

**The London School of Economics and Political  
Science**

The Institutionalisation of the European Defence  
Equipment Market

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## **Declaration**

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## **Abstract**

This thesis examines the emergence of EU-level rules in defence industrial matters within the context of European integration and inter-state cooperation more generally. This is a remarkable development, as the defence industrial policy area has been viewed as a core of nation state sovereignty and appeared impervious to injections of “more Europe.” At the centre of this nascent policy regime is the increasingly institutionalised European Defence Equipment Market (EDEM). The first and most significant elements of EDEM to date have been the 2009 Defence Procurement Directive issued by the European Commission and the voluntary Code of Conduct on Defence Procurement launched by the European Defence Agency (EDA) in 2006. These sets of rules have materialised despite EU member states’ resistance to meaningful constraints of national autonomy in defence procurement, and a distaste for the involvement of the European Commission in particular. An analytical puzzle thus emerges: why have member states acquiesced to binding regulation in the shape of the Directive, having already enacted a soft cooperation mechanism represented by the Code?

The thesis answers this question by pursuing three lines of inquiry, which correspond to three hypotheses and specify clear pathways whereby external adaptation pressures, such as the Euro-Atlantic defence budgetary trends, may result in states’ acceptance of particular constraints. Firstly, the project examines the lobbying activity of the EU’s major transnational defence firms in pursuit of a larger, more integrated “home” defence equipment market. In addition, this thesis evaluates the success of the European Commission as a determined “policy entrepreneur” in securing member states’ acquiescence to unprecedentedly binding defence procurement rules. Finally, the development of an EU security and defence policy as a source of “vital policy rationale” for an EU defence equipment market is also investigated. The tension between the supranational and intergovernmental modes of organising the defence industrial field constitutes a central theme of this thesis, while the “policy cycle” framework is used to order the causal significance of each hypothesis.

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## ACRONYMS

ACPP	Advisory Committee on Public Procurement (Council of the EU)
ASD	AeroSpace and Defence Industries Association of Europe
BICC	Bonn Conversion Centre
CDP	Capability Development Plan
CER	Centre for European Reform
CHOD	Chief of Defence
CoBPSC	Code of Best Practice in the Supply Chain
CoC	Code of Conduct
COREPER	Committee of Permanent Representatives (Council of the EU)
COST A 10	European Cooperation on Science and Technology Programme
CSDP	Common Security and Defence Policy
CTO	Countertrade and Offset
DE&S	Defence Equipment and Supply
DG MARKT	Directorate General Internal Market and Services
DGA	Direction Générale de L'armement
DIC	Defence Industries Council
DKF	Deutsches Kompensations Forum
DMA	Defence Manufacturers' Association
EADS	European Aeronautic Defence and Space Company
EBB	Electronic Bulletin Board
EDA	European Defence Agency
EDEM	European Defence Equipment Market
EDTIB	European Defence Technological and Industrial Base
EUISS	EU Institute for Security Studies
EUMC	EU Military Committee
EUMS	EU Military Staff
EUROMIL	European Organisation of Military Associations
FP7	Seventh Framework Programme for Community R&D
GCS	General Council Secretariat (Council of the EU)
GEC	General Electric
GIFAS	Groupement des Industries Françaises Aéronautiques et Spatiales
GOCA	Global Offset and Countertrade Association
HHG	Helsinki Headline Goal
IISS	International Institute for Strategic Studies
IMCO	Committee on the Internal Market and Consumer Protection
ITAR	International Traffic and Arms Regulations (US)
LoI Group	Letter of Intent Group
MOD	Ministry of Defence

NAD	National Armaments Director
OCCAR	Joint Organisation for Armaments Cooperation
OHQ	Operational Headquarters
POLARM	Ad Hoc Working Party on a European Armaments Policy
PRS	Policy and Research in Security Programme
QMV	Qualified Majority Voting
R&T	Research and Technology
RUSI	Royal United Services Institute
SDA	Security and Defence Agenda
SEDE	Security and Defence Sub-Committee (EP)
SME	Small and Medium-Sized Enterprise
STAR 21	Advisory Group on Aerospace
SWP	Stiftung Wissenschaft und Politik
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
WEAG	Western European Armaments Group
WEAO	Western European Armaments Organisation



# CHAPTER I: INTRODUCTION, RESEARCH QUESTION, AND RATIONALE

## Introduction and Research Question

Regulation in armament cooperation which has recently emerged at the level of the European Union constitutes a remarkable development in the evolution of the EU in general and its newly acquired autonomous military capacity in particular. As will be emphasised below, the entire armaments policy area has been historically regarded as a strict prerogative of sovereign nation states, to be insulated from the reaches of international organisations and supranational institutions, even in such an arguably *sui generis* case as the EU. Yet, within the armaments policy field, production, trade, and procurement aspects, the European Defence Equipment Market (EDEM) has in recent years transitioned from an aspirational goal of the EU, consistently invoked as such in official rhetoric and delegated to the European Defence Agency (EDA) for “realisation,” to a nascent policy regime,<sup>1</sup> endowed with the first tangible rule-making instruments (Wilson, 2000). In particular, an EU-wide defence procurement framework is emerging within the EDEM construct, represented by the 2009 Defence Procurement Directive issued by the European Commission, and, until its suspension from March 2013, the Code of Conduct on Defence Procurement launched by the EDA on 1 July 2006 (Official Journal of the European Union, 2009; EDA, 2005).<sup>2</sup>

This development constitutes the subject of the research presented here. As will be elaborated below, it is puzzling to see member states acquiescing to the terms of the

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<sup>1</sup> Wilson’s (2000) conceptualisation of a policy regime is meant here, which in turn relies on international regime literature (Harris and Milkis, 1996; Esping-Anderson, 1993; Kratochwil and Ruggie, 1997; Dougherty and Pfaltzgraff, 1997). A policy regime is organised around a specific issue area—in this case, defence procurement—and consists of four dimensions. The first dimension concerns power arrangements, that is, an actor or group of actors that support and benefit from the implementation of a particular policy regime, and thus act as its power brokers. A policy paradigm forms the second dimension, which “shapes the way problems are defined, the types of solutions offered, and the kinds of policies proposed.” The third dimension of a policy regime includes the policy making and implementation arrangements, that is, agencies and organisations “involved in maintaining, developing and implementing” the policy. The fourth and final dimension is the policy itself, which “embodies the goals of the policy regime” and the “rules and routines” of the implementing organisation.

<sup>2</sup> The Code was agreed in July 2005, but became operational on 1 July 2006

Directive in particular, especially as voluntary, intergovernmental cooperation had already been established in the form of the Code. Moreover, given that member state governments have a history of fiercely guarding their defence procurement autonomy, that divisions between member states with large arms production capabilities and those that purchase most of their defence equipment from abroad are deeply entrenched, and that prior integrationist efforts in this policy arena have repeatedly failed, the dynamic represented by EDEM constitutes an intriguing analytical puzzle: why have EU-level defence procurement rules emerged which clearly constrain national autonomy? This in turn leads to the research question to be addressed by this thesis— why member states have made the more costly move toward binding regulation in the shape of the Directive, having already enacted a soft cooperation mechanism represented by the Code?

Before exploring the rationale for advancing this line of inquiry, it is useful to review the major provisions of the two instruments. Like the EDA itself, the Code was intergovernmental, voluntary and legally non-binding, with the objective of extending internal market competition rules to defence procurement. Subscribing member states<sup>3</sup> committed to enhance common competitiveness through lowering mutual trade barriers and aligning policies in defence procurement activities which are exempt from EU's internal market procurement rules based on Article 346 of the Treaty on the Functioning of the European Union (TFEU), or the Lisbon Treaty as it has become known since its signing.<sup>4</sup> This clause grants member states the right to derogate from existing EU procurement law— which includes supplier non-discrimination and open competition stipulations supporting the Single Market and injecting “more Europe” into all trade sectors, including defence — to protect their “essential security interests.” Thus, the Code applied to sensitive defence procurement that is theoretically to be carried out of “outside” of EU law. While it is couched in broad principles to allow member states maximum manoeuvre with regard to actual implementation, the key practical stipulation of the Code was the requirement that national contracting authorities publish defence contract notifications on the Electronic Bulletin Board (EBB), an online portal.

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<sup>3</sup> By the beginning of 2013, 25 of the EU's 28 member states as well as Norway had subscribed to the Code of Conduct (all EU member states except Romania, Denmark, and Croatia)

<sup>4</sup> Again, until the entry into force of the Lisbon Treaty on 1 December 2009, Article 346 was known as Article 296. As with the ESDP/CSDP, the post-Lisbon numeration is used here, in order to avoid confusion and preserve continuity

The purpose of publicising defence contract notices was to open up defence procurement to EU-wide competition—that is, suppliers from all participating member states—in cases when the Article 346 exemption has already been invoked by the purchasing government. Consequently, the Code encouraged competitive procedures within defence procurement as a norm, except in situations of operational urgency, “extraordinary and compelling reasons of national security,” and follow-on work, including post-delivery provision of goods and services, to existing contracts (Heuninckx, 2008b: 8). Other principles included equal treatment of suppliers from across all subscribing member states, and a reporting and monitoring mechanism encouraging governments to provide the EDA with data on national application of the Code. The former provision meant that all suppliers, regardless of geographic origin, were entitled to transparency, objectivity, clarity and equality when it came to provision of information regarding the tender and selection criteria for the award of contract. Unsuccessful bidders were entitled to a “debrief” (Heuninckx, 2008b: 8). In addition, member states were expected to make data available to the EDA regarding how often and how effectively the competitive procurement provisions of the Code were and were not applied. The idea was that member states would then use such information in order to scrutinise each other’s compliance with the Code and justify cases when they have eschewed its provisions. This would form the basis of the instrument’s “institutionalised peer pressure” mechanism and means of “moral coercion” (Neuman, 2010: 18).

It is of course the case that subscribing member states faced no legally binding obligations or sanctions for non-application of the Code of Conduct, and remained the prime orchestrators of this instrument. Despite its voluntary nature, however, the Code nevertheless conditioned states’ policy choices through its peer pressure and reciprocity provisions. Furthermore, by virtue of its field of application, the Code inserted standards of behaviour into procurement carried out under Article 346, an area previously wholly subject to member states’ discretion. It had, moreover, added a further level of complexity into member states’ defence procurement decisions by subtly, yet inherently, competing with the Directive for “subject matter” coverage (Georgopolous, 2007: 220; Heuninckx, 2008b). No “official” reason had been provided by the Agency for the decision to suspend the Code of Conduct and, as part of its 2014 restructuring process, phase out its Industry and Market (I&M) Directorate

that oversaw all EDEM-related activities (EDA, 2013:14, 18). As these events had occurred during the primary research stage of this project, they have been raised in interviews with officials and industry executives—indeed, by the interviewees themselves—and the findings are discussed in Chapter V of this thesis.

In contrast, the Defence Procurement Directive (EC/2009/81), which entered into force on 21 August 2009 is a binding legislative instrument intended to regulate, harmonise and inject transparency and competition into member states' fragmented procurement policies. Containing specific regulations, the Directive is ostensibly designed to take account of the specificities of the defence sector, including provisions to safeguard security of supply (Art. 23) and information (Art. 22) while promoting sub-contractor competition (Art. 21). Specifically, it allows member states' contracting authorities to award contracts for the supply of military goods and services through the so-called negotiated procedure, with prior publication of a contract notice. Under current EU public procurement regulations—Directives 2004/17/EC and 2004/18/EC—all contracts, with limited exceptions, must be awarded by competitive methods, such as public tender open to domestic as well as international suppliers. This means that, after advertising the contract award to invite expressions of interest from suppliers, the contracting authority is required to follow the open tender process, in which the competition for award is opened to all interested domestic and international suppliers, and the winner then selected competitively. Under certain conditions, however, the negotiated procedure allows the contracting authorities to pre-select one or more specific suppliers and negotiate the terms of the contract directly with these candidate(s).

Since this course of action could constitute “single-source procurement” and would inherently violate the open competition rules on which the EU's internal market is founded, the negotiated procedure is technically reserved for a limited number of cases, while its use must be justified in each instance. In practice, and as will be explained more fully below, the member states have long ignored these limitations with no meaningful consequences. As a result, favouring preferred, usually domestic, defence equipment suppliers had become “the standard operating procedure of arms procurement” (Blauberger and Weiss, 2013: 1125). By legitimising “restricted competition” and even “non-competitive procurement procedures” in “limited, prescribed” instances when the general open-competition procurement regulations are

deemed harmful to member states' security concerns, the Defence Procurement Directive aims to reduce the reasons for which contracting authorities derogate from the EU's internal market rules (Teare and Nelson, 2012: 4). The Directive also contains regulations on research and development (R&D) activities (Art. 13, Art. 28), and commits the member states to the principle of non-discrimination and equal treatment of all suppliers. This stipulation thus enshrines competitiveness of the given bid as the sole criterion upon which contract award is to be based, and prohibits favourable treatment of bidding defence firms based on geographical considerations.

Most important for this thesis, however, is the effect of the Directive on Article 346, which is the member states' institutional instrument of choice when it comes to asserting sovereignty in defence procurement. While the "security interests" exemption remains in force, the Directive has for the first time imposed limitations on member states' invocation of it. In particular, they must be prepared to convince the Commission that this measure is indeed "essential for the protection of [their] essential security interests," on a case by case basis (Art. 16), or face sanctions from the European Court of Justice (ECJ), as well as other consequences, such as challenges from industry over national procurement decisions. In this regard, the "burden of proof" rests with the member states to, if called upon, demonstrate that their invocation of Article 346 in the course of a procurement procedure is indeed crucial to safeguarding a specific "essential security interest" and that even the specialized provisions of the Defence Procurement Directive described above would not be sufficient to ensure this (Blauberger and Weiss, 2013: 1125).

Consequently, these beginnings of EDEM represent emerging rules emanating from EU institutions that constrain the decision-making autonomy of EU member states in defence procurement matters. Matters that would have previously been wholly in the remit of national governments, concerning the number of bidders for defence contracts, sub-contracting requirements, or the mode of contract publication, must now also conform to rules emanating from EU institutions, both supranational and intergovernmental. For the first time, an "EU level" of importance has entered member states' policy calculus in defence procurement. Paramount among the new measures are the limitations on member states' invocation of Article 346, and, by extension, their decision-making autonomy. Until now, member states have made persistently indiscriminate use of Article 346, and jealously guarded their prerogative

to do so. In fact, accounts of the fragmentation and protectionism within the European defence market uniformly attribute these failings to the tenuous and automatic claim that a wide variety of goods are related to member states' "essential security interests." For instance, in 1997 Spain used it to exempt its military imports from VAT, arguing that this was necessary to guarantee the effectiveness of its forces in national defence and in NATO. Italy, in 2005 and 2006, purchased helicopters from the Italian company Augusta for its police force and fire service respectively, using non-competitive procurement under Article 346, arguing that this was necessary to ensure confidentiality of information regarding the helicopters' production (Koutrakos, 2010: 209-211). To be sure, the exemption is often invoked to protect national industries and local markets from competition, in order to preserve the large-scale domestic employment and investment they represent. At the core of the economic rationale for protectionism, however, lies the assumption and institutionalised recognition that national security ought not to be scrutinised by an external authority. Analyses of EU Treaty Law attribute both the purpose of Article 346 and the reason for its loose invocation to a widespread perception amongst member states that defence industrial matters are inextricably connected to national sovereignty, and thus beyond the reach of supranational structures (Koutrakos, 2010: 207; Trybus, 2004: 202). Batora, whose study, reviewed in Chapter II, deals with colliding institutional logics at the heart of the EDA, also finds that "the logic of defence sovereignty is...formalised in Article 346" (Batora, 2009: 1086).

In this context, the Code of Conduct and the Defence Procurement Directive circumscribe individual states' actions and may begin to shape actors' expectations in the defence procurement realm. This development is both important and perplexing for several reasons. Firstly, dominant theoretical trends in international relations, in both realist and constructivist traditions, view the production, acquisition, and maintenance of armaments as inextricably connected to nation state sovereignty. Secondly, this conceptualisation is consistently reflected in national policymakers' rhetoric concerning the defence sector, while the empirical record reveals persistent fragmentations within EDEM that may be traced back to fundamental differences between member states' political traditions, foreign policy orientations, and strategic cultures. These fault lines have endured due to the normative entrenchment of nation state sovereignty within defence- and foreign policy-related areas of the European

project, and the resulting institutional arrangements that safeguard it. Finally, as a direct consequence of this, member states have resisted prior attempts at harmonisation and integration in the defence procurement field. Against this backdrop, it is all the more remarkable that the Directive was “discussed, agreed, and adopted” with unprecedented speed, and despite significant opposition from member states and industry (Georgopolous, 2010; Interview 1, 15 December 2011, Industry). The Code of Conduct, and the EDA in general, have also been noted for surprising inter-member cooperation and speedy establishment (Georgopolous, 2007: 221-222; Interview 3, 15 December, Member State Permanent Representation).

Before progressing further, several caveats are necessary. Firstly, the effectiveness of both the Code and the Directive in achieving their stated objectives is questioned. Throughout its “lifetime,” the Code of Conduct had been applied to an inconsequential—although increasing—number of contracts and therefore remained limited in impact (Major and Moelling, 2010: 17). The transposition of the Directive into member states’ domestic law had been encumbered by a number of delays, while the exceptions from its provisions and lack of clarity regarding its application to non-EU countries have raised doubts regarding the instrument’s significance.<sup>5</sup> Secondly, the Code and the Directive did not usher in an EU-level defence procurement policy, EDEM still remains an objective rather than reality, and protectionism and fragmentation will not be done away with in the near future. This thesis does not make claims to the contrary. Rather, it argues that the instruments examined here represent a first set of commonly applied and accepted rules in defence procurement, which limit near-automatic national preference when it comes to contract awards, curtail member state prerogatives in this intergovernmental field, lay the groundwork for further developments towards EU-level institutionalisation, and signal key, if tentative, steps towards linking the EU’s military capacity to capability generation. Moreover, supranational regulation has been hitherto taboo in defence procurement, while any enforceable EU-level limitations on national use of Article 346 are

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<sup>5</sup>Intelligence-related contracts, counter-intelligence contracts for border protection, counter-terrorism and organised crime, cooperative procurement programmes with an R&D phase involving at least two member states, government to government purchases, and national R&D programmes are all exempt from the Directive, although once the latter move into mature product stage, open competition is expected. Arms trade with third countries will also not be covered, and continue to be governed by the WTO’s Government Procurement Agreement.

unprecedented.<sup>6</sup>

## **Institutions and Institutionalisation**

Although the conceptualisation of institutions adopted here is principally associated with codified rules and formal organisations, it also incorporates sociological and normative components (Duffield, 2007). This is partly because such formative definitions of institutions in IR as those advanced by Keohane, North, and Young feature these three dimensions, having been neatly integrated by Smith (Keohane, 1989; North, 1990; Young, 1989; Smith, 2004). Young has a largely sociological perspective when defining institutions as “patterns of behaviour and practice around which expectations converge,” while Keohane’s seminal, oft-cited conceptualisation has been characterized as rationalist and takes institutions to mean “persistent and connected sets of rules (formal or informal) that prescribe behavioural roles, constrain activity, and shape expectations” (1989: 3). Moreover, institutionalist approaches in both sociological and rationalist traditions have normative aspects, as well. Thus, despite the wide range of definitions with which “norms” and “rules” have been endowed in IR literature, the two terms are usually used interchangeably due to the strong similarity of meaning which they share (Duffield, 2007; Smith, 2004).

Consequently, rules are understood as “well-defined guides to action or standards setting forth actions that members [of an institution] are expected to perform (or to refrain from performing) under appropriate circumstances” (Young, 1989:16). Norms refer to shared expectations about appropriate behaviour held by a community of actors” that contain carry “a sense of obligation, a sense that they ought to be followed” (Finnemore and Sikkink, 1998: 22; Chayes and Chayes, 1995:113).

Therefore, considering the notable conceptual over-lap between the rationalist, normative, and sociological understandings of institutions, and taking into account his particular concern with EU foreign policy—rather than inter-state cooperation in general—Smith’s definition of institutions and institutionalisation is used in this thesis. Relying on North, he takes the former to mean the “rules of the game,” a set of

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<sup>6</sup> The implications of this are far-reaching. Conditions for Article 346 invocation would make it impossible for governments to require offsets, essentially complex side investments included in acquisitions to improve balance of trade. Many EU governments, like most states worldwide, rely heavily on offsets, which result in market distortion.



norms, which structure the behaviour and condition the choices and expectations of actors in a social space (North, 1990: 3). Before progressing further, it is also important to distinguish between institutions, as conceptualised above, and organisations. Although the former term is often used in the literature to refer to the latter entity, the understanding of institutions underpinning this thesis necessitates a distinction (Stein, 1990: 26; Sandholtz, 1993; Haas *et. al.*, 1993: 397). Thus, organisations refer to “material entities possessing physical locations (or seats), offices, personnel, equipment, and budgets” and “may or may not accompany” institutions (Young, 1986: 108; 1989: 32, 12-13, 35). Although the delimitation between organisations and institutions has been critiqued as unnecessarily sharp—a number of organisations are, after all, “primarily sets of roles and rules”—it is useful in this analysis, as it helps operationalize the “processual” conceptualisation of institutionalisation elaborated below (Duffield, 2007: 4; Smith, 2004: 39; Barzelay and Gallego, 2006). In particular, as will be explained shortly, the institution-organisation distinction helps differentiate between sets of rules within the EU, for instance, regulations, directives, and decisions, and organisations from which they emanate, such as the Commission, Council of Ministers, or European Parliament. In order to highlight the association of organisations with institutions that these bodies represent, that is, to signify that sets of rules and norms had in these cases become “endowed” with offices, staff, funds, and paperwork, this thesis will refer to them as permanent, or formal organisations (Smith, 2004: 39).

In the literature, the term institutionalisation is often used synonymously with institutional development and institutional change, although here institutional development is preferred since it “encourages us to remain attentive to the ways in which previous institutional outcomes can channel and constrain later efforts at institutional innovation” (Pierson, 2004:133).<sup>7</sup> Institutionalisation, then, refers to “the process by which those norms, or shared standards of behaviour, are created, developed” and extended to wider or deeper areas of key actors’ behaviour (Smith, 2004: 26; Goldstein, *et al.*, 2001: 385). More specifically, such proliferation is evident in the multiplication and clarification of norms, whereby more norms are created or are clarified “in greater detail” (Smith, 2004: 38-39). Furthermore, institutionalisation

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<sup>7</sup> As historical institutionalism, concerned with unpacking the “construction of policy issues and associated institutions, would contend, the early stages of this process circumvent the options available to actors during the later steps, making it “iterative and incremental” (Armstrong and Bulmer 1998: 56).

entails the transition from “informal customs” to “formal rules,” and in the context of the EU, the integration of community rules and “permanent EC institutions” into this process (Smith, 2004: 39). As such, the institutionalisation of the European Defence Equipment Market is understood as the application of common rules, whether formalized, legalized, or voluntary, emanating from and monitored by permanent EU organisations, to the issue area of defence procurement. While the rule-centred conceptualisation of institutions has been criticised for its ostensibly limited rationalist perspective, this framework enjoys particular longevity and legitimacy in IR (Duffield, 2007:13; Onuf, 2002: 224; Sandholtz, 1993). Furthermore, it is important to note that the Directive represents a particular type of institutionalisation, which has been termed legalisation by Goldstein *et al.*, and is characterised by proliferation of legally binding and precise rules, with delegation of “policing” powers to a – theoretically –neutral third party (Goldstein, *et. al.*, 2001:3).

In addition, there is a strong rationale for employing a rules-focused institutionalisation framework when the subject of study is the EU. Stone Sweet, Sandholtz, and Fligstein highlight several reasons why “institutionalisation in Europe has generally meant more rules, more procedures, and more formality” (2001: 21). Firstly, the EU’s *sui generis* nature in the international system means that the administration of its space requires extending its authority, concentrated in the body of EU law, “across jurisdictional boundaries” (*ibid*). The resulting propagation of rule of law within the EU “constitutes, by definition, profound institutionalisation in a formal direction” (Stone Sweet, *et.al.*, 2001: 22). In addition, the development of the internal market has been accompanied by a significant expansion of supranational governance, which operates through rule-making as it stipulates compliance and coordination (Fligstein, 2009: 37). Finally, intergovernmental organisations, particularly the Council of the EU and its agencies, also “govern by promulgating rules”—such as issuing decisions, guidelines and codes of conduct—which continue to reach into policy areas beyond the supranational “hard core” of the internal market and trade policy (Turnbull and Sandholtz, 2001).

Institutionalist literature has distinguished between a number of processes through which institutionalisation occurs, according to sources and dynamics of institutional change. Thus, one section of institutionalist scholarship focuses on exogenous factors, such as external crises, shocks and systemic shifts in the socio-political context as

catalysts of institutional development (Stone Sweet, *et.al.*, 2001: 10; Smith, 2004: 34;). Another set of approaches focuses on sources of change that are internal to the “existing spaces of governance,” in which repeated interaction amongst actors prompts them to “seek new rules,” more suited to their interests and policy goals (Stone Sweet, *et. al.*, 2001: 10). Such patterns represent what Smith terms “functional logic” of institutionalisation, by which actors “encourage institutional change” to the “extent that they believe the institutional arrangements” will benefit them (2004: 33; Visser and Rhodes, 2011: 81). Endogenous analyses also pay attention to dynamics of change which could be categorized under the “logic of normative appropriateness” rubric (Smith, 2004: 33; Visser and Rhodes, 2011: 79). Here, actors may both generate and encounter “ambiguities, inconsistencies, and contradictions” between and within existing institutional domains, particularly if there is an overlap in remit or responsibility, as they pursue their objectives and attempt to enhance their positions (Smith, 2004: 33; Stone Sweet, *et. al.*, 2001: 10). In the process of exploiting “existing EU rules, procedures and access points”—including by lobbying EU organisations—such actors may find them inadequate and seek their modification. The resolution of such conflicts then leads to institutional change, as norms are reproduced, clarified, formalized or elaborated (Smith, 2004: 33; Stone Sweet, *et. al.*, 2001: 10-11, 19). Operating across these logics are “skilled social actors” or “institutional entrepreneurs”—an institutionalist “version” of policy entrepreneurs—who, seeking to induce “dynamic policy change,” generate and promote ideas aimed at defining institutional or policy problems and specifying attendant solutions in a manner that “other actors find convincing and useful” (Fligstein, *et. al.*, 2001: 11-12; Mintrom, 1997: 739). In order to achieve a resonant problem-solution combination, skilled social actors construct and manipulate cultural frames which then help build a coalition of supporters by attaching their “their interests and identities to a set of ideas...that allow for further institutional development” (Stone Sweet, *et. al.*, 2001: 12). In empirical reality, as scholars of institutionalisation point out, these logics and dynamics are intertwined, existing and exerting their influence cumulatively.

The extension of rules and norms in the course of the institutionalising process implies progression and means, of course, that such rules must first exist. Indeed, armaments cooperation in Europe was not norm- and rule-free prior to the launch of the Code of Conduct and the approval of the Defence Procurement Directive. As will

be demonstrated below, a number of dedicated organisations and cooperative arrangements “governing” various components of the armaments policy field had been developed over the decades following World War Two. Furthermore, in recent years, aspects of defence procurement were technically subject to the EU’s general Public Procurement Directive (2004/18/EC), as explained above. In order to capture this progressive nature of institutionalisation, whereby rule and norms grow more numerous, detailed and pervasive, Smith conceives of sequential stages of institutionalisation (2004: 40-48). In “real life,” these may be inconsistent and overlapping, but serve a useful analytical purpose of demarcating successive periods of a policy field’s development. Thus, in the first instance, an intergovernmental forum is established as member states commit to cooperation in a particular policy domain. This commitment may develop organically, without an explicit legitimation by actors, but the much more typical scenario would be a public decision by actors to engage in organized cooperation. This may entail an informal agreement, a treaty, or the creation of a new dedicated organisation. Subsequently, as actors within this intergovernmental forum engage in discussions regarding the goals and dynamics of their cooperation, they enter into the information-sharing stage of institutionalisation. Although such communication may not generate specific policy outcomes, actors’ regular participation in such debates is likely to facilitate the development of “common understandings” and thus generate demand for “greater structure” (Smith, 2004: 42).

When such inter-state information sharing progresses to discussions of possible solutions to specific problems associated with that particular policy area, the stage of norm creation and codification may be said to take hold. As intergovernmental communication leads to the emergence of shared views amongst officials regarding the “means and ends” of their cooperation, they are able to establish more defined obligations to structure the emerging policy domain. As participants strive to preserve the consensus already achieved—for instance by formalizing problem-solving as modes of decision-making peer pressure as a means of enforcing compliance—they codify behavioural norms and generate expectations that these will be obeyed. The next stage of institutionalisation entails the establishment of formal, permanent organisations for the purpose of administering and monitoring the institutionalizing space. Existing organisations and agencies, such as those of the European community,

may also become involved in the emerging policy regime during this stage. Smith's final stage, which he terms "toward governance" in a sense comes full circle, and envisions the member states devising and implementing policies, which are anchored in shared norms, in order to achieve specific objectives they have themselves defined. They also allocate resources and design policy oversight mechanisms in order to ensure members' compliance and policy effectiveness. The resulting system of governance, then, is endowed with the "authority to make, implement and enforce rules in a specified domain" (Smith, 2004: 47; Anderson, 1995).

### **Armaments Policy, Sovereignty, and Fragmentation of EU Defence Procurement**

Sovereignty here is viewed as a combination of a state's ultimate supremacy over all existing authorities within its delineated territory, as well as its ultimate independence from any external authority (Bull, 1977). The literature concerning EU armaments cooperation inevitably turns to the fragmentation of the defence equipment market within the EU, and cites the centrality of armaments issues to nation state sovereignty when describing it. However, the causal or conceptual link between state sovereignty preservation and the state of armaments cooperation between member states of the EU is seldom made in sufficient detail. Nevertheless, as this connection exists not only in major theoretical approaches in IR but also in policy discourse permeating this field, it is essential for understanding the empirical characteristics of the EU defence procurement sphere, and, as this thesis will argue, the institutionalisation process that culminated in the Directive and Code of Conduct.

#### *Theoretical Conceptualisations*

Scholarship on the political significance of armaments points out that in the Middle Ages, and even dating back to Classical antiquity there has been political intervention into armaments production and trade. With a short "exception" during the Industrial Revolution, regulation has characterised the international system since. For instance, Hellenistic military innovation was "lavishly supported" by the rulers of the day, while Charlemagne prohibited the export of the prized Frankish armour from his

territories (Krause, 1992: 34-45; 61). Finally, there is evidence that Christendom of the later Middle Ages featured at least informal prohibitions on armament sales to the Ottoman Turks (Harkavy, 1975: 213). Nevertheless, the linkage between producing, trading, and using arms and state sovereignty is in many ways a distinctly Westphalian phenomenon, particularly through the connection between defence industries and that notoriously nebulous term, national security (Laurance, 1992: 4). By making the connection between territoriality and sovereign state borders, the Westphalian state system has legitimated and defined defence industries as part of the national security establishment (Sjolander, 1998: 119; Mawdsley, 2008: 368). Trade of defence-related goods and services naturally involves the distribution of military power, which forms the environment within which transactions occur and is also part of the outcome of transactions (Cornish, 1995: 76). The “drive to defence-industrial self-sufficiency,” long associated with the behaviour of Great Powers, has also come to denote a state’s ability to “conduct an independent foreign policy,” not least because “arms exporters can manipulate deliveries to coerce importers into supporting their foreign policies” (DeVore, 2012: 4). After all, as *The Economist* summarised the attitude of EU governments in an early call for a single arms market in the EU, “how can you trust foreigners to provide you with the means of defence in an uncertain world?” (*The Economist*, 1995).

It should be noted that the connection of defence industrial autonomy to nation state sovereignty as well as the overriding importance states accord to its protection, is largely associated with realist conceptualisations of the international system.<sup>8</sup> The anarchic nature of the system obliges states—in which they are viewed as dominant and unitary actors—to practice self-help in order to ensure their survival, which at its most fundamental hinges not only on the possession of military capability, but on the security of, and therefore direct control over, its supply (Waltz, 1979; Resende-Santos, 2007). Realist theoretical traditions emphasise the role of military production and defence procurement as the ultimate instruments of safeguarding territorial integrity, maintaining or increasing influence in the international system, and minimising strategic threats (Jervis, 1978; Morgenthau, 1966). In an international

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<sup>8</sup> Realism is not a unified theory, but comprises a number of strands, including classical realism, neorealism, neoclassical realism, and defensive and offensive realisms. These orientations differ as to the weight of various levels of analysis and structural factors in explaining state behaviour. For overviews, see Guzzini, 2004; Wohlforth, 2008; Jervis, 1998

system of power imbalances, ensuring national security becomes a fundamental driver of policy formation. An extension of the realist framework to the political economy realm, namely approaches focused on mercantilism or economic nationalism, emphasises the critical role of maximisation of economic potential and strategic industrial autonomy in defence in state policy formation (Krotz, 2011: 53).

Where interstate institutionalisation in the “national security realm” does occur, it is instrumental to the maximisation of the dominant states’ interests, such as the need to balance another actor that could jeopardise its position in the system (Mearsheimer, 1994/1995; Snyder, 1997; Walt, 1987). As such, inter-state institutionalisation does not exert an autonomous causal influence on states’ external policies or interests (Jones, 2007). Arms sales, moreover, comprise a key component of states’ foreign policy, and are thus another key aspect of sovereignty affirmation (Krause, 1992). Consequently, states will not endanger the security of their military supplies and will not cede any of their decision-making autonomy in an issue area as fundamental to their *raison d’être* as arms acquisition to institutional structures which they themselves cannot unequivocally control. This is why “most governments...treat the ability to make weapons almost as seriously as the ability to use them, and will cede neither to foreigners” (*The Economist*, 1995b).

However, legal-, economic-, and policy-oriented accounts of EU armaments cooperation also contain numerous references to the “status” of armaments policy, and of the defence procurement and industrial policies it encompasses, as essential components of nation state sovereignty- something of a “distinguishing emblem of the modern nation-state,” (Heisbourg, 1988: 86). Indeed, “a defence industry, rather like a currency, can turn into a kind of national virility symbol” (*The Economist*, 1997a). Constructivist approaches to IR stress this symbolic importance of weaponry within a conceptualisation of nation state sovereignty as normatively constructed, linking “authority, territory, population (society, nation), and recognition in a unique way and in a particular place (the state)” (Biersteker and Weber, 1996:3). State identity, shaped in large part by the surrounding “cultural security environment,” features prominently the advanced weaponry sought by states not only for its power projection capabilities but also for its “symbolic throw weight” (Eyre and Suchman, 1992: 154). Possession and ultimately production of armaments then becomes a legitimisation of states’ identity, which is notoriously resistant to significant transnationalisation (Sagan,

1996/97; Risse, 2001). Sociological institutionalism shares much of social constructivists' view of the defence establishment as a defining symbol of statehood, but attributes its entrenchment to the impact of transnational institutionalised norms which are shared and adapted to by states. Sovereignty, and its connection to military force, is an example of an institutionalised transnational norm, although the “look” of this institutionalisation varies among states. An “ideal of sovereignty”, is thus created, which exerts influence on the policy-making process as “statespersons, diplomats, and intellectuals... establish and police practices consistent with the ideal” (Biersteker and Weber, 1996:3).

This is by no means an exhaustive overview of various conceptualisations of the sovereignty-armaments relationship in IR. Rather, it is intended to demonstrate that the discipline's major theoretical traditions, whether in the realist or constructivist strands, place the military instrument as well as the industrial infrastructure necessary to equip it in the centre of the practice or construction of nation state sovereignty. Although these approaches disagree on the reasons for the importance of defence trade and production, they converge on its existence and point to similar policy implications in defence procurement—widespread protectionism, insistence on national suppliers, and preservation of national decision-making autonomy.

#### *Empirical Manifestations: Duplication, Fragmentation, and National Preference*

While several arguments have been advanced in favour of a gradual untethering of sovereignty from military acquisitions (Krause, 2011), an empirical overview of the current EU defence procurement architecture is nevertheless a powerful testament to the persisting equation of defence industrial matters to core state functions as well as the embeddedness of national prerogatives in this realm. In fact, states' defence and security policies enshrine the protection of sovereignty as a fundamental duty of the state, which is fulfilled through wielding the military instrument. For instance, Germany's defence policy guidelines state that “the role of the defence industry is to serve the *Bundeswehr*, [German armed forces],” which are in turn defined as the “centrepiece of the security and protection of Germany,” and “the basis of the nation's willingness and preparedness to defend itself” (Federal Ministry of Defence, 2011:8). Similarly, France's 2008 Defence White Paper stresses that the country's



“industrial skills...are crucial to retaining [its] strategic autonomy” (Ministry of Defence of France, 2008: 251). Although the document cites European interdependence as an objective of the French defence industrial policy, the most important factor is the need to “manufacture and maintain the military equipment essential to areas of sovereign prerogative, where in view of... political choices, sharing or pooling is not an option” (Ministry of Defence of France, 2008: 254). Similarly, Poland regards its defence industry as “an important element of the economic sphere of [the country’s] security,” while Spain’s security strategy asserts that “the industry and technological base associated with security and defence constitutes a key element in our response capability in the face of threats and risks” (Republic of Poland, 2007: 17; The Government of Spain, 2011: 43).

In addition, EU capability development forums and conferences dedicated to furthering procurement harmonisation are saturated with references to sovereignty and national security. Speaking at these gatherings, policymakers consistently cite “sovereignty concerns” as central impediments to deeper collaboration. For instance, the 2012 annual conference of the EDA was dominated by invocations of sovereignty, with the then Belgian minister of defence Peter de Crem emphasising member states’ worries about its loss, and senior industry executives reiterating that sovereignty concerns were at the root of the fragmentation of the European Defence Technological and Industrial Base (EDTIB) (EDA, 2012 : 5).<sup>9</sup> Military representatives expressed similar views, with one admitting that assuaging national sovereignty worries were a routine component of his senior post in the CSDP structures (EDA, 2012).

A poignant illustration of the depth of such perceptions in societies is provided by the Anglo-French defence deal of November 2010, which sparked intense media coverage and a flurry of public commentary from the highest levels of government. Establishing joint testing and development centres for nuclear weapons, the bilateral agreement also includes a joint expeditionary force and a series of interoperability measures, aircraft carrier synchronisation, submarine technology cooperation, joint pilot training, satellite communications, and co-development of unmanned aerial vehicles (UAVs). At their joint press conference with French President Nicholas

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<sup>9</sup> This conclusion is also reinforced by the author’s personal attendance of the EDA’s 2012 annual conference. It took place on 31 January 2012 in Brussels, Belgium.

Sarkozy following the signing, the UK Prime Minister David Cameron rushed to stress that “this is not...about weakening or pooling British or French sovereignty,” as soon as he had summarised the provisions of the treaties (Cabinet Office, 2010). President Sarkozy, for his part, asserted that “in France sovereignty is as touchy an issue as it is in Britain, but together we will be stronger” (Cabinet Office, 2010). The French embassy in Britain also released a statement by then Minister for Defence and Veterans Alain Juppe describing the aim of the agreement as “reducing overall costs whilst preserving national sovereignty” (Juppe, 2011). What is more, media coverage and policy-makers’ statements that both preceded and followed the deal demonstrated the public preoccupation with maintaining sovereignty despite cooperation and governments’ need to address that concern.<sup>10</sup> These episodes reflect the extent to which coupling of armaments with nation state sovereignty is ingrained in popular perception, and demonstrate both the near automaticity of public concerns over sovereignty “losses” and policymakers’ recognition thereof.

The European defence equipment market is characterised by persistently protectionist behaviour of member states aimed at maintenance of national employment, investment, and control over security of military supply and information. It is not uncommon for EU governments to be controlling, or at least major, shareholders of defence companies. Indeed, even though this trend may have decreased in recent years, governments remain if not sole then most important customers, regulators, and investors of the defence industry. France is perhaps the most widely cited example of this, with the French government historically acting as an arbiter of all defence industrial deals and restructuring, even if this trend appears to be slowly reversing.<sup>11</sup> Italy and Spain are other notable examples of state ownership of defence industry, with the governments having proved reluctant to move toward privatisation. EU member states justify their golden shares, and other measures aimed at restricting foreign investment, with arguments about maintaining security of supply and operational sovereignty. This is particularly the case with capabilities that governments have earmarked for “national” independence (see below). Other

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<sup>10</sup> See “New Era Dawns for Anglo-French Defence: Countries Destined for Much Greater Cooperation, but Governments Insist Sovereignty will be Kept,” 28 October 2011, *The Guardian*; “Liam Fox: Anglo-French Defence Treaty will not Compromise UK Sovereignty”, 2 November 2011, *The Guardian*;

<sup>11</sup> The French government holds shares of: 27 % in Thales, 27.08 % of Safran, 62.5 % of shipbuilder DCNS, 100% of Nexter (although the privatisation process has been initiated), and 10.9 % of Airbus Defence (via SOGEPa)

instruments of protectionism include barriers to entry of foreign defence firms, such as (too high) requirements for economies of scale, position on the learning curve, product differentiation, or too sophisticated or complex programme specification (Bekkers, *et al.*, 2009). National ownership, and divergent forms of government-industry relationships in general, presents a persistent impediment to industrial cross-border cooperation and establishment of multinational defence companies.

Protectionism is closely associated with duplication, excess capacity, and—other than a handful of “giants” or primary contractors (referred to as primes)—defence firms with small revenues catering to equally small, primarily national, markets. Indeed, as one senior European Commission official phrased it, complex weapons systems are made on such a small scale in Europe that “they are almost hand-made” (Interview 2, 15 December, 2011, European Commission). At the time of the Defence Procurement Directive’s approval, there were 12 major warship building companies in the EU, compared to a maximum of four in the US and 89 different defence research programmes, versus the 29 in the US (European Parliament, 2009). France, UK, Sweden, Poland, Germany, Italy, Spain, Austria and Switzerland not only each possess manufacture, research, and technology capabilities for armoured fighting vehicle production (AFV), but also purchase them from predominantly national suppliers (Dickow, *et.al.*, 2011). While the unsustainability of this status quo is acknowledged by EU policymakers, as when President Sarkozy stated at the 2007 Le Bourget Airshow that “Europe cannot afford the luxury of five ground to air missile programmes three combat aircraft programmes, six attack submarine programmes, and twenty-odd armoured vehicle programmes,” it does not seem to translate into policy choices. During the European Parliament debate preceding its vote on the Directive, the rapporteur lamented that although the “European defence equipment market” yields approximately 91 billion euros’ worth of goods and services, only an average of 13 per cent of this amount put to an EU-wide tender, while the remainder is spent domestically (European Parliament, 2009). He also noted that Germany, one of the biggest defence exporters and “his own member state,” opened only two per cent of its procurement to EU-wide competition (European Parliament, 2009). Figures released annually by the EDA during the period 2005-2012 repeatedly placed spending on national procurement programmes at 75-82.4 per cent, while between 82 and 89.3 per cent of investment into research and technology, the fundament of

capability development, has remained stubbornly national (EDA, 2011, 2013).

The EU defence equipment market is also characterised by divergence among member states. Not only do the national barriers described above vary in structure and extent across member states, defence equipment acquisitions within the EU are also carried out through divergent terms of publication, tendering procedures, selection award criteria, pricing schemes, and efficiency incentives (European Commission, 2012; Bekkers, *et al.*, 2009: 35). To a certain extent, divisions are structural. The smaller member states, in defence terms, are largely arms importers and contain mostly second-tier defence companies, or sub-contractors, while only six states account for 90 per cent of defence spending and contain the majority of defence production in the EU, as well. Many of these large states, that is, the UK, France, Germany, Italy, Sweden and Spain, are intent on preserving autonomy in weapons programmes they define as “essential security concerns.” The UK, for instance, would like to maintain freedom of manoeuvre in the procurement and maintenance of nuclear submarines, core warship building, ammunition and cryptography, as well as support capabilities for fixed wing combat aircraft, helicopters, and armoured fighting vehicles. France is protective of its nuclear deterrent, ballistic missiles, nuclear submarines and information system security (Bekkers, *et al.*, 2009: 35).

In practice, this means that governments are keen to maintain defence industrial capabilities for such equipment under direct control, outside of any form of EDEM, and most often within their territory. Underlying this state of affairs is a widespread and deep-seated commitment of national governments to domestic defence industry first, and the United States second, when it comes to supplying their armed forces (Bekkers, *et al.*, 2009: 133). Yet, widespread “abuse” of Article 346 is usually the first reason given in literature and policy documents for the fragmentation described above. A number of Article 346 exemptions, however, do pertain to legitimate security objectives of member states. These objectives, and the demands for weapons programmes they yield, vary across member states, resulting in 28 different R&D and production specifications. They are nationally defined, arising from differing strategic cultures, contending industrial demands, and diverse defence industrial policy choices, in themselves reflecting divergent national political traditions.

## European Defence Procurement Architecture

### *What Came Before*

#### *Resistance to Integration*

It will therefore not come as a surprise that this policy area has been resistant to significant steps toward integration. At the same time, attempts of supranational institutions to harmonise defence procurement procedures of EU member states—and hopes of a consolidated armaments policy—are not new. Already in 1989 the then Internal Market Commissioner Martin Bangemann called for a central Community role in arms production and trade (Bauer, 1992: 39).<sup>12</sup> In fact, this statement reflects the persistent arguments in favour of if not an elimination, then a limited application of Article 346 (then Article 223) consistently advanced at the time by the Commission despite its barely-there competence in defence-industrial matters (Cornish, 1995: 1). The European Parliament also, through its Poettering report of 1991, or *Report on the Outlook for a European Security Policy*, proposed the removal of Article 346 and discussed the creation of an autonomous European armaments agency (European Parliament, 1991).

In 1996, the Commission issued a Communication on the defence industry and armaments market within the European Union, entitled *The Challenges Facing the European Defence-Related Industry: a Contribution for Action at European Level* (European Commission, 1996). The report underlined the dual nature of defence industry- that is, a “major means of production and essential to foreign and security policy”- and proposed “an integrated European market for defence products...using a combination of all the instruments at the Union’s disposal: Community and Common Foreign and Security Policy, legislative and non-legislative instruments” (European Commission, 1996: 2,5). Again, the Commission reiterated its dictum of restrictive Article 346 interpretation, which hinted that “adapting the resources within the Community’s jurisdiction” may be necessary (p.10). The overall tone of the Communication, however, focused on the commercial aspect of the defence trade,

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<sup>12</sup> Cited in Cornish, 1995: 18

making the case for supranational regulation of armaments, while de-emphasising the political character of the issue, and thus casting this initiative as brash, fanciful, or divorced from reality in the eyes of the member states (Georgopolous, 2007:214).

A second Communication came in 1997, under the name ‘Implementing European Union Strategy on Defence-Related Industries’ and was notably more conciliatory and cognizant of member states’ sensitivities regarding defence industrial matters and what could therefore be achieved in that field (European Commission, 1997). In particular, in its call for a European defence equipment market, the Commission allowed for significantly more non-legislative components. The Communication also mapped out a timetable for the proposition and discussion of the various components of an EU armaments policy, for instance, a European company statute, export controls, and competition policy in addition to public procurement (Moerth, 2003: 97). However, this timeline was not to be realised, while the previous initiatives have not led to tangible outcomes or policy outputs. By 2000, the 1997 Communication (COM 97) was under discussion in the Council of the European Union, and specifically within the Ad Hoc Working Party on a European Armaments Policy, or POLARM, where the proposals had stalled. It is interesting to note that POLARM produced a non-paper entitled *The Opening Up of Procurement in the Arms Sector*, in which it noted the member states’ excessively “broad” interpretation of the national security exemption provided by the Treaty, and ventured that the Commission could well issue an “interpretive document” in order to affect greater “transparency” in this regard (POLARM, 1996:3).<sup>13</sup>

The non-paper set out a series of recommendations for achieving “major savings...by using flexible, streamlined joint procedures modelled on those in the public procurement directives” (POLARM, 1996: 3). However, illustrating that perhaps ideas do really “have their time,” a CFSP Common Position on armaments, proposed in COM 97, faced opposition from member state governments, as it implied a common defence policy and necessitated a stronger role for the Commission in the field of armaments, which member states viewed as premature and unacceptable in an issue-area considered inherently intergovernmental in national capitals (Moerth, 2003: 98-99; Ackrill and Kay, 2011). And this is precisely due to the governments’ view

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<sup>13</sup> In 2006, the Commission did indeed issue such an *Interpretive Communication*, which has been regarded as its “declaration of intent” to “go after” the defence procurement field (see Chapter III).

that “certain prerogatives of national sovereignty should be maintained for political reasons” (Moerth, 2003: 98-99). When POLARM did produce recommendations that were adopted by the Council, they were general and non-committal (Council of the European Union, 2003).

### *Cooperation Outside of the EU*

Instances of cooperation on armaments issues between member states of what is now the EU are also not at all new. In fact, the notion that European states need to cooperate in this sphere has a long history.<sup>14</sup> It has, however, predated the European Union, developed outside of its structures and was more characterised by the organisations it created rather than the concrete outcomes it produced. In addition, the institutions that armaments cooperation between European states did produce have suffered from over-density and ineffectiveness.

Already in 1976, defence ministers of European NATO members<sup>15</sup> established the Independent European Programme Group (IEPG) outside of NATO’s structure, aimed at promoting European cooperation on defence production and R&D. Although it remained inconsequential until the mid-1980s, IEPG in 1998 produced the IEPG Action Plan “on the stepwise development of a European Armaments Market.”<sup>16</sup> Voluntary, without sanctions, and entirely subordinate to the defence ministers, the Plan envisaged a “partial gradual, negotiated liberalisation of the armaments market” (Walker, 1989: 431). As work on the plan was underway, the Western European Union (WEU) was charged with furthering European armaments development in conjunction with IEPG and NATO’s Conference of National Armament Directors (CNAD). Intergovernmental and formally separated from the EU, the WEU entered the business of armaments precisely because it “reassured states that it would not undermine their sovereignty,” as a Commission role would have (Bauer, 1992: 26). In 1992, the European defence ministers transferred IEPG’s role to the WEU’s Western

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<sup>14</sup> DeVore (2012), whose work will be reviewed in Chapter II, provides a comprehensive overview of armaments cooperation involve European states, dating back to 1945. As a detailed examination is not possible here, only mechanisms with a clear defence industrial and procurement focus will be included.

<sup>15</sup> At the time, this included 13 states and Turkey, and excluded Iceland

<sup>16</sup> The Action Plan and its accompanying communique were published in Atlantic News, No. 2065, Annexes 1 and 2, 15 November 1988, cited in Walker, 1989: 431.

European Armaments Group (WEAG), which, without a legal personality, served as a consultative forum on increasing the transparency, competition and efficiency of the defence industrial base in the EU, and fostering cooperative R&D. The major output of WEAG was the first framework for EDEM, intended to open up national defence markets. It also formally established the *juste retour* principle, which is still a major characteristic of the EU defence equipment market and is widely recognised as a key contributor to its inefficiency and protectionism.<sup>17</sup>

Again, WEAG's EDEM framework was entirely voluntary and non-enforceable, while institutional equality of all its members meant it fell victim to opposing agendas of big and small members (Georgopolous, 2006: 208). To reduce this ineffectiveness and market fragmentation, WEAG's defence ministers in 1996 created the Western European Armaments Organisation (WEAO). A subsidiary of the WEU and the first European armaments organisation with an international legal personality, WEAO was initially tasked with coordinating WEAG's research and technological activities. In addition, the WEAO together with WEAG was envisioned as the oversight body for the proposed independent European Armaments Agency (EAA), a forerunner of the EDA (WEAG, 2002). However, the political will and interest from national authorities necessary to establish EAA did not materialise in WEAG, while the WEAO, functioning as a Research Cell and "de facto contracting agency," has remained inconsequential, responsible for contracts totalling only 2.5 per cent of EU military research and technology (R&T) spending (Schmitt, 2003: 23). Although the WEAG ceased operations in 2005, as did WEAO in 2006, their story highlights the fragmentation and duplication that continue to characterise the armaments architecture in Europe. Moreover, this early history reveals a coexistence of supranational and intergovernmental initiatives – a coexistence that is replicated today and one that has often been tense (Chapters IV and V).

### *What Exists Now*

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<sup>17</sup> (Fair return), a work share arrangement in collaborate procurement programmes, which channel work to national industries in proportion to their governments' planned acquisition of the programme



Common arrangements on armaments issues in Europe but outside of EU institutions nevertheless persist today. The Joint Organisation for Armaments Cooperation (known by its French acronym OCCAR) was established through a convention at the International Farnborough Air Show in 1998 between the UK, France, Germany and Italy.<sup>18</sup> Spain and Belgium have since joined as member states, while, as of 2012, Finland, Sweden, Poland, Luxembourg, the Netherlands and Turkey also participate in at least one OCCAR Programme. Endowed with a legal personality, OCCAR manages defence collaborative programmes, which currently comprise eight, including the A400M tactical and strategic airlifter, the BOXER multi role armoured vehicle, and TIGER new generation helicopter.<sup>19</sup> Hailed at the time of its establishment as breathing new, much-needed life in EU defence market integration and liberalisation with the dominant arms producers in the lead, OCCAR's impact has fallen short of such expectations (Mawdsley and Quille, 2003: 30-31; Hayward, 1997:21). Smaller states have been reluctant to participate in programmes due to privileges conferred on large ones, existing members have lacked political commitment in undertaking collaborative procurement, and significant commercial openness has not materialised (Georgopolous, 2006: 210-12).

Another intergovernmental cooperation mechanism not involving the Commission is the Letter of Intent Framework (LoI) Agreement concluded by the defence ministers of UK, France, Germany, Italy, Spain and Sweden, in order to further restructuring of European defence industry.<sup>20</sup> The LoI has high potential, especially when it comes to harmonising military requirements, intellectual property rights, and security of supply and information provisions between the participating states. Yet, again, LoI is voluntary, to the point of lacking a monitoring and coordination mechanism, and appears to treat the defence markets in its remit as distinct rather than striving for consolidation (Georgopolous, 2006: 212).

The Commission exercises procedural and substantive control over the export regime of dual-use products, an area that has grown in significance in recent years and has allowed the Commission to claim a greater role in defence procurement (see Chapter

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<sup>18</sup> See: <http://www.occar-ea.org/185>

<sup>19</sup> See: <http://www.occar-ea.org/programmes>

<sup>20</sup> Letter of Intent – Framework Agreement, 23 July 2003. Available at: <http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmselect/cmdfence/694/694we15.htm>

V). In addition, through its Framework Programme<sup>21</sup> for civil research funding, as well as the ‘European Research Area’, akin to an internal market for science and technology, the Commission has sponsored much strategic industry research, especially in the aerospace field. Although the Framework does not fund military projects, it currently includes the civilian security sector, such as crisis management and anti-terrorism, while the technological and scientific projects it finances may well have military applications. All of these sectors overlap with the defence field, and thus provide the Commission with another foothold in the defence procurement sphere.

This overview is significant for several reasons. Firstly, it illustrates the historic resistance of EU governments to serious contemplation of a meaningful Community role in armaments issues or any restriction of Article 346 invocation. The number of institutions “bypassing” the EU bears testament to this. As has been described, this resistance remains entrenched, but has not blocked the Commission’s current regulatory instruments. This, in turn, reinforces the questions posed earlier— namely, what has changed that allowed the Commission to question the extent of member states “essential security interests”? What finally led to the establishment of a functional armaments agency in the shape of the EDA that introduced defence procurement standards- even if they were voluntary - against which member states’ conduct could be judged? In addition, as mentioned above, attempts at cooperation and relevant institutions have arisen. However sub-optimal the results, the perception regarding the need for these structures has been shared amongst governments at various points of the European project and originated in response to policy challenges, evolution of the EU itself, and external pressures from the wider international system. How these were reflected in the emergence of an institutionalised EDEM makes the study of this process all the more interesting.

## **Hypotheses and Plan of Thesis**

An examination of the available literature and official documentation, undertaken in

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<sup>21</sup> See: [http://cordis.europa.eu/fp7/understand\\_en.html](http://cordis.europa.eu/fp7/understand_en.html)

detail in the following chapter, suggests several factors that may have induced member states to pay the costs of defence procurement institutionalisation in the shape of the Code of Conduct and Defence Procurement Directive. Almost universally highlighted is the post-Cold War context of falling defence budgets on both sides of the Atlantic, resulting in shrinking national armaments markets and coupled with technological advances driving up unit-level prices of weapons. In addition, much of the academic and policy literature, particularly materials dating to the 1990s and early 2000s, stress the imperative of providing political direction to defence industrial restructuring in Europe as a driver for procurement coordination. The technology and competitiveness gap vis-à-vis American companies is consistently invoked as a threat in need of such as response. Finally, existing literature suggests a strong institutional dimension in the causal processes leading to the Code of Conduct and Defence Procurement Directive, namely, the prominent role of EU supranational organisations, as well as the importance of the Union’s military dimension in general, and the Common Security and Defence Policy (CSDP) in particular.<sup>22</sup>

On the basis of the overview above, three hypotheses have been constructed—again, presented in detail in the following chapter—which provide plausible answers to the research question posed by this thesis. In the beginning of Chapter III, the thesis reviews the systemic context shaped by rapid technological development in the military sphere, declining defence budgets of the post-Cold War Transatlantic security environment, and increasing export dominance of US defence firms. These trends undermined the viability of national defence industrial bases in the EU and heightened deep concerns about security of military supply amongst its member states. In summary, it is argued that imperatives of industrial survival and security of supply in view of reliance on US-purchased weapons systems in turn exacerbated adaption pressure on governments for greater degrees of cooperation. Situated within this context, the first hypothesis argues that the post-Cold War “peace dividend” also led to defence industrial consolidation within the EU, creating powerful, export-oriented transnational companies intent on preserving competitiveness and export

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<sup>22</sup> With the entry into force of the Lisbon Treaty, the European Security and Defence Policy (ESDP) has been renamed as the Common Security and Defence Policy (CSDP). It will be referred to as such thenceforth and throughout this contribution in order to avoid confusion, even though all pre-Lisbon sources used here refer to it as CSDP.

market share in the face of dwindling domestic budgets and increasingly harsh competition from US industry.

These prime contractors, which are located in dominant arms-producing states, have then successfully lobbied both their national governments and supranational EU institutions for market competition and transparency measures. The national policy makers and EU officials have backed the Code of Conduct and Defence Procurement Directive on market liberalisation and industrial survival grounds. The second hypothesis states that supranational EU actors, particularly the European Commission, have played decisive policy entrepreneurship roles by consistently pushing for defence procurement integration. Buoyed by their powers granted through the Single European Act (SEA) and motivated by a desire to extend their institutional power, these supranational actors have skilfully forced the Directive through critical junctures, “escaping” the control of their principals. They have adeptly couched their proposals in terms that resonated with the dominant member states and industry. The third and final hypothesis argues that EDEM institutionalisation is an outcome of the EU’s development as an international security actor. Specifically, the emergence of its military dimension, Common Security and Defence Policy (CSDP), focused political attention on the need for efficient, cost-effective military equipment for its growing number of operations. Taken together, this has generated the vital rationale for an institutionalised defence equipment market—embodied in the establishment of the EDA—as well as providing a regularised intergovernmental decision-making forum and policy-making mechanism in which it could be formulated. In this scenario, policy initiative originated from the major arms-producing member states, namely the UK, Germany and France, each motivated by concerns over defence and security autonomy. However, they must contend with intergovernmental institutions, such as the CSDP bodies and the Council of Ministers, for decisive influence.

