

Basic information	
2005/2030(INI) INI - Own-initiative procedure	Procedure completed
Defence procurement. Green Paper Subject 2.10.02 Public procurement 3.40.09 Defence and arms industry 3.40.14 Industrial competitiveness	

Key players			
European Parliament	Committee responsible		Rapporteur
	IMCO Internal Market and Consumer Protection		WUERMELING Joachim (PPE-DE)
	Committee for opinion		Rapporteur for opinion
	AFET Foreign Affairs (Associated committee)		BEER Angelika (Verts/ALE)
	ITRE Industry, Research and Energy		HÖKMARK Gunnar (PPE-DE)
			Appointed

Key events			
Date	Event	Reference	Summary
23/09/2004	Non-legislative basic document published	COM(2004)0608 	Summary
10/03/2005	Committee referral announced in Parliament		
10/03/2005	Referral to associated committees announced in Parliament		
05/10/2005	Vote in committee		Summary
10/10/2005	Committee report tabled for plenary	A6-0288/2005	
16/11/2005	Debate in Parliament		
17/11/2005	Decision by Parliament	T6-0440/2005	Summary
17/11/2005	Results of vote in Parliament		
17/11/2005	End of procedure in Parliament		

Technical information	
Procedure reference	2005/2030(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Initiative
Legal basis	Rules of Procedure EP 55
Stage reached in procedure	Procedure completed
Committee dossier	IMCO/6/24073

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee opinion	AFET	PE357.801	31/08/2005	
Committee opinion	ITRE	PE357.910	31/08/2005	
Amendments tabled in committee		PE362.610	09/09/2005	
Committee report tabled for plenary, single reading		A6-0288/2005	10/10/2005	
Text adopted by Parliament, single reading		T6-0440/2005	17/11/2005	Summary

European Commission

Document type	Reference	Date	Summary
Non-legislative basic document	COM(2004)0608 	23/09/2004	Summary
Follow-up document	COM(2005)0626 	06/12/2005	Summary
Document attached to the procedure	SEC(2005)1572 	06/12/2005	
Commission response to text adopted in plenary	SP(2005)5015	15/12/2005	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0129/2005 OJ C 221 08.09.2005, p. 0052-0055	09/02/2005	

Defence procurement. Green Paper

2005/2030(INI) - 23/09/2004 - Non-legislative basic document

This Green Paper is one of the measures announced by the European Commission in its Communication "Towards a European Union defence equipment policy", adopted on 11 March 2003. Through these measures, the Commission intends to contribute to the gradual creation of a European

defence equipment market (EDEM) which is more transparent and open between Member States and which, whilst respecting the sector's specific nature, would increase economic efficiency.

Moving towards a truly European market is crucial for strengthening the competitiveness of European industry, improving the allocation of defence resources and supporting the development of the Union's military capabilities under the European Security and Defence Policy (ESDP).

The establishment of the European Defence Agency with its responsibilities in the field of defence capabilities, research, acquisition and armaments, makes the development of such a market even more important.

Creating an EDEM would require a set of complementary initiatives, including the establishment of an appropriate regulatory framework for the procurement of defence equipment. The opening up of defence markets, which are currently fragmented along national lines, would increase the commercial opportunities for European companies in the sector, including SMEs, and contribute to their growth and increase their competitiveness.

The purpose of this Green Paper is to develop the debate on these issues, bearing in mind the principle of subsidiarity. For this purpose the Commission set up two working parties consisting of representatives of the Member States and European industry to contribute to the preparatory stages of the Green Paper.

In the first part, the Green Paper identifies the reasons for specific action by giving a summary of the current state of defence procurement markets, their numerous special characteristics and the existing regulatory framework.

In the second part, on the basis of this analysis, it considers possible lines of action following the identification of a number of obstacles limiting the access of European industries to Member States' defence markets and hence restricting their growth opportunities.

The Commission therefore proposes pursuing the debate on the case or Community action in the field of defence procurement. So far the Commission has identified two possible instruments, one limited to clarifying the existing legal framework and the other aimed at establishing specific rules in the field of defence, taking into account the sector's specific characteristics.

