



Council of the  
European Union

Brussels, 1 December 2016  
(OR. en)

15140/16  
ADD 1

MI 773  
COMPET 639  
POLARM 9  
CFSP/PESC 991  
COARM 220

#### COVER NOTE

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	30 November 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2016) 407 final
Subject:	COMMISSION STAFF WORKING DOCUMENT Evaluation of Directive 2009/81/EC on public procurement in the fields of defence and security Accompanying the document Report from the Commission to the European Parliament and the Council on the implementation of Directive 2009/81/EC on public procurement in the fields of defence and security, to comply with Article 73(2) of that Directive

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Delegations will find attached document SWD(2016) 407 final.

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Encl.: SWD(2016) 407 final



Brussels, 30.11.2016  
SWD(2016) 407 final

**COMMISSION STAFF WORKING DOCUMENT**  
*Evaluation of Directive 2009/81/EC on public procurement in the fields of defence and security*

**Accompanying the document**

**Report from the Commission to the European Parliament and the Council on the implementation of Directive 2009/81/EC on public procurement in the fields of defence and security, to comply with Article 73(2) of that Directive**

{COM(2016) 762 final}

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## Glossary

ASD	AeroSpace and Defence Industries Association of Europe ( <a href="http://www.asd-europe.org/home/">http://www.asd-europe.org/home/</a> )
Baseline Study	“ <i>Openness of Member States’ defence markets</i> ” by Europe Economics for the Commission services in November 2012
BIS	Bureau of Industry and Security of the U.S. Department of Commerce, ( <a href="https://www.bis.doc.gov/">https://www.bis.doc.gov/</a> )
civil procurement Directives	Directive <a href="#">2004/18/EC</a> on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts and Directive <a href="#">2004/17/EC</a> coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors
CPV	Common Procurement Vocabulary; Commission Regulation (EC) No <a href="#">213/2008</a> of 28 November 2007 amending Regulation (EC) No <a href="#">2195/2002</a> of the European Parliament and of the Council on the Common Procurement Vocabulary (CPV) and Directives <a href="#">2004/17/EC</a> and <a href="#">2004/18/EC</a> of the European Parliament and of the Council on public procurement procedures, as regards the revision of the CPV
CSDP	Common Security and Defence Policy
Directive	Directive <a href="#">2009/81/EC</a> 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 <a href="#">2004/17/EC</a> and <a href="#">2004/18/EC</a>
DG GROW	Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs ( <a href="http://ec.europa.eu/growth/index_en">http://ec.europa.eu/growth/index_en</a> )
EDA	European Defence Agency ( <a href="https://www.eda.europa.eu/">https://www.eda.europa.eu/</a> )
EDEM	European Defence Equipment Market
EDTIB	European Defence Technological and Industrial Base
Evaluation Roadmap	Roadmap on the Evaluation of Directive <a href="#">2009/81/EC</a> ( <a href="http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_grow_031_evaluation_defence_procurement_en.pdf">http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_grow_031_evaluation_defence_procurement_en.pdf</a> )
FMS	Foreign Military Sales ( <a href="http://www.dsca.mil/programs/foreign-military-sales-fms">http://www.dsca.mil/programs/foreign-military-sales-fms</a> )
Impact	Commission Staff Working Document Annex to the Proposal for a Directive of the European Parliament and of the Council on the coordination of

Assessment	procedures for the award of certain public works contracts, public supply contracts and public service contracts in the fields of defence and security ( <a href="http://ec.europa.eu/internal_market/publicprocurement/docs/defence/impact_assessment_en.pdf">http://ec.europa.eu/internal_market/publicprocurement/docs/defence/impact_assessment_en.pdf</a> )
M&A	Mergers and acquisitions
NATO	North Atlantic Treaty Organization ( <a href="http://www.nato.int/">http://www.nato.int/</a> )
OCCAR	Organisation Conjointe de Coopération en matière d'Armement ( <a href="http://www.occar.int/185">http://www.occar.int/185</a> )
OJ/TED	Tenders Electronic Daily is the online version of the 'Supplement to the Official Journal of the EU, dedicated to European public procurement ( <a href="http://ted.europa.eu/">http://ted.europa.eu/</a> ).
PwC Study	<i>“Public procurement in Europe, Cost and effectiveness”</i> done by PwC, Ecorys and London Economics, for the Commission services in March 2011 <a href="http://bookshop.europa.eu/en/public-procurement-in-europe-pbKM3113708/">http://bookshop.europa.eu/en/public-procurement-in-europe-pbKM3113708/</a>
SCAP Study	<i>“Support to the implementation of the Supply Chain Action Plan”</i> by IHS Global Limited for EDA
SBS	Structural Business Statistics
Technopolis Study	<i>“Evaluation of Directive 2009/43/EC on the Transfers of Defence-Related Products within the Community”</i> by Technopolis group for the European Commission
VEAT	Voluntary ex-ante transparency notice

## 1. INTRODUCTION

The legal basis for this evaluation is Article 73(2) of Directive 2009/81/EC (the Directive), which states that “*the Commission shall review the implementation of this Directive and report thereon to the European Parliament and the Council by 21 August 2016. It shall evaluate in particular whether, and to what extent, the objectives of this Directive have been achieved with regard to the functioning of the internal market and the development of a European defence equipment market and a European Defence Technological and Industrial Base, having regard, inter alia, to the situation of small and medium-sized enterprises. Where appropriate, the report shall be accompanied by a legislative proposal*”.

The purpose of the evaluation is, therefore, to assess the functioning of the Directive and, to the extent possible, its impact on the market and on the industrial base. As to the scope, the whole of the Directive is subject to evaluation. Time-wise, the evaluation covers the period from the transposition of the Directive (2011) until the end of 2015. The situation before the transposition of the Directive is taken into account as baseline. Given the short time that has elapsed since the transposition deadline, and even more since its actual transposition by Member States, it can be expected that the conclusions about the Directive’s impact on the European Defence Equipment Market (EDEM) and, especially, on the European Defence Technological and Industrial Base (EDTIB) would be very difficult to reach<sup>1</sup>. In that context, the evaluation assesses whether we are on track to meet the objectives set by the Directive. From a geographical point of view, the evaluation focuses on the 28 Member States of the EU and 2 EEA<sup>2</sup> countries (Norway and Iceland).

## 2. BACKGROUND

This section seeks to provide background information that is essential for the evaluation of the Directive. This includes, first and foremost, data on Member States’ expenditure on defence and security and, in particular, on procurement. It also provides a brief description of the Directive and its different components, its objectives and the problems it was intended to solve; the key source in this respect is the Impact Assessment that accompanied the Commission’s proposal (the Impact Assessment)<sup>3</sup>. The background section also includes a description of the baseline, i.e. what the situation was like before the adoption of the Directive.

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<sup>1</sup> As required by Article 73(2) of the Directive, the evaluation mainly focuses on the defence market and industrial base, although the Directive also applies to sensitive security procurement.

<sup>2</sup> The Decision of the EEA Joint Committee 129/2013 of 14 June 2013 provided for the incorporation of the Directive into the EEA Agreement, by amending its Annex XVI. Point 5c of Annex XVI provides that the Directive does not apply to Liechtenstein.

<sup>3</sup> Impact Assessment, Commission Staff Working Document accompanying document to the Proposal for a Directive of the European Parliament and of the Council on the coordination of procedures for the award of certain public works contracts, public supply contracts and public service contracts in the fields of defence and security, SEC(2007) 1598, 5.12.2007.

## 2.1. Government expenditure on defence and security

Government expenditure on defence and security in Europe accounts for a significant share of the nations' GDP and the total public spending. For example, the guideline agreed by NATO Allies state that at least 2% of GDP should be allocated to defence spending. Meanwhile, according to the recent data for the European NATO countries<sup>4</sup>, defence expenditure in 2015 accounted for 1.45% of their GDP<sup>5</sup>. Similar range of estimates is provided by the European Defence Agency (EDA), which reports that defence expenditure of the 27 EDA Member States<sup>6</sup> in 2014 was around 1.42% of their GDP<sup>7</sup> and equalled roughly 195 billion EUR<sup>8</sup>.

According to Eurostat COFOG classification, defence expenditure (GF02)<sup>9</sup> equalled 1.3% of GDP for the EU-28 and amounted to roughly 187.4 billion EUR in 2014 (or 192.8 billion EUR, if the EEA countries were included). The highest levels of total expenditure on defence were found in Greece (2.7% of GDP), followed by the United Kingdom (2.2 % of GDP) and Estonia (1.8% of GDP), whereas Luxembourg (0.3 % of GDP), Ireland (0.4 % of GDP) as well as Austria and Hungary (both 0.6 % of GDP) reported comparatively low expenditure on defence<sup>10</sup>.

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<sup>4</sup> Albania, Belgium, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Turkey and the United Kingdom; the detailed data on defence expenditure by NATO countries as a percentage of GDP is provided in Table 45 of Annex IV.

<sup>5</sup> Defence Expenditures of NATO Countries (2009-2016), COMMUNIQUE PR/CP(2016)116, 4 July 2016, [http://www.nato.int/nato\\_static\\_fl2014/assets/pdf/pdf\\_2016\\_07/20160704\\_160704-pr2016-116.pdf](http://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2016_07/20160704_160704-pr2016-116.pdf).

<sup>6</sup> EDA 27 Member States include all EU Member States except for Denmark.

<sup>7</sup> Defence Data 2014, EDA, <http://www.eda.europa.eu/docs/default-source/documents/eda-defencedata-2014-final>, Figure 3.5, p. 14.

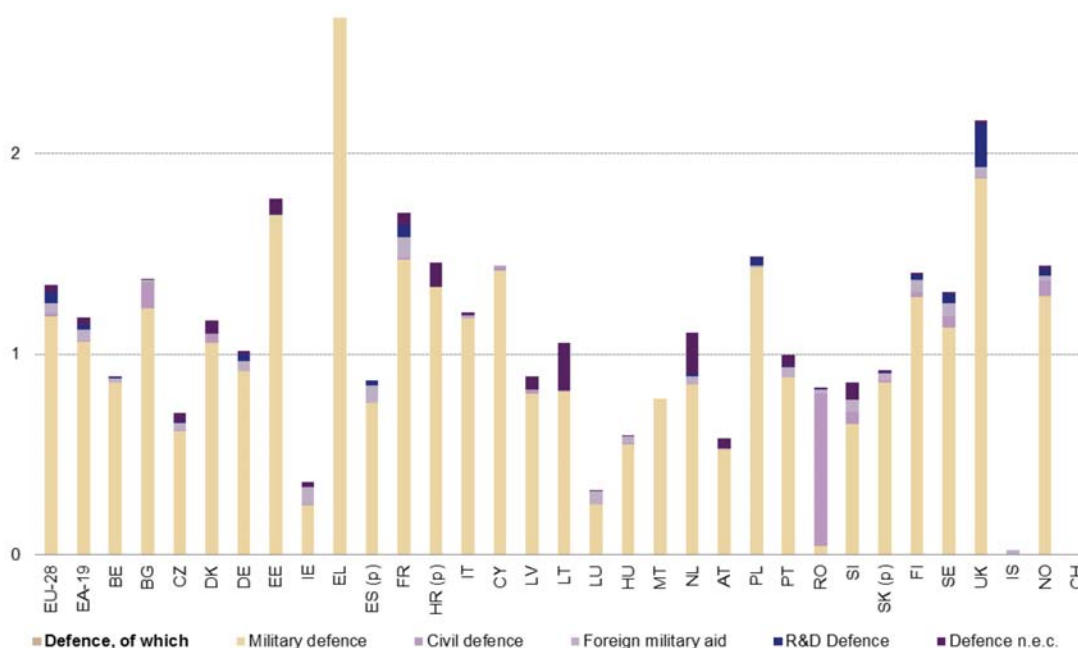
<sup>8</sup> *Idem* Figure 3.1, p. 10; the total reported by EDA differs from Eurostat COFOG data probably due to different assignments of retirement pensions in some countries; a similar discrepancy occurred in the past and was mentioned in the Impact Assessment, p. 10.

<sup>9</sup> [http://ec.europa.eu/eurostat/statistics-explained/index.php/Government\\_expenditure\\_on\\_defence](http://ec.europa.eu/eurostat/statistics-explained/index.php/Government_expenditure_on_defence)

<sup>10</sup> More data is provided in Table 46, Annex IV.



**Figure 1: General government expenditure on defence in 2014 [% of GDP]**



(p) provisional  
 note: no data available for Switzerland

Source: Eurostat, [http://ec.europa.eu/eurostat/statistics-explained/index.php/Government\\_expenditure\\_on\\_defence](http://ec.europa.eu/eurostat/statistics-explained/index.php/Government_expenditure_on_defence)

As presented on the graph above, in all countries except for Romania, the major part of the total general government expenditure on defence (GF02) in 2014 was spent under military defence (GF0201)<sup>11</sup>. Eurostat estimates that military defence expenditure in the EU accounted for around 1.2 % of GDP of EU-28 in 2014, which in monetary terms equalled roughly 165.7 billion EUR (Table 1). If the EEA countries were added, the total would increase to roughly 170.6 billion EUR.

**Table 1: Government expenditure on military defence [value in million EUR]**

	2010	2011	2012	2013	2014
Belgium	3 402.8	3 425.4	3 444.8	3 550.3	3 445.9
Bulgaria	630.9	447.0	420.6	491.1	525.2
Czech Republic	1 332.0	1 272.5	1 139.1	1 031.1	950.9
Denmark	3 006.7	3 184.0	3 422.8	3 248.5	2 752.3
Germany	24 720.0	25 771.0	27 145.0	27 064.0	26 639.0
Estonia	240.3	234.3	306.6	327.5	337.9
Ireland	476.6	475.4	463.1	459.1	468.0
Greece	6 069.0	4 955.0	4 610.0	3 878.0	4 758.0
Spain	10 133.0	9 622.0	8 546.0	8 721.0	7 889.0

<sup>11</sup> The 'military defence' is one of five groups under the 'defence' division in COFOG; the remaining groups are: 'civil defence', 'foreign military aid', 'R&D defence' and 'defence n.e.c.'.

France	31 349.0	30 874.0	32 020.0	32 309.0	31 341.0
Croatia	618.5	663.2	620.8	566.3	573.5
Italy	20 668.0	21 299.0	19 816.0	18 486.0	19 009.0
Cyprus	401.1	356.8	338.1	282.7	246.2
Latvia	168.1	186.1	174.9	185.8	189.4
Lithuania	233.6	242.3	254.5	261.2	296.9
Luxembourg	185.8	149.8	135.1	124.7	121.7
Hungary	1 113.0	1 008.9	677.1	628.6	570.9
Malta	50.4	56.0	50.6	49.1	62.9
Netherlands	6 047.0	6 368.0	5 715.0	5 875.0	5 613.0
Austria	1 727.8	1 749.2	1 708.5	1 828.8	1 727.8
Poland	5 381.9	5 628.1	5 421.7	6 258.2	5 872.1
Portugal	3 521.9	2 237.7	1 606.5	1 648.6	1 532.4
Romania	952.7	52.8	48.5	53.6	66.7
Slovenia	452.7	357.6	315.6	261.7	242.8
Slovakia	573.3	601.7	601.6	626.6	650.0
Finland	2 459.0	2 470.0	2 745.0	2 768.0	2 640.0
Sweden	4 398.3	4 879.4	4 987.2	5 482.6	4 874.0
United Kingdom	38 265.9	38 035.2	41 427.1	39 341.3	42 295.2
<b>Total EU-28</b>	<b>168 579.3</b>	<b>166 602.4</b>	<b>168 161.8</b>	<b>165 808.4</b>	<b>165 691.7</b>

Iceland	0.0	0.0	0.0	0.0	0.0
Norway	4 249.5	4 900.3	4 879.0	4 842.6	4 867.6
<b>Total EEA</b>	<b>4 249.5</b>	<b>4 900.3</b>	<b>4 879.0</b>	<b>4 842.6</b>	<b>4 867.6</b>

<b>EU-28 and EEA</b>	<b>172 828.8</b>	<b>171 502.7</b>	<b>173 040.8</b>	<b>170 651.0</b>	<b>170 559.3</b>
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Source: Eurostat, general government expenditure by function (COFOG) [gov\_10a\_exp]

The total general government expenditure on military defence can be further disaggregated into specific national accounts components (ESA 2010), such as personnel costs (e.g. wages, salaries as well as employers' social contributions) and, among other, the cost items that can serve as a proxy for the estimate of the value of public procurement linked to the military defence function of the general government, as presented in the following section.

### *2.1.1. Estimate of defence procurement expenditure*

The estimates of the military defence procurement expenditure by general government of EU-28 and EEA countries are presented in Table 2 below. This is the closest possible proxy of the maximum potential value of defence procurement expenditure, irrespective of whether the Directive is legally applicable to specific purchases. It is, therefore, the main expenditure estimate used in this evaluation, to assess the extent of application of the Directive, including the volume of exempted procurement (see in particular Sections 5.3.1.1., 6.1.1.1., and 6.1.2.1.).

In line with the methodology applied to calculate the total expenditure on works, goods and services for the general government in civil procurement<sup>12</sup>, the estimate was based on the following aggregates extracted from COFOG classification for military defence (GF0201) by the general government: ‘gross fixed capital formation’<sup>13</sup> and ‘intermediate consumption’<sup>14</sup>. ‘Social transfers in kind – purchased market production’<sup>15</sup>, which are added to the estimate of government procurement expenditure in the civil sector were equal to zero in all countries in the military defence sector<sup>16</sup>.

**Table 2: Government procurement expenditure on military defence [value in million EUR]**

	2010	2011	2012	2013	2014
Belgium	768.0	771.6	745.9	812.1	828.7
Bulgaria	294.2	119.6	108.1	123.9	164.6
Czech Republic	762.3	693.4	563.0	483.9	408.2
Denmark	1 601.2	1 709.5	1 960.5	1 835.1	1 478.8
Germany	12 114.0	13 229.0	15 044.0	14 919.0	14 582.0
Estonia	158.7	146.1	208.7	217.0	217.0
Ireland	91.8	85.8	79.0	78.3	86.1
Greece	2 591.0	1 564.0	1 302.0	1 012.0	1 571.0
Spain	3 698.0	3 425.0	2 421.0	2 618.0	1 892.0
France	14 376.0	13 696.0	14 504.0	15 040.0	13 910.0
Croatia	181.9	233.0	215.6	197.8	234.0
Italy	6 388.0	6 597.0	5 239.0	4 061.0	4 889.0
Cyprus	177.3	122.1	102.9	43.8	36.0
Latvia	97.4	95.6	68.0	77.9	94.3
Lithuania	71.4	82.0	87.4	89.4	115.7
Luxembourg	0.0	79.4	60.9	47.3	44.0
Hungary	417.4	305.5	336.5	307.9	258.9
Malta	12.0	18.0	14.1	11.4	24.3
Netherlands	2 363.0	2 715.0	1 961.0	2 078.0	1 783.0
Austria	528.4	564.4	538.7	671.2	582.3
Poland	2 064.0	2 420.0	2 130.4	2 738.7	2 249.5
Portugal	1 809.0	673.7	401.6	378.5	364.3
Romania	8.0	6.3	5.4	5.3	4.7
Slovenia	197.2	107.4	78.4	58.3	51.8
Slovakia	198.7	218.6	207.8	208.9	223.2

<sup>12</sup> “2014 Public Procurement Indicators”, [http://ec.europa.eu/growth/single-market/public-procurement/studies-networks/index\\_en.htm](http://ec.europa.eu/growth/single-market/public-procurement/studies-networks/index_en.htm)

<sup>13</sup> P.51g, 'gross fixed capital formation': consists of acquisitions, less disposals, of fixed assets during a given period plus certain additions to the value of non-produced assets realised by the productive activity of producer or institutional units; fixed assets are tangible or intangible assets produced as outputs from processes of production that are themselves used repeatedly, or continuously, in processes of production for more than one year.

<sup>14</sup> P.2, 'intermediate consumption': the purchase of goods and services by government.

<sup>15</sup> D.632, 'social transfers in kind - purchased market production'.

<sup>16</sup> This is to be expected as ‘social transfers in kind purchased via market producers’ are for example the provision, paid by government, of medical services by health care providers classified outside the general government sector and which is typically an activity occurring outside of the defence sector.

Finland	1 490.0	1 467.0	1 719.0	1 759.0	1 622.0
Sweden	2 876.0	3 222.2	3 261.5	3 576.0	3 058.0
United Kingdom	23 554.5	23 193.3	26 003.0	25 322.0	28 200.6
<b>Total EU-28</b>	<b>78 889.4</b>	<b>77 560.5</b>	<b>79 367.4</b>	<b>78 771.7</b>	<b>78 974.0</b>

Iceland	0.0	0.0	0.0	0.0	0.0
Norway	2 493.6	3 012.4	2 830.6	2 819.0	2 761.2
<b>Total EEA</b>	<b>2 493.6</b>	<b>3 012.4</b>	<b>2 830.6</b>	<b>2 819.0</b>	<b>2 761.2</b>

<b>EU-28 and EEA</b>	<b>81 383.0</b>	<b>80 572.9</b>	<b>82 198.0</b>	<b>81 590.7</b>	<b>81 735.2</b>
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Source: Eurostat, general government expenditure by function (COFOG) [gov\_10a\_exp]

As presented in Table 2, in 2014 the largest budgets were at the disposal of the UK military sector (around 28 billion EUR), followed by Germany and then France (14.5 billion EUR and 13.9 billion EUR per year respectively). The disproportionately low value of military defence expenditure for Romania can be most probably explained by the fact that, in contrast to other countries, significant amounts relating to civil defence were reported by Romania (e.g. 0.8% of GDP in 2014).

The overall value of defence procurement expenditure by general government by the 28 EU Member States and EEA countries remained stable over the investigated period of time, ranging between 81 to 82 billion EUR per year. Neither has it changed significantly since the same analysis was carried out in the Impact Assessment - the average annual defence procurement expenditure in 2000-2004 calculated for EU-25 Member States was estimated at roughly 79 billion EUR<sup>17</sup> (not adjusted for inflation).

### 2.1.2. Procurement of defence equipment

The overall value of military defence procurement expenditure, as presented in Section 2.1.1 above, was estimated based on the data provided by Eurostat (COFOG). Unfortunately, this source of data does not allow obtaining more detailed breakdowns within the selected functions of government. In particular, components which could serve as comparators of the three procurement contract types (i.e. works, goods and service contracts) are not available in COFOG.

However, the expenditure on military equipment, which constitutes a fraction of the total defence procurement expenditure, is estimated by EDA and NATO. NATO divides defence expenditure into four main categories: equipment<sup>18</sup>, personnel<sup>19</sup>, infrastructure<sup>20</sup> and other<sup>21</sup>, while the EDA recognises the following breakdowns under the total defence expenditure: personnel, investment (equipment procurement and R&D), other expenditure (including infrastructure/construction), operation and maintenance. The EDA estimate of the value of defence equipment procurement, as presented in below, covers: the national defence equipment procurement, European collaborative defence equipment procurement and other collaborative defence equipment procurement.

<sup>17</sup> The Impact Assessment, p. 10 and p. 62.

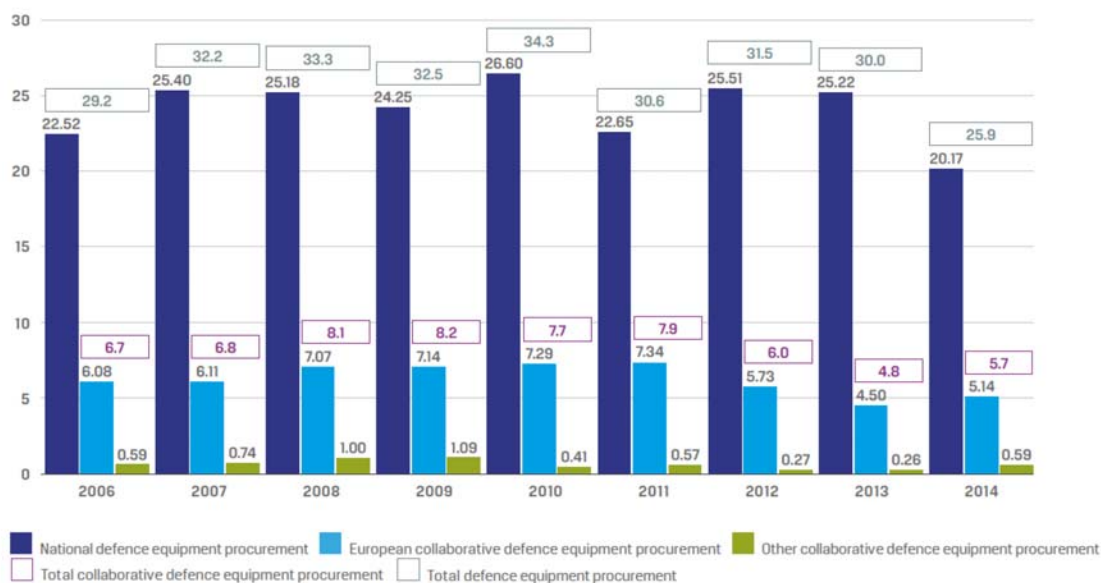
<sup>18</sup> Equipment expenditures include major equipment expenditures and R&D devoted to major equipment.

<sup>19</sup> Personnel expenditures include military and civilian expenditures and pensions.

<sup>20</sup> Infrastructure expenditures include NATO common infrastructure and national military construction.

<sup>21</sup> Other expenditures include operations and maintenance expenditures, other R&D expenditures and expenditures not allocated among above-mentioned categories.

**Figure 2: Defence equipment procurement [value in billion EUR]**



Source: EDA, Defence Data 2014, <http://www.eda.europa.eu/docs/default-source/documents/eda-defencedata-2014-final>

The total defence equipment procurement expenditure reported by 27 EDA countries, accounted for nearly 30 billion EUR in 2013 and roughly 25.9 billion EUR in 2014. National defence equipment procurement was equal to around 20.2 billion EUR in the last year for which data was available (2014). As previously explained, the value of military equipment acquired in a given year constitutes a fraction of the total defence procurement expenditure, but it also constitutes the part of public spending that would be the most appropriate to serve as a denominator when evaluating the publication rate for the procurement of goods under the Directive.

### 2.1.3. Outlook in defence and security expenditure

Although defence spending has generally been decreasing since the end of the Cold War, there are multiple indications that due to recent changes in the geopolitical climate mainly driven by the terrorist threat, and deteriorating relations with Russia following the annexation of Crimea, the downward trend may reverse in the nearest future. In the NATO Annual Report 2015, it was noted that *‘in 2015, there was real progress toward fulfilling the commitment made in Wales. The first aim of the Wales pledge is to stop the cuts to defence spending: 19 countries are expected to have met this aspect of their commitment in 2015’* and *‘In 2015, 16 NATO members not only stopped the cuts to their defence budgets but increased their defence spending in real terms. Twelve of these countries are forecast to have increased their defence spending as a percentage of GDP in 2015’*. As far as year 2016 is concerned, the signs of the new trend have recently also appeared via media coverage: according to Jens Stoltenberg NATO Secretary General *‘The forecast for 2016, based on figures from allied nations, indicates that 2016 will be*

the first year with increased defence spending among European allies for the first time in many, many years'. The latter was confirmed in a NATO Press Release of 4 July 2016<sup>22</sup>.

This trend may have an impact on the amount of defence procurement expenditure and, therefore, on the application of the Directive in the future.

## 2.2. The rationale for Directive 2009/81/EC

This section seeks to set out, on the basis of the Impact Assessment, the rationale for the EU intervention, i.e. the adoption of the Directive 2009/81/EC. The Directive regulates public procurement procedures for the award of certain works, supply and service contracts in the fields of defence and security. In essence, it provides that defence and sensitive security contracts, which fall within its scope of application, are not excluded, and whose value is above certain thresholds<sup>23</sup>, have to be awarded following competitive tendering procedures based on the principles of transparency and equal treatment.

Prior to the Directive, the award of such public contracts fell within the scope of Directives 2004/18/EC or 2004/17/EC (the civil procurement Directives), subject to the relevant Treaty-based derogations, in particular Article 346 TFEU (Article 296 TEC before 2009)<sup>24</sup>, and to the “secrecy” exclusions<sup>25</sup>.

### 2.2.1. The specific problem to be addressed by Directive 2009/81/EC

The specific problem identified in the Impact Assessment<sup>26</sup> – was that many Member States used Article 296(1)(b) TEC (now Article 346 (1)(b) TFEU<sup>27</sup>) extensively, exempting almost automatically the procurement of military equipment from EU public procurement rules. Similarly, Member States exempted sensitive security contracts systematically on the basis of Article 296(1)(a) and/or Article 14 of Directive 2004/18/EC<sup>28</sup>. Derogations which should have been the exception according to the Treaty and the case law of the Court of Justice were, in practice, the rule<sup>29</sup>.

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<sup>22</sup> [http://www.nato.int/nato\\_static\\_fl2014/assets/pdf/pdf\\_2016\\_07/20160704\\_160704-pr2016-116.pdf](http://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2016_07/20160704_160704-pr2016-116.pdf) and Table 47 in Annex IV.

<sup>23</sup> The thresholds are established by Article 8 of the Directive; an overview of the threshold amounts over the years since the adoption of the Directive is provided in Table 59 in Annex IV.

<sup>24</sup> Article 10 of Directive 2004/18/EC.

<sup>25</sup> Article 14 of Directive 2004/18/EC and Article 21 of Directive 2004/17/EC, with almost identical wording, provided for the exclusion of 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”.

<sup>26</sup> The Impact Assessment, p. 13.

<sup>27</sup> Article 346 (1)(b) allows EU Member States to take measures that are necessary for the protection of their essential security interests in connection with the production of/ trade in arms, munitions and war material (specified in the 1958 list). Measures taken under Article 346 (1)(b) may not adversely affect competition on the common market for products not specifically intended for military purposes.

<sup>28</sup> According to Article 346(1)(a), “no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security”. Article 14 of Directive 2004/18/EC excluded 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”.

<sup>29</sup> The Impact Assessment, p. 14.

In the fields of defence and security, EU public procurement rules (Directives 2004/18/EC and 2004/17/EC) were rarely applied in practice. As result, most defence and security contracts were awarded on the basis of diverse national rules and administrative practices. This often led to a regulatory patchwork which was hindering the establishment of a common European defence equipment market and to non-compliance with the principles of the Treaty, in particular the fundamental freedoms of the internal market and the principles of non-discrimination and transparency, including the development of “buy-national practices”.

The main cause of the problem was deemed to lie in the general structure of EU civil public procurement rules (Directives 2004/18/EC and 2004/17/EC), which failed to address the specificities of defence and sensitive security procurement. These specificities were: the high degree of complexity, which calls for flexibility, and the special needs to ensure security of supply and the protection of classified information (security of information)<sup>30</sup>.

### 2.2.2. General and specific objectives

Together with the other elements of the so-called “defence package” that was proposed in 2007<sup>31</sup>, the Directive seeks to support the establishment of an open and competitive EDEM. This is expected to benefit both the supply and the demand side: European companies should obtain a larger “home” market, and competition should help public purchasers to get best value for money, thus saving scarce financial resources<sup>32</sup>.

A more open, competitive and efficient market should help suppliers to achieve economies of scale, optimise production capacity and lower unit production costs, thus making European products more competitive on the global market. This should, in turn, strengthen the competitiveness of European defence industry, by fostering consolidation across national boundaries, helping to reduce duplication, and enhancing industrial specialisation. Indeed, the gradual establishment of the EDEM is essential for a strong EDTIB that can provide the military capabilities that Member States need<sup>33</sup>. The Impact Assessment made it clear that the Commission can play a role in this area via the establishment of a more coherent regulatory framework, but emphasised that, “*as sole customers of defence equipment, it is for Member States to reform the demand side of the market*”<sup>34</sup> (i.e. via harmonisation of requirements and consolidation of demand).

Finally, the specific objective of the Directive, as defined in the Impact Assessment, implied “*a properly functioning regulatory framework at the EU level for the award of contracts in the field of defence and security. This means that EU procurement law must*

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<sup>30</sup> The Impact Assessment, pp. 16-20; Commission’s proposal for a Directive of the European Parliament and of the Council on the coordination of procedures for the award of certain public works contracts, public supply contracts, and public service contracts in the fields of defence and security (the Commission’s proposal), 5.12.2007, COM(2007) 766 final, p. 3.

<sup>31</sup> The 2007 “Defence Package” included a Communication entitled “Strategy for a stronger and more competitive European defence industry” (COM(2007)764, and the legislative proposals for two Directives: Directive 2009/43/EC on transfers of defence-related products within the EU; and Directive 2009/81/EC on defence and security procurement (the Directive).

<sup>32</sup> The Impact Assessment, p. 32.

<sup>33</sup> Recital 2 of the Directive.

<sup>34</sup> The Impact Assessment, p. 32.

*effectively implement the principles of the Treaty for the Internal Market in the field of defence and security and, at the same time, ensure Member States security interests.*"<sup>35</sup>.

### 2.2.3. *The operational objective and the main features of the Directive*

The operational objective of the Directive is to limit the use of the exemptions, in particular under Article 346 TFEU, to exceptional cases, in accordance with the case law of the EU Court of Justice. The majority of contracts in the field of defence and security, including those for the procurement of arms, munitions and war material, should thus be awarded on the basis of the rules of the Directive in order to foster the application of the principles of the Treaty. At the same time, Member States' security interests must be respected<sup>36</sup>.

The Directive seeks to achieve this operational objective by coordinating the different national rules and laying down provisions tailor-made to the specificities of the defence and security sectors. Key elements of the Directive addressing such specificities include:

- **Defence-specific exclusions:** the Directive contains exclusions that have been adapted or newly created in order to accommodate the specific situation of the defence and security sectors. These are the exclusions on international rules, disclosure of information, intelligence activities, cooperative programmes, contract awards in third countries, and government to government sales. Some of the exclusions laid down in the Directive can relate to defence cooperation in procurement.
- **Flexible procedures:** use of the negotiated procedure with publication of a contract notice is authorised without the need for specific justification in order to allow the flexibility required to award sensitive defence and security contracts;
- **Security of Supply:** the particular importance of this issue for defence and security procurement and the specific needs of the Member States justify specific provisions. The Directive allows contracting authorities to address Security of Supply needs through criteria for the selection of suitable candidates and tenderers, contract performance conditions, and award criteria;
- **Security of Information:** protection of classified information is crucial for the award and execution of many defence and sensitive security contracts. The Directive addresses Security of Information in several provisions: as requirement for the tendering and contracting phase (Article 7), as cause for exclusion (Article 13), as contract performance condition (Articles 20 and 22), and as selection criterion (Articles 39 and 42).
- **Review:** in order to ensure compliance with transparency and competition obligations, the Directive establishes a specific review system. This system is largely based on the rules applicable to civil procurement<sup>37</sup>, but contains some provisions adapted to the domains of defence and sensitive security.

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<sup>35</sup> The Impact Assessment, p. 31.

<sup>36</sup> The Impact Assessment, p. 32.

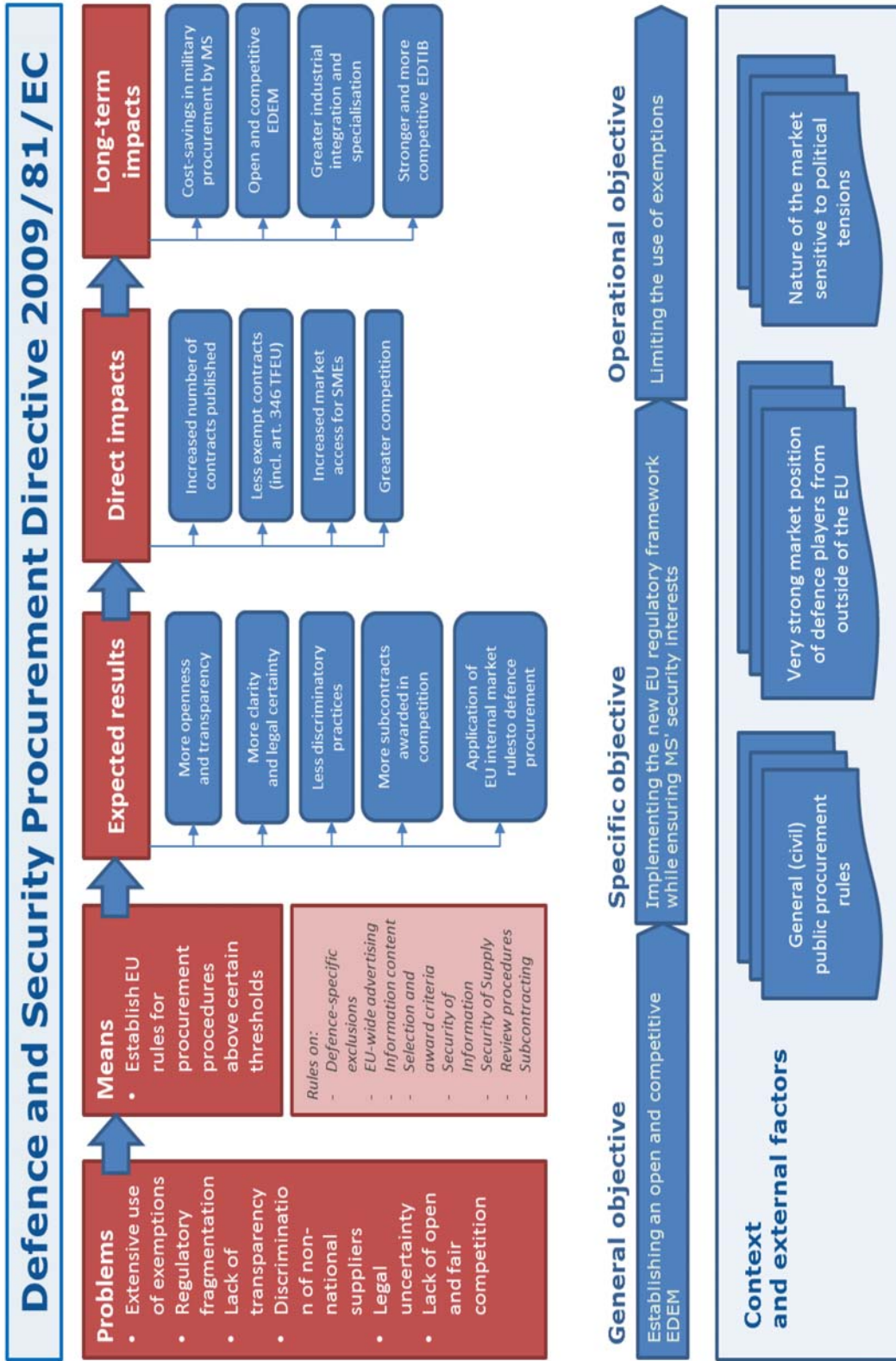
<sup>37</sup> Council Directives 89/665/EEC and 92/13/EEC, as amended by Directive 2007/66/EC of the European Parliament and of the Council.



- **Subcontracting:** in contrast with the civil procurement Directives that provide only very limited obligations with regard to subcontracting, the (defence procurement) Directive contains a detailed set of provisions laid down in Articles 21 and Title III (Articles 50-54). These provisions, in particular, allow contracting authorities to require that successful tenderers subcontract a certain share of the main contract and/or put proposed subcontracts out to competition. At the same time, these provisions, set basic rules for the fair and transparent awarding of such subcontracts. This approach is built on the assumption that competitive subcontracting would give to sub-suppliers, and especially SMEs, a fair chance of gaining access to the supply chains of big system integrators located in other Member States.

To summarise, the Directive aims at addressing the problems identified (extensive application of exemptions and non-application of competitive procurement procedures) through a set of rules specifically adapted for the defence and security sectors. The increased application of competitive procurement procedures based on transparency and equal treatment is expected to lead to more openness and transparency in defence procurement, as well as more clarity and legal certainty. This should bring about cost-savings for public authorities and a more open and efficient market and, in turn, be a contributing factor towards a stronger and more competitive industrial base in Europe. The intervention logic is presented in Figure 3 overleaf.

Figure 3: Intervention logic



### 2.3. Baseline: the situation before Directive 2009/81/EC

This description of the situation before the Directive is based on the analysis contained in the Impact Assessment and a study “*Openness of Member State’s defence markets*” by Europe Economics of November 2012 (the Baseline Study). The baseline situation was also reported in the Staff Working Document accompanying the 2013 Communication “Towards a more competitive and efficient defence and security sector”<sup>38</sup>.

#### 2.3.1. Regulatory patchwork

As explained above in Section 2.2., before transposition of the Directive, exemptions were used extensively and EU public procurement rules (Directives 2004/18/EC and 2004/17/EC) were rarely applied in practice in the defence and security sector. Most procurement contracts were awarded on the basis of different national rules<sup>39</sup>. Each Member State followed different rules as regards publication, technical specifications, and procedures.

With particular regard to publication, the extent to which contract notices were published (either at the EU or national level) differed widely. The frequency of publication and accessibility of contract notices also varied greatly across Member States<sup>40</sup>.

#### 2.3.2. EU-wide publication of business opportunities

The Impact Assessment found that, in the reference period 2000-2004, the publication in the field of defence was relatively rare, even with regards to non-military and non-sensitive procurement such as uniforms or certain services. The publication levels appeared to be even lower, if not marginal, for military procurement; in these cases, publication seemed to concern mainly procurement of “simple”, low value equipment, as well as non-sensitive works and services<sup>41</sup>.

According to the Baseline Study, more than 1 500 notices for defence contracts<sup>42</sup> of a value of roughly 4 billion EUR were published on Tenders Electronic Daily (OJ/TED)<sup>43</sup> from 2008 to 2010 included. On top of that, nearly 300 notices for contracts of roughly 4.76 billion EUR were published on the Electronic Bulletin Board (EBB) of the EDA<sup>44</sup>.

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<sup>38</sup> Commission Staff Working Document on Defence, accompanying the Communication “*Towards a more competitive and efficient defence and security sector*” {COM(2013) 542 final}SWD of 2013, Brussels, 24.7.2013 SWD(2013) 279 final.

<sup>39</sup> The Impact Assessment, p. 21: some Member States had specific legislative rules, while others relied on non-legislative/administrative guidance for project managers.

<sup>40</sup> The Impact Assessment, p. 21. For a description of diverging rules on technical specifications, procedures, selection of suppliers, security of supply, etc., see: the Impact Assessment, Section 3.4, pp. 21-25.

<sup>41</sup> The Impact Assessment, p. 14.

<sup>42</sup> Contracts for the purchase of arms, munitions and war material, plus related services and works.

<sup>43</sup> Tenders Electronic Daily is the online version of the 'Supplement to the Official Journal of the EU, dedicated to European public procurement (<http://ted.europa.eu/>).

<sup>44</sup> The EBB was an online portal operated by the EDA to publish defence contract opportunities submitted by subscribing Member States. The EBB supported the voluntary Code of Conduct on Defence Procurement which covered procurement procedures that Member States considered covered by Article 346 TFEU. The Code of Conduct and the EBB were launched on 1 July 2006 and have been abolished in May 2014.

**Table 3: Contracts advertised on OJ/TED and EBB in 2008-2010 [number of contracts, value in million EUR]**

Publication source	Number				Value			
	2008	2009	2010	Total	2008	2009	2010	Total
<b>TED</b>	415	447	686	1 548	513	2 626	885	4 024
<b>EBB</b>	126	90	80	296	2 518	1 348	900	4 766
<b>Total</b>	<b>541</b>	<b>537</b>	<b>766</b>	<b>1 844</b>	<b>3 031</b>	<b>3 974</b>	<b>1 785</b>	<b>8 790</b>

Source: The Baseline Study, p. 30

Hence, in the period 2008-2010, 1 844 defence contract notices were published EU-wide. The total value of these contracts was estimated to be nearly 8.8 billion EUR<sup>45</sup>, which was **equivalent to 3.3%**<sup>46</sup> **of the EU's total defence procurement expenditure** in the same period (263.23 billion<sup>47</sup> EUR, 2008-2010). In the context of comparisons with the baseline which will be made later in this evaluation, it shall be noted that the Baseline Study referred to defence procurement expenditure as reported by the EDA, while in this report, the main source of data used to determine defence procurement expenditure is Eurostat COFOG database<sup>48</sup> (see: Section 2.1.1.). If the baseline OJ/TED and EBB data were compared with the 2008-2010 COFOG defence procurement expenditure, the share would increase to 3.6%. Nonetheless, if the filtering OJ/TED of notices would be more conservative (as the one applied in this report, see: Section 5.3) the percentage would probably decrease, potentially to a figure close to the baseline estimate of 3.3%. For the above explained reasons, the share of 3.3%, despite its caveats, has been maintained as the reference figure for the baseline period.

### 2.3.3. Cross-border awards

According to the Baseline Study, cross-border contracts published in OJ/TED and EBB in 2008-2010 amounted to 2.26 billion EUR<sup>49</sup>. Consequently, the share of cross-border awards published through the above channels in the reference years equalled 0.86%<sup>50</sup> of the total defence procurement expenditure.

## 3. EVALUATION QUESTIONS

The following table contains a list of questions that will be addressed in the course of this evaluation, to guide the analysis of the performance of the Directive. The questions are grouped under the five evaluation criteria that will look into the effectiveness, efficiency, relevance, coherence and EU added value of the Directive.

<sup>45</sup> From a legal standpoint, publication in OJ/TED and on the EBB were mutually exclusive, as OJ/TED was to be used for contracts award procedures under the civil procurement Directive (Directive 2004/18/EC) and the EBB was to be used for procurement under Article 346 TFEU. The issue of duplication of data has, however, been thoroughly checked in the Baseline Study, and no duplication has been found, paragraphs 3.13 and 3.14, pp. 29-30.

<sup>46</sup> 8.8 billion EUR/263.2 billion EUR, in 2008-2010.

<sup>47</sup> The Baseline Study, Table 3.1. p. 27.

<sup>48</sup> The latter has been judged to be more complete, as it also covers Denmark and the EEA countries.

<sup>49</sup> The Baseline Study, Table 4.4. p. 57.

<sup>50</sup> 2.26 billion EUR/263.2 billion EUR, in 2008-2010.

**Table 4: Evaluation questions**

	<b>Main evaluation questions</b>	<b>Evaluation questions detailed</b>
<b>Effectiveness</b>	To what extent have the objectives of the Directive been achieved?	1. To what extent have competition, transparency and non-discrimination in the defence procurement market in Europe changed as a result of the Directive?
	To what extent the observed changes can be attributed to the Directive?	2. To what extent has the use of exemptions, in particular Article 346 TFEU, changed as a result of the Directive?
	What are the factors, if any, affecting the implementation of the Directive?	3. To what extent are the provisions of the Directive appropriate to guarantee competition, transparency and equal treatment, while safeguarding Member States security concerns?
		4. Have there been any major structural changes in the European Defence Technological and Industrial Base (EDTIB), including with regards to SMEs, and to what extent are they linked to the Directive?
<b>Efficiency</b>	To what extent has the intervention been cost effective?	5. To what extent are the costs proportionate to the benefits achieved?
<b>Relevance</b>	To what extent is the intervention still relevant?	6. To what extent are the objectives of the Directive still relevant?
		7. In what way has the initial problem evolved? Have any new issues that need to be taken into account emerged since the adoption of the Directive and what are they?
<b>Coherence</b>	To what extent is this intervention coherent with other interventions which have similar objectives?	8. To what extent is the Directive coherent with the framework of EU Public Procurement law and of internal market legislation and policies related to defence (e.g. Directive 2009/43/EC)?
		9. How does the Directive fit into the framework of other EU instruments and policies in particular in the area of CSDP?
<b>EU added value</b>	To what extent do the issues addressed continue to require action at EU level?	10. What has been the EU added value of the Directive compared to what could have been achieved by Member States at national (or regional) level (is the principle of subsidiarity respected)?

#### 4. METHOD

The analysis presented in this document was based on several data sources, in particular: notices published in OJ/TED, data published by EDA and NATO, IHS Jane's Defence & Security Intelligence database and Eurostat, as well as consultations with Member States

and stakeholders (including a public on-line survey). The findings of this evaluation are compared with the situation before the entry into the force of the Directive, as analysed in the Baseline Study.

As mentioned in the introduction, the evaluation covers years 2011-2015. Given the short time that has elapsed since the entry into force of the provisions, it can be expected that the conclusions about the Directive's impact on the EDEM and, especially, the EDTIB would be very difficult to reach. Therefore the present evaluation assesses whether we are on track to meeting the objectives it sets and the expectations made at the time of its adoption. The problem of insufficient time lag of this evaluation has been already pointed out in the Baseline Study: *"A comparison in 2016 of, say, 2013-2015 with 2008-2010 might not capture much of the Directive's impacts: 2013 is only one year later than the end of the transposition phase. Comparisons in 2017 of 2014-2016 (or possibly 2015-2016) with 2008-2010 would offer a better chance of capturing impacts."*<sup>51</sup> Similarly, it has been also pointed out in the Impact Assessment that *"Given the life cycle of defence equipment (and their related services, especially maintenance), an evaluation of the economic impact should be contemplated in the long term (no sooner than 10 years)."*<sup>52</sup>.

#### 4.1. OJ/TED data

The main source of data used in this evaluation was extracted from OJ/TED, which is the online version of the Supplement to the Official Journal of the EU dedicated to European public procurement. The OJ/TED dataset contains information provided by national contracting authorities about procurement procedures they implement(ed) and includes for instance the Common Procurement Vocabulary (CPV)<sup>53</sup> chosen to describe the subject-matter of the contract, the price of awarded contracts, the name of the winning firm and the legal regime applied (the Directive or the civil procurement Directives).

Procurement transactions which were of particular pertinence in the context of this evaluation were those published on notices dedicated to defence and security procurement<sup>54</sup>. Additionally, the analysis also covered a subset of publications on voluntary ex-ante transparency notices (VEATs) when the contracting authority indicated that the publication falls under the Directive and notices published under the civil procurement Directives, if their subject matter was linked to defence or/and security. The latter was established by retaining notices which referred to CPV codes listed in Table 42 and Table 43 in Annex III.

From the analytical point of view, the most valuable information about procurement comes from the contract award notices, as they refer to procedures that have been concluded (i.e. contracts which were attributed to a particular company for an agreed price). For this reason, the following **analysis is mainly based on the contract award notices**.

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<sup>51</sup> The Baseline Study, p.154.

<sup>52</sup> The Impact Assessment, p.58.

<sup>53</sup> The common procurement vocabulary (CPV) establishes a single classification system for public procurement aimed at standardising the references used by contracting authorities and entities to describe procurement contracts.

<sup>54</sup> Annexes XV to XVIII of Commission Implementing Regulation (EU) No 842/2011 of 19 August 2011 establishing standard form for the publication of notices in the field of public procurement and repealing Regulation (EC) No 1564/2005.