The thesis is structured as follows. Chapter II provides a review of the relevant literature concerned with EU defence procurement, armaments cooperation, and defence industrial developments, highlighting its short-comings and identifying contributions. This chapter will also describe the identified hypotheses in detail, and, drawing upon existing scholarship on EU’s defence and security policy as well as broader IR work on inter-state military cooperation, use them to establish a theoretical framework within which each will be examined. Chapters III, IV, and V will be

dedicated to examining each of the three identified hypotheses. Chapter VI will adjudicate between all hypotheses, and conclude by specifying the most comprehensive explanation for the institutionalisation of the EDEM yielded by this research.

## **Contribution**

Although legal and economic scholarship has followed developments in the EDEM arena for some time, politically-oriented analyses from an IR perspective have only recently begun to emerge (Chapter II). However, much of this work has been largely descriptive in nature, insufficient in time-scale, or lacking in empirical detail, and has thus remained quite limited in scope (Chapter II). In seeking to fill this gap, this thesis deals with a very specific subject. Yet, examining the Directive and Code is ultimately about understanding more clearly why states accept the limitations institutionalised cooperation places on their sovereignty in such an inherently intergovernmental and seemingly “cooperation-averse” sphere as defence procurement. Answering this question provides greater insight into the conditions which facilitate such an outcome and the objectives states may seek to achieve by bringing it about. In particular, examining the institutionalisation of EDEM sheds light on the evolution of the Union’s armaments cooperation and the emergence of its defence industrial policy. Tracing the causal mechanisms that led to the Defence Procurement Directive also reveals the influence of and interaction between key actors in this process, such as transnational defence firms, dominant arms-producing member states, and EU organisations, both supranational as well as intergovernmental. In addition, the impact of the transatlantic defence market, NATO, and United States introduces external adaptation pressures into the analysis, which, together with the post-Cold War context of declining defence budgets and technological innovation, allows to observe whether and how systemic influences may have translated into intra-EU dynamics under study here.

Thus, uncovering the influence of transnational EU defence firms in bringing about a more institutionalised EDEM could not only shed light on market-derived pressures for institutionalisation, but also enrich theoretical conceptualisations of the role

transnationally organised interests play in affecting intergovernmental cooperation and integration. Exploring the impact exerted by transnational EU defence industry would therefore add to the body of knowledge regarding the drivers behind defence integration, and enhance conceptualisations of non-state actors in multi-level decision-making of the EU. Detailing the role of the European Commission and its interaction with member states and intergovernmental players such as the EDA, would provide insights into the causal influence of supranational policy entrepreneurship on states' acceptance of rules in a field ostensibly central to their sovereignty. Exploring this hypothesis would also add to the literature on the policy entrepreneurship activity of the European Commission and the role of supranational agents in "cultivated spillover," more generally. As such, it would lead to a more nuanced understanding of constraints placed on dominant actors—member states—in the process of institutional development, and help discern whether and how these constraints related to "parties' relative abilities to force others to act in ways contrary to their unconstrained preference" (Knight, 1992: 126). Furthermore, if the Commission activity was, indeed, decisive, one could draw conclusions about the importance of prior institutionalisation and path dependence, as well as the mechanisms, timing and causal processes at work during "spillover." Such conclusions would be particularly enlightening as current neofunctionalist accounts of spillover through supranational agency do not envision this process being initiated in intergovernmental matters of high politics, while supranational competence is limited in the defence and security sphere.

In addition, exploring the role of the EU's developing military dimension in bringing about the beginnings of a common defence procurement policy could help elucidate the interaction between the ability of the CSDP institutional structure to reduce "returns to power" and importance of power capabilities of EU member states (Ikenberry, 2001:5-8, 36). If its autonomy from outcomes of inter-state bargaining could be demonstrated, this micro-level study could contribute to more convincing explanations of inter-state institutionalisation in the defence realm by introducing member states' power distribution into the causal mix of institutionalist analyses (Menon, 2011). A further shortcoming of institutionalist theories is a lack of attention to the influence of sustained inter-actor contestation over the nature of institutions or institutional development (Menon, 2011: 88). This gap may be narrowed by

examining the latent conflict between the European Commission, the EDA, and member states over the form of defence procurement harmonisation during the development of the Code of Conduct and the Commission's pursuit of a defence procurement directive (Georgopolous, 2007: 220).

In fact, the struggle for supremacy between the Commission and the EDA constitutes a central theme running through this thesis. Moreover, it is a tension that, far from being a theoretical construct superimposed upon a particular reading of European history, may be currently observed within the defence industrial issue area and constitutes an exciting case study of the nature and dynamics of European integration. Thus, the voluntary Code of Conduct as well as the entire Industry and Market (I&M) Directorate of the EDA tasked with EDEM issues were dissolved in March 2013 due to diminishing member states' commitment. At the same time, the Commission has continued to strive for an ever greater slice of the defence market pie. In particular, it has established a Defence Task Force in 2011, and released a high-profile Communication in July 2013 as well as a July 2014 *Roadmap* for its implementation, which indicates its increasingly ambitious agenda in the defence industrial policy regime (Chapter VI).

## **Sources and Methodology**

This thesis relies on process tracing in order to examine the three hypotheses specified above. George and Bennett (2005) have been instrumental to developing process tracing as a fundamental qualitative method of within-case analysis, which is in turn crucial to the rigour of small-n studies in social science. Process tracing is a method which seeks to “identify the intervening causal process—the causal chain and causal mechanism—between an independent variable (or variables) and the outcome of the dependent variable” (p. 206). In this undertaking, process tracers examine “diagnostic” evidence within the process under study, usually comprising a temporal sequence of events, and aim to support or weaken alternative hypotheses. This is done by looking for observable implications of hypothesised explanations, and gauging their “fit” to specified explanations (Bennett, 2010: 208).

As may be seen from this overview, process tracing is advantageous to this research for several reasons. Firstly, it allows for a rigorous, systematised examination of one case. As specified above, this thesis regards the EDA Code of Conduct and Defence Procurement as two manifestations of one phenomenon— that of EU defence procurement institutionalisation. As this level of institutionalisation is unprecedented in this area, a comparative study is not feasible. Secondly, process-tracing is well suited for studying complex phenomena with non-linear causality, entailing interaction among multiple variables and actors across a number of analytical levels, as defence procurement institutionalisation does (George and Bennett, 2005: 212). Inter-variable interaction and non-linear causality exist within each hypothesis as well. Such causal complexity has been suggested by preliminary research, and verified subsequently through interviews with policy-makers. Finally, given the early state of development characterising existing work on EDEM and the relative novelty of the phenomena under examination, this project is one of theory development, rather than theory testing. This makes within-case analysis through process tracing both useful and necessary.

However, rather than investigating a single *decision* process which translates initial conditions into outcomes, the macro-level sequence of events which have given rise to the first trappings of EU integration in defence procurement, in the shape of Defence Procurement Directive and Code of Conduct, will be studied inductively. This is done through examination of the hypothesised causal processes, plausibly leading to the same observed outcome (Collier, 2011). Extensive prior knowledge of the subject is central to a convincing process-tracing exercise (Checkel, 2008), as is the imperative to consider alternative hypotheses, evaluate and collect data meticulously and systematically, and be attentive to biases in the evidence. Prior to formulating the hypotheses presented in this thesis, a wide array of literature, official documentation, and media reports have been examined. Special attention has been paid to hypothesising specific causal mechanisms, intervening variables, and independent variables, as well as stating precisely which evidence would verify a given hypothesis and how. This is presented as part of the analytical framework in Chapter II. Furthermore, throughout the verification of hypotheses, which focus on the EU (and its member states') defence capability objectives, transnational industrial actors, and EU institutions and structures, the influence of dominant member states



and particular individuals in policy-making roles has been sought and highlighted. Although the perspectives of smaller member states and defence firms have been sought where feasible, the focus of the primary research conducted for this thesis has been on the dominant arms-producing states in the EU—Britain, France, and Germany. This is partly due to resource and time constraints characterising this project, but also because, in the field of armaments cooperation, states with a large share of weapons systems production and R&D capabilities are able to exert considerable influence on the development and implementation of new policy initiatives.

The point of departure for exploring the working hypotheses described above was an examination of empirical insights offered by the existing scholarship on the subject, particularly research by Moerth (2003), as well as economically and policy-oriented work, which is usually descriptive in nature. Taken together with legal analyses of the subject, as well as publicly available official documentation, this literature has allowed me to establish a plausible sequence of events, beginning in the late 1990s and culminating in 2009, with the approval of the Defence Procurement Directive. This has also solidified an initial understanding of potential causal relationships, establishing a valid “starting point” to guard against “infinite regress”, and allowed to specify critical junctures in the causal processes, that are key to hypothesis verification.

A significant amount of data underpinning this qualitative study is quantitative, and includes state-level defence spending and technological innovation trends readily available through databases of Stockholm International Peace Research Institute (SIPRI), International Institute for Strategic Studies (IISS), and specialised defence industry journals such as *Jane's Defence Weekly*, *Defence News*, and *Space and Defence Weekly*. More recently, the EDA has also begun to publish defence expenditure data, gathered from its participating member states, that includes specific information on multinational procurement. Industrial lobbying has been tracked through interviews, the firms' and defence industrial associations' press releases, and triangulated through other media sources, the work of relevant think-tanks, such as the EU Institute of Security Studies (EUISS) and Bonn International Centre for Conversion (BICC), and Centre for Strategic and International Studies (CSIS), as well as reports produced by non-governmental organisations concerned with the accountability and policymaking influence of defence firms.

A sequence of official documents emanating from the European Commission, European Parliament and European Court of Justice constitutes a considerable body of relatively detailed primary material, revealing clear instances of policy initiative by these supranational organisations. This thesis draws on the collection of detailed reporting by specialised Brussels-based media outlets such as *Europolitics* and *EurActiv*, as well as minutes from meetings of European Parliament's Security and Defence (SEDE) Sub-Committee, assembled by the Information Security Information Service, Europe (ISIS-Europe). In addition to interviews, member states' concern regarding threats posed to their defence industry has been traced through policy proposals and official statements, including in the settings of the Council of the EU and EDA policy processes.

As suggested above, formal documents alone are not sufficient to study the complex dynamics of EDEM's emergence comprehensively. Defence policy, including its industrial dimension, is somewhat less transparent than other policy areas due to its intimate connection to national security. Furthermore, in its current incarnation, EDEM represents the culmination of processes and the codification of debates that have been taking place for some time, and across a variety of different loci. Process tracing in this policy arena would therefore be difficult without extensive interviews with experts, policy-makers and officials involved. Therefore, field research, namely via semi-structured interviews, in member state capitals as well as in Brussels has formed an integral part of this project. Key institutions approached in this regard included European Commission's Internal Market Services and Enterprise and Industry Directorates General, the EU Council General Secretariat, the EDA, the EU Military Staff, EU Military Committee, as well as the Internal Market and Consumer Protection Committee and Sub-Committee on Security and Defence of the European Parliament. In addition, the three dominant arms-producing member states' permanent representations to the EU as well as their ministries of defence, and specifically armaments directorates or equivalent departments, have been contacted. The senior Brussels-based lobbyists of the EU's largest transnational defence firms have also been interviewed. In all cases, interviews have been conducted with decision-makers who were professionally active at the time of the research period. To supplement these sources, where possible, this thesis includes informal documents, statements and minutes, as well as public statements of politicians, cross-referencing them with

academic and policy literature.

# **CHAPTER II: CONCEPTUAL FRAMEWORK – THREE DRIVERS OF THE DEFENCE INDUSTRIAL POLICY REGIME**

The previous chapter had set out the puzzle to be addressed by this thesis, namely, why EU-level defence procurement rules are emerging in the context of the European Defence Equipment Market (EDEM) that place unprecedented constraints on member states' autonomy in this field. A research objective was then identified, which on one level seeks to uncover the causal process leading to the emergence of the Defence Procurement Directive and the Code of Conduct as the most tangible aspects of EDEM today. However, the fundamental research question posed by this thesis is why member states have acquiesced to the Directive in particular, given its binding constraints and the existence of the voluntary, intergovernmental Code they could ostensibly control. The main purpose of this chapter is to formulate a framework for analysis to be applied to the research presented in the rest of this thesis. This is achieved by presenting three hypotheses which have been constructed on the basis of existing literature and available empirical material. Each hypothesis provides an alternative account of the forces behind member states' acceptance of greater limitations on their freedom of manoeuvre in favour of an institutionalised EU-wide defence equipment market.

First, however, this chapter will review the scholarship that has emerged to date on the subject of European cooperation and integration in the sphere of armaments and defence market matters. This literature will be supplemented by an examination of publicly available policy documents, and subjected to a critical appraisal. In particular, the contribution it is able to make to the research question undertaken here will be assessed, and this material will also inform a detailed presentation of the hypotheses introduced in Chapter I. The description of each hypothesis will consist of a theoretical context, followed by its empirical justification and manifestations.

Finally, an organising framework—in the form of the policymaking cycle—which is used to order the research that follows in the remainder of this thesis will be introduced.

### **Armaments Cooperation- Political, Legal, and Economic Dimensions**

Until recently, literature on European defence procurement matters has been dominated by legal and economic contributions, alongside a stream of policy-oriented work. Although analyses of the industrial, legislative, and power-projection dimensions of EU armaments cooperation continue to be prominent, theoretically- and conceptually-oriented scholarship focusing not only on European armaments cooperation in general, but the defence market in particular, has also emerged in recent years. These contributions have chiefly fallen in one of two strands – a focus on the dynamics and impact of EU organisations or an examination of the interaction and convergence between member states. In particular, studies of intergovernmental armaments cooperation between European states, both within and outside the EU context, have been carried out by Krotz (2011), DeVore (2012), and Weiss (Weiss and Devore, 2013). Krotz examines Franco-German relations in the field of defence and security from the Cold War era of the 1970s until the beginning of the 21<sup>st</sup> century. He uses the two states’ co-development of the Tiger attack helicopter (or Eurocopter Tiger, as it is now known) in order to demonstrate the effect of institutionalised and “constructed” relations between states on their “national interests and security policies” (Krotz, 2011: 4). Krotz argues that this influence is exerted even in such unlikely—from an IR theory perspective—policy areas and contexts as “cutting-edge advanced weapons production involving enormous financial and technological resources, in response to security threats of truly existential dimensions” (2011: 3). Much of his analysis is thus concerned with constructing a theoretical model and elucidating specific pathways by which particular types of inter-state cooperation influence state interests.

DeVore and Weiss employ an international political economy (IPE), state-level approach to “answer the hitherto unexplored question of what factors drive government decisions on international armaments collaboration” (2013: 498). To

achieve this, they examine the choice faced by British and French governments regarding whether to collaborate “in the domain of combat aircraft” versus “autonomously producing,” or purchasing it “off the shelf” from foreign suppliers (2013: 498). DeVore and Weiss’ more specific aims consist in explaining why “the UK has more consistently pursued efficiency gains through collaboration, while France has privileged continued national autonomy” (2013: 498). Secondly, they seek to “ascertain who—governments or large defence contractors—sits in the proverbial cockpit when it comes to deciding whether to build aircraft collaboratively or on a national basis (2013: 499). Relying on the “Varieties of Capitalism” approach, they argue that differences in the Franco-British approaches to armaments collaboration may be attributed to divergent “institutional structures of the states’ political economies” (p. 499). Thus, the French Etatist system provides greater opportunities for interest groups to influence the policymaking process, while Britain’s “liberal market economy deprives defence contractors of such supportive organisations” (2013: 499).

DeVore, in his single-authored contribution, aims to rectify what he sees as the error shared by all “prior analyses” of European armaments organisations, and namely their chronologically and geographically myopic focus. This discrimination in favour of only “recent organisations of a European character” has led, “not unnaturally,” to “developments in this sector being explained in terms of broader trends in European integration,” as well as to predictions of “the emergence cohesive defence-industrial base and common defence market regulated by the EU” (DeVore, 2012: 2). Such forecasts, according to DeVore, are unfounded since “European States’ participation in international armaments organisations is neither a recent phenomenon nor one that has historically been rooted in broader processes of European integration” (DeVore, 2012: 3). Demonstrating that, “in fact, European States have worked to create and improve international armaments organisations on a continuous basis since 1949” leads DeVore to conclude that the European armaments domain will be more akin to a “polycentric architecture” that includes both EU and NATO contexts rather than a “simple ‘Europeanisation’ and ‘Brusselisation’” (DeVore, 2012: 3,6).

Several scholars have also paid particular attention to the interaction between the EU and national levels. In this context, the emergence of an EU defence procurement

policy space has been analysed through an IR lens by Moerth (2000, 2003, 2004), Mawdsley (2002; 2003; 2008), Batora (2008), Britz (2004, 2010), and Hoeffler (2012), while the most recent—and most relevant to this thesis—contribution to date has come from Blauburger and Weiss (2013). Moerth diligently traces the progressive institutionalisation of EU cooperation in the field of armaments. She employs the sociological institutionalist emphasis on the conceptualisation of the armaments issue within different organisational fields in the EU, namely, the internal market field and the defence field. The interaction and competition between them has driven armaments policy formation forward and shaped its substance, resulting in the emergence of a new, “independent” field of armaments built on both market and defence elements, yet subject to continuing contestation.

Mawdsley’s 2008 contribution begins with the premise that “the establishment of the European Defence Agency (EDA) in July 2004 and the European Commission’s 2007 draft directive on defence procurement clearly show that the EU has not only become the focus point for discussion of European intergovernmental armaments cooperation, but also that there is growing institutionalisation and regulation at EU level” (p. 367). Within this context Mawdsley examines the preferences and impact of small member states on EU armaments cooperation, beginning with the Cold War period. Her main concern, however, is analysing the nature and likelihood of small states’ “traditional tactics” of securing influence within armaments organisations— that is, “demanding equality of membership, ... using protectionist tactics to preserve the indigenous defence industry and using their home markets as a method of gaining advantages for their firms”—in the context of the EDA’s work and the Commission’s efforts to involve itself in defence procurement (p. 367; 380). Mawdsley concludes that any resulting supranational provisions would likely “erode” the “protectionist measures utilised by small states” (p. 381). The reason for this projection is that the extension of internal market principles into the defence industrial area would entail economic liberalisation and necessitate building coalitions with “key strategic firms” – measures that harm the interests of “failing” small industry in “small states” (p. 380).

Batora focuses his analysis on the EDA as “one of the key elements...bring(ing) about more coherence and integration in defence cooperation” within the EU (2009: 1075). He views the Agency as a key “standard-setter potentially fostering

isomorphic adaptation processes in the member state defence establishments” (p. 1093). His specific focus is on the “ambiguities” and “competing visions” regarding the purpose, goals, and institutional arrangements of the Agency (p. 1076). Thus, Batora highlights the competing institutional logics which lie at the heart of the Agency’s social structure and operate on several parameters. Firstly, the role of the EDA has tended to tread the unclear middle between acting as “an information provider among sovereign defence establishments” and “regulating the pooling of defence resources among the member states” (p. 1079). Secondly, the EDA is “struggling” regarding its relationship with NATO as a result of competing Europeanist and Euro-Atlanticist logics, as well as being caught between working towards a “Europeanised defence market” and striving for a liberalised (global) one (p. 1079-1080). The repeated collision of these competing logics has shaped the functioning of the EDA and has produced an “intergovernmental agency with severely limited powers heavily dependent on the willingness of the member to support particular initiatives” (p. 1084). The overall effectiveness of the Agency thus depends on the extent to which “the logic of pooled defence resources championed by the EDA will in fact supplant the logic of defence sovereignty” (p. 1093). Batora concludes that the equilibrium that will ultimately result from these collisions of institutional logics will not only continue to shape the EDA itself but will also structure “its role in the formation of the political order of European defence” as a whole (p. 1094).

Britz (2010) builds on the analytical categorisation offered by the Europeanisation approach to account for the development of a “European defence industry market” (p. 182). Using the case study of Swedish defence industrial policy, she demonstrates the importance of the free market idea and its manifestation in private ownership of state assets—or marketisation—in the interaction between member states’ domestic industrial policy restructuring and the creation of an EU defence industrial policy. The resulting process of Europeanisation, in this case, policy cross-loading between the two levels, has shaped the structural core of the emerging EU defence industry policy. In particular, Britz argues that the privatisation of hitherto publicly owned defence industry in Sweden and the extension of (civilian) public procurement rules to this area was the result of “economic (EU) integration brought about by the common market” (p. 180). By “supporting efforts to increase efficiency in the European



defence industry market” the Swedish government has furthered the development of an EU defence industrial policy, according to Britz, and thereby become an agent of its Europeanisation through marketisation (p.181). Thus, “the development of Swedish defense industry policy became part of the development of European defense industry policy,” albeit with the former rapidly progressing in the direction of “marketisation,” while the development of the latter has somewhat stagnated (p. 181).

Hoeffler, similarly to DeVore and Weiss, adopts a political economy lens to explain EU governments’ adoption of the Defence Procurement Directive (Hoeffler, 2012). In particular, she relies on the concept of economic patriotism to argue that this development stemmed from shifts within the domestic industrial policies of major arms producing member states (Hoeffler, 2012: 438). Defining the term as “economic choices which seek to discriminate in favour of particular social groups, firms, or sectors understood by the decision-makers as “insiders” because of their territorial status,” Hoeffler asserts that a shift towards a “liberal conception of economic patriotism at the European level” meant that arms producing member states came to regard the Commission’s vision of a procurement harmonisation as a “way to expand market opportunities for their insiders” – that is, nationally based defence firms (Hoeffler, 2012: 445-446). Thus, EU-level institutionalisation embodied by the Defence Procurement Directive stemmed from governments’ recognition that the EU could function as a “new level of economic patriotism in defence procurement” aimed at “expanding markets on a global scale” for European firms” (Hoeffler, 2012: 447). Yet, Hoeffler identifies the persistence of “national lines” of organisation and “nationally defined loyalties” within a large section of so-called “European” defence firms as one key limitation of any future European defence industrial policy (Hoeffler, 2012: 447). Finally, Blauberger and Weiss draw attention to the role of the Commission as a “strategic” policy entrepreneur in “pushing and pulling member states towards” the approval of the Defence Procurement Directive (Blauberger and Weiss, 2013: 1121-1122). Arguing that this represents a customary entrepreneurship tactic of the Commission, they employ a specific conception of policy entrepreneurship by equating it with credibly threatening national governments with “uncontrolled integration through [ECJ] case law” while at the same time offering “positive incentives and promises,” such as reduced legal uncertainty and regulation on terms favourable to them (Blauberger and Weiss, 2013: 1124). While Hoeffler

also makes this link, albeit more specifically as a justification for the 2008 French Presidency's support for the Directive, Blauberger and Weiss place it at the core of their argument (Hoeffler, 2012: 445).

Since the Directive on Defence Procurement is a legal instrument, it would make sense that legal scholarship has followed developments in this field for some time and in considerable detail (Trybus, 2004, 2005, 2006, 2007), with growing attention paid to the emergence of Community legislation (Georgopolous, 2008, 2010, Heuninckx, 2008a; 2008b). Indeed, the relatively new, but widening field of EU security law covers perhaps the most topically and empirically relevant material for this thesis, as the scholars in this tradition focus specifically on the progress and potential of the Defence Procurement Directive, the EDA and its Code of Conduct, and the interaction between them (Georgopolous, 2005, 2006; Koutrakos, 2011). While it has largely focused on legal implications, applicability, and interpretation—with the exception of Martin Trybus' 2006 work on the EDA—this literature has also paid close attention to the role of the European Court of Justice (ECJ) and European Commission in extending their influence into defence procurement.

A considerable body of analysis dealing with economic and industrial aspects of defence procurement within the EU has also taken shape. It examines the material costs and inefficiencies arising from the continued fragmentation of EU defence procurement framework, and highlights the benefits of an integrated market (Hartley, 2003, 2008). A prominent strand in this argument points to an increasing competitiveness gap between the fragmented European industry and its US counterpart (Hartley 2006, James, 2008, Callum and Guay, 2002). The resulting economic rationale for defence procurement harmonisation is frequently linked to a description of the effects that transnational industrial consolidation within the EU could have on promoting regulatory and political integration as a response to economic pressures (Schmitt, 2000; Taylor, 1990). Other “unifying” forces include post-Cold War economic trends, all of which might push governments toward common approaches to defence procurement. Moreover, the literature's emphasis on the increasing “competitiveness gap” between EU and US industry is used to argue that the latter might undermine or even threaten the economic viability of the European defence industry. A related body of work also decries the fragmentation of defence procurement within the EU, both as an economic burden and a serious

obstacle to an effective CSDP (Keohane, 2002; Aalto, *et. al.*, 2008; Briani, *et.al.*,2013). In this context, output by think tanks such as the International Institute for Strategic Studies (IISS) and Centre for European Reform (CER) has advocated more efficient armaments collaboration and capability generation in the EU, weighing existing procurement harmonisation instruments against this goal (Valasek, 2008; Giegerich and Nicoll, 2012). This literature also accentuates the macro, or systemic, post-Cold War developments, and primarily the combination of steadily decreasing defence budgets, constantly increasing costs of military equipment, and rapid technological innovation of weapons systems. This body of work, most of it driven by an explicit policy perspective, such as promoting increased pooling and sharing of EU military capabilities, relies on these trends and arguments to highlight the need for EU defence procurement harmonisation and development of a fully-fledged armaments policy in order to optimise scarce defence budgets and bolster the EU's global security "actorness."

### **From Dimensions to Hypotheses: Explanations of EDEM Institutionalisation and their Critique**

All the literature reviewed above is useful in providing a starting point for the research to be undertaken here, while the analyses focusing specifically on EU armaments and defence industrial cooperation are particularly valuable in informing the empirical work and its conceptual framework that will follow in the remainder of this thesis. Thus, Moerth and Britz, for instance, are helpful in providing an empirically enriched "map" of the earlier, pre-CSDP discussions, debates, and initiatives in the defence industrial arena, and especially in tracing the intergovernmental-supranational tension within it to the beginnings of the European Union as such (as opposed to the European Community) during the early 1990s. Barrinha's account constitutes a useful survey of EU policymakers' statements regarding the utility of defence procurement harmonisation as they may have viewed it (2010). More importantly, the literature cited above, in conjunction with publicly available policy documents, forms the foundation upon which the conceptual framework of this thesis will be constructed. In particular, this material helps identify

and order the forces that have been decisive in pushing EU member states to accept the confinement imposed by the beginning stages of an institutionalised EDEM.

### *Interacting Variables*

A number of sources reviewed above provide a categorisation of the actors and policy dynamics comprising EU defence procurement, as well as a systematic overview of their interaction. This is not surprising, since, as emphasised above, defence procurement involves economic and industrial dimensions in addition to political and military elements. Specifically, Callum and Guay identify a combination of internal and external factors which shaped the restructuring of the EU's defence industry throughout the 1990s (2002). They argue that the attitudes of EU governments towards supporting cross-border industrial mergers were considerably softened by their realisation that the transatlantic "technological gap" exhibited no intention of closing, having been starkly exposed by NATO's Kosovo bombing campaign. According to this logic, the combination of such awareness and the EU's development as a defence and security actor ostensibly prompted the EU member states to facilitate industrial consolidation. Thus, Callum and Guay argue that at the turn of the 21<sup>st</sup> century, the Commission had "revived" its "interest" in the defence industrial area, at the same time as the EU's defence industry was becoming more politically assertive, and the goal of a "serious CSDP" was providing the impetus for launching multilateral weapons acquisition programmes (Callum and Guay, 2002: 770-772).

Similarly, Mawdsley has listed defence firms, EU member states, and the European Commission, which "has long aspired to a role in defense industrial policy regulation," as the major actors of an emerging defence industrial policy (Mawdsley, 2002, 2003). She observes that the "spur of the development of CSDP" had highlighted the need for greater intra-EU armaments cooperation (Mawdsley, 2002: 10). Thus, it has contributed to the renewed burst of wind behind the Commission's sails in its second attempt at carving out "an enhanced role in defence-industrial policy making" for itself (Mawdsley, 2003: 22). One manifestation of such rejuvenation was the Commission's strategy of "championing" the EU's largest defence firms (Mawdsley, 2003: 22). Similarly to Georgopolous, she believes that such a combination of policy actors and dimensions resulted in an ambiguous

institutional “home” of the defence equipment market, uncomfortably situated “between” Pillars One and Two (Mawdsley, 2003; Georgopolous, 2007: 219). After all, as the European Parliament had noted, any prospective EU armaments policy would comprise “an essential element of the gradual development of a common defence policy” while being “linked to both the CFSP and Community policies,” such as industry, trade, and regions (European Parliament, 1999: Amendment 7).

In addition, Moerth and Britz distinguish between the defence and market organisational fields on the basis of issues, actors, and policy dynamics (Morth, 2003: 87; Moerth and Britz, 2004: 963). The defence field is characterised by the dynamics of the post-Cold War quest for military interoperability, and focused on issues associated with the CSDP and Petersberg tasks. Its prime actors are those associated with the EU’s “second pillar,” and the Western European Union (WEU). The drivers of the market field, in contrast, comprise internal market dynamics, dominated by industry and the EU’s supranational actors. The issues of concern to such actors are those associated with the European armaments market and the defence firms. Finally, Georgopolous provides an account of the “political/security, economic and industrial background of the European defence market,” which constitutes the “particularities” of this field (Georgopolous, 2007: 200). Moreover, he asserts that “all the relevant actors” are now aware of the crucial importance of a “healthy European defence industrial base,” as a prerequisite for the CSDP’s ability to “attain its objectives,” (Georgopolous, 2007: 219). Finally, Georgopolous shares with Moerth an interactive, and even competitive conceptualisation of EDEM’s emergence. Specifically, he believes the European Commission and the European Defence Agency to be engaged in a “refined institutional game of chess,” each pursuing “inherently antagonistic” initiatives and determined to dominate the policy space (Georgopolous, 2007: 220-221).

The documents emanating from the European Commission and Parliament, as well as the specialist media and the more policy-oriented output produced by think tanks also all point to the crucial importance of “a more integrated defence market” for the competitiveness of Europe’s defence industry as well as credibility of the CSDP (Keohane, 2002: 15,39). Thus, the defence industry information platform *TendersInfo* presented the opening up of member states’ defence markets through the Code of Conduct and the as yet proposed Defence Procurement Directive as a response to

pressures emanating from a combination of budgetary constraints and the growing requirement for increasingly sophisticated military equipment, but went into no further detail (*TendersInfo*, 2008; 2009). Another, more nuanced, argument invoked obstacles to interoperability between EU militaries posed by governments' entrenched insistence on national purchasing practices and domestic firms (O'Donell, 2011: 212-213). In addition, the Commission's 2003 Communication *Towards an EU Defence Equipment Policy* predicates the survival of a European defence industrial base on continuing EU-wide consolidation, which is hampered by legal and regulatory fragmentation (European Commission, 2003: 6). The document also traces its own origin to "period of transformation" in the EU's institutional framework, as evidenced by the inception of the CSDP, asserting that a "strengthened" defence market would "greatly improve" the Union's ability to fulfil the Petersberg tasks (European Commission, 2003: 3). The *Green Paper on Defence Procurement* issued by the EC echoes this argument, concluding that a "truly European [defence equipment] market" would go a long way towards strengthening the competitiveness of industry and developing military capabilities "under the CSDP" (European Commission, 2005: 3,4). The Commission's report on the results of the stakeholder consultation process initiated by the *Green Paper* also speaks rather confidently of member states' increasing reliance on the EU "framework"—"in connection with the development of the CSDP"—for defence capability generation and improved competitiveness of the defence technological and industrial base (European Commission, 2005: 1). Conversely, the documents warn that continued defence market fragmentation and protectionism, if left unabated, would fundamentally undermine the CSDP and industrial competitiveness. Emphasis on market fragmentation and legal uncertainty as obstacles to defence industrial growth and "autonomous development of capabilities needed for the CSDP," are also at the core of the justification for binding rules offered within the directive proposal and the accompanying Communication (European Commission, 2007c: 5; European Commission, 2007b). Finally, a number of Commission Communications also highlight the establishment of the EDA as an indication of member states' renewed commitment to addressing market fragmentation, defence spending inefficiencies, and CSDP capability shortfalls (European Commission, 2007b: 3; European Commission, 2007a: 9; European Commission, 2004: 8; European Commission, 2005: 1).

*Discreet but Inter-Connected Roles of Industrial, Supranational, and State-Level Players*

These as well as additional sources that will be reviewed below, also specify whether and how certain groups of actors and policy dynamics may have been dominant within the interacting factors driving EDEM institutionalisation. Thus, observers of defence industry have suggested that the intra-EU defence industrial cross-border consolidation process, although incomplete, has nevertheless generated pressure on member states' governments to "act more European instead of national" (Moerth, 2003: 86; Keohane, 2002: 39). As a result, some have concluded that the defence industry may even constitute "a proponent of even deeper cooperation between European defence industry policies" (Crollen, 2003: 96). In fact, the European Defence Industrial Group (EDIG), which, before its incorporation into the Aerospace and Defence Industries Association of Europe (ASD), represented the national defence industry associations of the Western European Armaments Group member states, had been heavily involved in the Commission's earlier attempts to introduce internal market rules into the EU's defence procurement practices. Specifically, EDIG representatives produced a series of position papers during the period 1995—1999, seeking to provide input into the Commission's agenda. Commission officials subsequently met with EDIG representatives to discuss the issues raised in the papers, and agreed to "tackle the various sensitive issues leading to the establishment of a European Armaments Market where defence industry will survive to remain competitive and capable of catering to the European Armaments needs" (EDIG, 1995: 2, as cited in Moerth, 2003: 71). The Group also called on member state governments to "harmonise their operational requirements to enable common procurements" (ibid). Viewed from this perspective, early efforts to construct an integrated defence market may also be viewed as an extension of the EU-wide liberalisation process, which may be traced back to the creation of the internal market and member states' deregulation of domestic high-technology industries (Moerth, 2003: 85).

One analysis suggested that it may even be industry, rather than governments, that is "steering European cooperation on armaments" and even "driving...the

implementation of a common defence” (Schmitt, 2000: 5). As a result, the transnational merger activity of the EU’s defence industry may lead to “increased political integration” as member states attempt to “take back” the policy initiative by reforming national regulatory frameworks in order to accommodate industrial restructuring already underway (Moerth and Britz, 2004: 967). For instance, a report presented to DG IA in 1997 speaks of the “industry-led drive for more cost-efficiency by transnational specialisation” (Moerth, 2000: 182). Finally, a more direct characterisation of industrial involvement concerned “active lobbying for improved conditions in the European defence market,” while a report by the European Union Institute for Security Studies (EUISS) highlighted the “remarkable readiness” of industry to “consider the Commission as a serious interlocutor” in defence industrial matters, (Mawdsley, 2003: 13; EUISS, 2005: 48).

Mawdsley has also emphasised the Commission’s “long-harboured ambitions to manage the defence market” as well as the competition it faces in this undertaking from the EDA (2008: 380). She has attributed the Commission’s “emboldened” enthusiasm in pursuing this claim to “recent ECJ judgments,” condemning the “abuse” of Article 346, as well as “legal advice” suggesting “that the Commission could legitimately enforce single market legislation on defence procurement (2008: 380-381). Echoing Mawdsley, Blauberger and Weiss specifically highlight the Commission’s increasing emphasis on “greater legal certainty” that may be traced back to the *Green paper on Defence Procurement* issued by the Commission in 2004, which sought stakeholders’ views on potential community involvement in EDEM issues (Blauberger and Weiss, 2013: 1128). The critical element came in the guise of the ECJ’s April 2008 *Commission v Italy* ruling (Case C-337/05). As already described in Chapter I, the Italian government’s decision to procure civilian-use helicopters through non-competitive tender resulted in its referral to the Court by the European Commission. The Italian government’s argument that the closed procurement could be justified through Article 346 since the helicopters could potentially be used for military purposes was not recognized by the ECJ. Consequently, after the “full-blown defeat of Italy, ... member states had to fear that ... defence procurement would become largely subject to the EU’s general rules on public procurement” (Blauberger and Weiss, 2013: 1130). This, in turn, enabled the Commission to change member states’ “opportunity structure” by combining this



“credible threat” with an offer of a “regulatory ‘middle ground’” represented by its proposed Defence Procurement Directive in a feat of “deliberate judicial politics” (Blauberger and Weiss, 2013: 1130).

Highlighting the defence and security forces underpinning EDEM institutionalisation, Crollen’s overview of policy developments deemed to represent “deeper integration of the European defence industry policies” includes proposals for a European Joint Air Transport Command and European Armaments and Strategic Research Agency (EASRA), a forerunner of the EDA eventually established in 2004 (Crollen, 2003: 92). Indeed, a focus on the EDA is prominent within this strand of literature. Britz has argued that the creation of the EDA has in fact formalised the encroachment of “internal market principles” into policy areas which intersect with defence procurement, such as arms exports and security research, by unifying the industrial and defence policy areas while bringing them into the EU’s institutional structure. She has also attributed the creation of the Agency itself to a focus on military capability generation precipitated by the increasing number of CSDP missions as well as the need to push the creation European defence market forward, in the process advancing the consensus on the need for a “common regulatory framework for defence procurement (Britz, 2010: 178).

### *Literature Assessment and Critique*

Notwithstanding their high empirical value, both legal scholarship and the economic and industrial literature are situated within different paradigms than the research undertaken here, and as such seek to answer different questions from those posed in this thesis. As explained above, legal analyses are concerned with the content of the Defence Procurement Directive, its compatibility with the Code of Conduct, as well as the evolution of EU law that it represents. Heuninckx’s work is dedicated to elucidating the legal governance within collaborative defence procurement, wherein states co-fund the development and production of military equipment they wish to purchase (2008a,b). Defence economists focus on the economic implications of an integrated defence equipment market, and seek to examine the (in)efficiencies and dynamics of such a structure, rather than its emergence. Both strands of literature treat the political aspects of this policy sphere as secondary, and as such cannot answer the

research question guiding this thesis.

Contributions in the IR and political science traditions concerned with intergovernmental armaments cooperation and weapons programme collaboration, such as those by Krotz (2011), DeVore (2012), and DeVore and Weiss, do provide a longer-range empirical studies that focus more specifically on the defence industrial dimension and supranational rule-making within it. Yet, these aspects lie at the core of the inquiry undertaken here, but are not paid sufficient attention in these analyses, due to their very nature. This thesis, moreover, focuses on one specific area of armaments policy—defence procurement—that has been contested between state-level, supranational, non-state, and transnational actors.

However, in a number of instances, the work presented above that does concentrate more specifically on the emergence of an EU defence industrial policy and market is simply not recent enough to take note of EDEM institutionalisation as conceptualised in this thesis – namely, through the Defence Procurement Directive and the Code of Conduct. Furthermore, a significant proportion of these as well as the chronologically suitable analyses are by and large of a descriptive nature, focusing on the *how* versus the *why*. Thus, Moerth (2003; 2004) is concerned with how the competing defence and market frames may be in fact increasingly intertwined, while Britz (2010) demonstrates how Sweden’s approach to the defence industrial field has been “uploaded” to the EU level. Rather than focusing on actors and causality, she is also focused on tracing the emergence and impact of the free market idea on EDEM construction. Finally, by its very nature, Barrinha’s discourse analysis is meant to illustrate rather than explain. In addition to their emphasis on the *how* versus the *why* questions, the accounts of European defence industrial integration reviewed above focus on one set of actors—either industry, national governments, or EU organisations—while taking insufficient account others. Hoeffler (2012), for instance, provides a convincing narrative of “economic patriotism” but does not take into account the influence of supranational actors within the defence industrial policy regime, or, indeed, paint a full picture of the complex and contradictory relationship between the dominant arms producing member states and the transnational defence firms that are headquartered within them. Blauberger and Weiss consciously only concentrate on a very particular legislative “stick and carrot” policy entrepreneurship tactic employed by the European Commission as the most suitable explanation for the

approval of the Defence Procurement Directive (2013).

Although such analytical specificity may represent a deliberate choice of the authors, usually stemming from their particular theoretical and conceptual foci, the logical and empirical justification for adopting this focus is not always accurate or immediately convincing. Thus, Blauberger and Weiss put forth a precise and nuanced account of the Commission's legislative "scaremongering." Yet, a missing link within their argument would be the demonstration of member states' belief in the credibility of the threat posed by the potentially unbridled ECJ activism. After all, following the adoption of the Defence Procurement Directive, they would have to be referred to the Court by aggrieved contract bidders, which is far from a certain outcome considering how highly defence industrial actors prize their relationship with governments. Furthermore, legal sources have argued for interpreting the implications of the "*Italian helicopter*" judgements with caution, as "after all, [Article 346] will remain in place and Member States will still be able to derogate from the new directive on the basis of the provision," while the "success" of the legislative instrument "will depend upon the willingness of both the European Commission and individual bidders to challenge [this] continued reliance" (Trybus, 2009: 990; Teare and Nelson, 2012: 7). Thus, it will be important to assess the claims made by Blauberger and Weiss against these insights through further empirical research.

In addition, Hoeffler argues that the approval of the Defence Procurement Directive was made possible by member states' adoption of a "liberal" type of economic patriotism, leading them to accept the Commission's portrayal of the legislature as a "tool to enhance their competitiveness," while "arms-producing states promoted the directive as a way to expand market opportunities for their insiders" (2012: 445). However, as emphasised by Blauberger and Weiss, Hoeffler's argument that national governments "actively liberalised their industrial policies 'in anticipation of future market constraints,'" is empirically inconsistent (2013: 1132). Firstly, it does not account for member states' apparently swift about-face in supporting the Directive throughout the 2008 negotiations, when 16 national submissions to the Commission's Green Paper consultation process in 2005 "largely favoured procurement rules that were close to the [intergovernmental] status quo," and opposed the Commission's involvement (2013: 1132). In addition, major domestic (defence) industrial policy re-

orientation that would have produced such an economically liberal conceptualisation of economic patriotism, occurred in only a minority of member states, and hardly made EU secondary legislation inevitable (2013: 1132). In fact, according to some assessments, even the UK, which has been consistently noted for its embrace of free markets including in defence, has actually “shifted from competition to protection” in its defence market orientation, as marked by its 2005 *Defence Industrial Strategy (DIS)* and at the very same time as the “EU was formulating its defence industrial policy,” (Hartley, 2008: 11; *The Economist*, 2006).

This observation indicates the general difficulties associated with applying IPE approaches, including that employed by DeVore and Weiss, to studies of defence market evolution (2013). Simply put, the political economy lens is just not political enough in this case. Specifically, these frameworks do not adequately take into account the national sovereignty concerns which permeate the defence industrial policy field (Chapter I). Similarly, insufficient attention is paid to member states’ deeply entrenched security of supply considerations, which are subordinated—mistakenly—to the pursuit of gains from economic liberalisation within IPE schemes of national policy preferences. Finally, as suggested above, such approaches tend to disregard the complexity and inconsistency of both industrial interests and government-industry relations when it comes to defence procurement matters, and the significant extent to which these are shaped by the “national lines” Hoeffler mentions. For instance, it could also be the case that although the large transnational defence firms “normally should be expected to cope with market forces,” they also “depend on government planning and decision-making,” while the member states with small defence industries “prefer to keep their defence procurement options open,” in order to be able to purchase defence equipment “off the shelf” (van Eekelen, 2005: 23).

In order to obtain an accurate and nuanced understanding of such tensions, this thesis aims to provide a puzzle-driven and empirically-rich account of EDEM institutionalisation which is rooted in the complexity characterising the defence procurement policy field and the interactions of the various actors within it. This entails building an explanation “from the ground up,” by incorporating the empirical insights of all sets of literature described above, as well as exploring the respective roles of interacting policy actors highlighted within them, although without adopting

any one theoretical orientation. Building on this foundation, this research posits actor-focused causal mechanisms which are hypothesised to have resulted in the extension of binding EU-level rules into the hitherto intergovernmental, member states-dominated defence industrial policy arena. As a result, relative causal importance of transnational economic interests, supranational policy entrepreneurs and state-level security concerns and power differentials in bringing about inter-state institutionalisation and furthering EU integration is considered. Specifically, three hypotheses have been formulated which set out discrete causal processes culminating in the approval of the Defence Procurement Directive within the emerging EDEM structure also featuring the EDA's voluntary Code of Conduct on Defence Procurement. Each hypothesis assesses the role of a particular group of actors in bringing this about— namely, transnational defence firms, the supranational European Commission, and dominant arms-producing member states in the context of the EU's defence and security dimension. Each line of inquiry presented below is thus mainly concerned with specifying why member states' historic resistance to EU-level defence procurement rules has been overcome in each hypothesised scenario. However, secondary questions are addressed as well, such as what has motivated or initiated each set of adaptation pressures and how have they developed.

## **Hypotheses Construction**

### *Influence of Market Imperatives and Non-State Actors: Transnational Defence Industry*

As demonstrated above, one factor consistently highlighted in the available literature is the imperative of the EU's defence industrial competitiveness and its obstruction due to the fragmentation of the defence equipment market. The literature review has also indicated that European defence firms have consistently called for a favourable pan-European political environment in the face of challenges before them. Considering the structural influence of defence firms in particular, it is sensible to explore the extent to which they lobbied EU governments to bring down defence trade barriers under an EU aegis (Chapter I). Thus, it is hypothesised that:

*H1: Transnational defence firms and industry associations, created by industrial consolidation within the EU, have lobbied member state governments to agree to harmonisation measures.*

### Theoretical Context

The adoption of the Single European Act (SEA) and the completion of the single market has resulted in a rapid proliferation of literature analysing interest intermediation and influence on supranationally-mandated economic liberalisation and integration. Not quite the global players that its American and Japanese rivals were, the European transnational industry viewed the fragmented EU market as the largest obstacle to its competitiveness. In contrast, a consolidated internal European market was not only viewed as a prerequisite to international competitiveness, but would also serve as a bulwark against unbridled external competition. These companies have therefore pushed for the adoption of the SEA by national governments, buoyed by the transfer of a number of regulatory powers to the Commission and the industrial implications of the internal market throughout the 1990s (Bieler, 2012: 207; van Apeldoorn, 2001: 71).

A modified neofunctionalist conceptualisation of institutional change envisions subnational and transnational actors as drivers of institutionalisation, provided that they make effective use of policy opportunity structures opened up by supranational bodies, while each actor may nevertheless pursue its own utility-maximising agenda (Buethe, 2007: 177). These approaches have advanced the argument that firms seek to affect decisions at the national, as well as supranational, levels, which they can reach simultaneously and independently of each other (Stone Sweet and Sandholtz, 1998, Mattli, 1999). Thus, Greenwood has distinguished between the so-called national route pursued by interest groups and what he terms the European route. The former mode of representation is indirect and characterises areas of intergovernmental decision-making, while the latter, direct route prevails in instances of supranational decision-making (2003). The national route, therefore, includes lobbying of permanent representatives, individual members of Council working groups, and national governments (Mazey and Richardson, 2006).

Despite the complexity of EU policy-making involving sub- and supranational as well as national authority structures, arenas and access venues, EU-level representations of member-state governments and their “institutionalised meeting platform,” the Committee of Permanent Representatives (COREPER), continue to be major targets of industrial lobbying activity, since the final decision-making authority in a number of policy areas continues to rest with the member states (Saurugger, 2009: 105; 119). Such national routes, for example, were the primary pressure pathways of car manufacturers during the European End of Life Automobile Directive process and negotiations over EU’s greenhouse gas emissions regulations (Bernhagen and Mitchell, 2009: 161). Moreover, the national route constitutes a “tried and tested access strategy” for interest groups, particularly when these are national champions, as is the case with the largest transnational defence firms examined here (Greenwood, 2003: 32; Saurugger, 2009: 119).

Where national interests are at stake, as is obviously the case with defence procurement, business interests are likely to lobby national governments in order to exert influence on the positions of national civil service officials and ministers within the deliberations of the EU technical committees (Bennett, 1999: 241). Authors examining defence industrial lobbying in favour of consolidation-enhancing EU-wide policies during the 1990s have found that firms preferred to “work through their national governments to affect Council decision-making” (Hayward, 1994: 362; McLauchlin, *et.al.*, 1993: 198). Such was the case during the negotiation process of EU-wide defence export control regime, with industry lobbying aimed at national channels in order to influence Council decisions (Hayward, 1994: 361). In addition, scholars of EU integration seeking to specify “spillover” mechanisms have pointed specifically to the influence of transnational actors such as EADS<sup>23</sup> on the development of CSDP, to the extent that their decisions may represent “cement which will make permanent, or irreversible, the watershed decisions on defence integration” (Collester, 2001: 386). The national route does, nevertheless, contain pitfalls, particularly where QMV is concerned. Thus, it is the majority of member states that must be “won over” through lobbying, as a sole focus on national governments does not guarantee success considering that “member states frequently trade one issue

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<sup>23</sup> From 1 January 2014, the EADS has been restyled and restructured as the Airbus Group. However, due to the time period of this project, the older designation of EADS is used.

against another between themselves” (Saurugger, 2009: 119).

As a “gatekeeper of the legislative process,” it is only natural for the Commission to become a major “target” for industrial lobbying (Bouwen, 2009: 32-33). The Commission’s prominent role during the policy agenda-setting stage has resulted in its preponderance as the “the strategic choice of ‘early lobbying’” (Bouwen, 2009: 20). At the same time, in drafting legislative proposals, the Commission often finds itself at a disadvantage with respect to information and must thus rely on “external resources to obtain the necessary information” (Bouwen, 2009: 20). As a result, the value of a European lobbying option for interest groups lies in the opportunity to secure an advantageous position that allows for changes to the later legislative proposals to be “made much more easily” (Bouwen, 2009: 20). However, rather than being a mere “target” of interest group lobbying, the European Commission may be said to be involved in an “exchange relationship” with private interests (Bouwen, 2002: 368). In return for access to policy formulation, it requires expert knowledge and legitimacy which key stakeholders are able to provide and which are “crucial” for its ability to “draft (effective) legislative proposals” and reinforce its own bargaining power in the “inter-institutional decision-making process” (Bouwen, 2002; Bouwen, 2009: 22).

### *Empirical Justification*

Steadily decreasing defence spending and investment into research and development resulted in defence industrial consolidation within the EU. Although its pace has been much slower and its result considerably more limited than that in the United States, the merger and acquisition process that did occur in the EU has created several powerful transnational defence companies, such as EADS, BAE Systems, Thales, and Finmeccanica (see *Table I* below). As a result of contracting home markets and increasing defence equipment prices, these “prime-contractors” were also becoming increasingly export-oriented (see *Figure I* below). Nevertheless, pursuing “outside business” tends to be a volatile undertaking, and transnational defence firms in the EU, just like their counterparts elsewhere, require political stability to operate profitably. This, in turn, relies on removing uncertainty from the business



environment. In the case of the EU, reduced uncertainty is a product of not only economic, but also political integration.

Table 1 Largest Arms Producing Firms (Excluding China), 2004

Rank		Company (parent company)	Country/ region	Sector	Arms sales		Total sales, 2004	Column 6 as % of column 8	Profit 2004	Employ 2004
2004	2003				2004	2003				
1	2	Boeing	USA	Ac El Mi Sp	27 500	24 370	52 457	52	1 872	159 000
2	1	Lockheed Martin	USA	Ac El Mi Sp	26 400	24 910	35 526	74	1 266	130 000
3	3	Northrop Grumman	USA	Ac El Mi SA/A Sh Sp	25 970	22 720	29 853	87	1 084	125 400
4	4	BAESystems	UK	A Ac El Mi SA/A Sh	19 840	15 760	24 687	80	-855	90 000
5	5	Raytheon	USA	El Mi	17 150	15 450	20 245	85	417	79 400
6	6	General Dynamics	USA	A El MV Sh	15 150	13 100	19 178	79	1 227	70 200
7	8	EADS	Europe	Ac El Mi Sp	9 470	8 010	39 455	24	1 280	110 660
8	7	Thales	France	El Mi SA/A	8 950	8 350	12 780	70	246	55 480
9	9	United Technologies, UTC	USA	El Eng	6 740	6 210	37 445	18	2 788	209 700
10	11	L-3 Communications	USA	El	5 970	4 480	6 897	87	382	44 200
11	10	Finmeccanica	Italy	A Ac El MV Mi SA/A	5 640	4 550	10 764	52	681	51 030
12	13	SAIC	USA	Comp (Oth)	4 670	3 700	7 187	65	409	42 400
13	12	Computer Sciences Corp., CSC	USA	Comp (Oth)	4 330	3 780	14 059	31	810	79 000
S	S	MBDA (BAESystems, UK/ EADS, E	Europe	Mi	3 850	2 710	3 851	100	..	10 000
14	14	Rolls Royce	UK	Eng	3 310	3 020	10 877	30	375	35 400
15	18	DCN	France	Sh	3 240	2 150	3 240	100	260	12 280
16	23	Halliburton	USA	Comp (Oth)	3 100	1 790	20 466	15	-979	97 000
S	S	KBR (Halliburton)	USA	Comp (Oth)	3 100	1 790	12 468	25	..	..
17	17	General Electric	USA	Eng	3 000	2 400	152 866	2	16 819	307 000
S	S	Pratt & Whitney (UTC)	USA	Eng	2 990	3 030	8 300	36	..	34 180

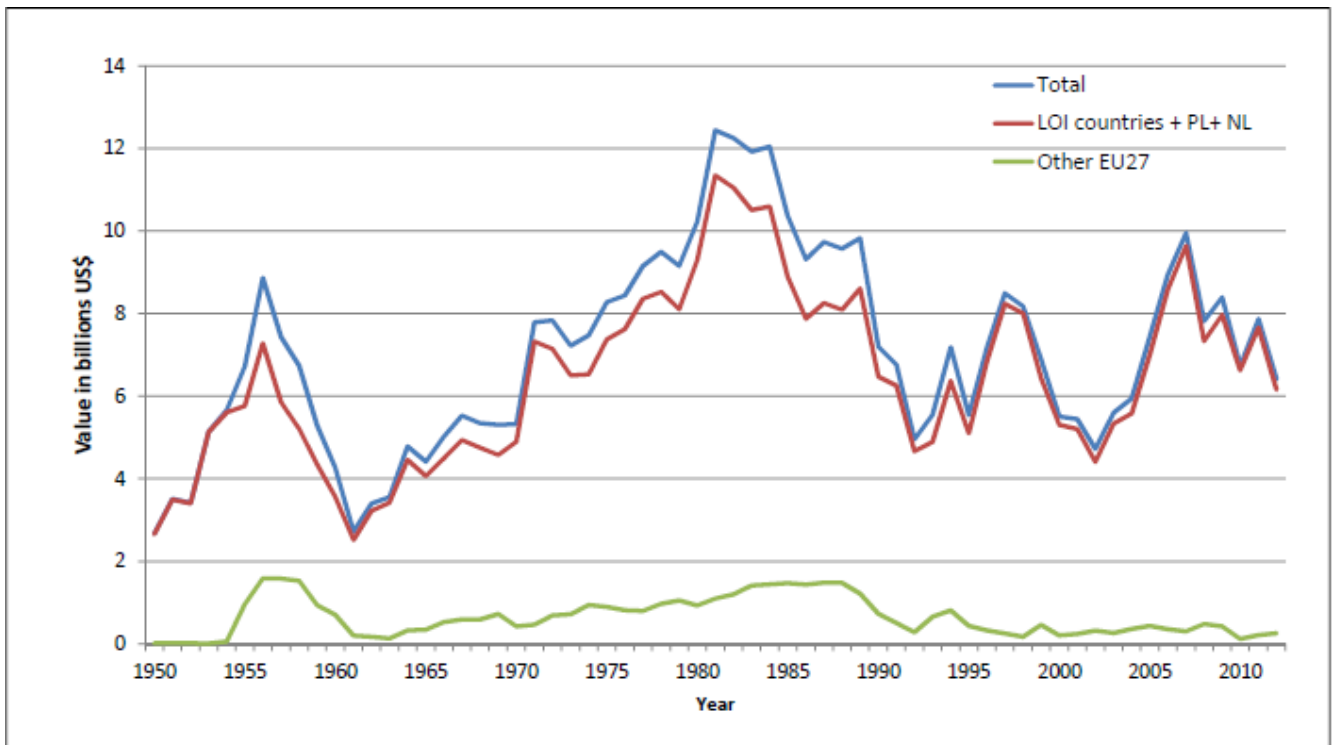
Source: Stockholm International Peace Research Institute (SIPRI)

Interpretation: A = Artillery, Ac = Aircraft, El = Electronic, Eng = Engines, Mi = Missiles, MV = Military Vehicles, SA/A = Small Arms and Ammunitions, Sh = Ships, Sp = Space, Oth = others, Comp = components. S = Subsidiary

Reproduced from the European Commission, 2007: 72

Common procurement rules are particularly essential to defence industrial future planning, while viability of transnational defence manufacturers depends in large part on their ability to invest in the research and development necessary for efficient production of weapons systems and platforms. However, their industrial competitiveness in international export markets is greatly hampered by the small size and fragmentation of EU national defence markets, which has resulted in duplication while keeping output low and unit-level research and development costs high, as well as preventing gains from economies of scale, learning and scope (Hartley, 2007: 1172). Moreover, internationalised ownership systems have not displaced persistently national purchasing structures and practices in the EU, especially in the naval and armoured vehicle sectors, further encumbering firms' business operations (Guay, 1998; Schmitt, 2004, 2005)

Figure 1: Defence Exports



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In addition, fierce competition from the efficient, and consolidated, US defence firms in both external and European markets has brought EU defence primes face to face with the need to improve the competitiveness and efficiency of European defence industry, if it was to maintain vital export market share and profits. Such a scenario made the traditional model of trade barriers and fragmented national defence industrial bases in Europe economically unviable or at least questionable. Greater competition and transparency in EU procurement would lead to the much-needed increase in production scale of economies stemming from greater market access, higher order volumes, and therefore lower unit costs leading to enhanced competitiveness. Such concerns appear frequently in media outlets, specialised sources such as *Jane's Defence Weekly*, and more analytical publications like *The Economist*. In fact, the message that defence firms have consistently articulated throughout the late 1990s and 2000s is one of almost “doomsday” consequences of American competition, with the very survival of European defence industry

threatened by market fragmentation and “political” obstacles to merger activity and business opportunities in other EU member states (*The Economist*, 1997a,b, 2003). For instance, on the eve of the creation of the EDA, EU defence industry executives were both worried that the Agency would fall victim to chronic disagreements among its members, and optimistic that it would help “ensure the independence of European companies and countries,” preventing them from becoming “vassal states to the United States (Timmons, 2004).

Consequently, the transnational companies “produced” by defence industrial consolidation in the EU would have an interest in dismantled national barriers to weapons sales and harmonised defence procurement regulations. In order to advance these objectives, they would be expected to lobby the governments of member states in which they are headquartered for the enactment of harmonised defence procurement, competition, and transparency rules proposed by the Commission and the EDA. Firms would be employing the national route to influence Council officials, and would particularly lobby their national permanent representatives, particularly during the latter stages of the policy process. Furthermore, industry would have a ready ear in the intergovernmental EDA, steered by defence ministers of the member states, and with a direct mandate to improve the competitiveness of EU’s defence industry. Finally, regularised interaction with the European Commission is nearly certain, not least due to its institutionalised stakeholder consultation procedure, and because of the importance of influencing legislative proposals as early as possible, meaning while they are still under the Commission’s “control.” In fact all major EU defence firms have maintained a representation in Brussels since the early 1990s, both collective and individual (Hayward, 1994: 359). Thus, lobbying activity would have been exercised individually, in concert, and through EU-level defence industrial associations, such as the Aerospace and Defence Industries Association of Europe (ASD).

