



MINISTÈRE DE LA DÉFENSE



DIRECTION GÉNÉRALE
DE L'ARMEMENT

DIRECTION DES OPERATIONS

Supervision OCCAR

Paris, le 25 Mai 2016
N° 16-070904 DGA/DO/D

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L'ingénieure générale de l'armement Monique Legrand-Larroche
OCCAR Board Of Supervisors Chairperson

to
Minister of National Defence Juozas Olekas
Totorių street 25
LT-01121 Vilnius
Lithuania

Subject : Letter of Offer - Boxer Programme

Attachments :

- A. Appendix I : privileges and immunities ;
- B. Appendix II : settlement of disputes;
- C. Appendix III : cooperation with non-member states and international organisations ;
- D. Letter of Acceptance.

Dear Minister,

Following the discussions between our representatives which permitted the definition of the conditions applying to your participation in the BOXER Programme, and following the Programme Management Authorisation (PMA) relating to the BOXER Programme, approved by the Board of Supervisors (BoS) on 21 February 2001 and the amendment thereto dated 22 February 2016, by which the OCCAR Board of Supervisors (BoS) has given its approval to the participation of the Republic of Lithuania in the BOXER Programme I have the honour to propose, on behalf of OCCAR, the following provisions:

1. You confirm your intention to participate in the BOXER Programme and to have it managed by OCCAR in accordance with OCCAR Rules (See paragraph number 4). Your representatives shall participate in the Programme Board and the Programme Committee, which have been created by the BoS to manage the BOXER Programme, as described in OCCAR Management Procedures (OMP) 1, 2, 3 and 4. They shall have your authority to decide on all matters within the responsibility of the Programme Board and Programme Committee.

2. The OCCAR privileges and immunities provisions and the arbitration clause described in Appendix I and Appendix II to this Letter shall apply to the BOXER Programme.

3. The Republic of Lithuania shall negotiate the Programme Decision with the other States participating in the BOXER Programme in accordance with OCCAR Rules. By signing the Programme Decision, the Republic of Lithuania shall be legally bound to the Programme to the same extent as OCCAR Member States participating in the Programme. The Programme Decision shall constitute a decision referred to in Article 38 of the OCCAR Convention as quoted in Appendix III to this Letter.

4. In this document, OCCAR Rules means the OCCAR Convention, the OCCAR Security Agreement, including relevant decisions pertaining to their interpretation, and OCCAR procedures (including all principles, strategies and policies). The version of these documents to apply is the one in force at the time of their application and will be accessible for representatives of the Republic of Lithuania.

5. This letter together with your response shall constitute the agreement between OCCAR and the Government of the Republic of Lithuania referred to in Article 37 of the OCCAR Convention (as quoted in Appendix III to this Letter) concerning the management of the BOXER Programme by OCCAR. With the exception of Appendix I and Appendix II to the Letter of Offer, this Agreement shall enter into force on the date of receipt of your Letter of Acceptance by the Chairperson of the BoS. Appendix I and Appendix II to the Letter of Offer shall enter into force on the date of receipt, by the Chairperson of the BoS, of notification in which the Government of the Republic of Lithuania informs that the necessary national constitutional requirements for the entry into force of Appendix I and Appendix II have been completed. Until the date of entry into force of the Appendixes I and II, all BOXER Programme-related meetings will be held in the OCCAR-EA premises in Bonn (Germany); no contractor in the Republic of Lithuania will be awarded OCCAR contracts and no national of the Republic of Lithuania will be recruited as OCCAR-EA Staff Member or accepted as Detached National Expert (DNE).

6. This Agreement shall remain in force until the day of expiration of the Programme Decision referred to in Paragraph 3 of this Letter of Offer, taking also into account possible later extension(s) to this Programme Decision. This Agreement may need to be terminated earlier in the event that the Republic of Lithuania would prematurely withdraw from this Programme Decision. In such event, the Parties shall mutually agree on the conditions of the termination, knowing that in any case the provisions granted under the Appendix I and Appendix II for an indefinite period of time shall continue to apply.

I would be grateful for your confirmation that the preceding provisions are acceptable to the Government of the Republic of Lithuania.

