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WILL THE EU GET TOUGH ON OPENING-UP NATIONAL DEFENCE PROCUREMENTS?



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&
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TOWARDS AN INTEGRATED EUROPEAN DEFENCE MARKET – JUST DO IT!

*If it were done when 'tis done, then 'twere well
It were done quickly . . .*

Macbeth: Act I, scene vii

A CALL FOR ACTION, GREATER POLITICAL WILL AND HARMONISED REQUIREMENTS

Returning to address the NDA after 12 months, European Defence Agency Chief Executive **Nick Witney** concluded that something had to be done and done quickly. After admitting that time was not on his side, Witney was strongly supported by industry. ASD's **Roger Hawksworth** and BAE Systems' **Bill Giles** both called for swift action, with Giles suggesting that the arrival of an integrated market was a decade late.

*“a great deal has to be achieved
and time is not necessarily on our
side”*

Nick Witney

Witney also shared the platform with representatives from the Commission, the member states and think tanks. No one doubted that the Agency and the Commission were taking positive steps but many speakers saw the need for greater political backing if a genuinely transparent and competitive European defence equipment market was to be created.

The oft-quoted defence market “specificities” were acknowledged, but Witney argued that this “term-of-art” was often used as an excuse to avoid thinking about the undoubted problems. It was admitted that the current market was inefficient (scale of demand, scale of investment, bidding costs, unequal playing fields between nations, preservation of inefficient structures, etc), but the clock was ticking. And market-related actions must be complemented by the development of harmonised military requirements. No surprise there, as this particular activity had been called for at NDA meetings since their inception back in 2002.

THE INSTRUMENTS ON THE TABLE

As for the actions currently underway, Witney described the Agency's preferred route – an inter-governmental non-binding code of conduct. He saw this as the best way of moving forward, working with Member States rather than getting tough, and noted that the EDA's Steering Board had committed itself to a “Go or No-Go” decision by the end of the year. If “Go”, he surmised that a pilot programme for the code could be in place by mid 2006. Speaking on behalf of the European Commission, **Sandra Mezzadri** described the options to enhance transparency and competition in the defence market, the interpretative Communication and the new defence procurement directive, as laid out in the 2004 green paper. She stressed that combined efforts were needed from the EDA, industry and the Commission itself.



BAE Systems' Giles focused on article 296, whereby a member state can be exempt from competition law in areas relating to “essential interests of its security”. This was the high tech, high value area of greatest interest to defence industry. Arguing that industry was driven by markets and that an open defence market would not only bring economies of scale but also increased interoperability, Giles saw a non-binding code as a real “challenge” to member states and called for governments to face up to their responsibilities.

The EU-ISS' **Burkard Schmitt** had heard the various proposals on the table from the Commission and the EDA and reasoned that the code of conduct was both the most ambitious and the weakest of the three instruments. He pleaded with member states to seize the opportunity to accept the Commission's

proposed directive as he sensed that the time was right. He called for an “Action Plan” to be developed that brought all three instruments together and complemented them with measures in related areas, such as transfers and security of supply.

THE MEMBER STATES’ VIEW

In the afternoon session, both France’s NATO delegate **Alain Picq** and **Dusan Svarc**, from the Czech Republic’s National Armaments Director’s Office, gave their backing to the Commission and Agency initiatives, with the former voting for the non-binding code. On behalf of industry, the ASD’s Hawksworth had a raft of reasons why an integrated defence market was high on the political agenda (rules were required that focused on harmonised requirements, European programmes were required to avoid duplication of effort, procurement processes had to be unified and greater technical collaboration was required). However, he was one of several speakers seeing an urgent need for a greater political will.



THE ELUSIVE REQUIREMENTS

The *European Voice*’s **Ilana Bet-El** was a lone voice asking why a defence market was actually required in these times. Hawksworth and Svarc were quick to reply that requirements did exist, but they needed to be brought together. The WEU’s **Paulo Brito** suggested that the creation of “Fortress Europe” was an approach worth considering, and late in the day, he found support from the Commission’s **Yves Mollard La Bruyère**.

Despite his best efforts, NDA Director **Giles Merritt** could find no one willing to say whose responsibility it was to harmonise those elusive military requirements. Unless they were nailed down, it might prove to be the showstopper that the Agency must fear. Indeed, during the debate, Schmitt said there would be high price to pay if vested interests were defended and Giles warned that if an integrated market did not arrive, Europe would struggle to meet its defence economic and technological ambitions. The stakes were high. Perhaps it was time to screw one’s courage to the sticking place¹.

“What’s the point of creating (a defence market) if we are not sure what we are going to use it for?”

Ilana Bet-El

¹ “We fail!
But screw your courage to the sticking-place,
And we’ll not fail”. (Lady Macbeth)
Macbeth Act I, scene vii

KEYNOTE ADDRESS: NICK WITNEY, CHIEF EXECUTIVE, EUROPEAN DEFENCE AGENCY

NDA Director **Giles Merritt** introduced the Head of the European Defence Agency **Nick Witney** and noted that it was 12 months since the latter had previously addressed an NDA audience, prior to the creation of the Agency. Anticipating an update on the Agency's progress, he handed over to *Defense News* correspondent **Brooks Tigner** who introduced Witney as the keynote speaker.

