

DEFENCE INDUSTRY INFLUENCE IN GERMANY

Analysing Defence Industry Influence
on the German Policy Agenda

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EXECUTIVE SUMMARY

This report examines systemic vulnerabilities and influence pathways through which the German defence industry may exert inappropriate influence on the national defence and security agenda. Governments and industry should mitigate the risk of undue influence by strengthening the integrity of institutions and policy processes and improving the control and transparency of influence in the defence sector. Compiled by Transparency International Defence and Security with the support of Transparency International Germany, this report forms a case study as part of a broader project to analyse the influence of the arms industry on the defence and security agendas of European countries. Alongside Italy, Germany was selected as a case study due to its defence industry characteristics, industry-state relations, lobbying regulations and defence governance characteristics. The information, analysis and recommendations presented in this report are based on extensive research that has been honed during more than 30 interviews with a broad range of stakeholders and experts.

The report finds that concerns of the industry can wield influence over defence and security policy, despite the constitution demanding strong parliamentary and government control over policy and procurement. In many cases, control is ceded through scarce government resources or expertise, inadequate enforceable regulation governing conflicts of interest and feeble monitoring and accounting of political contributions and lobbying activity by business.

Meanwhile, the defence budget and personnel cuts of the 1990s are currently being reversed in favour of ambitious capability replacement and expansion. Over the past five years, the German defence budget has increased to tackle the challenges facing the armed forces whose capabilities had previously fallen below prescribed readiness standards. Time pressure to re-equip the forces and the expansion of the German military budget increases the risk that private interests will flourish at the expense of the public interest. As such, there is an urgent need to identify and scrutinise the possible routes for undue influence in the German defence sector.

Pathways of influence

The principal pathways by which the defence industry exerts undue influence on the German Government are through money, ideas and people.

Money

These pathways involve influence exerted over the policy

process through financial means, ranging from companies' political contributions to conflicts of interest generated by decision-makers' financial interests.

The Deputies' Act allows MPs to undertake remunerated engagements as long as financial benefits are not exclusively contingent on representing the interests of the employer. This rule leaves the doors open to MPs wishing to take up lucrative side-jobs. The lax rules and lack of adequate penalties for failing to disclose such a potential conflict of interest leave the process vulnerable to influence. Gaps in Germany's existing conflict of interest regulations were publicly highlighted in June 2020, when MP Philipp Amthor was revealed to have allegedly lobbied on behalf of US technology company, Augustus Intelligence, while holding stock in the company and benefitting from luxury experiences.¹

The defence industry may provide financial support to the election campaigns of politicians and support in kind through contributions to party events and conferences. The rules in Germany about financial support to political parties and politicians fall short of European standards; there is scant monitoring of contributions made to parties or candidates at or around election time. Although there are rules on how much a business organisation can donate to a candidate's campaign, this applies to single contributions and the business can exceed this limit by donating many smaller sums. There is no cap on the total financial contributions made by the organisation itself.

Ideas

These pathways facilitate the transfer of ideas between the private and public sector. Lobbying, the role of parliamentary staff, think tanks and external consultants all play a role in enabling undue influence in this way.

Lobbying can play an important role in shaping Parliament's thinking on security and defence. Yet in Germany, the registration of lobbyists is not comprehensive and, in parts, effectively voluntary. As of September 2020, legislation for a compulsory lobby register is in parliament. However, it does not require the disclosure of meetings with the registered lobbyists, as is the case, for instance, in the European Parliament's lobbying legislation. There are no formal records of the nature and frequency of meetings between government staff and lobbyists. The legislation governing industry lobbying and procedures for applying that legislation lacks rigour – much of the regulation is discretionary. The registration of lobbyists and the volume of their interaction with the executive is desultory and does not have full

¹ "Philipp Amthor's World: A Young Star in Merkel's Party Faces Turbulence", Spiegel International, 12 June 2020, <https://www.spiegel.de/international/germany/philipp-amthor-s-world-a-young-star-in-merkel-s-party-is-in-danger-of-falling-a-f0205fd0-21e0-4f37-896f-bcea2ace1983> [accessed 7 August 2020]

coverage.

In recent years, the Federal Government has pared down its technical staff, turning increasingly to research institutions like Fraunhofer Institutes and private sector consultancies for analysis and development of solutions. These consultancies are often contracted on a direct award basis and retained during the procurement process. Consultancy firms providing advisory services can offer a pathway of influence to the heart of government. The increasing demand for such services stems partly from fast-paced restructuring, digitalisation, reforms and the complexity of large procurement projects, as well as the expansion of the defence budget and difficulties in finding qualified and specialised staff in the labour market.

People

These pathways relate to influence exerted through the movement of people between the public and private sectors or their close interactions with public institutions, the military or other associations.

The people pathway reinforces the effects of the money and ideas pathways. The defence industry sponsors think tanks or trade associations and appoints its senior people to their steering committees – including those recently retired from the military or government office. The so-called “revolving door” operates in Germany as it does elsewhere, whereby a government official may be influenced by the prospect of employment in industry on retirement. There, they continue to have friendly access to decision-makers in government. Cooling-off periods – intended to regulate movement of people between the private and public sectors – when in place at all, are not always observed.

The increasing outsourcing of competencies to industry means that industry representatives are becoming deeply embedded in the world’s most advanced militaries. Consultancy firms can be working on government and business assignments related to the same project and individual consultants may move between the two. Due to shortage of expertise and skills in the civil service, senior consultants are often embedded in high-level roles in government projects and can subtly shape the perception of capability and procurement. Similarly, the formal and informal participation of politicians and public servants in associations can facilitate the flow of ideas between the private and public sector. While these organisations may be non-profit bodies structured as platforms for dialogue on security and defence policy issues, their institutional members are sometimes predominantly defence companies.

Policy process vulnerabilities, their effects

In theory, a well-designed and well-executed policy and decision-making process guards against the risks that could be posed by inappropriate influence. This report,

however, identifies a number of vulnerabilities in the defence strategy formation and procurement process that expose the German system to undue influence.

The formation of strategy for German defence and security capability is vulnerable to undue influences by vested interests of its defence industry due to the following shortcomings:

Security and defence strategy

Despite the strong role of Parliament in security and defence matters, the Federal Government of Germany wields executive privilege in policy documents relating to strategy formation and capability planning. In these areas, a number of vulnerabilities exist that expose the system to influence through money, ideas and people. A lack of public engagement in the policy process means that decision-makers can be disproportionately influenced by ‘inside’ voices from lobbyists and campaigners, while high levels of secrecy mean that even where these policy documents are available to those responsible for providing oversight, they may be limited or insufficiently detailed to allow for meaningful scrutiny. The resulting limited public and media involvement on this topic decreases scrutiny of possible violations of public integrity standards and makes appropriate consultation of the public difficult.

Procurement

Germany’s defence procurement processes focus on defining and developing military capabilities. Procurement initiatives initiated by the Armed Forces Planning Office receive approval from the MoD’s leadership and Parliament, after which the Equipment Office (BAAINBw) assumes responsibility for implementing the project. In general, defence procurement follows an open and Europe-wide tendering process, except in circumstances where the government deems it in the interest of national security to restrict the contract. Beyond general compliance regulations, the procurement process also benefits from multiple risk assessment and audit tools to help increase transparency and accountability.

However, despite these measures, Germany’s defence procurement is at risk of inappropriate influence. The civil service has insufficient capacity as regards staffing and technical expertise to act as a fully informed intelligent client to government. This makes it reliant on consultancies and research institutes that can be subsidiaries of, or funded by, the defence industry. The transfer of key duties and expertise towards the private sector through outsourcing of tasks carries the risk of a gradual erosion of the Government’s ability to make independently informed choices on the management of defence capability and resources.

Furthermore, the Equipment Office suffers from structural under-resourcing, particularly in types of roles crucial for

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safeguarding the integrity of the procurement process, such as lawyers and auditors. As the procurement process undergoes several reviews, each review is vulnerable to external influence by the composition or expertise of those participating in the review. Due to the lack of expertise and resources in technical areas, the government often relies on the proficiency of existing suppliers for the design of tender documents and determining the merit of products to close capability gaps.

Given the degree of classification of information in defence and security projects – not all of it strictly warranted – the onus rests on parliament to carry out proper scrutiny of defence procurement. In parliament, the right resources are even more limited. It is generally a single MP from each party who has to delve into the complex decision drafts submitted by the government, sometimes within only a few days. Expert knowledge in the defence and security field is highly specialised and often classified. This increases the risk that unprocessed information, provided by suppliers who have close interactions with public servants and politicians throughout the procurement process, becomes the guiding factor in decision-making.

In practice Parliament tends to be engaged at an early stage, when plans are vague, and at a late stage after major decisions concerning capability requirements and related solutions have been taken. The time and resources already expended at this late stage make for a very high bar in terms of political and financial cost for an MP to overturn a procurement decision. The involvement is also often limited in terms of MPs and time; circumstances and capacity mean that some MPs feel they can only ratify or rubber-stamp a defence procurement proposal.

This risks allowing suppliers to exert systemic influence over key areas of defence and eroding the government's ability to make independently informed decisions. This has resulted in the following outcomes:

- The evaluation of tenders and calculation of costs, together with the drafting of contracts, is at risk of undue influence of vested interests.
- The government disproportionately relies on the research institutes of the Fraunhofer Society and others for ideas and options for future defence and security procurement. These institutes receive only 30% of their funding in the form of core funding from federal and state budgets, while they have to earn their remaining budget with specific research projects funded by the private sector or the government. This link means that industry is well placed to influence – through research and development – the direction of future defence procurement without adequate public scrutiny.
- The lack of technical expertise in the civil service engenders an information asymmetry between the civil service and the supplier, since the latter is privy

to the detail of the proposed solutions. Government staff are in a poor position to determine whether costs are proportionate and the proposal delivers capability that is sufficient for, or alternatively is in excess of, what is required for the projected lifetime of the system.

- There have reportedly been procurements that have completely bypassed Parliament under the pretext of emergency requirements.

Market dynamics

The defence sector worldwide is a very competitive marketplace and industry, public officials and experts have argued that it is difficult for many European countries' defence industries to survive without exporting weapons and related services. In order to have a presence in the global market, German companies have been allowed to merge to attain a near monopoly status in the national marketplace. Despite only spending 1.5% of GDP on defence and security, Germany is the world's fourth largest exporter of arms. Within Germany, competition is limited and the government awards a high percentage (30%) of contracts through single tender/bidder processes; the actual percentage being hard to assess because of classification. There is a view that certain key technologies should be protected for reasons of security and economy of supply. This has led to exemptions from normal EU tendering processes and direct awards of state contracts. Some might consider that a close relationship between industry and government is beneficial in such an international marketplace. However, if the influence of national champions over policy becomes dominant, the following detrimental outcomes may ensue:

- Near monopoly conditions might cost German taxpayers a premium for their defence and security. This is exacerbated by contracts that allow companies to make profit as a percentage of cost. Without due competition or independent scrutiny where competition cannot be established, this creates an incentive for the defence industry to define over-specified ("gold-plated") solutions.
- There may be delays and cost overruns due to those national champions having little competitive motivation to streamline their delivery processes.
- Defence companies have undue influence to the point where they may define more or less the capability requirement based on what they can offer rather than the government deciding what capability it actually needs.
- National capability requirements have implications for arms exports, as the national order book tends to be insufficient to support the development and production of weapons systems.
- It may become hard for SMEs in the sector to thrive.

It might also be argued that the taxpayer benefits by the industry making up the shortfall of government expertise in defence and security through secondments, think tanks and special interest groups. However, eventually, the purchaser pays for this expertise as its cost is built into the unit price of the product and, at the same time, loses influence over what is supplied.

A more recent trend towards international co-operation has led to nations negotiating the share their respective national champions will take in a supranational project. This horse-trading is complex, highly political and takes place in closed sessions, which diminishes transparency and accountability. Two current Franco-German collaborations have been exempted from competitive tendering. In such an environment, it is unsurprising that the defence industry lobby is training its sights on the EU Commission and MPs.

The report concludes with recommendations to empower the government to act as an intelligent client alert to defence industry influence and independent of any bias. In this way, it can ensure that its defence capabilities are correctly aligned to its actual needs and that public funds to procure those capabilities are spent wisely. All recommendations respect the need to protect the nation's security and competitiveness and the supremacy of its elected parliament.

The recommendations include measures to:

- Strengthen the integrity of institutions and policy-making bodies. These are measures that would ensure that government has the expertise, resources and access to information to act as an intelligent, independent client. Where it is not possible to staff projects sufficiently from government personnel, the measures should ensure that consultants have no conflicts of interest. Ideally, consultancies should act wholly for the government or for industry; or where not possible use Ethical walls to reduce risk of conflicts of interest.
- Improve access to information for those with a justified need – especially for accountability purposes. There should be no blanket classification of information in a defence and security project. MPs and, where possible, journalists should have access to basic high-level information such as what is being provided and how it meets a ratified capability requirement as well as ongoing costs and contractual terms. Security cleared MPs must be able to look into further detail such as results of performance tests against specification.
- In order to prevent runaway costs or developments that never meet their target performance, the procurement process should stage formal gateway reviews which can block or sanction proceeding. The success of each stage should be assessed

against an agreed set of criteria. A summary should be circulated to Parliament's Defence and Security committee. These should include the decisions of the review and any remedial proposals put forward.

- When awarding contracts for procurement, the MoD should give more weight to proposals that partition the development into tasks, a significant proportion of which are open to SMEs. This would open up the market as well as clarifying the scale and complexity of the development.
- Tighten the rules and regulations covering the registration of lobbyists, MPs' interests and the cooling-off periods before government and military personnel can accept jobs in industries where a conflict of interest might occur. The rules should be statutory, enforceable and the consequences of breaching these rules should be clear.
- Similarly, the rules for political contributions by companies to parties and individual MPs should be tightened and the thresholds lowered. The companies themselves should also declare what money has been spent on political contributions and on lobbying.
- Introduce a binding code of conduct for parliamentary staff that uniformly and transparently regulates conflicts of interest, secondary employment, engagement in industry-funded associations and cooling-off periods.

Full list of 23 recommendations for change proposed by this report:

Strengthening the integrity of institutions and policy processes

1. Resolve the personnel, expertise and capacity shortages of the MoD
2. Re-instate the planning staff of the MoD
3. Introduce a permanent MoD outsourcing review board
4. Improve parliamentary capacity to provide scrutiny and review of relevant proposals
5. Conduct a regular defence strategy review to improve public participation and accountability of decisions
6. Review rules for classification
7. Improve access to information in the procurement process
8. Request feedback on procurement initiatives early on from the Legislature
9. Improve defence market conditions by tackling key technology definitions, SME participation, and contract monitoring
10. Ensure that national standards to counter inappropriate influence govern German bilateral and international deals and activities.

Improve control and transparency of influence exerted through money, ideas and people

1. Create a decision-making footprint
2. Tighten conflict of interest and cooling-off regulations for government and military staff
3. Improve implementation and oversight of conflict of interest and cooling-off regulations for government and military staff
4. Require consultants and other MoD contractors to implement robust internal information barriers to prevent conflicts of interest between clients
5. Revise the existing Parliamentary Code of Conduct
6. Introduce a uniform code of conduct for Parliamentary staff
7. Impose a statutory register of lobbyists
8. Increase transparency of campaign and political financing
9. Empower journalists and whistleblowers

Recommendations for companies active in the defence sector

1. Improve controls on political contributions, charitable donations and lobbying
2. Publish details and expenditure of all political contributions, charitable donations and lobbying activities
3. Implement policies and procedures to better regulate conflicts of interest with public sector clients
4. Improve controls to regulate exchanges of people with the public sector

INTRODUCTION

Evidence-based and objective foreign policy and security debates are expected in well-functioning democracies. These should be conducted through state institutions that have the trust of the public. Policy decisions should be shaped through public consultations and debates with relevant stakeholders. These processes ensure the policy is fit for purpose. Provided such processes are transparent, well-regulated, fair and inclusive, they contribute to an effective and stable society. Yet when individuals, groups or corporations wield disproportionate or unaccountable influence, this undermines the public good and public funds may be squandered.

The risks and impacts of inappropriate influence, where individuals or organisations try to persuade or force their own agenda, are particularly significant in the defence and security sector. There, high levels of secrecy and complexity, combined with close relations between government and industry, converge to create a potentially fertile ground for private interests to thrive.

This situation is further complicated by the different roles a government has with respect to the defence industry, being simultaneously both the main customer and the main regulator. Because the government is reliant on the defence industry for the fulfilment of one of its core obligations – providing defence and security for its citizens – it is easy to see how lines in the relationship between the two can easily become blurred. If unchecked, the influence of the defence industry may damage the integrity of state institutions and pervert the aims of a national security strategy, while undermining market competition and good defence sector governance.

Objectives of the study

Transparency International Defence and Security undertook a project to analyse the influence of the defence industry on the defence and security policy agendas of European countries, based on an analysis of this relationship in two major countries. The aim of the project is to identify controls to reduce the risks of unwarranted influence and make proposals for a more ethical relationship between the defence industry and policy making entities. It does so on the basis of an in-depth risk assessment of potential defence industry influence over government decisions.

Germany and Italy have been selected as case studies for this project. By virtue of having distinct institutional traditions, both countries provide an interesting spectrum of defence industry characteristics, industry-state relations, lobby regulations, and defence governance characteristics.

Compiled by Transparency International Defence and Security with the support of Transparency International Germany, this report analyses the risks of influence in a range of areas from the development of the security and defence strategy to individual procurement processes.

The objectives of the case study are:

- To identify weaknesses in the regulatory framework and its application that could allow inappropriate influence to occur
- To propose influence controls in policy processes that ensure fair, accountable and transparent policy decisions
- To engage public and private stakeholders in ensuring longer-term accountability and integrity of defence policy decisions.

Defence export issues are a part of, but not at the centre of this study. Where there are obvious relationships between the policies under analysis and arms trade issues, exports are taken into consideration. Governments might support and even promote exports if it is perceived that it is necessary for industry to generate income to help maintain national capability requirements. However, export issues in their own right, such as export licensing procedures, violations or restrictions are not addressed in this study.

Approach

The capacity of an individual or organisation to influence government strategy or policy-making processes is extremely difficult to measure and monitor. A convergence of outcomes with a particular interest cannot be taken as evidence of cause and effect. Nor can a divergence of interests evidence the absence of the exercise of inappropriate influence.

The methodology advocated by Transparency International identifies potential weaknesses in regulations and policy decision-making processes that can allow for that inappropriate influence to occur. The development of solutions and controls are at the heart of this report. The aim is to offer a range of policy recommendations to enable fair, accountable and transparent policy decisions.

The information, analysis and recommendations presented in this report are based on extensive desk research that has been honed during more than 30, mainly anonymous, interviews. These included senior MPs of the governing coalition and from the German opposition parties, including those privy to key parliamentary committees, current and former parliamentary staffers, active and retired high-ranking employees of the Ministry of Defence (MoD) and subordinate agencies, defence industry and interest group representatives. Interviews were also conducted with investigative journalists, as well as staff from non-governmental associations and research institutions.

The study first describes the characteristics of the German defence sector and the variables that affect the industry and state relations; it then goes on to analyse influence pathways and identify vulnerabilities to influence in the policy process; finally, it proposes measures for better influence controls.

