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The Directive 2009/81/EC on Defence and Security Procurement under Scrutiny

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The present study is the first part of a report delivered to the European Parliament in February 2015 (The impact of the “defence package” Directives on European Defence, European Parliament, SEDE, published in June 2015, PE 549.044). The second part of the report, drafted by the GRIP Research team, is related to Directive 2009/43/EC on intra-European Union transfers of defence-related products.

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EXECUTIVE SUMMARY

The Directive 2009/81/EC intends to provide procurement rules tailor-made for defence and security markets and is supposed to lead to more transparency and competition. Most importantly, it should limit the use of the exception clause of Article 346.

While the number of documents published on TED over these past two years has been increasing, this increase is not as significant as expected, and above all it is due to a small group of Member States (France, Germany, and the United Kingdom). This initial survey demonstrates an important disparity in the Member States' publication practices (contract notices and contract awards). This poses the question of reciprocity. In value, contract awards notified between the 21st August 2011 and the 31st December 2014 represent around €10.53 billion. The year 2014 accounts for around 65% of the total, due to significant contracts notified by the United Kingdom in the field of services and facilities management, and by France on the segments covering Repair and maintenance services of military aircrafts.

The Directive 2009/81/EC is today favoured for contracts dealing with services, the acquisition of equipment deemed to be of a low strategic value, and sub-systems. Over the past three years, all of the major military equipment contracts, thus those that have had a structural effect on the DTIB, were notified without going via the Directive. Previous practices have continued, notably the use of Article 346.

When the contracting authorities/entities provide the name and address of the successful economic operators, in 84% of cases, the selected supplier is based on national territory. An analysis focused on the Member States that have published the most contract award notices (and if we consider non-specified addresses as national, as the European Commission does) demonstrates that the proportion of selected suppliers located on national territory reaches 98% for Germany, 97% for France, 96% for Italy, 96% for Poland, 92% for the United Kingdom, 90% for Romania, and 64% for Finland.

Concretely today acquisition practices seem to show an incomplete and incorrect application of the Directive, with de facto a limited or even non-existent impact on the DTIB. It is indeed too hasty and premature to draw conclusions from such a short period, all the more so given that it generally takes 5 to 10 years for a directive to be fully applied, and this is referring to the civilian sector. Although this new regime is not yet functioning satisfactorily at the present time, the Directive represents an important step in a sector such as defence, which is marked by a significant degree of opacity in acquisition practices.

LIST OF ACRONYMS

AT	Austria
BE	Belgium
CPV	Common Procurement Vocabulary
CSDP	Common Security and Defence Policy
CY	Cyprus
CZ	Czech Republic
DE	Germany
DK	Denmark
DTIB	Defence Technological and Industrial Base
EC	European Commission
ECJ	European Court of Justice
EDA	European Defence Agency
EDTIB	European Defence Technological and Industrial Base
EE	Estonia
ES	Spain
EU	European Union
FI	Finland
FR	France
GPA	Government Procurement Agreement
GR	Greece
HR	Croatia
HU	Hungary
IE	Ireland
IT	Italy
LT	Lithuania
LU	Luxembourg
LV	Latvia
MS	Member States
MT	Malta
NL	Netherlands
OJEU	Official Journal of the European Union
SMEs	Small and Medium Enterprises

PL	Poland
PT	Portugal
RO	Romania
SE	Sweden
SI	Slovenia
SK	Slovakia
UK	United Kingdom
TEC	Treaties Establishing the European Communities
TED	Tenders Electronic Daily
TFEU	Treaty on the Functioning of the European Union
VEAT	Voluntary ex-ante Transparency

INTRODUCTION

Since the end of the 1990s, the European Commission has consistently recalled the need to improve the regulatory framework governing the treatment of arms in Europe¹, thereby defending a restrictive reading of the scope of Article 346. This issue has been the subject of several communications and consultations². The European Commission has pragmatically intensified dialogue with companies in the defence industry, moreover taking advantage of the development of the security market. These consultations finally gave rise to the launch on the 5th December 2007 of the so-called ‘Defence Package’, comprising a Communication from the Commission ‘Strategy for a stronger and more competitive European defence industry’³ and two proposed directives designed to improve the functioning of the internal market for defence and security products. The first deals with transfers of defence-related products and the second with defence and security procurement.

Following the publication in the OJEU on the 6th May 2009 of Directive 2009/43/EC⁴ *simplifying terms and conditions of transfers of defence-related products within the Community*, and on the 20th August 2009 of Directive 2009/81/EC *on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security*⁵, the Member States had a period of two years to transpose the Directives into national law, thus up to the second semester in 2011, with concrete implementation theoretically expected in mid 2012. Given the field in question, the Commission favoured the use of directives rather than European regulations because this legal act is flexible. While a regulation is applicable in Member States’ internal law immediately after its entry into force, a directive must first be transposed by the Member States (national implementing measures). It obliges the Member States to achieve a certain result but leaves them free to choose how to do so (the form and the means for applying the directive). The expected benefit depends on the consistent and standardised implementation of Directives 2009/43/EC and 2009/81/EC by all EU Member States in order to avoid recreating market distortions.

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, ‘Implementing European Union Strategy on defence-related industries’, COM(97)583 final, 04 December 1997 ; ‘Industrial Policy in an Enlarged Europe’, COM(2002) 714 final, 11 December 2002; ‘European Defence – Industrial and Market Issues. Towards an EU Defence Equipment Policy’, COM(2003)113, 11 March 2003

² ‘Commission Green Paper on defence procurement’, COM(2004)608, 23 September 2004 ; Communication from the Commission to the Council and the European Parliament ‘on the results of the consultation launched by the Green Paper on Defence Procurement and on the future Commission initiatives’, COM(2005)626 final, 6 December 2005.

³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, ‘A strategy for a stronger and more competitive European defence industry’, COM(2007)764 final, 5 September 2007.

⁴ ‘Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community’, OJ L 146, 10.6.2009, pp. 1–36.

⁵ ‘Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security’, and amending Directives 2004/17/EC and 2004/18/EC, OJ L 216, 20.8.2009, pp. 76–136

On 24 July 2013, the Commission took a further step and put forward the Communication entitled *Towards a more competitive and efficient defence and security sector*⁶, as a contribution to the European Council of 19-20 December 2013. It contains an action plan⁷ with the overall objective of enhancing the efficiency and competitiveness of the defence and security sector in Europe. In its conclusions on the Common Security and Defence Policy, the December 2013 European Council stressed the importance of ensuring the full and correct implementation and application of the two defence Directives of 2009, and decided to review progress in all relevant areas in June 2015.

In order to understand the evolution of Member States' acquisition practices since the entry into force of the Directive 2009/81/EC, the study is structured around three main sections: (1) the situation before the Directive's entry into force, an overview of the major principles introduced by the Directive and their implications for actors in the European defence sector, along with the process of transposition into national law; (2) An initial evaluation of national practices through qualitative analysis and statistical analysis (based on reprocessed data from the TED database, during the period from the 21st August 2011 to the 31st December 2014, covering all EU Member States); (3) An identification of the complex points and obstacles, which, if not overcome, may well call into question the Directives' expected beneficial effects.

6 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Towards a more competitive and efficient defence and security sector', COM(2013)542 final, 24 September 2013.

7 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'A New Deal for European Defence Implementation Roadmap for Communication COM (2013) 542 Towards a more competitive and efficient defence and security sector', COM(2014)387 final, 24 June 2014.

BEFORE AND AFTER

Looking back: an extensive and intensive use of Article 346 of the TFEU

Directive 2009/81/EC is interposed between Article 346 of the TFEU, which should become the exception, and the Directive 2004/18/EC⁸ on public procurement (single market rules). This new regime, which is specific to public contracts in the fields of defence and security, provides adapted procedures. Following the transposition of the Directive 2009/81/EC into national law, the key issue is to establish to what extent EU Member States have recourse to the single market rules, to the special regime, as well as to exclusions and derogations.

In the sphere of public contracts, according to Directive 2004/18/EC, the award of contracts concluded in the Member States on behalf of the State, regional or local authorities and other bodies governed by public law entities, is subject to the respect of the basic provisions of the Treaty relating to free movement of goods and service and freedom of establishment, and in particular to the principle of freedom of movement of goods, the principle of freedom of establishment and the principle of freedom to provide services and to the principles deriving there from, such as the principle of equal treatment, non-discrimination, mutual recognition, proportionality and transparency. However, Article 10 established that ‘Directive shall apply to public contracts awarded by contracting authorities in the field of defence, subject to Article 296 of the Treaty’, and Article 14 that ‘Secret contracts and contracts requiring special security measures. This Directive shall not apply to public contracts when they are declared to be secret, when their performance must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned, or when the protection of the essential interests of that Member State so requires’⁹.

It is important to recall that Article 346 historically marks the willingness of the major arms producing States in Europe to exclude defence equipment from the Community sphere (which results in the non-application of Directive 2004/18/EC). Over the years, with the successive revisions of European Treaties, this article has not been subject to any major changes in substance, only its numbering has changed: Article 223 in the Treaty of Rome, then Article 296 in the Treaty establishing the European Community (TEC, in the framework of the Treaty of Amsterdam), and finally Article 346 in the Treaty on the Functioning of the European Union (TFEU¹⁰) since the entry into force of the Treaty of Lisbon on the 1st December 2009.

⁸ In December 2011, the Commission proposed the revision of Directives 2004/17/EC and 2004/18/EC (public works, supply and service contracts), as well as the adoption of a directive on concession contracts. The directives were voted by the European Parliament on 15 January 2014 and adopted by the Council on 11 February 2014. The Member States have until April 2016 to transpose the new rules into their national law. Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, Official Journal L 94, 28.3.2014, pp. 65–242.

⁹ The Court of Justice has repeatedly stated : ‘Article 10 EC makes it clear that the Member States are required to cooperate in good faith with the enquiries of the Commission pursuant to Article 226 EC, and to provide the Commission with all the information requested for that purpose’, Judgment of 13 July 2004, *Case 82/03 Commission v Italy*, par.15.

¹⁰ ‘Consolidated version of the Treaty on the Functioning of the European Union’, OJ C 326, 26.10.2012, pp. 47–390.

Article 346 (formerly Article 296 TEC)

1. The provisions of the Treaties shall not preclude the application of the following rules:
 - (a) no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security;
 - (b) any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the internal market regarding products which are not intended for specifically military purposes.
2. The Council may, acting unanimously on a proposal from the Commission, make changes to the list, which it drew up on 15 April 1958, of the products to which the provisions of paragraph 1(b) apply.

The first paragraph of Article 346 deals with the protection of classified information and opposes the principle according to which the Treaty applies to all arms, munitions, and war materials. Only a Member State's 'essential interests of its security' can justify an exemption on the basis of Article 346-1(b), and not industrial and economic interests¹¹. The general scope of this text gives Member States de facto a large amount of discretion in the interpretation of needs relating to the protection of the essential interests of their security. However, the second paragraph limits the scope of Article 346 to a list of military materials, drawn up and approved by the Council in its decision 255/58 of 15 April 1958¹². Wholly civilian products, dual-use products, and products that have military characteristics or specificities but which do not constitute war materials under the 1958 list, can be considered outside of the scope of Article 346.

While Article 346 gives Member States discretionary power in terms of the rules to be applied in the field of defence equipment contracts, article 348¹³ acts as a safeguard. This article stipulates that in case of improper use of Article 346, which could have the effect of distorting the conditions of competition in the internal market, the European Commission or any Member State may bring the matter directly before the Court of Justice of the European Union. The rule of exceptionality is thus not absolute and must be justified.

As such, ECJ jurisprudence repeatedly recalls¹⁴ that derogations 'deal with exceptional and clearly defined cases' and 'do not lend themselves to a wide interpretation'. Any derogation

¹¹ Commission of the European Communities, 'Interpretative Communication on the application of Article 296 of the Treaty in the field of defence procurement', COM(2006)779 final, 7 December 2006.

¹² Council of the European Union, 'Extract of the Council Decision 255/58 of 15 April 1958', 26 November 2008.

¹³ Article 348 (ex Article 298 TEC): 'If measures taken in the circumstances referred to in Articles 346 and 347 have the effect of distorting the conditions of competition in the internal market, the Commission shall, together with the State concerned, examine how these measures can be adjusted to the rules laid down in the Treaties. By way of derogation from the procedure laid down in Articles 258 and 259, the Commission or any Member State may bring the matter directly before the Court of Justice if it considers that another Member State is making improper use of the powers provided for in Articles 346 and 347. The Court of Justice shall give its ruling in camera'.

¹⁴ Court cases - Defence Procurement and Article 346 of the TFEU : Judgment of 15 May 1986, *Case C-222/84 Johnston*; Judgment of 4 October 1991, *Case C-367/89 Richardt and Les Accessoires Scientifiques*; Judgment of 3 May 1994, *Case C-328/92 Commission v Spain*; Judgment of 28 March 1995, *Case C-324/93 Evans Medical and Macfarlan Smith*; Judgment of 26 October 1999, *Case C-273/97 Sirdar*; Judgment of 16 September 1999, *Case C-414/97 Commission v Spain*; Judgment of 11 January 2000, *Case 285/98 Kreil*; Judgment of 13 July 2000, *Case C-423/98 Albore*; Judgment of 11 March 2003, *Case C-186/01 Dory*; Judgment of 16/10/2003, *C-252/01 Commission v Belgium*; Judgment of 30 September 2003, *Case T-26/01 Fiocchi Munizioni v Commission*; Judgment of 13 July 2004, *Case 82/03 Commission v Italy*; Judgment of the Court (Grand Chamber) of 8 April 2008, *C-337/05 - Commission v Italy*; Judgment of the Court (Second Chamber) of

must be interpreted strictly, even in ‘situations which may involve public safety’. In 2006, in its interpretative communication on the application of Article 296 of the Treaty in the field of defence procurement¹⁵, the Commission recalled that, for such limited cases, it is for Member States to provide, at the Commission's request, the necessary information and prove that exemption is necessary for the protection of their essential security interests.

But, in practice, the Article 346 TFEU was applied quasi automatically for the very large majority of defence equipment contracts awarded by Member States. The number of court cases was too low to bring about a change in practices, particularly regarding acquisitions.

A new flexible instrument

The Directive 2009/81/EC intends to provide procurement rules tailor-made for defence and security markets. Presented as an adapted and flexible regulation, outside the scope of the Government Procurement Agreement (GPA¹⁶), the new Directive is supposed to lead to more transparency and competition. Most importantly, it should limit the use of the exception clause of Article 346, even if the Member States will always have the possibility to justify restrictions based on this article (Recital 20 of the Directive).

The European Commission justifies the Directive 2009/81/EC through the lack of harmonisation at the European level of national rules for contract awards in the fields of defence and security. This incoherent situation constitutes an obstacle to the establishment of a European defence equipment market, which is essential for strengthening the European Defence Technological and Industrial Base (EDTIB) and developing the military capabilities (Recitals 2 and 4).