Opening his remarks, Witney noted that it was his responsibility to move the Agency from "concept to reality". Responding to Merritt's reminder about the anniversary of his previous talk, Witney acknowledged that he had not yet – in the previous 365 days - transformed the face of the European defence market. The Agency's chief executive did stress that, with a great deal to be achieved, time was not on his side.

Disagreeing with the line of attack suggested by the debate's title – *Will the EU get tough on opening-up national defence procurements?* – Witney explained that the Agency's preferred approach was to win the "intellectual battle" by persuading member states that the creation of an integrated market was in their own interests. To back his argument, he quoted Aesop's fable - about the North Wind and the Sun² - and confirmed that the Agency would be developing warm relationships rather than adopting a get-tough policy.

Stepping back, Witney pointed out that the arguments for a single defence market (EDEM³) had been well made in the Commission's Green

Paper (issued in the Autumn of 2004). But for too long, the defence community's attitude to the EDEM had been "necessary, but too difficult". Here, Witney felt that the phrase "defence market specificities" had often been used as "a replacement for thought".

"the phrase, 'the specificities of the defence market', has often been used as a substitute for thought"

Nick Witney



Taking a positive stance, Witney welcomed the "decision to decide" (whether to introduce competition in to European defence markets) that had been taken at the Agency's Steering Board meeting (March 2005). Although, by definition, no decision had been taken, he felt that it was nevertheless a considerable step forward. He insisted that more time was needed to review all the issues in a complex matter. Witney explained that the Agency had proposed a voluntary non-binding intergovernmental code of conduct and that the recording and reporting regimes together with the rules of application still had to be defined.

² The North Wind and the Sun (Aesop): A dispute arose between the North Wind and the Sun about the superiority of their power; and they agreed to try their strength upon a traveller, which should be able to get his cloak off first. The North Wind began, and blew a very cold blast, accompanied by a sharp, driving shower. But this, and whatever else he could do, instead of making the man quit his cloak, obliged him to gird it about his body as close as possible. Next came the Sun; who, breaking out from a thick watery cloud, drove away the cold vapours from the sky, and darted his warm, sultry beams upon the head of the poor weather-beaten traveller. The man growing faint with the heat, and unable to endure it any longer, first threw off his heavy cloak, and then headed for protection to the shade of a neighbouring grove.

³ Part of a global European Commission initiative to create a European Defence Equipment Market (EDEM) – see COM(2003) 113 final.

During the remainder of 2005, Witney wanted each one of the potential pitfalls and problems of the approach to be examined so that a common understanding could be reached and any “showstoppers” identified. Giving his own thoughts on the “issues” that were due to be reviewed, Witney reached the following conclusions:

- *Security of supply:* from his personal experience, Witney felt that this problem was often exaggerated; he did however acknowledge that it was a genuine concern for some major shareholders – overall, it was a matter of trust and of economics
- *State aid:* the issue of cross-subsidies or other “helping hands” was ever present and the Agency would seek the European Commission’s advice in regard to fair competition
- *Security of information:* here the Agency would build on the work of the LOI, Witney added that, again, trust was important but so were systems, processes and the related safeguards
- *Offsets:* Witney could not see this issue disappearing in the near future but he sensed that there were both “good and bad” offsets; it would be helpful to have a consensus on which kinds of offsets least distorted competition and most conduced to an efficient and sustainable DTIB in Europe.

Looking forward to the creation of an EDEM, Witney stated that everyone agreed that efforts and resources had to be pooled. Member states could not achieve all that they wanted to achieve on their own, and distributed centres of excellence were, at least partially, the way ahead. He accepted that some member states might be more conscious of the risks than the advantages of the new regime, but he saw them being rewarded by being able to promote their particular areas of expertise in a wider European market.

Witney concluded by conceding that a lot of hard thinking was going to be necessary before the desired objectives were achieved. However, he was not aware of any showstoppers and he looked ahead to the introduction of an integrated defence equipment market on a voluntary basis.

“early imperfect solutions will be preferable to waiting another two or three decades”

Nick Witney

Keynote speech - Q&A

TIMING FOR THE AGENCY AND EUROPEAN COMMISSION INITIATIVES

As the session moderator, **Brooks Tigner** took the opportunity to pose the first question and requested Witney to expand on the timing for the introduction of the voluntary code of conduct.

Applauding the co-operation between the Agency and the European Commission, Witney said he expected the code of conduct (assuming a green light) to be in place by mid-2006 on a pilot (reduced scale) basis.

ARTICLE 296 AND THE ISSUE OF ARMS CONTROL

Ernst Guelcher from the European Parliament had a number of questions; was the Article 296 likely to be abolished under the Agency’s proposals, how did the proposals on defence procurement fit with ESDP policy (where efficient processes were high on the agenda) and what, if any, were the links between defence procurement and arms control (within the Agency)?

