European Security and Defence Policy (ESDP) missions and tasks that are now included in those explicitly listed in Article 43 (1) Treaty on the European Union<sup>10</sup>.
2. At the same time, the EU ESDP has been transformed into the Common Security and Defence Policy (CSDP) as an outcome of the Lisbon Treaty. A Comprehensive Approach has become the trademark of the CSDP. It explicitly increases the synergies derived from actions on the civil and military domains. Thus, civil and military activities have to be closely coordinated.
3. The creation of the European External Action Service (EEAS) is one of the changes introduced by the Treaty of Lisbon. It is aimed at making the EU's external action more coherent and efficient, thereby increasing the EU's influence in the world.<sup>11</sup>
4. Adequate military logistics complemented and reinforced with civilian capabilities and resources are essential to meet with the necessary flexibility the broad range of operational requirements that CSDP operations may involve.
5. These requirements are especially demanding during the phases of deployment/redeployment and also for the sustainment of the Force during operations. External support, if available, from the State(s) hosting all or part of the EU-led Force might facilitate the completion of the logistic functions.

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<sup>9</sup> See Ref. B

<sup>10</sup> See Ref. C

<sup>11</sup> Press statement on the occasion of establishing the European External Action Service and setting out its organisation and functioning (26/07/2010).

6. The main difference between the concepts of Host Nation Support (HNS)<sup>12</sup> and contracting is the commercial nature on which the latter is based, while the former is the outcome of a formal agreement/arrangement established among the Nations or between an International Organization and the HN.
7. Contractor Support to Operations (CSO) is a mode of support that has become vital for all kinds of military operations, e.g. in the field of logistics. The fact that forces of EU member states are reducing their organic military and that Host Nations have limited capabilities in HNS can lead to an increased need for CSO.
8. Recourse to contractors is not new to armed forces. According to United States National Defence University, "the presence of contractors on the battlefield is obviously not a new phenomenon but has dramatically increased from the ration of 1 contractor to 55 military personnel in Vietnam to 1:1 in Iraq and 1.43:1 in Afghanistan".<sup>13</sup>
9. CSO is part of the "Commander's business" since it impacts all operations in one form or another. It is therefore important that the Commander understands the nature of CSO and any vulnerabilities or risks.
10. Contractor support in EU-led military operations mainly focusses to logistic support functions; but, in general, it can provide an essential part of the support to the military.
11. The principles, policies, procedures and responsibilities are defined in this concept in order to meet the specific requirements of Contractor Support in EU-led military operations.

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<sup>12</sup> See Ref. D

<sup>13</sup> See Ref. E

12. For the sake of completeness, whenever reference is made to the role and activities of other (EU) organizations, their official Terms of Reference prevail and nothing in this document will supersede their current procedures.

## **B. AIM**

13. The purpose of this document is to provide a concept for Contractor Support to EU-led military operations. This document expands on the given guidelines for the support of EU-led military operations<sup>14</sup>. In addition, this document provides guidance on CSO to the Troop Contributing Nations (TCN), to Headquarters (HQs) offered for EU-led military operations and to civilian or state-owned companies and service providers (contractors) potentially offering services in support of an EU-led military operation.
14. The principles and policies given in this concept are in general also applicable for EU exercises having military or defence implications. Member States (MS) and other TCN are encouraged to use them for these purposes as well.
15. Taking into account the range of missions envisaged, especially in case of rapid response elements, this concept allows TCN to contribute to the EU CSO planning process. Communication between all interested parties, in particular and if deemed appropriate with IOs and NGOs, is a prerequisite in order to achieve coherent EU CSO planning.

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<sup>14</sup> As described in the EU Concept for Logistic Support for EU-led Military Operations, see Ref. F  
EEAS 00754/14

## C. SCOPE

16. This document defines principles and policies concerning CSO for EU-led military operations and exercises. It links the EU Concept for Logistic Support<sup>15</sup> with the detailed regulations of the ATHENA Mechanism<sup>16</sup> and supporting instruments in the European Defence Agency, such as Effective Procurement Methods<sup>17</sup> and EDA's EU CSO Platform<sup>18</sup>.
17. This document takes into account relevant lessons identified during EU-led military operations.
18. In addition, it provides information about NATO entities which could be considered under the Berlin Plus Arrangements or on a TCN bilateral basis.
19. It is coherent, to the extent possible, with NATO's principles and policies on CSO.

## D. DEFINITIONS

In addition to the definitions explicitly given in this concept the EUMC Glossary of Acronyms and Definitions applies<sup>19</sup>.

20. **Host Nation Support (HNS)** is civil and military assistance, rendered by a Host Nation (HN) to another State and/or organisation which has forces located on, operating on/from, or in transit through the HN's territory. The basis of such assistance arises from bi- and/or multilateral international agreements / arrangements.

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<sup>15</sup> This takes into account that some Member States have a different definition of a logistic function and its related area.

<sup>16</sup> See Ref. G and I

<sup>17</sup> See Annex C

<sup>18</sup> See Annex B

<sup>19</sup> See Ref. H

21. **Logistic Lead Nation (LLN)**<sup>20</sup>. One nation assumes overall responsibility for organising and coordinating an agreed broad spectrum of logistic support for all or part of the multinational force within a defined geographical area for a defined period. This LLN can also provide capabilities as Logistic Role Specialised Nation (LRSN) at the same time.
22. **Logistic Role Specialised Nation (LRSN)**<sup>21</sup>. One nation assumes the responsibility for providing or procuring a specific logistic capability and/or service for all or part of the multinational force within a defined geographical area for a defined period. Compensation and/or reimbursement will then be subject to an agreement between the parties involved.
23. **Contractor Support to Operations (CSO)** enables competent commercial entities to provide a part of the support to the military, so that such support meets the Operation Commander's operational support requirements and optimises the most efficient and effective use of the resources. The basis for the delivery of CSO is a contract.
24. A **contract** is an agreement having a lawful object entered into voluntarily by two or more parties, each of whom intends to create one or more legal obligations between them. The elements of a contract are "offer" and "acceptance" by "competent persons" having legal capacity who exchanges "consideration" to create "mutuality" of obligation.
25. **Contracting** can either be the outsourcing of requirements to contractors for capabilities not met through the force generation process or other modes of logistic support (**planned**) or a response to unforeseen requirements that arise during the course of an operation (**ad-hoc**).
26. **Contracting Authority** within EU-led military operations is defined as the legal authority to enter into binding contracts and obligate funds.

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<sup>20</sup> See Ref. F

<sup>21</sup> See Ref. F

27. The **Authorizing Officer**<sup>22</sup> for **Common Costs (CC)** and **Nation Borne Costs (NBC)**<sup>23</sup>. The designated OpCdr (appointed by decision of the Council of the EU or the PSC<sup>24</sup>), is the Authorizing Officer for the operation which he/she commands. During the preparation of the operation (OpCdr hasn't been appointed) and the winding-up phase (termination) of an EU-led military operation the ATHENA Administrator acts as the Authorizing Officer.
28. The **Prime Contractor** is the one responsible to the client for all of the goods and services in the contract; a "sub-contractor" can be hired by the Prime Contractor for nearly anything the prime doesn't want to do or can't do in adequate volume or quality or time, as required by the contract. Some clients may restrict the types of companies or deliverables that can be "subbed out" (i.e. in case of PSCs or concerning limitations in terms of the geographical scope (see annex D)).
29. A **Contract Integrator (CI)** operates as a full service provider that is responsible for all aspects of providing contracted services and commodities, to include the determination of requirements in close coordination with the users. This includes the necessary invitations to tender, the selection of service providers, the subsequent conclusion and execution of contracts and, where applicable, cooperation for the purpose of coordination and quality assurance on operations.
30. **ATHENA**<sup>25</sup>, the mechanism to administer the financing of the Common Costs of EU operations having military or defence implications, has the legal capacity to, notably enter into contracts and administrative arrangements. ATHENA is managed, under the authority of a **Special Committee (SC)**, composed of representatives of EU Member States (except Denmark) contributing to the financing of each operation, by the Administrator or the Operation Commander (OpCdr) for the operation he/she commands.

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<sup>22</sup> An Authorizing Officer is a member of an entity who has been formally empowered by that entity to conduct business on its behalf, and to enter into arrangements with financial implications.

<sup>23</sup> See chapter K.

<sup>24</sup> Political and Security Committee meets at the ambassadorial level as a preparatory body for the Council of the EU. Its main functions are keeping track of the international situation, and helping to define policies within the Common Foreign and Security Policy (CFSP) including the CSDP. It prepares a coherent EU response to a crisis and exercises its political control and strategic direction.

<sup>25</sup> See Ref. I and Ref. C, Article 45

31. The **European Defence Agency (EDA)** was established "to support the Member States and the Council in their effort to improve European defence capabilities in the field of crisis management and to sustain the European Security and Defence Policy as it stands now and develops in the future"<sup>26</sup>. EDA Cooperation Planning and Support directorate developed specific activities to provide a complete set of tools that can be used for a direct support to EU-led military operations: e.g. the European Union Contractor Support to Operations Platform, the European Satellite Communications Procurement cell<sup>27</sup>, and the Effective Procurement Methods.
32. **European Union Contractor Support to Operations (CSO) Platform**<sup>28</sup> is designed to serve as a forum for interaction between experts from governmental authorities (such as logistic experts, CSO experts ...) and economic operators – in the meaning of potential or actual contractors, suppliers or service providers. It is a platform to exchange information in order to support the identification of commercial solutions for operational demands.
33. The **Effective Procurement Methods (EPM)**<sup>29</sup> is an EDA programme to facilitate the identification of common demand of groups of Member States and to translate such common demand into joint procurement.
34. The **NATO Support Agency (NSPA)**<sup>30</sup> is NATO's Integrated Logistics and Services Provider Agency. NSPA is a fully customer-funded agency, operating on a "no profit - no loss" basis. The purpose of NSPA's Logistics Operations is to deliver traditional, in-service logistics support for weapon systems and to provide logistics services in a broader context as a logistics integrator for multinational initiatives in direct support of deployed troops.

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<sup>26</sup> See Ref. J

<sup>27</sup> European Satellite Communications Procurement Cell (ESCPC) is an EDA framework agreement to provide satellite services.

