

# ANALYSING DEFENCE INDUSTRY INFLUENCE ON THE GERMAN POLICY AGENDA

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Summary Report



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This summary report is an excerpt of the full report of the study into defence industry influence in Germany. The full version is available at:

**[ti-defence.org/defence-industry-influence-germany](https://ti-defence.org/defence-industry-influence-germany)**

# 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.<sup>1</sup>

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

<sup>1</sup> "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]

registration of lobbyists and the volume of their interaction with the executive is desultory and does not have full 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

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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 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.

# POLICY RECOMMENDATIONS

## Strengthening the integrity of institutions and policy processes

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

Personnel, expertise and capacity shortages restrict the MoD's ability to act as an "intelligent customer". TI urges the German government to establish and implement a comprehensive strategy to address these shortages, with appropriate allocation of resources and safeguards against potential conflicts of interest.

### 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. There is a clear need for a designated and independent capability with both knowledge of, and sufficient distance from, the armed forces to provide internal scrutiny and ensure accountable decision-making.

### 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 sufficient in-house capacity for the independent tendering and monitoring of external consultants' activity. Where outsourcing and private contracts are deemed suitable, the MoD should ensure they retain the ability to collect independent data to feed into capability reviews and procurement requirements to inform final decisions.

### 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;

The German Parliament's alleged lack of expertise and capacity to scrutinise defence and security proposals as expressed by some MPs could be mitigated by the establishment of an independent body responsible for

providing expertise and analysis to parliament. In addition to specialised knowledge, it would also fulfil the role of institutional memory, balance the information asymmetry with the Executive, and empower Parliament in audit proceedings.

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

Conducting a review of the national security strategy, at regular five-year intervals, will offer a concrete frame of reference against which executive decisions can be assessed and government can be held accountable. This should be a broad and open public process – with transparency about how participants are selected and how stakeholders can get involved – that culminates in parliamentary participation and approval.

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

The current rules for classification of information that relate to defence and security should be reviewed and revised to be consistent, clear, and practical, and balance the need for transparency and public accountability with the need to appropriately protect national security. A review that includes a broad range of stakeholders should serve as the bases for an updated and publicly available framework.

### 7. Improve access to information in the procurement process;

The government should permit public access to information on the procurement process – including summaries for all MoD procurements, MoD annotations to the defence budget, consolidated information on the number of directly awarded contracts, etc. – to boost the ability of oversight actors to scrutinise policy and ensure accountability. Documents should be published promptly and in digital format on a permanent and searchable online archive.

### 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. MPs should be given adequate time to interrogate and evaluate proposals, and 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 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, limit their financial liability in court proceedings and enable press organisations to attain charitable status in order to get access to applicable benefits.

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

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. The government can achieve this by, for example, clearly and conclusively listing the protected industry sectors and defining policy consequences and fully implementing the “Concept of the Ministry of Defence for Strengthening Arms Technology SMEs”.

### **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 are also reflected in bilateral and multilateral defence cooperation agreements. 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, especially where this relates to the selection of industrial partners.

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

### **1. Create a decision-making footprint in the course of the defence strategy formation 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. Ideally, an online platform should be set up and extensive transparency applied to the finalised process 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. Time-limited constraints on any lobbying activity or defence-related interest representation should be considered. Cooling-off periods 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 cooling-off periods and the employment of ex-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.

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

To avoid conflicts of interest, 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 who may bid for MoD contracts.



### 5. Revise the parliamentary Code of Conduct;

Revise the existing mandatory Code of Conduct to include: improved obligatory standards applicable to secondary engagements to ensure adequate monitoring, a consolidated and higher level of detail concerning salary ranges and types, and beneficiaries of activities; a requirement to provide a publicly available annual declaration of interests and assets; a formal processes within parliamentary groups for reviewing and resolving conflicts of interest; and rules regarding follow-up employment that impose notification requirements and introduce cooling-off periods.

### 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. 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 of what tasks they can justifiably refuse.

### 7. Impose a statutory register of lobbyists;

Legislate requirements for statutory registers of lobbyists that should cover both in-house and consultant lobbyists. Also, 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 and an independent Lobby Commissioner should be appointed for monitoring, enforcement and to produce a yearly report on their activity.

### 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 MPs. 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

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

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. Companies should also implement and publish specific policies to regulate lobbying activities, which apply to internal, external and association lobbyists.

### 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; this information should include details of the recipient, amount, country and name of the corporate entity that made the contribution, and should be updated on at least an annual basis. Companies should also publish details of their lobbying activities, including expenditures on lobbying activity, the main topics on which they lobby and the ways in which lobbying is carried out.

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

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. Employees should be provided with clear descriptions of the relationships or situations that could constitute a conflict of interest, as well as a description of potential mitigations and punitive measures.

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

Companies should: require the approval of a senior compliance officer, or equivalent, before initiating any employment discussions with current or former public sector employees; adopt policies and procedures to implement a cooling-off period of between 12 months to three years before ex-public sector employees can have any contact with their former organisation on the company's behalf; and publish details about secondments to and from the public sector.

