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TOWARDS THE REFORM OF DIRECTIVE 2009/81/EC ON DEFENCE PROCUREMENT: CHALLENGES AND PROSPECTS

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ABSTRACT

Having entered into force in 2011, Directive 2009/81/EC on defence procurement was poorly received by the stakeholders responsible for its implementation (Member States, industry and the Commission). In practice, in most cases, the Directive was simply not applied. Against the backdrop of a changing international environment, the European Commission now intends to reform it.

Some stakeholders support this ambition, while others oppose it or remain cautious. How can any new legislation in this field secure this time genuine ownership among those who will ultimately be responsible for applying it? This article examines the terms of the debate, identifying both the Commission's objectives and the concerns they have raised. It then seeks to outline several possible ways forward.

The article concludes that reforming the rules governing defence procurement will make sense only if it forms part of the broader shift undertaken by the European Union (EU) in recent years towards what has, in practice, become a genuinely strategic and interventionist industrial policy based on the principle of European preference.

INTRODUCTION: AN ACCEPTABILITY PROBLEM

Directive 2009/81/EC on defence and security procurement has followed an unusual trajectory since it entered into force in 2011. Its principal stakeholders — the Member States, the European Commission and industry — have applied, or enforced, it only very partially, while simultaneously deploring its inadequate implementation.

The Directive has therefore produced limited results. The share of defence contracts published in the electronic version of the Supplement to the Official Journal of the European Union, Tenders Electronic Daily (TED), reportedly increased from around 8.5% over the 2011–2015 period to an average of only 11.71% between 2016 and 2018[1]. In June 2026, European Commissioner for Defence Andrius Kubilius estimated that, to date, around 80% of defence procurement was still carried out through direct awards, without an open competitive tender[2]. This latter figure may in fact be slightly lower, but it should not create the impression that, from 2018 onwards, the Directive suddenly became significantly more effective. Defence contracts appearing on TED are often awarded without prior publication or competition. Moreover, around 70% of contracts are awarded to domestic suppliers. Of the remaining share, contracts are far more often awarded to companies from third countries than to companies from other EU Member States[3].

These figures speak for themselves and support two straightforward conclusions. First, even today, the great majority of public defence contracts remain outside the framework established by the Directive, thereby perpetuating the fragmentation of the European defence market. Second, when EU Member States do not procure military equipment domestically, they prefer to turn to non-EU countries — and in particular to US companies — rather than to their European neighbours.

Despite these disappointing results, the European Commission has never shown particular determination to enforce the Directive. The few infringement proceedings it initiated against Member States suspected of breaching EU rules were never pursued to completion. Nor is that all. Legal challenges brought by companies that might have wished to benefit from more transparent conditions of competition have also remained relatively limited.

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[1] Isabelle Ionannides, Jean-Pierre Maulny, Edouard Simon, *EU Defence Package: Defence Procurement and Intra-Community Transfers Directives*, Study for the European Parliament (February 2020).

[2] European Commission, *Keynote speech by Commissioner Kubilius at Eurosatory* (17 June 2026).

[3] Lucian Cernat, Oscar Guinea, Hannah Preuss, "Openness and Fragmentation in EU Defence Procurement", Policy Brief No. 20/2025, ECIPE (December 2025).

The unusual nature of this situation lies in the paradox it reveals. During consultations conducted as part of successive evaluations of the Directive by the Commission in 2016[4], by the European Parliament in 2020[5], and again by the Commission in 2025, several stakeholders — Member States, industry and the Commission itself — repeatedly deplored the inadequate application of EU rules[6]. This raises an obvious question: why have those same actors, while criticising the Directive's limited effectiveness, made so little use of the courts to strengthen its enforcement? And why has the Commission itself never pursued a genuinely decisive legal action?

Formal acceptance of a rule is one thing; substantive acceptance is another. Although Directive 2009/81/EC was formally transposed by the Member States into national law, it does not appear to have been fully absorbed by those responsible for implementing it. It is as though its application remained surrounded by a series of unspoken reservations. What, then, is the underlying reason? What are these unspoken concerns?

At a time when the EU wishes to revise the rules governing defence procurement, answering these questions has become urgent. Any new legislation will make sense only if, this time, it secures genuine buy-in from the stakeholders concerned. This paper examines the conditions under which that might be possible.

THE DEBATE OVER APPLYING THE CONCEPT OF THE "SINGLE MARKET" TO DEFENCE

The revision of Directive 2009/81/EC is not an isolated initiative confined to the defence sector. It forms part of a broader effort to strengthen and complete the European single market as a whole. The Commission, for example, intends to amend also the directives governing civilian public procurement[7], for reasons broadly similar to those motivating the reform of defence procurement: to strengthen transparency and competition within the EU[8].

[4] Report from the Commission to the EP and the Council on the implementation of Directive 2009/81/EC on public procurement in the fields of defence and security, to comply with Article 73(2) of that Directive, COM/2016/0762, 30/11/2016.
[5] Isabelle Ionannides, Jean-Pierre Maulny, Edouard Simon, op. cit.
[6] See, for example, the contributions collected by the European Commission as part of the stakeholder consultation it organised in 2025 on Directive 2009/81/EC: Defence — simplifying EU rules for defence and sensitive security procurement.
[7] Directive 2014/24/EU on public procurement; Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors; Directive 2014/23/EU on the award of concession contracts.
[8] Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, "Commission publishes evaluation of EU Public Procurement Directives — Internal Market, Industry, Entrepreneurship and SMEs", European Commission, 14 October 2025).