Recital 2: ‘The gradual establishment of a European defence equipment market is essential for strengthening the European Defence Technological and Industrial Base and developing the military capabilities required to implement the European Security and Defence Policy’

Recital 4: ‘One prerequisite for the creation of a European defence equipment market is the establishment of an appropriate legislative framework. In the field of procurement, this involves the coordination of procedures for the award of contracts to meet the security requirements of Member States and the obligations arising from the Treaty’

The scope of the Directive 2009/81/EC is large. It covers contracts for the procurement of military and sensitive equipment (and related works and services), as well as works and services for specifically military purposes or sensitive works and sensitive services (Article 2)¹⁷. Military equipment is defined as equipment specifically designed or adapted for military purposes and intended for use as an arm, munitions or war material (article 1.6.). It should be

2 October 2008, *C-157/06 - Commission v Italy*; Judgment of the Court (Fourth Chamber), 7 June 2012, *Case C-615/10 - Finland v European Commission*; 28 February 2013 Judgment in *Case C-246/12 P Ellinika Nafpigia AE v European Commission*.

¹⁵ Commission of the European Communities, ‘Interpretative Communication on the application of Article 296 of the Treaty in the field of defence procurement’, op. cit., p.8.

¹⁶ It only concerns defence procurement by national authorities inside the European Internal Market. It does not deal with arms trade with third countries, which continues to be governed by WTO rules.

¹⁷ ‘Article 2-Scope. Subject to Articles 30, 45, 46, 55 and 296 of the Treaty, this Directive shall apply to contracts awarded in the fields of defence and security for: (a) the supply of military equipment, including any parts, components and/or subassemblies thereof;(b) the supply of sensitive equipment, including any parts, components and/or subassemblies thereof; (c) works, supplies and services directly related to the equipment referred to in points (a) and (b) for any and all elements of its life cycle;(d) works and services for specifically military purposes or sensitive works and sensitive services’.

understood in particular as the product types included in the list of arms, munitions and war material adopted by the Council in its Decision 255/58 of 15 April 1958. It should also cover products which, although initially designed for civilian use, are later adapted to military purposes to be used as arms, munitions or war material (Recital 10). In the specific field of non-military security, the Directive 2009/81/EC should apply to procurements which have features similar to those of defence procurements and are equally sensitive (Recital 11)¹⁸, e.g. border protection, police activities and crisis management missions.

The Threshold amounts for contracts above which the directive applies are EUR 414 000 for supply and service contracts and EUR 5 180 000 for works contracts (Article 8; excl.VAT). Thus, above the outlined thresholds, the contracting authorities/entities¹⁹ shall treat economic operators equally and in a non-discriminatory manner and act in a transparent way (Article 4), namely by applying the rules governing advertisement and transparency, and by adopting objective and non-discriminatory criteria, e.g. publication of appropriate information prior to, and at the end of, the award procedure²⁰, indication of the selection criteria, etc.²¹. Contracts should be awarded based on these principles which guarantee that tenders are assessed in a transparent and objective manner under conditions of fair competition.

Based on the principle of non-discrimination, the directive recalls that it is forbidden to introduce selection criteria based on nationality. Article 21.1 (Subcontracting) notably stipulates that the public buyer cannot impose a choice of sub-contractor on the successful tenderer, on grounds of nationality. However, Member States may provide that the contracting authority/entity may ask or be required to ask the successful tenderer to subcontract to third parties a share of the contract (not exceed 30 % of the value of the contract; Article 21.4). When such a share is required, the successful tenderer should award subcontracts following a transparent and non-discriminatory competition. However, the Recital 18 underlines that Member States retain the power to decide whether or not their contracting authority/entity may allow economic operators from third countries to participate in contract award procedure.

In addition, the criteria for awarding contracts (Articles 47.1.a and 47.1.b) provide a certain amount of freedom to contracting entities. Indeed, the definition of the most economically advantageous tender could be founded 'for example' (extensive range of possible criteria) on quality, price, technical merit, functional characteristics, environmental characteristics, running costs, lifecycle costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion, security of supply, interoperability and operational characteristics.

Furthermore, the Directive recognizes the 'sensitive nature' of goods and services in the defence and security sectors, because vital for both the security and the sovereignty of Member States and for the autonomy of the Union (Recital 8). This results in specific requirements (which do not exist in Directive 2004/18/EC), in the fields of security of information

¹⁸ Article 1.7 of the Directive 2009/81/EC: 'Sensitive equipment', 'sensitive works' and 'sensitive services' means equipment, works and services for security purposes, involving, requiring and/or containing classified information'.

¹⁹ 'As defined in Article 1.9 of Directive 2004/18/EC: 'Contracting authorities' means the State, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or one or several of such bodies governed by public law'.

²⁰ Documents: buyer profile, subcontract notice, prior information notice, contract notice, voluntary ex ante transparency notice, contract award.

²¹ Recitals 56, 61, 69, Chapter V. Rules on advertising and transparency, Chapter VII. Conduct of the procedure, of the Directive 2009/81/EC.

(Article 22) and security of supply (Article 23). In both cases, this allows for the imposition of particular conditions during the selection process for applications or offers, or during the execution of a contract. The Directive 2009/81/EC thus gives a fair amount of leeway to contracting entities to rule out undesirable tenderers, notably in relation to security of supply²².

Moreover, the ‘sensitive nature’ of goods and services in the defence and security sectors implies the possibility to applying a large range of award procedures, from ‘standard’ procedures [Restricted procedure (article 25) and Negotiated procedure with prior publication of a contract notice (article 26)], to ‘non standard’ procedures [Competitive Dialogue (article 27) and Negotiated procedure without prior publication of a contract notice (article 28)]. The use of the Competitive Dialogue procedure is relevant in the case of particularly complex contracts, when the article 28 covers a limited number of specific cases (and contracting authorities/entities shall justify the use of this procedure), such as (not exhaustive list):

- no tenders or no suitable tenders or no applications have been submitted
- in the event of irregular tenders or the submission of tenders which are unacceptable under national provisions
- when the periods laid down for the restricted procedure and negotiated procedure
- for reasons of extreme urgency brought about by events unforeseeable
- for technical reasons or reasons connected with the protection of exclusive rights
- R&D services and products manufactured purely for the purpose of R&D
- for additional deliveries by the original supplier, or additional works or services

On top of that, a dedicated section called ‘Section 3. Excluded Contracts’ contains a large list of 13 types of exclusions, ranging from contracts awarded pursuant to international rules (Article 12; international agreement or arrangement, international organisation purchasing) to specific exclusions, of which the main ones are as follows (Article 13):

- Contracts for which the application of the rules of the Directive would oblige a Member State to supply information the disclosure of which it considers contrary to the essential interests of its security
- Intelligence activities
- Cooperative programme based on R&D
- Contracts awarded in a third country carried out when forces are deployed outside the territory of the Union
- Government to government sales
- R&D services (other than those where the benefits accrue exclusively to the contracting authority/entity for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority/entity)

The diversity of exclusions that can be used and their undefined character (*e.g.* essential interests of security; intelligence activities; the lack of a list of materials that can be subject to exclusion) give contracting entities a significant amount of scope to exclude certain contracts

²² Article 23 (SoS) of the Directive 2009/81/EC and Article 42 h. ‘A description of the tools, material, technical equipment, staff numbers and know-how and/or sources of supply – with an indication of the geographical location when it is outside the territory of the Union – which the economic operator has at its disposal to perform the contract, cope with any additional needs required by the contracting authority/entity as a result of a crisis or carry out the maintenance, modernisation or adaptation of the supplies covered by the contract’.

from the sphere of the Directive, even though this freedom is reduced by European Court of Justice jurisprudence²³. Article 11 recalls that the use of exclusions must not circumvent the Directive.

Transposition: a difficult and lengthy process

Published on the OJEU on August 21st 2009, the transposition was mandatory within 2 years. Many Member States have widely missed the 21 August 2011 deadline imposed by the European Commission for the transposition into national law of the Directive²⁴. Only 3 Member States had notified complete transposition at that moment (and a fourth Member State in September 2011). Under Article 258 TFUE, the Commission opened infringement procedures against 23 Member States by sending letters of formal notice (30 September 2011). Moreover, on 26 January 2012, the Commission's request to Germany and The Netherlands takes the form of a reasoned opinion. If the national authorities do not reply satisfactorily within two months, the Commission may refer the matter to the Court of Justice and ask for the payment of financial penalties²⁵. Same process with Bulgaria and Luxembourg in March 2012²⁶, United Kingdom (in Gibraltar) in April 2012²⁷, Austria (with regard to Carinthia) and Poland in May 2012²⁸, Slovenia in June 2012²⁹ and Portugal in March 2013 (request to fully implement the Directive, and not only parts of it)³⁰. By July 2012, four Member States (Poland, The Netherlands, Luxembourg and Slovenia) had still not notified any transposition measure to the Commission. On 27 September 2012, Commission has decided to ask the Court to impose daily penalty payments³¹ on the four Member States until they fully implement the Directive³².

Finally, as stated in the Communication from the Commission, *Towards a more competitive and efficient defence and security sector*³³, the transposition in all 27 Member States was accomplished in March 2013³⁴. The difficulty now lies in the consistent and harmonised

²³ Possibilities of exclusion must be interpreted in the strictest sense (ECJ, 13 December 2007, *Bayerischer Rundfunk*, C- 337/06)

²⁴ Report from the Commission to the European Parliament and the Council on transposition of directive 2009/81/EC 'on Defence and Security Procurement', COM(2012) 565 final, 2 October 2012.

²⁵ 'The Commission acts to ensure the implementation of EU rules in the area of defence procurement', European Commission, Press Release, 26.01.2012.

²⁶ 'The Commission acts to ensure the implementation of EU rules in the area of defence procurement', European Commission, Press Release, 22.03.2012.

²⁷ 'The Commission requests the United Kingdom to implement EU rules in the area of defence procurement in Gibraltar', European Commission, Press Release, 26.04.2012.

²⁸ 'The Commission requests Austria and Poland to fully transpose EU rules in the area of defence procurement', European Commission, Press Release, 31.05.2012.

²⁹ 'The Commission requests Slovenia to implement EU defence procurement rules', European Commission, Press Release, 21.06.2012.

³⁰ 'Defence Procurement: The Commission requests Portugal to apply EU rules', European Commission, MEMO/13/261, 21.03.2013.

³¹ Daily penalty payment of € 70 561.92 for Poland, € 57 324.80 for The Netherlands, € 8 320 for Luxembourg and € 7 038.72 for Slovenia.

³² 'The Commission asks Court of Justice to fine Poland, The Netherlands, Luxembourg and Slovenia for not implementing defence procurement rules' European Commission, Press Release, 27.09.2012.

³³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Towards a more competitive and efficient defence and security sector', COM(2013)542 final, 24 September 2013.

³⁴ Croatia officially became an EU Member State on the 1st July 2013. It first published a contract notice on TED in October 2013. Yet it began the transposition of the Directive in July 2011, with Public Procurement Act adopted by the Croatian Parliament at its session of 15 July 2011.

application of the directive by all EU Member States in order to avoid recreating market distortions.

The European Commission will verify and monitor whether the national implementing measures comply with the Directive 2009/81/EC, considering that the difference in the implementation is directly linked to the national defence industrial capabilities, notably in addressing the following ‘crucial provisions: the scope of application (Article 2); the exclusions from the application of the Directive (Articles 12 and 13); the subcontracting provisions (Articles 21 and 50 to 54 – title III); and the review procedures (Articles 55-64)’³⁵. The Commission’s objective is thus to verify if these modifications lead to concrete changes in practices.

Furthermore, the Commission considers that the correct application of the Directive 2009/81/EC in the Member States is also dependent on the phasing out of offsets. Offsets are identified as incompatible procurement practices with the Directive (against the principles of openness, transparency and non-discrimination). Offsets are discriminatory measures on the ground of the nationality, and a disturbance of internal market. The Commission's position is that offsets are not automatically exempted from EU rules (under Article 346 TFEU). Even inside art 346 TFEU, it is necessary to justify and prove that requiring offsets are an ‘essential interest of security’, and not linked with economic purposes or employment-related interests.

In 2007, a study commissioned by the EDA thus underlined that 18 Member States (out of the 24 Member States studied) applied offsets policies³⁶ in the framework of their policy of defence equipment acquisition (with the average level of compensation being 135%). In July 2009³⁷, the new EDA *Code of Conduct on Offsets*³⁸ have represented an attempt to limit offsets by introducing a 100% cap (subscribing governments will neither request nor accept offsets exceeding the value of the procurement contract). The Code of Conduct on Offsets sets out a framework for evolving offsets, but it's a voluntary, non-legally binding code.

However, the Directive 2009/81/EC does not explicitly address offsets. There is no provision, no express reference in the text. The option chosen by the Commission is to not mention specifically offsets in the Directive, as it would leave it down to the Member States to assess the compatibility of offsets with EU law. The article 21 of the Directive 2009/81/EC deals indirectly with this issue, from the subcontracting perspective. The Commission has published a Guidance Note³⁹, which reflects the views of the services of Directorate General Internal Markets and Services and is legally not binding.

³⁵ ‘Report from the Commission to the European Parliament and the Council on transposition of directive 2009/81/EC on Defence and Security Procurement’, COM(2012) 565 final, 2 October 2012, pp. 5-8.

³⁶ ‘Final Report of 06-DIM-022 Study on the effects of offsets on the Development of a European Defence Industry and Market’, By E. Anders Eriksson with contributions by Mattias Axelson, Keith Hartley, Mike Mason, Ann-Sofie Stenérus and Martin Trybus, EDA, 12 July 2007. The average offset obligation among EU member states between 2000 and 2006 was 135% of contract value, and that direct offsets account for 40% of total offsets (Indirect military 35%, Civil indirect 25%).

³⁷ The European Defence Agency’s Steering Board adopted the code on the 24th October 2008. It came into effect on 1 July 2009.

³⁸ European Defence Agency, ‘Code of Conduct on Offsets’, 24 October 2008.

³⁹ ‘Guidance Note *Offsets*’, Directorate General Internal Markets and Services.

IMPLEMENTATION: STATISTICAL AND ANALYTICAL ANALYSIS

Transparency

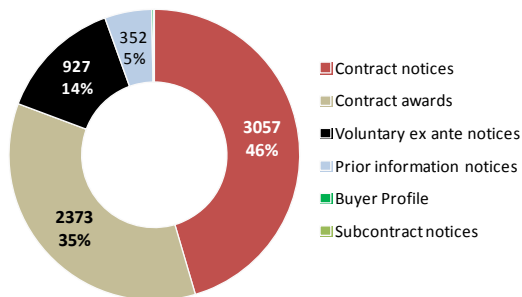
Tenders Electronic Daily (TED): free access to business opportunities

Contracts covered under the Directive 2009/81/EC are advertised in TED (Tenders Electronic Daily⁴⁰). TED database is the online version of the 'Supplement to the Official Journal of the EU', dedicated to European public procurement. TED provides free access to business opportunities. It is updated 5 times a week. Procurement notices can be browsed, searched and sorted by country, type of contracts, type of documents, CPV code⁴¹, publication date, type of authority, etc.

