



European defence and security market strengthened: deal on public contracts

Defence procurement, still essentially a national competence, is boosted by a new directive, seeking to create a genuine single market for defence and security equipment and services adopted by the European Parliament in Strasbourg. MEPs voted in favour of the text agreed before with the Council. The challenge has been to put in place a legal framework which will invigorate intra-Community trade in this field and which the Member States can apply without risking their security interests.

The new legislation establishes a co-ordinated EU procedure for awarding contracts in the fields of defence and security. It should 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. The EU's general rules on public procurement, set out in a directive in 2004, take insufficient account of the specificities of the defence sector. This is one reason why building a single market for defence goods is such a laborious task. A new directive, governing only public procurement of defence and security goods, should help to achieve this aim. This market is worth over €90bn and the new directive is important for all EU Member States even though 90% of the production of EU defence equipment is concentrated in five Member States: France, UK, Germany, Italy and Sweden.

The Directive does not apply to contracts outside the EU or intelligence related contracts

Not only defence but also non-military security has been included in the scope of the directive. The directive covers public contracts concluded between EU operators. It will not apply to contracts governed by specific procedural rules pursuant to an international agreement or arrangement concluded between one or more Member States and one or more third countries. Neither will it apply to contracts for which the application of the rules set down in this Directive would oblige a Member State to supply information, the disclosure of which it considers contrary to the essential interests of its security, nor to contracts for the purpose of intelligence activities. A list of types of contracts not included in the scope of the directive is provided in the directive.

This Directive applies to contracts which have a value excluding value-added tax (VAT) estimated to be no less than the following thresholds:

- a) €412,000 for supply and service contracts;
- b) €5,150 000 for works contracts.

What is an 'armament'?

For the purposes of the Directive, the term "military equipment" should cover products which, although initially designed for civilian use, were later adapted to military purposes to be used as arms, munitions or war material, states the adopted text.

The scope's definition still refers to the list of arms, munitions and/or war material agreed by Member States in 1958 (the Common Military List of the EU). The Internal Market Committee proposed that a contemporary interpretation be provided by using, in particular, the EU's annually updated common military list. This proposal is not included in the final agreement. But the list should be "interpreted in a broad way in the light of the evolving character of technology."

Review procedure

Parliament introduces a new review procedure which sets out that Member States must take the measures necessary to ensure that decisions taken by the contracting authorities/entities may be reviewed effectively and, in particular, as rapidly as possible. Member States must 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.

Offsets, research and transparency

The new directive does not include specific rules on offsets, also called "industrial compensations". The provisions on subcontracting do not prohibit offsets but will help in preventing illegal offsets. They will also facilitate market access for SMEs. The new legislation strengthens transparency requirements to contractors, and does not allow combined research and production contracts for national procurements without a competitive stage.

Entry into force

The directive will enter into force on the day following the publication in the Official Journal of the European Union. Member States shall adopt and publish, at the latest two years after the entry into force of the Directive, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate the text of those provisions to the Commission.

One of the two key parts of the defence package

The parliamentary report on the proposal was drafted by Alexander Graf **LAMBSDORFF** (ALDE, DE) 597 MEPs voted in favour of the resolution, 69 against, with 37 abstentions. This new directive forms one of the two key components of the defence package. Another text, focused on simplifying and harmonising the rules for granting licences to transfers of military equipment from one country to another was adopted by the European Parliament in December.

Contact :

Cezary LEWANOWICZ

E-mail: envi-press@europarl.europa.eu

BXL: (32-2) 28 44659

STR: (33-3) 881 74903

Richard FREEDMAN

E-mail: press-EN@europarl.europa.eu

BXL: (32-2) 28 41448

STR: (33-3) 881 73785

PORT: (+32) 498 98 32 39