Yours sincerely,


Ingénieure générale de l'armement Monique Legrand-Larroche
OCCAR Board of Supervisors Chairperson

To:

Minister of National Defence Juozas Olekas
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DO/DA

DO/SUP OCCAR

Appendix I to the Letter of Offer

PRIVILEGES AND IMMUNITIES

Art 22.1 of the OCCAR Convention:

The staff of OCCAR shall be accorded the privileges and immunities set out in Annex I to this Convention. The BoS shall ensure that the number of posts established is limited to those whose functions require the concomitant privileges and immunities. "Staff" do not include seconded personnel not under contract to OCCAR who shall, for the purposes of Annex I, have the status of experts.

Art 40 of the OCCAR Convention:

OCCAR, its staff and experts, as well as the representatives of its Member States, shall enjoy the privileges and immunities set out in Annex I of the OCCAR Convention.

Agreements concerning the headquarters of OCCAR, its programme divisions and its facilities set up in accordance with the provisions of this Convention, shall be concluded between OCCAR and the Member states on whose territories the headquarters, its programme divisions and its facilities are situated.

Art 41.1 of the OCCAR Convention:

The powers defined in Articles 39¹ and 40 of the OCCAR Convention shall be exercised by the BoS, which may delegate them to the Director. When the BoS has not delegated a power to the Director, that shall not prevent the BoS authorising the Director, or any staff members designated by the BoS, to sign a contract or adopt or sign an international agreement.

ANNEX I of the OCCAR Convention PRIVILEGES AND IMMUNITIES

ARTICLE 1 Without prejudice to Articles 3 and 4 of this Annex, the buildings and premises of OCCAR shall be inviolable.

ARTICLE 2 The archives of OCCAR shall be inviolable.

ARTICLE 3

1. OCCAR shall have immunity from jurisdiction and execution, except:
 - (a) to the extent that it shall, by decision of the BoS, have expressly waived such immunity in a particular case; the BoS has the duty to waive this immunity in all cases where reliance upon it would impede the course of justice and it can be waived without prejudicing the interests of OCCAR;

¹ Art 39 of the OCCAR Convention:

OCCAR shall have full legal personality and, in particular, the capacity to:

- (a) contract;
- (b) acquire and dispose of immovable and movable property, and
- (c) institute legal proceedings.

- (b) in respect of a civil action by a third party for damage arising from an accident caused by a motor vehicle belonging to, or operated on behalf of, OCCAR, or in respect of a motor traffic offence involving such a vehicle;
- (c) in respect of the enforcement of an arbitration award made under the terms of any contract made by OCCAR;
- (d) in the event of the attachment, pursuant to a decision by the judicial authorities, of the salaries and emoluments owed by OCCAR to a staff member.

2. OCCAR's property and assets, wherever situated, shall be immune from any form of requisition, confiscation, expropriation or sequestration. They shall also be immune from any form of administrative or provisional judicial constraint, except insofar as may be temporarily necessary in connection with the prevention and investigation of accidents involving motor vehicles belonging to, or operated on behalf of, OCCAR.

ARTICLE 4

1. Within the scope of its official activities, OCCAR, its property and income shall be exempt from direct taxes.
2. When purchases of goods or services of substantial value and strictly necessary for the exercise of the official activities of OCCAR are made or used by OCCAR, and when the price of such goods or services includes taxes or duties, appropriate measures shall, wherever possible, be taken by the Member States to grant exemption from such taxes or duties or to provide for their reimbursement.

ARTICLE 5 Goods imported or exported by OCCAR or on its behalf, and strictly necessary for the exercise of its official activities, shall be exempt from all import or export duties, and from all import or export prohibitions and restrictions.

ARTICLE 6

1. For the purpose of Articles 4 and 5 of this Annex, the official activities of OCCAR shall include its administrative activities, including its operations in connection with the Social Security Scheme.
2. The provisions of Articles 4 and 5 of this Annex shall not apply to taxes and duties that are no more than charges for public utility services.

ARTICLE 7 No exemption shall be granted under Articles 4 and 5 of this Annex in respect of goods purchased or imported, or services provided, for the personal benefit of the staff members of OCCAR.