Before launching any descriptive analysis of OJ/TED publications, the raw dataset was subject to manual scrutiny in order to verify its quality. The analysis of OJ/TED data included in this evaluation is based on the manually corrected datasets, unless specified otherwise. The scope of manual corrections is explained in detail in Annex III.

#### **4.2. Other data sources**

In addition to OJ/TED data, data from other sources were also used, in particular:

- Eurostat: COFOG data (<http://ec.europa.eu/eurostat/web/government-finance-statistics/data/database>) and Structural business statistics (SBS) data (<http://ec.europa.eu/eurostat/web/structural-business-statistics/data/database>),
- IHS Jane's (<http://www.janes.com/>), especially the following modules: Jane's Defence Procurement, Jane's Defence Industry & Markets,
- The European Defence Agency (EDA) (<https://www.eda.europa.eu/>),
- Stockholm International Peace Research Institute (SIPRI) (<https://www.sipri.org/>),
- North Atlantic Treaty Organization (NATO) (<http://www.nato.int/>),
- AeroSpace and Defence Industries Association of Europe (ASD) (<http://www.asd-europe.org/home/>).

The extent to which each of the above data was used and the limitations linked to its scope or availability, if any, are described in Annex III (Method). This Annex contains also references to other ancillary data sources used to underpin this evaluation.

#### **4.3. Stakeholders consultations**

The stakeholders consultation methods for this evaluation have been designed to reach all potential stakeholders as well as the general public, and to gather detailed technical feedback from more directly involved stakeholders and experts. In the light of this, the consultations included an internet-based public consultation (online survey) and several complementary consultation meetings with key stakeholders. More information is provided in Annex II.

#### **4.4. Methodological issues and data availability**

The current evaluation has been carried out without encountering major unexpected problems linked to methodological and/or data analysis issues. The economic research underpinning this evaluation relied heavily on descriptive statistics of the OJ/TED dataset which was available in a structured format and fit for automated processing. The raw OJ/TED was subject to manual scrutiny to ensure its adequacy and corrected for basic errors or missing information. Additionally, examination of the data, especially with regards to the contract award values, has also been performed by the representatives of two Member States who volunteered to complete the missing information for their countries. As such, the manual corrections affected less than 5% of the observations, which suggest that the original dataset was of a relatively good quality.

Some data availability issues were encountered in areas where such problems could have been expected (e.g. procurement exempt from the application of the Directive). This part of the market was analysed using data from a private provider (IHS Jane's), which as such was not technically demanding, but rather raised questions about its coverage/completeness and potential overlaps with OJ/TED. The estimation of compliance costs under the Directive also included "business as usual" costs and costs deriving from national legislation. It was impossible to disentangle the above components of the cost estimate due to technical limitations in the raw dataset used. More information about the methodology used is provided in Annex III.

As far as the EDTIB impact is concerned, it was noted that definite conclusions are difficult to draw at this stage, as insufficient time has elapsed since the adoption of the Directive and potential impact on the industry would need more time to materialise. In parallel, there were also issues with the unavailability of recent data about the industry (e.g. beyond 2014) in Eurostat and/or ASD. Additionally, the main Eurostat database which is typically used to describe patterns across chosen industries – the Structural business statistics (SBS) - is not well adapted to the defence sector, as it partially covers non-defence activities (e.g. civil aerospace and shipbuilding). This problem is known and has been mentioned in several previous publications about the defence sector, including the Baseline Study: "*The 'defence industry' is not an industry in a statistical sense. There is no classification 'defence equipment' in the EU's Nomenclature générale des Activités économiques dans les Communautés Européennes (NACE).*"<sup>55</sup>.

Notwithstanding those limitations, the evaluation is based on a review of best available quantitative and qualitative evidence of causality between actions and effected changes. It made extensive use of stakeholders' and experts' view on the functioning of the different provisions of the Directive.

## 5. IMPLEMENTATION STATE OF PLAY

This section includes an overview of the process that led Member States to convert the Directive into their national legal orders with some significant delays for some Member States, a summary of the results of the technical analysis of the transposition measures adopted by Member States process, a brief description of developments concerning the related issue of offsets regulations, some background information on the Commission departments' activities to ensure compliance with the Directive, and, finally, a quantitative analysis of the uptake of the Directive.

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<sup>55</sup> Cont. "*The bulk of the equipment supplied for defence purposes resides within three NACE industries that supply both and civil and military markets – weapons and ammunition, shipbuilding, and aerospace. The weapons and ammunition industry, for example, is not exclusively a supplier of military equipment: it also produces recreational guns and their ammunition. A fourth, and smaller, defence industry category emerged from a recent revision of NACE ("NACE Rev.2"), which then defined, for the first time, a manufacturing industry that is wholly related to defence - NACE Rev.2 C304, Military fighting vehicles.*", the Baseline Study, p. 89.



## 5.1. Transposition

### 5.1.1. *The transposition process (August 2011-May 2013)*

Under Article 72 of the Directive, Member States had to “*adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive*” (i.e. transpose it in their national legal orders) by 21 August 2011. Only 3 Member States had notified complete transposition of the Directive to the Commission by 21 August 2011, and a fourth Member State notified complete transposition in September 2011.

The Commission therefore opened infringement procedures against 23 Member States (Article 258 TFEU) by sending letters of formal notice. As a result, by March 2012, 15 additional Member States had notified complete transposition. For the remaining 8 Member States (Austria, Bulgaria, Germany, Luxembourg, the Netherlands, Poland, the United Kingdom, and Slovenia) the Commission continued the infringement procedures for non-communication of transposition measures and issued reasoned opinions<sup>56</sup>. By September 2012, Austria, Bulgaria, Germany and the United Kingdom notified complete transposition and the Commission closed the infringement procedures relating to them.

In September 2012, the Commission decided to refer Poland, the Netherlands, Luxembourg and Slovenia to the Court of Justice since these Member States had not notified the complete transposition of the Directive<sup>57</sup>. By April 2013, these four Member States did so and the Commission closed the infringements procedures. The Commission did not consider the transposition measures notified by Portugal to be complete and issued a reasoned opinion in March 2013<sup>58</sup>. Following the reply of the Portuguese authorities and notification of further transposition measures in April 2013, this infringement procedure was also closed.

It is, therefore, only from May 2013 that the provisions of the Directive have been fully transposed in the national legal orders of all Member States.

### 5.1.2. *Technical analysis of transposition measures*

The Commission departments have analysed Member States’ transposition measures to verify their conformity with the provisions of the Directive. The Commission departments have not identified fundamental problems in terms of conformity of national transposition measures, i.e. problems that would jeopardise the overall functioning of the Directive. However, this analysis has shown that, in several Member States, there are certain issues to be clarified on the transposition in national legislation of some specific provisions of the Directive.

This Section of the SWD is based on a preliminary analysis conducted in the context of the evaluation of the Directive. It is without prejudice to the Commission’ position concerning possible breaches of Union law.

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<sup>56</sup> See press releases: [http://europa.eu/rapid/press-release\\_IP-12-76\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-12-76_en.htm?locale=en); [http://europa.eu/rapid/press-release\\_IP-12-290\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-12-290_en.htm?locale=en); [http://europa.eu/rapid/press-release\\_IP-12-416\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-12-416_en.htm?locale=en); [http://europa.eu/rapid/press-release\\_IP-12-533\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-12-533_en.htm?locale=en); [http://europa.eu/rapid/press-release\\_IP-12-664\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-12-664_en.htm?locale=en);

<sup>57</sup> See press release: [http://europa.eu/rapid/press-release\\_IP-12-1020\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-12-1020_en.htm?locale=en).

<sup>58</sup> See press release: [http://europa.eu/rapid/press-release\\_MEMO-13-261\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-261_en.htm).

#### 5.1.2.1. Scope, thresholds and exclusions

The correct transposition of the provisions defining the scope of the Directive (Articles 1 and 2), and the exclusions (Article 12 and 13) is an essential pre-requisite for the uptake of the Directive, and compliance with the principles of competition, transparency and equal treatment. These provisions have been broadly transposed in a correct manner. One Member State seems to have transposed Article 2(c) broadening the scope with regard to the award of contracts for non-military security. Similarly, another Member State seems to have broadened the scope of Article 2(a) by referring to military “*and law enforcement purposes*”.

Article 9(5) third subparagraph provides that the application of the Directive to each lot may be waived if the lots are below a certain value. In one Member State, a small change in the wording of the corresponding national provision could allow contracting authorities/entities to waive such application in cases different than those provided for in the Directive.

Two Member States have transposed Article 12(c) without including the words “*purchasing for its purposes*”. One Member State seems to have broadened the scope of Article 13(b) by referring to the purposes of the bodies pertaining to the intelligence system rather than to intelligence activities.

#### 5.1.2.2. Negotiated procedure without publication

Since it allows contracting authorities to derogate from the fundamental requirements on transparency and EU-wide competition, the correct transposition of Article 28 on the use of the negotiated procedure without publication of a contract notice is also essential. Only very few and particular issues have been identified with the transposition of this provision. In one Member State, the time limit of five years in Article 28(3)(a) does not refer to “*recurrent contract*”. Another Member State did not transpose the provision in Article 28(4)(b) obliging contracting authorities/entities to disclose the possible use of the procedure as soon as the first project is put up for tender. Four Member States seem not to have transposed the second part of the same provision laying down an obligation to take into account the cost of subsequent works or services to calculate the estimated value of the contract for the purposes of the thresholds under Article 8.

#### 5.1.2.3. Exclusion grounds (Article 39)

Four Member States did not transpose Article 39(1) fourth subparagraph or at least the reference that clarifies that contracting authorities/entities’ requests of evidence about the personal situation of a candidate or tenderer have to relate, where needed, to natural persons such as company directors. One Member State seems to have extended the scope of mandatory exclusion grounds of Article 39(1) to economic operators submitting multiple offers and to those involved in the preparation of procurement documents. Two Member States broadened the possibility for contracting authorities/entities to waive mandatory exclusion grounds provided for in Article 39(1) third subparagraph.

Two Member States have not transposed Article 39(2)(d) providing for the exclusion for grave professional misconduct, and another Member State has not transposed Article 39(2)(e) on the exclusion of economic operators which lack the reliability to exclude security risks. Two Member States have not transposed Article 39(2)(h) on the exclusion of economic operators who are guilty of serious misrepresentation in supplying the

information on their personal situation or who have not supplied such information; in one Member State, the corresponding national provision narrows the scope of this exclusion ground.

#### 5.1.2.4. Time limits (Articles 33 and 34)

Two Member States transposed Article 33(3) by referring directly to the time limit of 22 days, instead of making it clear that the normal time limit is 36 days and 22 days is the absolute minimum that cannot be in any way shortened further.

Article 34(4) provides time limits for the contracting authorities/entities to send to economic operators additional information on the contracts documents. Five Member States have either not transposed this provision, or slightly reduced through different mechanisms the time available to economic operators.

#### 5.1.2.5. Other issues related to the rules on contracts

According to Article 5(2), groups of economic operators may submit tenders or put themselves forward as candidates. In one Member State, the corresponding national provision allows contracting authorities/entities to exclude groups of undertakings if based on objective reasons.

Article 18(3)(a) second subparagraph provides that contracting authorities/entities, when drafting the technical specifications, have to accompany every reference to standards with the expression “*or equivalent*”. One Member State seems to have converted this provision into national law without including this wording.

Article 22, third subparagraph provides that Member States have to recognise the security clearances which they consider equivalent to those issued in accordance with their national law. This means that, where there are bilateral security agreements or arrangements concerning the equivalence of security classifications and security requirements, contracting authorities/entities have to recognise security clearances granted by the national security authority of the other Member State party to this agreement or arrangement<sup>59</sup>. In two Member States national legislation do not explicitly provide for this obligation to recognise security clearances in the above-mentioned circumstances.

In two Member States, the national provisions corresponding to Article 29(3) allow contracting authorities/entities to conclude framework agreements with a single economic operator without defining all the terms for the award of specific contracts based on the agreement.

Article 32(1) provides for the minimum content to be included in the notices for publication at EU level; one Member State has not transposed this provision in its national legislation. In addition, Article 32(5) prohibits contracting authorities/entities to publish notices at national level before the date on which they are sent to the Commission for publication at EU level. It also provides that notices published at national level cannot include information other than that contained in the notices sent for publication at EU

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<sup>59</sup> Guidance note on Security of Information, paragraph 12, <http://ec.europa.eu/DocsRoom/documents/15411/attachments/1/translations/>.

level. In two Member States, the relevant national provisions do not contain the explicit prohibitions lay down in Article 32(5).

Article 37(1) lays down an obligation on contracting authorities/entities to draw up a written report on the selection procedure, and provides for mandatory elements to be included in the report. In two Member States, the national provisions do not mention all these elements.

Article 38 regulates various aspects of the conduct of procedures. Two Member States appear not to have expressly transposed Article 38(1), which sets out the sequencing of procedures from the application of exclusion grounds to the qualitative selection and the award of the contract. In two Member States, the provisions transposing Article 38(3) third subparagraph do not lay down the obligation, in case of re-publication of contract notice, to invite the candidates selected upon the first publication.

Article 38(5) regulates the situation where the contracting authorities/entities exercise the option of reducing the number of solutions or of tenders. In three Member States, this provision has not been transposed.

One Member State appears not to have transposed in national legislation Article 49(1) and Article 49(2) on abnormally low tenders. According to these provisions, where tenders appear to be abnormally low, contracting authorities/entities have to request in writing details of the constituent elements of the tender and to verify these elements by consulting the tenderer.

#### 5.1.2.6. Subcontracting

Article 21(1) lays down i.a. a prohibition to require successful tenderers to discriminate against potential subcontractors on grounds of nationality. Two Member States seem not to have explicitly transposed this provision. One Member State appears not to have transposed any of the provisions on subcontracting (Articles 21 and 50 to 53).

#### 5.1.2.7. Rules to be applied to reviews

According to Article 56(3), Member States are obliged to ensure that contracting authorities/entities cannot conclude the contract before the review body's decision. One Member State seems not to have transposed this provision, and another has introduced changes that make the prohibition less stringent.

Article 57(2), fourth subparagraph, imposes an obligation on contracting authorities/entities to include in the communication of the award decision a summary of the relevant reasons and a precise statement of the exact standstill period applicable. Two Member States have not transposed this provision in national legislation, and one has not included the reference to the statement of the applicable standstill period.

Article 58 allows Member States to provide for specific derogations from the standstill period. One of these derogations concerns contracts based on a framework agreement. However, according to Article 58(c), Member State which decide to use this option have to ensure, in two specific cases, that such contracts based on a framework agreement are ineffective. Four Member States seem to have used the option, but not explicitly transposed these provisions on ineffectiveness. In one Member State, the national provision provides for ineffectiveness only in one of the two cases.

Article 60(1) imposes on Member States the obligation to provide for ineffectiveness of contracts in specific cases. It seems that two Member States have not transposed this provision, while three Member States appear not to have included in the relevant national provisions all the cases for ineffectiveness. Article 60(3) provides that Member States may enable review bodies not to declare contracts ineffective when this is required by overriding reasons relating to a general interest; the same provision clarifies that economic interests directly related to the contract do not constitute such overriding reasons. In one Member State, the national provision transposing Article 60(3) admits such economic reasons to be overriding reasons. In addition, six Member States have not transposed either Article 60(4) or Article 60(5), which provide for mandatory non-application of ineffectiveness in given cases.

### 5.1.3. Offsets / industrial return regulations in the context of transposition

This section addresses the issue of offsets regulations, which is highly relevant in the context of the process of transposition of the Directive. The practice of concrete offsets or industrial return requirements in specific public procurement procedures is covered below in Section 6.1.1.4.

Offsets are compensations that many governments in the world require when they procure defence equipment from non-national suppliers. This is often to ensure an economic/industrial return on defence investment. Offsets can take various forms: they can be directly related to the subject-matter of the contract, indirect but limited to the military sphere, or indirect non-military.

Whatever their form, offsets requirements are, from an EU law standpoint, restrictive measures which go against the basic principles of the Treaty, because they discriminate against economic operators, goods and services from other Member States and impede the free movement of goods and services. They can only be justified on the basis of one of the Treaty-based derogations, in particular Article 346 TFEU. However, these derogations must be limited to exceptional and clearly defined cases, and the measures taken must not go beyond the limits of such cases. They have to be interpreted strictly, and the burden of proof that the derogation is justified lies with the Member State which invokes it<sup>60</sup>.

The Impact Assessment highlighted the negative and discriminatory effects of offsets upon procurement procedures. It noted that offsets “*give a considerable advantage to big prime contractors, which normally have better means than smaller competitors to arrange offsets deals*”; “*if military offsets are required, prime contractors have to sub-contract to companies located in the buying country. Consequently, they cannot use the most competitive sub-contractors to organise their supply chain, but must give preference to sub-suppliers of a certain nationality*”; “*if non-military offsets are required, the same effect spills over into civil markets: non-military contracts are awarded on the basis of nationality than competitiveness*”<sup>61</sup>.

The Impact Assessment assessed a number of options with regard to offsets, and concluded that not mentioning them in the proposal for the Directive was the best-suited

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<sup>60</sup> Guidance note on Offsets, <http://ec.europa.eu/DocsRoom/documents/15413/attachments/1/translations/>.

<sup>61</sup> The Impact Assessment, p. 28.

one<sup>62</sup>. In fact, since offsets requirements violate basis rules and principles of primary EU law, a secondary law instrument like the Directive cannot allow, tolerate, or regulate them. The Impact Assessment added that the issue of compatibility of offsets with EC law had to be addressed in the light of the Treaty and the Commission's Interpretative Communication<sup>63</sup>.

Before the adoption of the Directive, 18 Member States maintained offsets regulations requiring compensation from non-national suppliers when they procured defence equipment abroad<sup>64</sup>. These regulations obliged contracting authorities to systematically (i.e. for all contracts or for all contracts above a certain value) require offsets when purchasing defence equipment from foreign suppliers abroad. They were clearly incompatible with EU primary law as well as the correct transposition and application of the Directive.

Consistently with the option selected with the Impact Assessment, the Commission departments therefore engaged, since 2010, with Member States to make sure that these offsets regulations were abolished or revised in the context of the process of transposition of the Directive. Member States have indeed either abolished or revised their offsets regulations. The content of revised offsets regulations varies significantly across Member States, but they have one key feature in common. Under the revised regulations, offsets are no longer required systematically (i.e. for all contracts or for all contracts above a certain value) in connection with defence purchases from abroad based on grounds of clear economic nature. The revised rules provide that offsets can only be required, following a case-by-case analysis, where the conditions of Article 346 TFEU are met.

The revised offsets regulations of those Member States that have chosen to maintain them in place do not seem *per se* incompatible with EU law. The question remains, however, of whether - and to what extent - the concrete application of these revised rules in procurement practice in individual cases is compliant with EU law, and in particular with the strict conditions for the use of Article 346 TFEU.

## **5.2. Compliance activities concerning individual procurement cases**

Section 5.1. above describes the Commission activities concerning the transposition of the Directive, and the related issue of offsets/industrial return regulations. This paragraph seeks to explain the Commission departments' work so far about compliance of Member States' concrete individual procurements with the rules of the Directive.

It should be pointed out that, in the period 2011-2015 (and also until September 2016), the Commission departments have received only 1 complaint from an economic operator involved in a specific defence procurement procedure, and no complaint from economic operators involved in procedures for the procurement of high-value, complex military equipment. As it emerged in the stakeholders' consultations with regard to access to review procedures, defence companies only usually have one customer in each country, and therefore try not to antagonise them. This may also help explain the absence of

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<sup>62</sup> The Impact Assessment, p. 49.

<sup>63</sup> The Impact Assessment, p. 49; Interpretative Communication on the application of Article 296 of the Treaty in the field of defence procurement, 7.12.2006, COM(2006) 779 final.

<sup>64</sup> Report from the Commission to the European Parliament and the Council on transposition of Directive 2009/81/EC on Defence and Security Procurement, COM/2012/0565 final.

complaints to the Commission. It should be pointed out, however, that the absence of complaints from competitors, which have the potential of providing comprehensive and well-substantiated information, severely affects the compliance activities of Commission departments, due to the difficulties of gathering ex officio such information about concrete defence procurement procedures. Other relevant factors in this context are the relative novelty of the rules, and the sensitivity of the sector.

In the period 2011-2015, the Commission departments contacted Member States authorities to seek clarifications on 11 individual procurements. In 2016, further contacts concerning other 17 individual procurements have been undertaken. The main focus of these exchanges has been clarifications about the legal grounds for the non-application of the Directive and, in some cases, for the use of offsets/industrial return requirements.

### 5.3. Uptake of the Directive

As explained in Section 2.3., before the entry into force of the Directive, the publication of defence and security procurement was relatively limited and took place mainly through OJ/TED publications under the civil procurement Directives and on the EBB run by the EDA. According to the Baseline Study, in the period 2008-2010, 1 844 defence contract notices were published EU-wide for the estimated total value of around 8.8 billion EUR. The following sections discuss how the situation has changed in the EU since the adoption of a legal instrument dedicated to defence and security procurement.

#### 5.3.1. Defence and security procurement under the Directive

Since the entry into force of the Directive, more than 8 700 notices have been published in OJ/TED under the standard forms dedicated to defence and security procurement<sup>65</sup>. As explained in Section 4 and Annex III, following a manual scrutiny of the raw OJ/TED data, around 250 notices have been removed from the original dataset, mainly because their subject matter was judged as not being related to defence and security procurement. Additionally, contract award notices from Belgium and the Netherlands have also been manually corrected by the representatives of the respective Member States. All analysis of OJ/TED data included in this document is based on the manually corrected dataset. The retained dataset related to publications under the Directive contained 8 526 notices (Table 5).

**Table 5: Notices published under the Directive, by year and type [number of notices]**

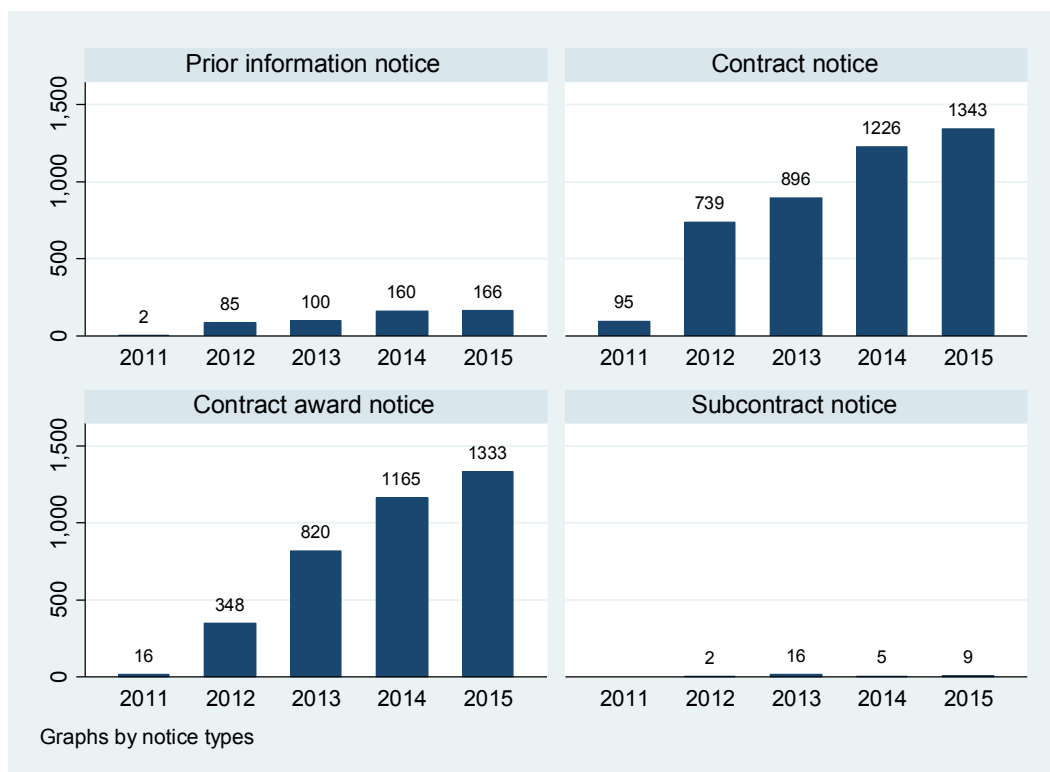
Year	Prior information notice	Contract notice	Contract award notice	Subcontract notice	Total
2011	2	95	16	0	113
2012	85	739	348	2	1 174
2013	100	896	820	16	1 832
2014	160	1 226	1 165	5	2 556
2015	166	1 343	1 333	9	2 851
<b>Total</b>	<b>513</b>	<b>4 299</b>	<b>3 682</b>	<b>32</b>	<b>8 526</b>

<sup>65</sup> Standard form types 16 to 19, as defined in Annexes XV to XVIII of Commission Implementing Regulation (EU) No 842/2011 of 19 August 2011 establishing standard form for the publication of notices in the field of public procurement and repealing Regulation (EC) No 1564/2005.

Source: OJ/TED, manual corrections by DG GROW

Upon entry into force, the uptake of the Directive was almost immediate and has shown a clear upward trend. As presented in Figure 4, the use of procurement notices available under the Directive has been increasing each year, with the exception of the subcontract notices<sup>66</sup> which clearly stagnated at barely a few publications per year.

**Figure 4: Notices published under the Directive, by year and type [number of notices]**



Source: OJ/TED, manual corrections by DG GROW

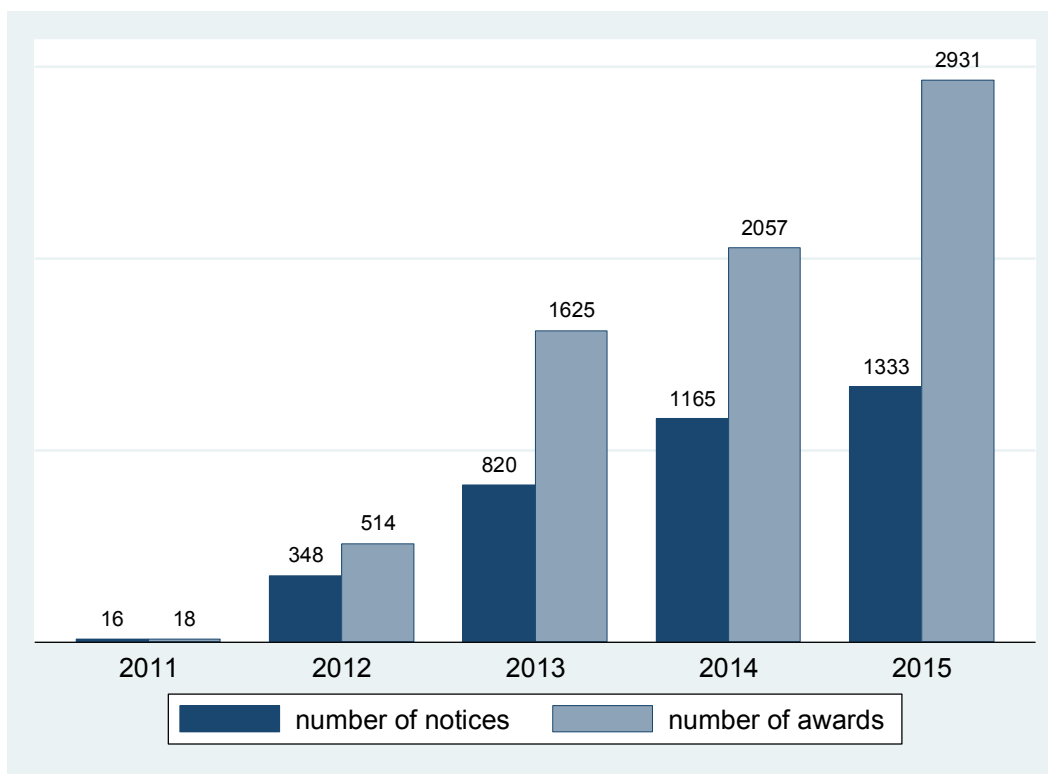
A total of 3 682 contract award notices has been published in OJ/TED over the analysed period of time, containing 7 145 distinct contract awards<sup>67</sup>. The difference stems from the fact that a single contract award notice may refer to the award of one or many contracts (contract awards). Out of the total number of contract awards notices published in 2011-2015, 3 121 contained just one contract. The remaining 15% of notices featured many awards – the largest number in the sample was a notice containing 365 separate awards.

<sup>66</sup> The subcontracting notices refer to the cases, where the contracting authority asked the successful tenderer to subcontract a share of the contract to third parties.

<sup>67</sup> The concept of a single award is more closely related to a contract signed with a bidder (or bidders) at the end of the procurement process.



**Figure 5: Contract award notices and awards published under the Directive, by year [number of notices and awards]**



Source: OJ/TED, manual corrections by DG GROW

The number of awards (awarded contracts) published under the Directive was in a steady increase over the last five years, rising from only 18 in 2011 to 2 931 awards in 2015 (Figure 5). The total number of awarded contracts equalled, after manual corrections, 7 145 in 2011-2015.

#### 5.3.1.1. Use of the Directive by countries

The total value of 3 682 contract award notices published under the Directive accounted for nearly **30.85 billion EUR over the five years which are covered by the current analysis (2011-2015)**. However, the extent to which Member States implemented the Directive remained uneven. In terms of the number of notices published, more than 70% of the publications concerning awarded contracts were made by authorities from five Member States: Germany, France, Italy, Poland and the United Kingdom (Table 6).

**Table 6: Contract award notices published under the Directive, by country and year [number of notices]**

	2011	2012	2013	2014	2015	Total
Austria		1	4	1	5	11
Belgium		3	28	25	14	70
Bulgaria	2	2	17	19	35	75
Croatia				16	31	47
Czech Republic		9	16	37	75	137
Denmark		17	23	32	40	112
Estonia			7	14	19	40

Finland		26	36	45	39	<b>146</b>
France		39	230	225	246	<b>740</b>
Germany	3	87	202	251	271	<b>814</b>
Hungary	1	11	18	7	10	<b>47</b>
Italy	10	106	97	105	88	<b>406</b>
Latvia			5	4	12	<b>21</b>
Lithuania		3	8	18	25	<b>54</b>
Netherlands		4	5	23	31	<b>63</b>
Norway				3	26	<b>29</b>
Poland		3	32	171	185	<b>391</b>
Portugal					8	<b>8</b>
Romania			21	58	48	<b>127</b>
Slovakia		5	1	5	15	<b>26</b>
Slovenia			8	7	10	<b>25</b>
Sweden		2	9	13	10	<b>34</b>
United Kingdom		30	53	86	90	<b>259</b>
<b>Total</b>	<b>16</b>	<b>348</b>	<b>820</b>	<b>1 165</b>	<b>1 333</b>	<b>3 682</b>

Source: OJ/TED, manual corrections by DG GROW

Between 2011 and 2015 there were no publications of contract award notices by contracting authorities from six countries: Cyprus, Greece, Ireland, Malta, Luxembourg and Spain<sup>68</sup>. It shall be noted however that these countries have published a number of contract award notices with a defence-related subject-matter under the civil procurement Directives. Spain for example, kept on publishing under the civil regime even after transposition of the Directive.

In terms of the contract value, an overview of publications by Member States also shows significant differences across the EU, as presented in Table 7. More than a half of the value of published contracts has been awarded by authorities from the United Kingdom (nearly 17 billion EUR over the analysed five years, albeit this result was heavily influenced by one contract award notice valued at around 6 billion GBP<sup>69</sup>). France, Poland, Germany and Italy followed in the ranking (with publications estimated at approximately 5 to 1 billion EUR).

**Table 7: Contract award notices published under the Directive, by country and year [value in million EUR]**

	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>Total</b>
Austria		0.62	3.79	2.03	17.23	<b>23.68</b>
Belgium		4.34	145.58	106.20	19.83	<b>275.95</b>
Bulgaria	0.58	0.70	90.14	15.60	46.51	<b>153.54</b>
Croatia				43.71	75.82	<b>119.53</b>
Czech Republic		20.03	23.25	55.15	94.33	<b>192.75</b>
Denmark		34.02	42.74	15.95	844.69	<b>937.39</b>
Estonia			16.15	23.79	104.34	<b>144.28</b>
Finland		25.48	84.82	143.35	91.45	<b>345.10</b>
France		45.64	817.71	2 000.91	2 105.16	<b>4 969.42</b>
Germany	2.15	280.92	344.99	409.46	664.58	<b>1 702.11</b>

<sup>68</sup> The removal of notices from the working dataset due to manual quality checks did not concerned contract award notices published by contracting authorities from these Member States.

<sup>69</sup> <http://ted.europa.eu/udl?uri=TED:NOTICE:162335-2015:TEXT:EN:HTML&src=0>.

Hungary	0.57	52.40	23.23	57.96	49.06	<b>183.23</b>
Italy	18.73	144.68	389.79	395.11	116.55	<b>1 064.86</b>
Latvia			4.38	8.84	25.72	<b>38.94</b>
Lithuania		1.41	37.26	22.85	75.52	<b>137.04</b>
Netherlands		2.27	6.73	26.58	81.25	<b>116.84</b>
Norway				3.69	191.47	<b>195.16</b>
Poland		4.37	123.30	700.20	1 181.23	<b>2 009.11</b>
Portugal					34.04	<b>34.04</b>
Romania			11.50	216.64	136.56	<b>364.70</b>
Slovakia		6.39	1.75	286.26	13.67	<b>308.07</b>
Slovenia			17.00	4.95	9.17	<b>31.13</b>
Sweden		1.15	0.18	0.18	17.68	<b>19.19</b>
United Kingdom		820.29	592.59	2 811.81	13 259.46	<b>17 484.14</b>
<b>Total</b>	<b>22.03</b>	<b>1 444.72</b>	<b>2 776.88</b>	<b>7 351.24</b>	<b>19 255.31</b>	<b>30 850.19</b>

Source: OJ/TED, manual corrections by DG GROW

The contracting authorities from the United Kingdom not only published the largest contract under the Directive, but also as much as 20 out of 44 contract award notices featuring the total value exceeding 100 million EUR (Table 8).

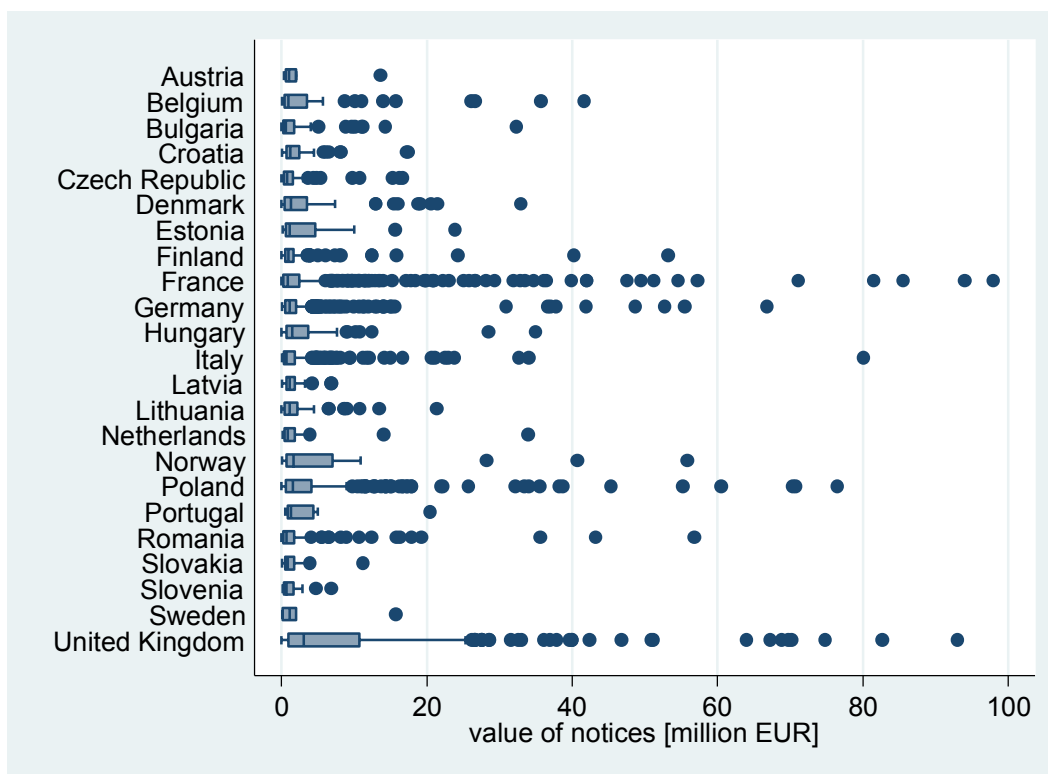
**Table 8: Contract award notices with values above 100 million EUR published under the Directive in 2011-2015, by country [number of notices]**

Country	Freq.	Percent	Cum.
United Kingdom	20	45.45	45.45
France	14	31.82	77.27
Germany	3	6.82	84.09
Denmark	2	4.55	88.64
Italy	2	4.55	93.18
Poland	2	4.55	97.73
Slovakia	1	2.27	100
<b>Total</b>	<b>44</b>	<b>100.00</b>	

Source: OJ/TED, manual corrections by DG GROW

The differences between countries were also significant for contracts below 100 million EUR. The box and whisker plots for each country presented in Figure 6 illustrate the median, quartiles, the range of data and its outliers.

**Figure 6: Distribution of contract award notices with values below 100 million EUR published under the Directive in 2011-2015, by country [value in million EUR]**



Source: OJ/TED, manual corrections by DG GROW

As seen on the graph, most observations are concentrated around the low value contracts with the right tail of the distribution being considerably longer. The majority of high value observations / outliers (marked by dots) were noted for the United Kingdom and France.

When analysing the awarded contracts in more detail, it appears that **high value contracts carried out under the Directive were rather few**. The reported contracts frequently concerned various auxiliary defence activities e.g. repair and maintenance services, building management services, logistic services, etc.

The examples of selected high value published under the Directive are provided in Table 9 overleaf.

**Table 9: Examples of high value contracts published under the Directive [value in million EUR]**

Country	Subject matter of procurement	Value	Procedure	Contractor	Contract award
United Kingdom	Complex of logistic services (warehousing services and warehouse management system; procurement consultancy; air, railway, road, water services; parcel transport; relocation services; medical equipment; pharmaceuticals and personal care products; clothing, footwear, luggage articles and accessories; food, beverages, tobacco and related products; lubricants).	8 266	Negotiated with publication	Leidos Supply Europe Limited (UK)	16.4.2015
United Kingdom	Repair and maintenance services of weapons and weapon systems, firearms and ammunition, military vehicles; fleet management.	1 934	Negotiated with publication	Babcock International Group Plc (UK)	5.12.2014
United Kingdom	Technical support services	678	Restricted procedure	Not published	6.4.2012
United Kingdom	Delivery initial in-service support of Specialist (Reconnaissance) Vehicles (common base platform).	537	Negotiated with publication	General Dynamics United Kingdom	22.7.2015
United Kingdom	Defence Infrastructure management support in the fields of real estate, construction project management, building and facilities management, organisational issue.	496	Negotiated with publication	Capita Business Services Ltd (UK)	22.5.2014
United Kingdom	Building and facilities management services.	396	Competitive dialogue	Landmarc Security Services Limited (UK)	9.5.2014
France	Maintaining in the operational conditions of CASA airplanes.	380	Negotiated with publication	Airbus Military (France) [2 lots]	24.6.2014 27.8.2014
Denmark	Acquisition and sustainment of 309 Armoured Personnel Carriers. The total number of units adjustable between 206 and 450.	350	Negotiated with publication	General Dynamics European Land Systems (Switzerland)	30.4.2015
United Kingdom	Pipeline transport services: transportation of military fuel, maintenance of the related assets.	344	Negotiated <b>without</b> publication	Compania Logistica de Hidrocarburos CLH, S.A. (Spain)	19.3.2015
United Kingdom	Construction works: military buildings and installations, construction and civil engineering, dismantling works for military installations, engineering works, construction work for pipelines, communication and power lines, architectural and engineering design for mechanical and electrical installations for buildings, demolitions, site preparation and clearance work.	344	Restricted	Henry Brothers (Magherafelt) Ltd, Interserve Construction Ltd, Lend Lease Construction (EMEA) Ltd, Kier Graham Defence Ltd, Miller Construction (UK) Ltd (UK) [5 lots]	9.12.2014
France	Delivery and logistics of electronic equipment, optical, optronic, accessories and infantryman integrated equipment.	300	Negotiated with publication	NSE Les Seignes (France)	4.9.2015

Source: Source: OI/TED

Note: Negotiated with publication – negotiated procedure following the publication of a contract notice; Negotiated without publication – negotiated procedure without the publication of a contract notice; Restricted - restricted procedure.

In line with the methodology of this evaluation, Table 9 only includes contracts that have been awarded until 31 December 2015.

However, by looking at contracts that have been advertised under the Directive (via the publication of a contract notice) but have not yet been awarded, it is possible to identify signs of an increasing use of the Directive for major military equipment contracts. The most prominent example is the contract notice published under the Directive by the German authorities for the design, construction and delivery of 4 multi-purpose combat ships (with option for 2 additional vessels), including the integration of all systems, equipment and materials provided, and the training of relevant staff<sup>70</sup>. The Danish authorities published under the Directive contract notices for the procurement of new armoured patrol vehicles and of new artillery systems<sup>71</sup>. Although it does not concern highly complex systems, another example of a significant procurement of military equipment launched under the Directive is the acquisition of around 90 000 assault rifles by the French authorities<sup>72</sup>.

#### 5.3.1.2. Reported and estimated value of contract award notices

As explained in Section 4.1 and in Annex III, the original dataset contained around 17% of contract award notices which were published without the final price of awarded contracts. Following a round of manual corrections carried out by the Member States representatives<sup>73</sup>, this ratio has dropped to 15%. The overview of missing values by country, after the implementing corrections by Member States, is provided in Table 48 in Annex IV. The table shows that in some Member States the share of missing values was still significant, notably in Sweden where it reaches as much as 85% of all observations, followed by Denmark (48% of the contract award notices did not contained information on the contract value) and Germany (41%). In order to compensate the above information gaps, the missing information on values was imputed using average contract values<sup>74</sup>.

The result of such estimation is presented in Figure 10 below. The total value of contract award notices published under the Directive in 2011-2015 increased from 30.85 billion EUR to an estimated value of roughly 34.55 billion EUR.

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<sup>70</sup> Contract notice 2015/S 137-252505 of 18 July 2015.

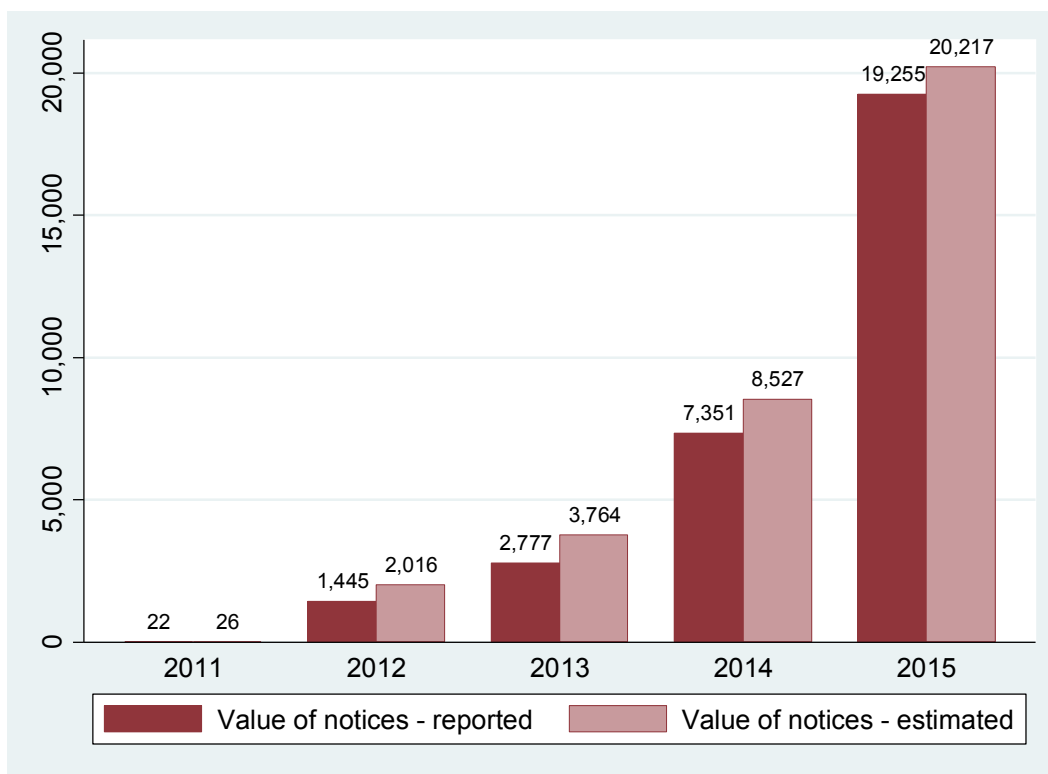
<sup>71</sup> Contract notice 2015/S 234-425025 of 3 December 2015; contract notice 2015/S 242-439446 of 15 December 2015.

<sup>72</sup> Contract notice 2014/S 094-164662 of 16 May 2014.

<sup>73</sup> As explained in Section 4.1.1 and in Annex III, the Government representatives of Belgium and the Netherlands have provided the Commission with a revised dataset, where majority of the missing values were completed.

<sup>74</sup> The estimation of missing values was based on the average values by Member State for: (i) works contracts and (ii) service and supplies contracts. The obtained average values were then used to replace the missing observations in the corresponding Member State and sector.

**Figure 7: Reported and estimated value of contract award notices published under the Directive, by year [value in million EUR]**



Source: OJ/TED, manual corrections by DG GROW

An overview of the raw and estimated values at country level is presented in Table 10 below. For countries where the occurrence of missing values was relatively high, the difference between the raw and estimated data is substantial, notably in Sweden (an increase from 19.2 to 130.5 million EUR over the analysed period of time).

**Table 10: Reported and estimated value of contract award notices published under the Directive in 2011-2015, by country [value in million EUR]**

	Reported	Estimated
Austria	23.68	23.68
Belgium	275.95	275.95
Bulgaria	153.54	167.62
Croatia	119.53	119.53
Czech Republic	192.75	211.26
Denmark	937.39	1 818.53
Estonia	144.28	144.28
Finland	345.10	349.89
France	4 969.42	5 879.50
Germany	1 702.11	2 977.26
Hungary	183.23	196.29
Italy	1 064.86	1 067.49
Latvia	38.94	38.94
Lithuania	137.04	137.04
Netherlands	116.84	116.84

Norway	195.16	195.16
Poland	2 009.11	2 061.43
Portugal	34.04	34.04
Romania	364.70	364.70
Slovakia	308.07	308.07
Slovenia	31.13	31.13
Sweden	19.19	130.50
United Kingdom	17 484.14	17 900.83
<b>Total</b>	<b>30 850.19</b>	<b>34 549.96</b>

Source: OJ/TED, manual corrections by DG GROW

To summarize, the total value of **defence and security procurement published under the Directives accounted for around 30.85 billion EUR in 2011-2015** (based on the raw dataset), **or around 34.55 billion EUR if the missing values were imputed**. The imputed figure gives a rough projection of the additional value of procurement that has probably been carried out under the Directives, but which cannot be effectively analysed due to the incomplete fulfilment of reporting obligations. To avoid estimation uncertainties<sup>75</sup>, this report is mainly based on the raw dataset, unless clearly specified.

#### 5.3.1.3. Use of procedures

The Directive foresees six types of procedures that can be used in order to award defence and security contracts: restricted procedure, negotiated with publication of a contract notice, negotiated without publication of a contract notice, competitive dialogue and two types of accelerated procedures (restricted and negotiated).

The procedures with prior advertising and call for competition accounted together for 60% of the number of contract award notices and 76% in terms of value of notices (see: Section 6.1.1.3). The negotiated procedure without publication of a contract notice is the most used one in terms of the number of contract award notices published (nearly 38%), while the highest value of contract was awarded following the negotiated procedure with publication of a contract notice (55%). The restricted procedure was the second most frequently used (nearly 29% of contract award notices), but it accounted for just 18% of their value. The use of the competitive dialogues as well as of the two types of accelerated procedures was relatively marginal.

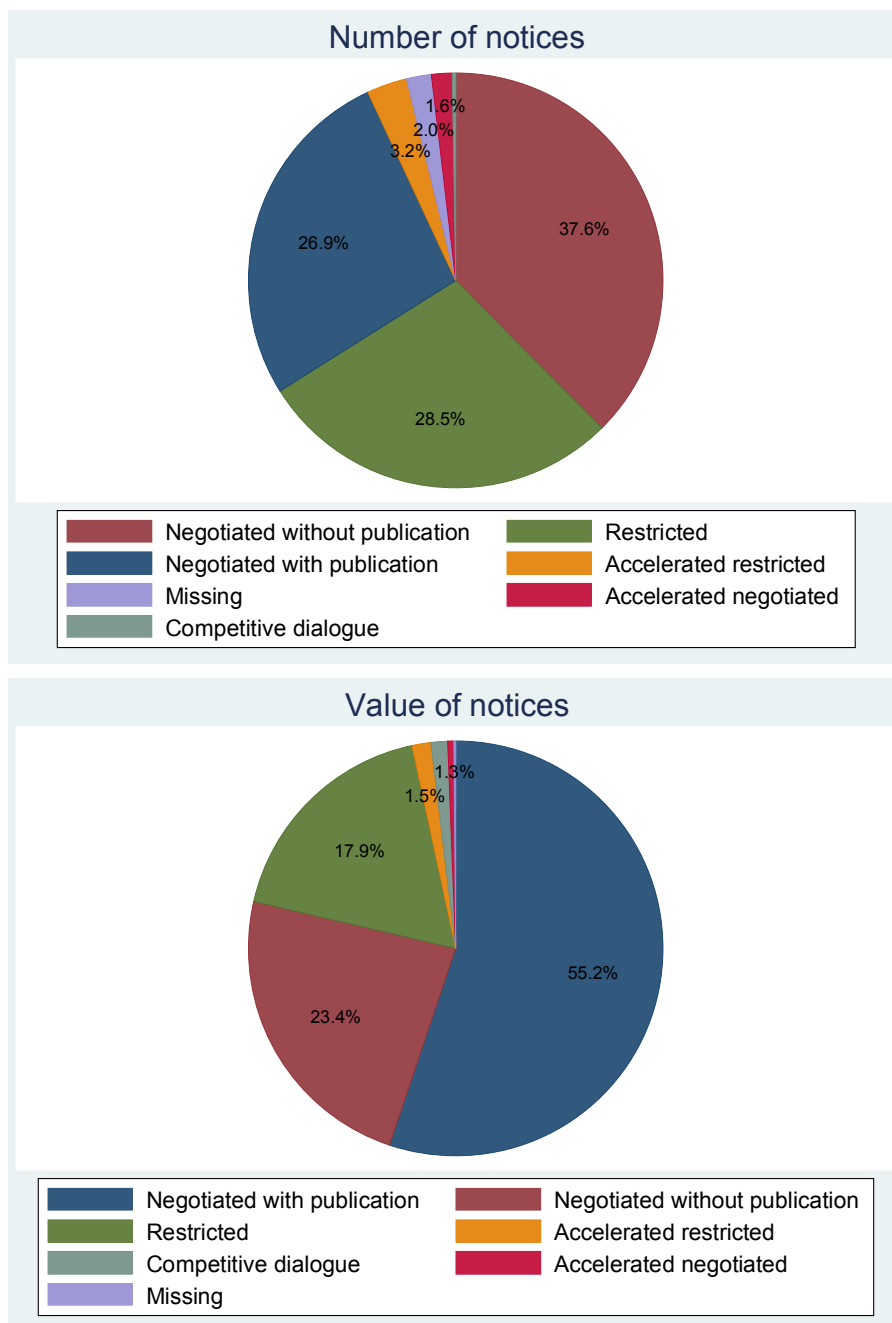
The significant use of the negotiated procedure without publication of a contract notice may also be due to the award of follow-on contracts related to original contracts awarded in previous years (as part of on-going defence equipment programmes).