Witney could not see Article 296 being abolished; it was carried forward into the new Constitution. He preferred not to comment on ESDP priorities, due to a lack of time to address a complex subject. As for arms EU-imports and EU-exports, Witney said the Agency was concentrating on how the EU member states interacted and it could not look at imports to (where opinions differed) and exports from (where resources were not available) the EU.

A BINDING SOLUTION?

SAIC’s **Robert Bell** felt that perhaps France⁴, for example, would be willing to accept a binding approach in the EU-China trade debate. He asked Witney to comment if a binding approach

⁴ As reported in that day’s FT.

might be feasible for the Agency's code of conduct.

Witney agreed that with the passage of time, codes could certainly evolve to become binding. However, he could not see this happening on his watch.



HOW WOULD THE CODE WORK?

The European Voice's **Ilana Bet-El** wanted to know how the code of conduct would differ from, say, the WTO regime and if Witney thought it work in a more effective way. He outlined some of the necessary features (fair opportunities to compete, fair procedure and evaluation, a reporting regime to provide transparency for the – inevitable – occasions when Member States wished to maintain a strictly national procurement strategy) and noted that effectiveness would ultimately depend on political will and peer pressure.

ISSUES: SECURITY OF SUPPLY & OFFSETS

The WEU's **Paulo Brito** suggested that specialisation, as mentioned by Witney, could be the answer to the security of supply issue. Witney acknowledged the argument that security of supply might be helped by interdependence between EU member states. But he was uncertain how much weight to attach to this. He tended to think that mutual commitments and solidarity would be a better route than one country saying to another that it had to take a certain action because it might be in trouble in five years' time if it did not.

Returning to the microphone, Tigner wanted more detail on the subject of offsets. Could OCCAR's experience be useful in this field? Answering on a more general basis, Witney said he would welcome more discussion with OCCAR on a range of subjects – adding that a date had been set for a meeting in the near future with this "major stakeholder". His instinct was to see a move away from *juste retour*, as indeed OCCAR was proposing, but Witney reasoned that this was not the same as offsets. Specifically on that subject, he could not see them disappearing and he preferred them to be factored in to procurements such that the impact on competition was minimised.

SESSION 1 – REDEFINING ARTICLE 296 IN LINE WITH THE RIGOURS OF THE SINGLE MARKET

Following the keynote address, Brooks Tigner held the chair for April's NDA roundtable. The Agency's Nick Witney remained for the morning debate and Tigner handed over to the first speaker, Sandra Mezzadri.

Sandra Mezzadri, Expert Defence Procurement, Directorate General for Internal Market & Services, European Commission

Mezzadri explained that the next step, following the publication of the European Commission's green paper, would be to report back (by the end of the year) on the feedback to the Commission's proposed initiatives, i.e. the interpretative Communication and the new procurement directive. The Commission would then also indicate which actions, if any, would be taken. She added that the Commission appreciated that a "serious discussion" (on the creation of an integrated EDEM) was taking place as to how transparency and competition could be improved. She observed that it was part of an overall plan set in motion by the issue of 2004's green paper on the defence market.



Mezzadri stressed the need for the Commission, the member states and industry to pool resources in order to create an integrated European defence market.

Noting that community rules already apply to defence contracts, subject to Article 296 derogation, Mezzadri emphasised that the green paper aimed to see whether the existing legal framework should be clarified or whether a new community instrument adapted in line with the

market's specificities should be developed. She doubted that Europe could afford to wait yet for another few years, in order to achieve better results. Welcoming the discussions in the EDA, Mezzadri felt that all the parties were heading in the right direction.

"the European Commission would start working on a directive if it is stakeholders orientation"

Sandra Mezzadri

Bill Giles, Director General, Europe, BAE Systems

As an opener, Bill Giles recommended that interested parties read the AeroSpace and Defence Industries Association of Europe's (ASD's) response⁵ to the green paper. Although all sectors of the market were important, Giles



argued that the zone within article 296 was both the biggest challenge and the greatest priority for industry. Giles stated that BAE Systems welcomed the Agency's initiatives but added that the "market issue" was structurally the most important: industry responds to markets. In the absence of growth in procurement budgets, resetting the demand side of the equation is the catalyst that can drive better performance. Furthermore, he argued that market fragmentation was continuing to breed too many inefficiencies (scale of demand, scale of investment, bidding costs, unequal playing fields between nations, preservation of inefficient structures, etc). The Agency could potentially over time play a

"the Article 296 area is the biggest challenge ...and it should be the priority for public policy"

Bill Giles

⁵ To be published on the European Commission's website.

role in helping to consolidating Member States' requirements into pooled purchases, perhaps with one State making a purchase on behalf of several. Giles argued that this would bring both economies of scale and improved interoperability, and that these improvements would be seen throughout the supply chain.

However, Giles also saw challenges. The non-binding nature of the proposed code of conduct would require peer pressure and serious intent among member states. Giles saw a need to re-examine some specific defence issues. For example, it was often assumed that commercial security of supply could be delivered without cost. Economically, this is not so: preservation of capacity is very expensive and is in effect a contingent liability on the customer when he places an order. In principle, it is the most competitive source, wherever that is in Europe, which offers the best chance of low-cost security of supply and which is most likely to become the centre of excellence in Europe for the relevant technology.

