

Public consultation on Directive 2009/81/EC - CONTRACTING AUTHORITIES/ENTITIES, OTHER PUBLIC AUTHORITIES

Fields marked with * are mandatory.

Introduction

Public consultation on Directive 2009/81/EC on defence and sensitive security procurement

Public procurement of military and sensitive security equipment in the EU and EEA is governed by Directive 2009/81/EC. This Directive sets rules for the procurement of arms, munitions and war material, plus related works and services, for defence purposes, but also for the procurement of sensitive supplies, works and services for security purposes. It is tailored to the specificities of defence and security markets also by providing more flexibility and a number of specific defence-related exclusions.

Directive 2009/81/EC is applicable through the national laws of the Member States which transpose it. Thus, all the questions about Directive 2009/81/EC or procedures under the Directive should be understood as referring to the relevant **national rules governing the procurement of military and sensitive security equipment, services and works (i.e.: transposing Directive 2009/81/EC)**.

The deadline for transposition into national law was 21 August 2011. In early 2012, Directive 2009/81/EC was transposed by the majority of EU Member States. When questions refer to the situation “**before or after**” **Directive 2009/81/EC** please take into account the **moment when the specific procurement rules transposing Directive 2009/81/EC entered into the force in your country**. Please see here (<http://ec.europa.eu/DocsRoom/documents/15723>) the list of transposition dates per Member State.

Some questions also refer to the “**Civil Procurement Directives**”. These are the Directives which, through the national laws transposing them, govern general (i.e. non-defence) public procurement. These Directives are, at the moment of the launch of the consultation, **Directives 2004/18/EC and 2004/17/EC**. The national laws transposing them should be replaced, by 18 April 2016, by national laws transposing the new Directives 2014/23/EC, 2014/24/EC and 2014/25/EC. This change will not affect the issues raised in this consultation.

The notion “Member States” used in this questionnaire refers to countries that are part of the European Union or of the European Economic Area.

Defence and security procurement experience

★

1. Have you ever been involved in **public procurement in the fields of defence and security** (equipment, works or services)?

- ☒ Yes
☐ No

Patterns of use and impacts

Patterns of use

1. What **proportion of your defence and security purchases** (in value terms) is made through procurement procedures under Directive 2009/81/EC?

- ☐ All
- ☐ More than 50%, but not all
- ☒ 50% or less
- ☐ I prefer not to answer

2. In your experience, how often are the following legal grounds used as a justification **NOT to carry out defence or security procurement procedures under Directive 2009/81/EC?**

	Very frequently	Frequently	Occasionally	Rarely	Very rarely	Never
Necessity for the protection of the essential security interests (Article 346 TFEU)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Purchase governed by international agreements rules (Article 12a)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Purchase governed by an international organisation's rules (Article 12c)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Purchase related to intelligence activities (Article 13b)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Purchase related to multinational cooperative programmes (Article 13c)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Government to government procurement (Article 13f)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Below threshold procurement	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other reasons (please explain):

3 To what extent do you agree with the following statement: **"The distinction between the scope of the Civil Procurement Directives and Directive 2009/81/EC is sufficiently clear."**?

- ☐ Strongly agree ☐ Agree ☒ Neutral ☐ Disagree ☐ Strongly disagree
☐ I have no opinion

If needed, please substantiate:

Although there has been improvement, there is still room for interpretation leading to a non-uniform approach throughout the European Union.

4. To what extent do you agree with the following statement: **"The exclusions from Directive 2009/81/EC (Articles 12 and 13) are appropriate."**?

- ☐ Strongly agree ☒ Agree ☐ Neutral ☐ Disagree ☐ Strongly disagree
☐ I have no opinion

If needed, please substantiate:

The purchase via international organizations require more clarification.

5. To what extent do you agree with the following statement: **"The procedures available under Directive 2009/81/EC and the conditions for their use provide enough flexibility."**?

- ☐ Strongly agree ☒ Agree ☐ Neutral ☐ Disagree ☐ Strongly disagree
☐ I have no opinion

If needed, please substantiate:

It would be worth to investigate if the procedure of innovation partnership in 2014/24/EC has an added value for 2009/81/EC

6. To what extent do you agree with the following statement: **"The provisions on security of information in Directive 2009/81/EC are sufficient to ensure the protection of classified information."**?

- ☐ Strongly agree ☐ Agree ☒ Neutral ☐ Disagree ☐ Strongly disagree
☐ I have no opinion

If needed, please substantiate:

7. To what extent do you agree with the following statement: **"The provisions on security of supply in Directive 2009/81/EC are sufficient to limit the risks of supply disruptions and ensure operational autonomy."**?

- ☐ Strongly agree ☐ Agree ☐ Neutral ☐ Disagree ☐ Strongly disagree
☒ I have no opinion

If needed, please substantiate:

8. To what extent do you agree with the following statement: **"Directive 2009/81/EC has reduced the need to use the essential security interest exemption (Article 346 TFEU)"**?

