

## QUESTIONS AND ANSWERS ABOUT INDUSTRIAL PARTICIPATION

### **What is industrial participation and why is it required?**

Industrial participation promotes development work and military security of supply in Finland. The objective of industrial participation is to develop and maintain the production, technology and expertise in the defence and security industry that is critical with respect to national defence, state security and functions vital to society, as well as to improve and safeguard the national military security of supply.

Industrial participation will ensure that the technology and expertise that are critical in terms of security of supply in relation to the defence equipment to be procured will be available to the armed forces even during a crisis and in emergency conditions comparable to a crisis. Therefore, industrial participation is about securing technology of critical importance to key security interests and acquiring timely expertise for Finnish companies, research institutes, higher education institutions and Defence Forces to ensure that Finnish industry and other operators can also continue to produce critical products and services for Defence Forces in emergency conditions.

Close, long-term cooperation between Finnish and international defence industry secures the military security of supply and the availability of critical technology in all conditions.

Industrial participation has been defined e.g. in the document "Industrial Participation in Defence Procurements" (MoD 2017) and "Rules on Industrial Participation in Defence Procurement in Finland" (Ministry of Economic Affairs and Employment 2012, most recently updated on 25 June 2018). The materiel policy objectives of the defence administration are also described in the Materiel Policy Strategy for the Defence Administration (Ministry of Defence 2023).

### **Is industrial participation the same thing as offsets?**

Earlier, the purchasing party in defence acquisitions traditionally introduced a compensation clause in high-value acquisitions in cases when the procurement was made from an international supplier. Such compensation was earlier referred to as offsets. However, today the expression "industrial participation" (IP) is used in Finland, due to the fact that the focus in the scheme is on cooperation between the Finnish defence and security industry and an international supplier especially in order to increase critical technology and expertise and to secure the availability of critical technology in all conditions.

Thus, the earlier term "offsets" is no longer in use in Finland and, besides, it is currently used to refer to a different thing, because industrial participation that may exceptionally be connected with defence procurements must be properly justified under Article 346 of the Treaty on the Functioning of the EU (TFEU) (essential interests of state security). Industrial participation secures the military security of supply and, therefore, is not considered an offset.

## **Offset?**

The term "offset" is still often used at the global level, and the national legislation of the relevant country is applied in such cases. National legislation can also be based on offsets in non-EU countries. A Finnish defence industry company, for instance, may have a valid offset obligation in some third countries. In the global context, offsets are thus a common precondition for agreements in large-scale defence procurements and more a rule than an exception. Their form, goals and methods of implementation vary considerably from country to country.

## **What is direct and indirect industrial participation?**

Industrial participation may be direct or indirect. It must be targeted at performance and technology areas critical for Finland's defence and defined in Government Resolution on Securing the Finnish Defence Technological and Industrial Base published in spring 2016. Participation may only target the defence and security sector, and the inclusion of non-related civil products or services in the arrangements is not possible.

The question is of *direct industrial participation* when participation between Finnish and international industry is related to the system to be procured. Participation ensures that the technology and expertise that are critical in terms of security of supply in relation to the defence equipment to be procured will be available to the armed forces even during a crisis and in emergency conditions comparable to a crisis.

*Indirect industrial participation* refers to participation that is not directly related to the defence materiel to be procured. It is a question of indirect industrial participation when the cooperation concerns the transfer of technology and expertise important with respect to the key security interests of the state to Finland. Therefore, industrial participation must focus on technologies of critical importance to national defence. Examples of indirect industrial participation include software, source codes, cyber security, research, advanced materials and manufacture. The purpose of industrial participation is above all to search for long-term partnerships between the Finnish industry and the international tendering candidate and its subcontracting chains.

The question is of indirect industrial participation when the object of the cooperation is the transfer of technology and expertise important for the essential interests of state security to Finland's defence and security industry, defence administration, research and science communities or universities and higher education institutions. The Ministry of Defence and Defence Command are responsible for planning indirect industrial participation. Special attention in indirect industrial participation is paid to the extent to which the expertise and/or technology relates to critical performances in Finland's defence and to securing the technological and industrial base needed to secure them.

## **How does the EU regulate defence procurements?**

The statutes and procedures related to industrial participation in defence materiel projects (earlier offsets) have changed substantially after the EU's defence and security procurement directive (2009/81/EC) entered into force. In Finland, the Act on Public Defence and Security Contracts (1531/2011) entered into force on 1 January 2012. The most recent amendments to the Act came

into force on 1 January 2022. As a rule, no obligation for industrial participation can be placed on the supplier in procurement based on the Act.

As a rule, the Member States therefore have the obligation to subject their defence and security procurements to competitive tendering pursuant to the EU's defence and security procurement directive. This principle can only be derogated from under the exceptions set out in Article 346 of the TFEU. However, the obligation for industrial participation can still be imposed in exceptional situations of this kind. In practice, the justifications in such cases in Finland are based on Government resolution on technologies critical for national defence (2016).

