

EUROPEAN PARLIAMENT

2004



2009

Committee on the Internal Market and Consumer Protection

2007/0280(COD)

3.7.2008

*****I**

DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council
on the coordination of procedures for the award of certain public works
contracts, public supply contracts and public service contracts in the fields of
defence and security

(COM(2007)0766 – C6-0467/2007 – 2007/0280(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Alexander Graf Lambsdorff

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council on the coordination of procedures for the award of certain public works contracts, public supply contracts and public service contracts in the fields of defence and security (COM(2007)0766 – C6-0467/2007 – 2007/0280(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0766),
 - having regard to Article 251(2), Article 47(2) and Articles 55 and 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0467/2007),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinion of the Committee on Foreign Affairs (A6-0000/2008),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Amendment 1

**Proposal for a directive
Recital -1 (new)**

Text proposed by the Commission

Amendment

(-1) In its resolution of 17 November 2005 on the Green Paper on defence procurement¹ the European Parliament called on the Commission to draft a directive taking particular account of the security interests of the Member States, further developing the common foreign and security policy, promoting greater European cohesion, preserving the role of the Union as a 'civil power' and, in addition to the actual procurement of goods, covering such aspects as research

and development, maintenance and repair, retrofitting and training, in which connection special attention should be devoted to SMEs, which are strongly represented in this sector.

¹ OJ C 280 E, 18.11.2006, p. 463.

Or. de

Amendment 2

Proposal for a directive Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) In the interests of legal certainty, the scope of this directive in the field of defence should be defined in accordance with the list of arms, munitions and war material adopted by the Council on 15 April 1958. On account of the rapid technological development in the field of arms and security, this list should, for purposes of its application, be interpreted in an up-to-date manner in the light of the current technical possibilities, in so far as necessary.

Or. de

Amendment 3

Proposal for a directive Recital 6 b (new)

Text proposed by the Commission

Amendment

(6b) A modern interpretation of the list of arms, munitions and war material of 15 April 1958, which may be necessary, is particularly to be found in the Common Military List of the European Union¹, which is the basis for the Code of Conduct

on Arms Exports.

¹ *OJ C 127, 25.5.2005, p. 1.*

Or. de

Amendment 4

Proposal for a directive

Recital 10

Text proposed by the Commission

(10) Public defence and security contracts often contain sensitive information which, for security reasons, needs to be protected from unauthorised access. In the military field, the Member States have systems for classifying this information. The picture is more varied, however, when it comes to non-military security matters. The recommendation is, therefore, to make use of a concept which takes into account the diversity of practices in the Member States and can encompass both the military and non-military fields. At any rate, public procurement in these fields should not, where appropriate, affect the obligations arising from Commission Decision 2001/844/EC of 29 November 2001 amending its internal Rules of Procedure or Council Decision 2001/264/EC adopting the Council's security regulations.

Amendment

(10) Public defence and security contracts often contain sensitive information which, for security reasons, needs to be protected from unauthorised access. In the military field, the Member States have systems for classifying this information. The picture is more varied, however, when it comes to non-military security matters. The recommendation is, therefore, to make use of a concept which takes into account the diversity of practices in the Member States and can encompass both the military and non-military fields. At any rate, public procurement in these fields should not, where appropriate, affect the obligations arising from Commission Decision 2001/844/EC of 29 November 2001 amending its internal Rules of Procedure or Council Decision 2001/264/EC adopting the Council's security regulations. ***In addition, Article 296(1)(a) of the EC Treaty allows any Member State to exclude public defence and security procurement from the scope of this directive if the Member State considers the disclosure of information which is necessary in order to award a contract to be contrary to its vital security interests. This may in particular be the case if contracts are so sensitive that their very existence must be kept secret.***

Or. de

Justification

This addition clarifies the fact that this directive respects the vital security interests of the Member States and is thus without prejudice to Article 296(1)(a) of the EC Treaty as originally framed.

Amendment 5

Proposal for a directive Recital 41

Text proposed by the Commission

(41) The award of public contracts to economic operators who have participated in a criminal organisation or who have been found guilty of corruption or fraud to the detriment of the financial interests of the European Communities, of money laundering, the financing of terrorism or of terrorist and terrorism-related offences should be avoided. Where appropriate, the contracting authorities should ask candidates or tenderers to supply relevant documents and, where they have doubts concerning the personal situation of a candidate or tenderer, they may seek the cooperation of the competent authorities of the Member State concerned. Such economic operators should be excluded as soon as the contracting authority has knowledge of a judgment concerning such offences rendered in accordance with national law that has the force of res judicata. If national law contains provisions to this effect, non-compliance with public procurement legislation on unlawful agreements, which has been the subject of a final judgment or a decision having equivalent effect, may be considered an offence concerning the professional conduct of the economic operator concerned or grave misconduct.

Amendment

(41) The award of public contracts to economic operators who have participated in a criminal organisation or who have been found guilty of corruption or fraud to the detriment of the financial interests of the European Communities, of money laundering, the financing of terrorism or of terrorist and terrorism-related offences should be avoided. Where appropriate, the contracting authorities should ask candidates or tenderers to supply relevant documents and, where they have doubts concerning the personal situation of a candidate or tenderer, they may seek the cooperation of the competent authorities of the Member State concerned. Such economic operators should be excluded as soon as the contracting authority has knowledge of a judgment concerning such offences rendered in accordance with national law that has the force of res judicata. If national law contains provisions to this effect, non-compliance with public procurement legislation on unlawful agreements, which has been the subject of a final judgment or a decision having equivalent effect, may be considered an offence concerning the professional conduct of the economic operator concerned or grave misconduct.
In some Member States, undertakings which have taken internal remedial measures are again regarded as suitable and reliable. Such remedial procedures

should, however, be subject to strict requirements: the undertakings must immediately take complete staffing and organisational measures which exclude the possibility of any repetition of violations of the law.

Or. de

Justification

Undertakings in the sectors of defence and security should have the same possibility as under public procurement law in general to restore their reliability by taking internal remedial measures which provide guarantees that the law will not be violated in future. At the same time this will provide a strong incentive to adopt and enforce internal compliance rules. In order to achieve the aim of ensuring that tenderers are reliable, strict requirements should apply to such procedures.

