

8th Congress on European Security and Defence in Berlin

- After the European « Defence package »
What next?
- 9th December, 2009
- Jacques Cipriano – VP European Affairs



- ▶ **The two « defence package » directives have been adopted early this year**
- ▶ **The transposition process into national laws has now started**
- ▶ **I shall assume optimistically that all participants here know these two directives inside out. In any case, somebody is going to explain them in detail today !**
- ▶ **Let us therefore look into the future : what could happen next ?**



▶ The « procurement directive » 2009 – 81

1. 1 Has a broader scope than defence to include
« sensitive » non military markets

- ▶ Some Member states will include all sensitive markets (police, borders, customs etc)
- ▶ whereas some others will take a restrictive view, to MOD markets only.



▶ **The non military markets under the new directive are :**

- Obviously not within the scope of art 296 ECT
but art 30, 45, 46 and 55 may apply.



- ▶ Different scopes of transposition by Member states will open :
 - New opportunities for protectionist measures
 - New need for clarification of the scope of exemption articles (30, 45, 46, 55 and 296)
 - Most probably, political impatience and further legislative action in a few years.



1.2 The “procurement” directive does not cover EU markets (markets where the EU or an EU agency is the customer)

Are :

- » Galileo
- » Sesar
- » GMES
- » Schengen Information System

sensitive procurements ?

Why accept specific procedures by the Member states but not for the common procurement of sensitive programmes?



1.3 The specifics of “sensitive” procurement

▶ Security of supply.

Particularly, risk of embargo, or denial of the export licence by the producing country. An issue partially covered by the “transit” directive 2009-43

▶ Security of information

- ✓ It is not only necessary that companies comply with the terms of the licences (export and transit), but that individual employees protect the confidential information of the customer.
- ✓ This does not only cover military secrets but may also cover police, justice activities
- ✓ This goes beyond contractual commitments
- ✓ This is not covered by company certification but by “clearance” of individual employees. This clearance is vetted by governments.
- ✓ Breach is punished under national Law.

How can consistency be achieved ?



2. The “transfer” directive 2009 - 43

- ▶ The Member states will have the possibility to grant “general” and “global” licences.
- ▶ Obvious reluctance to enter into a “coordination process” between national policies.



2.1 General licences covering a trans-national programme and granted by the participating Member States will have to be coherent. (Eg German and French licences covering helicopter programme NH90.)

Suppliers based in countries not participating in the cooperation programme will also need licences by their respective governments.

- ▶ Must be coherent (scope, duration) with the general licences for the same programme
- ▶ Failure to achieve this will trigger Community action on the basis of a breach of fair competition.
- ▶ Intra EU circulation of ITAR components will still need individual US licences.



2.2 Certified companies

Compliance by companies to the terms of transfer and final export licences will be guaranteed by :

- Standards of internal management compliance applicable to companies
- Certification of companies by national authorities (internal management rules guarantying compliance to licences terms)
- Remedies decided and enforced at national level.

If these 27 sets of national measures do not match, what will the Council and Parliament do next?