**Follow up to the European Parliament non-legislative resolution on the implementation of Directive 2009/81/EC, concerning procurement in the fields of defence and security, and of Directive 2009/43/EC, concerning the transfer of defence-related products**

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2. **Reference numbers:** 2019/2204 (INI) / A9-0025/2021 / P9\_TA-PROV(2021)0102
3. **Date of adoption of the resolution:** 25 March 2021
4. **Competent Parliamentary Committee:** Committee on Internal Market and Consumer Protection (IMCO)
5. **Brief analysis/ assessment of the resolution and requests made in it:**

The resolution reiterates the support of the European Parliament for the ambitions of the Directives on Defence Procurement[[1]](#footnote-1) and on Transfers of Defence-related equipment[[2]](#footnote-2) to promote the integration of the European defence market and industry, to increase transparency and competition in the sector, as well as mutual trust between the Member States, and to support the competiveness of the EU defence industry.

The resolution regrets the persisting fragmentation along national borders in the European Defence Equipment Market (EDEM), unnecessary duplications and inefficiencies. It highlights that no revision of the Defence Procurement and Transfers Directives is warranted since the existing regulatory framework should be sufficient if it is correctly implemented and properly used.

The resolution thus focusses first on the need for better implementation and enforcement of the Defence Procurement and Transfers Directives, calling 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. On enforcement, the resolution notes the persisting use of exclusions from the Defence Procurement Directive and calls on the Commission to monitor the necessity and proportionality of exclusions invoked by the Member States in their awarding of contracts outside the scope of the directive. Second, the resolution regrets the continued fragmentation of the EU’s internal defence market and calls notably for an improvement of cross-border market access for small and medium-sized enterprises (SMEs) and sub-suppliers in the defence sectors. Third, the resolution 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 to contribute to the establishment of an open European Defence Equipment Market. In that respect, it calls notably on the Commission to work towards increasing the uptake of the legislative framework on transfers of defence-related products, notably by improving the availability of General Transfer Licences (GTLs) throughout the EU.

The resolution also includes a strong focus on the need to improve the availability of data in the defence sector, as well as on the necessity to address the persisting administrative burden and the barriers that SMEs face in the defence sector, in particular regarding cross-border market access.

1. **Response to the requests and overview of the action taken, or intended to be taken, by the Commission:**

The resolution states that a revision of the Defence Procurement and Transfers Directives is not necessary but rather emphasises the importance of the correct implementation of the existing regulatory framework. In this respect, it calls on the Commission to ensure the effective enforcement of the directives, and in particular to address abusive use of exemptions and offset requirements in defence procurement (paragraphs 6, 7, 11 and 27)**.** The Commission is fully committed to ensure a uniform application of the directives, with a continuous monitoring and a proactive enforcement approach to prevent the misuse of exemptions in defence procurement. The Commission will continue to monitor the implementation of the Defence Procurement Directive and step up its enforcement efforts, including by initiating *ex officio* proceedings, *i.e*. in the absence of complaints from industry, as it has already done in the past.

The resolution also invites the Member States to improve the implementation of the various guidelines and recommendations adopted by the Commission on both directives (paragraphs 7 and 19) and to harmonise their implementation across the EU. As recalled for instance in paragraphs 6, 7, and 16, the Commission has continuously supported the Member States in ensuring a harmonised use of the legislative framework provided for under both directives by publishing guidance notices or recommendations[[3]](#footnote-3). The Commission will pursue its efforts to provide support and guidance to the Member States in their implementation of the directives as recommended by the resolution (paragraphs 8 and 11), including by assessing the need to develop new guidance notices or recommendations, in particular through the work in the framework of the Commission Expert Groups on Defence and Security Procurement and EU Transfers of Defence-related Products.