As requested in article 32.4 of the Directive 2009/81/EC, contract notices shall be published in full in an official language of the Community, as chosen by the contracting authority/entity, this original language version constituting the sole authentic text. A summary of the important elements of each notice shall be published in the other official languages.

In order to understand the evolution of Member States' acquisition practices since the entry into force of the Directive, the FRS Research team has relied on statistical analysis drawn up using reprocessed data from the TED database, during the period from the 21st August 2011 to the 31st December 2014⁴², covering all EU Member States. This analytical and statistical work is undertaken in the Framework of a dedicated review publication established in 2012 by the Foundation for Strategic Research (with a quarterly publication of statistical bulletins).

Notices published on TED: major differences between Member States



Between the 21st August 2011 and the 31st December 2014, 6 728 documents were published on TED: **3 057** Contract notices, **2 373** Contract awards⁴³, **927** Voluntary ex ante notices, and **352** Prior Information notices.

Buyer Profiles and Subcontract notices are few in number (only 19 over the period).

⁴⁰ <http://ted.europa.eu>.

⁴¹ The CPV establishes a single classification system for public procurement aimed at standardising the references used by contracting authorities and entities to describe the subject of procurement contracts. The CPV, adopted by Regulation (EC) No. 213/2008 is in use since 17/09/2008. The CPV consists of a main vocabulary for defining the subject of a contract, and a supplementary vocabulary for adding further qualitative information. The main vocabulary is based on a tree structure comprising codes of up to 9 digits (an 8 digit code plus a check digit) associated with a wording that describes the type of supplies, works or services forming the subject of the contract. (see <http://simap.europa.eu>). The CPV version 2008 is the current CPV version to: Fill the notices of calls for competition, Search business opportunities in TED, Find contract notices in the archive of TED (http://simap.europa.eu/codes-and-nomenclatures/codes-cpv/codes-cpv_en.htm).

⁴² Martin Kévin, 'Directive 2009/81/EC Statistical Report 2012', FRS, January 2013; 'Directive 2009/81/EC Statistical Report 2013', FRS, January 2014; 'Directive 2009/81/EC Statistical Report 2014', FRS, February 2015.

⁴³ The search on TED gave rise to the 2 381 contract awards notices, although 8 of them have been declared either fruitless, not followed up, cancelled, or have been deleted from the system. These notices have been removed from the statistics.

Growth in notices since 2011



The year 2012 can be considered as a transitional period given that, in July of that year, only 23 Member States had transposed the Directive into national law. Starting from the second semester of 2013, all EU Member States had completed this process. The years 2013 and 2014 thus provide a better indication of practices.

While the number of documents published over these past two years has been increasing, this increase is not as significant as expected, and above all it is due to a small group of Member States (France, Germany, and the United Kingdom).

Moreover, Member States (Portugal, Malta, Ireland and Spain) have not published documents on TED. This initial survey demonstrates an important disparity in the Member States' publication practices.

Contract Notices						
TOP10	2011	2012	2013	2014	TOTAL	
	Nb	Nb	Nb	Nb	Nb	%
FR	86	361	294	316	1057	34,58%
DE	8	171	202	239	620	20,28%
UK	1	65	60	115	241	7,88%
PL	0	0	81	148	229	7,49%
FI	2	44	43	43	132	4,32%
CZ	0	31	29	55	115	3,76%
DK	5	31	32	40	108	3,53%
SE	0	14	37	37	88	2,88%
IT	0	21	26	33	80	2,62%
RO	0	0	16	29	45	1,47%

It is apparent from an analysis by country and per year that, out of a total of 3057 **contract notices**⁴⁴ published on TED between the 21st August 2011 and the 31st December 2014, France and Germany account together for around 55% of the notices.

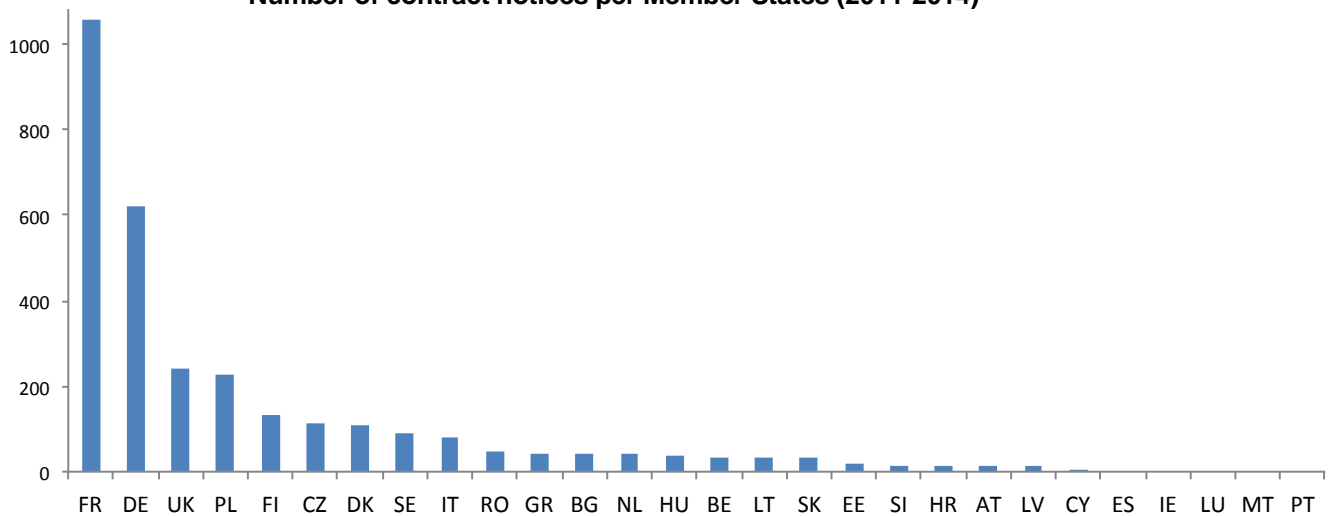
Next are the United Kingdom (7,9%) and Poland (7,5%), and there is then a significant gap to the rest of the Member States, with 17 Member States, ranging from 0,1% to 4,5%.

To date, 5 Member States have not yet published contract notices (Spain, Ireland, Luxembourg, Malta, and Portugal). Overall, the top 10 account for 89% of the contract notices published on TED.

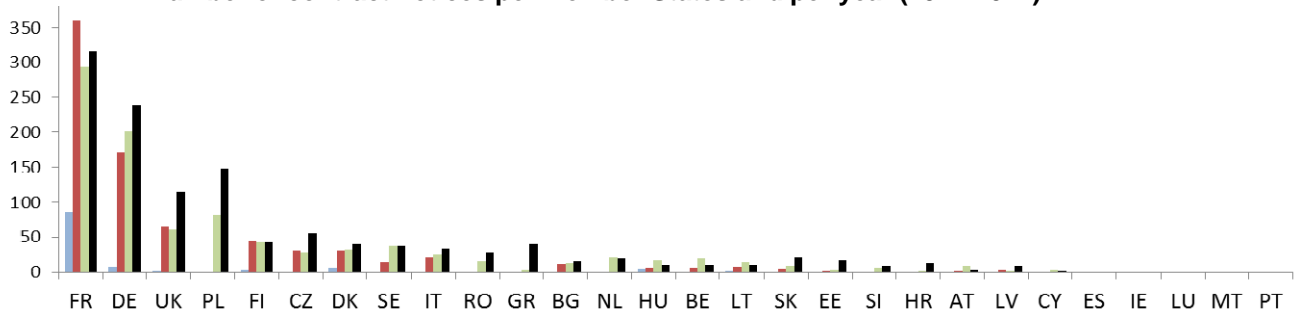
Poland's swift upsurge, in spite of its late transposition, should be highlighted, increasing from 81 contract notices published in 2013 to 148 in 2014 (+84%). France, at the head of the list right from the start, with a high point in 2012 (361 contract notices), seems to subsequently have stalled (-12,5% between 2012 and 2014).

⁴⁴ See the detailed table in the Annex 1.

Number of contract notices per Member States (2011-2014)



Number of contract notices per Member States and per year (2011-2014)



Contract Awards

TOP10	2011	2012	2013	2014	TOTAL	
	Nb	Nb	Nb	Nb	Nb	%
DE	3	89	205	253	550	23,18%
FR	0	42	237	232	511	21,53%
IT	10	109	100	108	327	13,78%
PL	0	3	35	171	209	8,81%
UK	0	31	55	86	172	7,25%
FI	0	26	36	45	107	4,51%
RO	0	0	22	58	80	3,37%
DK	0	17	23	32	72	3,03%
CZ	0	9	16	40	65	2,74%
HU	1	14	19	9	43	1,81%

Out of a total of 2373 **contract awards**⁴⁵, Germany, France, and Italy account together for a share of 58%.

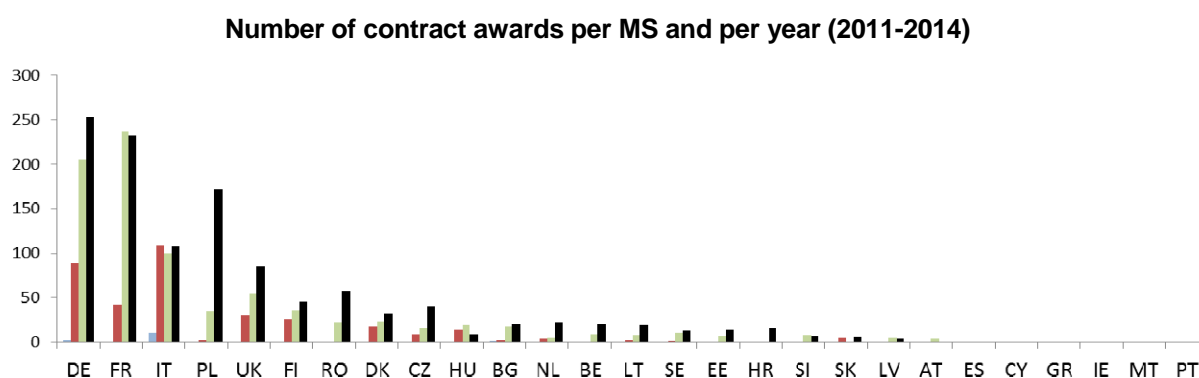
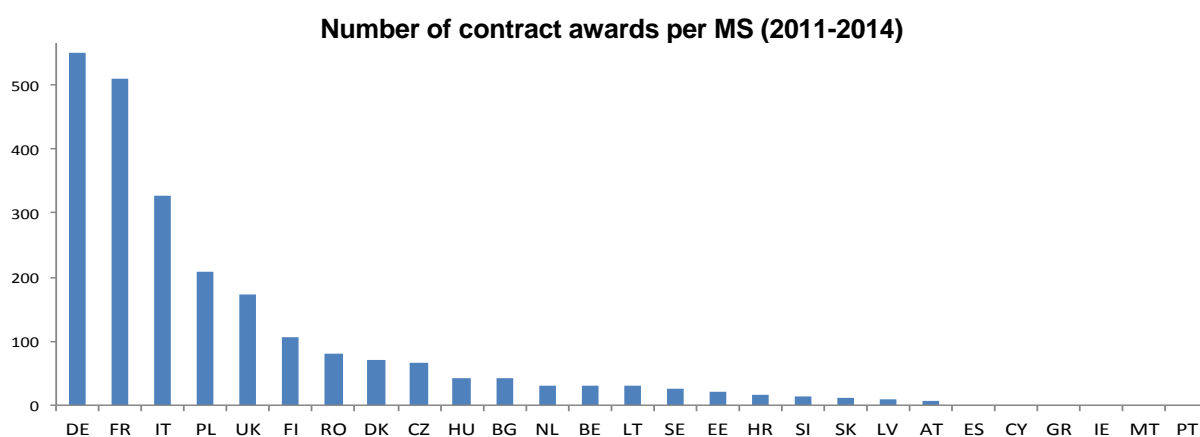
Poland and the United Kingdom follow, in the range of 7% and 9%, while the other Member States are all below the 5%.

6 Member States have not published contract awards (Portugal, Malta, Ireland, Greece, Cyprus, and Spain).

Thus, among the principal European State arms buyers and producers (France, the United Kingdom, Germany, Italy, Spain, and Sweden), Sweden is lagging far behind with only 25 *contract awards* over the period (and 88 *contracts notices*), while Spain has still not put Directive 2009/8 into practice despite the transposition of the text into national law⁴⁶.

⁴⁵ See the detailed table in the Annex 2.

⁴⁶ ‘Act on defence and sensitive security procurement’, (2011:1029) (LUFS), 1st August 2011 (entry into force on the 3rd November 2011).



The table below helps to illustrate several particularities in the publication practices of certain Member States.

- As previously underlined, Spain, Portugal, Ireland, Luxembourg, and Malta, have not yet published contract notices or single contract awards.
- Greece and Cyprus have published at least 50 contract notices but not a single contract award.
- Italy has published a much greater number of contract awards (327) compared with contract notices (80). This is also the case for Romania. This asymmetry seems to suggest frequent use of the negotiated procedure without prior publication, or the use of other procedures not foreseen in Directive 2009/81; a situation that has moreover been raised by the European Commission⁴⁷ in 2013.
- Italy and the Czech Republic also stand out due to their significant number of Prior Information Notices. This type of notice helps to reduce the timeframe for the reception of offers from candidates. When contracting authorities/entities have published a prior information notice, the minimum time limit for the receipt of tenders is shortened to 36 days, but under no circumstances to less than 22 days.
- The United Kingdom and Denmark, and to a lesser extent, Finland and Poland, are distinguished by the large number of publications of Voluntary ex ante transparency (VEAT) notices. This notice aims to provide voluntary prior transparency as referred to in Article 60.4 of Directive 2009/81/EC. A contracting authority can publish a contract

⁴⁷ Commission Staff Working Document on Defence, ‘Accompanying the Document Communication Towards a more competitive and efficient defence and security sector’, COM (2013) 542 final, SWD (2013) 279 final, 24.07.2013, p.15.

notice through VEAT if it intends to award a contract without prior publication or to award a contract by negotiated procedure without prior publication of a contract notice in the Official Journal of the European Union. If the administrative court has not received an application for a review before the expiry of the 'standstill period' (10 days, in some circumstances 15 days), the contract awarded without prior publication may subsequently not be subject to review. The advantage to the contracting authority is that the penalty of mandatory ineffectiveness does not apply in the event of a challenge to a contract awarded after the standstill period has elapsed.