Amendment 6

Proposal for a directive Recital 46 a (new)

Text proposed by the Commission

Amendment

(46a) In order to ensure transparency in the award of certain public contracts in the sensitive arms and security market and to prevent discrimination and ensure that the contract is duly awarded to the undertaking which makes the best offer, it should be possible to seek judicial redress in relation to the contracts defined as falling within the scope of this Directive.

Or. de

Amendment 7

Proposal for a directive Article 46 b (new)

Text proposed by the Commission

Amendment

(46b) The provisions governing review procedures have the purpose of providing the tenderers concerned with effective legal protection. To this end, a minimum standstill period is introduced during which the conclusion of the contract in question is suspended, irrespective of whether conclusion occurs at the time of signature of the contract or not.

Or. de

Amendment 8

Proposal for a directive Article 46 c (new)

Text proposed by the Commission

Amendment

(46c) In order to limit the Member States' use of Article 296 of the EC Treaty to substantiated and justified exceptional cases, the Commission requires an administrative instrument which enables it to take pre-emptive action before an irreversible stage of the procurement procedure has been reached, without making necessary a procedure pursuant to Article 226 of the EC Treaty. The Commission should use this new procedure only on condition that the case is urgent and there is a manifest irregularity.

Or. de

Amendment 9

Proposal for a directive

Article 1 – paragraph 1 – introductory part

Text proposed by the Commission

This Directive shall apply to public contracts **awarded in the fields of defence and security for:**

Amendment

This Directive shall apply to public contracts **relating to the supply of goods and services which are used in order to guarantee the security and defence of the Union or its Member States and entailing, requiring or containing sensitive information, and public works and services contracts strictly related to these supplies. These comprise:**

Or. de

Justification

All contracts covered by this Directive involve sensitive information. It therefore seems sensible to place this information in the introductory part.

Amendment 10

Proposal for a directive

Article 1 – paragraph 1 – point a

Text proposed by the Commission

(a) the supply of arms, munitions and/or war material, referred to in the Council Decision of 15 April 1958 and, **where necessary**, public works and services contracts strictly related to these supplies;

Amendment

(a) the supply of arms, munitions and/or war material, referred to in the Council Decision of 15 April 1958 and public works and services contracts strictly related to these supplies;

Or. de

Justification

The amendment clarifies the scope of the directive.

Amendment 11

Proposal for a directive

Article 1 – paragraph 1 – point d

Text proposed by the Commission

(d) works, supplies and/or services ***involving, entailing and/or containing sensitive information, and*** which are necessary for the security of the EU ***and its Member States, in the fields of protection against terrorism or organised crime, border protection and crisis management operations.***

Amendment

(d) works, supplies and/or services which are necessary for the security of the EU ***and/or in order to protect the security interests of the Member States.***

Or. de

Justification

Avoiding a definitive list of all possible sources of danger will provide Member States with a formula which will remain valid for a long time. Lists of individually itemised threats are inevitably incomplete, as new threats cannot be foreseen. Such a procedure would make it necessary to update the Directive too often.

Amendment 12

Proposal for a directive

Article 2 – paragraph 1 – point 5

Text proposed by the Commission

5. "Public supply contracts": public contracts other than works contracts having as their object the purchase, lease, rental or hire-purchase, with or without the option to buy, of products;

Amendment

5. "Public supply contracts": public contracts other than works contracts having as their object the purchase, lease, rental or hire-purchase, with or without the option to buy, of products; ***a public contract which has as its object the supply of products and at the same time comprises delivery and installation services connected with their supply shall be regarded as a public supply contract.***

Or. de

Justification

Clarification.

Amendment 13

Proposal for a directive

Article 2 – paragraph 1 – point 6

Text proposed by the Commission

6. "Public service contracts": public contracts having as their object the provision of services mentioned in Annex I;

Amendment

6. "Public service contracts": public contracts having as their object the provision of services mentioned in Annex I; ***a public contract relating to both the supply of goods and the provision of services as referred to in Annex I shall be regarded as a public service contract if the value of the services to be provided exceeds that of the goods covered by the contract; a public service contract as referred to in Annex I and including services referred to in Section 45 of the CPV which are provided in a secondary capacity in addition to the main task shall be regarded as a public service contract;***

Or. de

Justification

Clarification.

Amendment 14

Proposal for a directive

Article 2 – paragraph 1 – point 7

Text proposed by the Commission

7. "Sensitive information": any information (namely, knowledge that can be communicated in any form) or material determined to require protection against unauthorised disclosure for security

Amendment

7. "Sensitive information": any information (namely, knowledge that can be communicated in any form) or material determined ***by the Member State*** to require protection against unauthorised disclosure for security reasons;

reasons;

Or. de

Justification

The additional stipulation that the contracting authority should indicate the need for protection is intended to make it clear that 'sensitive information' refers to information held by the public authorities which is in need of protection, rather than operational and business secrets of undertakings.

Amendment 15

**Proposal for a directive
Article 2 – paragraph 1 – point 10**

Text proposed by the Commission

10. "Crisis": any *man-made* situation in a Member State or third country ***presenting a direct physical threat to persons or institutions in that country;***

Amendment

10. "Crisis": any situation in a Member State or third country ***in which a harmful event has occurred which clearly exceeds the dimensions of harmful events in everyday life and which substantially endangers or restricts the life and health of many people, substantial property values or measures required in order to supply the population with necessities; a crisis shall also be deemed to have arisen if the occurrence of such a harmful event must be deemed to be impending; armed conflicts and wars shall be regarded as crises for the purpose of this Directive;***

Or. de

Justification

The proposed definition is too vague. A crisis as defined in this Directive which can give rise to a negotiated procedure without the publication of a contract notice pursuant to Article 20 of this Directive means a substantial harmful event which has either happened or is threatening to happen to the Union, its Member States or one or more third countries.

