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**INTERNATIONAL DEFENCE PROCUREMENT IN THE EU:
MEMBER STATES' PREFERENCES AND DECISION-MAKING FROM 2014
DIRECTIVES TO THE SAFE PROGRAMME**

SUPERVISOR: Prof. Fabrizio Coticchia

CO-SUPERVISOR: Prof. Marco Di Giulio

CANDIDATE: Beatrice Baronchelli

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Alla vita.

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INTRODUCTION

International defence procurement within the European Union has progressively evolved from a fragmented and predominantly intergovernmental field into a complex, hybrid policy domain situated at the intersection of internal market law, industrial strategy, and geopolitical action.

Over the last decade, and particularly since the 2014 reform of the EU public procurement directives, defence procurement has undergone a profound transformation, reflecting broader shifts in the Union's understanding of strategic autonomy, security interdependence, and the role of Member States in shaping supranational decision-making processes.

This transformation has been further accelerated by successive security crises and by the gradual securitization of EU industrial policy, particularly after 2022 and the return of high-intensity warfare to the European continent has indeed acted as a catalyst, shifting the focus from a purely cost-efficiency logic to a "security of supply" paradigm.

This thesis examines the evolution of international defence procurement in the EU through the analytical lens of Member States' preferences and their impact on institutional and regulatory outcomes. In particular, it addresses the following research question: "How did Member States' preferences shape the EU public procurement directives of 2014, and what explains the inclusion and exclusion of specific rules, particularly in defence procurement?".

This question is approached not only from a legal perspective, but also and above all through an institutional and political economy lens, in order to capture the multidimensional nature of procurement governance in the EU. By doing so, the research aims to unravel the "dilemma of the decider": the constant tension between the commitment to a competitive Single Market and the imperative of protecting national sovereignty in the sensitive field of defence.

To systematically unpack this dilemma, the thesis adopts a two-step analytical approach. Before deep-diving into the specificities of the defence sector, it establishes an empirical baseline by investigating the broader evolution of cross-border public procurement within the EU internal market. By analyzing the structural patterns of contract allocation, the "border effect," and the persistent "home bias" that characterize even ordinary,

non-military public markets, this research unveils a foundational paradox: the progressive harmonization of European procurement legislation has consistently advanced at a much faster pace than the actual economic integration of national markets. This baseline serves to demonstrate that the frictions observed in defence are not isolated anomalies, but rather highly magnified manifestations of underlying structural dynamics within the Single Market.

The central objective is to understand how national strategic cultures, industrial interests, and security perceptions interact within the EU's multilevel governance system, shaping both legislative outputs and operational instruments, from the 2014 procurement directives to the emerging SAFE programme.

The choice of this topic is deeply rooted in my professional experience within a major industrial consortium, including companies such as Fincantieri, which operates extensively through public procurement. Working within the Legal Compliance and Anti-Money Laundering Office, I am specifically tasked with the implementation of Legality Protocol ("Protocollo di Legalità"). In particular, my responsibilities include conducting rigorous Antimafia screenings on participating companies, contracts, and personnel.

This role has granted me direct insight into the operational and regulatory complexities of public procurement systems, providing a practical understanding of how legal frameworks, compliance obligations, and security requirements intersect, particularly in high-sensitivity sectors such as defence.

Specifically, the Italian case offers a unique vantage point to observe how "national champions" navigate the thin line between European transparency requirements and the protection of strategic industrial capabilities. It has also highlighted the often-overlooked dimension of legality controls and integrity checks as foundational elements for the credibility and effectiveness of procurement systems; in this sense, the "credibility" of the European defence system relies heavily on the integrity of the entire supply chain, linking day-to-day compliance and Antimafia efforts to broader geopolitical strategies aimed at preventing systemic infiltrations or vulnerabilities.

More broadly, this professional exposure has reinforced the importance of viewing procurement not only as a legal-administrative procedure, but as a strategic governance mechanism embedded in broader security and industrial ecosystems.

The study is grounded in the recognition that EU procurement policy cannot be reduced to a purely technical or market-oriented regulatory framework; rather, it constitutes a deeply political arena in which Member States continuously negotiate the boundaries between integration and sovereignty, openness and protection, competition and strategic preference.

Defence procurement, in particular, amplifies these tensions due to its intrinsic link to national security, technological sovereignty, and industrial capacity and in this context, Article 346 TFEU remains the "cornerstone" of the debate, representing both a necessary safeguard for national interests and a potential loophole for market fragmentation. The structural fragmentation and "home bias" observed in the general internal market are thus exponentially magnified in the defence sector, where economic efficiency is routinely subordinated to the preservation of national industrial capabilities.

From a legal and institutional perspective, the European Union's procurement framework is characterised by a dual structure; on the one hand, the general principles of the Treaties, transparency, non-discrimination, proportionality, and competition, govern the internal market dimension of procurement; but, on the other hand, specific derogations, most notably Article 346 TFEU, preserve Member States' discretion in matters of essential security interests. This structural duality creates a persistent tension between supranational harmonization and intergovernmental control, which is particularly evident in the defence sector and this tension is not merely theoretical, but materially shapes the inclusion or exclusion of specific regulatory provisions within EU legislation. This also explains why defence procurement remains one of the most politically sensitive and legally fragmented areas of EU integration.

The 2014 procurement directives marked a significant step in the consolidation of EU procurement law, aiming to modernize procedures, increase efficiency, and strengthen cross-border competition. However, their implementation revealed persistent divergences among Member States, reflecting different administrative traditions, industrial structures, and levels of openness to European integration. These divergences are even more pronounced in defence procurement, where strategic considerations often override economic efficiency. In this sense, the directives can be interpreted not as neutral regulatory instruments, but as negotiated compromises reflecting competing national preferences.

In parallel, the development of EU defence policy instruments, such as the European Defence Fund, PESCO, the European Peace Facility, and more recently the SAFE programme, signals a gradual but significant shift towards a more integrated European approach to defence industrial policy. These instruments illustrate the Union's attempt to reconcile market logic with strategic objectives, particularly in response to the changing geopolitical environment following the 2014 Ukraine crisis and the subsequent escalation of security threats in Europe. This evolution marks the transition from a "reactive" regulatory approach to a "proactive" industrial strategy, where the EU actively incentivizes joint procurement to overcome the chronic fragmentation of the European defence market.

In general, this institutional evolution reflects a broader redefinition of the relationship between market integration and strategic autonomy within the EU governance framework.

A central analytical dimension of this research is the role of Member States in shaping these developments; rather than being passive recipients of EU legislation, Member States actively influence the design, scope, and implementation of procurement rules through Council negotiations, institutional bargaining, and informal coordination mechanisms. Their preferences are shaped by a combination of factors, including industrial capacity, strategic culture, geopolitical alignment, and domestic political economy considerations.

The thesis identifies distinct patterns of national positioning within the EU defence procurement landscape; some Member States, such as France, consistently advocate for a stronger European preference and industrial protectionism, emphasizing strategic autonomy and the consolidation of the European Defence Technological and Industrial Base. Others, such as Germany and several Nordic countries, adopt a more normative and rules-based approach, balancing industrial interests with legal certainty, transparency, and ethical considerations. Southern Member States, including Italy and Spain, instead tend to prioritize operational effectiveness and regional stability, particularly in relation to the Mediterranean and African neighborhood. Meanwhile, Eastern Member States emphasize security urgency, transatlantic alignment, and rapid capability acquisition, often maintaining a more flexible stance towards external suppliers.

These differentiated positions are crucial in explaining why certain rules were included, diluted, or excluded altogether in the 2014 directives and subsequent policy instruments.

Against this background, the SAFE programme represents a new stage in the evolution of EU defence procurement governance; positioned within the broader framework of the European Peace Facility, SAFE reflects the Union's attempt to operationalize strategic autonomy through concrete procurement mechanisms, while simultaneously managing legal constraints, industrial competition, and geopolitical dependencies. Crucially, it introduces the concept of "de-risking" into the procurement lexicon, aiming to reduce strategic dependencies on third countries while bolstering the resilience of European supply chains. It exemplifies the increasing interconnection between internal market instruments and external security objectives.

The theoretical framework of this thesis draws on theories of European integration, including liberal intergovernmentalism, multilevel governance, and normative power Europe, as well as on literature on regulatory governance and strategic autonomy.

This interdisciplinary approach allows for a comprehensive analysis of procurement not only as a legal regime, but also as a political and strategic instrument embedded in broader processes of European integration.

Methodologically, the research combines quantitative and qualitative indicators of market openness, such as single-bidder rates and cross-border award structures extracted from the Tenders Electronic Daily (TED) database, with the legal analysis of EU Treaties, directives, and regulations, and the institutional analysis of policy documents, Commission communications, Council decisions, and relevant case law.

Ultimately, this thesis argues that EU defence procurement is best understood as a dynamic and contested governance space in which integration is continuously negotiated rather than linearly achieved. The evolution from the 2014 directives to the SAFE programme illustrates a gradual but uneven shift towards strategic integration, driven by external crises, internal industrial pressures, and evolving conceptions of European sovereignty.

In this context, the distinction between market regulation and security policy becomes increasingly blurred, giving rise to a hybrid governance model in which procurement serves simultaneously economic, industrial, and geopolitical functions.

The SAFE programme, in particular, encapsulates this transformation, reflecting both the ambitions and the structural limits of the European Union as a security actor.

CHAPTER I. THE EU DECISION-MAKING PROCESS IN PROCUREMENT POLICY

1.1 The system of sources of EU law

At the core of the EU legal framework lies the system of sources of EU law, traditionally divided into primary and secondary law. This system forms the constitutional foundation of the Union's legal order and ensures the coherence, effectiveness, and uniform application of EU rules across all Member States¹. The hierarchy of sources plays a crucial role in defining the distribution of competences between the Union and the Member States, as well as in guiding the adoption and implementation of EU policies in various sectors².

Primary law consists of the founding Treaties, which define the competences of the Union, the institutional framework, decision-making procedures, and the fundamental values upon which the European integration project is based, including human dignity, freedom, democracy, the rule of law, and respect for human rights, as established in Article 2 of the Treaty on European Union. Primary law therefore constitutes the constitutional basis of the EU legal order and provides the legal framework within which the Union's institutions operate³. The main sources of primary law are the Treaty on European Union (TEU), the Treaty on the Functioning of the European Union (TFEU), and the Charter of Fundamental Rights of the European Union.

The Treaty of Lisbon, which entered into force in 2009, introduced significant institutional reforms aimed at strengthening the democratic legitimacy and efficiency of the European Union. By amending the existing Treaties, it reinforced the institutional framework of the Union, expanded the legislative powers of the European Parliament through

¹ Adam, R., Tizzano, A., *Manuale di diritto dell'Unione europea*, Giappichelli, Torino, 2024, pp. 45-50.

² M. Salvadori, *Gli appalti pubblici nell'organizzazione mondiale del commercio e nella comunità Europea*, 2001.

³ Cannizzaro, E., *Il diritto dell'integrazione europea. L'ordinamento dell'Unione*, Giappichelli, Torino, 2022, pp. 60-65.

the ordinary legislative procedure, and granted legally binding status to the Charter of Fundamental Rights. These developments strengthened the role of transparency, accountability, and respect for fundamental rights in EU policymaking⁴.

Such principles are particularly relevant in sensitive policy areas, including public procurement and defence procurement, where economic considerations often intersect with broader political and security interests⁵.

Alongside primary and secondary law, international agreements concluded by the Union form an integral part of the EU legal order. In the hierarchy of sources, these agreements occupy an intermediary position: they are subordinate to primary law but take precedence over secondary legislation. In the context of this study, the Agreement on Government Procurement (GPA) within the World Trade Organization (WTO) framework is of particular relevance. This international dimension is crucial as it constrains the EU's own legislative action, ensuring that secondary procurement rules remain consistent with the Union's international commitments toward third countries.

Secondary law derives from the Treaties and is adopted by the EU institutions in order to implement the objectives and policies defined in primary law. It represents the main instrument through which EU legislation concretely regulates economic sectors and harmonizes national legal systems within the internal market.

Secondary law includes several types of legal acts, as defined in Article 288 TFEU. These include regulations, which are directly applicable in all Member States and become immediately part of national legal systems without the need for transposition. Directives are binding as to the result to be achieved but leave Member States discretion regarding the form and methods of implementation and therefore require transposition into national law⁶. In this context, a growing role is also played by so-called "soft law" instruments, such as Commission Communications and Interpretative Guidelines. Although not legally

⁴ Villani, U., *Istituzioni di diritto dell'Unione europea*, Cacucci, Bari, 2024, pp. 55-60.

⁵ Strozzi, G., Mastroianni, R. (a cura di), *Diritto dell'Unione europea – Parte istituzionale*, Giappichelli, Torino, 2023, pp. 90-95.

⁶ Adam, Tizzano, op. cit., pp. 120-125.

binding, these instruments provide essential guidance on the application of complex procurement rules, effectively shaping the administrative practices of Contracting Authorities across the Union. Decisions are instead binding in their entirety upon those to whom they are addressed. Recommendations and opinions, by contrast, do not have binding force but provide guidance for Member States and EU institutions⁷.

In the field of public procurement, secondary legislation plays a particularly important role in harmonizing national procurement rules and ensuring the functioning of the internal market. EU directives on procurement establish common standards designed to guarantee transparency, non-discrimination, and fair competition among economic operators across the Union.

The system of EU sources is further complemented by the general principles of EU law, developed primarily through the jurisprudence of the Court of Justice of the European Union. Among the most significant principles are the supremacy of EU law over national law, the principle of direct effect, and the principles of proportionality and subsidiarity. In this sense, the jurisprudence of the CJEU acts as a "living source" of law, often anticipating legislative developments. Many key concepts of modern procurement law—such as the definition of a public body or the criteria for "in-house providing"—originated as judicial principles before being codified into secondary legislation. These principles ensure the uniform interpretation and effective application of EU law throughout the Union and play a crucial role in resolving potential conflicts between EU norms and national legislation⁸.

The effectiveness of this hierarchical system is further guaranteed by the principle of sincere cooperation established in Article 4(3) of the TEU. This principle imposes a dual obligation on Member States: a positive duty to take all appropriate measures to ensure the fulfilment of obligations arising from the Treaties or resulting from the acts of the institutions, and a negative duty to refrain from any measure which could jeopardize the attainment of the Union's objectives. In the realm of public procurement, this ensures that

⁷ Tesauro, *op. cit.*, pp. 110-112.

⁸ Adam, Tizzano, *op. cit.*, pp. 200-210.

the transposition and application of secondary sources are not merely administrative tasks, but essential components of the broader integration process.

Overall, the system of sources of EU law constitutes a structured and hierarchical legal framework that enables the Union to adopt and implement policies in a coherent and effective manner. In strategic sectors such as public procurement and defence procurement, this system ensures that national regulatory autonomy is balanced with the need to uphold common European rules, thereby safeguarding both the functioning of the internal market and broader Union interests.

Against this background, the system of sources of EU law provides the legal foundation upon which specific sectoral policies are developed and implemented. Among these, public procurement represents a particularly significant area of EU regulation, as it plays a crucial role in ensuring the proper functioning of the internal market and promoting transparency, competition, and non-discrimination among economic operators⁹.

Within this framework, EU procurement rules have been progressively harmonized through a series of legislative acts adopted at the Union level, primarily in the form of directives. These instruments establish common standards that Member States must implement in their national legal systems in order to guarantee fair and open competition across the internal market¹⁰.

Public procurement represents one of the main areas through which the European Union seeks to ensure the effective functioning of the internal market. The regulation of public purchasing activities is not contained in a single legal instrument but rather results from the interaction between primary law, secondary legislation and the jurisprudence of the Court of Justice of the European Union¹¹; sources that collectively establish the fundamental principles governing transparency, equal treatment and non-discrimination in the award of public contracts¹². In this context, procurement policy plays a crucial role in

⁹ Strozzi, Mastroianni, *Parte speciale*, cit., pp. 230-235.

¹⁰ Villani, op. cit., pp. 170-175.

¹¹ Cannizzaro, op. cit., pp. 240-245.

¹² Adam, Tizzano, op. cit., pp. 300-305.

guaranteeing fair competition among economic operators across Member States while promoting efficiency in public spending.

The relevance of these principles becomes particularly significant in sectors characterized by high levels of public expenditure and strategic importance, such as defence. In such areas, the balance between the objectives of market integration and the protection of national security interests raises complex legal and political considerations¹³.

For this reason, a clear understanding of the European Union's legal framework is essential in order to analyze how procurement rules are developed and applied within the broader context of EU policies¹⁴.

1.2 The EU Legal Framework for Public Procurement

Public procurement constitutes one of the key regulatory areas through which the European Union seeks to ensure competitive neutrality and cross-border market access within the Union. The regulation of public purchasing activities plays a fundamental role in preventing distortions of competition and in promoting equal access to economic opportunities across Member States. For this reason, the European Union has progressively developed a sophisticated and comprehensive legal framework aimed at coordinating national procurement systems and establishing common rules governing the award of public contracts and promoting fair competition within the internal market¹⁵.

This field represents one of the most significant areas of economic activity within the European Union, accounting for a substantial share of public expenditure across Member States¹⁶.

¹³ Baratta, op. cit., pp. 210-215.

¹⁴ Tesauro, op. cit., pp. 300-305.

¹⁵ Radaelli, C. M., *Europeanization and Public Procurement Policies*, Il Mulino, Bologna, 2016, pp. 12-18

¹⁶ Piga, G., *Appalti pubblici e mercato europeo*, Laterza, Roma-Bari, 2015, pp. 45-50.

As Public Authorities regularly purchase works, goods, and services from private economic operators, procurement policies play a crucial role in shaping market dynamics and ensuring the efficient allocation of public resources¹⁷.

Given the economic importance of these activities, establishing common rules at the European level is essential to guarantee transparency, competition, and equal access to procurement opportunities throughout the Union.

Public procurement has therefore become a strategic instrument not only for the management of public expenditure but also for the promotion of broader policy objectives within the European Union¹⁸. Through the establishment of common procurement rules, the EU aims to prevent market fragmentation and ensure that national procurement systems do not create unjustified barriers to cross-border trade. In this sense, procurement regulation contributes to the broader objectives of economic integration by facilitating the participation of economic operators from different Member States in public tenders across the Union.

Furthermore, public procurement represents a key mechanism through which Public Authorities interact with the market. By opening procurement procedures to competition at the European level, EU rules aim to enhance efficiency in public spending while simultaneously encouraging innovation, competitiveness, and the development of a more integrated European market for goods, services, and works¹⁹.

At the European level, public procurement is not governed by a single comprehensive code, as is the case in some national legal systems, such as the Italian one; instead, it is based on a structured set of European Union directives establishing common principles and binding rules applicable to all Member States, which must be transposed into their respective national legal systems²⁰. This legislative approach allows the Union to promote legal harmonization while at the same time leaving Member States a certain degree of flexibility in adapting EU rules to their domestic contexts²¹.

¹⁷ For further details: OECD (2021), *Public Procurement in Defence and Security*, <https://www.oecd.org/gov/public-procurement/>

¹⁸ Radaelli, C. M., op. cit., pp. 25-30.

¹⁹ Piga, G., op. cit., pp. 52-55.

²⁰ Arrowsmith, S., op. cit., pp. 10-15.

²¹ Baldwin, R., Cave, M., & Lodge, M., *Understanding Regulation*, Oxford University Press, 2012, pp. 302-305.

As noted in the previous chapter, the foundations of EU public procurement law lie in the Treaty on the Functioning of the European Union. Although the Treaty does not contain a comprehensive regulation of public procurement, it establishes the fundamental freedoms upon which the entire system is built. In particular, several Treaty provisions are directly relevant for the regulation of procurement activities, including the principle of non-discrimination on grounds of nationality (Article 18 TFEU), the freedom of establishment (Article 49 TFEU), the freedom to provide services (Article 56 TFEU), and the free movement of goods (Articles 34–36 TFEU).

These provisions form the legal basis for EU procurement rules, aiming to prevent protectionist practices and to ensure that economic operators from all Member States can compete under equal conditions. They also provide the foundation for a harmonized approach to procurement across the internal market.

From these Treaty provisions, the jurisprudence of the Court of Justice of the European Union has derived a core set of general principles applicable to all procurement procedures, even in the absence of specific sectoral legislation; among the most important are the principles of equal treatment, transparency, proportionality, and mutual recognition²².

The principle of equal treatment requires that all economic operators are treated impartially and without discrimination. The principle of transparency obliges Contracting Authorities to ensure adequate publicity and predictability in procurement procedures²³. Proportionality demands that requirements and selection criteria are appropriate and necessary to achieve the objectives of the contract. Finally, mutual recognition facilitates cross-border participation by requiring the acknowledgment of equivalent qualifications, standards, and certifications from other Member States²⁴.

In particular, the role of the Court of Justice of the European Union has been particularly significant in clarifying the scope and application of the Treaty principles in the field of public procurement; through its case law, the Court has progressively developed a set of interpretative guidelines ensuring that public procurement procedures remain consistent with the fundamental freedoms of the internal market. In particular, the Court has

²² Nakara, W., “The European Court of Justice and the Development of Procurement Law,” *European Law Review*, 45(4), 2020, pp. 556-580.

²³ For further information: FRA & Council of Europe (2018), *Handbook on European non-discrimination law*, <https://fra.europa.eu/>

²⁴ Smith, M. E., & Flanagan, R. J., op. cit., p. 85.

emphasized that Contracting Authorities must respect the principles of transparency and equal treatment even in situations not fully regulated by secondary legislation²⁵.

Over time, the development of EU procurement law has reflected the gradual strengthening of the internal market²⁶; in fact, early regulatory efforts focused primarily on eliminating discriminatory practices and increasing transparency in public purchasing, but as the European integration process advanced, procurement legislation became progressively more detailed, establishing common procedural standards designed to ensure fair competition and legal certainty for economic operators across the Union.

This evolution has resulted in the creation of a structured regulatory framework that combines Treaty-based principles, judicial interpretation, and legislative instruments, where directives play a central role in harmonizing national rules while allowing Member States to maintain their own administrative and legal traditions in the organization of procurement procedures²⁷.

Building upon these principles, the European Union has progressively developed a legislative framework through the adoption of directives aimed at harmonizing national procurement systems that establish rules regarding the organization of procurement procedures, publication of tender notices, selection of economic operators, and award of contracts. By providing a clear and structured regulatory framework, EU law seeks to balance two fundamental objectives: ensuring the effective functioning of the internal market and promoting transparency, efficiency, and accountability in the use of public resources²⁸.

Against this background, the European Union's public procurement framework can be seen as a progressive and adaptive system, grounded in primary law and shaped by judicial interpretation, which guides Member States in the implementation of harmonized rules while respecting national legal diversity.

²⁵ Arrowsmith, S., *op. cit.*, pp. 20-22. In particular the role of the Court of Justice of the European Union has been particularly significant in clarifying the scope and application of the Treaty principles in the field of public procurement; through its case law, the Court has progressively developed a set of interpretative guidelines ensuring that public procurement procedures remain consistent with the fundamental freedoms of the internal market. In particular, the Court has emphasized that Contracting Authorities must respect the principles of transparency and equal treatment even in situations not fully regulated by secondary legislation.

²⁶ Piga, G., *op. cit.*, pp. 60-62.

²⁷ Radaelli, C. M., *op. cit.*, pp. 50-55.

²⁸ Arrowsmith, S., *op. cit.*, pp. 55-60.

1.3 Role of institutions

The institutional framework of the European Union constitutes a cornerstone of its governance, providing both the structural and procedural foundations for policy-making and legislative action. This framework operates according to the principle of institutional balance, which implies that each institution must act within the limits of the powers conferred on it by the Treaties. Each institution is endowed with specific responsibilities and powers, which collectively ensure that EU objectives are pursued in a manner that balances supranational authority with national sovereignty. A detailed understanding of these roles is essential to comprehend how legislation, including sector-specific regulations such as public procurement, is developed, negotiated, and implemented effectively across the Union²⁹.