However, differentiation in the scope of defence firms across the EU also means that industrial interests, and the objectives of governments tasked with promoting them, are not uniform. Indeed, the demands of transnational defence companies hypothesised here pertain to only a handful of firms, situated in the dominant arms-producing states – that is, the UK, France and Germany. During the past decade, these

states, and particularly the UK, witnessed a shift toward defence sector privatisation (Eliassen, 2006: 9). The large transnational firms under consideration here are to a great extent products of these changes. Following economic considerations, privatised, competition-facing companies such as BAE Systems, Thales, EADS and Finmeccanica would stand to reap the benefits of increased economies of scale and competition. The remainder, and majority, of EU defence industry, if it functions under state protection, ownership, and subsidies, would be harmed by increased competition and transparency measures imposed by the Code of Conduct and Directive (Hartley, 2007:1172). Such firms are likely to have preferred leaving Article 346 firmly in place and its application unconstrained, to be used by “their” governments to channel procurement contacts to these national champions. However, as indicated above, this scenario constitutes only one layer of explanation, with small firms facing an even higher risk from US competition as well as a greater danger of “being swallowed up” by the larger US firms in any transatlantic development of defence systems and technologies (Adams and Ben-Ari, 2006:113). In addition, with no “national champion” to protect, smaller member states may in fact favour globally liberalised defence markets, enabling them to purchase equipment from the United States. These fault lines and their implications are taken up in detail in the analysis of defence industrial influence which follows in the next chapter.

Although, as has been emphasised above, the dominant defence firms in the EU have transnational structures and cross-border business activity, most of them are tied strongly to the country in which they are headquartered – politically, historically, and therefore, commercially. Thus, EADS, formed through a merger of French, German, and Spanish companies, is the only “official” pan-European defence firm, while BAE Systems’ strongest links are to the British Ministry of Defence, Thales’ to the French *Direction Générale de L’armement (DGA)* and Finneccanica’s to Italy’s *Ministero della Difesa (MDD)*, not least because each government constitutes the respective company’s all-important core customer. Correspondingly, the partial denationalisation of defence industry has not dislodged the attachment of governments to their national champions – in the case of the dominant arms-producing states, these have become the headquarters of the “new” transnational firms, while small states remained “deeply attached” to their own sub-contractor-level defence production capabilities (Mawdsley, 2008: 368). Each firm would therefore be strategically placed to exert

pressure on public authorities within “its” government. For instance, EADS has direct levers vis-à-vis a number of governments, with its multinational shareholders fulfilling the role of “spokesperson” in relations with their national governments (Joana and Smith, 2006: 83-85).

On the other hand, it is crucial to understand that, while industrial pressure necessarily implies a degree of overcoming governments’ resistance, in the case of defence it is difficult to juxtapose policy-makers’ and firms’ interests neatly. Due to the importance of defence production to sovereignty assertion, security conceptualisation, as well as national economy and domestic employment, governments of arms-producing states would have already been acutely attuned to industrial concerns (see Chapter I). The status of the defence industry as a key provider of a core state functions—assertion of sovereignty and interests through armed force and territorial defence—has led to a “close identification of interests” between national defence industry and EU governments (Eliassen, 2006:4). Member states would thus “have an interest in their national champions being able to create export opportunities for their products, thereby decreasing capital investment at home and lowering the cost of maintaining indigenous capabilities” (Theim, 2011: 12). Special attention is paid to this nuanced relationship in Chapter III.

Evidence necessary to substantiate this thesis consists of two strands. Firstly, it must be ascertained that the EU defence industrial landscape is indeed characterised by partial transnational consolidation amidst mostly second- and third-tier nationally-based companies. In addition, industrial awareness of the nature and gravity of the threats posed by competition from US firms and continuing regulatory fragmentation of the EU defence industrial base would need to be demonstrated. Finally, it is crucial to demonstrate that major transnational industrial players have called for increased competition and regulatory harmonisation of defence procurement in the EU, as well as specify their access pathways to the Commission, Council, EDA and national ministries of defence (Bouwen, 2004). If the major industrial players indeed obtained what they demanded, then one would expect the provisions of the Defence Procurement Directive and the Code of Conduct to favour the concerns of defence industry. Similarly, where conflicts over these amongst the firms and national governments, the EDA, and European Commission arose, for the resulting

compromise to favour industry.

Assessing interest group influence in the EU context has been notoriously challenging for scholars and researchers. Nevertheless, promising strategies have been developed, such as projects designed around in-depth examination of one case with the help of process-tracing. To assess interest group influence, their preferences are first examined, and their lobbying activities are then traced. The findings are juxtaposed against the reflection of interest group preferences in policy outcomes as well as the group's assessment of its satisfaction with the results. This is an approach adopted by most studies of special interest influence within the EU (Moravcsik, 1998; Warleigh, 2000; Michalowitz, 2007). Employed widely in studies of lobbying in the United States, an alternative method of influence measurement is that of "influence attribution," which relies on interest groups' appraisal of their own influence on policy outcomes as well as examination by experts (March, 1955; Dur, 2009:1224)., researchers on the EU have generally stayed away from "attributed influence" methodology, although, of course, exceptions do exist (Edgell and Thomson, 1999; Dur and De Bievre, 2007).

The assessment of the defence primes' lobbying efforts in favour of the Defence Procurement Directive presented in the next chapter, and the competitiveness boost it would ostensibly engender through greater market openness, employs a combination of the two approaches described above. In particular, as this discussion entails a single-case study, process tracing is used to first establish the interests of the EU's transnational defence firms in the realisation of the Code's and the Directive's key aims, that is, harmonisation and market openness, ostensibly leading to a better competitive stance vis-à-vis the United States. The resulting industrial demands are then compared with member states' attitudes towards cooperation and integration in the EDEM area. The second stage of substantiation entails tracing the defence primes' political activities, involving a reconstruction of events and positions as well as industry's accounts of "attributed," or rather "claimed" influence. In addition, several specific points of contention in the proposed legislation—namely, the potential risk to state investment in research and development (R&D) and restrictions on offset arrangements—are used to infer the presence and degree of industrial influence. These aspects of the Defence Procurement Directive are not only amongst its most

overt constraints on member states' notions of sovereignty, but also crystallise the fault-lines between the preferences of member states, the European Commission, and transnational defence firms.

### *Effective Policy Entrepreneurship by Supranational Agents*

#### *Theoretical Context*

Although defence firms would reap the benefits of a common EU defence procurement framework, it is nevertheless the European Commission that has prepared, advocated for, and initiated the Defence Procurement Directive. As has been suggested in the review of existing literature and policy documentation conducted above, it appears to have done so both opportunistically and strategically – dodging opposition, garnering support, and neutralising the “lead” of intergovernmental initiatives pursued within the EDA (Cram, 1994). It would seem that the European Commission, aided by the Court of Justice and European Parliament, has played the part of a policy entrepreneur in order to further integration in the defence procurement sphere, thereby extending its own institutional remit and fulfilling its mandate.

In the EU policy context, the European Commission is widely regarded as the “pre-eminent policy entrepreneur” (Jabko, 2006; Daviter, 2007: 659). However, important constraints on the extent of its influence are also recognised, particularly its need to secure “support from other institutional actors,” such as the European Parliament, the European Court of Justice, and “influential” member states (Tallberg, 2007: 204-205; Young, 2010: 53). Thus far, this pattern appears consistent with neo-functionalism explanations of the expansion in EC regulation, which emphasise the primary roles of supranational actors in such “political spillover” as well as a functional spillover of integration from one issue-area, in this case, internal market, to another, linked one – defence procurement (Caporaso and Keeler, 1995). In recent years, however, neofunctionalist approaches have been revised to present a wide-ranging account of European integration as dynamic and purposive, rather than deterministic (Stephenson, 2010: 1042). Insights from institutional and organisational approaches have been incorporated to provide more convincing and nuanced accounts of

supranationally-driven integration. In addition, the influence of the European Parliament and Court of Justice have also been recognised as essential in exerting integration pressure (Niemann, 2006:53). Supranational elites are still the prime movers of integration, but the causal importance of “cultivated spillover” via the Commission has been increased in neofunctionalist reinterpretations (Niemann, 2006: 42). For instance, Stephenson has characterised the role of the European Commission as agent of functional spillover, “releasing” mediating its “sporadic, uneven, intermittent” integrative pressures (2010: 1042; 1044). He devised a typology of such agency, in which he distinguished policy entrepreneurship or leadership from other types of the Commission’s efforts to “see a policy through,” such as drawing up guidelines for member states, putting forth revisions, initiating amended proposals, even shaming poor implementers into broader or deeper levels of policy integration (Stephenson, 2010: 1044).

Policy entrepreneurship, rather than merely taking advantage of opportunities to advance autonomous organisational preferences, entails creating such opportunities by utilising organisational resources. Policy entrepreneurs constitute “well-placed actors” that are able, willing, and interested in “investing resources in identifying and exploiting opportunities to push a policy” (Kingdon, 1995; Rhinard, 2010: 40; Young, 2010: 52). Generally, this could include developing and “framing” ideas, linking new policy proposals to existing deficiencies, building coalitions with critical interest groups, or manipulating decision-making procedures to increase the advantage of a particular outcome (Kingdon, 1984). The European Commission, more specifically, may exercise political entrepreneurship through “constructive, conciliatory, and flexible” behaviour, such as forming ties to strategically important interest groups in order to influence member states’ preferences, shaping the policy agenda to conform to its ideas, or overcoming opposition through “creative” means such as “finding” a new legal basis for its activity (Smith, 2004:209; Stephenson, 2010: 1046). Secondly, the Commission continuously seeks and amalgamates “new knowledge” in order to “improve policy instruments” or “steer policy in a new direction,” thereby advancing its own status and position in policymaking. In characterising the Commission as a “purposeful opportunist” Cram casts it as an organisation that is not adverse to relying on even a tenuous legal justification to expand its activities (Cram, 1994: 214). Stephenson’s conceptualisation of policy entrepreneurship and leadership entails



“offering solutions to ‘upgrade the common interest,’” while “satisfying” the basic preferences of the member states (Stephenson, 2010: 1045). In practice, this may translate into:

“waiting, taking time to place new ideas of increased EC regulation in the European policy space, testing out the balance of forces, gradually creating a climate of opinion and coalition supportive of its ideas, refining those ideas to match the balance of forces and finally, making proposals at suitable times, or simply repeating them until accepted” (Thatcher, 2006:315).

Rousing support—and supporters—for a particular policy problem-solution construction by “directing issues towards the ‘right’ venue” constitutes a key policy entrepreneurship tactic (Princen, 2011: 929). Indeed, some scholars have argued that one of the most critical tools in the Commission’s entrepreneurial arsenal is perhaps its ability to build political coalitions in support of its proposals. Accomplished by mobilising and concentrating the various interests of diverse actors around particular framing of policy issues, the importance and difficulty of building such coalitions increases with the “stakes” involved in the given proposal (Nylander, 2001: 290-292; Fligstein, 2001: 272). Analyses of the Commission’s policy framing activities have also drawn attention to its tendency to initiate policy proposals first and raise interests’ support for them later, building political support for its agenda despite tangible political opposition (Daviter, 2007: 658-659). The necessary support-garnering is typically carried out through “holding conferences and workshops with experts and interested groups, issuing Green Papers, commissioning studies and seeking to accommodate different points of view” (Thatcher, 2006: 315). Such a strategy is made possible by the dynamics of the EU policy formation processes, which mean that before a directive is proposed, its “sponsors” in the relevant Commission Directorate General (DG) gauge national positions by contacting those responsible for the given issue area in each of the member states. The DG also reaches out to a plethora of experts in the EU to garner support. Comments are sought from the rest of the Commission, the Council, business interests, and other stakeholders. Thus, negotiation, compromise, and interest intermediation take place throughout the policy formation process, leading Fligstein to the conclusion that “most of the political action therefore takes place

well before a directive reaches the Council” (Fligstein, 2001: 269). The resulting legislative measure is then issued in the context of “considerable momentum and well-developed agenda” (Ibid).

As has been suggested above, the Commission is an active “framer” and “projector” of issues as “problems (urgently) requiring solutions.” Policy entrepreneurs engage in issue framing in order to ensure that issues receive attention and ultimately result in their desired outcomes. Framing refers to an “interpretive construction of a policy problem that offers a rationale for change while also proscribing a course of action and particular solution” (Princen and Rhinard, 2006: 1121; 1129; Rhinard, 2010: 37, 39). Such a problem-solution structure forms the core of a policy frame (Kingdon, 1995; Princen, 2011: 119). Thus, a policy frame provides a justification or “a call to arms...for engaging in ameliorative or corrective action” (Kingdon, 1995; Princen, 2011: 119). The ultimate aim of framing, however, is not only to capture policymakers’ attention, but to “leave no doubt” to all relevant actors that the EU, and its community structures in particular, constitute the “proper venue for dealing with” the issue at hand, most optimally through “community action” in the form of legislation (Princen, 2011: 930).

One tactic the Commission employs in this regard is linking issues to with “grand political visions or policies” that are perceived to already be “high on the agenda,” in an attempt make them “palatable” to veto players (Stephenson, 2010: 1045; Princen, 2009). This involves simplifying complex and technical issues, “desensitising” “controversial issues,” especially where notions of sovereignty are involved, and presenting “functional pressures” as “compelling” (Stephenson, 2010: 1046; Niemann and Schmitter, 2009: 57). Thus, Fligstein tells a compelling story of the Commission’s effort to complete the Single Market Programme through framing it in terms of competitiveness and innovation to mobilise transnational business interests, the European Parliament and national civil servants as agents of pressure on member states’ representatives (Fligstein, 2001: 264). Moerth’s work demonstrates how “rival” framing of attempts at an EU defence industrial policy by the Commission’s External Relations and Internal Market Directorates have shaped these early efforts (Moerth, 2003, 2000). Similarly, Smith demonstrates the Commission’s reliance on two policy entrepreneurship strategies in order to liberalise the EU public procurement sector by extending Single Market provisions to it (Smith, 2004: 211).

One tactic was to present an open single European public procurement market as a solution to the European Community's economic woes of the late 1980s- not least through in-depth studies (ibid). The other strategy was the use of the Commission's authority for an aggressive pursuit of infringement proceedings against member states in the ECJ, which in turn created the basis, and legal precedent, for further liberalising legislation (Smith, 2004: 212).

The modes and dynamics of policy entrepreneurship described above will shape the second hypothesis advanced by this thesis and inform its substantiation. It is argued that the EU institutional configuration and evolution have exerted pressure for further institutionalisation by empowering the European Commission. Considering the Commission's intrinsic desire to expand and safeguard its own powers as a policy actor, this development has then allowed it to push for measures that would further this objective—increasing economic liberalisation and promoting European integration (Stacey, 2011: 44). Moreover, even if member states had delegated powers to a supranational agent and intended to exercise tight control over its agenda, as principal-agent approaches would foresee, the latter may have “escaped” such bounds in a manner unforeseen by national governments (Moe, 1990; Menon and Kassim, 2003). In other words, the European Commission has opportunistically pushed EDEM institutionalisation forward and, rather than serving as a mere “agent” or neutral arbiter in an inter-state bargain, has spearheaded this process.

Scholars studying the role the European Commission in EU policy outcomes have emphasised the importance of timing to the ultimate success of its initiatives (Vahl, 1997: 52; Rhinard, 2010:30). Such “policy windows” or “windows of opportunity” signify discernible instances when a constellation of circumstances allows supranational proposals to fall on favourable ground, and for policy entrepreneurship to be most effective (Kingdon, 1995; 2003). A window of opportunity opens when a particular problem is perceived as important amongst policymakers—for reasons ranging from ideological conviction to individuals' career advancement—a viable solution appears available, and favourable political developments materialise. The overall effect is to elevate the particular issue to the top of the political agenda. As such, windows of opportunity are rare and tend to close quickly, making it essential for the Commission to advance policy initiatives while the relevant decision-makers have not run out of “patience” and their attention has not shifted (Pollack, 1997: 123).

However, there may be instances where policy windows could remain open long enough for “contestation over control of the policy agenda” to occur (Ackrill and Kay, 2011: 74). During this period, not only do purposive or strategic policy entrepreneurs construct policy problems and “sell” solutions to them, but policymakers can, for their part, “select the ideas appropriate for the policy window” (Ackrill and Kay, 2011: 78). Both activities are, in fact, entrepreneurial (ibid). Policy windows open for both predictable reasons and unforeseen events, such as attention-focusing crises akin to the 9/11 terrorist attacks or food safety failures (Princen, 2011: 118; Pollack and Shaffer, 2010). They may also be the products of political developments such as a change in government or bureaucratic administration, and thus in attendant policy priorities. The so-called policy entrepreneurs or frame entrepreneurs are able to recognise open windows of opportunity and exploit them to affect policy outcomes (Rhinard, 2010:40). Although Kingdon does not foresee a role for policy entrepreneurs in opening the policy windows directly, other scholars have argued that they may actually do so (Corbett, 2005). Therefore, a consideration of all of these dynamics leads to the hypothesis which states that:

*H2: The European Commission has secured member states’ agreement to an unprecedented measure of defence procurement integration through successful policy entrepreneurship.*

### Empirical Justification

As emphasised above, defence procurement comprises industrial, economic, and technological aspects, which are characterised by a considerable degree of supranational institutionalisation within the European Union. In particular, the completion of the internal market through the SEA and ratification of the Maastricht Treaty (Treaty on European Union, or TEU) by the end of 1993 were crucial in allowing the European Commission to gain a policy foothold in the hitherto taboo sphere of defence. The internal market established the free movement of persons, goods and services within the Union, while the TEU enshrined this principle in Treaty Law and endowed the European Commission with enforcement powers to ensure its implementation (Graves, 2000: 18-19). The Commission’s position was reinforced as it solidified its competence as regulator of dual-use military goods and services,

corporate mergers, and R&D, allowing it to claim a role in defence procurement regulation (Cornish, 1995: 55-57). The increasing importance of dual-use technologies, such as electronics, optics and IT in defence equipment have provided further justification for supranational inroads into this field.

Aided by these developments, the European Commission, with the help of the EP and the ECJ, may have taken defence procurement harmonisation forward through critical junctures independently of member state initiatives. Thus, the 2002 European Parliament request for a new defence industrial proposal from the Commission was followed in 2003 by a Commission Communication entitled *Defence-Industrial and Market Issues- Towards and EU Equipment Policy*. In this document, the Commission first set out its argument for a Community role in defence procurement, and outlined seven areas where it envisaged further initiatives (European Commission, 2003). The following year, in 2004, it launched an official consultation process with stakeholders, seeking to engage national defence ministries, industry and experts (European Commission, 2004). The results of the consultation were summarised in a 2005 Communication (European Commission, 2005). Following the 2006 publication of the *Interpretive Communication* emphasising a strict interpretation of Article 346 announced in the Green Paper, the Commission issued its *Proposal for a Defence Procurement Directive* a year later (European Commission, 2006b, 2007b). Enshrined in the 2007 *Defence Package*, it was accompanied by two other initiatives: a largely procedural Directive on Intra-EU Defence Transfers and *A Strategy for a Stronger and More Competitive European Defence Industry*. With negotiations concluded by the end of 2008, the Defence Procurement Directive was approved by the European Parliament at first reading in January 2009, and adopted by the Council of the EU in July 2009.

Similarly, the Internal Market Committee of the European Parliament has long advocated the injection of Single Market measures into the defence trade, authoring the report which was the basis of the Parliament's vote in favour of the Directive. The Parliamentary Security and Defence Committee has also consistently called for rationalised defence procurement to support the EU's military aspirations and growing international security role. Finally, the ECJ has castigated member states for blatant abuse of Article 346 in two unprecedented rulings, *Commission v. Spain* and, more significantly, *Commission v. Italy* (see Chapter I). As described in the literature

review section presented above, the Commission may have relied heavily on these cases in its justification of Community instruments' application to defence procurement in the official documentation listed above (Hoeffler, 2012; Blauburger and Weiss, 2013).

Considering the obscurity into which the previous defence procurement initiatives of the European Commission and European Parliament descended, the apparently steady progress towards the Directive, from a tentative proposal to its adoption by the Council, suggests purposeful manoeuvring on the part of EU's supranational actors pressing for defence procurement integration (Cram, 1993). In particular, throughout the preparation stages, the Commission seems to have forged alliances with dominant industrial players to raise support for its involvement in the defence market, in order to overcome resistance from member states (Mawdsley, 2008: 380). The language of the policy documents reviewed above is also indicative of a certain issue urgency in the Commission's perception. For instance in the 2003 Communication, the fragmentation of the EU's defence market is portrayed as harmful to the entire European project as well as detrimental to EU defence industry (Georgopolous, 2006: 214). The *Interpretive Communication of 2006* has also been viewed by legal scholars as the Commission's "declaration of intent" to break from the unqualified use of the Article 346 derogation (Koutrakos, 2011). At each stage in the process described above, there would have been stakeholders – from member state governments, industry, and other EU institutions— for the Commission to "convince and convert." Indeed, the UK and France initially opposed the proposed Directive, while the rest of the member states appeared at most unenthusiastic (Heuninckx, 2008b: 21). Opposition to the Commission's involvement in any future arms market existed within member states as well, namely in the military and civil service (Trybus, 2006:675). Evidencing such cleavages will be a crucial component of substantiating this hypothesis.

However, the role and impact of the Commission, while bolstered by Treaty arrangements, nevertheless remains firmly circumscribed in the field of defence trade and production. Thus, the Commission's intent of including collaborative procurement in the scope of the Directive was rejected by member states, ensuring the exemption of major weapons systems from its remit. Moreover, although the *Interpretive Communication* implies confidence on the part of the Commission that its

view of Article 346 would be upheld by the ECJ, the Court's role in defence and security matters has been rather scant throughout the Directive's negotiation process, even if this does appear to be changing in recent years (Georgopolous, 2005; Chapter VI).

Thus, while one may trace Commission activity back to the mid-1990s, explanatory power would only be sufficient if its nature and independence from member states', industrial, and intergovernmental organisations' preferences could be identified (Moerth, 2003). Although such an undertaking is challenging, meticulous process tracing could demonstrate the primacy of supranational actors vis-à-vis the member states in bringing about EU defence procurement institutionalisation. This involves deciphering policy entrepreneurship techniques described above within the Commission's behavior, while examining national reactions to them and incorporating the dynamics generated by the Code of Conduct at each stage of the process that culminated in the Defence Procurement Directive. If decisive influence did indeed stem from the European Commission, one would also expect to see the resolution of any conflicts regarding the substance of its initiatives in a manner favourable to supranational preferences. Interaction with the EDA, where intergovernmental logics appear to reign supreme, will be used as a further indicator of supranational influence, while the possibility of forming coalitions with particular member states and defence firms is explored as its additional mode. Finally, it is important to specify why it is that the member states do not or cannot re-assert control, particularly in an area as sensitive as defence procurement (Moe, 1990; Kassim and Menon, 2003: 130). In fact, one national representative to the Council of Ministers recalled France and the UK being very influential in "guiding the Commission onto the 'right path'" and making sure that "their" language was inserted into the final text of the Directive (Interview 3, 15 December, Member State Permanent Representation).

### *Dominant Member States' Defence Capability Improvement Goals in the EU Defence and Security Context*

As has been made clear in the beginning of this chapter, academic literature and

primary-source documentation cite the EU's Common Security and Defence Policy (CSDP) as a central factor in the emergence of EDEM—indeed, as a necessary underpinning of a credible security and defence policy. However, specific causal linkages between the two developments, which a robust explanation would require, have not explored systematically in this material (Wivel, 2005; Biscop, Giegerich, Howorth, 2009; Britz, 2010). Indeed, given its direct connection to power projection and defence policy, it would make sense that defence procurement institutionalisation would grow out of the EU's development as a security actor. Therefore, the third and final hypothesis stems from the claim that states' security concerns constitute the drivers of integration, particularly in the field as central to sovereignty and power projection as defence procurement.

### *Theoretical Context*

In an inter-state context, even a highly institutionalised one like the EU, authority constructions “cannot dominate power asymmetries” (Krasner 1995-1996: 148). For this reason, when it comes to the EU defence and security field, realist and intergovernmentalist traditions in particular contend that “cooperation has been—and will likely continue to be—intergovernmental rather than supranational for the foreseeable future. Major EU foreign policy and defence decisions have been and will continue to be made in European capitals rather than in Brussels” (Jones, 2007:11). Viewed by structural realists as a product of a “unipolar world and a multipolar Europe,” EU's security and defence cooperation in their telling of it has been and will also continue to be driven by the “Big Three” arms producing member states (Hyde-Price, 2012: 34). For instance, several realist approaches to the evolution of the EU's security and defence dimension have insisted that this enterprise has been steered by France and Britain as the EU's two dominant states, which have converging interests in propping up CSDP as a tool for generating more robust crisis management capabilities (Art, 2005-2006; Jones, 2007). Thus, the balance that Germany, France, and the UK strike between their “sovereign rights” and the “needs” of CSDP will drive the development of the EU as a defence and security actor (ibid).

Classical realism, however, views this phenomenon as a “negotiated and unfolding community of power” imbued with historically-derived meaning (Rynning, 2011: 32).



Further development of an EU defence and security policy—its institutionalisation—is a product of “restrained behaviour on the part of important states,” which realise that they would be worse off outside of the EU framework (Rynning, 2011: 32). In yet another modification, the neoclassical realist school of thought contends that, whereas CSDP arose from (structural) power dynamics, namely the ascendance European “poles” alongside the United States, it is shaped by the decisions of the various policymakers and institutions of Europe, which are in turn acting on the basis of their own complex histories, ambitions, and objectives (Rynning, 2011:33). Thus, such intervening variables as culture, ideology and nationalism, enable policy leaders to generate state power in pursuit of foreign and security policy goals (Dyson, 2010: 123-124). Taking these arguments into account, one might therefore hypothesise that:

*H3: The development of the EU security and defence dimension has generated an interest in a common defence procurement framework on the part of the dominant arms producing member states, which then ensured the cooperation of other governments.*

#### *Empirical Justification*

The third and final hypothesis begins with the argument that the development of the EU’s military and security dimension has generated both the vital rationale for defence procurement harmonisation and a regularised intergovernmental decision-making forum in which it could be formulated. The development of the Common Security and Defence Policy (CSDP), the establishment of the EDA itself, and the publication of the European Security Strategy (ESS) in 2003 comprised the core of this process, bringing the notion of common EU security objectives into the Union’s structure, providing a systematised policy-making capacity in the field of defence, and focusing political attention on the need for an EU defence market. An institutionalised defence and security dimension has facilitated formal cooperation between previously non-intersecting actors and placed the potential and possibility of an integrated defence equipment market onto their agenda. Such high-level political leadership in foreign, security, and particularly defence matters was absent during previous attempts to harmonise defence procurement, and its absence has been highlighted by scholars as a fundamental reason for their failure (Moerth, 2003: 98-99; Guay, 1998:

64). Moreover, the increased imperative to “buy American” defence equipment in the absence of competitive European alternatives would result in the EU’s dependence on US industry for advanced military technology, with “the risk that it would flow only one way: from Europe to the United States” (Adams and Ben-Ari, 2006:113). After all, the reality is that American equipment comes with American restrictions and specifications on its use.

In addition, the operational maturation of CSDP and concerted EU action in the context of NATO, as well as bilateral and multi-lateral military cooperation amongst member states, has generated pressure on EU governments to provide capabilities for the growing number of military missions in a sustainable manner. This necessitated not only autonomous armaments production but also an efficient defence equipment market. The increasing number of operations has also raised the imperative of interoperability, which requires equipping member states’ armed forces that participate in the missions with easily compatible equipment in a cost-effective manner (Adams and Ben-Ari, 2006:114-115). Harmonisation of EU-level defence trade rules and creation of structures governing armaments market policies have therefore become increasingly critical to EU’s effectiveness as a security actor. In addition, the crux of the argument advanced here, and indeed the pressures, concerns and opportunities outlined above, pertain to the role of the three dominant arms-producing member states. Specifically, the third hypothesis assumes that defence procurement institutionalisation is a product of the EU’s development as a defence and security actor, and as such is driven by the interests and policy objectives of the UK, France, and, to a lesser extent, Germany (Table 2 and Figure 2, below). Using their dominance in this regard, the Big Three are able to secure the acquiescence of the other member states. Their influence within the EU’s security architecture stems from the dominant size of their militaries, defence budgets, arms production, military capabilities and contributions to EU operations. As such, Britain, France and Germany would also have the most to gain from a competitive defence industrial base to ease the burden and improve the effectiveness of these contributions. After all, defence equipment demand within the EU is shaped by the operational requirements of these states. As “owners” of the EU’s largest defence firms and able to deploy most significant military missions, they would also have much to lose from the transatlantic technological gap potentially leaving them dependent on American equipment for

their military operations.

Table 2 Arms Deliveries to the World, 1996-2006: Leading Suppliers Compared (in millions of constant 2006 US dollars)

Supplier	Arms Deliveries \$ Value 1999-2002	% of World Deliveries 1999-2002	Arms Deliveries \$ Value 2003-2006	% of World Deliveries 2003-2006	% Change from 1999-2002 to 2003-2006	Arms Deliveries \$ Value 1999-2006	% of World Deliveries 1999-2006	Arms Deliveries \$ Value 2006	% of World Deliveries 2006
United States	57,640	39.80%	50,032	41.47%	-13.20%	107,672	40.56%	14,008	51.87%
United Kingdom	21,813	15.06%	14,103	11.69%	-35.35%	35,916	13.53%	3,300	12.22%
Russia	19,041	13.15%	19,713	16.34%	3.53%	38,754	14.60%	5,800	21.48%
France	11,744	8.11%	11,053	9.16%	-5.88%	22,797	8.59%	400	1.48%
Germany	5,969	4.12%	5,780	4.79%	-3.17%	11,749	4.43%	1,000	3.70%
China	3,767	2.60%	3,381	2.80%	-10.25%	7,148	2.69%	700	2.59%
Italy	2,254	1.56%	1,071	0.89%	-52.48%	3,325	1.25%	100	0.37%
All Other European	14,217	9.82%	9,219	7.64%	-35.16%	23,436	8.83%	1,200	4.44%
All Other Countries	8,377	5.78%	6,303	5.22%	-24.76%	14,680	5.53%	500	1.85%
<b>Total</b>	<b>144,822</b>	<b>100.00%</b>	<b>120,655</b>	<b>100.00%</b>	<b>-16.69%</b>	<b>265,477</b>	<b>100.00%</b>	<b>27,008</b>	<b>100.00%</b>

Reproduced from Neuman, 113

Figure 1 Defence Procurement Expenditure

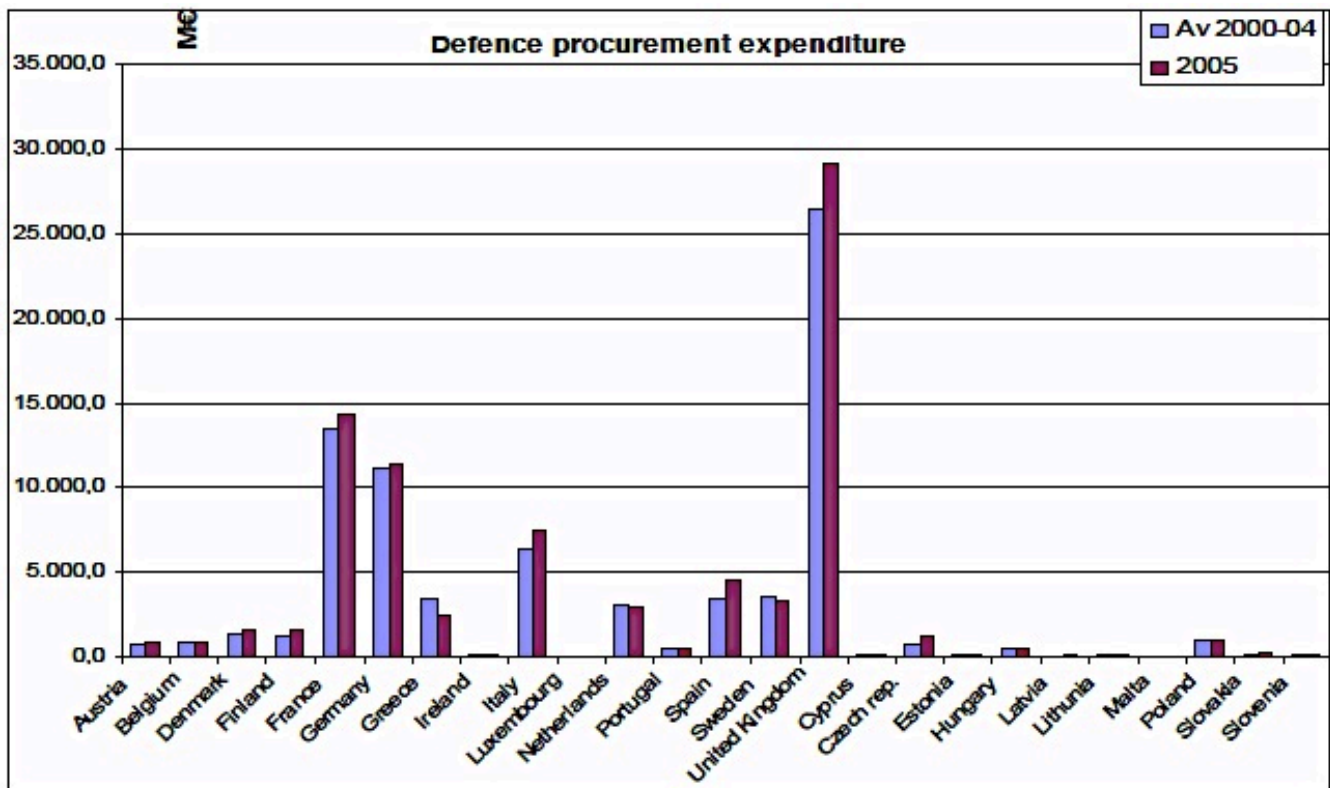


Figure 2 Reproduced from European Commission, 2007

In contrast, smaller states with second-tier uncompetitive or commercially unattractive defence industrial capacities, which they maintain to ensure a measure of national autonomy and domestic employment, may struggle in the EDA's vision of a competitiveness-driven EU-wide defence technological and industrial base (Mawdsley, 2008: 379). Therefore, this hypothesis argues that the EU's dominant states would have seen value in the Code of Conduct and Defence Procurement Directive. In other words, it is the largest states that have shaped the defence market activity of the EDA, advanced procurement-related proposals in CSDP bodies, and once the Commission's defence industrial agenda solidified, made sure that it was in line with their objectives. In particular, when the French then minister of defence heralded the creation of the EDA as Europe's opportunity to "take control of its own destiny," she was expressing traditional French Gaullist-inspired desire for European autonomy with France at its helm (Alliot-Marie, 2005; Guay, 1998:75). Since the French Council Presidency of 2008 also made EU defence and security policy, including defence procurement, a priority of its term, inquiry generated by this hypothesis will also need to pay particular attention to the influence exerted by this member state.

The EDA itself constitutes an outcome of the EU's development as a security and defence actor, and as such forms a crucial component of the substantiation of this hypothesis. Initially discussed in the context of the un-ratified draft EU Constitutional Treaty, the proposed Agency was speedily divorced from that process and advanced separately within the Council and with notable support from British and French governments (Adams and Ben-Ari, 2006:111). Successive European Council Presidencies have also invested in its role as an actor tasked with steering EU governments towards generating credible capabilities in support of CSDP and finding European, rather than national, solutions to capability shortfalls. Under this defence and security banner, the substance of EDA's mandate is in large part industrial – that is, strengthening the defence industrial and technological base and promoting research and development and research and technology investment (Hoeffler, 2012: 442). Thus, the Agency's *Long Term Vision* report, a sort of forward-looking declaration of intent, stresses that any European Defence Technological and Industrial Base (EDTIB) must provide "what our armed forces actually require and what export customers may be interested to buy," meaning that such a defence industrial base can

only be EU-wide in character, rather than a collection of national frameworks. A paramount purpose of the Agency's work has also been to present the EDTIB as critical to "dependable supply of the European Armed Forces' needs even in times of conflict," as well as for "appropriate national sovereignty and EU autonomy (EDA, 2006b). A competitive defence equipment market is a central component of this vision, as is a corresponding "reduction of reliance on non-European sources, (i.e. USA)" (EDA, 2006b). In this context, the EDA has brought member states' defence ministers, armaments directors, the Council, Commission, and industry under one institutional roof and focused their minds on defence industrial objectives. The EDA may thus have been critical in endowing the EU with the fundament of an armaments policy. In particular, Agency's policy-making activity and cooperative dynamics generated by its Code of Conduct on Defence Procurement may have paradoxically made it logical for member states to agree to the Defence Procurement Directive through a type of functional cross-fertilisation.

If this hypothesis were to provide the most potent explanation of EDEM institutionalisation, one would expect to see the EU's defence and security "infrastructure," such as the EDA, EU Military Staff (EUMS), and EU Military Committee (EUMC) used as decision-making forums and deliberation loci for EDEM matters. Similarly, CSDP capability generation processes and multinational military deployments would likely feature prominently in arguments for defence procurement harmonisation measures. For instance, framing CSDP deficiencies in terms of defence procurement inefficiency and capability duplication constitutes one useful indicator in this regard. Furthermore, it must be demonstrated that national policy-makers not only consistently articulated "defence and security" justifications during such deliberation processes, but also shaped them so as to address these concerns. In addition, linkages between the EDA setting and the Community defence procurement policy-making process must be specified in detail. Distinguishing between the causal influence of member states and intergovernmental organisations as well as among the "large" and "small" member states will be crucial for testing this hypothesis. Finally, verification will require detailed examination of member states' threat perception and policy objectives in this realm.

## The Policy Cycle Framework as Ordering Mechanism

In Smith's stage-based conceptualisation of institutionalisation employed by this thesis, the "clearest expression of institutional ends-means relationship is that of a policy process" (Smith, 2004: 39). In this framework, the policy process, also known as the policymaking process, functions primarily as an analytical device which is operationalised heuristically as a policy cycle (John, 1998: 23-27, 36; Young, 2010). Its increasing use as an analytical tool in IR, comparative politics, and studies of EU integration reflects the growing incorporation of "central concerns of policymaking" into these disciplines (Hurrell and Menon: 1996; Risse-Kappen, 1996; Richardson, 2006). In particular, examinations of "increasing institutionalisation of international cooperation," and the role played by non-state actors within it, necessitate an understanding of the utility, desirability, form and substance of cooperation, as well as the actors its development would empower (Young, 2010: 48).

The policy cycle consists of successive stages of policymaking, which have been categorised as agenda-setting, as a result of which a particular issues come onto the political agenda, agenda shaping (or policy formulation), whereby a specific proposal for action emerges and alternatives are discarded, decision-making, or the actual agreement on a particular policy option, and policy implementation. Policy cycles also include stages dedicated to policy evaluation and feedback of lessons learned, while some models feature additional "oversight or accountability" steps (Young, 2010; Smith, 2004). To return to Smith's framework, once the policymaking process "reaches" the latter implementation or monitoring stages, it may "be also conceived as a system of governance" (2004: 39).

The policy cycle has received its fair share of critique, with one line of contention pointing out that its stages need not be successive, but may occur simultaneously, as, for instance, a policy may be formulated before the political agenda is set (Kingdon, 2003: 205-206). Other scholars have taken issue with the policy cycle's dismissal of the "reality" in which there are "multiple, asynchronous policy cycles" interacting and "operating at different levels of governance" (Young, 2010: 47; Richardson, 2006: 24). The study undertaken here employs the policy cycle model despite such disadvantages because it treats it as a "descriptive heuristic device to help organise a

historical policy narrative,” and specifically, the institutionalisation of the European Defence Equipment Market (Ackrill and Kay, 2011: 72). This means that it is not used as means to identify causality driving EDEM institutionalisation, but rather as a tool to organise and present the explanation for it. The structure provided by the policy cycle is helpful in ordering the respective influence exerted by each set of actors identified through the hypotheses presented above.

In particular, it is useful not only in light of the inherent complexity of EU policymaking, with its fluid institutional structures and its multiple levels of governance, but especially considering the “status” of the defence procurement domain “as an interface between industrial, technological, ...defence” and security policies (Young, 2010: 46; Mawdsley, 2008: 368). This intricacy translates into multi-layered interactions between the process and actors characterising each of the three hypotheses advanced in this thesis, and means that attempting to identify the “most important” amongst them in bringing about the approval of the Defence Procurement Directive would amount to unfortunate over-simplification. Elucidating the most influential set of actors—whether the transnational defence firms, the European Commission, or the dominant arms producing member states—at *different stages* of the policy process would, however, do justice to the empirical richness of the defence procurement issue area, and may be achieved with the help of the policy cycle heuristic. Keeping in line with the research question posed by this thesis—namely, why have member states made the more costly move toward binding regulation in the shape of the Directive, having already enacted a soft cooperation mechanism represented by the Code?—only the first three stages of the policymaking process will be utilised here. Consequently, this investigation seeks to trace the process that led to member states’ acceptance of supranational regulation in defence procurement, rather than to understand its effectiveness and further evolution. Although the development of the defence industrial policy area in the EU following the adoption of the Defence Procurement Directive will be briefly taken up in the concluding chapter of this thesis, it is not the primary concern of the analysis undertaken here.

The first stage of the policy cycle is identified in the literature as agenda-setting. It is during this stage that “struggles” between the various actors concerned with or interested in a particular issue area take place (Princen, 2009: 3-4). As a result of

“deciding what to decide” in this uncertain environment, a given set of issues attracts “serious consideration in a political system” (Young, 2010: 52; Princen, 2009: 19; Kingdon, 2003: 3). A policy agenda may be considered as “set” once it has captured the attention of formal organisations and individual policymakers in the (emerging) policy regime (Page, 2006: 16; Princen, 2009: 20-21). Several scholars have argued that the likelihood of an issue attracting political attention is partly a function of its inherent characteristics, such as (an increase in) the “severity of the problem,” or may stem from its “emotional appeal” (Keck and Sikkink, 1998: 26; Page, 2006: 216). However, such aspects of issues by no means guarantee their advancement “higher up” the political agenda and, indeed, must usually be presented or “framed” in a politically resonant manner by policy entrepreneurs in order to achieve this objective (Tallberg, 2003: 5; Kingdon, 2003: 204-205).

The second stage of the cycle heuristic has been subjected to a number of terms, the most widespread of which are policy formulation, agenda shaping, and alternative-specification (Young, 2010: 53; Tallberg, 2003; Stephenson, 2010: 1040; Barzelay and Gallego, 2006: 539). This analytical category aims to encapsulate the period during which “specific proposals for action” are advanced and policy alternatives are narrowed and discarded. It involves the “emphasising and de-emphasising” of existing issues on the policy agenda as well as the explicit “barring” of them from it (Tallberg, 2003: 5). At this time, policy entrepreneurs may engage in “mediating and brokering” in order to resolve issue conflicts and “establish cooperative relationships” (Stephenson, 2010: 1046). Considering the complexity and “fluidity” of the EU policymaking process, the agenda shaping stage is “relatively open,” involving a number of actors drawn from within member states, transnational networks, and the EU’s supranational organisations and intergovernmental bodies (Richardson, 2000: 1013). Nevertheless, in fields where it possesses the “sole right of initiative,” the Commission constitutes the “pivotal actor” during the policy formulation stage, allowing it to have an impact on decision-making as well, despite its relatively limited formal powers (Young, 2010: 55). It may be said, then, that although the policy entrepreneur is typically associated with the agenda-setting stage, it remains “active” during periods of policy formulation and, as will be demonstrated below, is able to influence decision-making.

As its name indicates, the decision-making policy stage features actors selecting a



particular course of action and includes the (micro)process by which this occurs. This would entail veto players' acquiescence to the outcome, and, usually, its formalisation in an agreement, treaty, or legislation. One mode of decision-making in the EU policy context concerns the delegation of responsibility to the European Commission, and is rooted in principal-agent analyses of decision-making authority delegation to executive bodies. For instance, this is the case when specialised agencies such as the European Food Safety Authority or European Medicines Evaluation Authority provide expert advice to the Commission, which then takes formal decisions. Analyses focus on the factors driving the delegation process—whether it is efficiency or normative notions of appropriateness—as well as the dynamics characterising it. It is during the decision-making stage that the interaction between the principle and agent acquires particular analytical importance. In situations when the Commission has been delegated (a degree of) decision-making authority, it is important to remain attentive to the freedoms and constraints granted to it by the “principals' preferences.” Consequently, the member states' ability to sanction or, alternatively, promote, the actions of the agent is a key characteristic of the decision-making policy stage (Pollack, 2003).

Decision-making in the context of an EU policy cycle also involves “decision-taking” in the Council of the European Union. Under the qualified majority voting (QMV) procedure, the bargaining power of various member states becomes an important feature of the decision-making stage, helping answer questions such as, when are national delegations likely to be in the winning majority and how do their preferences on the one hand and voting weight on the other impact that? However, Council decision-making often operates by consensus amongst officials, rather than through voting by ministers, so that even instances of QMV tend to be underpinned by consensual dynamics (Haegel, 2008). Therefore, bargaining models, as developed in studies of inter-state negotiations, have been applied to Council decision-taking in order to elucidate the process by which agreement is reached – be it through exiting the decision-making trap with side payments and package deals, or via deliberation and arguing (Pollack, 2010). A key characteristic in this setting is also the impact of the Council Presidency, and, ultimately, the member state holding it. As will be explained more fully below, the ability of the Council Presidency to shape the decision-making agenda and “exploit superior information about the positions of

other member states,” may allow it to influence the outcome in accordance with the preferences of “its” member state (Tallberg, 2006; R. Thomson, 2008). It should be noted at this point that this more narrow “decision agenda” is not to be conflated with the broader policy agenda of the agenda-setting stage (Kingdon, 2003: 4). The former comprises issues that are “up for active decision-making,” while the latter refers, as explained above, to a set of issues that are “discussed by policymakers” (Princen, 2009: 22).

While, as an agency of the Council in the defence and security policy area, the EDA and its policy outcomes fall under “sole” decision-making by the Council, the Defence Procurement Directive has been subjected to the co-decision procedure shared between the Council and European Parliament. This process, crucially, also involves the European Commission (Wallace, 2010). In fact, as Ackrill and Kay argue, the role of policy entrepreneurs may extend well beyond that of “selling ideas to decision-makers,” so that these actors could also be “involved directly in decision-making” (Ackrill and Kay, 2011: 74). Thus, policy entrepreneurs may be policymakers at the same time (Ackrill and Kay, 2011: 78). Reaching agreement in the co-decision context, therefore, entails repeated and complex interactions between these organisations and actors within them.

It was already acknowledged above that the conceptual boundaries between the policy cycle stages tend to be vague and arbitrary “in reality.” The same may be said of the chronological distinctions between the successive policymaking periods.

Nevertheless, for the purposes of organising the “historical policy narrative” presented here and stemming from the characterisation described above, each stage within the policy cycle has been taken to correspond in subsequent chapters to a particular chronologically delineated period within the Defence Procurement Directive’s policy “path.” Thus, following the publication of the Communication *Towards an EU Defence Equipment Policy* by the European Commission in 2003, it may safely be said that the issue of EU defence market fragmentation has captured the attention of policy makers and thus fulfilled the chief condition of the agenda-setting policy stage. As a consequence, the agenda-setting period “ends” with this landmark.

Policy formulation, or agenda-shaping, is primarily characterised by discriminating between and discarding policy alternatives, so that one concrete policy proposal is

produced. Therefore, the following three chapters will treat the agenda-shaping stage as the period beginning approximately at the start of 2004. From this time, stakeholder consultations on potential community involvement in defence procurement were carried out as well as alternative, intergovernmental modes of organising this field proposed—in the face of the EDA’s Code of Conduct—and ultimately discarded. This stage, then, “concludes” with the formulation of a specific policy proposal in the guise of the draft Directive on Defence Procurement submitted to Council by the European Commission in December 2007. This leads to the decision-making stage during which the provisions of legislative proposal were discussed and negotiated under the co-decision procedure, before the resulting legislation was submitted for Council approval at the very end of 2008 and adopted by Parliament in early January 2009.

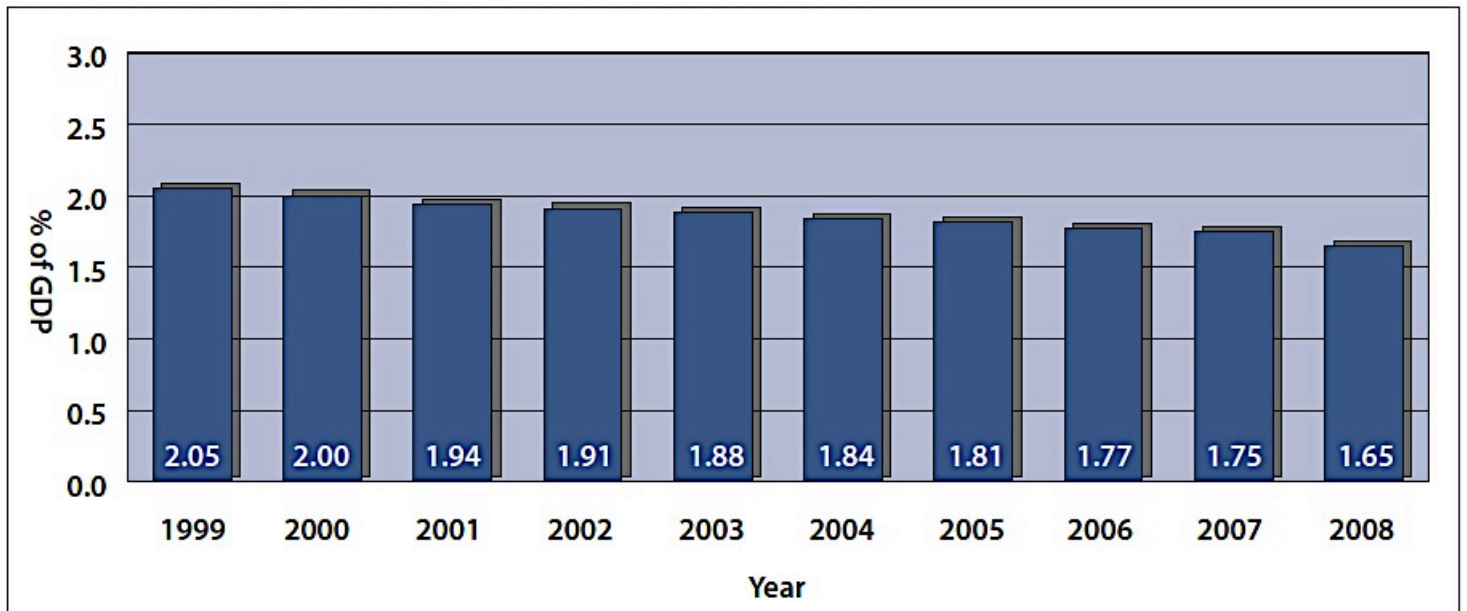
# CHAPTER III: EU'S TRANSNATIONAL DEFENCE INDUSTRY LOBBY AND THE “SINGLE MARKET OF DEFENCE”

## Introduction

Chapter I explained that the first decade of the 21<sup>st</sup> century witnessed significant changes in the nature of the EU's defence industrial environment. In particular, the fundamentally altered systemic context precipitated by the dissolution of the Soviet Union and its sphere of influence has spurred reforms within the defence and security structures of the United States and its European Allies. In addition to strategic realignment, such restructuring revolved around steadily decreasing defence budgets on both sides of the Atlantic (see Figure 2 and Figure 3 below). For the supply side of the armaments production equation, that is, defence industry, this meant shifting and dwindling demand for its equipment. In the United States, the response was rapid and radical consolidation around just a handful of defence industrial behemoths.

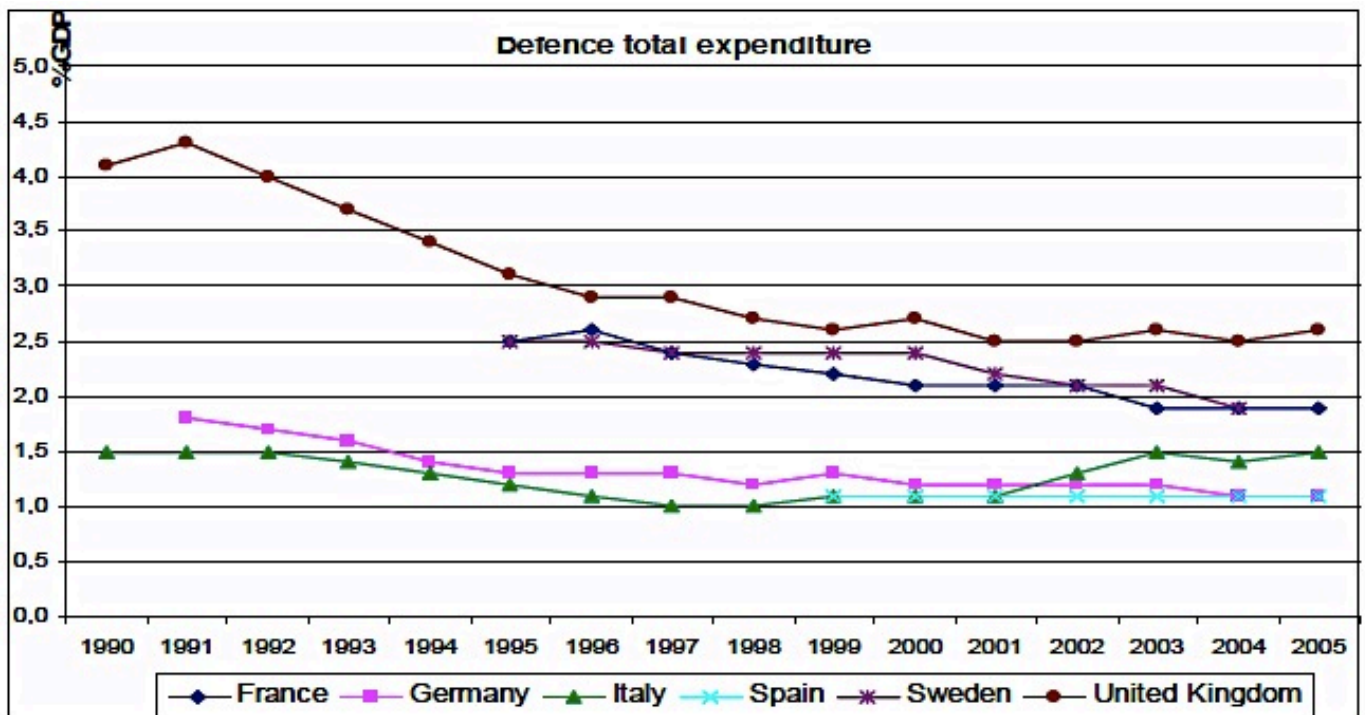
European merger activity, however, proceeded at a significantly slower pace and within national frameworks, remaining incomplete and uneven across the naval, aerospace, land, and electronics sectors. The result was a “loose coalition” of defence markets within the EU, encumbered by high degrees of state control, protectionism, and duplication, sustained by a patchwork of member states' fragmented regulatory and bureaucratic regimes. Nevertheless, defence industrial consolidation in the EU has resulted in the emergence of four dominant defence firms—BAE Systems, EADS, Thales, and Finmeccanica (Schmitt, 2002). These primary suppliers—primes—shared characteristics such as production across the defence and security sectors, transnational structures encompassing a number of national markets, and designs on ever-bigger slices of the international defence sales pie – namely, strong interests in exporting their products outside of the relatively defence investment-poor European Union (Struys, 2004: 554).

Figure 2 NATO ex-US Defence Expenditure as % of GDP



Reproduced from IISS Military Balance, 2010

Figure 3 Total Defence Expenditure as % of GDP



Reproduced from European Commission, 2007: 67

Considering these developments, as well as the role of transnational industrial interest groups in bringing about the extension of Internal Market regime to hitherto “closed” or “protected” policy fields, it was hypothesised in Chapter II that:

*Transnational defence firms and industry associations, created by industrial consolidation within the EU, have lobbied member state governments to agree to harmonisation measures.*

The objective of this chapter shall be to present and evaluate the evidence that exists in support of this claim. This will be carried out within the policy cycle framework elaborated in Chapter II, comprised of the agenda-setting, agenda-shaping, and decision-making stages. Substantively, this chapter proceeds by first elaborating upon levels of complexity within the “defence industrial” hypothesis centred around two aspects – the differing interests of large, transnational defence industrial firms and smaller, nationally based companies. Another crucial aspect that will be examined is the relationship between the primes and the governments within which they are headquartered, as an expression of the linkage between armaments manufactures and nation-states more generally. The chapter will then provide a detailed examination of the defence industrial environment within the EU, taking demand and supply factors in turn. This task will also further clarify the rationale for the hypothesis advanced above.

By the time the European Commission released its 2003 Communication *Towards an EU Defence Equipment Policy* outlining potential community initiatives in the defence industrial sphere, EU defence industry was suffering from a serious “competitiveness deficit.” The lack of harmonised Union-wide equipment requirements and procurement standards has prevented the emergence of a cross-border single market, forcing companies to position themselves towards a large number of differing national demands. This, in turn, left industry with small production volumes and thus large costs, stunting economies of scale, learning, and scope (Hartley, 2006:478). Furthermore, differing procurement structures and requirements deny EU defence firms the certainty needed for the long-term planning that is essential to innovation, alliance building, and R&D investment which lie the heart of profitable defence “business” (James, 2005: 9). Finally, EU governments continued to support industrial overcapacity, primarily in land and naval sectors, and enact protectionist policies, as a result of both concrete, short-term industrial policy reasons and more nebulous but equally powerful perceptions of national sovereignty

(Chapter I; Neuman, 2010:122). These constraints were also frustrating EU industries' efforts to secure opportunities in the international defence market, where their higher costs and lagging innovation helped their American rivals repeatedly out-compete them (Hartley, 2003: 347-348; *The Economist*, 2003; Citi, 2014: 144).

Opening up the protected markets of EU member states through open competition requirements and legal harmonisation would allow the EU's defence giants to increase their demand within the European Union considerably. This would result in higher production runs, and thus lower unit costs, including R&D unit costs, leading to gains from economies of scale and learning (Chapter II). In the end, EU defence primes would be more competitive in export markets as well, able to sell their sophisticated defence equipment more cheaply beyond the EU. Consequently, primes such as BAE Systems, EADS, Finmeccanica and Thales, would reap considerable benefits from greater market openness that an institutionalised European Defence Equipment Market (EDEM) could bring.

#### *Prime Contractors vs. Small and Medium-Sized Enterprises (SMEs)*

As mentioned above, a distinction must be drawn between the interests of the EU's transnational primary defence contractors, or primes, and the smaller, second-tier firms, "producing or assembling parts, components, and sub-systems into final military goods" (Struys, 2004: 556). Headquartered in the four member states with the highest defence spending—the UK, France, Germany, and Italy—the primes have developed extensive supply chains which required decades to establish due to the prohibitively high entry barriers in defence.<sup>24</sup> These networks include "second-tier suppliers" that are active across multiple jurisdictions within the EU. A number of such small and medium enterprises (SMEs) have traditionally relied on varying degrees of support and protection from national governments concerned with domestic industrial policy objectives such as maintaining employment, and, in the case of member states like Greece or Poland, staking their notions of security of (military equipment) supply on the survival of national defence industry (Interview

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<sup>24</sup> The headquarters of BAE Systems is in London, that of Thales in Paris, while Finmeccanica is based in Rome, and prior to its reorganisation as Airbus Group and HQ transfer to Blagnac, EADS was jointly headquartered in Paris and Munich.

26, 3 April, Industry; Interview 25, 19 March 2014, Industry).

Shielding by governments was in large part made possible by the steady stream of national orders flowing from their governments' widespread invocation of Article 346 of the Lisbon Treaty, even though economically-speaking, many of the beneficiaries may not have been "worthwhile to sustain, to protect, or to convert" (Struys, 2004: 561). However, the defence technological and industrial bases (DTIBs) of smaller member states comprise not only such proverbial "Portuguese SMEs that [could] never be part of Thales' supply chain" in conditions of open competition, but also highly-specialised, high-technology firms, which, as a result may also be "vulnerable to fluctuations in military demand" (Struys, 2004: 556; Interview 26, 3 April, Industry). Furthermore, there are a number of "competitive" SMEs which despite "having zero customers at the European level," nevertheless receive "many [orders] outside of Europe" (Interview 36, 5 May 2014, EDA and Member State).