ARTICLE 8

1. Goods acquired under Article 4 or imported under Article 5 of this Annex shall not be sold or given away except in accordance with conditions laid down by the Member States which have granted exemptions.
2. The transfer of goods and services between the Headquarters Office and other OCCAR facilities, or between its various divisions, or for the purpose of implementing a programme of OCCAR, between them and a national institution of a Member State, shall be free of charges or restrictions of any kind ; if necessary, the Member States shall take all appropriate measures to grant exemption from or reimbursement of such charges or to lift such restrictions.

ARTICLE 9 The circulation of publications and other information material sent by or to OCCAR shall not be restricted in any way.

ARTICLE 10 OCCAR may receive and hold all kind of funds, currency, cash, or securities; it may dispose of them freely for any purpose provided for in the Convention and hold accounts in any currency to the extent required to meet its obligations.

ARTICLE 11

1. For its official communications and the transfer of all its documents, OCCAR shall enjoy treatment not less favourable than that accorded by each of the Member States to other international organisations.
2. No censorship shall be applied to official communications of OCCAR by whatever means of communication.

ARTICLE 12 Member States shall take all appropriate measures to facilitate the entry into, stay in, or departure from their territories of staff members of OCCAR.

ARTICLE 13

1. Representatives of Member States shall, while exercising their functions and in the course of their journeys to and from the place of meeting, enjoy the following privileges and immunities:
 - (a) immunity from arrest and detention, and from the seizure of their personal luggage;
 - (b) immunity from jurisdiction, even after the termination of their mission, in respect of acts, including words spoken and written, done by them in the exercise of their functions; this immunity shall not apply, however, in the case of a motor traffic offence committed by a representative of a Member State, nor in the case of damage caused by a motor vehicle belonging to or driven by him/her;
 - (c) inviolability for all their official papers and documents;
 - (d) the right to use codes and to receive documents or correspondence by special courier or sealed bag;
 - (e) exemption for themselves, their spouses and dependant children and from all measures restricting entry and from aliens' registration formalities;
 - (f) the same facilities in the matter of currency and exchange control as are accorded to the representatives of foreign governments on temporary official missions;
 - (g) the same customs facilities as regards their personal luggage as are accorded to diplomatic agents.
2. Privileges and immunities are accorded to representatives of Member States, not for their personal advantage, but in order to ensure complete independence in the exercise of their functions in connection with OCCAR. Consequently, a Member State has the duty to waive the immunity of a representative wherever retaining it would impede the course of justice and it can be waived without prejudicing the purposes for which it was accorded.

ARTICLE 14 In addition to the privileges and immunities provided for in Article 15 of this Annex, the Director and, when the office is vacant, the person appointed to act in

his/her place, shall enjoy the privileges and immunities to which diplomatic agents of comparable rank are entitled.

ARTICLE 15 The staff members of OCCAR:

- (a) shall have, even after they have left the service of OCCAR, immunity from jurisdiction in respect of acts, including words written and spoken, done by them in the exercise of their functions; this immunity shall not apply, however, in the case of a motor traffic offence committed by a staff member of OCCAR, nor in the case of damage caused by a vehicle belonging to or driven by him/her;
- (b) shall be exempt from all obligations in respect of military service;
- (c) shall enjoy inviolability for all their official papers and documents;
- (d) shall enjoy the same facilities as regards exemption from all measures restricting immigration and governing alien's registration as are normally accorded to staff members of international organisations; and members of their families forming part of their households shall enjoy the same facilities;
- (e) shall enjoy the same privileges in respect of exchange regulations as are normally accorded to staff members of international organisations;
- (e) shall, in time of international crisis, enjoy the same facilities as to repatriation as diplomatic agents; and the members of their families forming part of their households shall enjoy the same facilities;
- (f) shall have the right to import duty-free their furniture and personal effects at the time of first taking up their post in the Member State concerned, and the right on termination of their functions in that Member State to export free of duty their furniture and personal effects, subject, in both cases, to the conditions considered necessary by the Member State on whose territory the right is exercised.