<sup>28</sup> See Ref. K

<sup>29</sup> See Ref. L

<sup>30</sup> <http://www.nspa.nato.int/en/organization/nspa/nspa.htm>

35. The **Operational Logistics Support Partnership (OLSP)** functions within the NSPA and is established under the aegis of the NATO Support Organisation (NSPO) Charter<sup>31</sup> to be a fully integrated service support provider open to both NATO and Partner Nations. Partner Nations participate as Associate States after agreement by the OLSP Committee and approval by the Agency Supervisory Board. The OLSP concept includes a standing logistics contingency planning capability that assists Nations to best utilise the capabilities, expertise and services provided by NSPA to meet operational and exercise requirements.
36. A **Private Security Company (PSC)**<sup>32</sup> provides services aimed at protecting persons, business and property from criminal activities.
37. Whereas, a **Private Military Company (PMC)**<sup>33</sup> provides services to replace or back-up an army or armed group or to enhance effectiveness. This category is further broken down into two sub-categories by some authors: Active PMCs, willing to carry weapons into combat and passive PMCs that focus on training and organizational issues.

## **E. Principles**

38. The following principles will be applied to ensure that CSO planning and execution is consistent and effective. Incorporation of these principles into the planning of CSO will not guarantee success in itself, but it will establish a solid foundation for constructive provision of CSO planning.
39. Contracting within regional resources should not interfere with HNS and should take into account the essential needs of the local population. If there is no official HN support government, contracting will be made directly with private sources within the HN-area. In case of scarce resources, such contracting should be co-

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<sup>31</sup> <http://www.nspa.nato.int/en/NSPO/nspo.htm>

<sup>32</sup> See Ref. M and O

<sup>33</sup> See Ref. M and O



ordinated in the framework of the EU-led military operation to limit competition. A balanced mix of genuine military support, CSO and HNS is desired in order to keep the logistic footprint as small as possible.

40. The comprehensiveness of CSDP actions involves increasing presence of actors other than military (EU civilian missions, IOs, NGOs) in the JOA. Effective measures have to be implemented to avoid uncoordinated and competing contracting activities. Therefore, coordination of contracting for all CSDP actors within the theatre (e.g. Support Coordination Board) should be sought as a matter of routine, ideally under the responsibility of the OpCdr. Whenever possible, the coordination should be expanded to non-EU actors in the JOA, but legal aspects and/or specific requirements of the EU-led military operation have to be respected.
41. The use of CSO must not jeopardize the allocation of capabilities by TCN through the force planning process, and their commitment through the force generation process. The military forces must continue to maintain all logistic functions in order to retain the logistic military core capabilities and a fast response capability. This will provide a military fall-back position, if needed. The services of contractors will be used to supplement these capabilities in order to ensure sustainability during prolonged deployments, and, if necessary, to release military support elements for other higher-priority operational tasks or to reduce the military footprint.
42. The Statement of Requirements (SOR) needs to be defined in conjunction with military core capabilities. Nevertheless, as early as possible in the planning process, TCN together with the OpCdr will identify the assets, services and/or products that can or cannot be outsourced and the standards to be met for outsourcing options. Support which cannot be covered under the ATHENA CC or NBC regime should be co-ordinated amongst TCNs to gain economies of scale and avoid escalation of prices. Therefore, the use of a Contract Integrator might be the best solution.
43. Member States are encouraged to establish binding generic minimum support standards/requirements for EU-led military operations (subject to an agreement on common EU standards for the different services used in EU-led military

operations). A starting point could be the existing EU generic minimum standards for the deployment of Military Personnel<sup>34</sup>.

44. The use of contractors to support military operations includes a risk of contract failure to deliver the contracted support. Therefore, a thorough risk analysis must be executed by the OpCdr/TCN and Contingency Plans (incl. a military fall-back position) are to be prepared to mitigate identified operational risk.
45. Developing and implementing contracted solutions requires considerable planning and co-ordination during all phases of an operation between relevant EU actors, TCNs and the HN. Experience has shown that once operations are launched it requires a huge effort and resources to reverse engineer multinational logistic solutions, particularly contracting. Therefore, planning and financial implications of contractor support must be deliberate and an integral part of the planning process. Since the most critical phase of logistic execution is deployment and initial operational set-up, it is essential that specific contracts with appropriate readiness should be pre-arranged where appropriate.
46. The geographical scopes (geographical limitations concerning contracting) described in the ATHENA procurement regulations have to be respected, but it is possible to deviate from these rules, pending approval by the ATHENA SC.<sup>35</sup>

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<sup>34</sup> See Ref. P

<sup>35</sup> See Ref. G, Part II, Chapter II and Annex D of this concept.

## F. Policies

47. Under no circumstances EU will outsource, to private companies, inherently governmental functions<sup>36</sup>, such as:
- Direct participation in hostilities;
  - Waging war and/or combat operations;
  - Taking prisoners;
  - Law making;
  - Espionage;
  - Intelligence analysis;
  - Knowledge transfer with military;
  - Security and policing application;
  - Use of and other activities related to weapons of mass destruction and police powers, especially the power of arrest or detention, including the interrogation of detainees and
  - Other functions that EU considers to be inherently governmental functions.
48. Provided the operational situation allows, contractor support to operations is generally considered under, but is not limited to, the following circumstances:
- The required military capability has not been made available for an operation;
  - The military capability is not available in sufficient numbers to sustain operations;
  - The use of local contractors supports the agreed Civil-Military Cooperation (CIMIC) Concept and the CIMIC Supporting Plans (SUPLAN)<sup>37</sup>;
  - The use of contractors for certain functions, and at certain times are more cost-effective;
  - Specialist skills are not available through military sources;
  - The military logistic footprint needs to be reduced;

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<sup>36</sup> Further restrictions may apply to individual TCN or their personnel in order to comply with national regulation.

<sup>37</sup> See Ref. Q

- There is an operational need for continuity and experience that cannot be provided by using military manpower on a rotational basis; and/or
  - The employment of military capability is not permissible or is constrained by Host Nation policy (e.g. along the Line of Communication).
49. Contractor support may mainly, but not exclusively, be used in the following areas:
- Service/Life Support (LS)<sup>38</sup>;  
LS standards may rise if the situation permits and over the duration of the operation.
  - Health and Medical Support<sup>39</sup>;
  - Welfare Support;
  - Supply  
Timely provision of all classes of supply<sup>40</sup> necessary to ensure the sustainability of forces;
  - Maintenance  
Includes all actions taken to retain equipment or material in/or to restore it to specified condition. In general, maintenance embraces all supply and repair actions taken to keep a force in condition to carry out its mission;
  - Movement and Transportation<sup>41</sup>  
Includes the whole spectrum of infrastructure, organization, facilities and equipment necessary for the deployment, sustainment and redeployment of EU-led military forces during the execution of an operation;
  - Infrastructure and Engineering Support<sup>42</sup>;
  - Technical Communications and Information Systems (CIS) services<sup>43</sup>;

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<sup>38</sup> LS is defined as encompassing all functions required to maintain adequate living conditions for deployed personnel in the JOA.

<sup>39</sup> According to the requirements stated in Ref. R

<sup>40</sup> Class I: Items of subsistence; Class II: Supplies for which allowances are established by tables of organisation and equipment, e.g. clothing, weapons, vehicles, etc.; Class III: Petroleum, oil and lubricants (POL) for all purposes, e.g. gasoline, fuel, oil, grease, coal and coke; Class IV: Supplies for which initial allowances are not prescribed by approved issue tables. Normally includes fortification and construction materials, as well as additional quantities of items identical to those authorised for initial issue (Class II) such as additional vehicles; Class V: Ammunition, explosive and chemical agents of all types; Other Supply Items: Pharmaceutical and medical material.

<sup>41</sup> See Ref. S and T

<sup>42</sup> See Ref. U

<sup>43</sup> CIS deployment kits were purchased in common and may be borrowed from ATHENA, notably for an advanced party to be deployed into the theatre.

- Interpreter and Translator Service;
- Geospatial Intelligence Service;
- Security Guard Service.  
Civilian personnel and civilian premises might be protected by a security guard service. Under no circumstances, will the EU outsource military contingent force protection to private companies. Security guard services to military premises and/or to military personnel, if necessary, should only be commissioned to PSCs when integrated within military force protection, and for limited tasks such as identification, surveillance and patrolling.

50. It is of key importance that the OpCdr defines precisely **comprehensive operational requirements at an early stage** in cooperation with TCN and to agree with the service providers in advance binding legal consequences which result from deficiencies in the performance of service. Inherent possible risk related to the specific nature of the tasks led in EU-led military operations should be considered and it should be examined in each case whether the contract should address specific circumstances (state of war, terrorism, massive public disorder) in order to guarantee its implementation by contractors even in deteriorated security environment. It may also include the right of service providers to outsource work to local sub-contractors, but the Prime Contractor has to guarantee the quality of the service.

Additionally "Performance based contracts"<sup>44</sup> should be preferred, instead of "Activity based contracts" in order to focus on outcomes, outputs and quality, rather than how the work is performed.

51. Both **planned and ad hoc contracting** can release military manpower for other tasks. However, the planned approach has the greater potential to make the best use of both military and civilian support capabilities.

- A **planned approach** permits the identification, from the outset of the planning process, of where and when the use of contractors is desirable, and facilitates the integration of contractor capabilities into the operation. In addition, a planned approach can lead to early and multinational

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<sup>44</sup> Performance-based contracts identify expected deliverables, performance measures or outcomes; and payment is contingent on their successful delivery. Performance-based contracts also use appropriate techniques, which may include but are not limited to, consequences and/or incentives to ensure that agreed upon value to the state is received (see Ref. V and Annex E).

solicitations, which should result in appropriate readiness (availability) and cost savings as compared to an ad-hoc approach.