The European Commission functions as the Union's executive body and primary legislative initiator; it possesses the exclusive right to propose new legislation and is tasked with ensuring that policy initiatives conform to the Treaties and serve the collective interests of the Union. Beyond its legislative initiative, the Commission monitors the implementation of EU law within Member States, enforces compliance, and evaluates the effectiveness of existing legislation. In doing so, it provides a mechanism for ensuring consistency, efficiency and legal certainty across the Union, which is particularly important in sectors such as public procurement, where uniform application of rules is critical to maintaining transparency, fairness, and competitive neutrality³⁰. In the specific field of procurement, the Commission also acts as a "guardian of the market," utilizing infringement procedures to sanction Member States that fail to correctly transpose or apply the relevant directives.

The Council of the European Union represents the governments of Member States, safeguarding national interests in the legislative process; it participates in the adoption of legislation, coordinates policies in specific areas and approves the EU budget. Through

²⁹ Cassese, S., *Il diritto dell'Unione europea*, Il Mulino, Bologna, 2011, pp. 34-36.

³⁰ Martinico, G., & McBain, K. C., *Diritto dell'Unione europea*, Giappichelli, Torino, 2019, pp. 78-81.

its deliberations, the Council ensures that legislative outcomes reflect the diversity of political, economic, and social priorities among Member States, thereby reinforcing the legitimacy, balance, and acceptability of Union legislation at the national level. In the context of defence and security procurement, the Council's role is further magnified, as it serves as the primary forum where national security concerns are weighed against the requirements of the internal market.

The European Parliament provides democratic legitimacy to the EU legislative process by representing the citizens of the Union. It examines, amends, and approves legislative proposals, supervises the activities of the Commission, and ensures transparency and accountability throughout policy-making. The Parliament's participation in both ordinary and special legislative procedures guarantees that Union legislation is not only effective but also reflects citizens' interests and democratic oversight.

Other key institutions complement the legislative and executive functions. The Court of Justice of the European Union (CJEU) ensures uniform interpretation and application of EU law, resolves disputes, and upholds the fundamental freedoms that underpin the internal market ³¹. Its role is vital in the procurement sector, as it provides the ultimate legal recourse for economic operators who face discrimination in foreign markets. The European Council, composed of Heads of State or Government, instead sets the strategic direction of the Union and establishes long-term political priorities, thereby guiding the legislative and executive bodies in their work. For instance, the European Council's role has become increasingly prominent in defining the EU's "Strategic Autonomy," which directly influences how defence procurement is prioritized at the legislative level.

A distinctive feature of the EU institutional framework is its emphasis on consultation and stakeholder involvement; prior to submitting legislative proposals, the Commission often engages with experts, civil society organizations, and other stakeholders through mechanisms such as Green Papers, White Papers, and impact assessments. Similarly, both the Parliament and the Council consult with committees, advisory bodies such as the European Economic and Social Committee (EESC) and the Committee of the Regions

³¹ For further details: Treaty on European Union (TEU), 2016 available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012M/TXT>.

(CoR), and national administrations to ensure that legislative decisions are informed by technical expertise, practical experience, and diverse perspectives. These processes are particularly relevant in complex sectors such as public procurement, where economic, social, and strategic considerations intersect³².

In the context of public procurement, the institutional balance of the EU ensures that legislative and regulatory measures promote harmonization, transparency, and fairness, while respecting the administrative traditions and autonomy of Member States. The Commission's role in initiating legislation, the Council's representation of national interests, and the Parliament's democratic oversight together create a system that facilitates the adoption of coherent rules applicable across the Union³³; this institutional framework provides the necessary checks, balances, and consultative processes to support policy areas where uniform application, market integration, and equal access to opportunities are essential³⁴.

Overall, the EU institutions establish a robust structural and procedural foundation that enables the Union to pursue its objectives efficiently, transparently, and democratically. This framework not only underpins the legislative process described in the subsequent section but also lays the groundwork for the adoption of harmonized rules in strategically important sectors such as public procurement. Through their interaction, EU institutions contribute to the creation of a regulatory environment that facilitates market integration and cross-border participation. This is particularly relevant in the field of public procurement, where harmonized rules aim to prevent market fragmentation and ensure that the Union's massive public purchasing power is harnessed to support its strategic interests, both domestically and in the international arena.

In fact, the role of EU institutions is particularly significant in sectors characterized by high levels of public expenditure and strategic relevance, such as public procurement. In

³² Merusi, F., & Trepte, A., *Appalti pubblici – Profili nazionali e comunitari*, Giuffrè, Milano, 218, pp. 56-60.

³³ Arrowsmith, S., *The Law of Public and Utilities Procurement*, Sweet & Maxwell, London, 2014, pp. 92-95.

³⁴ Biondi, A., Eeckhout, P., & Ripley, S. (Eds.), *EU Law after Lisbon* (Oxford University Press, Oxford, 2012, pp. 88-91.

these areas, institutional cooperation ensures that regulatory frameworks promote transparency, competition, and efficiency while safeguarding broader economic and security interests.

Through their interaction, EU institutions contribute to the creation of a regulatory environment that facilitates market integration and cross-border participation and this is particularly relevant in the field of public procurement, where harmonized rules aim to prevent market fragmentation and ensure equal access to procurement opportunities across Member States³⁵.

1.4 Legislative process in the EU

The legislative process of the European Union constitutes the primary mechanism through which EU policies are formulated, adopted, and implemented. It is designed to balance the principles of democratic legitimacy, efficiency, and transparency, while accommodating the diverse interests of the Union's Member States.

The process is governed by the Treaties, which define the powers of the EU institutions and establish the procedures for adopting legislation at the Union level³⁶.

At the core of EU lawmaking lies the distinction between ordinary and special legislative procedures. The ordinary legislative procedure (OLP), previously known as the “co-decision procedure”, is the standard method for adopting legislation and involves a joint role for the European Parliament and the Council of the European Union. This procedure ensures that both institutions participate equally in examining, amending, and ultimately approving legislative proposals submitted by the European Commission. The

³⁵ For further details: European Court of Justice (CJUE), *Telaustria*, C-324/98, available at: [InfoCuria - Cour de justice de l'Union européenne](#)

³⁶ Cassese, S., *Il diritto dell'Unione europea*, Il Mulino, 2015.

OLP is formally structured in up to three readings; however, in modern practice, a significant majority of legislative files are concluded at the first reading stage through informal negotiations known as "Trilogues" (or Trialogues). These tripartite meetings between representatives of the Parliament, the Council, and the Commission have become a fundamental tool for reaching political compromises on complex technical issues, such as those found in procurement law. It applies to a wide range of policy areas, including internal market regulations, environmental policy, and economic governance³⁷.

Special legislative procedures, by contrast, are applied in specific policy domains and often grant a more prominent role to either the Council or the European Parliament. These procedures may include consultation, consent, or other tailored mechanisms, depending on the legal basis established in the Treaties³⁸. They are generally employed in areas where the balance of institutional influence differs from that of the ordinary procedure, such as taxation, foreign policy, or internal security.

The legislative process begins with the initiative of the European Commission, which holds the exclusive right to propose new legislation. Proposals are drafted in accordance with the Union's strategic priorities and are often preceded by consultations with stakeholders, expert groups, and civil society, ensuring that legislation is informed by both technical expertise and practical considerations. Furthermore, the Commission frequently conducts impact assessments to evaluate the economic, social, and strategic implications of proposed legislation before submission³⁹. In the field of public procurement, these assessments are vital for measuring how proposed rules might impact the competitiveness of European firms and the accessibility of public markets for Small and Medium-sized Enterprises (SMEs).

Once a proposal is submitted, it enters the deliberative stage, during which the European Parliament and the Council examine, amend, and negotiate the text in order to reconcile divergent views and reach consensus. The Council, representing Member States'

³⁷ Craig, P., & de Búrca, G., *EU law: Text, cases, and materials* (7th ed.). Oxford University Press, 2020.

³⁸ Lenaerts, K., & van den Brink, J. A. G., *Constitutional Law of the European Union*. Sweet & Maxwell, 2014.

³⁹ Pescatore, P., *Il sistema delle fonti del diritto dell'Unione europea*. Giuffrè, 2012.

governments, ensures that national interests are adequately considered, while the European Parliament provides democratic oversight and directly represents the citizens of the Union. Throughout the process, the principles of transparency, proportionality, and subsidiarity guide the interactions between institutions, ensuring that legislative outcomes reflect both Union-wide objectives and national circumstances. The principle of subsidiarity, in particular, acts as a crucial safeguard, ensuring that the Union intervenes only when objectives cannot be sufficiently achieved by Member States at the national or regional level, a point of extreme relevance in procurement, where national administrative traditions are deeply rooted.

By establishing common procedural standards, the legislative process facilitates cross-border participation of economic operators and contributes to the creation of a coherent and integrated internal market.

By adopting legislation through these structured procedures, the Union is able to develop harmonized frameworks that maintain the autonomy of Member States while promoting uniform standards.

This balance is particularly critical in sectors where national and Union-wide interests intersect and in sectors characterized by high strategic and economic importance⁴⁰, such as international public procurement in the defence sector, where regulatory coherence ensures fair competition, legal certainty, and the effective use of public resources. Consultations with stakeholders, impact assessments, and expert advice further strengthen the quality and strategic relevance of legislation in these sensitive domains. Ultimately, the legislative process serves as the bridge between the political vision of the Union and the technical reality of the market.

By ensuring that legislation supports both strategic objectives and the efficient functioning of the internal market, the process enables the Union to harmonize rules, promote transparency and accountability, and facilitate equal access to procurement opportunities across all Member States⁴¹.

⁴⁰ Arrowsmith, S. (2014). *The Law of Public and Utilities Procurement*. Sweet & Maxwell.

⁴¹ Martinico, G., & McBain, K. C., *Diritto dell'Unione europea*, Giappichelli, 2019.

1.5 Theories of EU decision-making

The European Union represents a unique political system that blends elements of supranational governance with intergovernmental cooperation. Understanding how decisions are made within the EU is therefore a complex task that requires a combination of theoretical approaches.

Over the last decades, scholars of European integration have developed frameworks to explain not only how policy outcomes are achieved, but also why certain actors and institutions wield influence in shaping EU legislation. Among the most influential frameworks are neofunctionalism, intergovernmentalism (including liberal intergovernmentalism), and multilevel governance. To these, more recent scholarship has added Historical Institutionalism and Rational Choice Institutionalism, which provide further depth to the analysis of institutional behavior. Each framework offers distinctive insights into the EU decision-making process and its application to concrete policy areas such as public procurement⁴².

The study of these theoretical approaches is essential for understanding the dynamics of policy formation within the European Union, as they provide analytical tools to interpret the interaction between supranational institutions, national governments, and other relevant actors involved in the policymaking process.

Neofunctionalism, first articulated by Ernst B. Haas⁴³, is grounded in the idea that integration is self-reinforcing. According to this perspective, cooperation in one sector generates functional pressures to integrate in related sectors, a mechanism commonly referred to as spillover; for example, early economic integration in coal and steel created incentives for harmonizing industrial and trade policies, eventually affecting wider policy domains.

⁴² Helen Wallace, Mark A. Pollack and Alasdair R. Young, *Policy-Making in the European Union* (Oxford: Oxford University Press, 2020).

⁴³ Haas, E. B. (1958). *The Uniting of Europe: Political, Social, and Economic Forces 1950–1957*. Stanford University Press).

Within this framework, supranational institutions, especially the European Commission, are not neutral administrators but active drivers of integration; by proposing legislation, coordinating technical cooperation, and mediating disputes among Member States, it encourages gradual policy convergence⁴⁴. Furthermore, neofunctionalists emphasize the role of "legal spillover," where the rulings of the Court of Justice create new legal realities that necessitate further legislative action by the Commission to provide a structured framework for those judicial principles. Applied to public procurement, neofunctionalism helps explain the progressive development of common rules across Member States; harmonized procedures, transparency requirements, and standardized criteria reduce fragmentation in the internal market and promote cross-border competition. From this perspective, the gradual expansion of EU regulatory competences in the field of procurement can be interpreted as a consequence of functional pressures arising from the need to ensure the effective functioning of the internal market.

Critiques of neofunctionalism highlight its tendency to overestimate the role of supranational institutions and underestimate the persistent influence of national governments, especially in sensitive areas such as defence procurement, where sovereignty concerns remain paramount. For instance, while neofunctionalism explains the technical harmonization of ordinary public contracts, it struggles to account for the strategic protection of national industries. For example, despite the European Commission's efforts to promote greater openness and competition in defence markets, Member States frequently rely on Article 346 of the Treaty on the Functioning of the European Union to derogate from EU procurement rules, thereby awarding contracts directly to domestic suppliers in order to safeguard essential security interests. A prominent example of national interest prevailing over EU-wide competition is found in the Italian naval sector. The Italian government frequently supports Fincantieri as a "national champion" through direct awards for complex naval units, invoking Article 346 TFEU to ensure that strategic technological know-how and employment remain within national borders. This practice highlights the limits of neofunctionalist integration when faced with the "strategic autonomy" of Member States in the defence industry. This demonstrates that, even in the presence of integration

⁴⁴ Mark A. Pollack, *The Engines of European Integration: Delegation, Agency and Agenda Setting in the EU* (Oxford: Oxford University Press, 2003).

pressures, governments retain significant control over strategically sensitive sectors. Scholars have therefore argued that while neofunctionalism successfully explains certain dynamics of integration, it cannot fully account for the strategic role played by Member States in shaping policy outcomes.

In contrast, intergovernmentalism emphasizes the centrality of Member States in shaping EU policy; this perspective views integration as the outcome of strategic bargaining, where governments retain control over core interests. The liberal intergovernmentalist approach, developed by Andrew Moravcsik⁴⁵, refines this view by incorporating domestic preference formation as a key explanatory variable. Policy outcomes at the EU level are thus shaped by a three-step process: formation of national preferences, based on economic interests, domestic politics, and institutional constraints; intergovernmental negotiation, primarily occurring in the Council of the European Union; institutional arrangement, creating mechanisms to guarantee compliance with negotiated agreements. In the realm of public procurement, this theory can be viewed through the lens of the "Principal-Agent" model, where Member States (the Principals) delegate powers to the Commission (the Agent) to manage the market, but simultaneously introduce control mechanisms, such as the "Comitology" system, to ensure the Agent does not overstep its mandate.

According to this approach, EU policies ultimately reflect the aggregation of national preferences formed at the domestic level and subsequently negotiated at the European level⁴⁶.

In the context of policy change in public procurement, intergovernmentalism is particularly valuable for explaining why Member States insist on exceptions or opt-outs, especially in strategically sensitive areas such as defence and security procurement. Article 346 of the Treaty on the Functioning of the European Union allows Member States to

⁴⁵ Andrew Moravcsik, *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht* (Ithaca: Cornell University Press, 1998).

⁴⁶ Moravcsik, A, *The Choice for Europe: Social purpose and state power from Messina to Maastricht*. Cornell University Press, 1998.

derogate from standard procurement rules for security reasons, reflecting a deliberate institutionalized balance between market integration and the preservation of national sovereignty⁴⁷.

At the same time, intergovernmentalism illuminates the continued role of national industry protection, where governments strategically negotiate EU rules to favour domestic economic actors⁴⁸. This is especially evident in sectors where procurement serves as a tool to support national technological capabilities and innovation. From a policy change perspective, intergovernmentalism explains why, despite supranational pressures for harmonization, Member States succeed in retaining specific national exemptions, shaping the final design of the 2014 procurement directives.

Rather than assuming that a single framework can “explain” policy change, it is more accurate to use each theory to generate hypotheses regarding specific dimensions of change. For example, neofunctionalism best accounts for incremental harmonization and the expansion of common procedures; intergovernmentalism best explains persistent national derogations and strategic bargaining; and multilevel governance illuminates variations in implementation and compliance at regional and local levels⁴⁹. Applied to EU procurement, this allows a detailed understanding of which mechanisms drove the adoption of key legislative reforms and how national and supranational actors interacted to produce the observed outcomes.

Limitations of intergovernmentalism include its potential underestimation of supranational institutions’ agenda-setting capacity, particularly in areas where regulatory expertise and market coordination are crucial⁵⁰. Critics therefore argue that focusing exclusively on national governments risks overlooking the autonomous influence exercised by supranational institutions and transnational actors within the EU policy process.

⁴⁷ Treaty on the Functioning of the European Union, 13 December 2007, G.U. C 326 del 26.10.2012. <https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=celex%3A12012E%2FTXT>

⁴⁸ Piga, G., *L'impatto strategico del public procurement: Tra efficienza e protezione degli interessi nazionali*; <https://www.rivistapoliticaeconomica.it>, 2020.

⁴⁹ Marks, G., & Hooghe, L., *Multi-level governance and European integration*. Rowman & Littlefield, 2001.

⁵⁰ Simon Hix and Bjørn Høyland, *The Political System of the European Union*, 2011.

The multilevel governance (MLG) framework, developed by Gary Marks and Liesbet Hooghe, moves beyond the supranational-intergovernmental dichotomy. Marks and Hooghe conceptualize the European Union as a system in which authority is dispersed across multiple levels of governance, including supranational, national, regional, and local actors, all of which participate in the policy-making process.

MLG provides a useful lens to analyse policy implementation, not just legislative adoption. In the case of public procurement, while EU directives establish principles and frameworks, actual procedures are carried out by regional or local authorities. Consequently, compliance and enforcement depend on interactions across multiple governance levels, illustrating the networked nature of decision-making.

The framework also accounts for the role of non-governmental actors, such as industry associations and civil society, which can influence policy design, lobbying for favourable conditions or procedural clarity. In this context, independent regulatory agencies (such as national anticorruption or audit authorities) play a crucial role in ensuring that EU standards are translated into local administrative practice. This perspective explains how EU rules are not only negotiated but also adapted and interpreted in diverse local contexts, highlighting the complexity of applying EU legislation uniformly⁵¹.

Furthermore, the multilevel governance approach emphasizes that policymaking in the European Union is not limited to formal institutional arenas but also involves complex networks of actors operating across different territorial and institutional levels.

Finally, Historical Institutionalism provides a crucial insight through the concept of "path dependency." It suggests that once a set of procurement rules is adopted, it creates "lock-in" effects that make it costly for Member States to revert to previous national systems. This explains why, despite significant political resistance in sectors like defence, the trajectory of EU procurement law has been one of constant expansion rather than contraction.

⁵¹ Liesbet Hooghe and Gary Marks, *Multi-Level Governance and European Integration*, 2001.

While neofunctionalism, intergovernmentalism, and multilevel governance offer distinct perspectives, contemporary scholarship increasingly sees them as complementary lenses. Neofunctionalism helps explain incremental integration and the role of supranational institutions, intergovernmentalism clarifies national influence and bargaining power, and multilevel governance captures the complexity and diffusion of authority⁵².

Contemporary research on European integration increasingly adopts a pluralistic approach that combines insights from different theoretical traditions in order to better capture the multifaceted nature of EU governance.

Integrating these perspectives provides a richer understanding of EU public procurement policy. For instance:

- Supranational initiatives (neofunctionalist) drive harmonization and spillover;
- National negotiation (intergovernmentalist) determines the limits and exemptions;
- Implementation networks (MLG) translate policy into practice across regions and sectors.

Such an integrated view allows researchers to analyze how policies evolve, how compromises are achieved, and why outcomes vary across sectors. Public procurement exemplifies this interplay: legislation reflects collective objectives of market integration while accommodating national sensitivities and the practicalities of multilevel implementation.

Neofunctionalism may overstate institutional autonomy; intergovernmentalism may understate supranational influence; MLG can struggle to explain agenda-setting at the highest levels. Therefore, a synthetic approach, recognizing insights from all three theories, is essential for a comprehensive analysis, especially in areas where market regulation intersects with national strategic interests, such as defence-related procurement.

⁵² Simon Hix and Bjørn Høyland, *The Political System of the European Union* (London: Palgrave Macmillan, 2011).

These theoretical perspectives therefore provide the analytical foundation for examining how EU policies are shaped and implemented in practice. In the field of public procurement, understanding the interaction between supranational institutions, national governments and multi-level governance structures is crucial for analysing the evolution of the EU regulatory framework.

In the context of public procurement, these theoretical perspectives offer complementary explanations for the evolution of EU regulation. While supranational dynamics help explain the progressive harmonization of procurement rules, intergovernmental bargaining clarifies the persistence of national exceptions, particularly in strategically sensitive sectors such as defence procurement.

1.6 Member states' preferences

The analysis of Member States' preferences is central to understanding the European Union's legislative process, as it bridges the gap between theoretical frameworks and actual policy outcomes. Whereas neofunctionalism emphasizes supranational dynamics and multilevel governance highlights institutional interactions, intergovernmentalism directly addresses the role of national actors in shaping EU legislation⁵³. In practice, EU policy outcomes are the product of continuous negotiation and compromise among Member States, each driven by its own economic, political and strategic priorities⁵⁴. This dynamic is often described through the "Two-Level Game" theoretical framework, which suggests that national governments must simultaneously negotiate at the European level (Level I) and with their domestic constituencies (Level II), ensuring that any EU-wide agreement remains acceptable to internal stakeholders.

⁵³ Craig, P., & de Búrca, G., *EU law: Text, cases, and materials* (7th ed.). Oxford University Press, 2020.

⁵⁴ Wallace, H., Pollack, M. A., & Young, A. R., *Policy-Making in the European Union*. Oxford University Press, 2020.

The formation of national preferences is a multi-dimensional process influenced by economic interests, domestic political structures, institutional constraints, and societal pressures. Economic factors are often decisive: Member States with strong industrial sectors, advanced technological capabilities, or significant public procurement budgets may seek to protect or advance these sectors through EU legislation. In particular, procurement policy represents a strategic tool for governments to support domestic industries, promote innovation, and sustain employment, while simultaneously complying with internal market obligations. From a rational choice perspective, Member States act according to a "logic of consequences," evaluating how each regulatory shift in procurement law will affect their national treasury and industrial competitiveness.

In the area of public procurement, national preferences are strongly influenced by the structure of domestic markets and by the importance of procurement for national economies. Public procurement represents a significant share of public expenditure in most Member States and plays a crucial role in supporting domestic industries, promoting innovation, and ensuring the provision of public services⁵⁵. Governments therefore tend to defend regulatory arrangements that protect national suppliers or preserve flexibility in procurement procedures, especially for strategic sectors such as defence⁵⁶. This defensive stance is frequently associated with the concept of strategic autonomy, according to which Member States seek to preserve sovereign control over critical technologies, industrial capabilities and supply chains rather than relying exclusively on market efficiency. Recent scholarship has increasingly interpreted this evolution as part of a broader transformation in European integration, whereby industrial policy and security policy have become progressively intertwined. In particular, Antonio Calcara argues that defence-industrial capabilities constitute strategic national assets which significantly influence Member States' bargaining positions within the European Union, shaping both their willingness to cooperate and the degree of sovereignty they are prepared to retain in highly

⁵⁵ European Commission, *Public Procurement*. Internal Market, Industry, Entrepreneurship and SMEs, 2026.

⁵⁶ European Parliament, *Fact Sheet on Public Procurement*, 2026.

sensitive sectors such as defence⁵⁷. Against this background, public procurement increasingly evolves from a purely market-regulating mechanism into a strategic governance instrument capable of strengthening industrial resilience, preserving critical technologies and supporting the European Union's broader objectives of strategic autonomy.

Domestic political institutions also shape governmental preferences. Parliamentary systems, coalition governments, and bureaucratic structures influence how national priorities are formulated and negotiated⁵⁸. For instance, coalition governments may adopt more moderate positions to accommodate diverse political interests, whereas centralized governments may present a more coherent negotiating stance.