ARTICLE 16 Experts other than the staff members referred to in Article 15 of this Annex, in the exercise of their functions in connection with OCCAR or in carrying out missions for OCCAR, shall enjoy the following privileges and immunities, to the extent that these are necessary for the exercise of their functions, including during journeys made in the exercise of their functions and in the course of such missions:

- (a) immunity from jurisdiction in respect of acts, including words written and spoken, done by them in the exercise of their functions, except in the case of a motor traffic offence committed by an expert, or in the case of damage caused by a motor vehicle belonging to him or driven by him; experts shall continue to enjoy this immunity after they have ceased to be employed by OCCAR;
- (b) inviolability for all official papers and documents;
- (c) the same facilities as regards monetary and exchange regulations and as regards their personal luggage as are accorded to the officials of foreign governments on temporary official missions.

ARTICLE 17

1. Subject to the conditions and following to the procedures laid down by the BoS, the Director and OCCAR staff members shall be subject to a tax, for the benefit of OCCAR, on salaries and emoluments paid by OCCAR. Such salaries and emoluments of the Director and OCCAR staff members shall be exempt from national income tax; but the Member States shall retain the right to take these salaries and emoluments into

account for the purpose of assessing the amount of taxation to be applied to income from other sources.

2. The provisions of paragraph 1 shall not apply to annuities and pensions paid by OCCAR to its former Directors and staff members.

ARTICLE 18 Articles 15 and 17 of this Annex shall apply to all categories of staff members to which the Staff Regulations of OCCAR apply. Subject to Article 22(1) of the OCCAR Convention, the BoS shall decide the categories of experts to which Article 16 of this Annex shall apply. The names, titles and addresses of the staff members experts referred to in the present article shall be communicated from time to time to the Member States.

ARTICLE 19 In the event that it establishes its own social security scheme, OCCAR, the Director and OCCAR staff members shall be exempt from all compulsory contributions to national social security bodies, subject to agreements concluded with the Member States in accordance with Article 24 of this Annex.

ARTICLE 20

1. The privileges and immunities provided for in this Annex are not granted to the Director, staff members and experts of OCCAR for their personal advantage. They are provided solely to ensure, in all circumstances, the unimpeded functioning of OCCAR and the complete independence of the persons to whom they are accorded.

2. The Director has the duty to waive any relevant immunity in all cases wherever retaining it would impede the course of justice and it can be waived without prejudicing the interests of OCCAR. In the case of the Director, the BoS is competent to waive such immunity.

ARTICLE 21

1. OCCAR shall cooperate at all times with the competent authorities of the Member States in order to facilitate the proper administration of justice, to ensure the observance of police regulations and regulations concerning the handling of explosives and inflammable material, public health, labour inspection or other similar national legislation, and to prevent any abuse of the privileges, immunities and facilities provided for in this Annex.

2. The procedure for the cooperation referred to in paragraph 1 may be laid down in the complementary agreements referred to in Article 24 of this Annex.

ARTICLE 22 Each Member State shall retain the right to take all appropriate precautionary measures in the interests of its security.

ARTICLE 23 No Member State shall be obliged to accord the privileges and immunities referred in Articles 13, 14, 15 (b), (e) and (g) and 16 (c) of this Annex to its own nationals or persons who, at the moment of taking up their duties in that Member State, are permanent residents thereof.

ARTICLE 24 OCCAR may, on a decision of the BoS, conclude with one or more Member States complementary agreements to give effect to the provisions of this Annex as regards such State or States, and other arrangements to ensure the efficient functioning of the Agency and the safeguarding of its interests.

ARTICLE 25 OCCAR shall have insurance cover against third party risks in respect of vehicles owned or operated by it, as required by the laws and regulations of the Member State in which the vehicle is operated. OCCAR shall require as a condition of their employment that staff members have insurance cover against third party risks in respect of vehicles owned or operated by them, as required by the laws and regulations of the Member State in which the vehicle is operated.

Appendix II to the Letter of Offer

SETTLEMENT OF DISPUTES

ARTICLE 48 of the OCCAR Convention

1. Any dispute between the Member States, concerning the interpretation or application of this Convention should, if possible, be settled by consultation.
2. If a dispute cannot be settled by consultation, at the request of any party to the dispute, it shall be submitted to arbitration under the conditions laid down in Annex II.

