

Evaluation

of the functioning and impact of the EU Defence and
Security Public Procurement Directive (2009/81/EC)
across 20 EU states

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Introduction

This evaluation is based on a review of 8 indicators in Transparency International's (TI) unique dataset, the Government Defence Anti-Corruption Index, analysing procurement control mechanisms, policies and procedures from 20 European government defence ministries collected during 2014 and 2015.¹ The paper identifies positive and negative practices across countries, as well as the overarching trends analysed in three areas; namely, the use of the essential security interest exemption, procurement transparency and competition. Drawing on this analysis, the paper contains a series of recommendations to European governments and the Commission concerning the factors affecting the implementation of the Directive in these areas, and the issues that continue to require action at EU level.

Government Defence Anti-Corruption Index, results for assessed EU member states, 2015

Member state	Band (A-F)	Member state	Band (A-F)
Austria	C	Hungary	C
Belgium	B	Italy	C
Bulgaria	C	Latvia	B
Croatia	C	Lithuania	C
Czech Republic	C	The Netherlands	B
Denmark	B	Poland	B
Finland	B	Portugal	D
France	C	Spain	C
Germany	B	Sweden	B
Greece	C	United Kingdom	A

¹ Countries assessed include: the United Kingdom, Germany, France, Austria, Spain, Portugal, Greece, Latvia, Lithuania, Poland, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Finland, Hungary, Italy, Netherlands and Sweden. The full index contains 77 indicators analysing anti-corruption controls across five risk areas: political, financial, personnel, military operations and procurement. Transparency International Defence and Security, Government Defence Anti-Corruption Index (2015) <http://government.defenceindex.org/list/>

Why does defence corruption matter?

Public procurement is highly vulnerable to corruption. Defence corruption is particularly vulnerable and leads to significantly higher costs and lower quality equipment, destroys public confidence in governments, institutions, and the private sector, as well as undermining competition. An estimated 32% of European companies, for example, reported that corruption prevented them from winning a contract.

Effective defence is as important as ever due to the surge in armed conflict, state failure and instability in the EU's immediate neighbourhood -- not to mention terrorist threats inside and outside the EU. Yet less than a quarter of Europeans agree that their Government's efforts are effective at tackling corruption.

The European trading bloc remains the world's second largest exporter and purchaser of arms. This collective strength gives the EU a unique opportunity to raise integrity standards while establishing a European defence equipment market. But defence companies are increasingly looking to compensate falling turnover in Europe through exports to high-corruption risk countries in the Middle East and Africa; the task of increasing levels of transparency, competition and integrity is pressing.

Recommendations

The European Commission should ensure that governments:

- Promptly publish details of non-sensitive defence procurements, forward purchasing plans and full details on financial packages surrounding major arms deals.
- Fully justify the reasons for selecting non-competitive tender procedures (single-source or negotiated procedure) to an independent external oversight body with the power to scrutinise and reject the elected procedure, and access sensitive information. A summary of tender justifications should be available to the public.
- Establish an independent, appropriately resourced appeals system – for contractors and the public to report malpractice in procurement – with the power to reject tender procedures and awards. Encourage proactive investigation of poor procurement practice and share best practice amongst procurement authorities.
- Enact appropriate legislative protections to protect genuine complainants from discrimination in future procurements. Tender appeal decisions should be publicly available.
- Appropriately resource and train prosecutors to actively investigate corruption and collusion in defence procurement. Strengthen sanctions – including fines, criminal sentencing and settlements - to deter collusion and malpractice.
- Reform legislative restraints to effective enforcement, such as overly lenient sanctioning and settlements for collusion and corruption, unclear provisions for whistleblower immunity, overly strict statutes of limitations and lack of cooperation between European prosecutors.
- Proactively conduct due diligence on contractors, senior management and sub-contractors for evidence of corruption, bribery, money laundering, fraud and links to terrorist or organised crime groups.
- Actively exclude convicted companies from public procurement. Train procurement staff and develop detailed, transparent policies to implement derogations, mandatory and discretion exclusion, with guidance on liability for the actions of group companies. This will make it clear to companies what actions will lead to exclusion.
- To ensure uniformity, encourage procurement authorities to co-ordinate their application of derogation and supplier exclusion provisions. The decision and reasons for an exclusion or derogation should be publicly available.
- Require contractors to show a formal, publicly declared ethics and anti-corruption program that adheres to minimum standards, as a pre-condition to completing larger value contracts. This should be done together with training for employees, sub-contractors and agents.
- Include anti-corruption clauses in contracts with all contractors and subcontractors, regulating bribes, gifts, entertainment, agents and whistleblowing. Contractors should be obliged to disclose to the procurement authority any ethical and compliance violations committed by it, a subcontractor or agent.

The European Commission should:

- Issue implementation guidance on, and clarify the objectives of, the derogation, mandatory and discretionary exclusion provisions to ensure they meet the following aims:
 1. To deter companies from committing corrupt acts.
 2. To punish companies which commit corrupt acts.
 3. To encourage companies to implement effective anti-corruption policies.
 4. To encourage companies to deal promptly and openly with any instances of corruption, and to cooperate with the authorities in the investigation and prosecution of corrupt acts.
- Include a self-cleaning provision into procurement authorities exclusion and derogation decision-making processes, with detailed criteria that set a high bar for integrity and takes into account the following factors:
 1. The severity of the offence;
 2. The magnitude of the loss caused by the company's actions;
 3. Whether it is a first offence or a repeat offence;
 4. The seniority of the relevant individuals responsible for the offence;
 5. Whether the board of the company had authorised or acquiesced in the offence;
 6. The steps taken by the company to prevent the offence occurring;
 7. Whether the company itself reported the offence to the authorities;
 8. The extent to which the company co-operated with the authorities after the offence had been discovered;
 9. Whether the relevant individuals responsible for the offence have been dismissed or appropriately disciplined by the company;
- Establish a European-wide register with details of all debarred companies, the relevant offence, the length of the mandatory exclusion, and the reasons thereof. This information should be publicly available and easily accessible.
- As far as possible governments should co-ordinate their contractor exclusion systems, so that policies are applied uniformly to ensure that exceptions to exclusion rules are not granted to companies with special political influence.

1. Preventative Measures

1.1 Choice of tender methods, transparency and overuse of exemptions

The European Commission's Evaluation Roadmap for the Defence Directive states that the legislation was specifically designed to address, among other issues, preventative anti-corruption measures such as limiting extensive use of exemptions, increasing transparency and use of open and fair tender competitions. The "Expected Results" listed in the Roadmap include more openness and transparency in defence procurement, and clear tendering procedures. The "Direct Impact" of these results the Commission expects to see should include an increased number of contracts subject to publication and a decreased number of classified contracts, including on the basis of Art. 346².

Part I of this paper analyses the European-wide data taken from 20 European countries from four indicators assessed by the Government Defence Anti-Corruption Index 2015:

1. To what extent are actual and potential defence purchases made public?
2. Is defence procurement generally conducted as open competition or is there a significant element of (non-competitive) single sourcing?
3. Are the principal aspects of the financing package surrounding major arms deals, (such as payment timelines, interest rates, commercial loans or export credit agreements) made publicly available prior to the signing of contracts?
4. What percentage of defence and security expenditure in the budget year is dedicated to spending on secret items relating to national security and the intelligence services?

Our research found that a significant percentage of defence contracts (by value) within the EU is still single sourced, often without clear justification. An even higher percentage of tenders are competed via negotiated procedure, where 3 or fewer bidders are invited to tender. More specifically, our research found that:

- **The Netherlands** has the highest level of open competitions for defence procurement in the EU; less than 10% of the total value of defence contracts is single-sourced.

² Article 346 TFEU (formerly Article 296 TEC) allows EU countries to exempt defence and security contracts if the application of European law would undermine their essential security interests: a) Article 346 (1)(a) allows EU countries to keep secret any information the disclosure of which they consider contrary to the essential interests of their security. b) Article 346 (1)(b) allows EU countries to take measures they consider necessary for the protection of their essential security interests in connection with the production of/ trade in arms, munitions and war material (specified in the 1958 list) Measures taken under Article 346 (1)(b) may not adversely affect competition on the common market for products not specifically intended for military purposes. Derogation under Article 346 is a serious political and legal issue. The Treaty contains strict conditions for its use, balancing member countries' security interests with EU principles and objectives. According to the Court of Justice, the use of the derogation must be limited to clearly defined and exceptional cases and interpreted in a restrictive way.

- **France** and **Poland** are amongst the least likely to use open competitions. **Spain, France** and the **Czech Republic** use negotiated proceedings for the majority of their defence procurement needs - 85% in **Spain**.
- **France** awards a significant number of contracts to a few domestic companies in which it holds shareholdings. A 2011 audit report by the Cour des Comptes showed that 82% of naval contracts had been awarded to a single company DCNS which is 64% state-owned.
- The **Latvian** Armed Forces significantly reduced non-competitive tenders from 46% of total contracts in 2010, to 25% in 2011. However the Latvian Air Force saw a 30% increase in non-competitive procurement over the same 2-year period.
- In the last 2 years the **UK** has increased the percentage of competitively tendered new awards from 40% to 63%, and is on course to reach 80% by 2018. The use of sub-contractors in single source procurement has been increased from 19.6% and is due to reach 25% by 2020, with a particular emphasis on opportunities for Small and Medium-sized Enterprises.