The VEAT notice shall contain a justification of the decision of the contracting authority/entity to award the contract without prior publication of a contract notice in the Official Journal of the European Union (Article 64, Directive 2009/81/EC). The United Kingdom was the first Member State to use VEAT notices⁴⁸, and justifies this procedure largely for technical reasons connected with the protection of exclusive rights, or no tenders or no suitable tenders in response to negotiated procedure. For its part, Denmark also cites justifications linked to technical reasons, but also additional works/deliveries/services⁴⁹.

Number of notices published on TED (21.08.2011 until 31.12.2014)

	Buyer profile	Subcontract notices	Contract notices	Prior Information notices	Contract awards	Voluntary ex ante notices	Total
France	2	3	1057	5	511*	92	1670
Germany	1		620	17	550*	3	1191
United Kingdom		1	241	37	172	452	903
Italy	4		80	111	327*	25	547
Poland	3		229	1	209	82	524
Finland			132	2	107	98	339
Denmark			108	8	72	145	333
Czech Republic			115	143	65		323
Romania			45	3	80*		128*
Sweden			88	1	25	1	115
Bulgaria			41	3	42	1	87
Hungary	3		37		43		83
Netherlands			41	6	31*	1	79
Lithuania			34		30	6	70
Belgium			35	2	30	1	68
Slovakia			34	10	12	6	62
Greece			43	1	0		44
Estonia			20		21		41
Slovenia			15		15	11	41
Croatia			14		16	2	32
Latvia			12		9		21
Austria			12	1	6		19
Cyprus			4	1	0		5
Spain	1	1	0		0	1	3
Malta			0		0		0
Portugal			0		0		0
Luxembourg			0		0		0
Ireland			0		0		0
Total	14	5	3057	352	2373	927	6728

⁴⁸ Examples of British VEAT notices: Training simulators, Development of software for military applications, Helicopters (delivery of the 3rd pricing period of a 25 year contract for the support of Merlin helicopter availability), Sonars (Sensors Support Optimisation Project), Torpedoes (Spearfish Torpedo Upgrade Programme), Repair and maintenance services, LAIRCM system.

⁴⁹ And in a lesser extent, justifications related to 'the contract falls outside the scope of application of the Directive', or article 13(f) (contracts awarded by a government to another government), or article 10.2. (Contracts and framework agreements awarded by central purchasing bodies).

Contract awards notices: still too many "No Information"

As underlined in the article 31.3 of the Directive, contracting authorities/entities which have awarded a contract or concluded a framework agreement shall send a notice of the results of the award procedure no later than 48 days after the award of the contract or the conclusion of the framework agreement. The contract award notice shall contain the following information (Annex IV):

1. Name and address of the contracting authority/entity.
2. Award procedure chosen. In the case of a negotiated procedure without prior publication of a contract notice (Article 28), justification.
3. Works contracts: nature and extent of the services.
Supply contracts: nature and quantity of products supplied, where appropriate, by the supplier; CPV nomenclature reference no(s).
Service contracts: category and description of the service; CPV nomenclature reference no(s); quantity of services purchased.
4. Date of contract award.
5. Contract award criteria.
6. Number of tenders received.
7. Name and address of the successful economic operators.
8. Price or range of prices (minimum/maximum) paid.
9. Value of the tender (tenders) retained or the highest tender and lowest tender taken into consideration for the contract award.
10. Where appropriate, proportion of contract to be subcontracted to third parties and its value.
11. If appropriate, the reasons for the framework agreement lasting more than seven years.
12. Date of publication of the tender notice in accordance with the technical specifications for publication in Annex VI.
13. Date of dispatch of this notice.

The table below presents a statistical analysis of information not provided by contracting authorities/entities in the framework of contract awards notices (out of a targeted panel of requested information). It is apparent that the contracting authorities/entities have a tendency to provide more information as the years go by, in particular the 'Type of procedure', the 'Estimated total value of contract', the 'Total final value of contract', the 'Number of tender received', the 'Contract award criteria', the 'Successful economic operator' (Name, address) and the 'Information about subcontracting'.

Contract awards notices: % No Information

	2011	2012	2013	2014	TOTAL
	16 contract awards notices	359 contract awards notices	822 contract awards notices	1176 contract awards notices	2373 contract awards notices
Type of procedure	6,25%	0,00%	3,89%	0,94%	1,85%
Estimated total value of contract	43,75%	72,70%	72,90%	58,47%	65,53%
Total final value of contract	6,25%	24,23%	24,54%	23,15%	23,68%
Number of tender(s) received	0,00%	38,16%	26,97%	26,55%	28,28%
Contract award criteria	6,25%	48,19%	30,26%	26,04%	30,72%
Information of the successful economic operator*					
<i>Name of economic operator</i>	6,25%	15,04%	3,40%	2,13%	4,55%
<i>Address of economic operator (country)</i>	6,25%	15,32%	3,52%	2,21%	4,68%
Information about subcontracting	6,25%	15,88%	4,50%	4,00%	5,98%
	6,25%	48,75%	32,69%	29,96%	33,59%

However, significant disparities exist. 'Type of procedure' and 'Information of the successful economic operator' are generally provided by the contracting authorities/entities, with an average rate of 'No Information' less than 2% for the former and less than 5% for the latter.

'Total final value of contract' is not specified by the contracting authorities/entities in an average of 24% of cases over the period. No significant improvement is discernible in 2013 and 2014. An analysis of Member States practices demonstrate that Sweden, the Netherlands, Belgium, Denmark, and Germany can be characterised by the small amount of information provided regarding the final value of the contract (from 88% 'No Information' for Sweden, to 48% 'No Information' for Germany).

Concerning information relating to 'Contract award criteria' and 'Number of tender(s) received', the level of 'No Information' remains high: around 26% in 2014 (30% over the period 2011-2014), even though the situation has been improving since 2012, notably for 'Contract award criteria'.

An approach by Member State highlights the fact that Italy, Denmark, Sweden, France, and Finland are the States that, on average over the entire period, demonstrate the highest level of 'No Information' for the item 'Contract award criteria' (between 71% for Italy and 36% for Finland).

Regarding the 'Number of tender(s) received', Finland is at the head of the list of States providing the lowest amount of information on this point (73% 'No Information' from 2012-2014; 84% in 2014), followed by Denmark (72 % 'No Information' from 2012-2014; 63% in 2014), and Italy (68 % 'No Information' from 2012-2014; 66% in 2014).

In the framework of contract awards notices, the contracting authorities/entities are supposed to provide 'where appropriate, the proportion of contract to be subcontracted to third parties and its value'. In 2014, around 1/3 provided no information about subcontracting (34% 'No Information'). Furthermore, when information on this item is provided (the contract is likely to be sub-contracted: YES or NO), 50% respond in the negative, and 16% in the affirmative (385 contract awards). And in the latter case (YES), around 70% do not give any figures about the value or proportion of the contract likely to be sub-contracted to third parties. It is important to underline here that more than half of the 385 contract awards concerned, stem from German contracting authorities/entities, which provide almost no information on the value or the proportion.

Total Value of contract awards notices: €10.53 billion only...

In value, contract awards notified between the 21st August 2011 and the 31st December 2014 represent around €10.53 billion⁵⁰. It is important to underline that this figure does not reflect the entirety of contract awards over the period in question. Indeed, 562 contract award notices, out of a total of 2373, do not contain any information on this particular point.

An analysis by Member State demonstrates the preponderant weight of the United Kingdom, with 38% of the total amount between 2011 and 2014 (€3.99 billion), followed by France (26%; €2.77 billion).

⁵⁰ 562 Contract awards (23.28% of the total number) do not specify an exact value.

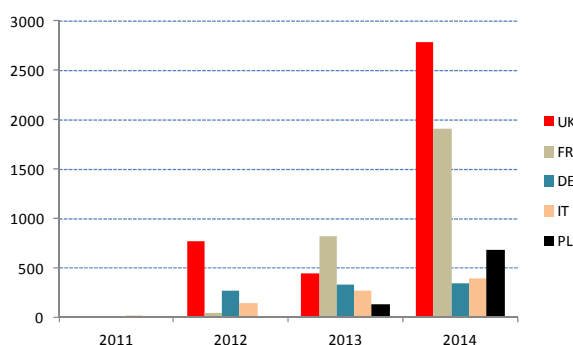
The cumulative share of these two Member States in addition to that of Germany (9%; €949 million), Italy (8%; €831 million) and Poland (8%; €816 million) represents 89% of the total amount. The contracts notified by the other 23 Member States during the period thus amount to no more than 11% (around €1.1 billion) ... with each Member State located in the range of 0,1% and 2% (Finland and Romania are each around 2%; the others have a share of less than 1%)⁵¹.

Although a comparison with Member States' spending on equipment is not rigorous from a methodological point of view, it nonetheless helps to put the size of the markets notified via Directive 2009/81/EC into perspective. For instance, for the year 2012, a period for which aggregated budgetary data is available (European Defence Agency, Defence Data 2012, edited in 2013), the total value of EDA pMS Aggregated National Defence Equipment Procurement Expenditure reaches €28.1 billion (without European Collaborative Defence Equipment Procurement). For the year 2012, the amount of the contracts attributed via the Directive represents less than 5% of the spending on equipment.

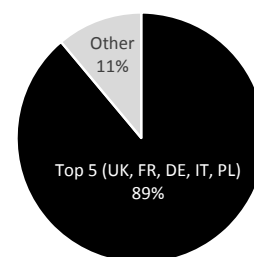
Total value of contracts in €million, per year

Year	Value (M€)	% total
2014	6 846,78	65%
2013	2 323,51	22%
2012	1 341,31	13%
2011	22,16	<1%
TOTAL	10 533,77	100%

Values of contracts in €million per year, for 5 MS



Total value of contracts: Top 5 MS (%)



While the year 2013 can be distinguished by an increase in the total amount of *contract awards* (+73% to €2.32 billion), the year 2014 demonstrates a significant rise with a total value of €6.85 billion. Thus, over the period 2011-2014, the final year accounts for around 65% of the total, due to significant contracts notified by the United Kingdom in the field of services and facilities management, and by France on the segments covering Repair and maintenance services of military aircrafts and the acquisition of military equipment (rockets).

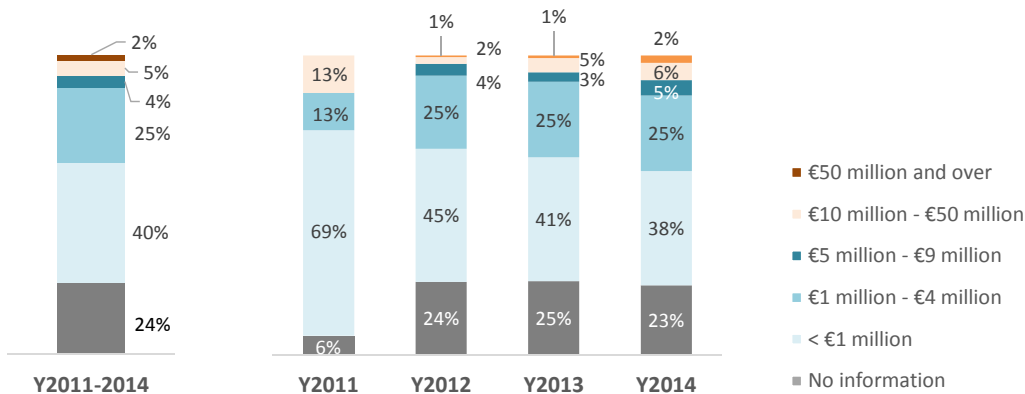
⁵¹ See the detailed table in the Annex 3.

Top 10 Major contracts awards, published on TED, in €million

Contracting authority		Publication date	Information about the contract award	Value
				Local currency
UK	Command & Centre, DE&S	10/2012	Technical services (Framework Agreement for Technical Support FATS/4)	550 M€
UK	Ministry of Defence, DIO	06/2014	Real estate services (Strategic Business Partner for Defence Infrastructure Organisation)	400 M€
FR	Ministry of Defence, Simmad	09/2014	Repair and maintenance services of military aircrafts, missiles and spacecrafts (CASA Transport aircraft)	379,7 M€
UK	National Training Estate Prime	07/2014	Building and facilities management services	319,5 M€
UK	Ministry of Defence, DIO	08/2014	Building and facilities management services (Regional Prime Central)	234,3 M€
FR	Ministry of Defence, DGA/SCA	12/2014	Rockets	229 M€
UK	Ministry of Defence, C&C	08/2014	Technical training services (Defence College of Technical Training Electro-Mechanical Training Contract)	180 M€
FR	Ministry of Defence, Simmad	06/2013	Repair, maintenance and associated services related to aircraft and other equipment	198,5 M€
UK	Ministry of Defence	08/2014	Building and facilities management services (Regional Prime South East)	148,3 M€
UK	Ministry of Defence	08/2014	Building and facilities management services (Regional Prime South East)	132,6 M€

Moreover, when the amount is provided by Member States (562 contract awards notices display *No Information*), it is apparent that the number of contracts with a value above €5 million is very low, around 11% of the contracts notified by Member States during the period 2011-2014 (a total of 255 contracts).

Number of contract awards, by value range



The vast majority of the contracts awarded under the Directive 2009/81/EC involve contracts with relatively small amounts. The contracts ranging from €1 million to €5 million account for 25% of the total, and those with a total less than €1 million account for 40%; in other words 65% of the contracts are below €5 million.

The number of major contracts - exceeding €50 million - is increasing: 2 in 2012, 7 in 2013, and 29 in 2014. The same is true for the contracts ranging from €10 million to €50 million, namely their number is increasing, from 2 in 2011 to 68 in 2014. But overall, the Directive does not, at the present time, seem to be favoured for the major equipment contracts.

Openness and competition

Procurement procedures

Within the Directive 2009/81/EC, the various procedures at the disposal of contracting authorities/entities represent different degrees of transparency and competition.

- Contracting authorities/entities may choose to contract awards by applying the Restricted procedure and the Negotiated procedure with publication of a contract notice (Article 25).
- In the case of particularly complex contracts, Member States may award their contracts by means of a Competitive dialogue (Article 27).
- In the specific cases and circumstances, the contracting authorities/entities may apply a Negotiated procedure without publication of a contract notice (referred to expressly in Article 28).