When one speaks of "European defence industry", therefore, it is important to distinguish between the varied, at times divergent, interests and cacophonous voices encompassed within this term (Interview 20, 5 March 2014, Industry). It is true that the key differentiating line may be drawn between the transnational prime contractors considered here and second-tier and third-tier SMEs further down the supply chain. The former would benefit from greater defence market openness and integration in the EU, while many of the latter rely on either entrenched relationships to prime contractors or state protection via offsets, subsidies, or guaranteed purchasing by home governments, making them fearful of potential supply-chain disruption and unfettered forces of competition. Yet, the full picture of defence industrial interests is both more nuanced and, in some ways, more simple. As one senior executive with an EU legislation portfolio at a transnational defence firm phrased it, although the "general view" within industry was that "market access and market openness are the right things to do," firms also feared that "the balance of advantage would not be in their favour" in the new, more competitive conditions (Interview 8, 28 August 2013, Industry). The transnational companies with large cross-border order books would be likely to benefit from a situation where Article 346 is no longer used by governments to keep them out of export markets in favour of domestic suppliers. At the same time, the chances of the Treaty exemption being used "against" them— that is a scenario where "their" national government awards a defence contract to a competitor from



another member state rather than invoking Article 346— are comparatively lower. After all, even if the Treaty-based exemption may be a bothersome feature of doing business when it prevents firms from winning contracts, it is at the same time a historical source of support accorded to industry by governments and a key expression of the customer-supplier relationship.

As a result, defence company executives based their attitudes towards a European defence equipment market on a calculation of whether the market-access benefits of a restricted use of Article 346 would outweigh the potential damage to their bottom line inflicted by diminished state support. These “balance of advantage” judgements are inherently subjective and variable, and as such, have resulted in inconsistent and somewhat contradictory positions within EU defence industry regarding the desirability of a single defence equipment market, particularly one with a supranational core. The elements of variability and inconsistency within industry’s interests would also shape the nature of EU defence firms’ influence upon the EDEM process and, as will be demonstrated in the remainder of this chapter, are key to understanding this process.

### *The Big Member States and “Their” Transnational Defence Firms*

Another layer of complexity in need of consideration is the “complex” relationship between the EU’s transnational defence primes and the member state governments in which they are headquartered (Interview 41, 11 June 2014, Member State Ministry of Defence). As mentioned above, the status of the United Kingdom, France, Germany, and, to a lesser extent, Italy as the four largest “defence spenders” in the EU is intertwined with the historical “national champion-like” status of their major defence industries, which contributed to the strong political ties between today’s BAE Systems, Thales, EADS, and Finmeccanica to their “home” ministries of defence. There are three reasons why understanding this interaction is not only essential for a comprehensive verification of the “industrial” hypothesis examined in this chapter, but is also crucial for the validity of this thesis as a whole. Firstly, it will help map out the “distance” between the preferences of member states and transnational defence firms. This will in turn enable an assessment of the relative success of defence firms’ lobbying efforts, which entails skilful nudging and convincing of decision-makers by

private actors to adopt policies that are beneficial to them (Coen and Richardson, 2009). Thus, a grasp the initial disposition of the policymakers—whether broadly sympathetic, disinterested, or hostile—is essential as it shapes the strategies and effectiveness of transnational interest groups (Interview 30, 8 April 2014, Industry). Second, appreciating the nuanced relationship between the EU’s primes, that is, BAE Systems, EADS, Thales and Finmeccanica, and their “home” governments is key to understanding the relative importance the former accorded to national channels versus EU institutions as “lobbying targets” in the pursuit of a European defence equipment market. Finally, understanding this connection will provide insights into the nature of the balance between the oft-cited “internationalisation” or “denationalisation” of defence industry on the one hand versus the “close identification of [its] interests” with those of governments in which they are headquartered. The latter is a product, as per the central claim of this thesis, of the enduring linkage between defence industrial capability and notions of state sovereignty and reality of economic well-being (Eliassen and Sitter, 2006:4; Chapter I).

As was explained above, the defence prime contractors of the EU do rely on an international supply chain. Moreover, with the advent of the 21<sup>st</sup> century, the “attention of their CEOs,” closely followed by the “content of their turnovers,” has begun to turn to the pursuit of business opportunities outside of Europe. This was particularly the case regarding the so-called emerging markets, and, for BAE Systems, the United States, as well (Interview 32, 10 April 2014, Member State Ministry of Defence; Interview 26, 3 April, Industry). Thus, BAE Systems’ US presence rivals that in the United Kingdom and across the EU (Bitzinger, 2003: 68). Thales makes a point of establishing a “home base” in states where it has acquired major operations (Bitzinger, 2003: 68; Interview 30, 8 April 2014, Industry). As will be demonstrated in the next section, defence primes of the EU have developed a variety of cross-border cooperation arrangements and “strategic alliances,” such as joint ventures, mergers and minority equity stakes (Dowdall, 2004: 542). After all, transnational consolidation is what gave rise to “big defence industry” in the first place. According to some assessments, this declining importance of European markets—internationalisation—has been coupled with a weakening relationship to the “home” governments as a result of denationalisation (Igekami, 2013).

However, the narrative of an increasingly globalised defence industry only tells a part

of the story, and a deeper look indicates that transnational defence firms “remain wedded to their home countries,” and to the EU, in a number of linkages underneath the veneer of internationalisation (Dowdall, 2004: 452). For instance, Finmeccanica has been encouraged by the Italian government in its active strategy in entering joint ventures as “a means of preserving its identity and sustaining Italian industrial and technological capabilities,” (James, 2002: 127). Thus, the “home government” remains the “key customer” that drives the political and regulatory agenda within which industry must operate, and the most important relationship of a company such as Thales, for all its global “home bases,” continues to be that with the *Direction Générale de L’armement* (DGA) (Interview 30, 8 April 2014, Industry; Interview 26, 3 April, Industry). The interaction between the “headquarter governments” and transnational defence firms also extends beyond the merely historical, cultural, or habitual aspects and into material territory. For instance, German defence industry has been both a beneficiary and a key supporter of the German government’s strategy of “keeping German defence industry German,” such as via a 2003 legislation necessitating governmental approval of shares exceeding 25 per cent in German defence firms by foreign entities (Mulholland, 2005: 2-3).

Similarly, since the 2006 release of its *Defence Industrial Strategy* and following a period of encouraging foreign competition in the UK, the British government has reverted to treating BAE Systems in a manner of a national champion, actively steering leading portions of multi-partner defence business towards the multinational (*The Economist*, 2006). There is a “certain logic behind” this policy direction which, as rationalised by a former senior defence official, fundamentally means that as a government, “you have to put a certain amount of business people’s way,” (Interview 7, 9 August 2013, Member State Ministry of Defence). Such logic cuts to the heart of states’ insistence on “security of supply”— governments are not prepared to “trust the other side” to carry out the necessary “upgrade” work for their defence equipment in a manner and within the timeframe they may require, and must thus decide whether and what degree of “risk” they would accept in the “risks game” of entrusting their security of supply to another state,” (Interview 7, 9 August 2013, Member State Ministry of Defence). The “national champion bond” is also solidified through such ties as the “absolutely critical” investment into R&D by the “home government” and its purchase of newly-developed products from the home supplier— invaluable for

signalling their export readiness (Interview 25, 19 March 2014, Industry; Interview 26, 3 April, Industry). As will be illustrated below, these elements of industry-government relationship constitute the lifelines of the defence industry (Hartley, 2003: 348-349).

*Inconvenient, Yet Crucial: Appreciating Inconsistencies and Contradictions*

Taken as a whole, then, any nuanced discussion of EU member states' and defence primes' "interests" must take into account these inherent inconsistencies. As in all its manifestations, globalisation in the defence industrial sphere entails costs as well as benefits, and thus far EU governments have not been fully willing to face the consequences of "opening national markets to foreign competitors" and allowing defence industry to be guided by "commercial logic rather than political requirements" in their decisions regarding the location "of industrial and technological activities," (James, 2002: 131). On a more fundamental level, there is a divergence of interest between the key state objective of maintaining domestic employment and the industrial goal of profit maximisation (Neal and Trevor, 2001: 349). The competition pressures of global markets, where "downsizing and capacity retirement are a commercial necessity," make this incompatibility that much more stark (ibid). This has led to a contradictory approach on the part of national governments, who on the one hand recognised that industrial consolidation bolstered by competition-enhancing regulation was essential to defence industrial competitiveness, but at the same time remained terrified that industrial capacity, and with it, domestic employment, industrial base, and the "national character" of its defence champions, would slip away to another member state (Fligstein, 2006). In the end, "interests" may be "different between member states and industry," but, considering the continuing importance of "home government" support and investment, they also remain tightly intertwined (Interview 20, 5 March 2014, Industry).

Such complexity has been part and parcel of the European post-Cold War defence industrial landscape, to which this chapter now turns. Understanding the interaction between the forces of demand and supply within the defence market sheds further light on the corresponding nuanced relationship between EU member states and transnational defence primes. This context also elucidates the pressures and

opportunities facing both industry and national governments, and as such, is critical to substantiating the claim of industrial lobbying presented here. Having demonstrated that any “internationalisation of arms production...[may be] driven by industry but [is] sanctioned by national governments,” the next phase of the analysis undertaken here will examine the post-Cold War defence procurement environment in detail (Dowdall, 2004: 542). This step will also provide the empirical background giving rise to the hypothesis advanced above.

## **The EU Defence Industrial Landscape: Early 1990s – Late 2000s**

### *Demand Factors*

The dissolution of the Soviet Union has precipitated a transition within most EU member states’ strategic planning away from large-scale confrontation with a rival superpower and toward expeditionary warfare. With the USSR no longer posing an existential threat, and the likelihood of war on the European continent—at least as European societies and policymakers understood it—greatly diminished, EU governments began slashing their defence budgets. In fact, already by the early 1980s, the so-called “structural disarmament” was making itself felt, whereby, despite an overall increase in public expenditure, defence budgets could not keep pace with rates of equipment acquisition and replacement, buoyed by rising costs and sophistication levels of weapons systems technology (Struys, 2004: 552). In addition, the logic of market economics of the 1980s demanded “value for money” and efficiency in the production and supply of defence equipment (Braddon, 2004: 500). Therefore, by the end of the decade, defence ministries across the EU began coming under fire for lax financial control processes within defence procurement procedures as well as “in-house defence services” (Braddon, 2004: 500). Reducing costs of defence equipment acquisition thus became an over-riding objective of ministries of defence across the EU, as with former German Chancellor Gerhard Schroeder, for instance, refusing to entertain proposals for defence spending increases, despite the admonition of German armed forces’ General Inspector Harald Kujat that “the *Bundeswehr* is not ...ready for interventions (abroad)” (Moens and Domisiewicz, 2001: 13). Furthermore, during the early 1990s European leaders were finding that re-

investing the “peace dividend” into the welfare-state elements of public spending was much more “electorally promising” and seemed to reflect the priorities of their publics (Liberti, 2011: 15). As one trade publication lamented, even when national defence industry was “crying for more funds,” it was being “ignored” in order to maintain social welfare programmes (Mulholland, 2005).

This environment of relative “defence austerity” also framed the policies employed by EU governments to steer the process of restructuring embarked upon by the EU defence industry (see *Supply Side* below). One option under consideration within national capitals was allowing defence firms to chart their own rationalisation course by determining product lines, selecting alliance partners, and structuring mergers (Fligstein, 2006: 950). This “market-driven” solution would have also avoided the protectionism, fragmentation, and over-capacity resulting from national champions serving national markets, as well as the intractable political difficulties associated with implementing the “specialisation” model. In this scheme, different member states’ firms produced only certain weapons systems in a coordinated, previously agreed upon structure (Fligstein, 2006: 951). Yet, as mentioned above, the objective of defence industrial rationalisation uneasily co-existed in national policymaking machines with a “fear that all of their national defence capacity might end up in the hands of firms from other countries,” resulting in a loss “of control over defence production” (Fligstein, 2006: 950, 951). Consequently, the resulting process of defence industrial consolidation and rationalisation across the EU combined elements of state ownership, control of merger activity, and support of national champions with allowing the proverbial invisible hand some freedom of manoeuvre (Fligstein, 2006: 953).

However, this transition has proven far from seamless, complete, or irreversible. Although the governments of the UK, France, Germany, and Italy, have significantly divested themselves of defence industrial control since the late 1990s, the state has retained a key stake, including in EADS, Thales, and Finmeccanica which represent the most “market-dominated” aerospace sector when compared to naval and land systems (James, 2002: 132; Balis, 2013: 4). Amongst the dominant arms producing member states, Britain and Germany embarked on post-Cold War domestic defence industrial rationalisation before France. Germany had allowed its industry to consolidate into Daimler-Benz Aerospace (DASA), following Daimler’s 1992 merger

with the American firm Chrysler, in a quasi cultivation of a national champion, while the UK followed a more “market-driven” approach. British firms were frequently subject to takeovers, and the government initially opposed the merger of its two largest suppliers, British Aerospace BAe and General Electric (GEC) (Moens and Domisiewicz, 2001: 5; Interview 18, 10 February 2014, Industry). However, while the UK government enjoyed highlighting the entirely private ownership of BAE Systems, it was also a much more active export supporter for its national champion than were its continental counterparts (Neal and Taylor, 2001: 352). On the whole, though, despite their considerable involvement, most EU governments had not provided much export support to their defence firms throughout the 1990s when compared to the United States. This disparity had further exacerbated the competitiveness pressure felt by industry. The difficulties of winning global market share weighed heavily on both sides of the Atlantic, but the American burden was lightened by the considerably greater governmental support (Neal and Taylor, 2006: 352). Thus, high degrees of state involvement continued to obstruct further industrial consolidation, while European ministries of defence have found that large, Cold-War era “legacy” procurement projects were painfully difficult and costly to cancel (Neal and Taylor, 2001: 349; Giegerich and Nicoll, 2008:101).

### *Supply Factors*

How, then, have the EU’s defence suppliers responded to the demand conditions outlined above? The “collection of national fiefdoms” that was the European defence industry in the immediate post-Cold War period has found that its traditionally high reliance on national ministries of defence for revenue had become unsustainable in the 21<sup>st</sup> century (Callum and Guay, 2002: 757). Important exceptions to the largely national character of European mergers and acquisitions were Thales and EADS (European Aeronautic Defence and Space Company). The former grew out of a merger of Thomson-CSP and Dassault Electronique, with a subsequent acquisition of Aerospatiale’s satellite business and Britain’s Racal Electronics. Similarly, EADS was a result of the merger between France’s Aerospatiale and Matra, later to be joined by DASA and CASA of Spain. The closest entity to a “pan-European” defence company, EADS also owns Airbus of Germany (Guay, 2007). BAE Systems

similarly originated in a national merger, namely, between British Aerospace, as it was formerly known, and GEC-Marconi. The resulting conglomerate spent the 2000s rapidly expanding into the US market as well as acquiring assets in Europe to become the EU's largest defence company, and third largest in the world. Finally, Italy's Finmeccanica absorbed the country's state defence assets and acquired the UK's Westland (Giegerich and Nicoll, 2008: 108).

The initial reaction of European firms to this situation may be categorised according to two patterns. The first was internal consolidation involving the acquisition of smaller domestic firms by national champions, such as that pursued by Germany's Daimler-Benz. The second pattern involved the acquisition of the defence businesses of industries across the EU by the large defence firms, such as Thompson-CSF of France (now Thales) buying the Dutch company Phillips' defence electronics division. However, the disparity between the rhetorical enthusiasm of EU governments for full-steam industrial rationalisation and their insistence on maintaining varying degrees of control over defence firms' consolidation and business line decisions resulted in the managerial circles favouring the more politically acceptable and less bureaucratically burdensome model of partnering through joint ventures rather than merger activity (Fligstein, 2006: 953).

Transnational structures were largely limited to joint ventures or multinational consortia, which left the firms' national orientation and independence intact (Callum and Guay, 2002: 758).

Thus, when cross-border industrial takeovers did occur, the purchased firm would often be left "intact" and managed as a separate entity (Fligstein, 2006: 953). The overall effect amounted to the preservation of the "original national firms" within the *de facto* consortia of transnational primes, reassuring governments that "their" national industry had not been swallowed up (Fligstein, 2006: 953). Another widespread mode of intra-industry arrangement which was conducive to "maintaining national identity" was the "strategic alliance," in which firms acquired decisive shares in other firms as was the case with BAE Systems' acquiring equity in the Swedish Saab (Neal and Taylor, 2001: 348). This mode of consolidation, in which a part of one firm was purchased by another, relied on "structural links" between the purchasing company and the "older national firm" (Neal and Taylor, 2001: 350). Rather than reducing the number of suppliers in the market, this model consolidated



“certain elements” of the two firms’ portfolios, which then worked together (Neal and Taylor, 2001: 350).

The evolution of the EU defence industry has also been shaped by the strategies of its chief competitors – companies in the United States. In the aftermath of the Cold War, the US military and defence industry were also adapting to the disappearance of their strategic *raison d'être* in the face of the Soviet Union, but were doing so much more quickly, efficiently, and comprehensively than their European counterparts (Dowdall, 2004: 545). Therefore, while the military procurement budget of the United States had declined throughout the 1990s, the Clinton administration dealt with defence market overcapacity by actively pushing the American industry along its course of rapid rationalisation and consolidation, including, if deemed necessary, complete “exit” of some firms from the defence business. Moreover, the 1990s spawned the traditional US policy of governmental support to its defence industry in the form of export aids and R&D investment. In the new millennium, policies of the first George W. Bush administration prioritised information superiority across the full spectrum of military operations and accordingly mandated a sustained upsurge in R&D spending (Mawdsley, 2003: 9; Hamre and Serfati, 2003). This has resulted in an industrial landscape characterised by a very small number of “giants” such as Boeing, Lockheed Martin, Northrop Grumman, and General Dynamics that boasted lower costs and higher production volumes than their European competitors. They were also overtaking them in competition for governments’ increasingly scarce defence procurement funds – first in their “home” markets of EU member states and, soon, in the increasingly big-spending “rising powers” keen on expensive weapons programmes.

Considering supply and demand factors together, then, indicates that the processes of European defence industrial consolidation and rationalisation have been uneven and incomplete. Re-structuring has occurred to a much greater extent in the aerospace sector than the land vehicle and naval sectors, which have remained hamstrung by overcapacity, duplication, and inefficiency (Hartley, 2011: 104-109). These sectors were also particularly fragmented along national lines, although, as Chapter I emphasised, inward national orientation towards 28 small markets and ownership structures became a persistent feature of EU’s defence industrial landscape as a

whole. It was already highlighted above that many of Europe's second-tier defence suppliers, as well, have not consolidated into larger cross-border firms exacerbated the over-capacity and fragmentation (Guay, 2007).

### **Agenda Setting: “Singing Happily about EDEM” and Bemoaning the Transatlantic “Competitiveness Gap”**

Taking into account the adverse market conditions described above points to the reasonable conclusion that reduction of barriers to cross-border business opportunities and harmonisation of procurement means within the EU, which the EDA's Code of Conduct and the Commission's Defence Procurement Directive aimed to achieve, would benefit industry through enhancing its competitiveness. Consequently, the EU's transnational defence firms would stand to gain from these instruments and would thus have an interest in their approval and implementation. This section traces the primes' efforts to achieve just that, garnering indicators of their success during each stage of the policy process – beginning at the agenda-setting stage, followed by agenda-shaping activity, and concluding with decision making.

Throughout the early 2000s, a “fragile consensus” began to emerge amongst industry, and particularly amongst primes such as Thales, Finmeccanica, and EADS, that a more integrated EU defence market was necessary “for a transition to global markets,” (Interview 26, 3 April, Industry; Interview 11, 6 December 2013, Member State Ministry of Defence). This recognition was voiced by Philippe Camus in 2001, the co-CEO of EADS, who spoke of the “absolute need” to have “common procurement in Europe,” (Michaels, 2001). “Big companies” were “asking for one customer,” according to Mr. Camus, since “integration cuts costs and yields more sophisticated systems,” as such allowing European firms to “have more competitive products for export outside Europe,” (Michaels, 2001).

The meeting of minds amongst Europe's major industrial players also included worries regarding the so-called “competitiveness gap” separating them from their American counterparts. It had become somewhat of a cliché to highlight the importance accorded by the British government to the UK's “special relationship” with the United States. In the defence industrial sphere, this was mirrored by

emphasising the focus of British firms, and particularly BAE Systems, on establishing a credible, lucrative presence in the United States. Yet, from the early days of the George W. Bush administration it was becoming increasingly clear that transatlantic sharing of intelligence—and by implication, of high-tech information crucial to 21<sup>st</sup> century weapons systems—was less and less palatable to US policymakers (Moens and Domisiewicz, 2001: 11). Moreover, in the telling of the EU’s defence industry lobbyists, the rapidly widening Transatlantic divergence in competitiveness threatened to turn EU defence industry into no more than sub-contractors to the US behemoths, barring urgent remedial action (SDA, 2006:11). Considering that “building up [defence industrial] competence” required decades due to the high levels of technology involved, European defence firms were worried that “if governments kept buying only from the US,” they would be compelled to “close up shop and [would] not [be able to] open it again,” (Interview 25, 19 March 2014, Industry).

On April 28, 2003, just over a month after the Commission issued its Communication *European Defence – Industrial and Market Issues* (COM(2003) 113), the official start of a process that culminated in the Defence Procurement Directive, the then-CEOs of EADS, BAE Systems, and Thales—three of the four primes considered here—published a collective open letter to the governments of EU member states. In the document, printed in the Journal of the Royal United Services Institute (RUSI), a London-based defence and security think-tank, the executives of the EU’s largest defence firms called on policy-makers to “quickly address the gap in resource and capability existing between the two sides of the Atlantic in order for Europe to be seen as a credible player on the international stage” (Ranque, *et. al.*: 2003: 7-8). A crucial component of this objective, according to the CEOs, was “aligning [national] defence investment spending” (Ranque, *et. al.*: 2003: 7-8). The executives reiterated their concerns the following year in a public warning that “industry in Europe is under enormous competitive pressure from the United States,” which, if left untended, would lead to the “overtaking of indigenous defence technology” and a detrimental reliance on “foreign technologies (Jones and Larrabee, 2005: 63). Competing with this “good friend,” that was “also a tough competitor” became increasingly more strenuous, especially since the US’ International Traffic in Arms Regulations (ITAR) were repeatedly strengthened, to the overall effect of barring EU firms from the American market (Interview 30, 8 April 2014, Industry).

Although several industrialists, such as the Chairman of the Swedish national defence industrial association, called for conditioning freer EU market access for American firms upon reciprocal measures, most CEOs also advocated policies promoting defence industrial consolidation within the EU in order to reverse the competitiveness gap spiral (*European Report*, 2005). The authors of the RUSI open letter viewed the establishment of a European Armaments and Strategic Research agency, first formally proposed by the Defence Working Group of the Convention on the Future of Europe, as the optimal way to achieve this. Such an Agency would then promote “joint [European]... development and acquisition” of military capabilities, which would be of “massive strategic importance for the future of the European defence industry” (Ranque, et.al., 2003: 7-8).

In September 2004, anticipating the impending *Green Paper on Defence Procurement* issued by the Commission seeking stakeholders’ views on its proposed defence procurement reforms, Alexander Reinhardt, the then EADS defence spokesman, stated that the company “would welcome a freeing-up of procurement with open arms” (Chapman, 2004). He could also have spoken for EU transnational defence firms such as BAE Systems, Thales, and Finmeccanica when he added that the proposed measures would help the large industrial players with units across the EU to overcome persistent “burdens and barriers between national markets” (Chapman, 2004). For him and the majority of EU’s defence industry his organisation encompassed, this entailed equally paramount objectives of reducing reliance on external—that is, American—sources for key defence technologies and improving competitiveness within a European defence market worthy of the name. This objective, in turn, necessitated an EU-wide industrial scope and a common approach to defining defence industrial priorities based on sharing military assets and accepting a degree of inter-dependence.

In sum, by the time the Commission had issued the *Green Paper* in 2005, launching its customary stakeholder consultation, the key players within industry and national ministries of defence were “singing happily about EDEM” (Interview 18, 10 February 2014, Industry; Chapter IV). Although it could be argued, as one senior executive retrospectively did, that these pronouncements amounted to little more than “rhetoric,” they also reflected an acute awareness of the pressures weighing upon the EU’s defence industry as well as a need to address these issues through “more Europe

in defence,” (Interview 18, 10 February 2014, Industry). If this sounds somewhat nebulous, that it is because it was. Although EU governments may have “finally recognised” the magnitude of industry’s “struggles,” and the latter were excited at the prospect of greater market share in a “defence internal market,” the actual structure of such a market was left undefined, and its inevitable regulatory aspects seemingly ignored (Mulholland, 2005:1; Interview 34, 16 April 2014, EDA and Member State). Thus, a number of lobbyists from the big defence companies remarked that the consultative *Green Paper* was accompanied by “a lot of confusion” within industry and ministries of defence (Interview 18, 10 February 2014, Industry). Furthermore, they believed that this disorientation “ultimately played into the Commission’s hands” (Interview 18, 10 February 2014, Industry; Interview 25, 19 March 2014, Industry). Partly as a result of their general sense of complacency regarding the impregnability of the defence industrial sphere to supranational authority, several industry representatives lamented that governments had thus “abdicated responsibility” as the gatekeepers of integration (Interview 18, 10 February 2014, Industry; Interview 8, 28 August 2013, Industry; Interview 25, 19 March 2014, Industry).

It is also important to remember that during this time the long-discussed European Defence Agency (EDA) was finally coming into being, and its Industry and Market (I&M) Directorate purported to take aim at the EU’s defence industrial fragmentation, over-capacity, and lack of competitiveness (Chapter V). During the preparatory work for the EDA’s establishment, the primes’ chief Brussels-based lobbyists seemed just as happy to hold a series of meetings with European Commission throughout 2003, as they were to provide input into the structure of the EDA (European Commission, 2003: 4; Interview 18, 10 February 2014, Industry). Indeed, the head of the EADS Brussels office claimed to have designed “95 per cent” of the Agency’s organisation chart—not least as a result of “direct contact with Valéry Giscard d’Estaing,” who had served as the president of the Convention on the Future of Europe. His counterpart in another firm considered here recalled making the—ultimately heeded—“explicit suggestion” that the Agency tackle the thorny, unresolved market and defence industrial issues in addition to those of armaments and defence capabilities (Luehmann, 2011:6; Interview 18, 10 February 2014, Industry). During the fractious discussions as to the remit, structure, and purpose of the EDA, this executive recalled that the period immediately following the EDA’s creation was one of “considerable

momentum” and it would have been “strange” to squander such an opportunity by ignoring “market issues” like the need for competitive procurement and R&D investment (Chapter V; Interview 18, 10 February 2014, Industry).

## **Agenda Shaping**

### *Calls for Binding EU-Wide Instruments*

In fact, during the latter part of 2004 and the first half of 2005, the EDA was rolling out the Code of Conduct on Defence Procurement, the big ticket item of its by then high-profile I&M Directorate (Interview 19, 26 February 2014, EDA and Member State). The Code of Conduct, as well as the greater agenda of the I&M Directorate, represented a voluntary, member state-led approach to advancing the European defence equipment market. As Chapter V elaborates, the major arms producing member states of the EU, that is the UK, France, and Germany, perhaps unsurprisingly, favoured the intergovernmental path toward greater competition. Senior defence industry lobbyists, as well, were making positive noises, having been “very supportive” of both the EDA and the Code of Conduct, and “consulted widely” in the drafting process of the Code (Interview 18, 10 February 2014, Industry; Interview 10, 4 December 2013, Industry; *European Report*, 2005).

Other prominent voices within industry, however, also began to call for binding EU-wide instruments to inject competition into the EU’s fragmented defence market. Jacques Cipriano, Vice President, European Affairs for France’s Groupe Safran, remarked that a “non-binding Code of Conduct will be no better than the current situation” at an informal meeting dedicated to the economic aspects of CSDP (Kangaroo Group, 2005: 2). Similarly, speaking on the eve of the signing of the EDA’s Code of Conduct in November 2005, Tom Enders, then EADS CEO and Chairman of AeroSpace and Defence Industries Association of Europe (ASD), the EU-wide defence industry association through which much of the defence industrial lobbying was conducted, underscored the need for a binding rather than a voluntary competition regime (*Agence France Presse*, 2005b). Moreover, following the submission of the ASD’s response to the Green Paper consultation process, the Association’s Defence Director Gert Runde emphasised the organisation’s support for the Commission’s objectives as expressed in the document, “for obvious reasons— it

will make our markets more transparent and open them up Europe-wide” (*Europolitics*, 2005). The long-serving former ASD Secretary General Roger Hawskworth also echoed the view that unified procurement procedures amongst member states would go a long way toward “simplifying life for industry” (*Europolitics*, 2005).

In April 2006, presumably not seeing the desired progress towards this objective, EADS spokesman at the time Alexander Reinhardt ruefully lamented that EU “governments are ready to go for uniting their currencies- in fact they are ready to unite a great deal of their economic activities- but they are not ready for Europe-wide defence procurement” (Kanter, 2006). Furthermore, remarking with disapproval that the Code only covered 15 per cent of new equipment contracts, Thomas Diehl, president and CEO of the German defence engineering firm Diehl, rather grandiosely stated that, for this reason, “the single European defence and security market is a must” (Jones and Larrabee, 2005). This assertion was seconded in the October 2006 statement by then-Director General of the Defence Manufacturers’ Association (DMA), the UK’s defence industrial grouping which has since been absorbed into the British defence association ADS. Specifically, the official insisted that his organisation supported “initiatives to stop countries making too liberal a use of Article 346” and to make “open competition the rule” (*Europolitics*, 2006). Indeed, the executive remarked that the measures then underway in the EDA and the Commission, which at that time had as yet “limited” itself to issuing a non-binding Interpretive Communication, “fell short of compulsion” and must more actively “discourage countries from blatant protectionism” (*Europolitics*, 2006).

### *Interaction with the European Commission: Courting or Clashing?*

It was stipulated in Chapter II that the EU’s defence primes would take a primarily “national” route when seeking the incorporation of their preferences into policy outcomes. Indeed, the “main interlocutors” of the primes’ Brussels-based lobbyists when it came to EDEM items were the dedicated departments of “their” national armaments directorates and procurement organisations within the ministries of defence, such as the *DGA* in France or the UK’s DE&S (Interview 18, 10 February

2014, Industry; Interview 30, 8 April 2014, Industry; Interview 20, 5 March 2014, Industry; Interview 24, 11 March 2014, Member State Permanent Representation). They have also attested to an extensive engagement with the European Commission as a “key decision-maker,” which had the capacity to shape their course of action. In fact, as will be highlighted in the next chapter, the Commission conducted extensive consultations with defence industry representatives, with more than a dozen meetings held in relation to its proposals (Luehmann, 2011:8; Industry 4, Interview). In fact, these deliberations would continue throughout the decision-making stage as the Commission officials and industry lobbyists discussed specific aspects of the proposed Directive (Luehmann, 2011:8; Interview 20, 5 March 2014, Industry). In comparison, the transnational defence firms appeared to regard relationships with both the EDA and national representations in Brussels as of secondary importance. Specifically, “information” on the significance of “various issues and points” the executives deemed “important” was exchanged, as one executive phrased it, but policy was not determined in these interactions (Interview 30, 8 April 2014, Industry; Interview 18, 10 February 2014, Industry).

Yet, it soon became apparent that the defence market proposals advanced by the Commission did not necessarily enhance the interests of the transnational defence firms, as they conceived of them. In particular, one of the most prominent features of the primes’ behaviour during the agenda-shaping stage was their attempt to ameliorate potential risks from arguably the most contentious issue raised by the Commission’s proposals – that of offsets. Defence offsets are requirements placed by national governments on foreign defence suppliers, in which the former “compensate” the latter for the large expenditure by re-directing some benefits of the defence contract back into the purchasing country’s economy. Offsets have long been part and parcel of “doing business” in defence. Defence companies have come to rely on offset packages to gain an edge on their competitors and receive generous export credits from their home governments. At the same time, offset beneficiaries, both companies and governments, which view offsets as industrial policy tools, have relished the investment flowing through offset requirements. Therefore, offsets were, and remain, a particularly sensitive area for both industry and nation states. As inherently discriminatory instruments, they by nature violate the rules of the single market, and



have long elicited the ire of the European Commission. In December 2006, it issued the *Interpretive Communication on the Application of Article 296 of the Treaty in the Field of Defence Procurement* (COM(2006) 779 final), widely regarded by officials and industry executives interviewed for this project as the most definite signal sent by the Commission to date that it intended to bring the EDEM under community purview. The purpose of the document was to “set out [the Commission’s] views on the principles governing the application of Article 296 TEC and explain its understanding of the conditions for the application of the derogation” (European Commission, 2006b: 3). These principles did not, as the Commission made clear, include the request of offsets as part of member states “economic and industrial interests,” even if they are “connected with the production of and trade in arms, munitions and war material” (European Commission, 2006b: 7).

Since an increasing share of their business is conducted across borders, one would expect that transnational EU primes would find the accompanying requests for offset projects burdensome, costly, and detrimental to competitiveness, especially as the bigger US companies may always offer bigger and better offset arrangements (Eriksson, *et.al.*, 2007: 44-45). In fact, the foremost trade publication dedicated to defence offsets, *Countertrade and Offset (CTO)* has reported that several primes remain vehemently opposed to offset (Shanson, 2007: 7). Yet, when it comes to the primes, one encounters negative views regarding restrictions on indirect offsets proposed by the Commission. While it may well be that defence firms viewed offsets as an unfortunate “fact of life,” the more accurate reason for this incongruity would be damage to the proverbial “level playing field.” Specifically, EU firms would be disadvantaged in the fiercely competitive international markets where non-EU providers could freely offer sweeteners in the form of offsets. Industry also viewed offset practices as a basic manifestation of the inherently “political” nature of the defence market, which, in their view, the Commission failed to appreciate by fixating on reigning in offsets (Interview 30, 8 April 2014, Industry). Consequently, the “island of rules,” that the Commission appeared intent upon creating became increasingly maligned by lobbyists as incognizant of “real-life” factors (Interview 18, 10 February 2014, Industry). As a result, *CTO* reported that many EU prime contractors were lobbying national governments to oppose such measures when they first got wind of the Commission’s intentions, citing as an example the UK Defence

Industries Council (DIC) organising a meeting with Ministry of Defence Officials to convey these requests (Shanson, 2006: 1-2). When the MoD response was one of support for the proposed prohibition on indirect offsets, the Defence Manufacturers' Association (DMA) of the UK, as well as British Industry Offset Group, declared their intention to "force the MoD to re-think its stance" (Shanson, 2006: 1-2).

*If You Cannot Kill Them, Join Them!*<sup>25</sup>

As the preceding analysis suggests, it became apparent that the Commission's vision of an EDEM was not aligned to defence primes' perception of a bright, competitive future. Specifically, the degree of openness that it entailed could not sufficiently assure industry of a favourable "balance of advantage." Thus, during the run-up to the release of the Defence Package in 2007, the prominent defence news outlet *Jane's Defence Weekly* reported an EU industry official expressing scepticism that firms would in fact take advantage of the proposed Directive's provision for complaining to the European Court of Justice, if they felt that they were unfairly excluded from contracting opportunities (Tigner, 2007). In a world where many firms' main sources of revenue, influence, and R&D investment stemmed from ministries of defence and contractual relationships took decades to develop, bringing governments to court was not an easy or desirable option.

As one senior industry association official ruefully reflected, despite frequent and pervasive calls for "more openness," "nobody" within industry was "ready" for its implications (Interview 26, 3 April 2014, Industry). The story is in fact, more complex, and precisely for the reasons that lie at the heart of the theme explored in this chapter. Being compelled to face open tender rather than "arranging bilateral deals" with a secure and steady stream of contacts, would be anathema to the decades-long modus operandi of even transnational "giants." This idiosyncrasy was aptly articulated by Gert Runde, the ASD Defence Director, when he acknowledged that defence industry "had no illusions" about the [Article 346] exemption—most likely referring to the prospects of its abolition—and also, he "guessed," "not any desire to

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<sup>25</sup> Similarity with the title of Blauburger and Weiss's work (2013) is acknowledged. However, this phraseology was derived independently, primarily through interviews.

see [it] changed” (Shanson, 2005: 4-5). Rather than pursuing a “truly European” defence equipment market, the EU’s transnational defence firms were actually content to continue their “balancing act” within the fragmented status quo. This meant “developing common technology,” and then adapting it to the requirements of each small base of customers – with all the costs and complexities that this involved (Interview 26, 3 April, Industry; Gates, 2004: 515). This game was to be played until “some [defence firms] went out of business,” (Interview 26, 3 April, Industry).

At the same, it appears that as the Commission persevered in its defence market policy initiative, the realisation that it would eventually, and at least partially, succeed began to dawn upon defence primes’ Brussels-based lobbyists. Consequently, their behaviour increasingly coalesced around the lobbying version of the principle “if you cannot kill them, join them” (Interview 30, 8 April 2014, Industry). Interview material indicates that the widely shared belief as to the inevitability of an “EC role in defence” elicited reactions ranging from the desire to “deal with it” while avoiding provocation to a determination to “minimise [the Commission’s] involvement” (Interview 10, 4 December 2013, Industry; Interview 30, 8 April 2014, Industry; Interview 18, 10 February 2014, Industry;). Furthermore, from mid-2007, the favourable view industry held vis-à-vis the EDA appears to have grown intertwined with regretful proclamations of the Code’s of Conduct “uselessness,” as a “window dressing device” that was “totally at the mercy of national armaments directors,” (Interview 25, 19 March 2014, Industry; Interview 30, 8 April 2014, Industry). As argued in Chapters IV and V, respectively, this change in attitude was to some extent brought about by the European Commission and in part constituted inevitable outcome of the structural tensions within the EDA itself.

### **Decision-Making: The Bottom Line?**

However, even the dawning awareness of the “long games” played by the European Commission appears not to have prepared industry for the “huge shock” of witnessing the “first time ever that the Commission would have a Directive in defence” (Interview 10, 4 December 2013, Industry; Interview 18, 10 February 2014, Industry).

In fact, as the chief EU representative of one of the primes examined in this thesis attested, the Directive “caught everyone by surprise... industry was not asking for it” (Interview 10, 4 December 2013, Industry). According to the perspective of another long-serving chief Brussels lobbyist of a transnational defence firm, “if you said at the beginning of 2003 that there would be a Defence Procurement Directive by 2009, there would have been huge disbelief” (Interview 18, 10 February 2014, Industry). Therefore, while defence firms’ EU representatives were, in the words of one former executive, “not the guys who went to the Commission and said, “do this! Do this!,” once it became apparent that the “Directive was in motion,” the lobbyists set about “shaping and influencing it” to ensure that “it is the best Directive possible,” (Interview 10, 4 December 2013, Industry; Interview 8, 28 August 2013, Industry). The ASD Chief Executive at the time also voiced the Association members’ eagerness to “play a part in shaping the proposal”, and in particular finding a balance between greater competition and “the retention of national industrial defence capability” (Cowan, 2007). Consequently, in the 2007 ASD Annual Report, the Defence Commission of the ASD identified as its paramount goal for the upcoming year the “encouragement of the implementation of appropriate and robust defence industry, cooperation and market policies at EU level” (ASD, 2007: 9). Under this overarching objective, “promoting the creation of a genuinely European defence equipment market” was highlighted as the first item (ASD, 2007: 9).

### *Public Self-Attribution and Frustration Behind the Scenes*

Indeed, publicly available documentation appears to suggest a decisive role played by industry, and specifically ASD, in moulding the Defence Procurement Directive. Thus, the ASD president at the time, Allan Cook, listed in his introduction to the Association’s 2008 annual report the adoption of the Defence Procurement Directive among ASD’ main achievements during that year. According to Cook, this outcome was a “reward” for “ASD’s intense lobbying efforts throughout the debate on the EU ‘Defence Package’” (ASD, 2008: 2). The document went on to provide some detail of the ASD lobbying efforts. In particular, it commended its especially-created Co-Decision Working Group for the tireless effort, as well as “considerable time and energy” it has dedicated to the legislative process of the Directive, working to ensure

that concerns of the industry were incorporated into the final version (ASD, 2008: 6). The annual report also asserted that the Defence Commission of the ASD was “actively engaged in the contribution and influencing of the relevant discussions among the Council and Parliament of the EU” (ASD, 2008: 9). In addition, the Association’s Rotorcraft Group, which includes the prime manufacturers and largest defence exporters was reported to have lobbied the European Parliament during the debate of the Defence Procurement Directive with gusto, resulting in “some major industry recommendations” having been ostensibly “recognised and taken into account” by MEPs (ASD, 2008: 25). One of the most significant of these concerns was the inclusion of a “remedies clause,” entitling any defence equipment supplier who believed itself to have been excluded from a contract award as a result of unfair competition practices to bring a case against the purchasing member state in the ECJ (Interview 40, 28 May 2014, European Parliament).

In fact, according to the ASD annual report, its President and CEO of the Swedish defence firm Saab Technologies, Ake Svensson’s speech at the European Parliament in May 2008 was given “in support of this [lobbying] work.” It appears that Svensson must have visited Parliament quite often during the Directive negotiation period. A month later he spoke at a “mini hearing” of the EP’s Committee on the Internal Market and Consumer Protection (IMCO)—which was formally considering the proposed Directive in the co-decision procedure—on the risks and benefits of European defence market rationalisation. Although his presentation itself has not been made public, a summary of the event indicates that while Svensson underscored the importance of the proposed Defence Procurement Directive for decreasing defence market barriers within Europe, he cautioned that the Directive in its current form could have a negative impact on defence R&D and thus harm the European defence industrial base (European Parliament, 2008a: 2). ASD has also congratulated itself on the fruitful contacts it had established with the Slovenian and French Council Presidencies throughout 2008, claiming that the French Presidency has been “particularly attentive” to the views of industry on the Defence Procurement Directive (ASD, 2008: 6).

The French Presidency, for its part, found a largely “favourable” and conciliatory attitude on the part of industry (Interview 37, 20 May 2014, Member State Permanent

Representation). Behind the scenes, however, despite being “very involved in the process of the [Directive’s] adoption,” EU defence primes admitted that their objective of “influencing the European Commission” met with “little success” (Interview 10, 4 December 2013, Industry; Interview 8, 28 August 2013, Industry). The frequent visits of defence primes’ chief Brussels-based lobbyists to IMCO—and in the case of BAE Systems the meetings amounted to more than a dozen—were aimed at ensuring that the defence industry’s “special status” and “special relationship” with their home government would not be diminished, and Article 346 left as intact as possible (Interview 40, 28 May 2014, European Parliament). Moreover, notwithstanding their stated wishes for “constructive” involvement, many lobbyists recalled a “very difficult, not constructive dialogue” throughout the debates on the Defence Procurement Directive, during which it was apparently “difficult to get the Commission to take industry on board” (Interview 10, 4 December 2013, Industry). One senior executive observed that while the Commission claimed to have “consulted” industry as an obligatory measure, it did not “really listen” to its position, and in fact, “there was no real dialogue,” (Interview 30, 8 April 2014, Industry). Finally, according to a long-serving lobbyist of one smaller defence firm who was initially positive regarding the Commission’s initiatives, with the Commission wielding the “hammer” of internal market legislation, it came to regard every “problem” it undertook to solve as a nail (Interview 25, 19 March 2014, Industry).

### *Preference Attainment*

It came as little surprise, then, that several aspects of the Defence Procurement Directive in its final version were described by industry as “perverse” (Interview 8, 28 August 2013, Industry). Industry’s more diplomatic version was that the resulting legislation left it with a “mixed feeling” (ASD, 2008: 9). Overall, many lobbyists felt that, frustratingly, the Commission and the Parliament failed to appreciate the difficulty of “internationalising and consolidating existing supply chains that take are decades to cultivate” and function as almost “insurmountable barriers to entry” into the defence market (Interview 1, 15 December 2011, Industry). There were two specific aspects of the Directive, however, that ran directly counter to industrial interests – R&D investment and offsets.

### Research & Development and Spiral Development

Alarm bells were sounded by then ASD Secretary General Francois Gayet who was worried that the Directive could discourage industry from investing into R&D by removing assurances that its national government would purchase the resulting technology. At the same time, governments would have little incentive to spend on domestic research and development, if it was likely that the equipment itself would be produced in other countries (*EurActiv*, 2009). Industry's worries over the Directive's adverse impact on R&D may also explain ASD President's somewhat lukewarm assessment of the Directive as a step towards a more efficient and competitive European defence industry but one which must be taken "globally" for its benefits to be appreciated (ASD, 2008: 2-3). Research and development is absolutely essential to the growth, competitiveness, and strategic planning of the defence industry—across the EU and worldwide. R&D is the bedrock of defence technological innovation, which itself is crucial to defence firms' export performance. Defence research and development requires investment on a large and increasing scale due to the growing cost and development periods of military technology. It is largely funded from national budgets, with governments typically reimbursing firms for the costs of privately financed R&D. Across the EU, R&D is often co-funded between government spending and contributions from industry (James, 2004: 2). Since defence firms will only invest their private funds when they see a reasonably certain prospect of procurement, "publicly funded R&D is the lifeblood of the defence industrial and technological base (Williams, 2008:29-30). Moreover, the purchase of the developed equipment by the national government is viewed as a sort of "seal of approval" which is essential for export potential and constitutes a key expression of the customer-supplier relationship the primes prized so highly (Williams, 2008: 29-30; Interview 18, 10 February 2014, Industry).

The fear of EU primes described above is rooted in the risk that, while R&D activity is exempt from the Directive, the products that result from it, and into the development of which firms have invested, could lose to a foreign firm's wares in competition. Such a scenario would, in turn, discourage governments from investing into "indigenous" R&D, when they may just as easily purchase off-the-shelf

equipment from third countries (Williams, 2008:30; O'Donnell, 2009: 4). R&D investment was also at the core of the sombre prospects advanced by the European defence primes regarding their own future, particularly when it came to lagging behind their American competitors. At the time of the release of the Commission's proposal for a defence directive, United States' R&D investment outstripped the combined EU spending by a ratio of six to one, and this gap has only widened since then (EDA, 2007: 3). As indicated above, industry has been cognizant of the risks regarding R&D, so that one would expect companies to ensure that in final version of the Directive these aspects were mitigated as much as possible. Nevertheless, judging by the industry's own reaction, this objective has not been achieved. Furthermore, the potentially adverse impact on R&D seems to have disappeared from the list of contentious points as the negotiations in Council and Parliament over the Directive's provisions drew to a close (*Europolitics*, 2008e). That industry was not able to secure a favourable outcome on this crucial point casts some doubt over the extent of its influence in bringing about the Directive's approval. After all, if it not only ignores but also potentially exacerbates defence firms' competitiveness woes, can one credibly claim that they were key to the passage of legislation?

In addition, the UK delegation had been unable to secure an exemption for one of the key concerns of BAE Systems, namely, the firm's ability to provide defence equipment through spiral development. Spiral development refers to a procurement methodology employed in high technology fields, and particularly in defence, security, and space. In defence procurement, spiral development allows suppliers to deliver a capability that has been identified and requested by the purchasing government without specifying its "end state requirements," as these may not yet be known or understood. Such a system is thus "designed to evolve" through "successive spirals or blocks" in response to technological breakthroughs, user feedback, and "lessons learned from the field" (Henning and Wade, 2005). Thus, spiral development entails not only an iterated interaction, but also an exclusive relationship between that particular supplier and the purchasing ministry of defence. Within armaments acquisition, spiral development becomes part and parcel of the "producer-customer relationship," as specific rules and modes of behaviour develop over time (Interview 18, 10 February 2014, Industry). By subjecting various components and "future spirals" of this process to rules of competition, the proposed Defence Procurement



Directive could undermine industry's ability to provide such opportunities and threatened to dismember the requisite customer-supplier silos. Thus, n a manifestation to the "close identification of interests" between transnational defence industry and the governments of the member state in which they are headquartered, the UK delegation "pushed very hard against the Commission and Parliament" on the issue of spiral development, so that it came to "dominate the negotiations for a considerable time," despite the ultimately unsuccessful outcome (Interview 16, 6 February 2014, European Commission; Interview 24, 11 March 2014, Member State Permanent Representation; Chapter IV).

### Offsets

A similarly problematic story may be told regarding the fate of offsets. The proposals of the Defence Package stood to make both direct and indirect offsets nearly impossible for industry to provide. When the Commission has at last officially revealed its position on offsets, it elicited a response from member states as well as industry that ranged from puzzlement to indignation and from incredulity to shock. In particular, Neil Rutter, then legal counsel to the Global Offset and Countertrade Association (GOCA), which includes all the EU primes, described his reaction as "rather shocked, really," specifying that the Commission's view of all offsets being illegal also appeared to contradict the EDA's efforts (Shanson, 2010: 3). What is more, in response to the Commission's *Guidance Note on Offsets*, issued after the Directive's approval, thirteen defence and security industry associations across the EU had written a letter to the European Commission, emphasising the benefits of offsets to much of the Union's defence industry, particularly to SMEs (European Commission, 2010). The groups have also appealed to the Commission to adopt a "prudent and pragmatic attitude regarding offsets" not least by allowing the EDA to drive policy in an intergovernmental manner, reiterating that this area was "closely related to national sovereignty" (Shanson, 2010b: 4). Yet, crucially, the national trade associations representing the largest EU defence firms considered here, as well as the Spanish defence association, neither signed the letter nor lent their support to the initiative. Brinley Salzmann, by that time serving as Director for Overseas Exports of the British (Aerospace Defence and Security Industries) ADS, justified his Association's reticence by highlighting the futility of the effort (Shanson, 2010b: 4).

He reportedly felt that the Commission's position was entrenched, and therefore must be managed rather than opposed. France's *Groupement des Industries Françaises Aéronautiques et Spatiales (GIFAS)* initially seemed to appear supportive, but in the end concluded that French defence industry did not benefit from offsets, while the German *Deutsches Kompensations Forum (DKF)* was not even asked to sign the letter, as Germany has an official policy of opposition to offsets (Shanson, 2010b: 4).

More than the precise calibration of industry's interests regarding offsets, it is quite telling that the primes appeared so caught off guard by the Commission's actions on the issue. Indeed, the *Guidance Note on Offsets* claims to merely clarify the Directive's stipulations, since the provisions for sub-contracting within the Directive are designed to address offsets without naming them (European Commission, 2010: 1-2). As the subjects of offsets had been repeatedly and intensively debated in Council discussions, this reaction on the part of industry seems at odds with the assertions of ASD annual reports regarding its "tireless lobbying effort" during this period. If this was indeed the case, then one must wonder how it is that industry appeared blindsided by the Commission's position on offsets. For instance, even if the primes did not subscribe to the letter of complaint mentioned earlier, they appeared to be in a reactive mode throughout the legislative process, rather than shaping it to fit their own objectives. Speaking during the final stages of negotiations over the Directive, the then European Commissioner for Enterprise Guenter Verheugen lamented that in discussions with the EU executive regarding offsets, industry's message was the ambivalent 'we don't like that, but please don't take it away from us!' (*Europolitcs*, 2008d). In fact, as suggested throughout this chapter, this statement could well encompass the complexities and incongruities of the defence firms' behaviour when it came to a more open, competitive defence equipment market in the EU.

*Industry's View on the Adoption of the Directive: The Commission's Tenacity, Member States' Complacency, and Pre-Crisis Optimism*

Thus, the primes' lobbyists attributed the ultimate approval of the Defence Procurement Directive to a number of factors other than their own influence. One

prominent narrative revolved around the quest for value for money. Specifically, it appeared that the preferences of finance ministries, who largely “understood that there was no alternative” to the Directive if public spending was to be curtailed, prevailed over the ostensibly parochial outlook of defence ministries (Interview 25, 19 March 2014, Industry). Similarly, at the political level, it became clear that the duplication and overcapacity characterising the EU’s defence market for such a long time “was no longer acceptable or sustainable” (Interview 25, 19 March 2014, Industry).

Consequently, the “complete lack of alternative,” coupled with the perception that “everyone’s back was truly against the wall,” was a widely held account amongst industry for the adoption of the legislative initiative. From the defence industrial perspective, moreover, these conditions were not sufficiently severe during earlier attempts to bring this policy field under supranational purview in 1996 and 1997 (Interview 25, 19 March 2014, Industry; Interview 30, 8 April 2014, Industry).

An equally powerful explanatory factor centred upon the “relentless march of the European state” with the European Commission at the helm (Interview 8, 28 August 2013, Industry). One former industry association official characterised the actions of the Commission as “the competence maximiser ... finding the weak spot” (Interview 26, 3 April 2014, Industry). Another executive likened the supranational body to a “tank,” which may move at an excruciatingly slow pace, but in the end always reaches its destination by demolishing all obstacles on its path (Interview 25, 19 March 2014, Industry). Moreover, a distinct perception emerged that in addition to “being inspired by a full liberal doctrine” the Commission was realising its long-held designs on the defence industrial policy area by utilising the issue of offsets and internal market regulation more generally as means to gain a “foothold,” “pave the way” and even deploy a “Trojan Horse” in this field (Interview 8, 28 August 2013, Industry; Interview 26, 3 April, Industry; Interview 31, 8 April 2014, Industry; Interview 25, 19 March 2014, Industry; Interview 22, 10 March 2014, EUMS).

According to this view, it was a matter of the busy-body desk officers within the Commission effectively spotting an opportunity to actualise its existing objective of extending supranational competence into yet another, hitherto inaccessible, field (Interview 26, 3 April, Industry). In fact, a former long-serving chief Brussels lobbyist of one prime contractor attributed the speedy passage and the approval of the Directive to the “absolutely disgraceful failure” of member states’ governments to

appreciate the implications of the Commission's "concentrated mind" (Interview 18, 10 February 2014, Industry). One illustration he gave of the effect the interaction between the Commission's "long game" tactics and member states' lack of attentiveness may have on policy outcomes was the Commission's one-time intention of "abolishing" intra-EU arms export controls. This would have posed significant "technological leakage risks" and "seriously undermined Article 346 in relation to third states," – as EU governments would have been unable to definitively satisfy the export control regulations accompanying their purchases of defence equipment from outside the EU (Interview 18, 10 February 2014, Industry). In this case, also, the member states were reportedly "slow to react" and firmly "say 'no way!'" to the Commission's plans. In the end, they managed to do just that, ensuring that the Directive which regulates inter-community armaments transfers, "only" addressed "process" and not "policy" of intra-EU defence equipment transfers (Interview 18, 10 February 2014, Industry).

Defence industry executives have also attributed the approval of the Defence Procurement Directive to a type of risk management technique employed by member states in an effort to stave off the Commission from further competence expansion. Such a risk entailed the Commission "forging a role for itself in arbitrating defence mergers between EU and 'foreign' defence firms" or securing greater "cessations of sovereignty" on sensitive aspects of European defence, such as the long-discussed permanent Operational Headquarters for CSDP missions (Interview; Industry 5; Interview 8, 28 August 2013, Industry). This process also contributed to the perception held amongst defence firms that their interests were displaced in favour of larger political bargaining objectives amongst the member states during the negotiating stage of the Directive (Interview 8, 28 August 2013, Industry; Interview 25, 19 March 2014, Industry). Such a begrudging assessment of the Commission's role and motivations was also coupled with an almost regretful acknowledgement that the adoption and transposition of the Directive had not resolved the fundamental issue – that of altering the "national mind-set" of member states' governments and compelling them "to buy from each other" rather than exploiting the regulations' loopholes to continue awarding contracts to their domestic suppliers (Interview 26, 3 April, Industry; Interview 30, 8 April 2014, Industry; Interview 20, 5 March 2014, Industry). Finally, many lobbyists recalled a feeling of pre-financial crisis optimism in

the spirit of which the Defence Procurement Directive was “conceived and designed” – a marked contrast to the “harsh reality” that followed the profound downturn of 2009 (Interview 30, 8 April 2014, Industry; Interview 20, 5 March 2014, Industry). One retired military officer who has conducted regular forum discussions with EU defence firms since 2007 also emphasised the resulting “loss of confidence and trust” felt by defence industry in a “full liberal doctrine” that is perceived as the Commission’s guiding philosophy and motivating force (Interview 22, 10 March 2014, EUMS). As such, rather than incentivising more cooperation, the financial crisis had instead elicited more protectionism from member states (Interview 35, 25 April 2014, EDA and Member State). It has also been observed that the economic downturn had brought with it the denigration of defence issues—both European and national—on the policymaking agendas of member states where it had been relatively prominent, such as France (Interview 12, 22 January 2014, Member State Ministry of Defence). This suggests that the resulting “change of posture” within member states’ economies may have affected their assessment of the Directive’s value and utility (Interview 30, 8 April 2014, Industry).

## **Conclusion**

This chapter set out to test the validity of the claim that the first elements of an institutionalised European Defence Equipment Market have materialised as a result of concerted lobbying by transnational defence firms of the EU. Following the elaboration of this hypothesis in Chapter II, it was assumed that lobbying would be undertaken by national and pan-European trade associations, as well as by individual companies, that is, BAE Systems, EADS, Thales, and Finmeccanica. From a methodological perspective, process-tracing was employed to elucidate the influence of the defence primes throughout the policy-cycle stages, beginning with agenda-setting, through to agenda-shaping, and culminating in decision-making.

This analysis began by elaborating upon Post-Cold War defence market conditions—both in the EU and globally—to demonstrate that industry would indeed benefit from harmonisation measures, and would thus have an incentive to see their implementation. The analysis then moved on to the entrenched idiosyncrasy of

member states' complex relationship with "their" defence firms, wherein both parties desired the benefits of more open markets and greater competition, but in the case of national governments, could not come to terms with the risk of "losing" defence technological and industrial capabilities. Similarly, while the prime contractors "merrily sang the EDEM song," they were not willing to abide by its principles if this entailed letting go of their cherished "special relationship" with the governments of their home markets (Interview 18, 10 February 2014, Industry). Therefore, one of the most prominent themes highlighted by the preceding examination is the continuous "flitting" of industrial preferences between a voluntary, member-state controlled mechanism for EDEM construction and the imposition of binding, supranational rules. The primes' support for an integrated defence market—with the champion of pan-European defence production EADS as well as the EU-wide industry association ASD voicing it most prominently—appears to have been more "in [vague] principle" rather than in not altogether comfortable fact.

The overall conclusion which emerges from this chapter, then, is that while BAE Systems, Thales, EADS, and Finmeccanica have been successful in capturing policymakers' attention during the EDEM agenda-setting stage, they have only partially shaped it to suit their preferences, and were not able to influence the decision-making stage of the Defence Procurement Directive to meet their objectives. Firstly, the EU's defence primes had to contend with the agenda of the European Commission acting in its capacity as a Guardian of the Treaty and ensuring that integrationist measures it proposed are accepted by member states. In fact, a key feature of this chapter is the nearly resigned attitude of the large defence firms' Brussels-based lobbyists regarding the involvement of the European Commission in EU defence procurement. Specifically, this outcome was viewed as an almost inevitable result, prompting the lobbying machinery to then dive into shaping the content and scope of the Directive to the best of its ability.