Unjustified use of negotiated or single source procedures increases the risk of corrupt practices. Nearly all countries have independent institutions such as a Court of Audit or Parliamentary Committee to scrutinise the choice of procurement procedure. But there is a mixed picture in terms of implementation. In practice, few of these are given sufficient information to question whether the use of non-competitive procurement procedures and exemptions is appropriate – this is limiting implementation of the Directive.

For instance:

- **Finland's** parliament plays a highly active role in scrutinising single source procurements and exemptions.
- Neither **Portugal, Spain, Austria** nor **Latvia** provide clear justifications for the selection of single source procurement or use of exemptions: a fact that has been severely criticised by both the Portuguese and Spanish Courts of Auditors.
- **Latvia's** Procurement Supervision Bureau, an independent entity under the supervision of the Ministry of Finance, has been active in reviewing tender procedures - out of 220 applications for negotiated procedures, the Bureau disallowed 52 of these competitions. However, Latvia's overall percentage of single sourcing and exemptions is still significantly higher than **Lithuania** and **Greece**.
- In **Poland** and **Latvia** there is insufficient publicly available information to enable the Court of Audit to identify why non-competitive procedures and exemptions have been selected.
- The **UK's** reliance on long-term, high-tech, high-capital investment contracts makes it one of the highest single source procurers in Europe. In January 2015, the UK government established the Single Source Regulations Office (SSRO) as an independent regulatory body of defence single source contracts. In the absence of market competition the SSRO reviews the profit margins on single source defence contracts to try to ensure fairness to the state. However, it does not have the power to scrutinise or reject the choice of procurement procedure.

In the past five decades companies have been earning anywhere between 12 and 22 per cent margins on UK defence single source contracts. The current formula, which allows for a profit margin of 10.6 per cent, is calculated based on an average of profits earned by a selection of UK listed businesses. The UK government's reforms are also seeking to enforce more discipline on costs being charged in contracts. The SSRO's chairman has spoken publicly on how a lack of defence competition has led to widespread instances of bad workmanship and high central overheads — including tabs for entertainment picked up by the government.³ The SSRO has the power to fine defence companies up to £1m if it discovers abuse of the contracting process.

While transition to the new regime has been slow - just three of 61 single-source contracts awarded in 2015 came under the SSRO's remit because the others were classified as extensions or amendments to existing contracts. Eventually, the UK government intends that the regulator will oversee all £8 billion of the MOD's annual spending on single-source defence contracts. The government's target is to save £200m a year through the SSRO's reviews.

The SSRO's first annual report published in January 2016 stated it had found almost £100,000 of agreed savings and identified over £20 million of potential savings. The report highlights a further £5.7 million of possible savings that are currently under investigation.

1.2 Disclosure of current defence tenders and forward purchasing plans

Our research found that while a number of countries have a policy to disclose non-sensitive defence tenders and purchases, too many tenders or purchases are still classified as sensitive or are not released for unjustified reasons, limiting the impact of the Directive by inhibiting effective competition and scrutiny:

Again the picture is mixed across the EU:

- **Denmark** provides the most extensive transparency on current and proposed purchases.
- In the **UK**, an online portal provides 3 month's free online access to relevant tender and contract opportunities with a value over £10,000 as well as information on the MoD's on-going and upcoming equipment projects. A Freedom of Information Request must be sent to access information older than three months, or to search the database in aggregate.
- **Latvian** Procurement Law mandates the publication of purchases within 3 days.
- After criticism by **Sweden's** National Audit Office, the government investigated models of accountability to improve transparency – and now releases extensive information.

While security is often given as a reason for confidentiality and non-publication of tender details, our research suggests that this is often not justified. For example:

- The **French** Defence Ministry must retrospectively publish concluded contracts, though this is not extensive and the reasoning behind exemptions is often unclear.

³ The Financial Times, Arms companies charged taxpayers for croquet and magicians, February 26, 2015

- **Portugal's** MOD classifies all urgent procurements, and does not publicly release data on proposed or past procurements. A retrospective report on aggregate costs is presented to parliament – though this is not audited, and contains no information on forward purchasing plans.
- In **Spain** there is evidence that many planned or actual defence purchases are not made public, with no clear security justification as to why this information is withheld
- **Croatia** has successfully decreased confidential classification from 12% in 2013 to 5.74% in 2014, though the rationale for classification is still often unclear.

We found only a few examples of the principal aspects of the financing package surrounding major arms deals –such as payment timelines, interest rates, default penalties, terms and conditions, commercial loans or export credit agreements – being made publicly available prior to the signing of contracts:

- **Greece** and **Finland** provide the most information on financial packages.
- **Austria** and the **Czech Republic** provide no details on the existence of a financing package.
- **Croatia, Germany, and France** do make some information publicly available, but usually only after the signing of contracts.

Information on forward purchasing plans allows more bidders to prepare for tenders, and minimises the risk of collusion. Our research found very few examples of good practice:

- **Spain** has improved on transparency since 2014 by publishing an Annual Contracting Plan with a forward purchasing requirement. But the high rates of negotiated procedure limit access for suppliers, and oversight.
- To increase industry awareness of future purchase requirements both the **Latvian** and **UK** defence ministries host Industry Days. In the UK events are advertised to companies who sign up online via the Contracts Online portal. Latvia's annual and two-year procurement plans are not publicly available, though the defence ministry does share these with contractors during Industry Days.
- A long-term procurement plan is published by **Croatia**, and one used to be published by **Poland** until 2012 – the last year for which the plan is available.
- **Bulgaria's** Public Procurement Agency produces a 12-month forward purchasing template for the Defence Ministry to update. The Agency then updates this information online daily – including emergency, unannounced tenders, and any exclusions must be justified to the Agency.
- In 2012, the **French** government published forward purchasing information on drones allowing the general public to debate and compare the advantages and disadvantages of the different models.

In **Austria**, overly strict data secrecy laws limit the implementation of the Directive across all intended areas:

- Only a small fraction of [Austria's](#) defence purchases is made public, and the Austrian defence ministry does not proactively release information online on planned purchases. Extensive legal secrecy provisions, and the lack of a Freedom of Information Act, leave the public with no right to access documents related to the activities of the defence ministry, purchases or the privatization of assets.
- Tender announcements are published on the defence ministry's website (and via the EU's TED service), but further details and the contract documents have to be specifically requested from the procuring entity by the potential bidder. These usually contain secrecy clauses that ban the recipient from discussing or sharing the documents, inhibiting any effective public scrutiny. Contract award notifications released through the TED service are the only source of systematic proactive publication of major purchases made by the defence ministry.
- An [Austrian](#) Member of Parliament noted that the defence ministry regularly refuses to provide final, signed procurement contracts to the designated Parliamentary committee. The Austrian Parliament has, for example, never received a copy of the controversial 2003 Eurofighter purchase agreement, which Austrian prosecutors are investigating for bribery. A statutory confidentiality clause in the Austrian Constitution and the Data Protection Act, which provides blanket privacy protection to legal entities, are used by defence and security officials as justification for not releasing any contracts or detailed information on defence procurement.

Some procurement details were previously made public in the [Austrian](#) "White Book" but this publication stopped in 2012. No recent examples of any defence contracts could be found through our research. The fact that even redacted contracts or partially released contracted data could not be found suggests that the high level of secrecy is not justified by security concerns.

2. Enforcement Mechanisms

This section of the evaluation paper analyses the effectiveness of the Defence Directive in achieving its expected results using European-wide data taken from a further three indicators:

1. Are there mechanisms in place to allow companies to complain about perceived malpractice in procurement, and are companies protected from discrimination when they use these mechanisms?
2. Does the country have legislation in place to discourage and punish collusion between bidders for defence and security contracts?
3. What sanctions are used to punish the corrupt activities of a supplier?

2.1 Complaint Mechanisms

Individuals and companies have access to a European Commission infractions process when it is believed that a contracting authority may not have met legal obligations under EU rules. But otherwise it is left up to individual governments to ensure they set up an efficient appeals system to investigate allegations of corruption and malpractice in procurement. Our research found that most, but not all, countries have active complaint mechanisms, though their effectiveness varies widely.

For instance:

- In [Portugal](#), no evidence of any formal complaint or appeal mechanisms was found.
- The [Czech Republic](#) has a rudimentary complaints procedure: – contractors can email korupce@army.cz, but there is no information available as to the outcome of investigations.
- The senior management at [Croatia's](#) State Commission for the Control of Public Procurement Procedures is appointed by Parliament and cannot be affiliated with any political party or industry association during their appointment. The Commission reported that it reviewed 12 appeals challenging MOD competitions and annulled 4 of these awards.
- The [UK](#) defence ministry receives a formal legal challenge every three months, but reports that no case has been sustained against the ministry in 3 years- implying a low level of malpractice. In addition to these measures, the Ministry's Fraud Team operates a toll-free Hotline, which receives all fraud and theft reports as well as procurement complaints. It receives on average 1,200 referrals per year. The outcome or categorisation of complaints is not reported on publicly.