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<sup>75</sup> The missing observations are clearly biased towards selected countries, hence are not missing at random.



**Figure 8: Contract award notices published under the Directive in 2011-2015, by type of procedure [%]**



Source: OJ/TED, manual corrections by DG GROW

The average and median values of contracts by procedure type are provided in Table 11. The procedure with the highest average value was the competitive dialogue, which is not unexpected since this procedure was conceived for large and complex projects.

**Table 11: Contract award notices published under the Directive in 2011-2015, by type of procedure [value in million EUR]**

<b>Procedure</b>	<b>Average</b>	<b>Median</b>
Accelerated negotiated	3.42	0.64
Accelerated restricted	4.01	1.15
Competitive dialogue	40.81	0.48
Negotiated with publication	24.04	1.24
Negotiated without publication	5.76	1.05
Restricted	5.65	0.81
Missing	2.08	1.15
<b>All types of procedures</b>	<b>9.89</b>	<b>1.01</b>

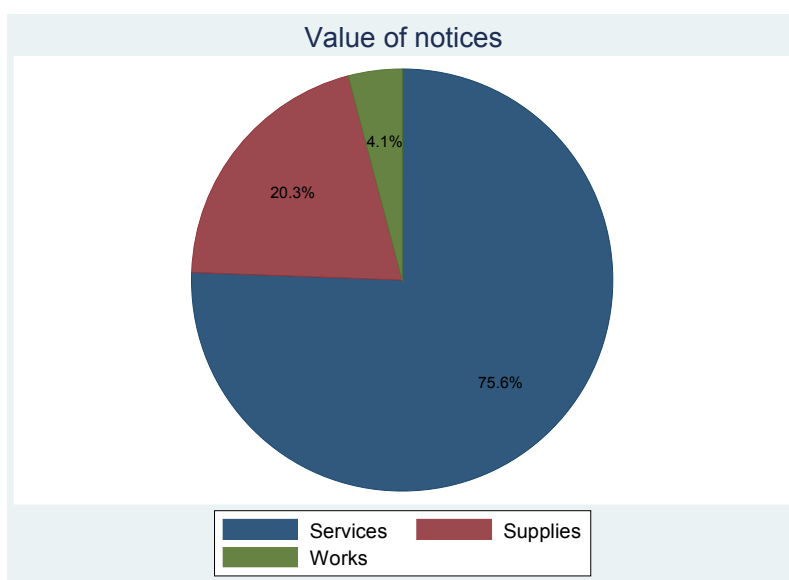
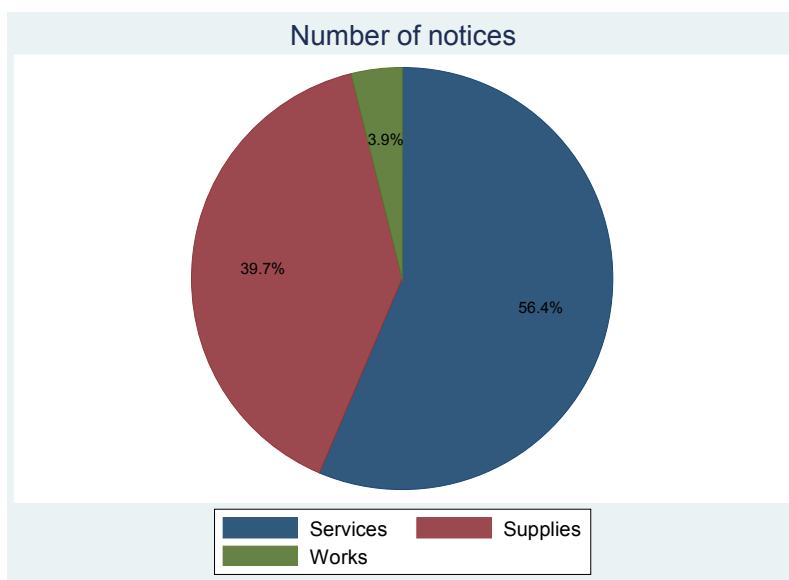
Source: OJ/TED, manual corrections by DG GROW

The table above also shows what could have been derived from the pie charts in Figure 8, namely that the negotiated procedure with publication has been used for procurement of a much higher average value than the negotiated procedure not open to competition (24 million EUR to 5.7 million EUR respectively). This significant difference was mainly driven by the previously mentioned high value contract awarded by the UK through the negotiated procedure with competition. The table also confirms that **the average contract value was relatively small (around 10 million EUR)** and the median was around 1 million EUR.

#### 5.3.1.4. Contract types

As far as contract types are concerned, more than a half of published contract award notices related to service contracts (56%), followed by supply and works contracts (roughly 40% and 4% respectively). In value terms, the dominance of services is even more apparent – three quarters of all contracts concerned services (Figure 9). This again was due to the fact that the largest awarded contract, worth nearly 6 billion GBP, was related to services. The remaining two categories followed with the shares of roughly 20% (supplies) and 4% (works contracts).

**Figure 9: Contract award notices published under the Directive in 2011-2015, by type of contract [%]**



Source: OJ/TED, manual corrections by DG GROW

The above patterns are confirmed when looking at average and median contract values by contract type presented below (Table 12).

**Table 12: Contract award notices published under the Directive in 2011-2015, by type of contract [value in million EUR]**

<b>Contract type</b>	<b>Average</b>	<b>Median</b>
Service	13.67	1.07
Supplies	4.89	0.97
Works	9.62	0.82
<b>All contract types</b>	<b>9.89</b>	<b>1.01</b>

Source: OJ/TED, manual corrections by DG GROW

As previously explained, the average value of service contracts has been heavily influenced by a single high value contract, therefore the value of median is probably more telling in this context. Finally, the presented data reiterate what has been already

mentioned i.e. that average and median contract values have been rather small, especially in the framework of the defence sector.

The following two tables (Table 13 and Table 14) present the most frequently purchased items according to the CPV divisions under which the contracts were advertised. CPV-50 (repair and maintenance services) top the list in terms of the number of observations, followed by CPV-35 (equipment for security, fire-fighting, police and defence), CPV-34 (transport equipment) and CPV-45 (construction works)<sup>76</sup>.

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<sup>76</sup> After a more detailed scrutiny of the dataset it was also noted that the number of notices published under CPV division 45 (construction work) is different from the number of contract award notices identified as works contracts (144). It appears that some authorities published their work contracts under the CPV divisions other than 45, such as CPV-44 (construction structures and materials; auxiliary products to construction) or CPV-71 (architectural, construction, engineering and inspection services), etc. Yet, some CPV-45 (construction work) contracts were published as services, or surprisingly a few of them as goods contracts.

**Table 13: Top 10 CPV divisions by number of contract award notices published under the Directive in 2011-2015 [number of notices]**

CPV Division	Freq.
50 Repair and maintenance services	1 053
35 Security, fire-fighting, police and defence equipment	914
34 Transport equipment and auxiliary products to transportation	254
45 Construction work	161
72 IT services: consulting, software development, Internet and support	149
79 Business services: law, marketing, consulting, recruitment, printing and security	149
32 Radio, television, communication, telecommunication and related equipment	133
38 Laboratory, optical and precision equipment (excl. glasses)	103
71 Architectural, construction, engineering and inspection services	99
73 Research and development services and related consultancy services	88

Source: OJ/TED, manual corrections by DG GROW

As far as the value of contracts is concerned (Table 14), CPV-75 (administration, defence and social security services) was the division which featured the highest value of contracts, followed by divisions CPV-50 and CPV-35 (i.e. the two divisions, which open the list sorted by the number of observations).

**Table 14: Top 10 CPV divisions by value of contract award notices published under the Directive in 2011-2015 [value in million EUR]**

CPV Division	Value
75 Administration, defence and social security services	8 392.25
50 Repair and maintenance services	7 569.80
35 Security, fire-fighting, police and defence equipment	4 675.39
79 Business services: law, marketing, consulting, recruitment, printing and security	1 544.51
71 Architectural, construction, engineering and inspection services	1 359.13
60 Transport services (excl. waste transport)	1 305.23
34 Transport equipment and auxiliary products to transportation	1 225.01
45 Construction work	841.94
70 Real estate services	496.20
80 Education and training services	414.42

Source: OJ/TED, manual corrections by DG GROW

#### 5.3.1.5. Division into defence and security contracts

As explained in the earlier sections, the Directive covers not only the defence, but also the sensitive security procurement. For this reason, the extent to which it is actually used for purchases in one of the two domains has been subject to scrutiny within the framework of this evaluation. As the OJ/TED database contains no field that would enable filtering contracts against this criterion in an automated way, the affiliation of the awarded contracts to either of the domains was carried out manually - contracts awarded under the Directive have been classified as belonging to either defence or security domain, based on common knowledge and/or desk research aimed at determining the profile of the contracting authority/entity (the details of the work undertaken are presented in Annex III).

**Figure 10: Share of defence and security procurement under the Directive in 2011-2015, by number and value [%]**



Source: OJ/TED, manual corrections by DG GROW, without corrections received from Belgium and the Netherlands

As it can be seen from the graph above, the defence purchases dominated by far the procurement carried out under the Directive with more than 9 out of 10 contracts referring to this category. The **security contracts accounted for just 7% of the number of notices and 3% of their value.**

#### 5.3.1.6. Use of Voluntary ex ante transparency notices

Voluntary ex-ante transparency notices (VEAT) may be published if a contracting authority/entity considers that the award of a contract does not require prior publication of a contract notice in OJ/TED. This may be the case, for example, if the conditions justifying use of the negotiated procedure without publication of a contract notice, set out in Article 28 of the Directive, are met.

In completing the VEAT notice, the contracting authorities/entities express their intention to conclude a contract and provide, among others, the justification for the award of a contract without prior publication of a contract notice in OJ/TED. They will then observe a standstill period before the contract is concluded. This gives economic operators the opportunity to challenge the decision of the contracting authority and obtain pre-contractual remedies should a challenge be upheld. 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.

Since the entry into force of the Directive, **1 272 VEATs related to defence or security procurement have been published in OJ/TED.** The uptake of this tool for ex-ante transparency was fairly imminent – it rose from 19 notices in 2011 (published only by France and Denmark) to nearly 250 in the following year and then remained fairly static at ca. 320-340 notices per year.

**Table 15: Voluntary ex-ante transparency notices published under the Directive, by country and year [number of notices]**

Country	2011	2012	2013	2014	2015	Total
Belgium	0	0	0	1	0	1
Bulgaria	0	0	1	0	0	1

Croatia	0	0	0	2	4	6
Denmark	6	43	31	65	44	189
Finland	0	17	46	35	41	139
France	11	20	43	18	34	126
Germany	0	0	0	3	2	5
Greece	0	0	0	0	1	1
Italy	2	9	5	9	1	26
Latvia	0	0	0	0	1	1
Lithuania	0	1	2	3	0	6
Netherlands	0	0	0	1	0	1
Norway	0	0	0	3	9	12
Poland	0	1	18	63	46	128
Slovakia	0	3	1	2	0	6
Slovenia	0	0	4	7	7	18
Spain	0	0	1	0	0	1
Sweden	0	0	1	0	2	3
United Kingdom	0	150	168	134	150	602
<b>Total</b>	<b>19</b>	<b>244</b>	<b>321</b>	<b>346</b>	<b>342</b>	<b>1 272</b>

Source: OJ/TED, manual corrections by DG GROW

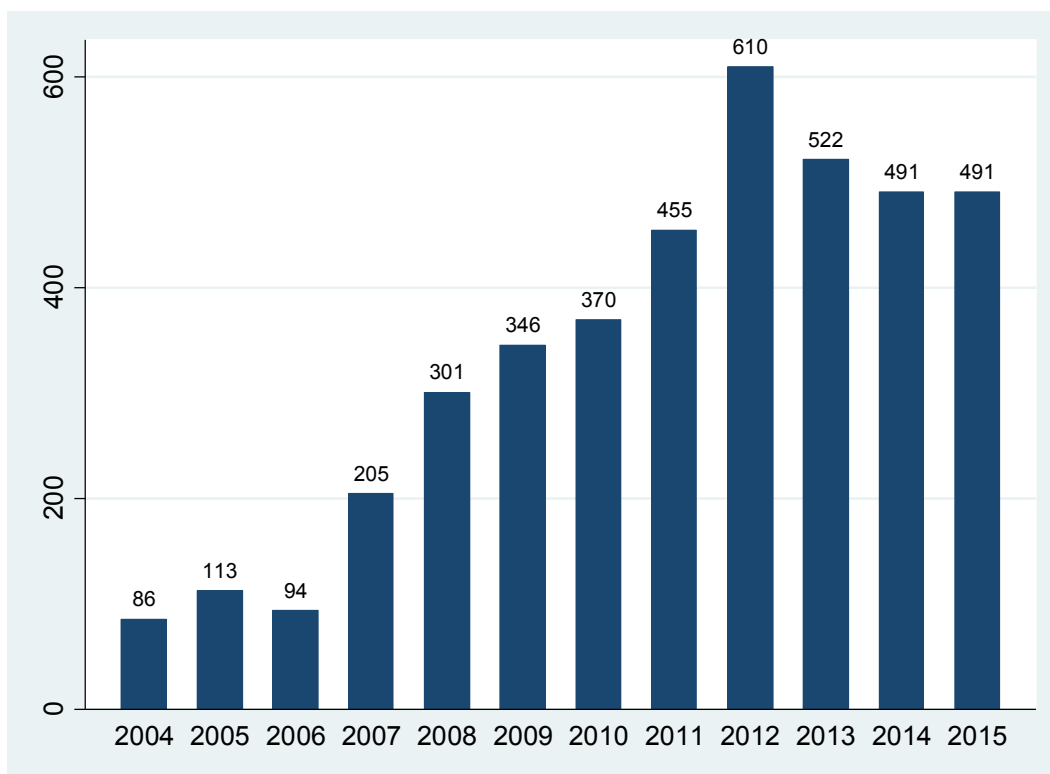
The implementation of this legal instrument was uneven across countries, with authorities from the UK, Denmark, Finland, Poland and France being the most frequent users. At the same time, the following 11 countries did not publish any VEATs related to the Directive in 2011-2015: Austria, Cyprus, the Czech Republic, Estonia, Hungary, Ireland, Iceland, Luxembourg, Malta, Portugal and Romania.

### *5.3.2. Defence and security procurement under the civil procurement Directives*

As mentioned in Section 2.3, before the adoption of the Directive, defence and security procurement open to competition was carried under the civil procurement Directive and published on OJ/TED or, as foreseen in the Code of Conduct, advertised through the EBB. Despite the adoption of a sector-specific legal act in 2009, the publications of contracts covered by defence and security-related CPVs under the civil regime still occur, albeit to a lesser extent than in the past.

A total of 4 084 contract award notices, related to defence procurement was published under the civil procurement Directives between 2004 and 2015. As presented in Figure 11, such publications have been increasing since 2006 (with just 94 contract award notices) to reach a peak in 2012 (610 notices) and then decrease slightly.

**Figure 11: Contract award notices covered by defence-related CPVs and published under the civil procurement Directives, by year [number of notices]**



Source

: OJ/TED, manual corrections by DG GROW

This overall rising trend could be interpreted as if the mere discussion about the proposal of the Directive had translated into higher levels of publications of defence related purchases under the legal instruments available at that time. After 2012 the publication numbers started to fall, probably due to the fact that authorities had at their disposal a sector-specific Directive that was better fit for the procurement of defence related goods and services.

With regards to data corresponding to years 2008-2010, the totals provided in Figure 11 above differ from those presented in the Baseline Study for the same years (415, 447 and 686 in 2008-2010)<sup>77</sup>. The observed discrepancies can be explained by the fact that the selection of notices identified as defence contracts was based on different assumptions. The list of CPV codes (provided in Annex III) which have been used to filter notices was the same as the one used in the Baseline Study, but the data manipulations that followed diverged significantly<sup>78</sup>. At the same time, the current methodology aims at being more

<sup>77</sup> The Baseline Study, p.30.

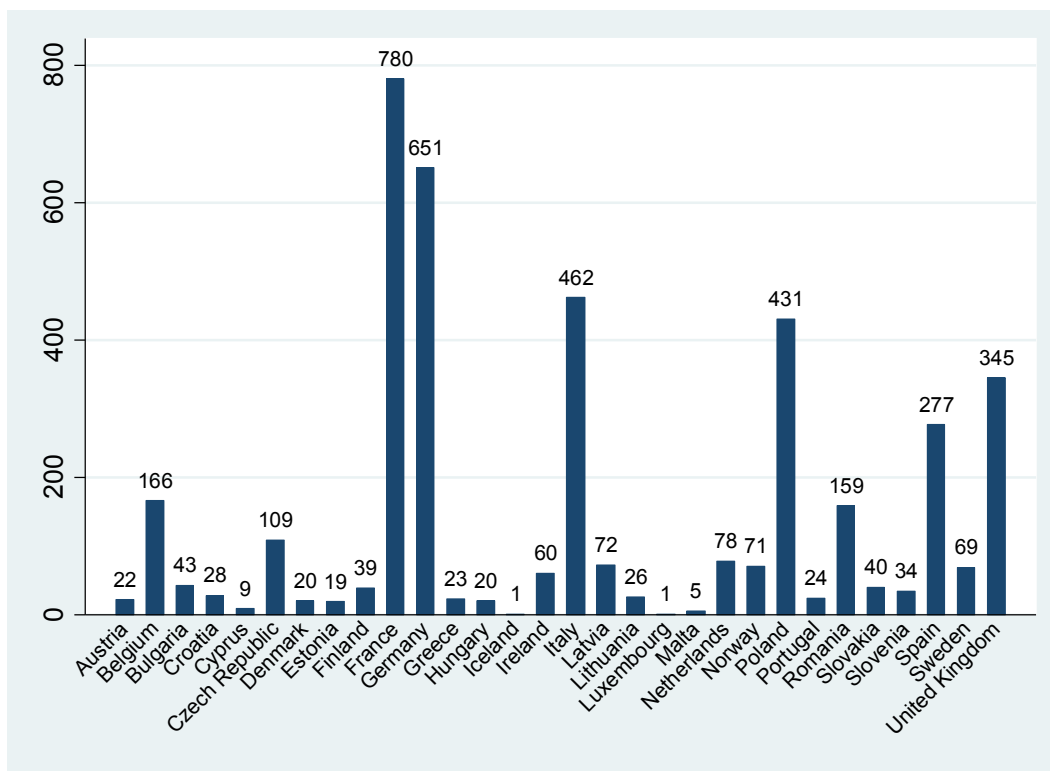
<sup>78</sup> Firstly, the unit of measure in the Baseline Study was a contract while above the number of contract award notices are used. Secondly, the Baseline Study considered as defence contracts those for which any CPV (main or secondary) codes matched codes used to define the defence contracts, while in this evaluation only notices with the defence CPV codes mentioned as the main description of procurement were used. In cases where the CPV code was missing from the contract award notice, the Baseline Study identified as defence contracts those which contained in their definition the most commonly used defence terms. No matching of text fields was carried out under the current evaluation. Finally, for OJ/TED contracts which did not contain the value of the contract the Baseline Study used a variety



rigorous and leaves less room for interpretations that non-defence contracts could have been erroneously captured.

An overview of publications across countries is provided below (Figure 12). As can be seen from the graph, out of the total of 4 084 notices, the highest number of defence-related contracts published under the civil procurement Directives originated from the French contracting authorities and entities (780 notices in total), followed by Germany (651), Italy (462), Poland (431) and the UK (345).

**Figure 12: Contract award notices covered by defence-related CPVs and published under the civil procurement Directives in 2004-2015, by country [number of notices]**



Source: OJ/TED, manual corrections by DG GROW

Interestingly, all countries which have not awarded contracts under the Directive since 2011 (see: Section 5.3.1.1), did so under the civil regime i.e.: Cyprus, Greece, Ireland, Malta, Luxembourg and Spain, also in the years following its adoption (Table 49 in Annex IV). In fact, many of the remaining countries have also continued to publish some of their defence and security procurement under the civil rules after the Directive has been effectively transposed to their legal systems.

Finally, the value of the above publications of contracts in OJ/TED under the civil procurement Directives with CPVs related to defence or security accounted for nearly 13 billion EUR over the last decade (Table 16 below).

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of imputation methods to estimate an expected contract value, based on similar but more complete records. No imputation of missing values was performed at this stage of the evaluation.

**Table 16: Contract award notices covered by defence-related CPVs and published under the civil procurement Directives, by year [value in million EUR]**

<b>Year</b>	<b>Sum</b>
2004	92.20
2005	299.27
2006	325.88
2007	233.07
2008	874.37
2009	2 444.41
2010	709.05
2011	685.03
2012	1 394.88
2013	2 906.21
2014	1 161.69
2015	1 830.74
<b>Total</b>	<b>12 956.79</b>

Source: OJ/TED, manual corrections by DG GROW

During the last five years when the **civil procurement Directives** co-existed with the newly enacted (defence procurement) Directive, the value of publications concerning these contracts was **roughly 8 billion EUR (hence nearly 1.6 billion EUR annually)**.

The scope of application of the (defence procurement) Directive and that of the civil procurement Directives are mutually exclusive. Contracts that fall within the scope of the Directive according to Article 2 have to be awarded under it, and cannot be awarded under the civil procurement Directives. This means that contracting authorities/entities have, in each individual procurement case, to make a decision on whether a given contract fall within the scope of the Directive or within that one of the civil procurement Directives. As pointed out by certain Member States' authorities in the consultations, there may be at times borderline cases where the identification of the applicable regime is not straightforward (see: Section 6.4.1.1).

The significant number of procurement still published under the civil procurement Directives may be explained by a combination of two factors: first, procurement with defence or security related CPV may still, from a legal point of view, fall within the scope of the civil procurement Directives; second, contracting authorities / entities may have erroneously decided (especially in "borderline cases") to publish under the civil procurement Directives contracts that would have actually fallen within the scope of the (defence procurement) Directive. Recognising that both legal regimes (civil and defence) are based on the same Treaty principles of transparency and equal treatment, the available data on publications in OJ/TED shall be interpreted, for the purposes of this evaluation, as complementary information - altogether they account for procurement governed by open and competitive EU rules.

## **6. ANSWERS TO THE EVALUATION QUESTIONS**

### **6.1. Effectiveness**

The evaluation questions related to the effectiveness of the Directive, as defined in Section 3, will be analysed based on the data on its use and on the results of the online survey and of the meetings with stakeholders.

### 6.1.1. Competition, transparency and non-discrimination

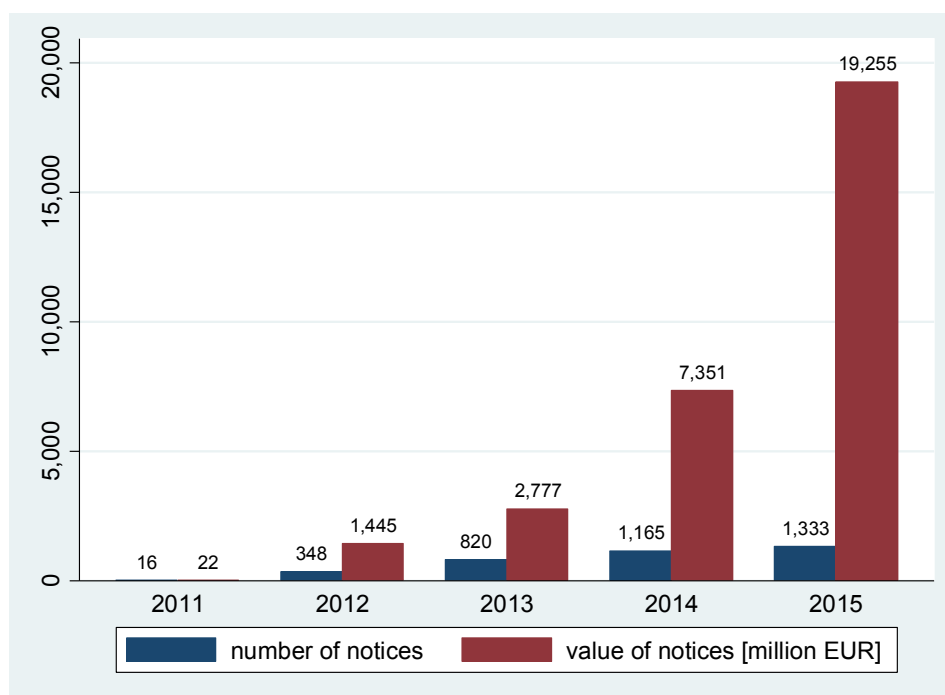
Evaluation question (1): To what extent have competition, transparency and non-discrimination in the defence procurement market in Europe changed as a result of the Directive?

In order to address the first evaluation question the report will start with referring to the baseline situation and data referring to the period before the adoption of the Directive.

#### 6.1.1.1. EU-wide publication of business opportunities

As discussed in Section 5.3, the total value of contract award notices published in OJ/TED since the entry into force of the Directive was around 30.85 billion EUR (2011-2015). The value of these notices equalled just 22 million EUR in 2011 and increased more than ten times between 2012 and 2015, from 1.4 billion EUR to 19 billion EUR per year (Section 5.3.1.1 and Figure 13 below). As noted in the previous sections, the increase in 2015 as compared to 2014 was mainly driven by one large contract awarded by the UK. However, significant year-to-year changes in the total value of defence contracts are somehow inherent in the sector, as purchases of major items usually occur irregularly and over longer time-spans.

**Figure 13: Contract award notices published under the Directive, by year [number of notices, value in million EUR]**



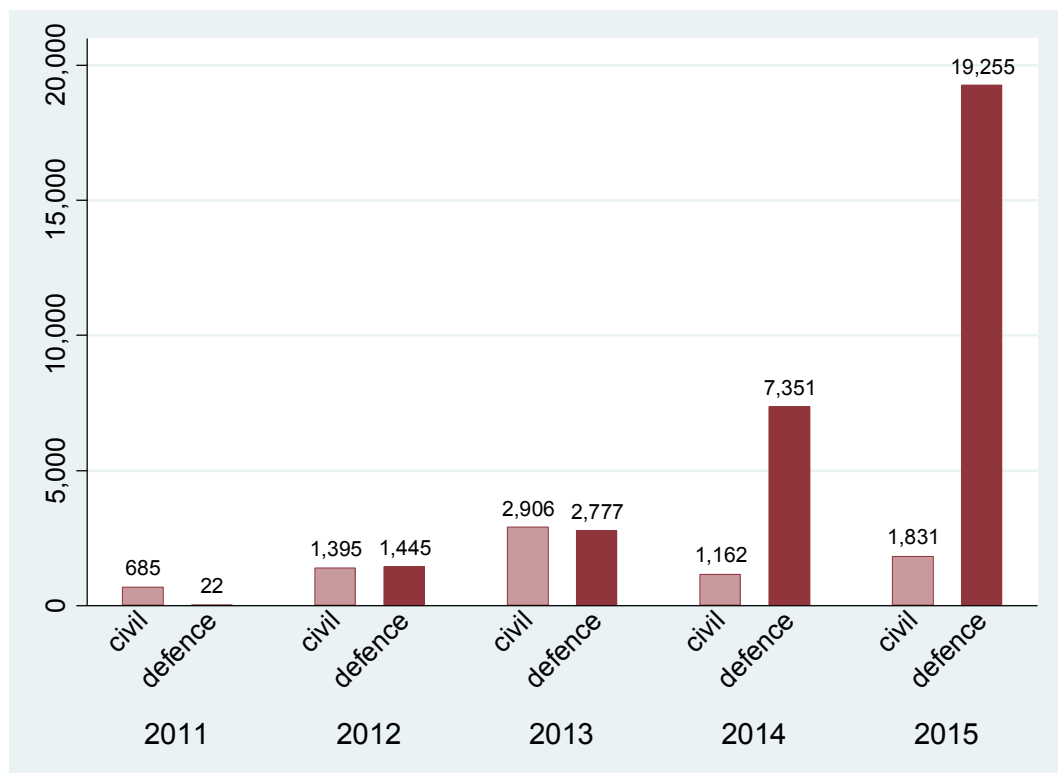
Source: OJ/TED, manual corrections by DG GROW

The increasing number of publications in OJ/TED confirms that the Directive has been gradually adopted by the public buyers as a tool for addressing their needs in defence and security procurement. Additionally, as described in Section 5.3.2, an important number of publications related to defence and security purchases has been also observed under the civil procurement Directives.

Recognising that both legal regimes (civil and defence) are based on the same Treaty principles of transparency and equal treatment, the total value of defence related contract

award notices published under the civil procurement Directives is presented alongside the contract award notices published under the Directive (Figure 14 below), as the total procurement governed by EU rules.

**Figure 14: Comparison between the contract award notices published under the civil procurement Directives and the Directive [value in million EUR]**



Source

: OJ/TED, manual corrections by DG GROW

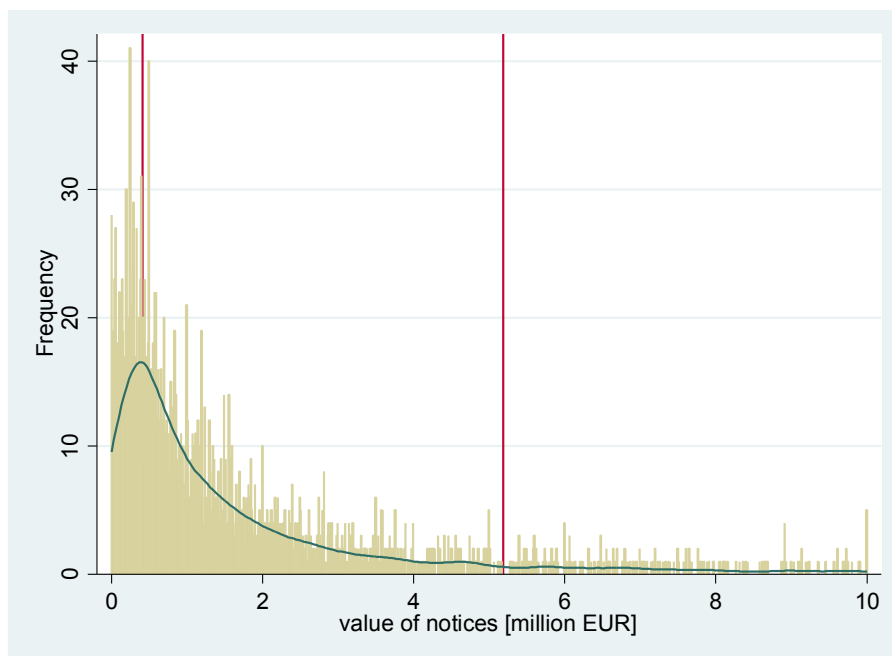
As illustrated by the graph above, in 2011-2015, **the value of procurement carried out under the two EU legal instruments accounted for roughly 38.85 billion EUR in total**. The decrease in the value publication contracts awarded under the civil procurement Directives after 2013 could mean a simple substitution of some publications under the civil procurement Directive by the (defence procurement) Directive without a net gain in transparency. It is however is impossible to verify the above conjunction only by analysing the available dataset. Nevertheless, these hypothetical “transfers” between the civil and defence legal instruments, if any, have happened in the general context of increasing publication rates and improved transparency in the defence and security procuring using all available EU legal instruments.

To conclude, a significant increase in the value of publications in OJ/TED (using civil and defence legal instruments) has been observed over the last years. A rise from 700 million EUR in 2011 to 21 billion EUR in 2015 confirms that **more and more defence procurement has been awarded following open and transparent EU rules**.

However, as far as the Directive is concerned (and as discussed in Section 5.3.1), the majority of contract award notices published under the defence legislation were of relatively small values. Overall, nearly 90% of observations related to procurement of less than 10 million EUR, 95% to less than 21 million EUR. The average contract value

was around 10 million EUR while the median was around 1 million EUR. An overview of contracts below 10 million EUR is presented in Figure 15 below.

**Figure 15: Contract award notices with values below 10 million EUR published under the Directive in 2011-2015 [frequency by value of notices]**



Source: OJ/TED, manual corrections by DG GROW

As shown on the graph, the distribution of the contract award notices is positively skewed, showing high concentration around low-value contracts and a long tail as the value increases. The red lines on the figure mark the threshold values<sup>79</sup> above which the Directive shall apply – 414 thousand EUR and 5.186 million EUR. It is clear that many of the published contract award notices have reported total contract values even falling under the lower threshold for supplies and services of 414 thousand EUR.

Along with the relatively small average contract values being advertised under the Directive, an overview of publications by Member States (as detailed in Section 5.3.1) shows also significant differences across the EU, which cannot be easily explained by such factors as the available defence budgets or the size of economy. Several countries have not published any contract award notices under the Directive in the analysed period of time<sup>80</sup> (notably Cyprus, Greece, Ireland, Malta, Luxembourg and Spain). For the countries which have used the Directive, the difference in the value of contracts published, especially when compared with the available budgets, as presented in Table 17 below, were also significant.

<sup>79</sup> As mentioned in the introduction, the threshold above which the Directive shall apply is set in Art.8 at 412 000 EUR for supply and service contracts and 5.15 million EUR for works contracts. The thresholds are updated every two years. The threshold values valid at the end of the evaluated period were those for 2014-2015, hence 414 000 EUR and 5.186 million EUR (for service/ supply contracts and works contracts respectively).

<sup>80</sup> However, all these countries have published a number of contract award notices with a defence-related subject-matter under the civil Directives in 2011-2015.

**Table 17: Comparison between the average annual<sup>81</sup> values of contract award notices published under the Directive (OJ/TED) and general government procurement expenditure on military defence (COFOG), by country [value in million EUR, %]**

	OJ/TED		COFOG	Percentage	
	Reported	Estimated		Reported	Estimated
Austria	5.92	5.92	577.00	1.0%	1.0%
Belgium	68.99	68.99	785.26	8.8%	8.8%
Bulgaria	30.71	33.52	162.08	18.9%	20.7%
Croatia	59.77	59.77	212.46	28.1%	28.1%
Cyprus			96.42	0.0%	0.0%
Czech Republic	48.19	52.81	582.16	8.3%	9.1%
Denmark	234.35	454.63	1 717.02	13.6%	26.5%
Estonia	48.09	48.09	189.50	25.4%	25.4%
Finland	86.27	87.47	1 611.40	5.4%	5.4%
France	1 242.35	1 469.88	14 305.20	8.7%	10.3%
Germany	340.42	595.45	13 977.60	2.4%	4.3%
Greece			1 608.00	0.0%	0.0%
Hungary	36.65	39.26	325.24	11.3%	12.1%
Iceland				n.a	n.a
Ireland			84.20	0.0%	0.0%
Italy	212.97	213.50	5 434.80	3.9%	3.9%
Latvia	12.98	12.98	86.64	15.0%	15.0%
Lithuania	34.26	34.26	89.18	38.4%	38.4%
Luxembourg			49.88	0.0%	0.0%
Malta			15.96	0.0%	0.0%
Netherlands	29.21	29.21	2 180.00	1.3%	1.3%
Norway	97.58	97.58	2 783.36	3.5%	3.5%
Poland	502.28	515.36	2 320.52	21.6%	22.2%
Portugal	34.04	34.04	725.42	4.7%	4.7%
Romania	121.57	121.57	5.94	n.a.	n.a.
Slovakia	77.02	77.02	211.44	36.4%	36.4%
Slovenia	10.38	10.38	98.62	10.5%	10.5%
Spain			2 810.80	0.0%	0.0%
Sweden	4.80	32.62	3 198.74	0.1%	1.0%
United Kingdom	4 371.03	4 475.21	25 254.68	17.3%	17.7%
<b>EU-28 and EEA-2</b>	<b>6 170.03</b>	<b>6 909.99</b>	<b>81 499.52</b>	<b>7.6%</b>	<b>8.5%</b>

Source: OJ/TED, manual corrections by DG GROW; Eurostat, general government expenditure by function (COFOG) [gov\_10a\_exp]

Note: the annual averages are based on the number of years since the first publication in OJ/TED e.g. the total value of contract award notices published by Austrian authorities was 23.68 million EUR, but the first publication occurred in 2012, therefore the average is calculated based on four year time span (23.68 million EUR /4=5.92 million EUR); to compare, the first publication from Bulgaria occurred in 2011 hence 153.54 million EUR/5=30.71 million EUR while Norway started publishing in 2014 and the average is calculated as follows: 195.16 million EUR/2=97.58 million EUR; the percentage for Romania was not provided due to the ambiguity of data available in COFOG.

<sup>81</sup> OJ/TED data refer to average annual values in 2011-2015 unless the publication period was shorter (see: explanation in the note); Eurostat COFOG data refer to 2010-2014.

As presented in the Table above, the **average yearly value of contracts awarded under the Directive would therefore be between 6.2 and 6.9 billion EUR<sup>82</sup>**, which equalled roughly **between 7.6% to 8.5%** of the total value of **general government procurement expenditure on military defence** of EU-28 and EEA-2 countries (81.5 billion EUR on average). If the value of defence and security procurement carried out under the civil procurement Directives (around 8 billion EUR in total in 2011-2015, hence circa 1.6 billion EUR annually) was to be added to the procurement under the Directive, the **reported percentage of procurement covered by transparent EU rules would increase to 9.5%<sup>83</sup>**. To compare, the publication rate in terms of percentage of total expenditure in the civil sector ranged between and 16.5% and 17.8% from 2012 to 2014<sup>84</sup>.

Looking at the data from a different perspective, the procurement of goods under the Directive can be also compared with the budgets spent on defence equipment discussed in

Section

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<sup>82</sup> As explained in Section 4.1 and 5.3.1.1, the original dataset contained many contract award notices published without the final price of awarded contracts. Following a round of manual corrections and estimation based on average contract values the missing values were imputed. As a result of the above, the total value of contract award notices published under the Directive in 2011-2015 increased from 30.85 billion EUR to an estimated value of roughly 34.55 billion EUR.

<sup>83</sup> 7.8 billion EUR/81.5 billion EUR annually.

<sup>84</sup> Estimated value of tenders published in OJ/TED (excluding utilities and defence) compared with the estimate of total public procurement expenditure by general government on works, goods and services (excluding utilities and defence): 17.5% in 2012 (326.69 billion EUR/1866.8 billion EUR), 17.8% in 2013 (334.56 billion EUR/1880 billion EUR), 16.5% in 2014 (319.64 billion EUR/1931.5 billion EUR) - Public Procurement Indicators 2014 (<http://ec.europa.eu/DocsRoom/documents/15421/attachments/1/translations> )

Figure 2). According to EDA, the national and collaborative defence equipment procurement in 2014 for the Agency participating countries<sup>85</sup> was estimated at 25.9 billion EUR. The total value of supply contracts awarded under the Directive in 2011-2015 was 6.2 billion EUR, hence roughly 1.3 billion EUR per year. This would indicate that not more than 4.8 % of the value of equipment procurement reported by EDA was carried out through the Directive.

To conclude, although the general trend in the publication of defence and security contracts is unquestionably positive, **the value of procurement awarded under the Directives** (in both cases - raw and imputed totals) still seems to be **relatively small when compared to overall defence procurement expenditure** which was at the discretion of Member States in the analysed period of time.

The relatively small overall volume of procurement carried out under the Directive (when compared with the available defence budgets) as well as the dominance of small value contracts, may suggest that **the Directive was used to a very limited extent for the procurement of strategic equipment** (i.e. complex systems) which would be manifested by much higher average or median contract values and by a larger share in procurement expenditure.

A recent study had come to a similar conclusion: “*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.*”<sup>86</sup> However, the conclusions of this evaluation are more nuanced on this point since some significant military equipment contracts have been awarded under the Directive.

This situation contrasts with the operational objective of the Directive, as set out in the Impact Assessment, that the majority of contracts in the fields of defence and security should be awarded on the basis of EU procurement rules.

In the perception of industry, the Directive improved market access and business opportunities only to a limited extent. 36% of companies or business associations that replied to the online survey considered there is “no difference” compared to the situation before, 21% deemed that the situation “improved”, and 12% responded that it “deteriorated” or “significantly deteriorated”.

In its reply to the online survey, ASD<sup>87</sup> noted the “*increase in publications of contract notices in recent years, but also huge differences in publication rates between Member States*” and emphasised that “*such uneven application of the Directive throughout the EU clearly has a negative impact on the level playing field*”. Similar comments were made by several other companies and businesses associations responding to the online survey. Overall, these stakeholders emphasised the importance of focusing on consistent application of the Directive and achieving more effective enforcement of its provisions.

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<sup>85</sup> EU Member States except for Denmark.

<sup>86</sup> “*The impact of the 'defence package' Directives on European defence*” Dr Hélène Masson, Kévin Martin, requested by the European Parliament's Subcommittee on security and defence, 20 April 2015.

<sup>87</sup> The AeroSpace and Defence Industries Association of Europe (ASD).



Industry representatives made the same points during stakeholder consultation meetings<sup>88</sup>.

Transparency International emphasised that the publication of longer-term purchasing plans by Member States, beyond the obligations under the Directive, would be an important contribution to a more transparent market.

To summarise, the value of defence and security contracts published EU-wide and awarded, in competition, under rules based on transparency and equal treatment has significantly increased. However, a very significant share of defence procurement expenditure is still done outside the Directive, especially for the procurement of high-value, strategic, complex equipment. This is in line with the feedback received from stakeholders.

This is probably due to a number of factors such as the relatively short time (2-3 years) between actual transposition by Member States and the last year covered in the evaluation (2015) and a still too broad interpretation of possible exemptions, including under Article 346 TFEU, which are probably relied on especially for the procurement of strategic equipment.

#### 6.1.1.2. Cross-border awards

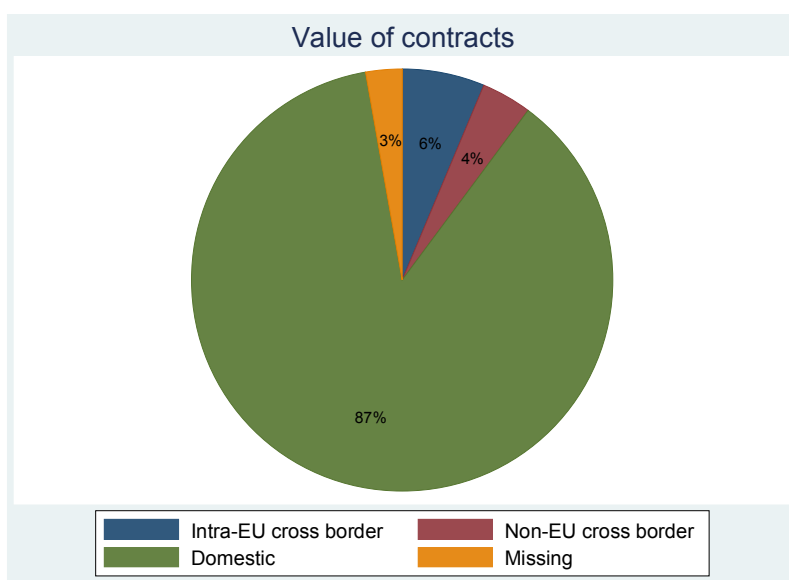
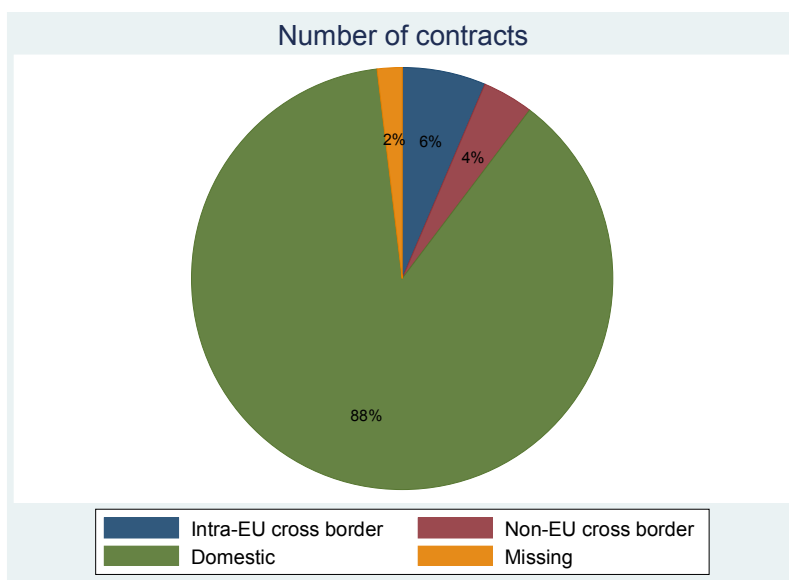
In the analysed period of time (2011-2015), **direct cross-border procurement** (i.e. contract won by companies located in a country different from the one of the contracting authority and bidding directly from abroad) **accounted for approximately 10% of awarded contracts in terms of their number, as well as value.** The total value of contracts awarded directly to foreign economic operators accounted for 3.1 billion EUR (hence around 620 million EUR annually) out of the total of 30.36 billion EUR<sup>89</sup> which was extracted from contract award notices that included total final values of procurement at the level of separate awards.

#### **Figure 16: Contracts awarded directly to foreign companies under the Directive in 2011-2015 [%]**

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<sup>88</sup> Minutes of 22 February and 3 May 2016 meetings with industry organised by ASD.

<sup>89</sup> The total value of procurement calculated on the basis of separate awards (30.36 billion EUR) is different from the same indicator calculated on the basis of contract award notices (30.85 billion EUR); this is due to the fact that many contracting authorities, despite providing the total value of all awarded contracts at the level of a notice, have not disaggregated this value by each unique contract award (if there was more than one); in order to calculate the share of cross-border procurement the values of separate contract awards must be used, therefore the above calculation is based on a larger number of missing observations and the sum of all observations is lower.



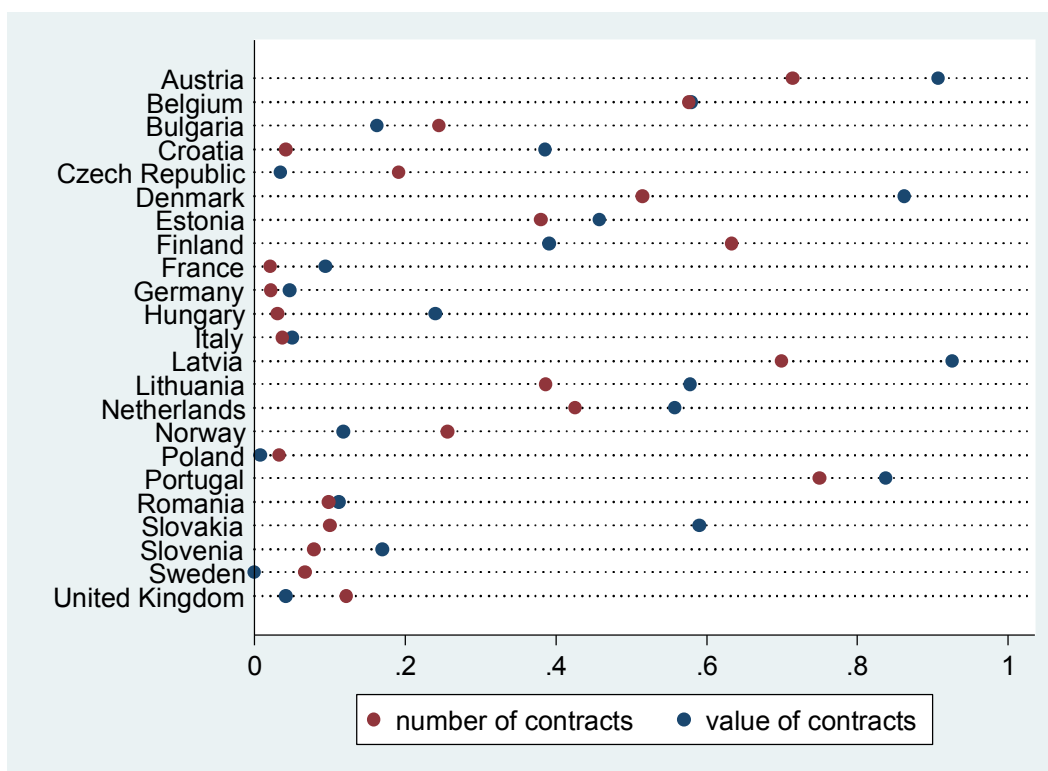
Source: OJ/TED, manual corrections by DG GROW

As shown in Figure 16, 6% of direct cross-border contract awarded under the Directive were won by companies from other EU Member States and 4% by companies located outside the EU. The levels of cross-border procurement were roughly the same in terms of the value of all awards. In civil procurement in 2007-2009, the level of direct cross-border equalled 3.5% of the contract value and 1.6% in terms of the number of contracts<sup>90</sup>.

The differences in the percentage of contracts awarded directly to foreign companies (intra-EU and non-EU combined) across Member States are shown in Figure 17.

<sup>90</sup> „Cross-border procurement above EU thresholds” Ramboll Management, HTW Chur, for the European Commission, DG Internal Market and Services in March 2011, [http://ec.europa.eu/internal\\_market/publicprocurement/docs/modernising\\_rules/cross-border-procurement\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/cross-border-procurement_en.pdf).