The Commission shares the view of the European Parliament that the Defence Transfers Directive has only partially achieved its main objectives (paragraph 14). To follow up on the recommendations on the scope of application and conditions of GTLs (paragraph 21), the Commission is currently monitoring and assessing the progress of the Member States in the implementation of GTLs and in the harmonisation of their scope of application and conditions, in light of the different recommendations. On the other hand, converting recommendations into legally binding provisions requires a revision of the directive, which the resolution considers not necessary at this stage (paragraph 10). The Commission is however, convinced that a significant potential for improving the implementation of the Defence Transfers Directive (paragraph 17) and the uptake of the instruments provided by it (paragraph 40) can be achieved through the constant work with the Member States in the framework of the Expert Group on the EU Transfers of Defence-related Products by sharing the difficulties encountered and best practices (paragraph 42), and through the provision of guidance from the Commission. This is without prejudice to the possibility for the Commission to take the appropriate actions in cases where the legally binding obligations stemming from the Transfers Directive are not respected.

As stressed in paragraph 19 of the resolution, but also in the supporting study by the EPRS (European Parliamentary Research Service)[[4]](#footnote-4), the implementation of the European Defence Fund (EDF) provides a key opportunity to mobilise the instruments foreseen by the Defence Transfers Directive. The Fund will support collaborative defence R&D projects with strong incentives for cross-border participation of SMEs and mid-caps at all tiers of the supply chain. The smooth implementation of supported cooperative projects can greatly benefit from the simplification of intra-EU transfers that the directive enables. In relation to this, the Commission stands ready to assist the Member States in developing and deploying exemptions, GTLs and global transfer licences for projects supported by the EDF (paragraph 19) and will propose to discuss this topic in the Expert Group on EU Transfers of Defence-related Products in order to assess the added value and feasibility of such mechanisms. Following paragraph 40 of the resolution on the limited application of the certification scheme, the Commission will also explore how to promote the use of GTLs for certified recipients in collaboration with the dedicated Expert group, notably while assessing the added value and feasibility of developing GTLs and global transfer licences for projects supported by the EDF.

In relation to the call to increase awareness of the Transfer Directive’s tools and benefits, in particular among SMEs (paragraph 22), the Commission has recently published a Handbook[[5]](#footnote-5) on the Transfers Directive specifically targeted to SMEs, to help them reaping the full benefits of the opportunities provided by this directive. The Handbook will convey concrete recommendations and will outline, through practical examples, how SMEs can approach the different processes foreseen by the directive, to make procedures less burdensome. The Commission will also explore the opportunity and feasibility of establishing common standardised administrative forms with the objective of lowering businesses’ administrative burden, particularly for SMEs (paragraph 26) with the Expert group on the EU transfers of defence-related products.

As highlighted in paragraph 25 of the resolution, the Commission is also committed to ensuring the availability, user-friendliness and efficiency of the Register of the Certified Defence-related Enterprises (CERTIDER) online database. In this respect, the Commission is currently performing data migration from the CERTIDER database to eLi-CERTIDER, a new application hosted on the Commission eLicencing platform. Replacing CERTIDER, the eLi-CERTIDER application will feature improved and user-friendlier functionalities, and will be completed in the course of 2021.

More generally, the Commission attaches great importance to improving the participation of SMEs in the defence sector that also takes a prominent place in the resolution of the European Parliament (paragraphs 28, 30, 31, 32, 33 and 34). The SMEs operating in the European defence sector are indeed a critically important part of supply chains. They are key enablers of innovation and growth, able to conduct essential research, technology and innovation activities. A substantial part of the European Defence Technological and Industrial Base is made of SMEs. SMEs involved in defence-related activities however, face numerous challenges, notably when it comes to cross-border innovation and industrial engagement that often exceed those encountered by similar companies in the civil sector.

With the particular aim of increasing the participation of SMEs in the defence industrial sector (paragraph 34), the Commission issued in 2018 a Recommendation on cross-border market access for sub-suppliers and SMEs in the defence sector. As noted in paragraph 30 of the resolution, the implementation of the Recommendation is in the hands of the Members States.

The Commission actively seeks to promote cross-border cooperation and enhance SMEs and non-traditional players access to the defence sector by mobilising all available instruments. The European Defence Fund and its pre-cursor programmes (the Preparatory Action on Defence Research and the European Defence Industrial Development Programme) incorporate strong incentives for the inclusion of SMEs, especially in a cross-border context. The first results of the pre-cursor programmes are already very encouraging and show a high-level of cross-border cooperation and SME participation.