Upon more detailed examination, it has become apparent that the EDEM of defence primes' desires did not coincide with the agenda of the European Commission, nor, it seems, have the former realised the full implications of the latter's programme until the negotiating process of the Defence Procurement Directive had reached an advanced stage. In an illustration of this conclusion, the Commission seems to have opted for a compromise excluding R&D activity from the Directive's remit to placate

the twitchy member states, but insisted on “de-coupling” the final product from the development stage, and subjecting it to competition. This outcome was contrary to the interests of defence firms, and exemplifies a major risk of “national route” lobbying discussed in Chapter II – namely, that interest groups’ preferences will be “traded” between member states in the course of “political” negotiations. Yet, even though they appear to have been aware of this danger during the negotiation stage, companies were alarmed at the risk the Directive’s provisions posed to R&D investment across the EU when the legislation was approved. Given that research and development spending constitutes a lifeline of the defence industry, and that increasing it had been a key demand companies had consistently voiced along with greater market openness, one would expect them to have mitigated such a grave risk in a Directive they ostensibly helped bring about. Another such aspect was the issue of offset arrangements, which the large, transnational firms were assumed to have opposed and sought to curtail with the help of the Directive. While acknowledging that the actual number of research areas that would come under the Directive is relatively small, that the member states have retained significant amount of freedom in “combining” the research and production phases of armaments acquisition, and that some prominent voices in industry have indeed decried offsets, the fact that the primes were thoroughly taken aback when the implications of the Directive’s provisions became apparent, is another detraction from the story of lobbying success and decisive influence. Lobbying is based on consistent monitoring of the policy process, and it is difficult to make a case for it when the policy outcome is such a surprise.

The preferences of industry for a softer, gentler approach with regard to offsets, for example, best led by the intergovernmental European Defence Agency, also bore no effect. Here arises another tentative conclusion, which concerns the voluntary, intergovernmental component of EU defence market institutionalisation in the shape of the EDA’s Code of Conduct on Defence Procurement. This trajectory has existed alongside the supranational, market-centred proposals of the European Commission, and industry’s behaviour in connection with it exhibited similarly incongruous characteristics as their attitude towards the Defence Procurement Directive. At first, the defence firms appeared enthusiastic regarding the EDA and its EDEM-related plans, such as the Code of Conduct. Their Brussels-based lobbyists also spoke of

direct access to the highest levels of EDA leadership and recounted providing direct input into the work of the I&M Directorate in general, and the Code of Conduct in particular. At the same time, however, several executives remained cautious about the likely impact of the Code of Conduct on enhancing defence market competition, and began to call for legally binding liberalisation measures instead. Yet, when the Commission extended the reach of internal market rules to offset arrangements in defence contracting—effectively curbing this economically questionable but financially lucrative practice—industry resumed its calls for the primacy of the EDA in handling this sensitive issue on an intergovernmental basis.

As indicated in the beginning of this chapter and described in greater detail in Chapter I, member states' traditionally indiscriminate use of Article 346, allowing for derogation from the EU's internal market open competition rules when national "essential security interests" are judged to be at risk, has often been singled out by industrial players as a key protectionist tactic and a major reason for the fragmentation of the EU's defence equipment market. Following the logic of market liberalisation, then, industry would be expected to lobby for its curtailment by the only actor in the EU's institutional structure capable of achieving this in an enforceable manner – the European Commission. However, the Treaty-based exemption also represented an important expression of defence firms' complex yet intimate relationship with "their" government, or, more precisely, that of the member state in which they are headquartered. A fundamental component of this connection was governments' routine use of Article 346 to channel business to nationally-based industry. At the same time, the competitiveness of Europe's large transnational defence firms was not sufficient to provide them with the necessary assurances that a more "regulated" invocation of Article 346 would not be used "against" them. As a result, industry was simply unwilling to take the chance that "their" national government could award a defence contract to a competitor from another member state, and as such was deeply wary of the binding curbs on its invocation promoted by the European Commission. Dealing with protectionism, inefficiencies and cost overruns was therefore preferable to supranational controls on the "special" nature of defence business.

In addition, the ultimate object of industrial desire appears to have been the



consolidation of defence equipment demand amongst member states, and the firms had initially viewed the Defence Procurement Directive as an intermediate step towards this objective. As one may discern from a more detailed scrutiny of their statements in support of an integrated defence market in the EU, and as had become apparent during interviews conducted for this thesis, defence firms believed that pooled demand, rather than greater competition – especially supranationally enforced competition—would generate economies of scale and spurn further industrial consolidation. At the same time, the persistent reluctance of governments to harmonise requirements and invest in joint projects was actually a source of “conflict” between governments’ and industry’s preferences (Interview 18, 10 February 2014, Industry). In conclusion, industry did favour “harmonisation” of intra-EU defence procurement legislation, but as an ancillary measure to harmonisation of equipment requirements, increased defence spending, and, as one former executive responsible for EU relations at a European prime succinctly phrased it, “not through the Defence Procurement Directive” (Interview 10, 4 December 2013, Industry).

# CHAPTER IV: THE EUROPEAN COMMISSION AS “PURPOSEFUL OPPORTUNIST” AND POLICY ENTREPRENEUR

## Introduction

Having examined the means, rationale, and extent of the influence exerted by the EU’s transnational defence firms on the emergence of an institutionalised defence equipment market, this thesis now turns to the role played by the European Commission. The previous chapter has suggested that its impact may have been significant, and in this section it will be examined in much greater detail. The rationale for extensive consideration of supranational influence was explored in Chapter II. It is worth reiterating here that, in pursuing its policy initiatives, the European Commission can draw on its mandate as “Guardian of the Treaty” reinforced by supranational law, independence in providing side-payments, cohesive action capability, and access to supposedly nonpartisan knowledge and expertise, in addition to its formal agenda-setting powers and institutional linkages (Vahl, 1997; Coleman and Tangemann, 1999). On the other hand, achieving this would require the support of a “stakeholder coalition” comprising influential member states and interest groups, as well as a favourable disposition of a majority in the European Parliament, since the “policy status quo” encountered by the Commission ranges from indifference to resistance on the part of governments, non-state actors, and EU institutions affected by its proposals (Rhinard, 2010: 37).

Taking into account such nuances, in Chapter II it was hypothesised that:

*The European Commission has secured member states’ agreement to an unprecedented measure of defence procurement integration through successful policy entrepreneurship.*

The remainder of this chapter will examine the influence of the European Commission in advancing the European Defence Equipment Market by acting as a policy entrepreneur and caretaker in order to further integration in the defence procurement sphere, fulfil its mandate, and extend its own institutional remit. It proceeds by first outlining the policy “foothold” of the Commission within the previous, “unconsolidated” components of the defence industrial policy regime. It then examines the policy entrepreneurship techniques it had employed in order to bring about the approval of the Defence Procurement Directive, as well as the acceptance of its own role as a policy actor in the emerging defence industrial policy regime. In this context, the chapter will consider the interaction between the Commission and the EDA, while dealing with the parallels between the development of the Code of Conduct and the evolution of the Directive. The following discussion also pays particular attention to specifying the causal significance of the tactics and actions of the European Commission in this context, while following the policy cycle structure elaborated in Chapter II.

#### *Commission’s Policy Foothold - Research and Dual Use*

As Robert Regan, former Director of International Relations Group, at Defence Equipment and Support (DE&S) of the UK’s Ministry of Defence acknowledged, the European Commission had long had an issue with the “undoubted” abuse of Article 346 (House of Lords, 2008:9). Although much has been made of the Commission lacking competence in defence matters as such, decades of EU integration have granted it powers in a number of intersecting policy fields. One of the most prominent aspects of this involvement has been research funding and coordination. During the latter half of the 1990s, the EC’s Directorate General for Science, Research and Development, as it was then known, had funded a series of projects and resulting publications as part of the European Cooperation on Science and Technology (COST) A10 Programme "Restructuring of Defence Industry and Conversion."<sup>26</sup> Specific topics explored under this initiative included various aspects and mechanisms of this process, such as the shifting relationship between governments and arms

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<sup>26</sup> See: [http://www.cost.eu/media/publications?pub-domain=all&pub-year=\\* &pub-action=A10](http://www.cost.eu/media/publications?pub-domain=all&pub-year=* &pub-action=A10)

manufacturers and the perspectives of the military and publics.<sup>27</sup> This was followed by the Commission's objective of forging an EU-wide security research structure by funding projects through its Policy and Research in Security Programme (PRS) and Seventh Framework Programme for Community R&D (FP7).<sup>28</sup> The Programme was officially launched in 2007, but the Commission's activities in coordinating, initiating, and funding security research date back to the 2003 Preparatory Action in Security Research.<sup>29</sup> Although research project funding has been technically restricted to civilian applications, the rise of "dual-use" technology has meant that the "distinction between civilian and military spin-offs of modern scientific research" has been increasingly difficult to make (Struys, 2004: 555).

These developments have resulted in a gradual but increasing extension of the Commission's remit into the EU's military dimension. In fact, in the prelude to the publication of the *Green Paper on Defence Procurement* launching the stakeholder consultation stage customary in EC legislative initiatives, Jonathan Todd, spokesman for the then Internal Market Commissioner Frits Bolkestein, presented the need for the application of community competition rules to defence procurement as a natural result of the increasingly blurred distinction between "dual-use" and "pure" defence products (Chapman, 2004). In addition, the Commission, together with the European Court of Justice, has been carving out a progressively dominant role for itself in dual-use export control and international air transport regulation, the latter allowing it to have a say in combat aircraft training in Europe, for instance (Micara, 2012; Schmitt, 2000:8; Interview 23, 10 March 2014, EUMC). Thus, it could be argued, as a retired EU Military Staff senior officer did, that after controlling "money, markets, and the common currency" the "next logical step" for the European Commission would be an "internal market in defence" (Interview 22, 10 March 2014, EUMS).

## **Agenda Setting**

### *Recognising and Utilising a Window of Opportunity*

By the early 2000s, most EU governments had been resolutely slashing their defence

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<sup>27</sup> See: [http://www.cost.eu/media/publications?pub-domain=all&pub-year=\\* &pub-action=A10](http://www.cost.eu/media/publications?pub-domain=all&pub-year=* &pub-action=A10)

<sup>28</sup> See: [http://ec.europa.eu/enterprise/policies/security/overview/index\\_en.htm](http://ec.europa.eu/enterprise/policies/security/overview/index_en.htm)

<sup>29</sup> See: [http://ec.europa.eu/enterprise/policies/security/files/pasr\\_com\(2004\)\\_72\\_en.pdf](http://ec.europa.eu/enterprise/policies/security/files/pasr_com(2004)_72_en.pdf)

budgets for more than a decade (Cordesman, 2002: 10; Chapter III). In parallel, rapid technological advancement has led to accelerating rises in defence equipment prices, which regularly outpaced inflation in the general economy and thus reduced the stretched defence expenditure even further (Hartley, 2003: 354). As a result, finance ministers across the EU were insisting on greater value for the 160 billion euros spent collectively on defence, and open tendering, leading to economies of scale, would be “the obvious way forward” to achieve this objective (Chapman, 2004; Chapter III). Superimposed upon this status quo was the notable, but fragmented and incomplete, consolidation within the EU defence industry coupled with the much more thorough defence industrial rationalisation process in the US. The powerful transnational defence industrial interests in the EU which the consolidation process brought forth found themselves under increasing pressure from their rivals across the Atlantic and began demanding harmonised EU policies to alleviate it (Chapter III).

#### *Riding the Wave of the European Convention*

This was the context surrounding the Convention on the Future of Europe (known as the European Convention), which was established in 2001 following the Laeken European Council Declaration. The European Commission would make skilled use of the window of opportunity that opened up as a result of the European Convention discussions, budgetary concerns, and the post-Cold War defence spending dynamics. The unofficial mission of the Convention was to advance the drafting of a European Union Constitution by generating ideas based on a focused reflection upon the future direction of the Union and all that this entailed. It comprised of representatives of Heads of State and Government, typically at foreign minister level, national parliamentarians, including those from the then candidate states, senior officials from the European Commission, and Members of the European Parliament. The forum also contained a Working Group on Defence, tasked with the future development of the Common Security and Defence Policy (CSDP) and its place in the evolution of the EU as a whole. In addition to discussing issues of crisis management operations and military capability generation, the Group was asked “to consider whether forms of cooperation on armaments could be incorporated into the Treaty” and to “investigate the possibility of setting up an armaments agency” (Barnier, 2002: 8). Chairing the

defence group was current Internal Market Commissioner Michel Barnier, then ~~Commissioner in charge of Regional Policy and the Reform of European Institutions.~~ Barnier, who later attested to the Working Group discussions becoming dominated by arms procurement and cooperation issues, would become a staunch advocate and key architect of the “internal market of defence” upon assuming the Internal Market Commissionership in 2010 (Barnier, 2006).

While the Convention was still in session, the European Parliament’s Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, as it was then known, adopted a *Resolution on European Defence Industries*, which was approved by Parliament in April 2002. Although the European Parliament “by default” tends to favour “integration, more Europe, and European rules,” it had also maintained a particular interest in the area of armaments cooperation dating back to the late 1970s (Interview 17, 10 February 2014, European Commission). In particular, the so-called Kangaroo Group, which was founded in 1979 as an “informal group of friends in the European Parliament,” has focused its efforts on promoting the “application of the rules of the Internal Market in the field of security and defence,” especially under the term of MEP—and Chairman of the Subcommittee on Security and Defence (SEDE)—Karl von Wogau as Secretary General from 2004 until 2009 (Interview 14, 3 February 2014, European Parliament).<sup>30</sup> The author of the motion of the 2002 *Resolution*, Committee Chairman Elmar Brok, also participated in the European Convention as a representative of the European Parliament. His initiative called on the Commission to submit “an updated Action Plan” which would consider potential application of “the discipline of the Single Market...to the defence industries” (Brok, 2001: 2). Brok presented his argument as a remedy for CSDP military capability shortfalls identified by the EU Foreign and Defence Ministers at the November 2001 General Affairs Council meeting. Achieving these objectives was, according to the *Resolution*, vital for a CSDP worthy of its name, and establishing a European armaments agency had become an imperative within this context (European Parliament, 2002: 2). Support for such an agency was actually one of the most prominent results of the defence discussions undertaken in the European Convention, receiving wide support amongst member states, particularly from the UK, France and Germany. According to the statements of the Working Group on Defence members,

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<sup>30</sup> Please See: [http://www.kangaroorgroup.eu/E/030\\_who\\_we\\_are\\_D.lasso](http://www.kangaroorgroup.eu/E/030_who_we_are_D.lasso)

officials of the Green Council Presidency of 2003 and the then European Commissioner for Enterprise Erkki Liikanen, this organisation was envisioned as the engine propelling defence procurement “de-fragmentation” in the EU (*European Voice*, 2003; Spinant, 2003a).

Notably, when the Greek *Presidency Conclusions* of the Thessaloniki European Council urged the member states to create “in the course of 2004” an intergovernmental armaments agency the mandate of which would include “creating a competitive European defence industrial market,” the only role envisioned for the Commission was supporting the proposed agency’s research activities “where appropriate” (Council of the European Union, 2003b: 19). In contrast, Erkki Liikanen described the first of the Commission’s defence-related communications, *the Defence-Industrial and Market Issues- Towards an EU Equipment Policy (COM(2003) 113 final)* which outlined in more or less concrete terms various aspects of potential Community involvement in European defence procurement, as “just one part of a long haul towards convincing national governments to loosen their grips on parochial defence markets” (*European Voice*, 2003). Appearing four months after the European Convention finished its work, the *Communication* traced its “origin” to the dynamic generated by the Convention discussions and the “invitation” of the Parliament issued in the *Brok Report* (European Commission, 2003: 6). Liikanen also expressed confidence that this endeavour would include a “legislative instrument” by the end of that year (*European Voice*, 2003).

Although a former defence ministry official insisted that “the Greek Presidency was always supportive of the Commission’s initiatives in the Internal Market,” a divergence between the Council’s and the Commission’s “visions” and objectives was already making itself felt (Interview 35, 25 April 2014, EDA and Member State 3). This may be regarded as an early manifestation of a tension that will form a major theme of this thesis. Thus, it appears that from the outset there emerged two competing frameworks for the nascent EDEM – one intergovernmental and one supranational. This divergence in visions also foreshadows the Commission’s subsequent strategy of striving for EDEM policy initiative, while initially refraining from antagonising the “intergovernmental camp,” but seizing the policy initiative when an opportune moment arose.

### Reaching Out to Industry

This period also witnessed the increasingly vociferous demands of EU's transnational defence industry for dismantled market barriers and enhanced competitiveness (Chapter III). Thus, in another instance of taking advantage of a window of opportunity the European Commission convened in 2001 the high-level European referred to as STAR 21, in order to "analyse the adequacy of the existing political and regulatory framework for aerospace in Europe, to highlight deficiencies and to make proposals for further improvement" (STAR 21, 2002: 4). Chaired by Erkki Liikanen, at the time already serving as Commissioner for Enterprise and Information Society, the Group also included Commissioners for External Relations, Trade, Research, and Transport, as well as chairmen and CEOs of EADS, BAE Systems, Thales, and Finmeccanica. Carlos Westendorp, Chair of the European Parliament's Industry Committee and Karl von Wogau took part as well, who upon becoming the Chairman of the Security and Defence Sub-Committee of the European Parliament in 2004, acted as a key proponent of both the Defence Procurement Directive and the EDA Code of Code.

In contrast to a similar grouping working on the *Bangemann Report*, which developed into the 1997 EC Communication, the names of STAR 21 members were made public and the substance of the report was attributed to them. Moreover, the document was "hosted" on the Commission's DG Enterprise and Industry website. Although STAR 21's mandate was broadly civilian, defence and military equipment issues soon came to dominate its agenda (Frost, 2002). Specifically, the Group regarded a "single European defence market" as crucial for industrial competitiveness, but one member admitted that the final report, which was presented to the Prodi Commission in July 2002, would recommend a "softly-softly approach" due to the likely opposition of member states to any plans for internal market rules in the field (Frost, 2002). As such, the STAR 21 recommendations, careful to convey the message that the Group is "not trying to bring anything under anything", that is, defence procurement under Community competence, called for the "harmonisation of arms procurement" and urged the member states to "work towards establishment of a European defence equipment market and an armament agency" without mentioning any supranational elements to this endeavour (STAR 21, 2002: 40)



The STAR 21 recommendations did not seem to generate much policy momentum, but the initiative provided the industry executives, Commission officials, and MEPs with an opportunity to forge contacts and exchange ideas. It had also brought such key actors in the policy process as Erkki Liikanen and Karl von Wogau face to face with defence industrial concerns and the benefits of an integrated defence equipment market. Indeed, throughout the legislative process that culminated in the Defence Procurement Directive, Commission officials would consistently address the concerns of industry in this regard and present the extension of the internal market to defence procurement as directly beneficial to defence firms. During these early stages, Commission documents emphasised the positive effects of greater “predictability,” “consistency,” and regulatory “clarity” to industrial competitiveness [European Commission, 2003: 10, 12).

It may be convincingly argued, then, that the Commission capitalised on the work and aftermath of the European Convention which focused attention on the issue of an EU-wide, open defence equipment market in the context of budgetary pressures and industrial imperatives. Furthermore, a shared understanding of the pressures exerted by the defence industrial status quo in the EU had begun to emerge. In addition, a cooperative EU-level response seemed both necessary and possible in light of the newly-created CSDP which appeared to be gaining momentum quickly and a European Union that was heading toward the federalist milestone of a common Constitution. That the Commission perceived a “window of opportunity” for defence market policy initiatives during the early 2000s was articulated in these very terms by Burkard Schmitt, at the time a strong advocate of harmonised defence procurement as a Research Fellow at the EU Institute of Security Studies (EUISS) (SDA, 2005:12). Schmitt would soon join the EC’s DG MARKT as part of the fledgling “defence team,” and become a central figure in implementing its defence agenda. The Commission’s *Impact Assessment Study on the Application of Community Instruments to the Defence Market* of 2007 also attested to the EC’s recognition of an increasing consensus that had emerged during the early 2000s as to the need for action in bringing about the European defence equipment market (European Commission, 2007: 32). According to the Commission, the “politically determined” manner in which the member states established the European Defence Agency was indicative of this growing meeting of minds and enhanced political will (European Commission,

2007: 32). In addition, one Commission official recalled a “changed atmosphere” in defence procurement in the past years that was conducive to “getting things done” (Tigner, 2007). Other officials directly involved in the process remarked that the 2003 Communication “came at a good moment for Europe,” amidst a “positive spirit” towards the European project and as one of cyclical “policy priority waves,” which rise during periods of a “common vision” and ultimately shape “how Europe happens” (Interview 17, 10 February 2014, European Commission; Interview 16, 6 February 2014, European Commission).

On a more practical level, the “revival of the Commission’s interest in this area” beginning in approximately 2000 indicated that it had “identified procurement as an action” (Guay and Callum, 2001: 17-18; Interview 17, 10 February 2014, European Commission). According to one senior official, this “identification” was the result of “looking at what actions are possible,” and reflecting on “what can we, the European Commission, do [in the area of defence]? What are we, and what is defence?” (Interview 17, 10 February 2014, European Commission; Interview 16, 6 February 2014, European Commission). This, in turn, was followed in 2001-2002 by the recruitment of a “small group” of desk officers and officials, “with a very clear view” of “what they wanted” in this area, several of whom had participated in the European Convention and propelled to prominence the “argument regarding member states’ abuse of Article 346” (Interview 17, 10 February 2014, European Commission). Moreover, “the *idea* for a Directive was there,” perpetuated since the mid 1990s by a previous “generation” of “expert desk officers” (Interview 17, 10 February 2014, European Commission; Interview 2, 15 December, 2011, European Commission). Reflecting on the impact of this “first push” by a “small group within the Commission,” one of its participants ventured that, “this is how Europe is built—through the determination and peer pressure of desk officers,” while a former senior EDA official remarked that the extent of individual desk officers’ policy influence seemed, in this case, “incredible” (Interview 17, 10 February 2014, European Commission; Interview 34, 16 April 2014, EDA and Member State).

## Agenda Shaping

For the Commission, the period following the publication of the 2003 Communication was one of “taking up the flag” of policy initiative, and then moulding it intellectually, “playing with it, and pushing it forward” (Interview 19, 26 February 2014, EDA and Member State; Interview 16, 6 February 2014, European Commission). With the release of the Communication, this “it” was “on the table, and changed the rules of the game” (Interview 16, 6 February 2014, European Commission). From that point onwards, as one former senior official who had served both in the EDA and the national ministry of defence reflected, the Commission has “come forward more strongly than ever before” (Interview 19, 26 February 2014, EDA and Member State). Internally, a decision was then made in early 2006 to “really go for” a community instrument in defence procurement, and once the EDEM issue became an item on the Commission’s official annual work programme for the coming year (2007), the wheels of internal bureaucracy were set in full motion (Interview 16, 6 February 2014, European Commission; Interview 17, 10 February 2014, European Commission). As it embarked on shaping the EDEM agenda, the Commission was aided by several factors. One was the fortuitous circumstance that, despite “broad opposition” from member states and some in industry, “nobody tried to kill” its proposals (Interview 16, 6 February 2014, European Commission; Blauburger and Weiss, 2013: 1121).

Commission officials were also encouraged by the “helpful” and “clearly supportive” disposition of the European Parliament, which, as argued above, “always wants more Europe,” and “most of all likes to gain power and competence” (Interview 16, 6 February 2014, European Commission; European Commission, 2005: 8; Interview 40, 28 May 2014, European Parliament). For instance, in its 2005 resolution endorsing the Commission’s Green Paper on Defence Procurement, the European Parliament stressed that rectifying the fragmentation of the EU’s defence equipment market would enhance industrial competitiveness, due to increased production runs. The Parliament also went to some lengths to make the case for opening the defence market

to competition, arguing that this measure was a “precondition for strengthening a financially viable EU armaments industry” and building an “autonomous and powerful industrial base” not only for more efficient procurement but also for “ensuring necessary defence capabilities (European Parliament, 2005: 7). Such advantages were reiterated by the author of the resolution, MEP Joachim Wuermeling at a Kangaroo Group meeting dedicated to the “economic aspects of a common European Defence Policy” on 1 June 2005 (Kangaroo Group, 2005: 2). He also suggested that the “profile” of “his” resolution, then in its final drafting stages, should be kept “rather low,” in order to avoid the negative impact of public perceptions of a “militarisation” of Europe (Kangaroo Group, 2005: 2). This sentiment, according to the participants of the meeting was particularly widespread at the time, as exemplified by the French rejection of a European Constitution in a May 2005 referendum. The consideration of optimal timing for releasing a report which agreed with the Commission that “pressure should be placed on national defence procurement agencies” and that “armaments industry should be subject to greater monitoring and control by the Commission” indicates the sincerity of the Parliament’s wish to further the EDEM project and enhance the Commission’s role within it (European Parliament, 2005). The *Wuermeling Report*, as it came to be called, was adopted by 392 votes to 77 (*European Report*, 2005b). In fact, MEPs initially pushed for a more far reaching Directive than proposed by the Commission, wanting it to apply to articles covered by Article 346, as well (*European Report*, 2005b). In November 2006, Parliament also adopted an own-initiative report authored by von Wogau, advocating for a common defence market as a means to bolster CSDP capabilities (*Europolitcs*, 2006a). The report followed a study, sponsored by von Wogau, that was conducted by the Bonn International Centre for Conversion (BICC) examining the “costs of non-Europe in security and defence” (*Europolitcs*, 2006a).

### *Consulting and Waiting*

The Commission’s legislative initiatives typically involve a formal consultation process, in which the views of the stakeholders concerned with or affected by its proposals are sought. The ultimate purpose of issuing Green Papers, holding stakeholder workshops, organising conferences of experts and commissioning studies

is to enable the Commission to garner expertise and win allies in an inherently hostile environment while focusing attention on its priorities regarding particular issues (Thatcher, 2006: 315). The path leading to the Defence Procurement Directive was no exception - in order to prepare the September 2004 *Green Paper* which launched the consultation period on a potential community instrument in the defence equipment market, the Commission assembled two working parties comprised of member state and industry representatives (Palloni and Lizza, 2012: 297). Most national officials hailed from ministries of the economy, industry, and finance (Interview 34, 16 April 2014, EDA and Member State). The majority of the three dominant arms' producing member states' delegations also included ministry of defence personnel, although the lead, at least during the agenda shaping stage, tended to be taken by the "economy and industry side," as was the case in the French and German working groups (Interview 35, 25 April 2014, EDA and Member State; Interview 19, 26 February 2014, EDA and Member State; Interview 24, 11 March 2014, Member State Permanent Representation).

The so-called Working Group of Member States' Experts and Working Group of Industry Experts each met in three sessions from January until April 2004. The meetings were held within a few days of each other and aimed at "identifying characteristics and economic dimensions of armament contracts," examining existing "defence procurement regulations at national, intergovernmental and Community level," and, finally, discussing "the way forward for a Community instrument as regards defence procurement" (European Commission, 2007: 93-98). From October 2003, the Commission also held the first of consultation meetings with member states in the Advisory Committee on Public Procurement (ACPP) context, which would be repeated during the period December 2006 – April 2007. Following each set of meetings, member states were prompted to submit comprehensive written contributions. In addition, the Commission held "numerous bilateral discussions" with member states and industry, the first (formally recorded) set of which took place during September 2006 –April 2007 for governments, and May 2006 – May 2007 for industry. The EDA and the Commission also met from July 2006 until April 2007 in various configurations, namely, in preparatory committee meetings, EDA-DG MARKT bilateral meetings, national armament directors meetings, and one Steering Board meeting, the highest-level of EDA decision making, which brings together

member states' ministers of defence (European Commission, 2007: 93-98). Moreover, *Jane's Defence Weekly* reported that the six-month period leading up to the publication of the *Proposal for Defence Procurement Directive* in December 2007 saw 30 more bilateral meetings between the Commission and national officials (Tigner, 2007). The majority of meetings with industry appear to have been with the large transnational defence firms, while the bilateral meetings with member states seem to have been particularly frequent. Amongst these, priority seems to have been given to the Big Three, and particularly Germany, with which the Commission met seven times during the September 2006 – April 2007 period, compared to four meetings with the UK, three with France and the Netherlands, and two with Italy. A Commission official attested to “preparing the defence community” through numerous meetings “over a number of years,” (Interview 16, 6 February 2014, European Commission).

The key features of the consultation process were its intensity—as “countless meetings” were held—and its early commencement in the overall policy cycle, with the result that the entire endeavour had “taken years” (Interview 33, 15 April 2014, European Commission). As one ministry of defence official recalled, the Commission team “met with everybody,” and, from his perspective at least, was “surprisingly” willing “to be convinced” by the “ideas of stakeholders,” (Interview 32, 10 April 2014, Member State Ministry of Defence). Another important aspect appears to have been the Commission’s willingness simply to wait for favourable responses to its proposals – itself an important policy entrepreneurship tool (Thatcher, 2006: 315). Thus, the Commission had originally set the deadline for the submission of stakeholder responses to the *Green Paper* for 23 January 2005. However, it decided to extend it when only two or three responses had been submitted by then. In fact, France was the only one of the member states with the greatest stake in a directive to have responded by the deadline (Shanson, 2005: 1). The French position, articulated by France’s NATO delegation Armaments Counsellor Alain Picq was one of “cautions support,” with a “preference” for a Commission communication clarifying the proper use of Article 346, as well as a non-binding intergovernmental instrument, which would “pave the way” for a Defence Procurement Directive in the long term (*Europolitics*, 2005a).

As it were, the consultation deadline extension was “unofficial” and left the new

deadline vague, allotting the member states an additional two months, or “at least” until the end of March 2005 (Shanson, 2005: 1). Having received more than 20 responses by the new deadline, the Commission had yet again pushed it forward, communicating to all stakeholders that it would “remain flexible” with the timing, as it waited for the more than 50 responses it desired (Shanson, 2005b: 4). Moreover, according to press reports, “no discernible trend” for or against the proposed measures had materialised by that time, and the remaining big member states had yet to submit their responses. In the end, the deadline was in fact extended until 15 September 2005—a year after the publication of the *Green Paper* rather than the customary and originally announced four months— with 40 responses were submitted (*EurActiv*, 2006; European Commission, 2005). Throughout the consultation process, both as part of the *Green Paper* and beyond it, the Commission was careful to “give the member states no reason to say no” to its proposals directly and definitively (Interview 17, 10 February 2014, European Commission; European Commission, 2005). Indeed, the juxtaposition of its representation of responses to the *Green Paper* with their actual content reveals a somewhat strategic use of information. Thus, according to the Commission, “almost all stakeholders supported a Community initiative in the field of defence procurement and ruled out the ‘no action’ option,” although, admittedly, “the general picture with regard to a defence directive [specifically] is more complex” (European Commission, 2005: 5, 7). The actual responses of member states and industry, however, reveal at best a cautious reception of the Commission’s proposals, which envisions a defence procurement directive as a remote, vague possibility and is in fact closer to a veiled opposition than enthusiastic approval (Blauberger and Weiss, 2013: 1133).

For instance, the UK, in a non-paper released as a response to the *Green Paper*, articulated a position reportedly shared by a number EU governments that EU legislation on defence procurement “would be a cumbersome process that could take years” (House of Lords, 2005: paragraph 61). Therefore, transparency would “meanwhile” be best enhanced through a voluntary code of conduct administered by the EDA (*ibid*: paragraph 68). That the UK’s “meanwhile” was rather disingenuous is illustrated by the government’s justification for this position – that having a “member state controlled” EDA in the driving seat would “avoid the potential for confrontation over Commission competence in the area of defence procurement,” that is, effectively

keep the Commission away from the defence equipment market issues (House of Lords, 2005: paragraph 64). Yet, although nervousness on the part of “stakeholders” was pervasive, as was insistence that a directive could only be a long-term objective, only Germany raised a significant objection, and “only” in the 2007 consultation round, citing the existence of the EDA (Interview 17, 10 February 2014, European Commission). As will be demonstrated below, the resulting “autonomy” to “keep working” as well as the fact that none of the big member states in particular had “killed” its proposal at the beginning proved fundamental to the Commission’s success in securing the passage of the Directive (Interview 17, 10 February 2014, European Commission; Interview 32, 10 April 2014, Member State Ministry of Defence; Chapter VI). Thus, the DG MARKT officials working on defence procurement enjoyed “almost complete freedom of manoeuvre” as a result of the largely disinterested Internal Market Commissioner Charlie McCreevy, who was content to provide a high degree of flexibility as long as the “boat was not rocked” too violently (Interview 17, 10 February 2014, European Commission; Interview 16, 6 February 2014, European Commission). Indeed, in the material presented above there have been precious few public statements, speeches, or presentations made by McCreevy when compared to Industry and Enterprise Commissioner Guenter Verheugen, even though DG MARKT was the “lead Directorate” on the Defence Procurement Directive.

### *Defining the Policy Problem and Providing the Solution*

The Commission had also engaged in what is regarded as part and parcel of policy entrepreneurship—namely issue framing via problem definition and prescription of solutions (Chapter II). This constitutes the continuation of the tactics it employed during the agenda-setting stage, and reflects the theoretical insights introduced in Chapter II, namely, that policy entrepreneurs may remain active throughout the entire policy cycle, and may rely on policy framing during any stage of it, not just agenda-setting. Thus, similarly to other policy entrepreneurs, throughout this endeavour the European Commission had consistently connected its vision of the problem-solution landscape to the greater European good, while presenting itself as the best-placed and legitimate actor able to attain it (Princen and Rhinard, 2006: 1127). Considering the



Commission's role as the steward of the internal market, wielding significant regulatory and executive powers, it is only natural that it would consistently portray its forays into the intergovernmental territory as a quest for efficiency, competitiveness and value for money. The Commission's portrayal of the 2003 "testing the waters" Communication as a "blueprint" to remedy the EU's "fragmented market, with fragmented stakeholders" was already highlighted above (*European Voice*, 2003). However, this characterisation was reiterated and reinforced throughout all subsequent Commission documentation which materialised in the course of the policy formulation stage. Thus, with the publication of the consultative *Green Paper*, the Commission was ostensibly trying to "help Member States ... get better value in [sic] the 30 billion euro plus EU market for defence," while the proposal for the Defence Procurement Directive was introduced as a measure to "enhance openness and competitiveness of defence markets in the EU" (European Commission, 2004b: 29; European Commission, 2007b: 6). An informative illustration of this logic may also be found in the Commission's *Strategic Initiatives Work Programme* for 2007 which defined the "problem" precluding the formation of a European Defence Equipment Market as one of inter-member state defence market fragmentation, spilling over into disjointed research efforts and incompatible industrial bases (European Commission 2006: 53). The resulting poorly functioning market and procurement processes were in turn enabled by the "extensive use" of Article 346, which has led to "uncoordinated national procurement rules ... in market segments which *de jure fall under community rules*" (European Commission 2006: 57, emphasis added).

However, the Commission also took care to appeal to "defence audiences" by highlighting the role of the EDEM in strengthening CSDP capabilities. As a result, *The Work Programme* approvingly mentioned the "increased emphasis on CSDP" that in the view of the Commission, "was paving the way for a progressively stronger framework for a European defence equipment policy" (European Commission 2006: 53). In fact, the rhetoric of European security and defence in general and CSDP in particular was never absent from the Commission's argumentation. Both the 2003 Communication and the consultative *Green Paper* drew attention to the harm caused by defence market fragmentation to the ability of EU defence industry to meet the requirements of a viable CSDP (European Commission, 2003:6; European

Commission, 2004: 4). This argument, frequently reiterated by the Commission, emphasised the development of the CSDP as both evolving in the same direction as the Commission's thinking and in dire need of added efficiency and credibility. Meanwhile, the status quo—duplication and fragmentation stemming from the indiscriminate invocation of Article 346—was cast as detrimental to member states efforts in the EU's defence and security arena. In addition, *the Interpretive Communication on the Application of Article 296* released by the Commission in 2006 took a slightly different approach by emphasising the noxious impact of EU defence market fragmentation on the ability of member states to equip their national armed forces (European Commission, 2006b: 2). The document pointedly advised the member states to “take into account” the “ever-growing convergence of national interests” between them “when assessing whether the application of EU procurement rules...would undermine the essential interests of their security” (European Commission, 2006b: 7). The official *Proposal for a Directive* contained in the *Defence Package* opened with the assertion that “the creation of a European defence equipment market is a key factor in backing the Common Security and Defence Policy (CSDP)” by developing the military capabilities it required (European Commission 2007b: 3, 11). This was also the focal argument of Commission officials when they presented their case during the hearings of the European Parliament's Sub-Committee on Defence and Security on 17 July 2007 (*Europolitics*, 2007a).

Having defined the problem as one of market fragmentation and presented the solution as an integrated European defence equipment market in support of CSDP, the Commission concluded that “only an intervention at EU level,” one that goes beyond member states' efforts and can therefore only mean Community involvement, “could build a single market in this sector” which would then enhance competitiveness, yield economies of scale, and focus research and development activity (European Commission, 2007: 53). As “the Guardian of the Treaty” it argued that it was the most appropriate actor, and in fact the “only possible actor” to provide policy solutions to the “widespread use of the exemption from EC law,” not least in the shape of a “specific Directive” (*ibid*). Furthermore, when unveiling the *Interpretive Communication* and looking ahead to future proposals, Commission officials presented these initiatives as urgent and unavoidable as well as being “so clearly based on European common sense” that it was difficult to see how member states

could object to their implementation (Ames, 2006a; *Flight International*, 2007a). In addition, the rationale for the proposed legislation was consistently portrayed as an important component of the Lisbon strategy “for growth and jobs” (*Europolitics*, 2007a). The 2007 *Defence Package* featured a general communication on enhancing the competitiveness of the EU’s defence sector alongside the proposed Directives on Defence Procurement and Intra-EU Defence Transfers.<sup>31</sup> Consequently, the Commission expressed confidence that “stakeholders would welcome Community action to overcome market fragmentation and increase competition in the defence markets” (European Commission, 2007: 57).

In short, a conscious effort was exerted by the Commission to present the Directive as a logical solution to “an economic problem,” and one to be addressed through increased efficiency derived from the economies of scale (Mallinder, 2007). The regulatory instrument was also connected to the imperative of constructing a genuine European Defence Technological and Industrial Base (EDTIB) to harness the EU’s competitive strength and alleviate the competitiveness pressure on its defence industry. According to the European Commission, such a “true industrial base,” when created, would be “more than [just] the sum of national industries” (*Europolitics*, 2008d). Invariably, these objectives were linked to several “greater goods,” including the Lisbon Strategy and the development of a credible CSDP.

Beneath this somewhat self-aggrandising rhetoric lay the more strategic objective of ensuring that the Commission’s EDEM proposals would be discussed via the “community method” of Pillar One. In the pre-Lisbon Treaty era, this would have eventually triggered a supranational decision-making process via qualified majority voting (QMV) at the final stage—considerably more favourable to the Commission’s aims given the “hostile terrain” of member states’ “suspicious” reactions to them (Georgopolous, 2008a: 1). The requirement for co-decision with the European Parliament also looked attractive in light of its increasingly favourable disposition to communitarising defence procurement. Moreover, framing the rationale for binding EU-level rules in defence procurement as an internal market issue would draw delegates from member states’ ministries of the economy, industry and finance into the Commission’s consultation process. They, in turn, espoused a staunchly liberal,

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<sup>31</sup> Please see: [http://ec.europa.eu/enterprise/sectors/defence/documents/index\\_en.htm](http://ec.europa.eu/enterprise/sectors/defence/documents/index_en.htm)

free-market ethos and were committed to obtaining value for money in all areas of national administration, including defence procurement (Interview 34, 16 April 2014, EDA and Member State; Interview 19, 26 February 2014, EDA and Member State; Interview 35, 25 April 2014, EDA and Member State 2). In addition, the Commission could draw upon decades' worth of institutional "experience" with these national structures, whereas it was largely unfamiliar with ministries of defence as interlocutors.

### *Grasping the Initiative and Managing Role Perception*

#### *Downplaying Significance of Proposals*

Another tactic that may be discerned in the Commission's policy caretaking arsenal was a sort of public relations campaign. It centred upon assuaging fears in national capitals as to any invasive supranational encroachment. Instead, Commission officials emphasised its function as a facilitator of necessary reforms, serving member states' interest, but deferring to their authority. As recalled by the Enterprise and Industry Commissioner Guenter Verheugen, who oversaw the Defence Transfers Directive introduced together with the procurement measures in the Commission's *Defence Package*, the "Commission was very wise not to ...create the impression there is a question of new competences, new powers" (Mallinder, 2007). This message could be traced to the early stages of the Commission's activity in this field. At an event specifically dedicated to discussion of issues raised by the Commission's 2004 Green Paper, (then) *Defense News*' Brooks Tigner obliquely mused on the likelihood of the Commission taking no further action if the Green Paper agenda found no intergovernmental support. In response, the Commission's Defence Expert Sandra Mezzadri who oversaw these early initiatives, assured all those present that the Commission had "no hidden agenda," and was merely setting out its "thinking" and launching a debate, but not providing any lasting solutions in the absence of "the required political backing" (SDA 2005: 12). Meanwhile, the Green Paper itself made frequent references to the working of the intergovernmental Council Working Party on Armaments Policy (POLARM), the Western European Armaments Group

(WEAG), and the [European Defence] Agency Establishment Team, in order to give credence to the subsidiarity principle and thus “move carefully” through the volatile terrain of member states’ reactions (European Commission 2004; van Eekelen 2005: 54).

In parallel, the Commission took pains to convey to the twitchy member states that it appreciated just how sensitive the issue of a defence equipment market was to them. This argument was concertedly reiterated, as, when following the release of the *Interpretative Communication on the Application of Article 296*, the Commission “stressed that it was not up to it to assess member states’ essential security interests, nor which military equipment they procured to protect those interests” (*Europolitics*, 2006b). Commission officials also emphasised in a full-length article published in the trade publication *Defence Management* that it was only “natural” for the governments to want to “lead” the construction of an EU-wide defence market (*Defence Management*, 2008). The role of the Commission, the piece continued, was to support them in this endeavour by providing instruments to “make regulatory framework for defence more coherent and efficient” (ibid). Thus, the intention of the proposed Directive was to enable “the member states [to] then find it easier to resort less often to Article 346” with the help of the new “defence specific and more flexible rules” (*Europolitics*, 2007a). Consequently, in the Commission’s representation, the potential legislative instrument appeared as a useful tool “at the disposal of” member states which they “can” use to “enable them” to limit the use of Article 346 to exceptional cases (ibid; emphasis added).

Commission officials also took care to describe their proposals as complementary to the work of the EDA. For instance, speaking at an EDA-organised conference on the development of the EDTIB, Guenter Verheugen, who, in addition to his post as Enterprise and Industry Director was also serving as the Commission Vice-President at the time, assured the audience that even though “much of the practical, daily work” involved in building a European defence technological and industrial base is the responsibility of the EDA, it is a multi-faceted endeavour and the Commission’s agenda “can also act as a catalyst in the process,” (*Flight International*, 2007a). It appeared that the Commission’s placating efforts were at least partially successful, when the EDA’s then Head of Industry and Market Directorate Ulf Hammarstroem felt comfortable enough to stress that the Commission “only” hoped to achieve less

use of Article 346, and that “once a government chose to invoke [it], a directive automatically did not apply” (Beatty, 2007a). Such apparent comity likely stemmed from an initial “sense” of camaraderie described by EDA officials in relation to their counterparts in the Commission also “working” on defence market issues (Interview 36, 5 May 2014, EDA and Member State; Interview 35, 25 April 2014, EDA and Member State).

### *Pushing for Agenda Leadership*

Underneath the publicity, however, a less conciliatory picture may be found. Defence procurement legislation proposed by the Commission would of course involve if not new formal competences, then certainly imbue old ones with greater reach. In particular, the Commission stood to gain powers to initiate infringement proceedings against errant member states, potentially referring them to the European Court of Justice if they did not correct their ways. In fact, the *Green Paper* raised the possibility of applying the proposed defence directive to collaborative defence procurement – now one of the legislation’s major exclusions—which would have authorised the Commission to scrutinise procurement activities of the EDA itself and every other contracting authority (Georgopolous, 2007:220). Such provisions, in effect, would unequivocally curtail member states’ decisions to apply Article 346, compelling them to consider Community-defined conditions when making the “choice” invoked by Hammarstroem.

Despite its consistent and unwavering attestations to the contrary, careful scrutiny of the Commission’s proposals reveals that they were not in fact complementary to the EDA’s Code of Conduct on Defence Procurement. Rather, it remained persistently unclear how and whether the provisions of proposed Defence Procurement Directive and the Code of Conduct could co-exist (O’Donnell, 2009: 4). After all, if a military equipment contract was judged by the member states as non-sensitive “enough” to be published for tender on the Electronic Bulletin Board (EBB) as part of the Code, then surely, the Commission would be able to question why it was too sensitive for the Directive? (Interview 2, 15 December, 2011, European Commission). Therefore, the Commission’s congenial narrative of the Directive addressing contracts where Article 346 does not apply and the Code covering those which fall under the exemption is rather disingenuous. Again, as indicated above, the central issue in this debate was the

very determination of which contracts would merit the Article 346 exemption and which authority would prevail in that decision.

The competition for institutional dominance between the Commission and the EDA, as well as the tension between their respective agendas and lines of responsibility have been consistently noted in the literature and specialised media (Georgopolous 2007: 219; Bauer, 2005; O'Donnell, 2009: 4; Leonard, 2005). Thus, the remarkably swift and coordinated establishment of the EDA has been at least in part attributed to the nervous jolt the member states had felt as a result of the publication of the Commission's 2003 Communication *Defence-Industrial and Market Issues—Towards and EU Equipment Policy* (Georgopolous, 2005; 2007: 119-220; Trybus, 2007). This claim would certainly provide a more nuanced explanation for why, although the EU Council had accepted “the thrust” of the Commission's proposal, it had urgently tasked the EDA during its first year of existence with the “early assumption of its role of interlocutor with the Commission on current Commission initiatives” in the defence market (EDA, 2004). Furthermore, the EDA's Code of Conduct followed on the heels of the EC's consultative *Green Paper* on extending Community instruments into defence procurement. Indeed, according to the UK's House of Lords European Union Committee, progress in finalising the EDA's Code of Conduct on Defence Procurement was “partly prompted” by the publication of the Commission's Green Paper, indicating its intent to pursue defence industrial matters further (House of Lords, 2006). In particular, the Agency was required to produce a parallel, complementary initiative, as well as providing input into the Commission's consultation process (House of Lords 2005: paragraph 65). Nick Witney, the former (and first) Executive Director of the EDA, had by then already informed the UK's Ministry of Defence that the EDA's message to the Commission would most likely be that “it will be a slog to get there,” “there” being a legally binding defence procurement regime (House of Lords, 2005: paragraph 67).

It is helpful to recall that national governments have always been strongly attached to their historically unchallenged prerogative to invoke the Article 346 exemption whenever they chose. As will be demonstrated in Chapter V, most member states had therefore regarded the Code as the primary vehicle bringing the issue of an EU defence equipment market to the fore, while the Commission's proposals were only “an echo” of this agenda (House of Lords, 2008:6; Chapter V). As one former official

of a member state's permanent representation to the EU attested, national governments "did not want the EC telling them what to do" in any aspect of defence, "full stop" (Interview 9, 14 November 2013, Member State Permanent Representation). Therefore, placing a restriction on this jealously guarded privilege, or as many capitals would view it, this right, at member states' "disposal" that they then "can" use to limit their own freedom of manoeuvre would require careful framing indeed.

One episode illustrates this "unspoken tension" between the Commission and the EDA well (Interview 11, 6 December 2013, Member State Ministry of Defence). When the Code of Conduct was discussed in the Commission's *Impact Study*, it was pronounced inadequate for addressing defence market "problem" as the Commission had described it. Specifically, the document remarked that the effectiveness of the Code in its own field of application "remained to be seen" (2007: 39). The authors went on to note that to date (of publication of the *Impact Assessment* – December 2007), the Code had not resulted in a single inter-state contract award, while, as supported by an anonymous testimony of "one Member State," there had already emerged a tendency to disregard its terms, in order to escape the sceptre of community rules (2007: 39). Although this trend became significantly more pronounced following the final stages of the Defence Procurement Directive negotiations—that is, the latter half of 2008—and particularly in the aftermath of the legislation's approval, its causal significance for the research question posed here entitles it to some elaboration at this earlier stage, as well. Thus, the rather cryptic reference made by the Commission refers to the reluctance of member states' defence contracting authorities to post contracts for competitive tender on the Electronic Bulletin Board (EBB), which constitutes the central commitment under the Code of Conduct. As was indicated in Chapter IV, the EU's major defence industrial players began to grow disillusioned with the effectiveness of the Code of Conduct during its second year of operation, July 2007 – July 2008 (Chapter IV).

Chapter V will argue that this ineffectuality in fact stemmed from the fundamental institutional weakness and inherent structural tensions within an intergovernmental organisation such as the EDA itself (Chapter V). As has been highlighted in a number of interviews, however, the key factor in member states' disappointing performance as far as the EBB itself was concerned was their "fear" that the



Commission would “scrutinise” the contracts they had opened to competition and attempt to subject them to the discipline of the Directive instead (Interview 32, 10 April 2014, Member State Ministry of Defence; Interview 35, 25 April 2014, EDA and Member State; Interview 36, 5 May 2014, EDA and Member State; Interview 26, 3 April, Industry). As explained in Chapter I, a member state’s decision to publicise a procurement opportunity on the EBB signifies that it is “covered” by the Article 346 exemption. In other words, the ministry of defence in question had exercised the Treaty-based right to exempt a tender from the open competition rules of the internal market as their application would have undermined the “essential interests of its security.” Yet, having also subscribed to the Code of Conduct, it had judged that this particular contract was not sensitive “enough” to merit non-competitive procurement, and could as a result be opened “to suppliers having a technological and/or industrial base in each other’s territories” (EDA, 2005: 1). The “fear” mentioned above stemmed from the possibility that the Commission would then “question” the legitimacy of opening contracts to competition via the Code, while keeping them “away” from the Directive on the grounds of “essential security interests” (Interview 2, 15 December, 2011, European Commission). The consequences of it then referring the “errant” member state to the ECJ, were this to follow, would be particularly serious, as the legal precedent of court sanction under the Defence Procurement Directive would significantly extend the reach of its application and limit the member states’ ability to exploit the loopholes within it.

The rhetoric of the Commission described above thus marks the beginning of its tendency to highlight the limitations of the Code in order to argue that the “member states did not really want to” open markets voluntarily, giving the Commission a “reason to force their hand” by moving full steam with the Directive (Interview 19, 26 February 2014, EDA and Member State). Yet, the Commission’s “taking initiative on industry and market issues” was not solely a product of its clever policy entrepreneurship strategy, but was enabled to a considerable extent by the “political frustrations” within the EDA, a lack of sustained commitment on the part of member states to the Agency’s development, and discord amongst them as to its ultimate purpose (Interview 19, 26 February 2014, EDA and Member State; Interview 11, 6 December 2013, Member State Ministry of Defence; Interview 35, 25 April 2014, EDA and Member State; Chapter V). Towards the end of 2007, then, it had become

apparent to EDA officials, at least, that the role of the EDA in the defence industrial sphere “was diminishing as the role of the Commission was increasing” (Interview 38, 22 May 2014, EDA and Member State). The “less and less” willingness of the Commission “to coordinate with the EDA” was combined with a marked acceleration in its pace of work during the second half of 2007, since, according to one former senior Agency official, the Commission had set a target for itself to achieve an “internal market of defence” by 2012 (Interview 35, 25 April 2014, EDA and Member State). Other officials working for the EDA at the time spoke of “a turf war” which the Commission waged with the Agency (Interview 35, 25 April 2014, EDA and Member State 2). According to their views, it was a struggle which the EDA ultimately lost. Their rhetoric characterised this development as a “wresting” of policy initiative from the EDA’s I&M Directorate, and one recalled “really feeling” this “seizure” (Interview 35, 25 April 2014, EDA and Member State 2; Interview 34, 16 April 2014, EDA and Member State).

### *Engaging with Defence Industry: Overtures and Uphill Battles*

In addition to carving out an increasing degree of policy initiative vis-à-vis the EDA, the European Commission also took pains to position its efforts as a push to boost the competitiveness of the EU’s defence industry by “liberating” it from the straightjacket of fragmented national regulation (European Commission, 2004: 3). According to this narrative, the Commission was attempting to “achieve better business opportunities for European companies which are suffering from heavy competition from outside [the EU]” as well as “to encourage the abandonment of traditional monopolistic schemes in member states” (*Europolitics*, 2006b). Commission officials also spoke of convincing “governments...to get their acts together and allow industry to broaden its options” (Ames, 2006a, 2006b). In addition, Charlie McCreevy, then Internal Market Commissioner, was quoted in *Jane’s Defence Weekly*, an influential trade publication, as calling on the EU governments “to put their foot on the gas” as “the future of Europe’s defence industry was at stake” (Anderson, 2006). Moreover, during the July 2007 hearing of the Parliament’s Sub-Committee on Security and Defence (SEDE), a DG Enterprise and Industry official described the upcoming legislative proposals as a means “to roll out a genuine internal market for the defence industry” (*Europolitics*,

2007a). Finally, when the *Proposal for a Defence Procurement Directive* did materialise, it was accompanied by a *Communication introducing a Strategy for a Stronger and More Competitive European Defence Industry*, and described the Proposal as “an essential framework for the establishment of a more competitive and stronger defence industry” (European Commission, 2007c:6)

Another strand within the “industry-friendly” argument advanced by the Commission focused on one of the core “grievances” of defence firms described above – that of market access to “third markets” in general and the United States in particular. Thus, the Commission assured that it was “looking at improvements” in security of information exchange in procurement, synergies between civil and defence markets, and access to non-EU markets (*Europolitics*, 2007b). In media interviews accompanying the release of the *Proposal for a Defence Directive* both McCreevy and Guenther Verheugen, Commissioner for Industry, spoke of their intention to “open up third markets,” while the *Strategy for a Stronger and More Competitive European Defence Industry* pointedly remarked that the European defence industry is “effectively excluded from supplying the US market,” whilst the EU market has been welcoming to US firms (*Europolitics*, 2007b; European Commission, 2007c: 9).

Keenly aware that “industry concerns” were “on everybody’s mind,” it is unsurprising that the Commission would attempt to portray its legislative proposals as an extension of the supranational helping hand to Europe’s struggling defence firms (Interview 16, 6 February 2014, European Commission). Behind the scenes, however, the Commission’s resources were being directed at the “uphill struggle” involved in “helping industry understand,” that there “were opportunities for them,” in a more open market with greater competition (Interview 16, 6 February 2014, European Commission). Such efforts were obstructed by frustrations on both sides. It was already emphasised in Chapter III that many amongst industry believed the Commission’s initiative to be misguided, inadequate, and even downright harmful. For their part, the officials at DG MARKT were irritated by the “cognitive deficit,” which kept the defence firms’ representatives anchored to a blind defence of “their customer’s (that is, the home government’s) interests,” (Interview 16, 6 February 2014, European Commission ).

### *Compromises and Concessions*

The story told thus far has been one of the Commission moving steadily towards the achievement of its objective to extend internal market principles to the member state-dominated field of defence procurement. However, there is another aspect to this process, as well. It is one of de-scaling ambitions and engaging in compromise. The experience of one senior official in the British Ministry of Defence who was familiar with the Directive negotiations, was that the “Commission was pretty good at learning,” and had “recognised where the political red lines were,” (Interview 11, 6 December 2013, Member State Ministry of Defence). Indeed, the Commission appeared consistently aware of the limitation of its powers throughout the policy process. In particular, even though the European Parliament had initially urged it to extend the provisions of a community instrument to defence procurement undertaken even under the Article 346 exemption, the Commission settled on the field of application outside of the exemption by the time the official consultation period drew to a close, (*European Report*, 2005b). In another instance, during the fall of 2006 the Commission was still planning to issue separate legislative proposals for “non-strategic” and “strategic” defence purchases. This would have amounted to dictating where member states could apply Article 346 as opposed to merely spelling out in which cases they would be legally challenged if they did so. Within a year, however, the Commission had found that this “was too complicated to do,” and instead decided to pursue “procurement rules that are flexible enough to be used for the majority of defence purchases and which make Article 346 more difficult to apply” (Tigner, 2007).

Consequently, by the Commission’s own admission, the draft Directive proposed in December 2007 was “less ambitious” than originally intended, due to a sobering assessment of opposition from the member states (*Europolitics*, 3 November 2008d). As the UK’s House of Lords Committee on the European Union seems to have understood, the main objective of the Commission’s proposals for a directive was to limit the use of Article 346, and it is one that stems from the recognition that the “dream” of removing the exemption altogether was unattainable (House of Lords 2008: 9). Moreover, the initiative took the form of a directive rather than a much more forceful regulation considered at first because, as the Enterprise and Industry Commissioner acknowledged at the time, “it was clear that a draft regulation would

not pass the Council” (ibid). Yet, these concessions must be balanced against the Commission’s perception that, given the widespread opposition it encountered, securing the approval of a directive qualified as a victory in itself. Thus, its *Impact Assessment Study* attested to the abandonment of non-legislative policy options “early on” in the consultation process. What is more, lending credence to Blauburger and Weiss’ argument, the Commission hinted that it made the “choice” to engage seriously with the proposed directive “easier” for the “vast majority” of the national representatives when it conveyed to them that the status quo would mean increased legal challenges “for abuse of the [Article 346] exemption” (European Commission, 2007: 36. Chapter II). Nor, as will be highlighted below, has the Commission proved so eager to “close the deal” that it sacrificed all objectionable aspects of it.

## **Decision-Making**

### *Reaping the Benefits of Policy Entrepreneurship*

The co-decision voting procedure implies that once the Commission submits a legislative proposal, the pre-vote deliberations are carried out by the Council and Parliament aiming to agree upon a text. However, in recent years, in order to achieve an agreement on the first reading—essentially, after just one round of negotiations—it has been customary to involve the Commission in “trialogue” deliberations as well. Thus, the Commission remained involved in the Defence Directive negotiations even during the decision-making stage. The “location” of the defence proposal in the First Pillar represents a measure of the Commission’s success in framing the EDEM agenda as an internal market issue. This venue was crucial to the eventual adoption of the Directive, not least due to the qualified majority voting (QMV) decision process and tendency to find compromise prevailing in the “Community method,” (Interview 16, 6 February 2014, European Commission). Another causally decisive step the Commission took was purposefully timing the publication of the *Directive Proposal* in order to secure the highest chance of it coinciding with the French EU Council Presidency that commenced in July 2008 (Interview 32, 10 April 2014, Member State Ministry of Defence ; Interview 37, 20 May 2014, Member State Permanent Representation; Chapter V). Indeed, the view of some participants in the process was that the largely technical, “nitty-gritty” nature of discussions on the proposal during

the six months predating the French Presidency was a conscious stalling technique employed by the Commission towards this end (Interview 32, 10 April 2014, Member State Ministry of Defence). The Commission would have been well aware that the preceding Slovenian Presidency, representing as yet a new, small member state, lacked the capacity, influence, and experience needed to secure agreement.

As has been demonstrated throughout this chapter, the *Defence Directive Proposal* was the product of the Commission's dedication to "actively preparing the terrain" for EU legislation in defence procurement, through "discussions, consultations, and Communications," so that even the 1996 and 1997 Communications were part of this "long game" (Interview 16, 6 February 2014, European Commission; 32, 10 April 2014, Member State Ministry of Defence ; Chapter I). This preparatory activity contributed to "all minds coalescing gradually around the need for a directive," by the time the French Presidency took up the EDEM agenda (Interview 24, 11 March 2014, Member State Permanent Representation). In addition to such "ripe" conditions, the "many consultations" carried out by the Commission also contributed to the high substantive quality of the draft that reached the French Presidency (Interview 37, 20 May 2014, Member State Permanent Representation). Therefore, the advanced standard of the draft was a major factor behind the surprisingly brief negotiating period over the proposed legislation (Interview 37, 20 May 2014, Member State Permanent Representation).