**Figure 17: Contracts awarded directly to foreign companies under the Directive in 2011-2015, by country in number and value [fraction]**



Source

: OJ/TED, manual corrections by DG GROW

The graph above marks significant differences between countries that can, from an economic viewpoint, be partially explained by the size of the industrial base in respective countries and their need (or not) to source procurement from abroad. A detailed overview of cross-border penetration by country in terms of value, number and their respective shares is provided in Table 50 in Annex IV.

**Table 18: Contracts awarded directly to foreign companies under the Directive in 2011-2015, by contract type [%]**

	Number				Value			
	<i>Intra-EU cross border</i>	<i>Non-EU cross border</i>	<i>Domestic</i>	<i>Missing</i>	<i>Intra-EU cross border</i>	<i>Non-EU cross border</i>	<i>Domestic</i>	<i>Missing</i>
Supplies	8%	6%	84%	2%	18%	16%	65%	1%
Services	5%	2%	91%	2%	3%	1%	93%	3%
Works	1%		99%	1%	1%		99%	0%
<b>Total</b>	<b>6%</b>	<b>4%</b>	<b>88%</b>	<b>2%</b>	<b>6%</b>	<b>4%</b>	<b>87%</b>	<b>3%</b>

Source: OJ/TED, manual corrections by DG GROW

An overview of cross-border procurement by contract types (Table 18) shows that supply contracts have been more frequently won by foreign bidders than service or works contracts. The percentage of supply cross-border awards was 14% in terms of number and 34% in value. This is to be expected, given the fact that goods are typically more tradable than services (or works). The shares of cross-border procurement by selected categories of CPV nomenclature are provided in

Table 51 in Annex IV. Finally, a detailed overview of contracts awarded under the Directive in 2011-2015 and broken down by the country of contracting authorities and economic operators is provided in Table 52 (the number of contracts) and Table 53 (in value terms) in Annex IV.

The Impact Assessment noted that, in general terms, EU-wide publication of contract opportunities should enhance companies' chances to win cross-border contracts<sup>91</sup>. When comparing the above findings with the baseline (despite some methodological discrepancies), it appears that the level of direct cross-border procurement in EU has remained at similar levels since the entry into force of the Directive. According to the Baseline Study, the value of cross-border procurement advertised in OJ/TED and EBB was estimated at around 2.26 billion EUR in 2008-2010<sup>92</sup>, hence roughly 753 million EUR per year. Since the entry into force of the Directive, contracts worth roughly 3.1 billion EUR were awarded directly to firms located in a country other than the one of the contracting authority (circa 620 million EUR per year). Additionally, defence and security contracts worth around 692 million EUR<sup>93</sup> were awarded to foreign bidders under the civil procurement Directives in 2011-2015 (hence roughly 138 million EUR annually on average). The two figures combined would equal around **758 million EUR annually, representing the mean average value of defence and security procurement covered by transparent EU rules and awarded directly cross-border in 2011-2015.**

When comparing the above totals with the value of defence procurement expenditure which was at the disposal of EU governments in the respective periods of time, it seems that, **since the Directive became applicable, direct cross-border procurement in EU has remained at similar levels** - according to the Baseline Study, the cross-border procurement announced via OJ/TED and EBB equalled roughly 0.85%<sup>94</sup> while the same percentage in the evaluated time span would account for 0.93%<sup>95</sup> of the defence procurement expenditure. Although both figures are very close (on average around 750 million EUR annually and both accounting for less than 1% of defence procurement expenditure), it should be underlined that the two estimates are difficult to compare, as they are based on different methodologies (e.g. the Baseline Study used a broader definition of defence procurement than the current evaluation, hence the current estimate would have been probably higher if it was calculated using the baseline methodology).

The above estimates all referred to the so-called direct cross-border procurement which occurs when firms operating from their home market bid and win contracts for invitations to tender launched in another Member State. However, **cross-border procurement can also occur indirectly through subsidiaries** (e.g. a foreign affiliate bids for tenders launched by authorities of a country different from the home country of the firm's headquarters or where the parent company is located).

In order to provide an estimate of the second form of cross-border procurement, the firms that have won contracts under the Directive were compared with the names of companies

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<sup>91</sup> The Impact Assessment, p. 54.

<sup>92</sup> The Baseline Study, p. 57.

<sup>93</sup> Without taking into account manual corrections received for Belgium.

<sup>94</sup> 753 million EUR/87.73 billion EUR, annual average in 2008-2010.

<sup>95</sup> 758 million EUR/81.49 billion EUR, annual average in 2011-2015.

listed in the SIPRI Top100-arms producing and military services<sup>96</sup> ranking. As the SIPRI list includes the country of the parent company, the approximate share of indirect cross-border procurement could be estimated.

As shown in Table 19, which provides an overview of indirect cross-border procurement calculated for a sample of large firms, amongst all contracts awarded under the Directive, 474 were won by the foreign subsidiaries of firms listed in SIPRI Top 100 ranking. Around 66% of these contracts were awarded to the European companies, while the following 26% have been won by companies from the US. Companies captured by the above method could have acted as stand-alone businesses or in consortia.

**Table 19: Contracts published under the Directive in 2011-2015 and awarded to foreign subsidiaries of companies listed on the SIPRI Top 100 ranking, by country [number of contracts, value in million EUR]**

Country of the headquarters	Freq.	Sum
Australia	7	0.76
EU	312	2 279.61
India	1	0.00
Israel	5	17.12
Norway	2	1.24
South Korea	1	5.00
Switzerland	24	37.27
USA	122	10 099.52
<b>Total</b>	<b>474</b>	<b>12 440.52</b>

Source: OJ/TED, manual corrections by DG GROW; The SIPRI Top 100 arms-producing and military services companies in the world excluding China, December 2015.

The total value of **indirect cross-border awards in 2011-2015 equalled 12.44 billion EUR, hence roughly 40% of the total value of contracts awarded under the Directive.**

The contracts won by companies originating from the US accounted for the highest share of the total value of awarded contracts (81%). However it is important to underline that this result was to a large extent influenced by the previously mentioned service contract worth 6 billion GBP awarded by the UK Government to a subsidiary of a US company. If this outlier was removed from the dataset, the order on the list would have changed with the winning firms from the EU moving at the top (the share of intra-EU awards in the value of contract would increase to 55% of the remaining observations and the US would follow with 44%).

Finally, the main drawback of the above estimation is the fact that it is solely based on the list of 100 largest companies worldwide (i.e. refers only to a subset of contracts won by these largest companies) while the subsidiaries of companies with lower value of arms sales are not included in the ranking. As a result, the number and value of indirect cross-

<sup>96</sup> The SIPRI Top 100 arms-producing and military services companies in the world excluding China, December 2015, <http://books.sipri.org/files/FS/SIPRIFS1512.pdf>

border contracts in practice could be larger as the indirect cross-border wins of smaller international companies were not captured by the above estimation method.

Based on the replies to the online survey, stakeholders' perception of the impact of the Directive on cross-border access to defence and security procurement in EU countries is rather positive (39% of respondents among both contracting authorities and businesses), but with a significant share of respondents seeing no impact (30% among contracting authorities, and 24% among businesses). The respondents seeing a negative impact are a sizeable minority among businesses (21%) and a rather marginal share among contracting authorities (6%).

An additional factor, which is relevant in connection with the issue of cross-border awards, is whether the Directive increases the number of cross-border bids, including from new entrants in the market. To assess this aspect, contracting authorities were asked in the online survey how often the Directive resulted in offers/expression of interests coming from a more diverse, wider range of suppliers from other EU Member States. The replies were rather mixed: 33% consider this has been the case "occasionally" or "frequently", whilst 30% think it happened "rarely" or "never".

In a stakeholder's consultation meeting<sup>97</sup>, a defence company explained that before making a decision to bid they make a case-by-case assessment. They need to be confident that they are well-placed to win and that it is worth preparing an offer.

To conclude, the increased use of EU public procurement rules based on transparency, competition and equal treatment naturally leads to enhanced cross-border opportunities for companies. However, it has not resulted in an increase in direct cross-border awards. As stakeholders pointed out, an important contributing factor is that cross-border bidding is by nature more difficult due to language and other non-regulatory barriers, higher costs and insufficient knowledge of the foreign market.

### 6.1.1.3. Competition

The average number of offers received when launching procurement under the Directive was 3.4, which is somehow lower than what is observed in the civil sector (5.4<sup>98</sup> bids per procedure), but can be explained by the structure of the defence sector with fewer but more specialised suppliers. However, nearly 33% of contract awards published in OJ/TED and containing information about the number of bids<sup>99</sup> received just one offer (Figure 18). This means that for 1/3 of the calls for tender there was actually no competition<sup>100</sup>.

### **Figure 18: Number of offers per contracts awarded under the Directive in 2011-2015 [fraction]**

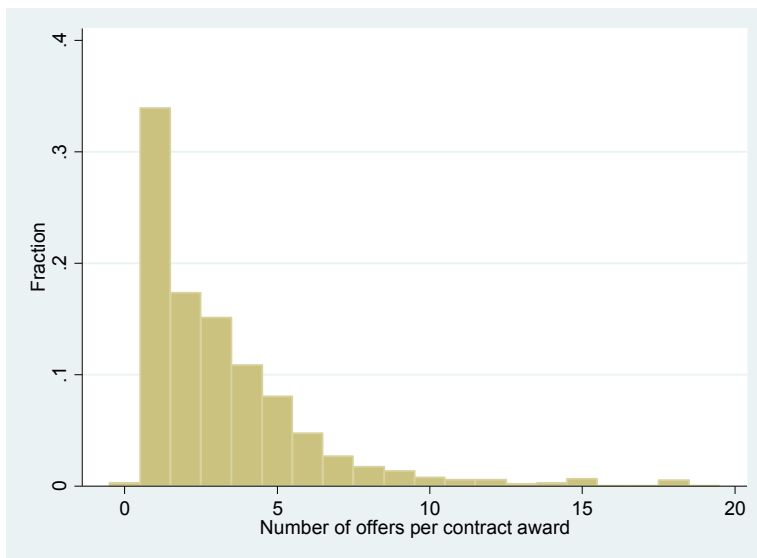
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<sup>97</sup> Minutes of 22 February 2016 meeting with industry organised by ASD.

<sup>98</sup> "Public procurement in Europe, Cost and effectiveness" <http://bookshop.europa.eu/en/public-procurement-in-europe-pbKM3113708/>, p. 93.

<sup>99</sup> 5 700 contract award out of 7 145 contained information about the number of bids received. 1 922 bids received one offer.

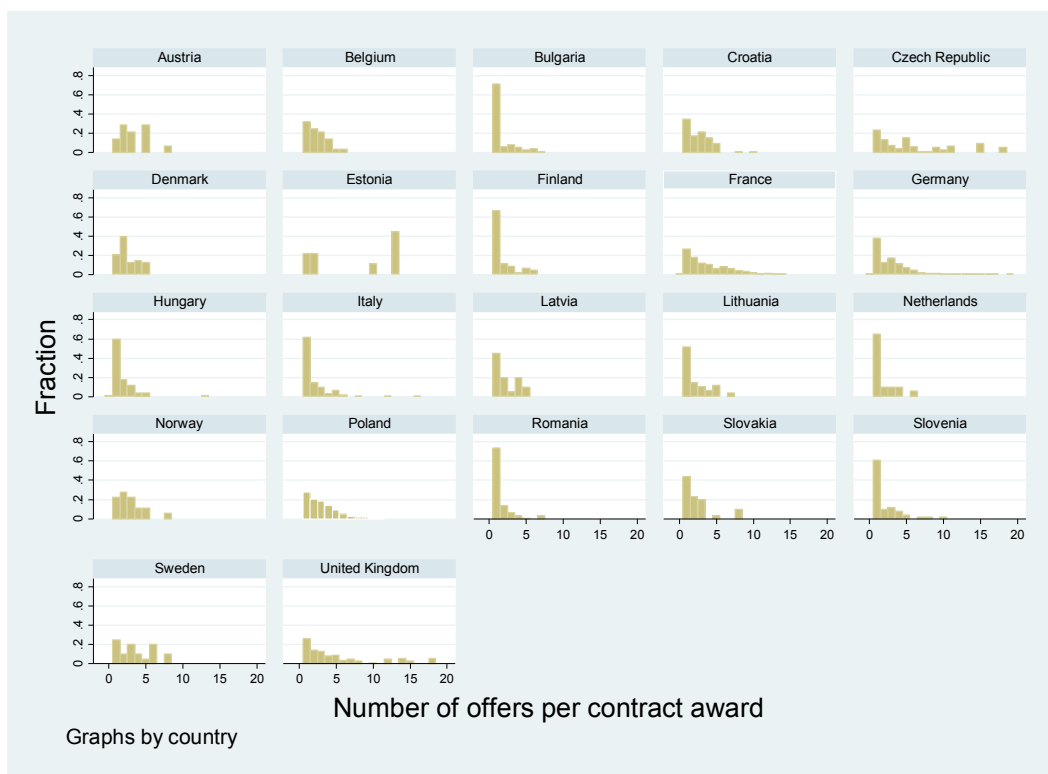
<sup>100</sup> Out of the observations that contained information about the number of bids submitted.



Source: OJ/TED, manual corrections by DG GROW

The same analysis can be carried out at a country level, showing that there are significant differences in the levels of competition across Member States.

**Figure 19: Number of offers per contracts awarded under the Directive in 2011-2015, by country<sup>101</sup> [fraction]**



Source: OJ/TED, manual corrections by DG GROW

In particular in countries such as Bulgaria, Finland, Hungary, Italy, the Netherlands, Romania and Slovenia (with spikes after “0”) nearly 60% of contracts or more were awarded following the reception of a single offer.

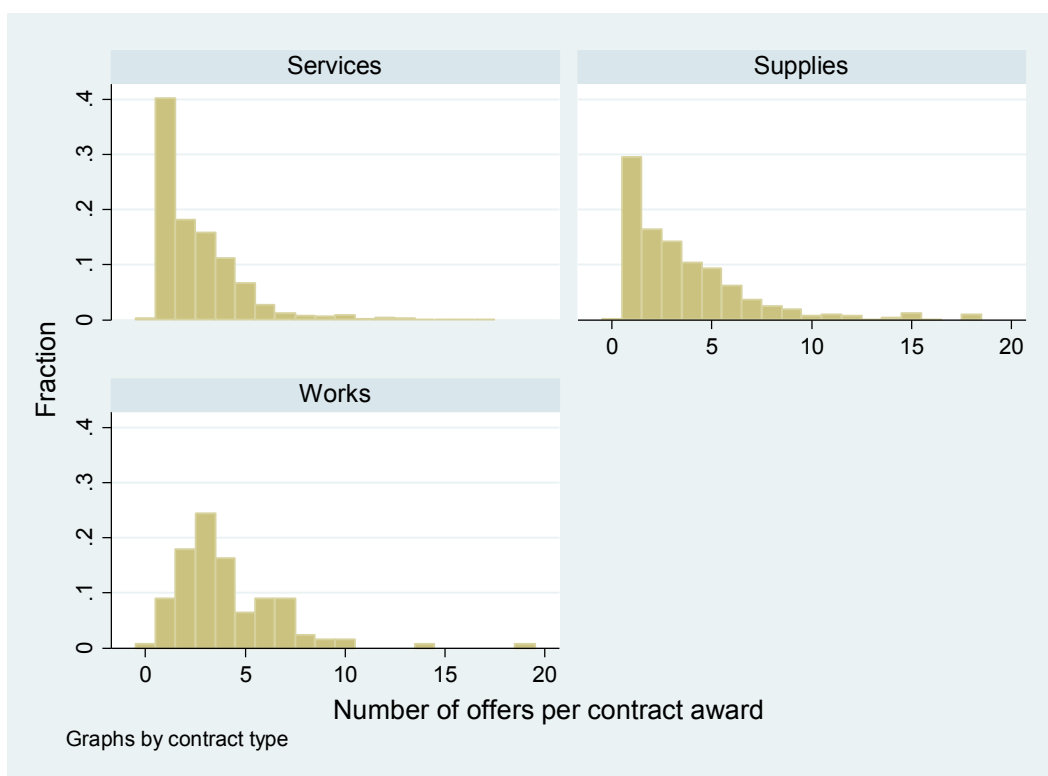
Finally, the competition levels can also be broken down by the type of contract that was used for procurement (Figure 20). The histogram below clearly shows that 40% of service contracts received just one offer, while single-bidder awards accounted for nearly 30% of supply contracts. In contrast, works procurement shows a much more balanced picture with less than 1/10 of such awards, it should be however kept in mind that the latter was based on a much smaller dataset<sup>102</sup>.

<sup>101</sup> Portugal is not included on the graph as none of the contract awards from Portugal contained information about the number of bidders.

<sup>102</sup> Only 123 awards for works contained information on the number of bidders, compared to roughly 3 000 awards concerning supplies and 2 500 for services.



**Figure 20: Number of offers per contracts awarded under the Directive in 2011-2015, by contract type [fraction]**



Source: OJ/TED, manual corrections by DG GROW

The number of offers received is closely linked with the type of procedure chosen by the contracting authority. Non-transparent procedures, such as the negotiated procedure without publication of a contract notice will typically involve just one bidder.

**Table 20: Contract award notices published under the Directive in 2011-2015, by transparency<sup>103</sup> of procedures [number of notices, %]**

	<b>Freq.</b>	<b>Percent</b>
Non-transparent	1 384	38%
Transparent	2 226	60%
Missing	72	2%
<b>Total</b>	<b>3 682</b>	<b>100%</b>

Source: OJ/TED, manual corrections by DG GROW

As presented in Table 20, the fraction of contract award notices where the procedures used in procurement were not transparent was almost 2/5. However, contracts awarded without publishing a call for tender accounted for lower share in terms of the total value of awards (23%), meaning that high value contracts were more frequently awarded following transparent procedures (Table 21).

<sup>103</sup> Non-transparent procedures understood as: the negotiated procedure without publication of a contract notice.

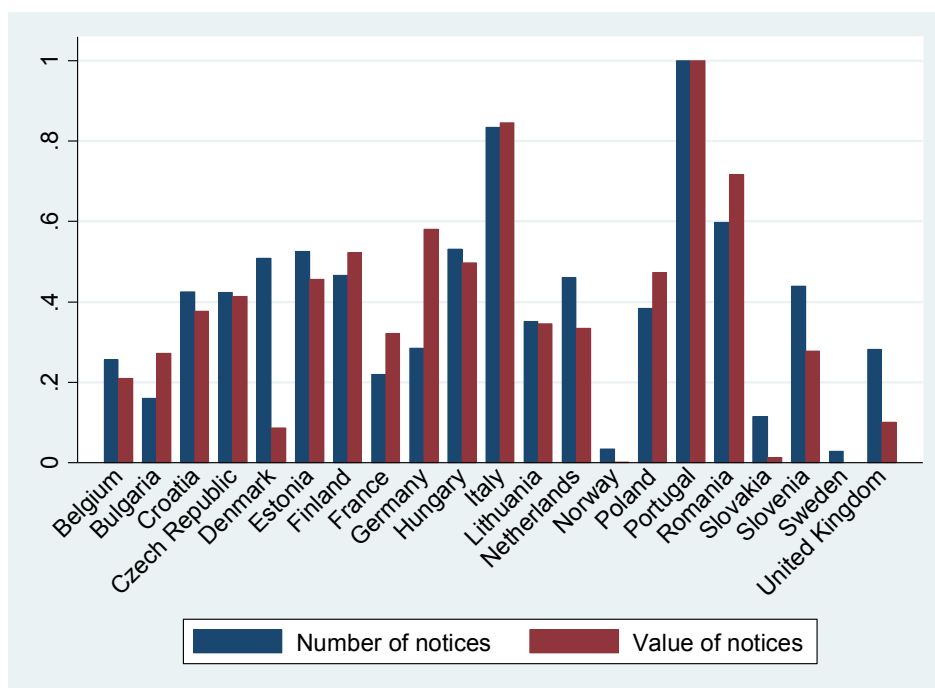
**Table 21: Contract award notices published under the Directive in 2011-2015, by transparency<sup>104</sup> of procedures [value in million EUR, %]**

	Sum	Percent
Non-transparent	7 234.25	23%
Transparent	23 565.96	76%
Missing	49.98	0.2%
<b>Total</b>	<b>30 850.19</b>	<b>100%</b>

Source: OJ/TED, manual corrections by DG GROW

As it can be seen from the graph below, the differences across countries in the use of non-transparent procedures were significant, also exposing different proportions depending on whether the share in terms of number or value is analysed. These differences may be due to some extent to different practices of contracting authorities in the application of the conditions for the use of the negotiated procedure without publication of a contract notice.

**Figure 21: Contract award notices published under the Directive where non-transparent procedures were used, by country<sup>105</sup> [fraction]**



Source: OJ/TED, manual corrections by DG GROW

Austria and Latvia are not shown on the graph, as in these countries all awards were based on transparent procedures. In Portugal the opposite was true (although in the latter case, the calculation was based on only eight contract award notices reported by Portugal

<sup>104</sup> *Ibidem.*

<sup>105</sup> There were no contract award notices where non-transparent procedures were used in: Austria and Latvia.

in 2011-2015). Obtaining a corresponding result for Sweden in terms of the value of contracts was impossible due to lack of price data.

The results of the online survey show that the perception of contracting authorities about the impact of the Directive on competition (in terms of number of offers received) is positive. 45% of contracting authorities' respondents considered that the situation "improved" with the Directive. 15% see no difference, and only 6% replied that the situation "deteriorated" or "significantly deteriorated" compared to before the Directive.

Similarly positive are the contracting authorities' responses on a related aspect, i.e. the impact of the Directive on their capacity to achieve best value for money. 33% of contracting authorities that replied to the survey consider that this aspect improved compared to the situation before the Directive, while 18% see no difference. Only 6% think that the situation deteriorated.

At a meeting on the evaluation<sup>106</sup>, some Member States' experts confirmed the perception that the Directive helped achieving best value for money, while many affirmed that it is still too early to draw definite conclusions. They pointed out that getting best value for money does not only depend on the rules of the Directive, but also on the degree of competition and the structure of the market. Some Member States experts clarified that even before the Directive some form of competitive procurement aimed at best value for money was normally used.

In conclusion, the fact that the average number of offers is somehow lower than in civil procurement can probably be explained by the structure of the defence sector with fewer but more specialised suppliers. Overall, as it is confirmed by stakeholders' feedback, the Directive had a generally positive impact on competition.

#### 6.1.1.4. The practice of industrial return requirements

The Impact Assessment addressed the issue of offsets/industrial return requirements. It concluded that this issue should/could not be explicitly regulated by the Directive, but needed to be addressed in the light of Treaty principles. As explained in Section 5, the Commission departments therefore engaged, since 2010, with Member States to make sure that offsets regulations were abolished or revised in the context of the process of transposition of the Directive. In addition to the revision of offsets regulations, it is appropriate to assess whether changes concerning offsets/industrial return requirements have taken place in the concrete public procurement practice of Member States.

No official data on Member States' practices concerning offsets/industrial return requirements exist at EU level. If some individual Member States collect such data in relation to their own national defence procurement or defence exports, they have no reporting obligation towards the Commission. No such data were obtained via consultation activities either.

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<sup>106</sup> Minutes of 18 February 2016 meeting of the Commission's governmental expert group on defence and security procurement.

The Bureau of Industry and Security (BIS) of the US Department of Commerce publishes an annual report on “*Offsets in Defense Trade*”<sup>107</sup>. The BIS collects data annually from the US firms involved in defence exports with associated offset agreements. These annual reports provide data on offset agreements and transactions reported by US firms exporting defence equipment abroad; only the globally aggregated data are provided, with no breakdown by (offset recipient) country or geographical area. The twentieth report, published in March 2016, provides, for the first time, data concerning the EU. In 2014, the US firms reported entering into nine new offset agreements with EU Member States. The value of these agreements is 1.68 billion USD. As a proportion of all the new offset agreements entered into by the US firms in the same year, those with EU Member States represent 18% by number and 12.9% by value<sup>108</sup>.

This data confirms that **Member States in 2014 still used offsets requirements when purchasing defence equipment from abroad, presumably based on Article 346 TFEU**. However, since similar BIS data from previous or later years is not available, it is impossible to make a comparison in order to assess whether – and to what extent – changes in the practice of offsets/industrial return requirements have taken place.

An element to assess this issue is the perception of stakeholders, and in particular of defence companies which are confronted with such requirements.

Businesses’ replies to the online survey show that the perception is that of a reduction, albeit to a very limited degree, in the frequency of industrial return requirements after the Directive. While the amount of businesses replying that they have been confronted “very often” or “often” with these requirements before or after the Directive is the same (48%), the proportion of those replying “very often” goes from 33% (before the Directive) to 24% (after the Directive). In the same direction, the percentage of companies that replied “never” goes from 9% (before the Directive) to 12% (after the Directive).

In its reply to the online survey, ASD pointed out that “*the uncertainties concerning the use of offset requirements that came along with the Directive is a particular concern for defence industries in smaller Member States*” and that these uncertainties also create legal and financial risks “*for bidders for contracts where such offsets are required*”. In this context, they argued that “*legal certainty would benefit from further clarification of the conditions for requests for industrial participation*”. One defence company that responded to the online survey also confirmed that there are still uncertainties in terms of offsets practices, and argued that the situation is more unclear and less transparent than before the Directive. This point was also made by another industry representative in a stakeholder consultation meeting<sup>109</sup>.

At the same meeting, another industry representative mentioned that formal offsets requirements have definitely changed or are now removed. However, there are still cases of offsets requirements based on essential security interests under Article 346 TFEU. He added that there remains a significant informal desire and expectation in customer countries to build industrial links with supplier companies and for them to establish local collaboration.

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<sup>107</sup> <https://www.bis.doc.gov/index.php/other-areas/strategic-industries-and-economic-security-sies/offsets-in-defense-trade>.

<sup>108</sup> Twentieth Offset Report to Congress 3/16, p. 20.

<sup>109</sup> Minutes of 22 February 2016 meeting with industry organised by ASD.

Several participants at the above-mentioned meeting stated that there is a clear trend to move away from indirect non-military offsets. It was pointed out, however, that direct military offsets can also have detrimental effects as they can lead to defence industrial duplications in Europe.

To conclude, it seems that Member States still use to some extent (presumably relying on Article 346 TFEU) offsets/industrial return requirements. However, the frequency of these requirements appears to have marginally decreased. Finally, there seems to be a trend to move away from indirect non-military offsets.

#### 6.1.1.5. Other aspects of procurement procedures

By introducing coordinated procurement rules based on competition, transparency and equal treatment, the Directive sought to improve a number of aspects such as: fairness or procedures, legal certainty, and bidders' access to review procedures.

The Directive lays down a detailed set of provisions designed to ensure that the principle of equal treatment is respected throughout the contract award procedure. In addition, it establishes a specific review system that constitutes an additional guarantee to ensure compliance with the rules. Finally, it coordinates national rules thereby reducing regulatory fragmentation across Member States and improving legal certainty.

As to the effects of the Directive on fairness of procedures, businesses' replies to the online survey indicate a mixed perception, with moderately positive signs. 30% of companies' respondents do not see any difference compared to the situation before the Directive, 21% consider that it "improved", and 15% think that the situation "deteriorated" or "significantly deteriorated". 42% have "some doubts" that a contracting authority in another Member State would give fair consideration to their bid under the Directive, while 21% are "reasonably confident", "confident" or "very confident" that this would be the case.

One defence and security company, in its written contribution to the open public consultation, mentioned that discriminatory technical specifications, tailor-made requirements, as well as national standards, are used in some Member States. This company argued that this constitutes a major problem in the application of the Directive and a barrier to the functioning of the internal market.

Another aspect related to the fair and non-discriminatory conduct of procedures, is the proper application of exclusion grounds. In this respect, Transparency International considers that the mandatory exclusion of tenderers takes place extremely rarely. Furthermore, the derogation from the mandatory exclusion is too broad and vague. A self-cleaning mechanism (currently not foreseen in the Directive) could encourage companies to implement effective anti-corruption policies. The application of discretionary exclusions is also too rare. They suggest a coordination of the exclusion systems of the Member States so as to follow a uniform approach and avoid the granting of special advantages to companies with political influence. Implementation guidance on the topic would also be welcome. In that context, Transparency International points at the electronic databases of the US government and of the World Bank which contain a list of excluded entities. These databases must be checked by the procurement authorities and are also to a certain extent publicly available. They recommend a similar mechanism for the EU.

With regard to legal certainty, contracting authorities consider that the Directive had a positive impact, while businesses' perception is rather mixed. Among the contracting authorities that replied to the online survey, 48% think that the Directive "improved" or "significantly improved" legal certainty, 12% see no difference, and 12% think that the situation "deteriorated" or "significantly deteriorated". The relative majority (30%) of businesses see no difference with regard to legal certainty, while 21% considers that the situation "deteriorated" and 15% that it "improved" or "significantly improved". With one exception, all Member States experts who intervened on this issue pointed out that the Directive improved legal certainty<sup>110</sup>.

In terms of access to review procedures, 36% of businesses' respondents think that the Directive made no difference, 15% consider that it "improved" or "significantly improved" the situation, and 9% see a negative impact ("deteriorated" or "significantly deteriorated").

The significant rate of businesses' replies indicating that the Directive has made no difference on these aspects is consistent with their feedback about the still limited uptake of the Directive and the need for more widespread and consistent application.

In a stakeholders' consultation meeting<sup>111</sup>, a number of defence companies pointed out there should not be high expectations that they would use access to review procedures in the defence sector. Since they only have one customer in each country, they prefer not to antagonise them if it can be avoided. Other factors that discourage the use of legal challenges in front of national courts are costs and time-limits. In this context, they emphasised that enforcement to ensure the correct application of the Directive cannot rely only on complaints from economic operators.

Transparency International, in its reply to the online survey, notes that in some situations the oversight institutions, such as the parliaments or the courts of audit, might be lacking the necessary information about specific defence and security procurement procedures, due to e.g. strict data secrecy laws. Transparency International also pointed out that the appeal or complaints mechanisms might be ineffective or insufficiently proactive in some Member States which makes it more difficult to report irregularities or corruption. Very often national legislations also fall short of offering adequate sanctions for corruption. In addition, the levels of prosecutions for corruption are very low and the proceedings often last very long and result in court settlements.

Transparency International also called for the application of an anti-corruption policy for subcontractors and third parties as well as the use of appropriate contract clauses. In this context, they specifically mention integrity pacts.

To conclude, when contracts are awarded under the Directive, aspects such as the fairness of procedures and access to reviews are improved. However, the extent to which these improvements take place depends on the degree of application of the Directive. The mixed stakeholders' perception on some of these aspects appears to be due to the still limited uptake of the Directive.

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<sup>110</sup> Minutes of 18 February 2016 meeting of the Commission's governmental expert group on defence and security procurement.

<sup>111</sup> Minutes of 22 February 2016 meeting with industry organised by ASD.

### 6.1.2. Use of exemptions

Evaluation question (2):	To what extent has the use of exemptions, in particular Article 346 TFEU, changed as a result of the Directive?
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As recalled in Section 2.2.3 above, according to the Impact Assessment, the operational objective of the Directive was to limit the use of exemptions, in particular Article 346 TFEU, to exceptional cases. This implied that *“the majority of contracts in the fields of defence and security, including those for the procurement of arms, munitions and war material, should thus be awarded on the basis of EU rules”*<sup>112</sup>.

Member States have no notification or reporting obligations concerning their decisions to rely on Article 346 TFEU, on other Treaty-based exemptions, or on one of the exclusions from the Directive (Articles 12 and 13) in order to conduct procurement outside the Directive. There are, therefore, no official statistical data or information on the extent to which these exemptions have been applied.

Under these circumstances, four elements have been relied upon in order to address this issue:

- (a) changes in the extent to which EU procurement rules (defence and civil) are used for the award of defence and security contracts, as compared to the defence procurement expenditure;
- (b) the volume of defence equipment procurement (upper/lower range) carried out outside the Directive;
- (c) examples of major excluded contracts;
- (d) Member States and stakeholders’ perceptions about the use of exemptions.

The results of analysis carried out under the four above mentioned approaches, along with methodological constraints (e.g. caused by limited access to comparable data), are presented in the following sections.

#### 6.1.2.1. Comparison with defence procurement budgets

The first and most important element to look at in order to understand whether changes in the use of exemptions have occurred, are the changes in the use of the Directive. An increase in the application of EU procurement rules would be in itself clear, albeit indirect, evidence of a decrease in the use of exemptions.

As presented in Section 6.1.1.1 above, after the deadline for transposition, the uptake of the Directive was almost immediate and has shown a clear upward trend.

The comparison with the baseline situation shows an increase in the use of EU procurement rules for the award of defence and security contracts. As explained in Section 2.3.2 above, the total value of contracts published EU-wide (OJ/TED and EBB)

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<sup>112</sup> Impact Assessment, p. 32.

in the period 2008-2010 amounted to an average yearly value of 2.9 billion EUR. The total value of these contracts was equivalent to 3.3% of the EU's total defence procurement expenditure in the same period.

The reported value of contract award notices published under the Directive in 2011-2015 was around 6.2 billion EUR annually, hence circa 7.6% of the total value of general government procurement expenditure on military defence of EU-28 and EEA-2 countries (or 6.9 billion EUR and 8.5% respectively, if the estimated value was used, see: Table 17). Additionally, defence and security contracts were awarded under the civil procurement Directives in 2011-2015 (on average 1.6 billion EUR annually). Consequently, on average circa 7.8 billion EUR was published annually under transparent EU rules in 2011-2015, equalling 9.5% of the defence procurement expenditure available to EU governments in the reference period.

This shows that, compared with the baseline situation, there has been a **more than twofold increase in the award of defence and security contracts under transparent and competitive procurement rules** (from 3.3% to at least 7.6%) in terms of the average yearly value of awarded contracts and as the proportion of defence and security procurement compared to defence procurement expenditure.

Despite this improvement, it is also clear that a very significant share of defence procurement expenditure is still done outside the Directive and, more in general, outside EU public procurement rules. This share is likely to include procurement in which exemptions (Article 346 TFEU or exclusions provided for in the Directive) are used - whether or not in a legally correct manner - as well as procurement whose value is below the thresholds for the application of the Directive.

#### 6.1.2.2. Major defence equipment procurement outside of the Directives – quantitative description

As already noted in Section 6.1.1.1 above, the total value of contract award notices published under the Directive in 2011-2015 ranged between 30.85 billion EUR and 34.55 billion EUR (reported and estimated value, respectively). However, when compared with the defence procurement budgets the share of procurement carried out under the Directive seems to be relatively small. Similarly, the dominance of relatively small value contracts (Figure 15), may suggest that the Directive was not used to a significant degree for the procurement of strategic equipment (i.e. complex systems).

In this context, an attempt has been made to provide an indication of the value of major defence equipment programmes procured outside the Directive. For this specific exercise, IHS Jane's defence procurement database has been used. In order to arrive at a rough estimate, procurement programmes conducted by EU and EEA countries have been shortlisted, where it could be inferred that award decisions have taken place between 2011 and 2015. Only programmes committed and/or completed have been considered. Finally, 128 defence procurement programmes, operated by 26 countries, has been included in the sample. More details about the methodology used are provided in Annex III.



**Table 22: Estimate of the total value of defence equipment procurement programmes included in IHS Jane’s database, by year [value in million EUR]**

Year	Lower bound	Mid-point	Upper bound
2011	2 271.26	3 283.60	4 295.95
2012	3 157.07	3 317.76	3 478.46
2013	14 587.51	18 440.08	22 292.64
2014	3 972.65	4 346.40	4 720.14
2015	11 574.57	15 048.34	18 522.11
<b>Total</b>	<b>35 563.05</b>	<b>44 436.18</b>	<b>53 309.30</b>

Source: IHS Jane’s procurement database.

Note: IHS Jane’s database offers estimates of minimum and maximum values of the programme. The middle estimate corresponds to the average value between the upper and the low ranges. The sample includes 128 programmes. Only "committed" and/or "completed" programmes have been considered.

As explained in the methodological section (Annex III), comparisons between the two sets of data (OJ/TED and IHS Jane’s) are difficult, due to potential differences in the scope, unit of observation and in the time dimension. Nevertheless in order to make an attempt at providing an indication of the value of major defence equipment programmes procured outside the Directive, the following two methods have been used: (i) estimating the value of programmes which have been awarded without starting competitive tendering process and (ii) capturing programmes which were awarded with a competitive tendering process, but which were presumably not published in OJ/TED.

The first approach (i) consisted of estimating the value of programmes which have been awarded without starting competitive tendering process<sup>113</sup>. IHS Jane’s database offers information about the request of proposal date of a programme (i.e. the date when the procuring country requests the submission of offers from potential suppliers for a procurement programme). It can be assumed that this date corresponds to the start of a competitive tendering procedure. Table 23 below summarises the value of programmes included in IHS Jane’s database which have been awarded between 2011 and 2015, but which did not have a request of proposal date.

**Table 23: Estimate of the total value of defence equipment procurement programmes without a request of proposal date – by year [value in million EUR]**

Year	Lower bound	Mid-point	Upper bound
2011	160.04	558.79	957.55
2012	518.36	605.18	692.01
2013	1 106.57	1 351.80	1 597.03
2014	1 268.28	1 402.10	1 535.92
2015	1 413.99	2 199.98	2 985.98
<b>Total</b>	<b>4 467.23</b>	<b>6 117.86</b>	<b>7 768.49</b>

Source: IHS Jane’s procurement database.

Note: See note in Table 22. The sample includes 47 programmes. Only committed or completed programmes have been considered.

<sup>113</sup> Competitive tendering is understood here as any form of bidding process, whether under EU procurement rules or not, whereby different offers are solicited and compared before awarding a contract.

According to IHS Jane's data, approximately 37% (47 out of 128) programmes awarded between 2011 and 2015 did not report the start of a competitive tendering process. Table 23 shows that between 2011 and 2015, the 47 programmes without a request of proposal date accounted for between 4.4 billion EUR and 7.7 billion EUR (which equalled approximately **13%**<sup>114</sup> - **15%**<sup>115</sup> **of the total value of programmes** recorded in the IHS Jane's database as committed or completed during the same period). Based on the assumption that the absence of a request of proposal date indicates that no competitive tendering procedure was launched, this estimate offers an overview of major defence equipment procurement programmes awarded **outside the Directive and without any form of competitive tendering**. Additionally, the data in Table 23 also presents an increasing trend in the year-to-year values, which is difficult to explain, but can also be linked with IHS Jane's data collection methods.

As briefly explained above, the second approach (ii) consisted of trying to capture the programmes which were awarded with a competitive tendering process (i.e. where a request of proposal date was included in the database), but which were not published in OJ/TED. In order to do so, the lists of companies winning between 2011 and 2015 have been extracted from OJ/TED and IHS Jane's and compared. The idea behind this exercise was to capture a low estimate of projects listed in the IHS Jane's database, which have been awarded to companies whose business name has not appeared in the OJ/TED during the same period.

As a result of the matching process, it has been found that the majority of firms which, according to IHS Jane's database, won a defence procurement bid in 2011-2015 have not been listed in OJ/TED during the same period of time. Only 12.5% of the procurement projects reported in IHS Jane's and awarded with a competitive tendering process during 2011 and 2015 have been won by companies which appeared in OJ/TED. The remaining subset of programmes could provide an estimate of major defence equipment procurement programmes most likely conducted outside the Directive, even if awarded through some form of competitive tendering.

**Table 24: Estimate of the value of defence equipment procurement programmes with a competitive tendering process and likely conducted outside the Directive [value in million EUR]**

Year	Lower bound	Mid-point	Upper bound
2011	2 111.22	2 724.81	3 338.40
2012	2 513.35	2 587.22	2 661.09
2013	12 653.61	16 215.77	19 777.93
2014	2 676.97	2 914.57	3 152.16
2015	6 323.29	8 571.21	10 819.13
<b>Total</b>	<b>26 278.44</b>	<b>33 013.58</b>	<b>39 748.71</b>

Source: IHS Jane's procurement database.

Note: please see the note in Table 23. The sample includes 70 programmes. Only committed or completed programmes have been considered. Companies from Bulgaria have not been included in the analysis due to matching impossibilities.

Consequently, the value of programmes awarded to companies which have not been listed in OJ/TED is presented in (Table 24) The total estimate of this subset **corresponds**

<sup>114</sup> 4.47 billion EUR/35.56 billion EUR in 2011-2015.

<sup>115</sup> 7.77 billion EUR/53.31 billion EUR in 2011-2015.

to approximately between 84%<sup>116</sup> and 87%<sup>117</sup> of the total value of defence equipment programmes reported in IHS Jane's and awarded with a competitive tendering process during the same period.

#### 6.1.2.3. Major defence equipment procurement outside of the Directives – qualitative description

In order to complement the quantitative indications presented above with qualitative description, it seems appropriate to provide a list of examples of major defence equipment programmes or contracts that have most likely been awarded outside the Directive. This exercise can be useful to illustrate the notions of major defence equipment programmes, strategic military procurement, or procurement of complex weapon systems that have been referred to in this evaluation.

It should be emphasised that the compilation of this list is not based on a legal assessment of compliance with the rules of the Directive, and in no way implies a position of the Commission departments on the existence of breaches of EU law. In fact, there may have been different legal reasons for awarding the defence programmes/contracts mentioned below outside the Directive. These include the possible application of Article 346 TFEU or of the exclusions provided for in Articles 12 and 13 of the Directive. Although great care has been taken to try and identify procurement cases awarded after the transposition deadline of the Directive, some of these programmes or contracts may have fallen outside the scope of application of the Directive *ratione temporis*<sup>118</sup>. Finally, in some cases the application of non-competitive procurement procedures – albeit not necessarily outside the Directive – may have been justified (e.g. sole supplier or supplementary supplies).

**Table 25: Examples of major defence equipment programmes/contracts outside the Directive - purchases over 200 million EUR in alphabetic order of Member States [value in million EUR]**

Member State	Description of the procurement (probable contractor in brackets)	Maximum estimated contract value	Estimated year of contract award
Czech Republic	At least 14 multirole aircraft fighters Saab Gripen (Saab Gripen), (extension of lease agreement)	750	2014
Denmark	27 F-35 air jet-fighters (Lockheed Martin), (The stage of government recommendation approved by the Parliament - no contract yet)	3 000	2016
France	12 Aircraft Tankers based on Airbus A330 (Airbus)	3 000	2015

<sup>116</sup> 26.28 billion EUR/(35.56 billion EUR – 4.47 billion EUR) in 2011-2015.

<sup>117</sup> 39.75 billion EUR/(53.31 billion EUR – 7.77 billion EUR) in 2011-2015.

<sup>118</sup> Especially since the Court of Justice established that the rules applicable *ratione temporis* are those applicable at the point in time when the contracting authority chose the type of procedure to be followed, C-337/98 Commission v France, para. 40; C-576/10 Commission v Netherlands, para. 53.

France	The SCORPION programme for the preparation of future land combat systems. It includes i.a. procurement of 110 Jaguar 6x6 reconnaissance vehicles, 780 Griffon 6x6 armoured personnel carriers, and renovation of 200 Leclerc tanks.	550	2013
France	4 C-130J Hercules transport aircrafts (Lockheed Martin) - two with helicopter in-flight refuelling capability, two gunships with precision-guided munitions	330	2016
France	14 tactical patrol drones (Sagem - Safran subsidiary)	300	2016
Germany	Additional delivery of 131 Boxer armoured vehicles (Krauss-Maffei Wegmann and Rheinmetall)	470	2015
Italy	Additional delivery of 9 M-346 advanced jet trainers including logistics support (Aermacchi)	300	2016
Italy	6+4 multipurpose offshore patrol ships and 1 logistic support ships (consortium Fincantieri and Finmeccanica)	4 300	2015
Italy	6 Medium-altitude long-endurance unmanned aerial vehicles - MALE UAVs (Piaggio Aero) P.1HH HammerHead	490	2015
Italy	136 new 8x8 military light to medium territorial defence and tactical reconnaissance vehicle, with a 120 mm gun (Centauro 2 programme)	200	2014
Netherlands	14 Boeing CH-47F Chinook heavy lift helicopters (Boeing)	838	2016
Romania	24 used multirole aircraft F-16 (Lockheed Martin) from Portugal including in-service support and training	630	2013
Poland	64 self-propelled 120 mm mortars RAK and 32 command vehicles	230	2016
Slovakia	16 medium transport helicopters Black Hawk (Sikorsky)	290	2015
Sweden	Design and construction of 4 new (A26) submarines (Saab Kockums)	2 295	2015
United Kingdom	50 Apache attack helicopters (Boeing)	2 105	2016
United Kingdom	Continuation of design work, demonstration and construction of 8 global combat Ships (BAE Systems)	6 916	2016
United Kingdom	5 helicopter-capable offshore patrol vessels (BAE Systems)	732	2013

Source: DG GROW, based on IHS Jane's procurement database and publicly available information (i.e. announcements in companies' and government authorities' websites, as well as press articles).

Note: the examples have been selected to maximise the illustrative potential of the list. Other criteria were:

high value, estimated year of contract award after the transposition deadline of the Directive, balance across sectors (air, naval and land) and Member States.

The examples in Table 25 confirm that **several major defence equipment programmes have been awarded in recent years outside the Directive**. These are all complex weapons systems and some of them represent the highest end of military capabilities such as fighter jets, attack helicopters, combat ships and submarines. Despite an effort to keep a balance across sectors (air, naval and land) the programmes in the air sector represent the majority (11 out of 19 examples), simply due to the much higher value of these programmes.

#### 6.1.2.4. Member States and stakeholders views on the use of exemptions

According to the replies to the online survey, public authorities and businesses have rather divergent views about the impact of the Directive on the use of the essential security interest exemption (Article 346 TFEU). While a majority of public authorities' respondents (52%) "strongly agree" or "agree" that the Directive has reduced the need to use this exemption, only 27% businesses hold the same view. 39% of businesses actually "disagree" or "strongly disagree" with this statement.

In a meeting on the evaluation, the vast majority of Member States' experts stated that the Directive significantly decreased the need for using Article 346 TFEU.

The Federation of German Industries (BDI), in its reply to the online survey, pointed out that "*Article 346 TFEU is often referred to in order to justify a non-application of the Directive*". BAE Systems noted that the frequency of use of this provision has reduced, but their perception is that it represents a significant proportion of the overall procurement value. Similar remarks have been made by one defence company and one business association that responded to the online survey.

One respondent to the online survey among contracting authorities mentioned that it is sometimes difficult to understand whether Article 346 TFEU can be applied to an individual procurement case.

It has been possible to test the stakeholders' perceptions (on both ends of the procurement procedure, i.e. contracting authorities and businesses) through the online-survey. Respondents that declared to be involved in public procurement in the fields of defence and security were asked to rate how often different legal grounds (Article 346 TFEU, exclusions, under thresholds) were used "*as a justification NOT to carry out defence or security procurement procedures under Directive 2009/81/EC*". Among exemptions/exclusions<sup>119</sup>, Article 346 TFEU is seen as the most frequently used legal basis not to apply the Directive; 33% of businesses and 12% of public authorities that replied to these questions consider that this Treaty provision has been used "very frequently" or "frequently".

#### 6.1.3. Member States security concerns

Evaluation question (3): To what extent are the provisions of the Directive appropriate to guarantee
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<sup>119</sup> "Below thresholds procurement" is seen as the most frequently used justification by contracting authorities. This indication is less relevant in this context.

As explained in Section 2, the Directive seeks to lay down provisions that are tailor-made to the specificities of the defence and security sectors. This means, in particular, that the Directive's rules aim at ensuring competition, transparency and equal treatment, while at the same time safeguarding Member States security concerns. The main features of the Directive that are relevant in this context are the defence-specific exclusions, and the provisions on security of information and security of supply.

The online survey and the meetings with stakeholders have been used to gather stakeholders' views on these provisions of the Directive (on exclusions, security of information, and security of supply), and assess whether they are still fit for purpose.

#### 6.1.3.1. Defence-specific exclusions

Roughly 45% of contracting authorities respondents and 36% of businesses respondents "strongly agree" or "agree" that the exclusions (Article 12 and 13) are appropriate. However, a non-negligible proportion of businesses respondents (27%) "disagree" or "strongly disagree". This is consistent with inputs received from some defence companies and business associations, which raised a few issues with certain exclusions from the Directive.

Some business associations and defence companies, who participated in the online survey, expressed concerns about the application of the exclusions on government-to-government sales (Article 13(f)) and International Organisations (Article 12(c)). They specifically referred in this context to the Global-FMS<sup>120</sup> concept, because this mechanism might amplify the potentially negative effects on the internal market. These stakeholders called for further guidance to clarify in particular these provisions of the Directive. Similar points were made, especially with regard to the exclusion on government-to-government sales (Article 13(f)) by a number of industry representatives during two stakeholder consultation meetings<sup>121</sup>.

On the other hand, one business association that responded to the online survey pointed out that the US FMS programme does not cause market distortions in Europe. In the above-mentioned stakeholders' consultation meetings, certain industry representatives said they are rather supportive of the use of government-to-government and FMS.

The Federation of German Industries (BDI), in its reply to the online survey, argued more generally that the interpretation of the exclusions (Articles 12 and 13) is partly diverging in practice, and that a clarification – through non-legislative instruments – would be necessary to establish a fair and competitive market.

One Member State, in its written contribution to the open public consultation, supported the idea of guidance on the application of the exclusions on government-to-government

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<sup>120</sup> FMS (Foreign Military Sales) is a US program under US Arm Export Control Act (AECA) within which US defence articles and services are sold to foreign countries and international organisations through government-to-government agreements.

<sup>121</sup> Minutes of 22 February and 3 May 2016 meetings with industry organised by ASD.

sales (Article 13(f)) and International Organisations (Article 12(c)). Several other Member States' experts also argued that some clarifications – through non-legislative guidance - on Article 12(c) of the Directive would be useful<sup>122</sup>.

Most of the Directive's provisions on exclusions (Articles 12 and 13) were not included in the original Commission's proposal and were, therefore, not subject to the Impact Assessment. These provisions have been inserted by the co-legislators as they were deemed necessary to address the specificities of defence procurement and to safeguard Member States security interests. On the other hand, as established in the case law of the Court of Justice, exclusions must be interpreted restrictively<sup>123</sup>. They cannot be used to circumvent the provisions of the Directive and to undermine its *effet utile*. For contracting authorities to correctly take these limitations into account when applying exclusions in individual procurement cases may not always be straightforward.

#### 6.1.3.2. Security of information

61% of contracting authorities' respondents strongly agreed or agreed that the Directive's provisions on security of information are sufficient to ensure the protection of classified information. Among businesses respondents, the relative majority (33%) also agreed and only 9% disagreed.