- ☐ Strongly agree ☒ Agree ☐ Neutral ☐ Disagree ☐ Strongly disagree
☐ I have no opinion

If needed, please substantiate:

9. To what extent do you agree with the following statement: **"The provisions on subcontracting in Directive 2009/81/EC foster cross-border access to defence and security supply chains."**?

- ☐ Strongly agree ☐ Agree ☐ Neutral ☐ Disagree ☒ Strongly disagree
☐ I have no opinion

If needed, please substantiate:

At the moment there is almost no cross-border subcontracting. However, an obligation to do so would not be an appropriate solution.

10. How would you evaluate the following aspects of procurement procedures under Directive 2009/81/EC as compared to **procurement rules applicable before**?

	Significantly improved	Improved	No difference	Deteriorated	Significantly deteriorated	I have no opinion
Best value for money	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Quality of contract implementation	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Competition (number of offers)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Procedures duration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Legal certainty	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Clarity of procedures	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other aspects that you consider important (please specify):

11. How would you evaluate the **costs of carrying out procurement** procedures under Directive 2009/81/EC as compared to these costs **before the Directive**?

The costs under Directive 2009/81/EC are:

- ☐ **Much more** resource intensive than before
- ☒ **More** resource intensive than before
- ☐ **Similarly** resource intensive as before
- ☐ **Less** resource intensive than before
- ☐ **Much less** resource intensive than before
- ☐ I have no experience in carrying out defence and security procurement before Directive 2009/81/EC
- ☐ I have no opinion

12. How would you evaluate the **costs of carrying out procurement** procedures under Directive 2009/81/EC as compared to **cost under the Civil Procurement Directives** (for procurement of similar complexity)?

The costs under Directive 2009/81/EC are:

- ☐ **Much more** resource intensive than civil procurement
- ☐ **More** resource intensive than civil procurement
- ☐ **Similarly** resource intensive than civil procurement
- ☒ **Less** resource intensive than civil procurement
- ☐ **Much less** resource intensive than civil procurement
- ☐ I have no experience in carrying out civil procurement
- ☐ I have no opinion

13. In your view, how do the **costs and benefits** of the application of procurement procedures under Directive 2009/81/EC compare?

- ☐ The benefits **by far outweigh** the costs
- ☐ The benefits **outweigh** the costs
- ☐ The costs **are proportionate** to the benefits
- ☐ The costs **outweigh** the benefits
- ☐ The costs **by far outweigh** the benefits
- ☒ I have no opinion

14. In your experience, has Directive 2009/81/EC resulted in offers/expressions of interests coming from a **more diverse, wider range of suppliers** from other EU Member States?

- ☐ Very Frequently ☐ Frequentl
y ☐ Occasionall
y ☐ Rarel
y ☐ Very
rarely ☐ Neve
r
- ☒ I have no
opinion

Impacts

1. In your view, what has been the impact of Directive 2009/81/EC on the **competitiveness of European defence industry** (the European Defence and Technological Industrial Base - EDTIB)?

- ☐ Significantly
positive ☐ Moderately
positive ☒ No
impact ☐ Moderately
negative ☐ Significantly
negative
- ☐ I have no
opinion

2. In your view, what has been the impact of Directive 2009/81/EC on the **access of SMEs to defence and security procurement** in EU and EEA countries?

- ☐ Significantly
positive ☐ Moderately
positive ☐ No
impact ☒ Moderately
negative ☐ Significantly
negative
- ☐ I have no
opinion

3. In your view, what has been the impact of Directive 2009/81/EC on **cross-border access to defence and security procurement** in EU and EEA countries?

- ☐ Significantly
positive ☐ Moderately
positive ☒ No
impact ☐ Moderately
negative ☐ Significantly
negative
- ☐ I have no
opinion

General views and comments

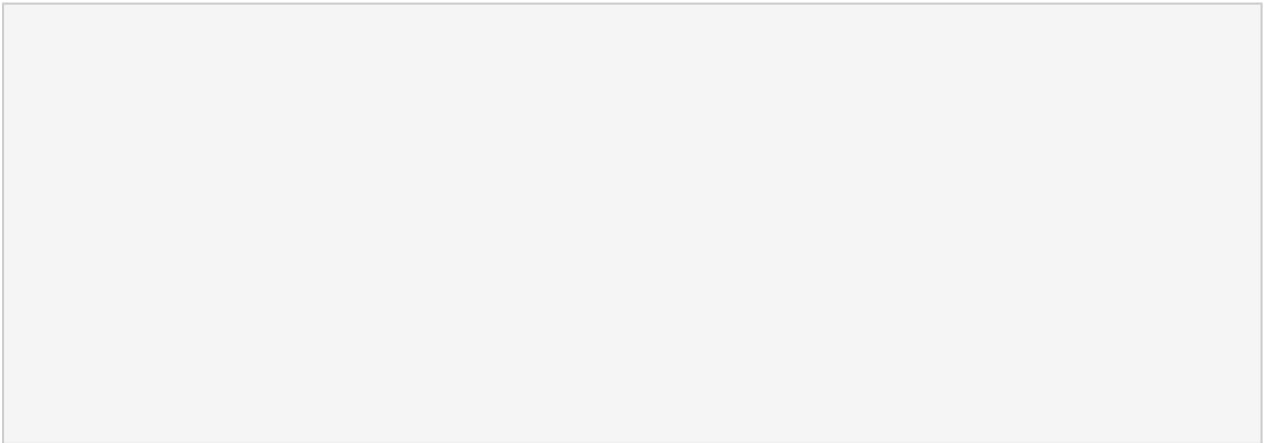
1. In your view, to what extent **the objectives of Directive 2009/81/EC are still relevant today?**

