

RECOMMENDATION 769¹

on the European defence equipment market: Article 296 of the Treaty establishing the European Community and the European Commission's Green Paper – reply to the annual report of the Council²

The Assembly,

- (i) Affirming the central role of governments in determining their armed forces' defence equipment requirement;
- (ii) Taking the view that the rising cost of defence research, technology and development programmes is restricting governments' capacity to meet virtually all of that requirement nationally;
- (iii) Considering therefore that cooperation over defence equipment, technology and capability programmes among European governments, in restricted or wider configuration, is currently the best way of dealing with the situation;
- (iv) Acknowledging that numerous obstacles – political and economic or in terms of priorities and technological capability – are limiting the scope and efficiency of programmes undertaken in cooperation;
- (v) Taking the view that improvement of the military capabilities the European Union member states and NATO countries place at the service of the Alliance and ESDP cannot be achieved without a European armaments policy and common definition and harmonisation of defence equipment and RT&D priorities and needs for the coming years;
- (vi) Recognising the leading role of the large European defence equipment producer and customer states as founder members of the Organisation for Joint Armament Cooperation (OCCAR) and signatories of the Letter of Intent/Framework Agreement concerning measures to facilitate the restructuring and operation of the European defence industry;
- (vii) Considering that those countries represent the central core of Europe's defence economic, industrial and technological capability;
- (viii) Noting that, as a whole, such nations are in favour of maintaining the national security derogation under Article 296 of the Treaty establishing the European Community (TEC);
- (ix) Considering that the 15 April 1958 List identifying the equipment and technology subject to the derogation should be updated and merged with the list of European Union military equipment as defined in the EU Code of Conduct on Arms Exports;
- (x) Recognising the limitations to the application of Article 296 TEC imposed by European Court of Justice precedents;
- (xi) Recognising the competence and salient role of the European Commission in public procurement and in activating and strengthening the European civilian industrial and technological base;
- (xii) Considering that its experience in this area is useful for restructuring and developing the defence industrial sector in the European Union member states;
- (xiii) Considering that the Green Paper on Defence Procurement, together with national and other responses to the consultation procedure set in train by the European Commission, has contributed vital food for thought on clarification of the legal rules and procedures that apply in this this area of state action;

¹ Adopted by the Assembly on 6 December 2005 at the 8th sitting.

² Explanatory Memorandum: see the report tabled on behalf of the Technological and Aerospace Committee by Franco Danieli, Rapporteur (Italy, Liberal Group), Document 1917.

(xiv) Considering nevertheless that the European Commission's role in that area should be in keeping with the principle of subsidiarity and should focus on advice and technical assistance while strategic decisions remain the responsibility of the European Union member states;

(xv) Considering that the European Defence Agency should be the driving force, and provide the forum for intergovernmental discussion on the future of the defence industry, defence RT&D and expanding the European Defence Industrial and Technology Base (EDITB);

(xvi) Considering the intergovernmental Code of Conduct on Defence procurement currently being prepared by the Agency a vital contribution to the future of EDITB but only a first step towards a more integrated and better regulated market – one possibly subject to EDA monitoring and arbitration;

(xvii) Considering that in regard to dual and security technology there needs to be synergy between the member states, the European Defence Agency and the Commission, taking care to avoid competing responsibilities and duplication;

(xviii) Acknowledging that all EU and European NATO member states should be able to take part in cooperation programmes in so far as their financial, industrial and technological capability allows and that due respect should also be paid to the interests of “small-medium” states;

(xix) Recognising the importance of taking account of the interests of and proposals from the defence industry itself in the process of developing a European defence equipment policy;

(xx) Considering, to that end, that the various industries must be closely associated with the work of the EDA Directorates and should, subject to arrangements yet to be defined (in terms of status, right to speak, vote and the like), be represented on the Agency Steering Board;

(xxi) Recognising the essential part played by small and medium-sized suppliers of defence equipment and technology in developing national and European military capabilities, both as contributors to research and as providers of employment;

(xxii) Considering that developing and strengthening the EDITB in the initial stages implies affirmation of the principle of seeking European national or cooperative solutions, in so far as is possible without prejudicing cooperation with third country allies and partners;

(xxiii) Considering that stating a European preference is not synonymous with protectionism, but a necessary step in “rebalancing” international defence industrial and technological cooperation, particularly in regard to the United States,

RECOMENDS THAT THE COUNCIL INVITE THE WEU MEMBER STATES AS MEMBERS OF THE EUROPEAN UNION TO:

1. Envisage updating the 15 April 1958 List identifying the equipment and technology subject to the Article 296 TEC national security derogation and merging it with the list of European Union military equipment as defined in the EU Code of Conduct on Arms Exports;
2. Adopt and implement the intergovernmental Code of Conduct on Defence Procurement being drawn up in the European Defence Agency at the earliest opportunity;
3. Ensure, in the application of the Code, that account is taken of and due respect given to the interests of the “small-medium” European Union member states and of small and medium-sized defence sector businesses;
4. Give the European Defence Agency the task of monitoring and enforcing application of and compliance with the rules defined in the Code;
5. Develop rules and machinery to bring about a reduction in the need for offset in defence procurement and its progressive replacement by an “overall juste retour” in accordance with OCCAR established practice;

6. Facilitate access by the defence industry to the financial aid and technical advice and assistance the Commission offers the civilian sector, particularly for industrial restructuring and dual-use RT&D programmes, subject to rules respectful of the competences of the member states and the Commission and the need for security and confidentiality in this area;
7. Gradually strengthen the European Defence Agency's work and intervention capability by ensuring that it has budget, staff and technical resources commensurate with defence capability and RT&D requirements, those resources being at the service of the member states and the ESDP;
8. Promote close cooperation between the European Defence Agency and NATO's technical agencies, particularly the NATO Consultation, Command and Control Agency (NC3A);
9. Work to achieve a better balance in transatlantic cooperation in the fields of defence equipment and technology by supporting the efforts of European firms to be more competitive in the European market and achieve a greater presence in the US market;
10. Coordinate their views in this connection so as to achieve a common position that could provide a basis for discussion about striking a balance in transatlantic cooperation – both industrial and in regard to technology – that is more even-handed and considerate of European interests;
11. Keep the Assembly informed, through the Council's annual report, of developments in regard to defence equipment at the European level in EU member states and in NATO, in the spirit of Article IX of the modified Brussels Treaty and in accordance with established practice.