Amendment 16

Proposal for a directive Article 7 – paragraph 3

Text proposed by the Commission

3. No works project or proposed purchase of a certain quantity of supplies and/or services may be subdivided to prevent its coming within the scope of this Directive.

Amendment

3. No works project or proposed purchase of a certain quantity of supplies and/or services may be ***extended in time to create essentially identical partial contracts or otherwise*** subdivided to prevent its coming within the scope of this Directive.

Or. de

Justification

This is intended to prevent authorities from dividing contracts which extend over a relatively long period of time into separate contracts relating to different periods in such a way that they fall below the thresholds above which a public procurement procedure is required.

Amendment 17

Proposal for a directive Article 8 – point a

Text proposed by the Commission

(a) pursuant to an international agreement concluded in conformity with the Treaty between ***a*** Member ***State*** and one or more third countries and covering supplies or works intended for the joint implementation or exploitation of a work by the signatory States or services intended for the joint implementation or exploitation of a project by the signatory States. All agreements shall be communicated to the Commission which, ***with the agreement of the Member State(s) concerned***, may consult the Advisory Committee for Public Contracts referred to in Article 41;

Amendment

(a) pursuant to an international agreement concluded in conformity with the Treaty between ***one or more*** Member ***States, of the one part, of the other part***, and one or more third countries, ***of the other part***, and covering supplies or works intended for the joint implementation or exploitation of a work by the signatory States or services intended for the joint implementation or exploitation of a project by the signatory States. All agreements shall be communicated to the Commission, which may consult the Advisory Committee for Public Contracts referred to in Article 41;

Or. de

Justification

More precise formulation of the conditions under which a derogation is permitted.

Amendment 18

Proposal for a directive

Article 8 – point b

Text proposed by the Commission

(b) pursuant to the particular procedure of an international organisation.

Amendment

(b) pursuant to the particular procedure of an international organisation, ***in so far as it is carrying out a cooperation project in the field of defence or security as an awarder of public contracts acting on the instructions of the Member States involved.***

Or. de

Justification

More precise formulation of the conditions under which a derogation is permitted.

Amendment 19

Proposal for a directive

Article 9 – paragraph -1 (new)

Text proposed by the Commission

Amendment

(-1) This Directive shall not apply if in the opinion of the Member State the disclosure of information which is necessary in order to award a contract is contrary to its vital security interests.

Or. de

Justification

This amendment will improve legal certainty and is intended to make it possible for those who accept public contracts to invoke secondary law in relation to the conditions for a derogation.

Amendment 20

Proposal for a directive

Article 10 – paragraph 1 – subparagraph 5

Text proposed by the Commission

After awarding the contract by applying the award criteria, the contracting authority shall send the successful tenderer the sensitive technical specifications that were not set out in the contract documents or additional documents so that the successful tenderer can ***adapt his bid accordingly***.

Amendment

After awarding the contract by applying the award criteria, the contracting authority shall send the successful tenderer the sensitive technical specifications that were not set out in the contract documents or additional documents so that the successful tenderer can ***take account of the specifications in the performance of the contract***.

Or. de

Justification

Once a candidate has been awarded the contract, the bid should not be amended but must be taken into account in the performance of the contract. The proposal provides for a clarification.

Amendment 21

Proposal for a directive

Article 14 – points a, b and c

Text proposed by the Commission

(a) ***proof that the*** subcontractors ***already identified*** possess the capabilities required to protect the confidentiality of the sensitive information to which they have access or which they are required to produce when carrying out their subcontracting activities,

(b) a commitment to provide the same ***proof*** for any new subcontractors that may be involved during performance of the contract,

(c) a commitment to keep all sensitive

Amendment

(a) ***adequate information about proposed subcontractors to enable the contracting authority to establish whether these*** subcontractors possess the capabilities required to protect the confidentiality of the sensitive information to which they have access or which they are required to produce when carrying out their subcontracting activities,

(b) a commitment to provide the same ***information*** for any new subcontractors that may be involved during performance of the contract,

(c) a commitment to keep all sensitive

information confidential for the entire duration of the contract and after termination or conclusion of the contract.

information *in its possession* confidential for the entire duration of the contract and after termination or conclusion of the contract.

Or. de

Justification

A contractor is not in a position to prove whether subcontractors possess the capabilities required to protect the confidentiality of information but must provide the contracting authority with adequate information on the subject.

Amendment 22

**Proposal for a directive
Article 15 – paragraph 1**

Text proposed by the Commission

Provided that they are in conformity with Community law, the contracting authority may specify requirements to **guarantee** security of supply.

Amendment

Provided that they are in conformity with Community law, the contracting authority may specify requirements to **fulfil its expectations with regard to** security of supply.

Or. de

Justification

Linguistic clarification.

Amendment 23

**Proposal for a directive
Article 15 – subparagraph 2 – points a and b**

Text proposed by the Commission

(a) **evidence that it will be able to honour its obligations** regarding the export, transfer and transit of goods **associated with the contract**, including **by means of** a commitment from the Member State(s) concerned,

Amendment

(a) **documents pertaining to the tender** regarding the export, transfer and transit of goods, **particularly** including a commitment **or other indicative documents which it has received** from the Member State(s) concerned,

(b) **evidence that** the organisation and location of its supply chain will allow it to comply with the contracting authority's requirements concerning the security of supply set out in the specifications,

(b) **an account of the extent to which** the organisation and location of its supply chain will allow it to comply with the contracting authority's requirements concerning the security of supply set out in the specifications,

Or. de

Justification

Despite the interest in guaranteed security of supply for the contracting authority, it is often not possible for candidates/contractors to provide binding evidence regarding security of supply.