Concluding his remarks, Giles called for a single European defence market area, open to competition that included the scope of Article 296 procurements, in which Member States remain the primary customers. Achieving this would require some political courage and a readiness to challenge some assumptions that were too easily seen as facts.

“unless we are prepared to tackle the market issue pretty drastically ... (and it is) a decade overdue ... Europe will continue to struggle”
Bill Giles

Burkard Schmitt, Deputy Director, European Union Institute for Security Studies (EU-ISS)

Burkard Schmitt briefly described the three instruments on the table; two of which (the Commission's interpretative Communication and new procurement directive) were outside the scope of Article 296 and one

(the Agency's proposed code of conduct), which focused on that very article.

Noting that all the instruments aimed to improve transparency and competition within the European defence market, Schmitt looked at the pros and cons of each device.

- *Interpretative communication*: it would limit the worst abuses of article 296 and foster competition at the periphery of the defence markets, but member states would still have to choose between the use of a ill-suited civil directive and the use of article 296
- *Defence procurement directive*: this would help cope with the difficulties of defining the borderline of article 296, but it would not cover the high-value parts of the market
- *Code of conduct*: this was potentially the most beneficial as it did cover the high-value end of the market, but it was also the politically weakest, since it depends completely on member states political will.

He added that none of the instruments would actually clarify in which cases the use of article 296 would be justified, as the notion of essential security interests remained vague. Moreover, all of them would need accompanying measures in areas such as security of supply, transfer, exports, and state aid to effectively enhance fair intra-European competition.

“the three instruments are no alternatives, but complementary in the way they impact on different segments of the market.”
Burkard Schmitt

Schmitt concluded that

1. A *comprehensive action plan* was required – one that brought together and developed all three of the instruments. As an aside, he added that the European Commission's interpretative communication should be issued as soon as possible in order to send

signal to the member states that the abuse of article 296 must end.

2. The *code of conduct* should be introduced by the Agency but it had to be remembered that it was: a) extremely ambitious, and b) not legally binding. However, as long as member states cling to Article 296, there was no alternative to the code of conduct.
3. On the subject of the *procurement directive*, Schmitt could see the member states resisting its introduction but he did not understand their reasoning (it would take too long, there were special issues, etc.), especially as they had the opportunity to ensure that their concerns are taken into account during the drafting phase.

He added that there were many challenges and progress depended on: a) the Commission fully playing its role as Guardian of the Treaty and b) member states changing their behaviour and accepting some loss of sovereignty in the defence markets. Schmitt argued that progress was essential as there would be high price to pay if the various groups continued to defend vested interests.

“progress will only be possible if the European Commission is ready to assume its responsibilities and if member states are ready to change their behaviour”

Burkard Schmitt

First session – Q&As

IT'S A GLOBAL MARKETPLACE

Defence consultant **Alexandra Ashbourne** asked Giles for his thoughts on the signal that his company was giving with their acquisitions in the US defence market? **Bill Giles** was swift to respond, stating that the signal was that defence was becoming a global market. He expected European observers to be delighted to see that US companies could be acquired in this manner.

CODE OF CONDUCT – REPORTING AND MONITORING

EADS' **Pierre Sabatié-Garat** wanted to know more about the reporting and monitoring system that would be linked to the code of conduct. **Nick Witney** did not see this as a difficult issue. He felt that the mechanism would include details of the threshold and the rationale as to why the code had not been applied in specific cases. He saw “peer pressure” as being a key part of the process. **Burkard Schmitt** however saw a huge workload for the Agency and the member states if a strong code was introduced. He was also not totally convinced that the member states would be willing to provide all the necessary data.

FOCUS ON THE BIG BOYS

Paulo Brito observed that 90% of the European defence market was the preserve of just six or seven member states. Adding that while the UK's market was relatively open, those of France and Germany were resolutely closed. He suggested that the Agency focus on lobbying the main players, i.e. France, Germany, Italy, UK, Poland and Sweden.



Witney was not tempted by that argument. He explained that he had learnt, in his 12 months in Brussels, to recall the importance of buyers of defence equipment as well as producers. He wanted all EU states to be involved and, in this respect, he felt the intellectual battle had already been won. **Sandra Mezzadri** explained that Treaty rules meant that all the member states were equal and they all had to be involved in the defence market - that was just one part of the overall single market within the EU.

MORE DETAIL WANTED ON THE AGENCY'S STRATEGY ...

Brooks Tigner was not totally convinced by the arguments. He wanted to know what would happen if the code of conduct was violated – did the Agency have sufficient teeth? Returning to Aesop's fable, Witney commented that he preferred the power of the sun to that of the North Wind. He was optimistic, as he had seen many examples of co-operation with the member states. Witney was willing to let the Agency "travel hopefully" towards its goals.

Gert Timmerman, from the Netherlands delegation to NATO, asked if the "list"⁶ attached to Article 296 would be reviewed by the Agency. Witney commented that he had not detected any appetite to attack that particular subject.