The Commission will further reinforce its efforts to support the inclusion of SMEs. In particular, one of the key actions included in the SME Strategy adopted by the Commission in 2020[[6]](#footnote-6) states that “The Commission will facilitate cross-border cooperation with and among SMEs under the European Defence Fund and map strengths in its research and innovation eco-system”. In addition to the strong incentives already embedded in the EDF Regulation, this will also include calls for proposals targeted at SMEs and initiatives to connect SMEs with the wider defence community.

As part of the implementation of the EDF, the Commission will seek to map the EDF beneficiaries, including SMEs, to better understand criticalities and vulnerabilities in the value chains. At the same time, the Commission will work with other stakeholders on showcasing innovative SMEs, mainly with the European Defence Agency (EDA), the Enterprise Europe Network (EEN), and industry, which developed several business-to-business instruments in the past, facilitating cross-border cooperation and cooperation across different tiers of value chains (paragraph 35).

In the recently adopted Action Plan on Synergies between civil, defence and space industries[[7]](#footnote-7), the Commission is also committed to launch targeted actions for start-ups, SMEs and Research and Technology Organisations (RTOs) to raise awareness about EU funding opportunities (including though the Enterprise Europe Network), showcase innovative solutions, provide business-accelerating services, create national focal points for all aspects on the European Defence Fund, and facilitate access to the defence, security, space or relevant civil markets.

SMEs in the defence sector also suffer from additional barriers with regard to access to finance (paragraph 36). In response to this, the Commission has ensured that the defence industry is listed amongst the sectors eligible for financing under the Invest EU Regulation[[8]](#footnote-8) and that support for the Union’s defence industry supply chain, in particular through financial support to SMEs and mid-caps is explicitly mentioned in Annex II to the InvestEU Regulation[[9]](#footnote-9). The European Investment Fund (EIF) and the Commission are currently working on the establishment of equity products aimed at supporting sectors that will contribute to the independence and open strategic autonomy of the EU, including the defence sector. Besides, in order to ensure that SMEs from the defence sector will be able to fully benefit from the opportunities offered under the InvestEU programme, the Commission also recalled in its “Action Plan on synergies”, its support for an adaptation of the lending criteria of the European Investment Bank (EIB) to the defence sector within the limits of the Treaties (as stated in the European Defence Action Plan of 2016, and the European Council Conclusions of December 2016).

As highlighted in paragraph 24 of the resolution, the Commission agrees that the current very limited availability of data, including quantitative data, is an issue to monitor adequately developments in the EU defence market and industry. Beyond the issue of data sensitivity inherent to the defence sector, the Commission acknowledges that the EU statistical apparatus does not allow distinguishing well defence economic activities from other economic activities (paragraph 24). Consequently, the Commission agrees that statistical classifications need to be updated regularly to accommodate new needs for, *e.g.* economic or social analysis. A general characteristic of clarifications is that they should be clear and should be able to shed light on the underlying economic (or social) phenomena. The Commission is currently updating the NACE classification used to classify enterprises by economic activities and the related CPA product classification. A particular issue in the area of defence is that many enterprises are engaged in activities where the outputs (products) could be used for both defence and civilian purposes. The Commission is engaged with the National Statistical Institutes to assess if changes in the classifications on activities and products could facilitate the monitoring of the defence industry. It should be underlined that it will take several years before the first statistics using the revised NACE/CPA will become available.

The Commission is also exploring with the Member States’ experts possible ways to improve the quality and availability of data on defence procurement, in particular on the basis of data collected through the Tenders Electronic Daily (TED)[[10]](#footnote-10), as part of the work in the Expert Group on Defence and Security Procurement. In this context, the Commission will also publish in 2021 a study on cross-border procurement.