These instruments would not prejudice any complementary measures taken by the Member States in the appropriate fora. Indeed, they could not provide exhaustive answers to all the specific aspects of defence markets. This is the case in particular for security of supply, a concept bound to change with the growing convergence of national security interests in the context of European foreign, security and defence policy. The gradual development of a common approach in this field could facilitate application of Community instruments. Equally, these instruments would constitute a useful tool for the success of cooperation between Member States.

This Green Paper marked the start of an official consultation process lasting four months from its date of publication (i.e. 23/01/2005 deadline for contributions from interested parties).

Defence procurement. Green Paper

2005/2030(INI) - 06/12/2005 - Follow-up document

The purpose of this Communication from the Commission is to report on the contributions by stakeholders to the consultation launched by the Green Paper on defence procurement. The Commission also presents the actions it intends to take as a follow-up to the Green Paper.

During the six-months consultation period, a series of bilateral meetings, seminars and working group meetings were held which allowed the Commission to explain its initiative and to gain a clearer idea of stakeholders' interests and concerns. At the end of the consultation, the Commission had received 40 contributions from 16 Member States, institutions and industry.

The vast majority of stakeholders shared the Commission's assessment of the Green Paper. They acknowledged the widespread misinterpretation of Article 296 and considered the existing PP Directive often ill-suited for defence procurement, despite the recent adaptations. Almost all stakeholders supported a Community initiative in the field of defence procurement and ruled out the "no action" option.

As for the instruments presented as possible solutions, stakeholders expressed a variety of opinions. Even if it is very difficult to draw a general conclusion or a single general trend, it does appear that a majority of stakeholders are in favour of an interpretative communication, and not against a directive. There is some disagreement about the timing of the latter. Preferences for an interpretative communication or a directive, also as far as timing is concerned, do not follow the traditional dividing lines between big and small, producing and non-producing Member States. The same is true for industry, with differences being seen between European and national associations and between defence industry associations and non-defence industry association. The European Parliament expressed clear support for a comprehensive approach combining an interpretative communication and a new directive adapted to the specificities of defence (combined with the development of an intergovernmental code of conduct).

The Commission's assessment is that the whole consultation process shows that the current legislative framework on defence procurement is not functioning properly. The appropriate initiatives therefore have to be taken, in order to improve a situation which is almost unanimously regarded as unsatisfactory.

-On one hand, the dividing line between defence acquisitions concerning essential security interests according to Article 296 and defence acquisitions which do not concern essential security interests is not clear, or at least is not perceived in the same way by all Member States. As a consequence, the application of the derogation remains problematic. The Commission will therefore adopt in 2006 an "Interpretative Communication on the application of Article 296 of the Treaty in the field of defence procurement." This Communication will recall the principles governing the use of the derogation, in the light of the case law of the Court of Justice, and will clarify the criteria on the basis of which Member States have to decide when the conditions for the application of the derogation are met and when they are not. While providing additional legal certainty and guidance for Member States, an Interpretative Communication will not alter the current legal framework. It will simply clarify

the existing one, with the objective of making its implementation more uniform. As the Interpretative Communication will also concern issues related to free movement of goods, it could have further consequences e.g. on intra-EU transfers for defence goods. This will be duly taken into account in the drafting of such Communication.

-On the other hand, a simple clarification may be insufficient. The consultation also confirmed that the current PP Directive, even in its revised version, may be ill-suited to many defence contracts, since it does not take into account some special features of those contracts. The Commission therefore considers that a directive coordinating national procedures for the procurement of defence goods (arms, munitions and war material) and services, would be the appropriate instrument to improve the situation described. This directive could take into account all the specific needs of defence procurement, and offer new, more flexible rules for defence procurement, to be followed in cases where the derogation in Article 296 does not apply.

The Commission will also follow with great interest the development of the Code of Conduct under preparation by the EDA. This code, voluntary and non-binding would aim at increasing transparency and competition also in a different segment of the market, since it would apply in cases where the conditions for the application of Articles 296 are met. This kind of intergovernmental initiative would usefully complement the initiatives taken at Community level.