- **Ad-hoc CSO during on-going operations** gives the EU Commander a greater flexibility to react to unforeseen developments of the situation. However, the last-minute nature of ad-hoc contracting, and the time required to secure funding approval, can result in increased costs and delayed delivery of the required capabilities. Therefore, its advantages and limitations need to be considered throughout the planning process.
52. **Pre-mission support solutions** enhance readiness, reduce crisis response time, may provide additional benefits for risk reduction, and limit price escalation. Since, EU-led military operations would likely require rapid deployment, pre-mission support solutions will facilitate planning and deployment, and empower the OpCdr to meet support requirements for rapid deployment of EU military forces. In addition, standardized statements of work should be prepared that can be tailored to the requirements of the particular EU-led military operation to allow swift tendering.
53. Within the ATHENA mechanism and in accordance with Ref. I (chapter 3) there are two possible options<sup>45</sup> for pre-mission support solutions:
- **Administrative Arrangements (AA)** are concluded between Administrative Authorities and are standby mechanisms which give an EU chain of command easier and faster access to a public entity which can provide support itself, or to framework contracts which certain Member States have. The operators remain free to engage in support of a particular EU operation.
  - **Framework Contract (FWC)** is a contract concluded between a contracting authority and a service provider for the purpose of laying down the essential terms governing a series of specific contracts to be awarded during a given period, in particular as regards the duration, subject, prices, conditions of performance and the quantities envisaged. Contracts concluded by an EU

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<sup>45</sup> The ATHENA staff could provide, upon request, an overview about valid Administrative Agreements/Framework Contracts.

Member State, an EU institution or an International Organisation (such as the United Nations or NATO) with a supplier may be used by an EU operation. In order to conclude a FWC a two-step-approach is necessary: First, elaboration of technical requirements in close coordination with MS and second, the provision of operational requirements (quantity, distances,...) as soon as the operation is established (Council decision).

54. Additionally, there may be other options to set-up or use existing pre-mission support solutions:
- In cooperation with EDA (details see Annex C);
  - In cooperation with NSPA or with an OLSP Member State. (But safeguarding of the decision autonomy of the EU has to be taken into account.);
  - By using multinational partnerships (i.e. SALIS<sup>46</sup>, EATC<sup>47</sup>, ARK<sup>48</sup>);
  - By taking advantage of existing Acquisition and Cross Servicing Agreements (ACSA) with the United States of America;
  - By using national contracts or
  - A combination of these options.
55. Especially, the **deployment of EU forces** and the **follow-on supply** (establish and sustain level of stocks) across strategic distances have to be coordinated with TCN (e.g. during the Main Logistic Planning Conference convened by the OpCdr). In addition, multinational support, as well as, available pre-mission support solutions need to be discussed. This makes it necessary to involve contractors' know-how (ideally by a Contract Integrator), as early as possible, in the planning process in order to ensure smooth cooperation, allowing contractors to tailor their capability augmentation to the requirements of the specific EU-led military operation. But fair competition has to be considered to find the best contractor, if applicable<sup>49</sup>.

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<sup>46</sup> Strategic Airlift Interim Solution (SALIS)

<sup>47</sup> European Air Transport Command (EATC) is a multinational organization using ATARES (Air Transport and Air Refueling Exchange Services) as a tool.

<sup>48</sup> The aim of the ARK project is that the ships are permanently at disposal for the conduct of operational tasks for the German and Danish defence.

<sup>49</sup> In a new operation, until the force reaches its full operational capability, due to the extreme urgency which then prevails, the authorising officer may decide that procurement should be through a negotiated procedure  
EEAS 00754/14

56. Contracting may be carried out by TCNs on a national basis, the ATHENA Administrator or the OpCdr for CC and NBC (or a MCdr where he/she exercises the functions of an OpCdr), or other agencies (i.e. EDA, NSPA). Contract management<sup>50</sup> requires robust and rapidly deployable teams that can quickly be established in theatre in time to coordinate contract issues; especially during the complex and dynamic reception, staging and onward movement phase of the operation when most of the contractor support is being established. The designation of a **Single Point of Contact** within TCN and the integration of a **Contract Integrator** may facilitate this process.
57. Concerning the implementation of a CI, the following options could be taken into consideration (but not exclusively):
- **LLN as CI:** A mix of military and civilian personnel, embedded in the OHQ/FHQ; reach back capability provided through national assets, EDA and ATHENA staff. Contracts to be awarded as a result of the competition process amongst contractors.
  - **NSPA as CI** (under the Berlin Plus Arrangements or on a TCN bilateral basis): NSPA personnel embedded in the OHQ/FHQ, with a reach back capability to NSPA. Contracts to be awarded as a result of the competition process amongst contractors.
  - **Commercial contractor as CI:** Contract a commercial company to employ personnel in the OHQ/FHQ and provide a reach back capability to the parent company headquarters. Contracts to be awarded to the CI.
  - **Independent Commercial contractor as CI:** Contract a commercial company to employ personnel in the OHQ/FHQ and provide a reach back capability to the parent organisation. The CI would be restricted from bidding on any subsequent contracts (signed by TCNs or OpCdr). Contracts to be awarded as a result of the competition process amongst contractors.

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with or without publication of a contract notice and with wherever possible at least three candidates being consulted (see Ref. G, Part. II, Art. 5)

<sup>50</sup> Contract management involves managing the contract document and invoking contractual remedies, which can only be done by those who have the necessary delegated power.



## Specific requirements related to contractors

58. Based on the logistic military core capabilities defined in the EU Concept for Logistic Support for EU-led Military Operations<sup>51</sup>, contractors should consider the following requirements identified by the military user:
59. **Command and control capability.** Responsibility for logistic command and control always remains with the military, i.e. the military commander in the theatre. Contractors should deploy representatives, if required, to be integrated into national or, where applicable, multinational structures together with military forces<sup>52</sup>. To ensure the decision-making capability of the military commander, contractors have to make consistent continuous contributions to the maintenance of a transparent and updated overall picture of the logistics situation. Therefore, all contractors have to manage their contracted capability and supply-chain including all sub-contractors as a single complement of the Prime Contractor. In order to take part in the selection procedures for PSCs, all Prime Contractors should comply with the following mandatory requirements:
- Should have been in the business of providing armed security services for at least five years prior to submission of its proposal;
  - Should have a valid and current license to provide armed security services in their Home State as defined by the Montreux Document;
  - Should have a valid and current license to provide armed security services and import, carry and use firearms and ammunition in the Territorial State, as defined by the Montreux Document;
  - Should be in substantial compliance with the Scope of Work.
60. **Responsiveness.** The responsiveness of CSO has to match the operational requirements of the force contingents to be supported. Therefore, it is important to include contractors' know-how (represented by a CI or an experienced contracting authority (EDA, ATHENA,...)) from the outset of the planning process so that they can be given due consideration in deployment planning, as well as in terms of follow-on supply on operations through anticipatory coordination of available

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<sup>51</sup> See Ref. F

<sup>52</sup> I. e. integration into Support Coordination Board (OHQ/FHQ) or the establishment of an in-theatre project management office to provide the required interface to the military structure.

transport resources.

61. **Flexibility and sustainability.** The range and quality of commercial services could be contractually agreed to allow the contractor to respond flexibly to operational requirements during deployment in accordance with the defined scope and to allow stable and reliable service delivery.  
Just like military forces, service providers could be able – and obligated by contract – to reliably provide, through suitable and timely planning and organization, enduring support at varying operational tempos, and possibly under threat, over extended periods of time.
62. **Mobility.** The contract should define the military forces' responsibilities to ensure the service providers' mobility, and the contractors' own responsibilities for mobility.
63. **Protection and survivability.** Contractors may be self-sufficient but they are usually not armed or only equipped with limited security and therefore the respective EU Commander will have to consider appropriate measures concerning force/contractors protection. In areas where local medical care is not available, the force may need to provide medical support as well. The issue of protection of contracted civilian staff on operations and liability in this respect have to be addressed in the contract. This may include support and protection in the area of mobility and accommodation (including catering) as well as the use of military medical services. The contract must also specify which of the above aspects apply to locally employed sub-contractor staff. To improve survivability, it is further desirable (and should be stipulated by contract) that commercial personnel are aware of the military code of conduct<sup>53</sup> and can ideally participate in segments of a pre-deployment training, if possible, as a group with the military personnel that they will later work together with in operations. A minimum standard of training (e.g. EEAS-HEAT<sup>54</sup>), to be undertaken by contractors deploying in operations should be considered. Therefore, the benefits of using contractors must be

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<sup>53</sup> This does not include the use of weapons. The Military Code of Conduct needs to be elaborated and implemented by the OpCdr in close coordination with TCNs for the respective operation.

<sup>54</sup> European External Action Service - Hostile Environment Awareness Training (HEAT) for staff going on mission to hostile environment is a key element of discharging the duty of care to EU expatriate staff. The training is expected to improve the understanding of the threats and how to mitigate them, to ensure that staff react to critical situations appropriately, to prevent staff from becoming a risk to those around them and to familiarize the staff with international best practices. POC: MDR-B1@eeas.europa.eu

considered carefully against the resources required to ensure their health and safety.

64. **Capability for multinational cooperation.** Due to functions<sup>55</sup> assigned in multinational formations, economic considerations<sup>56</sup>, operational advantages and politico-military interests, EU-led military operations need to rely on service providers using a multinational approach.

#### Specific requirements related to the cooperation with contractors/service providers

65. Military commanders and planners should be aware of the specific requirements to implement an effective and efficient CSO in the planning and execution of military operations. The following conditions should be considered:
66. **Management.** Contractors do not operate under the same command and control arrangements as the military force, as contractors have the liability and responsibility for their personnel. Contracted personnel remain under the management of their employer. However, the contract should provide that camp commanders have authority to give directives in all matters related to Force Protection (FP), security, safety, and general welfare of the force, if contractors are recognized as accompanying the armed forces. Besides, the military customer will generally not have any influence on the professional and personal qualifications of contractor personnel (pending on the specifications described in the tender dossiers about sub-contracting).
67. **Efficiency and cost-effectiveness of services.** The principle of economic efficiency must also be observed in EU-led military operations. Based on this principle, cost transparency and the establishment of a stringent contract performance management<sup>57</sup> are of paramount importance and should be highlighted in the contract. Performance management processes must provide the ability to properly measure the efficiency of service performance, to document the

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<sup>55</sup> LN (Lead Nation), LLN (Logistic Lead Nation), LRSN (Logistic Role Specialized Nation).

<sup>56</sup> Economies of scale (increased market power); single contractor/integrator (increased market power as well as prevention of a bidding war between TCNs and price inflation for service providers).

<sup>57</sup> Please, notice the difference between **contract management** and **contract performance management** which can be done by suitably skilled and nominated personnel in the field.

quality of services and/or works, and to ensure a consistent standard of reporting. Existing procedures must be further developed to establish a reliable feedback process encompassing all parties involved, ensuring comprehensive transparency (including transparency of costs) and providing the opportunity for the rectification of shortfalls in performance.