One Member State and two defence companies stated, in their replies to the online survey, that the lack of a harmonisation of national security clearance systems can create problems and market access barriers. However, the issue of diverse national security clearance systems goes well beyond the regulation of public procurement and the security of information provisions of the Directive.

The broad consensus of stakeholders on the fact that the security of information provisions of the Directive are appropriate confirms the Commission departments' analysis that has not identified particular problems in this area.

#### 6.1.3.3. Security of supply

On the security of supply provisions, contracting authorities and businesses hold somewhat different views. 30% of business respondents "agree" or "strongly agree" that the Directive's provisions on security of supply are sufficient to limit the risks of supply disruptions and ensure operational autonomy. Among contracting authorities respondents only 15% agree with that statement, while 33% are neutral and 18% disagree or strongly disagree.

One national defence industry association pointed out that security of supply cannot be fully guaranteed by political declarations or contractual commitments, but it is ensured primarily through national control of domestic industrial infrastructures.

One Member State's expert stressed, during the meeting on the evaluation<sup>124</sup>, that the provisions of the Directive cannot be sufficient to guarantee security of supply;

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<sup>122</sup> Minutes of 18 February 2016 meeting of the Commission's governmental expert group on defence and security procurement.

<sup>123</sup> See, *inter alia*, Case C-337/06 Bayerischer Rundfunk, paragraph 64.

<sup>124</sup> Minutes of 18 February 2016 meeting of the Commission's governmental expert group on defence and security procurement.

contractual obligations are not sufficient in this context. In some cases, key technologies and industrial facilities are needed, for security of supply reasons, in the national territory.

This feedback from Member States and stakeholders reflect the complexity of security of supply issues. These issues include, but are not limited to, transfer licenses and export control authorisations, contractual arrangements with suppliers and their industrial capacity to meet additional or urgent requests, availability in the medium-long term of industrial and technological capabilities, ownership and capital participation in key defence and security companies. Under these circumstances, the provisions of the Directive, which concern contractual arrangements with suppliers, address only part of the problem. The link with Directive 2009/43/EC on Intra-EU transfers of defence products is particularly important in this context (see below Section 6.4.3.).

#### 6.1.4. Changes in the industrial base (EDTIB)

Evaluation question (4):	Have there been any major structural changes in the European Defence Technological and Industrial Base (EDTIB), including with regard to SMEs and to what extent can they be attributed to the Directive?
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This section seeks to provide a broad picture of the main characteristics of the EDTIB and of major changes that have occurred in recent years. However, as mentioned in Section 4.4., it should be stressed at the outset that the limited availability of statistics for this sector, as well as a relatively short time that elapsed since the adoption of the Directive, restrict the extent to which changes affecting Europe's defence industry in the reference period (2011-2015) and the impacts of the Directive can be assessed.

As recalled in Section 2.2.2 above, and as argued in the Impact Assessment, the general objective of the Directive is to support the establishment of an open and competitive EDEM. This is expected to be, in turn, a contributing factor to strengthen the competitiveness of the EDTIB.

The Impact Assessment included a fairly short description of the main characteristics of Europe's defence industrial base. It indicated that, in 2005, the turnover of companies operating in the areas of land and naval defence and military aerospace was just over 52 billion EUR and that these companies employed around 614 000 people<sup>125</sup>. It also presented the list of the top 20 defence companies world-wide and highlighted that 7 out of these were based in Europe<sup>126</sup>.

Since the Impact Assessment and Article 73(2) of the Directive focus on the EDTIB, this Section looks at the situation of the defence industrial base. This is also justified by the fact that the overwhelming majority of contracts awarded under the Directive have been found to concern the defence, rather than the security, sector (see above Section 5.3.1.5.).

<sup>125</sup> The Impact Assessment, p. 10 and pp. 70-71.

<sup>126</sup> The Impact Assessment, p. 20.



For this reasons, this evaluation did not need to address the specific challenges related to data availability on the European security technological and industrial base<sup>127</sup>.

#### 6.1.4.1. The industry's size

According to ASD data, the total turnover of aerospace and defence industries in 2014 was estimated to be 199 billion EUR, out of which 97 billion EUR from military activities (in aeronautics, naval, land and space). The turnover levels have grown between 2009 and 2014, with the exception of 2013 when a slight downturn could have been noticed. Also with regards to employment, ASD data show a gradual but steady increase in the aerospace and defence industries.

**Table 26: Turnover and employment of European aerospace and defence industries, by year [turnover in billion EUR, employment in thousands of employees]**

Year	Turnover	Employment
2009	155	681
2010	163	705
2011	171	733
2012	187	753
2013	172	778
2014	199	795

Source: ASD - Aerospace and defence industries, Facts & Figures, 2014

In comparison, according to Eurostat SBS data, the turnover of defence-related industries (including civil aeronautics and shipbuilding) passed from nearly 130 billion EUR in 2010 to 162.5 billion EUR in 2014 (Table 57 in Annex IV). In terms of employment, the available Eurostat data show an increase from nearly 453 000 employees in 2010 to 550 000 in 2014<sup>128</sup> (Table 58 in Annex IV). It is, however, impossible to assess the extent to which the increase occurred in the defence or in the civil (aeronautics and shipbuilding) industries.

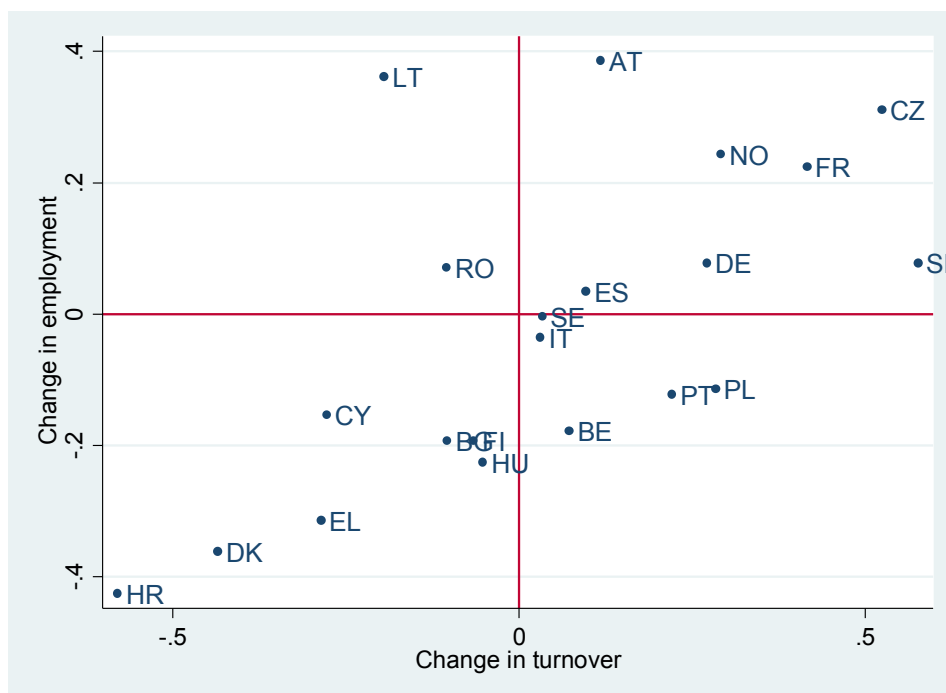
The changes in turnover and employment levels across Member States, calculated as a difference between 2014 and 2010 levels with 2010 being the base year<sup>129</sup>, are presented in Figure 22. Changes in Slovenia and Sweden were calculated between 2010 and 2013, because of the lack or incompleteness of data for 2014. Similarly, as there was no data available for 2010 on turnover in the manufacture of air and spacecraft in Belgium, the base year used for this country was 2009. Countries with no data reported for 2010 or with significant incompleteness of data in at least one of the variables (employment or turnover) were omitted (i.e. Estonia, Iceland, Ireland, Latvia, Luxembourg, Malta, Netherlands, Slovakia and the UK).

<sup>127</sup> Since developing a clear picture of the security sector was hampered by the absence of reliable data, a recent study done by Ecorys for the Commission, DG Migration and Home Affairs, aimed at establishing the aggregate size (turnover and employment) of the security industry. The study excluded firms that supply security products to the defence sector only, but covers firms active in both the civil security and defence markets. The study contains a mapping of the European security sector with estimates indicating that the security industry in the EU generates a total turnover of as much as €191 bn and employs as many as 2.3. mio people, [http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/security/reference-documents/docs/security\\_statistics\\_-\\_final\\_report\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/security/reference-documents/docs/security_statistics_-_final_report_en.pdf).

<sup>128</sup> Some annual fluctuations (e.g. a slight decrease in 2011), were rather due to the absence of data for some countries.

<sup>129</sup> Difference for a country  $j$  would be then:  $\text{Diff}_j = (\text{value}_{2014j} - \text{value}_{2010j}) / \text{value}_{2010j}$

**Figure 22: Changes in turnover and employment levels between 2010 and 2014<sup>130</sup>, by country [fraction]**



Source: Eurostat, Structural Business Statistics (SBS), annual detailed enterprise statistics for industry (NACE Rev. 2, B-E) (sbs\_na\_ind\_r2)

As seen on the graph, changes in employment and turnover levels between 2010 and 2014 seem to be fairly balanced across the EU and EEA - seven countries reported a decrease in employment and turnover levels and the same number of countries observed changes in the opposite direction. In five Member States the turnover has increased, despite a reduction in the headcount (Belgium, Italy, Portugal, Poland and Sweden – the latter with almost negligible negative change in employment levels) which might signal some efficiency gains in the industry. The employment has increased in Romania and Lithuania although it has not translated into higher turnover levels between 2014 and 2010<sup>131</sup>. To conclude, changes occurred in all directions and there is no clear pattern concerning the evolution of the industry that could be identified based on the available data.

Similar picture emerges when the list of top producing counties by sector are compiled and compared over time in EU and EEA (see: Tables 27 to 30<sup>132</sup>).

**Table 27: Countries with the highest share of turnover in the manufacture of weapons and ammunition, NACE C25.4 (sorted by 2010) [%]**

	2010	2011	2012	2013	2014
United Kingdom	26.1	29.8	33.1	25.6	31.0

<sup>130</sup> 2013-2010 for Slovenia and Sweden; 2014-2009 for Belgium.

<sup>131</sup> It is however unclear to what extent such change could have been caused by incomplete reporting to Eurostat.

<sup>132</sup> The "highest share" in Tables 27 to 30 was defined as more than 5% in any of the analysed years.

Germany	21.9	22.0	22.7	19.7	23.1
Italy	16.6	17.0	18.0	13.7	18.2
France	14.6			17.5	
Norway	12.7	11.7	9.9	7.5	7.9
Sweden	6.9	6.9	7.4	4.9	4.4

Source: Eurostat, Structural Business Statistics (SBS), annual detailed enterprise statistics for industry (NACE Rev. 2, B-E) (sbs\_na\_ind\_r2);

Note: the data for France in 2010 were missing and are replaced by its share in 2009.

**Table 28: Countries with the highest share of turnover in the building of ships and floating structures, NACE C30.11 (sorted by 2010) [%]**

	2010	2011	2012	2013	2014
Norway	22.7	27.8	32.0	35.9	31.4
Italy	15.4	12.7	9.9	8.6	10.7
Germany	15.1	11.9	11.1	10.1	16.7
Spain	11.2	9.2	7.3	6.1	4.5
United Kingdom	11.0	13.0	14.5	13.9	14.9
France	10.6	12.7	13.5	14.0	12.6

Source: Eurostat, Structural Business Statistics (SBS), annual detailed enterprise statistics for industry (NACE Rev. 2, B-E) (sbs\_na\_ind\_r2)

**Table 29: Countries with the highest share of turnover in the manufacture of air and spacecraft and related machinery, NACE C30.3 (sorted by 2010) [%]**

	2010	2011	2012	2013	2014
France	32.7	33.8	33.9	34.6	34.8
United Kingdom	28.8	27.6	27.3	26.6	25.6
Germany	22.1	22.3	22.1	22.4	21.3
Italy	9.2	8.6	8.2	6.7	8.1
Spain	5.3	5.5	5.1	6.0	6.2

Source: Eurostat, Structural Business Statistics (SBS), annual detailed enterprise statistics for industry (NACE Rev. 2, B-E) (sbs\_na\_ind\_r2)

**Table 30: Countries with the highest share of turnover in the manufacture of military fighting vehicles, NACE C30.4 (sorted by 2010) [%]**

	2010	2011	2012	2013	2014
France	79.9			50.4	66.9
United Kingdom	40.5	64.9	64.3	35.2	33.1
Poland	20.1	30.4	35.7	12.5	

Source: Eurostat, Structural Business Statistics (SBS), annual detailed enterprise statistics for industry (NACE Rev. 2, B-E) (sbs\_na\_ind\_r2);

Note: the data for the UK in 2010 were missing and are replaced by its share in 2009.

Overall no important changes over time can be noted in the tables. Although certain annual volatility over time can be observed for some countries, it is mainly caused by the lack of data or incompleteness in time-series (e.g. the United Kingdom share in the manufacture of military fighting vehicles has dropped from 64.3% in 2012 to 35.2% in 2013 because of the lack of data from France in 2012). In general, as it can be seen from

the tables above, the **main producing countries with market shares of more than 5% in each sector remained relatively stable between 2010 and 2014.**

#### 6.1.4.2. Global competitiveness

Europe's defence industry includes some of the world's leading system designers and integrators. SIPRI's list of top-100 arms producing and military services companies in the world (excluding China), based on the annual value of arms sales, can be referred to in order to position these leading European defence companies vis-à-vis the global market. As presented in Table 31, the latest SIPRI list includes 25 European companies, which are based in the UK (8), France (6) Germany (3), Italy (2), Finland, Norway, Poland and Sweden (1 each), as well as two transnational European companies.

**Table 31: Top European arms-producing and military services companies in 2014 [value in million EUR, %, number of employees]**

Rank	Company	Country	Arms sales value	% of total sales	Employment
3	BAE Systems	UK	23 672	94	83 400
7	Airbus Group	Trans-EU	13 331	18	138 620
9	Finmeccanica	Italy	9 697	54	54 380
12	Thales	France	7 912	50	61 710
16	Rolls-Royce	UK	4 996	23	2 025
17	SAFRAN	France	4 720	25	68 950
20	DCNS	France	3 606	96	13 130
25	Babcock International Group	UK	3 275	48	10 840
31	Rheinmetall	Germany	2 732	48	20 170
37	Saab	Sweden	2 493	79	14 720
42	ThyssenKrupp	Germany	2 125	4	160 740
44	CEA	France	2 107	40	15 770
49	Serco	UK	2 006	33	118 620
53	Cobham	UK	1 711	61	12 710
62	Fincantieri	Italy	1 297	24	21 690
64	Nexter	France	1 214	95	3 320
65	Dassault Aviation Groupe	France	1 214	27	11 750
67	Polish Armaments Group	Poland	1 168	100	17 500
72	QinetiQ	UK	1 049	91	6 250
79	GKN	UK	911	8	21 400
83	Krauss-Maffei Wegmann	Germany	865	95	2 770
85	Kongsberg Gruppen	Norway	846	35	7 730
87	Meggitt	UK	819	35	10 820
93	CNH Industrial	Trans-EU	754	2	69 210
96	Patria Industries	Finland	736	88	2 450
<b>Top 25 European</b>			<b>95 257</b>	<b>30</b>	<b>950 675</b>

Source: SIPRI Arms production database

The picture of the leading European defence companies has been rather stable over the years. As noted by the Technopolis study on the evaluation of Directive 2009/43/EC (the Technopolis Study), most changes, additions or removals to the list are a result of

mergers or group reorganisations<sup>133</sup>. It is particularly remarkable that the number of European companies in the global top 20 list in 2014 is the same (7) as it was in 2005 at the time of the Impact Assessment.

The international dimension is a key aspect of the competitiveness of Europe’s defence industry. As noted in the Report of the Group of Personalities on Defence Research, “*beyond the domestic European market(s), international market access and defence export activity are essential components of the business models used by Europe’s defence industry. From an industrial viewpoint, access to international markets is a necessity, but not only as a means to compensate for a declining domestic market: export growth significantly contributed to sustaining the critical mass of European defence companies and highlights the competitiveness, capability, performance and reliability of European export products*”<sup>134</sup>.

**Table 32: Share of total global defence exports [%]**

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
EU	33.51	36.35	37.74	32.65	34.59	26.38	26.49	21.18	25.09	27.89
US	34.85	30.48	29.54	28.15	28.06	31.87	30.26	31.20	26.45	36.01
China	2.98	2.61	1.81	2.44	4.68	5.69	4.44	5.76	7.41	3.83
Russia	23.68	20.72	20.97	25.88	20.99	23.38	28.42	29.07	30.31	21.09
Rest of the world	7.95	12.46	11.75	13.32	16.36	18.37	14.83	18.55	18.15	15.01

Source: Report of the Group of Personalities on European Defence Research, based on SIPRI Arms Transfer Database

Table 32 shows that the share of global defence exports from EU Member States declined from 33.5% in 2005 to 27.9% in 2014. The share significantly decreased in 2010, and started to pick up again in 2013. Besides this, no clear pattern in the evolutions of the export shares over the years seems to be discernible.

#### 6.1.4.3. The industry’s structure

The biggest defence companies in Europe (system integrators and prime contractors), which include the top 25 mentioned above, work with smaller companies in broad and complex supply chains to deliver their products and provide services.

A recent study commissioned by the EDA (the SCAP Study) identified about 9 000 companies supplying various capabilities across the European defence industry supply chain. Tier 1 companies (prime contractors, system integrators) constitute only 2% of the overall industry supply chain, but represent the dominant share of the defence expenditure revenues. Tier 2 companies account for around 15% of the supply chain. Tier 3 to Tier 5 companies are mostly suppliers catering to end-user and industry primes needs for components and associated support services<sup>135</sup>. According to ASD data on

<sup>133</sup> “Evaluation of Directive 2009/43/EC on the Transfers of Defence-Related Products within the Community” by Technopolis group for the European Commission in June 2016, p. 20.

<sup>134</sup> Report of the Group of Personalities on the Preparatory Action for CSDP-related research, 23 February 2016, p. 44, <http://www.iss.europa.eu/publications/detail/article/report-of-the-group-of-personalities-on-the-preparatory-action-for-csdp-related-research>.

<sup>135</sup> “Support to the implementation of the Supply Chain Action Plan” by IHS Global Limited for EDA; the executive summary has been published online: [https://www.eda.europa.eu/docs/default-source/procurement-library/15-esi-op-029\\_edasupport-for-implementation-of-scap-executive-summarye39d983fa4d264cfa776ff000087ef0f.pdf](https://www.eda.europa.eu/docs/default-source/procurement-library/15-esi-op-029_edasupport-for-implementation-of-scap-executive-summarye39d983fa4d264cfa776ff000087ef0f.pdf).

Europe's aerospace and defence industries, the supply chain is estimated to represent one third of total revenues (i.e. 66.5 billion EUR).

To complete the picture, Eurostat statistics on the number of enterprises can also be a relevant source to assess possible changes in the structure of the industrial base. However, these statistics are incomplete for a number of years and countries (no data are reported), and appear to underestimate the number of enterprises specifically active in the defence sector<sup>136</sup>.

**Table 33: Enterprises in Europe's aerospace, defence and shipbuilding industries, by country and year [number of enterprises]**

	2010	2011	2012	2013	2014
Austria	68	67	70	70	69
Belgium	29	0	46	51	54
Bulgaria	51	41	42	43	40
Croatia	215	217	208	192	192
Cyprus	4	4	4	3	3
Czech Republic	167	167	165	157	155
Denmark	54	50	51	60	61
Estonia	38	30	35	33	35
Finland	158	142	131	132	130
France	486	496	485	535	416
Germany	391	436	450	517	516
Greece	333	358	184	137	40
Hungary	76	78	44	38	42
Iceland	0	0	0	0	0
Ireland	0	0	0	0	0
Italy	1 320	1 305	1 236	1 181	1 114
Latvia	15	15	23	21	21
Liechtenstein	0	0	0	0	0
Lithuania	22	22	25	25	27
Luxembourg	1	1	0	1	1
Malta	0	0	0	0	0
Netherlands	268	294	305	351	360
Norway	318	320	325	304	317
Poland	631	670	630	528	714
Portugal	136	118	107	101	101
Romania	293	278	275	308	343
Slovakia	0	32	10	22	10
Slovenia	51	46	50	49	49
Spain	586	566	442	464	382
Sweden	243	246	251	255	69
United Kingdom	1 056	1 045	1 084	1 158	1 261
<b>Total</b>	<b>7 010</b>	<b>7 044</b>	<b>6 678</b>	<b>6 736</b>	<b>6 522</b>

Source: Eurostat, Structural Business Statistics (SBS), annual detailed enterprise statistics for industry (NACE Rev. 2, B-E) (sbs\_na\_ind\_r2)

<sup>136</sup> This is particularly evident when looking at the very few enterprises reported in NACE C30.4 (manufacture of military fighting vehicles). For Germany, where two of the leading defence companies in the land segment are located, no enterprise in this NACE is reported.

Although a general decrease in the number of enterprises can be noted – a change from around 7 000 in 2010 to 6 500 in 2014 – due to inconsistencies in data for specific years or countries, no conclusive pattern in the number of enterprises over the analysed years can be identified in a reliable manner.

Finally, mergers and acquisitions (M&A) concerning companies in the sector are another potential source of information about changes in the industrial base, in particular with regards to consolidation. IHS Jane’s study for the EDA tracked, between January 2011 and June 2015, 197 M&A transactions involving the purchase of a controlling stake in defence companies in EU Member States and EEA countries<sup>137</sup>. The above mentioned SCAP Study points out that there has been limited evidence of meaningful consolidation efforts by individual companies, although there has been extensive bolt-on activity<sup>138</sup> by tier 2-3 companies.

According to the same database, the number of M&A transactions for an earlier reference period of similar duration (2006-2010) is 126<sup>139</sup>.

The sheer number of M&A transactions tracked in the last years (2011-2015) is significant and appears to have increased. However, the more significant M&A or company restructuring operations involving defence companies based in Europe appear to be much fewer. Table 34 presents some examples of these operations that have occurred in the reference period (2011-2015).

**Table 34: Examples of recent M&A or other corporate operations**

Year	Operation
2016	Following a reorganisation, Leonardo-Finmeccanica has become a single company by integrating the activities of the group’s companies (AgustaWestland, Alenia Aermacchi, Selex ES, Oto Melara, WASS and Finmeccanica).
2015	Nexter and Krauss Maffei Wegmann set up a joint holding company, called KMW and Nexter Defence Systems (KNDS).
2015	GKN, a UK-based global engineering company operating in the automotive, land systems and aerospace markets, acquired Dutch aerospace component and systems manufacturer Fokker Technologies.
2014	Nexter agreed to acquire Mecar Belgium (energetics subsystems such as fuzes) and Simmel Difesa of Italy (medium and large calibre ammunition) from Chemring of the UK.
2014	The Finnish government acquired Airbus Group’s stake (26.8%) in Patria.
2013	Following company restructuring, EADS has become Airbus Group, which was reorganised into three divisions. At the core of the reorganisation is the integration of three businesses (Airbus Military; space systems business Astrium; and defence and security systems business Cassidian) into the newly created Airbus Defense & Space.

Source: DG GROW based on IHS Jane’s industry and market database, and other publicly available sources

<sup>137</sup> The SCAP study, p. 46.

<sup>138</sup> A bolt-on acquisition is when a private equity-backed company acquires another company as a "bolt on" to enhance the private equity-backed company's value. It refers to an acquisition that fits naturally within the buyer's existing business lines or strategy.

<sup>139</sup> This figure refers to transactions targeting companies based in EU Member States and EEA countries. Elaboration by DG GROW, on the basis of IHS Jane’s Defence Industry and Markets M&A database, which reports transactions that occurred until 2013.

#### 6.1.4.4. No evidence of fundamental change in the industrial base

Given the encountered limitations in data availability and the relatively short time that elapsed since the adoption of the Directive, it seems difficult to conclude that the overall size, structure, and shape of the EDTIB has fundamentally changed in the period 2011-2015. It would be even more difficult, if not impossible, to establish any causal link between the effects of the Directive and developments in the EDTIB.

This is fully consistent with the feedback received by Member States and stakeholders in the consultations for this evaluation. In fact, 55% of respondents among contracting authorities and 58% of respondents among businesses see no impact of the Directive on the competitiveness of EDTIB or have no opinion on the matter.

In its reply to the online survey, ASD stressed that *“the Directive should be assessed against realistic expectations and in a broader context. European procurement rules are an important part of the internal market for defence but by themselves they are not sufficient to ensure the proper functioning of the market (...) even more important from an industrial perspective is the size and structure of the market”*. In addition, several respondents to the online survey among businesses stated that, given the long cycle of defence markets, it is difficult to assess after only five years the impact of the Directive on the market and, even more so, on the industrial base.

One Member State also stressed, in its written contribution to the open public consultation, it is impossible at this stage to establish a causal link between the changes occurring in the market and in the industrial base and the application of the Directive. Member States' experts expressed very similar views in a meeting on the evaluation<sup>140</sup>: there have been some changes in the EDTIB, but it is impossible to establish a link with the Directive; there is no evidence that would allow to do so. In addition, these changes are often the result of industry's reaction to long-term general market and technological developments.

Some industry representatives, in a stakeholder consultation meeting, pointed out that **the objective of making Europe's industrial base more competitive is very hard to achieve in the absence of truly common security and defence policy (CSDP), no common armaments policy and no harmonisation of requirements**<sup>141</sup>. In general, at this meeting there was broad agreement that at this stage, after only five years, there is no evidence of impact of the Directive on the industrial base.

There are a number of factors that have the potential to affect the EDTIB, such as changes in Member States' budgets, degree of competition and emergence of new competitors on third countries markets, technological developments, with a more efficient European market (which the Directive can help achieve) being one of them. Given the long life-cycle of defence markets, all these factors are likely to take several years to bring about changes in the EDTIB. Under these circumstances, it would already be very difficult to attribute to the Directive changes taking place in the EDTIB after a longer period of time. It is, in fact, impossible to draw any conclusions on the impact of

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<sup>140</sup> Minutes of 18 February 2016 meeting of the Commission's governmental expert group on defence and security procurement.

<sup>141</sup> Minutes of 22 February 2016 meeting with industry organised by ASD.



the Directive on the EDTIB five years after the deadline for transposition, also given the significant delays in transposition and the still partial uptake by Member States.

Finally, the lack of significant impact on the industry is undoubtedly related with the fact that major strategic purchases have not been carried out under the Directive, hence the causal link between the two (the Directive and the industry) is difficult to intercept.

#### 6.1.4.5. Winning firms and SMEs presence

As far as the winning firms are concerned, out of 7 145 contracts awarded under the Directive in 2011-2015, 867 contracts were won by companies listed on SIPRI Top100-arms producing and military services companies<sup>142</sup> in 2014, hence accounted for circa 12% of the contracts. The list of winning companies, acting as stand-alone contractors or winning in consortia, is provided in Table 35 below.

**Table 35: Companies listed on the SIPRI list and winning contracts under the Directive in 2011-2015 [number of contract awards]**

<b>SIPRI ranking</b>	<b>Company</b>	<b>Freq.</b>
1	Lockheed Martin	13
2	Boeing	28
3	BAE Systems	21
4	Raytheon	6
5	Northrop Grumman	2
6	General Dynamics	18
7	Airbus Group incl. EADS, Eurocopter	112
9	Finmeccanica	1
10	L-3 Communications	4
12	Thales	96
16	Rolls-Royce	6
17	SAFRAN	1
18	Honeywell International	2
20	DCNS	19
22	Booz Allen Hamilton	2
25	Babcock International Group	8
26	Leidos	1
27	General Electric	8
29	Harris	8
30	AECOM Technology Corp.	1
31	Rheinmetall	112
32	Israel Aerospace Industries	1
33	Elbit Systems	4
37	Saab	19
40	Alliant Techsystems	2
42	ThyssenKrupp	4
43	Hewlett-Packard	11
44	CEA	8

<sup>142</sup> The SIPRI Top 100 arms-producing and military services companies in the world excluding China, December 2015, <http://books.sipri.org/files/FS/SIPRIFS1512.pdf>.

46	Rockwell Collins	6
48	Exelis	1
49	Serco	3
53	Cobham	3
58	Indian Ordnance Factories	1
62	Fincantieri	6
64	Nexter	13
65	Dassault Aviation Groupe	3
67	Polish Armaments Group	10
71	Jacobs Engineering Group	1
72	QinetiQ	8
79	GKN	4
80	Pilatus Aircraft	11
83	Krauss-Maffei Wegmann	79
84	ASC	7
85	Kongsberg Gruppen	2
87	Meggitt	2
88	Moog	4
92	RUAG	13
93	CNH Industrial incl. Iveco, Fiat	13
96	Patria Industries	27
99	Hyundai Rotem	1
S	Pratt & Whitney - United Technologies C	4
S	AgustaWestland – Finmeccanica	15
S	MBDA - BAE Systems UK/EADS W. Eur./Finmeccanica Italy	28
S	Selex ES SpA – Finmeccanica	79
S	Alenia Aermacchi – Finmeccanica	5
	<b>Total</b>	<b>867</b>

Source: OJ/TED, manual corrections by DG GROW; The SIPRI Top 100 arms-producing and military services companies in the world excluding China, December 2015.

The winners included firms with headquarters in the EU, US, Switzerland, Australia, Israel, Norway, India and South Korea. The value of the above mentioned 867 contracts was equal to roughly **16.5 billion EUR**, accounting for a much higher share of the total value of procurement carried out under the Directive (53%) than its share in terms of the number of contracts (12%). However it is important to underline that this relatively high result in terms of value was to a large extent influenced by a previously mentioned service contract worth 6 billion GBP awarded by the UK Government to a subsidiary of a US company.

The remaining dataset of contracts won by firms not listed on the SIPRI ranking has been further scrutinised in order to identify most frequent winners and, to the extent possible, determine their size classes. The top 10 winners amongst companies which were not listed on the latest SIPRI Top100 ranking won 1 473 contracts under the Directive in 2011-2015. The list of these companies is provided below (Table 36).

**Table 36: Top 10 companies not listed on the SIPRI list and winning contracts under the Directive [number of contract awards]**

Company	Country	Freq
WOJSKOWE ZAKŁADY LOTNICZE Nr 1 S.A.	PL	292
ANKOL Sp. z o.o.	PL	255
CENZIN Sp. z o.o.	PL	210

FIN Sp. z o.o.	PL	201
STV GROUP a.s.	PL	125
PPHU NAVCOM SYSTEMS s.c.	PL	112
MEGMAR LOGISTICS & CONSULTING	PL	87
FFG FLENSBURGER FAHRZEUGBAU GESELLSCHAFT MBH	DE	67
DIEHL GRUPPE	DE	62
DRABPOL Sp. z o.o.	PL	62
<b>Total</b>		<b>1 473</b>

Source: OJ/TED, manual corrections by DG GROW;

As it can be seen from the table, the top-winners most frequently included firms from Poland, followed by Germany. The clear dominance of firms from Poland can be explained by the fact that Polish authorities are among those that have published the largest number of contract awards (2 188), while the cross-border procurement in this country remains relatively low (3% in number).

In order to assess the SMEs presence among the most frequent winners, the profiles of firms which were not included in the SIPRI list, but have won more than 10 contracts under the Directive (50 firms in total) were analysed. As a result, it appeared that **27.9% of contracts included in this sample have been awarded to SMEs**. In terms of market share, the contracts identified as awarded to SMEs accounted for 6.1% of the total value of contracts in the sample<sup>143</sup>. When compared to the overall share of contracts won by SMEs in civil procurement (56% in number of contracts and 29% by value)<sup>144</sup>, SMEs appear to be less successful in winning contracts under the Directive than in EU public procurement in general. This difference may be explained by the specificities of the defence procurement market.

Based on the replies to the online survey, stakeholders' perception on the impact of the Directive on the access of SMEs to defence and security procurement is rather mixed, with a strong proportion seeing no impact or having no opinion on the matter among both contracting authorities (33% no impact and 27% no opinion) and businesses (30% no impact and 15% no opinion). Among those seeing an impact, the views of business respondents are more critical (33% replied that the impact was negative, compared to 21% that think it was positive). Among contracting authorities respondents, 18% see a negative impact and 15% a positive one.

A Member State participating in the open public consultation stressed that there are multiple factors affecting the situation of SMEs in the defence sector, such as new competitors, technological developments, and shrinking markets, so that it is impossible to identify if the Directive had any specific impact on their situation.

One national defence industry association argued, in its reply to the online survey, that the Directive did not help increasing the competitiveness of SMEs and did not facilitate their penetration in the supply chains of major defence companies.

<sup>143</sup> The figures provided above only correspond to the top 50 firms which won more than 10 contract according to data provided in OJ/TED. This sample might be not representative for the entire population, although it illustrates the relatively low degree of participation of SMEs in the public procurement defence market.

<sup>144</sup> "SMEs' access to public procurement markets and aggregation of demand in the EU" by PwC, ICF GHK and Ecorys, for the European Commission DG Internal Market and Services in February 2014, <http://ec.europa.eu/DocsRoom/documents/15459/attachments/1/translations> , pp. 28-29.

The issue was discussed, as part of the stakeholder consultation process, in the Commission’s Advisory Expert Group on cross-border access for SMEs to defence and security contracts<sup>145</sup>. All participants agreed that there are no hard data available on the situation of SMEs in the defence sector and on how that may have changed after the Directive. Their perception broadly was that there have been no major changes in the situation of SMEs in the defence sector in recent years. They may face some additional difficulties, but these are most likely due to other factors such as reductions in national defence budgets than directly to the effects of the Directive.

To summarise, SMEs appear to be less successful in winning contracts under the Directive than in EU public procurement in general. This difference may be explained by the specific nature of the defence procurement market. More in general, it seems, as broadly confirmed by stakeholders’ feedback, that the Directive did not have a significant impact (positive or negative) on the situation of SMEs in the defence sector.

#### 6.1.4.6. Subcontracting and SMEs' market access

In order to evaluate the presence of SMEs and their access to the procurement market, one should also look at how subcontracting is being used, since this form of participation in procurement is typically perceived as a key method to facilitate market access for smaller companies.

Under a traditional approach to subcontracting, the successful tenderer is in principle free to decide whether and to what extent some part of contracted work is let to other firms, as well as to select its subcontractors<sup>146</sup>. In such case, information on potential subcontracting is contained in the contract award notice. An overview of such publications is provided below.

**Table 37: Contract awards published under the Directive in 2011-2015, where subcontracting was declared as likely [number of contract awards, %]**

	<b>Freq.</b>	<b>Percent</b>
Yes	709	10%
No	4 535	63%
Missing	1 901	27%
<b>Total</b>	<b>7 145</b>	<b>100%</b>

Source: OJ/TED, manual corrections by DG GROW

As presented in Table 37, in around 10% of contract awards the contracting authorities reported that a certain share of the awarded contract is likely to be subcontracted to third parties. In terms of value of these same contracts they accounted for a much higher proportion of the overall procurement carried out under the Directive (42%), accounting for nearly 13 billion EUR in 2011-2015, as shown in Table 38. However, it is important to notice that the results are influenced by an outlier (the previously mentioned UK

<sup>145</sup> Minutes of 26 April 2016 meeting of the Commission’s advisory expert group on cross-border access for SMEs to defence and security contracts.

<sup>146</sup> Pursuant to Article 21(1) of the Directive “the successful tenderer shall be free to select its subcontractors for all subcontracts that are not covered by the requirement referred to in paragraphs 3 and 4 and shall in particular not be required to discriminate against potential subcontractors on grounds of nationality”.

service contract estimated at nearly 6 billion GBP, which is also likely to be partially subcontracted).

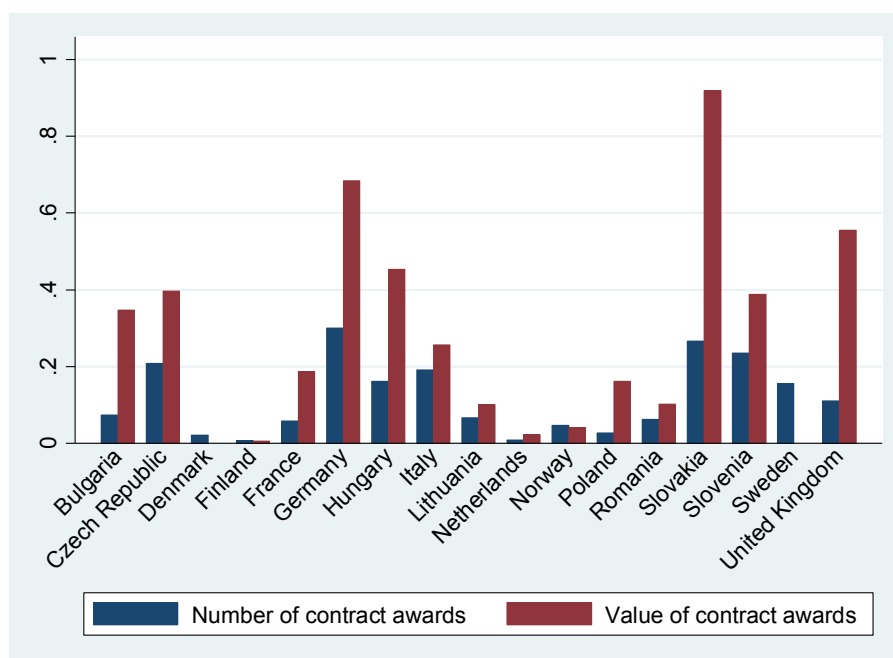
**Table 38: Contract awards published under the Directive in 2011-2015, where subcontracting was declared as likely [value in million EUR, %]**

	Sum	Percent
Yes	12 715.56	42%
No	12 757.87	42%
Missing	4 889.22	16%
<b>Total</b>	<b>30 362.65</b>	<b>100%</b>

Source: OJ/TED, manual corrections by DG GROW

When interpreting the total value of 12.7 billion EUR mentioned above, it is also important to underline that the presented proportion in terms of value does not represent the value of subcontracting as such, but only the value of contracts which are expected to be contracted out (i.e. in some proportion of it). If a share of 30% would be used as the proxy, the **total value of subcontracting would be around 3.8 billion EUR** representing an estimated value of business opportunities for SMEs. A country-by-country overview of contract awards where subcontracting was likely, is presented in Figure 23 below.

**Figure 23: Contract awards published under the Directive, where subcontracting was declared as likely compared to total awards, by country<sup>147</sup> [fraction]**



Source: OJ/TED, manual corrections by DG GROW

Finally, under the specific subcontracting provisions of the Directive, the contracting authority may require the successful tenderer to subcontract a share of the contract to third parties via competitive tendering, following the rules specified in Articles 50 to 53.

<sup>147</sup> There were no awards where subcontracting was reported in: Austria, Belgium, Croatia, Estonia, Latvia and Portugal.

The aim of these specific subcontracting provisions is to inject competition into the supply chains of prime contractors, thereby fostering market access opportunities for sub-suppliers and SMEs. These provisions have clearly not been adopted by the market. As mentioned in Section 5.3.1.1, the use of subcontracting notices was very limited with as little as 32 notices of such type published over the last five years in Europe (2011-2015). Based on manual checks of these notices, it seems that most of them were not defence subcontracts or have likely been published by mistake under the subcontracting standard form.

The negative assessment of the Directive's provisions on subcontracting is confirmed by the replies to the online survey. The relative majority of respondents "disagree" or "strongly disagree" that these provisions "foster cross-border access to defence and security supply chains" among both businesses (39%) and contracting authorities (27%). The proportion of these respondents that agreed with the statement was, respectively, 15% and 21%.

The Belgian Defence Staff, in its contribution to the open public consultation, stressed that "*the current subcontracting provisions are not interesting for the Member States*" and suggested that "*Member States should have the possibility to define specific parts of the main contract for subcontracting*", and/or contracting authorities should be allowed "*to use subcontracting as an award criterion*". The Dutch Ministry of Economic Affairs replied that the subcontracting provisions do not foster cross-border access to supply chains, but added that legal obligations in this area would in any case not be an appropriate solution. Another Member States argued that these provisions are not used since "*they do not guarantee subcontracting in the Member State of the contracting authority*" and are therefore "*ineffective to gain additional value*". Other Member States stressed that the subcontracting provisions "*are of no use*" or "*difficult to apply in practice*". Several Member States' experts expressed, in a meeting on the evaluation<sup>148</sup>, similar views on the ineffectiveness of the subcontracting provisions.

ASD replied that the subcontracting provisions of the Directive are not workable in practice. BAE Systems emphasised that "*within the defence industry, supply chains are long term and for the most part are established during product development, well in advance of sales contracts being tendered. Therefore, the (subcontracting) provisions do not correlate with this environment*". A similar view was expressed by another respondent from a big defence company. NDIV (the Netherlands Industries for Defence and Security) stressed that the subcontracting provisions have "*no benefit for cross border access to the supply chains*", and argued that "*the Directive has had no positive impact on cross-border access to defence and security supply chains*". Similarly, another defence company pointed out that since the majority of supply chains have already been established, the Directive will not stimulate cross-border access to defence and security supply chains.

The EDA developed, in discussions with Member States and stakeholders, a document setting out the challenges for contracting authorities and defence industry in using the subcontracting provisions of the Directive. EDA provided this document to the

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<sup>148</sup> Minutes of 18 February 2016 meeting of the Commission's governmental expert group on defence and security procurement.

Commission's departments, also as input for this evaluation<sup>149</sup>. The main issues identified by this document are:

- If smaller Member States use the subcontracting provisions of Directive, it does not necessarily mean that companies from their own countries will be awarded subcontracts, although they will have the opportunity to compete. These Member States therefore do not have strong incentive to use them.
- The fact that the existing Commission departments guidance note states that contracting authorities cannot define up-front which part of the contract the main contractor has to subcontract in competition is a disincentive for smaller Member States to apply the subcontracting provisions.
- The ability of contracting authorities to supervise prime contractors subcontracting activities (organising the subcontracting competition and running it fairly, including with regard to the definition of award criteria, execution of subcontracts) is very limited.
- Supply chains are formed well before the contract award procedure. It would be difficult, if not impossible, to change subcontractors in an existing system after the development phase without major costs, technical risks, delays and security of supply risks. In fact, large contractors have long lasting relationships with most of their subcontractors, which are normally involved early in the bidding process to assure a reliable evaluation and assessment of both price and performance. The subcontracting provisions are not in line with how industry manages supply chains.
- The potential use of subcontracting provisions would entail major questions in terms of liability for the contracting authority. These include, for example, cases such as: if a claim is made that the prime contractor has not complied with the provisions, a subcontract fails, or execution problems (additional costs or delays) arise due to performance issues related to subcontracts awarded in competition. Similar questions arise in terms of liability for the main contractor, which would be held responsible for problems in the execution of the main contract due to non-performance of new subcontractors selected on the basis of the provisions of the Directive.

To summarise, according to the traditional approach to subcontracting, business opportunities for SMEs and sub-suppliers to be freely selected by the successful tenderer (main contractor) can be estimated to amount to around EUR 3.8 billion EUR.

The specific provisions of the Directive on subcontracting, instead, have not been used for the reasons mentioned above. Since the subcontracting provisions merely lay down options for Member States and contracting authorities, the fact that they have not been used does not prevent the use of the Directive or undermine its functioning. It does, however, mean that the aim of providing additional opportunities to sub-suppliers and SMEs by injecting competition into the supply chains of prime contractors is not achieved.

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<sup>149</sup> “Challenges for Member States contracting authorities and defence industry in using/implementing Directive 2009/81/EC subcontracting provisions – an EDA assessment”, 8 April 2016.

### 6.1.5. Conclusions on effectiveness

In reference to Evaluation Question 1, this evaluation has demonstrated that competition, transparency and non-discrimination in the defence procurement market in Europe have started to improve as a result of the Directive, even if implemented recently. **The value of defence and security contracts awarded under EU rules** and based on transparency and equal treatment **increased** more than tenfold times within the reference period (2011-2015) as a result of the Directive. However, **the degree of application of the Directive, and therefore of the increase in competition, transparency and non-discrimination, remains uneven across Member States**, which in turn impacts negatively the effectiveness of the Directive.

According to the Baseline Study, the total value of contracts published EU-wide (OJ/TED and EBB) in the period 2008-2010 was equivalent to 3.3% of the EU's total defence procurement expenditure in the same period. The total value of contract award notices published under the Directive in 2011-2015 equalled 7.6% (or 9.5% if defence and security procurement under the civil procurement Directive was also taken into account) of the total value of general government procurement expenditure on military defence of EU-28 and EEA-2 countries. This shows that **there has been a more than twofold increase in the share of defence and security contracts awarded under the EU rules**.

Despite this improvement, **a very significant share of defence procurement expenditure is still done outside the Directive** and, generally, outside EU public procurement rules. In addition, the overall volume of procurement carried out under the Directive as well as the dominance of small value contracts seems to suggest that **the Directive was used to a limited extent for the procurement of strategic equipment** (i.e. complex defence systems). This finding is further reinforced by examples of major defence equipment programmes for complex defence systems that have been presumably awarded in recent years outside the Directive in 2010-2015.

The increased use of EU public procurement rules based on transparency, competition and equal treatment, while bringing about more cross-border opportunities, did not result in an increase in direct cross-border awards. This can be partly explained by the fact that cross-border bidding is, by nature, more difficult for companies due to language and other non-regulatory barriers, higher costs and insufficient knowledge of the foreign market.

On Evaluation Question 2, the conclusion, based on the body of evidence presented, is that **the use of exemptions has started to decrease** as a result of the Directive. However **exemptions are still used to a significant extent especially for the procurement of high-value, strategic, complex defence systems**. Nevertheless, there are some recent signs that the Directive is being used for this kind of procurement.

It can also be confirmed, based on the broad consensus that emerged in the consultations and on the Commission departments' analysis, that **the provisions of the Directive designed to address the specificities of defence procurement (e.g. exclusions, security of information, and security of supply) have in general proven to be fit for purpose** (Evaluation Question 3). It has emerged from the consultations that, given the complexity of the issues related to security of supply, the relevant provisions of the



Directive cannot be, by themselves, sufficient to fully guarantee Member States' security of supply.

Given the encountered limitations in data availability and the relatively short time that had elapsed since the adoption of the Directive, **it seems difficult to conclude that the overall size and structure of the EDTIB has fundamentally changed in the period 2011-2015.** It would be even more difficult, if not impossible, to establish any causal link between the effects of the Directive and developments in the EDTIB. This is fully consistent with the feedback received by Member States and stakeholders in the consultations for this evaluation. A definitive answer to Evaluation Question 4 cannot be therefore provided at this stage.

As regards the situation of **SMEs, they appear to have been less successful in winning contracts under the Directive** than in civil procurement, which can be explained by the nature of the defence market. Additionally, stakeholders' perception is that **SMEs in the defence sector have faced additional difficulties in recent years**; it is also recognised that there are multiple factors other than the directive (such as new competitors, technological developments or shrinking markets) affecting SMEs. In any case, **the specific subcontracting provisions of the Directive** have not been used by Member States' contracting authorities as they are seen by them as **ineffective**. Since the subcontracting provisions merely lay down options for Member States and contracting authorities, the fact that they have not been used does not prevent the use of the Directive or undermine its functioning. However, the aim of providing additional opportunities to sub-suppliers and SMEs by injecting competition into the supply chains of prime contractors has not been achieved. Two Member States argued that the Commission departments' 2010 guidance note on subcontracting unnecessarily restricts the subcontracting possibilities for contracting authorities, and that this is a contributing factor to the non-use of competitive subcontracting by Member States.

There are several factors that may have affected the achievement of the Directive's objectives. First, only a relatively short time (2-3 years) elapsed between actual transposition by Member States and the last year covered in the evaluation (2015). This factor, which is especially significant due to the long cycles of the defence market, means that if the upward trend in the use of the Directive continues, its results will become more visible in the next few years. This may also explain the as yet limited awareness of the rules among Member States' contracting authorities. A second factor, somewhat related to the first one, is that exemptions, including Article 346 TFEU, appear to be subject to an overly broad interpretation that does not restrict their use to truly exceptional cases as required by the case law of the Court of Justice. This factor probably is particularly relevant to explain the very limited use of the Directive for the procurement of strategic equipment and complex systems. Moreover, a significant share of defence procurement expenditure may have been spent on contracts awarded in the framework of cooperative programmes started well before the adoption of the Directive. Finally, the financial crisis may have led to the cancellation or postponement of new major procurement projects to be implemented under the Directive.

## 6.2. Efficiency

Evaluation question (5): To what extent are the costs proportionate to the benefits achieved?

In order to address the efficiency question, the cost of carrying out procurement procedures under the Directive will be estimated, taking into account both sides of the procurement transaction (i.e. the cost for contracting authorities or entities, as well as for firms bidding). The cost estimate will be then compared to the potential savings stemming from the Directive.

### 6.2.1. Costs of procedures

The overall costs of procedures carried out under the Directive accounted for approximately 89.6 million EUR in 2011-2015 (compliance costs)<sup>150</sup> (Table 39). The above estimate is a sum of two components:

- the costs incurred by the contracting authorities of 27.6 million EUR, and
- the costs incurred by the economic operators of nearly 62 million EUR (cost for all participating firms, including the unsuccessful ones).

The costs incurred by the economic operators have been calculated as the average cost for a firm bidding, multiplied by the average number of bidders participating in a call for tender. The above overall costs of procedures was estimated following a similar approach to the one adopted in the study “*Public procurement in Europe, Cost and effectiveness*” by PwC, Ecorys and London Economics for the services of the Commission and completed in May 2011 (the PwC Study). The costs of the application of the Directive was calculated based on the cost data collected in the above study, as more recent data of this type was not available. The methodology of the estimate is explained in Annex III.

**Table 39: Costs of procedures carried out under the Directive for the contracting authorities and the economic operators [value in thousand EUR]**

	Costs of procedures		
	for contracting authorities	for economic operators	Sum
2011	133.7	271.3	405.0
2012	2 505.8	8 573.0	11 078.8
2013	5 988.8	12 011.0	17 999.8
2014	8 753.2	17 095.7	25 848.9
2015	10 233.7	24 054.0	34 287.7
<b>Total</b>	<b>27 615.1</b>	<b>62 005.0</b>	<b>89 620.2</b>

Source: OJ/TED, manual corrections by DG GROW, based on PwC estimates of costs.

As presented in Table 39 above, around 30% of the total cost has been borne by the contracting authorities, while the rest by the economic operators. This proportion is due to the fact that the costs for firms are calculated for all bidders, including the cost of preparing offers which were not successful. It is also important to underline the above costs of procedures are not only the costs that directly resulted from the obligations stemming from the Directive, but it might likewise include other cost elements, such as “business as usual cost” or costs resulting from the national legislation, etc.