Our research highlighted only one example of a government proactively investigating poor procurement practice:

- In 2011, the UK government launched a ‘Mystery Shopper Scheme’ to address poor public procurement practice and receive complaints against procurement authorities as well as from subcontractors against prime contractors.
- In the first 3 years of the scheme, the Cabinet Office received 580 cases, reporting that 79% of cases reached a positive outcome; for example live changes made to procurement tenders, recommendations to procurers to change behaviour, and shared examples of good practice.
- In 2014, the scheme was expanded to include ‘spot checks’: – each month 20 sets of online tenders are selected at random to ensure they comply with best practice. In one of these checks the UK MOD was reported for illegible contract documentation.
- All case results are published online at www.gov.uk. In an annual report the UK Cabinet Office compares the data to previous years to identify positive and negative trends and issue guidance to procurers. For example, one trend analysis highlighted an increase in the number of complaints relating to specifications that did not allow for equivalents, an increase in bureaucracy, as well as complaints from suppliers that they did not have sufficient time to respond to lower value tenders.

Complaint mechanisms across European, and particularly in [Lithuania](#), [Spain](#) and [Italy](#), need to be significantly more active, efficient and independent. For example, [Italian](#) courts are formally independent, but despite legislative protections for claimants there is no evidence of companies challenging tender awards, with experts pointing to the lengthy timing of judicial proceedings as a possible reason for lack of appeals. Apart from appeals lodged via the judiciary, we were unable to find any other appeal mechanisms available to claimants in Italy.

In addition to judicial appeal mechanisms, [Germany](#), [Latvia](#), the [UK](#), and [Belgium](#) have several complaint and appeal mechanisms available to contractors. For example:

- In [Belgium](#), complaints can be pursued via the defence ministry’s Procurement Division, via the Legal Department, directly via the Minister, the Court System, or via the Council of State, which has the authority to suspend or annul tenders. The Belgium defence ministry told our researchers that they receive 2-3 challenges per month from suppliers.
- [Latvian](#) anti-corruption experts view the complaints systems as independent and non-discriminatory. According to a 2014 Annual Report published by Latvia’s Procurement Supervision Bureau [an independent entity under the supervision of the Ministry of Finance] it accepted 744 applications for review and issued decisions for 552 tenders; all of these decisions are publicly available online. Claimants can also appeal decisions via the Court System.

A lack of legal protections and other safeguards to protect genuine complainants from discrimination in future procurements is severely limiting the effectiveness of the Defence Directive:

- A recent survey indicates that 62% of **Lithuanian** businessmen believe public tenders are tailored to specific bidders, but only 3% of bidders challenge awards. Interviews with anti-corruption and defence experts indicate that the country's court system and procurement office are viewed as ineffective and lacking independence, with weak safeguards to prohibited discrimination against companies:
- **Croatia** has very detailed legislation on the types of genuine discrimination complaints from which companies are protected. Strong legislative protection from discrimination exists for claimants in **Belgium**.
- **Finland's** Market Court website lists all complaint decisions, including defence procurement appeals from companies which went on to win other defence contests – indicating a lack of discrimination.
- **Austria's** White Collar & Anti-Corruption Prosecutor's Office operates an anonymous, encrypted whistleblower mechanism and estimates it receives on average one complaint against the Austrian defence ministry every 2 months. Over the last year 2 out of 14 complaints have related to defence procurement malpractice.
- Procurement challenges to the **Austrian** Administrative courts are published online, but are largely anonymised and therefore it is unknown if companies suffer discrimination from challenging awards. Given the significant volume of non-competitive contracts, the lack of legal provisions to give specific protection to private sector whistleblowers or formal protection from discrimination for companies that file genuine complaints, discrimination may be a concern for suppliers.
- There is no evidence of companies challenging tender awards in **Spain**, though there are legislative protections from discrimination. The high rate of negotiated proceedings, 85%, reduces open competition and may dissuade selected bidders from complaints.
- Despite concerns of negative consequences and a lack of legal protections for companies, evidence indicates that **Bulgaria's** Commission for the Protection of Competition takes complaints seriously; it has received 1,161 complaints arising from the 7,416 procurements conducted since 2013.

2.2 Legislation to discourage and punish collusion

A number of factors limit the effectiveness of the Defence Directive in combating discrimination, including an absence of appeal mechanisms for contractors, lack of appropriate skills and resources leading to lack of enforcement by prosecutors, and lack of robust sanctioning for concluded cases. Our research pointed to legislative shortcomings such as an absence of criminal sanctions, unclear provisions for immunity, overly strict statutes of limitations and a lack of cooperation and information sharing amongst European prosecutors as additional factors limiting effective enforcement.

For instance:

- The countries where businesspeople reported that collusive bidding is widespread in public procurement include the **Czech Republic** (69%), **Greece** (55%), **Croatia** (58%) and **Italy** (55%).⁴
- In the **Netherlands**, **UK** and **Spain** competition authorities have actively investigated collusion, though not in the defence sector.
- The **UK** revised its criminal cartel offence, together with a reformed Competition and Markets Authority, in 2014. Cartel members who turn whistleblower are granted formal legal protection in the form of immunity and leniency, but even so the UK has had very limited success in cases – with only one successful prosecution out of 6 investigations conducted between 2003 and 2012. The Authority's website shows one current, active criminal cartel investigation.

Our research was unable to identify any evidence of prosecutions for collusion in **France**, **Latvia**, **Bulgaria**, **Greece**, **Italy**, **Portugal**, **Spain** and **Croatia**:

- Evidence from **Bulgaria's** Centre for the Prevention and Countering of Corruption & Organised Crime, a state body that collects data to elaborate anti-corruption strategies, points to collusive practices in procurement, price fixing and company mergers prior to the announcement of tender awards.

The high percentage of single sourcing has also fuelled high public perceptions of collusion in **Italy** and **Portugal** amongst contractors and the public:

- Legislation criminalising collusion is in place in all member states apart from **Italy** and **Portugal**. Italy has yet to implement EU laws on collusion into domestic legislation and we were unable to find evidence of robust enforcement from the Italian Competition Authority's annual reports.
- Collusion does not appear to incur any criminal sanctions in **Portugal**. A recent Parliamentary hearing into GSC Ferrostal uncovered allegations of collusion in aeronautics but the case was closed without a trial. The Attorney General's Office implied that it lacked the resources to investigate the case; though even with sufficient

⁴ Report from the Commission to the Council and the European Parliament, EU Anti-Corruption Report (2014) page 25 http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf

resources an overly strict Statute of Limitations Act ultimately prohibited further investigation.

- **Portugal's** investigations have also been hindered by a lack of cooperation amongst EU countries on cross-border collusion cases: an investigation by the Portuguese Attorney General's office into a submarine procurement case was unable to continue due to a lack of information sharing requested from its German counterpart.

Of all countries assessed, only **Germany**, **Poland** and the **Czech Republic** have prosecuted collusion in the defence sector:

- In 2015, **Germany's** competition authority fined three suppliers 1.3 million Euros for colluding in a military vehicle supply bid, a fourth company was granted immunity for whistleblowing.
- **Poland's** Office of Competition and Consumer Protection fined the state Military property Agency nearly 300,000 zlotys in 2015 for bid rigging. However, bidders in Poland lack a right to appeal a tender award when companies have reason to suspect collusion by another bidder.

2.3 Sanctions to punish corrupt suppliers

Low levels of enforcement for corruption and collusion are severely limiting the effectiveness of the open and fair competition objectives of the Defence Directive. Only two of the countries we assessed - **Germany** and the **UK** - are actively enforcing anti-bribery legislation: the **UK** Serious Fraud Office is investigating at least 28 companies for bribery and fraud, including two defence sector contractors: Rolls Royce and GPT Special Project Management, a subsidiary of Airbus.

Italy, **Austria**, **Norway** and **Finland** are assessed at 'moderately active' enforcement levels. For example, **Austrian** prosecutors investigating allegations of kickbacks in a controversial 2003 order for 18 EADS Eurofighter jets are, 13 years on, reportedly still investigating the case. The remaining countries demonstrated 'limited' or 'no enforcement' of bribery.⁵

Compounding low levels of enforcement, sanctions for defence sector bribery are too lenient to provide an effective deterrent to discriminatory practices. For example, **Belgium** has not convicted any companies of corruption since 2004, when prosecutors launched nearly 100 investigations into the Belgium Army for procurement crimes committed between 1996-2005. Thirty-one personnel as well as contractors were charged and 15 ultimately sentenced. Sanctions included confiscations and prison sentences – though these were all suspended prison sentences.