Contract notices: type of procedures, per year

Procedures		2011	2012	2013	2014
Competitive dialogue	Nb	0	1	2	1
	%	-	0,13%	0,21%	0,08%
Restricted procedure*	Nb	70	368	415	667
	%	65,42%	47,36%	44,20%	54,14%
Negotiated procedure*	Nb	37	406	502	563
	%	34,58%	52,25%	53,46%	45,70%
Not applicable	Nb	0	2	20	1
	%	-	0,26%	2,13%	0,08%
Total		107	777	939	1232

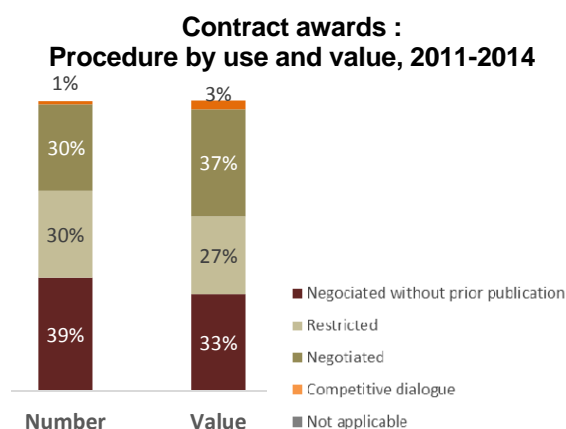
* accelerated procedure included

As such, an analysis of the **contracts notices** published by Member States over the period 2011-2014 demonstrates that the Negotiated procedure⁵², the majority until 2013, falls to second place in 2014.

During this last year, Restricted procedures are preferred with a level of 54% compared to 45% for Negotiated procedures.

The remaining 1% comes under Competitive dialogue, thus used very sparingly by public purchasers.

This shift is largely the result of Poland's upsurge. In 2014, out of 148 contract notices, the Polish contracting authorities/entities favoured the use of a Restricted procedure (or accelerated restricted) in 74% of the cases.

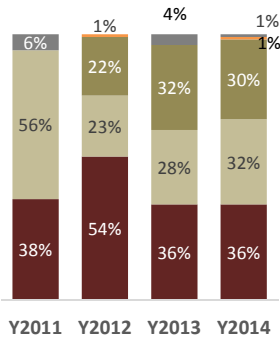


An analysis of **contracts awards** over the period 2011-2014 shows that in 60% of cases a prior publication of a contract notice was established by Member States. Although in this framework, the Restricted and Negotiated procedures were applied almost equally numerically speaking (705 vs. 701), the situation is inverted in terms of the total value (€2.8 billion vs. €3.8 billion). This means that for the most significant contracts in terms of value, the Member States favoured the use of Negotiated procedure. Such is the case for 7 of the 10 major contracts since 2011.

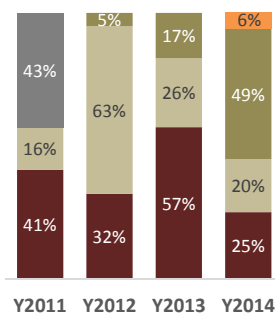
⁵² Including accelerated negotiated.

Furthermore, Award of a contract without prior publication of a contract notice accounts for 39% in terms of numbers (917) and 33% of the total value (€3,5 billion). Italy is the Member State that has had the greatest recourse to this procedure. The Competitive dialogue procedure was used for 6 contracts (3 FI, 1 UK, 1 DE, 1 AT) and thus remains extremely marginal.

Procedures by Number (%)



Procedures by Value (%)

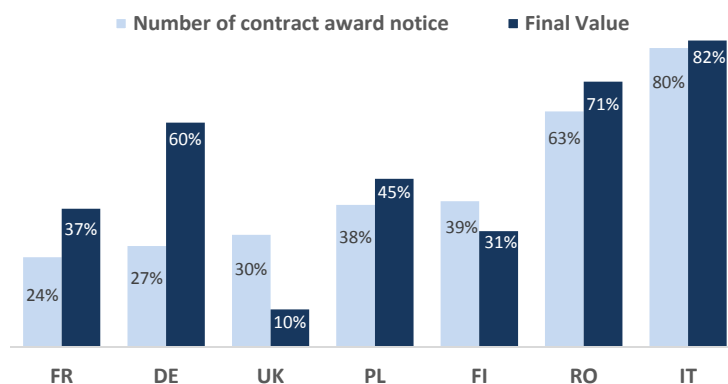


An analysis by year underlines a certain level of stabilisation, in terms of numbers, of the different types of procedures used, with each being used almost 30% of the time (with the exception of Competitive Dialogue) in 2013 and 2014. In terms of values, it is apparent that the contracts involving a Restricted procedure have reduced considerably, falling, from 63% in 2012 to 20% in 2014. Over the same period, Negotiated procedure increased, from 5% in 2012 to 49% in 2014.

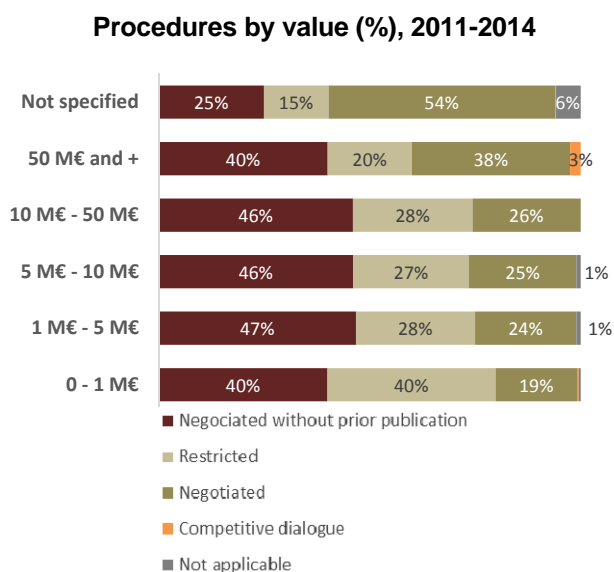
Moreover, the year 2014 was marked by a major contract awarded by the United Kingdom (National Training Estate Prime) *via* the Competitive dialogue procedure for a total of £319 million (Building and facilities management services), accounting for 6% of the total value of contracts awarded during the year under the Directive 2009/81/EC.

Of the Member States that notified the greatest number of contract awards (DE, FR, IT, PL, UK, FI, RO), Italy and Romania are distinguished by a level of Award of contract without prior publication of a contact notice procedure higher than 60%, with Finland, Poland, and the United Kingdom ranging from 30% to 40%, followed by Germany and France between 20% and 30%.

Award contract without prior publication of a contract notice (%)



As the bar chart above illustrates, a value-based approach clearly distinguishes Italy and Romania, but also Germany. With regard to the latter Member State, this procedure represents a 27% share of the number of contract awards, but 60% in terms of final value.



An analysis of the different types of procedures, by value, from 2011 to 2014, confirms that the Negotiated without prior publication procedure is heavily favoured, irrespective of the value range.

Only contracts under €1 million show recourse to the Restricted procedure at the same level as the Negotiated without prior publication procedure.

As for contracts of a total lower than €50 million, the Member States mostly use the Negotiated **without** prior publication procedure (40%), then the Negotiated **with** publication of a contract notice procedure (38%), followed by the Restricted procedure (20%), and finally Competitive dialogue (3%).

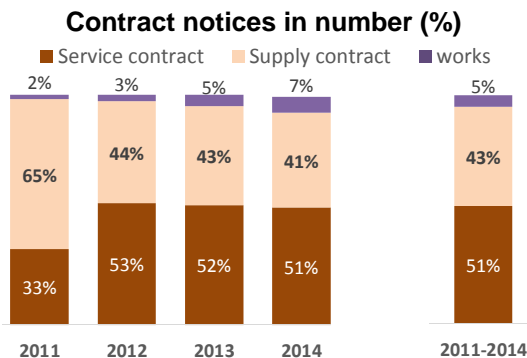
When the contracting authorities/entities award contracts by a Negotiated procedure without prior publication of a contract notice (a total of 917 contracts over the period 2011-2014), they shall justify the use of this procedure in the contract award notice as required in Article 28. In 99% of cases, the Member States justify this choice of procedure⁵³, by notably invoking:

- In the vast majority of cases (89%), the primary justification involves 'technical reasons or reasons connected with the protection of exclusive rights' (Article 28.1.e), such as in VEAT cases.
- To a lesser extent, the other justifications (10%) refer to: 'Additional works/deliveries/services', 'No tenders or no suitable tenders in response to negotiated restricted or competitive dialogue'(Article 28.1.a.), and 'for reasons of extreme urgency brought about by events unforeseeable by the contracting authorities/entities' (Article 28.1.d).

⁵³ For 6 contract awards, no justification is given (3 CZ; 2 FR and 1 DE).

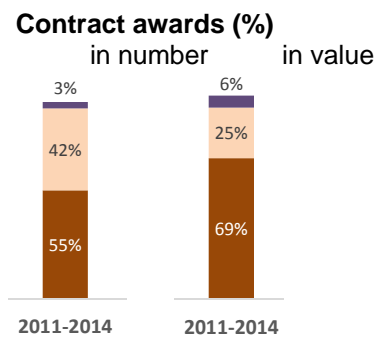
Type of contracts: a majority of services contracts

A majority of service contracts



An analysis of contracts notices by type, ‘Supply contracts’⁵⁴, ‘Service contracts’⁵⁵, and ‘Works contracts’⁵⁶ underlines the predominance of Service contracts notices over the period 2011-2014, representing a share of 51%.

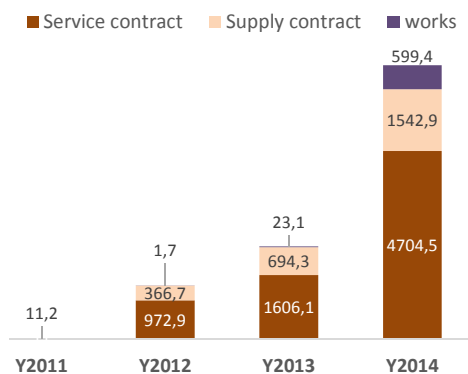
Since 2012, this share has remained relatively stable.



Concerning contract awards over the period 2011-2014, fairly logically, services are in the majority in both number (55%) and value (69%).

1308 service contracts were awarded for a total of €7.3 billion, against 989 supply contracts for €2.6 billion.

Growth in contract awards (in €million)



Since 2012, the value of service contracts has almost quadrupled, rising from €973 million to €4.7 billion. Significantly behind, supply contracts rose from €367 million to €1.5 billion over the same period.

In 2014, the share of works contracts broke the €600 million barrier for the first time, as a result of the notification of 2 British contracts.

⁵⁴ Article 1.4. ‘Supply contracts’ means contracts other than works contracts having as their object the purchase, lease, rental or hire-purchase, with or without the option to buy, of products. A contract having as its object the supply of products and which also covers, as an incidental matter, siting and installation operations shall be considered to be a ‘supply contract’.

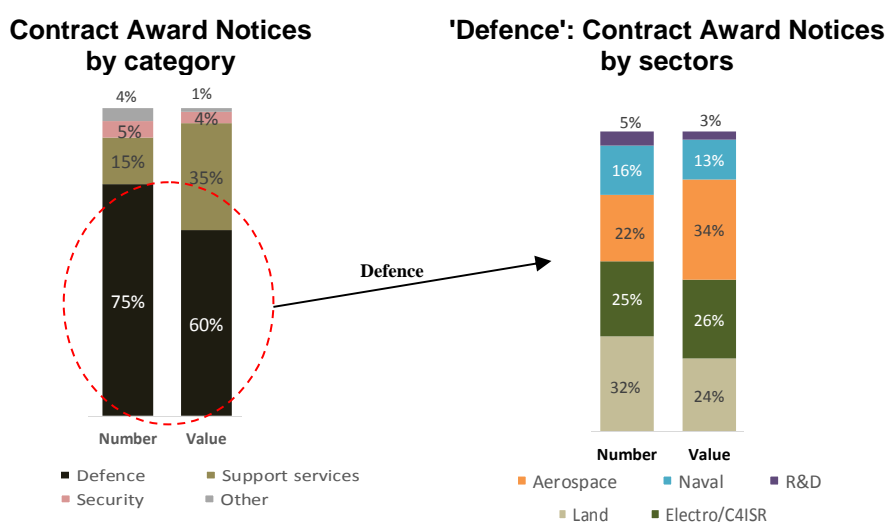
⁵⁵ Article 1.5. ‘Service contracts’ means contracts other than works or supply contracts having as their object the provision of services. A contract having as its object both products and services shall be considered to be a ‘service contract’ if the value of the services in question exceeds that of the products covered by the contract. A contract having as its object services and including activities mentioned in Division 45 of the CPV that are only incidental to the principal object of the contract shall be considered to be a service contract.

⁵⁶ Article 1.3. ‘Works contracts’ means contracts having as their object either the execution, or both the design and execution, of works related to one of the activities mentioned in Division 45 of the CPV, or a work, or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority/entity. A ‘work’ means the outcome of building or civil engineering works taken as a whole that is sufficient of itself to fulfil an economic or technical function.

A majority of contract awards in the field of 'Defence', mainly in the Aerospace sector (repair and maintenance services)

In order to better understand the profile of contracts awarded under the Directive 2009/80/EC, we have broken down the contract award notices into four major categories (the methodology is presented in the Annexes⁵⁷):

- **Defence:** supplies and services directly related to military equipment⁵⁸ (including any parts, components and/or subassemblies)
- **Security:** supplies and services directly related to sensitive equipment (including any parts, components and/or subassemblies)
- **Support Services**
- **Other**



In both number and value, the majority of contract awards are in the field of 'Defence' (75% in number, 60% in value). The contract awards in the field of 'Security' are marginal. The contracts that we have classified under 'Support Services' represent 15% in number and 35% in value (greatly linked to British contract awards⁵⁹).

Concerning the contracts in the field of 'Defence', and through the breakdown of contract awards by sectors (Aerospace, Land, Naval, Electro/C4ISR, R&D), the contracts relating to Land sector⁶⁰ were predominant, followed by the Electronic and Aerospace sectors. However, in terms of value, the Aerospace sector is clearly in pole position, comprising €2,1 billion out of the 'Defence' total of €6,3 billion.

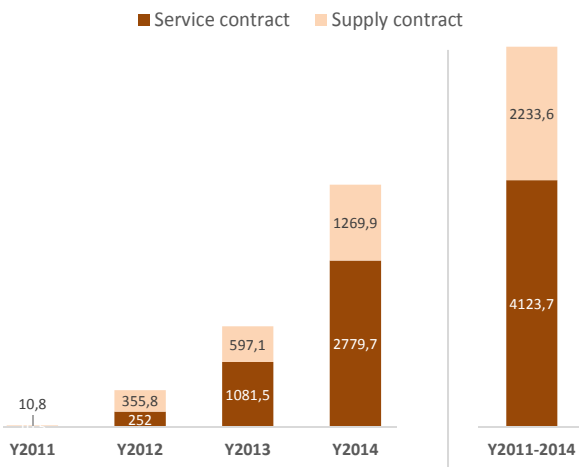
⁵⁷ Annex 6.

⁵⁸ 'Military equipment' means equipment specifically designed or adapted for military purposes and intended for use as an arm, munitions or war material.

