



EUROPEAN COMMISSION

Brussels, 07.04.2014
C(2014) 1959 final

Dear President,

The Commission would like to thank the Camera Deputaţilor for its Opinion concerning the Commission's Communication "Towards a more competitive and efficient defence and security sector {COM(2013) 542 final}.

The Commission welcomes the broad support the Opinion provides to the key objectives and action areas put forward in its Communication. The Opinion sets out a number of interesting perspectives on the Communication and the Commission's reactions are set out below.

Strengthening the internal market

The Camera Deputaţilor correctly identifies the central role that the Directive 2009/81/EC (on defence and security procurement) has in strengthening the internal market for defence. The Commission fully agrees that, in the light in particular of the specificities of this market, it is necessary to monitor the openness of Member States' defence markets. As set out in the Communication, the Commission intends to coordinate its activities in this area with those of the European Defence Agency (EDA).

On the question of the use of specific exclusions contained in the Directive 2009/81/EC, the critical issue is to ensure that they are not interpreted in a way undermining its correct use. Hence, the Commission committed itself, in the Communication, to clarify the limits of certain exclusions and to provide, in consultation with Member States, specific guidance, notably on government to government sales and international agreements. On the other hand, the Commission does not plan to draw up further clarifications or guidance on the conditions under which Member States may invoke Article 346 Treaty on the Functioning of the European Union (TFEU). Such clarifications are already provided in the Commission's Interpretative Communication COM (2006) 779 final, as well as in the case law of the Court of Justice (see, for instance, the judgements in cases C-615/10, C-284/05, C-157/06, C-414/97).

Directive 2009/81/EC also recognises that centralised purchasing techniques help to increase competition and streamline purchasing, and it contains provisions to that effect. It is for Member States to organise their procurement procedures and to make use of these centralised techniques in compliance with the Directive, including by identifying the relevant types of products, services and works.

*Mr Valeriu Ştefan ZGONEA
President of the Camera Deputaţilor
Palace of the Parliament
Str. Izvor nr. 2-4, sector 5
RO – 050563 BUCHAREST*

Finally, the Commission is committed to ensuring the rapid phasing out of offsets. This means that it will verify that revisions of national laws and regulations comply with EU law, and it will ensure that the revision of the legal framework leads to an effective change in Member States' procurement practice. Offsets required by Member States when procuring defence equipment from suppliers based abroad (in other Member States or in third countries) are restrictive measures which go against the basic principles of the Treaty. Hence, they can only be justified on the basis of one of the Treaty-based derogations, in particular Article 346 TFEU. However, this derogation must be limited to exceptional cases and has to be interpreted strictly. In particular, the Member States invoking Article 346 must prove that the use of the derogation is necessary for the protection of its essential security interests.

Promoting a more competitive defence industry

The Commission welcomes that the Camera Deputaţilor recognises the importance of standards and certification. This is a key driver for competitiveness as well as for interoperability and defence co-operation more generally. The Commission fully agrees that it is essential that there is no duplication with North Atlantic Treaty Organization (NATO). The Commission policy on “hybrid standards” will take due account of existing NATO standards, and will be developed in close cooperation with EDA.

Small and Medium-sized Enterprises (SMEs) are critical to the success of Europe's defence industrial base and are at the heart of the Commission's industrial strategy for the sector. The Communication sets out a number of policies to support SMEs establishing business links and opportunities throughout the European Union and internationally including promoting regional networking.

Exploiting dual-use potential of research and reinforcing innovation

The Communication highlighted the need to continue investing in defence research if we are to secure the technologies that Europe's armed forces will need for the future and it is encouraging that the Camera Deputaţilor fully recognises the seriousness of this situation. Although the Commission cannot replace the cuts in national defence research funding, it will strive to maximise the synergies between the results of the security research under the 'Secure Societies' theme of Horizon 2020 programme. In addition, the Commission, in proposing to establish a Preparatory Action for Common Security and Defence Policy (CSDP)-related research, has made an ambitious statement of intent to do more to support defence research directly without undermining the civil focus of Horizon 2020 programme.

Application of EU energy policies and support instruments in the defence sector

Where appropriate, the Commission will take forward its energy policy proposals for the defence sector in co-operation with EDA. The work will also include a guidance document on the implementation of Directive 2012/27EU.

The Commission hopes that these clarifications address the issues raised by the Camera Deputaţilor and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*