... AND MORE COMMENTS ON THE COMMISSION'S PLANS PLEASE

Tigner mused if it was possible that the Commission might do nothing, if it met significant opposition to a directive?

Mezzadri explained that the green paper had set out the Commission's thinking. She was also at pains to insist that the Commission had started the debate but it would not be providing the final solution if it did not receive the required political backing. "There was no hidden agenda", Mezzadri concluded.

Schmitt argued that the introduction of a new directive was the most politically difficult objective. He wanted the member states to fight for its introduction (which would bring more flexibility), as there was a window of opportunity due to the current changes that the European defence scene was undergoing. Schmitt also added that the Commission would issue a Communication, even if it had no backing for a directive. The former would at least be a warning to member states as to their use (and abuse) of article 296.

TECHNOLOGY TRANSFER

AeroStrategies' **Robert Draper** responded to Witney's remark that the code of conduct would not have an export dimension and Giles' comment that there was a global market. He pointed out that the JSF had been a "difficult experience" and the A400M had been a difficult project for US companies to gain export licenses to be able to compete. After having given some thought to such matters, Draper reasoned that the US's concerns centred on the ultimate use of the technology that might be provided. He wanted the technology transfer issue to be addressed and he called for the Agency to look at the issue of third country exports and intellectual property control.

Witney agreed that, intellectually, the Agency could look at such technology transfer issues but he argued that it was a matter of priorities. The Agency could not do everything with its current resources. On technology transfer Giles noted that current regulations inhibited industrial rationalisation across the water.

SECURITY OF SUPPLY

Eurocopter's **Arnaud Hibon** commented that non-European suppliers already owned some European players so he could not see a new problem in terms of security of supply. However, he agreed that the problem had a political dimension, which had to be addressed.

Witney described this as a big subject: how much did ownership matter? There were many different views. On the subject of ownership, Giles noted that companies were not subject to extra-territoriality provisions and suggested that security of supply concerns could generally be dealt with by contract: customers could stipulate severe penalties in the event of breach.

⁶ The April 15, 1958 list of products relating to Article 296.

SESSION 2: HOW SHOULD THE EU RESHAPE THE RULES TO BEST ADVANTAGE?



Introducing the second session that looked at how the rules of the defence market could be adapted, NDA Director **Giles Merritt** reminded the roundtable attendees that the defence sector was a fast-changing one as it had so many innovative sub-sectors.

Alain Picq, Armaments Counsellor Delegation of France to NATO

Starting on a positive note, Alain Picq said that France was giving its full support to the objectives set out in the Commission's green paper. He did note, however, that it would not be easy to achieve an integrated EDEM due to the specificities of the defence sector and the issue of sovereignty.

"France considers the best way to make real progress ... would be to focus on an experimental and inter-governmental instrument"

Alain Picq

Picq saw the three instruments proposed by the Agency and the Commission, as set out in the first session, to be complementary. Giving a French government's view of the interpretative Communication, Picq argued that it might prevent abuse of Article 296 but it would not improve the overall efficiency of the defence equipment market. He added that France would welcome the introduction of a new directive if it was specifically adapted for the defence market, "both in terms of techniques and sovereignty", and if it could be achieved without prejudice to Article 296.

Noting the many problems to be faced however, Picq reasoned that such a directive could only be a long-term solution. In addition, Picq said that France wanted all member states to be involved and therefore preferred the initial focus to be placed on the experimental and inter-governmental code of conduct proposed by the Agency. He argued it would bring convergence of procurement practices that could be followed by new legal instruments (that would take in to account Article 296) at a later date.

Expounding on France's vision for the inter-governmental code of conduct, Picq listed the following priorities:

- European markets to be opened up to competition, throughout the supply chain
- Mutual guarantees of security of supply
- Free access to critical technologies to be achieved
- Reinforcement of the European Defence Technological and Industrial Base (DTIB), in the short- and long-term

These benefits would be gained by defining common programmes and requirements. The overall effect would be improved efficiency of expenditure due to increased competition. In conclusion, Picq backed the actions of the Agency and described them as being the right way to achieve the green paper's objectives.

Dusan Svarc, Armaments Expert,
National Armaments Director's Office,
Czech Republic

Dusan Svarc backed the two Commission initiatives and explained why the Czech Republic was seeking greater international co-operation. He looked back to the nineties when his government had tried to produce its own defence-related equipment like aircraft L-159, modernized tank T 72 etc. At that time we sought about hundreds of pieces to produce and buy. But due to the strategic changes today we need only a fraction of tanks and about one third of aircraft. It was a very expensive exercise due to: a) a lack of volume that would have made it cost-effective and b) a misreading of the future defence requirements. Svarc's message was clear – "define military requirements first", over a 10 to 15-year timeframe at least.