68. **Training effort**<sup>58</sup>. The possible lack of information concerning general contract procedures for operational commanders, customers, and others with responsibilities to use, manage, and oversee logistics support contracts has adversely affected the use of such contracts to support deployed forces. Commanders and other senior leaders should understand that they have a key role in identifying requirements, ensuring that the contractors work in a cost-effective manner, and evaluating contractors' performance. Commanders are invited to participate in the trainings organized by the ATHENA staff for personnel already or to be deployed in EU operations. Additional ATHENA related training could be provided as per need, keeping in mind that training is considered a national responsibility.
69. **Best Practice**. In order to ensure a continuous increase in expertise and optimization of individual operating procedures when cooperating with contractors, OpCdrs/OHQs/MS are encouraged to collect Lessons Observations<sup>59</sup> related to CSO that might have an impact on EU operational output and has the potential to become a Lessons Learned and/or to share experience related to missions/operations. For this issue, the EUMS Lessons Management Application<sup>60</sup> (*Lessons Observations*) and/or the VOSIC<sup>61</sup> application of EDA's EU CSO Platform (*sharing of experience*) could be used to collect this kind of information. In addition, the Athena decision review process as a process that incorporates all the Lessons Learned (*contracting procedures*) and/or the College

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<sup>58</sup> "The personnel deployed by the military services to monitor the performance of the logistical support of contractors have not always received the training necessary to accomplish their missions" (GAO report, see Ref. A).

<sup>59</sup> A Lessons Observation is a problem that is not resolvable by the employment of current concepts, tactics, procedures, equipment or training.

<sup>60</sup> ELMA is an application installed on EU OPS WAN, but available from SOLAN by using a special token. ELMA is used for the reporting of observations from EU military activities including Operations and Trainings and it permits development of lessons from these observations via improvement actions.

<sup>61</sup> See annex B

of Auditors<sup>62</sup> report could supplement this purpose.

70. **Situation of the candidate or tenderer.** Any candidate or tenderer who has been subject of a conviction by final judgment, of which the contracting authority/entity is aware, should be excluded from participation in a contract.<sup>63</sup> In addition, the criteria of economic and financial standing and of professional and technical knowledge or ability have to be considered as well.

Additionally, for any armed personnel, the Prime Contractor is responsible for the screening process of its contracted personnel, including the screening of the sub-contractors' personnel.

This screening process will include the following:

- A criminal background record check with the national police and military services of the person's current country of residence, the country of current employment and the country of nationality; and
- A verification of the person's place of employment for the past five years including where relevant, a background check with all military or law enforcement employers.

Before employment of any armed personal, the Prime Contractor should confirm, in writing, that the above outlined screening process has been conducted satisfactorily.

In circumstances where the nation state of the personnel to be screened does not have the necessary mechanisms in place to determine the extent of criminal background or employment, the Prime Contractor is required to either employ alternate personnel or develop and submit alternate and equivalent screening certification to include the use of an independent third party screening company.

71. **In summary**, the contract is the legal basis for the relationship between the EU force/entity and the contractor. The contract must specify the terms and conditions, to include minimum required standards<sup>64</sup>, under which the contractor has to perform; the method by which the contractor will deploy its staff; and the specific support relationship between the contractor and the EU military force. The

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<sup>62</sup> See Ref. I, Article 38, *External auditing of the accounts*

<sup>63</sup> for one or more of the reasons listed in the EU regulations (see Ref. W, Chapter VII, Section 2, "Criteria for qualitative selection")

<sup>64</sup> Where a contract is signed by the OpCdr/ATHENA Administrator, ATHENA regulations will apply. Where a pre-existing national contract will be enabled to support an EU mission, TCNs may be permitted to apply national rules/regulations.

contract must contain clauses to ensure efficient deployment, accountability, visibility, protection, possible support by military medical services, and other support, sustainment, and redeployment of contractor personnel. It should also specify the appropriate flow-down of provisions and clauses to sub-contracts.

## **G. Risk analysis**

72. **The risk analysis** takes a special place in the planning process. Prior to any collaboration with contractors, the outsourcing potential of the service has to be analysed, and the actual suitability of a contractor (Performance Capability, Operational Security, expected Threat Level in theatre, Nationality of stakeholders, etc.) has to be evaluated.
73. The use of CSO as an integral element of support to operations involves varying degrees of risk. This chapter highlights issues which may mainly (but not exclusively) influence EU-led military operations.
74. **Reliability and Quality.** In order to ensure the necessary standards it is essential that contracts accurately specify as much as possible what is required and that there is a careful assessment of contractors' bids to ensure they are both realistic and achievable. The in-theatre presence of a representative of the contractor could be considered to mitigate possible operational impacts.
75. **Operational Security.** In principle, the security risk affects all levels and has to be considered as soon as contractor personnel participate in the planning process. At the operational level contractors may have knowledge of military plans and intentions and at the tactical level they may have visibility of military capabilities and activities. Operational risk is regularly considered by EU Member States and accepted particularly in the case of strategic deployment, where commercial providers will always play a significant role. Tactical risk is likely to be low where contractor's staff consists of expatriate nationals of the same TCN but will be higher in the case of host-country or third-country nationals. Vetting and monitoring must be considered in the planning process (EUMS INT, INTCEN and/or EEAS HQ/Field Security could assist the OpCdr).

76. **Contract Network Transparency.** Recent operations have shown that the use of contractors may produce negative operational effects due to personnel levels, the level of funding required, as well as price escalations and evidence indicating that payments made to sub-contractors may be channelled to opposing forces or organized crime. The aspect of contract/contractors visibility throughout the theatre of operations is therefore of outstanding importance. The OpCdr should be enabled by TCN to develop an overall picture about contractors employed, and to establish transparency in contracting. This also applies to the involvement of sub-contractors by service providers. To the extent possible, contractors should be required to provide all relevant information relating to their activities under contracts with the operation to the operation and to allow the operation to share this information with other international organisations / States operating in the same theatre. This would also provide contracting officers with visibility of potentially corrupt contractors<sup>65</sup>. Where necessary, this will include appropriate safeguards for the handling of commercial information so provided.
77. In general, there is no need to establish **geographic boundaries** where contracting activities will not be permitted. However, such boundaries might be considered for security reasons.

## H. Legal framework

78. Contracts in support of operations must indicate which national law is governing the contract, should be in compliance with any compulsory rules of applicable domestic law including but not limited to the law of the Host Nation, and must not be contrary to international law.
79. Whenever ATHENA funds the contract for CC or NBC, the OpCdr has full control over the contractors' activities in accordance with applicable regulations and the terms and conditions laid down in the contract.

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<sup>65</sup> see Ref. X  
EEAS 00754/14

80. Limitations regarding contracting Third States Contractors is subjected to the ATHENA rules (see annex D).
81. No specific restrictions limit the use of local contractors provided the agreed EU standards are fulfilled. The employment of local workers (service contracts) should be considered on a case-by-case basis, because it depends on the operational framework, legal questions, the security situation, and the cultural/socio-economic situation of the population. However, in most cases it is a solution with advantages for those who apply it, improving the good relationship with the population and promoting the development of local economy.
82. In operations, contractors' status will be governed by Host Nation law and/or applicable international agreements (e.g. Status of Forces Agreements (SOFA) or Transit Agreements). Unless stated otherwise, in applicable international agreements, contractors will be subject to the law of the State in which they are operating (i.e. the HN). Local hires (service contracts), regardless of nationality, will be subject to the laws of the respective country.
83. The EU will not employ PMCs under any circumstances.
84. The use of PSCs<sup>66</sup> is possible, but should be limited and thoroughly assessed and approved in the OPLAN, and is always subject to national law and caveats. Additionally, the implementation of such contracts has to be carried out in the framework of the relevant provisions of the Montreux document<sup>67</sup> and the PSC International Code of Conduct<sup>68</sup>.
85. Moreover, any use of force<sup>69</sup> by PSCs contracted by the OpCdr has to be in accordance with the applicable law, approved in the OPLAN, and must not go beyond self-defence, the defence of third persons and the defence of designated property, without use of deadly force.

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<sup>66</sup> This takes into account that some Member States have a different definition of a logistic function and its related area. Additional information is provided in Ref. N

<sup>67</sup> See Ref. M

<sup>68</sup> The Technical Steering Committee of the International Code of Conduct is in the process of establishing measurable standards for the PSC industry: <http://www.icoc-psp.org/>

<sup>69</sup> See "EU Concept for the Use of Force in EU-led military operations", Ref. Y, para 81



Furthermore, PSCs contracted by the OpCdr shall be prohibited from using weapons which cause superfluous injury or unnecessary suffering, or which cause widespread, long-term and severe damage to the natural environment. Additionally, the Prime Contractor is required to develop and implement, in consultation with OpCdr (or FCdr, if delegated), the necessary standard operating procedures (SOP) for the implementation of the contract, particularly when armed personnel is engaged.

Before engaging any armed personnel, the Prime Contractor should confirm, in writing, that the engaged personnel has been properly trained and has a good knowledge of the relevant SOPs.

86. The contractor and its personnel are obliged to respect the national law, in particular the national criminal law, of the State in which they operate and, as far as applicable, the law of the States of their nationality.

A Contractor is not covered, as regards privileges and immunities, by the SOFA concluded by EU with the Host Nation, unless it is embedded within the HQs and/or national contingents to the Force. Contractors will not be regarded as EUFOR personnel; however, EUFOR will provide an identity card identifying them as working in support of EUFOR.

87. Entering in employment contracts has to be in compliance with the ATHENA regulations. In addition, any recruitment of a contracted civilian to fill a position listed on the Operation Statement of Requirement (SOR) must be specifically authorised by the SC.<sup>70</sup>

88. Contractual Instruments<sup>71</sup> will, under the responsibility of the Contracting Officer, be administered in such a manner as to ensure that the contractual obligations of the contractor and the OpCdr are correctly and promptly fulfilled and that OpCdr's rights under the terms of the contractual instrument are exercised lawfully.

## **I. Considerations during the planning process**

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<sup>70</sup> See Ref. G, Part VI

<sup>71</sup> Contractual instruments are formal documents establishing contractual arrangements (see Ref. G, Part I and II).