<sup>150</sup> The methodology of this estimate is presented in Annex III.

The average unitary cost of running the procurement procedures for the contracting authority was around 7.5 thousand EUR, while the total average cost for all economic operators was around 16.8 thousand EUR and the overall cost was 24.3 thousand EUR on average. The medians were 6.4 thousand EUR and 13.8 thousand EUR for the contracting authorities and all bidders, respectively.

**Table 40: Mean and median costs of procedure for contracting authorities and economic operators [value in thousand EUR]**

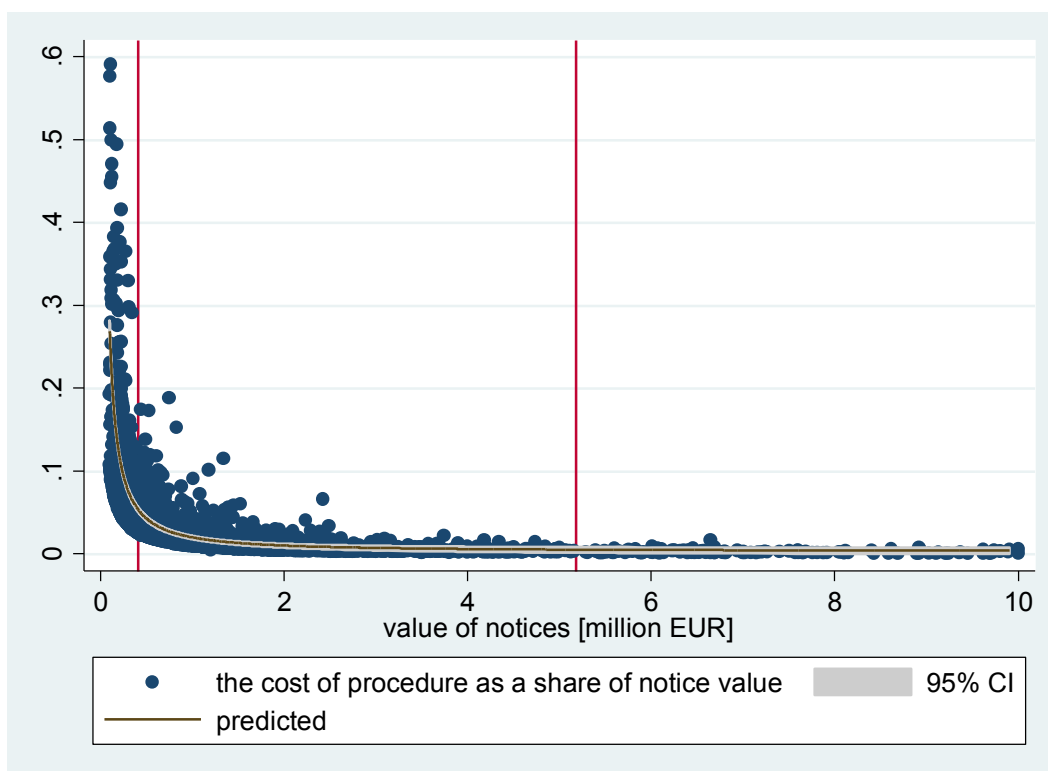
	Costs of procedures		
	for contracting authorities	for economic operators	Total
Mean	7.5	16.8	24.3
Median	6.4	13.8	21.6

Source: OJ/TED, manual corrections by DG GROW, based on PwC estimates of costs.

The relationship between the contract value and the costs of procedures for contracts below 10 million EUR (i.e. approximately the average contract value) is presented in Figure 24 below<sup>151</sup>. The red reference lines on the graph mark the threshold values for the end of the evaluated period, hence those valid for 2014-2015 (414 thousand EUR and 5 186 million EUR).

**Figure 24: Comparison between the costs of procedure and the value of awarded contracts below 10 million EUR [share of notice value]**

<sup>151</sup> The figure is only based on observations where complete data was available e.g. notices where the number of bidders was not available were not used in the graph although they were used in the overall estimate of the cost presented above. The costs were also trimmed at 100% of the contract value to remove potentially erroneous observations.



Source: OJ/TED, manual corrections by DG GROW, based on PwC estimates of costs.

As shown on the graph, for high value contract the costs seem to be negligible, especially once the upper threshold for works is passed (5 186 million EUR). The costs of procedure as a share of the contract value are still below 5% for a majority of observations where procurement value was below 2 million EUR. Although there are notably some outliers with the reported costs accounting as much as almost 60% of the contract value, for **all contracts with values above the thresholds the costs were lower than 20% of the total value of procured goods, works or services.**

**Table 41: Comparison between the costs of procedure and the value of awarded contracts [thousand EUR]**

	<b>Value of awarded contracts</b>	<b>Costs of procedure</b>	<b>Percentage</b>
Total	30 850 190	89 620.2	0.3%
Mean	9 897	24.3	0.2%
Median	1 012	21.6	2.1%

Source: OJ/TED, manual corrections by DG GROW, based on PwC estimates of costs.

When compared to total value of awarded contract (30.85 billion EUR in 2011-2015), **the costs of procedures account for around 0.3% of the contract value** (Table 41). The comparison between the average values yields a similar result (0.2%). It is only the median contract value and the median costs of procedure that accounts for a higher share (i.e. around 2.1% of the typical contract value is spent on the purchasing process itself).

In order to gather stakeholders' views concerning the cost of implementing the Directive, the online survey included a number of questions on related to the above aspects. According to the replies received, business respondents' perception differs from that of contracting authorities. 52% of business respondents consider that the costs of

participating in procurement procedures under the Directive are more or much more resource intensive compared to the situation before. Among contracting authorities, the views are more balanced with 33% of respondents considering that the costs have increased and the same proportion (33%) seeing no difference with the situation before.

However, when asked to compare the costs under the Directive to those under the civil procurement Directives, respondents expressed more positive views. 33% of respondents among businesses see no change or a reduction in costs, whilst 27% perceive an increase. Respondents among contracting authorities have a more positive perception, with 45% seeing no increase or a reduction, and only 12% considering that the costs of carrying our procedures under the Directive are more resource intensive than those under the civil procurement Directive.

A comparison of the replies to these two questions of the online survey (one comparing the costs of the Directive to the situation before and the other comparing them to the costs of the civil procurement Directive) seem to suggest that respondents think that the Directive has led to an increase in costs if compared with the costs entailed by (the participation in or the organisation of) non-competitive procurement procedures.

One Member State, in its written contribution to the open public consultation, pointed out that the Directive did not have a significant impact in terms of complexity and duration of tendering procedures or in terms of costs for contracting authorities. The main reason is that national legislation before the Directive provided for competitive procedures inspired by broadly similar principles.

One respondent (contracting authority) to the online survey pointed out that, for the military aeroplane market that consists of strong original equipment manufacturers with monopolistic positions, the procedures laid down in the Directive are too complex and take too much time.

The issue of costs was discussed at a meeting with Member States' experts<sup>152</sup>. No expert could provide quantitative data on costs stemming from the organisation of procurement procedures under the Directive. One Member State explicitly explained that they did not do a costing exercise, and did not intend to do so in the future. Only one Member State expert provided an estimation for costs concerning the organisation of procedures for simple off-the-shelf procurement (2 000 EUR), but added that for complex negotiations the cost would be much higher but also very difficult to estimate.

At the same meeting, several Member States' experts expressed the perception that costs slightly increased compared to the situation before the Directive. However, as pointed out by two experts, the response essentially depends on what the specific national situation used to be. If defence procurement was completely excluded or unregulated, then the procedures under the Directive will inevitably be more complex and costly. If some form of competitive procedures were used, then there is likely no significant impact stemming from the Directive. This is especially the case because, as one Member State clarified, the most time consuming and resource intensive activity for the contracting authority is the preparation of the technical specifications. The Directive as such has marginal impact on this aspect.

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<sup>152</sup> Minutes of 18 February 2016 meeting of the Commission's governmental expert group on defence and security procurement.

The issue of costs was also discussed with industry in two stakeholder consultation meetings<sup>153</sup>. The participants who intervened on this issue considered that either the Directive did not bring about changes in costs or burden for responding to procurement procedures or that there was a minor, marginal increase stemming from the rules of the Directive. With regard to more detailed questions on costs<sup>154</sup>, they explained not to be in a position to provide answers; there are too many differences across different kinds of procurement and too many elements to take into account. In addition, some of the information in this area could be commercially sensitive.

Finally, participants were asked whether “*suppliers in the EU could be given equal, open and competitive access to the European Defence Equipment Market with a system that imposes less regulation*”. Those who intervened on this point stated that the Directive probably cannot be made much simpler.

### 6.2.2. Costs compared to benefits

As mentioned in the previous Section, the total cost of implementing the rules of the Directive is estimated at around 89.6 million EUR over the time span of this evaluation (2011-2015). **When compared with the total volume of works, goods and services procured under the Directive (30.85 billion EUR), the cost level was relatively low (0.3%).**

The analysis of the cost-benefit relationship of the Directive remains particularly challenging, also due to the limited body of literature on the particular topic of procurement savings in defence. The study on the costs of non-Europe on defence procurement<sup>155</sup> commissioned nearly three decades ago, aimed at estimating the likely magnitude of the competition effect that would reflect the impact on costs, profits and prices of opening up national markets to competition. The study concluded that a common market in defence procurement restricted to EU firms only was likely to lead to price reductions ranging from 5% to 30 % (depending on the scenario) with a median figure of 20% reductions in prices. Opening the EU market to the rest of the world, according to the study of 1992, would increase the median estimate by further 5% (i.e. the median price reductions would reach 25%).

Further to the above quoted publication, its hard find studies that would estimate cost savings in the defence equipment procurement, especially amongst more recent research. This is mainly due to the fact the implementation of public procurement rules in the area of defence and sensitive security constitutes a relatively new policy area. As a consequence, there is little or no research completed on this subject. In order to compensate for the limited evidence on competition effects in the defence sector, the estimation of savings (benefits) resulting from the opening up of civil procurement markets will be used.

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<sup>153</sup> Minutes of 22 February 2016 and 3 May 2016 meetings with industry organised by ASD.

<sup>154</sup> “How would you evaluate the costs of participating in procurement procedures under the Directive as compared to these costs under the Civil Directives for procurements of similar complexity?”; “Can you provide an estimation of costs (e.g. in terms of man/hour of staff) of participating in a procurement procedure for the award of a defence contract, including under the Directive?”; “Can you identify the elements of the participation in a procedure contributing mostly to the overall costs and explain their relative importance?”.

<sup>155</sup> Hartley, K., and A. Cox, “*The Costs of Non-Europe in Defense Procurement*”, Brussels, European Commission-DGIII, May 1992.

There is general consent in academic literature and reports that that transparency (e.g. via the publication of a call for tender in an official journal) generates competition, which raises the number of bids and ultimately leads to savings and/or lower prices. A study completed in 2006<sup>156</sup> for the Commission services estimated that an increase in supplier competition caused by EU procurement legislation has led to a 2.5 % to 10 % price drop. Similar conclusions can be found in the evaluation of the public procurement directives of 2004, which finds that *"even incremental increases in transparency or openness can yield tangible savings. Publication of a contract notice results in a saving of 1.2% compared to contracts where neither contract nor prior information notice was published. Using an open procedure is associated with further 2.6 % savings. Based on these findings, a contracting authority that publishes an invitation to tender and uses an open procedure may expect total benefits equivalent to savings of 3.8 % on the final contract value. For restricted procedures, the corresponding saving appears smaller at around 2.5%."*<sup>157</sup>.

If a conservative assumption of 2.5% savings was used for the cost-benefit analysis in this evaluation (i.e. lower bound of the above mentioned expected savings resulting from the increased market opening or the estimates savings for the restricted procedure), **the Directive would be likely to generate savings of roughly 770 million EUR**<sup>158</sup>. This figure would then translate into lower prices paid for the procured works, goods and services in the defence and security sectors.

**The savings generated by the Directive are therefore likely to exceed the costs of running the procedures for public authorities and firms, nearly by a factor of nine** (i.e. 89 million EUR of costs of procedures, compared to 770 million EUR of savings).

Finally, respondents to the online survey were also asked to give an overall assessment on the efficiency of the Directive by comparing the costs and benefits of carrying out (for contracting authorities) or participating in (for businesses) procurement procedures under the Directive. Among contracting authorities, the perception is largely positive: 52% of respondents consider that benefits outweigh costs or are proportionate, and only 12% see the costs outweighing the benefits. The perception of business respondents is more negative: 33% think that the costs outweigh the benefits; while 24% consider the costs proportionate or the benefits outweighing the costs. This perception of business respondents is probably not due to shortcomings of the Directive as such, but rather to its limited uptake and inconsistent implementation that have been emphasised by several industry stakeholders during the consultations.

To conclude, the above estimates show that the Directive has the potential to bring about benefits significantly outweighing their costs. For contracting authorities, these benefits consist in savings. For industry, benefits derive from an increase of business opportunities and a reduction in bidding costs due to compliance with harmonised rules instead of rules widely diverging across Member States. Based on stakeholders' feedback, it is clear that for such benefits to fully materialise, the Directive needs to be used by Member States more and more consistently.

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<sup>156</sup> "Evaluation of Public Procurement Directives" by Europe Economics, for the European Commission, DG MARKT in September 2006.

<sup>157</sup> Commission Staff Working Document, Evaluation Report Impact and Effectiveness of EU Public Procurement Legislation, Brussels, 27.6.2011 SEC(2011) 853 final.

<sup>158</sup> The total value of procurement awarded under the Directive 30.85 billion EUR \* 2.5%.

### 6.2.3. *Administrative burden*

The concept of administrative burden refers to the costs incurred by enterprises, the voluntary sector, public authorities and citizens in meeting legal obligations to provide information on their action or production, either to public authorities or to private parties. The administrative costs consist of two different cost components: the business-as-usual costs and administrative burdens. They are different from compliance costs, assessed above in section 6.2.1. which stem from the implementation of the Directive.

The public procurement rules impose information obligations mainly on contracting authorities, which in most cases must provide substantial ex ante and ex post information about the award procedures (for instance through the publication of a contract notice in the OJ/TED). These obligations of transparency constitute the basis of the EU public procurement rules, to the extent that those rules would be meaningless without access to information.

Since the information obligations laid down in the Directive do not differ from those included in the civil procurement Directives, no additional administrative burden can be identified. A distinctive feature of the Directive that is relevant in this context is the subcontracting provisions, according to which the contracting authority may oblige an economic operator to organise a competitive selection of a subcontractor and therefore publish a subcontract notice on OJ/TED. This could, in principle, be considered as administrative burden. As noted in Section 6.1.4.6., these provisions have been practically not used, so the resulting administrative burden is negligible.

Stakeholders indicated that the Directive did not bring about changes in burden for responding to procurement procedures or that there was a minor, marginal increase stemming from the rules of the Directive.

It can therefore be concluded that the administrative burden stemming from the rules of the Directive is negligible.

### 6.2.4. *Conclusions on efficiency*

The overall costs of procedures carried out under the Directive accounted for approximately 89.6 million EUR in 2011-2015. The average unitary cost of running the procurement procedures was around 7.5 thousand EUR for the contracting authority, while the total average cost for all businesses was around 16.8 thousand EUR and the overall average cost for all participants was 24.3 thousand EUR.

The procedure costs as a share of the contract value accounted for less than 5% for the majority of observations where procurement value was above 2 million EUR. When compared with the total volume of works, goods and services procured under the Directive (30.85 billion EUR in 2011-2015), the overall cost level was relatively low (0.3%).

The savings generated by the Directive are therefore likely to exceed the costs of running the procedures for public authorities and firms, by almost a factor of nine (i.e. 89 million EUR of costs of procedures, compared to 770 million EUR of savings). Finally, the administrative burden stemming from the rules of the Directive is negligible. In response to Evaluation Question 5, it can be concluded that overall the costs are broadly proportionate to the benefits achieved and the **Directive is generally cost effective**.



Further work aimed at ensuring a greater and more consistent use of the Directive by Member States would also result in increasing the benefits for contracting authorities and businesses and, therefore, further enhancing its efficiency.

### 6.3. Relevance

The assessment in this section addresses whether the objectives (and the problem definition) underpinning the adoption of the Directive are still valid. It also considers developments that have occurred after 2009 and their impact on the relevance of the Directive. This is mainly based on the open public consultation, the complementary stakeholders' consultation, as well as desk research.

#### 6.3.1. *The objectives of the Directive*

Evaluation question (6): To what extent are the objectives of the Directive still relevant?
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The overwhelming majority of respondents to the open public consultation consider the objectives of the Directive<sup>159</sup> and the needs it is supposed to address still relevant. 70% of businesses or business associations replied that these objectives are “relevant”, and only 9% considers them “rather irrelevant”. Among Member States' authorities, 67% of respondents replied that the objectives of the Directive are “relevant” or “moderately relevant”. Again, only 9% replied “rather irrelevant” and no respondent qualified the objectives as “irrelevant”. 3 out of the 4 respondents from the general public replied “relevant”.

Other stakeholders' replies to the online survey confirm their support for the general objectives and underlying principles of the Directive. 91% of respondents among businesses and business associations agree or strongly agree that “defence and security equipment and services acquired by Member States should be procured using fair and competitive procedures (except where a valid exemption is properly applied)”. 89% of the same respondents also agree or strongly agree that “defence and security contracts should be awarded to the tenderer offering the best value for money solution, irrespective of the Member State in which the company is located (except where a valid exemption is properly applied)”.

On a different tone, one national defence industry association, which replied to the online survey, argued that the Directive aims “*primarily to market liberalisation and clearly favours the large, technologically and industrially advanced countries*”. It maintained that Member States should rely to the greatest possible extent on existing national industrial and technological capabilities.

The meetings with key stakeholders (Member States and industry) confirmed that there is consensus on the fact that the objectives of the Directive are still relevant. Stakeholders did not question the importance and relevance of establishing an open and competitive

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<sup>159</sup> These objectives (direct and indirect) were summarised in the online survey as: “*to establish an open and competitive European Defence Equipment Market, to help strengthen the European Defence Technological and Industrial Base, to ensure that the situation of SMEs in the defence sector is not negatively affected*”.

EDEM, increasing competition, transparency and equal treatment in defence procurement, and achieving a level playing field in this area.

One defence company pointed out that the objectives of the Directive remain fully valid since the structure of the market has not fundamentally changed in the past five years. A Member State highlighted in particular the objectives mentioned in recital 3 of the Directive “to foster, develop and sustain EDTIB that is capability driven, competent and competitive”. Another Member State argued that the objective of establishing an open and competitive EDEM not only remains fully valid, but is even more relevant today due to security concerns and budget restrictions.

Statements made by the European Council and Council in recent years confirm Member States’ support for the objectives of the Directive and their relevance. The European Council stated, in its conclusions of December 2013, that “a well-functioning defence market based on openness, equal treatment and opportunities, and transparency for all European suppliers is crucial” and stressed the importance of ensuring the full and correct implementation and application of the Directive (as well as of Directive 2009/43/EC)<sup>160</sup>. In May 2015, the Council underlined “the importance of improving cost-effectiveness and efficiency in the European security and defence market” and reiterated “the need for the implementation and application” of the Directive “without prejudice to Article 346 TFEU”<sup>161</sup>. The European Parliament also expressed support for the objectives of the Directive in recent resolutions<sup>162</sup>.

### 6.3.2. New developments after the adoption of the Directive

Evaluation question (7):	In what way has the initial problem evolved? Have any new issues that need to be taken into account emerged since the adoption of the Directive and what are they?
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A number of developments that are relevant to the Directive have been identified in answers to the open public consultation and in meetings with stakeholders. These are:

- The evolving defence and security landscape in Europe. Several Member States and stakeholders pointed at the deterioration of the security situation “with an increasingly unstable neighbourhood, difficult relationships with Russia, and hybrid threats directly targeting European territory”<sup>163</sup>. This situation can have an impact on the defence and security budgets of Member States, as it led to a (at least partial) reversion of the trend of budget reductions. One Member State also maintained that the worsening security situation can entail consequences on the application of the Directive, as the need for urgent procurement of military equipment in crisis situation can become more important. Another Member State highlighted in this regard that the provisions of the Directive on exclusions and the negotiated procedure without prior

<sup>160</sup> European Council conclusions of December 2013, paragraph 17.

<sup>161</sup> Council conclusions on CSDP, 18 May 2015, paragraph 27.

<sup>162</sup> See, for example, European Parliament resolution of 21 May 2015 on the impact of developments in European defence markets on the security and defence capabilities in Europe, P8\_TA(2015)0215, paragraph 28, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2015-0215&language=EN>.

<sup>163</sup> ASD reply to the online survey.

publication of a contract notice should be sufficient to allow contracting authorities to face urgent or crisis situations.

- The financial crisis which exacerbated the already existing trend towards significant reductions of defence budgets, and especially of defence procurement budgets. According to ASD' reply to the online survey, "*it is fair to assume that this hampered European cooperation and the openness of national markets to EU-wide competition*". A similar comment was made by a Member State in a consultation meeting. Member States and stakeholders also pointed out that budgetary constraints had a more direct impact on the uptake of the Directive: they led to cancellation or postponement of new defence procurement programmes. Such a trend implied a greater focus on maintenance, overhaul, and life-extension contracts for existing equipment, which often need to be awarded to original contractor. In general, the significant decrease in budgets and number of procurements limited the ability of the Directive to change the market. One Member States emphasised that, as a result of budgetary constraints, the market for used equipment has become more important and the implications on the functioning of the Directive should be assessed.
- An emerging consensus in the EU on the need to maintain an appropriate level of strategic autonomy. A number of stakeholders pointed out that it is in Europe's strategic interest to maintain technological and industrial means to develop and sustain certain indispensable defence capabilities. No Member State can afford to sustain the full spectrum of these means individually. Member States should therefore identify together the key defence capabilities for which they want to maintain or develop the necessary technological and industrial means. In order to avoid unnecessary duplication, these decisions should be based on a common assessment of Europe's security interests<sup>164</sup>. This can also have an impact on Member States procurement needs and strategies, and therefore on the application of the Directive.
- Although concrete progress is still very limited, Member States and stakeholders see as a relevant development that there is increasing awareness at all levels on the need for more defence cooperation in Europe, and in particular for more cooperative procurement. Some Member States pointed out in particular that nowadays there is a greater focus on common/joint procurement of off-the-shelf equipment, rather than on the establishment of new cooperative programmes for the development of new products. This is deemed to be a consequence of budgetary constraints. The link between cooperation and the Directive is further addressed under "Coherence" in paragraph 6.4.5. below.
- Several Member States and some stakeholders mentioned the adoption of the new civil procurement Directives as a relevant development. For example, ADS Group, in its reply to the online survey, stated that "*best practice in public procurement has further developed since the adoption of the Directive*", which "*does not allow for the full range of procurement techniques currently available*". They argued that the new civil procurement Directives are more efficient and streamlined. This issue is assessed in more details under "Coherence" in Section 6.4.2.

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<sup>164</sup> Replies to the online survey by ASD, MBDA, and ADS UK.

### 6.3.3. Conclusions on relevance

**The objectives of the Directive** - i.e. to support the establishment of an open and competitive EDEM by increasing the application of competitive tendering procedures in defence procurement and thus limiting the use of exemptions such as Article 346 TFEU – **are still fully relevant** (Evaluation Question 6). As shown under effectiveness, significant progress towards these objectives has been made thanks to the Directive, but much more work on the implementation is needed. The whole rationale and needs that led to the adoption of the Directive thus remain relevant.

All this is supported by a broad consensus among Member States and stakeholders. Statements made by the European Council and Council in recent years also confirm Member States' support for the objectives of the Directive and their relevance.

In response to Evaluation Question 7, it emerged that there have been a number of developments (deteriorating security situation, budgetary constraints, emerging consensus on the need of strategic autonomy and more cooperation, new legal framework for civil procurement) that needs to be taken into account. However, none of these developments put into question the relevance of the objectives of the Directive.

## 6.4. Coherence

The evaluation of coherence involves looking at how well or not different components of an intervention (i.e. different provisions of the Directive) and different actions work together. This part of the analysis relies on the open public consultation, the complementary stakeholders' consultation, and desk research.

### 6.4.1. Internal coherence

Checking internal coherence means looking at how the various internal components of the intervention (i.e. the different provisions of the Directive) operate together to achieve its objectives.

The Commission departments have not identified problems related to lack of coherence between the different provisions of the Directive. The structure of the Directive follows, albeit with a number of specificities, the general approach of EU public procurement legislation that has been developed and tested over several years. These findings have been confirmed by stakeholders: no internal coherence problems have been raised in the context of the open public consultation or the complementary stakeholders consultations.

It is widely considered that the subcontracting provisions of the Directive (Articles 21 and 50 to 53) have not achieved their objectives. This is addressed above under effectiveness (see: Section 6.1.4.6). With this exception, a broad consensus among Member States and stakeholders emerged on the fact that **the provisions of the Directive are generally fit for purpose. The focus needs to be on their effective implementation and application.**

### 6.4.1. Coherence with the framework of EU public procurement law

Evaluation question (8):	To what extent is the Directive coherent with the framework of EU Public Procurement law and of internal market legislation and policies related to defence (e.g. Directive 2009/43/EC)?
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The framework of EU public procurement law, based on the principles of the Treaties, consists of several legislative instruments. The Directive, which lays down rules on the coordination of procedures for the award of contracts in the fields of defence and sensitive security, is one of these instruments. To assess coherence, it is necessary to look at the interplay between the Directive and the other components of the EU *acquis* in the area of public procurement. This is particularly important since the main part of the *acquis* (the civil procurement Directives) has been reformed in 2014.

#### 6.4.1.1. Delimitation of scope

The first key issue that should be looked at with regard to the coherence of the Directive with the other elements of EU public procurement law are the rules on the applicable piece of legislation.

Article 2 of the Directive, jointly read with Article 1(6) to (8), defines the contracts that fall within the scope of the Directive. These provisions are based on the notions of military equipment (i.e. equipment specifically designed or adapted for military purposes), works and services for specifically military purposes, and sensitive equipment, works and services (i.e. for security purposes, and involving, requiring and/or containing classified information). This is consistent with the overall approach underlying the Directive: military contracts and contracts in the field of non-military security, which have features similar to those of defence procurement and are equally sensitive, should only be subject to the specific defence and security procurement regime. The civil procurement Directives do not apply to such contracts<sup>165</sup>. All other contracts should fall within the scope of the civil procurement Directives. Although there might be “borderline” cases in particular circumstances, the delimitation of scope between the different procurement regimes appear to be effective.

This question has been asked in the online survey. The majority (58%) of contracting authorities respondents “agreed” or “strongly agreed” that the distinction between the scope of application of the Directive and that of the civil procurement Directives is “sufficiently clear”. The proportion of positive replies was lower among business respondents: 36% agreed or strongly agreed, while 24% disagreed. Out of the four citizens that replied to the online survey, only two replied to this question and both agreed that the distinction is clear. However, it should be noted that the clarity of the applicable piece of legislation is a more immediate concern for contracting authorities, which have to make such a determination before launching a tendering procedure.

During a meeting on the evaluation<sup>166</sup>, the majority of Member States’ experts that intervened took the view that the existing provisions on the distinction of the scope of the Directive with that of the civil procurement Directives are satisfactory. However, one Member State’s expert argued that identifying the applicable Directive is one of the most complex issues they are confronted with. He argued that it would be preferable to have a system based on scope *ratione personae*: a list of contracting authorities/entities that only

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<sup>165</sup> Article 15 of Directive 2014/24/EU, Article 24 of Directive 2014/25/EU.

<sup>166</sup> Minutes of 18 February 2016 meeting of the Commission’s governmental expert group on defence and security procurement.

have to use the rules of the (defence procurement) Directive. This proposal was supported by another Member State's expert.

#### 6.4.1.2. Choice of procedures

A relevant aspect is the choice of contract award procedures that are available under the Directive (restricted procedure, negotiated procedure with publication of a contract notice, competitive dialogue, and negotiated procedure without publication of a contract notice) and the conditions for their use.

Article 25 of the Directive leaves contracting authorities free to choose whether to apply the restricted procedure or the negotiated procedure with publication of a contract notice. Contrary to the civil procurement Directives, the (defence procurement) Directive does not allow for the use of the open procedure. At the time of the proposal for the Directive, the reason for excluding the open procedure was that it involves distributing the specifications to any economic operator that wants to see them and this was deemed to be inappropriate in view of the confidentiality and security of information requirements attached to the contracts in question<sup>167</sup>. This approach was then confirmed by the legislator. No new elements calling into question the validity of this choice have emerged in more recent years.

According to Article 27 of the Directive, the competitive dialogue may be used in the case of particularly complex contracts where the use of the restricted procedure or the negotiated procedure with publication of a contract notice would not allow the award of the contract. The new civil procurement Directive defined the conditions for the use of the competitive dialogue in greater detail<sup>168</sup>. However, this does not seem to create inconsistencies that would have an impact on the functioning of the Directive. Article 28 of the Directive lays down the conditions for the use of the negotiated procedure without publication of a contract notice. These conditions appear to be fully consistent with the case law of the Court of Justice, and they are largely similar to those defined in the new civil procurement Directives<sup>169</sup>.

Stakeholders, according to the replies to the online survey, seem to consider rather appropriate the existing provisions of the Directive on the choice of procedures and the conditions for their use. 48% of respondents among contracting authorities consider that these provisions provide them with enough flexibility, and only 12% took the opposite view. Businesses replies on whether the rules on tendering procedures under the Directive are appropriate to ensure equal treatment and transparency are more mixed: 27% agree, and 24% disagree. Indications based on stakeholders meetings seem to show, however, that this businesses' perception has more to do with the limited uptake and application of the Directive, than with specific problems with the rules of the Directive.

During a meeting on this evaluation<sup>170</sup>, Member States experts expressed their full satisfaction with the rules of the Directive on the choice of contract award procedures. They praised in particular the possibility of using the negotiated procedure with

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<sup>167</sup> Commission proposal, p. 7.

<sup>168</sup> Article 26(4) of Directive 2014/24/EU.

<sup>169</sup> Article 32 of Directive 2014/24/EU and Article 50 of Directive 2014/25/EU.

<sup>170</sup> Minutes of 18 February 2016 meeting of the Commission's governmental expert group on defence and security procurement.

publication of a contract notice, which they consider to be particularly suited for defence and sensitive security procurement, without the need to provide justification.

A few Member States experts, however, raised the issue of the non-availability of the open procedure. They argued that it would be useful to have the possibility to use this procedure for certain non-sensitive military purchases under the Directive. A similar point was made by some Member States in the written contributions to the open public consultation. Belgian Defence Staff argued that contracting authorities should have the possibility to choose for an open procedure; there are exceptional cases where an open procedure would be preferred. Another Member State also explicitly argued, in its written contribution to the open public consultation, for the introduction of the open procedure; this would be more appropriate for the award of non-sensitive military contracts where the use of a two-step procedure (the restricted procedure) would be “*a waste of time*” for all parties involved in the procurement procedure.

In its reply to the online survey, Transparency International suggests that transparency of defence and security purchases would be enhanced through the use of open procedures.

In a stakeholder consultation meeting, industry representatives took a different view on the issue of the open procedure. They argued that the use of open procedures for procurement in the fields of defence and sensitive security would not be appropriate. They maintained that the existing rules on the choice of procedures are best suited for these specific sectors.

#### 6.4.1.3. The new civil procurement Directives

In February 2014, the European Parliament and Council adopted three new Directives in the field of public procurement: Directive 2014/23/EU on the award of concession contracts, Directive 2014/24/EU on public procurement, and Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors. Directives 2014/24/EU and 2014/25/EU replace and repeal, respectively, Directives 2004/18/EC and 2004/17/EC which constituted the “civil” public procurement legislation at the time when the (defence procurement) Directive was proposed, negotiated and adopted. Although with significant adaptations to take into account the specificities of defence and sensitive security procurement, the content of the (defence procurement) Directive is largely modelled after the provisions of Directive 2004/18/EC.

As explained in the Commission’s proposal for the new civil procurement Directives, the reform had two main objectives: i) simplifying the existing rules (dating back to 2004) and increasing their flexibility; ii) enabling procurers to make better use of public procurement in support of common societal goals such as protection of the environment, energy efficiency, combating climate change, promoting innovation, and employment and social inclusion<sup>171</sup>.

The (defence procurement) Directive already provides for more flexible rules, in particular the possibility to use the negotiated procedure with publication of contract notice as default procedure. In addition, given the specificities of the defence sector, the need for specific rules enabling national authorities to use public procurement in support of broader non-defence related societal policies appear to be less relevant.

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<sup>171</sup> Commission proposal, COM(2011) 896 final, p. 2.

A technical issue should also be mentioned here. In order to comply with the new civil procurement Directives, it was necessary to adapt the previous standard forms for the publication of notices. Hence, the Commission adopted Implementing Regulation 2015/1986 establishing updated standard forms for the publication of notices in the field of public procurement<sup>172</sup>. The introduced changes reflect the requirements of the new civil procurement Directives, and also involve some improvements to the previous standard forms. Since the (defence procurement) Directive was not amended, the Implementing Regulation left the corresponding standard forms unchanged. It should be added that a more substantial exercise for the revision of the standard forms, including an overhaul of the IT system of OJ/TED, and seeking to introduce more structural changes and improvements, is planned for later, possibly in 2018. For overall coherence, better functioning of the system, and the ease of users, this future exercise is likely to involve all standard forms, including those provided for by the (defence procurement) Directive.

The issue of coherence between the (defence procurement) Directive and the new civil procurement Directives was raised and discussed in the context of the consultations.

Two Member States argued, in their reply to the online survey, that it would be appropriate to consider amending the Directive to align it to the innovations introduced in the civil procurement Directives. The Dutch Ministry of Economic Affairs specifically wrote that it would be worth to investigate if the procedure of innovation partnership in the new civil procurement Directive would have an added value for defence and security procurement.

During a meeting on the evaluation<sup>173</sup>, one Member State argued that it would be useful to consider the inclusion in the Directive of certain innovations of the new civil procurement Directive such as: the codification of in-house and public-public exclusions, the new exclusion on rescue services, the innovation partnership, the changes to exclusion grounds and the introduction of self-cleaning mechanisms, the rules on modification of contracts, and certain elements of electronic procurement. Some other Member State argued, more generally, that any additional flexibility and simplification stemming from the recent changes would be useful to consider. One Member State specifically questioned the possibility to integrate in the context of defence the new provisions on the mandatory use of electronic procurement.

In its written contribution to the open public consultation, a Member State strongly argued that the focus should be on application of the Directive rather than its revision. Reopening it would imply significant legislative work for only marginal improvements of the text; in addition, it would shift the focus away from application and implementation also at national level, with time and resources needed to draft and adopt new implementation measures and additional time for contracting authorities/entities to become familiar with the revised rules.

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<sup>172</sup> Commission Implementing Regulation (EU) 2015/1986 of 11 November 2015 establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) No 842/2011, [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L\\_.2015.296.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2015.296.01.0001.01.ENG).

<sup>173</sup> Minutes of 18 February 2016 meeting of the Commission's governmental expert group on defence and security procurement.



Industry stakeholders did not identify any change introduced by the new civil procurement Directives that would be useful or appropriate in the context of defence procurement. In their view, the new rules need be tested in the civil market before considering if - and to what extent - some of them should be carried over to the defence procurement framework. One national industry association also addressed this in its written contribution to the open public consultation: they do not consider appropriate to amend the Directive in order to integrate the novelties of the new civil procurement Directives.

Some stakeholders also raised a more technical issue relating to the new civil procurement Directives: the (defence procurement) Directive contains several references to Directives 2004/18/EC and 2004/17/EC that have been repealed from 18 April 2016. It should be pointed out that this issue is, in fact, addressed by the new civil procurement Directives through Articles 91 of Directive 2014/24/EU and 107 of Directive 2014/25/EU. Pursuant to these provisions, references to the repealed civil procurement Directives shall be construed as being made to the new civil procurement Directives and shall be read in accordance with the correlation tables in Annexes XV (Directive 2014/24/EU) and XXI (Directive 2014/25/EU).

To summarise, the evaluation did not identify any inconsistency between the Directive and the innovations introduced with the new civil procurement Directives. This is also the case for the new civil procurement Directives' provisions on electronic procurement; Member States are free to use electronic procurement methods in the fields of defence and security, but it does not seem appropriate at this stage to introduce obligations at EU-level to do so. Furthermore, as the conclusions on effectiveness show, there is a need to strengthen the effective implementation of the Directive in order to increase its uptake and consistent application; this requires a stable legal framework. For these reasons, and in line with the overall indications from Member States and stakeholders it seems that amending the Directive in order to introduce the innovations of the new civil procurement Directives is not necessary or appropriate at this stage.

#### 6.4.2. Directive 2009/43/EC

Directive 2009/43/EC, which seeks to simplify the rules and procedures applicable to the intra-EU transfer of defence-related products, was proposed, negotiated and adopted in parallel with the (defence procurement) Directive as part of the so-called "defence package". These are two different legal instruments, each one with its own operational objectives and specific sets of rules, and each one building on distinct areas of the *acquis*. There is no specific inconsistency between the legal provisions of the two Directives.

However, problems with the application of Directive 2009/43/EC can have a direct impact on the uptake of the (defence procurement) Directive. When procuring defence related products from suppliers established in another Member States, contracting authorities often have to consider the risks that the authorisation for the transfer of the purchased equipment, as well as for the supplies needed for in-service support along its life-cycle, will be refused or excessively delayed. In this context, Member States sometimes use risks related to the transfer authorisations as arguments for the non-application of the (defence procurement) Directive on the basis of Article 346 TFEU.

A number of Member States' experts, during a meeting on the evaluation<sup>174</sup>, highlighted the importance of the link with Directive 2009/43/EC. They stressed that the effective implementation of Directive 2009/43/EC is a key enabler for cross-border trade and for the full uptake of the (defence procurement) Directive. The importance of the effective implementation of Directive 2009/43/EC for cross-border procurement has been highlighted by industry representatives as well in consultation meetings and in replies to the online survey.

Directive 2009/43/EC has also been subject to evaluation, and a number of steps aimed at improving its application have been taken and/or proposed.

#### 6.4.3. CSDP and a European capabilities and armaments policy

Evaluation question (9):	How does the Directive fit into the framework of other EU instruments and policies in particular in the area of CSDP?
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According to Article 42(3) TEU, as part of the Common Security and Defence Policy (CSDP), “*Member States shall undertake progressively to improve their military capabilities*”. One of the tasks of the European Defence Agency is to “*participate in defining a European capabilities and armaments policy*”.

The Impact Assessment for the Directive presented the Commission's initiatives to support the establishment of an EDEM as complementing Member States' efforts to develop military capabilities and, through EDA, to harmonise military needs, pool research efforts and foster European armaments cooperation<sup>175</sup>.

Several stakeholders highlighted that, without progress towards such a European capabilities and armaments policy, the Directive can contribute only to a very limited extent to the competitiveness of the EDTIB. ASD, in its reply to the online survey, stressed that there is “*a fundamental and structural handicap of the Directive, which is the weakness of CSDP and the absence of a common European armaments policy. The more Member States agree on common capability needs and an industrial strategy to address these needs, the more market openness will become a reality. This would also pave the way for new cooperative projects, which we believe are the best means to establish sustainable and competitive cross-border supply chains*”. Similar points have been made by other industry representatives in replies to the online survey and in a stakeholder meeting<sup>176</sup>.

#### 6.4.4. Cooperation in defence procurement

In recent years, Member States, EU institutions and stakeholders have repeatedly and unanimously stressed the importance of strengthening European defence cooperation, including in the field of procurement.

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<sup>174</sup> Minutes of 18 February 2016 meeting of the Commission's governmental expert group on defence and security procurement.

<sup>175</sup> The Impact Assessment, p. 5.

<sup>176</sup> Minutes of 18 February 2016 meeting of the Commission's governmental expert group on defence and security procurement.

The European Council, in its conclusions of December 2013, stated that “*cooperation in the area of military capability development is crucial to maintaining key capabilities, remedying shortfalls and avoiding redundancies. Pooling demand, consolidating requirements and realising economies of scale will allow Member States to enhance the efficient use of resources and ensure interoperability, including with key partner organisations such as NATO. Cooperative approaches whereby willing Member States or groups of Member States develop capabilities based on common standards or decide on common usage, maintenance or training arrangements, while enjoying access to such capabilities, will allow participants to benefit from economies of scale and enhanced military effectiveness*”<sup>177</sup>. In June 2015, the European Council recalled the need for “*fostering greater and more systematic European defence cooperation to deliver key capabilities*”. The Bratislava Declaration of 16 September 2016 sets out the objective of strengthening EU cooperation on external security and defence, and provides that the European Council should look at how to make better use of the options in the Treaties, especially as regards capabilities<sup>178</sup>.

In his political guidelines of July 2014, President Juncker stated: “*Member States should also create more synergies in defence procurement. In times of scarce resources, we need to match ambitions with resources to avoid duplication of programmes. More than 80% of investment in defence equipment is still spent nationally today in the EU. More cooperation in defence procurement is therefore the call of the day, and if only for fiscal reasons*”<sup>179</sup>. In the State of the Union speech of 14 September 2016, President Juncker also stressed that defence cooperation should be strengthened, in particular by moving towards common military assets, establishing a European Defence Fund and using the permanent structured cooperation to pool Member States’ capabilities<sup>180</sup>.

Participants at a stakeholder consultation meeting<sup>181</sup> agreed on the importance of cooperation and recognised that it is more necessary than ever to face increased challenges and budgetary constraints. They recalled that there are two complementary routes to create an integrated market: cooperation and competition, and recognised that the approach in the Directive is consistent with this. For complex systems in particular, cooperation is definitely the best way forward. Cooperation is also important to bring in the industry from smaller Member States.

Some specific examples of defence cooperation in procurement are mentioned in Recital 28 of the Directive. This Recital refers to cooperative programmes managed by international organisations such as OCCAR or NATO (via specific agencies) and by agencies of the EU, such as the EDA. As an example of the role played by these organisations, OCCAR currently manages 13 programmes with a total operational budget of 3.1 billion EUR in 2016.

It follows from the above that, from the point of view of coherence, it is important that the Directive does not hinder cooperation in defence procurement.

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<sup>177</sup> European Council conclusions of December 2013, paragraph 10.

<sup>178</sup> <http://www.consilium.europa.eu/en/press/press-releases/2016/09/16-bratislava-declaration-and-roadmap/>.

<sup>179</sup> [http://ec.europa.eu/priorities/sites/beta-political/files/juncker-political-guidelines\\_en.pdf](http://ec.europa.eu/priorities/sites/beta-political/files/juncker-political-guidelines_en.pdf).

<sup>180</sup> [http://ec.europa.eu/priorities/state-union-2016\\_en](http://ec.europa.eu/priorities/state-union-2016_en).

<sup>181</sup> Minutes of 22 February 2016 meeting with industry organised by ASD.

Indeed, the Directive was designed to enable Member States to pursue cooperative procurement in different forms. The main features of the Directive that are relevant in this context are:

- According to Article 13(c), contracts awarded in the framework of multinational cooperative programmes for the development of new products, based on Research & Development (R&D), are excluded from the Directive. This exclusion covers both R&D services and the purchase of the final products developed in the cooperative programme. Cooperative programmes under this exclusion must involve at least two Member States and can also include third countries. Member States with smaller defence budgets can participate in cooperative programmes covered by this exclusion, because the size of individual contributions is not a decisive factor<sup>182</sup>.
- With regard to existing products (off-the-shelf procurement), Member States can organise common or joint procurement in compliance with the contract award procedures of the Directive, either via a lead nation or through central purchasing bodies in the sense of Article 10 of the Directive.
- The exclusions on government-to-government sales (Article 13(f)) and on international organisations (Article 12(c)) can also be relevant in the context of cooperation.

The Commission departments discussed this issue with Member States' experts<sup>183</sup>. At this meeting, one Member State's expert presented his experience and explained that the Directive offers all the flexibility that is needed to pursue cooperative projects. It is sufficient to look carefully at all the possibilities contained in the Directive and add no extra condition at national level. Defence cooperation requires a number of important and challenging pre-conditions (e.g. political will, alignment of budgetary cycles, and harmonisation of requirements). The Directive is not the problem in this context. All Member States' experts that intervened at the meeting essentially agreed that the Directive is not an obstacle hindering cooperation; there are much more significant challenges in this area.

The EDA assessed the impact of the Directive on cooperation, and discussed the issue with Member States at expert and National Armaments Directors level. The general result of these discussions was that no direct obstacle, nor incentive on cooperation seems to be stemming from the Directive, especially on topics analysed in depth such as off-the-shelf procurement and barter. EDA concluded that if Member States do not cooperate in defence procurement, this may be due to a number of other elements (e.g. defence budget cuts, lack of harmonisation of requirements), but not in particular to the Directive<sup>184</sup>.

In its written contribution to the open public consultation, a Member State argued that the provisions of the Directive that are relevant for cooperation apply to situations where

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<sup>182</sup> Guidance note on Exclusions, paragraph 17, <http://ec.europa.eu/DocsRoom/documents/15408/attachments/1/translations/>.

<sup>183</sup> Minutes of 27 May 2015 meeting of the Commission's governmental expert group on defence and security procurement.

<sup>184</sup> EDA document, "Impact of Defence and Security Procurement Directive 2009/81/EC on Cooperation".

Member States decided to cooperate from the beginning. They do not seem to be applicable in cases in which a Member State would envisage to start converging towards capabilities already owned by another Member State. On this point, the contribution concluded that a flexible application of Article 28 of the Directive could facilitate cooperation in such scenarios.

A defence company who responded to the online survey stated that “*cooperation between Member States should be clearly incentivised at both regulatory and financial levels. Moreover, new genuinely European schemes of cooperation need to be considered under the Directive beyond the classical one already covered by the Directive. More flexibility should be introduced*”.

#### 6.4.5. Conclusions on coherence

**In terms of consistency between the different provisions of the Directive**, no issue has emerged from the consultations or from the technical analysis carried out by the Commission departments.

The Directive’s consistency with the framework of EU public procurement law has also been analysed ([Evaluation Question 8](#)). There are **no problems of consistency with the other instruments of EU public procurement law**, including the new civil procurement Directives. In this context, the question of whether (some of) the innovations introduced by the new civil procurement Directives should be rolled over to the (defence procurement) Directive attracted the particular attention of Member States and stakeholders, who have rather mixed views on the issue. The evaluation concluded that **the innovations of the new civil procurement Directives do not create coherence problems with regard to the existing text of the (defence procurement) Directive**. Finally, the evaluation found **no specific inconsistency between the legal provisions of the Directive and those of Directive 2009/43/EC**.

To answer [Evaluation Question 9](#), the issue of cooperative procurement was assessed. The Directive already recognises the importance of this aspect and seeks to enable Member States to pursue cooperative procurement in different forms. Based on discussions with Member States experts, the stakeholders consultations, and a specific contribution from the EDA, it can be concluded that **the Directive does not hinder cooperative procurement**.

#### 6.5. EU added value

Evaluation question (10):	What has been the EU added value of the Directive compared to what could have been achieved by Member States at national (or regional) level (is the principle of subsidiarity respected)?
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The Impact Assessment looked into the question of whether the EU was the best suited to act. It stated that the widespread use of the exemption from EC law in the field of defence and sensitive security procurement is incompatible with the Treaty and the case

law of the Court of Justice. It concluded the EU was not only the best suited, but the only possible actor to address this problem<sup>185</sup>.

This assertion remains, from a legal standpoint, fully relevant today. It is clear that only EU action can tackle the issue, i.e. the non-application of EU public procurement rules, hindering the establishment of a common European defence equipment market and leading to non-compliance with the Treaty's principles. However, the analysis of the EU added value for this evaluation can go beyond these legal arguments.

As shown above in Section 6.1.5, the Directive has led to a significant increase in the value of defence contracts published EU-wide and awarded through fair and competitive tendering procedures. This means that competition, transparency and non-discrimination in the defence procurement market in Europe have all improved as a result of the Directive. As demonstrated in Section 6.2.4, the savings generated by the Directives are likely to exceed the costs of running the procedures for public authorities and firms, nearly by a factor of nine (i.e. 89 million EUR of costs of procedures, compared to 770 million EUR of savings). If the uptake of the Directive further increased in the future, these results would be even more significant.

The EU-level coordination of procedures for public procurement above certain thresholds has proven to be an essential tool to ensure effective and equal access to public contracts for businesses across the Single Market. This could not be achieved through Member State action which would inevitably result in diverging requirements and possibly conflicting procedural regimes increasing regulatory complexity and causing unwarranted obstacles for cross-border activities.

In the absence of a specific EU regime for defence and sensitive security procurement, the increased use of transparent, fair and competitive tendering procedures, and the corresponding decrease in the use of exemptions, would not continue and might even be reversed.

In reference to Evaluation Question 10, it can, therefore, be concluded that the Directive has a **clear EU added value** and continues to comply with the principle of subsidiarity.

## 7. CONCLUSIONS

This evaluation analysed the Directive against five criteria: effectiveness, efficiency, relevance, coherence and EU added value.

As to **effectiveness**, it can be concluded, taking into account the short time elapsed between its actual transposition in Member States and the last year of the reference period of this evaluation (2015), that the Directive has partially achieved its objectives concerning the European defence equipment market. It has led to an initial increase of competition, transparency, and non-discrimination, and to a corresponding decrease in the use of exemptions. However, the uptake of the Directive, and therefore the degree of increase in competition, transparency and non-discrimination, remains uneven across Member States. Furthermore, a very significant share of defence procurement expenditure is still done outside EU public procurement rules, which in turn, affects the

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<sup>185</sup> The Impact Assessment, p. 31.

efficiency of the Directive. Besides the short time since actual transposition by Member States, the main reasons are thought to be: the fact that exemptions, including Article 346 TFEU, appear to be still subject to an overly broad interpretation that does not restrict their use to truly exceptional cases as required by the case law of the Court of Justice. This factor probably is especially relevant to explain the very limited use of the Directive for the procurement of strategic equipment and complex systems. Moreover, a significant share of defence procurement expenditure may have been spent on contracts awarded in the framework of cooperative programmes started well before the adoption of the Directive. Finally, the financial crisis may have led to the cancellation or postponement of new major procurement projects to be implemented under the Directive.

The provisions of the Directive designed to address the specific needs of defence procurement (e.g. exclusions, security of information, and security of supply) have proven to be appropriate and do not need to be amended. The analysis conducted on the position of Europe's defence industry, based on the available data, shows that it is difficult to conclude that the overall size, structure, and shape of the EDTIB has fundamentally changed in the period 2011-2015. As confirmed by Member States and stakeholders feedback in the consultations for this evaluation, it must be concluded that it is impossible at this stage to establish any causal link between the effects of the Directive and developments in the EDTIB.