THE GERMAN DEFENCE SECTOR

Understanding the roots and direction of influence requires an understanding of the context within which it can occur. State-industry relationships vary between countries and are shaped by variables such as state ownership of military production; the importance of the defence sector for the economy; whether production is monopolised by a few large players, or fragmented among many smaller ones; and the structure of the political and policy making process designed to regulate and oversee the defence sector.

All of these factors inform the way in which the state and industry relate to each other; the channels of influence that exist; who and what institutions are the target of influence; and what form pressure might take.

Defence and military in the German political context

In 1955, West Germany joined NATO and received the green light to invest in and build the Bundeswehr (armed forces).¹ After a lost war, and finding itself on the frontline of a Cold War stand-off between the two remaining superpowers, German society had limited interest in defence policy and the new army. As a consequence of the Second World War, the German constitution requires strong parliamentary control over the armed forces. Article 87a states, "The Federation establishes Armed Forces for defence purposes. Their numerical strength and general organisational structure must be shown in the budget."²

After the end of the Cold War, and with military confrontation in the heart of Europe seemly unlikely, military budgets were reduced and stagnated. Germany's reluctance to employ military force was tested for the first time in 1998 when it participated in the NATO-led coalition in the Yugoslav wars. In 2014, after a change

in the European security landscape triggered by the Russian invasion and permanent occupation of Crimea, Germany's security priorities reverted from peace-keeping engagements to national and alliance defence. Such a shift had significant implications for national security strategy, necessary military capabilities and the defence budget.

Today, the German armed forces finds itself facing significant challenges, with many of its key capabilities below prescribed readiness standards. Many of the helicopters, battle tanks and armoured personnel carriers are out of use.³ The budget and personnel cuts of the 1990s are currently being reversed in favour of ambitious capability replacement and expansion.⁴ By 2032, the goal is to provide up to eight fully and independently functional brigades.⁵ As a consequence, over the past five years, the German defence budget has increased by almost 35 per cent, from EUR32 billion in 2014 to EUR43 billion in 2019.⁶

There has also been a shift in public opinion, with 43 per cent of German citizens supporting increases in defence spending in 2018 compared to 32 per cent in 2017.⁷ If Germany honours its pledge to increase defence spending to 1.5 per cent of GDP, annual defence spending could surpass the EUR60 billion mark by 2024.⁸ However, this still falls short of the 2 per cent commitment NATO members again made in 2014.⁹

Germany's alliances and partnerships are increasing in importance in the area of research & development and procurement. Larger procurement programmes are no longer national, but multilateral or bilateral. The Aachen Treaty (officially the Treaty on Franco-German Cooperation and Integration) signed in January 2019, lays out an agenda for deepening defence cooperation and creating common defence programmes. Germany is already cooperating with France and other European countries in the development and production of major

¹ Bundeswehr, 'Die Gründung der Bundeswehr', <https://www.bundeswehr.de> [accessed 23 January 2020].

² Grundgesetz für die Bundesrepublik Deutschland, Art. 87a, <https://www.gesetze-im-internet.de/gg/> [accessed 23 January 2020].

³ Tahesschau, "'Sofortprogramm für Ausrüstung' gefordert", <https://www.tagesschau.de/inland/bundeswehr-sofortprogramm-101.html>.

⁴ Ursula von Leyen, 'Verteidigungsausgaben sollen um zehn Prozent steigen' (video recording), Deutscher Bundestag, 12 September 2018, <https://www.bundestag.de/dokumente/textarchiv/2018/kw37-de-verteidigung/566346> [accessed 12 September 2018].

⁵ *ibid.*

⁶ Bundesministerium der Finanzen, 'Bundeshaushalt, Bundesministerium der Verteidigung', 2018, <https://www.bundeshaushalt.de/#/2018/soll/ausgaben/einzelplan/14.html> [accessed 12 September 2018].

⁷ Körber Stiftung, *The Berlin Pulse 2018/19: German Foreign Policy in Perspective*, p.34-35, https://www.koerber-stiftung.de/fileadmin/user_upload/koerber-stiftung/redaktion/the-berlin-pulse/pdf/2018/The-Berlin-Pulse-2018.pdf [accessed 12 September 2018]. As this Körber Foundation poll demonstrates, this does not translate into public enthusiasm for German military action overseas – 55 per cent of the public were against Germany becoming more strongly involved in international crises.

⁸ Markus Becker and Matthias Gebauer, 'Deutschland verspricht Nato höhere Rüstungsausgaben', *Spiegel Online*, 05 February 2019, <http://www.spiegel.de/politik/ausland/verteidigungsetat-deutschland-verspricht-nato-hoehere-wehrausgaben-a-1251746.html> [accessed 04 January 2019].

⁹ European Parliament, *Briefing: NATO after the Wales Summit*, November 2014, p.5, http://www.europarl.europa.eu/RegData/etudes/BRIE/2014/536430/EXPO_BRI%282014%29536430_EN.pdf [accessed 04 January 2019]. The agreement also included a stated intent for 20 per cent of that spending to be on major new equipment and research and development.

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defence platforms such as the Future Combat Air System programme,¹⁰ the Eurodrone,¹¹ the upgrade to the Tiger attack helicopter,¹² and the Main Ground Combat System,¹³ as well as participating in pan-European companies and joint ventures such as Airbus and MBDA.

On top of this, European cooperation is likely to intensify with the EUR13 billion European Defence Fund¹⁴ for co-financing defence industrial projects undertaken jointly by at least three eligible entities from three Member States or associated countries. Germany is bound to have a significant role in some of these projects.

Time pressure to re-equip the forces and the expansion of the German military budget increases the risk that private interests will flourish at the expense of the public interest. As such, there is an urgent need to identify and scrutinise the possible routes for undue influence in the German defence sector.

Defence industry characteristics

The German defence industry is characterised by a handful of large companies that supply the government with weapons, platforms and other systems across a wide range of capabilities. According to 2014 data,¹⁵ the main branches of Germany's defence industry are, in decreasing order of financial turnover: aerospace; soft-skin and armoured vehicle manufacturing; electronics; naval and shipbuilding industries; weapons and munitions; unmanned aerial vehicles and guided missiles.

While sizeable, Germany's main defence companies do not rank among the world's top 10, except for the multinational European company Airbus. In its most recent 2018 data, the Stockholm International Peace Research Institute (SIPRI) shows that out of the world's 100 largest defence companies by volume of arms sales, four are

German. These are: Rheinmetall Group (rank 22), Krauss-Maffei Wegmann (rank 55), ThyssenKrupp (rank 57), and Hensoldt (rank 77).¹⁶ Two other defence companies have significant German operations and ownership, with 37.5 per cent of missile manufacturer MBDA (rank 23) being held by Airbus (rank 7), in which the government also holds an 11 per cent stake.¹⁷

Other than the government's stake in Airbus and MBDA, state ownership in the German defence sector is close to non-existent, reducing the possible risks of undue influence through state ownership.¹⁸

Industry consolidation

Large defence system producers, which have intertwined ownership structures, dominate the German defence sector. A 2015 study commissioned by the German Federal Ministry of Economic Affairs and Energy estimates that only about half of the 350 companies in the sector have an ownership structure that is truly independent of large manufacturers.¹⁹

While small- and medium-sized enterprises (SMEs) do play a significant role by providing key weapons systems components, German SMEs in the defence sector employ merely 3,500 (5.4 per cent) of the total estimated 65,700 defence-sector workers and generate only 3.4 per cent of the sector's yearly turnover.²⁰

Despite an already limited competitive environment, further steps towards consolidation are underway. Most prominently, and not for the first time, Rheinmetall, Germany's largest producer of land-based systems, is considering a takeover of Krauss-Maffei Wegmann,²¹ its only national competitor in this field. If past statements by the Minister for Economic Affairs²² and defence policy documents²³ are any indication, the government is

¹⁰ A Franco-German cooperation led by Airbus Defence and Space and Dassault Aviation.

¹¹ A cooperation between Airbus, Dassault Systèmes, Leonardo.

¹² Another Franco-German cooperation under Airbus Helicopters. See Pierre Tran, 'Update on upgrade for France's Tiger attack helicopter', *Defense News*, 07 May 2018, <https://www.defensenews.com/air/2018/05/07/update-on-upgrade-for-frances-tiger-attack-helicopter/> [accessed 24 January 2020].

¹³ A cooperation between Krauss-Maffei Wegmann, Nexter Defense Systems and Rheinmetall AG.

¹⁴ European Parliament, *Establishing the European Defence Fund*, October 2018, p.1, [http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/627121/EPRS_BRI\(2018\)627121_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/627121/EPRS_BRI(2018)627121_EN.pdf) [accessed 04 January 2019].

¹⁵ Federal Ministry of Economic Affairs and Energy, *Analysis of the structural situation of the defence industry in Germany, 2015*, November 2016, p.16, <https://www.bmwi.de/Redaktion/DE/Downloads/S-T/sicherheit-verteidigungsstrategie-studie.pdf> [accessed 23 January 2020].

¹⁶ Stockholm International Peace Research Institute (SIPRI), 'The SIPRI Top 100 Arms-Producing and Military Service Companies, 2018', December 2019, pp.9–11, https://www.sipri.org/sites/default/files/2019-12/1912_fs_top_100_2018.pdf [accessed 23 January 2020].

¹⁷ Airbus, 'Annual Report 2018', February 2019, p.104, <https://www.airbus.com/investors/financial-results-and-annual-reports.html#annualreports> [accessed 23 January 2020].

¹⁸ Transparency International, '10 Anti-Corruption Principles for State-Owned Enterprises', p.3, November 2017, www.transparency.org/whatwedo/publication/10_anti_corruption_principles_for_state_owned_enterprises [accessed 23 January 2020].

¹⁹ Federal Ministry of Economic Affairs and Energy, p.13.

²⁰ *ibid.* p.18.

²¹ Through the acquisition of a stake in in KMW + Nexter Defense Systems N.V. ("KNDS"). See Rheinmetall, 'Ad-hoc: Rheinmetall AG confirms talks regarding a potential acquisition of a stake in KNDS [...]', 26 November 2018, https://www.rheinmetall.com/en/rheinmetall_ag/press/news/archiv/archive2018/news_details_11_16192.php [accessed 23 January 2020].

²² Spiegel Online, 'Rheinmetall will Panzerkonzern Krauss-Maffei kaufen', 26 November 2018, <http://www.spiegel.de/wirtschaft/unternehmen/rheinmetall-will-leopard-hersteller-krauss-maffei-wegmann-kaufen-a-1240541.html> [accessed 04 January 2019].

²³ Die Bundesregierung, 'Zur Sicherheitspolitik Und Zur Zukunft Der Bundeswehr (White Paper)', 2016, p.74, <https://www.bmvg.de/resource/blob/13708/015be272f8c0098f1537a491676bfc31/weissbuch2016-barrierefrei-data.pdf> [accessed 23 January 2020].

expected to support such a merger. This would further limit domestic procurement options and would not address issues identified by the professional services consultancy KPMG in its 2014 “Comprehensive Inventory and Risk Assessment of Central Defence Projects”:

“[The Puma mechanised infantry combat vehicle, for instance, exhibits a] risk for the use phase due to the structural problem of a non-existent competitive situation, i.e. missing competitors for the contractor: in framework contract negotiations for technical-logistic assistance, the producer can therefore take a strong position.”

And, more broadly:

“In cases, in which the Federal Government wants to develop new products, it cannot procure, on a regular basis, the necessary development and realisation services in a competitive procedure. This is inherent to the industrial structure and could intensify in the future if the defence industry is to further consolidate.”²⁴

Overly dominant players in any market can pose a threat to the democratic process, by translating their economic power into political power.²⁵ Governments that rely on only one or a few firms for the provision of goods and services are inherently exposed to a higher risk of undue influence by the dominant companies.

Since the EU, as well as individual states including Germany,²⁶ continues to support mergers in the sector to achieve economies of scale and retain competitiveness on the global stage, the limited competition may affect more than just the cost-efficiency of the projects.

Association and representation

Beyond the customary individual offices of large defence companies in Berlin (and Koblenz, where the armed forces equipment office is located), the interests of the sector as a whole are represented by the Federation of German Security and Defence Industries (BDSV), which is also part of the cross-sectoral Federation of German Industries.

In addition, several other national associations that promote various aspects of security and defence policy – such as the German Association for Defence Technology (DWT), the Society for the Promotion of the Army (FKH) and the Association for Security Policy (GSP) – include a high level of participation from defence sector companies. While they (sometimes explicitly by statute)²⁷ do not engage in any lobbying or direct support of business activities and identify themselves exclusively as platforms for dialogue and information, a news report by the German weekly *Der Spiegel* has challenged this claim and criticised their entanglement with politics. This point was emphasised by coverage of a DWT-organised event in 2015 entitled “Speed Dating with Diplomats” – a series of short meetings between national defence industry and foreign government representatives that was also attended by representatives from the MoD.²⁸

Political representation in the German defence sector is not limited to defence companies. Traditionally strong and outspoken German trade unions, such as IG Metall, also represent interests closely aligned with the sector’s national procurement and export endeavours. For example, when the Federal Government decided in favour of a Europe-wide tender (as opposed to a national process or direct contract award) for the procurement of a new multipurpose frigate, the union blamed the MoD for “approvingly accepting the end of marine shipbuilding in Germany.”²⁹

Defence market characteristics

According to government data, most of the revenue in the German commercial defence sector (EUR20 billion in 2014) is generated independently of national military procurement. Only 36 per cent of German defence goods were purchased by the national armed forces. About the same volume was exported, with two-thirds reaching

²⁴ KPMG, ‘Umfassende Bestandsaufnahme und Risikoanalyse zentraler Rüstungsprojekte’, 30 September 2014, p.11 & 43, https://fragdenstaat.de/files/foi/24624/exzerpt_bestandsaufnahme_ruestungsprojekte.pdf [accessed 04 January 2014].

²⁵ Tim Wu, *The Curse of Bigness: Antitrust in the New Gilded Age* (Columbia Global Reports 2018); Open Markets Institute, ‘Democracy & Monopoly’, <https://openmarketsinstitute.org/explainer/democracy-and-monopoly/> [accessed 22 July 2019].

²⁶ Reuters, ‘German finance minister urges European defence mergers’, 29 August 2018, <https://uk.reuters.com/article/uk-france-germany-defence/german-finance-minister-urges-european-defence-mergers-idUKKCN1LE223> [accessed 22 July 2019].

²⁷ German Association for Defence Technology (DWT), ‘Statute of May 8th, 2019’, available to the author in print form.

²⁸ Christian Schweppe, ‘Speeddating mit Diplomaten’, *Spiegel Online*, 10 October 2015, <http://www.spiegel.de/spiegel/print/d-139226798.html> [accessed 23 January 2020].

²⁹ Martin Murphy, ‘IG Metall macht Bundesregierung für das drohende Aus der Thyssen-Krupp-Werften verantwortlich’, *Handelsblatt*, 08 June 2018, <https://www.handelsblatt.com/unternehmen/industrie/kampfschiff-mks-180-ig-metall-macht-bundesregierung-fuer-das-drohende-aus-der-thyssen-krupp-werften-verantwortlich/22662302.html?ticket=ST-3346882-JCfBd3oquBdpLfEHjQ-ap2> | [accessed 23 January 2020].

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EU and NATO partners as well as other “equivalent” states, including Australia, New Zealand, Switzerland and Japan.³⁰ A further third was exported to other countries, accounting for 11.9 per cent of the total. The remaining 32 per cent of turnover represented exports that are not subject to special approval, as well as domestic deliveries by suppliers to other defence companies or non-military security forces.³¹ This pattern places Germany fourth in SIPRI’s ranking of world arms exporters, representing a 6.4 per cent share of global arms exports in 2018.³²

Capability ambitions

Despite the planned rapid rise in German defence expenditure to pursue large-scale legacy and new procurement projects,³³ it remains highly unlikely that the domestic demand for defence goods will support the German defence sector alone. Exports will remain a key element to ensure the commercial viability of national armament projects and survival of the German defence industry. This creates an incentive for the state to support industry exports to safeguard the industry’s ability to deliver on the country’s capability ambitions. That dynamic is part of the backdrop to the debates about export controls that have raged in the German media, business and politics in the past few years.

Economic significance and regional distribution

In 2014,³⁴ an estimated 65,700 people were employed and EUR20 billion generated by arms production in Germany.³⁵ However, these numbers are no match for the country’s flagship automotive industry, which is responsible for 10 times the number of jobs and 20 times the revenue of the armaments sector.³⁶ Indeed, in comparison, the defence sector forms a relatively small part of Germany’s advanced and diversified economy.

Although the defence companies have a presence across the country, they seem to cluster in Upper Bavaria and Baden-Württemberg in the South, and Schleswig-Holstein in the North, as well as in north-western Bremen, where

they employ one per cent of the population. At the same time, 33 out of Germany’s 38 administrative regions³⁷ host some defence sector economic activity (see Figure 1).

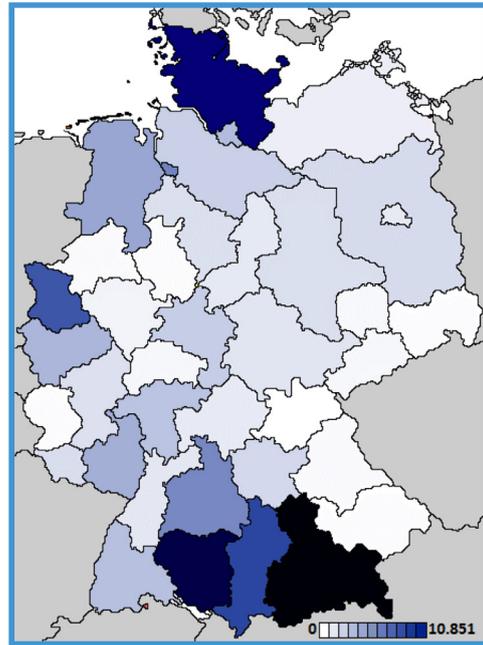


Figure 1: Number of defence industry employees by region in Germany. Darker shaded areas represent a higher number of employees.³⁸

The constitution provides for strong parliamentary control of the armed forces. This gives parliamentarians – and particularly members of the Budget Committee – a certain degree of influence over decisions in the defence sector. In general, Members of Parliament (MPs) consider themselves champions of the economy in their electoral districts, supporting measures and policies that safeguard or promote job opportunities and business success for their voters. This is especially the case for the 299 parliamentarians – out of 702 – who are directly elected by their constituencies.³⁹

At the same time, all MPs have the constitutional responsibility to act as “representatives of the entire people” and are “not bound by the orders and instructions

³⁰ Federal Foreign Office, ‘National Export Controls’, <https://www.auswaertiges-amt.de/en/aussenpolitik/themen/aussenwirtschaft/exportkontrolle-node/exportkontrolle-national-node> [accessed 23 January 2020].

³¹ Federal Ministry of Economics and Energy, p.27.

³² SIPRI, ‘Trends in International Arms Transfers, 2018’, March 2019, p.2, https://www.sipri.org/sites/default/files/2019-03/fs_1903_at_2018.pdf [accessed 23 January 2020].