89. During the planning process there are a number of considerations that influence decisions on whether to employ contractor support. Planning and preparation is necessary to ensure that requirements for contractor support are identified early and that their contributions to operations are fully optimised. The following considerations should provide some guidance to implement an effective and efficient CSO.
90. The integration of CSO in the planning process focuses on three main pillars: **COST – RISK – TIME**. Firstly, the possible cost savings should not be the main driver for outsourcing solutions. The commanders' requirements and the integration of organic military assets have to be the planning guidelines. Secondly, during an initial entry phase of a high intensity operation in "remote locations" or "1st line locations", contracting may not be appropriate due to difficulties in providing adequate force protection. Thirdly, the timely availability of contractor support has to be considered. If there are no pre-mission support solutions in place, a planning constraint could be the lead time in setting up contracts<sup>72</sup>.
91. In order to provide an accurate assessment of CSO options to the OpCdr, the creation of a temporary CSO planning cell within the Operational Headquarter/Mission Headquarter (OHQ/MHQ) is recommended. Besides J4, J8 (including CI) and J9 personnel, this cell should also consist of personnel from J2 and J5 to evaluate possible operational impacts in outsourcing logistic support. If additional outsourcing options (i.e. technical communications and information services, infrastructure support, health and medical support, etc.) are considered, the appropriate subject matter experts have to be integrated as well. Additionally, this CSO planning cell should support the J8 personnel to elaborate the specific requirements and the particular statements of work.
92. A Contract Integrator could provide considerable knowledge of contractors' capabilities, limitations, and operations. This knowledge could be taken into account early in the planning effort in order to increase the understanding of requirements and capabilities, facilitate communication regarding the statement of work, and enhance the quality of the contract. Therefore, the early identification of requirements involving potential contractors in developing comprehensive

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<sup>72</sup> As an example: It took EDA (EPM) six month to set up a contract for the provision of logistic services for EUBG 2012-2.

statements of work (fair competition is paramount) support an improved service quality, lower costs and might increase their responsiveness. However, any conflict of interests should be avoided. If security concerns prevent the involvement of the contractor, an unclassified statement of work has to be developed and provided to the contractor.

93. TCN must carefully harmonize their plans for deploying contractors with the Operational Plan (OPLAN) to avoid possible frictions in using available infrastructure in the HN. Therefore, the deployment of contractors, whether using their own resources or not, must be synchronized with OpCdr's deployment plan.
94. Designated personnel (i.e. from J4 and J8) of the future OHQ/MHQ of a forthcoming EU-led military operation, the EU Military Staff (EUMS) and the ATHENA administrator's team should undertake a joint Fact Finding Mission to identify and elaborate possible contracting solutions for CC and NBC items in line with Ref. I..
95. In order to obtain the best possible terms and conditions, TCNs should consolidate their requirements into common Requests for Proposals (RFPs). While most TCNs may have their own deployable contracting staffs and may be prepared to act independently in theatre, there are considerable advantages to be gained from utilising a collective approach. Therefore, TCNs should take advantage of the ATHENA mechanism for Nation Borne Costs<sup>73</sup>, or EU Agencies such as EDA and/or of NSPA/OLSP services (if applicable).

## **J. Roles and responsibilities**

96. One of the principles defined in this concept is that OpCdr, ATHENA Administrator, and TCN have a collective responsibility to identify support requirements that could be met by civilian contractors; put in place the contractual instruments; and share the provision and use of contractor capabilities and

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<sup>73</sup> TCN can contract under the same conditions like the Operation/Mission related to AA and FWC.

resources, through prior agreed arrangements, for such services which couldn't be provided through the Force Generation process.

### EU Military Staff (EUMS)

97. The EU Military Staff (EUMS) should take into account CSO aspects when supporting the EUMC on military aspects of strategic planning or when developing and prioritizing Military Strategic Options (MSO).
98. After approval of the Crisis Management Concept (CMC), EUMS has to participate in Fact Finding Mission Missions (i.e. Market Research) in order to elaborate the strategic assessment on possible contracted solutions.

### Operation Commander (respectively Mission Commander)

99. From the time of the appointment by the Council or the Political and Security Committee, the OpCdr is the Authorizing Officer and therefore, responsible for the implementation and execution of CSO in relation to the operation envisaged. In addition, he/she must ensure that the procurement complies with ATHENA's Rules and Procedures.
100. From the outset, the OpCdr should task his/her staff, working on CSO, to cooperate closely with legal, CIMIC, ATHENA and financial staff, reflecting the interrelationship of CSO with the SOFA, CIMIC and HNS. Close coordination with J3 and J5 considering potential operational risks of CSO is indispensable.
101. The OpCdr should promote consistency in the CSO planning process, to ensure an effective and flexible response to any operational need. In the interests of efficiency, and where appropriate, EU-coordinated pre-mission support solutions<sup>74</sup> should be preferred.
102. The OpCdr must properly address nationally agreed quality standards for services

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<sup>74</sup> Coordinated by the ATHENA Administrator or EDA/Cooperation, Planning & Support.  
EEAS 00754/14

and materials contracted under his/her responsibility. This is of particular importance with regard to food, water, fuel, transport assets, medical support and lodging.

103. The OpCdr assumes control of commonly provided resources as directed and is responsible for establishing the support requirements for all phases of an active operation<sup>75</sup>, coordinating support planning, and coordinating the provision of support within his/her area of responsibility. This applies to contractor support requirements as well, but does not include the right for the OpCdr to terminate existing national contracts.
104. The OpCdr should ensure that adequate guidance is provided to non-EU Troop Contribution Nations, willing to participate or participating in EU-led military operations, related to contractual arrangements under his/her responsibility.
105. The OpCdr may execute planned contracting (CC, NBC) in addition and in continuity to the effort that has already been undertaken by ATHENA, EDA or LLN/LRSN in preparation of the EU-led military operation. Also ad-hoc contracting may be executed by the OpCdr during the operation to the extent necessary. Where appropriate, the OpCdr may delegate the authority to conduct ad-hoc contracting to the Force Commander (FCdr). In that case, full contract visibility at the level of the OHQ has to be ensured.
106. The OpCdr defines the minimum standards for civilians accompanying the force according to his/her risk analysis (pre-deployment training, security clearance, personal protective equipment, medical and dental fitness, vaccination, etc.).

### Force Commander

107. The authority for ad-hoc contracting will be most likely delegated to the FCdr. It falls under his/her responsibility that all ad-hoc contracting conducted under his/her authority is in line with the ATHENA regulations. The FCdr should have granted the same contract visibility by TCN as the OpCdr.

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<sup>75</sup> Outside the active phase the ATHENA Administrator is responsible.  
EEAS 00754/14

## ATHENA Administrator

108. The responsibility of the ATHENA Administrator is to manage the financing of EU-led military operations and exercises through manpower/expertise.<sup>76</sup>
109. Based on operational needs identified in past operations, ATHENA, in collaboration with EUMS and MS, may explore new Administrative Arrangements and Framework Contracts in order to make the necessary procurement in operations easier, faster, and more economical.
110. When approved in the budget (or in the reference amount) or considered as NBC for the operation, the ATHENA Administrator (or the OpCdr) can enter into public supply, service and infrastructure contracts.
111. ATHENA can, if necessary, deploy officers to an EU operation OHQ/MHQ or FHQ to lend support notably in the preparation/early phase and in the winding up phase and to monitor the CSO process for services financed in common.

## European Defence Agency

112. Member States can designate the EDA as central purchasing body for defence procurements.
113. In this case, the Agency will be responsible for identifying whether common demand exists for the proposed operation and establish guidelines to facilitate the cooperation between participating Member States willing to pool their requirements and the related contracting based on existing EDA instruments and sources. This process must take into account whether the EDA is able to assume this additional responsibility within its agreed programme of work before agreeing to do so and also establish whether any additional financial or time costs or penalties will arise as a result and who will be liable for payments.
114. EDA can establish and implement common procurement cases, or helps to

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<sup>76</sup> In accordance with Council Decision 2011/871/CFSP of 19 December 2011 (see Ref. I) EEAS 00754/14

identify other appropriate contracting authorities.

115. EDA can publish offers on the EU CSO Platform on behalf of ATHENA Administrator, LLN/LRSN or OpCdr.

#### Logistic Lead Nation (LLN)

116. In EU-led military operations the LLN (if appointed) plays a key role to coordinate and ensure an agreed broad spectrum of logistic support for all or part of the multinational force.

117. Within its responsibilities the LLN should:

- Gather TCN support requirements to determine the exact range of contracted support services (task catalogue);
- Explore outsourcing options in using available EU & NATO instruments highlighted in this concept;
- Be capable to cooperate with Contract Integrators as a Single Point of Contact for the contractors and integrate them in the planning process;
- Act as a Single Point of Contact (SPOC) for TCN. If the LLN is acting as a CI, it will be also the SPOC for the contractors.

#### Contract Integrator (CI)

118. Generally, a CI should support the establishment of CSO as follows:

- Provides support to deliver timely and effective advice on CSO;
- Assists with Statement of Requirements development and could act as a Planning Interface with the industry;

- Assists with risk analysis and development of risk mitigation plans;
- Prepares a deployable staff element and keep it at high readiness to prepare the contracts;
- Provides solicited and proactive advice on CSO;
- Acts as a Single Point of Contact for all contract related issues;
- Is able to provide a full Service Package.

119. In the planning process, the CI has to implement Contracting Instruments and provide neutral advice on CSO.

120. In the Deployment and Execution Phase, a CI staff element has to be deployed into theatre to administer and execute the contracts.

121. During Redeployment, Termination of an Operation and Refurbishment Phase, support has to be provided to close down Contracting Instruments.

#### Member States (MS)/Troop Contribution Nations (TCN)

122. TCN have the ultimate responsibility for ensuring, individually or by contractual or cooperative arrangements, the provision of support to their forces assigned to EU operations.

123. MS should promote the elaboration of commonly agreed specifications to support the ATHENA Administrator or other EU entities (e.g. EDA) to establish pre-mission support solutions in order to shorten the lead time in the procurement process.

124. TCN should inform all appropriate military Commanders of EU-led military operations about their contractual arrangements implemented to support their forces deployed to the JOA (contract visibility).

125. TCN should, if applicable, designate Single Points of Contacts to coordinate contractual arrangements with OpCdr's staff (e.g. Support Coordination Board).



126. TCN must properly address their acceptable quality standards for services and materials contracted under OpCdr's responsibility. This is of particular importance with regard to food, water, fuel, transport assets and medical support.