Interest groups, industry associations, and civil society actors further influence national preferences. In the field of public procurement, lobbying by construction, defence, or technology sectors can steer national positions toward protecting domestic suppliers or seeking flexible rules within EU directives. Consequently, the preferences that Member States bring to EU negotiations are rarely monolithic; they reflect the outcome of complex domestic political and economic processes⁵⁹.

Once national preferences are formed, they are translated into bargaining positions within the EU's primary intergovernmental arena, that is the Council of the European Union⁶⁰. Here, governments negotiate the content, scope, and implementation rules of legislation. Intergovernmental bargaining is shaped by both formal institutional rules, such as voting weights and qualified majority voting, and informal practices, including coalition-building, side-payments, and “logrolling”, a practice where Member States trade support on different legislative files to achieve their primary objectives.

Member States often leverage their relative size, economic weight, or policy expertise to influence negotiations. As highlighted by Calcara, asymmetries in industrial capabilities and technological specialization further reinforce these differences in bargaining

⁵⁷ Calcara, A., *European Defence Decision-Making: Dilemmas of Collaborative Arms Procurement*, 2020.

⁵⁸ Cini, M., & Pérez-Solórzano Borrágán, N., *European Union Politics*. Oxford University Press, 2019.

⁵⁹ Hix, S., & Høyland, B., *The Political System of the European Union*.

⁶⁰ McGrew, A. G., & Bresser-Pereira, L. C., *The Theory of Decision-Making in the EU*. Cambridge University Press, 2016.

power, particularly in highly strategic sectors such as defence, where Member States possessing a stronger industrial base are generally better positioned to influence both the substance and the implementation of European procurement policies⁶¹.

Larger Member States, such as Germany or France, may exert greater influence due to their economic and political weight, whereas smaller states may seek alliances or form coalitions to advance shared interests. These dynamics are particularly pronounced in areas such as defence-related procurement, where strategic interests and national security considerations can amplify bargaining power disparities⁶². Furthermore, the "asymmetric information" held by states with larger defence industries often gives them a technical advantage in drafting the specific requirements of procurement directives.

Certain policy domains demonstrate heightened sensitivity to Member States' preferences due to their direct connection to national sovereignty, economic strategy, or security.

Defence procurement represents a paradigmatic case: while the internal market encourages cross-border competition, Member States often insist on preserving national procurement prerogatives to safeguard technological sovereignty and security⁶³. Article 346 TFEU formalizes this flexibility, allowing Member States to derogate from standard procurement rules for essential security interests.

Beyond defence, public procurement also illustrates the influence of national preferences; states with advanced technological sectors may advocate for rules that facilitate domestic industry participation, while smaller or developing economies may prioritise access to competitive markets and the elimination of barriers to entry⁶⁴.

⁶¹ Calcara, A., *European Defence Decision-Making: Dilemmas of Collaborative Arms Procurement* 2020.

⁶² Demertzis, M., *Defence Procurement and National Security*, Journal of European Public Policy, 2021.

⁶³ Craig, P., & de Búrca, G., *EU Law: Text, Cases, and Materials* (7th ed.). Oxford University Press, 2020.

⁶⁴ Arrowsmith, S., *The Law of Public and Utilities Procurement*. Sweet & Maxwell, 2010.

While Member States drive the negotiation of EU legislation, supranational actors play a complementary role in shaping outcomes. The European Commission, for instance, proposes legislation and monitors compliance, providing technical expertise and advocating for uniform application. Similarly, the Court of Justice of the European Union ensures the consistent interpretation of directives, which can constrain national discretion over time.

This interplay creates a dynamic in which Member States' preferences interact with supranational pressures and governments negotiate in order to maximize their national interests, but must also consider the legal and political authority of EU institutions, the expectations of other Member States, and the operational realities of multi-level implementation.

In the area of public procurement, the aggregation of Member States' preferences directly shapes the content and application of EU legislation. Negotiations determine the scope of harmonization, the thresholds for cross-border competition, and the flexibility afforded to national authorities; for example, while directives establish general principles of transparency, non-discrimination, and competition, Member States often negotiate exceptions, derogations, or special procedures to accommodate strategic industries or sensitive sectors⁶⁵. This results in what is often termed "gold-plating" or "differentiated implementation," where the final directive is a "package deal" that allows for various degrees of national discretion.

The resulting legislation thus reflects a careful balance between supranational integration and national autonomy. While harmonized procurement rules promote cross-border competition and market efficiency, they simultaneously respect the diverse economic structures and strategic priorities of Member States.⁶⁶

⁶⁵ Pollack, M. A., *The Engines of European Integration: Delegation, Agency and Agenda Setting in the EU*. Oxford University Press, 2003.

⁶⁶ Wallace, H., Pollack, M. A., & Young, A. R., *Policy-Making in the European Union*.

Understanding Member States' preferences is essential for analyzing EU decision-making. Preferences emerge from complex domestic processes, are translated into strategic bargaining positions, and interact with supranational institutions to produce negotiated policy outcomes. In public procurement, this dynamic explains the coexistence of harmonized rules with national exceptions and highlights the ongoing tension between integration and sovereignty.

Summary of the Main Legal and Institutional Frameworks

Framework / Instrument	Nature	Primary Purpose
Treaty on European Union (TEU)	Primary EU Law	Defines the EU institutional framework and core values.
Treaty on the Functioning of the European Union (TFEU)	Primary EU Law	Regulates the Internal Market and economic freedoms.
Article 346 TFEU	Treaty Derogation	Allows national security derogations from Internal Market rules.
European Commission	EU Institution	Holds legislative initiative and monitors EU law enforcement.
Council of the European Union	EU Institution	Represents Member States in the legislative process.
Court of Justice of the European Union (CJEU)	Judicial Institution	Interpretation and application of EU law.

Source: Author's elaboration.

Integration Theories and Defence Procurement

Political Theory	Key Approach	Application to the Defence Market
Neofunctionalism	Spillover logic	Commission-led market integration expanding from civilian sectors.
Liberal Intergovernmentalism	State-centric dynamic	Defence as core sovereignty; protection of national champions.
Multi-level Governance	Shared decision-making	Interaction between EU institutions, states, and authorities.
Historical Institutionalism	Path dependency.	Past institutional constraints limiting future policy reforms.

Source: Author's elaboration.

CHAPTER II. THE 2014 PROCUREMENT DIRECTIVES AND INTERNATIONAL PROCUREMENT

2.1 Origins of the 2014 reform

Public procurement constitutes one of the most economically significant policy areas within the European Union; it represents a substantial share of public expenditure across Member States and plays a fundamental role in the functioning of the internal market as, through public procurement, governments and Public Authorities acquire goods, services, and works necessary for the provision of public services, the development of infrastructure, and the implementation of public policies⁶⁷. Because of its economic relevance, procurement regulation has long been regarded as a crucial instrument for ensuring transparency, promoting competition, and facilitating market integration within the European Union⁶⁸.

Estimates from the European Commission indicate that public procurement accounts for approximately 14% of the European Union's gross domestic product⁶⁹; this considerable economic weight makes procurement policy a key mechanism through which Public Authorities influence market dynamics, industrial development, and innovation. Consequently, the establishment of a coherent regulatory framework governing procurement procedures has been considered essential for ensuring the effective functioning of the internal market and for preventing distortions arising from protectionist practices at the national level⁷⁰.

Historically, procurement markets within Europe were largely fragmented along national lines. For decades, national governments tended to favour domestic suppliers when

⁶⁷ For Further details: European Commission, *Public procurement in the EU*, 2020, available on: https://ec.europa.eu/growth/single-market/public-procurement_en

⁶⁸ European Commission, *Making Public Procurement work in and for Europe*, COM(2017) 572 final, Brussels, 2017.

⁶⁹ Arrowsmith, S., *The Law of Public and Utilities Procurement*, 3rd ed., Sweet & Maxwell, London, 2014, pp. 45–52.

⁷⁰ Bovis, C., *EU Public Procurement Law*, 2nd ed., Edward Elgar, Cheltenham, 2012.

awarding public contracts, often through administrative practices that limited cross-border participation; such practices included restrictive technical specifications, discriminatory qualification criteria, and limited publication of tender opportunities. As a result, companies from other Member States faced considerable barriers when attempting to participate in procurement procedures abroad⁷¹.

Member States with strong or technologically advanced industrial sectors tended to negotiate rules designed to protect or favour their national suppliers, while simultaneously seeking to ensure that EU directives would not excessively constrain their regulatory autonomy. Conversely, smaller Member States or those with less developed domestic markets generally pursued the objective of maximizing access to cross-border procurement opportunities and reducing barriers to entry within the internal market⁷².

Recognizing the negative implications of these practices for the development of the internal market, the European Community began to introduce legislative measures aimed at coordinating national procurement systems⁷³.

Building on this early regulatory framework, the European procurement system evolved progressively as part of the broader European integration process. The Treaty of Rome of 1957, as the foundational legal act of the European Community, aimed to establish a common market and ensure fundamental freedoms, including the free movement of goods and services and the prohibition of discrimination based on nationality⁷⁴. From the 1970s onward, the European institutions increasingly intervened to remove indirect barriers to competition stemming from national procurement rules, leading to the adoption of the first directives on works and supplies; these early measures sought to impose advertising obligations and open national markets to cross-border competition among economic operators.

⁷¹ European Commission, *A Single Market for Public Procurement*, available on: [Public procurement - Internal Market, Industry, Entrepreneurship and SMEs](#)

⁷² Craig, P., De Búrca, G., *EU Law: Text, Cases, and Materials*, 6th ed., Oxford University Press, Oxford, 2015.

⁷³ Cassese, S., *Il diritto dell'Unione europea*, Il Mulino, Bologna, 2011, pp. 34–36.

⁷⁴ For Further details: Directive 71/305/EEC (Works Directive) e Directive 77/62/EEC (Supplies Directive), in EUR-Lex, available on: <https://eur-lex.europa.eu>

Despite these early efforts, significant fragmentation persisted and many Contracting Authorities continued to apply national administrative traditions that limited the effective opening of procurement markets⁷⁵. Moreover, the regulatory framework remained complex and scattered across multiple directives, making it difficult for both Contracting Authorities and economic operators to navigate the applicable rules.

A major step forward occurred in the early 2000s with the adoption of a consolidated procurement framework in 2004; the directives adopted during that reform represented an important milestone in the development of European procurement law, as they brought together various legislative instruments. In fact, the 2004 directives represented the first attempt to consolidate the fragmented European procurement framework into a coherent system, standardizing procedures for works, services, and supplies, while seeking to balance transparency, competition, and flexibility for Contracting Authorities across Member States. They also introduced more detailed procedural rules governing the selection of bidders and the award of contracts⁷⁶.

However, over time, the 2004 regulatory framework began to reveal certain limitations. Contracting Authorities frequently reported difficulties in applying the existing rules, which were often perceived as overly complex and excessively rigid. Procurement procedures were sometimes criticized for imposing significant administrative burdens, particularly on smaller Contracting Authorities and small and medium-sized enterprises. These challenges were compounded by inconsistent implementation across Member States, which created legal uncertainty and reduced the effectiveness of the regulatory framework⁷⁷.

More specifically, these shortcomings signaled what scholars have described as a transition from “negative integration”, primarily focused on removing barriers within the internal market, to a form of “positive integration,” in which public procurement gradually emerged as a strategic policy instrument capable of supporting broader EU objectives.

⁷⁵ Directive 2004/18/EC e Directive 2004/17/EC, in EUR-Lex, available on: <https://eur-lex.europa.eu>.

⁷⁶ OECD, *Public Procurement for SMEs*, Paris, 2013, available on: <https://www.oecd.org>

⁷⁷ European Commission, *Evaluation of the 2004 Public Procurement Directives*, SEC(2011) 853 final, Brussels, 2011.

This conceptual shift is widely regarded in the literature as one of the defining features of the modernization of EU procurement law, marking the transition towards a more functionally oriented regulatory approach.

One frequently observed problem was the phenomenon commonly referred to as “gold-plating,” whereby Member States introduced additional national requirements on top of the EU regulatory framework, often generating unnecessary administrative burdens that discouraged cross-border participation by economic operators⁷⁸.

Another significant issue concerned the so-called “price–quality paradox”; the strong emphasis placed on the lowest price criterion frequently resulted in the selection of bids that were economically attractive in the short term but ultimately proved inefficient or costly over the lifecycle of the contract. This approach often undermined the broader objective of ensuring long-term “value for money” in public expenditure⁷⁹.

In addition, the regulatory framework contained several legal lacunae, particularly with regard to sensitive areas such as in-house providing and inter-municipal cooperation between Public Authorities.

In the absence of clear legislative guidance, these issues were largely clarified through the jurisprudence of the Court of Justice of the European Union (CJEU), most notably in landmark cases such as *Teckal* and *Stadt Halle*⁸⁰.

At the same time, broader economic and technological developments highlighted the need to modernize procurement regulation; the increasing digitalization of public administration created new opportunities for electronic procurement procedures, while growing concerns about environmental sustainability and social inclusion prompted policymakers to explore how procurement could be used to achieve broader policy objectives⁸¹. Public

⁷⁸ Scharpf, F. W., *Governing in Europe: Effective and Democratic?*, Oxford University Press, Oxford, 1999, pp. 45–50.

⁷⁹ Racca, G. M., “Collaborative Procurement and Contract Performance in the EU”, in *European Procurement & Public Private Partnership Law Review*, 2014.

⁸⁰ Treumer, S., “Competitive Dialogue and the Scope of the EU Procurement Directives”, in *Public Procurement Law Review*, 2004.

⁸¹ Court of Justice of the European Union, *Case C-107/98, Teckal*, 1999.

procurement was therefore increasingly seen not only as a mechanism for purchasing goods and services but also as an instrument supporting innovation, sustainability, and social policy goals.

The global financial crisis of 2008 further reinforced the urgency of reforming procurement regulation and since public finances came under pressure across the European Union, governments sought ways to improve the efficiency and effectiveness of public spending⁸². In this context, public procurement gained prominence as an instrument for ensuring value for money in public expenditure while simultaneously supporting economic recovery and policymakers emphasized the potential of procurement policy to stimulate economic activity, encourage innovation, and support the development of competitive industries.

The 2011 Green Paper on the Modernization of EU Public Procurement Policy served as a cornerstone for this paradigm shift, asking whether procurement should remain a neutral administrative process or become an instrument for broader EU goals. This consultation document played a crucial role in framing the subsequent legislative debate, explicitly opening the discussion on the strategic use of procurement as a policy tool⁸³.

Subsequently, further modernization culminated in the 2014 reforms, which introduced the Directives 2014/24/EU and 2014/23/EU. These legislative acts enhanced transparency, competition, integrity, and risk management while introducing more sophisticated mechanisms for selection, exclusion, and control of suppliers. At the European level, the main legislative instruments now include Directive 2014/24/EU for general public procurement, Directive 2014/25/EU for procurement in special sectors such as water, energy, transport, and postal services, and Directive 2014/23/EU for concessions, in which the concessionaire assumes an effective operational risk. These directives also establish “European relevance thresholds,” which determine when contracts must be published on the Tenders Electronic Daily (TED) platform and follow EU procedures,

⁸² Court of Justice of the European Union, *Case C-26/03, Stadt Halle*, 2005.

⁸³ European Commission, *Buying Green! A Handbook on Green Public Procurement*, 3rd ed., 2016.

whereas below these thresholds national rules prevail but must respect fundamental EU principles such as transparency, proportionality, and non-discrimination⁸⁴.

At the national level, Italy's current public procurement framework is contained in Legislative Decree 31 March 2023, n. 36, which transposes and integrates EU directives, adapting them to the constitutional and administrative context of the country⁸⁵. Earlier reforms included Legislative Decree 163/2006, considered the first modern "Public Contracts Code," and Legislative Decree 50/2016, which significantly reformed the system following the "Mafia Capitale" scandal. These reforms strengthened the role of ANAC, reduced detailed regulatory burdens, introduced soft law and guidelines, and were subsequently adjusted during the COVID-19 emergency and in the framework of the National Recovery and Resilience Plan (PNRR). The current 2023 decree instead focuses on simplification and acceleration of procedures⁸⁶.

In general, the 2014 reform introduced a series of measures aimed at addressing these structural shortcomings while simultaneously modernizing procurement policy in light of evolving economic and policy objectives. One of the central priorities of the reform was the facilitation of participation by small and medium-sized enterprises (SMEs), which had historically faced significant barriers when attempting to access public procurement markets and to address this issue, the reform introduced innovative instruments such as the European Single Procurement Document (ESPD⁸⁷) and strengthened the principle of dividing contracts into smaller lots under the "divide or explain" rule, thereby improving accessibility and encouraging greater competition within procurement procedures.

The reform encouraged Contracting Authorities to evaluate tenders not only based on price but also on qualitative criteria such as environmental sustainability, social value, and innovation, reinforcing the role of procurement in broader EU policy objectives⁸⁸.

⁸⁴ European Commission, *Tenders Electronic Daily (TED)*, available: <https://ted.europa.eu>

⁸⁵ European Commission, *Green Paper on the modernization of EU public procurement policy*, COM(2011) 15 final, Brussels, 2011.

⁸⁶ For further details: World Trade Organization, *Agreement on Government Procurement (GPA)*, available on: <https://www.wto.org>

⁸⁷ European Commission, *European Single Procurement Document (ESPD)*, available on: [European Commission](#)

⁸⁸ Arrowsmith, S., "Horizontal Policies in Public Procurement: A Taxonomy", in *Journal of Public Procurement*, 2010, pp. 149–186.

This marked a clear departure from a purely price-based approach, embedding procurement within the broader framework of sustainable and socially responsible governance.

In addition, the international dimension of procurement became central; the EU is a party to the WTO Agreement on Government Procurement (GPA), which regulates access to procurement markets among member countries. In this context, the 2014 reform established mechanisms to reject abnormally low tenders and ensure fair competition, balancing internal openness with strategic international considerations.

Although defence procurement is governed by Directive 2009/81/EC, the civilian directives of 2014 influenced this sector indirectly. The growing overlap between civilian and military technologies, as well as the refinement of national security exceptions under Article 346 TFEU⁸⁹, meant that lessons from the civilian procurement reform informed strategic decisions in defence procurement.

In addition to these internal considerations, the reform also had a significant international dimension. Public procurement markets are increasingly interconnected, and European firms participate actively in procurement procedures outside the European Union. At the same time,

Together, these instruments constitute the current legal foundation of EU procurement law and represent a significant step toward modernizing procurement regulation in response to evolving economic and policy challenges.

Understanding the origins of the 2014 procurement reform is essential for analyzing the subsequent legislative negotiations that shaped the final content of the directives. The reform process involved complex interactions among EU institutions and Member States, reflecting the diverse economic interests and policy priorities present within the Union.

This complexity makes procurement law a particularly rich field for analyzing European integration dynamics.

⁸⁹ Treaty on the Functioning of the European Union, Art. 346 TFEU.

2.2 Negotiation process

The negotiation process leading to the adoption of the 2014 Public Procurement Directives represents a defining and highly complex phase in the evolution of European procurement law, reflecting the interplay between supranational institutions, Member States, and multiple stakeholders. The legislative journey, spanning from the European Commission's formal proposal in December 2011 to the final adoption in early 2014, was marked by intense political contestation, iterative drafting, and strategic negotiation, illustrating in practice how EU decision-making frameworks, neofunctionalism, intergovernmentalism, and multi-level governance, mediate the translation of integration objectives into legally binding rules while accommodating diverse national preferences⁹⁰.

The European Commission acted as the principal architect of the 2014 directives, drawing on lessons from the 2004 procurement package; during the preparatory phase, it conducted extensive impact assessments, stakeholder consultations, and economic analyses, aiming to align legislative proposals with the strategic objectives of the Europe 2020 agenda, including innovation, sustainability, and SME participation⁹¹. Consultation mechanisms engaged Contracting Authorities, business associations, SMEs, trade unions, civil society organizations, and public procurement experts, ensuring that the proposals addressed practical challenges across all sectors⁹². The Commission's proposals also incorporated the "only once" principle, the European Single Procurement Document (ESPD), and measures to reduce duplicative documentation, demonstrating a clear focus on procedural efficiency and accessibility for SMEs.

Once the draft legislation was prepared, it was submitted to the European Parliament and the Council of the European Union under the ordinary legislative procedure; each institution contributed distinct perspectives. The European Parliament actively promoted a value-based approach to procurement, emphasizing transparency, social responsibility,

⁹⁰ Barrows, C., *The Making of EU Public Procurement Law*, Oxford University Press, 2016, p. 112.

⁹¹ European Commission, *Green Paper on the modernization of EU public procurement policy*, COM (2011) 15 final.

⁹² Arrowsmith, S., *The Law of Public and Utilities Procurement*, Sweet & Maxwell, 2014.

environmental sustainability, and access for SMEs; through the IMCO and ITRE committees and under the guidance of Rapporteur Marc Tarabella, Parliamentarians introduced over a thousand amendments, including the adoption of the Most Economically Advantageous Tender (MEAT) criterion, which prioritized quality, innovation, and sustainability over the lowest price⁹³. Parliament also strengthened labor and subcontracting standards, mandatory exclusion grounds for unethical business conduct such as corruption, fraud, and child labor, and ensured alignment with cross-border supply chain considerations⁹⁴.

The Council, representing Member States, focused on protecting national prerogatives, preserving administrative flexibility, and ensuring legal certainty. Within the Council, Member States' positions diverged according to economic size, industrial structure, legal tradition, and administrative capacity. Large industrial economies, such as Germany, France, and Italy, sought flexibility for strategic sectors including defence, dual-use technologies, and high-tech infrastructure, while smaller Member States emphasized market openness, simplification, and SME participation⁹⁵. Nordic countries and other SME-driven economies actively promoted lot-splitting and ESPD use to democratize procurement⁹⁶. Preparatory discussions were conducted in COREPER, specialized working groups, and trilateral informal meetings with the Commission and Parliament, facilitating compromises on contract division, award criteria, thresholds, environmental and social considerations, and alignment with international obligations⁹⁷.

Throughout negotiations, strategic and defence considerations played an important role, even if the directives primarily addressed civilian procurement. Member States sought to maintain discretion under Article 346 TFEU, ensuring that national security exceptions were respected without undermining transparency or competition. This tension between market openness and national security, already illustrated in Chapter I with

⁹³ European Parliament, *Report on the proposal for a directive of the European Parliament and of the Council on public procurement*, (A7-0007/2013), Rapporteur: Marc Tarabella.

⁹⁴ *Ibid.*, p. 45

⁹⁵ Council of the European Union, *Note on the Reform of the EU Public Procurement Rules*, 18 giugno 2013, Document 11111/13.

⁹⁶ Dragos, D. C., & Neamtu, B., *The Life of a Decision: Implementation of the EU Public Procurement Directives*, Routledge, 2016, p. 56.

⁹⁷ Craig, P., De Búrca, G., *op. cit.*, pp. 148–149.

the case of Fincantieri in the Italian naval sector, remained a focal point during the 2014 negotiations. While the new directives aimed at narrowing the scope for protectionist practices, Member States ensured that the 2014 reform did not infringe upon their ability to protect "national champions" in strategic industries under the umbrella of Article 346 TFEU, where technological know-how and national defence are inextricably linked. The Commission and Council also carefully balanced international obligations under the WTO Agreement on Government Procurement (GPA), facilitating access for third-country bidders while preventing distortions caused by state-subsidized competition, particularly in sectors with strong export-oriented or high-technology industries.

