



OCCAR Management Procedure

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This document replaces: OMP 4 issue 3 dated 01/07/06

Record of changes

Date	Issue	Changes
04/04	1	Completely revised version. Previously numbered OMP 4.6.2.3, agreed by BoS as OMP 1.02, issue 4
25/05/05	2	Revision: including "Programme Board" and deleting of 5.6 "Customs and Import Duties" Document issue further to the approval of OMP 4 issue 2 draft 2 by the BoS on 19/05/05.
01/07/06	3	Converted to the OCCAR-EA graphical house style
25/10/11	4	Alignment with OMP 2 issue 6

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List of acronyms

BoS	Board of Supervisors
EU	European Union
MoU	Memorandum of Understanding
OMP	OCCAR Management Procedure
PB	Programme Board

1. Introduction

OCCAR is an international organisation with full legal personality, as defined in Article 39 of the OCCAR Convention. The Convention entered into effect on 28 January 2001 following ratification by the four founding Member States.

The Convention sets out, *inter alia*, the legal personality of OCCAR, its organisation and administration, its relationship with Member States and its immunities and privileges.

2. Scope of this procedure

As stated in Article 7 of the Convention, OCCAR was created to co-ordinate, control and implement co-operative armament programmes that are assigned to it by the Member States. This OMP covers significant legal issues, which may arise from these activities but excluding matters relating to employment of staff. It deals with relationships between OCCAR and:

- Member States;
- Concerned Participating States (which may include non-Member States);
- Programme Contractors;
- Third parties (including Sub-Contractors and Suppliers).

Participating States involved in a specific matter or activity as defined in OMP 2 shall be considered as Concerned Participating States, and all articles and paragraphs of this document shall be understood in the light of this definition.

3. Relationships

3.1 Relationship with Member States

The relationship between OCCAR and its Member States is defined in the Convention. Any dispute between OCCAR and any Member State will be settled by consultation at BoS level.

3.2 Relationship between Concerned Participating States

3.2.1 Instruments

For each programme to be managed by OCCAR the following set of documents are required (see also OMP 2):

- **A Programme Memorandum of Understanding (MoU)** - An MoU, signed by the Participating States, providing their commitment to the programme;
- In case of a smaller programme or project within a programme, a specific MoU, signed by the Concerned Participating States, providing their commitment to this specific programme or project, where appropriate;
- **Board of Supervisors (BoS) Programme Management Authorisation** - A BoS Decision adopted by the representatives of all the Member States to authorise the integration of a programme into OCCAR;

- **Programme Decision** – The legally binding document approved and signed by the Programme Board (PB) representatives. The Programme Decision shall detail the way the Programme shall be managed by OCCAR and shall outline the rules and principles that shall apply and, where appropriate, exceptions to these rules and principles. The entry into force of the Programme Decision formally integrates the programme into OCCAR.

In accordance with Articles 37 and 38 of the Convention, non-Member States may participate in a programme managed by OCCAR. In response to a letter of offer from the BoS chairman, non-Member States intending to participate in an OCCAR Programme must state their commitment to the fact that the Programme will be managed in accordance with OCCAR rules and procedures. This response should also state their agreement to the creation of a PB and a PC to manage the Programme. This exchange of letters will constitute the agreement referred to in Article 37 of the Convention. By signing the Programme Decision as a Programme Participating State non-Member States are legally bound to the programme to the same extent as participating Member States. The Programme Decision constitutes a decision as referred to in Article 38 of the Convention.

Non-Member States participating in a programme managed by OCCAR do not have voting rights in relation to OCCAR management or policy issues. Decisions relating exclusively to that programme will be taken with the agreement of the non-Member State(s) participating in that programme in accordance with the decision making process agreed in the Programme Decision.

3.2.2 Disputes

Any dispute between the Concerned Participating States concerning the interpretation or application of the Programme Decision should, if possible, be settled by consultation. If a dispute cannot be settled by consultation it shall at the request of any party to the dispute, be submitted to arbitration in accordance with the conditions laid down in Annex II of the OCCAR Convention.

