THE GEORGE WASHINGTON UNIVERSITY

GOVERNMENT PROCUREMENT LAW PROGRAM

WEBINAR INNOVATION THROUGH PROCUREMENT: THE NATO-DIANA CASE STUDY

> WEDNESDAY, MAY 28, 2025 9:00 ET, 14:00 UK, 15:00 CET

Welcome

Christopher Yukins Lynn David Research Professor in Government Procurement Law GW Law School – Government Procurement Law Program

- Recording available (later today):
 - publicprocurementinternational.com (with program materials)
 - *GW Law Government Procurement Law Program* YouTube page
- Audience Questions & Answers
- Speakers' statements are in their personal capacities





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A webinar series showcasing open contracting case studies of turning public procurement into a digital, data-driven government service driving accountability, competition, innovation, and sustainability.

SERIES OVERVIEW SESSION Tuesday, July 15, 2025 9 am Eastern / 15:00 CET

ASIA AND OCEANIA Tuesday, July 22, 2025 9:00 Doha (UTC+3) / 12:00 Dhaka (UTC+6) / 13:00 Bangkok (UTC+7) / 15:00 Tokyo (UTC+9)

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AMERICAS

Thursday, July 24, 2025 9:00 Anchorage/ 10:00 Los Angeles/ 13:00 Santiago & New York/ 14:00 Brasilia

EUROPE/AFRICA

Tuesday, July 29, 2025 9:00 Reykjavik/ 10:00 London/ 11:00 Paris and Cape Town/ 12 noon Nairobi/ 13:00 Dubai





Panelists



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Panelists

- Tom McSorley, General Counsel, NATO DIANA DIANA's Procurement Strategy
- Maj. Gen. Jorge Côrte-Real Andrade (Portugal), PhD, NATO DIANA Military Deputy Director for Europe – DIANA's goals and a user's perspectives
- Lucian Cernat, Head of Global Regulatory Cooperation and International Procurement Negotiations at the European Commission – Procurement-for-Innovation in the EU
- Sonia Tabriz, Arnold & Porter U.S. solutions for innovation, including "Other Transactions" and "Commercial Solutions Opening"
- Moderators Profs. Christopher Yukins (GW Law), Gabriella Racca (U. Turin) & Daniel Schoeni (GW Law – U. Dayton/Aug. 2025)



Agenda

Overview: Key Elements of Procurement-for-Innovation

NATO DIANA Case Study

European Union's Approach

U.S. Approach



Procurementfor-Innovation: NATO

Defence Innovation Accelerator *for the* North Atlantic

Uniting disruptors to shape a peaceful future.

DIANA



Key Elements: NATO – DIANA: Procurement for Innovation Maj.-Gen. Paul Peyton (ret.)

Looking ahead, our **success** will be measured in 5 areas:

- **Operational Impact -** Successfully integrating innovative technologies into NATO exercises, operations, and capability development.
- **Rapid Prototyping -** Becoming faster and more efficient at accelerating and adopting new solutions.
- **A Cultural Shift that** moves toward new ways of doing business that reflect best industry practices So we move at commercial speed.
- **Normalized Collaboration** that shifts to a constant dialogue between defence and industry, not just a push and pull transactional relationship.
- **And, the availability of a Trusted Capital Community**, that aligns with NATO's mission, is committed to human rights and the rule of law, and is ready to invest in deep-tech companies.



Bridging the gap between Defence and Innovation ecosystems

Major-General (PhD) Jorge CORTE-REAL

Military Deputy Director -

DIANA Defence Innovation Accelerator for the North Atlantic Europe

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Development of Defence Capabilities: Specificities & Constrains

















DIANA's ADOPTION PATHWAYS – Agile Adaptation & Rapid Procurement



DIANA may facilitate and establish, upon request by participating NATO nations and/or NATO body, multinational, multilateral and bilateral programmes to enable further development of innovator's solutions.

>> NATO DIANA is Bridging the gap between Defence and Innovation ecosystems

Finding and accelerating deep tech, dual-use innovation solutions to critical defence, security and resilience challenges,

involving NATO Allies, NATO stakeholders, Academia, Industry, Innovators – from Public and Private sectors – and Investors,

in an agile interaction between "tech-push" and "need-pull" throughout the Innovation process,

creating the conditions to foster, shape and integrate Innovation at the speed of **<u>Need</u>** and **<u>Superiority</u>**.

Bridging the gap between Defence and Innovation ecosystems

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Procurement-for-Innovation: European Union

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Procurement-for-Innovation in the EU

 Lucian Cernat, Head of Global Regulatory Cooperation and International Procurement Negotiations, DG TRADE, European Commission





- 1) Innovation and Procurement in the Draghi/Letta report
- 2) Impact on Trade Flows
- 3) Procurement-for-Innovation in EU legislation
- 4) Future Developments: Room for Improvement?