The specific, optional, subcontracting provisions of the Directive have not been used by Member States' contracting authorities as they are seen by them as ineffective. Although this does not undermine the application and functioning of the Directive, it does mean that the aim of providing additional opportunities to sub-suppliers and SMEs by injecting competition into the supply chains of prime contractors has not been achieved.

In light of the estimations of costs and savings, and given that the impact on administrative burden is negligible, the evaluation has demonstrated that overall the Directive is broadly **efficient**. Further work aimed at ensuring a greater and more consistent use of the Directive by Member States would also result in increasing the savings and, therefore, further enhancing its efficiency.

The objectives of the Directive are still fully **relevant**. So is the whole rationale that led to the adoption of the Directive.

The evaluation has not identified any inconsistency or other **coherence** problems between the different provisions of the Directive, with the other elements of EU public procurement legislation, or with other EU instruments and policies (e.g. Directive 2009/43/EC).

The Directive, therefore, has a clear **EU added value** and continues to comply with the principle of subsidiarity.

Results from the evaluation, including an overall consensus among Member States and stakeholders, concur that the **text of the Directive is broadly fit for purpose and that amending the Directive is not necessary**. There is a **strong need to focus on its effective implementation**. This requires, among other things, a stable legal framework. Follow-up actions should therefore aim at supporting the Directive's effective implementation, including through soft law instruments such as guidance on the application of specific provisions, as well as ensuring compliance by Member States. Planned actions to improve the functioning of Directive 2009/43/EC on transfers of

defence-related products should also have a positive impact on the effective implementation of the Directive<sup>186</sup>.

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<sup>186</sup> See the Report on the evaluation of Directive 2009/43/EC simplifying terms and conditions of transfers of defence-related products within the Community, and the accompanying SWD.



## 8. ANNEXES

### **Annex I – Procedural information**

The lead department for this evaluation was the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) of the European Commission. In particular, the evaluation has been carried out by Unit G3 (Procurement Legislation and Enforcement) and Unit 01 (Economic Analysis).

The evaluation was included in the Commission's Agenda Planning (2016/GROW/031), which is the programming tool for the most important policy initiatives to be adopted by the Commission<sup>187</sup>.

As per the Better Regulation Guidelines on evaluations, an inter-service steering group (ISG) was set up to follow and steer the whole process<sup>188</sup>. The ISG for this evaluation involved people from the following Commission's departments: Unit G3 (Procurement Legislation and Enforcement), Unit 01 (Economic Analysis), Unit G4 (Innovative and e-procurement) and Unit I4 (Defence, Aeronautic and Maritime Industries) of DG GROW; Unit C1 (Evaluation, Regulatory Fitness and Performance) and Unit D2 (Internal Market and Competitiveness) of the Secretariat-General; Unit B4 (Innovation and Industry for Security) of the Directorate-General Migration and Home Affairs. The ISG was established in February 2015 and was involved – through three meetings<sup>189</sup> and several written exchanges – in the whole process from the drafting of the evaluation roadmap<sup>190</sup> to the finalisation of the Staff Working Document.

With regard to the evidence used for the evaluation, the analysis presented in this document was based on several data sources, in particular: notices published in OJ/TED, EDA, NATO, IHS Jane's Defence & Security Intelligence database and Eurostat, as well as consultations with Member States and stakeholders (including a public on-line survey). For more details on the methodology and the use of different sources, see Annex III.

This was an internal evaluation, i.e. it was entirely carried out by the Commission departments and did not rely on a study from an external contractor. However, the evaluation drew on external expertise through the use of two Commission expert groups<sup>191</sup> and through specific consultation meetings with stakeholders. For more details, please see Annex II.

### **Annex II – Stakeholder consultations**

The consultations for the evaluation have been designed to reach all potential stakeholders as well as the general public, and to deepen the engagement with more

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<sup>187</sup> [http://ec.europa.eu/atwork/planning-and-paring/index\\_en.htm](http://ec.europa.eu/atwork/planning-and-paring/index_en.htm)

<sup>188</sup> [http://ec.europa.eu/smart-regulation/guidelines/ug\\_chap6\\_en.htm](http://ec.europa.eu/smart-regulation/guidelines/ug_chap6_en.htm)

<sup>189</sup> 9 February 2015, 19 June 2015, 2 September 2016.

<sup>190</sup> [http://ec.europa.eu/smart-regulation/roadmaps/docs/2016\\_grow\\_031\\_evaluation\\_defence\\_procurement\\_en.pdf](http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_grow_031_evaluation_defence_procurement_en.pdf)

<sup>191</sup> The governmental Expert Group on Defence and Security Procurement and the Advisory Expert Group on cross-border access for SMEs to defence and security contracts.

directly involved stakeholders and experts. In the area at stake (defence and security procurement), there are two key categories of stakeholders that are directly impacted by the Directive: Member States' contracting authorities (the buyers) operating in the defence and security sectors, and the suppliers (defence and security companies and business associations as their representatives). Other categories of stakeholders also include: public authorities other than MoD and procurement authorities; other companies and businesses associations; social partners; NGOs; consultants including lawyers; academics; citizens.

In the light of this, the consultations included an internet-based public consultation (online survey) and complementary consultation meetings with key stakeholders to gather detailed inputs, expert advice, as well as data and technical information.

The below description presents summary of obtained opinions, and the detailed Factual summary available on the web page of DG GROW<sup>192</sup> provides more detailed technical information on the carried out consultations.

#### *Online survey (public consultation)*

The open public consultation has been carried out between 11 April and 8 July 2016 (13 weeks). This has been based on an online survey published on the 'Your Voice in Europe' portal: <http://ec.europa.eu/yourvoice/consultations/>. To better target potential respondents, the survey has been carried out through three questionnaires, separately directed for: 1) contracting authorities/entities and other public authorities, 2) businesses and business associations, 3) the general public (other stakeholders and citizens). Additionally the respondents were invited to attach free text files in which may possibly further elaborate their views. The questions of the online survey were put in English, but answers to the open questions and uploaded contributions in any of the official languages of the EU have been accepted and taken into account in the evaluation.

This online survey aimed at giving to all potential stakeholders an opportunity to respond. Hence, all citizens, public authorities, businesses, and other stakeholders were welcome to respond to it. The news about the online survey, together with the relevant links and background information, were published with high visibility on the webpage of the Commission department responsible for this evaluation<sup>193</sup>. Contributions have been particularly sought – including via direct mailings - from respondents which have an interest and/or expertise in public procurement in the fields of defence and security<sup>194</sup>.

In quantitative terms, the response rate to the online survey has been rather limited (70 replies), which can probably be explained by the restricted number of key stakeholders and the technical nature of the topic. There have been thirty-three respondents among contracting authorities/entities and other public authorities, thirty-three respondents among businesses and business associations, and four respondents from the general public (two academics, one NGO, and one citizen). Out of the thirty-three respondents from industry, sixteen were business associations that presumably participated in the online survey representing the views of several individual companies.

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<sup>192</sup> [http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item\\_id=8675](http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8675).

<sup>193</sup> [http://ec.europa.eu/growth/single-market/public-procurement/rules-implementation/defence\\_en](http://ec.europa.eu/growth/single-market/public-procurement/rules-implementation/defence_en).

<sup>194</sup> Several direct mailings have been made to invite stakeholders and experts to reply to the consultation. For more details, see: Annex II.

### *Meetings with key stakeholders*

The open public consultation based on the online survey has been complemented by the following targeted consultation activities seeking inputs by the key stakeholders identified above:

- Meetings with Member States' experts via the Commission's Governmental Expert Group on defence and security procurement. This group includes experts from all 28 Member States and EEA countries, mainly but not exclusively from Ministries of Defence<sup>195</sup>.
- Meetings with industry organised by the AeroSpace and Defence Industries Association of Europe (ASD) and involving several representatives of defence and security companies and national business associations<sup>196</sup>.
- With specific regard to the situation of SMEs, consultation with Member States and industry experts has also taken place in the Commission's Advisory Expert Group on cross-border access for SMEs to defence and security contracts<sup>197</sup>.

These extensive meetings have been effective tools for in-depth discussions with a comprehensive and balanced set of key stakeholders. The discussions, based on detailed sets of questions prepared by the Commission departments, covered all relevant aspects of the Directive and have been centred around the evaluation questions as set out in the Evaluation Roadmap.

Beyond the above, the Commission departments at all the above fora declared its openness to the direct bilateral meetings with all interested stakeholders. A will to have a meeting related to the evaluation of the Directive was expressed by German Ministry of Defence and the French Aerospace Industries Association (Groupement des industries françaises aéronautiques et spatiales – GIFAS).

### *Summary of opinions expressed within consultations*

In summary the stakeholders expressed the below views, presented in order of evaluation questions. The most comprehensive presentation of the opinions expressed by the stakeholders is included in the text of the *Commission Staff Working Document - Evaluation of Directive 2009/81/EC on public procurement in the fields of defence and security*. The technical information on consultations is summarised in the document *Stakeholder consultations - Factual summary*<sup>198</sup>.

- **Transparency**

According to the public consultation outcome, in the perception of industry, the Directive improved to a limited extent market access and business opportunities: 36% of

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<sup>195</sup> The meetings dedicated to the evaluation of the Directive took place on 18 February and 14 July 2016.

<sup>196</sup> The membership of ASD consists of 14 European Aerospace and Defence Companies and 26 National Associations in 19 countries: <http://www.asd-europe.org/about-us/structure/asd-members/>. The meetings took place on 22 February and 3 May 2016.

<sup>197</sup> The meeting on the evaluation of the Directive took place on 26 April 2016.

<sup>198</sup> [http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item\\_id=8675](http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8675).

companies or business associations that replied to the online survey considered there is “no difference” compared to the situation before, 21% deemed that the situation “improved”, and 12% responded that it “deteriorated” or “significantly deteriorated”.

Stakeholders stressed the increase in publications of contract notices connected with significant differences in publication rates between Member States. The stakeholders emphasised the importance of consistent application of the Directive.

- **Cross-border access to the public defence contracts**

Based on the replies of online survey, the perception of the impact of the Directive on cross-border access to defence and security procurement in EU countries is rather positive (39% of respondents among both contracting authorities and businesses), but with a significant share of respondents seeing no impact (30% among contracting authorities, and 24% among businesses). The respondents seeing a negative impact are a sizeable minority among businesses (21%) and a rather marginal share among contracting authorities (6%).

In its written contribution to the public consultation, one Member State emphasised that economic operators, big or small, can participate in tendering procedure via local subsidiaries or partners. As a result, the percentages of “direct” cross-border awards resulting from the OJ/TED database can underestimate the participation of companies from other Member States.

In a stakeholder’s consultation meeting with industry<sup>199</sup>, a defence company explained that before making a decision to bid they make a case-by-case assessment. They need to be confident that they are well-placed to win and that it is worth preparing an offer. Cross-border bidding is by nature more difficult due to language barriers, higher costs and insufficient knowledge of the foreign market.

- **Competition**

The results of the online survey show that the perception of contracting authorities about the impact of the Directive on competition (in terms of number of offers received) is positive. 45% of contracting authorities’ respondents considered that the situation “improved” with the Directive. 15% see no difference, and only 6% replied that the situation “deteriorated” or “significantly deteriorated” compared to before the Directive.

Similarly positive are the contracting authorities’ responses on a related aspect, i.e. the impact of the Directive on their capacity to achieve best value for money. 33% of contracting authorities that replied to the survey consider that this aspect improved compared to the situation before the Directive, while 18% see no difference. Only 6% think that the situation deteriorated.

At a Member States’ experts meeting on the evaluation<sup>200</sup>, some experts confirmed the perception that the Directive helped achieving best value for money, while many affirmed that it is still too early to draw definite conclusions. They pointed out that getting best value for money does not only depend on the rules of the Directive, but also

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<sup>199</sup> Meeting of 22 February 2016.

<sup>200</sup> Meeting of 18 February 2016.

on the degree of competition and the structure of the market. Some Member States experts clarified that even before the Directive some form of competitive procurement aimed at best value for money was normally used.

- **Industrial return (offset)**

Businesses' replies to the online survey show that the perception is that of a reduction, albeit to a very limited degree, in the frequency of industrial return requirements after the Directive.

In the consultation meeting<sup>201</sup>, industry stakeholders believe that the formal offsets requirements have changed or are now being removed. However, there are still cases of offsets requirements based on essential security interests and informal expectation in customer countries to build industrial links. The above brings also some uncertainty to the market game.

- **Other aspects of procurement procedures**

As to the effects of the Directive on fairness of procedures, businesses' replies to the online survey indicate a mixed perception, with moderately positive signs. Transparency International considers that the mandatory exclusion of tenderers takes place extremely rarely and the derogation from the mandatory exclusion is too broad and vague.

Contracting authorities replying to the online consultation consider that the Directive had a positive impact on legal certainty, while businesses' perception is rather mixed.

In the industry stakeholders' consultation meeting<sup>202</sup>, a number of defence companies pointed out there should not be high expectations that they would use access to review procedures in the defence sector since they only have one customer in each country.

- **Use of exemptions**

In the online survey public authorities and businesses expressed rather divergent views about the impact of the Directive on the use of the essential security interest exemption (Article 346 TFEU). Majority of public authorities' respondents (52%) "strongly agree" or "agree" that the Directive has reduced the need to use this exemption and 27% businesses hold the same view.

In a meeting on the evaluation, the vast majority of Member States' experts stated that the Directive significantly decreased the need for using Article 346 TFEU.

- **The Directive exclusions**

45% of contracting authorities respondents and 36% of businesses respondents to the on-line survey "strongly agree" or "agree" that the exclusions (Article 12 and 13) are appropriate, but a non-negligible proportion of businesses respondents (27%) "disagree" or "strongly disagree".

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<sup>201</sup> Meeting of 22 February 2016.

<sup>202</sup> Meeting of 22 February 2016.

In consultation meetings, some stakeholders expressed concerns about the application of the exclusions on government-to-government sales (Article 13(f)) and International Organisations (Article 12(c)) and called for further guidance to clarify particular provisions of the Directive.

- **Security of information**

61% of contracting authorities' respondents to the online consultation strongly agreed or agreed that the Directive's provisions on security of information are sufficient to ensure the protection of classified information. Among businesses respondents, the relative majority (33%) also agreed and only 9% disagreed. The consultations meetings also confirmed the broad consensus of stakeholders on the fact that the security of information provisions of the Directive are appropriate.

- **Security of supply**

On the security of supply provisions, contracting authorities and businesses replying to the on-line consultation hold somewhat different views. One national defence industry association pointed out that security of supply cannot be fully guaranteed by political declarations or contractual commitments, but it is ensured primarily through national control of domestic industrial infrastructures. One Member State's expert stressed, during the meeting on the evaluation<sup>203</sup>, that the provisions of the Directive cannot be sufficient to guarantee security of supply; contractual obligations are not sufficient in this context. In some cases, key technologies and industrial facilities are needed, for security of supply reasons, in the national territory.

- **Changes in the industrial base**

55% of respondents among contracting authorities and 58% of respondents to the on-line consultation among businesses see no impact of the Directive on the competitiveness of EDTIB or have no opinion on the matter.

Based on inputs provided in consultation meetings, stakeholders in general agree that the Directive should be assessed against realistic expectations and in a broader context. European procurement rules are not sufficient to solely and within the short time period significantly influence the industrial base.

- **SMEs**

Based on the replies to the online survey, stakeholders' perception on the impact of the Directive on the access of SMEs to defence and security procurement is rather mixed, with a strong proportion seeing no impact or having no opinion on the matter among both contracting authorities.

A Member State participating in the open public consultation stressed that there are multiple factors affecting the situation of SMEs in the defence sector, such as new competitors, technological developments, and shrinking markets, so that it is impossible to identify if the Directive had any specific impact on their situation. One national

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<sup>203</sup> Meeting of 18 February 2016.

defence industry association argued, in its reply to the online survey, that the Directive did not help increasing the competitiveness of SMEs and did not facilitate their penetration in the supply chains of major defence companies.

The issue was discussed, as part of the stakeholder consultation process, in the Commission's Advisory Expert Group on cross-border access for SMEs to defence and security contracts<sup>204</sup>. Their perception broadly was that there have been no major changes in the situation of SMEs in the defence sector in recent years as a result of the Directive.

- **Subcontracting**

The negative assessment of the Directive's provisions on subcontracting is confirmed by the replies to the online survey. The relative majority of respondents "disagree" or "strongly disagree" that these provisions "foster cross-border access to defence and security supply chains" among both businesses (39%) and contracting authorities (27%). The proportion of these respondents that agreed with the statement was, respectively, 15% and 21%.

As it results from the online survey and consultation meetings, stakeholders believe that the current subcontracting provisions are ineffective since they do not foster cross-border access to supply chains. They pointed out that these provisions are not used by Member States as "*they do not guarantee subcontracting in the Member State of the contracting authority*".

- **Efficiency – costs of procedures**

According to the received replies to the online survey, business respondents' perception differs from that of contracting authorities. 52% of business respondents consider that the costs of participating in procurement procedures under the Directive are more or much more resource intensive compared to the situation before. Among contracting authorities, the views are more balanced with 33% of respondents considering that the costs have increased and the same proportion (33%) seeing no difference with the situation before.

When asked to compare the costs under the Directive to those under the civil procurement Directives, respondents expressed more positive views. 33% of respondents among businesses see no change or a reduction in costs, whilst 27% perceive an increase. Respondents among contracting authorities have a more positive perception, with 45% seeing no increase or a reduction, and only 12% considering that the costs of carrying out procedures under the Directive are more resource intensive than those under the civil procurement Directive.

The issue of costs was discussed at a meeting with Member States' experts<sup>205</sup>. No expert could provide data on costs stemming from the organisation of procurement procedures under the Directive. At the same meeting, several Member States' experts expressed the perception that costs slightly increased compared to the situation before the Directive. However, as pointed out by two experts, the response essentially depends what the specific national situation used to be. If defence procurement was completely excluded or unregulated, then the procedures under the Directive will inevitably be more complex

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<sup>204</sup> Meeting of 26 April 2016.

<sup>205</sup> Meeting of 18 February 2016.

and costly. If some form of competitive procedures were used, then there is likely no significant impact stemming from the Directive. This is especially the case because, as one Member State clarified, the most time consuming and resource intensive activity for the contracting authority is the preparation of the technical specifications. The Directive as such has marginal impact on this aspect.

The issue of costs was also discussed with industry in two stakeholder consultation meetings<sup>206</sup>. The participants who intervened on this issue considered that either the Directive did not bring about changes in costs or burden for responding to procurement procedures or that there was a minor, marginal increase stemming from the rules of the Directive. With regard to more detailed questions on costs<sup>207</sup>, they explained not to be in a position to provide answers; there are too many differences across different kinds of procurement and too many elements to take into account. In addition, some of the information in this area could be commercially sensitive.

- **Efficiency – costs compared to benefits**

Respondents to the online survey were also asked to give an overall assessment on the efficiency of the Directive by comparing the costs and benefits of carrying out (for contracting authorities) or participating in (for businesses) procurement procedure under the Directive. Among contracting authorities, the perception is largely positive: 52% of respondents consider that benefits outweigh costs or are proportionate, and only 12% see the costs outweighing the benefits. The perception of business respondents is more negative: 33% think that the costs outweigh the benefits; while 24% consider the costs proportionate or the benefits outweighing the costs.

Stakeholders in consultation meetings in general agreed that the Directive did not have a significant impact in terms of complexity and duration of tendering procedures or in terms of costs for contracting authorities since that national legislations before the Directive provided for competitive procedures inspired by broadly similar principles.

- **Relevance - objectives**

The overwhelming majority of respondents to the open public consultation consider the objectives of the Directive<sup>208</sup> still relevant. 70% of businesses or business associations replied that these objectives are “relevant”, and only 9% considers them “rather irrelevant”. Among Member States’ authorities, 67% of respondents replied that the objectives of the Directive are “relevant” or “moderately relevant”. Again, only 9% replied “rather irrelevant” and no respondent qualified the objectives as “irrelevant”. 3

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<sup>206</sup> Meetings of 22 February and 3 May 2016.

<sup>207</sup> “How would you evaluate the costs of participating in procurement procedures under the Directive as compared to these costs under the Civil Directives for procurements of similar complexity?”; “Can you provide an estimation of costs (e.g. in terms of man/hour of staff) of participating in a procurement procedure for the award of a defence contract, including under the Directive?”; “Can you identify the elements of the participation in a procedure contributing mostly to the overall costs and explain their relative importance?”.

<sup>208</sup> These objectives (direct and indirect) were summarised in the online survey as: “*to establish an open and competitive European Defence Equipment Market, to help strengthen the European Defence and Technological industrial base (EDTIB), to ensure that the situation of SMEs in the defence sector is not negatively affected*”.



out of the four respondents from the general public replied “relevant” and no one see them as “rather irrelevant” or “irrelevant”.

Other stakeholders’ replies to the online survey confirm their support for the general objectives and underlying principles of the Directive. 91% of respondents among businesses and business associations agree or strongly agree that “defence and security equipment and services acquired by Member States should be procured using fair and competitive procedures (except where a valid exemption is properly applied)”. 89% of the same respondents also agree or strongly agree that “defence and security contracts should be awarded to the tenderer offering the best value for money solution, irrespective of the Member State in which the company is located (except where a valid exemption is properly applied)”.

The meetings with key stakeholders (Member States and industry) confirmed that there is consensus on the fact that the objectives of the Directive are still relevant.

- **Relevance - new developments after the adoption of the Directive**

A number of developments that are relevant in relation to the Directive have been identified in answers to the open public consultation and in meetings with stakeholders:

- The evolving defence and security landscape in Europe. Several Member States and stakeholders pointed at the deterioration of the security situation “with an increasingly unstable neighbourhood, difficult relationships with Russia, and hybrid threats directly targeting European territory”<sup>209</sup>. This situation can have an impact on the defence and security budgets of Member States, as it led to a (at least partial) reversion of the trend of budget reductions.
- The financial crisis which exacerbated the already existing trend towards significant reductions of defence budgets, and especially of defence procurement budgets. According to ASD’ reply to the online survey, “*it is fair to assume that this hampered European cooperation and the openness of national markets to EU-wide competition*”. A similar comment was made by a Member State in a consultation meeting. Member States and stakeholders also pointed out that budgetary constraints had a more direct impact on the uptake of the Directive: they led to cancellation or postponement of new defence procurement programmes.
- An emerging consensus in the EU on the need to maintain an appropriate level of strategic autonomy. A number of stakeholders pointed out that it is in Europe’s strategic interest to maintain technological and industrial means to develop and sustain certain indispensable defence capabilities. No Member State can afford to sustain the full spectrum of these means individually. Member States should therefore identify together the key defence capabilities for which they want to maintain or develop the necessary technological and industrial means.
- Although concrete progress is still very limited, Member States and stakeholders see as a relevant development that there is increasing awareness at all levels on the need for more defence cooperation in Europe, and in particular for more

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<sup>209</sup> ASD contribution to the online survey.

cooperative procurement. Some Member States pointed out in particular that nowadays there is a greater focus on common/joint procurement of off-the-shelf equipment, rather than on the establishment of new cooperative programmes for the development of new products.

- Several Member States and some stakeholders mentioned the adoption of the new civil procurement Directives as a relevant development.

- **Coherence - in general**

Based on both the online survey and consultation meetings, a broad consensus among Member States and stakeholders emerged on the fact that the provisions of the Directive are generally fit for purpose. The focus needs to be on their effective implementation and application.

No problems specifically related to lack of coherence between the different provisions of the Directive have been raised in the context of the open public consultation or the complementary stakeholders' consultation.

- **Coherence – delimitation of scope**

The majority (58%) of contracting authorities' respondents "agreed" or "strongly agreed" that the distinction between the scope of application of the Directive and that of the civil procurement Directives is "sufficiently clear". The proportion of positive replies was lower among business respondents: 36% agreed or strongly agreed, while 24% disagreed. Out of the four citizens that replied to the online survey, only two replied to this question and both agreed that the distinction is clear.

During a meeting of Member States' experts<sup>210</sup>, the majority of experts that intervened took the view that the existing provisions on the distinction of the scope of the Directive with that of the classical procurement Directives are satisfactory.

- **Coherence – choice of procedure**

Stakeholders, according to the replies to the online survey, seem to consider rather appropriate the existing provisions of the Directive on the choice of procedures and the conditions for their use. 48% of respondents among contracting authorities consider that these provisions provide them with enough flexibility, and only 12% took the opposite view. Businesses replies on whether the rules on tendering procedures under the Directive are appropriate to ensure equal treatment and transparency are more mixed: 27% agree, and 24 disagree. Indications based on stakeholders meetings seem to show, however, that this businesses' perception has more to do with the limited uptake and application of the Directive, than with specific problems with the rules of the Directive.

During a meeting on this evaluation<sup>211</sup>, Member States experts expressed their full satisfaction with the rules of the Directive on the choice of contract award procedures. They praised in particular the default possibility of using the negotiated procedure with

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<sup>210</sup> Meeting of 18 February 2016.

<sup>211</sup> Meeting of 18 February 2016.

publication of a contract notice, which they consider to be particularly suited for defence and sensitive security procurement.

A few Member States experts, however, raised the issue of the non-availability of the open procedure. They argued that it would be useful to have the possibility to use this procedure for certain non-sensitive military purchases under the Directive. A similar point was made by some Member States in the written contributions to the open public consultation.

In its reply to the online survey, Transparency International suggests that transparency of defence and security purchases would be enhanced through the use of open procedures.

In an industry stakeholder consultation meeting, industry representatives took a different view on the issue of the open procedure. They argued that the use of open procedures for procurement in the fields of defence and sensitive security would not be appropriate. They maintained that the existing rules on the choice of procedures are best suited for these specific sectors.

- **Coherence – new civil procurement Directives**

Two Member States argued, in their reply to the online survey, that it would be appropriate to consider amending the Directive to align it to the innovations introduced in the civil procurement Directives. The Dutch Ministry of Economic Affairs specifically wrote that it would be worth to investigate if the procedure of innovation partnership in the new civil procurement Directive would have an added value for defence and security procurement.

During a meeting of Member States' experts on the evaluation<sup>212</sup>, one expert argued that it would be useful to consider the inclusion in the Directive of certain innovations of the new civil procurement Directive such as: the codification of in-house and public-public exclusions, the new exclusion on rescue services, the innovation partnership, the changes to exclusion grounds and the introduction of self-cleaning mechanisms, the rules on modification of contracts, and certain elements of electronic procurement<sup>213</sup>. Some other Member State argued, more generally, that any additional flexibility and simplification stemming from the recent changes would be useful to consider. One Member State specifically questioned the possibility to integrate in the context of defence the new provisions on the mandatory use of electronic procurement.

In its written contribution to the open public consultation, a Member State strongly argued that the focus should be on application of the Directive rather than its revision. Reopening it would imply significant legislative work for only marginal improvements of the text; in addition, it would shift the focus away from application and implementation also at national level, with time and resources needed to draft and adopt new implementation measures and additional time for contracting authorities/entities to become familiar with the revised rules.

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<sup>212</sup> Meeting of 18 February 2016.

<sup>213</sup> The reference was probably made to articles 12 (in house exclusion), 31 (Innovation Partnership), 57 (exclusions), 22, 34-36, 59 (electronic communication), 72 (contract modifications), 74-77 (light regime including rescue services).

In consultation meetings, industry stakeholders did not identify any change introduced by the new civil Directives that would be useful or appropriate in the context of defence procurement. In their view, the new rules need be tested in the civil market before considering if - and to what extent - some of them should be carried over to the defence procurement framework.

- **Coherence – Directive 2009/43/EC**

A number of Member States' experts, during a meeting on the evaluation<sup>214</sup>, highlighted the importance of the link with Directive 2009/43/EC. They stressed that the effective implementation of Directive 2009/43/EC is a key enabler for cross-border trade and for the full uptake of the (defence procurement) Directive. The importance of the effective implementation of Directive 2009/43/EC for cross-border procurement has been highlighted by industry representatives as well in consultation meetings and in replies to the online survey.

- **Coherence – CSDP and a European capabilities and armaments policy**

During the consultation meetings, several stakeholders highlighted that, without progress towards such a European capabilities and armaments policy, the Directive can contribute only to a very limited extent to the competitiveness of the EDTIB. ASD, in its reply to the online survey, stressed that there is “a fundamental and structural handicap of the Directive, which is the weakness of CSDP and the absence of a common European armaments policy. The more Member States agree on common capability needs and an industrial strategy to address these needs, the more market openness will become a reality. This would also pave the way for new cooperative projects, which we believe are the best means to establish sustainable and competitive cross-border supply chains”. Similar points have been made by other industry representatives in replies to the online survey and in a industry stakeholder meeting<sup>215</sup>.

- **Coherence – cooperation in defence procurement**

Participants at a stakeholder consultation meeting<sup>216</sup> agreed on the importance of cooperation and recognised that it is more necessary than ever to face increased challenges and budgetary constraints. They recalled that there are two complementary routes to create an integrated market: cooperation and competition, and recognised that the approach in the Directive is consistent with this. For complex systems in particular, cooperation is definitely the best way forward. Cooperation is also important to bring in the industry from smaller Member States.

The Commission departments discussed this issue with Member States' experts<sup>217</sup>. At this meeting, one Member State's expert presented his experience and explained that the Directive offers all the flexibility that is needed to pursue cooperative projects. Defence cooperation requires a number of important and challenging pre-conditions (e.g. political will, alignment of budgetary cycles, and harmonisation of requirements). All Member

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<sup>214</sup> Meeting of 18 February 2016.

<sup>215</sup> Meeting of 18 February 2016.

<sup>216</sup> Meeting of 22 February 2016.

<sup>217</sup> The Commission's Members States Expert Group on Defence Procurement, meeting of 27 May 2015 with a special point on cooperative procurement.

States' experts that intervened at the meeting essentially agreed that the Directive is not an obstacle hindering cooperation and there are much more significant challenges in this area.

In its written contribution to the open public consultation, a Member State argued that the provisions of the Directive that are relevant for cooperation apply only to situations where Member States decided to cooperate from the beginning. Thus, in their views, a flexible application of Article 28 of the Directive could facilitate cooperation in such scenarios.

A defence company who responded to the online survey stated that *“cooperation between Member States should be clearly incentivised at both regulatory and financial levels. Moreover, new genuinely European schemes of cooperation need to be considered under the Directive beyond the classical one already covered by the Directive. More flexibility should be introduced”*.

### *Conclusions on stakeholders consultations*

The consultation processes provided a wide range of experience and opinion regarding the implementation of the Directive seen through the eyes of the stakeholders. This information is widely used in the evaluation to augment the information obtained from the TED and other sources.

The questionnaires targeted to the three groups of stakeholders brought important qualitative input, since answers to the open questions and attached textual documents presented important deepened and relevant opinions. From the quantitative point of view, i.e. the possibilities of carrying out statistically analysis, the online survey was less useful, due to the relatively low amount of answers. The limited number of replies was caused by the specificity of the sector in which, out of the two main stakeholders group, there is in principle the only one main buyer in every Member States and only some main suppliers.

Most of the gathered information referred to the functioning of the Directive, in terms of mechanism of carrying out of the procurement procedures, and to the situation and functioning of the defence and security market. It was less successful in gathering contextual data e.g. on relative costs of procedures, thus, in the evaluation obtained information was used in conjunction with information from other sources.

The meetings with the stakeholders proved to be highly useful, both, in case of the meeting with Member States and the industry. The obtained, deepened expert information allowed better understand and explaining the key issues, including those only generally asked in the questionnaire. It also brought the opinions about aspects of functioning of the Directives that could not be explained on the basis of the hard evidence and numerical data.

In overall, the mixture of the used stockholders consultation methods (questionnaire, written inputs and meetings), despite natural shortcomings connected with the sector specificity, proved to be an adequate and necessary element of the evaluation, completing and explaining the analysed hard data.

### Annex III – Methods and analytical models

As mentioned in the main sections of this evaluation report, the presented analysis was mainly based on the following data sources: notices published in OJ/TED, data published by EDA and Nato, IHS Jane’s procurement database and Eurostat, as well as consultations with Member States and stakeholders (including a public on-line survey).

#### *OJ/TED data*

As briefly explained in Section 4, the main source of data used in this evaluation was the OJ/TED data, containing all notices whose publication is required under the procurement Directives.

The analysis of notices published in OJ/TED covered:

- notices dedicated to defence and security procurement<sup>218</sup> published on standard forms 16 to 19,
- a subset of publications on voluntary ex-ante transparency notices (VEATs) published on standard form 15, when the contracting authority indicated that the publication falls under the Directive,
- notices published under the civil procurement Directives if their subject matter was linked to defence or/and security.

The notices published under the civil procurement Directives were judged to be affiliated with defence and/or security procurement if they referred to any of CPV codes listed in Table 42 and Table 43.

**Table 42: Defence-related CPV codes used to filter publications under the civil procurement Directives – high level**

<b>CPV codes used to characterise supplies defence contracts</b>	CPV
31642200-0 Detection apparatus for mines.	x
35300000-7 Weapons, ammunition and associated parts.	x
35400000-8 Military vehicles and associated parts.	x
35500000-9 Warships and associated parts.	x
35600000-0 Military aircraft, missiles and spacecrafts.	x
35700000-1 Military electronic systems.	x
<b>CPV codes used to characterise works defence contracts</b>	
45111300-1 Dismantling works.	x
45216200-6 Construction work for military buildings and installations.	x
45222200-1 Engineering work for military installations.	x
45222300-2 Engineering work for security installations.	x
<b>CPV codes used to characterise services defence contracts</b>	
50600000-1 Repair and maintenance of security and defence materials.	x
50840000-5 Repair and maintenance of weapons systems.	x
51550000-2 Installation services of weapon systems.	x

<sup>218</sup> Annexes XV to XVIII of Commission Implementing Regulation (EU) No 842/2011 of 19 August 2011 establishing standard form for the publication of notices in the field of public procurement and repealing Regulation (EC) No 1564/2005.

72231000-3 Development of software for military applications.	X
73410000-9 Military Research & Technology.	X
73420000-2 Pre-feasibility study & technological demonstration.	X
73430000-5 Test and Study.	X
75211300-1 Foreign military-aid-related services.	X
75221000-1 Military defence services.	X
80600000-0 Training services in defence and security materials.	X
90523100-0 Weapons and ammunition disposal services.	X
90523200-1 Bomb-disposal services.	X
90523300-2 Mine sweeping services.	X

Source: The Baseline Study

**Table 43: Defence-related CPV codes used to filter publications under the civil procurement Directives – detailed**

<b>CPV codes used to characterise supplies defence contracts</b>	
31000000-6 Electrical machinery, apparatus, equipment and consumables; lighting	
31600000-2 Electrical equipment and apparatus.	
31640000-4 Machines and apparatus with individual functions.	
31642000-8 Electronic detection apparatus.	
31642100-9 Detection apparatus for metal pipes.	
31642200-0 Detection apparatus for mines.	X
31642300-1 Detection apparatus for plastics.	
31642400-2 Detection apparatus for non-metallic objects.	
31642500-3 Detection apparatus for timber.	
35000000-4 Security, fire-fighting, police and defence equipment.	
35100000-5 Emergency and security equipment.	
35200000-6 Police equipment.	
35300000-7 Weapons, ammunition and associated parts.	X
35310000-0 Miscellaneous weapons.	X
35311000-7 Swords, cutlasses, bayonets and lances.	X
35311100-8 Swords.	X
35311200-9 Cutlasses.	X
35311300-0 Bayonets.	X
35311400-1 Lances.	X
35312000-4 Gas guns.	X
35320000-3 Firearms.	X
35321000-0 Light firearms.	X
35321100-1 Hand guns.	X
35321200-2 Rifles.	X
35321300-3 Machine guns.	X
35322000-7 Artillery.	X
35322100-8 Anti-aircraft.	X
35322200-9 Self-propelled artillery.	X
35322300-0 Towed artillery.	X
35322400-1 Mortars.	X
35322500-2 Howitzer.	X
35330000-6 Ammunition.	X
35331000-3 Ammunition for firearms and warfare.	X
35331100-4 Bullets.	X
35331200-5 Shells.	X
35331300-3 Grenades.	X
35331400-7 Land mines.	X

35331500-8 Cartridges.	X
35332000-0 Ammunition for naval warfare.	X
35332100-1 Torpedoes.	X
35332200-2 Sea mines.	X
35333000-7 Ammunition for aerial warfare.	X
35333100-8 Bombs.	X
35333200-9 Rockets.	X
35340000-9 Parts of firearms and ammunition.	X
35341000-6 Parts of light firearms.	X
35341100-7 Gunmetal pipe fittings.	X
35342000-3 Parts of rocket launchers.	X
35343000-0 Parts of mortars.	X
35400000-8 Military vehicles and associated parts.	X
35410000-1 Armoured military vehicles.	X
35411000-8 Battle tanks.	X
35411100-9 Main battle tanks.	X
35411200-0 Light battle tanks.	X
35412000-5 Armoured combat vehicles.	X
35412100-6 Infantry fighting vehicles.	X
35412200-7 Armoured personnel carriers.	X
35412300-8 Armoured weapon carriers.	X
35412400-9 Reconnaissance and patrol vehicles.	X
35412500-0 Command and liaison vehicles.	X
35420000-4 Parts of military vehicles.	X
35421000-1 Mechanical spare parts for military vehicles.	X
35421100-2 Engines and engine parts for military vehicles.	X
35422000-8 Electronic and electrical spare parts for military vehicles.	X
35500000-9 Warships and associated parts.	X
35510000-2 Warships.	X
35511000-9 Surface combatant.	X
35511100-0 Aircraft carriers.	X
35511200-1 Destroyers and frigates.	X
35511300-2 Corvettes and patrol boats.	X
35511400-3 Amphibious crafts and ships.	X
35512000-6 Submarines.	X
35512100-7 Strategic submarine nuclear fuelled.	X
35512200-8 Attack submarine nuclear fuelled.	X
35512300-9 Attack submarine diesel fuelled.	X
35512400-0 Unmanned Underwater Vehicles.	X
35513000-3 Mine warfare & auxiliary ships.	X
35513100-4 Mine hunter / minesweeper.	X
35513200-5 Auxiliary research vessel.	X
35513300-6 Auxiliary intelligence collection vessel.	X
35513400-7 Auxiliary Hospital / Cargo / Tanker / Roro vessel.	X
35520000-5 Parts for warships.	X
35521000-2 Hull and mechanical spare parts for warships.	X
35521100-3 Engines and engine parts for warships.	X
35522000-9 Electronic and electrical spare parts for warships.	X
35600000-0 Military aircraft, missiles and spacecrafts.	X
35610000-3 Military aircraft.	X
35611000-0 Fixed-wing aircraft.	X
35611100-1 Fighter aircraft.	X
35611200-2 Fighter-bomber / ground attack aircraft.	X



35611300-3 Bomber aircraft.	X
35611400-4 Military transport aircraft.	X
35611500-5 Training aircraft.	X
35611600-6 Maritime patrol aircraft.	X
35611700-7 Tanker aircraft.	X
35611800-8 Reconnaissance aircraft.	X
35612100-8 Combat helicopters.	X
35612200-9 Anti submarine warfare helicopters.	X
35612300-0 Support helicopters.	X
35612400-1 Military transport helicopters.	X
35612500-2 Search and rescue helicopters.	X
35613000-4 Unmanned Aerial Vehicles.	X
35613100-5 Unmanned Combat Aerial Vehicles.	X
35620000-6 Missiles.	X
35621000-3 Strategic missiles.	X
35621100-4 Strategic anti-ballistic missiles.	X
35621200-5 Inter continental ballistic missiles.	X
35621300-6 Submarine launched ballistic missiles.	X
35621400-7 Intermediate range ballistic missiles.	X
35622000-0 Tactical missiles.	X
35622100-1 Air-to-air missiles.	X
35622200-2 Air-to-ground missiles.	X
35622300-3 Anti-ship missiles.	X
35622400-4 Anti-submarines rockets.	X
35622500-5 Tactical anti-ballistic missiles.	X
35622600-6 Anti-tank guided missiles.	X
35622700-7 Surface-to-air missiles.	X
35623000-7 Cruise missiles.	X
35623100-8 Air/Ground/Sea Launched Cruise missiles.	X
35630000-9 Military spacecrafts.	X
35631000-6 Military satellites.	X
35631100-7 Communication satellites.	X
35631200-8 Observation satellites.	X
35631300-9 Navigation satellites.	X
35640000-2 Parts for military aerospace equipment.	X
35641000-9 Structure and mechanical spare parts for military aerospace equipment.	X
35641100-0 Engines and engine parts for military aerospace equipment.	X
35642000-7 Electronic and electrical spare parts for military aerospace equipment.	X
35700000-1 Military electronic systems.	X
35710000-4 Command, Control, Communication and Computer systems.	X
35711000-1 Command, Control, Communication systems.	X
35712000-8 Tactical Command, Control and Communication systems.	X
35720000-7 Intelligence, Surveillance, Target Acquisition and Reconnaissance.	X
35721000-4 Electronic intelligence system.	X
35722000-1 Radar.	X
35723000-8 Air defence radar.	X
35730000-0 Electronic warfare systems and counter measures.	X
35740000-3 Battle simulators.	X
<b>CPV codes used to characterise works defence contracts</b>	
45000000-7 Construction work.	
45100000-8 Site preparation work.	
45110000-1 Building demolition and wrecking work and earthmoving work.	

45111300-1 Dismantling works.	x
45111310-4 Dismantling works for military installations.	x
45111320-7 Dismantling works for security installations.	x
45200000-9 Works for complete or part construction and civil engineering work.	
45210000-2 Building construction work.	
45216000-4 Construction work for buildings relating to law and order or emergency services and for military building	
45216200-6 Construction work for military buildings and installations.	x
45216220-2 Military bunker construction work.	x
45216230-5 Military shelter construction work.	x
45216250-1 Trench defences construction work.	x
45220000-5 Engineering works and construction works.	
45222000-9 Construction work for engineering works except bridges, tunnels, shafts and subways.	
45222100-0 Waste-treatment plant construction work.	
45222200-1 Engineering work for military installations.	x
45222300-2 Engineering work for security installations.	x
<b>CPV codes used to characterise services defence contracts</b>	
50000000-5 Repair and maintenance services.	
50600000-1 Repair and maintenance services of security and defence materials.	x
50610000-4 Repair and maintenance services of security equipment.	x
50620000-7 Repair and maintenance services of firearms and ammunition.	x
50630000-0 Repair and maintenance services of military vehicles.	x
50640000-3 Repair and maintenance services of warships.	x
50650000-6 Repair and maintenance services of military aircraft, missiles and spacecrafts.	x
50660000-9 Repair and maintenance services of military electronic systems.	x
50800000-3 Miscellaneous repair and maintenance services.	
50840000-5 Repair and maintenance services of weapons and weapon systems.	x
50841000-2 Repair and maintenance services of weapons.	x
50842000-9 Repair and maintenance services of weapon systems.	x
51000000-9 Installation services (except software).	
51500000-7 Installation services of machinery and equipment.	
51550000-2 Installation services of weapon systems.	x
72000000-5 IT services: consulting, software development, Internet and support.	
72100000-6 Hardware consultancy services.	
72200000-7 Software programming and consultancy services.	
72230000-6 Custom software development services.	
72231000-3 Development of software for military applications.	x
72232000-0 Development of transaction processing and custom software.	
73000000-2(3) Research and development services and related consultancy services.	
73400000-6 Research and Development services on security and defence materials.	
73410000-9 Military Research & Technology.	x
73420000-2 Pre-feasibility study & technological demonstration.	x
73421000-9 Development of security equipment.	x
73422000-6 Development of firearms and ammunition.	x
73423000-3 Development of military vehicles.	x
73424000-0 Development of warships.	x
73425000-7 Development of military aircraft, missiles and spacecrafts.	x
73426000-4 Development of military electronic systems.	x
73430000-5 Test and Study.	x
73431000-2 Test and Study of security equipment.	x

73432000-9 Test and Study of firearms and ammunition.	x
73433000-6 Test and Study of military vehicles.	x
73434000-3 Test and Study of warships.	x
73435000-0 Test and Study of military aircraft, missiles and spacecrafts.	x
73436000-7 Test and Study of military electronic systems.	x
75000000-6 Administration, defence and social security services.	
75200000-8 Provision of services to the community.	
75210000-1 Foreign affairs and other services.	
75211000-8 Foreign-affairs services.	
75211300-1 Foreign military-aid-related services.	x
75220000-4 Defence services.	
75221000-1 Military defence services.	x
75222000-8 Civil defence services.	
80000000-4 Education and training services.	
80600000-0 Training services in defence and security materials.	x
80610000-3 Training and simulation in security equipment.	x
80620000-6 Training and simulation in firearms and ammunition.	x
80630000-9 Training and simulation in military vehicles.	x
80640000-2 Training and simulation in warships.	x
80650000-5 Training and simulation in aircraft, missiles and spacecrafts.	x
80660000-8 Training and simulation in military electronic systems.	x
90000000-7 Sewage, refuse, cleaning, and environmental services.	
90500000-2 Refuse and waste related services.	
90520000-8 Radioactive-, toxic-, medical- and hazardous waste services.	
90523000-9 Toxic waste disposal services except radioactive waste and contaminated soil.	
90523100-0 Weapons and ammunition disposal services.	x
90523200-1 Bomb-disposal services.	x
90523300-2 Mine sweeping services.	x

Source: The Baseline Study

From the analytical point of view, the most valuable information about procurement comes from the contract award notices, as they refer to procedures that have been concluded (i.e. contracts which were attributed to a particular company for an agreed price). For this reason, the analysis is mainly based on the contract award notices.

Before launching any descriptive analysis of OJ/TED publications, the raw dataset was subject to manual scrutiny in order to verify its quality. The analysis of OJ/TED data included in this evaluation is based on the manually corrected datasets, unless specified otherwise. The scope of these manual checks is described below.

#### Manual corrections

The raw data uploaded from OJ/TED was first subject to manual checks concerning the assessment of whether or not the notice was indeed related to defence and security procurement. To this aim, the subject matter of the notices was verified, in particular with regards to the CPV codes used in the notices and the description of procurement carried out. The investigation was frequently supported by a general desk research. Manual corrections of the subject matter affected more than 250 observations out of nearly 8 700 published in OJ/TED in the investigated period of time (2011-2015). The notices published on standard forms dedicated to the Directive, but which have been removed from the dataset concerned for example the following purchases: plumbing and sanitary works, health and safety consultancy services, canteen and catering services, printing and

related services, the purchase of industrial kitchen equipment, cupboards, military uniforms, outerwear, rucksacks, footwear or coins and medals, etc.

Additionally, the quality checks also concerned the plausibility of values reported in notices, and the affiliation of procurement to either works, goods or services category. For a subset of notices, the missing information about the country of the successful bidder was manually completed using various information potentially indicating the geographical location, such as: the company name, the town, telephone numbers, etc. Finally, to the extent possible, observations referring to cancelled procedures were removed from the dataset.

In addition to the above mentioned problems linked to the consistency of information contained in the notices or the occurrence of erroneous publications (presumably due to inappropriate legal basis), it was noted that around 17% of the contract award notices have been published without the final price of awarded contracts. In some countries the ratio was much higher, reaching nearly 85% in Sweden, followed by 71% in the Netherlands, 71% in Belgium, 48% in Denmark and 41 % in Germany.

Following a meeting of the Commission's Expert Group on Defence and Security Procurement on 17 of July 2016, the Government representatives of two countries (where the occurrence of contracts without values was particularly high), have agreed to manually correct notices published by their national authorities. As a result, the Netherlands and Belgium have provided the Commission with revised datasets, where the majority of missing contract values has been completed. The missing contract values received from the Netherlands included VAT calculated at various rates and VAT-exempt contracts. Because a case-by-case analysis of the level of tax rate was impossible, all newly received values were discounted at 21%. Additionally, Belgium has expanded the original dataset by providing a list of procurement notices that were erroneously published under a standard forms devoted to the civil Directives. These notices were added to the analysed dataset. As mentioned in the earlier sections, the analysis presented in this evaluation report is based on a dataset which was subject to manual corrections, including those received from Member States, unless stated otherwise.

Finally, in order to provide the results presented in Section 5.3.1.5 above, contract award notices published under the Directive have been scrutinised in order to decide on their affiliation of the awarded contracts to either defence or security domains. Contracts in the field of security fall within the Directive if they are "for security purposes" and involve, require and/or contain classified information. It was clearly impracticable to manually check all the notices published the Directive in order to assess whether the contracts fulfilled those conditions and were, therefore, security contracts in the sense of the Directive. Instead, an approach based on the evaluation of profiles of the contracting authority/entity was chosen. The full list of all contracting authorities/entities that awarded at least one contract under the Directive was manually divided into military and security purchasers, on the basis of their name and available description. This was complemented, through a random check of contracts, by the nature of purchases they made. Authorities / entities that were assessed to be "military contracting authorities/entities" included e.g. ministries of defence, services and units of armed forces, specialised defence procurement agencies. Based on the assumptions that "military contracting authorities/entities" are unlikely to award security contracts in the sense of the Directive, and that non-military contracting authorities/entities would not award military contracts, the remaining contracting authorities/entities (which included

for instance ministries of interior, police forces, local authorities) have been classified as “security contracting authorities/entities”.

### *Estimation of the compliance costs under the Directive*

The overall costs of procedures carried out under the Directive, as presented in Section 6.2.1, was estimated following a similar approach to the one adopted in the PwC Study. The costs of the application of the Directive was calculated based on the cost data collected in the above study, as more recent data of this type was not available.

The basic input for the cost analysis in the PwC Study was provided by 7 300 authorities and firms across Europe who answered an on-line survey and willingly reported the number of person-days spent, and other monetary costs, across a defined set of activities in the purchasing process. They provided the information with reference to a specific purchase published in OJ/TED for which they indicated themselves as the person responsible<sup>219</sup>. The costs of the procurement processes were collected in terms of person-days (in full time equivalent, FTE). The costs were then monetised by linking labour costs to the person-day data mentioned above, using the average wage for each country for 2009 from Eurostat and/or OECD<sup>220</sup>. The average costs per type of procedure from the PwC Study were used as a starting point for the main estimate included in this evaluation.