Any disagreement between OCCAR-EA and Concerned Participating States concerning the interpretation or application of Programme Decisions shall be settled by consultation at BoS level and shall not be referred to any third party or international tribunal for settlement.

3.2.3 Liabilities

Where a Concerned Participating State, in connection with that programme, causes loss or damage to OCCAR, its staff or experts, the cost thereof shall be borne as follows:

- Where and to the extent that such loss or damage is caused by the reckless acts or reckless omissions, wilful misconduct or gross negligence of that Concerned Participating State its personnel or agents, that Concerned Participating State alone shall bear the cost thereof;

- In any other case the cost thereof shall be borne by the Concerned Participating States in such proportions as are set out in the liability provisions of the Programme Decision for that programme and apply at the time that the loss or damage was caused.

3.3 Relationship with Programme Contractors

3.3.1 Instruments

The Contract creates the legal relationship between OCCAR and/or the Concerned Participating States and a Contractor. For each Programme, the Concerned Participating States will decide whether OCCAR is to place the main Programme Contract:

- In its own name and for the benefit of the Concerned Participating States so that OCCAR and the Programme Contractor are the parties to the Contract; or
- In the name and/or on behalf of the Concerned Participating States, so that the Concerned Participating States and the Programme Contractor are the parties to the Contract.

The Programme Decision will determine the way for OCCAR to place the Programme Contracts. OCCAR shall ensure that any Programme Contract contains provisions needed to give effect to the agreements laid down in the Programme Decision and the referenced OMPs.

3.3.2 Communication with Programme Contractors

Unless otherwise agreed by OCCAR-EA, OCCAR-EA will be the sole point of contact with Programme Contractors on all matters concerning Programme Contracts. In order to allow OCCAR-EA to fulfil its management tasks towards the Concerned Participating States requirements in the best possible and most effective way there will be no direct communication between the Concerned Participating States and the Programme Contractor concerning the management of a programme, in particular with regard to the contract. All communication will be between OCCAR-EA and the Programme Contractor. The Concerned Participating States will be kept informed through the OCCAR reporting system.

3.3.3 Disputes with Programme Contractors

3.3.3.1 Legal Actions against any Programme Contractor by OCCAR

Any legal proceedings to be brought against any Programme Contractor in relation to a matter associated exclusively with a programme shall be conducted solely and exclusively by OCCAR-EA, whether OCCAR is acting in its own name or on behalf of the Concerned Participating States in relation to the Programme Contract. No Concerned Participating State shall undertake such proceedings except through OCCAR-EA.

OCCAR-EA shall notify all the Concerned Participating States of any disputes with Programme Contractors that might lead to legal proceedings being taken.

Where proceedings are taken, OCCAR-EA shall keep all Programme Participating State(s) informed of all developments in relation to the dispute and the proceedings, whether or not involved in the proceedings. OCCAR-EA shall also obtain the approval of the Concerned Participating State(s) involved in the dispute as to all matters relating to such proceedings including the commencement, continuation, withdrawal or settlement thereof.

3.3.3.2 Legal Actions by Programme Contractors

Every Programme Contract shall, whether OCCAR is acting in its own name or on behalf of the Concerned Participating States, provide that any legal proceedings by Programme Contractors against any Concerned Participating State(s) or OCCAR in connection with that Contract shall be served only upon OCCAR.

Such legal proceedings shall be conducted solely and exclusively by OCCAR-EA.

Where any such legal proceedings are served on any Concerned Participating State, that Concerned Participating State shall immediately provide written notification thereof to the other Concerned Participating State(s) and instruct OCCAR-EA to conduct the proceedings.

The provisions of Article 3.3.3.1, paragraph 3 shall apply to a claim by a Programme Contractor as they would apply to a claim against a Programme Contractor.