Amendment 24

Proposal for a directive

Article 15 – subparagraph 2 – points c, d and e

Text proposed by the Commission

(c) a commitment to meet additional needs required by the contracting authority as a result of **an emergency, crisis or armed conflict**,

(d) a commitment from its national authorities not to obstruct the fulfilment of any additional needs required by the contracting authority as the result of **an emergency, crisis or armed conflict**,

(e) a commitment to carry out the maintenance, modernisation or adaptation of the supplies covered by this contract,

Amendment

(c) a commitment to meet additional needs required by the contracting authority as a result of **a crisis, under terms to be agreed between the contracting authority and the contractor**,

(d) a commitment **or other indicative documents** from its national authorities not to obstruct the fulfilment of any additional needs required by the contracting authority as the result of **a crisis**,

(e) a commitment to carry out the maintenance, modernisation or adaptation of the supplies covered by this contract, **under terms to be agreed between the contracting authority and the contractor**,

Or. de

Justification

Despite the interest in guaranteed security of supply for the contracting authority, it is often not possible for candidates/contractors to give an unconditional and binding commitment

regarding security of supply. According to the amendment of the definition of 'crisis' in Article 2(10), an armed conflict is a crisis for the purposes of the Directive.

Amendment 25

Proposal for a directive

Article 21 – paragraph 2 – subparagraph 4

Text proposed by the Commission

The term of a framework agreement may not exceed **five** years, save in exceptional cases duly justified, in particular, by the subject of the framework agreement. Contracting authorities may not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.

Amendment

The term of a framework agreement may not exceed **four** years, save in exceptional cases duly justified, in particular, by the subject of the framework agreement. Contracting authorities may not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.

Or. de

Justification

As Directive 2004/18/EC likewise provides for a term of no more than four years, four years seem an appropriate term in this Directive too.

Amendment 26

Proposal for a directive

Article 26 - paragraph 1 - subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The communication of the award decision to each tenderer and candidate concerned shall be accompanied by the following:
(a) a summary of the reasons applicable as referred to in paragraph 2; and
(b) a precise statement of the exact standstill period applicable pursuant to the provisions of national law transposing Article [38c](2).

Or. de

Justification

Amendment necessitated by the inclusion in the Directive of the possibility of judicial redress.

Amendment 27

**Proposal for a directive
Article 26 – paragraph 3**

Text proposed by the Commission

(3) Contracting authorities may decide to withhold certain information on the contract award or the conclusion of the framework agreements, referred to in subparagraph 1, where release of such information would impede law enforcement or otherwise be contrary to ***the public interest*** or would prejudice the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

Amendment

(3) Contracting authorities may decide to withhold certain information on the contract award or the conclusion of the framework agreements, referred to in subparagraph 1, where release of such information would impede law enforcement or otherwise be contrary to ***vital security interests*** or would prejudice the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

Or. de

Justification

Clarification taking account of the particular features of arms and security procurement.

Amendment 28

**Proposal for a directive
Article 30 – paragraph 4 a (new)**

Text proposed by the Commission

Amendment

(4a) Economic operators may be excluded from participation in the procurement procedure if information is available about them - including from protected data sources - indicating that the products which they manufacture or supply display dubious characteristics, which give rise to doubts about the suitability of the

economic operator.

Or. de

Justification

This relates to cases in which the products covered by a tender do formally comply with the requirements previously stated for them but the contracting authority has information, particularly from so-called protected data sources (i.e. intelligence) indicating that the product contains elements which, if implemented by the contracting authority, would permit manipulation, e.g. because a 'reserved' part of an IT product could subsequently be abused to intervene in, control or reprogram the system.

Amendment 29

**Proposal for a directive
Title II a (new) [after Article 38]**

Text proposed by the Commission

Amendment

**TITLE II A
Review procedure**

Or. de

Justification

The inclusion of a review procedure, along the lines of Directive 2007/66/EC, in this Directive is intended to achieve genuine market opening, provide effective legal protection for tenderers and ensure transparency and non-discrimination in the award of contracts without prejudice to Member States' need to protect secret information.

Amendment 30

**Proposal for a directive
Article 38 a (new)**

Text proposed by the Commission

Amendment

**Article 38a
Scope and availability of review
procedures**

(1) The Member States shall take the measures necessary to ensure that, as regards contracts – including framework contracts – falling within the scope of this Directive, decisions taken by the contracting authorities may be reviewed effectively and, in particular, as rapidly as possible in accordance with the conditions set out in Articles [38a] to [38h], on the grounds that such decisions have infringed Community law in the field of public procurement or national rules transposing that law.

(2) Member States shall ensure that there is no discrimination between undertakings claiming harm in the context of a procedure for the award of a contract as a result of the distinction made by this Directive between national rules implementing Community law and other national rules.

(3) Member States shall ensure that the review procedures are available, under detailed rules which the Member States may establish, at least to any person having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement.

A Member State may, in justified cases, refuse a review procedure if in its view the disclosure of information which is necessary for such a procedure would be contrary to its vital security interests.

(4) Member States may require that the person wishing to use a review procedure has notified the contracting authority of the alleged infringement and of his intention to seek review, provided that this does not affect the standstill period in accordance with Article [38c](2) or any other time limits for applying for review in accordance with Article [38e].

(5) Member States may require that the person concerned first seek review with the contracting authority. In that case, the

Member States shall ensure that the submission of such an application for review results in immediate suspension of the possibility to conclude the contract.

Member States shall decide on the appropriate means of communication, including fax or electronic means, to be used for the application for review provided for in the first subparagraph.

The suspension referred to in the first subparagraph shall not end before the expiry of a period of at least 10 calendar days with effect from the day following the date on which the contracting authority has sent a reply if fax or electronic means are used, or, if other means of communication are used, before the expiry of either at least 15 calendar days with effect from the day following the date on which the contracting authority has sent a reply, or at least 10 calendar days with effect from the day following the date of the receipt of a reply.

Or. de

Justification

The inclusion of a review procedure, along the lines of Directive 2007/66/EC, in this Directive is intended to achieve genuine market opening, provide effective legal protection for tenderers and ensure transparency and non-discrimination in the award of contracts without prejudice to Member States' need to protect secret information.

Amendment 31

Proposal for a directive Article 38 b (new)

Text proposed by the Commission

Amendment

Article 38b

Requirements for review procedures

(1) Member States shall ensure that the measures taken concerning the review procedures specified in Article [38a] include provision for the powers to:

(a) take, at the earliest opportunity and by way of interlocutory procedures, interim measures with the aim of correcting the alleged infringement or preventing further damage to the interests concerned, including measures to suspend or to ensure the suspension of the procedure for the award of a public contract or the implementation of any decision taken by the contracting authority;

(b) either set aside or ensure the setting aside of decisions taken unlawfully, including the removal of discriminatory technical, economic or financial specifications in the invitation to tender, the contract documents or in any other document relating to the contract award procedure;

(c) award damages to persons harmed by an infringement.