³³ These include: an armoured personnel carrier; a fighter-bomber replacement; a large military transport aircraft; a submarine cooperation with Norway; a multipurpose frigate; a heavy transport helicopter; new battle tank and fighter jet systems (with French cooperation) and possibly a Franco-German aircraft carrier as proposed by the new CDU Secretary-General, Annegret Kramp-Karrenbauer. See Ursula von Leyen, ‘Verteidigungsausgaben sollen um zehn Prozent steigen’ (video recording), Deutscher Bundestag, 12 September 2018, <https://www.bundestag.de/dokumente/textarchiv/2018/kw37-de-verteidigung/566346> [accessed 12 September 2018].

³⁴ Federal Ministry of Economic Affairs and Energy, p.10.

³⁵ *ibid.* p.11.

³⁶ Association of the Automotive Industry, ‘Zahlen und Daten’, <https://www.vda.de/de/services/zahlen-und-daten/zahlen-und-daten-uebersicht.html> [accessed 23 January 2020].

³⁷ Level 2 administrative divisions of the Nomenclature of Territorial Units for Statistics.

³⁸ Federal Ministry of Economics and Energy, p.13.

³⁹ The other half is elected through party lists, where people vote for a party, not a candidate. These members are not directly dependent on a certain constituency and feel a lesser responsibility for economic development. This is markedly different to countries with an election system where all parliamentarians are dependent on their constituencies, such as in the US or UK.

of their voters.”⁴⁰ As in all democracies – especially those with a direct election system – local-level political considerations can occasionally create tensions with broader national interests. Considering the importance of MPs and parliamentary institutions in decision-making and oversight in defence matters, it is important to acknowledge this potential conflict of interests, especially if MPs take on roles in defence or budget oversight committees. Since parliamentarians provide critical oversight and control of the defence sector, safeguarding the integrity of the democratic process requires guarding against conflicts of interest among MPs and creating transparency in legislative and policy decision-making.

Currently, the protections in the system are inadequate: there are no rules on the composition of parliamentary committees and MPs can take up unlimited secondary occupations. Although a Code of Conduct exists, it only obliges MPs to provide information about their past employment and secondary occupations, and requires that those who are “employed against payment with an issue which is to be discussed in a committee of the Bundestag [...], disclose a connection of interests prior to the discussion.”⁴¹ There is no clear evidence of any consequences when a possible conflict of interest is, or is not, disclosed.

⁴⁰ Grundgesetz für die Bundesrepublik Deutschland (The Constitution), Art. 38, <https://www.gesetze-im-internet.de/gg/> [accessed 23 January 2020].

⁴¹ Deutscher Bundestag, 'Anlage 1 - Verhaltensregeln für Mitglieder des Deutschen Bundestages, §6, https://www.bundestag.de/parlament/aufgaben/rechtsgrundlagen/go_btg/anlage1/245178 [accessed 23 January 2020].

PATHWAYS OF INFLUENCE

The way in which industry influence is exerted can be overtly financial, for instance through contributions to political parties and campaigns. It can also take its course through promoting certain ideas or co-opting people. This report groups these forms of influence into three main categories: money, ideas, and people.

Money

This involves influence exerted over the policy process through financial means, ranging from political contributions to direct financial interests of decision-makers that have the potential to generate a conflict of interest.

Direct financial engagement of politicians

The lax rules of the Deputies' Act potentially enable the concealment of conflicts of interest in the heart of Parliament. Under the Act, remunerated engagements of MPs are permitted as long as financial benefits "are not only granted because the representation and enforcement of the interests of the provider is expected in exchange."⁴² These rules leave the doors open to MPs wishing to take up lucrative side-jobs for which they may offer representation of interests in exchange.

A particularly stark example of a parliamentary conflict of interest is the 2016 case of MP Florian Hahn. Hahn sat on the supervisory board of German engineering company IABG, which has a large defence industry client base. At the same time, Hahn was a member of the Defence Committee of the German Parliament where he reviewed the awarding of contracts that benefitted his employer. The press at the time alleged that he was actively promoting these projects.⁴³ Hahn himself said that he saw "no conflicts of interest", that he had disclosed his additional income and that he separated the tasks in the IABG Supervisory Board "clearly from those in the German Bundestag."

Conventional wisdom on the management of actual,

potential, and perceived conflicts of interest would at least recognise the risk of these dual loyalties to interfere with an elected official's duties.

According to information provided by Parliament, neither Hahn nor any other member of the Defence Committee or Budget Committee continue to hold remunerated positions in the defence sector. However, regulations governing the mandate of parliamentarians allow for a large margin of individual discretion, merely stating that such potential conflicts of interest be disclosed, without imposing restrictions or penalties for failing to do so.⁴⁴

In a recent case, MP Philipp Amthor was alleged to have lobbied senior government officials for political support for Augustus Intelligence, a US-based technology company, despite holding stock options in the company and, therefore, potentially monetarily benefitting from this activity.⁴⁵ This case demonstrates that existing regulations on disclosures for secondary activities are not sufficient to ensure the visibility and prevention of conflicts of interest.

Even when this information is published, it is often only on the MP's website and remains unavailable in any consolidated, structured or searchable form to members of the public. This allows potential conflicts of interest and resulting industry influence to fly under the radar.

Campaign and political financing

A 2019 report published by the Council of Europe's Group Against Corruption (GRECO) reviewed progress made by Germany towards the implementation of 10 of its recommendations on transparency in party financing. The report's conclusion is damning, expressing the Group's disappointment in "the low level of progress achieved". Stating that the "system falls short of European standards" – it ascribed the lack of progress to "a clear lack of political will."⁴⁶ Transparency and controls on both party and individual candidate financing remain problematic.

Political parties are only required to publish donations of EUR50,000 or more "without delay." Details regarding

⁴² Gesetz über die Rechtsverhältnisse der Mitglieder des Deutschen Bundestages (Deputies' Act), §44a(1), <http://www.gesetze-im-internet.de/abgg/> [accessed 23 January 2020].

⁴³ Sven Becker, 'CSU-Politiker im Verdacht der Kungelei', *Spiegel Online*, 29 October 2016, <http://www.spiegel.de/politik/deutschland/florian-hahn-nebenjob-von-csu-verteidigungspolitiker-sorgt-fuer-aufregung-a-1118782.html> [accessed 23 January 2020].

⁴⁴ Deutscher Bundestag, 'Anlage 1 - Verhaltensregeln für Mitglieder des Deutschen Bundestages', §6, https://www.bundestag.de/parlament/aufgaben/rechtsgrundlagen/go_btg/anlage1/245178 [accessed 23 January 2020].

⁴⁵ "Philipp Amthor's World: A Young Star in Merkel's Party Faces Turbulence", *Spiegel International*, 12 June 2020, <https://www.spiegel.de/international/germany/philipp-amthor-s-world-a-young-star-in-merkel-s-party-is-in-danger-of-falling-a-f0205fd0-21e0-4f37-896f-bcea2ace1983> [accessed 7 August 2020].

⁴⁶ GRECO, 'Third Evaluation Round: Second Addendum to the Second Compliance Report on Germany', March 2019, p.5–6, <https://rm.coe.int/third-evaluation-round-second-addendum-to-the-second-compliance-report/168094c73a> [accessed 23 January 2020].

contributions above EUR10,000 are included in an annual report to the President of Parliament that, for 2016, was released two years later in May 2018. Smaller payments do not need to be itemised or individually disclosed, even if in sum they surpass these thresholds for individual donors over the course of one year.⁴⁷

Germany also lacks regulation mandating an accelerated financial reporting process during and immediately after political campaigning, making timely scrutiny of sources difficult. This includes both financial contributions and in-kind donations, such as advertisements in party magazines, stands at party events⁴⁸ or financing of conferences. The now-defunct “*Celler Trialog*” was a national forum that brought together political, business and military representatives and was organised by Henning Otte, the Christian Democratic parliamentary spokesperson for defence policy. It also received financial sponsorship from German defence giant Rheinmetall (headquartered in Otte’s constituency), as well as a dozen other defence companies and organisations, all of which made the conference possible and arguably contributed to the host’s re-election.⁴⁹

A study by the European Parliament shows that German regulations on corporate political donations put no caps on the amount of donations and only a few bans on which companies may make them.⁵⁰ Germany allows corporate donations and does not impose limits on company donations to party finances. The study ranks German regulations amongst the least restrictive of those of the Member States assessed. What is more, MPs can also receive individual donations. These need to be registered with the President of Parliament if above EUR5,000 and published if more than EUR10,000 is cumulated by a single donor in any one year.⁵¹

One case illustrates particularly well how this loophole can be exploited. According to news reports, during his re-election campaign to Parliament, Johannes Kahrs received multiple direct donations from defence companies that individually remained under the notifiable thresholds, but cumulatively amounted to EUR60,000. Upon his reconfirmation at the polls, Kahrs became the Social Democratic rapporteur for defence policy in the Budget Committee.⁵²

Sums spent on political donations in Germany lag behind those spent in some other countries, such as the United States. But so do the current regulations and repercussions for breaching regulations that are in place, which enables contributions – whether financial or in-kind – to be used non-transparently as a potential tool for exerting influence on candidates and the policy process.

Ideas

Pathways of influence in this category facilitate the transfer of ideas between the private and public sector. The most prominent example of this exchange is traditional lobbying, but they also relate to the role that parliamentary staff, think tanks and external consultants play in facilitating undue influence.

Parliamentary staff

Parliamentary staff are employed directly by MPs to serve as gatekeepers both inside and outside parliament. They have the potential and power to facilitate the exchange of ideas between parliament and the defence industry. Therefore, it is unsurprising that, according to a German parliamentary assistant from the traditionally influence-critical Left party, “professional lobbyists always choose the path through the assistants and staff members [to influence the relevant MPs].”⁵³

Yet, beyond possible individual contractual and oral agreements at the discretion of each MP, no uniform code of conduct exists to prohibit parliamentary staff from accepting gifts, pursuing invitations or moving to private sector jobs at short notice. Parliamentary staff are often invited to regular get-togethers, such as parliamentary evenings and receptions, sometimes even hosted in parliamentary venues,⁵⁴ organised by defence firms and proxy organisations.

One particular case in 2015 exemplifies this. More than 350 parliamentary staff members took an (almost) all-expenses-paid⁵⁵ trip funded by industry to the arms manufacturing facilities of Airbus, MBDA and Krauss-Maffei Wegmann.⁵⁶ This directly undermines some of the

⁴⁷ Lobbypedia, ‘Parteispenden (“Wahlkampffinanzierung”)', <https://lobbypedia.de/wiki/Parteispenden#Wahlkampffinanzierung> [accessed 23 January 2020].

⁴⁸ *ibid.*

⁴⁹ MP Henning Otte, ‘Celler Trialog 2013’, https://www.henning-otte.de/fileadmin/user_upload/Dokumente/Programmablauf_Celler-Trialog_2013.pdf [accessed 23 January 2020].

⁵⁰ European Parliament, ‘Party financing and referendum campaigns in EU Member States’, 2015, p.18, [http://www.europarl.europa.eu/RegData/etudes/STUD/2015/519217/IPOL_STU\(2015\)519217_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/519217/IPOL_STU(2015)519217_EN.pdf) [accessed 23 January 2020].

⁵¹ Deutsche Bundestag, ‘Anlage 1 - Verhaltensregeln für Mitglieder des Deutschen Bundestages’, §4(2, 3), https://www.bundestag.de/parlament/aufgaben/rechtsgrundlagen/go_btg/anlage1/245178 [accessed 24 January 2020].

⁵² Lobbypedia, ‘Parteispenden (“Wahlkampffinanzierung”)', <https://lobbypedia.de/wiki/Parteispenden#Wahlkampffinanzierung> [accessed 23 January 2020].

⁵³ Spiegel Online, ‘Exklusive Gelegenheit’, 17 October 2015, <http://www.spiegel.de/spiegel/print/d-139341573.html> [accessed 24 January 2020].

⁵⁴ Bundesverband der Deutschen Sicherheits- und Verteidigungsindustrie (BDSV) Newsletter, no.2, p.1, 29 June 2018, <https://www.bdsv.eu/aktuelles/newsletter.html?file=files/newsletter/2018/BDSV%20Newsletter%202-2018.pdf> [accessed 24 January 2020].

⁵⁵ Except for a EUR75 lump-sum expense covered by the employees, out of an estimated cost of EUR600 per person according to information from the DGAP.

⁵⁶ Spiegel Online, ‘Exklusive Gelegenheit’, 17 October 2015, <http://www.spiegel.de/spiegel/print/d-139341573.html> [accessed 24 January 2020].

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safeguards put in place to prevent private-sector influence on government staff, such as those on gifts and hospitality.

This is not to say that exchanges between parliamentary staff and industry cannot serve a useful purpose. On the contrary, they can help close the information gap in cases where parliament is kept in the dark on projects.⁵⁷ However, conflicts of interest must be controlled to ensure that any exchanges serve the purpose of improving parliamentary oversight.

Traditional lobbying

Traditional lobbying is an activity carried out to seek to influence a government or institution's policies and decisions in favour of a specific cause or outcome.⁵⁸ By way of institutionalised dialogue, casual events or through personal connections, lobbying facilitates the flow of ideas between industry representatives and senior political and public officials. While in itself an integral part of the democratic process, if not transparent and properly regulated it can mutate into privileged access and undue opportunities to exchange information that risks gaining disproportionate influence over political staff and their decisions.

In some jurisdictions, such as the EU, Members of the European Parliament (MEPs) who are involved in drafting and negotiating legislation are required to disclose meetings with interest representatives, who are themselves indexed in a transparency register.⁵⁹ Commissioners, members of their cabinets and Directors-General are similarly required to make this information available as a matter of transparency policy.⁶⁰

In Germany, lobbying remains largely unregulated, beyond direct financial contributions and rules for follow-up employment for public servants. Based on a 1972 resolution, the President of Parliament does maintain a list in which "associations representing interests vis-à-vis the Federal Parliament or the Federal Government can be registered." However, "no rights or duties are associated with registration" and "member associations of an already registered umbrella organisation, as well as individual associations and companies" are specifically excluded

from disclosing this information.⁶¹

In 2016, a common practice of issuing parliamentary access passes to lobbyists was discontinued amid controversy resulting from the unwillingness of political parties to make the lists of recipients public.⁶² A clear lack of commitment to transparency, the decision was even questioned by some industry representatives.⁶³ Since then, a new procedure was introduced stipulating that applications have to be made to the President of the Bundestag. Passes are issued on a much more restricted basis, and are normally limited to two per organisation. The overall number of passes has reduced from 1103 in 2016 to 787 at the end of 2018, and the list of recipients is publicly available. While this is a step in the right direction, a comprehensive register of lobbyists is still lacking.

In 2020, following the Amthor case, the government announced plans to introduce a transparency register requiring MPs to declare any interests that they represent. The announcement suggested that MPs who violate these transparency obligations would be fined, although the details of sanctions and the register itself are yet to be worked out. The proposal was to be discussed after the summer recess and is expected to be introduced in autumn 2020.⁶⁴ As of September 2020, the legislation is currently in parliament. However, it does not require the disclosure of meetings with the registered lobbyists, as in the case, for instance, in the European Parliament's lobbying legislation.

Think tanks

Numerous think tanks in Germany and elsewhere offer policy input into defence issues by hosting events, producing reports and having experts speak at conferences. But sometimes, the influence they wield on Germany's security and defence policy is backed up by significant financial support from the defence industry.

This was the case with the German Council on Foreign Relations (DGAP), a substantial provider of ideas to the armed forces' 2016 White Paper.⁶⁵ It calls itself "an independent, non-partisan, and non-profit membership organisation, think tank, and publisher [that] has been

⁵⁷ Interview with member of staff to an MP in the German Parliament, January-February 2019.

⁵⁸ Transparency International, 'Anti-Corruption Glossary ("Lobbying")', <https://www.transparency.org/glossary/term/lobbying> [accessed 24 January 2020].

⁵⁹ European Parliament, 'Report on amendments to Parliament's Rules of Procedure, p.10, December 2018, http://www.europarl.europa.eu/doceo/document/A-8-2018-0462_EN.pdf [accessed 24 January 2020].

⁶⁰ European Commission, 'Transparency register', https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/transparency/transparency-register_en [accessed 24 January 2020].

⁶¹ Deutscher Bundestag, 'Öffentliche Liste über die beim Bundestag registrierten Verbände', <https://www.bundestag.de/parlament/lobbyliste> [accessed 24 January 2020].

⁶² Der Tagesspiegel, 'From today no more Access IDs for corporate lobbyists, 2016, <https://www.tagesspiegel.de/politik/bundestag-ab-heute-keine-hausausweise-fuer-firmenlobbyisten-mehr/13033656.html> [accessed 24 January 2020].

⁶³ Interview with a defence industry representative and reserve officer of the German armed forces, January-February 2019.

⁶⁴ SPD Fraktion im Bundestag, 'Durchbruch bei Lobbyregister: Einführung im Herbst', 3 July 2020, <https://www.spdfraktion.de/presse/pressemitteilungen/durchbruch-lobbyregister-einfuehrung-herbst> [accessed 28 August 2020]

⁶⁵ The German Council on Foreign Relations (DGAP), <https://dgap.org/de> [accessed 24 January 2020].

promoting public debate on foreign policy in Germany for almost 60 years.⁶⁶ According to its annual report, the DGAP attracts a broad spectrum of donors, yet it also receives substantial contributions from multiple defence industry and related sources. In 2016/17, Airbus contributed (and in the three years prior) an unspecified amount surpassing EUR100,000 – on par with only four other financial supporters.⁶⁷

Two occasions illustrate the potentially close relationship between the DGAP and the defence industry. The aforementioned industry-funded trip for 350 parliamentary staffers, which included visits to the production sites of defence companies as well as leisure trips, was organised by the DGAP.⁶⁸ Secondly, an interview with a retired Member of Legislature revealed that the DGAP organised an event with parliamentary participation that was (unsuccessfully) designed to promote exports of MILAN anti-tank missiles to Libya only months before the outbreak of the civil war in 2011.⁶⁹

The close cooperation between the DGAP and defence industry was restated more recently, when Thomas Enders – the former CEO of Airbus and Airbus SE – became its president. This follows a career that started at the DGAP and, after a brief period in the planning staff of the Federal Minister of Defence, continued in the defence industry.⁷⁰

While these snapshots are by no means intended to discredit the academic work of the DGAP, they do suggest that a possible pathway to influence can occur through seemingly independent research institutions.

Advisory services

In Germany, as in many other countries, there is a demand for consulting services that are geared towards developing solutions and managing change in the public defence sector. This is a result of fast-paced restructuring, digitalisation, reforms and the increasingly sophisticated nature of large procurement projects, as well as the growth in the defence budget and the difficulties in finding the qualified and specialised staff on the German labour market. In recent years, this has led to concerns regarding procurement, checks and balances on the input provided

by external advisors, and important questions about who is performing the sovereign duties of the Government.⁷¹

The MoD's dependence on external consultants is a point of controversy in Germany, not least due to the temporary appointment of a former McKinsey partner as defence State Secretary in 2014 (this is discussed in the upcoming section about the “revolving door”). The MoD has spent a minimum of EUR150 million per year on consultancy services⁷² and an estimated total of EUR660 million since 2014.⁷³

According to news reports, a considerable proportion of these services was procured through direct award of contracts, or from reassigned funds. Not only are the numbers and volumes of non-tendered contracts publicly unavailable, but in response to a parliamentary inquiry regarding advisory services procured directly since 2012, the Government said that these figures cannot be published without the prior consent of the contractor:

“As to date, consent for publication [of direct contracts awarded to them] has not been received from all consulting companies, not all firms can be made public.”⁷⁴

The Federal Audit Office reviewed these practices in a report issued in August 2018, that was accompanied by a damning, but confidential opinion paper. It found that “in over 80 per cent of cases, the armed forces did not substantiate the need for external services” and “in virtually none of the procurements [of consulting services] reviewed by the Federal Audit Office had there been a cost-effectiveness check conducted.” Contracts were often “directly issued, without a competitive procedure” with “not always convincing” justifications. The auditor's report concluded that the “Ministry of Defence is lacking a comprehensive overview of contracts with external consultants.”⁷⁵

In one instance, the press reported that a EUR42 million contract for the analysis of the privatisation of the armed forces military vehicle maintenance works was issued directly. According to the chairperson of the Workers'

⁶⁶ DGAP, 'About Us', <https://dgap.org/en/about-us> [accessed 24 January 2020].