3.3.3.3 Resolution of Disputes

As provided for in Article 49 of the Convention each contract to be concluded by OCCAR shall provide for conciliation and include an arbitration clause. If a dispute cannot be settled by negotiation the procedure is as follows:

- The dispute may be submitted by agreement to conciliation;
- If the dispute cannot be submitted to, or settled by, conciliation then it shall be submitted to arbitration.

(for detailed contractual clauses concerning disputes see OMP 6 Contract Terms and Conditions).

3.3.4 Liabilities

Where OCCAR incurs or causes the Concerned Participating State(s) to incur any liability, costs or expenses in respect of any claim by or against a Programme Contractor in relation to a matter associated exclusively with that Programme, the cost thereof shall be borne by the Concerned Participating State(s) in such proportions as are set out in the liability provisions of the Programme Decision for that programme and which apply at the time that the liability was incurred

3.4 Relationship with Third Parties

3.4.1 Disputes with Third Parties

OCCAR's policy is to seek, if possible, to settle by negotiation any dispute between OCCAR and third parties. OCCAR may, subject to the approval of the Member States (but, in a matter exclusively relating to a programme, only the Concerned Participating States) agree with the third party to take any such dispute to arbitration.

3.4.1.1 Legal Actions by Third Parties against OCCAR

OCCAR-EA shall immediately inform the Member States (but, in relation to a matter exclusively relating to a programme, only the Concerned Participating States) of any dispute arising between OCCAR and a third party which may lead to a claim by the third party against OCCAR and consult with and seek their approval as to how to deal with the dispute.

If negotiations between the OCCAR-EA and the third party in relation to any such dispute fail to produce a settlement, the third party shall be unable to take court proceedings against OCCAR, if OCCAR's immunity from jurisdiction applies, unless the BoS waives OCCAR's immunity (see Article 3 of Annex I to the OCCAR Convention).

The BoS has a duty to waive immunity where the maintenance of the immunity would impede the course of justice and waiver would not prejudice the interests of OCCAR (see Article 3.1(a) of Annex I to the OCCAR Convention).

Where 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 (see Article 50 of the OCCAR Convention).

Where OCCAR waives immunity or agrees to go to arbitration with a third party or brings a claim against a third party, OCCAR-EA shall keep all Member States (but, in relation to a matter exclusively relating to a programme, only the Concerned Participating States) informed of all developments in relation to the dispute and the proceedings, whether or not involved in the proceedings. OCCAR-EA shall also obtain the approval of the Member States (but, in relation to a matter exclusively relating to a programme, only the Concerned Participating States) as to all matters relating to such proceedings including the commencement, continuation, withdrawal or settlement thereof.

3.4.1.2 Legal Actions by OCCAR against a Third Party

OCCAR-EA shall immediately inform the Member States (but, in relation to a matter associated exclusively with a programme, only the Concerned Participating States) of any dispute arising between OCCAR and a third party which may lead to a claim by OCCAR against the third party and consult with and seek their approval as to how to deal with the dispute.

Where any such claim by OCCAR against a third party results in any award or settlement in favour of OCCAR, OCCAR shall account for the same to the Member States (but, in relation to a matter associated exclusively with a

programme, only to the Concerned Participating States) in such manner as they shall decide.

3.4.2 Liabilities

Where OCCAR incurs or causes the Concerned Participating State(s) to incur any liability, costs or expenses in respect of any claim by or against a third party in relation to a matter associated exclusively with that Programme, the cost thereof shall be borne by the Concerned Participating State(s) in such proportions as are set out in the liability provisions of the Programme Decision for that programme and which apply at the time that the liability was incurred.

Where in any other case, OCCAR incurs or causes the Member States to incur any liability, costs or expenses in respect of any claim by or against a third party, the cost thereof shall be borne by the Member States in the same proportions as for OCCAR-EA Central Office Administrative Budget costs which apply at the time that the liability was incurred.