(2) The powers specified in paragraph 1 and Articles [38f] and [38g] may be conferred on separate bodies responsible for different aspects of the review procedure.

(3) When a body of first instance, which is independent of the contracting authority, reviews a contract award decision, Member States shall ensure that the contracting authority cannot conclude the contract before the review body has made a decision on the application either for interim measures or for review. The suspension shall end no earlier than the expiry of the standstill period referred to in Articles [38c](2) and [38f](4) and (5).

(4) Except where provided for in paragraph 3 and Article [38a](5), review procedures need not necessarily have an automatic suspensive effect on the contract award procedures to which they

relate.

(5) Member States may provide that the body responsible for review procedures may take into account the probable consequences of interim measures for the interests of defence and security, and may decide not to grant such measures when their negative consequences could exceed their benefits. A decision not to grant interim measures shall not prejudice any other claim of the person seeking such measures.

(6) Member States may provide that where damages are claimed on the grounds that a decision was taken unlawfully, the contested decision must first be set aside by a body having the necessary powers.

(7) Except where provided for in Articles [38f] to [38h], the effects of the exercise of the powers referred to in paragraph 1 of this Article on a contract concluded subsequent to its award shall be determined by national law.

(8) Member States shall ensure that decisions taken by bodies responsible for review procedures can be effectively enforced.

(9) Where bodies responsible for review procedures are not judicial in character, written reasons for their decisions shall always be given. Furthermore, in such a case, provision must be made to guarantee procedures whereby any allegedly illegal measure taken by the review body or any alleged defect in the exercise of the powers conferred on it can be the subject of judicial review or review by another body which is a court or tribunal within the meaning of Article 234 of the EC Treaty and independent of both the contracting authority and the review body.

The members of such an independent body shall be appointed and leave office under the same conditions as members of the judiciary as regards the authority

responsible for their appointment, their period of office, and their removal. At least the President of this independent body shall have the same legal and professional qualifications as members of the judiciary.

In addition, Member States may ensure that the members of review bodies at all instances are individually authorised to handle sensitive information. Member States may establish or designate a special review body to take sole responsibility for reviews in the fields of security and defence. The independent body shall take its decisions in a procedure in which both sides are heard; its decisions shall be legally binding in the manner to be determined by the individual Member States.

Or. de

Justification

The inclusion of a review procedure in this Directive is intended to achieve genuine market opening, provide effective legal protection for tenderers and ensure transparency and non-discrimination in the award of contracts without prejudice to Member States' need to protect secret information.

Amendment 32

Proposal for a directive Article 38 c (new)

Text proposed by the Commission

Amendment

Article 38c

Standstill period

(1) Member States shall ensure that the persons referred to in Article [38a](3) have sufficient time for effective review of the contract award decisions taken by contracting authorities, by adopting the necessary provisions respecting the minimum conditions set out in paragraph

2 of this Article and in Article [38e].

(2) A contract may not be concluded following the decision to award a contract falling within the scope of this Directive before the expiry of a period of at least 10 calendar days with effect from the day following the date on which the contract award decision is sent to the tenderers and candidates concerned if fax or electronic means are used or, if other means of communication are used, before the expiry of a period of either at least 15 calendar days with effect from the day following the date on which the contract award decision is sent to the tenderers and candidates concerned or at least 10 calendar days with effect from the day following the date of the receipt of the contract award decision.

Tenderers shall be deemed to be concerned if they have not yet been definitively excluded. An exclusion is definitive if it has been notified to the tenderers concerned and has either been considered lawful by an independent review body or can no longer be subject to a review procedure.

Candidates shall be deemed to be concerned if the contracting authority has not made available information about the rejection of their application before the notification of the contract award decision to the tenderers concerned.

Or. de

Justification

The inclusion of a review procedure in this Directive is intended to achieve genuine market opening, provide effective legal protection for tenderers and ensure transparency and non-discrimination in the award of contracts without prejudice to Member States' need to protect secret information.

Amendment 33

Proposal for a directive Article 38 d (new)

Text proposed by the Commission

Amendment

Article 38d

Derogations from the standstill period

Member States may provide that the periods referred to in Article [38c](2) do not apply in the following cases:

(a) if this Directive does not require prior publication of a contract notice in the Official Journal of the European Union;

(b) if the only tenderer concerned within the meaning of Article [38c](2) of this Directive is the one who is awarded the contract and there are no candidates concerned;

(c) in the case of a contract based on a framework agreement pursuant to Article 21. If this derogation is invoked, Member States shall ensure that the contract is ineffective in accordance with Articles [38f] and [38h] if

- Article 21(4)(2) is violated and

- the estimated value of the contract is equal to or exceeds the thresholds referred to in Article 6.

Or. de

Justification

The inclusion of a review procedure in this Directive is intended to achieve genuine market opening, provide effective legal protection for tenderers and ensure transparency and non-discrimination in the award of contracts without prejudice to Member States' need to protect secret information.

Amendment 34

Proposal for a directive Article 38 e (new)

Article 38e

Time limits for applying for review

Where a Member State provides that any application for review of a contracting authority's decision taken in the context of, or in relation to, a contract award procedure falling within the scope of this Directive must be made before the expiry of a specified period, this period shall be at least 10 calendar days with effect from the day following the date on which the contracting authority's decision is sent to the tenderer or candidate if fax or electronic means are used or, if other means of communication are used, this period shall be either at least 15 calendar days with effect from the day following the date on which the contracting authority's decision is sent to the tenderer or candidate or at least 10 calendar days with effect from the day following the date of the receipt of the contracting authority's decision. The communication of the contracting authority's decision to each tenderer or candidate shall be accompanied by a summary of the relevant reasons. In the case of an application for a review concerning decisions referred to in Article [38b](1)(b) that are not subject to a specific notification requirement, the time period shall be at least 10 days from the date of publication of the decision in question.