⁶⁷ DGAP, 'Sponsors', <https://dgap.org/en/sponsors> [accessed 24 January 2020].

⁶⁸ Spiegel Online, 'Exklusive Gelegenheit', 17 October 2015, <http://www.spiegel.de/spiegel/print/d-139341573.html> [accessed 24 January 2020].

⁶⁹ Interview with a retired MP from the governing coalition, November 2018.

⁷⁰ DGAP, 'Dr. Thomas Enders ist neuer Präsident der DGAP', 14 June 2019, <https://dgap.org/de/gesellschaft/die-gesellschaft/dgapinfo/dr-thomas-enders-ist-neuer-praesident-der-dgap> [accessed 24 January 2020].

⁷¹ Interview with an MP from the opposition party, January-February 2019.

⁷² Matthias Gebauer, 'Wehrressort zahlte bis zu 150 Millionen Euro jährlich an Berater', *Spiegel Online*, 25 September 2018, <http://www.spiegel.de/politik/deutschland/ursula-von-der-leyen-wehrressort-zahlte-bis-zu-150-millionen-euro-jaehrlich-an-berater-a-1229849.html> [accessed 24 January 2020].

⁷³ Matthias Gebauer, 'Von der Leyen hält Zahlen zu Beraterbudgets zurück', *Spiegel Online*, 09 March 2019, <http://www.spiegel.de/politik/deutschland/ursula-von-der-leyen-ministerium-haelt-zahlen-zu-beraterbudgets-zurueck-a-1257051.html> [accessed 24 January 2020].

⁷⁴ Deutscher Bundestag, *Drucksache 19/5646*, 2018, p.4, <http://dip21.bundestag.de/dip21/btd/19/056/1905646.pdf> [accessed 24 January 2020].

⁷⁵ Matthias Gebauer, 'Wehrressort zahlte bis zu 150 Millionen Euro jährlich an Berater'.

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Council cited by the article, it is “stunning how many people have had to play along in the Ministry for this to be possible” and “incomprehensible to date nobody has halted this procurement process.”⁷⁶ The Ministry’s alleged attempt to withhold information in a response to a parliamentary inquiry further exacerbated concerns about the situation.⁷⁷ At the time of publishing this report, the inquiry committee is still examining the situation.

Even considering the simplest explanation for such irregularities – a lack of in-house expertise and capacity – the audit report paints a disquieting picture. There is a sense that the MoD lacks the ability and adequate understanding of the need to justify, structure and monitor the influx of ideas and their consequences from external consultants to guard against undue influence.⁷⁸ It has not preserved sufficiently the ability to act as an intelligent client.

People

This pathway of influence relates to the movement of people between the public and private sectors or their close interactions in public institutions, the military or other associations. These relationships are even more significant given the high levels of complexity and intrinsic lack of transparency, in both the defence institutions and the defence industry.

“Revolving door” situations

The movement of individuals between the public and private sector - while, in principle, potentially in the interests of both parties - can present a significant conflict of interest risk if not appropriately transparent and properly regulated. The prospect of lucrative private sector employment has the potential to influence policymakers’ decisions while still in office in order to benefit their future employers. Once employed by a private company, former officials may use their contacts and privileged information either to give their new employer a competitive advantage or to gain access to and influence their former employer.

This phenomenon – often referred to as the “revolving door” – is pervasive in the defence sector globally. Studies in both the US and the UK have documented a myriad of cases of retiring generals taking up employment with arms manufacturers and MoD officials accepting jobs with defence companies.⁷⁹

In the German defence sector, one particular revolving door case attracted substantial criticism. In 2015, Dirk Niebel became a chief international lobbyist for Rheinmetall, Germany’s largest defence manufacturer, one year after retiring as Federal Minister of Economic Cooperation and Development. This was a position in which, as an ex officio member of the National Security Council, he had a vote on authorising arms exports involving his current employer that totalled over EUR10 billion, although it is not possible to say how he voted in each case.⁸⁰ In another example in 2017, Rheinmetall’s shareholders elected Franz-Josef Jung, Minister of Defence between 2006-2009 and while still an MP, to the company’s supervisory board. Before his departure from Parliament, the two mandates overlapped by six months.⁸¹

Conversely, private-sector staff transitioning into governmental positions can equally represent a potential pathway for industry influence on defence policy and procurement. Here, the case of Katrin Suder stands out. In 2014 Suder, who was a partner in the consulting firm McKinsey, which was in charge of government contracts, was appointed as State Secretary for Planning and Equipment by Minister of Defence Ursula von der Leyen. While she was in her new position her former employer, according to news reports, continued to receive work as a contractor and subcontractor on high-profile advisory projects for the MoD.⁸² Suder put on record: “It is important for me to emphasize that I was never involved in selection decisions and was generally not involved in selection decisions”. However, reports from the news outlet Spiegel suggest internal documents may call this statement into question.⁸³ A parliamentary inquiry is looking into the matter.⁸⁴

These examples are by no means unique, with significant anecdotal evidence suggesting that high-ranking officers,

⁷⁶ SR 3 Saarlandwelle, “Keiner hält das auf”, 23 November 2018, https://www.sr.de/sr/sr3/themen/politik_wirtschaft/interview_betriebsratsvorsitzender_hil_beraterauftraege_verteidigungsministerium100.html [accessed 24 January 2020].

⁷⁷ Matthias Gebauer, ‘Von der Leyen hält Zahlen zu Beraterbudgets zurück’.

⁷⁸ Interview with an MP from the governing coalition, January-February 2019.

⁷⁹ Transparency International Defence & Security, ‘Out of the Shadows, Promoting Openness and Accountability in the Global Defence Industry’, September 2018, http://ti-defence.org/wp-content/uploads/2018/09/Out_of_the_Shadows_WEB3.pdf [accessed 24 January 2020].

⁸⁰ Sebastian Kempkens, ‘Diese Rüstungsgeschäfte fallen in Niebels Amtszeit’, *Spiegel Online*, 02 July 2014, <http://www.spiegel.de/politik/deutschland/dirk-niebel-und-rheinmetall-die-ruestungsdeals-des-ex-ministers-a-978764.html> [accessed 24 January 2020].

⁸¹ Spiegel Online, ‘Ex-Verteidigungsminister Jung ist neuer Aufsichtsrat’, 10 May 2017, <http://www.spiegel.de/wirtschaft/unternehmen/rheinmetall-franz-josef-jung-ist-neuer-aufsichtsrat-a-1146918.html> [accessed 24 January 2020].

⁸² Thomas Steinmann, ‘Bundeswehr nutzte Dienste von McKinsey häufiger als bekannt’, *Capital*, 14 March 2019, <https://www.capital.de/wirtschaft-politik/wie-mckinsey-zu-auftraegen-bei-der-bundeswehr-kam> [accessed 24 January 2020].

⁸³ Spiegel Online, ‘Neue Vorwürfe gegen Ex-Staatssekretärin Suder’ 29 January 2020, <https://www.spiegel.de/politik/deutschland/katrin-suder-neue-vorwuerfe-gegen-ex-staatssekretaerin-im-verteidigungsministerium-a-8c3e9b9a-5030-4861-a386-087e1a4caefa>

⁸⁴ Der Tagesspiegel, ‘Die Erinnerungslücken einer ehemaligen Staatssekretärin’, 30 January 2020, <https://www.tagesspiegel.de/politik/zeugin-suder-in-leyens-berateraffaere-die-erinnerungsluecken-einer-ehemaligen-staatssekretaerin/25492800.html>

senior officials, MPs and their staff regularly find follow-up employment in industry or proxy organisations. For ministers⁸⁵ and parliamentary state secretaries,⁸⁶ these transitions are supposedly regulated. Potential future employment is only reviewed within 18 months of their departure from government jobs and generally approved after a mere 12-month cooling-off period.⁸⁷

For civil servants and soldiers follow-up appointments are reviewed by the MoD in the five years after their leaving employment, and can be denied if a conflict of interest could potentially exist.⁸⁸ Evidence however suggests that enforcement is lax. Between the years 2010 and 2014, of the 42 notifications analysed by the MoD, only two were denied.⁸⁹ The case of a former state secretary who became CEO of the lobbying giant EUTOP without any difficulty illustrates this.⁹⁰

One could argue that employment opportunities are scarce for retired government security and defence policy experts, aside from lobbying companies and the defence industry. Yet it is indisputable that in taking up these roles – sometimes specifically designed to exert influence – former government employees certainly benefit from their former professional networks, insider knowledge of loopholes and the non-transparent processes at work in ministries and even the armed forces. Even if they do stay within the bounds of the law, the rather short time they have to let pass compared to the many years over which large defence procurement contracts are developed still brings them competitive advantage. Nevertheless, it is worth noting that some interlocutors observed that defence companies don't always see new "revolving door" candidates as a welcome asset, but rather a necessary liability in a bidding war against competitors to secure access and influence within the constraints of an opaque institutional framework.⁹¹

External advisors, who move from project to project and client to client can carry risks similar to that of the revolving door phenomenon. Consultants working on specific projects develop a deep insight into procurement

processes and can also help shape them. These same consultants may have a defence company as a client, then or in the future, whom they can give an unfair advantage.⁹²

Outsourcing to industry

As is increasingly the case in the world's advanced militaries, there is a creeping outsourcing of technical competencies. As a result, it is becoming common for industry representatives to assume a variety of expert roles that were previously reserved for public servants or members of the armed forces. From information technology, logistics and technical maintenance, to contributions to the development of military strategy and doctrine, industry representatives are becoming deeply embedded in headquarters, staffs and other groups.⁹³ While the private sector is interested in expanding its portfolio of assignments and maintaining a constant utilisation of people and assets to ensure commercial success, the military requires readily available and flexible capacity to resolve occasional peak demand and conserve its resources. The risk here, if not recognised and appropriately mitigated, is that industry can subtly shape the perspective of the capability and procurement needs of the armed forces, or profit from their lack of capacity and expertise to be an intelligent client.

These personal relations risk inadvertently enlisting the support of the armed forces for the inappropriate international sale of military technology. In one such instance – which also underlines the role that Government plays in facilitating defence exports – Russian delegations interested in purchasing new technology were hosted on eight occasions at an armed forces military training compound operated by Rheinmetall. According to news reports, the visits were described by one participating German captain as "sales events for Russians."⁹⁴

⁸⁵ Gesetz über die Rechtsverhältnisse der Mitglieder der Bundesregierung (Federal Ministers Act), §6(a-d), 17 June 1953, <https://www.gesetze-im-internet.de/bming/BMinG.pdf> [accessed 24 January 2020].

⁸⁶ Gesetz über die Rechtsverhältnisse der Parlamentarischen Staatssekretäre (Parliamentary State Secretary Act), §7, http://www.gesetze-im-internet.de/parlstg_1974/ [accessed 24 January 2020].

⁸⁷ Wolfram Krohn and Tobias Schneider, 'Defence & Security Procurement', *Getting the Deal Through*, January 2019, <https://gettingthedealthrough.com/area/90/jurisdiction/11/defence-security-procurement-germany/> [accessed 24 January 2020].

⁸⁸ Bundesbeamtengesetz (Federal Public Servants Act), §105, 05 February 2009, https://www.gesetze-im-internet.de/bbg_2009/BBG.pdf; Soldier Act, §20a, <https://www.gesetze-im-internet.de/sg/SG.pdf> [accessed 24 January 2020].

⁸⁹ Deutsche Bundestag, *Drucksache 18/3672*, 2015, p.20, <http://dipbt.bundestag.de/doc/btd/18/036/1803672.pdf> [accessed 24 January 2020].

⁹⁰ Lobbycontrol, 'Verteidigungsministerium soll Lobbyjob von Ex-Staatssekretär untersagen', 01 December 2014, <https://www.lobbycontrol.de/2014/12/verteidigungsministerium-soll-lobbyjob-von-ex-staatssekretaer-untersagen/> [accessed 24 January 2020]. EUTOP is also active on issues of defence and security; see Helga Maria Schmid, 'From Brussels with love: To a more assertive EU in a volatile world', *The Security Times*, February 2019, http://www.the-security-times.com/wp-content/uploads/2019/02/SecurityTimes_Feb2019Teil14.pdf [accessed 24 January 2020].

⁹¹ Interview with a German defence industry representative, January-February 2019.

⁹² Interview with a parliamentary staff member, January-February 2019.

⁹³ Christian Fuchs and Hauke Friederichs, "Wir sind hier der Kriegsgott", *Zeit Online*, 20 August 2015, <https://www.zeit.de/2015/34/bundeswehr-ruestungsindustrie-hilfssoldaten> [accessed 24 January 2020].

⁹⁴ Zeit Online, 'Bundeswehr organisiert Verkaufstreffen für Rüstungsindustrie', 19 August 2015, <https://www.zeit.de/politik/2015-08/bundeswehr-ruestung-industrie-deutschland> [accessed 24 January 2020].

Engagement in associations

It is not unusual for key politicians and public servants working on these issues to have formal ties to organisations that are closely connected to the defence industry, like the Deutsche Gesellschaft für Wehrtechnik (DWT). Although these associations are generally not-for-profit bodies structured as platforms for information exchange and dialogue on topics of security and defence policy, their institutional members are predominantly defence companies, while their steering committees host a plethora of current (and former) MPs as well as high-ranking armed forces' officers and MoD representatives.⁹⁵

Currently, public servants are not required to seek their employer's approval for such honorary positions. In a response to a 2010 parliamentary inquiry, the MoD made it clear that it believes "the inclusion of expert representatives of public institutions supports the effective work of these associations" and is unobjectionable as long as these are not-for-profits, "not business-oriented companies."⁹⁶ For most public servants there is little transparency around such engagements. While at least Parliamentarians are required to publish their advisory roles in non-governmental associations together with any remunerated activities on the Parliament's website, in the absence of strict enforcement some of them simply do not.⁹⁷

Casual meetings at conferences, parliamentary evenings and defence fairs arguably allow for an exchange of information that is less hindered by accountability and transparency standards than formal exchanges with ministries, armed forces or Parliament. While not wrong in itself, this circumvents internal compliance mechanisms and could create pathways for exerting influence on security and defence policy decisions. Although some companies decry this dysfunctional system, they feel they have no choice but to participate.⁹⁸ This keeps everyone from playing by the rules of transparency.

⁹⁵ German Association for Defence Technology (DWT), 'Präsidium', <https://www.dwt-sgw.de/ueber-die-dwt/praesidium/> [accessed 24 January 2020].

⁹⁶ Deutsche Bundestag, *Drucksache 17/1414*, 2010, p.5, <http://dipbt.bundestag.de/dip21/btd/17/014/1701414.pdf> [accessed 24 January 2020].

⁹⁷ Abgeordnetenwatch.de, 'Nebenjobs in Lobbyvereinen: Wie die Rüstungsindustrie Politiker umgarnt', 16 April 2018, <https://www.abgeordnetenwatch.de/blog/2018-04-16/nebenjobs-rustungsvereinen-wie-die-waffenlobby-politiker-umgarnt> [accessed 24 January 2020].

⁹⁸ Interview with a German defence industry representative, January-February 2019.

DEFENCE STRATEGY FORMATION AND PROCUREMENT

A well designed and executed policy and decision making process guards against the risks of undue influence. Yet shortcomings in its design or application can expose it to risks of inappropriate influence.

This section looks into the policy processes, from the development of the security and defence policy to how this subsequently informs decisions on defence acquisitions. In each case it describes the policy process and then analyses potential vulnerabilities that open it up to external influence, particularly from the private sector.

Security and defence strategy

Despite the strong role of Parliament in matters of security and defence, the Federal Government wields wide-ranging executive privilege detailed in three fundamental policy documents, which each answer a specific question:

- The White Paper (Weißbuch zur Sicherheitspolitik und zur Zukunft der Bundeswehr) - the “Where to?”
- The conception of the armed forces (Konzeption der Bundeswehr) – the “How?”

- The classified armed forces capability profile – the “With what?”

The White Paper is published at irregular intervals to reflect changes in strategic priorities and to inform Parliament and the general public.⁹⁹ Focusing on security policy, the last White Paper in 2016 describes the fundamentally changed security environment. It does not include detailed instructions for necessary changes in the structure and equipment of the armed forces, which were included in previous White Papers.

Derived from the strategic goals of the 2016 White Paper, the rules of the armed forces “define the long-term guidelines for Germany’s military defence” within the framework of already approved policies for personnel, equipment and finances.¹⁰⁰

The capability profile details concrete capacity and equipment planning for the armed forces until 2032. The document focuses on digitalisation and personal equipment for soldiers and is set to be updated yearly. Substantial parts of it remain secret, together with the resulting procurement “wish list” – except for a generic overview, shown in Figure 2.¹⁰¹

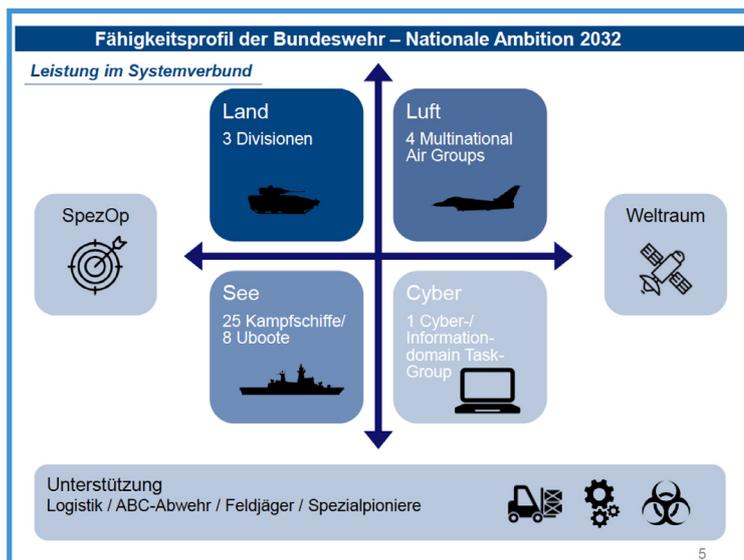


FIGURE 2: The most comprehensive of six slides presenting the armed forces’ Capability Profile, illustrating the very limited information conveyed by the document.¹⁰²

⁹⁹ Markus Kaim, Hilmar Linnenkamp, *The New White Paper – An Impulse for the Mutual Understanding in Matters of Security Policy*, p.1, (SWP-Aktuell 65, 2016), https://www.swp-berlin.org/fileadmin/contents/products/aktuell/2016A65_kim_ink.pdf [accessed 24 January 2020].

