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## **REPORT**

on the Green Paper on defence procurement  
(2005/2030(INI))

Committee on the Internal Market and Consumer Protection

Rapporteur: Joachim Wuermeling

Draftswoman (\*): Angelika Beer, Committee on Foreign Affairs

(\*) Enhanced cooperation between committees – Rule 47 of the Rules of Procedure

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(\*) Enhanced cooperation between committees – Rule 47

## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on the Green Paper on defence procurement (2005/2030(INI))

*The European Parliament,*

- having regard to the Treaty establishing the European Community, and in particular Articles 95 and 296 thereof,
  - having regard to Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts<sup>1</sup>, and in particular Article 10 thereof,
  - having regard to the case law of the European Court of Justice<sup>2</sup>,
  - having regard to Rule 45 of its Rules of Procedure,
  - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee on Foreign Affairs and the Committee on Industry, Research and Energy (A6-0288/2005),
- A. whereas Article 296 of the Treaty provides a derogation to protect the essential interests of national security which are connected with the production of or trade in arms, munitions and war material, and, although that article also provides that measures taken pursuant to that derogation must not adversely affect the conditions of competition in the common market regarding products which are not intended for specifically military purposes, it is often abused,
- B. whereas Article 10 of Directive 2004/18/EC provides that, subject to Article 296, that Directive applies to contracts awarded in the field of defence,
- C. whereas the Court of Justice has held that Article 296 does not amount to a general, automatic derogation, that its use must be justified on a case-by-case basis, that recourse to it is justified only if it is necessary for achieving the objective of safeguarding the relevant security interests involved and that the burden of proof must be discharged by the Member State concerned,
- D. taking account of the economic importance of defence procurement within the European internal market, the tight budgetary position in the Member States, the restriction in terms of budgetary expenditure imposed on the Member States and the considerable burden which defence expenditure places on taxpayers,
- E. conscious of the specific features of defence markets, in particular with regard to the dominant role of the state, the importance of armaments procurement in terms of security and

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<sup>1</sup> OJ L 134, 30.4.2004, p. 114.

<sup>2</sup> In particular the judgment in the Johnston case, C-222/84, and the judgment in Case C-414/97, Commission v Spain.

the special nature of fragmented market structures, e.g. the very limited number of suppliers and demand and even monopolies;

- F. whereas the fragmented nature of the armaments market in Europe is one of the causes of weakness in terms of Europe's military capabilities,
  - G. whereas the complete fragmentation of armaments markets is also the cause of a lack of standardisation, which has led to a lack of interoperability between systems in Europe, making cooperation in international operations more difficult,
  - H. whereas the fact that 25 different sets of rules on procurement are in force constitutes an obstacle to implementation of the European Capabilities Action Plan,
  - I. whereas the 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 have shareholdings in the armaments industry.
1. Welcomes the Green Paper and encourages the Commission in its efforts to 'contribute to the gradual creation of a European defence market ... which is more transparent and open between Member States and which, whilst respecting the sector's specific nature, would increase economic efficiency', as well as competitiveness and common security in all Member States of the European Union;
  2. Takes seriously the task set by the Treaties, to be taken up in the European Constitution, of contributing *inter alia* through armaments cooperation to strengthening European cohesion;
  3. Calls 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;
  4. Agrees 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;
  5. Agrees with the Commission that a European defence market is necessary to reduce military expenditure costs and make the production of military goods more cost-effective in the interest of the European taxpayer;
  6. Stresses the need, particularly in the context of a more efficient European armaments industry, not to bring into doubt the Union's role as a civil power;
  7. Emphasises that the increased efficiency of the industry should serve to protect European soldiers in action and benefit European citizens;
  8. Points out that every effort must be made at EU level to increase harmonisation, standardisation with accepted NATO standards of interoperability and cooperation in defence procurement matters in accordance with specific European Security and Defence Policy needs and that, in the process, overcoming ECAP shortfalls should be seen as a priority by all Member States;