Throughout this preparatory work, as already indicated above, no member state put forth "specific obstacles" other than the issue of offsets, and even this barrier was not insurmountable for the Commission, as will be explained shortly (Interview 32, 10 April 2014, Member State Ministry of Defence). Thus, according to one former senior EDA official, it appeared that the Commission "simply continued working because it did not face barriers and suddenly the member states found the *Directive Proposal* on their desks which they had to approve" (Interview 35, 25 April 2014, EDA and Member State). Another EDA veteran characterised member states' reaction to Commission activity as "let them come, we can fall back on our vast woods and country, like the Russians; we can suck them in and spit them out until they leave" (Interview 4, 23 July 2013, EDA). This somewhat unorthodox reading was corroborated by a retired national MoD official, who had occupied a highly senior

post, when he expressed “confidence” that the Commission could have its “intellectual victory” for the time being, but it “would have plenty to get on with—such as pounding the member states over commodities, transport, boots, vests [that is, the defence equipment that would fall under the provisions of the Directive]—before it gets to the sensitive and complex stuff that really matters” (Interview 7, 9 August 2013, Member State Ministry of Defence ).

Unsurprisingly, the perspective of the Commission was rather different. Specifically, the dynamic of “if you cannot stop them, join them!” has taken hold among member states and industry in the course of the negotiations, who had eventually conceded that the Commission “was not the ultimate evil” (Interview 16, 6 February 2014, European Commission). The “intellectual leadership” it believed it exercised was amplified by the nature of its interlocutors. As highlighted above, many of the Commission’s “stakeholders” from the member states were officials from ministries of finance, economy, or industry. This composition was replicated within the *Directive Proposal* negotiating delegations of France, Germany, Italy, Sweden and Spain (Interview 32, 10 April 2014, Member State Ministry of Defence). Their “liberal,” “transborder” ethos privileging free markets, as well as their penchant for “hard versus soft law” set the negotiating tone for a long time, since Ministry of Defence representatives, who were also included, did not become fully involved or assume leading roles until a late stage in the process (Interview 32, 10 April 2014, Member State Ministry of Defence; Interview 35, 25 April 2014, EDA and Member State; Interview 34, 16 April 2014, EDA and Member State; Interview 19, 26 February 2014, EDA and Member State). All these conditions contributed to the “strong resolve” and “political energy,” which the Commission deployed towards ensuring that the member states “found the consensus necessary to issue the Directive” (Interview 37, 20 May 2014, Member State Permanent Representation; Palloni and Lizza 2012: 2975). As during the agenda shaping stage, this endeavour entailed securing agreement, while preserving an advantageous balance between compromise and insistence on terms that would lead to an actual change in national behaviour.

### *Enjoying the Support of the European Parliament*

Considering the co-decision procedure guiding the *Directive Proposal* negotiations, it is during this time that the role of the European Parliament became most visible, requiring concerted analytical attention as well. As indicated throughout this chapter, the Parliament, had consistently advocated greater defence market integration in Europe for more than two decades. Although both bodies may be characterised as inherent proponents of “more Europe,” the Parliament and the Commission do not always pursue complimentary, or similar, objectives through EU legislation. Yet, even though this is not the norm within the legislative process, the Commission and the Parliament had proven strong allies as far as EDEM and the Defence Procurement Directive itself were concerned. The Parliament’s role in furthering and shaping the EDEM agenda has been highlighted throughout this chapter. This dynamic also characterised the decision-making period following the release of the *Directive Proposal* in mid-December of 2007. Thus, the interaction between the Commission, or more specifically DG MARKT, and the Internal Market and Consumer Protection (IMCO) Committee of the Parliament under whose remit the proposed legislation fell, was marked by a “supportive climate,” “fruitful cooperation,” and a “constructive relationship” (Interview 40, 28 May 2014, European Parliament; Interview 17, 10 February 2014, European Commission; Interview 24, 11 March 2014, Member State Permanent Representation). IMCO continued to advance the goal of communitarising defence procurement—or rather as “much” of it as was feasible—throughout 2008. In particular, under the skilled rapporteurship of its Chair Alexander Graf Lambsdorff, the Committee set about introducing more than 500 amendments while aiming to “close as many loopholes which the member states could exploit as possible” (Interview 40, 28 May 2014, European Parliament ). In addition, obtaining the high-profile *Defence Package* constituted a personal career ambition for Lambsdorff, who believed himself to be opportunely placed for dealing with this brief as a result of also serving on the Foreign Affairs Committee and supporting the overall aims of the Commission (Interview 40, 28 May 2014, European Parliament).

In order to secure parliamentary majority in a legislative body that was as a whole ideologically wary of “facilitating arms sales,” Lambsdorff presented the Directive as a means of benefiting tax payers and enhancing transparency (Interview 40, 28 May 2014, European Parliament). During debates and in the “many, many” press releases



issued by the MEP's office during this time, these aspects were repeatedly emphasised, while the "defence" aspects were played down (Interview 40, 28 May 2014, European Parliament). This was a deliberate strategy, which may be traced back to the Kangaroo Group discussions described above, in order to avoid "giving the impression" to Parliament that "this was about the militarisation of the European Union" and making "life easier for arms manufacturers" (Interview 40, 28 May 2014, European Parliament). Thus, one of IMCO's early working documents on the proposed Directive described the aim of the legislation as achieving "greater cost efficiency, thereby benefiting both national budgets and the arms industry" (European Parliament, 2008: 2). Comparatively, the statement that "providing the armed forces with the best possible equipment" is "just as important," appeared to be more of an obligatory afterthought (European Parliament, 2008b:2). In contrast, in its opinion to IMCO, the EP's Sub-Committee on Security and Defence (SEDE) welcomed the initiative of the Commission to bring about a transparent and competitive EDEM, listing its benefits to Europe's defence industry immediately after heralding its contribution to CSDP (European Parliament, 2008c: 3). It is a testament to IMCO's framing efforts and Lambsdorff's skill and determination as Rapporteur that the Defence Procurement Directive was adopted at the first reading with a 597 to 69 majority and 33 abstentions.

### *Compromising, Standing Firm, and Avoiding Deal-Breakers*

As already discussed above, a measure of skilful policy entrepreneurship and caretaking is the ability to strike the optimum balance between compromises offered to veto-players in order to secure their agreement, and safeguarding the interests and policy objectives of the entrepreneur itself. The Commission's efforts to achieve this equilibrium continued throughout the decision-making stage of the policy process, and, as will be explained shortly, were in fact crucial to its conclusion. Firstly, although it was a contentious proposition for the Commission to adopt vis-à-vis several member states, in its final form the Directive was extended to cover sensitive non-military security procurement as well. This category included contracts related to border protection, police activities and crisis management operations (*Europolitics*, 2009). Indeed, the UK and Germany were amongst the staunchest opponents of

extending the Directive's provisions to the security sector, and had lobbied against it (*European Report*, 2008). To counteract this position, the Commission had reached out to member states with paramilitary forces, namely, *gendarmeries*, *carabinieri*, and *Guardia Civil*, in order to secure their support for the security clause (House of Lords 2008: 9). Yet, although the QMV procedures should theoretically have ensured that this minority with the UK at the helm would not be able to attain its aim, the fundamental British concern in this matter—that the intelligence sector be shielded from the Directive's provisions—was accommodated in the end with the help of an exemption (*ibid*).

In order to address the contentious issue of offsets, the course of action upon which the Commission settled was to avoid their mention in the Directive text altogether. Even as 2008 was drawing to a close, and with it, the debates in Council and Parliament over the proposed Defence Procurement Directive, Enterprise and Industry Commissioner Guenter Verheugen lamented to the press that although he found offset arrangements “undesirable” there was “no legal solution” to their continued use (*Europolitics*, 2008d). According to the curious justification provided by the Commission, prohibiting offsets would mean that they had been accepted in the first place, which, given their inherently discriminatory nature from a trade perspective, was not the case. For this reason, neither could offsets be legitimised, as they contravened internal market rules. In reality, however, as the Commission itself has acknowledged, the true dilemma lay in the very likely opposition from a number of member states to stringent restrictions by the Commission, spelling “the end of the [Directive] proposal itself” (European Commission, 2007b: 48; Georgopolous, 2008b: 2). Therefore, in the words of the Dutch Commissioner of Military Production Rini Goos as reported in the trade publication *Countertrade and Offset*, “no way [did] the European Commission dare to tackle the issue of offsets in a directive or in other legislation” (Shanson, 2010: 2).

In order to resolve this conundrum, the Defence Procurement Directive instead defined subcontracting rules, focusing on transparency requirements. In particular, bidding companies were required to indicate if part of the work was to be subcontracted, while national contracting authorities could oblige contract holders to subcontract up to 30% of the main contract. These provisions were intended to make the recourse to offsets unnecessary by providing a legally-acceptable means of

channelling defence business opportunities to local industry, provided, of course, that this was done on a competitive basis. Thus, the purchasing government could not demand that the selection of subcontractor be based on national affiliation and could only require subcontracts which are directly relevant to the main contract. Consequently, these stipulations differed from offsets in three crucial ways – firstly, the purpose of offsetting is to steer defence business to the purchasing government’s domestic industry, meaning that the “national element” is key. Second, a large number of offset requirements are indirect, meaning that they do not pertain to the main defence contract. Finally, offset arrangements usually far exceed the 30 per cent value level of the main contract stipulated by the Directive. Therefore, replacing the entrenched practice of offsets with its sub-contracting provisions amounted to restricting them in potentially fundamental ways.

Consequently, following the approval of the Directive, these sub-contracting provisions have come under frequent criticism by industry and member state representatives (*Jane’s Defence Weekly* 2011a; 2011b; 2011c). The dissatisfaction appears to have stemmed from the Commission’s publication of the *Guidance Note on Offsets* in October 2010, that is, nearly two years after the Directive had been approved by the Council. The *Note* clearly states that “as restrictive measures infringing primary law, offset requirements can only be justified on the basis of one of the Treaty-based derogations, in particular Article 346 TFEU” (European Commission, 2010: 1). The document, which although not legally binding, is likely to be considered by the ECJ when deciding upon any case brought against member states under the Defence Procurement Directive, further adds that such derogations cannot be justified on the basis of “economic considerations” (European Commission, 2010: 7). This amounts to an effective prohibition of indirect civilian offsets at least, and just to dispel any doubts the Commission further declares that, unless justifiably covered by Article 346, member states’ defence contracting authorities may not request any type of offset whatsoever.

The protestations of industry to the publication of the *Guidance Note* have already been documented in Chapter IV, but this indignant reaction followed from the member states, as well. For instance, Dusan Svarc, Czech Republic’s Permanent Representative to the EU and Defence Advisor, recalled that during working-level discussions of the Directive between the national delegations and the Commission, he

witnessed not only “strong interventions from several delegates” but also opposition to the Commission’s proposals from “the majority” and silence “from many” representatives (Shanson, 2011:1-2). Thus, according to Svarc, the Commission’s views on offsets were met with “negativity” from the member states, with only a “couple of supporters” (ibid). A similar response followed from EDA officials, who, reportedly taken aback by the Commission’s tough stance, requested that the Commission permit the Agency to “deal with offsets” itself (Shanson, 2011:2).

Nevertheless, the Commission had—once more—also proven willing to compromise on specific matters of political sensitivity to the member states, and, indeed, had quickly understood what these matters are. Specifically, it has conceded to the demands of the majority of member states in basing the Directive’s scope on the detailed list of items constituting “military equipment” produced by the Council in 1958, rather than providing a general definition which would have made the Directive’s scope more flexible (*Agence Europe*, 2008b). Moreover the Commission had yielded ground to the UK’s demand for stringent, explicit security of information provisions, rather than just what the British delegation perceived to be vague and general references originally proposed (House of Lords, 2008:9). In addition, the UK was ultimately successful in securing a more restricted role for ECJ adjudication on what does and does not constitute member states’ legitimate security of information concerns than the Commission had initially advanced (ibid). The Commission also stepped away from its insistence on a threshold contract value of 137 000 euros for works and services, in favour of the 412 000 euros figure proposed by the French Council Presidency (*Europolitics*, 2008c; 2009). In fact, reflecting on the substantive result of the negotiations, one Commission official acknowledged that it perhaps had “given in too early” by “settling for exclusions that were too generic,” with the result that many “questions remained open and unresolved – a big oversight” (Interview 16, 6 February 2014, European Commission).

## **Conclusion**

This chapter has explored the role of the European Commission in bringing about the approval of the Defence Procurement Directive by both strategically and

opportunistically deploying policy entrepreneurship techniques. Thus, its actions in this regard have been characterised as a “long game,” beginning in the mid-1990s with its two inconsequential communications on defence industrial matters, re-launching its initiatives in the early 2000s, and ultimately succeeding in introducing legislation in 2009. However, to argue that this course constituted one clever, sustained strategy would be to read into this process a degree of continuity and foresight that was not necessarily present, or, indeed, realistic, considering the degree of complexity and contingency inherent in the EU policymaking process. Therefore, the picture of the Commission’s policy entrepreneurship that has emerged from the examination undertaken here features a significant degree of opportunism and circumstantiality. In particular, a small, but discerning and determined group of Commission individuals recognised a window of opportunity and subsequently took advantage of it to “re-launch” the EDEM programme in the early 2000s. In other words, the dynamics generated by the European Convention, a widespread awareness of downward pressures on member states’ defence budgets and noxious effects of defence market fragmentation on industrial competitiveness, as well as a general enthusiasm regarding the EU’s ability to “act” on the international arena coupled with the rapid development of CSDP—even if in mostly institutional terms—contributed to a sense that the EDEM “idea was having its time” (Ackrill and Kay, 2011).

Such cognisance contributed to the European Commission’s ability to initiate an early and intensive consultation process with stakeholders from defence industry and member states, helping it, in turn, to begin building a coalition of supporters and justifying more decisive policy action in the future. As such, both procedurally and substantively, the Commission attempted to minimise the opportunity it afforded the member states to say “no” to its rationale for extending internal market principles to defence procurement. The Commission also proved skilled at framing its policy initiatives as remedies for internal market problems stemming from defence market inefficiencies and budgetary constraints, arguing that, given its competencies and level of experience with “market issues,” the community level was the most suitable and best placed framework for addressing such pressing EU-wide concerns. On a more practical level, its framing efforts drew in “consultation partners” from member states’ ministries of economy, finance or industry, who, as opposed to “sovereignty-conscious” ministries of defence, were inherently sympathetic to arguments revolving

around liberal markets, greater competition, and value for money. Other major policy entrepreneurship techniques which may be discerned in the Commission's behaviour during the agenda-shaping stage include attempts to garner support from defence industrial actors, while downplaying the likely impact of the Defence Procurement Directive—and the extent of community influence in the EDEM that the legislative instrument would underpin—in interactions with member states' governments. These tactics contributed to the “false sense of security” and “complacency” on the part of national administrations widely regarded by policy actors as crucial in making the Commission's proposals so difficult to “kill” or reverse prior to their referral to Council for decision-making.

Of course, not even all the determination and entrepreneurial skill in the world could guarantee member states' approval of the Defence Procurement Directive, and the Commission was thus compelled to compromise on several significant issues of substance and scope—effectively affording the member states a number of considerable loopholes—in order to make its proposals more palatable to them. The thorny issue of offsets, moreover, was essentially avoided altogether until after the decision-making stage. In addition, it may initially have appeared that the European Commission resolutely seized the policy initiative away from the EDA, side-lining its alternative, intergovernmental approach to defence market integration through the voluntary Code of Conduct on Defence Procurement. However, this characterisation represents only part of the story. As will be explored in the next chapter, the preponderance of supranational EU-level regulation was to a large extent enabled by the inherent fragility and contingency of member states' commitment to the EDA in general, and the Code of Conduct in particular. Moreover, the Commission's initiatives were in no small part aided by a widespread and keen awareness of defence budgetary pressures, worries regarding the widening transatlantic “competitiveness gap,” a shared understanding of the unsustainability of the status quo, and a sympathetic and supportive disposition of the Parliament. In fact, interview material has underlined the importance of policy actors' acknowledgement that “something had to be done” in contributing to the survival of the Commission's legislative agenda.

Although the Commission was not formally included in the institutional decision-making process guiding deliberations on the Defence Procurement Directive, it was a

de-facto party to the negotiations and continued to exercise influence at this stage, as well. Firstly, framing the EDEM as an “internal market issue” eventually activated the “community-friendly” Pillar One decision-making mechanism via the co-decision procedure culminating in qualified majority voting in Council. In addition, interview material conducted in the course of researching this chapter has indicated that Commission officials consciously submitted the *Proposal for a Defence Procurement Directive* in order for the intensive negotiating phase to coincide with the French Council Presidency of 2008. The Commission’s belief that this outcome would be conducive to “getting things done” stemmed, as will be explained in the next chapter, from the superior resources and extensive EU policymaking experience of the French Presidency, the “untested” Czech term that would follow it, and, most importantly, its support for a legislative instrument that had already been conveyed to the Commission. Although the French Presidency steered the proposed Directive through the crucial decision-making phase, policy entrepreneurship exercised by the Commission contributed to a legislative proposal that was difficult to oppose, not least because member states’ concerns appeared to have been taken into account. Thus, in the words of one senior Commission official, these efforts amounted to “preparing the ground the entire time; ...putting water into the soil bit by bit, then taking member states by the hand and helping them slide” into agreement (Interview 17, 10 February 2014, European Commission).

# CHAPTER V: THE COMMON SECURITY AND DEFENCE POLICY AS AN IMPETUS FOR A EUROPEAN DEFENCE EQUIPMENT MARKET?

## Introduction

As explained in Chapter II, the academic literature and primary documentation feature numerous references to the emergence of an EU security and defence policy as well as the need to equip “Europe’s armed forces” adequately and ensure the continued supply of modern military capabilities as key factors in the materialisation of the European Defence Equipment Market, or (EDEM) (Struys, 2004: 557; Wivel, 2005; Biscop, Giegerich, Howorth, 2009; Britz, 2010). The European Commission and, as will be demonstrated below, the EDA, have consistently presented defence industrial competitiveness—reliant on streamlined procurement processes—as a central component of EU’s security in general, and its defence dimension in particular. (Chapter IV). Moreover, Moerth (2003) has extensively detailed the existence of the “defence frame” for EU armaments cooperation, which revolved around an integrated defence procurement regime as an enabler of the member states’ individual defence capabilities as well as the EU’s nascent ability to project military force. Finally, according to Meyer and Strickman (2011) the development of the EU’s defence and security dimension could have served as the driver of defence procurement institutionalisation, because it was presented as a tool for enacting the necessary measures to reduce defence market ineffectiveness and inefficiency in the face of increasing pressure on defence budgets (Meyer and Strickman, 2011: 75-76). Of course, the states that found these issues to be most urgent, and have then taken the opportunity presented by CSDP to shape solutions according to their own priorities, are the largest defence spenders.

However, as Chapter II had also argued, such statements offered no clear causal



pathways between the defence and security policy field and institutionalisation of the EDEM as embodied in the Commission's Defence Procurement Directive and the Code of Conduct on Defence Procurement established by the EDA, and as such did not advance the central concern of this thesis (Chapter II). Thus, the prevalence of such claims as well as the theoretical and logical threads connecting defence procurement institutionalisation and the EU's development as a military actor merit a serious pursuit of this line of inquiry. This chapter will therefore endeavour to achieve just that, through the exploration of the third and final hypothesis advanced in this thesis, which posits that:

*H3: The Development of the EU security and defence dimension has generated an interest in a common defence procurement framework on the part of the dominant arms producing member states, which then ensured the cooperation of other governments.*

Therefore, this hypothesis does not envision an autonomous, primary role for supranational actors or transnational industrial interests. Rather, stemming from the intergovernmental structure of the EU's defence and security apparatus, it is expected that member states consent to institutionalisation if and when this suits their objectives. Furthermore, as is apparent from the hypothesis above, the empirical focus of the following discussion is on the three dominant arms-producing member states, namely, the UK, France and, to a lesser extent, Germany. These "Big Three" have historically exerted superior influence in EU's security architecture due to the relatively large size of their militaries, defence budgets, arms production, military capabilities and contributions to EU operations (Chapter II). As such, their operational requirements have shaped defence equipment demand across the EU and their comparatively well-resourced, extensive bureaucratic and civil service structures would be well-positioned to ensure that the terms of any defence procurement policy erected in Europe would be beneficial to them.

Following the policy cycle heuristic, this chapter proceeds by first examining the emergence of defence procurement harmonisation as a military capability enhancement issue. As such, it traces the development of an intergovernmental vision of a European defence equipment market, as a manifestation of armaments, rather

than industrial, policy in the EU. The role of the European Defence Agency (EDA) will also be paid special attention in this discussion. Arising from the EU's development as a defence and security actor and tasked with finding European, rather than national, solutions to military capability shortfalls, it had also come to embody the growing connection between military and commercial aspects of defence procurement. In this context, it brought member states' defence ministers, armaments directors, the Council, Commission, and industry under one institutional roof and focused their minds on defence industrial objectives. It could therefore be advanced that the intergovernmental EDA's policy-making activity has paradoxically made it logical for member states to agree to the binding Defence Procurement Directive by concentrating attention on the issue of defence market fragmentation and drawing them into structured, iterated interaction that was focused on EDEM. This contention is also reinforced by the salience and continuity of defence procurement harmonisation and standardisation within the intergovernmental armaments cooperation organisations reviewed in Chapter I. These arrangements reflected an approach to the issue of a European defence market from the angle of enhancing military capabilities, and since the EDA is, in many ways, their "descendant," it is important to explore the development of the Code of Conduct and the approval of the Defence Procurement Directive through the lens of defence capability improvement. Finally, since member states constitute the primary policy actors in the intergovernmental armaments arena, their defence and security interests are accorded particular consideration in the discussion that follows, especially when it comes to the impact of the French Council Presidency of 2008.

## **Agenda Setting - Defence Economics and Capabilities**

### *Post-Cold War Transformation— Rationale for "Managing" Defence Together*

The emergence of defence industrial rationalisation and efficient acquisition processes onto the policy-making agenda in the EU may be traced back to member states' expansive restructuring and modernisation programmes of their militaries, prodded by the need to align them to the demands of the post-Cold War security context. These increasingly centred upon expeditionary warfare, necessitating smaller, specialised,

rapidly deployable armed forces. The restructuring process, as is well documented and frequently emphasised, has varied greatly when it comes to its level of completion, success or uniformity across the European Union (Giegerich and Nicoll, 2008: 100-101). It is widely known that the Central and Eastern European member states, still stocked with Soviet-era defence equipment, faced capability shortfalls that were considerably more severe than those of the older NATO members (Behr and Siwiecki, 2004).

However, it is important to appreciate that “old” defence “heavyweights” such as Germany and France entered the post-bipolar international era with notable obstructions within military reform programmes of their own, which have proven quite persistent. For instance, Germany’s *White Paper on Security Policy and the Future of the Bundeswehr* released in 2006 testifies to consistent defence spending cutbacks in the country “since 1991, due to the changes in the security environment in Europe and German reunification,” such that the contemporary defence budget “is some 3 billion euros below the ceiling of 1991” (Federal Ministry of Defence, 2006: 62). Although the document extols the benefits of the funds thus “released,” it acknowledges that the “transformation of the *Bundeswehr* into an expeditionary force” is still an on-going process in need of “considerable adaptation and modernisation effort” (Federal Ministry of Defence, 2006: 62.).

It is not, however, the purpose of this chapter to analyse the post-Cold War reforms of the EU member states’ security and defence establishments. Rather, the causally important aspect of the military transition programmes for the questions undertaken here is not as much their substance as the need to manage them efficiently. This is because one of the most noteworthy trends arising from the 1990s was the realisation, or, as former Director of the French armaments directorate (the DGA) phrased it, the “conviction,” felt by national armaments directors (NADs) across the EU that due to the “budget pressures...nobody could have what they used to have” in terms of armaments and equipment (Interview 12, 22 January 2014, Member State Ministry of Defence). What was needed to mediate the effects of these pressures on European military capabilities was “truly integrated procurement,” with “agreed, shared concepts and real operations,” (Interview 12, 22 January 2014, Member State Ministry of Defence).

### *CSDP – the Capabilities Turn*

The 1998 Franco-British St Malo Declaration, which enshrined the establishment of the Common Security and Defence Policy (CSDP), envisaged “a strong and competitive European defence industry and technology” to support the “strengthened armed forces” needed by Europe (ISS-EU, 2000). This aspiration was also an important impetus behind the British-backed initiative to convene in November 2000 the first of several Capabilities Commitment Conferences which gave rise to the Helsinki Headline Goal (HHG) and the European Capabilities Action Plan (ECAP). These initiatives represent the first steps in the process of formulating collective operational demands and capability targets, respectively, which an EU defence and security policy would require to become a functional reality (Oikonomou, 2012: 178; Merand, 2012: 148; Quille, 2006: 119). Furthermore, as capability gaps, such as strategic airlift, sea transport, and electronic warfare were identified and schemes to fill them outlined, defence experts and defence staffs from across the EU were brought into the architecture and development of the CSDP. For instance, as will be explained below, the EU Military Staff (EUMS), the military “heart” of the CSDP responsible for “coordinating the military instrument” by generating capabilities and launching missions, was “deeply involved” in procurement activities (Interview 22, 10 March 2014, EUMS). Prior to transferring a part of this responsibility to the EDA, the EUMS defined armaments requirements, assembled the so-called capabilities catalogue, and then “edited it for correspondence between member states’ contributions” and operational needs (Interview 22, 10 March 2014, EUMS).

Throughout this process, the focus of the CSDP began to revolve more and more around capabilities’ improvement. This objective entailed the development of a technical, tangible dimension within this largely political and institutional structure (Merand, 2012: 148; Quinlan, 2001: 37; Clarke and Cornish 2002; Sakellariou and Keating, 2003: 88). Once the successive capability generation initiatives were launched, the link between military capabilities and armaments policy became both more pronounced and more frequently evoked by policy analysts as well as policymakers. In particular, the think tank circuit regularly argued that economic realities necessitated armament cooperation if member states’ armed forces were to be adequately equipped and a competitive European Defence Technological and

Industrial Base (EDTIB) was to be maintained (Schmitt, 2003a; 2003b; 2004; Keohane, 2002; *RUSI Defence Systems*, 2004). Similar reasoning was also emanating from national ministries of defence and the CSDP itself. Marc Otte, then at the CSDP's Political Planning and Rapid Alert Unit had even speculated that it would be only a matter of time before Community rules would penetrate the defence sector and Article 346 would be reinterpreted in light of a "Community [defence] market" (*European Report*, 2000). France's then Director General for Armaments Jean-Yves Helmer had also echoed this projection nearly a decade before it came to pass, cautioning the delegates to the seventh Parliamentary "Peace and Defence" conference in Paris that "the defence sector will not escape from the application of community rules" (*European Report*, 2000). The merits of a single, efficient armaments industry and a single, competitive defence market in support of European military capabilities were also at the heart of the presentation delivered by the former defence minister of Spain Frederico Trillo to the Foreign Affairs Committee of the European Parliament in early 2002 (Kirk, 2002).

As this overview demonstrates, characterisations of integrated EU defence procurement as an enhancement of and a condition for CSDP effectiveness, were beginning to emanate from the "military circles" of the EU. In addition, the economic and industrial dimension of defence was becoming an integral pillar of CSDP alongside "big" strategic aspects of security and crisis management. With the creation of the EDA, as will be demonstrated below, this justification became increasingly centred on strengthening the CSDP capability-generation aspect, with a defence market at its core. According to this logic, if the CSDP were to address the security threats of the day, the capability gaps obstructing it must be filled. In order to close them, a European Defence Technological and Industrial Base was required, including an efficient use of resources through harmonised equipment requirements, procurement, and research and technology (Oikonomou, 2012: 179). The emphasis on capability improvement within CSDP that was emerging during the early 2000s shared the policymaking stage with a European defence industry that had become "increasingly vocal" (Merand, 2012:149; Chapter III) Thus, "industrial concerns" functioned more and more as an "underlying factor, enabling" armaments cooperation initiatives (Interview 34, 16 April 2014, EDA and Member State). As has been demonstrated, in the telling of the specialised media and within policy pieces emanating from the think

tank community, as well, open defence markets in the EU became increasingly associated with Europe's military needs. In this association, the latter was put forward as both a justification and an explanation for the former. Consequently, these developments—rationale for common arrangements to manage member states' military transformation processes, CSDP becoming increasingly focused on capabilities improvement, and defence market issues beginning to be seen as integral to these capabilities—combined to bring defence industrial competitiveness onto the policy agenda as a “salient issue” (Merand, 2012: 149). In this manner, then, the evolution of the CSDP began to “align the discussions” that were taking place, with the “UK, in particular, focused on capabilities” while viewing the EDEM agenda through the lens of capability improvement (Interview 16, 6 February 2014, European Commission).

### *The Origins of the European Defence Agency*

As the defence market and industrial issues were becoming incorporated into the EU's emerging defence and security agenda, a strong rationale was also emerging for an organisation to oversee and coordinate armaments cooperation between EU member states. And if this objective was to be achieved, it was becoming increasingly clear to policymakers engaged in armaments decision-making at the beginning of the new millennium that an EU-wide context and an EU-wide, dedicated armaments agency would be required (Behr and Siwiecki, 2004: 48). In fact, already in the 1970s, one could discern calls for the establishment of a European armaments agency, such as the proposals made by Leo Tindemans, then Prime Minister of Belgium, in a 1975 report to the European Council (Tindemans, 1975: 18). However, considering the unequivocal primacy of NATO in the European security and defence architecture throughout the Cold War, what followed Tindemans' recommendations in 1976 was the Independent European Programme Group (IEPG) comprising European members of NATO. The IEPG was intended as a “strictly” European forum, that is, not including the United States, which would coordinate European allies' defence equipment requirements and, beginning in the late 1980s, research and development (R&D) programmes. Functionally, regular meetings of national armaments directors (NADs) would serve as “the principal forum” within which collaborative projects would be identified and

launched (DeVore, 2012: 446). Eventually, IEPG member states' defence ministers also began to meet in this configuration, and the Group's mandate technically expanded to include defence market integration, although this direction did not produce tangible results. However, discussions of what was by then called a European Armaments Agency (EAA) were revived at the end of the Cold War, and an annex to the Maastricht Treaty incorporated member states' declaration of their "aim of creating a European armaments agency," potentially based on the framework of the WEU.<sup>32</sup> This new agency was envisioned as a source of "long-term political guidance" on the full spectrum of defence matters, and regarded as an "adjunct to the development of the CFSP" as well as a "contribution to improving Europe's military independence" (Hayward, 1997: 30). The aim of bringing this about was subsequently "entrusted" to the Western European Armaments Group (WEAG) established in 1993, which, as described in Chapter I, was also tasked with enhancing standardisation of defence equipment, promoting defence industrial cooperation, and taking the first tentative steps towards injecting greater competition into defence procurement (Cornu, 2001: 76; Chapter I).

Thus, an ad hoc working group on the establishment of the EAA was created within the WEAG in 1994 (Cornu, 2001: 76). Other novel features of the WEAG, as far as European armaments organisations were concerned, were its permanent staff comprised of international civil servants, and the linkage which it embodied between armaments cooperation and the wider European integration process (De Vore, 2012: 448). However, the progress made by WEAG towards the establishment of an Armaments Agency remained inconsequential, not least due to the disagreements amongst member states "on the ultimate objective and responsibilities" of this body, with proponents of a "pragmatic, loose arrangement" at odds with those advocating a "more global vision" (Cornu, 2001: 76). Although the NADs across the EU grew dissatisfied with the WEAG's progress after four years of its function, the Group's existence and deficiencies, as well as those of other various armaments and defence industrial cooperation initiatives had nevertheless contributed to a "critical mass" of support amongst the member states for an EU-wide armaments agency (Interview 34, 16 April 2014, EDA and Member State; Interview 41, 11 June 2014, Member State Ministry of Defence). Thus, following periodic policy suggestions advocating a formal EU

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<sup>32</sup> Declaration on the WEU, Section C, Treaty on European Union (1992)

armaments organisation, and the “laborious” discussions of WEAG’s *Master Plan for a European Armaments Agency* beginning in 1998, the EDA as it exists today emerged as a tangible possibility at the December 2001 Laeken European Council the Convention on the Future of Europe (Cornu, 2001: 77). As mentioned in Chapter IV, the European Convention was charged with producing recommendations and options for wide-ranging institutional reform of the EU, but in practice focused its efforts on producing a draft constitutional text based on these proposals (Chapter IV). Its day to day drafting work was carried out by 11 working groups in fields including economic governance, external action, and simplification of institutional procedures and instruments. A Working Group on Defence (WG Defence) was also convened, and its meetings quickly came to revolve around the EU’s “capabilities-expectations gap” and the imperative of EU defence convergence. The French representative first flouted the idea of a European armaments agency during these discussions, and the French suggestion won the support of the majority of delegations, with the proviso that its projects would be open to all, rather than just the large armaments producing member states (Knowles and Thomson-Pottebohm, 2004: 596).

It was not long before similar proposals began to emanate from high profile bilateral meetings, as well. In early 2003, Italy had also joined the call for what was then being called a European defence capabilities and acquisition agency, following a meeting with the UK’s then Prime Minister Tony Blair (*Defence Daily International*, 2003b). The British-Italian summit closely followed an earlier Franco-British call for such an agency issued by Blair and the then French president Jacques Chirac during the Le Touquet summit in February 2003. In a joint press conference, the British prime minister hailed the meeting of minds with President Chirac on the “new agency” as a measure to “match the aspirations...in European defence with capability and efficient procurement (*Defence Daily International*, 2003a). These pronouncements reflected the EU policymakers’ view of the proposed armaments agency as a means of improving the efficiency and cost-effectiveness of “their” military equipment, thereby also “promoting cooperation” (Blair and Chirac, 2003; *Defence Daily International*, 2003b). Similarly, the UK’s 2005 *Defence Industrial Strategy* cited the “desire to make European military contributions more effective” as a driving force behind the creation of the EDA, alongside “economic realities associated with national frameworks sustaining largely separate markets” (Ministry of Defence, 2005:26).



The Convention recommendations for the establishment of the armaments agency were intended as part of the EU constitutional Treaty then planned for ratification during 2007-2008. However, this timeline was greatly shortened—or as one assessment phrased it, “the schedule became confused”—during the June 2003 Thessaloniki European Council, when the proposed agency was divorced from the Treaty negotiations and the EU Council was tasked with “undertaking the necessary actions towards creating, in the course of 2004, an intergovernmental agency in the field of defence capabilities development, research, acquisition and armaments” (Chapter II; Council of the European Union, 2003b:19; Schmitt, 2004). Moreover, with what has been described as “unprecedented speed,” a so-called Agency Establishment Team under then High Representative Javier Solana was established by the Council in November 2003, and presented its proposals for the structure, funding, and mission of the European Defence Agency (EDA), as the new body was to be called, in April 2004 (Adams and Ben-Ari, 2006: 110-111). As also pointed out in Chapter II, this expedited timeline partly stemmed from the member states’ desire to maintain control of the defence procurement policy sphere into which the Commission was beginning to make inroads with its 2003 Communication. The Team’s recommendations for the structure and mandate of the agency were endorsed in a Council Joint Action in July of that year (Council of the European Union, 2004a). The (pre-Lisbon) Secretary General/High Representative for the Common Foreign and Security Policy—then Javier Solana—was appointed as the Head of the EDA and as such tasked with overseeing its overall functioning and organisation. The decision-making apparatus of the Agency is its Steering Board, which is comprised of participating member states’ representatives at defence ministers’, NADs’, or defence directors’ level. A representative of the European Commission is also included in the Steering Board meetings in an observer capacity. Officially, the Steering Board takes decisions via qualified majority voting, but in practice consensus is sought. The EDA’s staff is overseen by its Chief Executive, who is the Agency’s legal representative and bears ultimate responsibility for its day to day functioning.

The establishment of the EDA in the summer of 2004—despite its “modest” starting budget of 25 million euros and permanent staff numbering 78—was accompanied by a considerable amount of fanfare within the EU defence policy circles. In particular, the Agency was heralded as “a critical breakthrough, empowering the European

Union to become a player in armaments policy,” while the launch of its Code of Conduct was greeted as its “most radical move” and a “landmark announcement” (Adams and Ben-Ari, 2006: 113; Tigner, 2007b; *European Report*, 2005c). Indeed, the EDA exceeds the mandate of the long-discussed European Armaments Agency “model,” because it is tasked with a significantly broader field of responsibility, spanning from crisis management to research and technology. Despite this breadth and bringing armaments cooperation amongst member states into the structure of the EU for the first time, the reach of the EDA is not as long as the EAA’s would have been, “falling short” of a supervisory High Authority of a European Defence Market originally envisioned (Georgopolous, 2005).

## **Agenda Shaping**

### *Contention at the Core of the EDA*

What is more, despite the apparent meeting of minds that characterised the origins of the EDA, considerable divergence emerged amongst member states as to the role, structure, and remit of the Agency soon after its establishment. Indeed, a lack of agreement amongst the UK, France and Germany on these issues threatened at one point to derail the entire timeline for the EDA’s establishment (Cronin, 2004). Furthermore, notwithstanding the smooth and swift process of the Agency’s founding, it was not long before the differences on key issues like “procurement philosophy or defence-industrial strategy” also made themselves felt (Schmitt, 2004). Most visibly, mirroring the divergences amongst member states on Armaments Agency discussions within the WEAG forum, a disagreement emerged between the UK and France as to the extent of the Agency’s institutional powers. France had much grander plans for the autonomy of the EDA, and desired a body with the ability to influence member states’ behaviour (Interview 26, 3 April 2014, Industry). The UK, supported by the small member states, envisioned an armaments “talking shop” which could be useful in instances when the United States needed to be kept out (Interview 26, 3 April 2014, Industry). Although it viewed it as primarily a coordinating forum for member states’ initiatives, it was actually the UK delegation that had insisted on a QMV system for EDA decision-making, and yet lobbied intensely to keep national vetoes in foreign

policy aspects of the European Constitution discussions taking place at the time (Cronin, 2004). Although it seemed contradictory, this position was nevertheless a reflection of the UK's interest "in a common defence market, in an armaments agency, in improving capabilities," as the Convention WG Defence Chair Michel Barnier characterised it, but coupled with an opposition to any political "integrationist" moves, which could, even symbolically, have dislodged NATO from its position at the pinnacle of European security architecture (Spinant, 2003b).<sup>33</sup>

Therefore, in the defence market sphere, France seemed to be advocating the integration of procurement processes to a degree of centralisation unacceptable to Britain (*Agence France Presse*, 2005a). Thus, while France sustained its push for a strengthened EDA with considerable resources and a wide reach, the UK vetoed the proposed three-year budget for the Agency in 2006 and then blocked plans funding increases supported by France on several occasions (Beatty, 2006; Taylor, July 2008e). Britain would also decline to participate in several high profile programmes of the EDA, such as the force protection research project. This reticence reportedly stemmed from concerns over the Agency's increasing autonomy vis-à-vis member states, prompting the French then Minister of Defence Michele Alliot-Marie to describe the UK's non-cooperative position as "a bit of a joke" (Beatty, 2006). As it were, Germany and Italy also held "minimalist" views of the EDA, amounting to a simple coordination structure which did not require any great financial resources. Germany was furthermore reluctant to empower the new organisation with the authority to inspect and evaluate member states' capability development progress for fear it would publicise its own shortfalls in this area (Kowles and Thomson-Pottebohm, 2004: 597). In fact, Germany had originally attempted to have the EDA steering board almost entirely subjugated to the Council (Cronin, 2004).

True, the EDA has been widely regarded as "one of the most consensual initiatives" arising out of the European Convention (Merand, 2012: 149). Its history has also been characterised as a "tough and often controversial but finally successful process" (Clermont, 2013). However, the establishment of the EDA in spite of the contention and divergence between member states did not mean that these fundamental

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<sup>33</sup> For example, one proposal that elicited the UK's ire was the mutual defence clause akin to NATO's Article V, which was being flouted by some member states in early 2003

differences had somehow given way to consensus. Rather, they have been temporarily put aside. The seeds of indifference, more than discord alone, were sown deeply within the EDA, and, as will be demonstrated in this chapter, would have profound implications for the development of the European Defence Equipment Market. With its mandate encompassing the “integration” between operational, acquisition-, and development-related aspects of military capabilities, the EDA came to “sit on the borders of two very well defended territories” of military capability development and defence market policies (Beatty, 2006). Batora characterised the tensions resulting from this incongruity as colliding institutional logics, which reflect “competing visions of appropriate institutional arrangements” characterising the “political order of EU defence” as a whole (Batora, 2009: 1075). The EDA’s “severely limited powers” to change and sanction member states’ behaviour and its “dependence” on their “willingness to support particular initiatives” have been integrated into the structure of the Agency (Batora, 2009: 1084). As a result, the much-heralded, but inherently transient, political will which ostensibly fuelled the speedy and decisive creation of the Agency has appeared less concentrated in reality. The existence of a number of armaments and defence industrial cooperation arrangements, such as the WEAO, OCCAR, and LoI meant that establishing the EDA was akin to reaching for a “low hanging fruit” for the member states. Its Industries and Market (I&M) Directorate in particular has been described by former EDA officials as a “political declaration ‘costing’ almost nothing to establish” and “easy, non-committing prey” (Interview 34, 16 April 2014, EDA and Member State; Interview 19, 26 February 2014, EDA and Member State).

Recounting the establishment of the EDA from this perspective yields several insights into the connection between the emergence of an EU military dimension and development of a defence procurement policy. Firstly, the origins of the Agency lay in an attempt to enhance the ability of EU member states to act collectively in the crisis management arena, which also involved the improvement and coordination of their military capabilities. For the first time, an EU Agency, a Council of the EU Agency to be precise, was responsible for “pooling” the production, development, acquisition and use of member states’ military capabilities into a functioning European whole. There was no escaping the conclusion that the creation of the EDA was a sort of milestone, with the I&M Directorate its “most visible” part (Interview 19, 26 February 2014, EDA and

Member State; Interview 35, 25 April 2014, EDA and Member State). This in turn endowed the CSDP with a capability-generation capacity that would help Europeans react more efficiently to security crises of their choice. Secondly, this consensus was aided by a convenient rhetorical interchangeability between military capabilities as part of the CSDP and the equipment of member states' respective armed forces. Thirdly, and most importantly, the creation of the Agency amounted to a temporary bridging of fundamental divisions at the core of the European defence project, regarded as "an ingredient of political integration in Germany, an element of Europe *puissance* in France, and a curiosity in Britain" (Merand, 2012: 149). As such, it is a reflection of the inherent fragility of any wide-spread meeting of minds when it comes to EU defence issues, and would play a crucial role in the evolution of EDEM institutionalisation explored in this thesis.

#### *EDA in the Lead...or at least not the European Commission*

Even though its foundations were tenuous, the member states appeared to have formulated a collective agenda for EU armaments cooperation through the EDA, which then enabled the Agency to play an important role in shaping it. The conclusion that members viewed the EDA as the forum best suited—and most acceptable—to spearhead defence procurement integration seems to emerge upon examining contemporary debates on defence industrial issues. Firstly, this observation is reinforced by the qualified and rather lukewarm support for the Commission's early hints at a defence procurement directive. Speaking at a conference organised by the Brussels-based think tank Security and Defence Agenda (SDA) in April 2005, the French Armaments Counsellor at NATO, Alain Picq, stated that any binding legislation as part of EDEM could only be a long-term endeavour, and that France favoured first adopting an intergovernmental code of conduct as proposed by the EDA (SDA, 18 April 2005). In fact, the official went so far as to describe the voluntary mechanism as the "right way" to follow the "lines of action in the field of defence procurement" proposed by the European Commission (SDA, 2005; European Commission, 2004). Moreover, he conditioned his government's support for a potential legislative instrument on it being "specifically adapted for the defence market, both in terms of techniques and sovereignty," and without compromising Article 346. In addition, an

expert-practitioner council on defence industrial policy convened by the former defence minister Michele Alliot-Marie explicitly cautioned against “simply opening up the European defence procurement market, especially if this is done merely to satisfy the European Commission’s apparent free-market bias” (Defence Economy Council, 2006: 313). Such a step, the group warned, would jeopardise “the autonomy [of national decision-making in defence purchasing]” (Defence Economy Council, 2006: 313). Instead, the council’s recommendations were to be implemented by “subscribing fully to the [EDA] Code of Conduct and then going beyond it” (Defence Economy Council, 2006: 313-314).

Think tanks and specialist media, as well, have repeatedly contrasted the perceived complexity of a “long term,” “gradual” approach requiring a cumbersome timeline with the more expedient option of the Code of Conduct, which could deliver results “now” and provide a “clear platform for adherence” (Hatton and Wright, 2006). In one of its European Foreign and Security Policy-series research papers entitled “Challenges and Opportunities for the German EU Presidency,” the prominent Berlin-based German Institute for International and Security Affairs, known by its German acronym SWP (*Stiftung Wissenschaft und Politik*), had urged the incoming German Council Presidency of 2007 to steer member states towards “making greater use” of the “procurement and savings potential” offered by the EDA (Mair and Perthes, 2006: 21). In the recommendations section concerning the progress of EU Battle Groups formation, the document held up the EDA’s Code of Conduct as “an important effort to promote common military capabilities in Europe and thereby reach the Headline Goal 2010” (Mair and Perthes, 2006: 21).

The view that the “turf” of defence procurement in an EU context “belonged” to the EDA appears to have been shared by other member states, as well. Thus, the UK’s 2005 *Defence Industrial Strategy* claimed that the EDA’s Code upheld the UK’s historic “policy aims” for competitive defence equipment markets built on self-regulation while ensuring that other member states were just as open (British Ministry of Defence, 2005:29). Therefore, the *Strategy* committed the British government to “work with the EDA” on its defence and security agenda, harmonising the UK’s approach with the Code of Conduct on defence procurement (British Ministry of Defence, 2005: 48). Significantly, although the *Green Paper on the European Defence*

*Market*, which had been published by the Commission shortly before the release of the *Strategy*, was also mentioned, the document merely commended it for “recognising” the efficiencies which may be achieved and instead drew attention to a list of obstacles to integration in a sector where “national interests remain dominant” (British Ministry of Defence, 2005: 28). In the case of Germany’s 2006 *White Paper on Security Policy and the Future of the Bundeswehr*, the initiatives of the European Commission did receive detailed treatment – the *Interpretative Communication on the Application of Article 296*, which the Commission was in the midst of producing at the time, was mentioned alongside the EDA’s Code of Conduct as an “important means for promoting competition for defence procurements” (Federal Ministry of Defence, 2006: 64). The *Green Paper on Defence Procurement* was also described. However, this was immediately followed with the “viewpoint” of the German government that “unfair competition and barriers still existing in the European defence market, such as protectionist export regulations, state subsidies to defence firms, and government ownership of defence industry, should be removed prior to the creation of legally binding instruments” (Federal Ministry of Defence, 2006: 64). Also espousing the view that any Community-led defence market could only be a “long-term, strategic objective” was Christian Schmidt, Germany’s Parliamentary State Secretary to the Minister of Defence. Schmidt expounded on his government’s desire for the “successful operation of the European armed forces” and underlined that this must be bolstered by an integrated defence market and an efficient EDTIB, both led by the EDA and based on its Code of Conduct (SDA, 2006). Finally, the then Assistant Director of the EDA’s Industry and Market Directorate Arturo Alfonso-Mariño presented the Commission’s initiatives as later, supplementary additions to the “coordination of member states” already undertaken by the EDA (Alfonso-Mariño, 2010: 194, 200). He was careful to characterise the EC’s proposals as merely “an example of the way forward in the creation of EDEM” (Alfonso-Mariño, 2010: 201).

*“Intellectual Case” of the EDA*

#### *The Inevitability of Cooperation*

It appears, then, that a consensus existed between the member states regarding the need

to formulate a common EU armaments and defence industrial policy, and that it was to be channelled through the European Defence Agency, while the Commission was to be kept at bay. This placed the EDA, at least temporarily, in a privileged position to begin shaping the European defence equipment market agenda. Indeed, Nick Witney, just after his appointment as the first CEO of the EDA, signalled his intention to do just that. When asked to specify exactly the EDA could “get tough on opening up national defence procurements” at a debate in 2005, Witney described his Agency’s strategy of “winning the intellectual battle” by convincing the member states that creating an integrated defence market was in their own interests (SDA, 18 April 2005). Therefore, having “brought together” the EU’s defence ministers around market issues “for the first time,” the EDA then directed their discussions towards “improving the situation but without [legal] obligation” (Interview 36, 5 May 2014, EDA and Member State). The Code of Conduct was judged to be the “best instrument” for this, and was regarded as the “flagship project” of the EDA’s I&M Directorate (Interview 36, 5 May 2014, EDA and Member State; Interview 35, 25 April 2014, EDA and Member State).

Following swiftly after the Agency’s establishment, its Industry and Market Directorate, with considerable personal commitment of Nick Witney as CEO, set about reconciling member states’ awareness that “something had to be done” to address defence market fragmentation—and could only be done jointly—with their defence establishments’ entrenched resistance to external “authority” and perceived encroachments on sovereignty. Hence, in many ways, the Code represented minimum necessary institutionalisation, and its voluntary nature was frequently emphasised to member states in order to secure their approval (Interview 4, 23 July 2013, EDA; Interview 19, 26 February 2014, EDA and Member State; Interview 36, 5 May 2014, EDA and Member State). EDA officials, for their part, hoped that with time, cooperative mechanisms would “harden,” and the Code’s least common denominator aspect would give way to a more robust tool (Interview 41, 11 June 2014, Member State Ministry of Defence; Interview 3, 15 December, Member State Permanent Representation). Yet, even as preparatory discussions were taking place, it was becoming apparent to some within the Agency that actual implementation would not be easy.

The first stage of this battle could be described as more or less won by the time that



the EDA's Code of Conduct on Defence Procurement entered into force in July 2006. Describing the new agreement as a "quiet revolution" Witney emphasised that a "number of member states" realised that industrial restructuring and implementation of Europe-wide competition was inevitable, either within the Code or without, since "the money is [just] not there in defence budgets" (Taylor, 2006a). The former CEO had also attested to the governments' recognition that streamlined procurement processes, enabling them "to spend money on the right things" was the inevitable path toward the preservation of their "military clout" and competitive defence industry (*Flight International*, 2007b). An additional, if not decisive, impetus for the establishment of the Code of Conduct as far as member states were concerned was its utility as a "demonstration" to the increasingly active Commission of their resolve to inject more competition into EU defence procurement, and thus undermine the rationale for a legislative instrument (Interview 4, 23 July 2013, EDA; van Eekelen, 2004). However, as has been argued throughout this thesis and will be expounded below, "think[ing] that one could stop the Commission with a Code of Conduct" proved highly "mistaken" (Interview 12, 22 January 2014, Member State Ministry of Defence).

The EDA, for its part, continued to advance its argument of the inevitability of cooperation between member states well after the Code of Conduct was launched. In particular, the pressing need for a fundamental change in the "business aspects of defence in Europe" was the overarching message of both the EDA's *Initial Long Term Vision for European Defence Capability* and *Strategy for the European Defence Technological and Industrial Base*. Both of these ambitiously titled documents were regarded as amongst the most prominent of the Agency's outputs as they emanated "directly" from the EDA's Steering Board composed of national defence ministers. Their authors decried the economic unsustainability of the fragmented reality which was leading Europe to a future of dependence on "the US, but also the rising Asian economies" and reiterated the contention that there was no viable alternative to a common defence industrial policy (EDA, 2007: 1; 4-6; EDA, 2006: 31-33).

Furthermore, a widely shared belief was that the EDA's work in the markets field, and its *EDTIB Strategy* in particular, both "drew its inspiration" from the CSDP and embodied the "intrinsic link [between] industry and capabilities," (Interview 35, 25 April 2014, EDA and Member State; Interview 36, 5 May 2014, EDA and Member

State). As such, the *Strategy* also served as an ambitious “political statement,” that specified the necessary conditions for a truly internal market in defence (Interview 35, 25 April 2014, EDA and Member State; Interview 38, 22 May 2014, EDA and Member State; Interview 34, 16 April 2014, EDA and Member State).

### *Linking Defence and Industry: The “Business Aspects” of Defence*

In addition to emphasising the inevitability of cooperation, the “intellectual case” of the EDA was aimed at bridging the divide between economic and military aspects of defence procurement. In fact, the very *raison d’être* of the EDA lay in supplying the “missing link” between “the armaments phase and the capability development phase” of EU defence cooperation (Briani, *et. al.*, 2013: 23). As one experienced EDA official phrased it, “industry and capabilities are inextricably linked,” and the Agency’s purpose lay in solidifying the vision of a “EU defence industrial policy supporting the European Common Defence and Security Policy” (Interview 36, 5 May 2014, EDA and Member State). Thus, shortly after its establishment, the work and development of the EDA began to feature in the *Conclusions* and agenda of the Council dealing with the CSDP, as well as in CSDP newsletters, both alongside and as part of military capabilities discussions.<sup>34</sup>

Nick Witney highlighted the close connection between the two dimensions right at the start of his tenure as CEO, when he insisted that the preservation of Europe’s “effective military clout, and a globally competitive industry” was essential for a “stronger EU” and would as such “contribute to our common security” (Witney, 2007). Moreover, in his keynote speech delivered at the EDA’s February 2006 conference dedicated to EDTIB, Javier Solana, who also served as both EU High Representative for the Common Foreign and Security Policy (CFSP) and Head of the EDA, declared the European Defence Technological and Industrial Base “to be the defence theme for 2007” (Solana, 2006). He characterised a “healthy” defence industry as not only the “very foundation upon which so much of our security and

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<sup>34</sup> See [http://eeas.europa.eu/csdp/publications-and-documents/csdp\\_newsletter/index\\_en.htm](http://eeas.europa.eu/csdp/publications-and-documents/csdp_newsletter/index_en.htm) for a collection of CSDP newsletters 2005-2009

defence efforts is built” but also pronounced it essential to maintaining “operational autonomy” through control of defence systems’ technology (Solana, 2006). And defence industrial survival in the face of such a formidable challenge, according to Solana, “rested on” cross-border competition in an EU-wide defence market (Solana, 2006).

However, it is perhaps the last line of his speech that best illustrates the position advocated by the EDA at this time, namely that the nascent defence market initiatives were not “merely a matter of economics, but ... a matter of the infrastructure of Europe’s essential security” (Solana, 2006). Such tangible support of the first Head of the EDA (and High Representative for Foreign and Security Policy) Javier Solana for its initiatives was central to the viability of the EDA’s efforts. Furthermore, Solana’s “personal commitment” to the work of the Agency, not least manifested in his willingness to “step in” and “intervene” on behalf of the EDA in the midst of what was coming to resemble an institutional “turf war” with the Commission, was key to the Agency’s early rigour and success (Interview 38, 22 May 2014, EDA and Member State; Chapter IV). This insight lends credence to the work of Kurowska and others who have examined the so-called “Solana milieu,” introduced in Chapter II, that comprises the former High Representative and the “divisions and working groups surrounding him in the Council Secretariat.” This “environment” has shaped the CSDP policy outcomes during its first decade by “making specific conceptions of European security commonsensical” as the “personification of EU foreign policy” operating through “high-profile political action” (Hoffman, 2012: 51; Kurowska and Kratchowil, 2012: 100).

It appears that the EDA was not speaking in a vacuum, as a variety of military actors and defence and security forums began to be concerned with industrial matters—and more precisely, the need to resolve defence market problems in order to boost capabilities— further augmenting the link between the two dimensions of the defence procurement policy field. For instance, two (retired) senior NATO military figures, namely General Joseph Ralston of the US and Germany’s General Klaus Naumann, spearheaded a high profile report which called on EU governments to integrate their defence procurement and research practices, in a bid to mitigate the harmful impact of declining national defence spending on their militaries and thereby fulfil strategic

security objectives (*Agence France Presse*, 2005a). The document was a product of wide-ranging consultations with a number of senior officials and policymakers on both sides of the Atlantic. It couched its recommendations as ensuring not only the EU's ability to "protect its interests," but also helping to avoid doing damage to "the viability of NATO as an alliance and the ability of European countries to partner in any meaningful way with the US" – essential objectives both threatened by the status quo (*Agence France Presse*, 2005a). In another illustration, Andreas Pruefert, the Secretary General of the European Organisation of Military Associations (EUROMIL) at the time characterised the impact of Article 346 as a "hindrance" to the coordination and cooperation between member states on defence and space matters (SDA, 2006a). Yet another example was defence and security applications of satellite systems in the EU. Here, the persisting "under-utilisation" of existing space activities for common EU military purposes— contrary to the EU's repeatedly stated intention and the calls of both the aerospace industry and defence and security actors to achieve this objective— has been attributed to divergences in, amongst other areas, national procurement practices and "state-regulated markets" (Mair and Perthes, 2006: 79).

In addition, as already mentioned, the European Parliament, and namely its Subcommittee on Security and Defence (SEDE) under former Chairman and long-standing advocate of European defence Karl von Wogau, advocated a strengthened, re-energised CSDP through a common defence equipment market (Chapter I). This, as von Wogau insisted in his own initiative report on the subject, would bolster the "CSDP's ability to act" in accordance with the EU's Security Strategy of 2003 (von Wogau, 2006; *Europolitics*, 2006a; Interview 14, 3 February 2014, European Parliament). V a r i a t i o n s of this line of reasoning were also apparent in successive CSDP newsletters, and have been articulated by member states' defence officials across the EU (Council of the European Union, 2005d: 28; Council of the European Union, 2007a: 7, 20-22). In a piece he penned for the prominent British daily *The Guardian* in 2007, the then defence minister of Portugal Nuno Severiano Teixeira equated "a European defence system" with "developing military capabilities," including the establishment of a "European industrial base" with "a central role for the European Defence Agency" (reproduced in: Council of the European Union, December 2007d: 24). Moreover, the UK's 2005 *Defence Industrial Strategy* presented the efforts of the EDA as building an effective European Defence

Equipment Market which, by strengthening the EU's defence technological and industrial base, would help "our Armed Forces ...to secure their equipment capability needs more cost effectively" (Ministry of Defence, 2005: 29). The German *White Paper on Security*, as well, stated that not only was an "efficient and sustainable defence industrial base" necessary for a "modern" *Bundeswehr*," it "would need to be defined increasingly in a European Context," (Federal Ministry of Defence, 2006: 62). The document also viewed a European armaments policy as a "central goal in establishing and expanding the European Security and Defence Policy" (Federal Ministry of Defence, 2006: 62). Thus far, it has been demonstrated that in the telling of the specialised media and within policy pieces emanating from the think tank community, as well, open defence markets in the EU became increasingly associated with Europe's military needs. In this association the latter was put forward as both a justification and an explanation for the former.

#### *Aiding the EDA: Shared Awareness of Pressures and Consensus on the Need for Action*

The EDA's efforts to concentrate minds were aided by a shared awareness of the problems the Agency was attempting to address. As one senior EDA official had summarised, "big industries of big member states were pushing their governments to apply transparency," while "small countries" were interested in market access and a "fair chance" this would generate for their small and medium sized enterprises (SMEs) (Interview 36, 5 May 2014, EDA and Member State). In fact, many of the latter, despite their much-maligned "protectionism," had also realised that market rationalisation could be beneficial, as their ministries of defence would be able to use the resulting diversification of the defence supplier base as a bargaining chip vis-à-vis "pushy" defence manufacturers who "expected" contracts to be awarded to them (Interview 36, 5 May 2014, EDA and Member State). It was becoming apparent to actors concerned that member states, including France, were using the Treaty exemption to procure equipment that "was not as sensitive as one might think," and "more and more pressure" to curb the use of Article 346 was beginning to "convert" a few senior national defence procurement officials into sympathisers of the Commission (Interview 12, 22 January 2014, Member State Ministry of Defence). The UK government in its 2005 *Defence Industrial Strategy* cited falling defence

spending and dwindling R&D funds for new capabilities across the EU as pressures acting for “further integration ... in the European market.” (Ministry of Defence, 2005:92). Although the *Strategy* acknowledged that “every nation ideally want[ed] to keep under its control critical defence technologies,” it also recognised that no state other than the United States was able to “afford... a full cradle to grave industry in every sector” (Ministry of Defence, 2005: 17, 21). Likewise, the former French armaments counsellor in NATO insisted that the very existence of the EDA was indicative of the requisite political will on the part of member states to “achieve an integrated EDEM” (SDA, 2005).