The Czech Republic's conclusion had also been clear. It would not develop its own complex military equipment in the future, as it has elected to take the procurement route. It will buy expensive equipment on the international market. It has already leased Gripen aircraft and is going to procure AFV soon. Moving to the subject of offsets, Svarc was not in agreement with Witney. In the short-term, he saw them as being essential for new member states as funding was required to bring new technologies and stabilise the regions (where industry was being phased out) and to reduce job losses. On the subject of security of supply, Svarc looked back to bad experiences with some Eastern block countries. He wanted this issue to go hand-in-hand with any modification of Article 296. Looking at the other member states that had recently joined the EU, Svarc saw major differences. For example, the former Czechoslovakia states have only 10% of its former military industry capability whereas some other states had still to go through such a (painful) downsizing process. It would therefore be hard to find co-operation and common ground. Instead EU offers new ground for co-operation. Svarc concluded that the Czech Republic was prepared to accept "rigid rules" and open up its defence market together with creation of conditions for its transformed SMEs to participate in the international co-operative projects.

"there are different interests of the different nations in Europe ... but if you are a member of the club, you must support it"

Dusan Svarc



Roger Hawksworth, Secretary General,
AeroSpace and Defence Industries
Association of Europe (ASD)

Speaking in a personal capacity, Roger Hawksworth saw the various options as complementary and he had no preferences. However, he did express a need to take advantage of the current momentum, i.e. "to do something quickly". Hawksworth wanted a more coherent defence equipment market, as there was only one industry that could meet EU member states' requirements and the Helsinki Goals etc. He also stressed the need for a credible military capability, effectively supplied and supported, to back the CFSP and the ESDP. Hawksworth added that a capable and indigenous European industry could make a significant contribution to world peace.

"we need a credible military and security capability, and an efficient industry to supply it and to support it"

Roger Hawksworth

His conclusion was simple. There was a need to increase expenditure on defence equipment and, more importantly, to spend such monies more efficiently. Hawksworth saw no magic bullet, just a number of actions to be taken:

- Rules were required that focused on harmonised requirements
- Enough member states had to be involved to create a critical mass
- European programmes were required to avoid duplication of effort
- Procurement processes had to be unified (they were currently very different with varying views on, for example, offsets)
- Greater technical collaboration was required, e.g. WEAG was only responsible for 4% of European research
 - European multinational companies could help in this regard
 - Perhaps more money could be provided to the EDA

To achieve progress, Hawksworth stressed the need for a “shared political will” – the Council, the Commission, the European Parliament and industry had to share a vision of the future. Taking a practical line, he acknowledged that six member states accounted for 75% of equipment procurement and some 90% of R&D expenditure. Agreeing that all member states had to be involved, Hawksworth wanted the major players to take a lead and act as a catalyst for the programme. He saw the objectives as being achievable, but he wanted priorities to be identified

In addition Hawksworth called for vital technologies to be identified, cross-border transfers to be handled efficiently, security classifications to be reviewed, “mutual dependency” to be introduced correctly and the impact of (non-European) take-overs to be written in to contracts. On a general point, he wanted negotiations to be between principals, i.e. senior politicians, so that “risk-averse people” did not run the show. He also saw the need for solid projects that would prove the concept of an integrated market. Hawksworth could give no guarantees about employment but he did argue that an efficient industry would survive and prosper. Hawksworth concluded with a familiar message, things would change if the right level of political will existed.

“we do need to understand what the missions are going to be and to harmonise requirements”

Roger Hawksworth

Second session – Q&As

TOWARDS AN INTEGRATED MARKET – THE BEST APPROACH?

Brooks Tigner wanted to know why France was supporting the Agency’s proposed code of conduct. **Alain Picq** explained that France wanted a step-by-step approach. As the directive would not be implemented quickly, the code of conduct offered something in the near future. Reminding Tigner that Witney had opted for an imperfect option, Picq said that France agreed with that philosophy. He added that the code of conduct would be the first real attempt to create an integrated market.

Picq also argued that the political will to achieve an integrated EDEM did exist, as exemplified by the existence of the Agency. A second step could be the introduction of legal instruments that could lead to the introduction of a genuine DTIB. **Dusan Svarc** commented that the Czech Republic would continue to apply Article 296 where appropriate. He added that the Czech Ministry of Defence preferred the code of conduct approach, as it would provide time for the players to understand the “rules of the game”.

HARMONISED REQUIREMENTS, COMMON THREATS?

The Israeli Embassy’s **David Dahan** argued that the right level of political will must imply an agreement to give up sovereign rights. This had to go hand-in-hand with a definition of common threats and European capabilities. Otherwise, added Dahan, the political will would exist without any defined capability to achieve its objectives. The European Voice’s **Ilana Bet-El** had two questions. She wanted to know if there was a long-term political will beyond making the market more efficient and she asked for more detail on who the enemy actually was. Bet-El could see little point in defining a European defence market if its objectives were unclear.

Picq repeated his view that the political will did exist and that a more efficient and harmonised market was required in order to reinforce the DTIB. Hawksworth concurred, arguing that requirements had to be harmonised so that everyone could understand the objectives. That would allow industry to ask the question – “are we doing the right things in the right way?”

Svarc commented that the requirements had been set out in the EU's Strategy document and reinforced with the discussion on battlegroups. But he acknowledged that there were different interests across member states. Sometimes solidarity with other states might be reason to participate in certain activities where we do not have strong interests.