Or. de

Justification

The inclusion of a review procedure in this Directive is intended to achieve genuine market opening, provide effective legal protection for tenderers and ensure transparency and non-discrimination in the award of contracts without prejudice to Member States' need to protect secret information.

Amendment 35

Proposal for a directive Article 38 f (new)

Text proposed by the Commission

Amendment

Article 38f

Ineffectiveness

(1) Member States shall ensure that a contract is considered ineffective by a review body independent of the contracting authority or that its ineffectiveness is the result of a decision of such a review body in any of the following cases:

(a) if the contracting authority has awarded a contract without prior publication of a contract notice in the Official Journal of the European Union without this being permissible in accordance with this Directive;

(b) in case of an infringement of Article [38a] (5), Article [38b](3) or Article [38c](2) of this Directive, if this infringement has deprived the tenderer applying for review of the possibility to pursue precontractual remedies where such an infringement is combined with another infringement of this Directive, if that infringement has affected the chances of the tenderer applying for a review to obtain the contract;

(c) in cases referred to in the second subparagraph of Article [38d](c) of this Directive, if Member States have invoked the derogation from the standstill period for contracts based on framework agreements.

(2) The consequences of a contract being considered ineffective shall be provided for by national law. National law may therefore provide for the retroactive cancellation of all contractual obligations or limit the scope of the cancellation to

those obligations which still have to be performed. In the latter case, Member States shall provide for the application of other penalties within the meaning of Article [38g](2).

(3) Member States may provide that the review body independent of the contracting authority may not consider a contract ineffective, even though it has been awarded illegally on the grounds mentioned in paragraph 1, if the review body finds, after having examined all relevant aspects, that justified vital security interests of the Member State require that the validity of the contract should be maintained. In this case, Member States shall provide for alternative penalties within the meaning of Article [38g](2), which shall be applied instead.

Economic interests in the effectiveness of a contract may only be considered as overriding reasons if in exceptional circumstances ineffectiveness would lead to disproportionate consequences.

However, economic interests directly linked to the contract concerned shall not constitute overriding reasons relating to a general interest. Economic interests directly linked to the contract include, inter alia, the costs resulting from the delay in the execution of the contract, the costs resulting from the launching of a new procurement procedure, the costs resulting from the change of the economic operator performing the contract and the costs of legal obligations resulting from the ineffectiveness.

(4) Member States may provide that paragraph 1, lit. a, shall not apply if – the contracting authority considers that the award of a contract without prior publication of a contract notice in the Official Journal of the European Union is permissible in accordance with this

Directive,

– the contracting authority has published in the Official Journal of the European Union a notice as described in Article [38j] expressing its intention to conclude the contract, and

– the contract has not been concluded before the expiry of a period of at least 10 calendar days with effect from the day following the date of the publication of this notice.

(5) Member States provide that paragraph 1, lit. c, shall not apply if

– the contracting authority takes the view that the contract is being awarded pursuant to Article 21(4)(2),

– the contracting authority has sent a contract award decision, together with a summary of the reasons as referred to in Article 26(1)(1a)(a), to the tenderers concerned and

– the contract has not been concluded before the expiry of a period of at least 10 calendar days with effect from the day following the date on which the contract award decision is sent to the tenderers concerned if fax or electronic means are used or, if other means of communication are used, before the expiry of a period of either at least 15 calendar days with effect from the day following the date on which the contract award decision is sent to the tenderers concerned or at least 10 calendar days with effect from the day following the date of the receipt of the contract award decision.

Or. de

Justification

The inclusion of a review procedure in this Directive is intended to achieve genuine market opening, provide effective legal protection for tenderers and ensure transparency and non-

discrimination in the award of contracts without prejudice to Member States' need to protect secret information.

Amendment 36

Proposal for a directive Article 38 g (new)

Text proposed by the Commission

Amendment

Article 38g

Infringements of this Directive and alternative penalties

(1) In the case of an infringement of Article [38a](5), Article [38b](3) or Article [38c](2) which is not covered by Article [38f](1)(b), Member States shall provide for ineffectiveness in accordance with Article [38f](1) to (3), or for alternative penalties. Member States may provide that the review body independent of the contracting authority shall decide, after having assessed all relevant aspects, whether the contract should be considered ineffective or whether alternative penalties should be imposed.

(2) Alternative penalties must be effective, proportionate and dissuasive. They shall comprise the following:

- the imposition of fines on the contracting authority; or***
- the shortening of the duration of the contract.***

Member States may confer on the review body broad discretion to take into account all the relevant factors, including the seriousness of the infringement, the behaviour of the contracting authority and, in the cases referred to in Article [38f](2), the extent to which the contract remains in force.

The award of damages does not constitute an appropriate penalty for the purposes of this paragraph.

Justification

The inclusion of a review procedure in this Directive is intended to achieve genuine market opening, provide effective legal protection for tenderers and ensure transparency and non-discrimination in the award of contracts without prejudice to Member States' need to protect secret information.

Amendment 37

Proposal for a directive
Article 38 h (new)

Text proposed by the Commission

Amendment

Article 38h

Time limits

(1) Member States may provide that the application for a review in accordance with Article [38f](1) must be made:

(a) before the expiry of at least 30 calendar days with effect from the day following the date on which

- the contracting authority published a contract award notice in accordance with Articles 22(4), 23 and 24, provided that this notice includes justification of the decision of the contracting authority to award the contract without prior publication of a contract notice in the Official Journal of the European Union; or

- the contracting authority has informed the tenderers and candidates concerned of the conclusion of the contract, provided that this information contains a summary of the relevant reasons referred to in Article 26(2), subject to Article 26(3). This option also applies to the cases referred to in Article [38d](c) of this Directive;

(b) and in any case before the expiry of a period of at least 6 months with effect from the day following the date of the

conclusion of the contract.

(2) In all other cases, including applications for a review in accordance with Article [38g](1), the time limits for the application for a review shall be determined by national law, subject to Article [38e].