9. Agrees with the Commission that pressure should be placed on national defence procurement agencies to alter the practice of general derogation pursuant to Article 296 and measures taken to ensure that defence procurement is covered to a larger extent by European Community legislation rather than by national legislation;
10. Believes 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;
11. Considers that the Interpretative Communication should not amend Article 296, but, rather, should explain it on the basis of the relevant case law of the European Court of Justice, and in particular should clarify the product groups covered, the steps in the armaments procurement procedure that are covered by the derogation and the scope of essential security interests;
12. Regards a restrictive interpretation of national security interests as appropriate, given that Member States are already mutually dependent in areas such as monetary affairs or energy; wonders to what extent any meaningful distinction at all can still be drawn between national and common European security interests;
13. Could imagine, given that Article 296 can be revised only by amending the Treaty, a self-imposed obligation by Member States to invoke derogations in limited individual cases; at the same time welcomes the industry's commitment to playing a part in the development of a code of conduct for defence procurement;
14. Is aware of the limited suitability of conventional public procurement directives for armaments procurement because of the area's specific features;
15. Believes, with regard to the new directive, that both mandatory and optional instruments could be considered in connection with procurement procedures; considers that the emphasis should be placed on creating greater transparency and fairness in the award of contracts; points 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;
16. Regards the possibility of negotiations in such procurement procedures as essential, particularly where standard products are not involved;
17. Believes that there must be intensive consultation with stakeholders in drawing up the draft directive, and stresses the need for a business impact study and a foreign-relations impact study;
18. Points to the presence of many small and medium-sized enterprises in the sector which are distinguished by a high degree of specialisation and efficiency; seeks to ensure that SMEs with dual military and civilian technology can benefit from the opening up of the market;
19. Urges Member States to cooperate actively with the Commission on the 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; is of the opinion that this code should apply to contracts covered by Article 296 with the aim of introducing more competition and transparency to the sector; believes that it should be ensured that national parliaments are involved in the process in line with relevant national legislation; is of the opinion that the European Parliament should be consulted;

20. Considers that the Code of Conduct should:

- a) provide Member States with a consultation mechanism in connection to R&D and procurement,
- b) define preconditions for exemptions under Art 296 and ensure the required transparency of reasons for exemption and non-publication of information,
- c) inform policies regarding cross-border competition and transfer of defence equipment,
- d) inform rules for fair competition and state support in order to avoid distortions on competition,
- e) provide criteria for contractor eligibility and selection, and other important mechanisms,
- f) set out criteria for laying the ground for a European Defence Equipment Market, which in the medium term could be developed to a directive depending on the progress in developing the market,
- g) lay down general orientations on how to handle offset practices;

21. Urges the Commission to work closely with the EDA so as to establish in parallel a comprehensive plan with accompanying measures in related areas, such as security of supply, transfer and exports, which are necessary to create a level playing field for fair intra-European competition and reliable statistical information about the market;

22. Considers that the successes achieved in the field of common foreign and security policy and the internal market have created the confidence to finally venture to take new steps in this important area;

23. Points to a series of obstacles to the competitive award of contracts which are not due to the nature of public procurement *per se*, such as:

- restrictions on cross-border trade in armaments within the EU,
- exertion of political influence on award decisions,
- the strong state influence on armaments companies,
- the lack of controls on aid,
- the lack of research cooperation (within EU research policy too),
- the lack of market rules at the global level;

and calls on the Commission to take appropriate measures, in tandem with this initiative, to tackle these problems;

24. Recognises that defence procurement problems in the EU are partly linked to the absence of a genuine 'two-way street' with the United States; therefore poses the question whether European defence procurement agencies should be recommended to make more European purchases; is convinced that the new EU defence procurement legislation should not be used as an instrument enabling US corporate interests to unilaterally infiltrate European defence procurement markets;
25. At the same time considers, however, that adoption and observation of the revised EU Code of Conduct on Exports of Military Equipment, adopted by the Council on 25 April 2005, constitute a basic condition for all Member States; calls on the Commission to monitor and evaluate observation of this Code of Conduct;
26. Calls on the Commission - together with the European Defence Agency - to put forward proposals for the long term 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;
27. Asks the Commission to examine whether Member States are classifying, on certain occasions, dual use equipment and technology as military, thereby avoiding the application of EU legislation on public procurement;
28. Stresses the leading role of the European Defence Agency and other bodies currently involved in the procurement of armaments;
29. Agrees that ending the fragmentation of the defence equipment market will increase the competitiveness of the industry as a result of higher-volume product series, a greater return on research and enhanced global marketability; also stresses that voluntary restrictions on exports to third countries laid down by the Member States in the Code of Conduct in 1998 should be fully applied;
30. Regards the opening up of the market as a precondition for strengthening a financially viable EU armaments industry, for developing an autonomous and powerful industrial basis for more cost-effective procurement and for ensuring the necessary defence capabilities; also considers that the inevitable concentration of the armaments industry should be subject to greater monitoring and control by the Commission (DG Competition) as regards competition law, so that the advantages of mass production are not jeopardised by sectoral monopolies and the resulting market power of companies;
31. Instructs its President to forward this resolution to the Council and Commission and the governments of the Member States.