### Contractor

127. The contractor is responsible for conducting and maintaining its own risk analysis prior and during the deployment of any personnel to their specified locations within the Operations Area. It has generally to be self-sufficient which includes its own workforce of managers, engineers, labour and health support. With regard to civilians serving on a commercial service contract, the contractor is responsible to ensure the minimum standards are met.

128. The contractor must grant visibility of its activities and personnel throughout the JOA; this includes also sub-contractors as specified in the contract.

129. The presence and actions of contractors could affect local political structures. Therefore, contractors involved in EU-led military operations should coordinate their access to resources in the HN with the OpCdr.

130. Contractors' deployment plans have to be in accordance to OpCdr's policy.

131. Contractors have to take into considerations possible environmental implications due to their engagements in the Host Nation. Contractors may be seen as an integral part of the EU-led military operation. Therefore, they have to comply with the relevant environmental regulations and policies (e.g. Environmental Protection for EU-led military operations<sup>77</sup>) for EU-led military operations.

### Host Nation

132. HNs could designate officials to advice the OpCdr or TCN in developing and concluding of local contractual arrangements. These officials could be designated as Single Point of Contacts. Furthermore, HNs are encouraged to advise the OpCdr or TCN about the availability of HN resources and the possible impact of contracted solutions to the local economy and the population.

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<sup>77</sup> See Ref. Z  
EEAS 00754/14

133. HNs could facilitate the early use of contracted solutions, particularly with respect to transportation, infrastructure and other deployment related resources.

## **K. ATHENA mechanism as regards CSO**

134. The **Common Costs** of an European Union military operation are costs financed in accordance with the rules of the ATHENA mechanism (specific CC act). These costs are listed in the Annex of the ATHENA Council Decision (which applies in full to any CSO contracting arrangements). They are distinguished in three phases of an operation (details see Annex D):

- Preparatory phase  
(from adoption of the Crisis Management Concept to OpCdr's appointment)
  
- Active phase  
(during the term in office of the OpCdr or of successive OpCdr)
  
- Winding-up phase  
(when the OpCdr has been officially released by the Council)

135. ATHENA also manages **Nation Born Cost**<sup>78</sup>. The Special Committee approves for each EU military operation a list of NBCs (special NBC act) to be managed by the OHQ/MHQ or FHQ. This covers expenses which are not eligible for common funding but which for operational reasons are best managed centrally. ATHENA staff receives information from the OHQ/MHQ or FHQ and bills the States every month. ATHENA also provides, on demand, the OHQ/MHQ or FHQ with the necessary funds to pay suppliers of NBCs.

136. The same rules on the management of NBC that apply to participating States also apply where Third Parties use the Nation Borne Costs mechanism, particularly in relation to invoicing and reimbursement procedures. The Special Committee usually decides that Member States and Third Parties should be requested to make a "deposit" to ATHENA to pre-finance the first purchase, pending reimbursements based on usage.

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<sup>78</sup> Costs of EU operations or missions which are managed in common, but billed to States or other parties based on their consumption.

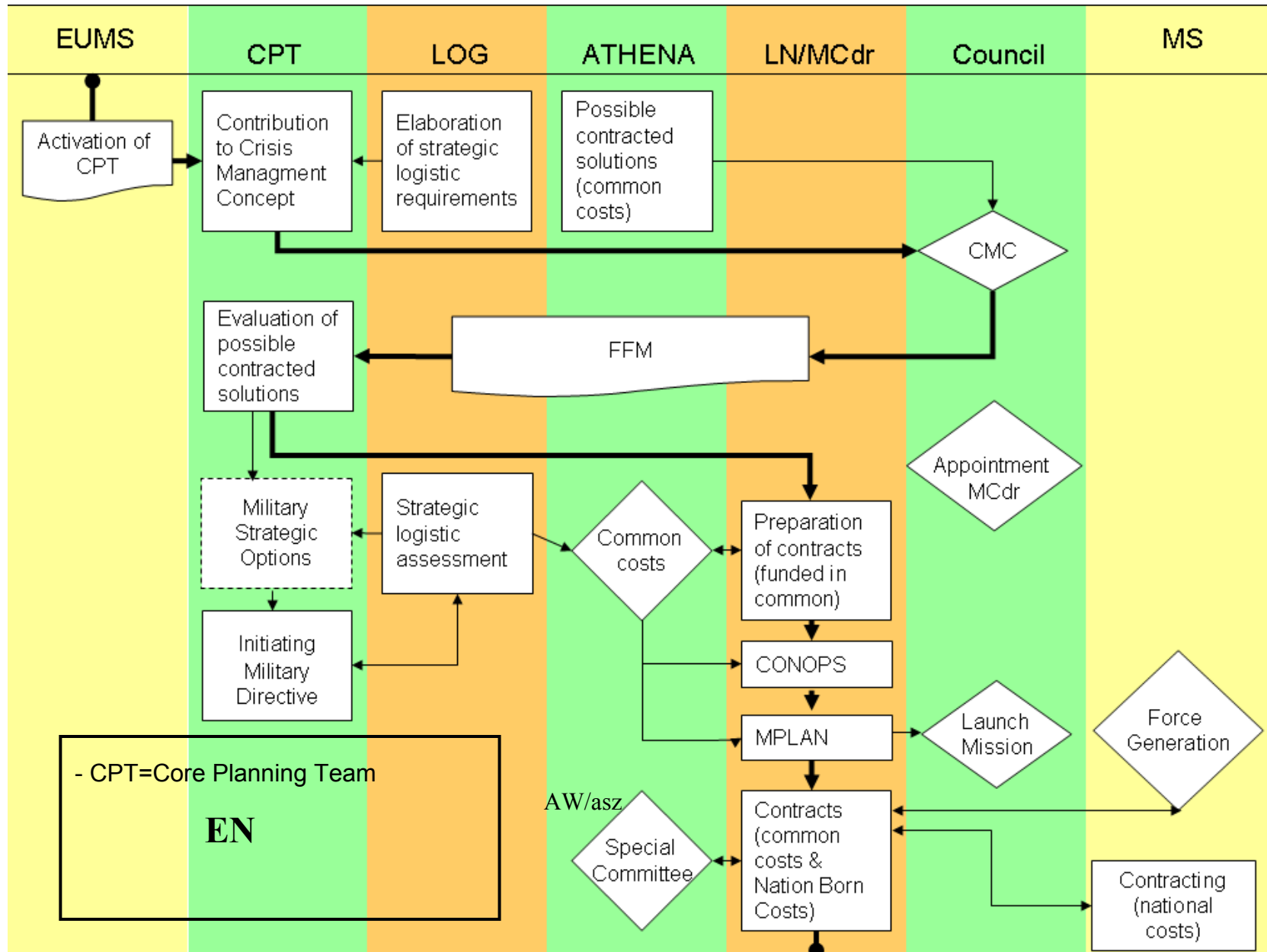
## **L. Conclusion**

137. To be effective and efficient, CSO should be planned prior to an operation in order that EU OpCdr and TCN can collaborate to identify requirements, review CSO options and select the most appropriate options – and implement the appropriate governance structure and practice.
138. Contracting is an alternative course of action, which contributes to the adequate support of deployed operations. Thereby, it complements the existing resources in order to get optimized results and consequently contributes to the successful sustainment of the mission. Nevertheless, military capabilities should be the foremost option.
139. CSO offers a variety of benefits to EU-led military operations and it has proved to deliver timely, responsive and effective support. However, it is not the ultimate solution and will not resolve all of the capability gaps, but, if used wisely and with due regard to the risks and potential consequences it is a valuable option.
140. Contract management requires robust and rapidly deployable teams (military or civilian) that can quickly be established in theatre.
141. The engagement of a CI should be the preferable option to strengthen the operational agility of a multinational logistic solution.
142. A contracted solution will require appropriate legal documentation to be in place. This might create a long lead time to get contracts prepared. Therefore, it is important to have logistic military core capabilities and pre-arranged contracts (Framework contracts) available.
143. Contracting has to be the "Commander's business"<sup>79</sup> in order to be aware of the limitations of employing contractors, to conduct the adequate risk analysis, and to implement suitable mitigation plans.

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<sup>79</sup> Statement of General David Petraeus in his ISAF COIN Contracting Guidance EEAS 00754/14

**CSO in the Crisis Management Process (example without activation of an OHQ)**



- FFM=Fact Finding Mission
- CMC= Crisis Management Concept

## Purpose & Structure of the European Union Contractor Support to Operations Platform<sup>80</sup>

1. The platform, which will be operated by the European Defence Agency, is designed to serve as a forum for interaction between experts from governmental authorities (such as logistic experts, CSO experts...) and economic operators – in the meaning of potential or actual contractors, suppliers or service providers – to exchange information in order to support the identification of commercial solutions for operational demands.
2. The platform will primarily be operated as an internet based system and will consist of a publicly accessible domain and a restricted domain for registered governmental experts and European economic operators.
3. Experts from governmental authorities representing a participating Member State of the European Defence Agency will automatically have access to the limited access area of the platform, whereas other governmental authorities will, before first using the platform, be required to provide appropriate identification data and to accept their responsibilities in the use of the platform.
4. Economic operators wishing to have access to the limited access area of the platform will have to register. In registering they will be required to provide necessary data to populate the database of economic operators and to accept their responsibilities in the use of the platform.
5. The platform will have no contracting capacity. Any contract deriving from the use of the platform will be concluded between the respective contracting authorities and the successful economic operator according to the specific rules applicable to the contract.
6. The platform will be supported by an administration cell within the EDA to provide assistance to registered users using the platform and an advisory group to be convened on a case by case basis to address questions the administration cell cannot resolve internally. Any formal decisions to be taken in respect of the platform will be submitted to the Steering Board of the EDA. The EDA will not accept any liability whatsoever with regard to the platform or material on the platform.

### **Public Access Area**

7. Business Opportunities: Governmental authorities can advertise their business opportunities, including contract notices, calls for expression of interest, prior information notices etc., on a dedicated internet page of the platform. When making use of this service, contracting authorities will be required to ensure that the advertisement contains the necessary information on the applicable tender procedures and on where and how to obtain the official documentation of the business opportunity.

In order to provide for the highest degree of competition, this internet page will be publically accessible. Governmental authorities will be required to post their business opportunities in English language.

8. Library: The library will provide essential documents about Contractor Support to Operations in the context of the Common Security and Defence Policy (CSDP).
9. Registering: Appropriate information on the applicable requirements and procedures for registering will be publicly accessible.