Stakeholder influence was central to the process, reflecting a multi-level governance approach; industry associations lobbied for practical award criteria, realistic timelines, and procedural clarity, while SME organizations advocated simplified documentation and access mechanisms. Environmental NGOs pushed for sustainability criteria, life-cycle costing, and circular economy objectives, ensuring that procurement policy aligned with broader societal goals. The relationship between environmental criteria and the interests of national industrial champions, however, is inherently ambivalent. On the one hand, sustainability requirements may promote greater market openness by shifting competition away from purely price-based criteria toward qualitative standards, theoretically accessible to a broad range of firms. On the other hand, compliance with advanced environmental standards often demands significant technological capabilities, investment capacity, and regulatory expertise. Established national champions, such as leading Italian firms in high-technology or heavy industry sectors, may thus gain a comparative advantage, while smaller firms face higher entry barriers. In the Italian context, this dynamic can be illustrated with the example of Fincantieri: as a large, technologically advanced shipbuilder, the company is well-positioned to meet stringent environmental and technical standards in procurement procedures, whereas smaller Italian SMEs may struggle to compete effectively in such tenders. This shows how environmental criteria, while promoting sustainability objectives, can simultaneously reinforce the competitive position of domestic industrial champions⁹⁸. These interactions across supranational, national, regional, and

⁹⁸ Arrowsmith, Sue. *The Law of Public and Utilities Procurement*. London: Sweet & Maxwell, 2010.
For an Italian illustration instead see ANAC case studies and TAR decisions highlighting how

local levels ensured that the final directives balanced policy coherence, operational feasibility, and national discretion.

The legislative process was iterative and extended over several years, beginning with the Commission's 2011 proposals and concluding with adoption in early 2014. Key stages included impact assessments and consultations (2011–2012), parliamentary and Council committee reviews with informal trilogue meetings (2012–2013), technical adjustments to accommodate SMEs, sustainability goals, and dual-use overlaps (2013), and final adoption by Parliament on 15 January 2014 and Council on 11 February 2014, with Member States granted a two-year transposition period⁹⁹.

In sum, the negotiation process demonstrates how institutional structures, political bargaining, and strategic objectives converge to produce complex, robust legislation. From a theoretical perspective, the process illustrates neofunctionalism in the Commission's supranational role, intergovernmentalism in Member States' bargaining and protection of national interests, and multi-level governance through stakeholder influence and practical feasibility¹⁰⁰. The culmination of this process transformed public procurement from a procedural administrative tool into a strategic instrument capable of supporting innovation, sustainability, economic recovery, and international competitiveness, setting the stage for detailed analysis of Member States' positions in subsequent sections.

2.3 Member states' positions

The negotiation and eventual adoption of the 2014 Public Procurement Directives were profoundly shaped by the divergent positions of the Member States, reflecting not only

large industrial players, such as Fincantieri, successfully meet complex sustainability and technical standards, whereas smaller enterprises face higher compliance costs.

⁹⁹ Directive 2014/24/EU; Directive 2014/25/EU; Directive 2014/23/EU, in EUR-Lex.

¹⁰⁰ Arrowsmith, S., *op. cit.*

economic interests but also administrative cultures, strategic industrial priorities, and concerns over sovereignty¹⁰¹.

These divergences illustrate the structural tension that characterizes EU governance, where supranational regulatory ambitions must constantly be reconciled with the heterogeneous economic models and institutional traditions of the Member States¹⁰². In this sense, the reform of the procurement framework provides an instructive example of how national preferences interact with EU institutional processes to produce legislative compromise within the Union's multi-level governance system.

Although the directives were conceived at the European level with the aim of harmonizing procurement rules and promoting transparency, competition, and efficiency within the internal market, the final legislative framework emerged from a complex bargaining process in which national governments sought to reconcile supranational objectives with domestic political and economic priorities. The negotiation therefore represented not merely a technical exercise in legal harmonization but a broader political debate concerning the role of public procurement as an instrument of governance, industrial policy, and economic development within the European Union¹⁰³.

From a theoretical perspective, this dynamic reflects several of the analytical frameworks discussed in Chapter I; in particular, intergovernmentalist approaches emphasize how national governments seek to safeguard domestic economic interests within EU negotiations¹⁰⁴, while multi-level governance perspectives highlight the interaction between supranational institutions, national administrations, and economic stakeholders in shaping legislative outcomes.

¹⁰¹ Bovis, C., *EU Public Procurement Law*, Edward Elgar, 2012, pp. 45–50.

¹⁰² Arrowsmith, S., *The Law of Public and Utilities Procurement*, Sweet & Maxwell, 2014, pp. 320–325.

¹⁰³ European Commission, *Green Paper on the Modernization of EU Public Procurement Policy*, COM(2011).

¹⁰⁴ Scharpf, F. W., *Governing in Europe*, Oxford University Press, 1999.

Member States approached the negotiations through lenses shaped by their national economic structures, legal traditions, and levels of trust in European institutional oversight and these differences manifested themselves both in preferences regarding procedural mechanisms and in broader strategic visions of procurement policy¹⁰⁵.

Recent scholarship has further refined the interpretation of these divergent national approaches. Rather than viewing Member States' preferences simply as different levels of support for market integration, Calcara and Simón argue that governments often assign different strategic functions to the European defence market itself. In this perspective, national preferences are closely linked to domestic industrial structures and long-term strategic objectives. States with strong defence-industrial capabilities tend to perceive procurement not merely as an instrument of competition, but also as a mechanism for preserving technological sovereignty, sustaining national industrial champions, and reinforcing strategic autonomy. This broader interpretative framework helps explain why negotiations on the 2014 procurement reform frequently extended beyond purely regulatory issues and evolved into debates over industrial policy, economic security, and the future governance of the European defence market¹⁰⁶.

For some Member States, procurement law primarily serves to guarantee competition, transparency, and the efficient allocation of public resources¹⁰⁷. For others, it represents a strategic policy instrument capable of supporting domestic industries, promoting social objectives, and steering long-term economic development. In particular, the negotiations revealed the existence of several informal “coalitions” of Member States advocating different regulatory philosophies and, although these coalitions were not formally institutionalized, they reflected enduring structural differences within the European political economy, often corresponding to broader patterns of regulatory governance observed in other areas of EU policy-making¹⁰⁸.

¹⁰⁵ Craig, P., De Búrca, G., *EU Law*, Oxford University Press, 2015, pp. 155–160.

¹⁰⁶ Calcara, A., & Simón, L., *The Two Faces of Market Size: France, Germany and the Future of the European Defence Market*, 2025.

¹⁰⁷ Bovis, C., op. cit., pp. 60–65.

¹⁰⁸ Arrowsmith, S., op. cit., pp. 330–335.

One prominent group was often described as a “liberalization-oriented bloc,” primarily comprising the United Kingdom and several Northern European countries, including Denmark and Sweden, with the Netherlands frequently acting as an ally. Prior to its withdrawal from the European Union, the United Kingdom played a particularly influential role in promoting procedural flexibility and administrative efficiency¹⁰⁹. British negotiators supported the expansion of the Competitive Procedure with Negotiation, arguing that Contracting Authorities should act as “smart buyers” capable of adopting market-oriented procurement strategies while minimizing unnecessary bureaucratic constraints¹¹⁰. Nordic countries shared this emphasis on efficiency but also strongly promoted the concept of strategic procurement, advocating the integration of environmental and social criteria into procurement decisions. For these states, public procurement represented an important policy instrument capable of advancing broader objectives such as sustainability, climate policy, and innovation. Their approach was closely aligned with emerging European initiatives aimed at strengthening environmental governance, including early discussions surrounding what would later evolve into the European Green Deal¹¹¹.

In contrast, France and several Southern European Member States, including Italy and Spain, tended to emphasize what could be described as a “social and industrial model” of procurement governance¹¹²; within this perspective, procurement was viewed not only as a mechanism for ensuring market competition but also as a tool for pursuing public policy objectives and supporting national industrial structures.

France played a particularly important role in the negotiations surrounding Directive 2014/23/EU on concessions¹¹³, advocating a definition of “operating risk” that would preserve sufficient flexibility for long-term public–private partnerships with major national industrial actors. Italy similarly emphasized the importance of strengthening integrity mechanisms within procurement systems. Italian negotiators advocated the use of

¹⁰⁹ European Parliament, *Report on Public Procurement Reform*, Rapporteur Marc Tarabella, 2013.

¹¹⁰ For further details: UK Government, *Public Procurement Negotiations*, 2012, available on: <https://www.gov.uk>.

¹¹¹ European Commission, *Buying Green! Handbook on Green Public Procurement*, 2016.

¹¹² Bovis, C., op. cit., pp. 70–75.

¹¹³ Directive 2014/23/EU, in EUR-Lex.

reputation-based criteria and robust exclusion grounds as instruments to combat corruption and ensure ethical standards in the allocation of public contracts. Furthermore, Italian negotiators emphasized the need to align anti-corruption measures with strategic industrial policies, ensuring that the new integrity rules would not hinder national champions such as Fincantieri or Leonardo, and simultaneously support the transparency and ethical management of public procurement. Other Member States, including France, Germany, and the Nordic countries, also introduced proposals to strengthen anti-corruption frameworks, though with varied emphasis: France prioritized integrity in long-term partnerships, Germany focused on procedural clarity and SME access, and Nordic countries sought to link ethical rules with environmental and social criteria. Together with Spain, Italy also strongly supported the codification of rules governing in-house providing, seeking to preserve the ability of municipalities and Public Authorities to deliver services internally without being required to launch competitive tender procedures, thereby maintaining a degree of local autonomy within the broader framework of EU harmonization.

Italy's negotiating position was emblematic of this "industrial model"; by advocating for rules that protect in-house providing and reputation-based criteria, Italy sought to preserve a flexible framework for its public-interest entities. This approach is consistent with the national tendency to support strategic industrial players, such as Fincantieri or Leonardo, where procurement is not merely a transactional tool but a pillar of national industrial policy, strategic autonomy, and employment stability. For Italy, the challenge was to modernize the system to combat corruption while ensuring that the new EU rules would not dismantle the state's ability to steer development in key technological sectors¹¹⁴. The inclusion of anti-corruption measures was therefore carefully balanced to strengthen transparency without undermining Italy's capacity to support strategic champions. This exemplifies how ethical rules can interact with industrial policy in practice, rather than operating as strictly neutral measures.

Germany occupied a somewhat distinctive position within the negotiations, often acting as an intermediary between the efficiency-oriented approach favored by Northern

¹¹⁴ ANAC, *Guidelines on Integrity in Public Procurement*, 2014.

Member States and the more protective industrial perspectives prevalent in parts of Southern Europe. German negotiators played a key role in promoting the “divide or explain” principle, which encouraged Contracting Authorities to divide large contracts into smaller lots in order to facilitate access for small and medium-sized enterprises (SMEs), particularly within Germany’s extensive Mittelstand sector. At the same time, Germany maintained a cautious stance regarding the introduction of mandatory social criteria in procurement procedures, expressing concerns that overly prescriptive requirements could create hidden forms of protectionism or generate increased litigation risks within national procurement systems¹¹⁵.

Instead, Member States from Central and Eastern Europe, including countries such as Poland, Hungary, and Romania, approached the reform from a somewhat different perspective. For these states, the modernization of procurement legislation presented both opportunities and challenges. On the one hand, governments sought stronger regulatory frameworks capable of combating corruption and ensuring transparency in the management of public funds, particularly given the importance of EU structural and cohesion funds within their economies. On the other hand, these countries expressed reservations about the increased use of discretionary procedures advocated by some Western Member States, fearing that such flexibility could undermine objective competition and weaken procedural safeguards. Consequently, Central and Eastern European delegations emphasized the importance of clear rules, technical assistance, and transitional arrangements, particularly in relation to the implementation of complex innovations such as electronic procurement systems and life-cycle costing methodologies.

Across the negotiations, certain themes nonetheless generated broad convergence among Member States. One such issue concerned the need to improve access to procurement markets for small and medium-sized enterprises. While there were differences regarding the practical implementation of SME-friendly measures, there was general agreement that existing procurement systems often imposed disproportionate administrative burdens on smaller firms. As a result, the final directives incorporated several instruments designed to facilitate SME participation, including the European Single Procurement

¹¹⁵ European Commission, *SME Access to Public Procurement*, 2012.

Document (ESPD) and provisions encouraging the division of large contracts into smaller lots¹¹⁶.

About the emphasis on SME participation, although some larger Member States initially expressed concerns that these measures might increase administrative complexity for Contracting Authorities, the final compromise reflected an effort to balance efficiency with inclusiveness in public procurement markets.

Instead about the growing emphasis on social and environmental considerations within procurement policy; Northern and Western European countries, including Sweden, Denmark, and the Netherlands, strongly supported the integration of sustainability criteria, life-cycle costing, and labor standards into procurement decisions. These states advocated the broader use of the Most Economically Advantageous Tender (MEAT) principle as a mechanism for incorporating qualitative considerations such as environmental performance, innovation, and social value into award procedures. By contrast, several Southern and Eastern European Member States approached these proposals with greater caution, expressing concerns that extensive procedural requirements might impose additional administrative burdens on local authorities or disadvantage SMEs with limited administrative resources. Achieving consensus therefore required careful negotiation to ensure that sustainability objectives could be promoted without imposing rigid or overly complex regulatory obligations.

Strategic and security considerations also played a significant role in shaping national positions during the negotiations and although the 2014 reforms primarily concerned civilian procurement, the increasing overlap between civilian and military technologies meant that procurement rules could indirectly affect defence-related sectors¹¹⁷.

This issue was particularly significant in sectors characterized by dual-use technologies, such as aerospace, cybersecurity, and advanced digital infrastructures, where the

¹¹⁶ For more details: European Commission, *European Single Procurement Document (ESPD)*, available on: <https://ec.europa.eu>

¹¹⁷ Directive 2009/81/EC, in EUR-Lex.

boundaries between civilian and military applications are increasingly blurred. Consequently, Member States with significant defence-industrial bases closely monitored the negotiation process to ensure that civilian procurement reforms would not unintentionally undermine strategic autonomy or national security interests.

Member States with significant defence industries, including France, Germany, Italy, and the United Kingdom, were particularly attentive to ensuring that the new directives would not undermine existing frameworks governing defence procurement. Other Member States with notable defence interests, such as Spain, Sweden, and the Netherlands, also actively monitored the negotiations: Spain prioritized safeguarding national defence contractors and maintaining flexibility in long-term contracts; Sweden focused on promoting transparency and efficiency while preserving its technological edge in dual-use sectors; the Netherlands emphasized a balance between openness to EU-wide competition and the protection of strategic industrial capabilities. These positions contributed to shaping provisions that allowed for both market integration and the protection of sensitive defence-related sectors. In this regard, the negotiations emphasized the need to preserve the application of Directive 2009/81/EC on defence and security procurement, as well as the continued relevance of the national security exception contained in Article 346 TFEU, particularly with respect to issues such as security of supply and confidentiality.

International trade considerations further influenced the positions adopted by Member States. The European Union's commitments under the WTO Agreement on Government Procurement (GPA) required that procurement rules maintain openness to foreign competitors while simultaneously protecting against unfair practices. In fact, several Member States noted the lack of reciprocity in global procurement markets, highlighting that while the EU maintained relatively open markets, European firms frequently encountered significant barriers when attempting to participate in procurement procedures abroad, particularly in major economies such as the United States and China. These concerns reflected a broader debate within the EU regarding the balance between openness and strategic economic protection in global markets. While the Union has historically promoted liberal access to procurement markets as part of its commitment to international trade governance, Member States increasingly emphasized the need to ensure fair competition and reciprocity in relations with major global economic powers, particularly France and

Italy, which have traditionally advocated for stronger reciprocity instruments and the protection of strategic sectors, as well as Germany, which, while generally supportive of open markets, has increasingly endorsed the need for defensive trade instruments in response to distortions created by non-EU state-backed competitors.

This shared concern contributed to the strengthening of provisions addressing abnormally low tenders, allowing Contracting Authorities to reject bids that might be artificially underpriced as a result of state subsidies or other distortive practices¹¹⁸.

Taken together, the diverse national positions expressed during the negotiations illustrate the inherently multi-level and pluralistic nature of EU decision-making and the final legislative framework represents a carefully negotiated compromise between different regulatory philosophies and national priorities¹¹⁹. It balances the objectives of market integration, administrative efficiency, and competition with broader goals related to social policy, environmental sustainability, industrial strategy, SME participation, and international competitiveness. In this sense, the 2014 procurement directives illustrate how European legislation emerges not merely from technocratic harmonization but from the continuous negotiation of heterogeneous national interests within a highly institutionalized political framework. The resulting legal architecture reflects the capacity of the European Union to reconcile diverse economic models, regulatory traditions, and strategic priorities, transforming potential conflict into structured compromise within the Union's legislative process.

2.4 The Evolution of Cross-Border Public Procurement in the EU

Assessing the effectiveness of procurement reform requires moving beyond legal analysis and considering empirical evidence on the evolution of cross-border procurement

¹¹⁸ For more details: World Trade Organization, *Agreement on Government Procurement*, available on: <https://www.wto.org>

¹¹⁹ Arrowsmith, S., op. cit., pp. 350–355.

across Member States, examining the extent to which economic operators established in one Member State successfully participate in procurement procedures organized by contracting authorities located in another Member State.

In academic literature, public procurement is frequently conceptualized as a primary instrument of European economic constitutionalism, aimed at dismantling national protectionism through non-discriminatory procedural harmonization. To determine whether the principles of efficiency, transparency, and market openness under the 2014 Directives have materialized, we must analyze the structural patterns of transnational contract allocation.

The European Commission has consistently observed that, despite successive legislative reforms, direct cross-border procurement remains limited throughout the European Union; while participation by foreign-owned subsidiaries established within the purchasing Member State has increased over time, contracts awarded directly to undertakings established abroad continue to represent only a relatively small proportion of the overall value of procurement published in the Tenders Electronic Daily (TED) system¹²⁰.

The empirical evidence presented in this section is based primarily on official studies published by the European Commission and on statistical indicators derived from the Tenders Electronic Daily (TED) database, the online version of the *Supplement to the Official Journal of the European Union*¹²¹. Unless otherwise specified, the analysis refers exclusively to procurement procedures whose estimated value exceeds the financial thresholds established under Article 4 of Directive 2014/24/EU.

To assess the degree of market integration, this section adopts the distinction between direct and indirect cross-border procurement developed by the European Commission in its empirical analyses of the Single Market; direct cross-border procurement refers to contracts awarded to economic operators established in a Member State other than that of the contracting authority, instead indirect cross-border procurement refers to contracts

¹²⁰ Tenders Electronic Daily (TED) is the online version of the 'Supplement to the Official Journal of the European Union' dedicated to European public procurement. It was established to ensure transparency, non-discrimination, and cross-border competition under EU procurement law. For a comprehensive institutional overview, see Publications Office of the European Union (2024)

¹²¹ This methodological note synthesizes the analytical framework adopted by the European Commission in its empirical studies on cross-border public procurement, including the *Single Market Scoreboard*, the *Study on the Measurement of Cross-Border Penetration in the EU Public Procurement Market* (DG GROW), and related publications of the European Commission and the OECD on procurement market integration.

awarded to subsidiaries established within the purchasing Member State but ultimately controlled by parent companies located in another Member State. This distinction provides a more comprehensive assessment of cross-border economic integration than direct procurement alone, as it captures the increasing internationalization of corporate structures within the European Union.

The indicators discussed throughout this chapter should therefore be understood as analytical measures employed by the European Commission to monitor long-term developments in procurement market integration. Given the inherent limitations of administrative procurement data, including differences in national reporting practices, occasional gaps in contract notices and periodic methodological revision, these indicators are intended to support comparative and longitudinal analysis rather than to provide exact measurements of market openness.

The objective of the empirical analysis is not to establish precise estimates of cross-border procurement activity, but rather to identify the broader structural trends that characterize the evolution of the European procurement market. This methodological approach is consistent with the analytical framework adopted by the European Commission and supports the central argument developed throughout this thesis: namely, that the progressive harmonization of EU procurement legislation has advanced more rapidly than the effective integration of national procurement markets.

2.4.1 Regulatory Milestones and Economic Trajectories

The institutional evolution of the European Union public procurement regime has not followed a purely linear process of market integration¹²²; although successive legislative reforms have progressively strengthened the principles of transparency, competition and

¹²² European Commission, *Evaluation of the 2014 Public Procurement Directives*, SWD(2024) 671 final; S. Arrowsmith, *The Law of Public and Utilities Procurement* (latest ed.); S. Bovis, *EU Public Procurement Law*.

non-discrimination, empirical evidence suggests that significant structural differences between national procurement markets have persisted throughout the integration process.

The chronological development of these frameworks highlights the changing nature of the barriers economic operators face when bidding across borders:

1971	1993	2004	2014
Directive 71/305/EEC	Completion of the EU-Single Market	Directives 2004/17 & 18	Directives 2014/24 & 25
First formal ban on national preferences; procurement markets remained predominantly domestic with minimal cross-border participation..	Strengthened free movement principles, reinforcing market openness across Member States.	Standardized procurement procedures; market growth driven largely by indirect cross-border local subsidiaries.	Introduced the MEAT paradigm, focusing on strategic socio-environmental indicators and SME access.

Figure 2.1. Evolution of the EU Public Procurement Framework (1971–2024). Source: Author's elaboration based on Directives 71/305/EEC, 2004/17/EC, 2004/18/EC, 2014/24/EU, 2014/25/EU and European Commission policy documents¹²³.

To further examine the relationship between legislative reform and market integration, Table 2.2 compares the principal regulatory objectives pursued by successive generations of EU procurement directives with their underlying economic rationale and the market outcomes subsequently identified in European Commission evaluation reports and academic literature. Rather than establishing direct causal relationships, the table provides an analytical framework for understanding how successive waves of regulatory reform

¹²³ The figure provides a schematic representation of the principal legislative milestones in the evolution of the EU public procurement framework and is intended as a conceptual overview rather than an exhaustive historical reconstruction.

have progressively reshaped the functioning of the European public procurement market.¹²⁴

Regulatory Era & Directives	Main Regulatory Objective	Primary Economic Rationale	Observed Market Outcomes and Remaining Challenges
First Generation (Directives 71/305/EEC, 77/62/EEC)	Establish common procurement rules based on transparency, equal treatment and non-discrimination	Reduce explicit national preferences and facilitate the opening of procurement markets.	Markets remained predominantly domestic; low cross-border participation due to fragmented enforcement.
Second Generation (Directives 2004/17/EC, 2004/18/EC)	Harmonize procurement procedures, increase transparency and promote electronic publication through TED.	Lower transaction costs and encourage greater participation by suppliers from other Member States.	Improved accessibility, but direct cross-border bidding remained low; growth shifted to indirect structures.
Third Generation (Directives 2014/24/EU, 2014/25/EU)	Integrate sustainability, innovation, and SME access through flexibility and MEAT criteria.	Increase procurement quality while preserving competition and market openness.	Strategic procurement expanded; administrative divergence and high single-bid rates still limit competition.

Table 2.2: Evolution of EU Public Procurement: Regulatory Objectives and Observed Market Outcomes. Source: Author's synthesis based on European Commission (DG GROW), Evaluation of the 2014 Public Procurement Directives, Single Market Scoreboard, and related European Commission policy reports

Taken together, the evidence presented in Table 2.2 suggests that successive waves of legislative reform progressively strengthened the legal framework governing public procurement while expanding the strategic role of procurement within the European Union. However, the empirical evidence also indicates that legal harmonization has advanced

¹²⁴ The market outcomes presented in Table 2.2 are based on a qualitative synthesis of European Commission evaluation reports, including the Evaluation of the 2014 Public Procurement Directives (SWD(2024) 671 final), the Single Market Scoreboard, and the Study on the Measurement of Cross-Border Penetration in the EU Public Procurement Market, supplemented by the academic literature. The table is intended to illustrate long-term developments rather than to establish direct causal relationships between legislative reforms and procurement performance.

more rapidly than effective economic integration of procurement markets and although explicit forms of discrimination have been substantially reduced, cross-border participation continues to be influenced by structural factors such as administrative practices, market fragmentation, linguistic barriers and differences in national implementation. Consequently, the evolution of EU procurement law illustrates that regulatory convergence represents a necessary, but not sufficient, condition for achieving a genuinely integrated European public procurement market.