## EXPLANATORY STATEMENT

### I. Subject of the Green Paper

*In September 2004 the Commission presented a Green Paper on defence procurement, with the objective of contributing to 'the gradual creation of a European defence equipment market (EDEM) which is more transparent and open between Member States'<sup>1</sup>. The Green Paper forms part of the strategy 'Towards a European Union defence equipment policy' adopted by the Commission at the beginning of 2003. The aim is to achieve more efficient use of resources in the area of defence and to raise the competitiveness of the industry in Europe, as well as to help bring about improvements in military equipment within the context of European security and defence policy.*

1. With a view to achieving a more coordinated EU policy in the area of defence, the Commission adopted a communication of a general nature, entitled 'Towards an EU Defence Equipment Policy', at the beginning of 2003. In this Communication, the argument is put forward that a common European defence equipment policy could help address the shortfalls in Europe's operational capabilities in the area of defence. The communication sets out a number of measures for achieving this objective, including:

- formulating an approach to defence equipment standardisation,
- simplifying European licensing systems, in order to facilitate the movement of defence equipment components between EU countries,
- (limited) application of competition rules in the defence sector, and
- optimising defence procurement at national and EU levels, with the end goal of having a single set of rules for procuring defence equipment in Europe.

The Green Paper on public procurement in the area of defence equipment which has now been presented by the Commission constitutes one of these measures, and is only one of many steps contributing towards the development of European defence cooperation.

2. The European single market that has existed since 1992 permits the free movement of goods within the EU's borders. An important aspect of this internal market is the requirement for contracting authorities to put contracts for procurement above a certain level out for tender throughout Europe.

However, pursuant to the derogation provided for in Article 296 of the EC Treaty<sup>2</sup>, the procurement of goods that serve a state's essential security interests is not subject to the rules of the European internal market

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<sup>1</sup> See Green Paper on defence procurement, COM(2004)608, p. 3.

<sup>2</sup> Article 296 TEC.

1. The provisions of this Treaty shall not preclude the application of the following rules:

(a) no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security;

(b) any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the common market regarding products which are not intended for specifically military purposes.



As, though, a precise interpretation of Article 296 has not been given, the derogation is invoked almost systematically when awarding public contracts. The use of the derogation in the case of so-called 'dual use' goods, used both for military and civilian purposes, is especially problematic. Examples include catering, computers, vehicles, clothing, etc.

## **II. Options**

The Green Paper refers to two possible instruments for achieving the goal of a more transparent and open European defence equipment market:

1. The existing derogation pursuant to Article 296 TEC could be clarified by an Interpretative Communication from the Commission, which could define more precisely contracts covered by the exemption under Article 296.
2. In addition, new specific rules (in the form of a directive) could be drawn up to coordinate the procedures for awarding contracts falling within the scope of the rules on exemption set out in Article 296. The rules would take account of the specific nature of such contracts. The objectives of a new directive would be:
  - (1) greater legal certainty in connection with contracts in the defence sector,
  - (2) more information at Community level on the contracts in question,
  - (3) the introduction of the necessary flexibility for the award of such contracts.

In contrast, sections of the industry are proposing that a voluntary Code of Conduct be implemented in the European defence equipment market under the supervision of the European Defence Agency (EDA).

The discussion therefore turns not on foreign, security or defence policy in general, but on the specific internal market aspect, the issue of the procurement of goods and services in this sector.

## **III. Assessment of the Green Paper**

The objective set in the Green Paper on Defence Procurement of making defence policy in Europe more efficient and competitive is welcomed by your rapporteur. In order to achieve the goal of a common market, it is without doubt necessary to take measures to remove barriers to trade in the defence industry. Article I-41 (3) of the European Constitution lays down that Member States 'shall undertake ... to improve their military capabilities'.