The vitality of the EDA during its early years was also bolstered by its initial success in launching credible capability generation initiatives with the potential to deliver where the Helsinki Headline Goal had largely failed. Thus, the Capability Development Plan (CDP) built upon the *Long Term Vision* objective of defining common requirements for EU member states’ armed forces (Heuninckx, 2008b: 4). The CDP had even generated some waves of optimism amongst the EU’s military cadre in that it “could be the beginning of something serious and useful” (Interview 23, 10 March 2014, EUMC; Interview, 21, 7 March 2014, EDA and Member State).

Finally, a number of policymakers interviewed for this thesis attested to a feeling of optimism during the years immediately following the European Convention – recalling the period of early-mid 2000s as the “halcyon days” of European integration in general and the EU defence project specifically (Interview 4, 23 July 2013, EDA; Interview 41, 11 June 2014, Member State Ministry of Defence; Interview, 22 January 2014, Member State Ministry of Defence; Interview, 20 May 2014, Member State Permanent Representation; Interview 29, 7 April 2014, EU Council ). One former senior EDA official described it as a widespread sense that “we were riding the wheel of history,” a feeling that “Europe was moving into the 21<sup>st</sup> century” and served as a “model to the rest of the world - one of economic success” (Interview 4, 23 July 2013, EDA). Considering the recent establishment of EU Battle Groups and the development of the CSDP, there was a “wind in favour of being better Europeans,” which mean empowering Europe to “really act,” (Interview 4, 23 July 2013, EDA; Interview 29, 7 April 2014, EU Council).

All of these developments contributed to the “impulse” which materialised “at an early stage” within the EDA to “try to break up the national silos” by “weaning the member states gradually off the careless, blanket” invocation of Article 346 (Interview 4, 23 July 2013, EDA). The combination of this “critical mass” of consensus, the “intellectual case” advanced by the EDA, and the Agency’s privileged status as an institutional innovator enabling the EU’s “defence ministers to discuss defence issues” for the first time, contributed to the relatively smooth consultation period preceding the Code of Conduct (Interview 36, 5 May 2014, EDA and Member State). Its voluntary nature had no doubt contributed to this “lack of political difficulties” in establishing the Code, as well as to the generally “positive and supportive attitude of industry” regarding its provisions (Interview 36, 5 May 2014, EDA and Member State; Chapter IV). The Code of Conduct was a “reflection of what was possible” in this regard and, as a “bottom-up approach,” an expression of the member states’ collective intent, in the absence of common defence, industrial capabilities to “help achieve national defence and security objectives” (Interview 36, 5 May 2014, EDA and Member State).

A number of former and current EDA officials who were directly involved with the establishment and operation of the Code of Conduct emphasised repeatedly that while its overall results may have been portrayed as unsatisfactory, the mechanism was beginning to build unprecedented amounts of trust between member states in its first year of operation (July 2006-July 2007). Thus the “growing level of confidence” was often highlighted, as was the gradual increase of contracts posted on the Electronic Bulletin Board (EBB) (Interview 35, 25 April 2014, EDA and Member State; Interview 4, 23 July 2013, EDA).<sup>35</sup> Some went as far as to speak of “the beginning...[of] a transparent, internal defence market” in the EU, and underlined the robust operation of the monitoring and reporting mechanism, as well as the willingness of member states to provide defence equipment data to the Agency (Interview 36, 5 May 2014, EDA and Member State; Interview 38, 22 May 2014, EDA and Member State ). A number of officials also attested to the effective operation of the Code’s peer pressure dynamic, as member states’ non-compliance was both increasingly questioned by and justified to each other as per the

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<sup>35</sup> As first explained in Chapter I, the EBB was the core of the EDA’s Code of Conduct on Defence Procurement. It was an online platform designed to “host” the non-sensitive, but Article 346-protected contract notices by member states, that they were opening up to inter-EU industrial competition

mechanism's intention. Specifically, member states' decisions to invoke Article 346 in relation to a defence contract would not be disputed, but they would then still be expected to publish the contract notice on the EBB, or otherwise be compelled to defend their choice of continuing with closed competition (Interview 38, 22 May 2014, EDA and Member State ; Interview 36, 5 May 2014, EDA and Member State; Interview 35, 25 April 2014, EDA and Member State; Interview 4, 23 July 2013, EDA).

*The Reality of the Defence Capability-EDEM Link: Complex, Fragmented and Vague*

Thus far, the discussion above has demonstrated that the member states had viewed the European Defence Agency as the framework for making the European Defence Equipment Market a reality. The EDA, in turn, played a key role in shaping this perception as well as bringing the imperative of harmonised defence procurement to the fore of the military capability improvement agenda. At the same time, voices from within the EU defence and security structures were making similar arguments, resulting in a merging of industrial and military dimensions. It was also demonstrated that EU actors were underlining the importance of an integrated EDEM to CSDP capabilities, while sources from the member states indicate that they viewed a European Defence Equipment Market as contributing to a more cost effective supply structure for their armed forces. In addition, these trends, together with the “intellectual case” the EDA was busily making, were reflected in a consensus amongst the media and defence think tanks that industrial consolidation and harmonised procurement were key to military capabilities. Moreover, EDA officials clearly believed that the Agency's efforts were finally laying the foundations for a solid, transparent defence equipment market in the EU. Crucially, however, the distinction between these two dimensions—the “European” and the national armed forces that would ostensibly benefit from EDEM—was left unspecified.

Before drawing further conclusions, however, it is useful to pursue this line of inquiry a bit further, to see how, and if at all, member states' defence white papers and defence industrial strategies positioned the utility of and scope for common intra-EU procurement structures. Although the UK's *Defence Industrial Strategy* released in



2005 “welcomed” the Code of Conduct on Defence Procurement introduced by the EDA as a measure aimed at creating an effective European defence equipment market, in a departure from the earlier 2002 *Defence Industrial Policy*, the authors noticeably tapered the UK’s embrace of free markets, which was much-vaunted and frequently-cited even in the field of defence and security. In particular, the *Strategy* cautioned against “open international competition,” which, given the “fragility of the wider UK industrial base,” could endanger the “sustainment of key [British] industrial capabilities” (Ministry of Defence, 2005: 7). In the view of the Strategy, this risk had nevertheless created an opening for a “coordinated approach” with other European governments to industrial rationalisation and consolidation required for the sustainability of a “viable industrial base” (Ministry of Defence, 2005: 7). Similarly, references to Europe and the EU permeate the armaments policy section of Germany’s 2006 *White Paper on Security Policy and the Future of the Bundeswehr*. However, in a subtle turn, the document also stressed that, in fact, “indigenous defence technology capabilities” were essential for “co-shaping the...integration process,” as “only nations with strong defence industry have the appropriate clout” (Federal Ministry of Defence, 2006: 64; emphasis added). Moreover, a “balanced European partnership” required the retention of defence technological capabilities in key and high-tech areas in Germany (p. 64). Yet, the *White Paper* also emphasised that a more competitive and transparent European defence market would benefit both the German defence industry and the transatlantic alliance (p. 64).

As one can see, then, the armaments and defence procurement policy structures of the three dominant member states did see a space for and value in—as far as both their armed forces and defence industry were concerned—EU-wide cooperation in this field. Such an opening did exist. However, as the overview above so aptly demonstrates, the calls to “act together” exude caution and conditionality. There are certainly no proposals to construct an EU defence equipment market on a supranational edifice, nor does one see any meaningful endorsement of the Commission’s proposal for a defence procurement directive, which had been taking shape while France, Germany and the UK were formulating their defence white papers and strategies. Furthermore, the actual nature of the relationship between the objectives of the EDA’s Code of Conduct and the Defence Procurement Directive was left rather vague and it was not specified how these market-opening initiatives would

result in or were prompted by the equipment needs of EU's militaries.

In addition, it appears that this focus on the importance of the industry-defence linkage for capability building—a linkage that the European Commission was concertedly highlighting in its policy proposals— did not resonate as such within CSDP's military structures. For one, an EU defence equipment market was not viewed in these settings as a means of achieving interoperability between the member states' armed forces and bolstering the EU's ability to project force externally. As stressed by the former Chairman of the EU Military Committee (EUMC), the “supreme military body with the Council of the EU” which functions as the “forum for military consultation and cooperation” between the member states, industrial aspects of defence were “never, ever” discussed at EUMC meetings (Interview 23, 10 March 2014, EUMC). Furthermore, the discussions between the National Chiefs of Defence (CHOD) comprising the EUMC focused on the nature and timings of armaments programmes, and did not intersect with either the work of the National Armaments Directors concerned with the “cost and rules” of executing these programmes, or that of the Commission, which was beginning to concern itself with “legal and fiscal” aspects (Interview 23, 10 March 2014, EUMC). In addition to the “very little linkage” between the work of the military representatives and market issues, there was also virtually no interest felt by the former in the latter (Interview 23, 10 March 2014, EUMC). Moreover, the “competition and mistrust” between NADs and CHODs that was apparently a customary feature of domestic defence bureaucracies, was transferred to the EU-level relationship between the EDA and EUMC when the agency was established, although this relationship had begun to improve throughout 2008, with the EDA CEO frequently invited to EUMC meetings to “discuss CDP priorities,” for instance (Interview 23, 10 March 2014, EUMC). Nevertheless, this uncertainty regarding the demarcation of responsibilities between the two bodies was also part of the institutional ambiguity that has characterised the Agency since its establishment, constituting a manifestation of Batora's “colliding institutional logics” framework described earlier.

The prevailing view within the EU Military Staff (EUMS) also held that the path to a “credible CSDP” bolstered by robust military capabilities lay in actually “using the

CSDP tool” for crisis management by deploying it on military missions (Interview, 21, 7 March 2014, EDA and Member State; Interview 22, 10 March 2014, EUMS). Thus, the difficulty lay not in “drawing up common military requirements,” but defining “common *operational* requirements” at the political level (Interview 22, 10 March 2014, EUMS). The path to this ambitious objective, in turn, lay through forging a “common strategic view” regarding shared “*European* interests,” and then a harmonised intra-EU demand for capabilities would emerge (Interview 22, 10 March 2014, EUMS; Interview 13, 27 January 2014, EUMS). Only then would joint acquisition of equipment follow interoperability—once the requisite contract specifications could be written in a manner allowing for the resulting capabilities to be used compatibly between member states (Interview 12, 22 January 2014, Member State Ministry of Defence; Interview 4, 23 July 2013, EDA/NATO). However, it was believed within the EU’s defence structures that striving for the EDEM could not compel member states to “want to improve capabilities at the EU level,” which they clearly appeared unwilling to do (Interview 22, 10 March 2014, EUMS; Interview, 21, 7 March 2014, EDA and Member State). Furthermore, amidst uncertainties regarding the “division of labour” between the EDA and the EUMS the responsibility of the latter for defence technology, research, and market issue areas was formally “transferred” to the EDA’s “portfolio” after the Agency was established (Interview 39, 25 May 2014, EUMS). Prior to this, the Military Staff was the sole body in charge of defining capability requirements based on the so-called Petersberg tasks which stipulated the “type of military action that the EU can undertake in crisis management operations.”<sup>36</sup> The resulting “requirement catalogue” was then submitted to member states, and the result “edited” for “correspondence” between their contributions and operational needs (Interview 22, 10 March 2014, EUMS). This definition of requirements is in fact an integral part of the defence procurement “spectrum,” but the responsibility for it is “shared” between the EDA and EUMS (Interview 22, 10 March 2014, EUMS). Yet, EDEM items as such did not arise on the agenda of EUMS’ capability departments in any meaningful way (Interview 13, 27 January 2014, EUMS ; Interview 39, 25 May 2014, EUMS). In addition, as underlined by a senior military officer, “in most cases,” the CSDP represented “only the third ‘customer’ of member

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<sup>36</sup> The Treaty of Lisbon expanded these to include: humanitarian and rescue tasks; conflict prevention and peace-keeping tasks; tasks of combat forces in crisis management, including peacemaking; joint disarmament operations; military advice and assistance tasks; post-conflict stabilisation tasks.

states' military capabilities," following "national missions and NATO obligations" within the prioritisation structure of national defence resources allocation (Interview 39, 25 May 2014, EUMS). This attachment, finally, reflected the tendency of the "uniform wings" across the EU to be "enamoured with NATO" as the setting where interoperability was "truly" and successfully developed and defence equipment "standards defined" (Interview 4, 23 July 2013, EDA; Interview 12, 22 January 2014, Member State Ministry of Defence; Interview, 21, 7 March 2014, EDA and Member State).

In fact, the "shadow" cast by NATO over the EDA and "everything in CSDP" was highlighted as the Agency's Achilles' Heel by both the military cadre and industry executives, while the lack of a clear demarcation of responsibilities between the EDA, EUMS, EUMC, and the NATO Capabilities Agency was perceived to encumber its effectiveness (Interview 23, 10 March 2014, EUMC; Interview, 21, 7 March 2014, EDA and Member State; Interview 26, 3 April, Industry; Interview 13, 27 January 2014, EUMS). In addition, after a promising and ambitious beginning, the Capability Development Plan (CDP) initiated by the EDA lost its momentum due to dwindling "political will," as explained by a senior military officer associated with the Agency's work (Interview, 21, 7 March 2014, EDA and Member State). This allowed the United Kingdom, for instance, considering its preoccupation with capability enhancement, to claim with the appearance of credibility that the EDA was not helping "them" improve "their capabilities," while the enduring commitment to NATO of other dominant member states such as Germany as the "primary vehicle for cooperation in capabilities, research and technology, and industry and markets" circumscribed the impact of the Agency's work (Interview 4, 23 July 2013, EDA; Interview 34, 16 April 2014, EDA and Member State).

### *The Code of Conduct Loses its Rigour and the EDA Concedes its Policy Leadership*

During its first 14 months of operation beginning on 1 July 2006, the Code of Conduct resulted in 227 cross-border defence contract notices amounting to a total

value of ten billion euros. However, only in two instances were the contracts actually won by firms from other member states (EDA, 2007b). In order to illustrate this point further, it is helpful to look slightly beyond the time period demarcating this research, to get a sense of how the Code of Conduct performed beyond the inevitably rocky “early days.” Thus, according to the EDA’s 2009 Annual Report, of all the 725 defence contracts amounting to 18 billion euros awarded in the EU between 1 July 2006 and 31<sup>st</sup> December 2009, 259 were awarded under competition following the Code of Conduct, encompassing a total value of 3.9 billion euros. Cross-border contract awards were made in 75 instances (EDA, 2010: 45). In absolute terms, this represents a significant increase from the two cross-border awards cited earlier, while the invocation of exemptions from the Code in (slightly) fewer instances than compliance with it, also reflects this upward trend. However, it is also the case that the proportion of cross-border procurement stemming from the Electronic Bulletin Board amounted to only 10.3 per cent, while the value of these contracts represents just over seven per cent of the total value of awarded contracts in the EU.<sup>37</sup> Such modest results reflected, in the view of one former senior British official, the “tension between security of supply and open procurement,” which the EDA was finding increasingly difficult to negotiate (Interview 7, 9 August 2013, Member State Ministry of Defence). Drawing on Batora’s framework once again, this particular conflict may be characterised as the collision between the “logic of pooled defence resources...championed” by the Agency and the pervasive “logic of defence sovereignty” compelling member states to “to develop military forces with a full range of capacities to conduct various kinds of operations independently” (Batora, 2009: 1086; 1092).

It has therefore emerged that the “conviction” of EDA officials regarding the pressing need for an EDEM did not easily translate into compelling member states to abide by its principles (Interview 4, 23 July 2013, EDA). Thus, despite the “exhortations” of the Agency, after an initial period of compliance, and even enthusiasm, member states could not be induced to commit to the provisions of the Code fully. From the end of 2007 onwards, EDA officials working on the implementation of the Code of Conduct began to ruefully acknowledge that “even though ministries of defence would say that

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<sup>37</sup> These calculations were carried out using the data provided in the EDA’s 2009 Annual Report, as cited in text.

competition was needed,” the “political aspects” of forging a durable intergovernmental regime were proving prohibitive (Interview 36, 5 May 2014, EDA and Member State). For instance, in his biannual report to the Council, Javier Solana characterised his assessment of the Code’s implementation as “positive,” but admitted that there “remains a need to increase the awareness of [the instrument], to ensure higher value cross-border awards and to encourage greater cross-border bidding” (Council of the European Union, 2008: 3). In November 2008, the Head of the Agency appeared to lower the benchmark for success, stating neutrally that the Code of Conduct was displaying “signs that cross border bidding and contract awarding take place” (Council of the European Union, 2008b: 5). At the same time, Solana reiterated the need to enhance the “limited” bidding on cross-border contracts by industry (Council of the European Union, 2008b: 5). Moreover, protestations on the part of defence primes regarding a desire for greater market access also did not result in their lasting commitment to open supply chains to the SMEs of smaller member states— as envisioned in the supplementary Code of Best Practice in the Supply Chain (CoBPSC) intended to help strike the “bargain” of agreeing the Code of Conduct on Defence Procurement (Interview 36, 5 May 2014, EDA and Member State; Interview 4, 23 July 2013, EDA). This reluctance may be partly attributed to industry’s unwillingness to forego their “special relationship” with governments in favour of market forces, as explained in Chapter III. This attitude, however, did not exist in a vacuum, but constituted part and parcel of Batora’s “logic of defence sovereignty” pervading the EU’s defence sphere. In this particular manifestation of it, defence firms were reluctant to bid on defence contracts advertised by a foreign government unless they believed that there was a reasonable chance of a return on the financial and administrative investment necessitated by cross-border bidding in the form of contract award (Interview 26, 3 April, Industry). The defence firms’ persisting reticence in this regard indicates their belief in the entrenchment of the “national silos” the Code was attempting to dislodge.

Considering these dynamics, it is interesting to note that the timing of the Commission’s proposal for a defence procurement directive was attributed by the EDA to an agreement amongst member states on “the need for the gradual formation” of an EDEM that would “favour the development of the military capabilities required to

implement the CSDP,” while the “firm support” lent to it by the Council and Parliament was due to the function of the integrated defence market as “an essential pillar” in generating capabilities for the “current and future missions of Europe’s Armed Forces” (Alfonso-Mariño, 2010: 199, 201). Primary research, has, however, indicated that policymaking circles emphasised the linkage between the growing ineffectuality of the Code of Conduct and the enhanced role of the Commission. The views emanating from member states’ ministries of defence furthermore acknowledged that the EDA’s Industry and Market Directorate yielding ground to the Commission could have been largely attributed to the difficulty of resisting at least a degree of supranational competence in the “market aspects of defence” (Interview 19, 26 February 2014, EDA and Member State; Interview 11, 6 December 2013, Member State Ministry of Defence ; Interview 32, 10 April 2014, Member State Ministry of Defence). This was coupled with the Commission’s determination to expand this competence, as well as its credibility in claiming some continuity for its defence market agenda.

Within the EDA structures, the sentiment was somewhat different. At the highest levels, it was acknowledged that the Code of Conduct had indeed exerted only a limited impact on severing the link between member states’ “protectionist trade policy” and defence contracting – after all, the Code could not invalidate the potent argument that key domestic constituencies “needed jobs” and therefore “should” be entitled to the defence business (Interview 4, 23 July 2013, EDA). Moreover, officials formerly involved in the establishment and operation of the Code of Conduct and the Agency itself felt that the progress in solidifying inter-member state cooperation achieved by both has in a way emboldened the Commission in its pursuit of defence market integration. Specifically, “the level of confidence” the EDA had managed to affect between member states through regular participation in its meetings and programmes “signalled” to the Commission that its involvement would perhaps be more readily received in national capitals than previously. While it was acknowledged that the substantive results of these initiatives, including the Code in its first year, may have fallen short of expectations, their role in building trust and facilitating cooperation amongst ministries of defence was optimistically regarded as indicative of their promising future (Interview 35, 25 April 2014, EDA and Member State; Interview 36, 5 May 2014, EDA and Member State; Interview 38, 22 May 2014, EDA

and Member State). Specific instances that were highlighted in this respect included the Commission's *Interpretative Communication* of 2006, the preparatory work for which ostensibly relied on the "high level of confidence" described above, as well as "high-level political agreement" embodied by the EDA's *EDTIB Strategy*, which reportedly generated "ideas" for the initiatives of the Commission (Interview 35, 25 April 2014, EDA and Member State; Interview 38, 22 May 2014, EDA and Member State).

Yet, the Agency's "scepticism regarding the motivation and impact" of the Commission was kept in check as long as there was a credible perception that the two actors were "on the same side of the argument" and "working together" to achieve greater defence market openness (Interview 4, 23 July 2013, EDA; Interview 36, 5 May 2014, EDA and Member State). Some within the EDA even regarded the Commission activity to be "helpful" as a means of applying pressure to the member states when needed, and thus "scaring the proverbial children," in the words of one former highly-placed official (Interview 4, 23 July 2013, EDA). However, towards the end of 2007, this sense of accommodation began to give way to near-resentment, directed at the Commission's ostensibly relentless and premature pursuit of "a supranational regime," complete with "legal tools," in defence procurement (Interview 35, 25 April 2014, EDA and Member State; Interview 36, 5 May 2014, EDA and Member State; Interview 38, 22 May 2014, EDA and Member State). As suggested above, within the EDA structures, some of the blame for the eventual listlessness of the Code of Conduct was attributed to the Commission as well.

According to this view, not only were the "conditions insufficient" and the member states "not ready" for the extension of internal market principles into this policy field, but as well as "taking advantage of the EDA's work" the Commission had provoked a "self-defence mechanism" on the part of the member states. Specifically, as explained in Chapter IV, national officials as well as defence industry executives attributed member states' lack of commitment to the Code of Conduct at least partly to their reluctance to subject any contract notices they published to the Commission's scrutiny. Thus, despite the EDA "clearly" being endowed with the "responsibility for advancing the defence market," it was the Commission that seemed to have won the institutional "turf war" (Interview 35, 25 April 2014, EDA and Member State; Interview 38, 22 May 2014, EDA and Member State; Interview 26, 3 April, Industry;



Interview 18, 10 February 2014, Industry).

In addition, more practical aspects also impeded effective functioning of the Code of Conduct, including the devolution of defence procurement authority amongst the various military services (for instance, army, air force, and navy) within certain member states. This was the case in Italy with the result that, in the absence of a central contracting authority, implementing the provisions of the Code of Conduct presented significant bureaucratic difficulties (Interview 4, 23 July 2013, EDA). The agenda prioritisation structures of respective EDA CEOs contributed to the Agency's relative loss of policy leadership in the defence industrial sphere and to its decline in prominence, as well. Specifically, one can see from the material presented above that Nick Witney, the Agency's first CEO, frequently promoted both the Code of Conduct and the Agency itself in public statements and media outlets. This commitment was also reflected in closed settings and stemmed from Witney's "personal investment" that was felt to have raised and maintained the profile of the Agency and its initiatives in the defence industrial sphere in particular (Interview 34, 16 April 2014, EDA and Member State; Interview 38, 22 May 2014, EDA and Member State). Witney was thus known for his "strategic vision" and "focus on big strategies," while his contemporaries believed that his stepping down from the helm in autumn of 2007—the very period of intensified Commission activity preceding its publication of the *Proposal for a Defence Procurement Directive*—contributed to both the degeneration of the Code of Conduct and the "disappointing" performance of the EDA itself (Interview 34, 16 April 2014, EDA and Member State; Interview 38, 22 May 2014, EDA and Member State; Interview 8, 28 August 2013, Industry ).

The underlying issue confronting the architects of the Code of Conduct, however, may be described as one of the most intractable obstacles to the development of an effective EU security and defence policy, and meaningful inter-state cooperation more generally. While agreement regarding the "need for collective action" to address issues no member state could tackle unilaterally was shared across national capitals, it did not extend beyond a consensus "on principles" (Interview 4, 23 July 2013, EDA). Thus, although member states signed up to the Code of Conduct with sufficient enthusiasm, no participating ministry of defence "wanted to be the first" to invite foreign firms to its tenders (Interview 4, 23 July 2013, EDA). The dominant arms-producing member states, such as Germany in particular, felt that any

intergovernmental agreement in the defence industrial sphere would invariably yield benefits to partners, while the superior domestic technology “would slip away” and finance would be “siphoned out” (Interview 4, 23 July 2013, EDA). Therefore, the ineffectuality of the EDA’s Code of Conduct paralleled, and indeed, stemmed from, the sceptre of irrelevance looming on the horizon of the Agency itself (Interview 41, 11 June 2014, Member State Ministry of Defence). Moreover, the much-lauded consensus and “meeting of minds” which ostensibly gave rise to the EDA was beginning to appear not only fragile, but transient as well. Immediately following its establishment, the Agency had generated much “enthusiasm and excitement” within national ministries of defence, and its meetings were regularly attended by the Ministers and National Armaments Directors themselves (Interview 38, 22 May 2014, EDA and Member State; Interview 11, 6 December 2013, Member State Ministry of Defence). By early 2008, however, this high-level attendance became considerably less of a norm, with deputies and lower-level officials increasingly replacing their superiors at EDA meetings (Interview 11, 6 December 2013, Member State Ministry of Defence).

Thus, it was extremely telling that the EDA was characterised within the higher levels of the British MoD as “useful...but only as long as it does not poke its nose into anything really important” to member states’ defence and security (Interview 7, 9 August 2013, Member State Ministry of Defence). Similarly, within the armaments directorate of another dominant arms-producing member state the functioning of the Agency was referred to as a “Catch-22,” wherein it was expected to deliver results in accordance with its ambitious mandate, but was not endowed by the member states with the necessary resources to do so (Interview 41, 11 June 2014, Member State Ministry of Defence). In sum, then, the “unresolved tension” at the heart of the Agency, as well as the differing “visions” of its key “stakeholders” regarding its ultimate purpose, resulted in the relegation of the EDA to the “back burner” of its participating member states’ ministries of defence (Interview 34, 16 April 2014, EDA and Member State; Interview 12, 22 January 2014, Member State Ministry of Defence).

## Decision-Making

### *Member States' False Sense of Security vis-à-vis the Commission's Defence Package*

With the ability of the Code of Conduct to deliver its promised benefits of intergovernmental cooperation being increasingly questioned, the argument for a legally binding instrument could be more easily and credibly made. As detailed in Chapter IV, the Commission busily set about doing precisely this, while the member states found it increasingly difficult to deny that the proposed Defence Procurement Directive could be the “obvious next step” (Interview 19, 26 February 2014, EDA and Member State). Moreover, the publication of the *Directive Proposal* by the Commission in December 2007 did not incite a “huge hostility” or “surge of indignation” from the member states comparable to that bubbling to the surface within the EDA officialdom (Interview 4, 23 July 2013, EDA; Interview 35, 25 April 2014, EDA and Member State). Rather, the response from ministry of defence and armament directorate delegates was to “listen to proposals, participate in consultations,” and repeatedly reaffirm their agreement that “something needed to be done” (Interview 4, 23 July 2013, EDA; Interview 35, 25 April 2014, EDA and Member State; Interview 8, 28 August 2013, Industry). This seemingly conciliatory, detached response stemmed from the lack of engagement and “political interest” on the part of senior echelons within national ministries of defence. The considerable reluctance “to take up” the *Defence Package* proposals within member states’ capitals was highlighted by EU permanent representation delegates, national armament directorate officials, and, as detailed in the previous chapter, defence industry lobbyists (Interview 11, 6 December 2013, Member State Ministry of Defence; Interview 9, 14 November 2013, Member State Permanent Representation; Interview 34, 16 April 2014, EDA and Member State; Interview 15, 4 February 2014, Member State Permanent Representation; Interview 35, 25 April 2014, EDA and Member State; Interview 38, 22 May 2014, EDA and Member State; Interview 18, 10 February 2014, Industry; Interview 26, 3 April 2014, Industry). However, the interviewees have been self-

admittedly less clear about the reasons for this senior-level lack of engagement within member states. A number of ministry of defence officials spoke of a “failure to grasp the significance” and “enormity” of the Commission’s agenda, to the extent that one expressed “amazement” at “how little discussion” there was regarding the Commission’s proposals at high bureaucratic levels (Interview 34, 16 April 2014, EDA and Member State; Interview 15, 4 February 2014, Member State Permanent Representation). Another factor emphasised frequently in this regard was a sense of “complacency” regarding the likelihood of the Directive’s approval (Interview 34, 16 April 2014, EDA and Member State; Interview 38, 22 May 2014, EDA and Member State; Interview 9, 14 November 2013, Member State Permanent Representation).

According to this narrative, many member states believed that, even if it was ultimately successful, the legislative process advocated by the Commission would take years and be characteristically cumbersome. In addition to this “sense of security,” it appears that the leadership of the traditional “guardians of national sovereignty,” that is, the armed forces and the ministries of defence, lacked sufficient interest in, appreciation, and understanding of not only the significance but also the process of EU legislation (Interview 38, 22 May 2014, EDA and Member State). This was perhaps not unexpected, since these actors had hitherto had little contact or experience with the “community method” or the European Commission. Thus, one senior official recounted the recent opening of a national industry association’s representation in Brussels, during which the president declared that “only now, [he is] beginning to understand Europe” (Interview 34, 16 April 2014, EDA and Member State). The interviewee felt that “this, precisely, was the problem,” especially since this characterisation could be applied to “many defence companies and officials” (Interview 34, 16 April 2014, EDA and Member State). Moreover, the “normal interlocutor” of defence ministries, the EDA, appears to have initially shared this complacent outlook, as one official recalled that “all documents and presentations” associated with the Code of Conduct emphasised the “untouchable” prerogative of member states to invoke Article 346 as well as the exemption of the “defence market from internal market rules” more broadly (Interview 38, 22 May 2014, EDA and Member State). The “lack of appetite” for “fighting” to “defend national interests” vis-à-vis the increasingly “aggressive and determined” Commission was coupled with the perception within national capitals that its proposals could be “killed” or “pushed

to the EDA” at any time they wished (Interview 34, 16 April 2014, EDA and Member State; Interview 38, 22 May 2014, EDA and Member State; Interview 24, 11 March 2014, Member State Permanent Representation; Interview 9, 14 November 2013, Member State Permanent Representation). Thus, the UK MOD was reportedly “alerted” by its Permanent Representation in the spring of 2008 that a “blocking minority” in Council voting that had still been hoped for in London “was not going to happen” (Interview 9, 14 November 2013, Member State Permanent Representation). In fact, the British Ministry of Defence had reportedly favoured “killing” the *Directive Proposal* in the first instance (Interview 9, 14 November 2013, Member State Permanent Representation). Finally, although they would struggle to pinpoint the precise reason why the member states’ ministries of defence, as one senior official phrased it, “did not care,” most national officials agreed that, by the time they did, “it was too late” to either “kill” the proposed Directive or, indeed, affect as many or as significant of substantive changes to it as they would have preferred (Interview 11, 6 December 2013, Member State Ministry of Defence; Interview 9, 14 November 2013, Member State Permanent Representation; Interview 38, 22 May 2014, EDA and Member State ; Interview 35, 25 April 2014, EDA and Member State; Interview 34, 16 April 2014, EDA and Member State).

### *France to the Fore*

Such, then, was the policy “state of play” in the months following the December 2007 publication of the *Proposal for a Defence Procurement Directive*. After its release, the proposal entered the first round of negotiations in the Public Procurement Working Party which supported the Competitiveness configuration of the EU Council and, in parallel, the Internal Market and Consumer Protection Committee (IMCO) of the European Parliament as part of the co-decision procedure. As also indicated in Chapter IV, these discussions centred on technical and procedural aspects until the proposal reached the COREPER level on the eve of the French Council Presidency of July – December 2008 (Interview 27, 3 April, EU Council; Chapter III). It is important to emphasise that while most member states “believed that [the Commission’s agenda] would just go away” even as the volume and frequency of consultations increased, French officials responsible for this issue were reportedly

“not at all surprised” when the Commission tabled the proposed Directive text. Rather, they attested to recognising its consultative “questionnaires that just kept coming” as a sign that the “tank” which was the Commission— slowly but surely demolishing all obstacles on its path—“had arrived” (Interview 32, 10 April 2014, Member State Ministry of Defence; Interview 24, 11 March 2014, Member State Permanent Representation). Indeed, as demonstrated above, the French calls for a “free trade area in defence equipment” and a “European Defence Procurement Area” bear the most direct relevance to the objectives of the Defence Procurement Directive. Moreover, such ambitions were not without precedent. A survey of policies emanating from successive French governments reveals periodic nudges to national defence firms to re-structure and consolidate on the European level, but only to the extent that these efforts furthered the dominance of French firms in the EU context (James, 2002: 125).

Michele Alliot-Marie, French defence minister between 2002 and 2007, had established Defence Economy Council within her ministry, mandating it to evaluate the “health” of both French and European defence industries and attempt to boost defence spending (Spiegel, 2005). In fact, both Alliot-Marie and Francois Lureau as the National Armaments Director at the time were “strong” and “visionary” supporters of an EU-level defence industrial policy, with the latter in particular being described by one retired senior defence industrial lobbyist as “ahead of his time” regarding this issue (Interview 4, 23 July 2013, EDA; Interview 18, 10 February 2014, Industry). The theme of the comprehensive, highly analytical report compiled by the nine-member council in 2005 was the looming lag of the EU behind the United States when it came to maintaining the crucial high-technology underpinning defence systems. In order to preclude such a decline, the document in the section entitled “Maintaining and Developing European Defence and Security Capabilities” recommended “coming up with common rules ... in an attempt to set up a European Defence Procurement Area” which would ensure what the report called Europe’s “competitive autonomy” and global competitiveness (Defence Economy Council, 2006: 313).

Soon after assuming office, the former president of France Nicolas Sarkozy set about promulgating his apparent agenda of enhanced defence spending across the EU to bolster its military capabilities. This, as Sarkozy phrased it in a 2007 foreign policy

speech, was necessary in order to counter “multiplying crises” and “assume responsibility for Europeans’ own security” (Hepher, 2007). Moreover, from the beginning of his term, Sarkozy widely publicised his grand ambitions for European defence, even generating expectations of an “St Malo II” under the approaching French EU Council Presidency of 2008 (Taylor, 2008c). In an overtly Atlanticist move not usually seen amongst French leaders, he also entered the French presidency intending to re-integrate France into the full military structure of NATO—completed in April 2009—as well as favouring strengthened EU “operational capabilities.” In this regard, Sarkozy was following well-established line of French policymakers in giving political visibility to “autonomous European defence” (Ortiz, 2007:2). The latter included the consistently controversial European Operational Headquarters (OHQ), ostensibly to enable EU intervention where NATO and the United States had no interest or desire (Lequesne and Rozenberg, 2008: 24).

In addition, military officers, civilian officials, and defence industry executives, while acknowledging “French leadership” on the “EDEM agenda,” characterised it as a “reflection” of the “historic” French pursuit of “Europe of Defence, but on French terms” (Interview 26, 3 April, Industry; Interview 38, 22 May 2014, EDA and Member State; Interview 34, 16 April 2014, EDA and Member State). It is telling that the French 2008 *White Paper on Defence and National Security*, commissioned in July 2007 and released just before the commencement of the French Council Presidency, contained a chapter dedicated to “France’s Ambition for Europe,” in which France would occupy “the front rank” of a “more unified, stronger European Union, with a greater presence in ... security and defence” (Ministry of Defence of France, 2008: 75). An important component of achieving this objective was reenergising EU cooperation on weapons programmes, which in turn necessitated coordination of procurement policies and “presupposed” greater common demand specification (Ministry of Defence of France, 2008: 86). The *White Paper* does declare France’s undertaking to support common defence equipment rules, but this intention is not set out as part of capability enhancement efforts, but rather “in addition to” them (Ministry of Defence of France, 2008: 87).

The vision for European defence articulated in the document also relied upon “major industrial, technological and scientific capability” and specifically “a streamlined and

competitive European industry” (Ministry of Defence of France, 2008: 86). The *White Paper* also set out France’s defence procurement strategy on the basis of three levels corresponding to varying levels of national control. These ranged from “national proficiency” in the most sensitive areas “of sovereign prerogative” to purchasing from the world market, where security of supply was not a paramount concern (Ministry of Defence of France, 2008: 254). Between these two poles was what the document termed “European interdependence,” which ostensibly covered the majority of defence procurement, and involved “reciprocity, security of supply and overall balance” between EU member states “underpinned by effective procurement procedures” and built upon “free consent between” governments (Ministry of Defence of France, 2008: 254). The *White Paper* urged its fellow “States” to develop “world-class European [industrial] champions” through harmonising military needs. France itself would follow a “pragmatic approach” of entering into “structural bilateral or trilateral partnerships” (p. 255). It was from these partnerships that “European ambitions for an arms industry would take shape” (p. 255). The EDA occupied a primary place in this scheme, bearing the responsibility of coordinating EU-wide military needs in conjunction with the EU Military Committee and Military Staff (p. 255). In order to bring this picture to life, the document called for “a free trade area in defence equipment” but only between states with “comparable control procedures” (p. 255).

This overview indicates that when compared to the Defence Economy Council report, which articulated a far-reaching version of a European defence equipment market, the 2008 *White Paper* placed a notably greater emphasis on “intergovernmental aspects,” making frequent use of concepts such as balance, security of supply, free consent, and a “pragmatic approach” through partnerships. Moreover, despite using language similar to that employed by the Commission, the document’s view of cooperation is characterised by qualification and caution, reaching only as “far” as is necessary for intergovernmental cooperation on weapons programs. This observation lends credence to the finding that has emerged in the course of this chapter regarding the disassociation of defence market integration as a policy objective from EU defence structures. Furthermore, the view from several other major arms’ producing member states’ capitals was that, much like former President Sarkozy’s 2007 highly-publicised castigations of the duplication and over-capacity across EU’s defence markets with which this thesis began, the French readiness to “criticise at the political level” was



not always translated into policy direction, and was thus regarded with a degree of scepticism (Chapter I; Interview 4, 23 July 2013, EDA).

*Public Portrayal of the French EU Council Presidency Agenda: From St Malo II to EDEM*

Nevertheless, a key component of Sarkozy's EU agenda also focused on the European Defence Technological and Industrial Base as well as the "development [of] a European arms industry" and defence industrial strategy (Hepher, 2007; Ortiz, 2007:2). Indeed, the French plans to forge the beginning of a joint procurement policy in the EU frequently appeared in the media and policy discourse in the months preceding its Council presidency, and, in support of the argument advanced above, most often presented as a policy to be set and steered by the EDA (*Economist Intelligence Unit*, 2008; *Europolitics*, 1 July 2008). In addition, as France's time at the helm of the EU Council drew near, its initially grand objectives appeared to have been gradually de-scaled. One factor in this shift was reported as French doubts of British support for a major EU defence initiative at the time when Gordon Brown's political weakness was leaving him open to domestic criticisms of "betraying" the UK's prized "special relationship" with the United States (Taylor, 2008c). Sarkozy's messages of reassurance – that the EU getting its defence act together in this way would bolster rather than rival NATO and serve a US interest in the EU "rationalising its own capabilities"—were not sufficient to assuage British fears of "new French activism" on EU defence and security (Hepher, 2007; Lequesne and Rozenberg, 2008: 24). Moreover, it had soon become clear to Paris that should the next UK government happen to be Conservative, realising French ambitions in this field would be much more difficult still (Lequesne and Rozenberg, 2008: 24). This timeline put some time pressure on Sarkozy's desired policy outcomes, as they would have to be agreed before the intensive campaigning phase of the UK's 2010 general election (Lequesne and Rozenberg, 2008: 24).

German support for increased defence spending—a cornerstone of Sarkozy's CSDP-enhancement plan—could also not be counted upon, as election year positioning saw both major parties sway to the left, away from a focus on defence and security needs and towards "peace dividend" campaigning. Although Germany shared with France its

favourable outlook for harmonised procurement processes, largely as a result of both countries' interest in increasing opportunities for their formidable defence industries, the former was not at all receptive to the French objective of compelling member states to increase defence spending (Taylor, 2008b; 2008e). Furthermore, all was not calm on France's home front, either, particularly considering the impending publication of the *Defence White Paper* which would advocate shedding tens of thousands of jobs and closing a number of military bases (Taylor, 2008d). Finally, it had already become clear by the summer of 2008 that the entry into force of the Lisbon Treaty, on which the implementation of the French agenda relied, would not occur until January 2009, when France would no longer hold the Council Presidency (Taylor, 2008c). In this regard, the ratification of the Treaty hinged on the approval of Ireland, which, having helped scupper the Constitutional Treaty and nervous about Lisbon's implications for its jealously guarded neutrality policy, could not be made anxious again over "EU militarisation" (Taylor, 19 June 2008)

Consequently, by the time France announced strengthening the CSDP capabilities as one of its presidency priorities, its plans for EU defence, which by now also included a more competitive, free defence market, were beginning to be portrayed in the media as more "pragmatic" and less "*avant garde*" (Taylor, 2008d). Thus, the then Secretary of State for EU affairs Jean-Pierre Jouyet informed the media of his preference for strengthening the "operational capacity" of CSDP rather than a "grand conceptual review" (Taylor, 2008d). Such a "pivot" was also more palatable to Britain, where the public and legislature were considerably more sympathetic to "opening markets," which had "clearly and historically" worked very well for the UK (Interview 4, 23 July 2013, EDA). For Jouyet, this entailed increasing the effectiveness of member states' defence spending as well as enhancing equipment interoperability through common procurement procedures and a more integrated defence market (Taylor, June 2008d). In addition, the relative reliance of Thales, the French defence prime contractor examined in Chapter III, as well as that of other major French defence firms, on the European versus the United States' defence market is considerably heavier than that of other transnational firms in the EU (Luehmann, 2011: 7; Thales Group, 2008: 14; Interview 38, 22 May 2014, EDA and Member State; Interview 9, 14 November 2013, Member State Permanent Representation).

*The French Presidency's Support of the Defence Procurement Directive behind the Scenes – Safeguard Against Future ECJ Rulings*

Therefore, the objective of constructing a European defence equipment market resonated with French traditional concerns for the “strategic autonomy of Europe.” Particularly true in the transatlantic context, this was also a “matter of French sovereignty, pride, and conscience” as well as France’s “credibility as an ally” (Interview 37, 20 May 2014, Member State Permanent Representation; Interview 21, 7 March 2014, EDA and Member State). There was certainly an “economic interest to reinforce industry” guiding the French Council Presidency, while in some French policymaking circles, the defence industrial equivalent of the state’s quest for “strategic autonomy” was the “protection of the European defence equipment market via a “European preference” in defence acquisition (Interview 37, 20 May 2014, Member State Permanent Representation; Interview 12, 22 January 2014, Member State Ministry of Defence). However, underneath such grand political narratives surrounding the European Defence Equipment Market, a more narrow and more acute institutional concern was concentrating the attention of the French Council Presidency on the proposed Defence Procurement Directive.

In fact, discussions of the French position and preparation of the Presidency agenda on the “EDEM dossier” within the permanent representation were already taking place during the preceding Slovenian Presidency, and had in fact begun under the Portuguese term before that (Interview 37, 20 May 2014, Member State Permanent Representation). In fact, it was the French representation, with the view towards its own time at the helm, that was key to securing one of a major concessions on the part of the Commission during the latter half of 2007 – the “big shift” from the planned regulation to the more flexible directive (Interview 37, 20 May 2014, Member State Permanent Representation; Chapter IV). Regarded as a “way to reassure the member states,” this development was key to reducing their opposition to community involvement (Interview 37, 20 May 2014, Member State Permanent Representation; Chapter IV) Consequently, by the time the intensive phase of the preparatory work on the Presidency commenced in early 2008, the *Directive Proposal* was already “on the table,” with the first phase of negotiations on its content initiated in January 2008 (Interview 37, 20 May 2014, Member State Permanent Representation). On an

institutional level, Christine Roger, the former French Ambassador to the Political and Security Committee (PSC), a permanent structure within the Council of the EU, was instrumental in securing a “defence focus” within the French Presidency’s agenda, and then extending that agenda to include the proposed defence procurement directive (Interview 37, 20 May 2014, Member State Permanent Representation; Interview 29, 7 April 2014, EU Council). An uncharitable reading of such support for the legislation would characterise it as one of focusing on “the only deliverable(s)” after the grander aspects of its European defence agenda proved untenable (Interview 9, 14 November 2013, Member State Permanent Representation; Interview 11, 6 December 2013, Member State Ministry of Defence; Interview 16, 6 February 2014, European Commission). Indeed, as an official tasked with the Defence Procurement Directive “brief” acknowledged, the Presidency had “not envisioned the EDEM as a huge priority; the Directive was more like a beautiful present on top of the list” (Interview 24, 11 March 2014, Member State Permanent Representation). Moreover, there were a “number of packages” under negotiation, with the Climate and Energy Directive perceived “the big ticket item” at the time (Interview 37, 20 May 2014, Member State Permanent Representation; Interview 6, 30 July 2013, Member State Permanent Representation). However, reaching for the “low-hanging fruit” in this manner was a widespread technique amongst pre-Lisbon Council Presidencies, and, moreover, this narrative only tells part of the story (Interview 37, 20 May 2014, Member State Permanent Representation). As mentioned above, the “political mood” set and propagated by the Sarkozy administration favoured an “EU initiative on defence,” and had filtered down throughout the bureaucratic levels (Interview 32, 10 April 2014, Member State Ministry of Defence).

In addition, the significance of recent ECJ activity in solidifying the support for a Directive within the French Presidency must be noted (Interview 37, 20 May 2014, Member State Permanent Representation; Interview 24, 11 March 2014, Member State Permanent Representation). As argued by Blauburger and Weiss, and indicated in Hoeffler’s work, the Case *Commission vs. Italy* (C-337/05) in which the Court ruled that the Article 346 exemption did not apply to dual-use goods, a number of infringement proceedings initiated by the ECJ throughout 2007 and the beginning of 2008 questioning member states’ closed competition procurement decisions, and the “ECJ getting very close to ruling on defence markets” in general, reportedly

convinced the French Ministry of Defence and the Council Presidency that “not having a text was worse than having it” (Interview 24, 11 March 2014, Member State Permanent Representation). These indications of the Court’s increasingly “restrictive interpretation” of defence acquisition cases sent a powerful jolt through the French bureaucracy that “fragility” and “transience” or Article 346 necessitated “legal certainty” and required a “safeguard” which the Defence Procurement Directive could provide (Interview 37, 20 May 2014, Member State Permanent Representation; Interview 24, 11 March 2014, Member State Permanent Representation). Consequently, it was decided in early 2008 that the French Presidency would “take the bull by the horns” and oversee its approval (Interview 24, 11 March 2014, Member State Permanent Representation). Furthermore, unlike other member states’ legal systems, French domestic legislation already contained provisions for regulating the scope of Article 346, which boded well for the transposition process and could also provide a source of amendments, and thus French influence, to the text itself (Interview 32, 10 April 2014, Member State Ministry of Defence; Blauburger and Weiss, 2013). In fact, Hoeffler has stated that this 2004 decree was the basis for the “instructions” to support the Directive conveyed by Paris to the French delegation (Hoeffler, 2012: 445).

Other member states were also warily noting the “independent and serious indication of intent” on the part of the Court (Interview 36, 5 May 2014, EDA and Member State). The UK, similarly to France, understood that the Directive would provide a “safeguard” vis-à-vis ECJ rulings. Generally guided by a pragmatic approach, the British government at the time appeared “comfortable enough” with the French Presidency leading the negotiations once it had assumed that post (Interview 37, 20 May 2014, Member State Permanent Representation). Specifically, the Department of Business, as well as “parts of the Ministry of Defence” regarded the *Defence Package* as a “very positive development” (Interview 6, 30 July 2013, Member State Permanent Representation). Moreover, despite its “love affair” with the United States, the UK was beginning to understand that it was increasingly less willing to “share key technology” as part of transatlantic defence acquisition projects, further contributing to the British willingness to compromise (Adams and Ben-Ari, 2006; Interview 39, 25 May 2014, EUMS).

## *The French Presidency Forges Consensus*

This is not to say that this shift made for a smooth negotiating path. In fact, many calls for an intergovernmental approach to defence market matters continued well after the publication of the *Proposal* and throughout the better part of 2008 (Interview 37, 20 May 2014, Member State Permanent Representation). Tacit support of Paris for the *Directive Proposal* did not mean that it was forthcoming from other member states' capitals. Rather, the French Presidency faced "very reluctant" governments concerned about the "extremist" approach of the Commission and the likelihood of competence creep (Interview 37, 20 May 2014, Member State Permanent Representation). Thus, national EU representation officials recall "very tense, very difficult" discussions beginning with the first meeting and "all the way" until adoption (Interview 24, 11 March 2014, Member State Permanent Representation ; Interview 3, 15 December, Member State Permanent Representation; Interview 9, 14 November 2013, Member State Permanent Representation). However, having determined that "there would be a very good Directive, if there were to be a Directive at all," the officials and civil servants of the French Presidency set about achieving just that in the six months preceding the official July commencement (Interview 37, 20 May 2014, Member State Permanent Representation;). The task before the French delegation of bringing member states closer to "accepting a degree of interdependence and cooperation was eased by a general awareness in national capitals that "an internal market in defence was needed" to address budget constraints and help finance weapons programmes that "have been getting more and more expensive" (Interview 24, 11 March 2014, Member State Permanent Representation; Interview 37, 20 May 2014, Member State Permanent Representation). This sense was also reinforced by the shared understanding that "there are things that [member states] cannot do alone that are necessary in modern war," while the pre-financial crisis "halcyon days" of European integration and CSDP "optimism" helped make "issues of competence" less "acute" than they are today (Interview 37, 20 May 2014, Member State Permanent Representation).

### *Creation and Influence of the LoI Working Group*

In this context, the French diplomats and officials in Brussels set about making proposed legislation as palatable to the member states as possible. In particular, the French delegation made sure to organise “many meetings, lunches, and visits to [member states’] embassies” in Brussels (Interview 37, 20 May 2014, Member State Permanent Representation). With “nobody” “killing” the idea of a defence procurement directive, an “agreement among the Big Three” arms producing member states was forged “in principle,” approximately three-four months prior to the beginning of the French term (Interview 37, 20 May 2014, Member State Permanent Representation; Lequesne and Rozenberg, 2008: 25). A key early component of this strategy was the establishment of the so-called Letter of Intent Working Group, known as the LoI Group in early 2008. Comprised of ministry of defence and armaments directorate officials from the six largest arms producing member states that had originally signed the LoI, as well as their representatives at desk-officer level in COREPER, the establishment of the forum had been a significant step in “placating” the largest member states (Interview 37, 20 May 2014, Member State Permanent Representation; Interview 41, 11 June 2014, Member State Ministry of Defence). The LoI Group met on the days immediately preceding the Council Working Group meetings, and aimed to input “defence specific” concerns into these discussions (Interview 32, 10 April 2014, Member State Ministry of Defence).

In fact, the LoI Working Group became the chief forum for discussing the implications and provisions of the proposed directive, raising issues of common concern, and, in the words of one former participant, “comparing national positions” (Interview 11, 6 December 2013, Member State Ministry of Defence; Interview 41, 11 June 2014, Member State Ministry of Defence). Although the meetings were often fractious, and there was “no time when all six agreed,” a “common vision” began to emerge amongst them as a result of “testing ideas” and discussing shared concerns of a “larger, strategic nature” (Interview 32, 10 April 2014, Member State Ministry of Defence ; Interview 24, 11 March 2014, Member State Permanent Representation ). One official recalled that the LoI Working Group meetings also provided an opportunity to “work out competition amongst the six member states,” and it was

grudgingly agreed that, as the official phrased it, “having the Czechs buy equipment from a Swedish company was more acceptable to the French than having it be bought from an American firm. Although, of course, the French would have preferred that it had been purchased from France” (Interview 24, 11 March 2014, Member State Permanent Representation). Moreover, the LoI Working Group delegates would even give the floor to each other ahead of other member states’ representatives during Council meetings, secure in the knowledge that broad support for their positions had been “worked out the day before” (Interview 24, 11 March 2014, Member State Permanent Representation). Crucially, the Group, rather than the Council, also became the chief interlocutor of the Commission for much of the negotiating process—as Commission officials had requested to be included in LoI meetings—and held frequent meetings with the EDA, as well (Interview 24, 11 March 2014, Member State Permanent Representation; Interview 11, 6 December 2013, Member State Ministry of Defence; Interview, 32, 10 April 2014, Member State Ministry of Defence; Interview 41, 11 June 2014, Member State Ministry of Defence). In fact, LoI Working Group participants recalled an amenable process during which they felt they were “educating” the Commission on the implications of the Directive’s provisions under discussion, while the Commission “used” the LoI forum to gauge the progress of the negotiations (Interview 11, 6 December 2013, Member State Ministry of Defence; Interview 3, 15 December, Member State Permanent Representation). In the absence of more senior level input from their ministries of defence, the LoI Working Group also functioned as the main vehicle for conveying member states’ positions throughout a considerable portion of the co-decision discussions (Interview 11, 6 December 2013, Member State Ministry of Defence).

### *The Importance of Intra-Presidency Dynamics*

As stressed repeatedly by officials at the Commission, COREPER, and member states’ ministries of defence, as well as industry executives, the French Presidency beginning with the official commencement of its term on 1 July 2008, was widely regarded as “incredibly ambitious,” having “dedicated an enormous amount of resources,” “worked extremely hard,” and “pushed everyone else to work extremely hard” (Interview 6, 30 July 2013, Member State Permanent Representation; Interview 24, 11 March 2014, Member State Permanent Representation; Interview 9, 14



November 2013, Member State Permanent Representation; Interview 3, 15 December, Member State Permanent Representation; Interview 18, 10 February 2014, Industry; Interview, 32, 10 April 2014, Member State Ministry of Defence ; Interview 26, 3 April, Industry; Interview 17, 10 February 2014, European Commission ). Fuelling the pressure to “get as much done as possible,” was the French Presidency’s desire, shared within COREPER, to secure a decision before the looming European Parliament elections, end of the first Barroso Commission’s term, and the commencement of the “untested, new” Czech Council Presidency in 2009 (Interview 6, 30 July 2013, Member State Permanent Representation; Interview 9, 14 November 2013, Member State Permanent Representation; Interview 32, 10 April 2014, Member State Ministry of Defence ; Interview 24, 11 March 2014, Member State Permanent Representation ). Moreover, after the Commission had first published its *Proposal for a Defence Procurement Directive*, there was no certainty amongst stakeholders as to when and even if it would be finalised and approved.

Therefore, the initial aim of the French Presidency was a legislative text that was “as advanced as possible,” in order to be optimally positioned to influence its content at later drafting stages (Interview 24, 11 March 2014, Member State Permanent Representation). As negotiations progressed, however, the Presidency became increasingly determined to take and “maintain control of the entire process,” (Interview 24, 11 March 2014, Member State Permanent Representation ). In a reflection of this, one interviewee recalled “everyone in COREPER” being “forced” to work through the night on the eve of the Directive’s adoption, for instance, while another characterised France’s time at the helm as “the Presidency on crack” (Interview 17, 10 February 2014, European Commission ; Interview 9, 14 November 2013, Member State Permanent Representation). Those involved also recounted “meetings with the Commission before and after Council meetings, seven hour-long meetings, informal, ad hoc meetings, and sometimes additional meetings in Council” (Interview 32, 10 April 2014, Member State Ministry of Defence).

The dynamics of the EU’s institutional alignment, and that of the French Council Presidency, played a key role in securing the adoption of the Defence Procurement Directive, as well. The “traditional” defence and security structures within the EU Council, much like member states’ ministries of defence, were not the primary venues

of the Directive negotiations. Despite a “very strong interest in the issue,” the PSC had “discovered” the EDEM agenda “almost” by chance, and did not become actively involved until very late into the negotiating period (Interview 24, 11 March 2014, Member State Permanent Representation ). To the Committee, the likelihood of an “actual” Directive seemed like “a remote possibility” for much of the *Directive Proposal* discussions, and the text itself was deemed “too technical” (Interview 24, 11 March 2014, Member State Permanent Representation ). Similarly, the armaments counsellors of member states’ permanent representations to the EU had more or less “let the” brief “go” to the Competitiveness configuration of the Council, likely viewing it as yet another “administrative burden” and one that would likely be discussed within the same domestic government structures, at any rate (Interview 24, 11 March 2014, Member State Permanent Representation ; Interview 9, 14 November 2013, Member State Permanent Representation; Interview 29, 7 April 2014, EU Council). Nevertheless, the engagement of the Brussels “defence actors” was necessary to forge a general consensus, and the “political support” of Christine Roger, the then French PSC Ambassador, was essential to securing it (Interview 37, 20 May 2014, Member State Permanent Representation). Cognizant of “community matters,” she expended tremendous personal effort in order to “bring industry, the Commission, and national defence people” together (Interview 37, 20 May 2014, Member State Permanent Representation; Interview 29, 7 April 2014, EU Council).

In addition, a number of officials interviewed as part of this research recalled a congenial atmosphere and a “very good spirit” within the French “team,” the LoI Working Group, and the Council Working Party (Interview 32, 10 April 2014, Member State Ministry of Defence ; Interview 17, 10 February 2014, European Commission ; Interview 24, 11 March 2014, Member State Permanent Representation). Thus, despite the sharp dividing line between “public procurement people” and “defence people” within these settings—which reportedly even translated into social activities—a shared goal of “working in the direction of a solution” emerged as the negotiations progressed (Interview 24, 11 March 2014, Member State Permanent Representation; Interview 40, 28 May 2014, European Parliament ; Interview 3, 15 December, Member State Permanent Representation). For instance, one senior official at the General Council Secretariat (GCS) spoke of a shared desire to have the proverbial baby,” after investing the time and resources into “not throwing

it out with the bathwater” during negotiations (Interview 29, 7 April 2014, EU Council).

*The Devil is in the Detail: Reaching Agreement on Substance*

Substantively, the French Presidency was also instrumental in forging compromise on several thorny aspects of the Defence Procurement Directive’s provisions. Firstly, it was responsible for introducing the Directive’s treatment of offsets as a compromise measure, which enabled the member states’ contracting authorities to require defence firms who had won contracts from other member states’ governments to sub-contract a share of the project to local firms (*Europolitics*, 2008e). Described as a “very bitter part of the negotiations” the issue of offsets constituted one of the most sensitive aspects of the Commission’s EDEM agenda (Interview 6, 30 July 2013, Member State Permanent Representation; Chapter III; Chapter IV). Secondly, the Commission and the Council had clashed over the proposed “threshold” values of defence supplies and services contracts above which the Directive would apply, with the latter putting forward a much larger amount (1 million euros versus the 133,000 – 206,000 euros favoured by the Commission and European Parliament). It was the French Presidency that proposed the compromise amount of 412,000 euros, basing the figure on civilian procurement regulations (*Europolitics*, 2008e). Thirdly, the French Presidency was responsible facilitating agreement between the Commission, Parliament, and several member states on the specification of services to be covered by the Directive (*Europolitics*, 2008e).<sup>38</sup>

On the higher, more political level, the Presidency also insisted on the inclusion of the EDA into the Defence Taskforce being planned by the Commission at the time of the Directive negotiations (Interview 37, 20 May 2014, Member State Permanent Representation; Interview 38, 22 May 2014, EDA and Member State ). Furthermore, the French concern with “strategic autonomy” has also found its way into the

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<sup>38</sup> The Commission set out a list of services to which the Directive would apply in an annex, based on the 1958 Council Decision. However, the EP wanted a general definition and an updated list of defence-related services, proposing to delete the annex. Several member states were opposed to this. The compromise brokered by the French presidency was to retain two annexes with updated service definitions (dividing between primary and secondary services, based on how “directly” they relate to the 1958 list of materiel).