Or. de

Justification

The inclusion of a review procedure in this Directive is intended to achieve genuine market opening, provide effective legal protection for tenderers and ensure transparency and non-discrimination in the award of contracts without prejudice to Member States' need to protect secret information.

Amendment 38

Proposal for a directive Article 38 i (new)

Text proposed by the Commission

Amendment

Article 38i

Corrective mechanism

(1) The Commission may invoke the procedure provided for in paragraphs 2 to 5 when it considers that a serious infringement of Community provisions in the field of public procurement has been committed during a contract award procedure falling within the scope of this Directive.

(2) The Commission shall notify the Member State and the contracting authority concerned of the reasons which have led it to conclude that a serious infringement has been committed and request its correction. It shall allow the Member State concerned a reasonable period within which to reply, regard being had to the circumstances of the case in point.

(3) Within the period referred to in paragraph 2, the Member State concerned

shall communicate to the Commission:

- (a) its confirmation that the infringement has been corrected; or*
- (b) a reasoned submission as to why no correction has been made; or*
- (c) a notice to the effect that the contract award procedure has been suspended either by the contracting authority on its own initiative or on the basis of the powers specified in Article [38b](1)(a).*

(4) In a submission pursuant to paragraph 3(b), it may in particular be indicated that the alleged infringement is already the subject of judicial proceedings or of another procedure or a review pursuant to Article [38b](9). In this case the Member State shall inform the Commission of the outcome of the proceedings or procedure as soon as it is known.

(5) Where notice has been given that a contract award procedure has been suspended in accordance with paragraph 3(c), the Member State shall notify the Commission when the suspension is lifted or another contract procedure relating in whole or in part to the same subject matter is begun. That notification shall confirm that the alleged infringement has been corrected or include a reasoned submission as to why no correction has been made.

Or. de

Justification

The inclusion of a review procedure in this Directive is intended to achieve genuine market opening, provide effective legal protection for tenderers and ensure transparency and non-discrimination in the award of contracts without prejudice to Member States' need to protect secret information.

Amendment 39

Proposal for a directive Article 38 j (new)

Text proposed by the Commission

Amendment

Article 38j

Content of a notice for voluntary ex-ante transparency

The notice referred to in Article [38f](4), second indent, the format of which shall be adopted by the Commission in accordance with the advisory procedure referred to in Article 41(2), shall contain the following information:

- (a) the name and contact details of the contracting authority;*
- (b) a description of the object of the contract;*
- (c) a justification of the decision of the contracting authority to award the contract without prior publication of a contract notice in the Official Journal of the European Union;*
- (d) the name and contact details of the economic operator in favour of whom a contract award decision has been taken;*
- (e) where appropriate, any other information deemed useful by the contracting authority.*

Or. de

Justification

The inclusion of a review procedure in this Directive is intended to achieve genuine market opening, provide effective legal protection for tenderers and ensure transparency and non-discrimination in the award of contracts without prejudice to Member States' need to protect secret information.

Amendment 40

Proposal for a directive

Article 44

Directive 2004/18/EC

Article 10

Text proposed by the Commission

This Directive shall apply to public contracts awarded in the fields of defence and security with the exception of contracts to which Directive XXXX/X/EC applies. It shall not apply to public contracts excluded from the scope of Directive XXXX/X/EC pursuant to Articles 8 and 9 thereof.

Amendment

Without prejudice to Article 296 of the EC Treaty, this Directive shall apply to public contracts awarded in the fields of defence and security with the exception of contracts to which Directive XXXX/X/EC applies. It shall not apply to public contracts excluded from the scope of Directive XXXX/X/EC pursuant to Articles 8 and 9 thereof.

Or. de

Justification

Clarification.

Amendment 41

Proposal for a directive

Annex I – table – row 2 – column 3

Text proposed by the Commission

From 60110000-2 to 60183000-4 (except 60160000-7, 60161000-4), and from 64120000-3 to 64121200-2

Amendment

60100000-9, from 60110000-2 to 60183000-4 (except 60160000-7, 60161000-4), **from 63100000-0 to 63111000-0, from 63120000-6 to 63121100-4, 63122000-0, from 63520000-0 to 63700000-6**, and from 64120000-3 to 64121200-2

Or. xm

Justification

In order to ensure that the inclusion of public works, supply and/or service contracts which is provided for in this Directive is complete, the Annex must be expanded.

Amendment 42

Proposal for a directive Annex I – table – row 3 – column 3

Text proposed by the Commission

From 60410000-5 to 60424120-3 (except 60411000-2, 60421000-5), **and** 60500000-3

Amendment

60400000-2, from 60410000-5 to 60424120-3 (except 60411000-2, 60421000-5), 60500000-3, **from 63100000-0 to 63111000-0, from 63120000-6 to 63121100-4, 63122000-0, 63520000-0, 63521000-7, 63524000-8, and 63700000-6**

Or. xm

Justification

In order to ensure that the inclusion of public works, supply and/or service contracts which is provided for in this Directive is complete, the Annex must be expanded.

EXPLANATORY STATEMENT

Background

European arms markets are characterised by their fragmentation. Since the 1990s the realisation has been growing within the EU that this fragmentation has adverse economic consequences. There are a number of reasons for this state of affairs:

- a) In response to geopolitical developments, over the last 20 years defence expenditure has fallen by half (the so-called peace dividend), leading to reductions in the turnover generated and the number of people employed by arms manufacturers and cutbacks in investment in the areas of research and technology. No increase in defence spending is likely in the immediate future. In detailed terms, that spending breaks down as follows¹:

In 2006 defence spending by the EU-26² amounted to € 201 billion (ranging between € 47 bn in the United Kingdom and € 35 m in Malta). This amount includes € 110 bn for expenditure on personnel and € 91 for defence matériel procurement. The figure of € 91 bn breaks down further into spending of € 39 bn on investment, including research and development, € 43 bn on operations and maintenance and € 9 bn for other expenditure items, including infrastructure and building measures.

A comparison of these figures with US spending in this area gives the following picture³: in 2006 the USA spent a total of € 491 bn, or 4.7% of GDP, on defence. Expenditure on operations and maintenance totalled some € 169 bn and investment some € 141 bn.