¹⁰⁰ Bundesministerium der Verteidigung (Federal MoD), ‘Die Konzeption der Bundeswehr’, 03 August 2018, <https://www.bmvg.de/de/aktuelles/konzeption-der-bundeswehr-26384> [accessed 24 January 2020].

¹⁰¹ Bundesministerium der Verteidigung, ‘Neues Fähigkeitsprofil komplettiert Konzept zur Modernisierung der Bundeswehr’, 04 September 2019, <https://www.bmvg.de/de/aktuelles/neues-faehigkeitsprofil-der-bundeswehr-27550> [accessed 24 January 2020]; Interview with former senior MoD official in the German civil service, January-February 2019.

¹⁰² Bundesministerium der Verteidigung, ‘Bundeswehr Fähigkeitsprofil (Armed Forces Capability Profile)’, September 2018, <https://augengeradeaus.net/wp-content/uploads/2018/09/Folien-Fa%CC%88higkeitsprofil.pdf> [accessed 24 January 2020].

Potential vulnerabilities and risks of influence

Public engagement with Germany's strategic need for a strong defence industry and military capacity has historically been very low. The exception to this is the NATO discussion on the storage of atomic missiles in Germany and the NATO 'Twin-Track' decision on medium-range missiles in the 1970s.¹⁰³ Currently, the public tends to take some interest in arms export issues, with modest demand for stories of strategy formation, governance or inappropriate influence.¹⁰⁴ It pales in comparison to other policy areas of similar magnitude and cost. For instance, Germany's Energiewende (the phasing out of nuclear power to an emphasis on renewables) has generated a continuous public debate involving Parliament, civil society, academia and businesses for more than a decade. In contrast, Germany's security and defence policy remains the realm of government executive privilege and non-publicly convening parliamentary committees. This further complicates the work of media and journalists trying to cover defence topics, as availability of information is limited and highly technical, and only a handful of journalists systematically investigate defence and defence industry issues.¹⁰⁵

This lack of public engagement can impact on the integrity of the process in two ways. Firstly, greater public debate and participation would foster a culture of transparency and public scrutiny,¹⁰⁶ which raises the stakes for oversight and reduces the tolerance for violations of public integrity standards. Secondly, it informs policymakers of the public's preferences and opinions on issues. The latter is crucial as otherwise only those voices that are engaged with the process and connected to decision-makers are heard. These voices are more likely to be those representing vested interests, such as industry staff, lobbyists and private sector advisors who tend to have the resources and the contacts to monitor progress, get information early and share their proposals and views at the right time.

The process for the most recent 11th iteration of the White Paper in 2016 was set to change this. It was intended to include extensive public consultations with civil society, Parliament and allied nations. While no other White Paper process in German history has had such a participative and transparent process, the breadth of contributors was still rather limited. In 2015, the MoD, in cooperation with

various partners, organised 11 expert workshops which were attended by 22 MPs. However, out of those who participated, only three represented opposition parties.¹⁰⁷ This skewed distribution may have resulted from the higher likelihood that party¹⁰⁸ members accept invitations from their government. A more important question than who participated, is how participants were selected and whether there is a procedure in place to ensure the full spectrum of views are considered. The process also needs the participation of stakeholders who are not in regular contact with the MoD. Considering that the last two editions of the White Paper were published in 1994 and 2006, it may be difficult for the public and other less well-resourced and in-the-know representatives to make sure their voices are heard when faced with such a sporadic and infrequent process.

The government's improved public participation process for the 2016 White Paper came at a cost: a less detailed approach that, much more so than even in Cold War editions of the document,¹⁰⁹ shifts concrete policy specifications to ancillary and sometimes classified documents. Detailed military planning, such as that of the military capability profile, or the resulting procurement "wish list" remains secret. Such documents can also be extremely complex and even those who can access them and are tasked with providing oversight can struggle to make sense of them. Information may be contained in multiple tables across dozens of pages and only be accessible in a confidential space where note-taking is not allowed.¹¹⁰ Such circumstances are insufficient for meaningful evaluation.

While the confidential approach might reflect genuine national security concerns, it also increases the risk of inappropriate influence as it enables almost any procurement decision to be justified against the broad strategic guidelines. Parliamentary initiatives aimed at supporting local defence manufacturers and securing constituency jobs may bypass scrutiny and become difficult to oppose, as one former MoD official argued.¹¹¹ The need for procurement requirements to flow from an open, well-audited national defence and security strategy is a key component of an effective and accountable procurement process.¹¹² Without it, procurement choices risk falling prey to ad hoc decisions influenced by those with the best access, for example through influence obtained as a result of their support of political parties

¹⁰³ NATO, 'Special Meeting', 12 December 1979 (updated 09 November 2010), https://www.nato.int/cps/en/natolive/official_texts_27040.htm [accessed 24 January 2020].

¹⁰⁴ Interview with an investigative journalist in Germany, January-February 2019.

¹⁰⁵ Interview with an investigative journalist in Germany, January-February 2019.

¹⁰⁶ OECD, *OECD Recommendation on Public Integrity*, 2017, <http://www.oecd.org/gov/ethics/OECD-Recommendation-Public-Integrity.pdf> [accessed 24 January 2020].

¹⁰⁷ Bundesministerium der Verteidigung, 'Wege Zum Weissbuch (Pathways to the White Paper)', 2016, http://www.reservistenverband.de/custom/bilder/microsites/770000000/RZ_Begleitprodukt_Weissbuch_Ansicht.pdf [accessed 24 January 2020].

¹⁰⁸ Parties of the governing coalition: Christian Democratic Union (CDU), Christian Social Union (CSU) and Social Democratic Party (SPD).

¹⁰⁹ Deutsche Bundestag, *Weißbuch 1971/1972 (White Paper)*, 07 December 1971, <http://dipbt.bundestag.de/doc/btd/06/029/0602920.pdf> [accessed 24 January 2020].

¹¹⁰ Interview with a member of staff for a German MP, January-February 2019.

¹¹¹ Interview with a former senior MoD official in the German civil service, January-February 2019.

¹¹² Transparency International Defence & Security, *Government Defence Anti-Corruption Index 2015*, <https://government.defenceindex.org/methodology/> [accessed 04 January 2019].

or candidates and relationships maintained by former employees, frequent interactions with MoD or military personnel.

While boosting transparency, the new strategy formation process compensates by reducing the level of detail. It is difficult to determine to what extent the broader consultation has had a genuine impact on the strategy and the capability requirements. For the credibility of this new process to be strengthened, it needs to be clearer that the conclusions reflect the public consultation process.

Procurement

The defence procurement process is currently based on planning and customer product management processes that emerged in the course of the “Reorientation of the armed forces,” which began in 2010 and was updated in 2018.¹¹³ It focuses on military capabilities rather than specific defence products, and attempts to include all key administrative and military units and relevant timeframes from the outset.¹¹⁴

The Armed Forces Planning Office aligns a procurement initiative to medium-term planning goals, capability needs and financial abilities. After final approval by the MoD’s leadership and appropriation of funds by Parliament, the proposal is implemented by the Bundesamt für Ausrüstung, Informationstechnik und Nutzung der Bundeswehr (BAAINBw, or the Equipment Office). In principle, Europe-wide tendering is the rule, and procurement is conducted in line with the Defence Procurement Directive, which looks to open up national defence production and procurement to the wider internal EU market.¹¹⁵ Exceptions to this Directive allow tenders to be restricted to national providers and contracts can be directly awarded when it is deemed in the interest of national security by the government to do so.¹¹⁶ The Equipment Office also makes use of these rights if contracts remain under certain monetary values. The process is visualised in Figure 3.

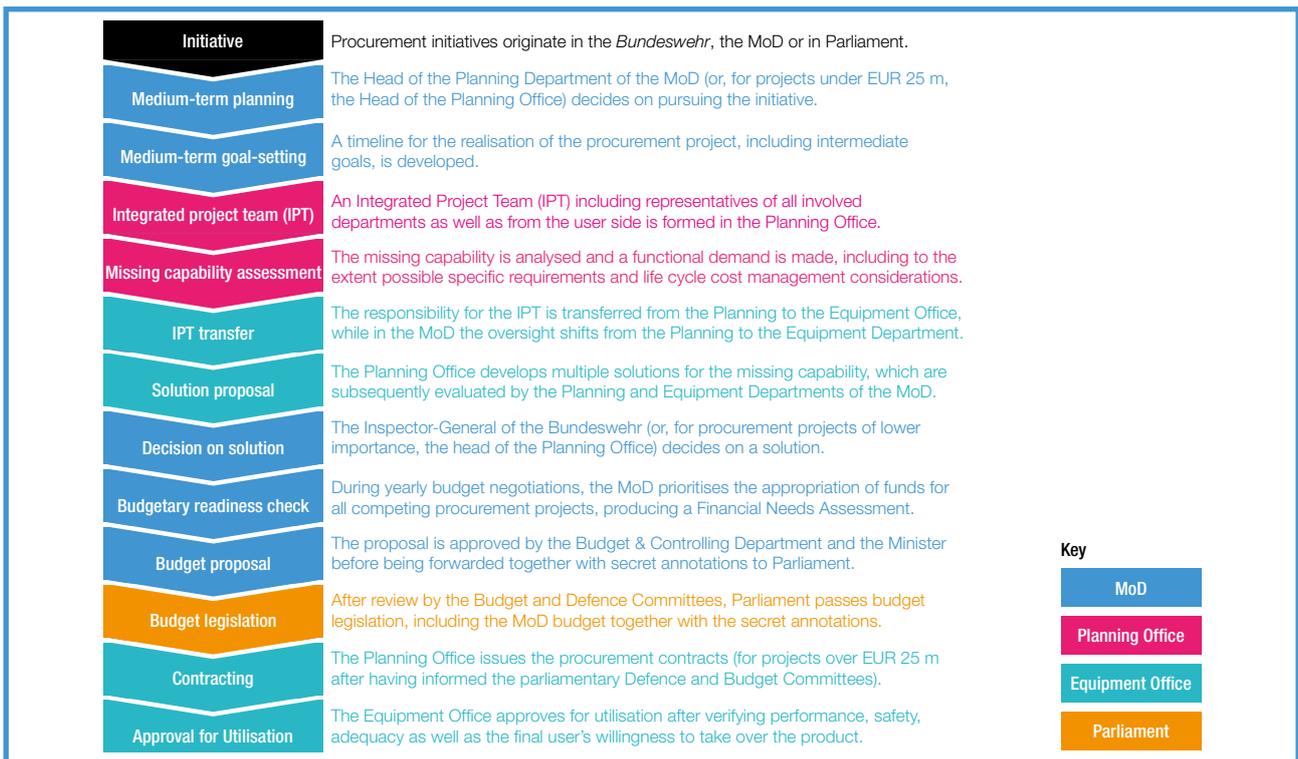


FIGURE 3: Overview of the defence procurement process.¹¹⁷

¹¹³ Bundesministerium der Verteidigung (Federal MoD), *8th Report of the Federal Ministry of Defence on Defence Procurement Matters*, December 2018, p.35, <https://www.bmvg.de/resource/blob/29586/9c5a53095d16e8b603244bb2623aa4dd/20181207-achter-ruestungsbericht-data.pdf> [accessed 24 January 2020].

¹¹⁴ Thomas Kaiser, *The Integrated Planning Process – from Idea to Budgeting*, 2014, p.1, in *Hardthöhen-Kurier* 1/2014, http://www.planungsamt.bundeswehr.de/resource/resource/UIRvcjZYSW1RcEVHaUd4ckizQU4yMzFYnli6UGxhbm1vNGx0VWuZlrvak5vWHpkU21WVzVyk3FD2loT0dSb2xtbnVDUS9ac3JpSzk2VHFMD2VXZc5VvpjSWFTemLce45dm1VUGcxMXM9/140130_Hardth%C3%B6hen-Kurier_Der%20IPP_Die%20Initiative%20-%20von%20der%20Idee%20bis%20zur%20Einplanung_kaiser.pdf [accessed 04 January 2019].

¹¹⁵ European Parliament, ‘Directive 2009/81/EC of the European Parliament and of the Council’, 13 July 2009, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009L0081> [accessed 24 January 2020].

¹¹⁶ Act Against Restraints of Competition (Competition Act), §107, http://www.gesetze-im-internet.de/englisch_gwb/ [accessed 24 January 2020].

¹¹⁷ Friedbert Stemann and Holger Groß, *From Initiative to the Defence Product*, *Europäische Sicherheit und Technik*, June 2015, http://www.planungsamt.bundeswehr.de/resource/resource/UIRvcjZYSW1RcEVHaUd4ckizQU4yMzFYnli6UGxhbm1vNGx0VWuZlrvak5vWHpkU21WVzVyk3FD2loT0dSb2xtbnVDUS9ac3JpSzk2VHFMD2VXZc5VvpjSWFTemLce45dm1VUGcxMXM9/150601_Eurp%C3%A4ische%20Sicherheit%20und%20Technik_Von%20der%20Initiative%20bis%20zum%20R%C3%BCstungsprojekt.pdf [accessed 04 January 2019].

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Simplified and accelerated alternative procedures also exist, which limit the required level of justification. They are for the procurement of commercially available IT contracts under EUR500,000; emergency procurement for urgent operational reasons; and procurement relating to international cooperation projects. Commercially available and commonly used goods are purchased directly from regular suppliers. Complex services, such as the maintenance and repair of armoured vehicle fleets, are managed by specialised state enterprises.¹¹⁸ As non-commercial entities, these act in the public interest and are bound by the rules of public procurement.¹¹⁹

Beyond general internal compliance and audit regulation, several additional risk assessments, review and audit tools help to increase transparency, accountability and serve as boundaries for the procurement process described in Figure 3:

- **Corruption risk review and prevention:** The Ministry of the Interior conducts an annual government-wide review and produces a report that focuses on identifying and countering corruption risks. The report also contributes to mitigating some of the pathways of influence, by limiting discretion and maximising oversight. Specific individuals responsible for corruption prevention are present in higher government institutions, acting as first responders for indications of wrongdoing. They are responsible for implementing corruption prevention strategies (such as rotation of personnel, informational campaigns, added transparency and the “four eyes” principle - where people in teams of two monitor each other).
- **Defence procurement board and report:** Since 2014, senior representatives involved in the procurement process have come together bi-annually to advise the Ministers of Defence and their deputies on the status of major defence procurement projects. The information forms the basis for a report on defence procurement matters, which includes scorecard type information on delays, budget overruns and brief explanations of the largest weapons systems procurement projects. The report is presented to the Defence and Budget Committees of Parliament.¹²⁰
- **Parliamentary review:** Parliament formally scrutinises and passes the annual budget presented by the government. By way of custom, it has also secured

the right to conduct a final review of all procurement contracts above EUR25 million before these are issued to suppliers by the armed forces Equipment Office (see ‘Contracting’ step in figure 3). In its audit committee, or in exceptional circumstances in a specific inquiry committee, Parliament also reviews the allocation and use of funds, making suggestions for improvements or mandating corrective measures.

- **Review by the Federal Audit Office:** The office evaluates procurement processes retrospectively, presenting its findings to the Parliamentary Audit Committee. It also proactively reviews all MoD proposals above EUR25 million, making its assessment available to Parliament before the Budget Committee signs off on the procurement.¹²¹
- **Parliamentary Commissioner of the Armed Forces:** The Commissioner is mainly in charge of the protection of the fundamental rights of soldiers and keeps a watchful eye on equipment issues, reviewing these at length in their annual report. While not directly responsible for complaints regarding the procurement process, if these come from soldiers, they are processed and forwarded.¹²²
- **Product costing and supplier audit:** As part of the defence procurement process, the Equipment Office independently verifies that production costs are reasonable and audits supplier financial data for the duration of the contract.¹²³

Potential vulnerabilities and risks of influence

On closer inspection, three main potential areas of risk of inappropriate influence are apparent at various stages of the procurement process: insufficient expert knowledge and capacity; lack of public scrutiny; and the inclination to exempt matters of security from regular controls. This section also considers the risks posed by influence over national procurement from supranational entities.

Insufficient expert knowledge and capacity

Lack of capacity and expertise are manifest at several key points along the procurement process.

¹¹⁸ Bundesministerium der Verteidigung (Federal MoD), *7th Report of the Federal Ministry of Defence on Defence Procurement Matters*, March 2018, pp.47-49, <https://www.bmvg.de/resource/blob/23010/7362820057116c6763aac84147ce3ea/20180319-7-bericht-des-bmvg-zu-ruestungsangelegenheiten-data.pdf> [accessed 24 January 2020].

¹¹⁹ Holder Schröder, ‘Sind Inhouse-Unternehmen automatisch öffentliche Auftraggeber?’, *Vergabeblog*, 05 October 2017, <https://www.vergabeblog.de/2017-11-20/sind-inhouse-unternehmen-automatisch-oeffentliche-auftraggeber-eugh-urt-v-05-10-2017-c-56715-litspecmet/> [accessed 24 January 2020].

¹²⁰ Bundesministerium der Verteidigung, *8th Report of the Federal Ministry of Defence on Defence Procurement Matters*, December 2018, p.99, <https://www.bmvg.de/resource/blob/29586/9c5a53095d16e8b603244bb2623aa4dd/20181207-achter-ruestungsbericht-data.pdf> [accessed 24 January 2020].

¹²¹ Interview with an MP from the governing coalition, January-February 2019.

¹²² Interview with a retired MP from the governing coalition, January-February 2019.

¹²³ Interview with a former German MoD procurement expert, January-February 2019.

Outsourcing

As a result of the cost-cutting measures of the 1990s and 2000s, which resulted in personnel reduction, as well as a rapid rise in the complexity of technology, the armed forces have substantially increased the outsourcing of services. Most recently, despite rising defence spending, the MoD formed intentions to privatise three of its military vehicle maintenance works. While it would have stood to save around EUR180 million over the next two decades (according to an external advisor) this would have carried the risk of losing these specific skills and competencies to the private sector for good.¹²⁴ Critics argued it would have been solely in the interest of industry to pursue the privatisation. The far-reaching plans, which reportedly accrued millions of euros in external consultant costs, were abandoned by the new Minister of Defence in late 2019.¹²⁵

Private contractors manage road vehicle fleets and IT services, private contractors have already maintained battle tanks in Kosovo, fly reconnaissance drones in Afghanistan, provide strategic airlift, guard barracks, evaluate aviation data and operate military training grounds. According to one military expert, without major private sector contribution the armed forces would be incapable of performing its duties – both domestically and on missions abroad.¹²⁶

This close cooperation does not only happen in the field. Strategy consultants provide many advisory and support services to agencies and bodies involved in the capability and armaments process, particularly within the MoD. The Airbus A400M is one of the armed forces' largest and longest procurement projects. In 2015, when it started entering service, the Equipment Office had to hire 15 external consultants for the inspection, approval and preparation for use of the delivered units, to bridge the gap of in-house capacity.¹²⁷ The extensive use of external consultants by the MoD under defence minister von der Leyen, worth millions of Euros,¹²⁸ has prompted Parliament to set up a committee of inquiry to look into the practice and whether public procurement laws have been violated.¹²⁹ A substantial number of contracts is alleged to have been awarded without demonstrating the need for commissioning external services or without following due process.¹³⁰

The transfer of key duties and expertise towards the private sector risks the gradual erosion of the Government's ability to make independently informed choices on the management of defence. If the MoD increasingly relies on the data and expertise of existing suppliers with their own vested interests when designing tenders, determining the merits of products and their suitability to close capability gaps, or assessing when these have reached the end of their life cycle, this might result in the creation of over-dependent relationships and with it the ability of the private sector to exert systemic influence over key areas of German defence.

