EXPLANATORY MEMORANDUM ON EUROPEAN UNION DOCUMENT

COMMISSION COMMUNICATION: TOWARDS A MORE COMPETITIVE AND EFFICIENT DEFENCE AND SECURITY SECTOR

Submitted by the Ministry of Defence, 22nd August 2013

SUBJECT MATTER

1. This Communication, accompanied by its staff working paper, from the Commission to the European Parliament and Council, proposes a number of high-level actions that the Commission could take in order to improve the competitiveness of the European defence industrial base. It forms the outcome of the work of the Commission’s Defence Task Force, which was established in November 2011, and is intended to be the Commission’s contribution to the defence industry element of the December 2013 European Council discussion on defence.

2. Subject to the Council discussion, the Commission intends to create a detailed roadmap with concrete actions and timelines. The Commission proposes to establish specific consultative mechanisms with Member States in conjunction with the European Defence Agency (EDA) and the European External Action Service (EEAS) in order to prepare and implement the roadmap.

3. The actions which are listed in the Communication include: ensuring the full application of the existing Directives on defence and sensitive security procurement (2009/81/EC) and on intra-EU defence transfers (2009/43/EC); developing hybrid standards to benefit security and defence markets; supporting defence SMEs; and exploiting civil-military research synergies. The Communication also proposes to assess the possibility of EU-owned dual-use capabilities and to consider supporting a preparatory action for CSDP-related research.

4. The Communication also argues for increased cooperation and more efficient use of resources among Member States to compensate for budgetary constraints and to ensure that defence capabilities are maintained and developed in order to meet current and future requirements.
SCRUTINY HISTORY


http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/86-xx/8603.htm
House of Commons Votes and Proceedings (Vote Bundle No. 104)

MINISTERIAL RESPONSIBILITY

6. The Secretary of State for Defence has overall responsibility for policy on defence and security procurement regulations. The Secretary of State for Foreign and Commonwealth Affairs, the Secretary of State for Business, Innovation and Skills and the Minister for the Cabinet Office also have an interest.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

7. EU defence is a reserved matter under the UK’s devolution settlements and no devolved administration interests arise at this stage. The devolved administrations have therefore not been consulted in the preparation of this Explanatory Memorandum.

LEGAL AND PROCEDURAL ISSUES

8. There are no legal or procedural issues. This is not a proposal for legislation.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

9. This has no application to the EEA.

SUBLI DIARITY

10. The present Communication is not a proposal for legislation, and therefore no specific issues of subsidiarity exist at this time. However, there is potential that
some areas covered in the report would be more appropriately dealt with at a national level.

POLICY IMPLICATIONS

11. The present Communication does not alter UK policy. There are many proposals which the Government supports and encourages as they are consistent with the Government’s growth agenda. These include: the Commission taking ‘specific measures to ensure that the [Defence and Security Procurement] Directive is correctly applied and fulfils its objective’, which should encourage greater opening of defence markets; the use of EU structural funds to encourage less efficient industry to leave the defence market; the proposals relating to the support of defence SMEs such as, ‘the Commission will adapt existing tools [including Commission research funding and financial grants] designed to support SMEs to the needs of defence-related SMEs’; and the aspiration to increase the synergies between the EU civil research programme and defence research.

12. However some of the proposed actions in the Communication cause concern. Those fall into four broad categories:

   a. **Those that could impinge on Member States’ sovereignty**, for instance ‘the Commission intends to support a pre-commercial procurement scheme to procure prototypes…’ and ‘the Commission will consider the possibility to support a Preparatory Action for CSDP Research, focusing on those area where EU defence capabilities would be more needed’. While the exact scope of these proposals remains unclear, the Government has made it clear to the Commission that we would oppose any measures by the EU to develop and, of more concern, to own high-end military or dual-use capabilities such as Remotely Piloted Air Systems (RPAS), high-resolution satellite imagery or military satellite communication equipment;

   b. **Those related to the external market and exports**, such as ‘The Commission will establish a dialogue with stakeholders on how to support European industries in third markets. It will also explore how EU institutions could promote European Suppliers in situation where only one company from Europe is competing…’. The Government would not wish to see the Commission involved in external market matters which would constrain our ability to promote and pursue defence export opportunities. We would also question the idea of the EU supporting a ‘European supplier’ in an export situation – this would be virtually impossible to enact without implementing some regulation around a ‘European Economic Operator’ and could have a negative impact on UK companies supporting non-European Allies in export opportunities;
c. Those which suggest the potential for duplication of effort, including those measures where we would consider that Member States, NATO or EDA currently have the lead and therefore see that the Commission may create a role for itself in competition with, or duplicating, the role of these other, better-placed organisations. Examples would include: the Commission exploring with the EDA options to establish 'a mechanism to draft specific European standards for military applications on request from Member States'; which could duplicate the NATO standardisation work; the Commission establishing 'a European certification system for military airworthiness', which could duplicate work being undertaken with the EDA; or 'the Commission has put forward a proposal for an EU space surveillance and tracking (SST) support programme in 2013. Building on this proposal, the Commission will assess how to ensure, in the long term, a high level of efficiency of the SST service', where we would rather see them draw on the existing Member State infrastructure in place.

d. Those which imply unnecessary regulatory interference in the defence market. While the Commission has ruled out legislation in the near term, there remains a risk that it could interfere in the defence market through promoting regional specialisation, or by the issue of new guidance on defence procurement. Similarly, its proposal to issue a green paper on controls of defence assets (mergers and/or foreign investment) risks new Commission controls.

13. Equally, the action 'the Commission will work with the EEAS on a joint assessment of dual-use capability needs for EU security and defence policies. On the basis of this assessment, it will come up with a proposal for which capability needs, if any, could best be fulfilled by assets directly purchased, owned and operated by the Union', presents a 'red line' for the UK. Not only does this impinge on the Member States' sovereignty, it also suffers from duplication of efforts already in place. Pooling & Sharing and NATO Smart Defence have both been established to enable Member States to co-operate, identify capability gaps, prioritise and work together filling these gaps and delivering a 'European Solution'. The Government does not believe that there is, or should be, a role for the EU in this area.

14. The Government has engaged proactively with the Commission's Task Force and has also worked closely, on a bilateral basis, with our Letter of Intent (LOI) partners and through the EDA, to shape Commission thinking. The European Defence industry has also lobbied strongly.

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1 France, Germany, Italy, Spain and Sweden
CONSULTATION

15. The UK continues to work closely with industry, including through the ADS association in particular, in addition to engaging with Member States, to establish their views on these issues.

IMPACT ASSESSMENT

16. This is not a proposal for legislation, therefore no impact assessment has been made. This is the first Communication on this subject and we will continue to engage with the Commission, Allies and the EDA to ensure UK interests are protected while the proposed actions and resulting road maps are developed.

FINANCIAL IMPLICATIONS

17. There are no immediate financial implications, although the impact of any Commission action being taken forward would have to be quantified.

TIMETABLE

18. The Commission intends to discuss these proposals at the Council Meeting in December 2013. In the lead up to this discussion the Government intends to work with Member States and the Commission to ensure that our areas of concern are properly addressed, and that UK interests are fully taken into account when taking forward any of these actions.

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