3.4.3 Legal Actions by or against Programme Participating States

Reference should be made to the Programme MoU for claims by or against third parties, not involving OCCAR, for injury or damage of any kind caused or brought by any Concerned Participating State, its personnel or agents.

4. Ownership, Disclosure, Use and Protection of Information

4.1 General

OCCAR shall secure sufficient rights in information including Technical Information to preserve at least a source of supply to Concerned Participating States. Additionally OCCAR will endeavour to secure sufficient rights in information where appropriate to provide for competition throughout the life of the defence articles or defence services to be procured.

Detailed contract clauses (see OMP 6 Contract Terms and Conditions) in respect of the ownership, disclosure, use and protection of information shall be agreed for the benefit of the Concerned Participating States with the Contractor in accordance with provisions of the Programme MoU and the Programme Decision.

In general the following requirements need to be implemented:

4.2 Contractor Furnished Information

4.2.1 Disclosure and Use by Programme Participating States

In placing Programme Contracts or securing licences OCCAR shall acquire for Concerned Participating States the right to disclose and use or have used all necessary information furnished or arising under the Programme Contracts and subcontracts or licences for the purposes defined in the Programme Arrangements. This shall include the right to receive, copy, use or have used or modify such information. Accordingly Programme Contracts or licences shall establish legal and directly enforceable links regarding such a right between the Programme Contractor or the sub-contractors concerned and the Concerned Participating States. Any misuse of such information shall be the liability of the Concerned Participating

State(s) responsible for such misuse unless otherwise provided for in the Programme Arrangements. To enable the Programme Participating States to exercise the above rights OCCAR shall provide each Concerned Participating State with copies of any Programme Contract or licence and any amendment thereto.

4.2.2 Use by OCCAR

In placing Programme Contracts OCCAR shall secure for itself for the purpose of managing the programme, the right to use all necessary information furnished or arising under the Programme Contract. This shall include the right to receive, copy, modify or transfer such information for consultation purposes. OCCAR's use of such information shall be limited to the purposes defined in the Programme Arrangements unless otherwise authorised by the Concerned Participating States and agreed, if required, by the Programme Contractor or sub-contractors. OCCAR shall not enter into any arrangement, which precludes OCCAR from passing Programme Information to the Concerned Participating States.

4.3 Government Furnished Information

During the management of a Programme OCCAR may need information that can only be provided by the Concerned Participating States. To give OCCAR the necessary assistance in managing the programme the Concerned Participating States shall facilitate the provision to OCCAR of all required information at their disposition (see the Programme Decision). Such information shall not be disclosed or used by OCCAR except in accordance with terms under which it is provided unless otherwise agreed by the originator. Any such information subsequently transferred to a Programme Contractor shall be treated in accordance with the terms under which it is provided.

4.4 Ownership of OCCAR Generated Information

Ownership of all information generated by OCCAR in the performance of a Programme whether created by OCCAR personnel or by seconded loaned personnel of the Concerned Participating States shall vest jointly in the Concerned Participating States. OCCAR shall have the right to copy, disclose, modify and use or have used such information for the purpose of managing that Programme or any further work relating to that Programme and for any other purposes authorised by the Concerned Participating States.

OCCAR may disclose to another Programme any information generated by OCCAR within a Programme, subject to the agreement of the Concerned Participating States in that Programme and subject also to the agreement of the recipient Participating State(s) not to further disclose it and to use such Programme Information only for the purpose for which it is disclosed.

Ownership of all information generated by OCCAR-EA Central Office, which is not specifically Programme related shall vest jointly in the Member States. OCCAR shall have the right to copy, disclose, modify, use and have used such information.

Non-Member States participating in a Programme may not disclose or use OCCAR information, which has been generated by OCCAR outside that Programme except with the prior written consent of OCCAR.