Capacity

The dissolution of the MoD's Planning Staff in 2012 removed an intended safeguard against ill-advised procurement decisions and institutional failures.¹³¹ Initially created as an internal think tank or so-called "red team" reporting to the Minister, it was structured as an independent review body that challenged proposals to improve decision-making and outcomes. Had it continued, it could have mitigated the risk of inappropriate influence at the initial phases of the procurement process by re-confirming that large acquisition decisions fulfil their intended strategic role and are based on legitimate needs assessments. This would have helped stall initiatives which may have originated from officials' political concerns or private-sector influence through interactions with the military, rather than from legitimate strategic considerations. However, former Minister of Defence Thomas de Maizière had it merged into the Ministry's Political Department, effectively dissolving it.

At the later stages of the procurement process, internal expertise and control over the processing of large volumes of data are essential in overcoming information asymmetry.¹³² This also reduces the risk of inappropriate influence on the process, whether evaluation of tender responses; costing calculations; drafting of contracts; audit of suppliers; management of contracts; necessary modifications, for example, to accommodate technological advances; or monitoring implementation. This also means having the necessary technical expertise and market knowledge to recognise when demands on capabilities are overinflated or have the potential to generate disproportionate costs in relation to the benefits they offer.

¹²⁴ Tagesschau.de, <https://www.tagesschau.de/inland/bundeswehr-tochter-privatisierung-101.html>.

¹²⁵ Spiegel Online, <https://www.spiegel.de/politik/deutschland/bundeswehr-annegret-kramp-karrenbauer-stoppt-privatisierung-der-panzerwartung-a-1291991.html> [accessed 31 January 2020]

¹²⁶ Christian Fuchs and Hauke Friederichs, "Wir sind hier der Kriegsgott".

¹²⁷ T. Wiegold, 'Ein neuer Anlauf für den effizienten "Staatskonzern Bundeswehr"', *Augen geradeaus*, 05 March 2015, <https://augengeradeaus.net/2015/03/ein-neuer-anlauf-fuer-den-effizienten-staatskonzern-bundeswehr/> [accessed 24 January 2020].

¹²⁸ Matthias Gebauer, 'Wehrressort zahlte bis zu 150 Millionen Euro jährlich an Berater'.

¹²⁹ DW, 'Vetternwirtschaft und zweifelhafte Auftragsvergabe?', 14 February 2019, <https://www.dw.com/de/vetternwirtschaft-und-zweifelhafte-auftragsvergabe/a-47517685> [accessed 24 January 2020].

¹³⁰ Matthias Gebauer, 'Wehrressort zahlte bis zu 150 Millionen Euro jährlich an Berater'.

¹³¹ Based on several interviews with different stakeholders, which revealed a wide range of reasons for dissolving the unit, with the exact reason difficult still to pinpoint.

¹³² When one stakeholder has more information than another.

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Appropriately skilled and experienced staff are essential to identify when contractual proposals are too good to be true and then renegotiate them before the government becomes committed to a costly, uncertain, yet legally enforceable dependency.

Neither a critical evaluation of capability requirements nor an effective negotiation of contracts seems to have happened with the procurement of the Puma mechanised infantry combat vehicle. The contracts, with manufacturers Rheinmetall and Krauss-Maffei Wegmann, allowed flexibility on cost rises with little degree of control for the MoD on neither cost¹³³ nor contract termination. Opposition MP Matthias Höhn referred to the project as “one of the MoD’s largest planning failures.” According to the most recent information provided to Parliament, the cost of the EUR3 billion project has doubled to six billion, with only 60 of the 244 delivered vehicles ready for use, albeit with severe restrictions.¹³⁴

The process of the BAANBw, which is responsible for the vast majority of defence procurement, has been the subject of a number of improvements. These range from the reform of the internal product management process to the implementation of a specialised contracting office, the development of project management capabilities and the adoption of a whole life-cycle approach to procurement. However, structurally, it still suffers from a lack of resources, first and foremost in terms of personnel with appropriate skills and experience. At the end of 2017, despite more than 10,000 contracts (35 of which are above EUR25 million), the BAANBw was unable to fill close to 20 per cent of its 11,000 employment positions.¹³⁵ According to a former senior MoD official, it is lawyers, auditors and digital experts who are urgently needed.¹³⁶ These are exactly the types of roles crucial for safeguarding the integrity of the procurement process.

These staff shortages might be why the Eurohawk unmanned aerial vehicle (UAV) project continued to be pursued for years even though it should have been clear to those responsible that, due to technical limitations and strict regulation, it had no prospect of receiving authorisation to fly in European airspace. This cost the armed forces an estimated EUR1.3 billion – and generated the same income for the suppliers.¹³⁷

In Parliament, adequate resources to provide effective oversight and scrutiny of defence policy are even more limited. As they pass the yearly budget, legislators approve defence procurement initiatives in bulk and conduct a subsequent final check of major purchases before signing contracts. However, it is generally a single MP from each party who has to delve into the complex decision drafts submitted by the government, sometimes within only a few days. While staffers, the parliamentary scientific service¹³⁸ and parliamentary group experts provide some support, MPs may sometimes have to rely on sound bites from stakeholders (such as the MoD, industry, armed forces and trade unions) rather than their own in-depth analysis to reach a decision.¹³⁹ A further risk is that an MP may struggle to identify the origin of information and whether it was from the government, military or private sector.¹⁴⁰ Expert knowledge in the defence and security field is highly specialised and often classified. This increases the risk that unprocessed information, provided by suppliers who have close interactions with public servants and politicians throughout the procurement process, becomes the guiding factor in decision-making,¹⁴¹ rather than knowledge produced by in-house capabilities and exposed to due diligence examination. This leaves space for inappropriate influence by lobbyists, private-sector advisors, and industry representatives, especially those that may be working in close collaboration with the military.

Lack of public scrutiny

Opportunity for public participation in the security and defence policy debate is already limited; it is non-existent when it comes to capabilities and procurement decisions. This is because of the negligible public and limited parliamentary access to relevant information as a result of extensive classification and strict confidentiality, justified by the need to protect national security and trade secrets. In 2013, Parliament actively curtailed public access to potentially relevant information even further. It granted the Federal Audit Office – the public authority in charge of ensuring accountability – a special status vis-à-vis the German Freedom of Information Act. It exempted it from the obligation to provide the results of its proceedings upon request to journalists or the general public. According to news reports, this happened mainly out of concern over the publication of financial audits of

¹³³ N-TV, “Größte Fehlplanung”: Preis für Puma-Panzer hat sich verdoppelt”, 19 July 2019, <https://www.n-tv.de/politik/Preis-fuer-Puma-Panzer-hat-sich-verdoppelt-article21154904.html> [accessed 24 January 2020].

¹³⁴ Thorsten Jungholt, ‘Sturmgewehr, Puma-Panzer & Co. – Kramp-Karrenbauers größte Baustellen’, Welt, <https://www.welt.de/politik/deutschland/plus197210905/Bundeswehr-G36-Puma-Panzer-Co-die-groessten-Baustellen-von-AKK.html> [accessed 24 January 2020].

¹³⁵ Tagesschau.de, *Beschaffungsamt - Mangel, Kritik und Sorgen*, <https://www.tagesschau.de/inland/beschaffung-bundeswehr-101.html>

¹³⁶ Interview with a former senior MoD official in the German civil service, January-February 2019.

¹³⁷ Marco Seliger, ‘Euro Hawk wird nicht zugelassen’, *Frankfurter Allgemeine Zeitung*, 13 May 2013, <https://www.faz.net/aktuell/politik/eine-milliarde-euro-versenkt-euro-hawk-wird-nicht-zugelassen-12181768.html> [accessed 24 January 2020].

¹³⁸ Wissenschaftlicher Dienst des Bundestages.

¹³⁹ Based on interviews with several different German MPs, January-February 2019.

¹⁴⁰ Interview with a German MP, January-February 2019.

¹⁴¹ Interview with a former senior MoD official in the German civil service, January-February 2019.

parliamentary groups,¹⁴² rather than a deliberate decision that information relevant to defence policy scrutiny should be restricted.

There is an information gap between industry and other interest representatives. For example, industry and the armed forces might quickly agree that it is a tactical imperative for new submarines to have the capability to engage helicopters, or for UAVs to have the ability to deliver smart munitions. However, these justifications might be difficult to follow for outsiders who lack access, for example, to the analysis of the threat that the new system is designed to defeat, or resulting requirement definition. According to a former high-ranking MoD official, technical complexity can prevent military planning teams from reaching the same conclusion on how a missing capability should be addressed.¹⁴³ In the face of such ad hoc decision-making, a systematic change is essential to ensure that decisions are founded on agreed security strategy and capability planning. As it is, industry will have greater access to this process than many other stakeholders, through existing relationships and dedicated resources. But if the right balance is struck between national security interests and transparency, public scrutiny can play a meaningful role in oversight. An internal and well-resourced “red team”, or other vehicle for appropriate scrutiny, is essential whenever full transparency is not possible owing to genuine security considerations or issues that require highly technical expertise.

Before a concrete procurement project is initiated, research and development programmes set the stage for future defence capabilities and ambitions. They rely on private-sector ideas and funding as well as (in 2019) EUR1.47 billion in non-itemised government contributions – a 45 per cent increase compared to the previous year.¹⁴⁴ While the annual government Report on Defence Research¹⁴⁵ includes information on many individual projects, it lacks any reference to the use of funds. According to an interview with the head of one defence research institute:

“The bulk of government funding presumably reaches state institutes conducting research into ABC¹⁴⁶ defence and battlefield medicine, the two armed forces’ universities in Munich and Hamburg, the German Aerospace Centre and the French-German Research Institute of Saint-Louis. Approximately EUR125 million flows every year as core and project funding into the Fraunhofer network¹⁴⁷ of defence and security research institutes, which acts as an expert pool and assures funding for research that otherwise does not generate commercial interest and therefore funding.”¹⁴⁸

It is worth noting that, according to the “Fraunhofer Model,” this group of research institutes receives 30 per cent of its budget from federal and state budgets.¹⁴⁹ It has to obtain the remaining funding from other sources, such as private-sector cooperation and research assignments. This generates an intentional link between the state and industry in research matters and facilitates the flow of ideas between the public and private sectors. The resulting bottom-up approach allows companies that are well-represented in scientific advisory boards to potentially influence the research agenda (companies like Hensoldt, MBDA, Airbus, Diehl, and Rheinmetall sit, among others, on the advisory board of the Fraunhofer Institute for Optronics, System Technologies and Image Exploitation¹⁵⁰). In the almost total absence of public scrutiny, they can influence the options for future defence procurement from the start.¹⁵¹ This state of affairs makes it particularly important that the review of private research assignments, which is conducted by the MoD, should take account of potential conflicts of interest.

At the other end of the procurement process, detailed information regarding upcoming procurement is officially conveyed to the Defence and Budget Committees of

¹⁴² Tania Röttger, ‘Nachts um halb eins im Bundestag’, *Correctiv*, 11 December 2017, <https://correctiv.org/aktuelles/auskunftsrechte/2017/12/11/nachts-um-halb-eins-im-bundestag> [accessed 24 January 2020].

¹⁴³ Interview with a former senior MoD official in the German civil service, January-February 2019.

¹⁴⁴ Bundesministerium der Verteidigung (Federal MoD), ‘Einzelplan 14/2019 im Vergleich zum Haushalt 2018’, <https://www.bmvg.de/resource/blob/30132/5a6709e731e4e10c57717a6ac9f6c9e6/vergleich-verteidigungshaushalt-2019-zu-2018-data.pdf> [accessed 24 January 2020].

¹⁴⁵ The ‘Wehrwissenschaftliche Forschung Jahresbericht 2017’, <https://www.bmvg.de/resource/blob/30418/5ffb95a46a54e263dc3e5efc04e3ac6e/g-03-jahresbericht-wehrwissenschaftliche-forschung-2017-data.pdf> [accessed 3 February 2020].

¹⁴⁶ Atomic, biological and chemical.

¹⁴⁷ Fraunhofer is Europe’s largest application-oriented research organisation focused on topics of societal relevance. See Fraunhofer, ‘About Fraunhofer’, <https://www.fraunhofer.de/en/about-fraunhofer.html> [accessed 24 January 2020].

¹⁴⁸ Interview with the head of a German defence research institute, February 2019.

¹⁴⁹ Fraunhofer, ‘Jahresbericht 2017 (Annual Report)’, 2017, p.19, <https://www.fraunhofer.de/content/dam/zv/de/publikationen/Jahresbericht/jb2017/Fraunhofer-Jahresbericht-2017.pdf> [accessed 24 January 2020].

¹⁵⁰ Fraunhofer IOSB, ‘Advisory Board’, <https://www.iosb.fraunhofer.de/servlet/is/68894/> [accessed 24 January 2020].

¹⁵¹ Interview with a former senior MoD official in the German civil service, January-February 2019.

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Parliament through secret annotations to the defence budget and, once again, shortly before signing contracts for procurements over EUR25 million. The formal involvement of Parliament only at this point – after the procurement process has been on-going for months, if not years¹⁵² – stifles effective debate and stops formal opposition, even though Parliament has that right.¹⁵³ At this point, military assessments have run their course, solutions have been chosen and inappropriate influence could have already been exerted on procurement – whether through embedded industry representatives at the inception stage or lobbyists farther along the way. The political and financial costs of formally overturning well advanced plans at this stage in the process is potentially very high. While, in theory, MPs can inform themselves about new armaments and research projects and the activities of the BAaINBw throughout the defence budget preparation, limits on capacity mean parliamentary involvement is limited to formal participation at the very beginning when plans are abstract and at the very end, when everything has advanced too far to be opposed.¹⁵⁴

Despite legal provisions and due processes, it has proven to be possible to bypass the Defence Committee almost entirely. In 2016, this was illustrated by the case of a controversial short-notice order of five corvettes for the German Navy.¹⁵⁵ News reports suggested that this order was pushed through by two motivated MPs from seafaring and shipbuilding constituencies¹⁵⁶ and justified by NATO capability requirements. The Defence Committee was not informed about the impending deal worth EUR1.5 billion, which was also absent from the equipment ‘wish list’ submitted to Parliament in March of the same year and which was based on a review of capability gaps in the armed forces. Opposition MPs criticised the Minister of Defence for abandoning due planning processes.

When procurement proposals receive formal democratic scrutiny in the Legislature, MPs have limited tools at their disposal, generally only being able to make binary yes or no decisions. Just like the general public, they are unable to verify in detail the necessity or adequacy of specific elements of the purchase. The relative ease of reassigning funding across different elements of the equipment budget also enables some discretionary spending with reduced justification.¹⁵⁷

In a sector that is often unable to offer full transparency to allow for meaningful public scrutiny, Parliament fulfils its ultimate purpose of oversight on behalf of the public and the national interest. It is clear from the above that the resources and capacity to accomplish this effectively are lacking. To safeguard public trust in the institution, MPs need to guard against any perceived or actual conflicts of interest and provide clarity on their role, and any possible sources of undue influence such as political financing or side engagements. The Minister of Defence does have oral exchanges with the parliamentary spokespersons for security and defence policy of the governing coalition every week and receives additional feedback through informal party channels. This communication can include affirmations of support or opposition to individual procurement proposals or export approval processes, which can impact the final decisions reached by the government. Parliamentarians representing the opposition may also publicly state their preferred supplier or product well in advance of major procurement decisions reaching the Defence Committee. These informal avenues represent a way for MPs to exert influence on procurement (potentially on behalf of or after close interaction with defence companies) with little to no accountability before it reaches the Legislature.¹⁵⁸ This again can affect public trust in the process.

Exemptions to competition rules

Finally, in the defence sector, the suspension of certain regulations that govern other sectors – such as competitive tendering – on grounds of national security interests and market challenges increases the risk of inappropriate influence over policy making and procurement. This is primarily due to the state’s intensified dependence on a limited set of suppliers.

It is already the case that despite the capability-based approach of the German armed forces, few adequate national suppliers can be identified. Approximately 30 per cent of contracts between 2006 and 2016 were awarded through single-bidder processes. Over the same period, two-thirds of the 83 contracts received by land systems producer Krauss-Maffei Wegmann were single-bidder offers, as were half of the 59 contracts awarded to munitions producer RUAG Ammotec.¹⁵⁹ While in a competitive procurement the unsuccessful bidders

¹⁵² Even though, according to the Constitution, it is the Legislature that shall determine the size and structure of armed forces by way of appropriations. *Grundgesetz für die Bundesrepublik Deutschland* (The Constitution), Art. 87a, <https://www.gesetze-im-internet.de/gg/> [accessed 24 January 2020].

¹⁵³ Interview with a German MP from the opposition party, January-February 2019.

¹⁵⁴ Interview with a parliamentary staff member to an MP, January-February 2019.

¹⁵⁵ Matthias Gebauer, ‘Rechnungshof zerpfückt von der Leyens Korvetten-Deal’, *Spiegel Online*, 17 June 2017, <https://www.spiegel.de/politik/deutschland/ursula-von-der-leyen-rechnungshof-kritisiert-verteidigungsministerin-a-1152539.html> [accessed 24 January 2020].

¹⁵⁶ Thorsten Jungholt, ‘Von der Leyens Korvettendeal ist pure Rüstungskungelei’, *Welt*, 06 December 2016, <https://www.welt.de/politik/deutschland/article160032465/Von-der-Leyens-Korvettendeal-ist-pure-Ruestungskungelei.html> [accessed 24 January 2020].

¹⁵⁷ Interview with a German investigative journalist and defence policy expert, January-February 2019. Note that while such changes do not have to pass the complete budgeting cycle anew, procurement proposals over EUR25 million still need to receive final approval from Parliament.

¹⁵⁸ Interview with a former senior MoD official in the German civil service, January-February 2019.

¹⁵⁹ Agnes Czibik, Mihaly Fazekas and Johannes Wachs, *State capture and defence procurement in the EU*, forthcoming 2019, Government Transparency Institute.

have the option to request independent verification of the results, in single-bidder situations this element of accountability is lost.

This state of affairs heightens the risk of common defence procurement woes associated with monopolists exerting influence – such as price premiums, delays or cost overruns.¹⁶⁰ Suppliers can potentially become “too big to fail” and wield a disproportionate amount of market power. In Germany, the MoD admitted the resulting powerlessness itself. In response to a parliamentary inquiry into what contractual penalties it had included in the procurement agreement with Rheinmetall and Krauss-Wegmann Maffei for the severely delayed Puma mechanised infantry combat vehicle, the MoD stated:

“Contractual penalties are not included in the procurement contract [of the Puma] as, due to the monopoly position of the contractor, these were not enforceable during contract negotiations.”¹⁶¹

A further issue resulting from non-competitive procurement is that although the armed forces Equipment Office does conduct a mandatory cost verification on each bid, this process takes place in a market vacuum.¹⁶² While certain prices can be easily compared to competitively-offered services, others can only be checked based on rough desk estimates.

