

# Public Defence Procurement

Screening Meeting

7th Novembre 2005

# The State of Defence Market

- Defence expenditure represents €170 billion for the 25 Member States, one fifth of which is used for the procurement of military equipment (acquisition plus research and development)
- A fragmented market
- Competitiveness of European industries, which is particularly affected
- The lack of effectiveness of acquisition systems and procedures
- The cost for the European taxpayer

# Defence Procurement Specificities

- The State leading role such as customer, sponsor and regulator
- The political and strategic importance of weapon systems
- The complexity of defence programmes
- The security of supply and confidentiality requirements
- Complexity of arms acquisition program

# Commission Objectives

- Standardisation
- Monitoring of defence related industries
- Intra-community transfers
- Competition
- Procurement rules

Unit C-3 is only in charge of the aspect concerning public procurement

# Main Topics

- The concept of essential interests is not defined yet
- Different interpretation of the scope of the article 296 needs by Member States

# The Legal Framework

- The three directives on public procurement
- The new directive on public procurement
- The article 296
- Its derogative nature
- The ECJ caselaw framework
  - Commission v/ Spain C-414/97
  - Johnston C-222/84

# The 296 caselaw

- Not a general and automatic derogation
- A case by case justification
- A necessary measure for achieving the objective of safeguarding the essential security interests invoked
- Burden of proof lies on the Member State

# Chronology of Commission action

- Communication COM (1996)10 - "The challenges facing the European defence-related industry, a contribution for action at European level" (24.1.1996)
- Communication COM (1997)583 - "Implementing European Union strategy on defence-related industries (12.1.1997)
- Communication COM (2003) 113 final -"Towards a European Union defence equipment policy" (11.3.2003)
- Green Paper on the public defence procurement – September 2004
- Communication on the contribution of the Green Paper planned for December 2005