- b) The cost of developing new weapons systems has risen so much that even the larger Member States have difficulty in bearing the financial burden involved.⁴
- c) The restructuring of armed forces following the end of the Cold War has led to traditional items of equipment being ordered in smaller numbers and created requirements for qualitatively different defence capabilities.

The aim is therefore to achieve greater cost efficiency, thereby benefiting both national budgets and the arms industry, and, just as importantly, to provide the armed forces with the best possible equipment.

The establishment of a European security and defence policy makes it necessary to build up the necessary capacities, for which purpose a high-performance European industry is needed. The establishment of a European defence technology and defence industry base and a European market for the procurement of matériel is intended to contribute to this. The two can supply the capabilities required to meet global defence tasks and cope with the new challenges in the area of security.

¹ Information from the European Defence Agency. See <http://www.eda.europa.eu/facts.aspx>.

² Denmark is not involved in the work of the European Defence Agency.

³ <http://www.eda.europa.eu/genericitem.aspx?area=Facts&id=310>.

⁴ See Burkard Schmitt, 'From cooperation to integration, Defence and Aerospace Industries in Europe', Chaillot Paper 40, Paris, July 2000, p. 6 et seq.

Article 296 of the EC Treaty

In principle, defence procurement falls within the scope of Directive 2004/18/EC (Article 10), subject to the provisions of Article 296 TEC, which provides for a derogation from EU procurement rules on grounds of national security. In practice, however, the Member States systematically invoke Article 296 TEC in order to exclude almost all military procurement from the scope of Community law. The situation is little different on the economically increasingly important market in sensitive non-military security equipment. In both cases, the Member States frequently invoke Article 14 of Directive 2004/18/EC in order to circumvent Community rules. Accordingly, most contracts in this area are awarded on the basis of national rules and procedures. According to statistics, over the period between 2000 and 2004 the EU-15 States published only 13% of all contracts for defence equipment in the Official Journal, with the figures for individual Member States ranging between 2% (in Germany) and 24% (in France)¹. Thus derogations which according to Community law ought to be exceptional are in fact the rule.

This practice by the Member States violates the case law of the Court of Justice of the EC, which has established that Article 296 of the EC Treaty may be invoked only in limited and justified exceptional cases.² In an interpretative communication, the Commission has drawn the necessary conclusions from this case law and explained how it proposes to proceed in such cases in future.³

Directive on Defence Procurement

The proposal for a directive under consideration here (COM(2007) 766) is designed to allay the Member States' misgivings as to whether the existing Directive 2004/18/EC takes sufficient account of the specific nature of military procurement. The proposal for a directive was presented on 5 December 2007 together with the proposal for a directive on transfers of defence-related products within the Community (COM(2007) 765) and a Commission communication.⁴ Both directives aim to establish a common arms market, but using instruments which must be considered separately.

The aim of the proposal for a directive is to establish a uniform European legal framework which enables the Member States to apply Community law without jeopardising their security interests. The hope is that, as a result, they will less frequently feel obliged to invoke Article 296 TEC. To put it another way, Article 296 TEC remains in force, but its use is to be restricted to genuinely exceptional cases, as provided for in the EC Treaty and as called for by the European Court of Justice. Article 296 TEC would then only apply in those cases when the special provisions of the new directive are not sufficient to safeguard the Member States' security interests.

¹ Impact assessment concerning the proposal for a directive COM(2007) 766, Annex 11, p. 78: Rates of publication in the OJEU of defence contracts.

² CJEC, C-414/1997, COM/Spain; cf. also CJEC, C-337/2005, COM/Italy.

³ Interpretative communication on the application of Article 296 of the Treaty on the establishment of the European Communities (TEC) in the field of defence procurement, COM(2006) 779.

⁴ A strategy for a stronger and more competitive European defence industry, COM(2007) 764.

Your rapporteur endorses the aims of the proposal for a directive. On the basis of the aims of the resolution on the **Green Paper on Defence Procurement**¹ of 17 November 2005, in which the European Parliament had called upon the Commission to draft a directive taking particular account of the security interests of the Member States, further developing the Common Foreign and Security Policy, promoting greater European cohesion, preserving the role of the Union as a 'civil power' and devoting special attention to SMEs, which are strongly represented in this sector, this report devotes particular attention to the following points:

In view of the frequent overlapping of procurement on the defence and security market, the rapporteur agrees with the Commission that both the defence and security fields should be included in the **scope** of the proposal for a directive. As, however, all contracts falling within its scope involve sensitive information, it is proposed that the scope be uniformly defined in Article 1. In order to do justice to the problem that the list of arms, munitions and/or war material of 1958, which defines the scope for defence contracts, is no longer up to date, it is proposed that a contemporary interpretation be provided by using, in particular, the EU's annually updated common military list.

The **provision for derogations** pursuant to Article 296(1)(a) of the EC Treaty remains in force notwithstanding this proposal for a directive, but is incorporated in Article 9 of the proposal for a directive in a form appropriate to public procurement law in order to improve legal certainty and prevent abusive or avoidable application of Article 296 of the Treaty.

As regards **security of information and supply**, it is important to contracting authorities to obtain from tenderers commitments which are as reliable as possible. However, a tenderer cannot in every case provide proof or a definitive commitment, particularly regarding the conduct of a subcontractor or in relation to a transit entitlement. In the draft report, therefore, amendments are proposed which will make it easier for tenderers to comply with the requirements in practice.

A further essential element in the draft report is the introduction of a **review procedure**. This has the purpose of affording tenderers effective legal protection, promotes transparency and non-discrimination in the award of contracts, and thus contributes to genuine market opening. The system of legal remedies provided for in this proposal for a directive basically adopts the same approach as the standard legal remedy directives, but at the same time takes account of the special interests of the Member States in relation to the award of defence and security contracts.

¹ Defence Procurement, COM(2004) 0608. Report on the Green Paper on defence procurement, Committee on the Internal Market and Consumer Protection, Rapporteur Joachim Würmeling, A6-0288/2005.