

Public procurement in the fields of defence and security

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The Commission has presented a report on the implementation of Directive 2009/81/EC on public procurement in the fields of defence and security.

The main objective of the Directive is to ensure that procurement in the field of defence and certain sensitive purchases related to security in this market is carried out in compliance with EU rules on competition, transparency and equal treatment.

The report assesses the functioning of the Directive and, as far as possible, its impact on the defence market and the defence industrial base.

Following the evaluation, the Commission considers that, overall, **the Directive is adapted to its objectives**, that it is on track to meet its objectives and that it does not require modification. Consequently, **no legislative proposal accompanies the report**. Given the short period since the Directive was actually transposed, efforts should instead focus on the **effective implementation** of the Directive.

The main conclusions are as follows:

Competition: the Directive has led to an **initial increase in competition**, transparency and non-discrimination on the European defence market, and a corresponding reduction in the use of exemptions.

The Directive has more than doubled the value of defence and security markets published in the EU and awarded after a call for competition. Between 2011 and 2015, the total value of contracts awarded in accordance with the Directive amounted to approximately **EUR 30.85 billion**.

However, **the Directive's application remains uneven between Member States**. In particular, the Directive continues not to be applied to a significant part of the expenditure incurred in the award of defence contracts. It has thus been applied very little to **markets for high-value, strategic and complex defence systems**.

In addition, Member States always rely on the **requirements of industrial compensation / benefits** (presumably based on Article 346 of the TFEU). Industry stakeholders expressed concerns about the uncertainties associated with the practical use of such requirements.

In order to assist Member States to apply the Directive more consistently, the Commission will (i) provide **guidance** on the interpretation / application of the provisions of the Directive on exclusions; (ii) intensify **dialogue** with Member States and stakeholders on the application of the Directive; (iii) publish **statistics** on the use of the Directive periodically; (iv) open **infringement proceedings** where serious infringements of EU law are detected.

Subcontracting: the subcontracting provisions of the Directive permit the contracting authority to request the successful tenderer to subcontract part of the contract to third parties via competitive bidding. These provisions **have not been used** and are considered ineffective.

Consequently, the Commission will **revise the guidelines** on subcontracting provisions so that the contracting authorities of the Member States are encouraged to use these provisions and can bring competition into the supply chains.

Strengthening European cooperation: The Directive does not hamper cooperation-based procurement. However, in order to encourage the authorities of the Member States to make full use of the flexibility offered by the Directive, the Commission will provide guidance to clarify all the possibilities for co-operation in procurement.

Impact on the European defence industrial and technological base (EDTIB): given the short period since the end of the transposition deadline and the even shorter time span since the actual transposition by the Member States, it was **impossible to establish a causal link** between the effects of the Directive and developments in the EDTIB.

Lastly, the Commission recalls that the proposals of the European defence action plan to promote cross-border market access for subcontractors and SMEs should also help to improve cross-border penetration levels and **increase SME participation** to defence contracts.