

THE DEFENCE & SECURITY PROCUREMENT DIRECTIVE IN 2016

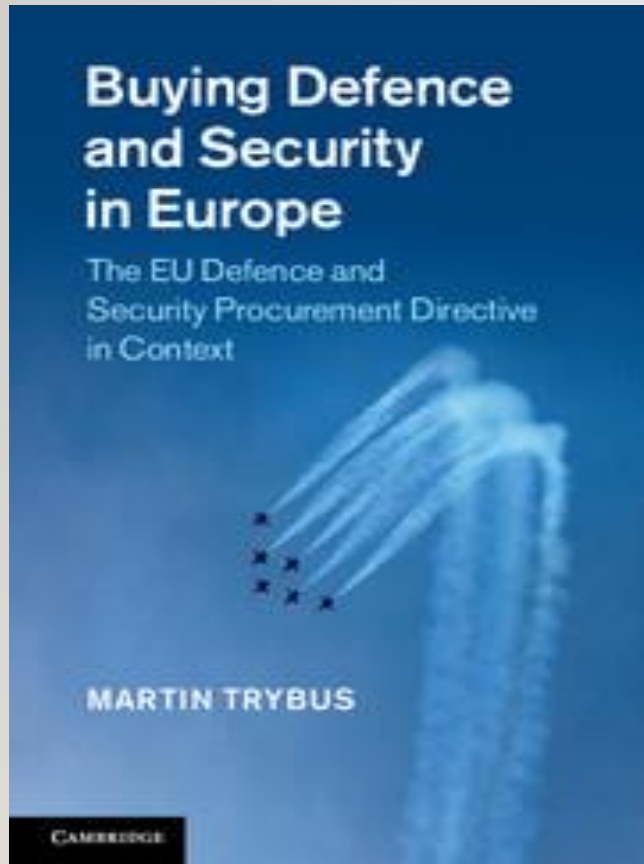
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THE OBJECTIVE OF DIRECTIVE 2009/81/EC



- **Adapting** Public Sector Directive 2004 to the *national security needs* of the defence & security sectors to reduce use of Art. 346(1)(b)TFEU:
- **Limitation:** national security exclusions
- **Flexibility:** use of negotiated procedures
- **Description:** security of *supply* and *information*
- **Substitution:** offsets with *subcontracting*

WHAT WORKS **WELL?**



- Limitation: many of the **national security specific exclusions** are used and thus the use of Article 346 (1) (b) TFEU is reduced.
- Flexibility: Free use of **negotiated procedure** with publication of notice.
- Description: the provisions on **security of information** throughout the Directive.
- The (slightly adapted) **review and remedies** regime.
- Transposition in all Member States complete and in some Member States the regime is frequently **used**.

POSSIBLE IMPROVEMENTS?

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- Personal scope: **clarify** 'international organization', 'European public body' Article 2 & Annex of covered authorities?
- Material scope: **clarify** 'international organizations exclusion', government to government exclusion regarding newly purchased equipment?
- Procedures: add **open** procedure? Why is *competitive dialogue* needed when there is the free use of the negotiated procedure with prior publication of a contract notice (delete)?
- Security of supply: **insufficient** and thus leading to use of Article 346 TFEU, connection to Directive 2009/43/EC: extension of global licences + certification
- Offsets and subcontracting: *subcontracting* rules **difficult** to apply

THANK YOU!

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