4.5 Proprietary Rights

All rights in any work done by staff members (as defined in OMP 8) in the performance of their duties shall be the property of OCCAR unless stated otherwise in the following paragraphs.

4.6 Filing of Patent Applications

4.6.1 Programme Contractor Invention and Patents

Subject to relevant laws and regulations, Contracts awarded by OCCAR will require the Contractor (including Sub-Contractors) to file the first patent application(s) relating to a Programme Invention in the Concerned Participating State where the invention was made. OCCAR will require the Contractor to inform it of any application filed in association with a Programme Contract. OCCAR will also ensure that Concerned Participating State(s) have the right, free of charge, to use or have used the invention for Defence Purposes. Inventions arising from classified technical information will be filed with appropriate notification to the Patent Office concerned.

4.6.2 OCCAR Programme Division Inventions and Patents

Subject to relevant laws and regulations, OCCAR will file on behalf of the Concerned Participating States the first patent application relating to an invention in the State where the Programme Division is located. OCCAR will inform Concerned Participating States of any application filed in respect of an invention. These invention(s) and patent(s) will vest jointly in the Concerned Participating States unless otherwise provided for in the MoU. Inventions arising from classified technical information will be filed with appropriate notification to the Patent Office concerned. A co-ownership agreement will be established by OCCAR.

OCCAR-EA will ensure that any patents and patent application fees provided by the relevant Concerned Participating States are paid as necessary to maintain the patent or application.

OCCAR-EA will ensure any resultant proceeds generated are collected and credited to the appropriate national accounts of the Concerned Participating States.

4.6.3 OCCAR Central Office Inventions and Patents

OCCAR will file on behalf of the Member States the first patent application(s) for an invention relating to OCCAR business, in the Federal Republic of Germany (location of OCCAR-EA Central Office). OCCAR will inform the Member States of any such application filed. OCCAR will grant the Member States a free licence to use or have used the invention for any purposes. Such invention(s) and patent(s) will vest in OCCAR unless otherwise agreed by the BoS.

OCCAR-EA will ensure that any patents and patent application fees provided by the Member States are paid as necessary to maintain the patent or application.

OCCAR-EA will ensure any resultant proceeds generated are collected and disbursed as directed by the BoS.

4.7 Protection of Information by OCCAR

OCCAR will ensure that any government furnished information available to OCCAR will be treated in confidence and shall not be disclosed to, or used by, any third party except as authorised by the furnisher.

OCCAR will ensure that any information arising from Programme Contracts available to OCCAR will be treated in confidence and will not be disclosed to, or used by, any third party except as otherwise stated in the Programme Contracts and in accordance with the Programme Arrangements.

Without prejudice to any existing rights or any rights secured by OCCAR for the benefit of the Concerned Participating States, the Concerned Participating States and OCCAR will treat all third party information in confidence and in accordance with any valid confidentiality marking applied.

Internally, OCCAR-EA will only disclose government furnished information and Programme Contractor or sub-contractor information to any OCCAR personnel (including loaned, contracted and hired staff) either directly involved in the programme or with a need to know for the management of specific tasks (e.g. personnel of Central Office). For protection of information inside OCCAR all such OCCAR personnel individually must sign a Declaration of Confidentiality prior to starting work for OCCAR.

4.8 Protective Marking

Where appropriate, protective marking will be applied to information exchanged between OCCAR and the Programme Contractor (including sub-contractors) or OCCAR and the Concerned Participating States, setting out the name of the owner and the terms under which such information can be disclosed and used.

4.9 Action Against Unauthorised Disclosure or Use

OCCAR may take all appropriate action, including legal proceedings, against unauthorised disclosure or use of information by anyone other than those for whom a Concerned Participating State is responsible. Legal proceedings will not be commenced without prior BoS approval.

Where such misuse or unauthorised disclosure of programme information is caused by anyone for whom a Concerned Participating State is responsible, any action will be the responsibility of the appropriate authorities, not OCCAR.