⁵⁹ For the United Kingdom, out of the 10 major contracts, 8 fall into the 'General Support' category: Framework agreement FATS4 for £550 M; Selection of Strategic Business Partner for DIO for £400 M; National Training Estate Prime for £319,5 M; Regional Prime Central for £234,3 M; 2 contract awards relating to the regional Prime South East for £148,3 M and £132,7M; Defence Mechanical Handling Equipment for £87,2M; Principal Support Provider - HMNB Clyde for £64 M.

⁶⁰ This assessment is the result of German contracts notified by the HIL contracting authority (which manages the MCO of the fleet of military vehicles of the German armed forces). HIL published 194 contract awards notices (but for 99% of these contract awards notices, HIL did not specify the final value).

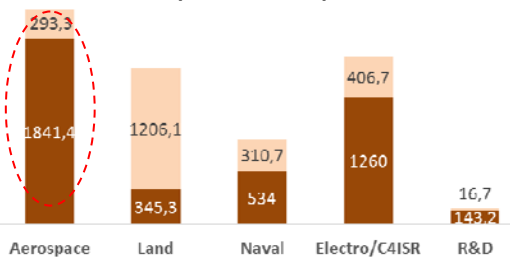
**Defence: services / supply contracts
 (in €million)**



Furthermore, service contracts (directly related to military equipment) account for a share of 65% over the period 2011-2014 (with a high point in 2014, at 69%). The weight of service contracts is particularly important for the Aerospace sector, reaching 86% (€1.8 billion out of a total of €2.1 billion), as the graph illustrates. The services are related to 'repair and maintenance services of military aircrafts, missiles and spacecrafts', and 'training and simulation in aircrafts, missile and spacecrafts'.

The 3 service contracts in the Aerospace sector with the highest value (> € 100 million) were awarded by France in 2014⁶¹.

**Defence subsectors: services / supply contracts
 (in €million)**



This situation is repeated for the Naval and Electro/C4ISR sectors. Only the Land sector stands out with a 78% share of supply contracts (but due to the lack of information regarding the value of service contracts passed by the German contracting authority HIL)⁶².

As such, under the Directive 2009/80/EC, the contracts relating to the acquisition of military equipment remain limited in both number and value. The first contract is valued at approximately €229 million. In December 2014, the Swedish defence and security company Saab Dynamics (subsidiary of Saab Group) was awarded a contract by the French Ministry of Defence procurement branch (DGA) to supply the Roquette Nouvelle Generation, (Roquette NG) next-generation shoulder-launched weapon system for the French armed forces⁶³. The contract also incorporates an integrated logistics and support package with an extensive training suite, including deliveries of outdoor training simulators from Saab. The Swedish company has teamed up with NEXTER Munitions in Bourges, France, for engineering and logistical support throughout the programme. Other contracts relating to the acquisition of

⁶¹ (Ministry of Defence/SIMMAD; Airbus Military France; €354,8 million) + (Ministry of Defence/SIMMAD; Sabena Technics DNR; €108,4 million) + (Ministry of Defence/SIMMAD ; Airbus helicopters ; €100,1 million).

⁶² See Footnote 59.

⁶³ The Roquette NG is a general-purpose weapon system which will be employed by all three branches of the French armed forces (Army, Air Force and Navy). The contract is a multi-stage agreement with one fixed element and eight consecutive options over the period 2015-2024. The new weapons are part of the AT4CS family and build upon Saab Dynamics' modular 84-mm product range including the renowned Carl-Gustaf multi-purpose reloadable weapon system and the AT4 family of disposable weapons. Saab AB press release, 08.12.2014.

vehicles (KMW, RDE), or Multi-Purpose Vessels⁶⁴ (Kership, a joint company founded in 2013 by PIRIOU and DCNS⁶⁵).

Successful economic operator: 84% based on national territory

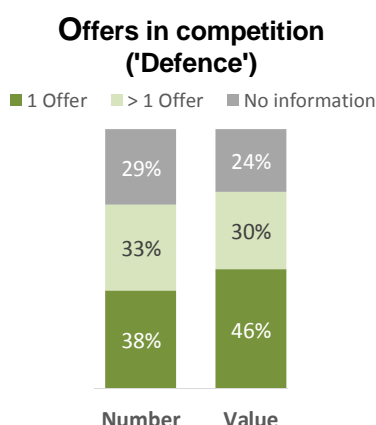
Offers in competition

In the framework of contract awards notices, Directive 2009/80/EC specifies that the information requested from contracting authorities/entities notably includes the 'number of tenders received' and the 'name and address of the successful economic operators'.



Information relating to 'number of tenders received', provides a clearer idea of the reality of the situation regarding competition. It is also apparent that over the period 2011-2014, a proportion of 35% of contract awards notices (33% in value) received one offer, compared with 37% that received several offers. The number of contracts that received several offers is, however, showing an upward trend, rising from 32% in 2012 to 40% in 2014.

Yet it is important to note that a third of contract awards notices do not provide any information on the number of offers received.



Looking specifically at the 'Defence' category, it is not at all discriminating in terms of numbers. The spread is fairly close to the average of all contract awards notices.

However, a value-based approach helps to nuance the analysis. The proportion of contracts for which one bidder entered competition reached 46% over the period 2011-2014. In 2013, this share was 70%.

According to the procedures used by Member States, it appears that the proportion of contracts for which more than one bidder entered competition is 68% for Restricted procedures, and 51% for Negotiated procedures with prior publication of a contract notice, a fact that means that the proportion of contracts for which one bidder entered competition remains high, particularly in the framework of Negotiated procedures.

For negotiated procedure without prior publication, the key point is that contracting authorities/entities communicate very little information on the number of offers (no information: 46%).

⁶⁴ B2M Contract: vessel to perform public service missions such as humanitarian assistance, pollution response, logistic support and SAR as well as military operations such as patrol, counter piracy or illegal immigration prevention.

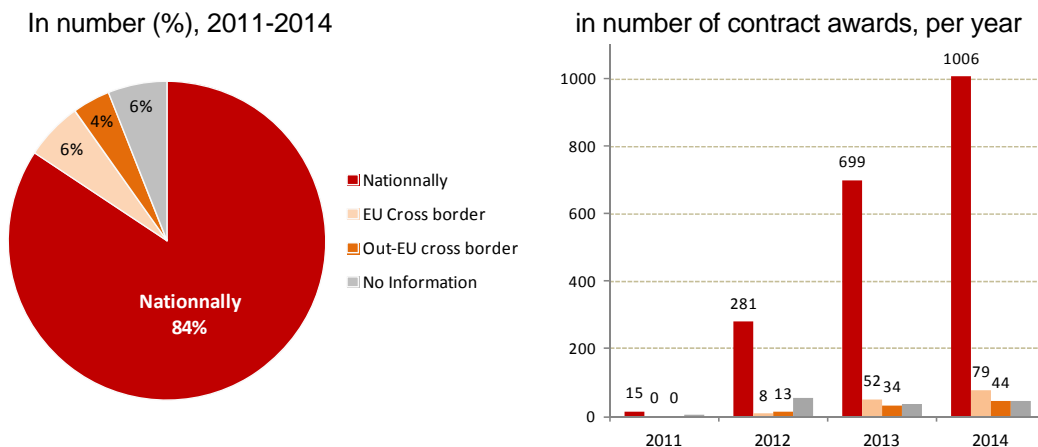
⁶⁵ 'Piriou et DNCS remportent le contrat B2M', Piriou Communiqué de presse, 09.01.2014.

	1 offer	> 1 offer	No Information
Restricted	20%	68%	12%
Negotiated with prior publication	27%	51%	23%
Negotiated without prior publication	51%	4%	46%

Selected suppliers: 84% based on national territory

When the contracting authorities/entities provide the name and address of the successful economic operators, in 84% of cases, the selected supplier is based on national territory. In terms of value, this share reached 92% in 2013 and 94% in 2014 (the high point during the period in question).

Location of the successful economic operator



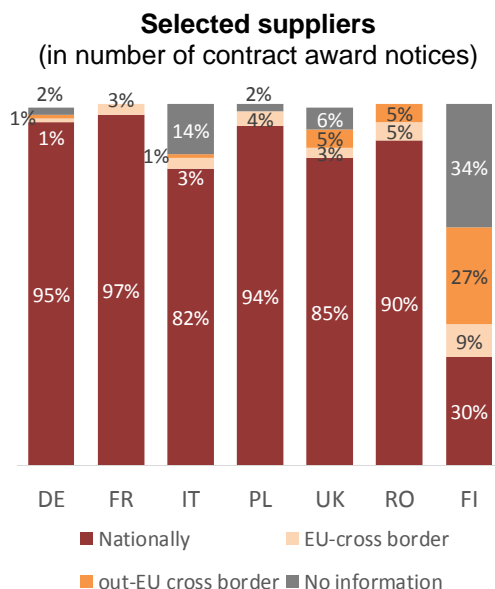
National location can refer to a diverse profile of suppliers:

- A company whose headquarters is located on national territory and a majority of whose capital is held by private and/or State national shareholders
- A company whose headquarters is located on national territory and whose capital is held by a variety of shareholders (national and foreign)
- A subsidiary entirely owned by a European group (e.g. Finmeccanica/Selex ES in the United Kingdom)
- A subsidiary entirely owned by a non-European group (e.g. General Dynamics ELS in Spain, Lockheed Martin UK in the United Kingdom)
- A joint venture (co-owned by companies whose headquarters is located on national territory; or co-owned with a European or non-European partner)

The remaining 16% break down as follows:

- Economic operators whose address is given in another European country, accounting for 6% (139 EU cross-border contract awards, €271.4 million). In terms of location (ranked by number of order), addresses are given in Germany, the United Kingdom, and to a lesser extent in France, then Belgium, Denmark, Sweden, the Netherlands, Spain, and Italy.

- Economic operators whose given address is outside the EU, accounting for 4% (91 out-EU cross border contracts, €183.1 million). 62% of the out-EU cross border contract awards were won by American companies, in particular General Electric, Harris Corp., L-3, Lockheed Martin, Parker Hannifin, and Boeing.
- For 6% of the contract award notices, the contracting authorities/entities did not provide any information; this involves for the most part notices from Italy and Finland.



An analysis focused on the Member States that have published the most contract award notices (and if we consider non-specified addresses as national, as the European Commission does) demonstrates that the proportion of selected suppliers located on national territory reaches 98% for Germany, 97% for France, 96% for Italy, 96% for Poland, 92% for the United Kingdom⁶⁶, 90% for Romania, and 64% for Finland.

The 27% of out-EU Finnish cross-border contracts represent contracts for supplies and services linked to the F-18 Hornet aircraft and were awarded to American companies.

The top 10 (Thales, Airbus Group, Carillion, Capita, Finmeccanica, Landmarc Security, Saab AB, MBDA, Babcock International, CNH Industrial) won 11% of the contracts (256 contracts awards) representing 41% of the total amount (€4,29 billion).

They are followed by a group of companies (Aerostar, BAE Systems, Compagnie Nationale de Navigation, Cobham, Dassault Aviation, DCNS, Diehl, Fincantieri, FN Herstal, IAR, KMW, MAN, Nammö, Nexter, Patria, QinetiQ, Pern Przyjazn, Rheinmetall, Rolls Royce, Rosomak, Safran, Seyntex, Zodiac, Sabena Technics, Terma and Volkswagen) that won 13% of the contracts (303 contracts awards), accounting for 15% of the total amount (€1,55 billion).

The European subsidiaries of the foreign firms Briggs, Jacobs, General Dynamics, Lockheed Martin, Chapman Freeborn, AECOM, Parker Hannifin, Caterpillar, Garda World, Raytheon, Rockwell Collins, L-3 Communications and Boeing won 1% of the contracts (34 contracts awards), representing 5% of the total amount (€553,96 million).

⁶⁶ The 'No Information' part is linked to the contract FATS/4.

TOO SOON AND RELATIVELY UNFAIR TO SAY ... NO EFFECT

Instability

With regard to this analysis of the implementation of the Directive since its entry into force in August 2011, and above all since its transposition in the majority of Member States (which had been carried out in the majority of Member States at the end of 2012, and in all of them by mid-2013), the situation is not satisfactory. While concretely today acquisition practices seem to show an incomplete and incorrect application of the Directive, with de facto a limited or even non-existent impact on the DTIB, could the case be any different after only three years of implementation? It is indeed too hasty and premature to draw conclusions from such a short period, all the more so given that it generally takes 5 to 10 years for a directive to be fully applied, and this is referring to the civilian sector. Although this new regime is not yet functioning satisfactorily at the present time, the Directive represents an important step in a sector such as defence, which is marked by a significant degree of opacity in acquisition practices.

In the short term, this period of transition should allow the Commission to set a course and ensure the harmonisation of transposition texts and the coherence of practices among Member States. The most important, and perhaps the most urgent point, given the longstanding nature of 'bad' practices, is for the Commission to fully assume its 'watchdog role'. Setting a course means not allowing old practices that were manifestly contrary to EU law to continue and not allowing new bad practices to become engrained (at the risk of legitimising them). The Commission should already be supporting Member States in their efforts to reform their purchasing policy, while at the same time publicising to a greater degree the action taken against certain Member States that are not playing the game⁶⁷, and, where appropriate, deciding to refer the Member States to the European Court of Justice.

Learning time and mutual assistance

A certain period of apprenticeship is necessary in order to integrate all of the Directive's content and the legal specificities, all the more so seeing as the Directive is flexible and gives public buyers a significant amount of leeway. From one Member State to another, public buyers are more or less tough on the regulation linked to contract awards in the field of defence and security, for instance according to whether or not they used Directive 2004/18/EC prior to the entry into force of Directive 2009/81/EC. Therein lies the importance in the context of prioritising information sharing and the exchange of experiences and best

⁶⁷ Following infringement proceedings, the Commission considered referring the Czech Republic to the EU Court of Justice in 2010, for breaching EU public procurement rules (2004/18/EC) by not opening up to EU-wide competition a contract for 4 military tactical transport aircraft. In November 2011, the EC has closed investigations as the Czech Republic has ensured that contracting authorities will in future limit the use of the Article 346 TFEU. This clarification was made in the transposition of the Directive 2009/81/EC and brings the Czech legislation in line with the Commission's position. Moreover, although the Commission continues to consider that the purchase of aircraft in 2009 should have been subject to EU-wide tendering procedures, the public supply contract in question has already been fully performed (See 'Public procurement: Commission closes its investigations concerning the purchase of military transport aircraft by the Czech Republic', European Commission Press Release, 24 November 2011); In September 2012, the EC has sent separate letters to the Defence Ministers of Romania, Bulgaria and the Czech Republic, after it became concerned about possible moves (planned purchases of fighter jets from the stocks of other countries), likely to violate the Directive 2009/81/EC (EU warns Romania, Bulgaria, Czechs over defence procurement, Actmedia Romania News Agency, 4 September 2012).

practices among national administrations, and of training public buyers, in order to guarantee a standard level of knowledge and competence.