Evidence indicates that companies are able to evade corruption convictions by agreeing a settlement with prosecutors. In some cases settlements allow the contractor to avoid any acknowledgement of guilt. In other cases companies are allowed to plead guilty to lesser crimes. Fines for these settlements or lesser convictions are insufficient to remove the economic benefit of the activities engaged in. The OECD Working Group on Bribery has repeatedly raised

⁵ Transparency International, Exporting Corruption (2015)
http://www.transparency.org/exporting_corruption

concerns that along with low enforcement levels in Europe, settlements are unlikely to comply with Article 3 of the Convention, which requires parties to ensure that bribery of foreign officials is “punishable by effective, proportionate and dissuasive criminal penalties”. In addition, procurement authorities seem to be giving all contractors who have agreed a settlement for bribery a blanket indemnity to exclusion from public procurement, however severe the economic crimes involved –in complete opposition to the intended objectives of the Defence Directive, which grants greater mandatory and discretionary exclusion powers to procurement authorities to exclude suppliers:

- In 2014, AgustaWestland’s [UK](#) subsidiary entered into a settlement in Italy and was fined € 300,000. The parent company, AgustaWestland SPA was fined € 80,000 and had € 7.5 million confiscated in return for settling a bribery investigation into the sale of 12 helicopters by the Indian military.⁶ Yet –according to articles in The Hindu newspaper and Italian court documents – the scale of the alleged bribery was vast and Indian authorities are investigating whether € 60 million in bribes had been paid by AgustaWestland to Indian officials to secure the sale. The strength of the evidence has so far resulted in two senior executives –the CEO of AgustaWestland and the CEO of Finmeccanica –being convicted of bribery and sentenced jail for paying bribes to Indian officials to secure the deal.⁷ Yet the company’s annual report said AgustaWestland’s settlement “was neither an affirmation of liability, nor an acknowledgment of guilt.” The company and its subsidiaries have continued to win defence contracts across Europe, including Italy and the UK.
- In 2010, BAE Systems was ordered to pay £500,000 and £250,000 costs to settle a corruption probe into a £26 million contract for the sale of a radar and air traffic control system to Tanzania – a nation without an air force. The company was also ordered to make nearly £30 million of ex-gratia payments to Tanzania. BAE pleaded guilty to one charge of failing to keep accounts. The judge said he was “surprised” the Serious Fraud Office had offered BAE “a blanket indemnity for all offences committed in the past”, and added that he was “astonished” that the SFO agreed that none of the funds paid by BAE to third parties was used improperly. He said it was “naïve in the extreme” to think that BAE’s agent in Tanzania, who was paid more than \$12 million via offshore-companies, was simply “a well-paid lobbyist”. This settlement allowed BAE to avoid criminal corruption convictions and mandatory exclusion from European public contracts.
- In 2010, BAE Systems settled another bribery investigation with the US Department of Justice and the UK SFO – which had investigated allegations of substantial secret payments made to secure plane leases to the [Czech](#) and [Hungarian](#) governments, as well as bribes to the [Saudi](#) government. BAE pleaded guilty to one charge of conspiring to make false statements to the US government and paid a \$400 million fine. This settlement also allowed BAE to avoid criminal corruption convictions and mandatory exclusion from US and European public contracts. [Mike Turner](#), then CEO of BAE Systems, said in August 2005 that BAE and its predecessor had earned £43 billion in twenty years from the Saudi Al-Yamamah contracts and that it could earn £40 billion more. The DoJ gave a damning condemnation of BAE, which it said had accepted

⁶ Finmeccanica Press Release, 28 August 2014, <http://www.leonardocompany.com/en/-/finmeccanica-accolte-gjp-richieste-agustawestland>

⁷ Both individuals have appealed their sentences to the Italian Supreme Court.

"intentionally failing to put appropriate, anti-bribery preventative measures in place", despite telling the US government that these steps had been taken.

2.4 Exclusion from Public Contracting

"Exclusion", sometimes referred to as "debarment" or "blacklisting", is the procedure by which a public procurement authority or government prevents a company or individual from participating in a public tender for specified reasons, such as a conviction for corruption or fraud.

Beyond general references in the explanatory material to anti-corruption, the Defence Directive does not clarify the objectives of its exclusion regime, making a baseline for evaluation difficult to establish. This paper will use the UK Anti-Corruption Forum's four primary objectives for a contractor exclusion framework to evaluate the Defence Directive's exclusionary provisions:⁸

- 1) To deter companies from committing corrupt acts.
- 2) To punish companies which commit corrupt acts.
- 3) To encourage companies to implement effective anti-corruption policies.
- 4) To encourage companies to deal promptly and openly with any instances of corruption, and to cooperate with the authorities in the investigation and prosecution of corrupt acts.

Mandatory Debarment

The offences listed in the Defence Directive that trigger **mandatory** exclusion from public procurement include convictions for corruption, bribery, money laundering, collusion, terrorist financing, criminal enterprise, and fraud. The legal drafting of the text is clear and directs procurement authorities to exclude suppliers "as soon as they have knowledge of a judgement concerning such offences." Despite this, we could only find evidence of one country using the mandatory exclusion powers to exclude a contractor. In our view the mandatory exclusion provision in the directive is not working; rather than incentivising good practice by creating penalties for illegal practices, it seems the directive is being completely ignored by governments:

- The **Czech Republic** was the only defence ministry to positively confirm that it has excluded defence sector suppliers under the mandatory exclusion provisions (7 companies since March 2015).
- Evidence suggests that **Poland** has not enacted the necessary legislation to enable it to exclude suppliers convicted of collusion.
- The **UK** Defence Ministry's Commercial Department confirmed that it has never used mandatory exclusion, though it has advised some suppliers to not prepare or submit bids for tenders.

⁸ The UK Anti-Corruption Forum is an alliance of UK business associations, professional institutions, civil society organisations and companies. The purpose of the Forum is to promote industry-led actions, which can help to eliminate corruption.
www.giaccentre.org/documents/FORUM.DEBARMENT.DISCUSSIONPAPER.pdf

Our research uncovered a number of European defence sector suppliers that have been investigated and convicted of bribery or corruption by European enforcement agencies in the last 3 years, but no evidence that they have subsequently been excluded from public defence contracts.⁹ Many of these suppliers are listed as winning public contracts in the Tenders Electronic Daily (TED) European database. By failing to apply the legislation and allowing companies to evade exclusion, governments are undermining the exclusion regime by neutralising its intended goal as a deterrent against corruption. Governments' failure to act on these legislature powers further removes any incentive for companies to, deal promptly and openly with any instances of corruption, cooperate with the authorities in the investigation and prosecution of corrupt acts or implement effective anti-corruption policies.

Derogation Provision

To avoid a situation whereby governments endanger their national security by being unable to procure goods and services from an excluded suppliers, the Directive includes a derogation for “overriding requirements in the national interest”, allowing governments to continue procuring from that entity. The derogation contains no guidance on how, or in what circumstances, it should be applied by governments. For example, the Directive does not stipulate if this derogation should be interpreted as a blanket derogation allowing the company to continue bidding for any public procurement tenders, or if the derogation should be considered on a tender-by-tender basis, depending on whether the required equipment or services can be adequately provided by another supplier.

Because the derogation allows suppliers to escape exclusion and fails to stipulate any remediation or self-cleaning requirements, the existence of the derogation undermines the goals of the mandatory exclusion framework. It also creates a disparity between smaller suppliers who will face a greater risk of exclusion for criminal offences than dominant suppliers, which governments depend on to fulfil single source contracts. It is not clear from our research if all incidences of defence procurement authorities continuing to trade with convicted companies are being classified internally as a derogation, or if defence ministries are just ignoring the mandatory exclusion requirements. To avoid continued abuse, the circumstances in which the derogation can be applied should be clarified and limited.

Discretionary Exclusion: The United States Approach to Suspension and Debarment

Globally, exclusion systems vary from mandatory to highly discretionary exclusion systems - such as the suspension and debarment system in the **United States'** Department of Defence (DoD). The US debarment system does not seek to punish contractors for past wrongdoing, such as where a company has been convicted of bribery, though this is one of a range of factor that is considered. Instead by authorising procurement officials to analyse a range of factors such as a contractor's honesty, integrity, ethics, responsibility, competence and what remediation steps the contractor has taken since the malpractice was discovered, the system

⁹ According to publicly available research European defence sector suppliers investigated for bribery and corruption in the last 3 years, which resulted in a settlement, fine or conviction include: Rheinmetall Defence Electronic GmbH/ (German), Ballast Nedam (Dutch) purchased by BAE, AKTOR ADT, Patria/Patria Land Services Oy, BAE (Romania), Steyr/Marek Dalik, Liebherr, Safran, DCNS, Ferrostaal, EADS, Countermine Technologies AB, Astrium, Wirtsschaftsblatt, Izar, Ferrostaal AG, Tognum AG/Rolls-Royce PLC and Daimler, Finmeccanica and AgustaWestland.

seeks to give procurement officials (also referred to as suspension and debarment officials) a wide margin of discretion to decide whether to suspend or debar an entity based on the **current risks** that a contractor poses to the DoD (“present responsibility”).

Crucially, United States’ procurement officials are not bound to only consider criminal convictions, but can act on the basis of “adequate evidence” to exclude contractors accused of, or under investigation for, misconduct or in cases where contractors have voluntarily reported an incident of malpractice (to discuss potential issues, rather than waiting for the agency to take action). Only in extreme cases, if a contractor is judged to have taken insufficient steps to remedy the malpractice and therefore represents a continuing risk to US public procurement is an entity or individual debarred.

The most recent annual report from the Interagency Suspension and Debarment Committee (ISDC) indicates a significant increase in the number of contractors self-reporting incidences of malpractice to procurement authorities, in the hope of avoiding more serious penalties such as debarment.¹⁰ By incentivising self-reporting, the US approach encourages companies to take responsibility for their own risk management and remediation efforts. As a consequence, this limits the government resources required to monitor and investigate malpractice.