PROCESSES AND PROCEDURES IN A SINGLE MARKET

EIS' **Brian Beary** asked for more detail on the need to unify procedures and also wanted to know how the procurement of defence equipment could fit with the current rules that applied to the single market.

Hawksworth argued that there were many specificities within the defence market, some within Article 296 and some outside of that domain. All of these had to be considered on a case-by-case basis. In regard to those related to Article 296, such as security issues and concerns about security of supply, Hawksworth said that specific market circumstances (e.g. capabilities that would perhaps be essential in the long-term) had to be considered. That meant that it could not be left to market forces, governments had to take a view.

On the issue of procurement processes, Hawksworth said there was a need to look at the overall situation in order to reduce costs. Currently EU member states had different procedures and this made the whole process inefficient.

WHERE ARE THE HARMONISED REQUIREMENTS?

Giles Merritt took the discussion back to basics and asked where he could find a global snapshot of the European defence requirements. He also wanted to know whose job it was to define those requirements (the consolidation of national defence needs) and how those European military capabilities dovetailed with the US view of a global defence market.⁷

Hawksworth agreed that the member states had to define their overall military requirements and objectives. As for where that responsibility was positioned (the member states, NATO, the

military organisations within the Council, etc.) he could not provide a definite answer. Svarc reasoned that it was the responsibility of politicians, not the military. Picq thought it was an extremely important issue but he added that certain European scenarios did exist and the ECAP process could bring something to the party. In regard to the perceived US-Europe gap, it had to be reduced by achieving a harmonised European market.

Fortress Europe – a good approach?

Paolo Brito returned to Hawksworth's comments on the question of European autonomy. Brito was concerned about technology transfer problems with the US. He wanted European preference rules to be considered as an alternative to opening up the European market to all-comers.

Speaking personally, Hawksworth believed in open markets on a reciprocal basis. He was not a supporter of protectionism. Picq was thinking along the same lines and did not want to see "Fortress Europe" created. He argued that the objective was to make European expenditure more efficient. Svarc added that consolidation of requirements and improved effectiveness were needed to create a strong European market.



The European Commission's **Yves Mollard La Bruyère** intervened to bring the session back to the question on the table – how could European legislators approach the liberalisation of the defence market? Personally, he felt that the progress on opening up the defence market was slowing down due to the application of political pressure. As an example, he dismissed the criticism of the EU's proposed links with China, as "officially" the US had three times the amount of trade in comparison to Europe.

⁷ Merritt also reminded the meeting about the gross imbalance between US and European troops in the Balkan and Iraq campaigns.

Turning to the so-called “Fortress Europe”, Mollard La Bruyère argued that the existence of a “Buy America” policy meant that European companies could not compete on the majority of systems. Looking at the European situation, he argued that France was perhaps the country that had given the strongest opposition to market liberalisation and was also the one that was the most capable of standing alone. Using the example of recent discussions between France and Saudi Arabia, he said the former had wanted a supplier that was not subject to US pressures. He therefore concluded that “Fortress Europe” might be the most effective way of creating a profitable European defence market.

“building (fortress Europe) might be the best way of making money”
Yves Mollard La Bruyère

Picq replied that France had no intention of creating “Fortress Europe”, but he felt that a strong European market was the best way of making the US re-consider its policies. He could not accept that France was currently opposed to market liberalisation; however, he did acknowledge that the French position had softened over recent years. Picq concluded with a wish that France could work with the EDA in a pragmatic manner to take the first steps on a long road towards an integrated market.

As WEAG was being wound down, Svarc reasoned that it was now the responsibility of the EDA to achieve the European requirements. He warned, though, that the Czech Republic – that had dismantled its own defence industry capability

y – did not wish to subsidise some larger member states ineffective defence industry. The defence industry in EU must further consolidate.

Hawksworth added that Europe had considerable military capabilities and it was now a question of seeing how those capabilities could be improved. As for political pressure, both economically- and military-based, this was nothing new. In conclusion, he reasoned that the US depended on Europe as well, and he felt this dependence (political and technical) would increase over time.

Next NDA meetings

NDA Conference – May 24: ***Reinventing NATO: Does the Alliance reflect the changing nature of transatlantic security?***

The next NDA roundtable will be June 27: ***Strategic Priorities for Protecting Europe's Infrastructure Against Terrorism***



NDA- Will the EU get tough on opening-up national defence procurements?

Programme:

SESSION 1

REDEFINING ARTICLE 296 IN LINE WITH THE RIGOURS OF THE SINGLE MARKET

Keynote Address - **Nick WITNEY**,
Chief Executive, European Defence Agency

The European Commission consultative Green Paper of July 2004 opened a debate on creating a more transparent EU single market for defence equipment. The fledgling European Defence Agency, operational from the beginning of this year, also has a mission to create a European defence equipment market. What is the political state of play on this in EU Member States and in the boardrooms of major defence companies? What ideas are emerging about redefining exemptions from EU single market rules? What role will the European Defence Agency play in defining and implementing a single market for equipment within the Article 296 exemption? And what role will it be playing in developing EU-wide procurement?