Defence procurement. Green Paper

2005/2030(INI) - 17/11/2005 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution based on own-initiative report by Joachim **WUERMELING** (EPP-ED, DE) on the Green Paper on defence procurement. (Please see the document dated 05/10/2005.) The report commanded a majority of 392 members against 77, with 7 members abstaining. Parliament began by pointing out that the hermetic segregation of armaments markets is also the cause of a lack of standardisation and has led to a lack of interoperability between systems in Europe and made cooperation in international operations more difficult. The fact that 25 different sets of rules on procurement are in force constitutes an obstacle to implementation of the European Capabilities Action Plan (ECAP). Relevant armaments purchasers are solely the governments of the 25 Member States, six of which account for 90% of armaments purchases and in some cases even hold stakes in the armaments industry.

Consequently, Parliament called on the Member States and the industry to abandon the reservations which for decades have stood in the way of a European defence market and to set in train a new phase of cooperation based on an innovative strategy. It agreed with the Commission that current policies of juste retour and off-setting in the field of military procurement lead to large-scale distortions of competition and artificial divisions of labour between industrial partners, and greatly hinder the efficiency of public procurement. Pressure should be placed on national defence procurement agencies to alter the general practice of taking advantage of the derogation contained in Article 296 and to take measures to ensure that defence procurement is covered to a larger extent by Community legislation rather than by national legislation. Parliament believed that the Commission should both adopt an interpretative Communication reflecting its determination to stop the misuse of Article 296 and start to develop, in parallel, a new directive, tailored to the specific features of defence, for the purposes of the procurement of arms, ammunition and war material subject to Article 296.

Parliament regarded a restrictive interpretation of national security interests as appropriate, given that Member States are already mutually dependent in areas such as monetary affairs and energy. It questioned to what extent any meaningful distinction at all can still be drawn between national and common European security interests.

With regard to a new directive, both mandatory and optional instruments could be considered in connection with procurement procedures. The emphasis should be placed on creating greater transparency and fairness in the award of contracts. Parliament pointed out that, in addition to the actual acquisition of equipment, other aspects will need to be taken into account, such as research and development, offsetting agreements, maintenance, repair, retrofitting and training. There must be intensive consultation with stakeholders in drawing up a directive, and stresses the need for a business impact study and a foreign-relations impact study.

Member States are urged to cooperate actively with the Commission on a new directive and to instruct the European Defence Agency (EDA) to develop, as an initial step, a code of conduct for defence procurement within the meaning of Article 296. This code should apply to contracts covered by Article 296 with the aim of introducing more competition and transparency to the sector.

Parliament went on to offer suggestions on the content of the code of conduct. It should, for example, define preconditions for the exercise of the derogation under Article 296 and ensure the required transparency of reasons for exemption and non-publication of information.

Parliament also urged the Commission to work closely with the EDA so as to establish in parallel a comprehensive action plan with accompanying measures in related areas, such as security of supply, transfer and exports, which are necessary for the creation of a level playing field for fair competition within the EU and to ensure the provision of reliable statistical information about the market.

Parliament moved on to state that it recognised that defence procurement problems in the EU are partly linked to the absence of a genuine 'two-way street' with the United States. It questioned whether European defence procurement agencies should be recommended to make more European purchases in order to reinforce strategically the European defence industry in certain sectors. New EU defence procurement legislation should not be used as an instrument enabling US corporate interests unilaterally to infiltrate European defence procurement markets. At the same time it is indispensable that all Member States observe the Common Military List of the European Union (equipment covered by the European Union Code of Conduct on Arms Exports) adopted by the Council on 25 April 2005. Parliament called on the Commission, together with the EDA, to put forward long-term proposals indicating how closer links between EU procurement markets and those in the United States and also in countries such as Ukraine and, in specific sectors, Russia, could lead to both greater choice and more efficient specialisation.

The opening up of the market is a precondition for strengthening a financially viable EU armaments industry, for developing capabilities. The inevitable concentration of the armaments industry should be subject to greater monitoring and control by the Directorate General for Competition of the Commission as regards the application of Community competition law, so that the advantages of mass production are not jeopardised by sectoral monopolies and the resulting market power of undertakings.