COREPER *Draft Declaration on Strengthening Capabilities*, which proclaimed that “lessening our dependence for key technologies on non-EU suppliers” and “improving our security of supply” is essential to developing operational capabilities (COREPER, 2008: 8). In addition, the Presidency reportedly succeeded in securing assurances that any ECJ ruling resulting from the Directive would consider the impact of its decision on the viability of the defence contract in question – providing the member states with yet another “safeguard” (Interview 32, 10 April 2014, Member State Ministry of Defence ). And finally, despite relative EC “victories” on curtailing offset practices and restricting the application of Article 346, the definition of what constitutes military equipment meriting an exemption from competitive procurement due to its sensitivity has been left to the interpretation of the member states (O’Donnell, 2008)

## **Conclusion**

This chapter has traced the connection—of both a rhetorical and a policy-making nature— between EU military capability development and the coalescence of an EU defence equipment market. This link arose from the post-Cold War military transformation efforts undertaken by EU member states, and specifically the need for an EU-wide framework to support defence industrial rationalisation. The massive military equipment demand structures of bi-polar posturing had become unsustainable, and considering the small defence market sizes across the EU, if its defence firms were to continue to operate (a political and labour market concern) and produce the equipment required by the armed forces (a defence and security concern), a European framework for industrial rationalisation and consolidation was necessary. This rationale coincided with Europe’s defence firms themselves becoming more “vocal” regarding the risks and challenges they were facing. The first post-Cold War decade also saw the emergence of an EU military construct as part of the Common Security and Defence Policy (CSDP). Although it had since acquired civilian crisis management capacities as well, the CSDP originated in an attempt to narrow the transatlantic gap in military capabilities which was so starkly exposed during the Balkan wars of the late 1990s. Subsequently, the Anglo-French meeting of minds at St Malo in 1998— CSDP’s official “birth” if there was one—soon became caught and

buoyed along by the European integration dynamic. In this self-reinforcing pattern, as the fundamental fragility of this historic consensus became apparent, CSDP was cast as primarily a military capability development and enhancement tool. Steering clear of politically grand but inherently divisive aspects, such as the relationship with NATO or a permanent EU headquarters, and focusing on “practical” ways in which CSDP could deliver on capabilities and close-to-home crisis management, allowed this project initiated into existence with such fanfare, to move along, if only from one usually unfulfilled capability target to the next.

Another outcome of this shift, however—and one that is of direct relevance to the arguments presented in this chapter—was to strengthen the chain of policymaking rationale between crisis management capabilities and an integrated defence equipment market, via industrial restructuring. In turn, the EDA, an incarnation of the long-touted European armaments agency, arose from this growing connection between defence and market policy fields. It was also spurred into existence by the mounting indications of the European Commission’s resolve, as the member states warily perceived it, to forge a role for itself in any EDEM that would emerge. Thus, as this chapter has demonstrated, the EDA was the direct result of member states’ recognition that the “business aspects” of defence were in dire need of policy attention if the defence aspect was to have any meaning at all. As such, the Agency was positioned by EU governments as the leading actor in the construction of the EDEM, while the EC and its proposals in this field, were kept resolutely at bay. Furthermore, in the words of the Agency’s first CEO, the “intellectual case” which the EDA dedicatedly set about making reverberated throughout the EU’s defence and security structures, as the imperative of an efficient defence market, with harmonised, competition-enhancing procurement procedures at its core, became increasingly characterised as a crucial component of developing Europe’s capabilities and furthering its security. There was, as the EDA officials never lost an opportunity to emphasise, no viable alternative to cooperation.

That meeting of minds, however, proved fleeting and conditional, as indicated by the divergent roles member states originally envisioned for the EDA itself. Therefore, the Agency, despite producing initially promising results and facilitating (soft) rule-based cooperation between member states, has fallen victim to the fragility and transience of

intergovernmental consensus situated at the core of the EU's attempts to forge a coherent defence policy in general. The frequently reiterated sentiment which emerged in the course of interviews regarding the over-zealousness of the Commission as it "moved in" with "its" regulations and ostensibly "scared" member states off voluntary cooperation must therefore be viewed in this context. Furthermore, these are significant not so much for their veracity but as an indication of the influence exerted by the Commission itself. Yet, paradoxically, the EDA and the Code of Conduct, as well as their decline, also "eased" the passage of the Defence Procurement Directive. The former created a level of trust between the member states, raised the defence equipment market issue on the policymaking agenda, and brought together hitherto non-intersecting actors (such as representatives of national armaments directorates) around the EDEM policy area. Rather, the inter-linkage between capability improvement objectives and defence industrial imperatives greatly strengthened the policy rationale for a legislative instrument as part of the EDEM, supplying a persuasive set of arguments in its favour—to be exploited by its proponents—and drawing in an additional caucus of supporters from the defence and security field. A European defence and security policy bolstered by a European defence equipment market is potent mission statement. The ineffectuality of the Code of Conduct then strengthened the rationale for the Commission's involvement, as well.

Yet the key finding of this chapter is that in the numerous policy statements with the message of "we need to forge an open EU defence market to ensure the effective operation of our armed forces," a crucial detail was lost. In particular, it was never made clear, by member states policy makers or relevant EU officials, if the armed forces and military capabilities they were concerned about referred to an EU or a national context. In other words, did the key actors believe that an EU defence procurement policy would bolster CSDP—assuming that this was what they in fact desired—or did they see a value in it, as the EDA had hoped, for their national militaries and defence firms? This distinction is important not only because it could clarify if and how the EDEM elements which have emerged may be viewed as a result of EU's continuing military integration, but also because its absence indicates vague policy proposals, which in turn suggest a lack of clear policymaking intent to bring about further institutionalisation of the defence equipment market.

Thus, as has been demonstrated above, the member states did see a purpose and benefit of institutionalised EU cooperation in the defence industrial realm for their national defence and security policy objectives. However, it has also been made apparent that this space for integration, so to speak, was highly conditional and carefully constructed to provide member states with decision-making primacy and the maximum possible room for manoeuvre. Moreover, and perhaps not very surprisingly, EU governments did not envision much of a role, and certainly not a leading role, for the European Commission and its “internal market for defence” proposals in an EDEM they may have wished to see. Therefore, the conclusion which emerges from the discussion above is that capability improvement was not the primary motivation behind member states’ acquiescence to supranational constraints in the form of the Defence Procurement Directive. It is reinforced by the continuing failure of member states to close the CSDP capability gaps they have repeatedly identified, as well as the lack of clarity in their policy statements regarding how precisely an EU defence equipment market—particularly one with a role for the European Commission—would benefit their armed forces. In addition, the EU’s capability generation structures, primarily the EUMC and the EUMS, did not concern themselves with “issues of the market,” and viewed the EDEM as functionally separate from true “defence” aspects such as deployment on missions and interoperability. The prevailing view within these settings was that the road to defence integration ran through increased operational integration of the member states’ armed forces, rather than the construction of a harmonised defence market.

The focus on the interests and policy objectives of the Big Three member states, which has underpinned the research presented in this chapter, has indicated that the French EU Council Presidency of 2008 was fundamental in securing the adoption of the Defence Procurement Directive—primarily by forging a consensus “in principle” amongst the Big Three before the French term even commenced— and its influence in this regard was consistently highlighted in interviews. Furthermore, the French Presidency agenda prioritised the EU defence and security policy, and within that, emphasised capability development. In this, it was spurred on by the political direction of the Sarkozy administration. For France, this was a manifestation of its historic quest for a European “strategic autonomy”—largely vis-à-vis the United States—including the pursuit of

“Europe of defence, but on French terms.” French calls for a “European Defence Procurement Area” based on “common rules” certainly constitute considerable policy continuity, as does the Directive’s compatibility with its domestic decree of 2004. However, the support of the French Presidency—as well as of Paris—for the Commission’s initiatives was essentially reactive, rooted in not only the “threat” of potentially harsh future ECJ rulings in the field of defence procurement, but also in the apparent unworkability of its grander European Defence ambitions, the significance of the EU market to French transnational defence industry, and the desire to shape the process the result of which was increasingly seen as inevitable.



# CHAPTER VI: CONCLUSION – INTER-STATE COOPERATION AND ITS MINUTE MANIFESTATIONS

## Introduction

This thesis had set out to investigate the emergence of an institutionalised European Defence Equipment Market (EDEM). Towards this end, Smith’s conceptualisation of institutionalisation was adopted here, which views this process as an increase in the level of detail and inter-linkage between the collective behaviours and choices of a social group. As a result, norms become more numerous, clear, binding—as behavioural standards become obligations—and formal, as they are codified into rules and laws, and as permanent organisations are “brought into the process (Smith, 2004: 27; 39). As such, focus was placed on the first and most significant elements of EDEM to date—the legally binding 2009 Defence Procurement Directive issued by the European Commission, and, until its suspension in March 2013, the European Defence Agency’s (EDA) voluntary of Conduct launched in 2006. Both instruments have imposed conditions, limitations, and in the case of the Defence Procurement Directive, unprecedentedly binding rules on member states’ defence procurement practices. The most important manifestation of this constraint has been the curtailment of national governments’ hitherto unbridled and often superfluous invocation of Article 346 of Lisbon Treaty. The provision allows the member states to derogate from the stringent Single Market regulations mandating open competition within the Union, when the “essential interests of its security” are at stake.

Having been preserved throughout successive Treaty revisions, the exclusion constitutes a jealously guarded prerogative of the member states, which view it as the tantamount legal safeguard of their sovereignty. Situated at the core of nation-states’ perceptions and expressions of sovereignty is control over the production, development, acquisition and trade of armaments. As this thesis has demonstrated, this linkage has been emphasised within major theoretical traditions in IR, such as realism, constructivism and liberalism, and is routinely invoked in policy discourse emanating from the defence industrial policy field. Moreover, the entrenched

equation of defence industrial matters to core state functions finds numerous empirical manifestations within the EU armaments and defence procurement sphere, as, for instance, persisting protectionism, fragmentation, and lack of cooperation in this areas are consistently attributed to “sovereignty concerns” within policymaking and academic circles alike. Thus, the Independent European Programme Group (IEPG) within NATO, the Western European Armaments Group (WEAG), followed by the Western European Armaments Organisation (WEAO), and finally the European Defence Agency (EDA) of today constituted political, intergovernmental initiatives. The so-called Letter of Intent Agreement (LoI) and the establishment of the Organisation for Joint Armament Co-Operation, known by its French acronym OCCAR, have had a more industrial focus, encompassing governments’ commitment to ease the life of defence industry through cooperation. Yet, all of these organisations have proven largely incapable of fulfilling their mandates due to the lack of true commitment to cooperation and the seemingly ever elusive political will. The fundamental reason for difficulties or descent into irrelevance, however, lay in the inherent difficulty of inter-state cooperation in policy fields which lie at the heart of nation-state sovereignty conceptualisations

Nevertheless, as stated above, member states have acquiesced to supranational rules which would, for this first time, circumvent their monopoly on defence procurement decision-making. Furthermore, they have done so despite a long-held resistance to meaningful involvement of the European Commission in any aspect of the EU’s defence and security policy, and following the rejection of its previous forays into defence industrial matters. This empirical puzzle has consequently resulted in the research question addressed by this thesis: why have member states made the more costly move toward binding regulation in the shape of the Directive, having already enacted a soft cooperation mechanism represented by the Code? This inquiry was also approached as a means of examining rule-based inter-state cooperation in a policy area that lies at the core of national sovereignty conceptualisations, while seeking to elucidate the dynamics of European integration in a field that has been notoriously and historically resistant to such forces. Consequently, three hypotheses were generated. Taking into account the industrial, economic, defence and security aspects of the defence industrial policy field, and informed by the existing literature and policy documents available at the time, it was hypothesised that:

*H1: Transnational defence firms and industry associations, created by industrial consolidation within the EU, have lobbied member state governments to agree to harmonisation measures*

*H2: Supranational EU bodies have secured member states' agreement to an unprecedented measure of defence procurement integration by playing opportunistic policy entrepreneurship roles*

*H3: Development of the EU security and defence dimension has generated an interest in a common defence procurement framework on the part of the dominant arms producing member states, which then ensured the cooperation of other governments*

The final chapter in this thesis will first review and assess the evidence in support of each hypothesis. Subsequently, a conclusion will be drawn regarding the respective causal significance of each, while pathways of interaction between these three lines of inquiry will also be specified. These findings will then be placed in the context of the conceptual framework and organising principles underpinning this research – namely, processes of institutionalisation and policy stages. This chapter will conclude by suggesting fruitful avenues for future research.

## **European Defence Industry – Resignation Rather Than Jubilation**

The EU's largest transnational defence firms (also referred to as primary contractors, or primes) were certainly vociferous regarding their desire for a more open, harmonised defence market in the EU. Indeed, the EU's armaments manufacturers have been feeling under pressure for some time – at least since the late 1980s. Thus, as discussed in Chapter III, Europe's transnational defence industry entered the new millennium with frequent calls for “one customer” and greater political cooperation in order to alleviate the heavy pressure of decreasing defence budgets, dwindling government investment, and intense competition with US firms. They were thus instrumental in bringing concerns regarding the competitiveness and even survival of this strategically vital sector to the fore of the policy agenda. These industrial players have also helped concentrate the minds of member states' policymakers on the critical

importance of political cooperation for ensuring that competitiveness and survival. Viewed through the lens of international political economy, if BAE Systems, Thales, EADS, and Finmeccanica—the four primes on which the analysis has concentrated – were to reap the benefits of economies of scale through lower unit costs and increased production runs, more EU customers than just their home government would need to purchase the defence equipment they produced.

However, in the course of research undertaken here, it became apparent that the trajectory of primes' interests could not be traced to a competition-based European Defence Equipment Market in a straightforward manner. Rather, their interest in any such construct was conditional on the benefits it would yield for their profit margins, including with respect to market-share and export potential. And in the transnational defence sector, where “home” governments still constitute the most important regulators, chief customers, and majority shareholders, the viability of the industrial bottom line is a complex concept. Decades of tightly-knit association with member states in which BAE Systems, Thales, EADS, and Finmeccanica are headquartered, have resulted in an uneasy tension, with a “close identification of interests” between them on one hand and divergence in preferences on the other. The prime contractors constitute only one, albeit key, component of national defence technological and industrial bases (DTIBs), in which inherently contradictory objectives regarding armed forces' autonomy, security of defence supply, maintenance of employment and technological know-how, efficiency and industrial competitiveness are pursued simultaneously. Complete security of supply and information would imply maintaining all industrial capabilities within the state's territorial borders, while market forces prioritise cost considerations within contracting decisions. Similarly, true industrial consolidation within the EU would imply halting support to non-competitive firms, which would of course have negative consequences for domestic employment.

All of these tensions were manifested in the preferences, behaviour, and impact of transnational defence primes in the sphere of EDEM. The EDA's Code of Conduct on Defence Procurement and the EC Defence Procurement Directive purported to address the grievances of industry by furthering the removal of political barriers to a more open defence equipment market within the EU. The Code of Conduct has proven to be a “low hanging fruit” of an intergovernmental agreement, and as such

enjoyed both the support and significant substantive input from industry. This became intertwined and eventually gave way to a rueful awareness of both the Code's and, in fact, the EDA's, inability to affect change in member states' behaviour. At the same time, as the EDEM policy agenda of the Commission materialised, it increasingly diverged from the interests of the EU's transnational defence primes. It furthermore emerged that, rather than acting as autonomous drivers of harmonisation, the defence industrial demands—as well as their uncertain fortunes—were also utilized by the Commission and the EDA as part of the policy rationale for the initiatives they advanced, that is, the Code of Conduct and the Directive, respectively.

Tracing the extensive consultations and numerous meetings between industry and Commission representatives indicated that the implications of a community vision of an open and harmonised defence equipment market contradicted the preferences of large defence firms in several important aspects. In particular, they contravened the primes' desire to maintain their preferential status of national champions and attendant privileged relationship to “home” governments, while at the same time enjoy enhanced access to the markets of other member states. Therefore, such fundamental aspects of the Defence Procurement Directive as the curtailment of member states' invocation of Article 346, heavy restriction of offset arrangements, and exemption of the research and development stage of equipment production from open competition have been described by defence primes EU representatives as “perverse,” “misplaced,” and “misguided.”

Consequently, it may be concluded that defence firms' preferences could be aptly described as having the proverbial cake and eating it too. This idiosyncrasy in turn stemmed from their contradictory relationship with the governments of member states in which they are headquartered. In particular, Article 346 has elicited the primes ire when it had been deployed as a protectionist measure denying them access to other member states' markets. At the same time, BAE Systems, Thales, Finmeccanica and EADS have all grown accustomed to the benefits accruing to them as a result of provision being invoked to channel business opportunities to them, most often by their “home” government. A similar dynamic existed in relation to the notoriously opaque offset practices, wherein governments, when purchasing defence equipment from foreign suppliers, require a (typically high) proportion of defence contracts' value to be reinvested in their domestic industry. Again, although offset requirements

add unnecessary cost and complexity to defence firms' business, they have also become instrumental to obtaining business opportunities in a fiercely and increasingly competitive export environment. In fact, such "sweeteners" are often instrumental in securing the entire contract, as purchasing governments—increasingly located outside of the EU—can afford to select suppliers based on the "extra" packages they offer. Finally, the exemption of national research and development (R&D) contracts from the Directive's scope effectively meant that the necessary investment was not subject to competition requirements, while the (more advanced) products resulting from this phase would be opened to "fair competition" following a "reasonable" risk assessment phase. Industry viewed this provision as problematic since, as R&D in the EU tends to be co-financed by government and industry, member states could not be sure that the manufacturing work resulting from their investment would be carried out within their territory or bolster the arsenal of their armed forces. Similarly, defence firms could not have a guarantee that their own R&D investment would be rewarded by a home government purchase of the resulting product – a long established means of bestowing a "seal of approval" within defence industry that has become critical for export potential.

As a result, Brussels-based industry representatives have repeatedly chided the Commission for not understanding and appreciating such "specificities" of the defence market. In fact, upon closer examination of defence primes' public statements and on the basis of interviews conducted, it emerged that the industry's version of a defence equipment market entailed the injection of competition as a complimentary and intermediate step to greater demand harmonisation—that is, encouraging member states to formulate common armaments requirements— and stimulating government investment. It appears industry did not believe that the Commission's proposals would address the root cause of their malaise as they saw it, namely, lack of common armaments programmes and R&D investment. Furthermore, the research undertaken here also found that rather than actively lobbying "their" member states to acquiesce to the binding provisions of the Directive for the sake of greater competition, defence primes' Brussels-based lobbyists were driven by a belief that the Commission could not be prevented from extending its competence into the defence industrial sphere if it had set upon this policy path. Thus, they expended considerable efforts on mitigating what they perceived to be noxious aspects of the Commission's agenda,

motivated more by resignation than proactive policy moulding. The limited impact of such efforts—as evidenced by the implications of the finalized Defence Procurement Directive discussed above—also signifies a lack of influence during the decision-making stage of the Directive’s approval. Therefore, the proposition that the EU’s largest industrial actors pushed for the “single market of defence” as embodied in the Directive could not be empirically supported.

The examination of transnational firms’ positions has also demonstrated that even though they interacted heavily with the European Commission, and to a lesser extent, the European Parliament and EU Council, the primary interlocutors of the EU’s transnational defence primes have been their home governments’ ministries of defence,—and specifically their armaments directorates— particularly during the decision-making stage of the Directive’s approval. This conclusion is also consistent with the distinct sense of near betrayal expressed by industry representatives in interviews—many believed that their interests had been diluted within a “political” bargaining process between the member states and the Commission, each pursuing their own objectives. A number of interviewees also felt that “their” governments had failed to grasp the implications of the Commission’s intentions sufficiently early in the policy process, and had thus missed an opportunity to shape it according to their will and defence firms’ demands. These sentiments indicate that the “flow” of influence is not necessarily unidirectional in instances of interest group lobbying, that is, exerted by lobbyists upon policymakers, but may rather take on an interactive character between supranational, subnational, and national actors.

### **The European Commission as Policy Entrepreneur**

This thesis had also explored the role of the European Commission as a policy entrepreneur and caretaker in facilitating the institutionalisation of the European Defence Equipment Market. Initially, it appeared that the EC’s motivation—and eventual success—in extending binding EU-level rules into the defence industrial policy field had materialised suddenly, following a period of inactivity and “policy silence.” In the aftermath of the irrelevance that befell the previous supranational forays into this sphere, that is, Commission Communications issued in 1996 and

1997, it seemed that the 2003 Communication, which first flouted the possibility of a Directive, was unprecedented. However, a more detailed inspection revealed a considerable amount of policy continuity. Firstly, despite possessing no competence in defence, the European Commission had been gradually but steadily carving out islands of influence in attendant policy fields, such as security research – where its substantial funds accord it a significant degree of influence—and control of dual-use exports, meaning goods with both military and civilian applications.

Secondly, Callum and Guay (2002) highlighted the “revival of the Commission’s interest” in the defence industrial area beginning in 2000 (p. 771). In 2001, it had convened two high profile groupings of senior aerospace executives, the so-called Group of Personalities and the European Advisory Group on Aerospace. Chaired by Commissioners for Research and Enterprise, respectively, the objectives set before the panels was an examination of the challenges and prospects of the EU’s aerospace industry, as well as reflection upon the value of an EC “contribution” thereto. In fact, according to interviews with Commission officials, the objective of “contributing to” the construction of the European defence industrial policy had survived from 1996 until 2003 as a task on the desks of successive desk officers.

In addition, the examination of the Commission’s policy entrepreneurship and caretaking arsenal has revealed the importance of policy windows, or, rather, recognising such windows of opportunity and making effective use of them. In the case of the EC’s involvement in the defence industrial field, such an opportunity materialised with the commencement of the Convention on the Future of Europe. Grandiosely referred to as the Convention on Europe, this extended summit was itself a manifestation of a dynamic period within EU integration, a stretch of pre-financial crisis “halcyon days” and optimism regarding the development of its defence and security dimension in particular. Systemic level pressures—that is, consistently declining defence budgets, rapidly increasing costs of modern weapons systems, and the ever-widening Transatlantic “competitiveness” gap—made the intra-EU defence industrial status quo palpably untenable. There was a shared, widespread awareness that the fragmentation and overcapacity across the EU’s defence markets, particularly in light of decreasing defence spending, was both unsustainable and deleterious for European defence industry and capabilities. As such, the Convention was concerned with the inefficacy of existing armaments and defence industrial cooperation



arrangements. The combination of these factors – existence and awareness of external efforts, as well as a certain pro-integration dynamic, however fleeting, contributed to the opening of a policy window which was then recognized as such by a capable policy entrepreneur.

Interview material and policy documentation both indicate that Commission officials regarded this conflation as a window of opportunity to advance their policy initiatives. They have subsequently embarked on a path of “purposeful opportunism,” engaging in a number of policy entrepreneurship and caretaking techniques. Firstly, the Commission had launched an intensive consultation period at an early stage of the policy process. Taking the form of sustained series of frequent meetings at regular intervals, it enabled the Commission to engage with “stakeholders” within industry and member states, and to begin assembling a coalition of supporters while neutralising opposing arguments as well as incorporating differing views. The consultation period also allowed the Commission to claim legitimacy as a propagator of the “sacred” Internal Market principles within the defence industrial sphere. By allotting member states only a limited time to respond to its questionnaires, the EC also decreased the scope for resistance, as the ambitious response deadlines were often missed, while the Commission could reasonably claim to have carried out the consultations in good faith.

Another—and related—tactic employed by the Commission was the conscious framing of its agenda as a market fragmentation and competitiveness issue, which could only be sufficiently addressed at the Community level. Beyond their normative and rhetorical significance, the framing efforts of the Commission had significant material consequences. Specifically, they ensured that, once tabled, the defence procurement legislative proposal would be debated and voted upon as a (pre-Lisbon) First Pillar issue. This triggered the co-decision process between the Council and an already largely sympathetic, supportive Parliament, with qualified majority voting (QMV) as a decision-making method. Moreover, the Commission’s framing and consultation strategies drew in particular interlocutors, in this case, representatives of member states’ ministries of economy, finance, and industry, and activated certain institutional venues, here—the Council’s Public Procurement Working Group (within the Competitiveness Preparatory Body). Such actors embodied an economically liberal organisational ethos, and viewed the Commission’s proposals and

argumentation through a “marketised” cognitive frame. Helpfully for the EC, this orientation prioritised considerations of competitiveness and value for money, as opposed to privileging the “specificities” of defence procurement.

The Commission also proved adept at cajoling as well as coercion. For instance, it repeatedly extended official consultation deadlines until the desired number and type of responses were received. At the same time, the Commission has consciously downplayed the implications of its proposals for member states’ institutional dominance within the defence industrial field by consistently paying rhetorical homage to their primacy in this sphere. Furthermore, DG MARKT and, to a lesser extent, DG Enterprise officials portrayed their agenda as merely ancillary to that of intergovernmental cooperation initiatives and national efforts. In their telling, the Commission was not interested in arm-twisting, but rather helping member states achieve optimal policy outcomes.

Nevertheless, the supranational Dr. Jekyll was not without his Mr. Hyde. Thus, beneath the veneer of emphasising complementarity in public statements, Commission officials frequently drew attention to, first, the Code’s of Conduct voluntary nature and thus questionable potential and, later, its apparent inefficacy. They have done so both in closed meetings, during their consultations with the member states, and even in relevant Commission staff working documents. Finally, perhaps the most causally consequential policy entrepreneurship action taken by the European Commission was skilfully timing its submission of the *Defence Package* to the Council and Parliament. Specifically, it ensured that the crucial, intensive negotiating period of the decision-making stage coincided with the French Council Presidency of 2008.

### **Defence Capability Development Priorities of the Big Three**

As the overview of European intergovernmental armaments cooperation initiatives suggested, an examination of the defence industrial policy field must by definition include a defence and security dimension. In this thesis, this has been undertaken by focusing on the causal linkages between the EU’s developing defence and security policy and the rule-based provisions of the European Defence Equipment Market. A

focus on the three dominant arms producing member states—that is, the UK, France, and Germany—was maintained throughout this line of inquiry, as their defence capability requirements and large, transnational defence firms shape both supply and demand within the EU’s defence industrial environment. Moreover, consensus amongst the Big Three has historically shaped the nature, output, and progress of the EU’s foreign and defence and security policies.

Policy documents and existing literature have repeatedly characterised the CSDP as both the beneficiary and an enabler of the EDEM. The former scenario featured arguments for the necessity of a robust defence industrial policy in support of a “credible CSDP,” while the latter line of reasoning held that the evolution of an EU-level defence and security policy provided a “vital rationale” for an integrated defence equipment market. Yet, as no specified causal pathways existed, the approach adopted here sought to arrive at an empirical specification of causal linkages, if any, between the EU’s CSDP structures and the adoption of the Defence Procurement Directive. In addition, the existence of intergovernmental cooperative structures described above, aiming to develop a *European* defence industrial policy in support of *European* capabilities also merited a consideration of a European Defence Equipment Market with an emphasis on *defence*.

The first strand of research in this line of inquiry, however, found that the notion of European defence capabilities, much like European defence industrial capabilities, corresponds to a complex and often contradictory empirical reality. Specifically, interview material highlighted that European capabilities—routinely invoked in policy rhetoric and documentation—are understood by member state actors as primarily national capabilities, to be deployed first and foremost for national priorities. Contributions to NATO operations were still widely viewed as the second most important use of military arsenals across the EU, and CSDP missions came only after that. Consequently, the need to bolster CSDP capabilities through a common defence procurement policy could not be the primary driver behind member states’ approval of the Defence Procurement Directive. This is also reinforced by the finding that discussions regarding or calls for a European Defence Equipment Market did not figure on the agenda of CSDP structures or institutions, such as EUMS or EUMC. Moreover, the involvement of national ministries of defence only late in the Directive discussion indicates that member states did not view the EDEM as significantly or

directly beneficial to their capability development.

In addition, it was found that the arms-producing Big Three member states, and in fact, many in defence industry, viewed the EDA, and not the Commission, as the primary vehicle for advancing the market and industrial aspects of defence capability development within the EU. As this thesis has also demonstrated, the EDA was initially successful in this endeavour, and the officials implementing its agenda certainly believed that it had made valuable gains in facilitating intergovernmental cooperation through its voluntary Code of Conduct on Defence Procurement. However, after a little more than two years of its operation, the fragility of member states' commitment to the Code of Conduct, as well as industry's enthusiasm for it, was becoming an increasingly prominent feature of policy discourse. Again, a number of policy makers interviewed in the course of the research conducted for this thesis cited the premature and "aggressive" pursuit of a defence industrial legislative instrument by the European Commission, as a key contributor to the dysfunction of the Code of Conduct. Its ineffectuality in turn strengthened the arguments in favour of a binding Defence Procurement Directive, and provided a policy "opening" which aided the European Commission in bringing about its adoption. In addition to providing such "policy space" for the Commission, the decline of the EDA's defence industrial role also brought the EDEM "issue" to the fore of member states' concerns and helped create invaluable consensus around the need to address the fragmented *status quo*; EDA also inadvertently contributed to the "complacency" of member states that helped secure agreement in Council.

The failure of the EDA to be "useful" in this area, its lack of a clearly delimited remit, and member states' resulting disengagement from it constituted other prominent explanations of capitals' "increasing reticence" regarding the future, potential, and value added of the Agency (Interview 34, 16 April 2014, EDA and Member State; Interview 4, 23 July 2013, EDA). However, these factors are rather manifestations of the "contradictory logic" pervading the entire defence industrial policy field, of which the establishment of the EDA is a part (Interview 29, 7 April 2014, EU Council). As stated above, Internal Market norms imply unilateral openness to competition, without the expectation of reciprocal access, and as such fundamentally contravene the "defence norms" which privilege domestic control and at best iron-cast reciprocity guarantees within any intergovernmental cooperation agreement (Interview 29, 7

April 2014, EU Council). Consequently, the “business aspects of [EU] defence” at the core of the EDA’s mission is itself a highly contested concept. Moreover, as perceptively discerned by Batora (2009), the European Defence Agency also embodied the fundamental tension spanning the gamut of EU member states’ efforts to construct an integrated, truly common defence and security policy. It is the fissure between the staunch preservation of nation-state sovereignty and the recognition that sharing it is unavoidable in light of the defence budgetary pressures weighing heavily upon individual member states. Consequently, as Batora argues, the EDA represented an attempt to square this circle by establishing an organisation endowed with an ambitiously “integrationist” mission but thoroughly inadequate resources to achieve it. The consensus which gave rise to the EDA proved transient and superficial, falling short of a truly autonomous, effective Agency which could set the rules for inter-state cooperation and then enforce their observance. Such a remit was crucial if the EDA were to fulfil its stated purpose of compelling member states to finally close EU defence capability gaps.

Nevertheless, a linkage between member states’ objectives, European defence policy, and EU defence procurement harmonisation was demonstrated in Chapter V, although it was not as direct as originally hypothesized. Specifically, the Commission would not have been able to capitalise on its policy “foothold” in this field without the influence of the 2008 French Council Presidency. It is true that the Commission has purposefully set the stage for the approval of the Defence Procurement Directive by tabling to proposal in order to coincide with the French Council Presidency, and ensuring that the text was presented in an advanced form, bolstered by numerous consultations and much “learning.” However, the French Presidency was fundamental to securing the approval of the Defence Procurement Directive in the co-decision procedure between the Council and Parliament. Interview material has consistently emphasised the tireless efforts of French officials and civil servants in forging the necessary consensus in the trilateral negotiations between the Council, Parliament, and Commission. The French Presidency also made a significant contribution to making the proposed Defence Procurement Directive “palatable” to member states by orchestrating important compromises, activating the Letter of Intent (LoI) Working Group comprised of six largest armaments producing member states, and maintaining dialogue with key MEPs and defence industry

representatives. This, in turn, had only been possible after securing the tacit agreement of Paris and a nod from the remaining two Big Three member states as to their willingness to engage with the legislative proposal.

However, similarly to the characterisation of the British Council Presidency's success in "delivering" the *EU Counter-terrorism Strategy* in December 2005 as an attempt to "show leadership" in the field, the French time at the helm was also conditioned by French, rather than European, objectives (Argomaniz, 2009: 161). Its historic quest for European "strategic autonomy" and desire for "Europe of defence but on French terms" were the paramount guiding principles in this regard, underpinned by a drive to shape an institutionalisation outcome that was increasingly viewed as inevitable. In fact, the 2013 and 2014 Commission Communications on defence procurement, which will be discussed below, are peppered with the term "strategic autonomy." The French "performance" in the application of the Directive together with the prominence of common EU defence procurement structures in its policy thinking suggests a bounded complementarity between French interests and the narrative frame constructed by the European Commission. To what extent this notion—that is, EU ensuring defence industrial and technological independence from, primarily, United States' technology—is translated into policy objectives of other member states will become apparent in the next several years, and could constitute a fruitful line of future research on EU defence market integration.

### **The Importance of the "Purposeful Opportunist"**

In order to obtain a comprehensive, nuanced understanding of EDEM institutionalisation, it is first important to underscore the limitations of the Commission's policy entrepreneurship reach and of the integration "space" within which it may have been realised. Thus, despite all its policy caretaking efforts, and the "degeneration" of the EDA, the Commission could not *force* the member states to approve the Defence Procurement Directive, just as it could not guarantee that they would not once again deem its efforts "premature" as they had in the mid-1990s. It has already been argued above that the Commission's publication of the *Defence Package* to coincide with the ambitious, defence-oriented French EU Council

Presidency of 2008, determined as it was to “close” the maximum number of EU legislative deals on the table, was decisive for the adoption of the Defence Procurement Directive. Another key factor that helped it achieve these outcomes has been identified in the course of this thesis as the lack of sufficiently senior, ministerial-level engagement on the part of member states’ governments, and ministries of defence in particular. Such political disinterest, leading to a reluctance to “take up” the *Defence Package* proposals within member states’ capitals was repeatedly highlighted during interviews by a cross-section of actors, that is, EU permanent representation delegates, national armament directorate officials, and defence industry representatives.

The reasons cited for this disengagement included an apparent sense of “complacency” within national capitals, itself underpinned by the highly technical nature of the proposed regulation and continued “reassurances” from the EDA as to the immutability of Article 346 and entrenched dominance of member states in defence industrial matters. These actors’ lack of familiarity with the EU legislative process, underpinned by a belief that the Commission’s initiatives could be “killed” at any time they so desired, fed into the “false sense of security” on the part of member states, as well (Chapter V). Moreover, this situation stemmed in part from the Commission’s policy entrepreneurship techniques. It was already indicated above that the EC’s framing efforts drew in sympathetic interlocutors who prized market rather than security of defence supply as the highest national good. Its intensive consultation tactics also left little opportunity for member states—and their defence and security structures in particular—to process the implications of its proposals or provide substantial input. Finally, virtually every type of policy actor interviewed for this thesis emphasised that the need to address the impact of budgetary pressures was acknowledged across the defence industrial policy field. Even the rationale for a binding curb on protectionism and circumvention of Article 346 was grudgingly conceded. Such awareness was also cited by interviewees as a major contributing factor to member states’ apparent failure to stamp out the Commission’s proposals and invalidate the argumentation underpinning them. As a result, by the time the higher national echelons recognised the implications of the Directive for their primacy within defence acquisition decision-making, the EU policymaking machine was in full swing and very difficult to halt.

## Post-Directive Developments and the Future of the EU Defence Market

Following the adoption of the Defence Procurement Directive in 2009, the Commission has closely monitored the member states' transposition process, admonishing all those it deemed to lag behind through warnings and "reasoned opinions." In the aftermath of the August 2011 transposition deadline, the Commission referred Poland, the Netherlands, Luxembourg and Slovenia to the European Court of Justice for missing that date by nearly a year. In addition, the Commission has investigated the Czech Republic's 2009 purchase of four aircraft in 2011 on grounds of non-compliance with competition rules, while the ECJ made a landmark ruling upholding the principles of the Directive against a Finnish defence contract award decision in 2012. Interviews conducted as part of this research also indicated that while member states may continue to take advantage of loopholes within the Directive's provisions, they have also felt increasing pressure to take into account the "reaction of the Commission" to non-competitive defence contract awards. According to both industry representatives and government officials, the new regulations have already begun to have an impact on behaviour. Paradoxically, this is also evidenced by member states going to considerable lengths to avoid scrutiny by the Commission and consequences thereof.

In addition, the Commission has continued to advance further policy initiatives and appears set on enhancing its role within EU defence policy. Indeed, the term defence rather than armaments cooperation or defence procurement, is used here deliberately as it reflects the high level of its ambition in this regard. The July 2013 Communication *Towards a More Competitive and Efficient Defence and Security Sector* speaks boldly of the Commission's intent to forge a "single defence market," while its subtle shift in terminology from the European Defence Equipment Market to (just) European Defence Market is also significant (European Commission, 2013). Defence *equipment* denotes a distinction between the "goods and services" regulated by the Defence Procurement Directive and the large-scale, complex armaments programmes which would have been exempted from its terms, either due to their "status" as "essential" for the "interests of member states' security" or because they involve collaboration between two or more member states. The 2013 Communication does away with this distinction, and often refers to the European Commission as the



European Union, with, for instance, EU contributions to European defence discussed under the heading of “European Commission’s Contribution.” The tone of the document is also markedly more assertive than that of the Commission’s earlier communications associated with the Defence Procurement Directive. It opens with a suggestion that “strengthening CSDP and improving the availability of the required civilian and military capabilities” is also the responsibility of the European Commission, citing the somewhat ambiguous statement to that effect within the European Council Conclusions of 14 December 2012.

The Communication also specifies a host of initiatives, from supporting industry restructuring to facilitating the development of military satellite communication “at European level,” the Commission intends to undertake in order to “strengthen European defence” (p. 4). These include monitoring the “openness of member states’ defence markets” and their application of the Directive, restricting a number of its legislative exclusions, and focusing on definitively prohibiting offsets. Furthermore, the Commission intends to implement a security of (defence) supply regime, support defence and security SMEs, develop a certification system for dual-use goods, and forge a role in CSDP-related research. Perhaps the most far-reaching proposals advanced in the Communication concern dual-use assets “directly purchased, owned and operated by the Union” (p.12) and “supporting European defence industry on [sic] third markets” (p. 15). The extension of EC competence to acquisition and operation of capabilities and external defence policy would constitute a considerable expansion of the Commission’s remit in the defence sphere, decidedly beyond what it had gained with the approval of the Defence Procurement Directive.

The 2013 Communication was followed with an *Implementation Roadmap* in July 2014, entitled a “New Deal For European Defence,” in which the Commission specified “concrete actions and timelines” for the initiatives announced in the earlier document (European Commission, 2014: 2). This Report reiterates the Commission’s determination to forge a single market of defence in even starker rhetoric – stating, for instance, that it intends to monitor both the defence contracts that member states open for EU-wide competition and those that they do not, “through the specialised press and information provided by market operators” (p. 3). There are also warnings that the EC would “intervene, when necessary” to prevent unjustified” offset requirements (p. 4). As has been emphasised throughout this thesis, the restrictions placed on

defence offsets by the Defence Procurement Directive have constituted its most restrictive measures and have been repeatedly denounced by the member states and industry. Furthermore, the Commission's "ban on offsets" has been consistently cited in interviews as the most prominent example of the EC's "competence creep." The *Roadmap* also reflects the Commission's growing profile in the EU dual-use export control regime, with a public consultation undertaken in 2012, a report on the implementation of export control Regulation 428/2009 presented in October 2013, and a Communication issued in April 2014, all aimed at reviewing and "modernising" strategic export controls (European Commission, 2013b; European Commission, 2014b).

Chapter V of this thesis has also demonstrated that the Commission's pursuit of the Defence Procurement Directive has contributed to the redundancy of the EDA's Code of Conduct on Defence Procurement and the irrelevance of the Agency's Industry and Markets (I&M) Directorate as a whole. This "side-lining" of the Agency in defence industrial matters has continued in the years following the approval of the Defence Procurement Directive. In fact, whereas the Code was featured prominently on the EDA's website as a major achievement until approximately mid-2012, reference to it is now found only with difficulty by conducting a "search" within the Agency's list of "projects."<sup>39</sup> According to the Agency, "due to the changes in the European Defence Equipment Market the EDA Steering Board tasked on 12 March 2013 the EDA to analyse the need for a possible new intergovernmental arrangement to replace the Code [sic]."<sup>40</sup> As of late August 2014, such an analysis has still not been announced, and is unlikely to materialise in light of the Commission's enhanced role.

Furthermore, although the Agency's 2013 Annual Report implies that its newly-developed Defence Procurement Gateway is a sort of replacement for the "closed" Electronic Bulletin Board (the platform on which the member states committed to post defence contracts as part of the Code), the former functions as merely a defence procurement information platform amalgamating opportunities, policies, and developments within the EU and advertising the EDA's own procurement needs (EDA, 2014: 14). Finally, as was mentioned in the introductory chapter to this thesis,

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39 See <http://sation.eda.europa.eu/projects/projects-search> and <http://sation.eda.europa.eu/projects/projects-search/code-of-conduct-on-defence-procurement>

40 <http://sation.eda.europa.eu/procurement-gateway/information/eda-codes-arrangements>

the Agency's Industry and Market Directorate which oversaw all of its EDEM-related activities, has been phased out as part of the January 2014 restructuring process, and integrated as a sub-unit into the newly-formed European Synergies and Innovation Directorate.

The strengthened role of the European Commission does not, however, imply the emergence of a truly integrated and competitive defence market in the EU. There was a nearly 2.5 year delay in member states' transposition of the Directive, and the completion of this process (in March 2013) has yielded limited results. Conspicuously absent from the *Implementation Roadmap*, for instance, is any reference to European Union/Commission ownership and development of capabilities, and this omission poignantly illustrates the limitations of EU integration and supranational authority within the European defence market. *Towards a More Competitive and Efficient Defence and Security Sector* was prepared by the Commission as input into the discussions of the European Council which took place on December 19-20, 2013. It was widely referred to as the "Defence Council" due to its focus on CSDP as one of the agenda items, for the first time in five years. However, interview material has indicated that there was widespread resistance to the Commission's "drive for competence," with member states, particularly Germany, voicing their firm opposition to proposals regarding Commission-owned capabilities and industry representatives wary of any Commission "help" vis-à-vis third market exports (Interview 18, 10 February 2014, Industry; Interview 25, 19 March 2014, Industry; Interview 30, 8 April 2014, Industry). Despite the urging of the European Parliament to "provide the necessary fresh and ambitious impetus and to lay down guidelines, overarching political priorities and timelines for supporting a truly European defence technological and industrial base," the Council Conclusions featured no concrete measures to develop the defence market or enhance the effectiveness of its existing measures (European Parliament, 2013; European Council, 2013).

As suggested in Chapter I, the implementation of the defence procurement directive has been uneven and enforcement of its provisions has yet to materialise. Eighty per cent of procurement expenditure within the EU continues to be spent domestically, and even though the Commission in its 2013 Communication has commended France as the member state that has awarded the highest number of contracts under the Defence Procurement Directive, all of these went to French firms. Consequently,

national thinking continues to dominate the defence industrial policy field, while member states continue to equate their security of (military) supply with domestic production, just as they remain highly sceptical of the Directive's ability to ensure it. Thus, in the short term, the member states will most likely exploit legislative loopholes and evade the Commission's reach. In fact, this observation lies at the heart of one of the first academic examinations of the Directive's impact. Castellacci's *et al.* study of Swedish and Norwegian defence firms' responses to the implementation of the Directive indicates that, in the immediate future at least, the former "expect a slow and cautious [process], where EU members will watch each others' steps and will not be willing to fully open their own national markets," while the latter "doubt the sincerity of the largest EU members, the willingness of the EU to enforce the Directive and their own ability to assert their rights" (2014: 1228; 1231). However, these views represent the perspective of smaller firms, and are limited to short-term projections. As such, the pattern of uneven implementation and "loophole seeking" may not be entirely different from the post-liberalisation histories of other policy sectors.

It therefore remains to be seen whether the EC will be able to progress with its planned initiatives in spite of these obstacles. It has already announced its plans to establish a government-industry forum in the "fourth quarter of 2014" to discuss its "third country" proposals. If it succeeds in establishing such a role, this would constitute another step in the path of what one former high-level defence procurement official in the UK termed, rather disparagingly, as "the great European state ...marching relentlessly forward" (Interview 7, 9 August 2013, Member State Ministry of Defence). Parallels in this regard may be drawn to the "integration records" of other policy fields in the EU, such as telecommunications, immigration, and counter-terrorism. In the case of the telecommunications sector during the 1970s and 1980s, the Commission had pursued its liberalisation and harmonisation "creating, financing and relying upon an epistemic community, mobilising interests to support its strategies, and increasingly institutionalizing the policy-making environment at the European level," (Goodman, 2006: 50). It achieved success in this regard despite initial failures and the opposition of the intergovernmental *Conférence Européenne des Administrations des Postes et des Télécommunications* (CEPT) whose "non-binding agreements" dominated the policy space (Goodman, 2006:

Chapter III) Notably, the Commission's agenda was also approved by the national industry ministers and not the parochial PTT (post, telephone and telegraph) ministers. This decision followed widespread concerns regarding the encroachment of Japanese and American telecommunications firms into the European market, propagated in large part by EC-funded studies. The Commission was also aided by liberalisation reforms in key member states, favourable ECJ rulings, and the incentivisation potential of its considerable research funds (Goodman, 2006: Chapter III). Nevertheless, a "regulatory patchwork" of member states' telecommunications regulatory approaches—and their reluctance to cede power to the "European level—proved highly resilient in the face of a number of Commission directives and harmonisation "rounds." Yet, it has gradually eroded and all but disappeared in recent years.

Argomaniz also attributes the institutionalisation of "European Union counter-terrorism" to skilled policy entrepreneurship efforts of the European Commission, although the "impact" of its integrationist initiatives "in practice" has proven limited in the years immediately following their implementation and less ambitious than what was originally proposed (Argomaniz, 2009: 160-162). However, the analysis has also indicated an enhanced profile of the European Commission in the counter-terrorism sphere as well as the growing relevance of EU-level rules for national security actors (Argomaniz, 2009: 162; 167). Similarly, in the field of migration, Cerna concludes that the 2009 'Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment' (the Blue Card Directive) has "not resulted in a harmonized immigration policy," and the legislative tool itself reflected considerable "watering down" in light of member state discord and opposition (2013: 2).

These developments, much like the construction of a single market for energy and civil transport, reflect the Commission's willingness to play "long games" in pursuit of its objectives. Its quest for harmonisation, liberalisation, and market integration in these policy fields exhibits a number of shared features – incremental regulatory "successes" in light of national resistance, often less ambitious than its original intent, but nevertheless followed by a policy "foothold" in the form of successive rounds of regulatory packages. In some areas, such as telecommunications and transport, this

has after several decades resulted in the establishment of a truly integrated European policy. In others, specifically, migration, counter-terrorism, and energy, fragmentation along national lines has persisted, falling short of Smith's governance criteria, but a shift to communitarisation may nevertheless be observed in these fields during recent years (Maltby, 2013: 442). Similarly to defence procurement, these areas have been constitutive of member states' sovereignty conceptualisations, although, it could be argued, to a lesser extent.

It is clear that the Commission is set on bringing defence under the umbrella of the single market. This would entail, in the first instance, extending the scope of the Directive to include the current loopholes and exclusions – such as the R&D, collaborative procurement, and Article 346. Secondly, a mechanism to affect member states' compliance with existing rules would need to be implemented. These tasks alone provide significant challenges, and a truly integrated, efficient, and open defence market does not appear plausible in the foreseeable future. The Defence Procurement Directive benefited in no small part from straddling fields of defence and single market, public procurement and armaments acquisition, politics and economics, with all the attendant competences, ambiguities, and institutional precedents. However, the further supranational initiatives move away on this spectrum from areas of EC competence and towards member states' dominance, the less likely the creation of a single defence market becomes. This is because a truly single defence market would imply a de-coupling of member states' perceptions of security of supply from territoriality and a disassociation of national governments' understandings of security of information from national decision-making dominance. It would also necessitate a significant weakening if not the abolition of Article 346 of the Lisbon Treaty. The ultimate rationale for common procurement is, of course, a single army. However, barring a crisis of systemic proportions, this development appears highly unlikely in the imaginable future, not least because it would entail a fundamental reconceptualization of post-Westphalian sovereignty as enshrined in domestic constitutions and international law, an acceptance of unprecedented and nearly complete degree of interdependence, and radical re-alignment of foreign policy and national defence and security structures and postures. The lack of political will amongst the member states that has plagued the Common Security and Defence Policy, and their insistence on sovereignty that has been the bane of EU armaments

cooperation, makes these developments all the more unlikely.

### **Implications for Institutionalisation Studies and Future Research**

This thesis has relied on Smith's stages of institutionalization, which includes the establishment of the policy domain as an intergovernmental forum, information-sharing between actors, norm creation and codification, the establishment of permanent organisations to "administer the policy domain," and, lastly, a move towards a form of governance, where actors behave as a "unified whole" by

"setting goals, devising specific policies (or norms) to reach them, implementing such policies, providing the necessary resources to carry out the policies, and establishing some form of policy assessment or oversight to ensure that goals are being met and actors are fulfilling their obligations" (Smith, 2004: 40-47).

Viewed in this context, it is safe to conclude that its institutionalisation had not yet reached the "governance stage" and it is uncertain when and whether it will do so. Nevertheless, the development of the EDA's Code of Conduct and the approval of the Directive do nevertheless constitute institutionalization of the defence procurement policy domain, particularly since Smith acknowledges the possibility of "formal organisations" developing their own distinct interests and exerting autonomous influence on the policy process in accordance with them (2004: 46). However, the account presented in this thesis also departs from this scenario in two important ways. Firstly, the involvement of a "permanent organisation," in this case the European Commission, developed in parallel with earlier stages of institutionalization, rather than progressing from them, and the EC did indeed generate and concertedly pursue its interest—the extension of internal market rules into defence procurement. Secondly, this objective came to supplant and dominate the intergovernmental mode, with the result that the "organisations stage" included more of a "takeover" by a permanent organisation than its mere inclusion.

In this sense, Pierson's notion of "loose coupling" between institutions, or sets of rules and norms, provides a useful insight. According to this conceptualisation, when

“substantial ambiguities” regarding the demarcation of authority exist between two institutional settings, as they did between the intergovernmental regime of the EDA’s Code of Conduct and the Commission’s drive for a Directive, there is an increased likelihood of unintended consequences emerging in the course of institutionalisation—here, the approval of the Defence Procurement Directive in spite of the Code and to the “surprise” of a number of policy actors (Pierson, 2004: 163). Ambiguity within authority delimitations implies a diminished ability on the part of the original institutional creators to maintain control over further institutional development, as was arguably the case with the member states, who, having established the EDA, then ceded ground to the European Commission.

One of the most prominent conclusions to emerge in the course of the research undertaken here has focused on the role of the European Commission acting as a policy entrepreneur and characterized its role as a “purposive opportunist” (Cram, 2005). Institutional approaches refer instead to “institutional entrepreneurs” or “skilled social actors,” (Stone Sweet, Fligstein, and Sandholtz, 2001: 11-12). A recurring theme in policy entrepreneurship analyses draws attention to the favourable positioning of skilled actors vis-à-vis “multiple social networks,” enabling them to engage in productive coalition-building and issue-framing (Pierson, 2004: 139; Thelen, 2003: 139). Thus, much of the literature examining this category of actor is concerned with unpacking the dynamics of their entrepreneurship rather than its causal influence on the institutionalisation process, taking as a given that “to the extent that such actors are successful ... we can expect to find changes at the micro-level that will provoke evolution at the meso and macro levels (Stone Sweet, Fligstein, and Sandholtz, 2001: 11-12).

Of course, identifying generalisable conditions which spurn and shape institutionalisation is a notoriously difficult task (Pierson, 2004: 139; Thelen, 2003: 139). One of the most relevant exceptions to this trend has been contributed by Kaunert, who has argued that advantageous timing and informational superiority facilitate the success of supranational policy entrepreneurs’ strategies (2010). In addition, Citi, although not using the policy entrepreneurship terminology, has analysed the Commission’s “creeping competence” into the security R&D policy area (2014). In particular, Citi has argued that the Commission has been “allowed” to



extend its competence in this manner as a result of the need to address the dual collective action problem facing EU member states (p. 136). This consisted of “the provision of new, standardised and interoperable security and defence technologies to be employed across the whole range of CSDP operations,” coupled with “sustaining the competitiveness” of transnational defence firms (p. 143,144). In this context, “the Commission found itself in the best position for proposing and negotiating new supranational initiatives in this area, pursuing additional governance functions and new budget opportunities” (p. 144).

The research presented here contributes to this endeavour by deriving several conclusions regarding the likelihood of an enhanced role of “self-interested” and “purposeful” (supranational) policy entrepreneurs in forging rule-based cooperation in a highly sensitive policy area. Chief among these are widespread awareness of the unsustainability of status quo due to a long-standing build-up of external pressures, fragility of alternative intergovernmental, less binding arrangements, and at least tacit, conditional support of powerful, well-placed institutional decision-makers. From the perspective of European integration processes, this thesis has demonstrated that member states remain the “gate-keepers,” but their decision as to whether, when, and how widely to open the gates to “more Europe” may be conditioned by the autonomous interests and activities of supranational actors and transnational interest groups, even in traditionally “taboo” policy areas such as defence procurement. Thus, the dominant arms-producing member states may not have desired for the Defence Procurement Directive to have seen the light of day, but once they judged this outcome to be a sufficiently likely prospect, they dedicated their efforts to ensuring that the legislative instrument reflected their preferences to the greatest extent feasible. The Directive’s compatibility with French domestic legislation and eschewal of a “European preference”—which would have harmed British firms’ transatlantic market prospects—constitute key indicators of this finding.

The organising principle for the material presented in this project was based on the policy cycle heuristic, while relying on concepts such as policy windows and policy entrepreneurs, developed to a great extent by Kingdon and derived from public policy literature. The conclusions drawn as a result of employing that framework are also relevant for studies of institutions and institutionalisation. Historical institutionalist

approaches envision institutional change occurring in the context of “critical junctures” which refer to “brief moments” in a long period of path-dependent, reproductive institutional stability during which “opportunities for major institutional reforms appear” (Pierson, 2004: 135; Capoccia and Kelemen, 2007: 341). The “criticality” of such junctures is due to their decisive impact on the future of institutions, as “they place institutional arrangements on paths or trajectories, which are then difficult to alter” (Pierson, 2004: 135; Capoccia and Kelemen, 2007: 341). During critical junctures the ability of political actors to exert lasting influence is also heightened (Capoccia and Kelemen, 2007: 343). In the literature, critical junctures are typically associated with “big, exogenous shocks,” leading analysts in this tradition to “distinguish sharply between periods of institutional creation and periods of ‘stasis’” (Thelen, 2003:19; Pierson, 2004: 135).

The research presented in this thesis demonstrates that critical junctures and policy windows share a number of conceptual similarities—indeed, exogenous crises may be one reason why windows “open”—but finds that the latter present a more suitable conceptual tool, not least due to their ability to elucidate periods of opportunity for “heightened influence” even in the absence of observable shocks. Rather, the institutionalisation process examined here bears more relevance to Pierson’s argument that “the moment of institutional innovation will often follow a long build-up of pressure” echoed by similar contentions that successful challenges to institutional status quo and catalysts for change are slow to emerge (Pierson, 2004: 164; Thelen, 2004).

This thesis has also demonstrated that actions *not* taken and decisions *not* made during policy windows’ opening or critical junctures may also exert lasting influence and contribute to path dependency. This conclusion is reinforced by the finding that insufficient attention paid to the Commission’s early “policy activism” within national capitals, including ministries of defence, has enabled it to advance its objectives without significant opposition for a considerable amount of time. Similarly, although high public attention has often been cited in literature as an important characteristic of a policy window, as well as a contributing factor to foreign policy agreements in light of divergent member state preferences, the institutionalisation of the EU defence industrial sphere discussed here demonstrates

that in the latter stages of the policymaking process, it is the lack of public and elite attention that may facilitate cooperation. Viewed from a slightly different angle, this conclusion also concurs with Smith's finding that repeated interaction amongst "lower-level state actors," who in this analysis have been demonstrated to dominate much of the policy process, provides greater opportunities for cooperation and "mutual understanding," than bargaining between "high-level state officials" (Smith, 2004: 57).

Due to its limited scope, this project could only present a snapshot account of the institutionalizing process. Future research could take a longer view of armaments and defence industrial cooperation in Europe, beginning in the Cold War period, and perhaps reaching as far back as the end of World War Two. This would help derive a more nuanced and robust set of conditions under which institutionalisation occurs, especially if particular attention is paid to "transitions" to successive stages of institutionalisation. More specifically, it would be useful to chart the continuing institutionalisation process of the EU defence market, particularly in light of the Commission's stated ambitions and the member states' "red lines" described above. It will be important to chart the degree to which national behaviour changes to comply with supranational rules, and whether transnational defence contract awards become more of a norm and less of an exception. The impact of high-profile ECJ rulings would also be an important component of such a study, as would the effect of member states' enhanced awareness of the EU's heavy dependence on American defence technology. This latter aspect appears particularly significant in light of the frequent references to the EU's "strategic autonomy" found in the latest Commission defence market communications. Further examinations of the EU's largest defence industrial firms could focus on the extent to which the financial crisis of 2009 and the subsequent economic recession, may have altered these actors' views of the benefits to be gained from a European defence market, and how these events could affect their future behaviour regarding cross-border activity.

In addition, the development of the EU defence equipment market as presented here could benefit from comparative and normative approaches. From a comparative perspective drawing on other policy areas, most fruitful would be studies of fields that share similar essential characteristics with defence procurement, such as a "sensitive"

nature from the perspective of nation-state sovereignty, while straddling the “border” between “high” and “low” politics of the EU, its internal and external action, and member states’ domestic and foreign policies. In this regard, EU counter-terrorism and migration policy areas, already touched upon here, come to mind, particularly as they also “feature” Commission directives. In fact, a special issue of *Cooperation and Conflict* edited by Kaunert and Leonard is dedicated to exploring policy entrepreneurship exercised by the European Commission in the area of counter-terrorism following the “major exogenous shock” of 9/11 attacks (2012). More generally, contributions illustrate the “transition of supranational governance” in the EU’s security policy field, particularly within the context of the “former third pillar,” the Area of Freedom, Security and Justice (AFSJ). Amongst articles that bear the most relevance to the examination of defence procurement undertaken here is that by Howorth, who questions the rigid distinction between intergovernmental and supranational modes of decision-making within the EU that is often drawn by scholars and emphasised within policymaking circles (2012a). He argues that, even within the CSDP field, persisting with such binary categorisation is “at the very least, unhelpful to our understanding of what is actually happening” (p. 449). What may instead be emerging in this area is akin to “intergovernmental supranationalism,” characterised by a “marked trend towards consensus-seeking” amongst officials within Brussels-based “institutional agencies” (p. 449, 448). Leonard and Kaunert’s own contribution focuses on the policy entrepreneurship carried out by the European Court of Justice, which, through its “landmark rulings,” has extended supranational governance further into European security policy (2012a: 427; 2012b).

Another strand of comparative analyses could draw parallels to studies of the roles played by each set of actors examined here—that is, policy entrepreneurs, transnational industry groups, and powerful nation-states—in other instances of institutionalisation or inter-state cooperation, even beyond the EU. Regarding industrial lobbying in particular, a valuable contribution could focus on actors whose preferences are not as clearly defined in favour of liberalisation as those typically studied under the interest group in the EU rubric. Rather, attention could be devoted to other transnational industrial actors that have a more ambiguous, even contradictory relationship with open markets and national governments. Insights could be drawn from studies of EU gas market privatisation and liberalisation, for

instance, wherein the “national monopolies and suppliers... tried to keep their traditional position in their home market to the largest extent possible, at the same time trying to penetrate other markets” (Graetz, 2011: 69-70). Finally, normative approaches could focus on the impact and influence of the (single) market norm in the emergence of common EU defence procurement, as it confronts the deeply entrenched nation-state sovereignty norms.

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