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<sup>80</sup> Please, refer to Ref. K about the latest information

## Limited Access Area

10. Database of Companies: Registered economic operators will be admitted to a dedicated database operated and maintained by the administration cell. This database will offer multiple search options in order to support both governmental authorities and registered economic operators in the identification of the most appropriate solutions for CSO.

In this respect, registered economic operators will be required to ensure that the data they provide will be correct, comprehensive, recent and accurate. The requested data will, besides the standard contact and certification information, include the nature of the service provided, information on the circumstances this service can be delivered in and, as applicable, preferences regarding sub-contractors.

Each registered economic operators will be required to review, on a regular basis, the data specifically related to it and validate the data as necessary in order to maintain the validity of the registration.

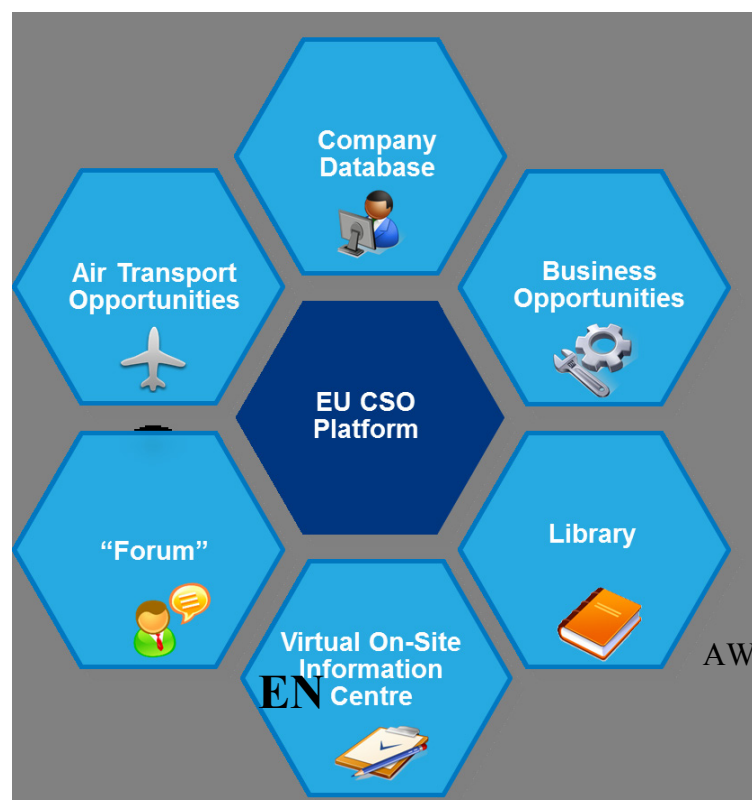
11. Catalogue of Services: In order to support the identification of the most appropriate solutions for CSO the catalogue of services will be structured along the standard logistic functions. Registered economic operators will be required to base their entry into the database of companies on the structure established by the catalogue of services. The catalogue of services will periodically be reviewed and adjusted by the administration cell.

12. Air Transport Availability: Registered economic operators can advertise the availability of empty cargo compartment and empty legs on commercial flights. All registered users have access to this information.

13. Virtual On-Site Information Centre (VOSIC): The aim of the VOSIC feature is to provide a tool for governmental logistic and CSO experts to exchange CSO-related information for specific operations. For an operation/mission a specific VOSIC can be established. The VOSIC has to be managed by a dedicated moderator coming from the governmental authority which is responsible for the operation/mission.

The management of the users is separated from the rest of the EU CSO Platform. That means the moderator has to manage the access rights for the VOSIC he is responsible for.

Users with access rights for a VOSIC can share information about the logistic concept, on-going and completed contracts, PoCs and they can use a document library and a forum to exchange CSO-related information for that specific operation/mission.





Fact sheet

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## Effective Procurement Methods (EPM)

### Pooling demand through common off-the-shelf procurement



#### Implementation of a clear tasking by the European Union Treaty

The European Union Treaty tasks the EDA to support Member States in implementing any useful measures to strengthen the European Defence Technological and Industrial Base and to improve the effectiveness of military expenditure. It also tasks EDA to promote the harmonisation of operational needs and the adoption of effective procurement methods.

The EPM initiative was first presented to participating Member States in mid-2011, who, together with the European Commission and industry, have welcomed the initiative and showed interest in supporting its further development.

#### Investigating into new common procurement methods including off-the-shelf procurement

Based on the enhanced mandate of the EDA following the Lisbon Treaty, the EPM focuses on the development of innovative ways to consolidate the demand side of the European Defence Equipment Market and indeed to identify current common demand.

Already in 2007, in the European Defence Technological and Industrial Base Strategy, the Ministers of Defence named off-the-shelf purchases as an interesting area to achieve consolidation of demand, where the benefits of common ways of procurement are self-evident.

#### Circumvent lengthy development phases and prove benefits to participating Member States

Potential savings for Member States are expected as fewer variants result in a more streamlined production for industry and higher economies of scale. Off-the-shelf procurement, not being focused on the development phase, ensures a higher level of harmonisation. It is also understood that a more frequent use of common procurement methods will lead to more nations employing the same equipment and therefore increase their interoperability.

Moreover, collaborative procurement conducted in a transparent and competitive way increases cross-border competition which again is a key factor in market terms. The EPM initiative is thus

also a true contribution to creating a competitive, transparent and open European Defence Equipment Market and a means to implement the Defence Procurement Directive (2009/81/EC).

As a final objective, the EPM initiative tries to translate strategic tasks into practice and develop ways to identify and shape common demand, together with Member States and other relevant stakeholders.

#### Make the EDA a "one-stop shop" for the entire range of defence cooperation

The EDA, with its integrated way of working is ideally placed. Given the new legal framework after the Defence Procurement Directive which explicitly names the EDA as a central purchasing body for common defence procurement, the Agency can, if so requested, conduct the contracting for a group of Member States and thus become a one-stop shop for cooperation.

#### Create a generic and reusable process as a "vehicle" which can carry different "payloads"

The EPM initiative comprises both the development of a methodology to identify common demand (payload) and the setting-up of guidelines to facilitate the cooperation between participating Member States willing to pool their demand and the related contracting (vehicle).

Identifying common demand is the most crucial part of the exercise and should be capability-driven, focused on the needs of participating Member States and based on existing EDA tools and sources (Capability Development Plan (CDP), the Collaborative Database (CODABA) or the Third Party Logistics Support Platform (TPLS)).

Once existing common demand and the willingness of Member States to cooperate have been identified, the Agency could be entrusted to establish and implement common procurement cases, or could help identifying other appropriate contracting authorities.

#### Develop a concept on the basis of pilot cases

As the EDA is an output-oriented Agency, the EPM concept is developed on the basis of pilot cases. The first ones in the field of Counter-IED training services and on EU Battle Group logistic services have been successfully implemented within six months only.

Some further promising areas in this regard will be mission-related transport or logistic support, education and training, standard vehicles, ammunition, legacy weapon systems and communication equipment.

Last update: 29/06/2012

<sup>81</sup> Please, refer to Ref. L for the latest information  
EEAS 00754/14



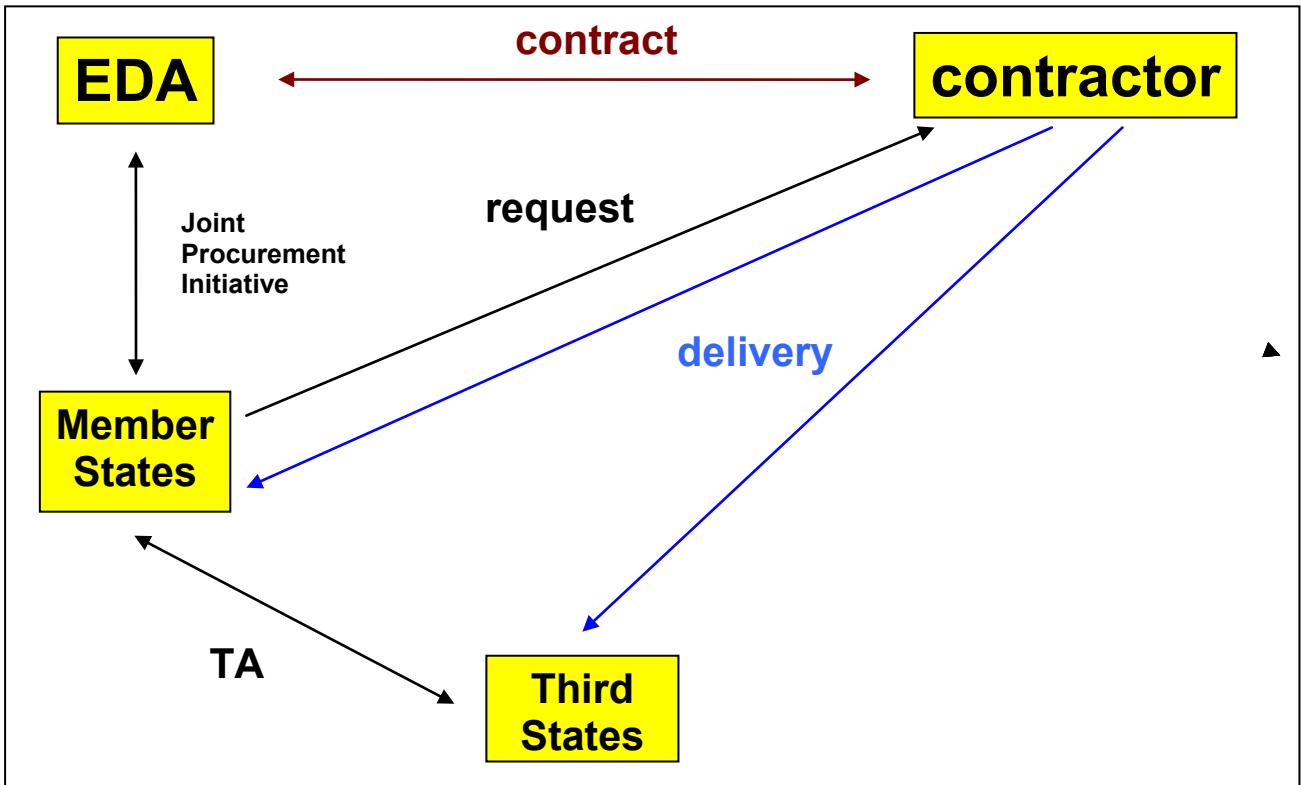


Figure 1: Possible interaction in using EPM

## **ATHENA regulations (abridgements)**<sup>82</sup>

ATHENA comprises three management bodies, all under the authority of the Special Committee (SC):

- a. The Administrator represents ATHENA's permanent executive authority, draws up any draft budget and submits it to the Special Committee and ensures the proper implementation of SC's decisions.
- b. The OpCdr carries out duties according to ATHENA regulations in relations the financing of Common Costs and Nations Borne Costs of the relevant operation. In particular, proposals for the "expenditure - operational Common Costs" section of the budget must be sent to the Administrator and, as authorising officer, the OpCdr has to ensure the proper implementation of ATHENA's rules related to the financing of the operation.
- c. The accounting officer keeps the accounts of ATHENA and is responsible for the proper implementation of payments, collection of revenue and recovery of amounts established as being receivable.