2.4.2 Trends in Direct and Indirect Cross-Border Procurement

Evidence collected by the European Commission through successive evaluations of the EU public procurement market consistently indicates that direct cross-border procurement has remained limited despite successive waves of legislative harmonization. An analysis of public procurement integration over the last three decades highlights a persistent structural stagnation in direct cross-border activities; based on data extracted from the Tenders Electronic Daily (TED) database and related DG GROW analytical studies, contracts awarded directly to suppliers established in another Member State have consistently fluctuated below the 3% threshold of total value¹²⁵. This empirical trend suggests that geographic proximity and persistent domestic bias continue to act as resilient non-tariff barriers within the Single Market.

Conversely, the main channel of market integration has emerged through indirect cross-border procurement, wherein contracts are awarded to subsidiaries or branches established within the purchaser's Member State by foreign parent companies.

This bifurcated trajectory reveals an asymmetric integration process: while the institutional objective of facilitating fluid, direct cross-border bidding remains only partially

¹²⁵ European Commission (2021), *The Border Effect in the European Single Market: Final Report and Econometric Evidence from Public Procurement Data*, which evaluates the persistent friction holding back direct cross-border awards since the mid-1990s.

achieved, European market integration is increasingly shaped by multinational corporate structures and the localization of foreign firms within domestic procurement systems¹²⁶.

This persistent divergence between legal and effective market integration suggests that legal harmonization alone has not been sufficient to eliminate the practical barriers affecting cross-border participation; the literature identifies several factors behind this persistent gap between legal integration and market outcomes, including linguistic barriers, differences in administrative procedures, legal uncertainty, high transaction costs, and limited incentives for cross-border participation. Consequently, while procurement legislation has progressively reduced formal barriers to market access, structural and institutional obstacles continue to constrain the development of a genuinely integrated European procurement market. However, this aggregate European trajectory obscures significant structural variations across individual jurisdictions and to fully understand how these macroeconomic barriers manifest empirically, it is necessary to transition from a Union-wide baseline to a comparative cross-national analysis of the major Eurozone economies¹²⁷.

2.4.3 Comparative Cross-National Analysis (Italy, France, Germany, Spain)

The European Union average masks significant differences in procurement performance among the four largest Eurozone economies; a comparative assessment highlights how administrative organization, procurement governance and institutional structures contribute to different levels of market openness across Member States.

¹²⁶ European Commission's *Evaluation of the 2014 Public Procurement Directives*. The report underscores that the establishment of local subsidiaries remains the preferred corporate strategy to mitigate legal fragmentation and domestic administrative compliance costs.

¹²⁷ European Commission, *Evaluation of the 2014 Public Procurement Directives*; OECD, *Government at a Glance*; European Commission, *Single Market Scoreboard – Public Procurement*.

Member State	Single Bidder Rate (%)	No Calls for Bids (%)	Publication Rate (% of GDP)	Main Characteristics
Italy ¹²⁸	34%	3%	3.6%	High regulatory complexity, frequent legislative reforms, lengthy procedures and elevated litigation risk
France ¹²⁹	20%	~ 3%	4.6%	Centralized system with strong administrative coordination and extensive strategic policies.
Germany ¹³⁰	20%	7%	1.8%	Federal decentralization, fragmented procurement platforms, and low publication rate.
Spain ¹³¹	18%	~4%	3.2%	Decentralized procurement featuring extensive digitalization and SME participation.

Table 2.3: Comparative Public Procurement Indicators in Selected EU Member States (Latest Available Data). Source: Author's elaboration based on the European Commission, *Single Market and Competitiveness Scoreboard – Access to Public Procurement* (2024 country profiles for Italy, France, Germany and Spain).

The comparative evidence presented in Table 2.3 highlights significant differences in procurement performance among the four largest Eurozone economies. Italy records the highest Single Bidder Rate (34%), considerably above the European Union average; this indicator may be associated with a combination of regulatory complexity, frequent legislative reforms and administrative burdens that have been widely discussed in the procurement literature as potential constraints on market participation. Although the Italian pro-

¹²⁸ For more details: European Commission, *Single Market and Competitiveness Scoreboard – Public Procurement: Italy*, available at: https://single-market-scoreboard.ec.europa.eu/node/548_en

¹²⁹ For more information: https://single-market-economy.ec.europa.eu/single-market/public-procurement/country-reports-and-information-eu-countries_en?utm_source

¹³⁰ For more details: European Commission, *Single Market and Competitiveness Scoreboard – Public Procurement: Germany*, available at: https://single-market-scoreboard.ec.europa.eu/node/502_en

¹³¹ For more data: https://single-market-economy.ec.europa.eu/single-market/public-procurement/country-reports-and-information-eu-countries_en?utm_source

curement framework has undergone substantial modernization in recent years, the frequency of legislative amendments and the complexity of administrative procedures continue to represent important challenges for both domestic and foreign economic operators.

France and Germany exhibit different institutional models while achieving comparatively lower levels of single-bid procedures; France places greater emphasis on strategic procurement objectives, supported by a highly coordinated administrative system and comparatively high publication rates, instead Germany, by contrast, operates through a strongly decentralized federal procurement structure. While this model promotes local administrative autonomy, it may also increase transaction costs for foreign suppliers by requiring participation across numerous regional and local procurement platforms.

Spain presents an intermediate institutional model where procurement responsibilities are widely decentralized across the Autonomous Communities and are supported by a relatively advanced level of digitalization and policies encouraging SME participation. Nevertheless, differences in regional administrative practices may reduce the practical accessibility of procurement opportunities for non-domestic suppliers.

Overall, the comparative evidence suggests that, despite the existence of a harmonized legal framework at EU level, differences in administrative organization, procurement governance and institutional capacity continue to influence the practical accessibility of national procurement markets. These findings reinforce the broader argument developed throughout this chapter: legal harmonization represents a necessary precondition for market integration, but it is not sufficient on its own to ensure effective cross-border competition within the European public procurement market.

2.4.4 Deconstructing the 'Border Effect' and 'Home Bias' in Public Markets

To explain the persistent localization of public procurement, economic literature has increasingly focused on the concept of the Border Effect (“effetto frontiera”) and its mi-

croeconomic corollary, Home Bias. The border effect demonstrates an extraordinary market distortion: even when a foreign firm and a domestic firm are entirely identical, offering the exact same price, utilizing the same technology, and demonstrating equivalent qualitative standards, the domestic firm maintains an exponentially higher probability of being awarded the contract.

The border effect in public procurement is significantly more pronounced than in private and this phenomenon can be attributed to three underlying structural drivers, mapped below in Table 2.4:

Structural Dimension	Microeconomic Manifestation	Institutional Consequence
Information Asymmetries	Greater familiarity with domestic procurement practices.	Higher entry costs for foreign suppliers.
Procedural Complexity & Language	Administrative and linguistic requirements.	Reduced participation by foreign firms.
Political Economy Bias	Preference for familiar suppliers and previous contractors.	Lower cross-border competition

Table 2.4: Structural Taxonomy of the Border Effect in EU Public Procurement. Source: Author's own elaboration.

The structural dimensions summarized in Table 2.4 help explain why cross-border procurement remains considerably less integrated than other segments of the European Single Market; although successive procurement directives have progressively harmonized the legal framework governing public procurement, they have been less successful in addressing the institutional and administrative factors that continue to influence procurement decisions at national level.

Among these factors, information asymmetries continue to play a particularly significant role¹³². Domestic suppliers generally possess greater familiarity with national administrative procedures, documentation requirements and procurement practices, reducing the costs associated with participation in public tenders. Foreign economic operators, by contrast, frequently incur additional administrative and compliance costs arising from linguistic differences, procedural complexity and the need to adapt to unfamiliar regulatory environments¹³³.

Administrative fragmentation further reinforces these obstacles; while procurement procedures are formally governed by common European legislation, their practical implementation continues to differ across Member States in terms of digital procurement platforms, documentary requirements, administrative organization and procurement governance. These differences increase transaction costs and may discourage cross-border participation, particularly among small and medium-sized enterprises that lack the organizational capacity to operate simultaneously across multiple national procurement systems.

The literature also identifies administrative risk aversion as an additional factor contributing to the persistence of domestic procurement patterns. Contracting authorities may display a preference for suppliers with whom they are already familiar or whose legal and administrative documentation can be more easily verified within the domestic legal framework. Although such behavior does not necessarily constitute intentional discrimination, it may reduce the practical accessibility of procurement opportunities for non-domestic suppliers and contribute to the persistence of home bias within European public procurement markets.

Taken together, these structural factors suggest that the border effect should not be interpreted as the consequence of explicit protectionist policies alone¹³⁴; rather, it reflects the cumulative impact of administrative complexity, institutional diversity, information asymmetries and organizational incentives that continue to shape procurement decisions

¹³² European Commission (DG GROW), *Study on the Measurement of Cross-Border Penetration in the EU Public Procurement Market*, Brussels.

¹³³ European Commission / DG GROW, *The Border Effect in the European Single Market: Final Report and Econometric Evidence from Public Procurement Data*, Brussels (2021), pp. 52-56.

¹³⁴ John McCallum, *National Borders Matter: Canada-U.S. Regional Trade Patterns*, *American Economic Review* (1995), pp. 615–623.

despite the existence of a harmonized legal framework. Consequently, the persistence of home bias illustrates that legal harmonization, while essential, does not automatically translate into effective market integration or fully competitive cross-border procurement.

2.5 The Italian Case Study: From Gold-Plating to the "Principle of Result"

The evolution of the Italian public procurement framework offers a significant example of how EU Member States transpose European directives into complex national administrative and legal systems¹³⁵. In Italy, the regulation of public contracts is currently governed by Legislative Decree No. 36 of 31 March 2023, which transposes and integrates the 2014 EU Directives while adapting their content to the specific national constitutional and administrative landscape¹³⁶. This regulatory path began significantly with Legislative Decree No. 163 of 12 April 2006, which represented the first unified "Public Contracts Code"; this document consolidated the rules for works, services, and supplies into a single text, providing highly detailed regulations. However, it eventually suffered from extreme complexity and was subject to more than fifty amendments, representing a clear instance of "gold-plating" where national rules added layers of bureaucracy beyond European requirements. The resulting inefficiencies, characterized by high litigation rates and procedural delays, necessitated further intervention.

In response to these structural weaknesses and the emergence of the "Mafia Capitale" scandal, the legislator introduced Legislative Decree No. 50 of 18 April 2016; this reform aimed for a radical simplification by reducing detailed implementing regulations and strengthening the role of the National Anti-Corruption Authority (ANAC) through the introduction of soft law and specialized guidelines¹³⁷. Despite these objectives, this

¹³⁵ Cassese, S. (2011). *Il diritto dell'Unione europea*. Il Mulino, Bologna.

¹³⁶ Legislative Decree No. 36/2023. *Codice dei contratti pubblici*. Gazzetta Ufficiale, Italy.

¹³⁷ European Commission (2011), *Green Paper on the Modernization of EU Public Procurement Policy*.

framework also faced continuous adjustments, particularly during the COVID-19 emergency and subsequently to meet the urgent deadlines imposed by the National Recovery and Resilience Plan (PNRR). These pressures ultimately led to the adoption of the current 2023 Code.

The 2023 Reform marks a fundamental paradigm shift by placing the “Principle of Result” at the very core of the procurement process. This principle establishes that the primary objective of any procedure is the timely and efficient execution of the contract, prioritizing substance over formalistic bureaucracy. While strictly respecting European constraints and principles, such as transparency, proportionality, and non-discrimination, the Italian legislator has also introduced specific provisions to manage organizational risks and prevent criminal infiltration, reflecting the unique challenges of the domestic context. However, whether this shift amounts to a genuine transformation of administrative practice or rather remains, at least partially, a programmatic statement is still debated in legal scholarship. Early implementation suggests that entrenched administrative practices, the persistence of a risk-averse approach by Contracting Authorities, often linked to concerns over administrative and accounting liability, and the high level of litigation in public procurement may limit the immediate practical impact of the reform. Empirical signals seem to confirm this cautious transition: data and reports from the National Anti-Corruption Authority (ANAC) continue to highlight significant levels of procedural complexity and litigation, while the implementation of projects under the National Recovery and Resilience Plan (PNRR) has required the adoption of derogatory and accelerated procedures, suggesting that ordinary procurement rules may still struggle to ensure efficiency in practice¹³⁸.

In this way, the Italian experience demonstrates how national reforms can effectively align with EU objectives while tailoring procedures to domestic strategic priorities; this

¹³⁸ On the debated practical impact of the “Principle of Result” and the persistence of formalistic and risk-averse administrative practices in Italian public procurement, see M. Clarich, *Il nuovo Codice dei contratti pubblici tra semplificazione e risultato* o R. Garofoli, *Il principio del risultato nel nuovo codice dei contratti pubblici*, in *Foro Amministrativo*, 2023. See also reports and monitoring activity of the ANAC, which highlight persistent criticalities in procurement procedures, as well as the implementation framework of the Piano Nazionale di Ripresa e Resilienza, which has often relied on simplified and derogatory procedures to ensure timely execution of public investments.

trajectory ultimately illustrates the broader transition from a rigid, procedure-oriented approach to a more functional and strategic orientation, where public procurement is utilized as a key driver for national economic recovery within the framework of European integration.

CHAPTER III. EU PUBLIC PROCUREMENT AND DEFENCE PROCUREMENT

3.1 Defence procurement as a special sector

Public procurement in the defence and security sectors occupies a unique and often contentious position within the European Union's legal and institutional architecture. While the general procurement directives, analyzed in Chapter II, aim to foster an open, competitive, and transparent Internal Market, defence procurement instead operates at the intersection of economic integration and the “hard core” of national sovereignty. Unlike civilian procurement, which can generally be governed by uniform rules designed to maximize efficiency, competition, and inclusiveness, defence procurement entails high strategic, technological, and security stakes that demand specialized procedures and exemptions¹³⁹. Historically, this sector remained largely insulated from EU competition law, shielded by a broad and often discretionary interpretation of national security interests under Article 346 of the Treaty on the Functioning of the European Union (TFEU), formerly Article 296 TEC¹⁴⁰. Recent scholarship has increasingly argued that Article 346 TFEU should not be understood solely as a legal derogation from the Internal Market acquis, but also as a political and strategic instrument through which Member States preserve control over critical defence-industrial capabilities. From this perspective, the defence sector represents one of the clearest examples of what Antonio Calcara describes as a form of “bounded integration”, whereby European integration advances only insofar as it does not fundamentally undermine national sovereignty, strategic autonomy, and the protection of key industrial assets. This interpretative framework helps explain why, despite the progressive development of common European defence initiatives, Member States have consistently sought to preserve significant discretion over procurement decisions involving essential security interests¹⁴¹.

¹³⁹ Arrowsmith, S., *The Law of Public and Utilities Procurement*, Sweet & Maxwell, London, 2018.

¹⁴⁰ Treaty on the Functioning of the European Union, art. 346.

¹⁴¹ Calcara A., *Europe's Security Market: Strategic Ambiguity, Risk and Governance*, Routledge, 2020.

Over time, however, the development of the European Defence Technological and Industrial Base (EDTIB), coupled with the introduction of specific legislative instruments such as Directive 2009/81/EC, has transformed defence procurement into a sophisticated “special sector” requiring nuanced legal and economic analysis¹⁴².

The “exclusivity” of the defence sector stems from several interrelated factors; firstly, the monopsonistic nature of the market, where the state, typically through the Ministry of Defence, acts as the sole buyer creates conditions in which traditional competitive procurement mechanisms are often unfeasible¹⁴³. Secondly, the need for strategic autonomy and security of supply (SoS) compels Member States to maintain domestic industrial capabilities, ensuring the operational readiness of military assets regardless of geopolitical disruptions or commercial contingencies. In this context, Security of Supply transcends simple delivery logistics; it implies a binding guarantee that, even in the event of a high-intensity conflict, a supplier will prioritize the provision of spare parts, maintenance, and ammunition, a requirement that does not exist in standard civilian markets¹⁴⁴. Thirdly, the technological complexity and long life-cycles of defence systems, ranging from fighter jets to advanced cyber and communication platforms, necessitate extended collaborative arrangements between governments and prime contractors, which do not align easily with the short-term, price-driven frameworks of civilian procurement. These characteristics have historically justified the application of wide exemptions from EU procurement rules, rendering defence procurement the “last frontier” of European integration and highlighting its unique governance challenges.

The Directive 2009/81/EC formalized the treatment of defence as a “special sector,” establishing tailored procedures that reconcile EU principles such as non-discrimination, transparency, and proportionality with the operational realities of the military and sensitive security markets¹⁴⁵. In fact, the directive codifies essential mechanisms to address the twin imperatives of security of supply (SoS) and security of information (SoI), ensuring that sensitive technologies remain under controlled conditions, and that the armed forces

¹⁴² European Commission, *Directive 2009/81/EC on defence and security procurement*, 2009; European Commission, *EDTIB Communication*, 2007.

¹⁴³ Hartley, K., *The Economics of Defence Policy*, Routledge, London, 2011, pp. 89-95.

¹⁴⁴ European Commission, *Guidance Note on Security of Supply*, 2013.

¹⁴⁵ Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009.

retain uninterrupted access to critical equipment even under crisis scenarios¹⁴⁶. The directive also allows for negotiated procedures as a standard practice, rather than an exception, reflecting the technical necessity of dialogue-based contract design for complex weapon systems. This approach contrasts sharply with civilian procurement under the 2014 directives, where negotiated procedures are reserved for exceptional cases.

Economic considerations further underpin the “special sector” classification since defence markets are prone to structural market failures, including extremely high entry barriers, massive research and development costs, and the dual-use nature of modern technologies, which may simultaneously serve civilian and military purposes. Absent a tailored framework, these factors would constrain competition, inflate costs, and compromise strategic readiness. By facilitating long-term partnerships, iterative technical negotiations, and the preservation of national industrial champions, Directive 2009/81/EC ensures that strategic and economic objectives are effectively reconciled. Furthermore, the integration of life-cycle costing, modular development, and risk-sharing mechanisms reflects an advanced understanding of defence procurement as both a public policy instrument and a complex industrial ecosystem.

Member States’ positions during the negotiation of defence procurement rules also illustrate the interaction between sovereignty, strategic autonomy, and European integration. Large industrial economies, such as France, Germany, Italy, and previously the United Kingdom, sought to maintain discretion over sensitive sectors while simultaneously supporting EU-level initiatives to enhance market efficiency and cross-border collaboration where feasible. Italy, in particular, reflecting its position as a major industrial player through national champions like Fincantieri and Leonardo, has emerged as a key supporter of the EDTIB¹⁴⁷. The Italian stance often seeks a delicate balance: protecting its strategic national industrial base while advocating for increased European cooperation to remain competitive against global giants. France, for instance, emphasized flexibility in defining “operating risk” for long-term public–private partnerships, particularly within the framework of Directive 2014/23/EU on concessions. Germany focused on ensuring

¹⁴⁶ Trybus, M., *Defence Procurement in the EU*, Cambridge University Press, 2019.

¹⁴⁷ Fincantieri, *Annual Report*, 2022.

access for SMEs, notably the Mittelstand, through mechanisms such as the “divide or explain” principle, while cautiously evaluating the implications of mandatory social or environmental criteria. Smaller and Central and Eastern European Member States, including Poland, Hungary, and Romania, emphasized transparency, anti-corruption safeguards, and the provision of technical assistance for complex innovations such as electronic procurement systems, demonstrating the balancing act between EU integration and domestic capacity-building. Across all Member States, there was broad consensus on maintaining provisions that protected strategic autonomy, dual-use technologies, and security-sensitive information, even while promoting limited cross-border competition in non-strategic areas¹⁴⁸.

The geopolitical and strategic dimension of defence procurement has become increasingly salient in recent years. The resurgence of high-intensity conflicts on the European continent, exemplified by the war in Ukraine, has underscored the critical importance of maintaining resilient and sovereign defence industrial capabilities. EU-level initiatives, including the European Defence Industry Reinforcement through common Procurement Act (EDIRPA) and the European Defence Investment Programme (EDIP), seek to complement Directive 2009/81/EC by fostering coordinated investments, shared technological development, and increased interoperability among Member States. These instruments highlight a shift from a purely nationalist conception of defence procurement to a hybrid European approach, where the “specialness” of the sector encompasses both national security imperatives and collective European industrial resilience¹⁴⁹.

In conclusion, defence procurement in the European Union represents a paradigmatic example of how high-stakes strategic, economic, and security considerations necessitate the creation of a legally distinct and institutionally complex “special sector.” Its evolution demonstrates the interplay between national sovereignty, supranational governance, industrial policy, and market regulation, offering a rich case study for the study of multi-level governance, regulatory harmonization, and the strategic use of public procurement

¹⁴⁸ OECD, *Public Procurement for Defence*, 2017.

¹⁴⁹ European Commission, *EDIRPA Regulation Proposal*, 2022; *EDIP Communication*, 2023.

as a tool of both national and European security policy. By reconciling competing imperatives like efficiency, transparency, technological sophistication, strategic autonomy, and industrial competitiveness, the legal and procedural architecture governing defence procurement exemplifies the EU's capacity to craft nuanced solutions in sectors where the stakes extend far beyond the purely economic.

3.2 Security exceptions and special rules

The integration of security exceptions and special procurement rules within the European Union's legal framework exemplifies the delicate and often contested balance between the imperatives of the Internal Market and the overriding necessity of national and European security¹⁵⁰. While general EU procurement law is grounded in principles of transparency, non-discrimination, and competition, the exceptional nature of defence, dual-use, and other sensitive security-related acquisitions necessitates a differentiated legal regime that can reconcile operational imperatives with regulatory oversight. These provisions, codified primarily in Article 346 of the Treaty on the Functioning of the European Union (TFEU) and operationalized through Directive 2009/81/EC¹⁵¹, constitute a sophisticated legal and political instrument designed to harmonize the goals of market integration, technological innovation, and strategic autonomy, while accommodating the sovereignty prerogatives of Member States in high-security domains.

Article 346 TFEU serves as the foundational legal pillar for security exceptions, granting Member States the right to take measures deemed necessary to protect their essential security interests. These interests are particularly relevant where procurement concerns military equipment, armaments, dual-use technologies, or other critical systems essential for national defence. Historically, Member States interpreted Article 346 as a broad safeguard, allowing extensive discretion and enabling the long-standing insulation of national

¹⁵⁰ Cannizzaro op. cit., pp. 60-65.

¹⁵¹ Directive 2009/81/CE; TFUE art. 346.

defence markets from EU competition and procedural obligations. Such interpretation was grounded in the recognition that defence procurement is inherently distinct from civilian procurement: it involves products of high strategic sensitivity, long development life-cycles, technological complexity, and concentrated supplier bases, where operational failure could have severe consequences for national security¹⁵². It is important to note that the scope of this article is traditionally linked to the "1958 List," a Council decision enumerating the types of weapons, munitions, and war material to which these exceptions can apply, although modern interpretations must account for the evolution of technology.