This reciprocal support should allow for an improvement in understanding the text and for an adjustment in practices, particularly regarding the following points:

- The boundaries between what falls under Directive 2009/81/EC and Directive 2004/18/EC.
- The different types of procedures and the selection criteria (the more these criteria are shared the greater the readability and the predictability will be for suppliers concerning the conditions to win a contract).
- The correct use of CPV codes, associated where appropriate with discussions between buyers and users on improving the TED interface.
- The notions of Security of Information and above all Security of Supply, particularly what that means concretely in terms of selection criteria. For instance, Finland has developed interesting purchasing practices that display a good grasp of the issue of Security of Supply, experience that could be shared with other Member States.

The European Commission has published seven Guidance Notes (Field of Applications, Exclusions, R&D, Security of Supply, Security of Information, Subcontracting, Offsets) and is planning to release two more in 2015 on Government-to-Government sales (Article 13.f)⁶⁸ and Purchases under international agreements and international organisations (Article 12)⁶⁹. These two notes thus constitute the perfect opportunity for the Commission to establish a dialogue with Member States on subjects that have previously never been addressed in a formalised and open manner. Moreover, this aspect constitutes progress in and of itself.

However, up until now, dialogue has focused on the issue of exclusions, which appear to cause problems of interpretation, with a view to remedying it, and to ensure that these exclusions are interpreted strictly (and not used to circumvent the Directive). This mobilisation of different stakeholders on the question of exclusions structures discussions according to a frame of reference that is marked by practices which precede the Directive. This approach focuses on the glass half-empty when it should concentrate on the glass half-full (as little full as it may be...). The angle is different and it would initially contribute to centring current efforts on the correct application of the Directive for all of the contracts that fall under domains that are not excluded (which is by no means the case today), and then to adjusting acquisition practices that may become exclusions. The margin for progress is thus significant.

⁶⁸ Government-to-government sales (Article 13.f): launch of a fact-finding exercise in December 2013, organisation of workshops with Member States in 2014, drafting of a guidance note on the use of the exclusion early 2015.

⁶⁹ Purchases under international agreements (Article 12.a) and international organisations (Article 12.c): launch of the clarification work in 2015 (according to the same approach as G to G sales), direct discussions with the NATO Support Agency and OCCAR, drafting of a guidance note by the end of 2015.

Publication disparity and the problem of reciprocity

The Directive 2009/81/EC is today favoured for contracts dealing with services, the acquisition of equipment deemed to be of a low strategic value, and sub-systems. If it can be considered progress, the Directive is carried/supported by a small group of Member States, and seems to clearly be insufficient. The disparity in the publication of documents (contract notices and contract awards) between Member States is too great. If this situation continues there is a significant risk that the initial Member States that played the game, even in a very limited fashion, will back-pedal in light of the non-application of the Directive by other Member States (despite its transposition into national law).

This poses the question of reciprocity (supplier A of State A benefits from access to the market of State B without supplier B having the opportunity to get a foothold in the market of State A...). In the case of the loss of a contract on the national market, suppliers cannot compensate such a loss with success on other European export markets. This asymmetry heightens tension and contributes to conservatism in acquisition policies.

Article 346, still very much in the Member States' minds

Over the past three years, all of the major military equipment contracts, thus those that have had a structural effect on the DTIB, were notified without going via the Directive. Previous practices have continued, notably the use of Article 346. The transition seems to be proving difficult for public buyers that are used to 'securing' defence contracts through the use of Article 346 and the culture of secrecy. More transparency could mean more recourse, and thus risks of slowing down the procedure of contract awards. It consequently appears 'easier' and more 'secure' to use Article 346 than to open up a contract, even according to adapted procedures. This issue clearly places at the centre of the agenda the importance of public buyers familiarisation with the tools proposed by the Directive, which help to secure the buying process, or run the risk of seeing extensive use of Article 346 continue.

While the Directive is flexible and provides numerous instances of leeway to public buyers, the use of negotiated procedures without prior publication seems to be favoured, with the primary justification being technical specifications. The European Commission should look into this issue, in order to avoid the establishment in certain cases of practices that might resemble protectionism.

Subcontracting, Actions to support SMEs, Direct offsets: a complex equation

The statistical analysis clearly underlined the fact that clauses linked to sub-contracting are used extremely sparingly. The mechanism appears to be complex to implement, as much for the public buyer as for the selected supplier. The obligation to use competitive procedure regarding sub-contractors implies that the selected supplier takes the place of the public buyer. For large groups, this means further administrative constraints and conflicts with their policy of integrating the supply chain (with the establishment of partnership agreements with sub-contractors that are deemed 'strategic') that is supposed to allow for better cost management.

In actual fact, this equation relating to sub-contracting seems to be poorly formulated, hence the introduction of a complex and hardly applicable mechanism in practice. Indeed it cannot be a question of a kind of 'lawful alternative to offsets', in response to the fears expressed by European States with an equipment suppliers base (national companies that have not reached

the critical size to be able to compete with large groups), given that discrimination on the basis of the supplier's nationality is prohibited by the Directive. If the purchasing State wishes to have in its national territory industrial capacities that allow it to be autonomous in terms of maintenance, or even renovation (concerns which are legitimate), this comes back to the clauses linked to the security of supply (SoS). This issue linked to the obligation of geographical location imposed on the holder of the contract for SoS reasons should be clarified by the European Commission and should be subject to the exchange of best practices between Member States (Finland has notably developed interesting purchasing practices on this point).

Furthermore, while this question of sub-contracting⁷⁰ goes back to the issue of the access of small and medium enterprises to public defence and security contracts, this constitutes a real challenge, and one which concerns all Member States. Indeed, in the defence sector, the role of OEMs is central. As the prime contractors of the major weapons systems, they take care of integration and final assembly, and they represent the interface with the State client. In addition to this primary and pivotal role in client relations, a policy has developed of reducing the number of sub-contractors and transferring technical and financial risks to rank 1 and 2 suppliers. The SMEs must thus manage these risks without controlling the management of the project, and with very late return on investment in the context of military equipment programmes conceived over long cycles. However, the relationship between SMEs and large groups does not systematically fail to be in favour of small structures. There are also numerous examples demonstrating the advantages of a partnership with the large primes to break into new markets.

More importantly, small and medium enterprises have to fight against a certain level of conservatism of practices and other habits of national administrations in charge of acquisitions, practices that maintain the large prime contractors at the centre of the process. The issue here is not to bring about a more advantageous situation for SMEs but to ensure the elimination of disproportionate and unfair disadvantages. There is a historical tendency to underestimate SMEs with regard to their ability to provide innovative technologies and solutions, as a result of an exaggerated perception of these companies as being financially fragile. Furthermore, the administrative constraints are still both significant and numerous, complicating the direct relationship between SMEs and the State clients, and rendering access to public contracts costly.

It is these practices that need to be made to evolve, through a better understanding of the supply chain and the mobilisation of industrial policy tools that facilitate small and medium enterprises' access to public defence and security contracts. Several Member States have taken measures in this direction (e.g. public policy provisions and tools in support of defence SMEs in France and the United Kingdom). Furthermore, the adoption of a new business model, such as SME consortiums proposing complete offers constitutes a strong response to the problem of direct access to public defence contracts.

Improving Security of Supply between Member States

The '*sensitive nature*' of goods and services in the defence sector results in specific requirements, particularly in the field of security of supply. Ensuring security of supply raises the question of exposure to the risks of dependencies and failures, with the undesirable conse-

⁷⁰ Sub-contracting is often associated to SMEs, a reductive link given that sub-contractors can also be of significant size, such as a large group, MMCs, or SMEs.

quences to be unable to rapidly respond to demand for military equipment in a crisis situation, or to be unable to operate key weapons systems properly and autonomously. The security of supply is a prerequisite, a *sine qua non* condition that must be fulfilled to ensure that the armed forces can operate their equipment without third party constraints. It constitutes the bedrock of a confidence-based relationship between States, and one of the necessary conditions for contracting authorities to accept cross-border contracts.

Establishing a trusting ongoing relationship implies that European Member States adopt a common approach to decisive factors affecting security of supply, and thus a harmonised application of Article 23 of Directive 2009/81/EC (list of commitments that procurers may require tenders to contain; as conditions for the performance of the contract, e.g. export controls, supply chain, IPR clauses, liability of spare parts throughout the life cycle of the weapon system, etc.).

A number of MS will continue to retain on their national territory certain activities, assets and installations for reasons of national security (with contracts likely to be awarded under Article 346). But in a time of budget constraints, the areas covered are de facto decreasing. This context should provide an opportunity to consolidate confidence among Member States, thereby making cross-border contracts acceptable in fields that were hitherto excluded. It raises the fundamental question of the establishment of a system of appropriate guarantees, based on bi/multilateral SoS agreements.

Harmonisation of the demand side and Industrial Policy

The Directive 2009/81/EC is a flexible legal instrument, a tool used to standardise national legislations. This Directive is a tool for better coordination of procedures for the award of contracts in the fields of defence and security (better purchasing), not an instrument for industry consolidation.

Harmonisation of demand (and thus cooperation) and Industrial policy remain the cornerstone and the main conditions for strengthening the European Defence Technological and Industrial Base. Today, however, the majority of large programmes (national and in cooperation) have entered the production phase and are moving forward under tight constraints. There is little or no prospect of launching new generation programmes, due to the substantial investment required and the lack of convergence of European States' needs. It is these large programmes that have a structural effect on the DTIB.

Although the European Commission's action, which is today focused on competition, is not linked to industrial policy provisions at the European level, Article 346 will continue to be used and exploited by numerous Member States. Offsets, and in particular direct offsets, will continue to exist (the ongoing offset policy reforms are often purely 'cosmetic'). In order to avoid Member States developing circumvention strategies which disrupt the internal market, a compromise needs to be reached. This would involve making a more precise distinction between what falls under security of supply, a legitimate national concern (which justifies, for reasons of national security, obligations of local presence, transfers of technologies and know-how, and the establishment of partnerships with a local company), and offsets whose sole justification is motivated by a conscious economic calculus (linked with economic purposes). In the latter case, legal proceedings should be brought by the European Commission.

ANNEX I - NUMBER OF CONTRACT NOTICES PUBLISHED ON TED PER MEMBER STATES

	2011	2012	2013	2014	TOTAL	
	<i>Nb</i>	<i>Nb</i>	<i>Nb</i>	<i>Nb</i>	<i>Nb</i>	%
France	86	361	294	316	1057	34,6%
Germany	8	171	202	239	620	20,3%
United Kingdom	1	65	60	115	241	7,9%
Poland	0	0	81	148	229	7,5%
Finland	2	44	43	43	132	4,3%
Czech Republic	0	31	29	55	115	3,8%
Denmark	5	31	32	40	108	3,5%
Sweden	0	14	37	37	88	2,9%
Italy	0	21	26	33	80	2,6%
Romania	0	0	16	29	45	1,5%
Greece	0	0	3	40	43	1,4%
Bulgaria	0	12	13	16	41	1,3%
Netherland	0	0	21	20	41	1,3%
Hungary	4	6	17	10	37	1,2%
Belgium	0	5	20	10	35	1,1%
Lithuania	1	8	14	11	34	1,1%
Slovakia	0	4	9	21	34	1,1%
Estonia	0	1	2	17	20	0,7%
Slovenia	0	0	6	9	15	0,5%
Croatia	0	0	1	13	14	0,5%
Austria	0	1	9	2	12	0,4%
Latvia	0	2	1	9	12	0,4%
Cyprus	0	0	3	1	4	0,1%
Spain	0	0	0	0	0	0,0%
Ireland	0	0	0	0	0	0,0%
Luxembourg	0	0	0	0	0	0,0%
Malta	0	0	0	0	0	0,0%
Portugal	0	0	0	0	0	0,0%
TOTAL	107	777	939	1234	3057	100,0%

ANNEX II - NUMBER OF CONTRACT AWARDS NOTICES PUBLISHED ON TED PER MEMBER STATES

	2011	2012	2013	2014	TOTAL	
	Nb	Nb	Nb	Nb	Nb	%
Germany	3	89	205	253	550	23,2%
France	0	42	237	232	511	21,5%
Italy	10	109	100	108	327	13,8%
Poland	0	3	35	171	209	8,8%
United Kingdom	0	31	55	86	172	7,2%
Finland	0	26	36	45	107	4,5%
Romania	0	0	22	58	80	3,4%
Denmark	0	17	23	32	72	3,0%
Czech Republic	0	9	16	40	65	2,7%
Hungary	1	14	19	9	43	1,8%
Belgium	2	3	17	20	42	1,8%
Netherland	0	4	5	22	31	1,3%
Belgium	0	1	9	20	30	1,3%
Lithuania	0	3	8	19	30	1,3%
Sweden	0	2	10	13	25	1,1%
Estonia	0	0	7	14	21	0,9%
Croatia	0	0	0	16	16	0,7%
Slovenia	0	0	8	7	15	0,6%
Slovakia	0	5	1	6	12	0,5%
Latvia	0	0	5	4	9	0,4%
Austria	0	1	4	1	6	0,3%
Spain	0	0	0	0	0	0,0%
Cyprus	0	0	0	0	0	0,0%
Greece	0	0	0	0	0	0,0%
Ireland	0	0	0	0	0	0,0%
Malta	0	0	0	0	0	0,0%
Portugal	0	0	0	0	0	0,0%
Luxembourg	0	0	0	0	0	0,0%
TOTAL	16	359	822	1176	2373*	100,0%

**The search on TED gave rise to the 2 381 contract awards notices, although 8 of them have been declared either fruitless, not followed up, cancelled, or have been deleted from the system. These notices have been removed from the statistics.*