The ISDC has consistently emphasised that it does not consider the overall number of suspensions and debarments to be a metric of success or failure. Rather, the appropriate level of discretionary suspension and debarment activity in any given year is purely a function of need. In this regard, the ISDC reminds procurement authorities to regularly review their own actions to determine if the level of activity is reflective of what is necessary to protect their agency and the government from harm.

In line with this discretionary power, US procurement officials have developed a range of proactive engagement tools, such as pre-notice engagement letters, which give contractors an opportunity to discuss the steps they are taking to address issues, that if left un-remediated, would likely result in suspension and debarment. For example, United States agencies reported a nearly 30 per cent increase from FY 2014 to FY 2015 in the use of show cause or other pre-notice investigative letters. Finally, use of administrative agreements (settlements) increased by 25 per cent from FY 2014 to FY 2015. The ISDC devotes significant resources to regulatory development support and training, with a particular emphasis on promoting greater procedural consistency, transparency of practice, and fairness in suspension and debarment programs across the Federal Government.¹¹

¹⁰ Interagency Suspension and Debarment Committee Annual Report, June 2016, <https://isdc.sites.usa.gov/>

¹¹ Actions Related to Suspension and Debarment FY 2015, Letter to The Honorable Jason Chaffet, Chairman Committee on Oversight and Government Reform U. S. House of Representatives <https://isdc.sites.usa.gov/files/2016/06/873report2015.pdf>

Department of Defence Actions Related to Suspension and Debarment FY 2015

Defence Agency	Show Cause Notices	Referrals	Suspensions	Proposed Debarments	Debarments	Administrative Agreements (settlements)
Air Force	24	141	18	123	100	2
Army	34	1027	137	429	456	4
Defence logistics Agency	49	326	48	325	149	1
Navy	28 482	482	41	155	154	0

Discretionary Exclusion: The European Union's Approach

Without stating its objectives, the European Commission seems to have created a hybrid regime, mixing discretionary and mandatory exclusion provisions. The Discretionary Exclusion provision applies to instances of "Grave Professional Misconduct" on the part of the contractor, and appears to grant broadly similar powers to procurement authorities as the United States discretionary model.

In a recent ruling, the European Court of Justice clarified that the concept of "grave professional misconduct" gives procurement authorities a wide margin of interpretation, and can be applied to "any wrongful conduct which has an impact on the professional ethical standards established by a disciplinary body or by a judgment which has the force of *res judicata*", including "breach of contract".¹²

Moreover, there is nothing in the wording of the Directive that would preclude European procurement officials from analysing a range of factors beyond a conviction, such as a contractor's honesty, integrity, ethics, responsibility, competence and what remediation steps the contractor has taken since the malpractice was discovered, in a similar fashion to American suspension and debarment officials. This discretionary aspect is particularly important given the very low criminal conviction rates in Europe and the increasing number of settlements. But nor are these additional powers being used by governments to exclude contractors. As with the mandatory exclusion provisions, we found no evidence that these discretionary provisions have been applied by defence ministries for cases involving bribery and corruption, only for cases of fraud and non-payment of tax duties.

Many of the defence commercial staff we interviewed were unclear on how or when they could apply the provisions and were similarly concerned about legal action by suppliers, limiting the impact of this provision.

¹² C-465/11 Case of Forposta, European Court Justice, 2012 <http://curia.europa.eu/juris/liste.jsf?num=C-465/11&language=EN>

Overall, research and interviews indicate main five factors limiting the implementation of the exclusion provisions:

- 1) Lack of guidance on exclusion framework objectives, interpretation and implementation;
- 2) Market concentration/lack of defence sector suppliers. (In countries such as the UK, which often single-source or rely on a very small group of trusted suppliers for high-tech aerospace contracts).
- 3) Lack of political will to exclude domestic providers;
- 4) Weaknesses in due diligence and information sharing procedures on convicted entities;
- 5) Lack of a self-cleaning provision.

Self-Cleansing Provision

The Defence Directive lacks a self-cleaning provision. The revisions made to the Defence Directive's more recently updated counterpart for non-defence procurement, the Public Contract Directive 2014/24/EU included a "self-cleaning" provision. In the Public Contract Directive, this clause grants public procurement authorities and suppliers who have been excluded from public procurement a remediation mechanism, giving the possibility of an end to mandatory exclusion for suppliers who are judged to have effectively "self cleaned" –a process undertaken during US suspension and debarment decision-making.

In one interview, a senior defence commercial official flagged the lack of a self-cleaning provision as an inconsistency between two parallel procurement directives – one framework which gives convicted non-defence sector suppliers an opportunity and incentive to remediate, and a separate framework which mandates that governments exclude defence suppliers whatever actions they may have taken to remediate. This current legal inconsistency may give defence sector suppliers legal cause to challenge the Defence Directive as "disproportionate".

The US experience has shown that a robust self-cleaning framework can encourage companies to implement effective anti-corruption policies, deal promptly and openly with any instances of corruption, and cooperate with the authorities in the investigation and prosecution of corrupt acts, thereby enabling procurement authorities to achieve the objectives of a contractor exclusion regime. Giving suppliers an opportunity to self-clean enables procurement authorities to exclude non-compliant companies and thereby deter companies from committing corrupt acts.

Our research was unable to identify any uniformity or transparency in European defence procurement authorities' approach to mandatory or discretionary exclusion. As far as possible governments should co-ordinate their exclusion systems, so that policies are applied uniformly to ensure that exceptions to exclusion rules are not granted to companies with special political influence.

2.5 Defence Ministries Due Diligence on Supply Chain Corruption Risks

This evaluation paper identifies a lack of information and information sharing on relevant convictions as a factor limiting the effectiveness of the exclusion provisions. Our research found no evidence that defence procurement authorities proactively conduct due diligence on domestic as well as non-domestic entities to check whether suppliers, senior management and sub-contractors have a conviction for corruption, bribery, collusion, money laundering, fraud, terrorist financing or other offences detailed in the Defence Directive. Nor do authorities proactively conduct their own due diligence checks on suppliers' ultimate beneficial ownership, or for links to organised crime or terrorist groups.

In February 2016, an EU funded report from Conflict Armament Research investigated the supply chain of weapons into armed conflicts and named 51 commercial entities from 20 countries, including Belgium, the Netherlands, Austria, that are involved in the supply chain of components used by IS to create improvised explosive devices (IEDS).¹³

Current due diligence checks by European procurement authorities are limited to self-certification by the prime contractor. Only **Italy** seems to have taken some small steps towards establishing a supplier list, though research indicates this is limited to investigating links to organised crime syndicates.

For example:

- **Italy's** Anti-Corruption Law Reforms of 2012 made the Anti-Corruption Authority responsible for creating supplier "white lists", detailing which businesses are compliant with anti-mafia legislation. Procurement authorities are directed to assign tenders only after consulting these lists.
- All **UK** Defence Ministry prime level contractors must sign a "Statement in Relation to Good Standing" and in some cases a "Dynamic Pre-Qualification Questionnaire" before signing a contract. These are designed to ensure that neither the organisation nor its representatives have a criminal conviction for the offences stipulated in the Defence Directive. Contractors are then vetted and must pass Security Clearance. However, this process does not include integrity checks or due diligence checks on a supplier or on the sub-contractors.
- In **Portugal**, the **Netherlands** and the **UK**, a false declaration by a supplier can lead to imprisonment and to termination of a contract.

The **United States** is the most active global enforcer of anti-bribery and economic crime, but the Department of Defense's General Counsel informed us that no European defence procurement authority has ever requested information on US convictions, settlements or entities listed on the US debarment blacklist prior to awarding defence contracts. Current vetting procedures across Europe are inconsistent and do not include checks for non-conviction relevant risks such as

¹³ Conflict Armament Research, Tracing the Supply of Components used in Islamic State IEDs (2016) www.conflictarm.com/wp-content/uploads/2016/02/Tracing_The_Supply_of_Components_Used_in_Islamic_State_IEDs.pdf

ultimate beneficial ownership, links to organised crime or terrorism, current investigations, settlements or senior management convictions.

For example:

- The [UK](#) Defence Ministry reserves the right to request further information from the UK Criminal Records Bureau, but does not proactively conduct due diligence. For non-UK suppliers, commercial staffs are directed to consult the competent authority of the relevant EU member state.
- A number of defence ministries including [Belgium](#), [Latvia](#), [Lithuania](#) and [Greece](#) reported that they ask suppliers to provide a criminal record certificate from their domestic Ministry of Justice but that this procedure differs between countries and it can take considerably longer to receive confirmation from some countries, particularly France.
- The [Belgium](#) Defence Ministry reported that it has no formal proactive due diligence protocol, but that it can request the Intelligence Services to investigate.

Our research indicates that no due diligence is undertaken of sub-contractors or third parties. While some Defence Ministries reported that they reserve the right to check and refuse sub-contractors and third parties, none systematically do this or could give examples of having done this.

For example:

- [The Netherlands](#) obligates prime contractors to ensure that subcontractors have not been convicted of bribery or corruption. The Defence Ministry can instruct an Integrity Assurance Officer ("FIZ") from the Public Administration Probity in Decision-making regulations (BIBOB) to start an investigation into police and judicial documentation.
- [Norway's](#) Ethical Statement requires a contractor should confirm that sub-contractors and entities involved in the contract have not been convicted of corruption.