The need for and the scope the obligation of industrial participation is always assessed in advance and on a case-by-case basis by the procurement authority, and criteria must meet the conditions in Article 346 of the TFEU mentioned above. The rules on industrial participation from 2012 (rev. 25 April 2013, 11 May 2017 and 25 June 2018) apply to any such contracts concerning industrial participation.

### **What defence projects does industrial participation relate to?**

Currently, two strategic projects include the obligation for industrial participation: the procurement of the combat system Squadron 2020 and the F-35 project. In the Squadron 2020 project, Saab has the responsibility for industrial participation and, in the F-35 project, both Lockheed Martin and Pratt & Whitney.

In both the above projects, the minimum share of industrial participation has been placed at 30 per cent of the total project value. This amount of industrial participation will ensure that the technology and expertise that are critical in terms of security of supply in relation to the procured defence equipment will be available to the armed forces even during a crisis and in emergency conditions comparable to a crisis. In addition, industrial participation aims to ensure the domestic industry's significant share in carrying out the contract and at the same time safeguard sufficient military security of supply and deepen the technical and industrial basis of Finland's defence.

### **What are the technologies critical for national defence?**

Technologies critical for national defence are defined in the Government resolution "Securing the Finnish Defence Technological and Industrial Base" (7 April 2016).<sup>1</sup>

1. C4ISTAR technologies
2. Material and structural technologies
3. Technologies for multi-technology systems and system management
4. Biotechnologies and chemical technologies

### **When does industrial participation begin and when does it end?**

Industrial participation with the winning tenderer will begin after the procurement contract and the industrial participation agreement have been signed. Projects can then be implemented for the period defined in the agreement, approximately 10 years.

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<sup>1</sup> [http://www.defmin.fi/files/3402/PUTE\\_strategia\\_fi\\_010416.pdf](http://www.defmin.fi/files/3402/PUTE_strategia_fi_010416.pdf)

**How is the crediting value determined for industrial participation?**

The crediting value is determined in accordance with section 5 of the Rules on industrial participation and the criteria referred to therein. As a rule, transactions are accepted at the full value of the domestic content of the contract. The domestic content of the contract includes Finnish material, labour, added value and other elements of Finnish origin. If the Finnish Committee on Industrial Participation deems it justified, it may decide that the crediting value is lower than the full value according to the domestic content.

Transactions concerning direct industrial participation may be accepted according to the full value of the contract providing that the domestic content of the contract is significant. If a participation project concerning product development, technology, production or any similar activity has no contract value or the contract value is not representative in the Committee's opinion, the Committee determines a crediting value in each case separately on the basis of the resulting benefit to the Finnish party.

**What do multipliers for SMEs mean in industrial participation?**

Multipliers may be awarded on a case-by-case basis for certain projects of the winner of the competitive tendering (= supplier) in indirect industrial participation that can be used to promote the technological development and internationalisation of small and medium-sized companies in the defence and security sector operating in areas of expertise and technology that are critical to national defence and state security. Here, the definition for SMEs used by the Commission shall apply: small and medium-sized enterprises (SMEs) are enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, or an annual balance sheet total not exceeding EUR 43 million, and in which 25% or more of the capital or voting rights are not controlled, jointly or individually, by an enterprise or enterprises to which this definition does not apply.

The applicability of multipliers will be decided later by the Finnish Committee on Industrial Participation, which is subordinate to the Ministry of Economic Affairs and Employment. The tenderer may propose a multiplier of 1.5–3 for a project when it presents its claim to the Committee. The party presenting a claim must justify its multiplier proposal and why a multiplier should be applied to determine the crediting value of the transaction in question. Ultimately the Finnish Committee for Industrial Participation decides, at its discretion, on the application of a multiplier on a case by case basis.

[Rules on industrial participation in defence procurement in Finland](#) 2012.

**Is supplier involvement in the industrial participation project required?**

Direct supplier involvement is not required, but the supplier must be able to provide evidence of having been instrumental in creating the transaction. This means that the transaction was unlikely to have taken place without an active contribution from the tenderer. The tenderer must bring added value to the project that supports critical capabilities and their development.

**Will there be opportunities for industrial participation after procurement decision?**

Industrial cooperation is a long-term obligation; this means that some changes may be made to plans if necessary due to technological progress or similar. Consequently, in some situations the industrial participation plan may be reviewed and revised, and new projects may be included. In some cases, new players may join the project in the implementation stage to provide the necessary added value and expertise. As a rule, however, compliance with the approved industrial participation plan is the standard procedure.

**What is a good size for an industrial participation project?**

In an industrial participation project, it is the content that matters, not the size of the project. Projects of all sizes will be considered if the parties can identify a mutually interesting area for cooperation. SMEs are also encouraged to join industrial participation projects.

**Can a foreign-owned company be accepted as a partner in industrial participation?**

As a rule, yes they are. However, steps must be taken to ensure that the competence being developed will be available nationally after the industrial participation project.

**Who is the co-signatory of a Finnish partner's agreement regarding the supplier's industrial participation obligation?**

As a rule, a Finnish partner signs an agreement with a foreign supplier who has an industrial participation obligation in Finland.