**ANNEX III - VALUE OF CONTRACT AWARDS NOTICES PUBLISHED ON TED
PER MEMBER STATES, IN €**

	2011	2012	2013	2014	TOTAL	
	€	€	€	€	€	%
United ingdom	0,00	770 125 125,61	445 540 838,44	2 781 131 746,17	3 996 797 710,22	37,9%
France	0,00	42 290 564,65	822 841 650,69	1 903 683 525,29	2 768 815 740,64	26,3%
Germany	2 092 476,98	272 322 733,30	327 129 269,76	347 819 451,76	949 363 931,80	9,0%
Italy	18 935 850,93	141 673 668,54	273 806 277,88	396 671 532,68	831 087 330,03	7,9%
Poland	0,00	4 153 791,81	135 289 643,61	676 804 527,25	816 247 962,67	7,7%
Romania	0,00	0,00	12 936 094,70	221 583 629,12	234 519 723,82	2,2%
Finland	0,00	25 074 729,41	51 735 366,36	128 440 611,72	205 250 707,49	1,9%
Slovakia	0,00	6 350 005,31	1 746 000,00	110 762 570,72	118 858 576,03	1,1%
Czech Republic	0,00	18 253 747,76	21 780 404,35	58 973 794,70	99 007 946,81	0,9%
Bulgaria	553 846,45	637 075,82	80 554 524,44	16 470 310,15	98 215 756,86	0,9%
Hungary	581 120,00	21 442 327,63	21 793 719,16	52 974 340,15	96 791 506,94	0,9%
Denmark	0,00	33 572 054,52	42 015 838,30	14 943 187,90	90 531 080,72	0,9%
Lithuania	0,00	1 350 543,16	29 892 017,91	33 823 808,95	65 066 370,02	0,6%
Belgium	0,00	0,00	2 482 341,10	51 444 825,44	53 927 166,54	0,5%
Croatia	0,00	0,00	0,00	35 927 153,93	35 927 153,93	0,3%
Slovenia	0,00	0,00	16 179 929,22	3 521 337,14	19 701 266,36	0,2%
Estonia	0,00	0,00	16 145 666,00	2 066 666,00	18 212 332,00	0,2%
Latvia	0,00	0,00	5 969 575,48	6 328 873,99	12 298 449,47	0,1%
Sweden	0,00	1 199 270,84	7 973 489,66	0,00	9 172 760,50	0,1%
Netherland	0,00	2 241 430,66	3 905 103,33	1 375 687,00	7 522 220,99	0,1%
Austria	0,00	624 546,95	3 792 185,00	2 034 600,00	6 451 331,95	0,1%
Spain	0,00	0,00	0,00	0,00	0,00	0,0%
Cyprus	0,00	0,00	0,00	0,00	0,00	0,0%
Greece	0,00	0,00	0,00	0,00	0,00	0,0%
Ireland	0,00	0,00	0,00	0,00	0,00	0,0%
Malta	0,00	0,00	0,00	0,00	0,00	0,0%
Portugal	0,00	0,00	0,00	0,00	0,00	0,0%
Luxembourg	0,00	0,00	0,00	0,00	0,00	0,0%
TOTAL	22 163 294,36	1 341 311 615,97	2 323 509 935,40	6 846 782 180,06	10 533 767 025,79	100,0%

**ANNEX IV - MAJOR CONTRACTS AWARDED UNDER DIRECTIVE 2009/81/EC
(PUBLISHED ON TED), IN € MILLION**

Contracting authority	Publication date	Doc. Nb	CPV	Type of contract	Procedure	Economic operator	Value (M€)
UK Commands & Centre, DE&S	10/2012	324881	Technical services	Service	Restricted	Suppliers details available on request from DESComrclCC-FATS4AB@mod.uk	638,01
UK Ministry of Defence, DIO	06/2014	190736	Real estate services	Service	Negotiated	Capita Business Services Ltd (UK)	506,14
FR Mindef/ Simmad	09/2014	311657	Repair and maintenance services of military aircrafts, missiles and spacecrafts	Service	Negotiated	Airbus Military France (2 lots) (FR)	379,72
UK National Training Estate Prime	07/2014	241976	Building and facilities management services	Work	Competitive dialogue	Landmarc Security Services Limited (UK)	376,29
UK Ministry of Defence, DIO	08/2014	277436	Building and facilities management services	Service	Negotiated	Carillion Amey Ltd (UK)	296,83
FR DGA/SCA	12/2014	429874	Rockets	Supply	Negotiated	SAAB Dynamics AB (SE)	229,01
UK Ministry of Defence, C&C	08/2014	281619	Technical training services	Service	Negotiated	Babcock Land Ltd (FUK)	228,02
FR Mindef/ Simmad	06/2013	208100	Repair, maintenance and associated services related to aircraft and other equipment	Service	Negotiated without prior publication	Thales systèmes aéroportés (FR)	198,47
UK Ministry of Defence	08/2014	277433	Building and facilities management services	Service	Negotiated	Carillion Amey Ltd (UK)	187,92
UK Ministry of Defence	08/2014	277432	Building and facilities management services	Service	Negotiated	Carillion Amey Ltd (UK)	168,05
FR Mindef/ SIMMAD	01/2014	025010	Repair and maintenance services of military aircrafts, missiles and spacecrafts	Service	Negotiated without prior publication	Thales optronique SAS (FR)	137,10
IT Stato Maggiore Esercito – Ufficio Generale C.R.A. «Esercito Italiano»	11/2013	369989	Mechanical spare parts for military vehicles	Supply	Negotiated without prior publication	Iveco S.p.A. (IT)	115,11
DE BAAINBw	12/2012	393391	Armoured weapon carriers	Supply	Negotiated without prior publication	KMW (DE)	109,81
FR Mindef/ Simmad	07/2014	239390	Repair and maintenance services of military aircrafts, missiles and spacecrafts	Service	Negotiated	Sabena Technics DNR (FR)	108,43
UK DSTL	03/2014	079288	Research services	Service	Restricted	QinetiQ Limited (UK)	107,67
UK DE&S Commercial	07/2013	222969	Mechanical handling equipment	Service	Restricted	Briggs Equipment UK Lt (UK)	100,81
FR DGA/SCA	01/2014	029472	Surface combatant	Service	Negotiated	Piriou (mandataire)– DCNS (cotraitant) (FR)	100,43

FR Mindef/ Simmad	05/2014	183872	Repair and maintenance services of military aircrafts, missiles and spacecrafts	Service	Negotiated without prior publication	Airbus helicopters (FR)	100,08
DE BAAINBw	11/2013	399952	Unmanned aerial vehicles	Service	Negotiated without prior publication	Taurus Systems GmbH (DE)	97,20
FR Mindef/ Simmad	10/2013	342862	Repair and maintenance services of aircraft	Service	Negotiated without prior publication	Société THALES AVIONICS SAS (FR)	94,00
SK Ministerstv o vnútra Slovenskej republiky	02/2014	064542	Security-type printed matter	Supply	Restricted	Giesecke & Devrient Slovakia, s.r.o.(SK)	89;17
FR Marine/ DCSSF/ DSSF Toulon	12/2014	411145	Warships and associated parts	Service	Negotiated	CNN MCO (FR)	82,17
FR Mindef/ Simmad	09/2014	311658	Repair and maintenance services of helicopters	Service	Negotiated without prior publication	Thales Training & Simulation (FR)	81,56
UK Ministry of Defence	07/2014	219842	Construction project management services	Service	Restricted	Jacobs UK Ltd (UK)	81,07

**ANNEX V – VALUE OF TOP 10 MAJOR VOLUNTARY EX-ANTE NOTICES
PUBLISHED ON TED, IN € MILLION**

Contracting authority	Publication date	Doc. Nb	Information about the contract award	Justification of the choice for the procedure	Type of document	Economic operator	Value (M€)
UK Ministry of Defence, Land equipment	05/2014	163665	Training simulators (AS90 Turret Trainer)	No tenders or no suitable tenders in response to: negotiated procedure Technical	Service	Van Halteren Metaal (NL)	-
UK Joint & Battlefield Trainers, Simulation & Synthetic Environments (JBTSE), DE&S	05/2013	163292	Training and simulation in military electronic systems (Post Design Service, Contractor logistics support for the Command and Staff Trainer)	technical, connected with the protection of exclusive rights (Raytheon Systems Ld)	Service	n/r	987,02
UK Ministry of Defence, C&C	06/2014	198876	Development of software for military applications (DAFIF 8.1 Upgrade)	No tenders or no suitable tenders in response to: negotiated procedure Technical, connected with the protection of exclusive rights	Supply	1Spatial Group (UK)	780,84
UK Ministry of Defence, Helicopters	09/2014	309497	Helicopters (delivery of the 3rd pricing period of a 25 year contract for the support of Merlin helicopter availability)	Technical, connected with the protection of exclusive rights (AgustaWestland)	Service	n/r	706,64
UK Maritime Combat Systems Team, DE&S	07/2012	219086	Sonars (Sensors Support Optimisation Project)	No tenders or no suitable tenders in response to: negotiated procedure Technical, connected with the protection of exclusive rights (Thales Underwater Systems)	Service	n/r	345,79
UK Ministry of Defence, Weapons	11/2014	382280	Torpedoes(Spearfish Torpedo Upgrade Programme)	No tenders or no suitable tenders in response to: negotiated procedure Technical (BAE Systems Maritime Systems)	Supply	n/r	317,99
UK Sea King, DE&S	07/2012	241920	Repair and maintenance services of helicopters (Sea King Integrated Operational Support Pricing Period 3)	Technical, connected with the protection of exclusive rights (AgustaWestland)	Supply	n/r	288,16
FR Mindef/Air/SIAé	11/2012	363571	Engineering services (Spare parts, tools and ancillary equipment in support of MRO Larzac Engines)	Technical, connected with the protection of exclusive rights	Supply	Snecma (FR)	156,05
UK Air Platform Systems Project Team, DE&S	09/2012	285703	Electronic warfare systems and counter measures (LAIRCM system)	No tenders or no suitable tenders in response to: negotiated procedure Technical, connected with the protection of exclusive rights (Northrop Grumman)	Service	n/r	109,50
UK Armoured Vehicle Programmes-In Service Platforms, DE&S	10/2013	339342	Repair and maintenance services of military vehicles (CV8 Engines, CV12 Engines, X300 Transmissions and ancillary items)	No tenders or no suitable tenders in response to: negotiated procedure Technical, connected with the protection of exclusive rights (Caterpillar)	Service	n/r	86,36

ANNEX VI – SEGMENTATION OF THE CONTRACT AWARD NOTICES

		Supply and service related to defence equipment	Repair and maintenance services of defence equipment and supply of spare parts	
Defence	>> Aerospace	Air	<ul style="list-style-type: none"> ▪ Military aircrafts and spacecraft. ▪ Training and simulations in aircrafts, missiles and spacecraft 	<ul style="list-style-type: none"> ▪ Repair and maintenance services of military aircrafts, missiles and spacecraft ▪ Repair and maintenance services related to aircraft and other equipment (engines...)
		Missiles	<ul style="list-style-type: none"> ▪ Air-to-air missiles ▪ Surface-to-air missiles ▪ Air-to-surface missiles ▪ Anti-ship missiles ▪ Surface-to-surface missiles 	<ul style="list-style-type: none"> ▪ Repair and maintenance services
		Satellites	<ul style="list-style-type: none"> ▪ Satellites 	<ul style="list-style-type: none"> ▪ Repair services of satellites
	>> Land	Military and engineering vehicles Shelters	<ul style="list-style-type: none"> ▪ Military vehicles (Battle tanks, ACV, IFV, APC...) ▪ Training and simulation in military vehicles 	<ul style="list-style-type: none"> ▪ Associated parts, parts and accessories for vehicles and their engines ▪ Repair, maintenance and associated services of vehicles and related equipment ▪ Repair and maintenance services of military vehicles
		Military individual equipment	<ul style="list-style-type: none"> ▪ Individual and support equipment (military uniforms, helmet, bullet-proof vest) ▪ CBRN protection 	<ul style="list-style-type: none"> ▪ Repair and maintenance of individual and support equipment
		Weapons, Ammunition Explosives	<ul style="list-style-type: none"> ▪ Explosives, small arms and light weapons ▪ Ammunition for firearms and warfare ▪ Weapons ▪ Training and simulation in firearms and ammunitions 	<ul style="list-style-type: none"> ▪ Repair and maintenance services of firearms and ammunition
	>> Naval		<ul style="list-style-type: none"> ▪ Warships ▪ Training and simulations in warships 	<ul style="list-style-type: none"> ▪ Associated parts and spare parts ▪ Repair and maintenance services of warships
	>> Electro C4ISR		<ul style="list-style-type: none"> ▪ Instrumentation and control equipment Military electronic systems ▪ Electronic detection apparatus. ▪ Navigation instruments and equipment ▪ Electronic marine equipment. ▪ Radars sets ▪ Transmission apparatus for radiotelephony, radiotelegraphy, radio broadcasting and television. ▪ Detection and analysis apparatus. ▪ Military networks ▪ Telecommunications equipment. ▪ Electronic, electromechanical and electro technical supplies ▪ Information systems and software specially designed for military use. ▪ Optical instruments (binoculars, telescopic sights, night glasses) 	<ul style="list-style-type: none"> ▪ Repair and maintenance services of military electronics systems and networks ▪ Repair, maintenance services and associated services related to computer, telecommunication equipment and audiovisual material for military purposes ▪ Repair services of radars sets
	>> R&D		Research and development services and related consultancy services (Military research & technology, research & development consultancy, engineering studies, pre-feasibility study and technological demonstration, test and evaluation)	

Support services	>> Cargo and transport vehicles	<ul style="list-style-type: none"> ▪ Cargo trucks (buses and coaches, trucks, vans). ▪ Special purpose motor vehicle (jeep, break, estate and saloon cars).
	>> IT	<ul style="list-style-type: none"> ▪ Desktop computers, fax, video projectors, printers. ▪ Telecommunication equipment for personnel in the armed forces. ▪ Electrical materials for infrastructures. ▪ Software (archiving system, accounting...). ▪ Electronic mail software and e-mail system.
	>> Catering	<ul style="list-style-type: none"> ▪ Catering services and catering supplies
	>> Building and facilities management services	<ul style="list-style-type: none"> ▪ Construction works. ▪ Building-cleaning services and management services. ▪ Maintenance services (ventilation and air conditioning, central heating...).
	>> Logistics	<ul style="list-style-type: none"> ▪ Supply services of personnel including temporary staff. ▪ Transport services. ▪ Tanks, reservoirs, and containers for logistical services.
Security	>> Specialized vehicles	<ul style="list-style-type: none"> ▪ Ambulances, rescue vehicles, Patient-transport vehicles, police cars, firefighting vehicles.
	>> Air Traffic Control	<ul style="list-style-type: none"> ▪ Air-traffic control equipment and systems. ▪ Air-traffic control simulation and training. ▪ Control tower equipment, air traffic-control.
	>> Surveillance	<ul style="list-style-type: none"> ▪ Infrastructures surveillance and security systems and devices. ▪ Guard services, security services. ▪ Smoke-detection, gas-detection apparatus. ▪ Population warning system.
	>> Individual equipment	<ul style="list-style-type: none"> ▪ Police equipment: police uniforms, firearms, bullet-proof vest... ▪ Firefighting, rescue and security materials: extinguishers, fire extinguishing systems... ▪ Firefighter uniforms.
Other	>> Raw material	<ul style="list-style-type: none"> ▪ Fuel, metallic ores.
	>> Vehicles	<ul style="list-style-type: none"> ▪ Refuelling vehicles, airway tractors.
	>> Healthcare	<ul style="list-style-type: none"> ▪ Medical, pharmaceutical products & personal care products.
	>> Machinery and equipment	<ul style="list-style-type: none"> ▪ Special-purpose machinery and equipment used in repair and maintenance of weapon system.
	>> Measuring instrument (nuclear)	<ul style="list-style-type: none"> ▪ Nuclear evaluation instruments.

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