The benefits of a common European defence policy are obvious. At present, European defence expenditure totals some €160 billion. It is necessary to spend more efficiently. Suppliers can achieve economies of scale if the volume demanded is high enough, i.e. as a result of combining. Significant savings in terms of tax revenues can be made in this way. Particularly in the cost-intensive field of research such an approach will be imperative in future.

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2. The Council may, acting unanimously on a proposal from the Commission, make changes to the list, which it drew up on 15 April 1958, of the products to which the provisions of paragraph 1(b) apply.

Europe must also free itself significantly from its dependence on the American market and jointly work towards achieving its own solutions.

In addition, it is of vital importance to work towards achieving a common technological standard, so as to enable troops from different states carrying out operations to cooperate with each other. For example, Member States are currently using very different radio systems, which makes working together enormously more difficult.

Not least, common defence structures also contribute towards greater policy integration and solidarity within the EU.

For these reasons, the proposals put forward in this Green Paper represent an important step towards developing an effective common defence policy.

1. If the goal of opening up the European defence market is accepted, it follows that the exemption pursuant to Article 296 should be defined more precisely in order to prevent its misuse. It is also necessary to more clearly define the field of application of Article 296 through a more precise interpretation (enabling a dividing line to be drawn).

The core group of goods that are sensitive for security reasons will – there is no question about that – remain unaffected. The exemption for goods which are clearly of a military nature will continue to apply. It is simply a matter of preventing Article 296 from being invoked for goods that are not clearly of a military nature, in order to enable the internal market and the provisions of the new Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts to be effective.

2. Your rapporteur also believes that consideration should be given to drawing up a directive which would create, alongside the normal internal market rules on the one hand and the area covered by the exemption in Article 296 on the other, a – possibly optional – instrument taking into account the defence sector's specific requirements (including national security, supply and confidentiality requirements), whilst at the same time enabling competition between Member States.

Your rapporteur does not consider the proposal for a voluntary Code of Conduct put forward by the industry to be the right approach, as such a code would not be legally binding and it would therefore have limited effectiveness.

On the other hand, the reservation has been expressed that opening up the award of contracts would mean putting the cart before the horse. The industry in the various countries, it is commented, is very differently structured, for example with a privatised defence industry in Germany and a state-owned one in France.

In response to this argument, it should, however, be pointed out that in the telecommunications and energy sectors conditions also differed very widely at the time when the markets were opened up, and that the single market ultimately led to competition in those sectors. Any proposal for addressing a problem in the armaments field would probably be met with the objection that other measures should be taken first. And, after all, we have to start somewhere.

#### **IV. Conclusion**

Your rapporteur takes the view that it is necessary to open up the European defence market. The measures considered by the Commission, in particular an interpretation of Article 296 of the EC Treaty and a directive on public contracts in areas with relevance to security are a step in the right direction.

31.8.2005

## **OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS (\*)**

for the Committee on the Internal Market and Consumer Protection

on the Green Paper on Defence Procurement  
(COM(2004)0608 – 2005/2030(INI))

Draftsperson: Angelika Beer

(\*) Enhanced cooperation between committees - Rule 47 of the Rules of Procedure

### **SUGGESTIONS**

The Committee on Foreign Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Welcomes the Commission's communication and encourages its efforts 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';
2. Agrees with the Commission that current policies of 'juste retour' and off-setting for military procurement lead to large-scale distortion of competition and artificial divisions of labour between industrial partners and greatly hinder efficiency of procurement;
3. Agrees with the Commission that a European defence market is necessary in order to minimise military expenditure costs given the size of the market, and the need for advanced technology and heavy investment;
4. Points out that every effort must be made at EU level to increase harmonisation, standardisation with accepted NATO standards of interoperability and cooperation in defence procurement matters in accordance with specific ESDP needs and that, in the process, overcoming ECAP shortfalls should be seen as a priority by all Member States;
5. Urges the Commission to work towards reducing the import of Article 296 of the EC Treaty;
6. Urges the Commission to strive for the removal from the EC Treaty of Article 296 as the ultimate objective of its attempts to establish a coherent regulatory framework for defence procurement in Europe; in the meantime encourages all the efforts to reduce the importance of that article and requests the Commission to engage in in-depth reflection and thorough

discussion on the article's content, as well as on the practice of the general derogation before its withdrawal;

