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Committee on the Internal Market and Consumer Protection  
The Chairman

317008 13.10.2011

IMCO-11-0313  
D(2011) 48617

Mr. Gabriele ALBERTINI  
Chairman  
Committee on Foreign Affairs  
ASP 08 E 205  
EUROPEAN PARLIAMENT

*Dear Chairman*

**Subject: AFET Committee report on the impact of the financial crisis on the defence sector in the EU Member States (2011/2177(INI))**

I am pleased to see that your Committee is examining in comprehensive detail, in the draft report of Krzysztof Lisek, MEP, the Internal Market in the defence Sector.

The section in the draft report on 'Establishing a European Defence Equipment Market' covers issues related to the transposition of Directive 2009/81/EC on defence and sensitive security procurement and of Directive 2009/43/EC on transfers of defence-related products within the EU. As you know, the IMCO Committee was the lead Committee on both Directives and is therefore primarily responsible for following up on their transposition. By suggesting the introduction of a "pan-European certification for security and defence products", the draft report also makes concrete recommendations which relate to the harmonisation of technical standards in the internal market, also an exclusive competence of the IMCO Committee as set out in Annex VII to the Rules of Procedure.

I have discussed the above with the Coordinators of the IMCO Committee. They have agreed to examine the proposals contained in the Lisek report which relate to areas of IMCO competence, to see if they wish to add a contribution, and in particular to check if there are other aspects related to the implementation of the legislation which could be included or otherwise indicate where they consider the draft text of the report could be further improved.

The IMCO Committee would welcome the chance to add value to the report of your Committee and I would accordingly appreciate your confirmation that you would be prepared to include these elements, which I will transmit to you as soon as they are finalised by the Coordinators.

I look forward to a close and productive cooperation between the two Committees, and remain,

Yours sincerely

A handwritten signature in black ink, appearing to read 'Malcolm Harbour', with a horizontal line underneath the name.

Malcolm HARBOUR

*copy:* Mr Klaus-Heine LEHNE, Chairman, Conference of Committee Chairmen



Committee on the Internal Market and Consumer Protection  
The Chairman

IMCO-11-0349  
D(2011) 53957

317703   21.10.2011

Mr. Gabriele ALBERTINI  
Chairman  
Committee on Foreign Affairs  
ASP 08 E 205  
EUROPEAN PARLIAMENT

Dear Chairman,

**Subject: Report of the AFET Committee on the impact of the financial crisis on  
the defence sector in the EU Member States**

Further to my letter of 13 October 2011, I write to enclose a number of paragraphs approved by the IMCO Coordinators on 17 October 2011 concerning your Committee's Report on the impact of the financial crisis on the defence sector in the EU Member States ( Rapporteur Lisek ). They relate to the internal market dimension of the defence sector, the modernisation and effective enforcement of EU public procurement rules and the rules concerning offsets.

I trust that the AFET Committee can consider these paragraphs favourably. They have been prepared after consultation with the IMCO Rapporteurs for Defence Procurement Directive, and provide an informed assessment of the issues being examined. I would, accordingly, request your Committee to incorporate them into the final report.

Yours sincerely

Malcolm HARBOUR

## Annex

1. Considers that Directive 2009/81/EC strengthens the single market by reducing the diversity of procurement rules in the defence sector and by opening up national markets to greater competition; stresses the importance in the current context of the economic crisis of implementing a comprehensive and coherent defence procurement policy aimed at improving the competitiveness of the European defence sector in the global marketplace, where demand is consolidated, requirements are more widely harmonised, and where the use of article 346 TFEU is restrained; underlines the opportunity that lies therein to complement the establishment of an efficient and effective overall European public procurement framework;
2. Urges the Commission to ensure the timely and consistent transposition by the Member States of Directive 2009/81/EC; underlines that this would benefit from an evaluation by the Commission reporting on good practices as well as cases of misapplication of the new rules;
3. Calls on the Commission and the Member States to ensure that the objectives underlying the on-going efforts aimed at modernising and streamlining the overall European public procurement framework also inform the implementation of Directive 2009/81/EC;
4. Underlines that in particular the objectives of administrative simplification and burden-reduction should be reflected in the practical application of Directive 2009/81/EC; stresses that greater use of innovative procurement techniques, especially including those related to the aggregation of requirements, use of ICT and incentives-setting for R&D as laid down in the respective provisions of the directive should be encouraged in defence procurement, as they may be particularly suited to this field and can play a major role in reducing the administration and costs related to procurement procedures;
5. Recalls that the contracts awarded in the field of defence and security are often technically complex; stresses that in order to facilitate cross-border tendering there is a need to review incompatible or disproportionate technical requirements so as to minimise and where possible, eliminate barriers to the internal market;
6. Recalls that potential subcontractors should not be discriminated against on the grounds of nationality and depending on the value of the contract, the primary contractor may be required to tender or at least organise a transparent and non-discriminatory competition when awarding subcontracts to third parties;
7. Revised (47): Stresses that ~~offsets practices that may accompany defence procurement not covered under Directive 2009/81/EC, for which the exemption under Article 346 TFEU has been applied,~~ **that are justified under Article 346 TFEU** should be consistent with the principles of transparency and non-discrimination and must not cause risks of corruption or disrupt the functioning of the European defence equipment market;

8. Revised (48.): ~~Calls on the Member States to make the EDA Code of Conduct on Offsets more ambitious and to work towards the phasing-out of offsets; notes, however, that offset practices may in certain cases help domestic industries become more efficient and contribute to the development of the European defence industrial base; asks the EDA and the Commission to work together in order to foster the integration of smaller Member States' industries into the European defence technological and industrial base by other means than offsets;~~

**Justification for points 7 and 8 (revised points 47 and 48)**

**Revised Point 47.** The drafting of (original) point 47 must be clarified: the present wording misleadingly implies that if a given procurement falls within the scope of article 346 TFEU, offsets would be possible. However, the Community approach is clearly that the off-sets themselves must be justified on the basis of art. 346 TFEU. Moreover, there are no 'non-discriminatory offsets'.

The wording has been adjusted accordingly:

*47: Offsets that are justified under Article 346 TFEU have to be consistent with the principles of transparency and must not cause risks of corruption or disrupt the functioning of the European defence equipment market;*

**Revised Point 48:** the proposed wording of (original) Point 48 creates a wrong impression wrt. the relevance and importance of the EDA's (European Defense Agency) Code of Conduct on Offsets. Indeed the objective is not to promote a 'more ambitious code of conduct'. Similarly to the EDA code of conduct referred to under point 45, the EDA code on offsets will be made obsolete by the defence directive; hence it loses (at the latest) its validity at the directive's date of entry into force. Furthermore, it should be noted that the code is not (and never was) binding and contradicts the principle of case-by-case-evaluation, as to whether in a concrete case offsets are covered by article 346.

Therefore, point 48 has been shortened as follows:

*48. Calls on EDA and the commission to work together in order to foster the integration of smaller Member States\* industries into the European defence technological and industrial base by other means than offsets.*