### **1. Common Costs listed in the annex of ATHENA Council decision during preparatory, active and winding up phase.**

*(Note: ATHENA Special Committee may approve, on an exceptional basis, other costs as listed below)*

- **Preparatory Phase**

**Costs listed at Annex II of ATHENA Council decision :**

"Incremental costs necessary for exploratory missions and preparations (in particular fact-finding missions and reconnaissance) by military forces with a view to a specific Union military operation: transport, accommodation, use of operational communications tools, recruitment of local civilian personnel for the execution of the mission, e.g. interpreters and drivers."

*(This includes fact-finding missions and reconnaissance by the pre-designated OHQ/MHQ and FHQ, the CMPD, the EUMS and other EU departments, as well as by EU Member States.)*

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<sup>82</sup> Please, refer to Ref. I about the latest information.

- **Active Phase**

- Operational Common Costs relative to the active phase of operations always borne by ATHENA (Annex III-A):**

- *Incremental costs for fixed and deployable headquarters (OHQ + FHQ + component HQ(s): Air, Sea, Army, Special Forces):*
      - *Transport to / from / within theatre*
      - *Administration,*
      - *Locally hired personnel,*
      - *Communication & information systems (CIS),*
      - *HQ facilities/ lodging in theatre (NB: therefore not for OHQ),*
      - *Information campaign by OHQ & FHQ,*
      - *Representation and hospitality.*
    - *Incremental costs incurred for providing support to the force as a whole :*
      - *Works for deployment & infrastructure used in common (limited to a list of items: infrastructure for transportation, electricity and water supply, earthworks and static force protection, storage facilities, logistical assembly areas) and engineering support (NB: see Annex III-C),*
      - *Satellite images for intelligence approved in the OPLAN,*
      - *Identification and markings (including CSDP medals),*
      - *Emergency medical evacuation (MEDEVAC from the point where the accident occurred to Europe) & certain medical services (Roles 2 and 3 at theatre operational element level, such as APODs and SPODs approved in the OPLAN).*

- Operational Common Costs borne by ATHENA when the Council so decides (Annex III-B):**

- *Transport of the forces : to/from theatre*
    - *Multinational task-force HQs deployed in theatre.*

- Common Costs borne by ATHENA when requested by the Mission/Operation Commander and approved by the Special Committee (Annex III-C):**

- *Barracks & lodging for the forces.*
    - *Essential additional equipment: the rental or purchase in the course of operation of specific equipment not envisaged and essential for the execution of the operation, insofar as the purchased equipment is not repatriated at the end of the mission.*
    - *Medical services: roles 2 in theatre other than those at APOD, SPOD and other theatre operational level.*
    - *Acquisition of information: satellite images not for intelligence foreseen in the OPLAN; theatre level intelligence, reconnaissance and surveillance (ISR), including Air to Ground Surveillance (AGSR); human intelligence.*
    - *Other critical theatre level capacities: demining in theatre insofar as necessary to the operation; chemical, biological, radiological and nuclear protection, (CBRN); storage and destruction of arms and ammunitions collected in within the area of operations.*

- Winding-up phase

- Costs listed at Annexes IV of ATHENA Council decision:

- *Annex IV: Costs incurred for finding the final destination of the equipment and infrastructure funded in common (sold, stored or given -> resulting costs)*
    - *Annex IV: Incremental costs of drawing up the accounts for the operation*

- At any time

- Costs listed at Annexes I of ATHENA Council decision:

- *Costs related to submitting accounts to Special Committee, banking and audit*
    - *Costs pursuant to any decision to store material which was acquired in common for an operation.*
    - *Indemnities for damages and costs resulting from claims and legal actions.*

## 2. Rules of Procurement (abridgements)<sup>83</sup>

- Article 1 - Scope

Procurement to be financed or pre-financed through ATHENA shall be through contracts concluded on behalf of ATHENA in order to obtain against payment of a price the supply of movable or immovable assets, the provision of services or the execution of works, through purchase, lease, rental or hire purchase, with or without an option to buy.

- Article 2 - Principle

Procedures shall be directed to ensuring through fair and open competition the most efficient procurement meeting the operational requirements. All staff involved in procurement procedures, notably contracting authorities, shall treat economic operators equally and non-discriminatory and shall act in a transparent way.

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<sup>83</sup> Please, refer to Ref. G, Part II, Art. 3 and Art. 4  
EEAS 00754/14

- Article 3 - Geographical scope

1. Equal treatment shall be granted in procurement procedures to candidates, if any, from the following countries:
  - (a) Belgium, Bulgaria, Croatia, the Czech Republic, Denmark, Germany, Estonia, Greece, Spain, France, Ireland, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden and the United Kingdom;
  - (b) Iceland, Liechtenstein, Norway;
  - (c) Albania, Chile, FYROM, Mexico and Montenegro.
2. Procurement procedures shall also be open to candidates from Aruba, Canada, Hong Kong, Israel, Japan, Singapore, South Korea, Switzerland, Chinese Taipei and the United States of America when they aim at awarding contracts which:
  - (a) have a value exclusive of value-added tax estimated to be more than 130 000 euros and concern supplies or services,  
or
  - (b) have a value exclusive of value-added tax estimated to be more than 5 000 000 euros and concern public works.
3. Procurement procedures for Common Costs and Nation Borne Costs of an operation shall also be open to candidates from the host state.

- Article 4 - Thresholds

1. For the purpose of the present Act, the "higher threshold" shall be:
  - (a) 130 000 euros for supplies and for services;
  - (b) 5 000 000 euros for infrastructure works
2. For the purpose of the present Act, the "lower threshold" shall be 30 000 euros.

## Activity based contracts versus performance based contracts

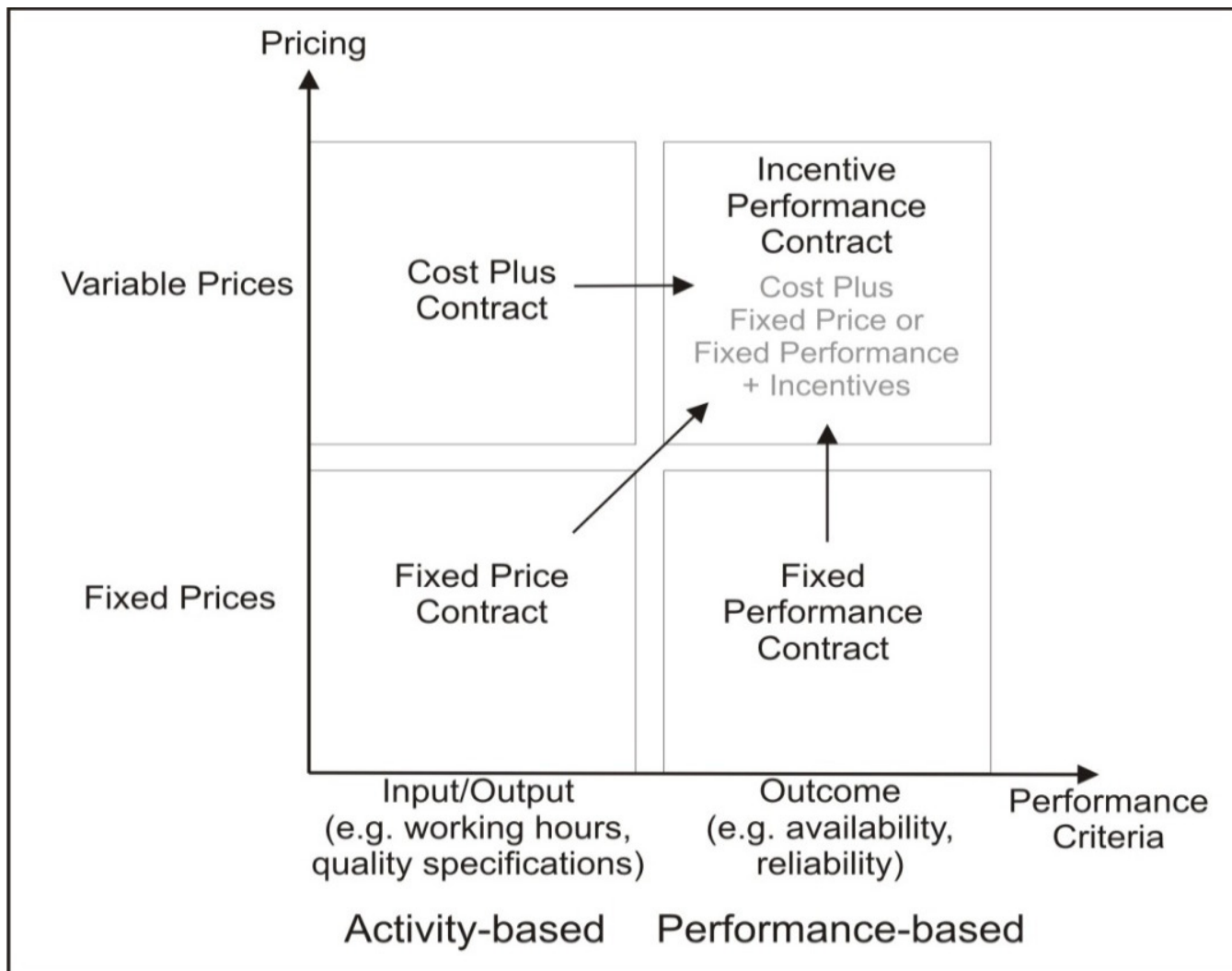


Figure 2: Contracting and pricing alternatives (see Ref. V)