4.10 Payment Related to Use of Information

Any commitment by OCCAR relating to payment for the use of background information or third party information will be subject to the prior agreement of the Concerned Participating States.

4.11 Licences for use of Information

Any licences negotiated by OCCAR for the use of third party information will not be agreed without prior written approval of the Concerned Participating States.

OCCAR will ensure that licences arising from contracts and sub-contracts provide for the manufacture or modification of developed items by an alternative source.

Where such manufacturing or modification licences are to provide for payments in respect of the use of contractor background information the terms of such licences will be negotiated by OCCAR. Any licence payments will be based solely on contractor background information declared prior to the placing of the contract, unless otherwise agreed.

As far as possible OCCAR will negotiate the terms of any such licence before the associated contract is signed, or as soon as possible thereafter, and the prior written approval of the Concerned Participating States will be required prior to its signature.

Licence payments may be made in respect of the use of background information for manufacture or modification by an alternative contractor.

Any use of such information for other purposes including in-service support, operation and integration of equipment provided must be free of charge.

5. Special Contractual Issues

5.1 OCCAR terms and conditions

OMP 5 provides the procedure and policy to be followed when placing a programme contract; this includes tender activities and complaint procedures prior to contract placement.

OMP 6 provides standard contract terms and conditions.

5.2 EU Regulations and Directives

In addition to complying with applicable law, it is OCCAR policy to respect the spirit of EU Regulations and Directives, which are not binding upon it.

5.3 Law of the Contract

The law of the contract will be determined by the parties to the contract.

It is OCCAR's policy that all contracts let by OCCAR within a Programme will apply the same national law. Where practicable it should be the law of one of the Concerned Participating States.

The law applicable to contracts let by OCCAR where OCCAR acts in the name of the Concerned Participating States may be selected from one of the following, in the following order:

- Any preference expressed by Concerned Participating States, usually the law of one of the Concerned Participating States;
- Any preference expressed by OCCAR, usually the national law applicable to the location of the Programme Division which places the contract or, if other contracts have already been placed, the same law as those apply;
- The national law applicable to the location of the Contractor's registered office or principal place of business for the performance of the contract. In this event any ITT/RFP in a competitive tendering should clearly state that

The law applicable to contracts let by OCCAR where OCCAR acts in its own name may be selected from one of the following, in the following order:

- Any preference expressed by OCCAR, usually the national law applicable to the location of the Programme Division which places the contract or, if other contracts have already been placed, the same law as those apply,
- The national law applicable to the location of the Contractor's registered office or principal place of business for the performance of the contract, in this event the ITT/RFP in a competitive tendering should clearly state that the law applying to any resultant contract will be subject to agreement by OCCAR-EA.

As far as contracts transferred to OCCAR are concerned, there will be no change to the law of such contracts.

5.4 Language

All contracts let by OCCAR are to be written in one of the official languages stated in Article 4 of the Convention and be the ruling language for the contract, whether or not the law applicable to the contract corresponds to one of the official languages.

5.5 Value added tax

Before OCCAR places any programme contract, the fiscal implications will be determined by the Programme Contractor and the relevant national authorities and be reflected in the programme contracts.

5.6 Levies on Export Sales

In accordance with the Programme Decision OCCAR-EA will ensure the programme contracts contain adequate provisions to ensure any potential sales by Contractors to non Participating States are notified to OCCAR and any resultant levies are collected and credited to the appropriate national accounts in accordance with instructions given by each Participating State.

5.7 OCCAR ethics

Based on the policies of the Member States OCCAR will set up a list of ethics. Every contract placed by OCCAR will contain provisions requiring adherence and the contractor will be required to flow this down through sub-contracts.

6. Reference documents

OCCAR Convention

OMP 2: Programme Integration

OMP 5: Contract Placement Procedure

OMP 6: Contract Terms and Conditions

OMP 8: Personnel Regulations

7. Revision schedule for this procedure

Every three years, if necessary.