7. In the meantime, agrees with the Commission that every effort should be made to persuade national defence procurement agencies to discontinue the practice of general derogation from the application of Article 296 and to take measures to ensure that defence procurement is covered to a greater extent by Community legislation rather than purely by national legislation;
8. Notes that under current domestic and Community regulations some national defence markets are largely open to competition, whereas others remain almost entirely closed; urges governments therefore to take the decisions at national level to open their defence markets to wider competition;
9. Fully supports the Commission's proposals put forward in its Green Paper of 23 September 2004; the Commission should both issue an interpretative communication stating its determination to put a stop to the abuse of Article 296 and draw up, in parallel, a new directive adapted to the specificities of defence for the procurement of arms, munitions and war material subject to Article 296;
10. Urges Member States to cooperate actively with the Commission on this directive and to instruct the EDA to develop, as a complement to Community action, a code of conduct for defence procurement covered by Article 296;
11. Stresses that such courses of action are complementary, since they will tend to address different segments of the defence procurement market, and that, more specifically, the preparatory work being undertaken by the EDA on the code of conduct may yield very relevant results for future work on the proposed directive; expresses its concern, however, about the lack of political will by Member States to embrace the need for a specific directive and calls on them not to let progress on the code of conduct preclude movement on a directive;
12. Urges the Commission to work closely with the EDA on the establishment, in parallel, of a comprehensive action plan with accompanying measures in related areas, such as security of supply, transfer, exports, State aid and off-sets, which are necessary in order to create a level playing-field for fair intra-European competition;
13. Calls on the Commission to acknowledge the role of small and medium-sized enterprises and their contribution to the manufacture of dual-use and military products for defence and security uses;
14. Recognises that defence procurement problems in the EU are partly linked to the absence of a genuine 'two-way street' with the United States; therefore poses the question whether European defence procurement agencies should be recommended to make more European purchases; is convinced that the new EU defence procurement legislation should not be used as an instrument enabling US corporate interests to unilaterally infiltrate European defence procurement markets;
15. Calls on the Commission - together with the European Defence Agency - to put forward

proposals for the long term indicating how closer links between EU procurement markets and those in the US and also in countries such as Ukraine and, in specific sectors, Russia could lead to both greater choice and more efficient specialisation;

16. Agrees with the Commission that the EU's defence equipment policy should be based on due consideration and respect for the principles of ethics and fairness in the arms trade; with this in mind, encourages the Commission to put forward proposals to bring defence procurement into line with the need to respect the EU Code of Conduct on Arms Exports; reiterates that as long as that Code of Conduct is not legally binding, its purpose of improving transparency and contributing to an ethical CFSP will not be fulfilled;
17. Requests the Commission to cooperate further with the European Parliament on this issue and to maintain the highest possible levels of prior consultation and transparency;
18. Asks the Commission to examine whether Member States are classifying, on certain occasions, dual use equipment and technology as military, thereby avoiding the application of EU legislation on public procurement.

## PROCEDURE

<b>Title</b>	Green Paper on Defence Procurement		
<b>Procedure number</b>	2005/2030(INI)		
<b>Committee responsible</b>	IMCO		
<b>Committee asked for its opinion</b> Date announced in plenary	AFET 10.3.2005		
<b>Enhanced cooperation</b>	Yes		
<b>Draftsperson</b> Date appointed	Angelika Beer 8.12.2004		
<b>Discussed in committee</b>	26.5.2005	4.7.2005	29.8.2005
<b>Date suggestions adopted</b>	30.8.2005		
<b>Result of final vote</b>	for:	42	
	against:	5	
	abstentions:	0	
<b>Members present for the final vote</b>	Angelika Beer, Panagiotis Beglitis, Monika Beňová, André Brie, Elmar Brok, Ryszard Czarnecki, Véronique De Keyser, Giorgos Dimitrakopoulos, Camiel Eurlings, Anna Elzbieta Fotyga, Alfred Gomolka, Richard Howitt, Toomas Hendrik Ilves, Jelko Kacin, Ioannis Kasoulides, Helmut Kuhne, Joost Lagendijk, Vytautas Landsbergis, Cecilia Malmström, Emilio Menéndez del Valle, Francisco José Millán Mon, Baroness Nicholson of Winterbourne, Alojz Peterle, Tobias Pflüger, João de Deus Pinheiro, Mirosław Mariusz Piotrowski, Paweł Bartłomiej Piskorski, Bernd Posselt, Raül Romeva i Rueda, Libor Rouček, José Ignacio Salafranca Sánchez-Neyra, Jacek Emil Saryusz-Wolski, Gitte Seeberg, Marek Maciej Siwiec, Hannes Swoboda, Geoffrey Van Orden, Ari Vatanen, Luis Yañez-Barnuevo García, Josef Zieleniec		
<b>Substitutes present for the final vote</b>	Árpád Duka-Zólyomi, Alexandra Dobolyi, Giovanni Claudio Fava, Alexander Lambsdorff, Rihards Pīks, Aloyzas Sakalas, Inger Segelström, Alexander Stubb		
<b>Substitutes under Rule 178(2) present for the final vote</b>			

31.8.2005

## **OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY**

for the Committee on the Internal Market and Consumer Protection

on the Green Paper on defence procurement  
(2005/2030(INI))

Draftsman: Gunnar Hökmark

### **SUGGESTIONS**

The Committee on Industry, Research and Energy calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Welcomes the efforts to achieve better competition rules for defence procurement and a European Defence Equipment Market (EDEM); underlines that this is a precondition for ensuring a competitive European defence industry with advanced R&D taking place in the EU; notes that defence markets are highly fragmented, on both the demand as well as the supply side, due to the distinct national character of security strategies which have evolved through recent history; stresses that harmonised requirements, continuity and avoiding over burdensome regulatory procedures are necessary for developing a EDEM;
2. Underlines that the fragmentation of the market in itself is a crucial hindrance to fair competition and a well-functioning single market and underlines that reciprocity regarding fair competition in all Member States for all producers in the EU is a precondition for this to be achieved; notes that the amount of spending on defence equipment is strongly reduced, while the fragmentation and distortion of the market in form of state-owned companies, state subsidies and lack of competition are still the case, creating unbalanced proportions between spending on R&D in relation to the quantities produced;
3. Notes that the dominant and technologically interesting part of the defence market is covered by the Art 296 exemption, which makes it necessary to include this part in the efforts to achieve better competition and common market rules;
4. Is sceptical as to what can be achieved by an interpretative communication as this only provides clarification of present legal framework, thereby not addressing the more fundamental changes that must be made; welcomes the idea of a new directive but points out the problems that must be solved regarding state-owned industry and state involvement, as well as other market distortions, in order to guarantee fair competition; considers that any such directive should reduce the use of Article 296 to the absolute minimum necessary;



5. Proposes that a first and immediate step should be to assign to the European Defence Agency the responsibility to develop a Code of Conduct for EDEM, in those areas covered by the Art 296 exemption, and to supervise its implementation with rights to check the Member States' performance against the Code and to report on this; feels that the Code of Conduct, since it would not be legally binding, could lay down standards that would be difficult to achieve in a directive and impossible to achieve under an interpretation of the existing legal framework; believes that one of the aims of the Code of Conduct should be to open reciprocity between the US and the EU in the framework of EDEM;
6. Considers that the Code of Conduct should : a) provide Member States with a consultation mechanism in connection to R&D and procurement, b) define preconditions for exemptions under Art 296 and ensure the required transparency of reasons for exemption and non-publication of information, c) inform policies regarding cross-border competition and transfer of defence equipment, d) inform rules for fair competition and state support in order to avoid distortions on competition, e) provide criteria for contractor eligibility and selection, and other important mechanisms, f) set out criteria for laying the ground for a European Defence Equipment Market, which in the medium term could be developed to a directive depending on the progress in developing the market, g) lay down general orientations on how to handle offset practices;
7. Considers that the European Defence Agency, together with the Commission, should also consider to what extent the European defence procurement market might be networked with the US, other NATO markets and countries that share EU principles, and in selected sectors also with the Russian market, with a view to achieving more competition as well as greater technological efficiency;
8. Considers that the European Defence Agency and the Commission should pay particular attention in their proposals to the situation of small and medium-sized undertakings;
9. Believes that the EDA should have the right to monitor Member States and report on their performance as well as to ensure coordination with NATO requirements; it could also help both to harmonise existing national procedures and to negotiate all the necessary financial aspects; stresses that Member States should initiate and supervise of a procedure between themselves to coordinate the demand for defence equipment and services.