The direct and indirect objectives of Directive 2009/81/EC were:

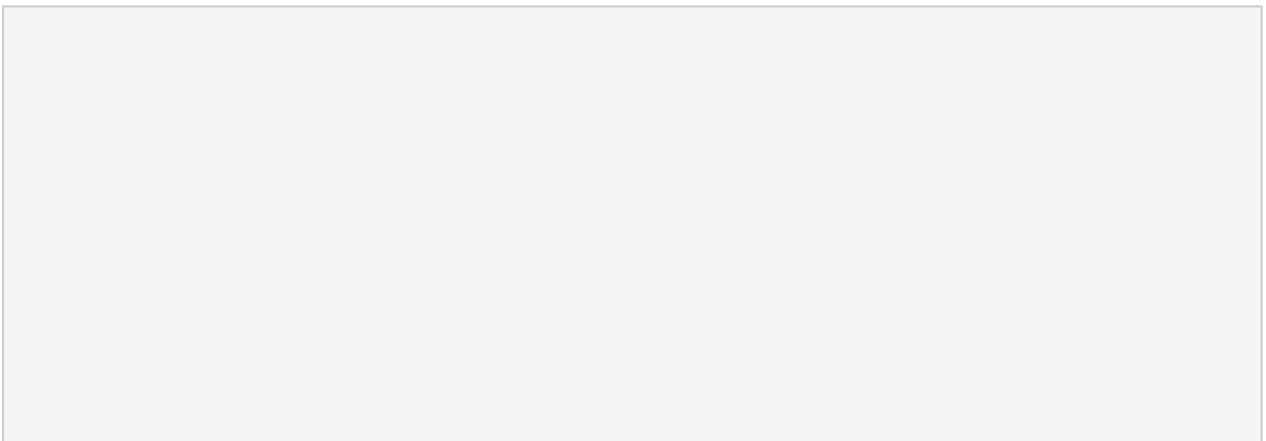
- *to establish an open and competitive European Defence Equipment Market (EDEM),*
- *to help strengthen European Defence and Technological industrial base (EDTIB),*
- *to ensure that the situation of SMEs in the defence sector is not negatively affected.*

- ☒ Relevant
- ☐ Moderately relevant
- ☐ Neither relevant nor irrelevant
- ☐ Rather irrelevant
- ☐ Irrelevant
- ☐ No opinion

2. Have any **new issues related to the objectives of Directive 2009/81/EC** emerged since its adoption?



3. If you have any **additional observations or comments** concerning Directive 2009/81/EC, please provide them here:



You may also provide your comments in a file.

Contact details



1. Please indicate the country you are from:

- ☐ Austria
- ☐ Belgium
- ☐ Bulgaria
- ☐ Cyprus
- ☐ Czech Republic
- ☐ Germany
- ☐ Denmark
- ☐ Estonia
- ☐ Greece
- ☐ Spain
- ☐ Finland
- ☐ France
- ☐ Hungary
- ☐ Croatia
- ☐ Ireland
- ☐ Iceland
- ☐ Italy
- ☐ Lithuania
- ☐ Luxembourg
- ☐ Lichtenstein
- ☐ Latvia
- ☐ Malta
- ☒ Netherlands
- ☐ Norway
- ☐ Poland
- ☐ Portugal
- ☐ Romania
- ☐ Sweden
- ☐ Slovenia
- ☐ Slovak Republic
- ☐ United Kingdom
- ☐ Other country

***2. Your name/organisation and contact details (address, e-mail, phone):**

Ministry of Economic Affairs
Bezuidenhoutseweg 73
2594 AC Den Haag
The Netherlands

Phone number: +31 70 379 8911

3. We will include the answers into the consultation summary that will be published on the Commission website (www.ec.europa.eu/yourvoice). If you have provided textual answers, would you agree to possibly be quoted in the summary?

- ☒ YES - under my name (I consent to my name and my answers being quoted; none of the information I have provided is subject to copyright restrictions).
- ☐ YES - anonymously (I consent to my answers being quoted anonymously; none of the information I have provided is subject to copyright restrictions).
- ☐ NO - please keep my answers confidential (your answers and personal data will not be published, but will be used by the Commission within the evaluation and included in aggregated form)

Contact

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