To make things worse, the reasonable return that companies are permitted to generate is calculated as a percentage of their proven costs, an approach that does not foster frugality. Quite the contrary: it creates an incentive for the defence industry to accelerate investment write-offs and distribute them over national military orders to maximise profits.¹⁶³ The plagued A400M project is an example of a fixed-price procurement project, albeit a multinational one, which ended up costing the public purse far more than originally budgeted.

The government’s policies largely support further consolidation efforts of the defence industry, by way of “key technologies” and a broad interpretation of the exemption of Art. 346 of the Treaty on the Functioning of the European Union regarding the protection of essential

national security interests. This policy is based on the tenet that Germany’s security depends on a strong and capable national defence industry.¹⁶⁴ The Federal Government has pledged to identify and preserve key national technologies, through the prioritisation of research, targeted industry policy, export support and the direct award of state contracts.¹⁶⁵

More recently the National Industrial Strategy 2030, supported an active national industrial policy in the armaments and aerospace space.¹⁶⁶

In 2018, the Coalition Agreement of the CDU/CSU and Social Democratic Party (SPD) Government reinforced the concept of “key technologies” by vowing to avoid EU-wide tendering. It pledged to:

“[...] Use wriggle room in procurement law more consistently, make legal interpretation aids available and examine to what extent the exemption of Art. 346 of the Treaty on the Functioning of the European Union [regarding the protection of essential national security interests] can be drawn upon more intensely in the award practice.”¹⁶⁷

However, according to the parliamentary opposition, “the concept of ‘key technologies’ was never discussed to the end, making it difficult to base far-reaching political decisions on it.”¹⁶⁸ Without concrete political consequences, the “key technology” framework remains too vague and problematic for the accountability and transparency measures required to prevent potential efforts of industry influence.

There are valid economic and national security reasons for industry consolidation and for maintaining national industrial capabilities. However, any government needs to recognise the increased risk of inappropriate influence and put appropriate controls in place. In order to define what constitutes a “key technology”, the government needs its own in-house capacity and expertise. It is only too easy to end up with broad definitions incorporating any industry

¹⁶⁰ Interview with a German MP from the opposition party, January-February 2019.

¹⁶¹ Deutsche Bundestag, *Drucksache 18/650*, 2014, p.12, <http://dip21.bundestag.de/dip21/btd/18/006/1800650.pdf> [accessed 24 January 2020].

¹⁶² Interview with a former German MoD procurement expert, January-February 2019.

¹⁶³ *ibid.*

¹⁶⁴ The Federal Government, *Strategy Paper of the Federal Government on Strengthening the Defence Industry in Germany*, 08 July 2015, https://www.bmwi.de/Redaktion/EN/Downloads/strategy-paper-of-federal-government-on-strengthening-the-defence-industry-in-germany.pdf?__blob=publicationFile&v=3 [accessed 24 January 2020].

¹⁶⁵ Die Bundesregierung, ‘Zur Sicherheitspolitik Und Zur Zukunft Der Bundeswehr (White Paper)’, 2016, p.74, <https://www.bmvg.de/resource/blob/13708/015be27f8c0098f1537a491676bfc31/weissbuch2016-barrierefrei-data.pdf> [accessed 24 January 2020].

¹⁶⁶ Federal Ministry of Economic Affairs and Energy, *National Industrial Strategy 2030*, February 2019, pp.5, 8 & 10, https://www.bmwi.de/Redaktion/EN/Publikationen/Industry/national-industry-strategy-2030.pdf?__blob=publicationFile&v=8 [accessed 24 January 2020].

¹⁶⁷ *Coalition Agreement Between CDU, CSU and SPD*, 2018, p.159, https://www.cdu.de/system/tdf/media/dokumente/koalitionsvertrag_2018.pdf [accessed 24 January 2020].

¹⁶⁸ Interview with a German MP from the opposition party, January-February 2019.

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proffered suggestions, which then end up falling outside competition rules and tie the government into a weak negotiation position. Intelligent client capability in the MoD itself needs to be able to define and distinguish between the necessary requirements and any non-essential or desirable items. Consultation with industry partners will occur in the course of capability discussions and this has its value. But this does not absolve the state from retaining the control and ability to critically evaluate requirements and contractual obligations.

There are procurement strategies through which the government can encourage diversity in the marketplace it sources from. The aforementioned 2014 KPMG Risk Assessment of Central Defence Projects advises:

“Through the formation of lots and specifications for the formation of consortia and the involvement of subcontractors, a competitive organization of the industrial partner can be secured.”¹⁶⁹

Paying attention to such advice can also help overcome the obstacles that SMEs face when entering this sector and encourages more independence in the supply chains. Without these measures and in-house capabilities, the state runs the risk of over-reliance on limited suppliers, overstretched requirements, unrealistic contracts and heightened vulnerability to inappropriate industry influence on the procurement process and decision-making.

Intergovernmental cooperation

Despite the strong national character of military procurement in Germany, the process is not immune to intergovernmental or supranational influences. The complexity of intergovernmental negotiations and political considerations tend to diminish transparency and accountability.

In a move designed to fortify the EU's security interests and promote the international competitiveness of the European defence industry, the Federal Government seeks to end the “luxury of having numerous [European

development] programmes” for battle tanks, fighter planes and marine shipbuilding that ultimately only financially burden national budgets.¹⁷⁰ It calls for further consolidation of the European defence industry¹⁷¹ and increased intergovernmental cooperation in arms development.

International defence cooperation projects, such as the new Franco-German “Main Ground Defence System” or “Future Combat Air System” (FCAS) are exempt from a competitive tendering procedure, despite a total estimated turnover of EUR600 billion.¹⁷² In the end, it is confidential intergovernmental negotiations that determine the distribution of labour, goods and profits between the two nations' industry champions. Members of the German Parliament are already publicly weighing-in on the issue in support of their favourite contractors:

“Our message [for the French counterparts was] that we insist on a real partnership with the FCAS. Airbus has to be involved appropriately, not everything can go to French companies.”¹⁷³

This allows Government to pick “winners” with less transparency than is typical in the national procurement process and exposes it to a heightened risk of influence from those with vested interests.

Developments in the institutions of the European Union echo this trend towards pan European defence collaboration. Under the common defence policy, industrial cooperation on the development of defence capabilities has progressed noticeably in the past years. In June 2017, the European Commission launched the European Defence Fund (EDF), worth EUR5.5 billion per year, with the stated aim to “help Member States spend taxpayer money more efficiently, reduce duplications in spending, and get better value for money.”¹⁷⁴ The available funds will contribute to defence research and prototype development, as well as purchases of defence equipment.

The establishment of the EDF has been accompanied by a noticeable increase in industry lobbying at the EU level. The 10 largest European arms companies spent a combined total of EUR5.6 million on lobbying in 2017, double the amount spent in 2012, a figure that is likely

¹⁶⁹ KPMG, *Comprehensive Inventory and Risk Analysis of Central Armament Projects*, 2014, pp.11 & 43, https://fragdenstaat.de/files/foi/24624/exzerpt_bestandsaufnahme_ruestungsprojekte.pdf [accessed 24 January 2020].

¹⁷⁰ The Federal Government, *Strategy Paper of the Federal Government on Strengthening the Defence Industry in Germany*.

¹⁷¹ Die Bundesregierung, ‘Zur Sicherheitspolitik Und Zur Zukunft Der Bundeswehr (White Paper)’, 2016, p.74, <https://www.bmvg.de/resource/blob/13708/015be27f8c0098f1537a491676bfc31/weissbuch2016-barrierefrei-data.pdf> [accessed 23 January 2020].

¹⁷² Handelsblatt, ‘So wollen Deutschland und Frankreich ihre Rüstungsindustrie neu aufstellen’, 26 November 2018, <https://www.handelsblatt.com/politik/international/gemeinsame-jets-und-panzer-so-wollen-deutschland-und-frankreich-ihre-ruestungsindustrie-neu-aufstellen/23673794.html> [accessed 24 January 2020].

¹⁷³ MP Fritz Felgentreu, quoted in Handelsblatt, ‘Deutsch-französisches Kampfflugzeug – wie Politik und Industrie einander blockieren’, 06 November 2018, <https://www.handelsblatt.com/politik/deutschland/ruestung-deutsch-franzoesisches-kampfflugzeug-wie-politik-und-industrie-einander-blockieren/23573750.html> [accessed 24 January 2020].

¹⁷⁴ European Commission, ‘A European Defence Fund: €5.5 billion per year to boost Europe's defence capabilities’, 07 June 2017, https://ec.europa.eu/commission/presscorner/detail/en/IP_17_1508 [accessed 24 January 2020].

underestimated.¹⁷⁵ German companies are amongst those ensuring they have a seat at the table; Airbus spent between EUR1.8m and 2m on lobbying in the EU in 2018; Thyssen Krupp spent EUR800k – 900k¹⁷⁶; while Rheinmetall reported a EUR300k – 400k expenditure on lobbying.¹⁷⁷ The companies interact with Commissioners, Members of European Parliament and other decision makers through official meetings, industry events, and by invitation to partake in bodies such as the ‘Group of Personalities’.¹⁷⁸ For example, Airbus has had 183 formal meetings with Commissioners and their cabinets since November 2014.¹⁷⁹ Through the revolving door members and staff from EU institutions can transition into lobbyists representing industry interests. An example of this is the Kangaroo Group, a Brussels based organisation that lobbies on defence and security issues, that has seven MEPs as Members on its Board, three of whom are Members of the European Parliament’s Subcommittee on Security and Defence.¹⁸⁰

Such a significant presence exposes the decision-making process to potential influence at the supranational level. Certainly, suggestions have been made that industry views carry a heavy weight in the design of programmes and priorities.¹⁸¹ At the time of writing, the specific criteria and award processes of the EDF remain unclear. Without appropriate transparency measures in place, the management of, and decisions in relation to, the EDF risk falling prey to inappropriate industry influence, or at least risk appearing as such. These decisions, the allocation of funds, and prioritisation of certain R&D programmes and capability developments has a bearing on the national level. Many are co-financed, and R&D projects set the agenda of capability development for years to come. As such, it is critical for national governments to advocate for transparency and accountability at the supranational level, in order to ensure the EDF, and other instruments, contribute towards the national security strategy instead of the other way around.

Industry dependence on exports

Export issues are often directly related to defence capability strategies, since only the sum of production for the armed forces and exports make arms production economically viable.

Although as a matter of declared policy, the Federal Government strives to limit arms sales outside of EU and NATO, as a matter of fact, the Government does have a vested interest in facilitating the broad international economic activity of Germany’s defence industry.¹⁸² This ensures its commercial viability and ability to meet the rather modest armed forces orders, which by themselves would be unable to support a defence industry and maintain its key technological competencies.¹⁸³ The export credit for the A400M illustrates the Federal Government’s direct dependence on the export success of the aircraft. According to an internal MoD assessment in 2018, the failure to stimulate exports of the Airbus A400M – despite tax-funded demonstrations of the plane at aviation shows – will probably force the Executive to write off an almost EUR1.4 billion facility it granted to Airbus, the repayment of which hinges on external sales of the aircraft.¹⁸⁴ To compound the pressure on the Government even further, according to an unwritten rule of the international arms trade, foreign militaries are reluctant to buy equipment that the supplier nation’s armed forces have not procured first.

Transparency on exports is even more restricted in intergovernmental projects where governmental interests seem irredeemably conflicted. In February 2019, it emerged that the Federal Government had renounced its veto right over future French exports of the battle tank and fighter jet systems under joint development,¹⁸⁵ essentially allowing German defence majors to circumvent its trade legislation. This decision flies in the face of Germany’s decision to halt exports to Saudi-Arabia prompted by the killing of the Saudi dissident journalist Jamal Khashoggi.¹⁸⁶ Following pressure from France, the UK and its own industry, the German government watered down its policy in March 2019 by allowing exports of weapons systems

¹⁷⁵ Vredesactie, *Securing Profits: How the arms lobby is hijacking Europe’s defence policy*, October 2017, p.8 https://www.vredesactie.be/sites/default/files/pdf/Securing_profits_web.pdf [accessed 24 January 2020].

¹⁷⁶ LobbyFacts.eu, ‘thyssenkrupp AG’, <https://lobbyfacts.eu/representative/346f7f0ad25d4dabb018fe983fb8ed76/thyssenkrupp-ag> [accessed 24 January 2020].

¹⁷⁷ LobbyFacts.eu, ‘Rheinmetall Group’, <https://lobbyfacts.eu/representative/9e7ead1732f84cbfafad0d1df3c684cb/rheinmetall-group> [accessed 24 January 2020].

¹⁷⁸ ALTER-EU, *Corporate Capture in Europe*, September 2018, https://www.alter-eu.org/sites/default/files/documents/corporate_capture_web_1.pdf [accessed 24 January 2020].

¹⁷⁹ Integritywatch.eu, <https://integritywatch.eu/> [accessed 25 August 2020]

¹⁸⁰ Kangaroo Group, <https://www.kangarogroup.de/who-we-are/kangaroo-board/> [accessed 03 February 2020].

¹⁸¹ *ibid.*

¹⁸² The Federal Government, Strategy Paper of the Federal Government on Strengthening the Defence Industry in Germany.

¹⁸³ J. Paul Dunne & Ron P. Smith, ‘The evolution of concentration in the arms market’, 2016, *The Economics Of Peace And Security Journal*, Vol. 11, No.1, p.12, <https://www.epsjournal.org.uk/index.php/EPSJ/article/view/242> [accessed 24 January 2020].

¹⁸⁴ Stern, ‘Bundeswehr-Airbus A400M: ein Milliardengrab und nichts als Pannen’, <https://www.stern.de/digital/technik/bundeswehr-airbus-a400m--ein-milliardengrab-und-nichts-als-pannen-7923382.html> [accessed 24 January 2020].

¹⁸⁵ Spiegel Online, ‘Deutsch-französisches Geheimpapier regelt Waffenexporte neu’, 15 February 2019, <http://www.spiegel.de/politik/deutschland/ruestungsexporte-deutsch-franzoesisches-geheimpapier-a-1253393.html> [accessed 24 January 2020].

¹⁸⁶ Reuters, ‘German halt in Saudi arms sales causing serious problems: Airbus’, 15 February 2019, <https://www.reuters.com/article/us-airbus-defence/german-halt-in-saudi-arms-sales-causing-serious-problems-airbus-idUSKCN1Q41VK> [accessed 24 January 2020].

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that use German made components.¹⁸⁷

Against this backdrop, it is difficult to imagine that economic considerations do not play a role or, conversely, that national procurement is wholly independent of industry-friendly initiatives to motivate international buyers. This increases the risk of undue influence on both Parliament (which passes the budget for domestic procurement) and the government (which is responsible for approving exports).

187 DW, 'Germany exporting weapons to Saudi Arabia and UAE — reports', 12 April 2019, <https://www.dw.com/en/germany-exporting-weapons-to-saudi-arabia-and-uae-reports/a-48296155> [accessed 24 January 2020].

CONCLUSION & POLICY RECOMMENDATIONS

The current defence procurement process allows industry substantial opportunity to exert undue influence. These risks are heightened by the structural and process flaws and weakness that exist from the start of the determination of defence and security strategy, right through to individual equipment procurement programmes.

Existing safeguards are insufficient to mitigate these risks. Within the current defence policy and procurement framework, a vested interest stakeholder is potentially able to offer input into the national security strategy, fund the entire re-election campaign of a Member of the Defence Committee of the German Parliament, and later employ them as a consultant in a public relations capacity. This means they would have the opportunity to influence both defence procurement and export control policy without violating any law or leaving any public trace. There is the danger that responsibility for sovereign decisions in the MoD might increasingly be transferred from independent public servants to an armada of external consultants. Defence exceptionalism that exempt defence activities from the usual regulations governing other sectors could enable the industry to reap monopolistic benefits while also expecting (and receiving) generous support for exporting their products.

Over the coming decades, Germany's (currently) under-equipped armed forces plan to ramp up their purchases of defence related equipment and weapons. There is an urgent need to review and enhance the rules and regulations intended to stem the undue influence of money, ideas and people on the process of defence policy making, and improve its resilience, limit individual discretion and increase transparency. Ensuring that the government retains the ability to act as an intelligent customer is critical to ensure that public resources are spent wisely and troops are adequately equipped.

The policy recommendations below respect executive privilege, the right to protect the confidentiality of private information, the freedom of the parliamentary mandate, as well as the role of appropriate protection for the preservation of national security and business competitiveness. Equally, however, they are offered in the belief that the balance between these considerations and transparency and accountability will benefit from greater participation of the public and media in the formation of defence and security policy.

Based on this analysis, the report proposes 23 recommendations for change. These can be grouped broadly into three categories; those that aim to strengthen

the integrity of institutions and the policy-making process to reduce their vulnerability to external influence; those that improve controls of that external influence by fostering transparency and accountability; and those that encourage best practice in this area amongst the defence industry.

Strengthening the integrity of institutions and policy processes

In this section the recommendations focus on improving the ability of government, parliament and other oversight bodies to provide adequate scrutiny of policies and acquisition decisions and accountability for them. The principles running through all of these are that the staff of state institutions need adequate resourcing, expertise, time and access to information to perform their duties with proper care. And that where full transparency cannot be achieved, suitable alternative arrangements need to be put in place to ensure that effective scrutiny is exercised on behalf of the public and civil society more widely.

1. Develop and implement a comprehensive strategy to address the personnel, expertise and capacity shortages of the MoD

Our research shows that the MoD – and in particular the Equipment office- lacks sufficient personnel with the skills and experience to be able to act as an 'intelligent customer'. This becomes especially challenging in light of proposed increases in defence expenditure and acquisition projects. Therefore, expanding MoD capacity should be a top priority, despite how challenging the tasks might be.

TI urges the German government to establish and implement a comprehensive strategy to address the issue, with appropriate allocation of resources and safeguards against potential conflicts of interest.

Strengthening institutional safeguards by building in-house capacity and expertise in the defence procurement and policy process will reduce the Government's dependence on external inputs (such as from consultants). It will enhance its ability to tender, monitor and evaluate these and limit the individual discretion exercised by its personnel.

2. Re-instate the planning staff of the MoD to ensure decisions are accountable and in line with the set out strategy

The MoD should review and reconsider the decision to merge its Planning Staff into the Ministry's Political Department. From the point of view of improving the effectiveness of decisions on capability and acquisitions there is a clear need for a designated and independent capability with both the necessary knowledge of, and sufficient distance from, the armed forces to fulfil its role as a "red team." This capacity would provide internal scrutiny and take an adversarial stand-point to stress-test decisions. By challenging capability planning decisions such a team can break through entrenched patterns and make sure that decisions are accountable and based on a clear and defensible rationale.

3. Introduce a permanent MoD outsourcing review board to verify the necessity and appropriateness of external services

A review board should routinely verify the necessity and cost-effectiveness of external advisory and consultancy services and ensure that sufficient in-house capacity and expertise are present for the independent tendering and monitoring of the activity of external consultants. A key consideration should be the appropriateness of outsourcing for the sort of capabilities that are essential to the government acting as an intelligent client. Where outsourcing and private contracts are deemed suitable, the MoD needs to ensure they retain the ability to collect independent data to feed into capability reviews and procurement requirements to inform final decisions.

To ensure the proper functioning of the outsourcing review board it should be adequately funded and resourced to monitor the performance of projects, undertake an annual progress review and publish results of the review and performance of large outsourcing projects.