In line with the methodology of the PwC Study, it is important to underline that the costs of procedures which were captured by the survey were not only the costs that directly resulted from the obligations specified in the Directives, but might have also included other inputs, such as “business as usual cost”, costs stemming from the national legislation, etc. The methodology applied for the collection of raw cost data was designed to provide the most comprehensive estimate of the compliance cost incurred across the whole procurement delivery chain (i.e. pre-award stage or pre-proposal stage for firms, award or proposal for firms, post-award stage and litigation, if applicable), rather than to look into the factors behind the observed costs. For this reason, it was equally impossible to disentangle the cost estimate into the above components for the purpose of this evaluation.

In order to take account of the change in costs over time, the average cost per procedure type obtained from the PwC Study has been indexed with the Labour cost index by NACE Rev. 2 activity (lc\_lci\_r2\_a), using the yearly data on percentage change over previous period. The procurement costs incurred by the contracting authorities’ were updated based on an index for NACE O code (Public administration and defence; compulsory social security), while the costs for the economic operators were updated using LCI annual data for NACE codes B-N (Business economy).

Once indexed, the costs of procurement for different procedures from the PwC Study were used to estimate the cost of procurement carried out under the Directive. The cost referring to the negotiated procedure was used to estimate the cost of contracts awarded through the accelerated negotiated procedure or the negotiated procedure with and without publication. The costs of the restricted procedure as estimated in the PwC Study were used to calculate the cost of tenders carried out under the Directive following the

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<sup>219</sup> The PwC Study, p. 76.

<sup>220</sup> The PwC Study, p. 86.

restricted procedure and the accelerated restricted procure. The PwC Study didn't provide estimates for the competitive dialogue. It was therefore decided to use the average cost across all procedure types to estimate the costs of these tenders. If the information about the procedure used was missing in OJ/TED, then also the average cost from the PwC Study was used. An overview of procedure types and the relevant cost estimates which have been used for the estimate is provided in Table 44 below.

**Table 44: Procedure types used to estimate the overall costs of the Directive**

<b>Procedure used to award contracts under the Directive (according to OJ/TED)</b>	<b>Data on the cost of procedure used in the estimate (PwC)</b>
Negotiated with publication	Negotiated
Negotiated without publication	Negotiated
Accelerated negotiated	Negotiated
Restricted	Restricted
Accelerated restricted	Restricted
Competitive dialogue	Average cost for all procedures
Missing	Average cost for all procedures

Finally, as the calculation of costs of procurement for the economic operators was based on the average number of bidders per contract award notice. For observations where information on the number of bidders was not available in OJ/TED, the average value was taken (i.e. 3.4 offers, see: Section 6.1.1).

*IHS Jane's procurement data*

The IHS Jane's data was mainly used to calculate the value of procurement outside of the Directive (Section 6.1.2.2).

IHS Jane's procurement database offers a regularly updated list of major defence procurement programmes operated worldwide. Information about defence procurement is provided at programme (rather than contract) level, and it reveals different characteristics of programmes such as the purchasing country, the manufacturing and contractors companies, the latest status of the project (i.e. committed, completed, cancelled, postponed, announced or forecasted) as well as an estimation of the programme's value.

In order to arrive at a rough estimate, procurement programmes conducted by EU and EEA countries have been shortlisted, where it could be inferred that award decisions have taken place between 2011 and 2015. Only programmes committed and completed have been considered. Programmes which have been cancelled, announced or postponed have not been included in the sample in order to be as close as possible to the notion of an "award" as used in OJ/TED. A total list of 128 defence procurement programmes, operated by 26 countries, has been included in the sample: Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Croatia, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Slovakia, Spain, Sweden.

The IHS Jane's database is based on open-source intelligence data. As a consequence, there is no absolute certainty concerning the full scope of the programs listed, the number of purchased units and/or the specific value of particular contracts or purchased units. It can be therefore the case that some programs have been implemented, but have not appeared in IHS Jane's database.

As far as the estimation of the major defence equipment procurement outside of the Directives is concerned, it must be also stressed that comparisons between OJ/TED and IHS Jane's are very difficult. IHS Jane's essentially reports major equipment programmes and it is likely not to include some of the defence and security procurement contracts published in OJ/TED. In addition, the unit of observation of both datasets is different - IHS Jane's data being gathered at the programme level and OJ/TED at a contract or a contract award notice level. The comparison is also difficult time wise, since the award date of programmes in IHS Jane's is often inferred on the basis of available information, may not be absolutely certain and is not entirely comparable with OJ/TED variables containing information about timing of the public procurement transaction (e.g. the date of contract award as published in OJ/TED).

With regards to the OJ/TED vs. IHS Jane's matching presented in Section 6.1.2, the second approach consisted of trying to capture the programmes which were awarded with a competitive tendering process (i.e. where a request of proposal date has been included in the database), but which were not published in the OJ/TED. In order to do so, the only practicable method, given the difficulties in comparing OJ/TED and IHS Jane's, was to contrast the list of winning companies between 2011 and 2015 in both datasets. The idea behind this exercise was to capture an estimate of projects which have been awarded to companies whose business name has not appeared in OJ/TED during the same period. This matching presented significant limitations, in particular since companies listed in IHS Jane's were only parent companies. Thus, if other sub-units of subordinate companies were listed in OJ/TED, the comparison might not correspond.

#### *Member States' statistical reports*

According to Article 65 of the Directive, Member States are obliged to provide the Commission with the yearly statistical information on services supply and works contract awarded under the Directive. The reports should include information on number of contracts, broken down value by CPV and procedures, as well as a more detailed overview of the use of negotiated procedure without publication of a contract notice. Member States are also asked to provide information on the nationality of the successful contractors that could be used to estimate the share of cross-border procurement.

Member States are obliged to provide the report by 31 October each year, but the reports have been sent irregularly and not all Member States provided them in the analysed period of time (2011-2015). Additionally, the statistical reports which have been sent to the Commission included aggregated information that was not complementary to what was already available in OJ/TED. As a consequence, it was judged that analysing the OJ/TED data would more effective.

#### **Annex IV – Complementary data**

This annex contains supplementary data which has been referred to in the previous sections of the evaluation report.

#### **Table 45: Defence expenditures as a percentage of gross domestic product<sup>221</sup> [%]**

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<sup>221</sup> Based on 2010 prices and exchange rates.

Country	2009	2010	2011	2012	2013	2014	2015	2016 e
(0)	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Albania	1.52	1.56	1.53	1.49	1.41	1.34	1.16	1.21
Belgium	1.16	1.08	1.05	1.05	1.01	0.97	0.91	0.85
Bulgaria <sup>222</sup>	1.75	1.67	1.33	1.35	1.46	1.32	1.29	1.35
Croatia	1.62	1.54	1.60	1.53	1.47	1.41	1.37	1.23
Czech Republic	1.52	1.29	1.07	1.06	1.03	0.96	1.06	1.04
Denmark	1.34	1.41	1.30	1.34	1.23	1.16	1.14	1.17
Estonia	1.80	1.70	1.68	1.89	1.90	1.94	2.07	2.16
France	2.02	1.96	1.87	1.87	1.86	1.84	1.80	1.78
Germany	1.39	1.35	1.28	1.31	1.23	1.19	1.19	1.19
Greece	3.08	2.64	2.38	2.29	2.22	2.22	2.38	2.38
Hungary	1.14	1.04	1.05	1.04	0.95	0.87	0.94	1.01
Italy	1.42	1.35	1.30	1.24	1.20	1.09	1.02	1.11
Latvia	1.21	1.06	1.02	0.89	0.93	0.94	1.04	1.45
Lithuania	1.07	0.88	0.79	0.76	0.76	0.88	1.14	1.49
Luxembourg	0.40	0.47	0.39	0.38	0.38	0.39	0.43	0.44
Netherlands	1.42	1.34	1.25	1.23	1.16	1.15	1.16	1.17
Norway	1.54	1.52	1.51	1.47	1.48	1.51	1.47	1.54
Poland	1.71	1.77	1.72	1.74	1.72	1.85	2.23	2.00
Portugal	1.53	1.49	1.49	1.41	1.44	1.30	1.32	1.38
Romania	1.33	1.24	1.28	1.22	1.28	1.35	1.45	1.48
Slovak Republic	1.52	1.27	1.09	1.10	0.99	0.99	1.14	1.16
Slovenia	1.59	1.61	1.30	1.18	1.06	0.98	0.94	0.94
Spain	1.13	1.03	0.94	1.04	0.92	0.91	0.92	0.91
Turkey	2.06	1.93	1.76	1.76	1.75	1.70	1.67	1.56
United Kingdom	2.51	2.51	2.42	2.20	2.30	2.20	2.09	2.21
<b>NATO - Europe</b>	<b>1.70</b>	<b>1.64</b>	<b>1.56</b>	<b>1.53</b>	<b>1.51</b>	<b>1.46</b>	<b>1.45</b>	<b>1.46</b>
Canada	1.39	1.16	1.23	1.10	0.99	1.02	0.98	0.99
United States	5.29	4.81	4.77	4.42	4.09	3.78	3.59	3.61
<b>North America</b>	<b>4.91</b>	<b>4.46</b>	<b>4.42</b>	<b>4.09</b>	<b>3.78</b>	<b>3.51</b>	<b>3.33</b>	<b>3.36</b>
<b>NATO - Total</b>	<b>3.30</b>	<b>3.04</b>	<b>2.98</b>	<b>2.82</b>	<b>2.66</b>	<b>2.50</b>	<b>2.41</b>	<b>2.43</b>

Source: Defence Expenditures of NATO Countries (2009-2016), COMMUNIQUE PR/CP(2016)116, 4 July 2016, [http://www.nato.int/nato\\_static\\_fl2014/assets/pdf/pdf\\_2016\\_07/20160704\\_160704-pr2016-116.pdf](http://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2016_07/20160704_160704-pr2016-116.pdf)

<sup>222</sup> Data do not include pensions.



**Table 46: Total general government expenditure on defence as percentage of gross domestic product (GDP) [%]**

	2010	2011	2012	2013	2014
Belgium	1.0	0.9	0.9	0.9	0.9
Bulgaria	1.7	1.2	1.1	1.2	1.4
Czech Republic	1.0	0.9	0.8	0.8	0.7
Denmark	1.4	1.4	1.4	1.3	1.2
Germany	1.1	1.1	1.1	1.1	1.0
Estonia	1.7	1.5	1.8	1.8	1.8
Ireland	0.4	0.4	0.4	0.4	0.4
Greece	2.7	2.4	2.4	2.1	2.7
Spain	1.0	1.0	0.9	1.0	0.9
France	1.9	1.8	1.8	1.8	1.7
Croatia	1.5	1.6	1.5	1.4	1.5
Italy	1.3	1.3	1.3	1.2	1.2
Cyprus	2.1	1.8	1.8	1.6	1.4
Latvia	1.0	1.0	0.9	0.9	0.9
Lithuania	1.2	1.0	1.0	1.0	1.1
Luxembourg	0.5	0.4	0.4	0.3	0.3
Hungary	1.2	1.1	0.7	0.7	0.6
Malta	0.8	0.8	0.7	0.6	0.8
Netherlands	1.3	1.3	1.2	1.2	1.1
Austria	0.6	0.6	0.6	0.6	0.6
Poland	1.6	1.6	1.5	1.7	1.5
Portugal	2.0	1.3	1.1	1.1	1.0
Romania	1.4	0.8	0.7	0.8	0.8
Slovenia	1.5	1.2	1.1	1.0	0.9
Slovakia	0.9	0.9	0.9	0.9	0.9
Finland	1.5	1.4	1.5	1.5	1.4
Sweden	1.5	1.4	1.4	1.5	1.3
United Kingdom	2.6	2.5	2.4	2.3	2.2
EU-28	<b>1.5</b>	<b>1.5</b>	<b>1.4</b>	<b>1.4</b>	<b>1.3</b>

Iceland	:	:	:	0.0	0.0
Norway	1.5	1.5	1.4	1.4	1.4
Switzerland	0.9	1.0	1.0	1.0	1.0

Source: Eurostat, general government expenditure by function (COFOG) [gov\_10a\_exp]

**Table 47: Defence expenditures - annual real change <sup>223</sup>**

Country	2009	2010	2011	2012	2013	2014	2015	2016 e
(0)	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

<sup>223</sup> Based on 2010 prices.

Albania	-4.58	6.54	0.55	-1.32	-4.23	-2.83	-11.62	7.95
Belgium	-5.82	-3.70	-1.68	0.10	-3.11	-3.09	-4.57	-5.30
Bulgaria <sup>224</sup>	-21.22	-4.59	-18.90	1.54	9.58	-8.27	1.02	6.21
Croatia	-11.12	-6.38	3.53	-6.44	-4.93	-4.61	-0.95	-8.80
Czech Republic	10.17	-13.58	-14.92	-2.17	-3.11	-4.82	14.43	0.29
Denmark	-6.00	6.53	-6.81	3.12	-8.32	-4.37	-1.05	4.32
Estonia	-13.79	-2.91	6.11	18.21	2.26	4.82	7.95	6.50
France	-13.70	-0.94	-2.95	0.56	0.00	-1.08	-1.21	0.64
Germany	2.30	1.44	-1.90	2.90	-6.31	-1.26	1.22	2.08
Greece	3.36	-18.94	-17.97	-10.81	-6.41	0.72	7.06	-0.07
Hungary	-12.08	-8.01	3.09	-2.84	-6.67	-4.81	10.32	9.33
Italy	-5.68	-3.73	-3.18	-6.82	-5.10	-9.81	-5.82	10.63
Latvia	-31.82	-15.80	2.31	-9.51	8.31	3.11	14.08	42.31
Lithuania	-17.54	-16.85	-4.28	-0.89	4.71	18.99	31.72	34.13
Luxembourg	-2.57	25.03	-14.63	-3.72	3.02	7.15	16.23	5.75
Netherlands	1.36	-4.22	-4.90	-2.84	-5.98	0.19	2.63	2.27
Norway	3.65	-1.08	0.47	0.40	1.57	4.32	-1.65	5.45
Poland	9.37	7.34	2.05	2.69	-0.05	11.42	24.76	-7.80
Portugal	5.03	-1.35	-1.45	-9.56	1.51	-8.74	3.01	5.68
Romania	-14.30	-7.31	4.48	-4.13	8.36	8.60	11.42	6.47
Slovak Republic	-1.74	-12.02	-12.23	2.31	-8.63	3.24	18.66	4.85
Slovenia	-1.73	2.38	-18.77	-11.90	-10.52	-4.76	-1.85	1.46
Spain	-4.63	-8.87	-9.66	7.59	-12.81	0.53	4.54	0.62
Turkey	-0.74	2.54	-1.11	2.36	3.66	-0.04	2.33	-3.23
United Kingdom	-1.40	1.38	-1.67	-8.23	6.80	-1.61	-2.52	7.44
<b>NATO - Europe</b>	<b>-3.32</b>	<b>-1.44</b>	<b>-3.21</b>	<b>-1.89</b>	<b>-1.27</b>	<b>-1.40</b>	<b>0.79</b>	<b>2.97</b>
Canada	5.88	-14.25	9.71	-9.50	-7.51	5.14	-2.70	3.33
United States	2.07	-6.68	0.74	-5.45	-6.04	-5.22	-2.88	2.49
<b>North America</b>	<b>2.17</b>	<b>-6.89</b>	<b>0.97</b>	<b>-5.56</b>	<b>-6.08</b>	<b>-4.95</b>	<b>-2.87</b>	<b>2.52</b>
<b>NATO - Total</b>	<b>0.68</b>	<b>-5.48</b>	<b>-0.16</b>	<b>-4.60</b>	<b>-4.78</b>	<b>-3.95</b>	<b>-1.82</b>	<b>2.65</b>

Source: Defence Expenditures of NATO Countries (2009-2016), COMMUNIQUE PR/CP(2016)116, 4 July 2016, [http://www.nato.int/nato\\_static\\_fl2014/assets/pdf/pdf\\_2016\\_07/20160704\\_160704-pr2016-116.pdf](http://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2016_07/20160704_160704-pr2016-116.pdf)

**Table 48: Contract award notices with and without the value of awarded contracts published under the Directive in 2011-2015 [number of notices, %]**

	Notices with final value	Notices without final value	Total
Austria	11	0	11
	100 %	0 %	100 %

<sup>224</sup> Data do not include pensions.

	70	0	70
Belgium	100 %	0 %	100 %
	69	6	75
Bulgaria	92 %	8 %	100 %
	47	0	47
Croatia	100 %	0 %	100 %
	125	12	137
Czech Republic	91.24 %	8.76 %	100 %
	58	54	112
Denmark	51.79 %	48.21 %	100 %
	40	0	40
Estonia	100 %	0 %	100 %
	144	2	146
Finland	98.63 %	1.37 %	100 %
	628	112	740
France	84.86 %	15.14 %	100 %
	483	331	814
Germany	59.34 %	40.66 %	100 %
	45	2	47
Hungary	95.74 %	4.26 %	100 %
	405	1	406
Italy	99.75 %	0.25 %	100 %
	21	0	21
Latvia	100 %	0 %	100 %
	54	0	54
Lithuania	100 %	0 %	100 %
	63	0	63
Netherlands	100 %	0 %	100 %
	29	0	29
Norway	100 %	0 %	100 %
	381	10	391
Poland	97.44 %	2.56 %	100 %
	8	0	8
Portugal	100 %	0 %	100 %
	127	0	127
Romania	100 %	0 %	100 %
	26	0	26
Slovakia	100 %	0 %	100 %
	25	0	25
Slovenia	100 %	0 %	100 %
	5	29	34
Sweden	14.71 %	85.29 %	100 %
	253	6	259
United Kingdom	97.68 %	2.32 %	100 %
	3 117	565	3 682
Total	84.66 %	15.34 %	100 %

Source: OJ/TED, manual corrections by DG GROW

**Table 49: Contract award notices covered by defence-related CPVs and published under the civil procurement Directives in 2011-2015 – by selected countries [number of notices]**

	2011	2012	2013	2014	2015	Total
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Cyprus	0	1	1	1	1	4
Greece	0	1	0	4	6	11
Ireland	7	7	5	2	4	25
Luxembourg	0	0	0	0	1	1
Malta	0	1	0	0	0	1
Spain	56	27	40	33	39	195
<b>Total</b>	<b>63</b>	<b>37</b>	<b>46</b>	<b>40</b>	<b>51</b>	<b>237</b>

Source: OJ/TED, manual corrections by DG GROW

**Table 50: Contracts awarded directly to foreign companies under the Directive in 2011-2015, by country [number of awards and value in million EUR]**

	Number								Value									
	Intra-EU cross border	Non-EU cross border	Domestic	Missing	Total	Intra-EU cross border	Non-EU cross border	Domestic	Missing	Intra-EU cross border	Non-EU cross border	Domestic	Missing	Total	Intra-EU cross border	Non-EU cross border	Domestic	Missing
Austria	5	5	4		14	36%	36%	29%		4	17	2		24	18%	73%	9%	
Belgium	42	3	33		78	54%	4%	42%		159	1	116		276	58%	0%	42%	
Bulgaria	15	8	71		94	16%	9%	76%		11	14	129		154	7%	9%	84%	
Czech Republic	52	15	276	7	350	15%	4%	79%	2%	2	4	185	1	193	1%	2%	96%	1%
Germany	12	10	989	18	1029	1%	1%	96%	2%	9	70	1619	4	1702	1%	4%	95%	0%
Denmark	47	24	48	19	138	34%	17%	35%	14%	41	767	129	0	937	4%	82%	14%	0%
Estonia	16	3	31		50	32%	6%	62%		51	15	78		144	36%	10%	54%	
Finland	49	115	77	18	259	19%	44%	30%	7%	82	51	163	44	340	24%	15%	48%	13%
France	23	3	1225	2	1253	2%	0%	98%	0%	457	8	4480	25	4969	9%	0%	90%	1%
Croatia	3	8	258		269	1%	3%	96%		15	31	73		120	12%	26%	61%	
Hungary	3		93	3	99	3%		94%	3%	44		137	2	183	24%		75%	1%
Italy	12	4	364	49	429	3%	1%	85%	11%	47	5	967	35	1054	4%	1%	92%	3%
Lithuania	23	6	46		75	31%	8%	61%		60	19	58		137	44%	14%	42%	
Latvia	20	8	12		40	50%	20%	30%		23	13	3		39	59%	34%	7%	
Netherlands	18	28	62		108	17%	26%	57%		23	42	52		117	20%	36%	44%	
Norway	10	1	32		43	23%	2%	74%		21	2	172		195	11%	1%	88%	
Poland	69	3	2113	3	2188	3%	0%	97%	0%	10	5	1993	2	2009	0%	0%	99%	0%
Portugal	4	2	2		8	50%	25%	25%		7	21	6		34	21%	62%	16%	
Romania	7	7	129		143	5%	5%	90%		34	6	324		365	9%	2%	89%	
Sweden	2	1	36	6	45	4%	2%	80%	13%	0	0	19	0	19	0%	0%	100%	0%
Slovenia	3	1	47		51	6%	2%	92%		5	0	26		31	16%	1%	83%	
Slovakia	3		27		30	10%		90%		182		126		308	59%		41%	
United Kingdom	19	24	297	12	352	5%	7%	84%	3%	626	77	15577	733	17013	4%	0%	92%	4%
<b>Total</b>	<b>457</b>	<b>279</b>	<b>6272</b>	<b>137</b>	<b>7145</b>	<b>6%</b>	<b>4%</b>	<b>88%</b>	<b>2%</b>	<b>1913</b>	<b>1171</b>	<b>26432</b>	<b>847</b>	<b>30363</b>	<b>6%</b>	<b>4%</b>	<b>87%</b>	<b>3%</b>

Source: Source: OJ/TED, manual corrections by DG GROW; "0%" in the value columns frequently stem from the fact that notices were published without their respective contract values e.g. 0% of cross-border procurement in value terms in Sweden despite the fact that three contracts were directly awarded to foreign suppliers

**Table 51: Contracts awarded directly to foreign companies under the Directive in 2011-2015, by CPV divisions with the top 10 highest value of awards - number and value [%]**

CPV division		Number				Value			
		Intra-EU cross border	Non-EU cross border	Domestic	Missing	Intra-EU cross border	Non-EU cross border	Domestic	Missing
75	Administration, defence and social security services	12%	0%	85%	3%	0%	0%	100%	0%
50	Repair and maintenance services	5%	1%	91%	3%	2%	1%	96%	1%
35	Security, fire-fighting, police and defence equipment	11%	11%	75%	3%	21%	19%	58%	2%
79	Business services: law, marketing, consulting, recruitment, printing and security	0%	1%	98%	0%	0%	0%	100%	0%
75	Architectural, construction, engineering and inspection services	1%	2%	95%	3%	0%	1%	49%	50%
60	Transport services (excl. waste transport)	13%	7%	80%	0%	33%	0%	67%	0%
34	Transport equipment and auxiliary products to transportation	7%	3%	90%	0%	3%	4%	91%	2%
45	Construction work	1%	1%	98%	1%	0%	0%	99%	0%
70	Real estate services	0%	0%	100%	0%	0%	0%	100%	0%
80	Education and training services	10%	14%	66%	10%	3%	12%	82%	3%

Source: OJ/TED, manual corrections by DG GROW; “0%” in the value columns frequently stem from the fact that notices were published without their respective contract values e.g. Administration, defence and social security

**Table 52: Contracts awarded under the Directive in 2011-2015, by the country of contracting authority and economic operator [number of contract awards]**

Country of the contracting authority	Country of the economic operator																											Total								
	Austria	Belgium	Bulgaria	Cyprus	Czech Republic	Germany	Denmark	Spain	Estonia	Finland	France	Greece	Croatia	Hungary	Ireland	Italy	Lithuania	Luxembourg	Latvia	Malta	Netherlands	Poland	Portugal	Romania	Slovakia	Slovenia	Sweden		United Kingdom	Norway	Iceland	Lichtenstein	Switzerland	USA	Other	Missing
Austria	4	0	0	0	2	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	14
Belgium	1	33	0	0	1	9	1	6	0	0	10	0	0	0	0	2	0	0	0	0	3	0	1	0	0	0	0	1	7	0	0	0	1	2	0	78
Bulgaria	0	0	71	0	1	7	0	0	0	0	5	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0	0	8	0	0	94	
Czech Republic	0	0	3	0	276	0	0	0	0	0	1	0	0	0	0	22	0	0	0	0	0	12	0	0	0	14	0	0	0	0	0	0	0	15	7	350
Germany	5	0	0	0	0	989	0	0	0	0	2	2	0	0	0	2	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1	5	4	1029	
Denmark	0	1	0	0	0	12	48	0	0	0	9	0	0	0	0	3	0	0	0	0	4	0	0	0	0	0	0	5	13	2	0	3	15	4	19	138
Estonia	0	0	0	0	1	5	1	0	31	2	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	4	0	0	2	1	0	0	50
Finland	0	1	0	0	0	3	7	2	0	77	7	0	0	0	0	1	0	0	0	0	1	2	0	0	0	0	0	7	18	1	0	1	110	3	18	259
France	1	6	0	0	0	4	3	1	0	1225	0	0	0	0	0	2	0	0	0	0	1	1	1	0	0	0	0	1	2	0	0	1	0	2	2	1253
Croatia	0	0	0	1	0	2	0	0	0	0	0	0	0	258	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	3	2	0	269
Hungary	0	0	0	0	1	0	0	0	0	0	0	0	1	93	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	99
Italy	0	1	0	0	0	4	1	1	0	0	0	0	0	0	0	364	0	0	0	0	0	0	0	0	0	0	0	5	0	0	1	2	1	49	429	
Lithuania	3	1	0	0	1	2	2	2	2	1	0	0	0	0	0	1	46	0	1	0	1	2	0	0	0	0	0	2	2	1	0	0	4	1	0	75
Latvia	0	6	0	0	0	1	0	0	0	0	1	0	0	0	0	5	0	12	0	0	0	0	0	0	0	0	2	3	2	3	0	3	2	0	40	
Netherlands	0	3	0	0	0	2	0	0	0	0	5	0	0	0	0	0	0	1	0	0	62	0	1	0	0	0	0	0	6	0	0	1	24	3	0	108
Norway	0	0	0	0	0	1	1	1	0	0	1	0	0	0	0	0	0	0	0	0	1	0	0	1	0	0	0	3	32	0	0	0	1	0	43	
Poland	0	0	0	0	55	3	0	1	0	0	0	0	0	0	0	1	81	0	0	1	2113	0	0	0	0	0	0	0	1	0	0	1	1	3	2188	
Portugal	0	4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	2	0	0	8	
Romania	0	1	0	0	0	3	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	129	0	0	2	0	0	1	6	0	0	143	
Sweden	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	36	1	0	0	1	0	0	6	45	
Slovenia	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	47	0	1	0	0	0	1	0	51	
Slovakia	1	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	27	0	0	0	0	0	0	0	0	0	30	
United Kingdom	0	2	0	0	0	6	1	3	0	0	3	0	0	0	1	0	0	0	0	2	0	0	0	0	0	0	1	297	0	0	3	9	12	352		
<b>Total</b>	<b>16</b>	<b>59</b>	<b>74</b>	<b>1</b>	<b>338</b>	<b>1057</b>	<b>65</b>	<b>17</b>	<b>33</b>	<b>81</b>	<b>1271</b>	<b>2</b>	<b>259</b>	<b>93</b>	<b>1</b>	<b>379</b>	<b>81</b>	<b>1</b>	<b>13</b>	<b>0</b>	<b>80</b>	<b>2130</b>	<b>6</b>	<b>129</b>	<b>41</b>	<b>49</b>	<b>58</b>	<b>363</b>	<b>41</b>	<b>0</b>	<b>29</b>	<b>186</b>	<b>55</b>	<b>137</b>	<b>7145</b>	

Source: Source: OJ/TED, manual corrections by DG GROW

**Table 53: Contracts awarded under the Directive in 2011-2015, by the country of contracting authority and economic operator [value<sup>225</sup> in million EUR]**

Country of the contracting authority	Country of the economic operator																											Total									
	Austria	Belgium	Bulgaria	Cyprus	Czech Republic	Germany	Denmark	Spain	Estonia	Finland	France	Greece	Croatia	Hungary	Ireland	Italy	Lithuania	Luxembourg	Latvia	Malta	Netherlands	Poland	Portugal	Romania	Slovakia	Slovenia	Sweden		United Kingdom	Norway	Iceland	Lichtenstein	Switzerland	USA	Other	Missing	
Austria	2	0	0	0	3	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	24	
Belgium	0	116	0	0	4	46	1	6	0	0	74	0	0	0	6	0	0	0	0	0	1	0	4	0	0	0	0	14	3	0	0	0	0	0	1	0	276
Bulgaria	0	0	129	0	4	2	0	0	0	0	4	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	14	0	0	0	154	
Czech Republic	0	0	0	0	0	185	0	0	0	0	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	4	1	193	
Germany	1	0	0	0	0	1619	0	0	0	0	2	1	0	0	0	4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	25	45	4	1702		
Denmark	0	1	0	0	0	9	129	0	0	0	2	0	0	0	0	4	0	0	0	0	0	4	0	0	0	0	22	0	0	0	716	47	4	0	937		
Estonia	0	0	0	0	0	5	1	0	78	10	24	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	4	8	0	0	5	10	0	0	144		
Finland	0	1	0	0	0	3	0	9	0	163	20	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	43	5	1	0	0	1	40	10	44	340	
France	0	17	0	0	0	12	0	0	0	0	4480	0	0	0	0	1	0	0	0	0	1	1	71	0	0	0	0	229	123	0	0	1	0	7	25	4969	
Croatia	0	0	0	6	0	9	0	0	0	0	0	0	73	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	4	5	22	0	120		
Hungary	0	0	0	0	35	0	0	0	0	0	0	0	0	137	0	9	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	183
Italy	0	17	0	0	0	6	12	1	0	0	0	0	0	0	0	967	0	0	0	0	0	0	0	0	0	0	0	0	11	0	0	3	1	1	35	1054	
Lithuania	6	4	0	0	2	4	10	10	2	0	0	0	0	0	0	9	58	0	2	0	0	0	1	0	0	0	6	3	0	0	0	0	12	6	0	137	
Latvia	0	2	0	0	0	1	0	0	0	0	1	0	0	0	0	0	7	0	3	0	0	0	0	0	0	0	11	11	0	0	0	0	10	2	0	39	
Netherlands	0	1	0	0	0	2	0	0	0	0	4	0	0	0	0	0	0	3	0	0	52	0	0	0	0	0	0	0	13	0	0	0	0	39	3	0	117
Norway	0	0	0	0	0	1	2	2	0	0	1	0	0	0	0	0	0	0	0	0	1	0	2	0	0	0	0	0	12	172	0	0	0	2	0	195	
Poland	0	0	0	0	2	3	0	0	0	0	0	0	0	0	0	0	1	0	0	4	1993	0	0	0	0	0	0	0	0	0	0	0	2	2	2	2009	
Portugal	0	7	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	6	0	0	0	0	0	0	0	0	0	21	0	0	34	
Romania	0	16	0	0	0	5	0	0	0	0	0	0	0	0	0	11	0	0	0	0	0	324	0	0	0	0	0	0	2	0	0	2	5	0	0	365	
Sweden	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	19	0	0	0	0	0	0	0	19		
Slovenia	3	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	26	0	0	0	0	0	0	0	0	31		
Slovakia	89	0	0	0	0	4	0	0	0	0	0	0	0	0	0	0	0	0	0	89	0	0	0	0	126	0	0	0	0	0	0	0	0	0	0	308	
United Kingdom	0	5	0	0	0	24	0	345	0	0	205	0	0	0	0	0	0	0	0	7	0	0	0	0	0	0	40	15577	0	0	14	23	40	733	17013		
	102	187	129	6	234	1756	155	373	80	175	4819	1	73	137	0	1011	66	3	5	0	159	1995	84	324	126	27	388	15758	175	0	776	240	151	847	30363		

Source: Source: OJ/TED, manual corrections by DG GROW

<sup>225</sup> The reliability of this Table is linked to the quality of information provided in OJ/TED e.g. Sweden reported the award of 36 contracts domestically, but in most cases refrained from providing their values. As a result only 19 million EUR is reported as Swedish domestic procurement while France reported procurement worth 229 million EUR awarded to Sweden-based companies, which was actually based on one contract only won by SAAB Dynamics AB (<http://ted.europa.eu/udl?uri=TED:NOTICE:429874-2014:TEXT:EN:HTML&src=0&tabId=1>).

**Table 54: Turnover in Europe's aerospace, defence and shipbuilding industries 2010-2014 – broken down by NACE sectors [million EUR]**

	C25.4					C30.11					C30.3					C30.4				
	2010	2011	2012	2013	2014	2010	2011	2012	2013	2014	2010	2011	2012	2013	2014	2010	2011	2012	2013	2014
Austria	257	200.6	309.2	349	300	0	0	0	0	0	201.7	180.4	182.9	174.5	212.9	0	0	0	0	0
Belgium	333.4	0	0	0	0	20.8	0	20.8	26.2	33.2	0	0	1355	1363.6	1479.3	0	0	0	0	0
Bulgaria	226.9	204.4	190.1	148.4	246.7	35.8	41.8	35.8	18.1	23.9	0	0	0	0	0	0	0	0	0	0
Croatia	0	0	0	0	0	382	528.4	382	236.2	301.6	0	11.6	0	31.4	33.7	0	0	0	0	0
Cyprus	11.9	13	11.4	8.6	8.6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Czech Republic	182.3	215.6	217.7	248.6	280.9	0	0	0	0	0	449.1	479.3	533.1	648.2	681.3	0	0	0	0	0
Denmark	0	0	0	0	0	394.9	474.6	394.9	239.6	296.3	23.6	31.5	25.3	60.8	65.7	0	0	0	0	0
Estonia	0	0	0	0	0	42.1	0	42.1	0	38.1	0	0	0	0	0	0	0	0	0	0
Finland	83.6	0	0	0	0	748.1	505.9	748.1	868.2	835.6	146.9	0	0	0	165.6	0	0	0	0	0
France	0	0	0	2382.7	0	4248.7	3839.8	4224.9	4248.7	4158.1	27940.6	29584.6	34191.5	37255.4	40942.3	1058.2	0	0	699.4	869.2
Germany	2254	2244.4	2606.7	2693.3	2471.2	3466.6	3598.2	3466.6	3074.6	5529.4	18836.6	19577.9	22265.6	24143	25055.1	0	0	0	0	0
Greece	0	76.6	49.2	80.8	39.4	71.7	87.3	71.7	84.8	0	0	168	0	0	84.8	0	0	0	0	0
Hungary	15.1	14.8	22.2	19.6	21.6	4.5	4.6	4.5	5.4	5.7	10	10.2	0	0	0	0	0	0	0	0
Iceland	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ireland	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Italy	1712	1737.8	2068.2	1864.3	1940.8	3095.3	3818.5	3095.3	2596.8	3544.7	7821.7	7498.6	8270	7191.7	9529.7	0	0	0	0	0
Latvia	0	0	0	0	0	0	0	0	0	27.8	0	0	0	0	0	0	0	0	0	0
Liechtenstein	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Lithuania	0	0	0	0	0	59.3	6.3	59.3	58.9	52.7	13.7	1.7	2.2	4.4	1.8	0	0	0	0	0
Luxembourg	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Malta	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Netherlands	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Norway	1303.5	1196.4	1135	1023	845.5	10007.5	8393.3	10007.5	10999.5	10406.9	0	0	0	0	0	0	0	0	0	0
Poland	193.2	186.6	184.1	220.4	199.3	892	956.6	892	733.7	689	650.1	857.7	1152.3	1463.5	1532.4	266.7	237.1	277.4	173.9	0
Portugal	45.1	40.5	41.5	48.1	55.4	76.2	57.7	76.2	30.7	34.4	0	12.7	11.9	28.8	53.2	0	0	0	0	0
Romania	0	0	0	0	0	627.8	824.8	627.8	844.9	711.8	117.4	126.8	162.8	185.3	204.4	0	0	0	0	0
Slovakia	0	0	0	0	0	1.8	24.5	1.8	4.6	3.8	0	14.5	0	11.6	0	0	0	0	0	0
Slovenia	0	6	4.2	1.8	0	1.6	0	1.6	1.4	1.4	10.3	11.1	14.2	15.9	17.2	0	0	0	0	0
Spain	278.5	310	0	396.5	497.3	2283.8	2773.2	2283.8	1855.3	1493.1	4548.6	4856.8	5117.9	6490.6	7315.2	0	0	0	0	0
Sweden	710.4	706.5	849.5	663.5	465.5	327.1	285.8	327.1	294.2	0	0	0	0	0	0	0	0	0	0	0
United Kingdom	2685.4	3042	3807.2	3500.3	3311.8	4521.6	3916.8	4521.6	4201.9	4921.1	24588.9	24227.2	27527.5	28675.4	30120.9	0	506.6	500.3	488.1	429.5
<b>Total</b>	<b>10292.3</b>	<b>10195.2</b>	<b>11496.2</b>	<b>13648.9</b>	<b>10684</b>	<b>31285.4</b>	<b>30138.1</b>	<b>31285.4</b>	<b>30323.7</b>	<b>33108.6</b>	<b>85359.2</b>	<b>87650.6</b>	<b>100812.2</b>	<b>107744.1</b>	<b>117495.5</b>	<b>1324.9</b>	<b>780.2</b>	<b>777.7</b>	<b>1388.1</b>	<b>1298.7</b>

Source: Eurostat, Structural Business Statistics (SBS), annual detailed enterprise statistics for industry (NACE Rev. 2, B-E) (sbs\_na\_ind\_r2);

Note: C25.4 - Manufacture of weapons and ammunition, C30.11 - Building of ships and floating structures, C30.3 - Manufacture of air and spacecraft and related machinery, C30.4 - Manufacture of military fighting vehicles



**Table 55: Number of employees in Europe's aerospace, defence and shipbuilding industries 2010-2014 – broken down by NACE sectors**

	C25.4					C30.11					C30.3					C30.4				
	2010	2011	2012	2013	2014	2010	2011	2012	2013	2014	2010	2011	2012	2013	2014	2010	2011	2012	2013	2014
Austria	958	899	1029	1229	1262	0	0	0	0	0	676	711	927	945	1003	0	0	0	0	0
Belgium	1660	0	0	0	0	104	0	110	105	110	0	0	4943	5338	5522	0	0	0	0	0
Bulgaria	13450	13900	12634	10798	11825	1889	1278	796	627	554	0	0	15	19	0	0	0	0	0	0
Croatia	0	0	0	0	0	11162	10558	9799	10352	5701	0	428	0	668	716	0	0	0	0	0
Cyprus	26	30	27	21	22	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Czech Republic	3264	3278	3303	3615	3918	0	0	0	0	0	5977	6461	6977	7372	8198	0	0	0	0	0
Denmark	0	0	0	0	0	2293	1831	1050	999	1057	177	211	178	457	520	0	0	0	0	0
Estonia	0	0	0	0	0	0	0	362	0	306	0	0	0	0	0	0	0	0	0	0
Finland	418	0	0	0	0	5102	4161	4190	4166	4108	1282	0	0	0	1384	0	0	0	0	0
France	6503	0	6408	0	0	12547	13398	14098	14174	14547	83050	87700	93639	99160	110896	2229	0	2236	2308	2246
Germany	11134	11310	11766	11975	12384	14345	13419	10713	12559	12939	67595	69429	71433	74806	74958	0	0	0	0	0
Greece	0	1196	1102	898	825	3304	2085	2076	1373	0	1871	0	0	0	1443	0	0	0	0	0
Hungary	339	345	331	310	326	80	128	122	121	128	167	142	0	0	0	0	0	0	0	0
Iceland	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ireland	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Italy	6824	6603	6805	6941	6768	16414	15253	14153	13739	14304	32326	31786	31703	30317	32555	0	0	0	0	0
Latvia	24	18	17	15	14	723	724	789	792	727	13	16	31	41	57	0	0	0	0	0
Liechtenstein	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Lithuania	0	0	0	0	0	334	236	825	678	713	261	83	101	107	97	0	0	0	0	0
Luxembourg	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Malta	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Netherlands	0	0	0	0	0	6325	6806	6164	6542	6621	3898	3918	3612	3798	3810	0	0	129	201	209
Norway	2676	2864	2953	2876	2874	21677	21160	23753	26121	27564	522	552	546	495	498	1	1	1	0	0
Poland	4651	4513	4368	5446	4879	8640	8276	7207	5450	4966	13988	14337	14546	15373	15840	1703	1483	1459	1322	0
Portugal	468	424	423	414	477	1619	1480	1390	676	799	0	309	359	499	557	0	0	0	0	0
Romania	0	0	0	0	0	17196	16195	16357	17152	18022	3528	3452	3708	3976	4171	0	0	0	0	0
Slovakia	0	0	0	0	0	0	456	54	48	29	0	162	0	233	0	0	641	0	553	0
Slovenia	0	9	7	0	0	29	0	26	0	26	112	120	137	152	0	0	0	0	0	0
Spain	1284	1666	0	1615	1856	11279	11119	10093	9386	8795	17728	18489	18480	19177	20702	0	0	0	0	0
Sweden	2318	2353	2522	2293	0	1359	1337	1389	1371	0	0	0	0	0	0	0	0	0	0	0
United Kingdom	0	0	14453	0	0	22664	21466	0	0	0	0	0	0	87004	92242	2436	3852	3393	3429	3400
<b>Total</b>	<b>55997</b>	<b>49408</b>	<b>68148</b>	<b>48446</b>	<b>47430</b>	<b>158981</b>	<b>151366</b>	<b>125510</b>	<b>126431</b>	<b>122016</b>	<b>231300</b>	<b>240177</b>	<b>251335</b>	<b>349937</b>	<b>375169</b>	<b>6369</b>	<b>5977</b>	<b>7218</b>	<b>7813</b>	<b>5855</b>

Source: Eurostat, Structural Business Statistics (SBS), annual detailed enterprise statistics for industry (NACE Rev. 2, B-E) (sbs\_na\_ind\_r2);  
 Note: C25.4 - Manufacture of weapons and ammunition), C30.11 - Building of ships and floating structures, C30.3 - Manufacture of air and spacecraft and related machinery, C30.4 - Manufacture of military fighting vehicles

**Table 56: Number of enterprises in Europe's aerospace, defence and shipbuilding industries 2010-2014 – broken down by NACE sectors**

	C25.4					C30.11					C30.3					C30.4				
	2010	2011	2012	2013	2014	2010	2011	2012	2013	2014	2010	2011	2012	2013	2014	2010	2011	2012	2013	2014
Austria	48	47	47	49	49	0	0	0	0	0	19	18	21	20	19	1	1	1	1	1
Belgium	29	0	0	0	0	0	0	10	11	18	0	0	36	40	36	0	0	0	0	0
Bulgaria	23	21	20	19	20	25	15	17	18	15	3	5	5	6	5	0	0	0	0	0
Croatia	8	8	7	7	6	194	198	190	173	173	13	11	10	11	12	0	0	1	1	1
Cyprus	4	4	4	3	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Czech Republic	112	108	99	97	90	0	0	0	0	0	55	59	66	60	63	0	0	0	0	2
Denmark	13	15	14	18	16	18	17	19	22	25	21	15	15	17	17	2	3	3	3	3
Estonia	2	2	2	2	2	36	28	33	31	33	0	0	0	0	0	0	0	0	0	0
Finland	25	26	27	27	24	126	105	96	96	97	6	9	5	7	7	1	2	3	2	2
France	136	164	131	173	45	153	134	161	132	163	193	194	189	225	203	4	4	4	5	5
Germany	154	168	180	211	235	99	111	99	100	121	138	157	171	206	160	0	0	0	0	0
Greece	0	45	26	22	24	333	302	158	115	0	0	11	0	0	16	0	0	0	0	0
Hungary	13	16	15	7	13	32	28	29	31	29	31	34	0	0	0	0	0	0	0	0
Iceland	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ireland	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Italy	261	260	244	248	224	889	878	828	760	706	170	167	164	173	184	0	0	0	0	0
Latvia	2	2	2	1	1	11	9	15	15	14	2	4	6	5	6	0	0	0	0	0
Liechtenstein	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Lithuania	2	2	2	2	2	17	17	19	19	22	3	3	4	4	3	0	0	0	0	0
Luxembourg	1	1	0	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Malta	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Netherlands	13	14	12	12	13	186	206	216	262	273	69	74	76	75	72	0	0	1	2	2
Norway	29	32	32	32	35	283	282	287	267	276	5	5	5	5	6	1	1	1	0	0
Poland	38	42	40	40	36	538	564	525	415	593	51	60	60	69	82	4	4	5	4	3
Portugal	8	8	7	7	6	113	92	83	74	77	14	17	16	19	18	1	1	1	1	0
Romania	0	0	0	0	0	272	260	258	289	325	21	18	17	19	18	0	0	0	0	0
Slovakia	0	0	0	0	0	0	20	10	11	10	0	5	0	5	0	0	7	0	6	0
Slovenia	20	16	17	16	17	14	12	12	14	12	17	18	21	19	20	0	0	0	0	0
Spain	56	59	0	51	52	445	426	366	337	248	85	81	76	76	82	0	0	0	0	0
Sweden	85	78	74	75	69	121	126	136	137	0	35	40	39	41	0	2	2	2	2	0
United Kingdom	126	123	122	121	124	438	418	392	394	418	492	494	562	634	709	0	10	8	9	10
<b>Total</b>	<b>1208</b>	<b>1261</b>	<b>1124</b>	<b>1241</b>	<b>1107</b>	<b>4343</b>	<b>4249</b>	<b>3960</b>	<b>3723</b>	<b>3648</b>	<b>1443</b>	<b>1499</b>	<b>1564</b>	<b>1736</b>	<b>1738</b>	<b>16</b>	<b>35</b>	<b>30</b>	<b>36</b>	<b>29</b>

Source: Eurostat, Structural Business Statistics (SBS), annual detailed enterprise statistics for industry (NACE Rev. 2, B-E) (sbs\_na\_ind\_r2);  
 Note: C25.4 - Manufacture of weapons and ammunition), C30.11 - Building of ships and floating structures, C30.3 - Manufacture of air and spacecraft and related machinery, C30.4 - Manufacture of military fighting vehicles

**Table 57: Turnover in Europe's aerospace, defence and shipbuilding industries 2010-2014 [value in million EUR]**

	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Austria	458.7	381.0	492.1	523.5	512.9
Belgium	333.4	0	1 375.8	1 389.8	1 512.5
Bulgaria	301.9	246.2	225.9	166.5	270.6
Croatia	797.3	540.0	382.0	267.6	335.3
Cyprus	11.9	13.0	11.4	8.6	8.6
Czech Republic	631.4	694.9	750.8	896.8	962.2
Denmark	640.7	506.1	420.2	300.4	362.0
Estonia	0	0	42.1	0	38.1
Finland	1 071.1	505.9	748.1	868.2	1 001.2
France	32 459.6	33 424.4	38 416.4	44 586.2	45 969.6
Germany	25 996.6	25 420.5	28 338.9	29 910.9	33 055.7
Greece	173.9	331.9	120.9	165.6	124.2
Hungary	28.8	29.6	26.7	25	27.3
Iceland	0	0	0	0	0
Ireland	0	0	0	0	0
Italy	14 559.2	13 054.9	13 433.5	11 652.8	15 015.2
Latvia	0	0	0	0	27.8
Liechtenstein	0	0	0	0	0
Lithuania	67.7	8	61.5	63.3	54.5
Luxembourg	0	0	0	0	0
Malta	0	0	0	0	0
Netherlands	0	0	0	0	0
Norway	8 710.4	9 589.7	11 142.5	11 922.5	11 252.4
Poland	1 885.4	2 238.0	2 505.8	2 591.5	2 420.7
Portugal	117.1	110.9	129.6	107.6	143.0
Romania	1 022.8	951.6	790.6	1 030.2	916.2
Slovakia	0	75.5	1.8	42.9	3.8
Slovenia	11.8	17.1	20	19.1	18.6
Spain	8 484.4	7 940.0	7 401.7	8 742.4	9 305.6
Sweden	926.1	992.3	1 176.6	957.7	465.5
United Kingdom	30 866.3	31 692.6	36 356.6	36 865.7	38 783.3
<b>Total</b>	<b>129 556.5</b>	<b>128 764.1</b>	<b>144 371.5</b>	<b>153 104.8</b>	<b>162 586.8</b>

Source: Eurostat, Structural Business Statistics (SBS), annual detailed enterprise statistics for industry (NACE Rev. 2, B-E) (sbs\_na\_ind\_r2)

**Table 58: Employment in Europe's aerospace, defence and shipbuilding industries 2010-2014 [number of employees]**

	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Austria	1 634	1 610	1 956	2 174	2 265
Belgium	1 660	0	5 047	5 443	5 632
Bulgaria	15 339	15 178	13 445	11 444	12 379
Croatia	11 162	10 986	9 799	11 020	6 417
Cyprus	26	30	27	21	22
Czech Republic	9 241	9 739	10 280	10 987	12 116
Denmark	2 470	2 042	1 228	1 456	1 577
Estonia	0	0	362	0	306
Finland	6 802	4 161	4 190	4 166	5 492
France	104 329	101 098	116 381	115 642	127 689
Germany	93 074	94 158	93 912	99 340	100 281
Greece	3 304	5 152	3 178	2 271	2 268
Hungary	586	615	453	431	454
Iceland	0	0	0	0	0
Ireland	0	0	0	0	0
Italy	55 564	53 642	52 661	50 997	53 627
Latvia	760	758	837	848	798
Liechtenstein	0	0	0	0	0
Lithuania	595	319	926	785	810
Luxembourg	0	0	0	0	0
Malta	0	0	0	0	0
Netherlands	10 223	10 724	9 905	10 541	10 640
Norway	24 876	24 577	27 253	29 492	30 936
Poland	28 982	28 609	27 580	27 591	25 685
Portugal	2 087	2 213	2 172	1 589	1 833
Romania	20 724	19 647	20 065	21 128	22 193
Slovakia	0	1 259	54	834	29
Slovenia	141	129	170	152	26
Spain	30 291	31 274	28 573	30 178	31 353
Sweden	3 677	3 690	3 911	3 664	0
United Kingdom	25 100	25 318	17 846	90 433	95 642
<b>Total</b>	<b>452 647</b>	<b>446 928</b>	<b>452 211</b>	<b>532 627</b>	<b>550 470</b>

Source: Eurostat, Structural Business Statistics (SBS), annual detailed enterprise statistics for industry (NACE Rev. 2, B-E) (sbs\_na\_ind\_r2)

**Table 59: Thresholds as defined in Article 8 the Directive over the period of its applicability [value in thousand EUR]**

<b>Period</b>	<b>services and supplies</b>	<b>works</b>
21 August – 31 December 2011	387	4 845
2012-2013	400	5 000
2014-2015	414	5 186
2016-2017	418	5 225



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