The Future of European Competitiveness: Innovation and Procurement in the Draghi/Letta Report

Starting point: Europe needs to accelerate innovation

- To reignite growth Europe needs to close the innovation gap with the US and China
- What is standing in the way?
 - **Lack of joint action**: insufficient combination of resources on an EU level to make use of economy of scales
 - Regulatory burden impedes the translation of innovation into commercialisation
- Obstacles especially eminent in Defence sector
 - Fragmentation hinders ability to produce at scale
 - In 2022, only 18% of expenditure on defence equipment procurement in collaborative manner (benchmark agreed by European Defence Agency 35%)
 - Lack of standardisation and interoperability of equipment, e.g. 12 different types of battle tanks are operated in Europe, whereas the US produces only one
 - As a result, defence procurement is diverted outside of the EU
 - Between June 2022 and June 2023, 78% of procurement spending went to non-EU suppliers, out of which 63% went to the US.



Impact on Trade Flows

- European Procurement market highly fragmented: limited cross-border flows
 - Procurement mostly happens on the national or even local/regional level (Cavallo and Racca 2019)
- Need for open markets and competition to upscale procurement-for-innovation

Average direct cross border procurement in EU member states (2011 to 2021)



Procurement-for-Innovation in the European Union

Procurement-for-innovation in EU legislation:

Member State began considering procurement as a means to develop the economy from the European Council in Lisbon (European Council 2000).

Procurement Directives (2004/17/EE and 2004/18/EE)

Under Horizon Europe the Commission supports **innovative public procurement through PPI and PCP** (European Commission, n.d.)

- Public Procurement of Innovative solutions (PPI) support the purchase of innovative solutions that are already on the market but in small quantities.
- Pre-Commercial Procurement (PCP) funds the procurement of R&D services to develop innovative solutions if not yet on the market.

EU procurement in the Defence sector:

Defence Procurement Directive 2009/81 applies to all contracts for the procurement of military equipment, works and services and to sensitive purchases with a security purpose. According to <u>Art. 346 TFEU</u> MS can exempt contracts if necessary for security considerations.

Increasing initiatives aimed at combining Defence procurement, especially since 2016

- <u>2016: European Defence Action Plan</u>: cross-border market access for SMEs in the defence sector.
- <u>2021: European Defence Fund</u>: joint R&D of defence equipment and technologies (EUR 7.3 bn over 2021-2027)
- 2022: European Defence Industry Reinforcement through common Procurement Act : EUR 310 million for joint defence procurement
- <u>2025: ReArm Europe/Readiness 2030</u> package (EUR 800 bn) including the SAFE instrument



How could Procurement-for-Innovation be enhanced in the EU?

Better combine public spending, especially defence sector

- European collaborative procurement accounted for less than a fifth of spending on defence equipment procurement in 2022.
- Increase joint cross border procurement, e.g. via one central purchasing body (CPB), or through European Groupings of Territorial Cooperation (EGTCs).
 - EGTCs are joint entities which contracting authorities from different Member States can establish to pursue cross-border procurement.

Utilise existing pan-European initiatives

- The European Defence Agency sets a joint defence procurement target of 35%. However, so far Member States do not achieve this target (in 2022 only 18%).
- Under the ReArm Europe/Readiness 2030 package the **Security Action for Europe (SAFE) instrument** offers up to EUR 150bn of loans backed by EU budget for defence procurement carried out by at least two Member States (or EFTA, EEA, Ukraine).

Discussion: Future Developments and the Reform of the EU Procurement Directives: Room for enhancing Joint (Defence) Procurement?





Thank you for your attention!

 Lucian Cernat, Head of Global Regulatory Cooperation and International Procurement Negotiations, DG TRADE, European Commission





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Procurementfor-Innovation: United States

Sonia Tabriz



Fostering Reform and Government Efficiency in Defense or "FoRGED" Act

Senator Wicker, in his briefing to President Trump:

I have published a plan to change the way the Pentagon does business. Called "Restoring Freedom's Forge," the project takes inspiration from the heroic work of America's private sector during World War II. In that conflict, industry mobilized with incredible speed to build the ships, planes, and weapons that helped the Allied forces prevail.

The story is different today. **The Department of Defense (DOD) has been too slow to adopt private sector innovation. Instead, burdensome rules keep startups from competing for military contracts**. In 1948, the DOD rulebook that governed those contracts was just eight pages long. Today, **the regulations fill 3,500 pages**. The budgeting process has hardly changed since the Kennedy administration. My plan would change that. It would inject more competition into the defense industry. Layers of busy work and reams of unnecessary reporting requirements would be **eliminated, and DOD would be compelled to steward taxpayer funds better**. Most importantly, restoring freedom's forge would bring **cuttingedge military hardware to the battlefield faster**.