However, the jurisprudence of the Court of Justice of the European Union (CJEU) has progressively refined the understanding of Article 346, emphasizing that derogations must be proportionate, necessary, and strictly linked to genuine security concerns. Landmark cases, including *Commission v. Spain* (C-414/97) and *Commission v. Italy* (C-337/05), clarify that there is no automatic immunity for defence contracts¹⁵³. In the Italian case (C-337/05), for instance, the Court ruled against the direct award of Agusta and AgustaBell helicopters for civilian use (forestry and police), establishing that the security exception cannot be invoked for "dual-use" goods unless a specific military or security necessity is proven¹⁵⁴. The burden of proof lies with the Member State invoking the exception, requiring demonstration that the protection of security interests could not be achieved through competitive procedures¹⁵⁵. Moreover, the measures implemented must be strictly necessary and proportionate, preventing abuse of the security exception while respecting EU legal principles. This evolution reflects a broader trend in EU governance: even in sectors traditionally shielded from integration pressures, the Union seeks to impose structured accountability and procedural legitimacy.

Directive 2009/81/EC operationalizes these legal exceptions by introducing a *lex specialis* specifically tailored to the defence and sensitive security procurement sectors¹⁵⁶.

¹⁵² Trybus, M., *Buying Defence and Security in Europe*, Cambridge University Press, 2014.

¹⁵³ Corte di giustizia dell'Unione europea, C-414/97, *Commissione c. Spagna*; C-337/05, *Commissione c. Italia*.

¹⁵⁴ Corte di giustizia dell'Unione europea, C-337/05, *Commissione c. Italia*.

¹⁵⁵ Trybus, M. op. cit.

¹⁵⁶ European Commission, *Explanatory Memorandum on Defence and Security Procurement*, Brussels, 2009.

The Directive balances the principles of the Internal Market; transparency, competition and non-discrimination, with the operational realities of defence. A crucial element of this Directive is the explicit exclusion of certain contracts from its scope, most notably "Government-to-Government" (G2G) sales. This allows Member States to acquire equipment directly from another state (often the United States via Foreign Military Sales) without a public tender, provided that the purchasing state acts as the end-user. Among its key provisions, the Directive allows the negotiated procedure with publication as a standard, a mechanism essential for refining complex technical specifications and ensuring Security of Supply (SoS). In addition, it permits restricted competitions and direct awards in cases where open competition could compromise operational security, technological secrecy, or the continuity of critical supply chains. These rules reflect a pragmatic recognition that procurement in this sector is fundamentally about trust, strategic continuity, and operational effectiveness rather than mere price optimization¹⁵⁷.

So, a central aspect of Directive 2009/81/EC is the formalization of Security of Supply (SoS) and Security of Information (SoI) as guiding principles; SoS ensures that essential military equipment, spare parts, maintenance services, and operational support remain available under all circumstances, including geopolitical crises, conflicts, or supplier insolvency. Instead SoI guarantees the protection of sensitive technical data, operational requirements, and supplier information throughout the procurement lifecycle. The combination of SoS and SoI underscores the strategic rationale for special procurement rules: defence acquisitions are not only about transactional efficiency but about safeguarding state capacity, operational readiness, and technological sovereignty.

The Directive also integrates considerations of industrial economics and market structure; in fact, defence production is characterized by high fixed costs, complex R&D investments, and a limited number of capable suppliers, often concentrated in a few Member States or strategic consortia. The Directive's special procedures enable the preservation and development of national and European Defence Technological and Industrial

¹⁵⁷ Arrowsmith, S., op. cit.

Bases (NDTIB/EDTIB), ensuring industrial continuity, encouraging innovation, and supporting strategic autonomy¹⁵⁸. These provisions also allow selective cross-border collaboration through pooled procurement, cooperative projects under the Permanent Structured Cooperation (PESCO), and European Defence Industrial Development Programmes¹⁵⁹. By treating negotiated procedures as standard rather than exceptional, the Directive recognizes the structural uniqueness of the sector, where a rigid open-bid model would risk technical inadequacy, industrial collapse, or supply chain disruption.

Dual-use technologies introduce additional layers of legal, strategic, and operational complexity. Products and components such as satellites, cyber-defence tools, autonomous vehicles, advanced materials, and encryption systems straddle civilian and military applications, necessitating rigorous security and export control assessments¹⁶⁰. Procurement authorities must evaluate not only price and technical merit but also supplier reliability, security clearance, and geopolitical dependencies. Negotiated procedures, technical dialogues, phased delivery schedules, and robust end-user verification mechanisms are therefore systematically employed to ensure operational compliance without violating EU principles.

A historically sensitive aspect of the framework is the use of offsets and industrial compensation; whereby foreign suppliers reinvest portions of the contract value into domestic industrial capabilities. While offsets may distort competition in a civilian market context, they are often justified under Article 346 as necessary to maintain national industrial capacities, preserve strategic technologies, and secure Security of Supply. However, the European Commission has increasingly challenged the legality of non-specific offsets, viewing them as discriminatory. Current EU guidance demands that any industrial compensation must be directly related to the specific military equipment being purchased and strictly necessary for the protection of essential security interests¹⁶¹. The EU's 2013 Guidance Note emphasizes strict limitations, permitting offsets only in exceptional cases

¹⁵⁸ European Commission, *Communication on the European Defence Technological and Industrial Base (EDTIB)*, 2007.

¹⁵⁹ Council Decision (CFSP) 2017/2315 establishing PESCO; European Defence Agency, *Defence Data Report*, 2020.

¹⁶⁰ OECD, *Public Procurement for Defence and Security Sectors*, Paris, 2017.

¹⁶¹ Dunne, J.P., *Defence Industrial Policy*, 2015.

directly tied to demonstrable security needs, thereby harmonizing national prerogatives with Union-level market integration.

Security exceptions are also deeply connected to international trade obligations, particularly the WTO Government Procurement Agreement (GPA); while EU procurement law generally seeks to allow third-country access under GPA rules, defence procurement explicitly allows exclusion of suppliers whose participation could compromise national or collective European strategic interests. This ensures that key capabilities in aerospace, cybersecurity, and advanced electronics remain within trusted industrial networks, reflecting the tension between market openness and strategic sovereignty.

Directive 2009/81/EC additionally embeds robust governance, risk management, and accountability mechanisms and even where full technical specifications are classified, Member States must document and justify derogations, detailing rationale, scope, and anticipated outcomes. Independent audits, reporting requirements, and oversight mechanisms reduce risks of corruption, favoritism, or mismanagement, ensuring that exceptions serve genuine strategic objectives rather than opportunistic industrial protectionism¹⁶².

Recent geopolitical developments, including renewed conventional military threats, cyber and space domain competition, and the strategic challenges posed by third-country actors, have intensified the relevance of security exceptions¹⁶³. Instruments such as the European Defence Fund (EDF), the European Defence Industrial Reinforcement through common Procurement Act (EDIRPA), and joint PESCO projects exemplify a shift toward collective European defence governance, where security exceptions are increasingly used to enhance interoperability, industrial resilience, and strategic autonomy. These initiatives indicate that security exceptions are evolving from purely national protective measures to instruments of coordinated European strategic policy, reconciling national sovereignty with the EU's emerging defence ambitions¹⁶⁴.

¹⁶² European Court of Auditors, *EU Defence Procurement Review*, Luxembourg, 2021.

¹⁶³ European Commission, *Defence Investment Gaps Analysis*, Brussels, 2022.

¹⁶⁴ Craig, P., De Búrca, G., op. cit.

From a theoretical perspective, the architecture of security exceptions illustrates a convergence of intergovernmentalist imperatives, safeguarding Member State sovereignty and strategic industries and multi-level governance mechanisms, which facilitate supranational coordination without fully subordinating national prerogatives. This demonstrates the EU's capacity to reconcile heterogeneous political, economic, and strategic priorities within a legally coherent and operationally effective framework, providing a sophisticated model of governance for sectors characterized by extreme technological, operational, and strategic sensitivity.

In sum, security exceptions and special rules in EU defence procurement reflect a legally nuanced, economically informed, and strategically responsive framework. By combining Article 346 TFEU derogations with Directive 2009/81/EC procedures, the EU accommodates operational secrecy, technological complexity, industrial continuity, and strategic autonomy, while simultaneously maintaining oversight, transparency, and adherence to the broader objectives of European integration. The resulting system exemplifies the Union's ability to transform potential conflict between market integration and security imperatives into a structured, sophisticated compromise, offering a model of governance uniquely suited to high-stakes, high-complexity policy areas such as defence procurement.

3.3 Subcontracting and supply chains (in defence procurement)

In the defence sector, the complexity of modern weapon systems, such as multi-role combat aircraft, advanced naval platforms, integrated missile defence systems, and cyber-defence infrastructures makes it practically impossible for a single company to possess all the technological expertise, industrial capacity, and research capabilities required to design, produce, and maintain the entire system independently¹⁶⁵. Consequently, defence

¹⁶⁵ Hartley, K., *The Economics of Defence Policy*, Routledge, London, 2011, pp. 101-108.

procurement programs are typically organized around a prime contractor, the lead industrial actor responsible for overall project management and delivery, which coordinates a vast and often transnational network of subcontractors.

Within the European Union's legal and institutional framework, subcontracting in defence procurement is therefore not merely a logistical necessity but a strategic governance mechanism; it serves to reconcile three core objectives: the protection of sensitive information, the maintenance of secure and resilient supply chains and the promotion of a competitive and innovative European Defence Technological and Industrial Base (ED-TIB).

Unlike civilian supply chains, where the dominant objective is often cost efficiency and the implementation of "just-in-time" production models, defence supply chains are governed by the principle of strategic resilience. The disruption of a single component, such as a specialized semiconductor, high-grade alloy, or encrypted communication module, can halt the production or maintenance of an entire weapons system. Consequently, the defence supply chain must be structured in a way that minimizes vulnerabilities, anticipates disruptions, and ensures long-term operational continuity. This shift from "efficiency" to "security of supply" is now a cornerstone of the new European Defence Industrial Strategy (EDIS), which pushes for a more integrated and less fragmented supply network across the Continent¹⁶⁶.

Directive 2009/81/EC reflects this strategic understanding by treating the supply chain as an extension of the broader security architecture of the state; the Directive provides Contracting Authorities with significant powers to supervise and intervene in subcontracting arrangements (powers that would generally be incompatible with the principles of the civilian procurement directives adopted in 2014)¹⁶⁷. These exceptional powers are justified by the need to prevent the emergence of "weak links" within supply networks that could be exploited by hostile actors, compromised through cyber intrusion, or disrupted during geopolitical crises.

¹⁶⁶ European Commission, *European Defence Industrial Strategy (EDIS)*, Brussels, 2024.

¹⁶⁷ Direttiva 2009/81/CE del Parlamento europeo e del Consiglio, 13 luglio 2009; Direttive 2014/24/UE e 2014/25/UE.

One of the most innovative and frequently debated elements of Directive 2009/81/EC concerns the possibility of mandatory subcontracting, introduced primarily to enhance market openness and promote the participation of small and medium-sized enterprises (SMEs) within defence procurement programmes¹⁶⁸.

Article 21 of the Directive allows Contracting Authorities to adopt several mechanisms aimed at encouraging wider participation within defence supply chains. Authorities may require the successful tenderer to subcontract a specified share of the contract to third parties, invite tenderers to propose additional subcontracting beyond the required threshold, or require bidders to identify in advance the parts of the contract they intend to subcontract and the subcontractors already selected¹⁶⁹.

The rationale behind these provisions is both economic and strategic; on the one hand, they seek to prevent the excessive concentration of defence procurement contracts among a limited number of large national champions, but on the other hand, they aim to stimulate the development of innovative SMEs and mid-cap companies that possess niche technological capabilities but lack the resources to compete directly for large-scale defence contracts. Furthermore, the European Commission's 2018 Recommendation on cross-border market access explicitly encourages prime contractors to diversify their sub-suppliers, aiming to break the "national silos" that historically characterized European defence markets¹⁷⁰.

Encouraging subcontracting also promotes cross-border industrial cooperation within the EU, pushing prime contractors to identify the most technologically capable suppliers across the Union rather than relying exclusively on domestic supply networks. This contributes to strengthening the European defence industrial ecosystem while fostering technological diffusion and innovation across Member States¹⁷¹.

¹⁶⁸ Arrowsmith, S., *The Law of Public and Utilities Procurement*, Sweet & Maxwell, London, 2018.

¹⁶⁹ Directive 2009/81/CE, art. 21.

¹⁷⁰ European Commission, *Recommendation on Cross-Border Access for SMEs and Sub-Suppliers in Defence Markets*, Brussels, 2018.

¹⁷¹ European Defence Agency, *Defence Data Report*, Brussels, 2020.

Within the subcontracting context, the principle of Security of Supply (SoS) becomes particularly critical since defence procurement programmes often involve systems with operational life cycles extending over several decades, during which spare parts, maintenance services, software updates, and technical support must remain continuously available¹⁷².

Consequently, prime contractors are typically required to guarantee that the entire subcontracting chain remains reliable and sustainable over time. Contracting Authorities may therefore impose a variety of obligations on subcontractors, including industrial commitment clauses requiring suppliers to prioritize the fulfilment of military contracts during periods of crisis or increased demand.

In addition, procurement contracts frequently address the management of intellectual property rights (IPR) and technical know-how, and Governments may require contractual guarantees ensuring that they will retain access to critical design information, manufacturing specifications, and maintenance procedures in the event that a subcontractor becomes insolvent or ceases production. These provisions prevent situations in which essential military capabilities become dependent on a single private supplier¹⁷³.

Another crucial element concerns export control compliance; because defence components frequently cross national borders within multinational supply chains, subcontractors must demonstrate their ability to obtain the necessary export licenses and comply with relevant international regulatory regimes, including dual-use export control frameworks and external regulatory systems such as the United States' International Traffic in Arms Regulations (ITAR). The presence of ITAR-restricted components in European sub-supply chains remains a significant challenge for "ITAR-free" European strategic autonomy, as it grants third countries a de facto veto over the export of European-made systems.

Defence subcontractors often handle highly sensitive or classified information, including technical specifications, operational data, encryption technologies, and cybersecurity

¹⁷² Trybus, M., 2019, cit., pp. 174-180.

¹⁷³ OECD, *Public Procurement for Defence and Security Sectors*, Paris, 2017.

protocols and for this reason, the Security of Information (SoI) framework extends deeply into the subcontracting network¹⁷⁴.

Contracting Authorities are entitled to require that subcontractors involved in sensitive aspects of a project obtain a Facility Security Clearance (FSC), ensuring that their facilities meet strict physical and cyber-security standards. In addition, personnel working on classified projects may be required to undergo rigorous background investigations and obtain Personnel Security Clearance (PSC)¹⁷⁵.

This extensive vetting process contributes to the creation of a secure and trusted industrial ecosystem capable of handling classified defence information. However, it can also represent a significant barrier to entry for smaller or newly established companies, which may lack the administrative resources necessary to navigate complex security clearance procedures.

The globalization of industrial production has significantly affected defence supply chains, creating new vulnerabilities for European strategic autonomy. Many critical components used in advanced defence systems, particularly semiconductors, rare earth materials, and specialized electronics are sourced from suppliers located outside the European Union. This situation creates a structural paradox: while the EU seeks to strengthen its strategic autonomy in defence, its industrial base remains partially dependent on external technological ecosystems. Consequently, recent EU policy initiatives have increasingly focused on mapping and mitigating these dependencies¹⁷⁶.

Recent interpretations of Directive 2009/81/EC and subsequent policy developments emphasize the need to “de-risk” global supply chains through measures such as supply diversification, reshoring critical production capacities, and strengthening partnerships with trusted allies in what is often described as “friend-shoring¹⁷⁷”.

¹⁷⁴ European Defence Agency, *Security of Information Framework*, Brussels.

¹⁷⁵ Council of the European Union, *EU Security Regulations*, Brussels; NATO, *Industrial Security Standards*.

¹⁷⁶ Draghi, M., *The Future of European Competitiveness*, Brussels, 2024, section on defence industries.

¹⁷⁷ Howorth, J., *Security and Defence Policy in the European Union*, Palgrave Macmillan, London, 2014, pp. 201-210.

This transformation reflects a broader evolution in European defence governance; as argued by Antonio Calcara, recent EU defence initiatives increasingly combine industrial policy, security governance and geopolitical objectives within a single strategic framework. In this perspective, strategic autonomy should not be understood merely as the pursuit of military independence, but as a comprehensive governance model aimed at strengthening critical industrial capabilities, reducing strategic dependencies and increasing the resilience of European defence supply chains. Consequently, subcontracting policies progressively evolve beyond their traditional contractual function and become instruments for reinforcing the European Defence Technological and Industrial Base (ED-TIB) and enhancing the Union's long-term strategic resilience¹⁷⁸.

Within this evolving framework, subcontracting rules are increasingly viewed not only as procurement mechanisms but as strategic tools for safeguarding European technological sovereignty; by encouraging the development of resilient, secure, and geographically diversified supply networks, the EU aims to protect its industrial defence base from potential geopolitical

¹⁷⁸ Calcara A., *Europe's Security Market: Strategic Ambiguity, Risk and Governance*, Routledge, 2020.

Evolution of EU Defence Procurement Governance: From Market Integration to Strategic Autonomy

Instrument / Policy	Strategic Context	Key Procurement Innovation	Institutional and Industrial Impact
Directive 2009/81/EC (Defence Procurement Directive)	Establish a specific framework for defence and security contracts while respecting Member States' essential security interests.	Tailored procedures for defence contracts, combining competition with negotiated procedures and security exemptions.	First systematic attempt to reconcile Internal Market principles with national security, though reliance on Article 346 TFEU persists.
European Defence Fund (EDF)	Growing awareness that fragmented national defence industries weaken European competitiveness and capabilities.	EU financial support for collaborative research, innovation, and capability development via cross-border consortia.	Shifted the EU's role from market regulator to active industrial investor, strengthening the EDTIB.
EDIRPA (European Defence Industry Reinforcement through Common Procurement Act)	Immediate response to capability shortages following Russia's invasion of Ukraine in 2022.	Financial incentives encouraging Member States to conduct joint procurement through collaborative purchasing.	Promoted economies of scale, interoperability, and coordination while reducing market fragmentation.
EDIS & EDIP (European Defence Industrial Strategy)	Long-term security requires resilient industrial capacities and reduced strategic dependencies.	Establishes a comprehensive strategy combining joint procurement, supply chain resilience, and coordinated planning.	Embeds defence acquisition within a broader European industrial and technological strategy.
SAFE Programme (Security Action for Europe)	Consolidation of EU response to a deteriorating geopolitical environment and need for preparedness.	Large-scale financial support for joint procurement, de-risking mechanisms, and stricter third-country rules.	Advanced stage of governance linking procurement policy, industrial resilience, technological sovereignty, and security.

Source: Author's elaboration.

CHAPTER IV. INTERNATIONAL DEFENCE PROCUREMENT AND THIRD COUNTRIES; THE SAFE PROGRAMME

4.1 Third countries

The participation of third countries in European Union public procurement, and particularly in defence procurement, represents one of the most complex and politically sensitive dimensions of EU market regulation. From an analytical perspective, this policy area may be regarded as a crucial testing ground: if developments continue in the current direction, they may indicate an ongoing transformation of the European Union from a predominantly market-oriented regulatory system into an increasingly geopolitical actor capable of using legal instruments to pursue strategic objectives. While the internal market is founded on principles of openness, transparency, and non-discrimination, the extension of these principles to economic operators from non-EU countries raises fundamental questions concerning reciprocity, strategic autonomy, and economic security. In this context, procurement policy increasingly intersects with the broader framework of EU external economic relations and security governance¹⁷⁹.

From a legal standpoint, the EU distinguishes between internal market actors and third-country operators, with access to procurement markets largely governed by a combination of international agreements and unilateral EU rules. The most significant international framework in this field is the Agreement on Government Procurement (GPA) within the World Trade Organization (WTO), to which the European Union is a party¹⁸⁰. The GPA establishes a system of reciprocal market access among its signatories, requiring participating countries to open certain public procurement sectors to foreign competition under conditions of transparency and non-discrimination. However, this openness is neither absolute nor uniform, as it depends on the specific commitments undertaken by each party and is structured through negotiated schedules that may exclude entire sectors, entities,

¹⁷⁹ Biondi, A., Eeckhout, P., & Ripley, S., *EU Law after Lisbon*, Oxford, Oxford University Press, 2019.

¹⁸⁰ World Trade Organization, *Revised Agreement on Government Procurement*, Geneva, 2012.

or categories of contracts. Crucially, sensitive sectors such as defence remain largely outside the effective scope of liberalization; this selective openness highlights the structural limits of multilateral trade governance when confronted with core state functions such as security and defence¹⁸¹.

This legal configuration results in an inherently asymmetric landscape; while the European Union has traditionally maintained a relatively open procurement market, many third countries impose significant restrictions on access for foreign firms, particularly in strategically sensitive sectors. This lack of reciprocity has increasingly been perceived within the EU as a structural imbalance, prompting a gradual shift from a purely market-oriented approach to a more strategic use of procurement policy as an instrument of external economic regulation. In this sense, procurement policy is progressively reinterpreted not merely as a tool of market integration, but as a mechanism for correcting geopolitical asymmetries and protecting European industrial interests¹⁸².

The situation is even more complex in the field of defence procurement; in fact, unlike civilian procurement, the defence sector is effectively shielded by security exceptions under both EU and international law. In particular, Article XXIII of the GPA allows signatories to take any action, or to withhold information, that they consider necessary for the protection of their essential security interests in relation to arms, ammunition, or war materials and as a result, third-country suppliers do not enjoy an inherent right of access to EU defence procurement procedures. In the absence of specific bilateral agreements, such as those concluded with certain European Economic Area (EEA) countries, Member States retain a high degree of political and legal discretion in determining whether and to what extent foreign operators may participate in defence tenders. This wide discretion reflects the enduring primacy of national sovereignty in the defence domain, positioning procurement at the boundary between supranational integration and state control¹⁸³.

¹⁸¹ Trybus, M., *European Defence Procurement Law*, Cambridge, Cambridge University Press, 2014.

¹⁸² Buttà, A., “Appalti pubblici e autonomia strategica europea”, *Rivista Italiana di Diritto Pubblico Comunitario*, 2022, pp. 455–489.

¹⁸³ World Trade Organization, *Revised Agreement on Government Procurement*, Article XXIII.

At the same time, this discretion is not entirely unconstrained; where a Contracting Authority decides to open a procurement procedure to international competition, it remains bound by general principles of transparency and non-discrimination, as reflected in Directive 2009/81/EC¹⁸⁴. This creates a dual regime in which access to the market is discretionary at the entry stage, but subject to procedural guarantees once granted. In practice, however, Member States often rely not only on formal legal mechanisms but also on informal tools, such as security clearance requirements, offset obligations, and the prioritization of domestic or European suppliers, to shape market access in favour of trusted partners and national industries. Such practices, while often justified on security grounds, may contribute to a de facto fragmentation of the internal market, revealing the tension between integration and national strategic preferences.

A particularly complex legal issue concerns the status of companies that are formally established within the European Union but are controlled by third-country entities. Under Article 54 TFEU, companies incorporated in accordance with the law of a Member State are generally treated as EU operators. However, recent developments in EU defence policy have introduced a more substantive approach, focusing on control rather than mere formal establishment. Instruments such as the European Defence Fund (EDF) and the European Defence Industry Reinforcement through common Procurement Act (EDIRPA) have incorporated strict “control clauses,” requiring that companies participating in EU-funded defence projects must not be subject to the effective control of a non-associated third country¹⁸⁵.

The rationale behind these provisions lies in the need to prevent indirect or “backdoor” access by third-country governments to sensitive technologies, intellectual property, and strategic decision-making processes. Through such control, external actors could potentially influence the management or direction of EU-based companies, thereby undermining the Union’s objective of strategic autonomy. While derogations are possible, they are subject to stringent conditions: the Member State in which the company is established must provide robust guarantees, subject to assessment by the European Commission, that

¹⁸⁴ European Parliament and Council, Directive 2009/81/EC, 2009.

¹⁸⁵ European Parliament and Council, Regulation (EU) 2021/697 (EDF), 2021.

no risks arise for security of supply or the protection of classified information; this conditional openness illustrates the EU's attempt to reconcile economic integration with the imperative of safeguarding critical assets¹⁸⁶.