In many cases evidence suggests that defence ministries are not aware of which sub-contractors or third parties they are contracting with, nor do they require a contractor to confirm that sub-contractors and entities involved in the contract have not been convicted of corruption.

Collection and access to enforcement information

Procurement authorities' ability to use the mandatory and discretionary provisions by assessing the risks posed by defense contractors and subcontractors, depends upon easy access to information from enforcement bodies in all European states on current investigations, court cases, judgments and settlements against contractors, their senior management, and sub-contractors. None of the countries assessed has a consolidated, publicly available list of convictions imposed on individuals or companies for bribery, or other relevant convictions or information.

For example:

- **Italy** lacks any accessible central database of investigations and cases.
- In the **United Kingdom** the Serious Fraud Office website lists very basic details on the companies and individuals currently under investigation or convicted by the SFO. But details on settlements are not accessible from the webpage. The Crown Prosecution Service also investigates bribery and economic crimes, but does not list any of the investigations or convictions it has secured on its website. Data must be requested via a Freedom of Information request.
- **German** authorities maintain details of investigations, charges, judgments rendered and other terminations of proceedings, but they anonymise case information and never disclose the names of the defendants nor of the countries involved. This practice is implicitly confirmed by a Federal Administrative Court decision based on the principles of privacy and data protection, notwithstanding the fact that cases are tried in open court and judgments are pronounced in public.
- In **Belgium** and **Greece** even a basic level of statistical data collection concerning anti-foreign bribery enforcement is missing.
- Similarly in **Bulgaria**, **France**, **Portugal** and **Spain** the systematic collection and publication of enforcement data has serious shortcomings.

In contrast, all [United States](#) procurement authorities, including the US Department of Defence, use a countrywide consolidated electronic database - the Excluded Parties List System - with information on all companies or individuals excluded from receiving Federal contracts. American procurement officials must check the database to ensure they do not award a contract to an excluded bidder. The system is accessed via the System for Award Management, which includes information of various sensitivity levels, depending on the user's level of security access. For members of the public, assessed as having the lowest level of security access, the information that is publicly available includes company name, DUNS unique company identifier, address, whether the entity is currently debarred, and expiration of debarment period.

Figure 1: United States System for Award Management: Excluded Parties List

SAM
SYSTEM FOR AWARD MANAGEMENT

USER NAME: PASSWORD: [LOG IN](#)
[Forgot Username?](#) [Forgot Password?](#) [Create an Account](#)

[HOME](#) [SEARCH RECORDS](#) [DATA ACCESS](#) [GENERAL INFO](#) [HELP](#)

Search Results

- Your search results represent the broadest set of records that match your search criteria. You may get entity registration records that are still in progress or have been submitted, but not yet activated. Check the status of each record.
- Of note, some entities choose to opt out of public display. Even if they are registered in SAM, you will not see their entity registration records in a public search. You can only see them if you log in as Federal Government user.
- You can refine your search results. If you used the Quick Search, select the search filters on this page. If you used one of the Advanced Search options, select the Edit Search button.
- If you want to perform a new search, use the Clear button to remove your current search results. If you are logged in with your SAM User Account, you can save your search criteria to run again later using the Save Search button.
- NOTE:** Please read this important message when searching for exclusion records.

Advanced Search Results

[Clear Search](#) [Edit Search](#)

TOTAL RECORDS: 2
Result page 1 of 1

Sort by: Order by:

[Save PDF](#) [Export Results](#) [Print](#)

Your search returned the following results...

Entity	Kompaniya Kalyna Treiding, TOV		View Details
DUNS: 506860335	Address: 8 A	Status: Active	
CAGE Code: SARR5	Line 2: Druzhby Narodiv Boulevard	Has Active Exclusion?: Yes	
DoDAAC:	City: Kyiv	Delinquent Federal Debt?: No	
	State:	Expiration Date: 03/14/2017	
	ZIP Code: 01103	Purpose of Registration: All Awards	
	Country: UKRAINE		

Entity	SEVEN SEAS SHIPCHANDLERS (L.L.C.)		View Details
DUNS: 644762783	Address: Plot No.598-668 Off Emirates	Status: Active	
CAGE Code: SG192	Line 2: Road	Has Active Exclusion?: Yes	
DoDAAC:	City: Dubai	Delinquent Federal Debt?: No	
	State:	Expiration Date: 05/09/2017	
	ZIP Code:	Purpose of Registration: All Awards	
	Country: UNITED ARAB EMIRATES		

Glossary

[Search Results](#)

Entity

Exclusion

With an annual operating budget of over \$60 billion – larger than all European defense ministries bar the **UK** - the World Bank operates a similar debarment system and information database to the United States Federal Government. In the year ended June 2015, the World Bank temporarily suspended 54 firms and individuals and debarred or sanctioned 73 firms and individuals. Since 2007, the World Bank has publicly debarred or otherwise sanctioned more than 700 firms and individuals. Its website lists the firms and individuals that are ineligible to be awarded a World Bank-financed contract, because they have been sanctioned under the Bank's fraud and corruption policy. Details available to the public include the firm's name, address, country, period of ineligibility (date starting and ending); and grounds for sanction. The list also includes other sanctions such as conditional non-debarment, imposed when companies have demonstrated to the World Bank that they have taken comprehensive corrective measures and that other mitigating factors apply, so as to justify non-debarment.

Figure 2: World Bank Listing of Ineligible Firms & Individuals: Debarred & Cross-Debarred Firms & Individuals¹⁴

Debarred Firms and Individuals						
Name: <input type="text"/>		Country: <input type="text" value="United Kingdom"/>		<input type="button" value="GO"/> <input type="button" value="Reset"/>		
Firm Name	Address	Country	Ineligibility Period		Grounds	
			From	To		
MR. STEPHEN COURTENAY CHANDLER *327	71 FULWELL PARK AVENUE, TW2 5HF TWICKENHAM, MIDDLESEX	United Kingdom	21-JUN-2016	21-JUN-2019	2006 Consultant Guidelines, Para. 1.22(a)(ii)	
NIHON KOHDEN UK LTD.*321	TRIDENT COURT 118, 1 OAKCROFT ROAD, CHESSINGTON, SURREY KT9 1BD	United Kingdom	11-APR-2016	10-APR-2019	2004 Procurement Guidelines, 1.14(a)(i)	
ELMCREST GROUP LIMITED, FORMERLY KNOWN AS LANDMARC LIMITED*234	COBURG HOUSE, 1 COBURG STREET, GATESHEAD, TYNE & WEAR, NE8 1NS	United Kingdom	04-NOV-2014	03-NOV-2020	Sanctions Procedures, 9.04(b)	
EDUTEQ LIMITED	CHARTER POINT WAY, ASHBY PARK ASHBY-DE-LA-ZOU CH, LEICESTERSHIRE LE65 1NF, UK,	United Kingdom	21-AUG-2014	17-JAN-2017	Cross Debarment: AFDB	
GLOSOLVE LIMITED*11	,	United Kingdom	01-APR-2010	31-MAR-2018	Sanctions Procedures 9.04(a)	
DARESLEY HOLDING, INC.	BRITISH VIRGIN ISLANDS,	United Kingdom	05-MAR-2001	Permanent	Consultant Guidelines 1.25(a)(i)	
AGRIC-CANADA	,	United Kingdom	24-FEB-2000	Permanent	Procurement Guidelines 1.15(a)(i) & (ii)	
OVERSEAS PROJECT SERVICES LTD.	,	United Kingdom	24-FEB-2000	Permanent	Procurement Guidelines 1.15(a)(i) & (ii)	

¹⁴ World Bank debarments are also recognized through cross-debarment agreements with the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, and the Inter-American Development Bank.
http://web.worldbank.org/external/default/main?pagePK=64148989&piPK=64148984&theSitePK=84266&theSitePK=84266&contentMDK=64069844&querycontentMDK=64069700&sup_name=&sup_country=GB

3. Disseminating Best Practice on Supply-Chain Management

This section of the evaluation paper analyses the effectiveness of the Defence Directive via the data collected from the following two indicators:

1. What procedures and standards are companies required to have - such as compliance programmes and business conduct programmes - in order to be able to bid for work for the Ministry of Defence or armed forces?
2. Does the government formally require that the main contractor ensures subsidiaries and sub-contractors adopt anti-corruption programmes, and is there evidence that this is enforced?

Our assessment of defence ministries' anti-corruption controls indicates that the vast majority would benefit from increasing their anti-corruption controls. A significant number of European countries including [France](#), [Hungary](#), [Portugal](#), [Spain](#), [Austria](#) and the [Czech Republic](#) rank in the high corruption risk category – the same risk category as South Africa, Indonesia, Russia, Indonesia and Brazil.