Moderator: **Brooks Tigner**, Correspondent, *Defense News*

- **Nick Witney**, Chief Executive, European Defence Agency
- **Bill Giles**, Director General, Europe, BAE Systems
- **Sandra Mezzadri**, Expert Defence Procurement, Directorate General for Internal Market & Services, European Commission
- **Burkard Schmitt**, Deputy Director, European Union Institute for Security Studies (EU-ISS)

SESSION 2

HOW SHOULD THE EU RESHAPE THE RULES TO BEST ADVANTAGE?

Defence contracts range from cutting-edge micro-electronics to clothing and feeding the troops. How best can Europe's legislators approach the liberalisation of defence procurement as a means of stimulating pan-European R&D? What needs to be done to satisfy the needs of both major platform-builders and smaller niche-market specialists? Could the re-thinking of procurement rules in Europe begin to staunch the loss of employment in the defence sector, or might it cost still more jobs?

Moderator: **Giles Merritt**, Director, New Defence Agenda

- **Alain Picq**, Armaments Counsellor, Delegation of France to NATO
- **Roger Hawksworth**, Secretary General, AeroSpace and Defence Industries Association of Europe (ASD)
- **Dusan Svarc**, Armaments Expert, National Armaments Director's Office, Ministry of Defence, Czech Republic

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ABOUT THE NEW DEFENCE AGENDA

The **New Defence Agenda** (NDA) has become established as the only regular Brussels-based forum where political figures and journalists gather to discuss the future of European and transatlantic defence and security policies.

The aim of the NDA is not to replicate more academic research-based projects but to give greater prominence to the complex questions of how EU and NATO policies can complement one another, and how transatlantic challenges such as terrorism and WMD can be met.

Bringing clarity and new ideas to the rapidly-changing defence and security policy scene has been the NDA's aim from its beginning. NDA's activities range from monthly roundtables and international conferences to reports and discussion papers, all of which attract high-level speakers and authors and institutional, governmental and industry support.



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One of our prime objectives is to raise the profile of defence and security issues among the Brussels-based international press. To encourage more in-depth coverage of these topics, the NDA holds regular, informal dinners for journalists with high profile decision makers.

Recent speakers and participants include



Benoit d'Aboville, Ambassador, Permanent Delegation of France to NATO; **Gijs de Vries**, Counterterrorism Coordinator, Council of the EU; **Richard Falkenrath**, Research Fellow, Brookings Institution and former Deputy Homeland Security Advisor to the US President; **Franco Frattini**, Commissioner for Justice, Freedom and Security, European Commission; **Bill Giles**, Director General, Europe, BAe Systems; **Vecdi Gönül**, National Defence Minister, Turkey; **Scott A. Harris**, President, Lockheed Martin International; **Patrick Hennessey**, Director, DG Enterprise, European Commission; **Hilmar Linnenkamp**, Deputy Chief Executive, European Defence Agency; **Alessandro Minuto Rizzo**, Deputy Secretary General, NATO; **Sergei Ordzhonikidze**, Director General of the United Nations Office in Geneva; **Zonghuai Qiao**, Vice Foreign Minister, Ministry of Foreign Affairs, China; **George Robertson**, Former Secretary General, North Atlantic Treaty Organisation; **Gary Titley**, MEP, Committee on Industry, External Trade, Research and Energy, European Parliament; **Michel Troubetzkoy**, Senior Vice President, Director for Relations with European Institutions, EADS; **Günter Verheugen**, Commissioner for Enterprise and Industry, European Commission; **Antonio Vitorino**, former Commissioner for Justice and Home Affairs, European Commission; **Karl von Wogau**, Chairman, Subcommittee on Defence and Security, European Parliament,



"[NATO] An Alliance in which Europe and North America are consulting every day on the key security issues before them. Acting together, in the field, to defend our shared security... Because in a dangerous world, business as usual is not an option"

NATO Secretary General Jaap de Hoop Scheffer, NDA Conference 17 May 2004

"Homeland Security = a concerted, comprehensive and nationwide effort to prevent future terrorist attacks, to protect the most vulnerable targets against future terrorist attacks and to be ready to respond against possible attacks and minimize loss of life and damage if such attacks occur" **Richard Falkenrath**, former Deputy Assistant to the President and Deputy Homeland Security Advisor, 17 November 2003 NDA Conference



"The agency should generate ideas and speak the truth to defence ministers."
Nick Witney, Chief Executive, European Defence Agency 28 April 2004 NDA Press Dinner



"There is an opportunity for Europe to take advantage of the US's investment by issuing collaborative programmes – paid for to a certain extent by the US taxpayer. The European Defence Agency could foster transatlantic cooperation rather than follow more traditional approaches"

Scott Harris, President Continental Europe, Lockheed Martin, 28 April 2004 NDA Press Dinner

NDA- Will the EU get tough on opening-up national defence procurements?

THE NEW DEFENCE AGENDA WOULD LIKE TO THANK ITS PARTNERS AND MEMBERS FOR THEIR SUPPORT IN MAKING THE NDA A SUCCESS



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