ARTICLE 49.2 of the OCCAR Convention

Each contract to be concluded by OCCAR for the implementation of programmes assigned to it, other than employment contracts, should provide for conciliation and include an arbitration clause.

ARTICLE 50 of the OCCAR Convention

If it is claimed by a third party that damage or injury has been caused by OCCAR, its staff members or experts, and OCCAR does not waive immunity, the BoS shall take all appropriate steps to deal with the claim and, if the claim is justified, to settle it.

ANNEX II of the OCCAR Convention ARBITRATION

ARTICLE 1 The request for arbitration shall be made to the depositary, stating the nature of the dispute. The depositary shall communicate this information to all Member States.

ARTICLE 2

1. The Arbitral Tribunal shall be composed of three members:
 - (a) an arbitrator designated by each Party to the dispute;
 - (b) a third arbitrator, designated by mutual agreement by the first two, who shall act as chairman of the Tribunal;
 - (c) If the chairperson of the tribunal is not designated within thirty days from the date of designation of the second arbitrator, a Party to the dispute may request the President of the International Court of Justice to select as soon as possible the chairperson. S/he may not choose a chairperson who has been or is currently of the same nationality as one of the Parties to the dispute, unless the other Party so agrees.
2. If, within sixty days from the date of receipt by the depositary of the request for arbitration, one of the Parties to the dispute has not designated an arbitrator, the other Party may request the President of the International Court of Justice to select as soon as possible that arbitrator.
3. In the case of the death, incapacity or default of an arbitrator, the Party to the dispute which designated him/her shall designate his/her replacement within thirty days from the date of death, incapacity or default. In the case of death, incapacity or default of the chairman, his/her replacement shall be designated under the conditions laid down in paragraph 1(c) within ninety days of the death, incapacity or default.

ARTICLE 3 The Tribunal may investigate and rule on counter-claims directly linked to the subject of the dispute.

ARTICLE 4 The Tribunal may, at the request of one of the Parties to the dispute, recommend protective measures.

ARTICLE 5 Each Party to the dispute shall be responsible for costs incurred in the preparation of its own case. The cost of the salaries of the members of the Tribunal, and all expenses incurred by the Tribunal, shall be shared equally between the Parties to the dispute. The Tribunal shall record all expenditure and shall provide a final account to the Parties.

ARTICLE 6 Any Party whose interests are likely to be affected by the decision may, after notifying in writing the Parties to the dispute, intervene in the arbitration procedure, with the agreement of the Tribunal and at its own cost. Any Party thus intervening may submit proof or dossiers, or make oral statements of its arguments, concerning the questions that have given rise to the intervention, in accordance with the procedures established in application of Article 7 of this Annex, but it shall have no rights in respect of the composition of the Tribunal.

ARTICLE 7 The Tribunal shall establish its own rules of procedure.

ARTICLE 8

1. The decisions of the Tribunal, both in respect of its procedure and the location of its meetings, and its award shall be taken by majority vote of its members.

2. The Parties to the dispute shall facilitate the work of the Tribunal; to this end, the Parties shall:

(a) provide the Tribunal with all relevant documents and information; and

(b) allow the Tribunal to visit their territory, to examine witnesses or specialists and to travel to locations to investigate the said dispute in situ.

3. The fact that a Party to the dispute does not comply to the provisions of paragraph 2, or does not defend its case, shall not prevent the Tribunal from giving a ruling or making an award.

ARTICLE 9 The Tribunal shall give its ruling within six months of the date of its formation, unless it considers it necessary to extend this time limit for a new period, that shall not exceed five months. The award by the Tribunal shall be reasoned. It is final and without appeal and shall be communicated to the depositary who shall so inform the Parties. The Parties to the dispute shall implement it without delay.

Appendix III to the Letter of Offer

COOPERATION WITH NON-MEMBER STATES AND INTERNATIONAL ORGANISATIONS

ARTICLE 37 of the OCCAR Convention

OCCAR may cooperate with other international organisations and institutions, and with the governments, organisations and institutions of non-Member states, and conclude agreements with them.