COUNTRY	PROCUREMENT	BAND			
United Kingdom	82.4	B		BAND	RISK OF CORRUPTION
Germany	75	B		A	VERY LOW
Switzerland	71.3	B		B	LOW
Finland	70	B		C	MODERATE
Netherlands	68.8	B		D	HIGH
Latvia	67.6	B		E	VERY HIGH
Denmark	67.5	B		F	CRITICAL
Norway	65	C			
Poland	65	C			
Belgium	62.5	C			
Lithuania	60.3	C			
Sweden	60	C			
Greece	55.9	C			
Bulgaria	53.8	C			
Italy	50	C			
France	48.8	D			
Hungary	46.3	D			
Spain	45	D			
Austria	43.8	D			
Czech Republic	38.8	D			
Portugal	37.5	D			

Figure 3: Government Defence Anti-Corruption Index: Europe Results 2015

Provisions in the Defence Directive encourage the sharing of best practice between member states, industry and the Commission on supply-chain management. From our research in this sector we have identified that improving anti-corruption controls requires that both governments

and defence contractors assess and mitigate their risk exposure. The companies and governments that score highest in the Government Defence Anti-Corruption Index and the Defence Companies Anti-Corruption Index share one approach to best practice – mandating that suppliers have in place a robust compliance or business conduct program that adhere to minimum standards established by the procurement authority.

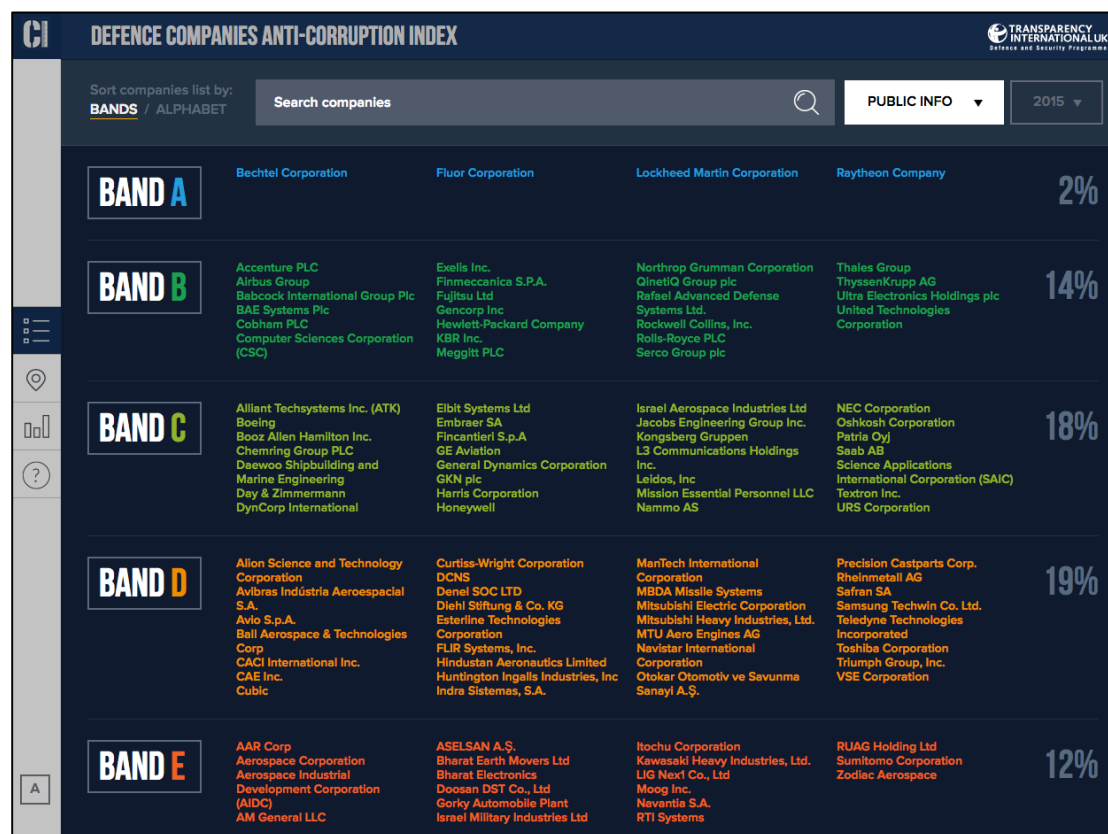


Figure 4: Defence Companies Anti-Corruption Index 2015, company aggregate transparency and anti-corruption control scores¹⁵

Based on the extent of public evidence on their ethics and anti-corruption programmes, companies were placed in one of six bands.

A compliance and business conduct program indicates that a contractor has proactively engaged in a self-assessment of its exposure to fraud or corruption and designed anti-corruption mechanisms to prevent misconduct. Our findings from the Defence Companies Anti-Corruption Index 2015 indicate that as many as two thirds of major defence companies have little to no evidence of an ethics and anti-corruption program. No European defence ministry requires contractors to show that they have a formal and publicly declared compliance programme.

BAND	EVIDENCE LEVEL
A	Extensive evidence
B	Good evidence
C	Moderate evidence
D	Limited evidence
E	Very limited evidence
F	Almost no evidence

¹⁵ Companies were asked to nominate a point of contact; one hundred companies did so. All companies in the index were sent a draft assessment for comment and review. We also reviewed information that is internal or confidential to companies. Sixty-three companies provided detailed internal information in 2015, almost double the number that did so in 2012.

In contrast, the **United States** requires companies to have an ethics and anti-corruption program in place as a pre-condition to fulfilling a contract. For example, within 90 days of winning a contract with the **United States** government, including the Department of Defence, the main contractor must adopt a comprehensive compliance and ethics programme, together with training for all employees and subcontractors. These provisions apply equally to subcontractors and agents of the main contractor, provided that the subcontract is worth more than \$5 million. The compliance program must adhere to minimum standards stipulated by the US government in the Federal Acquisition Regulations.¹⁶

This is not a significant burden to require of European defence companies bidding for larger contracts. Due to the global nature of defence sales, many trade with the United States and are already required to have an ethics and anti-corruption program in place. Harmonising this requirement would help to improve standards globally.¹⁷

We also assessed the extent to which defence ministries use contractual provisions to regulate illegal behaviour and notify bidders of their legal obligations. According to the European Court of Justice's interpretation of the discretionary exclusion provisions for "grave professional misconduct" this can include a gross "breach of contract". Breach of a contractual clause gives procurement authorities the power to terminate a contract or act immediately to exclude a contractor in the event of misconduct. For example, the United States' contractual terms require contractors, including subcontractors, above a certain threshold to:

1. Prohibit kickbacks (applies to all contracts exceeding the simplified contract threshold)
2. Provide for the Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (applies to all contracts except commercial purchases)
3. Allow for Price or Fee Adjustment for Illegal or Improper Activity
4. Require certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. (Applies to contracts above \$100,000)
5. Require a Contractor Code of Business Ethics and Conduct 52.203-13 (applies to contracts above \$5 million)
6. Require display of a Hotline Poster(s) (52.203-14, applies to contracts above \$5 million)
7. Require whistleblower protections Under the American Recovery and Reinvestment Act of 2009 (52.203-15, applies to all contracts above the simplified contract threshold).

Only in **Denmark**, **Norway**, the **UK** and **The Netherlands** did we find any evidence of anti-corruption clauses being included in contracts.

¹⁶ Federal Acquisition Regulations, Subpart 3.10—Contractor Code of Business Ethics and Conduct, www.acquisition.gov/far/html/Subpart%203_10.html

¹⁷ Transparency International Defence and Security, Companies Defence Anti-Corruption Index (2015), page 10, <http://companies.defenceindex.org/docs/2015%20Defence%20Companies%20Anti-Corruption%20Index.pdf>

For example:

- All contracts signed with the **Danish** Defence Acquisition and Logistics Organisation (DALO) impose integrity conditions on suppliers including anti-corruption and obliges suppliers to “work against corruption in all its forms.” These contractual conditions extend beyond the performance of the contract to the supplier’s conduct overall in its business and include responsibility to ensure sub-contractors abide by these conditions. Subject to the principle of proportionality DALO reserves the right to cancel a contract if in DALO’s opinion these terms have been breached.¹⁸
- The **Dutch** MOD requires all suppliers to sign their Terms and Conditions, which specifically ban bribery and conflicts of interest. BIBOB policy guidelines require contracting authorities to investigate the integrity of companies for contracts above a certain threshold amount in construction, the environment and IT services, but do not stipulate defense.
- The **German** MOD told us they have the power to include anti-corruption clauses into contracts with private companies, though it is not clear if or how often this is used in practice.
- **Norway’s** Defence Acquisition Regulations encourage prime contractors to implement measures to prevent corruption and unlawful influence, but does not mention subcontractors.
- The **UK** MOD includes in contracts a prohibition on gifts or payments, but this is limited to UK Crown Servants; breach of the condition entitles the MOD to terminate the contract. It is unclear if this condition extends to sub-contractors.¹⁹ The Supplier Selection Policy of the UK MOD states that commercial suppliers must possess “good standing” but does not require contractors to take forward-looking preventative measures such as adopting a compliance or business conduct program. The Defence Financial Policy Management Manual contains a chapter on sound governance but does not elaborate into details.

Our research was unable to identify a European defence ministry with an anti-corruption policy for subcontractors and third parties. Apart from **The Netherlands**, evidence indicates that most demonstrate very weak controls:

- **The Netherlands:** According to the MOD’s general terms and conditions, the supplier can only subcontract if it has a prior consent of the ministry. However, the prime contractor is still responsible for meeting the obligations in the contract and the general terms and conditions, and to ensure that subcontractors do not meet exclusion criteria, including bribery and corruption. The contracting authority is empowered to exclude subcontractors (both during the selection phase and during the execution of the contract) for breach of the corruption and bribery criteria.