4. Create an independent parliamentary body responsible for providing expertise and analysis to improve parliamentary capacity to provide scrutiny and review of defence and security proposals

Our research highlighted concerns amongst MPs about an alleged lack of expertise and capacity of the German Parliament to scrutinise defence and security policies and procurement decisions. One solution to this could be the establishment of an independent body to provide specialised knowledge, expertise and analysis to improve

parliamentary capacity.

In the United States, for example, there is the Congressional Budget Office which conducts independent analyses of budgetary and economic issues. An independent expert body could help parliamentarians understand technical defence issues – such as the utility and cost-effectiveness of new technologies, much like how another US body, the Office for Technology Assessment, supported parliamentarians by providing specialised and easily accessible analysis of technological developments¹⁸⁸ – and therefore make informed decisions when scrutinising defence policy.

In addition to specialised knowledge, this body would also fulfil the role of institutional memory, balance the information asymmetry with the Executive, and empower Parliament in audit proceedings.¹⁸⁹

5. Conduct a regular defence strategy review to improve public participation and accountability of decisions

At regular five-year intervals, conduct a review of the national security strategy which sets out the government's assessment of the strategic environment and describes the link between agreed challenges and threats, capability (and procurement) requirements and force structure. This will offer a concrete frame of reference against which executive decisions can be assessed and government can be held accountable. A regular review of the national security strategy provides a predictable process that opens up opportunity for a debate on defence and security policy that involves experts, the public, civil society and media.

This should be a broad and open public process that culminates in parliamentary participation and approval. There needs to be transparency about how participants in consultations are selected and how stakeholders who wish to be involved can do so. All non-governmental contributors to this process should be subject to the proposed lobby register and legislative footprint regulations.

6. Review rules for classification to balance the need for transparency and national security

The current rules for classification of information that relates to defence and security should be reviewed and revised to be consistent, clear, and practical, and balance

¹⁸⁸ Office of Technology Assessment, 'Annual Report to the Congress: Fiscal Year 1995', March 1996, <https://ota.fas.org/reports/9600.pdf> [accessed 28 August 2020]

¹⁸⁹ Interview with a German MP from the opposition party, January-February 2019.

the need for transparency and public accountability with the need to appropriately protect national security for the right length of time. While Germany has relatively elaborate and well-established legislation to guide and oversee security classification,¹⁹⁰ interviews with practitioners suggest that these can be inconsistently applied and impractical. A review that includes a broad range of stakeholders and covers a range of outcomes, including freedom of information applications, should serve as the basis for an updated framework that is made public.

7. Improve access to information in the procurement process

The German government should rebalance, by way of an independent review authority, the protection of companies' commercial interests with a justified public interest. There is untapped potential for additional transparency in the procurement process which can boost the ability of the general public, journalists and the defence sector to comprehend and verify the rationale and plausibility of policy and procurement decisions, thereby pre-empting the risk of inappropriate influence on the process.

As a minimum, the government should permit access to:

- Basic information from MoD annotations to the Budget (in particular to the procurement of equipment and services, discretionary reallocation of funds as well as research spending);
- Regularly updated “Scorecard” summaries similar to those in the Defence Procurement Report providing key information for all (not only the largest) MoD procurement, including but not limited to:
 - What will be procured?
 - Where did the proposal originate?
 - What missing capability is being introduced?
 - How does it align to the national strategy?
 - Who will be the beneficiaries?
 - What are the initial and life-cycle costs?
 - What is the contractual structure (duration, penalties, etc?)
 - How did the costs develop? How do they compare to the initial estimate?
 - What is the reason for the difference?

- Consolidated information on defence procurement, such as the number of directly awarded contracts, number of single-source contracts, contractors with high ratios of such contracts, etc;
- Notifications of on-going audit proceedings and final reports (or at least summaries) of the Federal Audit Office, as well as its advisory notes submitted to Parliament regarding upcoming procurement decisions;
- Improved consolidated records of the Federal Statistical Office that enable a detailed review of exports of defence goods and equipment.

Documents should be published promptly and in digital format, at the responsible institution's initiative, in a permanent and searchable online archive. Otherwise, the sheer amount of unstructured information risks cancelling out the benefits of the public being able to access it.

8. Request feedback on procurement initiatives early on from the Legislature

Involvement from Parliament in oversight of the procurement process can be made more effective if it is given a more meaningful role earlier on and at critical decision points along the procurement process. The duration of defence procurement projects can challenge Parliament's ability to provide effective oversight. Breaking the process down into clearly defined phases – thereby allowing parliamentary involvement whenever critical decisions in large projects are taken – can make the entire process more manageable. This can help overcome the high threshold felt by some Parliamentarians to oppose final proposals.

This is not independent of the necessary increase in the knowledge and understanding of Parliamentarians and the Defence and Budget Committees, as greater involvement will only put more strain on their time and resources. It is also necessary for MPs to be given adequate time to interrogate and evaluate proposals, which are sometimes expected within unreasonable timelines. Finally, appropriately security cleared MPs should be given easy access to classified information in a space where they can meaningfully interact with the material.

9. Provide a robust protection to journalists and whistleblowers in the judicial system and other bureaucratic processes to improve civilian oversight

With a particular focus on the implementation of

¹⁹⁰ Transparency International Defence & Security, *Classified Information: A review of current legislation across 15 countries & the EU*, 10 March 2016, <https://ti-defence.org/publications/classified-information-a-review-of-current-legislation-across-15-countries-the-eu-2/> [accessed 24 January 2020].

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the EU Trade Secrets and Whistleblower Directives, policymakers in Germany should ensure that journalists and whistleblowers are not only protected when uncovering illegal acts but also, in cases of misconduct or wrongdoing. Their financial liability in court proceedings should be limited and press organisations should be enabled to attain charitable status in order to get access to applicable benefits. Implementation of the directives should not be interpreted too narrowly and should not give matters of defence and security a blanket exemption.

Implementing these recommendations will make a journalistic investigation of defence decisions more possible, which plays an important role in ensuring accountability in a relatively closed-off sector. Such regulation still needs to strike a balance with the justified need to protect business and national security secrets. Transparency International's 'A Best Practice Guide for Whistleblowing Legislation'¹⁹¹ and the 'Global Principles on National Security and the Right to Information'¹⁹² provide guidance on how to achieve this.

10. Improve defence market conditions to limit over-reliance on incumbent providers

Market conditions and the scale of projects, particularly in the development of new weapons systems put an understandable limit on market fragmentation in the defence sector. Yet there are opportunities to improve the functioning of the market and allow entry into the supply chains for SMEs and to better control the performance of incumbent providers. This is essential for a healthy business climate, but it will also diminish the ability of the industry to exert influence on government to expand protectionist policies.

The government can achieve a better functioning and transparent defence market by:

- Defining a transparent framework for key technologies by clearly and conclusively listing the protected industry sectors and defining policy consequences. Clarifying what responsibilities and benefits result for companies that produce key technologies in Germany will establish legal certainty and planning reliability, and these should be based on national security needs not economic development policy;
- Fully implementing – in a competitive manner – the “Concept of the Ministry of Defence for Strengthening Arms Technology SMEs” to strengthen the position of small and medium-sized enterprises

vis-à-vis large defence systems producers;

- Fully implementing the political principles of the Federal Government for the export of defence equipment and other goods independently of national defence procurement, economic or international security policy;
- Strictly monitoring costs, write-off periods and the number of units they are distributed over, as well as profits of defence suppliers that are selected in a non-competitive procedure.

11. Ensure that national standards to counter inappropriate influence govern German bilateral and international deals and activities

Policymakers should ensure that adequate measures to limit the risk of inappropriate influence apply to bilateral and multilateral defence cooperation agreements. With the increase in European-level lobbying expenditure and the upcoming introduction of the EUR13 billion European Defence Fund, there is a risk that new and unregulated pathways of inappropriate influence could be exploited. For example, state representatives could circumvent local regulations and exert influence to unduly favour a supplier of national importance, or company representatives could unduly influence a state into entering bilateral agreements that may not best serve national priorities. A mandatory lobby register in Germany should complement the information disclosed at EU-level, and transparency around decision-making in government-to-government deals should be available to Parliament or a supporting body with adequate expertise and clearance, especially where this relates to the selection of industrial partners.

¹⁹¹ Transparency International, *A Best Practice Guide for Whistleblowing Legislation*, March 2018, https://www.transparency.org/whatwedo/publication/best_practice_guide_for_whistleblowing_legislation [accessed 24 January 2020].

¹⁹² Open Society Foundations & Open Justice Initiative, *The Global Principles on National Security and the Right to Information*, June 2013, <https://www.justiceinitiative.org/uploads/bd50b729-d427-4fbb-8da2-1943ef2a3423/global-principles-national-security-10232013.pdf> [accessed 24 January 2020].

Improve control and transparency of influence exerted through money, ideas and people

The following policy recommendations are not opposed to the principles of lobbying, cross-sectoral employment or exchange of ideas. Yet, they seek to address the most egregious instances where self-interested behaviour by companies or individuals may adversely impact on policy outcomes. Furthermore, they aim to establish best practice that helps preserve the integrity of these vital exchanges and the trust the public places in them.

Some of these recommendations are not unique to the defence sector, but address issues that do occur in this area. It is necessary to make these recommendations here precisely because the defence sector is often treated with caution and exempted from transparency regulations that govern other sectors. The defence sector exemplifies the need to improve regulations across all sectors with appropriate alternative oversight provisions put in place when full transparency cannot be achieved.

1. Create a decision-making footprint in the course of the defence strategy formulation and procurement process

Attach an overview to the administrative decision of all substantial input (from industry, civil society, experts, but also internal opinions and reasoning) provided by stakeholders in the course of the defence strategy formulation and procurement process, and submit this for parliamentary scrutiny. This should also be published where appropriate. This will ensure that arguments and ideas are transparently traceable to their origin and discourage undue influence on the political process¹⁹³.

Ideally, an online platform should be set up at the federal level following the example of the city-state of Hamburg, which mandated in its 2012 Transparency Act that the governing body of the state publish documents relating to executive actions. Although such extensive transparency cannot interfere with federal executive responsibility and security interests, it can be applied to finalised processes to ensure the opportunity for a transparent ex-post review.

2. Tighten conflict of interest and cooling-off regulations for government and military staff

Broaden the conflict of interest definition that responsible bodies use when reviewing engagements of the most senior public servants, military personnel, and ministers,

whether honorary or paid and during or after their tenure. Time-limited constraints on any lobbying activity or defence-related interest representation should also be considered. The same principles should apply to a wider range of individuals occupying key roles at lower levels within defence institutions.

Cooling-off periods for all those to whom such restrictions apply and during which notification/approval of follow-up engagement is legally mandatory should be extended to up to three years and require that employment offers received during their time in office be made public.

3. Improve implementation and oversight of conflict of interest and cooling-off regulations for government and military staff

Existing rules on conflicts of interest and cooling-off periods need better oversight and enforcement, with consequences attached to the breaching of rules and decisions. The advisory body that oversees statutory rules on cooling-off periods and behaviour in the new job for relevant government and military staff, needs to be equipped with the power and resources required to adequately investigate cases brought before it, monitor compliance with its decisions and investigate complaints about individuals who appear to have disregarded its advice.

4. Require consultants and other MoD contractors to implement robust internal information barriers to prevent conflicts of interest between clients

The government's reliance on private sector advisory services is likely to continue. How these services are delivered should be controlled to avoid conflicts of interest occurring within the companies and consultancies. Company staff working on projects for the MoD relating to procurement processes should be effectively isolated from colleagues working on projects for private sector clients who may bid for MoD contracts. They should be similarly restricted from switching between public and private sector clients themselves in areas where conflicts of interest may occur. A company could, for example, be required to implement 'cooling-off' periods for their own staff between them working on certain topics for private as well as public sector clients. Most companies have confidentiality agreements with their clients, but conflicts of interest or apparent conflicts of interest are not always regulated. The legal and financial professions where such 'ethical walls' are more commonplace can serve as an example.

¹⁹³ The Federal Government requests feedback on draft legislation from the stakeholders it deems relevant and it publishes these position papers online. This is only applicable to legislation, not executive decisions, and excludes many types of input that exposes the policy process to a risk of undue influence.

5. Revise the Parliamentary Code of Conduct

Revise the existing mandatory Code of Conduct for MPs to improve the visibility and mitigate the effects of any interests that could potentially affect the decisions of MPs beyond their constitutionally mandated obligations to the nation and their conscience. This should take into account the often lengthy tendering and awarding procedures for defence contracts and relate to the period before, during and after a legislative tenure.

The revised Code of Conduct should include:

- Improved obligatory standards applicable to secondary engagements, such as remunerated activities or leadership positions in associations, to ensure adequate monitoring, a consolidated and higher level of detail concerning salary ranges and types, and beneficiaries of activities;
- The requirement to provide an annual declaration of interests and assets that is made public;
- A formal process within parliamentary groups and/or committees for reviewing and resolving conflicts of interest, including those emerging from secondary engagements within the defence sector or significant defence industry concentration in a constituency. For example, by requiring that an MP recuses themselves from votes pertaining to related matters;
- Rules regarding follow-up employment that impose notification requirements and introduce cooling-off periods for follow-up employment that could potentially generate a conflict of interest, in alignment with those relating to former high-ranking executive officials.

6. Introduce a binding Code of Conduct for Parliamentary staff that uniformly and transparently regulates conflicts of interest, secondary employment, engagement in industry-funded associations and cooling-off periods

This uniform code should also address the handling of monetary donations or in-kind gifts, invitations and other benefits from meetings with industry representatives, in alignment with the Code of Conduct for MPs as recommended above.

An overly strict code of conduct might thwart the ability of MPs to recruit the qualified and motivated staff they need, and a balance needs to be struck between these potentially competing aims. Nevertheless, staff would be aided by comprehensive regulation which would

ensure that parliamentary staff – first and foremost junior employees – are not only aware of their duties, but also what tasks they can justifiably refuse.

As members of staff are employed directly by the MP under a private contract, from a legal perspective a code of conduct cannot be implemented by way of legislation relating to government employees. The inclusion of an appropriate set of rules in their staffers' contracts would have to be achieved by mandating it as a part of parliamentary rules for Legislators.

7. Impose a statutory register of lobbyists

Legislate requirements for statutory registers of lobbyists that should cover both in-house and consultant lobbyists. The registers of lobbyists should require regulated individuals and organisations to provide the following details:

- the name of the lobbyists / their registered company name (if applicable)
- their company registration number (if applicable) to ensure there is clarity about which company is engaging in this activity
- their registered address
- details of the names of lobbyists who have lobbied on their behalf within the previous quarter
- the details of the government policy, legislation etc. they have lobbied on during the preceding quarter
- information on any public office held previously (during the past five years) by any employees who are engaged in lobbying
- their expenditure on lobbying, including gifts and hospitality to public officials
- to include any use of secondments or advisers placed within government to influence policy

Ensure the proposed lobbying register for MPs is introduced promptly, is made public, with appropriate oversight and sanctioning mechanisms for those who fail to disclose all interests they hold or represent.

The information in these registers should be subject to quarterly updates. An independent Lobby Commissioner (similar to the Parliamentary Commissioner for the Armed Forces) should be appointed to monitor the registers, enforce their rules and produce a yearly report on their

activity.¹⁹⁴

In addition to these disclosure requirements, there should also be legally enforceable codes of conduct for determining what behaviour is appropriate for lobbyists.

8. Increase transparency of campaign and political financing

Reduce the thresholds for political donations cumulatively by both financier and party so that contributions above EUR 10,000 are subject to immediate publication, and those over EUR 2,000 are published annually. This includes sponsoring and direct payments to Members of the Legislature. This information should include the precise recipient's details in a searchable online database, in addition to the now customary annual reports of the President of Parliament, which should be published before the end of each year.

Furthermore, policymakers should review regulations on corporate donations and consider imposing caps on donations from the private sector.

Recommendations for companies active in the defence sector

The defence industry has an interest in preserving the legitimacy of its interactions with policy makers and avoiding semblance of impropriety that can cause public mistrust. More than waiting for legally binding standards and controls, companies can take their own measures to improve the transparency and accountability of their actions and ultimately safeguard their reputations.

1. Improve controls on political contributions, charitable donations and lobbying

Companies that choose to make political contributions should only do so by exception, according to strict policies and procedures. Companies should introduce and strengthen policies on all corporate donations, with clearly stated criteria for making them, a strict approval process with senior-level sign-off, due diligence on recipients and provisions to ensure that they are only made to provide support for a genuine democratic process.

Moreover, companies should implement and publish specific policies to regulate lobbying activities, which apply to internal, external and association lobbyists. These policies should establish appropriate standards of conduct, restrict or even prohibit the giving or receipt of gifts and hospitality to public officials and outline procedures to identify and mitigate conflict of interest risks associated with lobbying.

2. Publish details and expenditure of all political contributions, charitable donations and lobbying activities

Companies should report their political contributions in every country where they operate, regardless of whether they are legally required to disclose this information in each country of operation; or publish an accompanying statement that they only lobby in the country in which they are headquartered. This information should include details of the recipient, amount, country, and the name of the corporate entity that made the contribution, and should be updated on at least an annual basis.

In addition, companies should publish details of their lobbying activities at least annually. This should include disclosing expenditures on lobbying activities for every country where they operate, the main topics on which they lobby and the ways in which lobbying is carried out. Where companies disclose this information in lobbying registers, they should publish details of the registers on which they

¹⁹⁴ Along the lines of a common proposal by Transparency International Germany and the German Association of the Chemical Industry (VCI), https://www.transparency.de/fileadmin/Redaktion/Publikationen/2018/2018-04-17_Eckpunktepapier_Interessenvertretungsgesetz.pdf [accessed 24 January 2020].

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are listed and ensure that this covers in-house, external and association lobbyists.

3. Implement policies and procedures to better regulate conflicts of interest with public sector clients

Companies should implement clear policies and procedures to prevent potential conflicts of interest or identify, detect and manage conflict of interest risks, especially for employees in roles that require interaction with the public sector such as sales or public affairs. These policies should require employees to disclose any family, government or financial relationships that may lead to actual, potential or perceived conflicts of interest and record these in a central register that is accessible to those responsible for oversight of the process. Companies should provide their employees with clear descriptions of the relationships or situations that could constitute a conflict of interest so that they can be appropriately managed, as well as with a description of the potential mitigations or punitive measures for breaches of this policy.

4. Improve controls to regulate exchanges of people with the public sector

Under existing regulations, companies are under no obligation to ensure that newly hired former and recently departed public officials, civil servants or service personnel abide by their post-employment restrictions. Companies also face no legal or regulatory consequences for their approach to secondments, which may be exploited to exert influence. To better mitigate these risks, companies should:

- Require the approval of a senior compliance officer or equivalent individual before initiating any employment discussions with current or former public sector employees. This approval process should include an assessment of the actual, potential or perceived conflict of interest risks that may arise as a result of their employment.
- Adopt policies and procedures to implement a cooling off period of between 12 months and three years before employees from the public sector are allowed to have any form of contact with their former organisation on the company's behalf. Such a policy should apply to all employees, contracted staff and consultants, and the length of a cooling-off period should account for the risk of the appointment, based on factors such as seniority of the individual before the move, the lifespan of any relevant public policy issues from their time in public office, and the nature of their new responsibilities.

- Publish details about secondments to and from the public sector, including information on the locations of secondments, the number of seconded staff and the purpose of particular secondments.

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