BY SENATOR ROGER WICKER







SECRETARY OF DEFENSE 1000 DEFENSE PENTAGON WASHINGTON, DC 20301-1000

MAR - 6 2025

MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP COMMANDERS OF COMBATANT COMMANDS DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Directing Modern Software Acquisition to Maximize Lethality

The Department of Defense (DoD) has been slow to recognize that software-defined warfare is not a future construct, but the reality we find ourselves operating in today. Software is at the core of every weapon and supporting system we field to remain the strongest, most lethal fighting force in the world. While commercial industry has rapidly adjusted to a software-defined product reality, DoD has struggled to reframe our acquisition process from a hardware-centric to a software-centric approach. When it comes to software acquisition, we are overdue in pivoting to a performance-based outcome and, as such, it is the Warfighter who pays the price.

It is a top priority for DoD to reform its acquisition processes in order to acquire, deliver, and iterate on our weapon and business systems — including software — at speed and scale for our Warfighter. To start, DoD must maximize the use of its existing authorities, contracting strategies, and processes for software acquisition. This will enable us to immediately shift to a construct designed to keep pace with commercial technology advancements, leverage the entire commercial ecosystem for defense systems, rapidly deliver scaled digital capabilities, and evolve our systems faster than adversaries can adapt on the battlefield.

To meet this challenge, I am directing all DoD Components to adopt the Software Acquisition Pathway (SWP) as the preferred pathway for all software development components of business and weapon system programs in the Department.

The Department must also align contracting strategies and maximize the use of existing authorities. Effective immediately, for efforts that meet the threshold requirements enabling the application of authorities provided at title 10, U.S.C., § 3458 or title 10, U.S.C., § 4022. 1 am directing the use of Commercial Solutions Openings and Other Transactions as the default solicitation and award approaches for acquiring capabilities under the SWP. This applies to any software pathway program in the planning phase prior to execution. Department Components are prohibited from implementing further guidance on this point that would set out restrictive measures, guidelines, frameworks, directives, or policies other than required by statute.

The Under Secretary of Defense for Acquisition and Sustainment, in coordination with the Director of the Defense Innovation Unit, will develop and submit an implementation plan within 30 calendar days.



"... I am directing all DoD Components to adopt the Software Acquisition Pathway (SWP) as the preferred pathway for all software development ..."

"I am directing the use of Commercial Solutions Openings and Other Transactions as the default solicitation and award approaches for acquiring capabilities under the SWP."



Software Acquisition Pathway



Figure 1. The Software Acquisition Pathway

Executive Order: "Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base"

<u>Sec</u>. <u>2</u>. <u>Policy</u>. It is the policy of the United States Government to accelerate defense procurement and revitalize the defense industrial base to restore peace through strength. To achieve this, the United States will rapidly reform our antiquated defense acquisition processes with an emphasis on speed, flexibility, and execution. We will also modernize the duties and composition of the defense acquisition workforce, as well as incentivize and reward risk-taking and innovation from these personnel.

"... the United States will rapidly reform our antiquated defense acquisition processes with an emphasis on speed, flexibility, and execution." Sec. 3. Acquisition Process Reform. Within 60 days of the date of this order, the Secretary of Defense shall submit to the President a plan to reform the Department of Defense's acquisition processes that, to the maximum extent possible, incorporates the following: (a) Utilization of existing authorities to expedite acquisitions throughout the Department of Defense, including a first preference for commercial solutions and a general preference for Other Transactions Authority, application of Rapid Capabilities Office policies, or any other authorities or pathways to promote streamlined acquisitions under the Adaptative Acquisition Framework. Starting upon issuance of this order, and during the formation of the plan, the Secretary of Defense shall prioritize use of these authorities in all pending Department of Defense contracting actions and require their application, where appropriate and consistent with applicable law, for all Department of Defense contracting actions pursued while the plan directed by this section is under consideration.



Commercial Solutions Opening (CSO)

- DoD has statutory authority; DFARS 212.70
- DoD may acquire *innovative* commercial products and commercial services through competitive selection resulting from general solicitation and peer review of proposals
- May be used:
 - To obtain innovative solutions or potential capabilities;
 - To close capability gaps or provide innovative technological advancements; and,
 - When meaningful proposals with varying technical or scientific approaches can be reasonably anticipated
- Shall result in fixed-price contract
- CSO should:
 - Describe interest for individual requirement or broadly defined areas of interest
 - Specify technical data required
 - Describe evaluation factors and instructions for preparation and submission of proposals
 - Be publicized through Governmentwide point of entry and (if authorized) through periodicals

Other Transaction Authority (OTA)

- DoD has statutory authority; OTA Guide
- Can be used for research and prototypes, with potential for production follow-on
- Not a traditional procurement contract
- DoD can use an OTA for prototype project if one of the following is met:
 - At least one nontraditional defense contractor or nonprofit research institution participating to significant extent
 - All significant participants in the transaction are small businesses or nontraditional defense contractors
 - At least one third of total cost is *not* paid for by the US Government
 - Senior procurement executive issues waiver
- No defined competitive process
- No defined contract terms
- · Awards can be made through consortia

Questions and Discussion

Conclusion

Video recording of today's session will be available on GW Law – Government Procurement Law **YouTube Page & www.publicprocurementinternational.com**