ARTICLE 38 of the OCCAR Convention

Such cooperation may take the form of participation by non-Member States or international organisations in one or more programmes. Such arrangements may make provision for matters associated exclusively with the programme in which a non-Member State or international organisation is participating to be the subject of decisions taken by the BoS with the agreement of the said non-Member State or organisation concerned.

Letter of Acceptance

Dear IGA Monique Legrand-Larroche,

I am pleased to receive your letter dated [Date] which reads as follows:

" Dear Minister,

Following the discussions between our representatives which permitted the definition of the conditions applying to your participation in the BOXER Programme, and following the Programme Management Authorisation (PMA) relating to BOXER Programme, approved by the Board of Supervisors (BoS) on 21 February 2001 and the amendment thereto dated 22 February 2016 , by which the OCCAR Board of Supervisors (BoS) has given its approval to the participation of the Republic of Lithuania in the BOXER Programme I have the honour to propose, on behalf of OCCAR, the following provisions:

- 1. You confirm your intention to participate in the BOXER Programme and to have it managed by OCCAR in accordance with OCCAR Rules (See paragraph number 4). Your representatives shall participate in the Programme Board and the Programme Committee, which have been created by the OCCAR Board of Supervisors (BoS) to manage the BOXER Programme, as described in OCCAR Management Procedures (OMP) 1, 2, 3 and 4. They shall have your authority to decide on all matters within the responsibility of the Programme Board and Programme Committee.*
- 2. The OCCAR privileges and immunities provisions and the arbitration clause described in Appendix I and Appendix II to this Letter shall apply to the BOXER Programme.*
- 3. The Republic of Lithuania shall negotiate the Programme Decision with the other States participating in the BOXER Programme in accordance with OCCAR Rules. By signing the Programme Decision, the Republic of Lithuania shall be legally bound to the Programme to the same extent as OCCAR Member States participating in the Programme. The Programme Decision shall constitute a decision referred to in Article 38 of the OCCAR Convention as quoted in Appendix III to this Letter.*
- 4. In this document, OCCAR Rules means the OCCAR Convention, the OCCAR Security Agreement, including relevant decisions pertaining to their interpretation, and OCCAR procedures (including all principles, strategies and policies). The version of these documents to apply is the one in force at the time of their application and will be accessible for representatives of the Republic of Lithuania.*
- 5. This letter together with your response shall constitute the agreement between OCCAR and the Government of the Republic of Lithuania referred to in Article 37 of the OCCAR Convention (as quoted in Appendix III to this Letter) concerning the management of the BOXER Programme by OCCAR. With the exception of Appendix I and Appendix II to the Letter of Offer, this Agreement shall enter into force on the date of receipt of your Letter of Acceptance by the Chairperson of the BoS. Appendix I and Appendix II to the Letter of Offer shall enter into force on the date of receipt, by the Chairperson of the BoS, of notification in which the Government of the Republic of Lithuania informs that the necessary national constitutional requirements for the entry into force of Appendix I and Appendix II have been completed. Until the date of entry into force of the Appendixes I and II, all BOXER Programme-related meetings*

will be held in the OCCAR-EA premises in Bonn (Germany); no contractor in the Republic of Lithuania will be awarded OCCAR contracts and no national of the Republic of Lithuania will be recruited as OCCAR-EA Staff Member or accepted as Detached National Expert (DNE).

6. This Agreement shall remain in force until the day of expiration of the Programme Decision referred to in Paragraph 3 of this Letter of Offer, taking also into account possible later extension(s) to this Programme Decision. This Agreement may need to be terminated earlier in the event that the Republic of Lithuania would prematurely withdraw from this Programme Decision. In such event, the Parties shall mutually agree on the conditions of the termination, knowing that in any case the provisions granted under the Appendix I and Appendix II for an indefinite period of time shall continue to apply.

I would be grateful for your confirmation that the preceding provisions are acceptable to the Government of the Republic of Lithuania."

I have the honour to inform you that the Government of the Republic of Lithuania accepts the above provisions. Accordingly, your Letter of Offer together with my reply herein shall constitute the agreement between the Government of the Republic of Lithuania and OCCAR concerning the management of the BOXER Programme by OCCAR.

Yours sincerely,

Date:

Name:

Signature:

