P9_TA(2021)0102

Procurement in the fields of defence and security and transfer of defence-related products: implementation of relevant Directives


The European Parliament,


– having regard to Commission Recommendation (EU) 2018/624 of 20 April 2018 on

cross-border market access for sub-suppliers and SMEs in the defence sector\(^1\),

- having regard to the Commission notice on guidance on cooperative procurement in the fields of defence and security (Defence and Security Procurement Directive 2009/81/EC)\(^2\),

- having regard to the European Parliamentary Research Service (EPRS) study of September 2020 entitled ‘EU Defence Package: Defence Procurement and Intra Community Transfers Directives’,

- having regard to Rule 54 of its Rules of Procedure, as well as Article 1(1)(e) of, and Annex 3 to, the decision of the Conference of Presidents of 12 December 2002 on the procedure for granting authorisation to draw up own-initiative reports,

- having regard to the opinion of the Committee on Foreign Affairs,

- having regard to the report of the Committee on the Internal Market and Consumer Protection (A9-0025/2021),

A. whereas the Defence Procurement Directive seeks to introduce fair and transparent rules for defence procurement to make sure that defence companies in the Member States can access other Member States’ defence markets;

B. whereas the Transfers Directive sets out to improve the functioning of the European defence equipment market (EDEM), promote integration of the EU defence supply chain and increase security of supply, by simplifying the rules and procedures for intra-EU transfers of defence-related products;

C. whereas both directives set out to boost the internal market for defence-related products and to strengthen the competitiveness of the EDEM;

D. whereas the Defence Package directives are needed to further develop a common European security and defence culture, based on the Union's shared values and objectives, with respect for the specific character of the security and defence policies of the Member States;

E. whereas the 2016 Commission evaluation concluded that the objectives of the Defence Procurement Directive had only been achieved partially, since it allowed for an initial increase in competition, transparency and non-discrimination in the EU’s defence procurement market, but that much more progress in Member States’ consistent use of the directive was needed to achieve those objectives fully;

F. whereas the EPRS study pointed out the insufficient effect of the Defence Procurement Directive on the Europeanisation of defence value chains;

G. whereas the 2016 Commission evaluation showed that differences in how the Transfers Directive had been transposed posed major barriers to its effective application, which resulted in slow or incomplete application in individual Member States, a general lack of harmonisation in requirements and procedures between Member States, and highly

\(^1\) OJ L 102, 23.4.2018, p. 87.

\(^2\) OJ C 157, 8.5.2019, p. 1.
diverging conditions and limitations in the General Transfer Licences (GTLs) published by Member States;

H. whereas, in addition to the general market entry barriers of geographic distance, linguistic barriers, and lack of cross-border market knowledge, small and medium-sized enterprises (SMEs) in the defence sector also face additional administrative hurdles such as concerns regarding the security of supply, the complexity of the sub-contracting provisions, and the high costs of certification;

I. whereas SMEs face major challenges when participating in public procurement procedures;

J. whereas a major reason for the lack of participation of SMEs is the lack of cross-border access to supply chains; whereas defence supply chains have a substantial national focus, which adds challenges for SMEs that wish to enter defence supply chains in other European countries; whereas, moreover, original equipment manufacturers continue and limit themselves to subcontracting SMEs with which they have a pre-existing working relationship, owing to financial constraints;

K. whereas there is a need to develop a comprehensive and holistic concept for a European defence equipment market which formally connects all existing fragments such as the European Defence Industrial Development Programme (EDIDP), the Preparatory Action on Defence Research (PADR), the European Defence Fund (EDF), Permanent Structured Cooperation (PESCO), the Common Position on Arms Exports, the Dual-Use Regulation¹, the two directives of the 2009 Defence Package and future initiatives such as common rules on security of supply;

L. whereas without policy coherence and an effort to build links between different fragments of policy there is a risk that action at the EU level will add to existing market distortions and other highly inefficient processes and policies in the defence sector;

*Improving the functioning of the internal market for defence products through better implementation and enforcement of the Defence Package*

1. Reiterates its support for the ambitions of the Defence Package directives, which were established to promote further integration of the EU defence supply chain and increase mutual trust and transparency between Member States, equal treatment and the overall competitiveness of Europe’s defence industry;

2. Stresses that the effective implementation of the directives is a step towards the EU’s ambition of strategic autonomy and a European Defence Union; underlines that the directives could make EU defence policy more coherent and foster the development of the European defence industry, provided that Member States have a common vision and shared strategic outlook on European defence initiatives;

3. Regrets the continued fragmentation of the EU’s internal market for defence products, which is still leading to unnecessary duplications and the multiplication of inefficiencies

in defence spending by the Member States;

4. Welcomes some of the positive trends witnessed in the progressive implementation of the Defence Procurement Directive, namely the increasing number of contract notices and contract-award notices issued by Member States, and the increasing proportion of procurement that has been tendered competitively through Tenders Electronic Daily (TED); stresses, however, that a very high volume of procurement expenditure is still incurred outside the directive and that an overwhelming percentage of contracts are still awarded nationally; stresses also that the procedures are not easily accessible to SMEs;

5. Underlines that the systematic use by the Member States of the provisions relating to exclusion, in particular those laid down in Article 346 of the Treaty on the Functioning of the European Union (TFEU), could undermine the full and proper implementation of the Defence Procurement Directive;

6. Recalls the Commission’s interpretative guidance as to the conditions under which Article 346 TFEU can be invoked in the field of defence procurement, which aims to prevent potentially abusive recourse to, misuse and misinterpretation of this provision by the Member States; calls on the Member States to strictly follow the Commission’s interpretative guidance and asks the Commission to ensure that it is implemented and enforced consistently;

7. Calls for the correct use of exemptions and offset requirements in defence acquisitions, which limit fair competition in the European defence equipment market, and more particularly for the better monitoring and enforcement of the correct usage of the exemption for government-to-government sales in line with the Commission’s 2016 guidance notice on government-to-government sales and the application of the Defence Procurement Directive; asks Member States, in this respect, for more systematic and comprehensive reporting of consistent, accurate and comparable data concerning their use of exemptions in order to improve scrutiny over and the implementation of the relevant Commission guidelines; believes that the Commission should assume its responsibility for monitoring the necessity and proportionality of exclusions invoked by the Member States in their awarding of contracts outside the scope of the Defence Procurement Directive, and should not be mainly reliant on received complaints filed by the industry; urges the Commission, therefore, to step up its efforts and take bold and proactive measures to prevent the misuse of exceptions and adopt a more assertive enforcement policy, in particular by ensuring the effectiveness of infringement procedures;

8. Considers that there is still a strong need to focus on the effective implementation and enforcement of the Defence Procurement Directive, considers that, for that to happen, the Member States should focus on ensuring equal treatment, transparency and competition as well as on access to public procurement in this field, and that the Commission should focus on implementing common reporting standards and providing the Member States with further guidelines and information on the application of the provisions laid down in the directive;

9. Calls on the Member States to properly implement the Defence Procurement Directive and asks those with a large established defence industry to lead by example;

10. Considers that, in order to provide quality-driven and agile procurement, some aspects
of the implementation of the Defence Procurement Directive could be improved, such as the Member States’ use of the open procedure, innovation partnerships or other new procedures as provided for in Directive 2014/24/EU\(^1\), and encourages Member States to consistently apply that directive whenever possible; believes, however, that no revision of the Defence Procurement Directive and the Transfers Directive is needed at this point, since the existing regulatory framework is sufficient if correctly implemented and properly used and enforced;

11. Calls, therefore, on the Commission to monitor the implementation of the directives, to improve their transparency and provide guidance to the Member States in order to ensure their consistent and full enforcement and therefore fully achieve their objectives, as the lack of reciprocity could disincentive Member States with a higher degree of implementation;

12. Observes that, in respect of the Transfers Directive, the take-up of new tools, including GTLs, is rather low compared to Individual Transfer Licences (ITLs), which were intended to be replaced by the new tools;

13. Observes, further, that there was a slower and lower than expected uptake of certification, and that there are still barriers to effective application of the Transfers Directive, with low levels of awareness, particularly among SMEs, of the tools available under the directive and the opportunities that exist in the internal market, and of the system used by the Member States in their export controls, in addition to the lack of harmonisation in the implementation of GTLs, which act as major barriers to the effective application of the directive;

14. Considers, therefore, that the Transfers Directive has only partially achieved its main objectives, in particular that of smoothing the circulation of defence-related products within the internal market and of having an efficient internal market, greater security of supply and improved competitiveness;

15. Underlines the importance of having a genuine internal market for intra-EU transfers of defence-related products, where national authorities are aware of what and to whom products are transferred and where the export authorisations and other restrictions to exports are brought to a required minimum;

16. Notes, in this context, the progress achieved by the Commission with its recommendations on the scope of application and conditions of GTLs;

17. Calls on the Commission to improve the Transfers Directive’s implementation in individual Member States by insisting that national authorities resolve outstanding issues;

18. Calls for increased development of contacts and exchanges between the national transfer control communities across the EU to address the existing divergences of transfer control practices and the lack of trust between Member States, as well as to assess the appointment of unique national points of contact for intra-EU transfer-related issues;

\(^1\) OJ L 94, 28.3.2014, p. 65.
19. Calls on the Member States to take due account of the Commission recommendations on the scope of application and conditions of GTLs and to avoid adding conditions for transfers under GTLs, which would contradict or undermine the conditions listed in the recommendations; underlines the need to provide translations of national transfer licence regulations, at least in English; calls on the Commission to fully support and assist Member States in developing harmonised global and individual transfer licences for EDIDP and EDF projects;

20. Welcomes the provisions of the Transfer Directive that aim to foster cooperative procurement in the field of defence and calls on the Member States to make use of all the cooperation possibilities offered by the directive in a genuine spirit of solidarity, notably under the EDIDP and the future EDF;

21. Calls on the Commission to make the follow-up to the recommendations on the scope of application and conditions of GTLs a priority, including by considering the possibility of converting the recommendations into binding provisions, with a view to a progressive harmonisation as an overarching objective for the coming years;

22. Calls on the Commission and the Member States to increase efforts in raising awareness of the Transfer Directive’s tools and benefits, in particular among SMEs;

23. Takes note of the Strategic Compass intended to conduct a common threat analysis; believes that the Defence Package should be one of its building blocks contributing to export control policies;

24. Calls on the Commission and Member States to improve the quality, transparency, consistency and availability of data and consider the creation of dedicated statistical classification codes in order to facilitate the monitoring of the implementation of these two directives and provide meaningful scrutiny;

25. Highlights the disparities in publication rates of contract notices between Member States on TED; stresses the importance of ensuring the accessibility and usability of the Register of the Certified Defence-related Enterprises (CERTIDER) online database; emphasises the need to systematically make data available on intra-EU transfers, including quantitative data as well as a breakdown by licence categories, in order to better take into account defence and armament activities; notes that such disparities contribute to the lack of reliable data and may cause disruption to the internal market, and that the lack of reciprocity could disincentive Member States with a higher degree of implementation;

26. Calls on the Commission to study the feasibility of establishing common standardised administrative forms with the objective of lowering businesses’ administrative burden, particularly for SMEs, and to build a European approach to transfers of defence-related products;

27. Calls on the Commission to be strong in enforcing the directives, including, by making more use of its right as laid down in Article 258 TFEU to start infringement procedures; asks the Commission to initiate infringement procedures instead of solely acting on complaints filed by the industry;

Combating market fragmentation and increasing SME participation
28. Notes that SMEs appear to be less successful in winning contracts under the Defence Procurement Directive than in general EU public procurement; notes, further, that the subcontracting provisions of the directive have clearly not been used on a regular and structured basis by Member States’ authorities; finds that some Member States experience these provisions as complex and difficult to use, which partially explains the limited impact of the directive, and that there is hence a need for SMEs to be encouraged to participate in this process and for procedures to be simplified;

29. Highlights that certification processes are regarded as costly, lengthy and burdensome, and hence neither accessible nor attractive for SMEs;

30. Asks Members States to systematically follow the Commission’s recommendation on cross-border market access for sub-suppliers and SMEs in the defence sector, such as requirements for the quality of information, the division of contracts into lots or the alleviation of the administrative burden arising from the procurement procedure;

31. Considers, therefore, that the goal of increasing SME participation has only been partially achieved;

32. Is of the opinion that the provisions of the Defence Procurement Directive with regard to competition between subcontractors have had no or a very limited impact on the cross-border access of sub-suppliers and defence SMEs; calls on the Member States to ascertain that their internal procedures allow for SMEs’ cross-border participation and simplify their access to and participation in tendering processes in the fields of defence and security;

33. Observes that a number of SMEs active in the defence markets are involved in dual-use, while many remain specialised specifically in defence-related activities and are therefore particularly dependant on military and defence-related businesses;

34. Calls on the Commission to continue its work and thoroughly examine the causes behind the lack of SME participation;

35. Calls on the Commission to consider creating an updated map of data on relevant SMEs, which, while guaranteeing the protection of sensitive data and intellectual property, outlines their industrial and technological capabilities and which can be publicly accessed by prime contractors from other Member States in order to identify SMEs with the relevant capabilities needed for specific projects, and to propose other effective tools that could increase SMEs’ participation in the public procurement process;

36. Calls on the Commission to improve access to finance for SMEs;

37. Considers that Member-State action could significantly improve cross-border market access for SMEs and sub-suppliers in the defence sectors, and therefore calls on the Member States to implement the Commission recommendations as comprehensively as possible;

38. Calls on the Member States to make more systematic use of existing tools at EU level, such as the Enterprise Europe Network, to support SMEs’ cross-border activities;
Achieving an open European defence equipment market

39. Considers that better implementation of the directives is critical in order to attain the overarching objective of improving the functioning of the internal market for defence products and of contributing to the establishment of an open EDEM;

40. Calls on the Commission to work towards increasing the uptake of the legislative framework on transfers of defence-related products, improving the availability of GTLs throughout the EU and addressing the limited application of the certification scheme, which can boost the development of the EDEM and thereby improve the functioning of the internal market for defence products;

41. Calls on the Commission to undertake specific actions that set out to build more trust among the Member States in the area of defence and security in order to boost their cooperation and create a genuine single market for defence products;

42. Believes that effective implementation of the directives would also further enhance the effectiveness of defence initiatives launched over recent years, notably PESCO, the Coordinated Annual Review of Defence (CARD), the EDF and the revised Capability Development Plan (CDP), which altogether can boost collaborative defence capability planning, development, procurement and operation; calls on the Member States to boost the EDEM through cooperation on projects under PESCO and the EDF; notes in this regard that lessons learnt and best practices stemming so far from the implementation of the Defence Package should be shared among the Member States in order to remedy an uneven level of their implementation;

43. Underlines that a more coherent interpretation and consistent implementation of the EU Common Position on Arms Exports, taking into account the eight EU criteria on arms exports, is needed in order to limit fragmentation of the EU’s internal defence market and reinforce the consistency of its foreign policy; calls for action to address any loopholes which may exist among the Transfers Directive, the Common Position and the Dual-Use Regulation;

44. Calls on the Member States to demonstrate political will in increasing intra-EU defence acquisition and R&D cooperation and to make use of common defence R&D and acquisitions in order to boost interoperability between their militaries;

45. Calls for renewed efforts to tackle persistent technology and innovation gaps and lags in the EDTIB in order to reduce Europe’s growing dependence on defence imports; stresses that in order to build a reliable and comprehensive European defence equipment market and an efficient defence sector, the Commission needs to present a comprehensive EU-wide security of supply regime strategy;

46. Stresses that EU-UK defence cooperation is not covered by the Trade and Cooperation Agreement and recommends that an appropriate analysis be carried out into what impact Brexit will have on the EU defence equipment market;

47. Considers that, since the adoption of the two directives, the EDEM has experienced many changes; calls on the Commission to analyse the efficiency of the tools available in the light of those changes;
48. Instructs its President to forward this resolution to the Council and the Commission.