The legal and strategic relevance of third countries is further amplified by issues related to security of supply and technological dependency. Defence supply chains are increasingly global, and reliance on non-EU components can create significant vulnerabilities. A prominent example is the extraterritorial application of the United States' International Traffic in Arms Regulations (ITAR¹⁸⁷). When a defence system procured by an EU Member State incorporates ITAR-controlled components, any subsequent export or transfer of that system to a third party requires authorization from US authorities. This effectively introduces external constraints on the strategic autonomy of Member States, limiting their freedom of action in defence policy.

In response, there has been a growing emphasis within the EU on the development of "ITAR-free" solutions, aimed at reducing dependence on non-European technologies and ensuring full European control over defence systems and their supply chains. This trend reflects a broader shift towards strengthening the European Defence Technological and Industrial Base (EDTIB), as well as enhancing resilience against geopolitical disruptions. In this sense, procurement policy operates not only as a regulatory mechanism but also as a key instrument of industrial and technological policy¹⁸⁸.

At the EU level, these developments are embedded within the broader framework of "open strategic autonomy," which seeks to reconcile openness to international trade with the protection of critical industries and technologies¹⁸⁹. This approach is closely linked to the emerging strategy of "de-risking," aimed at reducing excessive dependencies without fully disengaging from global markets. Within this paradigm, the participation of third-country operators is increasingly assessed not only in terms of economic efficiency, but also in light of security risks, supply chain resilience, and geopolitical considerations.

¹⁸⁶ European Parliament and Council, Directive 2009/81/EC, 2009.

¹⁸⁷ U.S. Department of State, ITAR Regulations.

¹⁸⁸ European Defence Agency, *Defence Data and Market Analysis*, 2023.

¹⁸⁹ EUISS, *Strategic Autonomy and Defence Procurement*, 2022.

This strategic reorientation is also reflected in the adoption of new regulatory instruments addressing distortions caused by foreign state intervention; the Foreign Subsidies Regulation (FSR), for example, empowers the European Commission to investigate and potentially restrict the participation of companies benefiting from foreign subsidies in large public procurement procedures¹⁹⁰. Similarly, the International Procurement Instrument (IPI), adopted in 2022, introduces a reciprocity-based mechanism allowing the EU to impose corrective measures on bidders from countries that do not provide equivalent access to their own procurement markets¹⁹¹.

Although the IPI is primarily designed for civilian procurement, its underlying logic has significant implications for the defence sector; it signals a broader shift from a model of unconditional openness to one based on “strategic reciprocity,” whereby access to the EU market is increasingly treated as a conditional privilege rather than an automatic right. This is particularly relevant in the context of major partners such as the United States and the United Kingdom, where questions of market access, regulatory alignment, and security cooperation are closely intertwined. Access to the European procurement market thus becomes a tool of leverage in the Union’s external relations.

At the same time, the complete exclusion of third countries from defence procurement is neither feasible nor desirable and, in fact, international cooperation remains essential, particularly with trusted partners and allies, for ensuring interoperability, technological advancement, and operational effectiveness¹⁹². Defence innovation often relies on cross-border collaboration, and certain high-end capabilities remain dependent on transnational supply chains; this creates an inherent tension between the objectives of strategic autonomy and the practical necessity of international cooperation. Managing this tension represents one of the central challenges of contemporary EU defence policy.

Ultimately, the legal framework governing third-country participation in EU defence procurement reflects a layered and flexible approach; on the one hand, international agreements and EU law promote a degree of openness and cooperation; on the other hand,

¹⁹⁰ European Commission, *Foreign Subsidies Regulation*, 2023.

¹⁹¹ European Commission, *International Procurement Instrument*, 2022.

¹⁹² Tocci, N., *Politico Europe*, 2021.

Member States and EU institutions retain broad discretion to restrict access on security grounds. This dual structure allows the Union to adapt to evolving geopolitical conditions while maintaining the core principles of the internal market. However, it also reveals the limits of full harmonization in a domain still deeply rooted in national sovereignty.

More broadly, the role of third countries in EU procurement illustrates the transformation of public procurement from a technical regulatory field into a central instrument of economic statecraft¹⁹³. Legal rules governing market access are increasingly intertwined with strategic objectives, including industrial policy, technological sovereignty, and geopolitical positioning. In this sense, procurement policy has become a key arena in which the European Union defines and negotiates its role within the global economic and security order, revealing both the ambitions and the structural limits of European integration in a rapidly changing international environment. In this perspective, the regulation of third-country participation emerges not merely as a legal issue, but as a defining test of the EU's capacity to act as a coherent and autonomous strategic actor on the global stage.

4.2 Origins of SAFE

The emergence of the SAFE programme must be understood within the broader transformation of the European Union's approach to defence procurement and industrial policy in response to rapidly evolving geopolitical dynamics¹⁹⁴; from an analytical perspective, SAFE can be interpreted as a paradigmatic example of the EU's transition from a regulatory power to a strategic actor, capable of mobilizing economic and legal instruments for security purposes¹⁹⁵. In recent years, the EU has progressively moved away from a purely market-oriented conception of procurement towards a more strategic and security-driven framework, in which economic instruments are mobilized to achieve

¹⁹³ Fiott, D., *EUISS*, 2019.

¹⁹⁴ Tocci, N., *European Strategic Autonomy: What It Is, Why We Need It*, European University Institute, 2020.

¹⁹⁵ Bauerle Danzman, S., & Meunier, S. (2024). The EU's geoeconomic turn: from policy laggard to institutional innovator. *JCMS: Journal of Common Market Studies*, 62(4), 1097-1115

broader geopolitical objectives. This shift has been significantly accelerated by the resurgence of high-intensity conflict in Europe, most notably following Russia's invasion of Ukraine, which exposed profound structural weaknesses in the European defence industrial base and procurement systems¹⁹⁶.

However, the origins of SAFE cannot be fully understood without taking into account the longstanding legal and institutional constraints that have historically limited the Union's ability to act in the defence domain. In particular, Article 41(2) of the Treaty on European Union (TEU) has traditionally prohibited the use of the EU budget to finance expenditure arising from operations with military or defence implications¹⁹⁷. This provision, often described as a "constitutional taboo," effectively prevented the Union from directly funding military assistance, forcing it to rely on alternative and often less efficient mechanisms. This legal constraint represents one of the clearest examples of the structural limits of supranational integration in the field of high politics¹⁹⁸, where Member States have historically retained tight control over security and defence competences.

For a long time, this constraint shaped EU external action in the security field; instruments such as the African Peace Facility (APF), financed through the European Development Fund¹⁹⁹, were used to support partner countries, but within a framework still largely anchored in development policy. Crucially, these mechanisms were subject to a "non-lethal" limitation: while the EU could provide training, infrastructure, or basic equipment, it could not finance lethal military capabilities. This led to a structural imbalance in EU missions, particularly in fragile regions such as the Sahel or Somalia, where local forces trained by EU missions often lacked the necessary equipment to effectively operate and maintain territorial control. The growing awareness of this gap highlighted the limitations of a "train and advise" model without a corresponding "train and equip" component, creating a strong institutional and operational incentive for reform.

A decisive turning point came with the establishment of the European Peace Facility (EPF) in 2021²⁰⁰, an off-budget instrument financed by Member States' contributions

¹⁹⁶ European Defence Agency, *Defence Data and Market Analysis*, 2023.

¹⁹⁷ Treaty on European Union (TEU), Article 41(2).

¹⁹⁸ Biondi, A., Eeckhout, P., & Ripley, S., *EU Law after Lisbon*, Oxford University Press, 2019.

¹⁹⁹ European Commission, *African Peace Facility*, framework documentation.

²⁰⁰ Council of the European Union, *Council Decision (CFSP) 2021/509 establishing a European Peace Facility*, OJ L 102, 24.3.2021.

based on a GNI ²⁰¹ distribution key. By operating outside the EU budget, the EPF effectively circumvented the constraints imposed by Article 41(2) TEU, thereby enabling the Union to finance military assistance, including the provision of lethal equipment to partner countries. A specific technical feature of SAFE, being under the EPF umbrella, is its capacity to facilitate the reimbursement of Member States that provide equipment from their own national stocks. This mechanism not only accelerates the delivery of aid but also serves as an indirect industrial incentive, encouraging Member States to modernise their own arsenals and fostering the technological renewal of the European Defence Technological and Industrial Base (EDTIB). This financial architecture illustrates a form of “institutional workaround,” whereby Member States reconcile legal constraints with strategic necessity through innovative governance solutions. Within this new legal and financial framework, SAFE can be understood as one of the first structured and operational expressions of this shift, translating the broader enabling function of the EPF into a more targeted and procurement-oriented instrument²⁰².

At the same time, the development of SAFE must also be situated within a longer-term conceptual evolution in EU policy, particularly the growing emphasis on the “security-development nexus”; initiatives such as the Capacity Building in support of Security and Development (CBSD), adopted in 2017, reflected the recognition that sustainable development is closely linked to security conditions²⁰³. SAFE represents a further evolution of this approach, moving beyond capacity-building towards a more explicit integration of defence procurement, operational support, and long-term capability development. In this sense, the programme embodies a shift from a primarily civilian and developmental logic to a more comprehensive and security-oriented framework. Crucially, this framework is underpinned by a rigorous Integrated Methodological Framework for risk assessment, often referred to in the context of Peace and Defence Analysis, which requires a human rights and international humanitarian law vetting process far more stringent than those

²⁰¹ GNI (Gross National Income) is an economic indicator that represents the total sum of income earned by a country’s citizens, regardless of residence or citizenship. It includes income earned from activities within the country and from activities abroad, while it excludes income earned from activities within the country and from foreign activities. GNI is considered an important measure for assessing the economic development and well-being of a country, as it provides a more accurate view of economic output compared to GDP (Gross Domestic Product).

²⁰² Fiott, D., *op. cit.*

²⁰³ European Commission, *Joint Communication on Capacity Building in support of Security and Development (CBSD)*, JOIN(2015) 17 final.

applied by global competitors like Russia or China²⁰⁴. This defines a clear "values-based" identity for European procurement, ensuring that strategic assistance remains aligned with the Union's foundational normative principles and this financial architecture illustrates a form of "institutional workaround," whereby Member States reconcile legal constraints with strategic necessity through innovative governance solutions.

These structural and legal developments intersected with the profound geopolitical shock generated by the war in Ukraine. As previously discussed, the conflict exposed the fragmentation and inefficiency of European defence procurement systems, creating strong incentives for Member States to increase defence spending, replenish stockpiles, and expand industrial production capacity, while leaving the implementation of these measures subject to national political choices and institutional constraints. This crisis can therefore be interpreted as a critical juncture, accelerating pre-existing trends towards deeper coordination and integration in defence procurement.

In response, the European Union developed a range of complementary instruments, including the European Defence Fund (EDF²⁰⁵), the European Defence Industry Reinforcement through common Procurement Act (EDIRPA²⁰⁶), and the Act in Support of Ammunition Production (ASAP²⁰⁷). SAFE emerges within this broader policy ecosystem as a further step towards consolidating these initiatives into a more coherent and strategically oriented framework; its defining feature lies in its dual objective: addressing short-term operational needs while simultaneously contributing to long-term structural reform of the European defence industrial base.

Beyond its internal dimension, SAFE is also deeply rooted in external geopolitical dynamics; in fact, the deterioration of security conditions in regions such as the Sahel and parts of Sub-Saharan Africa, as well as conflicts such as the insurgency in Cabo Delgado (Mozambique), highlighted the increasing competition between global powers in the provision of security assistance. In the absence of effective European support mechanisms, partner countries increasingly turned to alternative actors, including Russia and China, for military assistance and equipment. In this context, SAFE can be interpreted as a form

²⁰⁴ Manners, I., "Normative Power Europe", op. cit.

²⁰⁵ European Parliament and Council, *Regulation (EU) 2021/697 establishing the European Defence Fund*.

²⁰⁶ European Parliament and Council, *Regulation (EU) 2023/2418 (EDIRPA)*.

²⁰⁷ European Parliament and Council, *Regulation (EU) 2023/1525 (ASAP)*.

of “defence procurement diplomacy,” aimed at reinforcing the EU’s position as a reliable security partner by offering high-quality equipment, training, and institutional support, while promoting transparency and alignment with European standards.

This external dimension also reinforces the link between procurement and broader strategic objectives; SAFE is not merely a tool for acquiring equipment, but a mechanism for shaping security architectures, fostering interoperability, and strengthening long-term partnerships. Its design reflects an awareness of past shortcomings, particularly the so-called “graveyard of equipment” problem, whereby externally supplied military assets became unusable due to the lack of maintenance, spare parts, or logistical support. As a result, the programme places strong emphasis on sustainability, lifecycle management, and the development of resilient supply chains.

Another critical driver behind SAFE is the growing concern over external dependencies and technological vulnerabilities and, in fact, as highlighted in the previous section, reliance on third-country suppliers and external regulatory regimes poses significant risks to strategic autonomy. SAFE therefore contributes to the broader EU objective of strengthening the European Defence Technological and Industrial Base (EDTIB²⁰⁸), promoting industrial capacity, and reducing dependence on non-European actors. In this sense, it is closely aligned with the Union’s “open strategic autonomy” and “de-risking” strategies, which aim to balance openness with resilience. Here, procurement becomes a central lever in the broader reconfiguration of global supply chains in a context of increasing geopolitical competition.

Institutionally, the origins of SAFE also reflect an important evolution in EU governance; the programme required a new level of coordination between different actors, including the European External Action Service (EEAS), the Military Planning and Conduct Capability (MPCC), and the Service for Foreign Policy Instruments (FPI). This enhanced coordination illustrates how procurement has become integrated into the Union’s broader external action toolbox, transforming it into an instrument not only of economic policy, but also of diplomatic and strategic engagement. Such institutional hybridity highlights the blurring of boundaries between internal and external policies within the EU governance system.

²⁰⁸ Fiott, D., *The European Defence Industrial Base*, op. cit.

Finally, SAFE must be understood within the broader context of global and transatlantic dynamics²⁰⁹; the evolving relationship with the United States, the implications of Brexit, and the increasing assertiveness of other global actors have all contributed to a reassessment of Europe's role in the international system. In this environment, SAFE represents both a response to internal structural weaknesses and a strategic tool for enhancing the EU's capacity to act as a global security provider and it therefore reflects the emergence of a more self-conscious and strategically oriented European foreign and security policy.

In conclusion, the SAFE programme emerges at the intersection of legal innovation, geopolitical transformation, and strategic ambition. Its origins lie not only in recent crises, such as the war in Ukraine, but also in longstanding institutional constraints and evolving policy paradigms within the European Union. By overcoming previous legal limitations, strengthening industrial capacity, and integrating procurement into a broader strategic framework, SAFE represents a significant step in the evolution of EU defence policy. At the same time, it highlights the enduring tensions between integration and sovereignty, openness and protection, and internal cohesion and external projection, which continue to shape the development of European defence procurement.

Ultimately, the origins of SAFE illustrate how crises, legal constraints, and strategic ambitions interact to drive the incremental but profound transformation of the European Union into a security and defence actor.

4.3 Member states' positions

The implementation of the SAFE programme, together with the broader operationalization of the European peace facility (EPF), which acts as the off-budget financial engine enabling the provision of both lethal and non-lethal equipment²¹⁰, has highlighted significant divergences in the strategic cultures and national interests of the EU member states. While the resurgence of geopolitical threats has fostered a newfound sense of urgency,

²⁰⁹ International Institute for Strategic Studies (IISS), *The Military Balance*.

²¹⁰ Council of the EU, Decision (CFSP) 2021/509 establishing the European Peace Facility.

the transition toward a common procurement framework for third countries remains a site of intense diplomatic negotiation²¹¹. The positions of the member states reveal four primary strategic logics, each reflecting a distinct vision of the Union's role as a security provider and the relative weight assigned to industrial, normative, and operational priorities. These divergences also reflect deeper structural asymmetries within the Union, including differences in industrial capacity, historical strategic culture, threat perception, and degrees of dependence on external security providers such as NATO²¹².

France has consistently been the primary driver behind SAFE, viewing it as a means to project European influence while simultaneously strengthening the European defence technological and industrial base (EDITB²¹³). From the French perspective, the procurement of equipment for third countries must follow a "European preference" logic, ensuring that EU-funded initiatives primarily support European manufacturers such as Leonardo. This stance is rigidly designed to counter the recent trend of "out-of-area" purchases by Member States, such as Poland's extensive contracts with south Korean and U.S. suppliers. arming partners with non-European technology would, in their view, constitute a strategic failure, as it would subsidize third-country competitors, notably the United States or south Korea, and fail to leverage the economic return of European investments. This "dirigiste" approach integrates external security assistance with internal industrial policy, ensuring that every procurement decision aligns both with strategic autonomy and the long-term vitality of the European defence industry. In practice, this logic shapes SAFE procurement decisions by prioritizing European suppliers wherever feasible, demonstrating the inseparability of industrial policy and sovereignty in French defence thinking. More broadly, the French position reflects a Gaullist tradition of strategic autonomy²¹⁴, in which defence procurement is conceived not merely as a technical function but as a core instrument of state sovereignty and geopolitical projection.

Germany, in contrast, represents a "normative" and "frugal" bloc, often supported by Nordic countries such as the Netherlands, Sweden, and Finland. Germany's approach has

²¹¹ Biscop, S. *European Strategic Autonomy: Making Sense of the Debate*. EUI, 2021.

²¹² SIPRI, *European Arms Procurement and Strategic Autonomy*, Stockholm International Peace Research Institute, Annual Report 2023.

²¹³ Fiott, D., *The European Defence Industrial Base*, EUISS, 2019.

²¹⁴ Howorth, J., *European Security and Defence Policy*, Palgrave Macmillan, 2014.

evolved significantly in recent years: historically restrained by post-war legal and political norms that discouraged arms exports to conflict zones, Berlin initially approached the EPF and SAFE with caution. However, the war in Ukraine prompted a shift toward a more pragmatic "train and equip" philosophy, supporting partner states with both training and material assistance. These states place a strong emphasis on accountability, human rights vetting, and the application of the integrated methodological framework. For them, procurement is not merely an industrial tool but a normative instrument: the "specialness" of EU procurement lies in superior ethical standards, rigorous post-export monitoring, and differentiation from the "no-strings-attached" models offered by Russia or China. While supportive of European industrial interests, this bloc stresses that ethical integrity must guide procurement decisions, reflecting a delicate balance between industrial, operational, and normative priorities. This approach can be interpreted within the broader framework of "Normative Power Europe," whereby the Union seeks to project influence not primarily through coercion, but through the diffusion of rules, standards, and values, even in traditionally "hard power" domains such as defence²¹⁵.

Italy and Spain adopt a more pragmatic approach, focusing on the southern neighborhood and the extended mediterranean; Italy, in particular, has strongly supported using the EPF to stabilize north African and sub-Saharan regions, linking SAFE procurement to national strategic plans such as the "Mattei plan" for Africa²¹⁶. Italian policymakers emphasize the nexus between security, migration, and energy, arguing that providing partner countries with maritime surveillance assets, border control technology, and logistical support is essential to ensure European internal security. This position embodies "balanced autonomy": while supporting the EDTIB, Italy remains open to pragmatic cooperation with third-country partners if it ensures immediate regional stability and secures the EU's southern flank against asymmetric threats. Spain shares this perspective, emphasizing operational effectiveness in the mediterranean while aligning with European industrial and strategic objectives. This "pragmatic" orientation highlights how procure-

²¹⁵ Manners, I., Normative Power Europe, *Journal of Common Market Studies*, 2002.

²¹⁶ ECFR, European Strategic Cultures and the War in Ukraine, European Council on Foreign Relations, 2023.

ment policy is increasingly used as a tool of external stabilization, linking defence capabilities with migration management, energy security, and crisis prevention in regions of direct strategic relevance for Southern Member States.

The European integration process also has to accommodate "constructive abstainers" and the eastern flank; neutral or non-aligned Member States such as Austria, Ireland, and Malta have leveraged the "constructive abstention" mechanism under article 31(1) TEU²¹⁷, allowing them to opt out of financing lethal equipment while participating in non-lethal components of safe, such as demining or medical support. This legal "escape clause" represents a pragmatic bypass of the unanimity rule in common foreign and security policy (CFSP), preventing national neutrality from de facto vetoing the union's geopolitical ambitions while preserving cohesion and respecting diverse national constitutional identities. Conversely, the eastern flank, including Poland and the Baltic states, views SAFE primarily as a mechanism for global burden-sharing. By supporting African partners through structured EU programmes, these countries aim to prevent crisis spillover that might otherwise divert NATO and EU attention and resources away from the primary threat on the eastern front²¹⁸. For these Member States, SAFE procurement is more about strategic stabilization than industrial or normative considerations, demonstrating the spectrum of priorities shaping EU-wide consensus. At the same time, the Eastern Member States remain strongly anchored in the transatlantic security architecture, which partially explains their relative openness to non-European suppliers and their emphasis on rapid capability acquisition over long-term industrial consolidation.

From an analytical perspective, the SAFE programme illustrates a profound "paradox of integration" in EU defence procurement; while the programme was designed to overcome the fragmentation of national policies, it remains deeply dependent on intergovernmental consensus. Furthermore, a hidden tension exists between the council's intergovernmental steering and the commission's increasing ambition (via DG DEFIS) to standardize defence procurement procedures²¹⁹. The use of constructive abstention and the de-

²¹⁷ Treaty on European Union, Article 31(1) TEU.

²¹⁸ EUISS (2022). *European Strategic Cultures and the War in Ukraine*.

²¹⁹ European Commission (2024). *Defence Industrial Strategy COM, 2024*.

bate over European preference reveal that the EU has yet to act as a single, unified strategic actor, often functioning instead as a "clearing house" for national interests. This dynamic reflects a broader pattern of "differentiated integration" in EU security and defence policy, where varying levels of commitment and capability coexist within a formally unified institutional framework.

The programme's long-term success hinges on moving beyond transactional politics; if procurement continues to be contested between French industrialism and German normativism, the EU risks slow response times in the face of agile competitors such as the Wagner group or Chinese private security firms. The ultimate challenge is to transform safe from a mere budgetary instrument into a "geopolitical brand," where the combination of European technological excellence and normative integrity constitutes the union's competitive advantage. In this sense, SAFE can be interpreted as a testing ground for the emergence of the EU as a "strategic actor," capable of aligning internal market tools with external security objectives²²⁰.

Ultimately, SAFE demonstrates that EU defence procurement is as much about managing inter-member-state politics as it is about strategic, industrial, and operational objectives. Furthermore it highlights the delicate balance between sovereignty, solidarity, and shared European objectives, confirming that European strategic autonomy is an evolving negotiation rather than a fixed institutional reality. These diverging national interests directly translate into the technical debate over the "conditions for participation" in the following section; the definition of what constitutes a "European" entity is not merely a legal technicality, but the primary battlefield where these four strategic logics collide.

²²⁰ Fiott, D. (2019). Op. cit.

4.4 Conditions for participation

The conditions for participation in European defence procurement, particularly under the SAFE programme and the broader European Peace Facility (EPF) framework, represent a highly sophisticated intersection of legal, industrial, and strategic considerations. Unlike civilian procurement, where access is largely governed by the principles of transparency, non-discrimination, and proportionality²²¹, the defence sector introduces an additional layer of complexity due to the strategic and security-sensitive nature of the goods, technologies, and services involved. The conditions for participation are therefore designed not merely to regulate competition but to safeguard the Union's Strategic Autonomy, maintain control over sensitive technologies, and ensure that European geopolitical and normative objectives are respected. In this respect, participation rules operate simultaneously as market-regulating mechanisms and as instruments of geopolitical filtering, determining not only who can compete, but also under which strategic conditions such competition is deemed acceptable.