## PROCEDURE

<b>Title</b>	Green Paper on defence procurement
<b>Procedure number</b>	2005/2030(INI)
<b>Committee responsible</b>	IMCO
<b>Committee asked for its opinion</b> Date announced in plenary	ITRE 13.12.2004
<b>Enhanced cooperation</b>	No
<b>Drafts(wo)man</b> Date appointed	Gunnar Hökmark 17.3.2005
<b>Discussed in committee</b>	15.6.2005
<b>Date suggestions adopted</b>	30.8.2005
<b>Result of final vote</b>	for: 37 against: 6 abstentions: 0
<b>Members present for the final vote</b>	Ivo Belet, Šarūnas Birutis, Joan Calabuig Rull, Pilar del Castillo Vera, Den Dover, Lena Ek, Nicole Fontaine, Adam Gierek, Umberto Guidoni, András Gyürk, Fiona Hall, David Hammerstein Mintz, Rebecca Harms, Ján Hudacký, Romana Jordan Cizelj, Werner Langen, Nils Lundgren, Angelika Niebler, Reino Paasilinna, Miloslav Ransdorf, Vladimír Remek, Herbert Reul, Teresa Riera Madurell, Mechtild Rothe, Paul Rübig, Andres Tarand, Britta Thomsen, Patrizia Toia, Catherine Trautmann, Nikolaos Vakalis, Alejo Vidal-Quadras Roca, Dominique Vlasto
<b>Substitutes present for the final vote</b>	Dorette Corbey, Jan Christian Ehler, Norbert Glante, Françoise Grossetête, Satu Hassi, Edit Herczog, Gunnar Hökmark, Lambert van Nistelrooij, Pier Antonio Panzeri, Francisca Pleguezuelos Aguilar, Vittorio Prodi
<b>Substitutes under Rule 178(2) present for the final vote</b>	

## PROCEDURE

<b>Title</b>	Green Paper on defence procurement		
<b>Procedure number</b>	2005/2030 (INI)		
<b>Basis in Rules of Procedure</b>	Rule 45		
<b>Committee responsible</b> Date authorisation announced in plenary	IMCO 10.3.2005		
<b>Committees(s) asked for opinion(s)</b> Date announced in plenary	<b>AFET</b> 10.3.2005	<b>ITRE</b> 10.3.2005	
<b>Not delivering opinion(s)</b> Date of decision			
<b>Enhanced cooperation</b> Date announced in plenary	AFET 10.3.2005		
<b>Motion(s) for resolution(s) included in report</b>			
<b>Rapporteur(s)</b> Date appointed	Joachim Wuermeling 30.11.2004		
<b>Previous rapporteur(s)</b>			
<b>Discussed in committee</b>	15.3.2005	12.7.2005	5.10.2005
<b>Date adopted</b>	5.10.2005		
<b>Result of final vote</b>	for:	35	
	against:	1	
	abstentions:	1	
<b>Members present for the final vote</b>	Mia De Vits, Bert Doorn, Nigel Farage, Janelly Fourtou, Evelyne Gebhardt, Małgorzata Handzlik, Malcolm Harbour, Anna Hedh, Edit Herczog, Pierre Jonckheer, Henrik Dam Kristensen, Alexander Lambsdorff, Kurt Lechner, Lasse Lehtinen, Toine Manders, Arlene McCarthy, Manuel Medina Ortega, Bill Newton Dunn, Béatrice Patrie, Zita Pleštinská, Guido Podestà, Giovanni Rivera, Zuzana Roithová, Luisa Fernanda Rudi Ubeda, Heide Rühle, Leopold Józef Rutowicz, Andreas Schwab, Eva-Britt Svensson, József Szájer, Marianne Thyssen, Jacques Toubon, Bernadette Vergnaud, Barbara Weiler, Phillip Whitehead, Joachim Wuermeling		
<b>Substitutes present for the final vote</b>	Alexander Stubb, Diana Wallis		
<b>Substitutes under Rule 178(2) present for the final vote</b>			
<b>Date tabled – A6</b>	10.10.2005	A6-0288/2005	