Regarding defence technologies and innovation, with a budget of EUR 8 billion over the 2021-2027 period, the EDF will boost collaborative research and development in the defence sector, supporting the development of technologies and products critical for the protection of the defence and security interests of the Union and its Member States. The Fund will thus tackle technology and innovation gaps and lags in the European Defence Technological and Industrial Base (EDTIB) and contribute to the more efficient use of scarce resources and to better industrial organisation (paragraph 45). By incentivising enhanced cross-border cooperation in the EU, the EDF will also provide a major contribution in terms of building closer relations and trust between the EU Member States in the defence sector (paragraphs 18 and 41). Finally, it will support the competiveness of the European defence industry and contribute to the autonomy of the EDTIB, including by reducing dependency on non-EU sources and strengthening security of supply (paragraph 45).

In this context, in line with the 2 October 2020 Council Conclusions, the Commission has already started working to identify strategic dependencies and to propose measures to reduce these dependencies, as well as fostering production and investment in Europe. The 2021 update of the Industry Strategy proposed several actions in this direction. As requested by the European Council on 26 February 2021, the Commission will present by October 2021 a technology roadmap for boosting research, technology development and innovation and reducing our strategic dependencies in critical technologies and value chains.

The Commission is also setting up, as announced by the Action Plan on synergies, an EU Observatory of Critical Technologies. This Observatory will provide regular monitoring and analysis of critical technologies, their potential applications, value chains, needed research and testing infrastructure, desired level of EU control over them, and existing gaps and dependencies. Once critical technologies are identified, the Commission will develop tailored technology roadmaps, which could lead to the launch of new flagship projects, therefore concretely contributing to the reduction of strategic dependencies.

The Commission recognises that Security of supply is also a cornerstone to the establishment of a genuine single market for defence and is key to future cooperative programmes (paragraph 45). Member States need to be confident that cross-border deliveries will not be disrupted. Strengthening security of supply at EU level implies enhancing mutual trust among the Member States. The Commission is deploying a large number of actions and instruments that ultimately contribute to this objective, including efforts to reinforce the uptake of the instruments of the transfers Directive, different actions aimed at reducing dependencies, including those described above, initiatives in the field of military mobility. However, as already noted in the European Defence Action Plan of 2016, progress towards an EU-wide regime on Security of Supply is critically dependant on the willingness of EU Member States to reinforce their cooperation.

Finally, the Commission would like to stress the complementarity of the different tools deployed, and in particular between the Defence Procurement and Transfers Directives and the European Defence Fund. The introduction of the European Defence Fund is a major innovation and its implementation is expected to have a significant impact on the European defence sector in terms of increasing the competitiveness of the defence industry and enhancing Europe’s open strategic autonomy. The Commission will perform both an interim and a final evaluations of the Fund, which will provide good occasions to assess the evolution of the European Defence Equipment Market and of the European Defence industry, as well as the impact of Fund, including with regard to the level of involvement of SMEs and mid-caps and the degree of their cross-border participation.

1. Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC. [↑](#footnote-ref-1)
2. Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community. [↑](#footnote-ref-2)
3. On the one hand with the 2016 Guidance notice on government-to-government sales and the 2019 Guidance notice on cooperative defence procurement (for the Defence Procurement Directive), and on the other hand with various recommendations on the scope of application and conditions of GTLs, and on the certification of undertakings (for the Transfers Directive). [↑](#footnote-ref-3)
4. EU Defence Package: Defence Procurement and Intra-Community Transfers Directives (19-10-2020) <https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU(2020)654171> [↑](#footnote-ref-4)
5. [The Defence Transfers Directive Handbook for SMEs (europa.eu)](https://ec.europa.eu/defence-industry-space/defence-transfers-directive-handbook-smes-0_en) [↑](#footnote-ref-5)
6. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions. - An SME Strategy for a sustainable and digital Europe, COM/2020/103 final. [↑](#footnote-ref-6)
7. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions. - Action Plan on synergies between civil, defence and space industries (COM (2021) 70 final of 22/02/2021). [↑](#footnote-ref-7)
8. Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU Programme and amending Regulation (EU) 2015/1017. [↑](#footnote-ref-8)
9. Paragraph 13(a) of Annex II of Regulation (EU) 2021/523, *in fine*. [↑](#footnote-ref-9)
10. The online version of the Supplement to the Official Journal of the EU dedicated to European Public Procurement [↑](#footnote-ref-10)