The transition from strategic debate to operational reality is crystallized in the "Conditions for Participation" of the SAFE programme; these criteria serve as the legal gatekeepers of the Union's external defence assistance, ensuring that the financial resources deployed through the EPF do not inadvertently benefit global competitors. Beyond their technical appearance, these conditions represent the procedural manifestation of the "European Preference" logic²²², transforming the abstract concept of strategic autonomy into a rigid set of eligibility rules. From a juridical perspective, the legal architecture of these conditions rests on the strategic interpretation of Article 346 TFEU²²³, which allows the Union to derogate from standard competition and non-discrimination rules to protect essential security interests. However, consistent with the jurisprudence of the European court of justice (e.g., case c-337/05, *commission v. Italy*²²⁴), this derogation is not an

²²¹ Arrowsmith, S., *The Law of Public and Utilities Procurement*, Sweet & Maxwell, 2014.

²²² Biscop, S., *European Strategic Autonomy: Making Sense of the Debate*, EUI, 2021.

²²³ Treaty on the Functioning of the European Union, Article 346 TFEU.

²²⁴ Court of Justice of the European Union, Case C-337/05, *Commission v. Italy*, 2008; Case C-337/05, *Commission v Italy* (Judgment of 26 October 2006) concerned Italy's systematic exclusion of defence procurement contracts from EU public procurement rules on the basis of national security. Italy relied on what is now Article 346 TFEU (ex Article 296 EC), arguing that contracts relating to military equipment automatically fell outside the scope of EU law. The Court of Justice rejected this approach, holding that Article 346 TFEU constitutes a derogation which must be interpreted

automatic exemption, but a targeted measure that must be proportionate to the specific security threats addressed. This proportionality requirement is crucial in preventing the abuse of security exceptions as disguised protectionism, thereby preserving the delicate balance between market integration and national security prerogatives. This is not merely an administrative choice but a geopolitical barrier against the fragmentation of the European Defence Technological and Industrial Base (EDTIB).

At the core of participation eligibility lies the legal framework established by Directive 2009/81/EC²²⁵, codifying both EU principles and Member State discretion in defence procurement, where a primary precondition is that any participating economic operator must comply with national security requirements, including security of supply (SoS) and security of information (SoI) obligations. This entails rigorous vetting procedures to ensure that sensitive technologies, dual-use components, and classified information remain under EU control. Central to this framework is the “Effective Control” requirement²²⁶, meaning entities must be established in the EU or in an associated third country, with executive management located within the Union. The notion of control extends beyond mere ownership; it encompasses “decisive influence” over strategic decisions, R&D priorities, and security protocols. This evolution from a formalistic to a substantive notion of economic nationality reflects the broader “geopolitical turn” in EU law, where legal categories are increasingly aligned with strategic risk assessments rather than purely market-based criteria²²⁷. In this respect, the SAFE programme aligns with the EU FDI Screening Regulation (2019/452²²⁸), preventing “Trojan horse” scenarios where non-EU parent

strictly and cannot justify a general or automatic exclusion of defence contracts from the internal market rules. The Court clarified that Member States bear the burden of proof and must demonstrate, on a case-by-case basis, both that the measure in question genuinely concerns an *essential interest of security* and that the application of EU procurement law would specifically jeopardise that interest. Mere reference to the military nature of the goods or to broad security considerations was deemed insufficient. The judgment thus established that defence procurement, while sensitive, is not per se immune from EU legal constraints, and that national discretion in this field is subject to judicial review under principles of proportionality and necessity. This case is widely regarded as a cornerstone of EU defence procurement law, paving the way for later secondary legislation (notably Directive 2009/81/EC) and for contemporary instruments such as the EPF and SAFE, by confirming that security and defence remain integrated—albeit conditionally—within the EU legal order.

²²⁵ European Parliament and Council, Directive 2009/81/EC, Official Journal of the European Union, 2009.

²²⁶ European Commission, European Defence Fund Regulation, Regulation (EU) 2021/697.

²²⁷ Buttà, A., Appalti pubblici e autonomia strategica europea, *Rivista Italiana di Diritto Pubblico Comunitario*, 2022, pp. 455–489.

²²⁸ European Commission, Regulation (EU) 2019/452 (FDI Screening Regulation).

companies could exploit European taxpayer funds to strengthen their own market dominance. Participation is further conditioned on industrial and technical capacity, as contractors must demonstrate the ability to manufacture or supply advanced military systems, as well as to provide life-cycle support, including maintenance, spare parts logistics, and system upgrades. The evaluation of these conditions increasingly relies on the "life-cycle cost" approach, ensuring that the procurement is not merely a transactional purchase but a long-term strategic investment. This shift from upfront price evaluation to long-term value assessment aligns defence procurement with broader trends in strategic public spending, where resilience and sustainability are prioritized over short-term cost efficiency.

The SAFE programme, in particular, emphasizes sustainability, acknowledging historical challenges where improperly maintained systems rapidly degrade; technical preconditions are therefore intimately linked to strategic objectives, as third-country operators must not compromise operational continuity or interoperability with European forces. Interoperability itself emerges as a key strategic criterion, ensuring that equipment provided under SAFE is compatible with EU and NATO standards, thereby reinforcing collective operational effectiveness. The system of derogations and guarantees accommodates pragmatic realities, where EU-based entities controlled by non-associated third countries may be admitted if they provide legally binding assurances, vetted by the host Member State, guaranteeing security of supply, protection of classified information, and non-interference in strategic decisions. This represents a concession to pragmatic Member States, such as Italy and Spain, recognizing that total industrial autarky is sometimes unrealistic²²⁹.

Furthermore, the SAFE programme integrates a strong normative dimension where participants must adhere to the Integrated Methodological Framework (IMF), including rigorous human rights due diligence and end-use monitoring. This ensures that EU procurement remains ethically superior to "no-strings-attached" models offered by geopolitical competitors. In this sense, procurement becomes a vector of "normative power Europe," projecting values such as accountability, transparency, and respect for international

²²⁹ ECFR, *European Strategic Cultures and the War in Ukraine*, 2023.

humanitarian law through material assistance²³⁰. The participation conditions also explicitly regulate Intellectual Property Rights (IPR), stipulating that all technical data, blueprints, and innovations generated under SAFE-funded contracts remain the property of the Union or participating Member States. By retaining IPR, the EU preserves a “KI-NETIC VETO”, preventing uncontrolled proliferation of sensitive knowledge to non-European actors and ensuring that the recipient third countries remain technologically anchored to European standards. This anchoring effect creates a form of long-term technological dependency that reinforces the Union’s strategic influence over partner countries.

Participation is also conditioned on reciprocal access to defence markets, as the SAFE programme applies the principle of strategic reciprocity, echoing the logic of the International Procurement Instrument (IPI²³¹). Third-country suppliers from states that restrict EU access may be excluded or subjected to competitive adjustments, reflecting a shift from unconditional openness to conditional privilege in an increasingly protectionist global defence market. Financial integrity and contractual reliability remain essential, and participants must demonstrate solvency and the ability to manage large-scale contracts through risk-sharing clauses and performance bonds, ensuring that the Union’s strategic and financial interests are protected. The inclusion of joint development obligations further ensures that critical technologies remain under EU oversight. Moreover, participation is subject to high-level political oversight, as the SAFE programme, operationalized through the Strategic Compass, requires alignment with EU foreign and security policy objectives. Member States, via the Council, the political and SECURITY COMMITTEE (PSC), the EEAS, and the Service for Foreign Policy Instruments (FPI²³²), can approve or reject participation, ensuring that procurement decisions advance broader EU strategic goals.

Ultimately, the conditions for participation illustrate the EU’s ambition to maintain a competitive and technologically innovative defence industrial base while preventing strategic vulnerabilities. They reveal the SAFE programme as a strategic instrument of foreign policy and industrial policy, rather than a mere administrative procedure. By transforming abstract strategic autonomy into concrete procedural rules, the EU establishes a

²³⁰ European Commission, Intellectual Property in Defence Procurement, Policy Papers, 2022.

²³¹ European Commission, International Procurement Instrument, 2022.

²³² EU Institute for Security Studies, The Politics of the European Peace Facility, EUISS, 2022.

clear boundary for the “European Defence Club,” balancing industrial protectionism with operational necessity. This rigorous focus on the effective procurement outcome mirrors, on a supranational level, the "principle of result" analyzed in the Italian case study (paragraph 2.4), demonstrating that in sensitive sectors, the legal validity of the process is increasingly measured by its ability to secure the intended strategic objective. This anchoring effect creates a form of long-term technological dependency that reinforces the Union’s strategic influence over partner countries. In this way, the Union projects power as a responsive and normatively coherent global actor.

4.5 Strategic autonomy vs openness; The De-risking strategy in EU Defence Procurement

The inherent tension between strategic autonomy and international openness constitutes the defining dialectic of contemporary European defence procurement²³³. The European Union has historically sought to balance its role as a global economic actor with the imperatives of securing its defence and technological sovereignty. This final analytical section explores how the Union is navigating the shift from a neoliberal paradigm of globalized supply chains toward a more guarded framework of "De-risking," particularly within the SAFE programme. Unlike the concept of "Decoupling," which implies a radical and often unrealistic severance of economic ties, De-risking in the EU defence sector aims to identify and mitigate strategic vulnerabilities without retreating into full autarky. This logic is increasingly operationalized through Commission-level mapping exercises of “strategic dependencies”, which identify critical bottlenecks in raw materials, semiconductors, and defence sub-systems that could directly affect procurement cycles under SAFE. This de-risking logic is pinned on the recent efforts by the European commission to map 'strategic dependencies' in sensitive ecosystems, recognizing that vulnerabilities in critical raw materials or semiconductors can directly paralyze defence procurement

²³³ Fiott, D., *op. cit.*

under SAFE. This strategy finds its definitive doctrinal foundation in the European Defence Industrial Strategy (EDIS²³⁴), which marks a historic transition from sporadic co-operation to a structural “war economy” preparedness. EDIS acknowledges that while the Union must remain an open economy, its reliance on third-country technologies, raw materials, and components in the security domain has reached a threshold that threatens its “freedom of action.” Accordingly, the De-risking strategy is not merely an industrial policy but a security imperative, ensuring that the EU can project power and provide assistance to partners without being subject to extraterritorial pressures or supply-chain weaponization by external actors. In this sense, EDIS, together with the European Defence Industry Programme (EDIP), introduces an ambition to re-balance procurement flows toward intra-EU production, reinforcing the structural coherence of the European Defence Technological and Industrial Base (EDTIB).

From a theoretical perspective, this shift reflects a move away from the classical “Peace through Trade” ideal toward a framework of Geopolitical Realism²³⁵, where procurement becomes a deliberate instrument of statecraft. In this context, the SAFE programme serves as a laboratory for testing the boundaries of this new balance. The “openness” of the EU is no longer unconditional; it is now a qualified openness, based on the principle of reciprocity and the preservation of the European Defence Technological and Industrial Base (EDTIB). Within this framework, instruments such as the European Defence Industry Reinforcement through Common Procurement Act (EDIRPA²³⁶) and the European Defence Investment Programme (EDIP) establish concrete mechanisms to aggregate demand across Member States, reduce the unit costs of sovereign technologies, and prevent reliance on external suppliers for critical subsystems. Contrary to criticisms of procedural duplication, this de-risking strategy strengthens the European pillar within NATO; by reducing fragmentation, the EU ensures a 'single set of forces' that is technologically sovereign, thereby increasing the alliance's overall resilience. This also aligns with NATO capability planning objectives, insofar as greater European industrial coherence reduces duplication inefficiencies and enhances burden-sharing credibility within the Alliance framework. EDIS complements this approach by setting quantitative targets

²³⁴ European Commission, *European Defence Industrial Strategy (EDIS)*, 2024.

²³⁵ Howorth, J., *Security and Defence Policy in the EU*, Palgrave Macmillan, 2014.

²³⁶ European Parliament & Council, *EDIRPA Regulation*, 2023.

for internal procurement, aiming to ensure that a significant portion of EU defence spending remains within the Union, particularly in high-technology sectors where strategic dependencies could compromise operational autonomy.

The De-risking strategy also addresses the growing dual-use dilemma²³⁷, where the line between civilian and military technology is increasingly blurred. By leveraging mechanisms such as EDIRPA and the SAFE programme, the EU incentivizes Member States to maintain technological sovereignty while remaining pragmatically engaged with global innovation ecosystems. Stricter screening for foreign investments, as reinforced by the EU Foreign Direct Investment (FDI) Screening Regulation (2019/452²³⁸), conditions for participation, and rigorous requirements for effective control ensure that sensitive capabilities are not silently transferred to systemic competitors, while maintaining sufficient openness to benefit from global technological advancements. However, the success of this balance hinges on the EU's ability to maintain the 'speed of innovation', ensuring that rigid participation criteria do not become bureaucratic barriers that prevent the adoption of emerging and disruptive technologies (EDTS) from agile start-ups. The SAFE programme, as highlighted in previous sections, operationalizes these principles through its participation criteria, control requirements, and intellectual property management²³⁹, creating a legal and procedural framework that embodies the "European Preference" logic in practical terms. In legal terms, this reflects a continuous tension between security-based derogations under Article 346 TFEU and the preservation of internal market functionality.

From a geopolitical standpoint, De-risking represents a strategic hedge against the risks posed by third-country influence, extraterritorial legal regimes such as ITAR, and systemic rivals seeking to penetrate the European defence market. It also reflects lessons learned from SAFE's operationalization²⁴⁰: the EU cannot rely solely on market openness when providing security assistance to third countries without risking the unintended strengthening of global competitors. By linking procurement, industrial strategy, and stra-

²³⁷ Manners, I., *Normative Power Europe*, JCMS, 2002.

²³⁸ European Commission, *FDI Screening Regulation 2019/452*.

²³⁹ European Commission, *SAFE Programme Framework Documents*, 2024.

²⁴⁰ U.S. Department of State, *ITAR Regulations Overview*, 2023.

tegic autonomy, De-risking transforms defence procurement into an instrument that simultaneously safeguards the EDTIB, supports the Union's normative agenda, and preserves operational freedom in crisis scenarios.

Moreover, the De-risking approach reflects a careful legal-political calibration. While the EU must avoid breaching WTO obligations or creating disguised trade barriers, it leverages Article 346 TFEU and the SAFE participation framework to ensure that strategic autonomy is not compromised. Participation conditions, control requirements, intellectual property retention, and dual-use oversight collectively prevent potential “Trojan horse” scenarios, ensuring that SAFE-funded projects strengthen European capabilities rather than those of external competitors. This approach embodies a pragmatic balance between legal rigidity and operational flexibility, illustrating the EU's capacity to transform procurement rules into instruments of geopolitical strategy²⁴¹.

In conclusion, the De-risking strategy represents the Union's attempt to resolve the paradox of being simultaneously a global trading power and a nascent security actor. Within the framework of international defence procurement and the SAFE programme, strategic autonomy is redefined as “Resilient Interdependence”: the Union does not seek total autarky but aims to retain decisive control over its critical capabilities. By 2030, the ambition is that a substantial portion of defence procurement will remain under EU jurisdiction, ensuring supply chain security and technological stewardship. Every contract signed, every partner equipped, and every investment made through SAFE, EDIP, or EDIRPA serves not merely as an administrative function, but as a deliberate exercise in building a coherent European geopolitical doctrine. The De-risking strategy therefore represents the pragmatic response to the vulnerabilities of globalization, positioning defence procurement at the very core of European strategic sovereignty in the 21st century, and transforming the EU into a resilient, technologically autonomous, and normatively coherent security actor. From a legal-institutional standpoint, this evolution does not replace the existing procurement acquis, but progressively reinterprets it through a security-oriented teleology, where procurement law becomes an instrument of strategic governance rather than a purely market-regulating framework.

²⁴¹ EUISS, *European Strategic Autonomy and Normative Power*, 2022.

CONCLUSIONS

This thesis examined the evolution of international defence procurement within the European Union through the analytical lens of Member States' preferences and their impact on institutional and regulatory outcomes. By tracing the development of the EU procurement framework from the 2014 directives to the emerging SAFE programme, the analysis has sought to demonstrate how procurement in the defence sector constitutes not merely a technical area of internal market regulation, but a deeply political and strategic domain in which competing national preferences are continuously negotiated within a multilevel governance system.

The first chapter shows how the EU procurement system is embedded in a complex legal and institutional architecture, characterized by the interaction between primary law principles, secondary legislation, and institutional practice. Within this framework, procurement emerges as a policy field where legal harmonization and political discretion coexist, and where Member States retain significant influence over both the design and implementation of rules. Theoretical approaches to EU decision-making, particularly liberal intergovernmentalism and multi-level governance, have provided useful analytical tools to interpret this dynamic, highlighting the centrality of state preferences in shaping supranational outcomes. This confirms that EU procurement governance does not replace intergovernmental bargaining with supranational rationality, but rather embeds it within formalized legal and institutional procedures.

The second chapter demonstrated that the 2014 reform of EU procurement directives represented a moment of formal consolidation of internal market rules, aimed at modernizing procedures, increasing efficiency, and strengthening cross-border competition. However, the analysis has also shown that these directives were the result of complex intergovernmental bargaining processes, in which Member States' industrial structures, administrative traditions, and strategic priorities played a decisive role. The inclusion, dilution, or exclusion of specific provisions can therefore be understood as the outcome of negotiated compromises reflecting competing national preferences rather than neutral regulatory instruments. Crucially, the empirical evaluation of market openness highlights a foundational paradox: while legislative harmonization has advanced rapidly, actual eco-

conomic integration remains constrained by a persistent 'border effect' and 'home bias,' proving that procedural uniformity does not automatically eliminate entrenched administrative barriers.

The Italian case study further illustrated how national administrative practices and interpretative approaches continue to shape the implementation of EU procurement law, reinforcing the persistence of differentiated integration in practice. In particular, the tension between the "Principle of Result" and the necessity of preventing criminal infiltration underscores that efficiency in procurement cannot be decoupled from a robust framework of legality and compliance. The case of Italian national champions demonstrates that the challenge for the future is to build a "European preference" that does not stifle national industrial excellence, but rather integrates it into a broader, more competitive ecosystem. The goal is to move from a fragmented competition between Member States to a collective strength capable of competing on the global stage.

The third chapter highlighted the specificity of defence procurement as a distinct legal and political domain within the broader procurement framework. The presence of security exceptions, particularly Article 346 TFEU, confirms the structural tension between market integration and national sovereignty in matters of defence. The analysis suggests that Article 346 is no longer just a "shield" for national interests, but has become a strategic pivot that determines the speed and depth of European industrial cooperation. This chapter has shown that defence procurement cannot be fully understood through internal market logic alone, as it is structurally shaped by security imperatives, strategic autonomy considerations, and industrial constraints. Subcontracting structures and supply chain dependencies further reinforce the complexity of this sector, where legal rules intersect with geopolitical and technological realities. It also explains why defence procurement remains one of the most politically sensitive and legally fragmented areas of EU integration. The analysis of industrial ecosystems, such as those involving major players like Fincantieri and Leonardo, confirms that supply chain integrity is not just a matter of operational logistics, but a fundamental component of European strategic autonomy. In this perspective, the traditional 'security exception' is evolving into a requirement for 'supply chain security', where the resilience of the industrial ecosystem becomes the new benchmark for sovereignty.

The fourth chapter focused on the external dimension of EU defence procurement, with particular attention to third-country participation and the SAFE programme. It has shown how the EU is progressively developing a more integrated approach to defence industrial policy, combining market-based instruments with strategic objectives. The SAFE programme, situated within the broader framework of the European Peace Facility, illustrates this evolution by operationalizing strategic autonomy through concrete procurement mechanisms while simultaneously managing legal constraints, industrial competition, and geopolitical dependencies. Furthermore, the introduction of 'de-risking' mechanisms and the insistence on international reciprocity reflect a transition toward defensive economic statecraft, designed to secure critical supply chains from external vulnerabilities. It exemplifies the increasing interconnection between internal market instruments and external security objectives, thereby confirming the progressive securitization of EU industrial policy. The shift from the 2014 regulatory logic to the SAFE operational logic reflects a "geopolitical awakening" of the Union, where procurement is repurposed as a tool for rapid response and collective resilience.

Across all chapters, a consistent analytical finding emerges: EU defence procurement is not a static regulatory regime, but a dynamic governance space shaped by the continuous interaction between supranational rules and Member States' preferences. Industrial capacity, strategic culture, geopolitical orientation, and domestic political economy considerations systematically influence the positioning of Member States in negotiations, thereby affecting the final structure of EU procurement rules. The 2014 directives, rather than representing a purely technical harmonization effort, must therefore be understood as institutionalized compromises reflecting these underlying divergences.

The research question posed at the beginning of this thesis: "how Member States' preferences shaped the 2014 procurement directives and what explains the inclusion and exclusion of specific rules, particularly in defence procurement", can thus be answered by emphasizing the central role of preference aggregation within a constrained institutional framework. While the European Commission and EU institutions play a key role in agenda-setting and legal drafting, the final shape of procurement legislation remains heavily dependent on intergovernmental bargaining and political trade-offs among Member States. This leads to a "variable geometry" of integration, where the formal rules of

the 2014 Directives coexist with the political pragmatism required by the current geopolitical climate.

From a theoretical perspective, the analysis confirms the relevance of combining liberal intergovernmentalism and multi-level governance approaches to understand EU procurement policy. Neither supranational functionalism nor purely intergovernmental explanations alone are sufficient to capture the complexity of decision-making in this field. Instead, EU defence procurement emerges as a site of continuous institutional negotiation, where integration advances unevenly and asymmetrically across policy areas.

The SAFE programme, in this regard, represents not a rupture but an evolution within this long-term trajectory; it reflects the increasing securitization of industrial policy and the gradual redefinition of procurement as an instrument of strategic autonomy. At the same time, it also highlights the structural limits of integration, as Member States continue to retain significant control over sensitive defence-related decisions. The resulting governance model is therefore best described as one of “structured interdependence”, where integration and sovereignty coexist in a constantly renegotiated balance. Furthermore, the professional experience gained in legal compliance reinforces the conclusion that 'structured interdependence' requires not only political alignment but also a high degree of regulatory convergence in integrity and anti-money laundering standards. Shared standards of legality act as a catalyst for mutual trust: they ensure that the 'geopolitical awakening' of the Union is built on a foundation of transparency, preventing the rapid pace of defence procurement from becoming a vulnerability to external influence or internal malpractice.

Ultimately, this thesis has argued that EU defence procurement should be understood as a field in which law, politics, and strategy intersect in a particularly intense manner. The evolution from the 2014 directives to the SAFE programme illustrates the gradual emergence of a more strategically aware European procurement framework, but also the persistence of national divergences that shape its limits and direction. As the Union moves from a "market-maker" to a "security-provider," procurement becomes the primary arena where this new identity is forged. This transition underscores that the credibility of the European defence architecture is fundamentally linked to the integrity of its supply chains, directly connecting micro-level legality controls and anti-corruption screening to macro-level geopolitical resilience. Finally, the transition from the 2014 regulatory

framework to the SAFE logic highlights that time is now a strategic variable. The effectiveness of the future European Defence Union will depend on the ability of legal systems to be as agile as they are rigorous, ensuring that the speed of procurement required by modern warfare does not compromise the transparency and integrity that define the Union's values.

More broadly, the evolution of European defence procurement highlights how the future of European integration in this field will depend on the Union's ability to transform diverging Member States' preferences into a structured form of strategic coherence, rather than a source of persistent fragmentation. The transition from a regime of "exceptions" to one of "shared strategic investment" represents the next frontier for the Union. The path toward a true European Defence Union will therefore be measured by its capacity to harmonize not only what the Union buys, but how it ensures the legality and transparency of its strategic investments in an increasingly volatile global landscape.

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