If the supplier is accompanied by a consortium of several companies as the Finnish party in the project, the company representing these companies in the joint venture (coordinator) may sign an agreement with the supplier, if agreed in advance. In this case, the companies participating in the industrial participation project are not required to sign their own separate agreements with the supplier. Companies and research organisations decide among themselves on how they wish to organise in any joint projects.

**How will fulfilment of the obligation be monitored? Are there any sanctions in the agreement for non-fulfilment?**

The Ministry of Economic Affairs and Employment and the Finnish Committee on Industrial Participation systematically monitor the progress made in the fulfilment of industrial participation obligation. Industrial participation agreements include project milestones to be reviewed, and sanction provisions to be applied in the event of non-fulfilment of obligations laid down in the agreement. The Ministry of Defence is the party to industrial participation agreements.

**Can a project consisting exclusively of research be accepted?**

Cooperation in the field of research may be considered indirect industrial participation if it meets the other criteria for industrial participation. Indirect industrial participation refers especially to transfers of critical technology and expertise to Finland in the form of industrial, technological or research cooperation, for example.

**What is the role of exports in industrial participation?**

Export promotion is not the first and foremost objective of industrial participation. However, industrial participation may be used to promote the technological development and internationalisation of small and medium-sized companies in the defence and security sector operating in areas of expertise and technology that are critical to national defence and state security.

**Who owns the industrial property rights to the industrial participation project?**

Ownership of industrial property rights must always be agreed on separately, case by case. User rights to the industrial property rights of the project may be transferred to a Finnish party, but not their ownership. This affects the crediting value of industrial participation in the project.

**Can a supplier invest in a Finnish company and be credited value for industrial participation?**

If a supplier is given shares in exchange for an investment, no value for industrial participation will be credited.

**Where can I get financing for my project?**

As a rule, the Finnish partner shall not bear the supplier's costs arising from industrial participation nor the costs of services acquired by the supplier from third parties. However, the Finnish partner will have to invest their own work in the project and thereby make a financial contribution. The Finnish company may apply for e.g. Business Finland's standard financial instruments to cover its share, if it is in a position to do so.

**What is the role of the Ministry of Defence in industrial cooperation?**

The Ministry of Defence is a contractual party in defence procurements and has the main responsibility for whether an industrial participation obligation for an international supplier company is included in the procurement. The decision to place the obligation is made on case-by-case basis before submitting the invitation to tender.

## **What is the role of the Ministry of Economic Affairs and Employment in industrial participation?**

The Ministry of Economic Affairs and Employment and the Finnish Committee on Industrial Participation are responsible for the practical administration of industrial participation with international defence equipment contractors, i.e. international companies that have a valid industrial participation obligation in Finland. A separate agreement on industrial participation is attached to the procurement contract. The contracting party in both the above agreements is the Ministry of Defence.

The Secretariat of the Finnish Committee on Industrial Participation at the Ministry of Economic Affairs and Employment is responsible for the practical arrangements of the Committee's meetings and for matters related to the administration of industrial participation. The Committee systematically monitors the implementation and progress of the obligations for industrial participation. It also discusses claims and keeps accounts of projects that have already been accepted. In addition, the Committee outlines policies related to dealing with matters concerning industrial participation in order to ensure a consistent and equal treatment in processes.

The Committee has members from the Ministry of Defence, the Ministry for Foreign Affairs and the Ministry of Economic Affairs and Employment. It meets approximately six times a year. Matters are presented in the Committee meetings by its Secretary-General or Deputy-Secretary General. The Ministry of Economic Affairs and Employment approves the decisions that have been considered by the Committee.

### **More information:**

<https://tem.fi/industrial-participation>

[Rules on industrial participation in defence procurement in Finland and composition of the Committee](#)

#### **Ministry of Defence (military procurement and industrial participation):**

Iikka Marttila, Senior Ministerial Adviser, tel. +358 295 140 038, [iikka.marttila@gov.fi](mailto:iikka.marttila@gov.fi)

Tom Lindén, Senior Specialist, tel. +358 295 140 405, [tom.linden@gov.fi](mailto:tom.linden@gov.fi)

Eemeli Peltonen, Senior Specialist, tel. +358 295 140 125, [eemeli.peltonen@gov.fi](mailto:eemeli.peltonen@gov.fi)

#### **Ministry of Economic Affairs and Employment (rules for industrial participation and processes of the Finnish Committee for Industrial Participation):**

Marjaana Aarnikka, Commercial Counsellor, Secretary-General, tel. +358 295 062 122, [marjaana.aarnikka@gov.fi](mailto:marjaana.aarnikka@gov.fi)

Timo Nyysönen, Chief Specialist, Deputy Secretary-General, tel. +358 295 047 365, [timo.Nyysonen@gov.fi](mailto:timo.Nyysonen@gov.fi)

Matias Keinänen, Senior Specialist, tel. +358 295 047 275, [matias.keinanen@gov.fi](mailto:matias.keinanen@gov.fi)