¹⁸ Danish Defence Acquisition and Logistics Organization, Corporate Social Responsibility Requirements, www.ft.dk/samling/20151/almindel/fou/spm/93/svar/1303863/1604984.pdf

¹⁹ UK Ministry of Defence, The Commercial Toolkit DEFCON Series – MOD Defence Conditions Guide, – Last Updated 2011, www.metasums.co.uk/uploads/asset_file/MOD%20Defence%20Conditions%20Guide.pdf

In contrast, the **United States** Federal Acquisition Regulations formally require that the main contractor adopts a comprehensive compliance and ethics programme, together with training for all employees and subcontractors, within 90 days of the contract award. It also stipulates that these provisions apply equally to subcontractors and agents of the main contractor, provided that the subcontract exceeds the value of \$5 million. The main contractor is also obliged to disclose any ethical and compliance violations committed by it or by a subcontractor to the manager of the Contractor Disclosure Program at the DOD Inspector General's office.

The current integrity standards demanded of industry by most European defence ministries are alarmingly low:

- **French** government contractors are required to abide by an ethics code, but this document is non-public.
- **Spain** has a Code of Conduct for contractors and sub-contractors; it is purely voluntary and makes only vague references to transparency and business sustainability.
- Until 2013, **Poland** urged suppliers to comply with the European Defence Agency's Code of best Practice in the Supply Chain. The Code states its core value is to "maintain the highest levels of integrity". It makes no further reference to integrity however, nor any reference to corruption, bribery or gifts.
- The **Polish** MOD told us that they try to promote awareness amongst their suppliers of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions - Good Practice Guidance on Internal Controls, Ethics, and Compliance (annex II).²⁰
- **Latvian** industry experts say there are moves in Latvia's Defence Industry Federation to create industry standards for business conduct, but this is still at an early stage. Latvia's Corruption Prevention and Combating Bureau (KNAB), the country's anti-corruption authority, told us that Latvian MOD integrity checks are limited by a lack of integrity training and understanding amongst procurement officials.
- **Sweden** appears to impose higher integrity demands on exporting companies than domestic procurements: in order for Sweden's Security Export Agency (FXM), to provide export support to a company, the company must sign an anti-corruption certificate. The company then certifies that control systems to combat corruption are in place and that neither the company, nor anyone acting on its behalf, has given or will give, any bribes or other improper remuneration. Companies are also reminded that Swedish legislation imposes penal sanctions on the receipt and giving of bribes.
- In early 2015, the Swedish Security and Defence Industry Association (SOFF) and the Swedish Defence and Security Export Agency (FXM) launched a joint Swedish on-line training course on combating corruption which they report has been used by more than 4,000 employees in Swedish defence companies, the course was phased out in December 2015 and oversight transferred to the Swedish Defence Materiel Administration, FMV. It is not clear if this has been continued.

²⁰ The OECD Good Practice Guidance is addressed to companies for establishing and ensuring the effectiveness of internal controls, ethics, and compliance programmes or measures for preventing and detecting the bribery of foreign public officials in their international business transactions and to business organisations (subsidiaries and sub-contractors) and professional association.

In 2011, [Bulgaria's](#) MOD adopted TI's Integrity Pact, a contract binding bidders to a tender to integrity clauses. A subsequent investigation by the Internal Audit Unit found that the Integrity Pact had considerably decreased procurement corruption risks. However, in December 2012 the MOD purchased fighter jets without a tender, in a procedure that was subsequently cancelled. In May 2013, business leaders called for greater transparency in defence procurement.

The role of integrity pacts in countering corruption in defence procurement

Integrity Pacts were developed by TI in the 1990s to aid governments, civil society and companies to counter corruption in public procurement, they have been widely used in defence public procurement contracts in India, Colombia and Bulgaria. A current TI-EU Commission project is piloting the use of Integrity Pacts for non-defence procurement in the EU.

Integrity pacts can be powerful incentives for companies to abstain from bribery or collusion with guarantees that: all their competitors will contract to do the same; and the government and licensing agencies will take steps to prevent corruption (including extortion by officials) and ensure transparency. Governments are in turn, can counter the distorting impact and high costs of corruption in the procurement and licensing processes. As a result, there is increased confidence among bidders and the public, potential reduction of costs and supplementation of weak legislation or enforcement.

Although mostly used during the bidding stage of contracting procedures, integrity pacts should ideally be applied at the execution phase as well to ensure there is no potential for misconduct after the contract is awarded. In order to ensure that they not become mere box-ticking exercises a credible, in-country independent monitor must oversee the entire process. The lack of one can render the entire exercise fruitless.

With the potential to be applied to various types of public contracts, there are examples of integrity pacts being used successfully in the field of defence procurement. Most recently, in January 2014, India terminated a US\$770 million deal with Italian defence company Finmeccanica's AgustaWestland unit for a breach of an integrity pact amid allegations of bribery. Similarly, in 2012, India blacklisted six Israeli defence companies on the basis of allegations of corruption in violation of an integrity pact. In this instance, a bank guarantee by the Israeli military industry was encashed by the Ministry of Defence as part of the sanctions.

Methodology

The methodology of this evaluation paper involved:

- TI's Government Defence Anti-Corruption Index results for 2015, a global risk assessment conducted over two years of 120 defence and security ministries, including 20 European states. Qualitative and quantitative data were used to measure anti-corruption controls in national defence establishments across 77 indicators. Each country assessment was peer reviewed by two independent, in-country defence sector experts and TI's local chapter. Defence ministries were invited to peer review their country's final assessment. All European defence ministries took part in this peer review process - apart from Spain, France, Sweden and Portugal.
- Extracting the data for 20 European countries for the 8 procurement relevant indicators (outlined in each section)
- Where gaps such as incomplete data have been identified, the research was more recently augmented with additional interviews conducted with senior procurement staff in the defence ministries of Belgium, the UK, Greece, Latvia, Lithuania, the Slovak Republic and the Netherlands. All European defence ministries (MODs) had been invited to take part. These interviews also served to substantiate and elaborate on the country context.
- The analytical approach involved assessing country performance for each procurement indicator against the six specific problems that the Defence Directive was designed to address; these are overuse of the essential security interest exemption, lack of transparency, lack of competition, discrimination of non-national suppliers, legal uncertainty and lack of open and fair competition. This analysis identified the country specific and overarching factors supporting and inhibiting effective implementation of the Defence Directive. Interviews with in-country procurement staff were used to triangulate this information.
- Using deep analysis of country implementation and context (generated from the validated peer reviewed cross country data), as well as interviews with key government informants, has informed the development of overarching recommendations to address the problems the Defence Directive was designed to address.

POLITICAL	PERSONNEL	PROCUREMENT
DEFENCE AND SECURITY POLICY	LEADERSHIP BEHAVIOUR	TECHNICAL REQUIREMENTS / SPECIFICATIONS
DEFENCE BUDGETS	PAYROLL, PROMOTIONS, APPOINTMENTS, REWARDS	SINGLE SOURCING
NEXUS OF DEFENCE & NATIONAL ASSETS	CONSCRIPTION	AGENTS / BROKERS
ORGANISED CRIME	SALARY CHAIN	COLLUSIVE BIDDERS
CONTROL OF INTELLIGENCE SERVICES	VALUES & STANDARDS	FINANCING PACKAGES
EXPORT CONTROLS	SMALL BRIBES	OFFSETS
FINANCE	OPERATIONS	CONTRACT AWARD, DELIVERY
ASSET DISPOSALS	DISREGARD OF CORRUPTION IN COUNTRY	SUBCONTRACTORS
SECRET BUDGETS	CORRUPTION WITHIN MISSION	SELLER INFLUENCE
MILITARY-OWNED BUSINESSES	CONTRACTS	
ILLEGAL PRIVATE ENTERPRISES	PRIVATE SECURITY COMPANIES	

Figure 5: Defence corruption risk typology for governments

For the full methodology of the Government Defence Anti-Corruption Index, please refer to: <http://government.defenceindex.org/methodology/>.

1. LEADERSHIP, GOVERNANCE & ORGANISATION	2. RISK MANAGEMENT	3. COMPANY POLICIES & CODES
LEADERSHIP, GOVERNANCE & ORGANISATION	RISK ASSESSMENT	POLICIES
EXTERNAL ENGAGEMENT	PARTNERS & AGENTS	GIFTS & HOSPITALITY
STRUCTURE & ORGANISATION	OFFSETS	FACILITATION PAYMENTS
MONITORING & EVALUATION	5. PERSONNEL & HELPLINES	POLITICAL & CHARITABLE CONTRIBUTIONS
4. TRAINING	PERSONNEL & DISCIPLINE	
GENERAL TRAINING	HELPLINES & WHISTLEBLOWERS	
SPECIALIST TRAINING		

Figure 6: Defence corruption risk typology for companies

For the full methodology of the Defence Companies Anti-Corruption Index, please refer to: <http://companies.defenceindex.org/methodology/>.