The ambition to revitalise the European single market, however, goes far beyond this. The Commission now wishes to address economic and industrial sectors deemed strategic, which had until now largely escaped its integration policies. This direction was clearly set out in the report Much More Than a Market, submitted in 2024 by former Italian Prime Minister Enrico Letta[9]. Since then, the Commission has launched several reform initiatives, notably through the Single Market Strategy, to strengthen market integration in key areas such as energy, digital technology and telecommunications[10]. In 2025, the EU executive also proposed a space regulation, the EU Space Act, which likewise aims, among other objectives, to create a single market for space activities within the Union[11].

The reform of Directive 2009/81/EC must therefore be understood as one piece of a much larger puzzle, intended to extend European integration into industrial sectors that are critical to sovereignty. The objective? To complete the historic mission of the EU and its Member States to build a single market, revive economic competitiveness and defend the continent's independence.

This ambition has nevertheless given rise to a misunderstanding. Initially, the Commission did not hesitate to apply the expression "single market" to the defence sector. Yet, when transposed to the military sphere, the concept prompted strong reservations across Europe, and particularly in France, where it provoked a major backlash. The idea of a "single market for defence" fuelled fears that the Commission might ultimately treat military equipment as ordinary goods and services governed solely by the laws of supply and demand. In other words, some saw a risk that the model of economic and competitive integration underpinning the construction of the single market since the Union's origins would be extended to the military sector. The concern is that such a development could come at the expense of the political, strategic and operational considerations of Member States, which should underpin every choice in the military-industrial field[12].

The Commission has not responded to these criticisms head-on. Instead, it has offered an indirect, two-part response. Firstly, it acknowledges the sovereign specificities of defence and gives assurances that it intends to preserve the safeguards enabling Member States to

[9] Enrico Letta, Much More Than a Market (April 2024).

[10] European Commission communication, "The Single Market: our European home market in an uncertain world — A Strategy for making the Single Market simple, seamless and strong", COM(2025) 500 final (21 May 2025).

[11] European Commission, "Proposal for a Regulation of the European Parliament and of the Council on the safety, resilience and sustainability of space activities in the Union", COM/2025/335 final (25 June 2025).

[12] The French Senate, for example, challenges a single-market logic that would treat military equipment as ordinary goods. It points out that these products serve a strategic purpose and that their procurement, use and control remain prerogatives of sovereign states: European Defence Industry Programme (EDIP). See also the statement made by French Minister for the Armed Forces Catherine Vautrin in the Senate on 19 January 2026.

continue basing their decisions on political and strategic considerations[13]. In the Defence Readiness Omnibus package, it even proposed temporarily broadening the use of the negotiated procedure without prior publication for joint procurement, including off-the-shelf purchases, where several Member States acquire identical or only slightly modified equipment[14].

At the same time, the Commission argues that the specific characteristics of the defence sector cannot justify the continued fragmentation of the European market. This is particularly true at a time when the emergence of new technologies and new industrial players — including small and medium-sized enterprises (SMEs), start-ups and scale-ups — calls for a larger and more integrated market. Moreover, both the EU executive and the Member States recognise that European defence procurement legislation must be adapted to the new international environment and the needs arising from it, which requires the legislation to pursue new objectives.

THE COMMISSION'S OLD AND NEW OBJECTIVES

In 2009, when the Defence Procurement Directive was adopted, the geopolitical context was radically different from today's. Europe was then a pacified continent, supply chains were relatively predictable and reliable — albeit fragmented — and, above all, US security guarantees on the European continent were not in question.

That is no longer the case. Faced with the weaponisation of dependencies, threatened by Russia and abandoned by the United States, the Commission considers that the time has come to review its legislation. The objectives it set itself in 2009 in fact remain unchanged. They were primarily economic and aimed to open up and regulate European defence procurement, while limiting systematic recourse to national exemptions based on Article 346 TFEU. The idea was to create a more transparent, competitive and integrated European market, while nevertheless taking account of the sector's specific requirements in terms of security of information and security of supply[15].

[13] In its communication on the Defence Readiness Omnibus of 17 June 2025 (COM(2025) 820 final), the Commission stated that "the European Defence Technological and Industrial Base is a highly specific sector, the primary objective of which is not purely economic".
[14] European Commission, "Proposal for a Directive of the European Parliament and of the Council amending Directives 2009/43/EC and 2009/81/EC as regards the simplification of intra-EU transfers of defence-related products and the simplification of security and defence procurement", COM(2025) 823 final (17 June 2025).
[15] Articles 20, 22 and 23 of Directive 2009/81/EC on defence and security procurement.

Directive 2009/81/EC also provided for a number of possible exemptions in Articles 12 and 13. These were intended, on the one hand, to promote intra-European industrial cooperation and, on the other, to enable Member States to protect their essential security interests. In short, the Directive's underlying objective rested on a clear alternative: either Member States cooperated in producing and procuring armaments, or their defence markets had to be opened to European competition.

Today, these objectives remain unchanged, but they are no longer the only ones. In the face of the new climate of instability, other priorities have come to the fore. Among these, the following could be taken into consideration:

- Further consolidate supply by **promoting industrial cooperation even more strongly**, notably by facilitating the procurement of products developed through cooperative programmes.
- Introduce **administrative simplifications** and accelerate procurement procedures. In particular, **facilitate the rapid integration of technological advances** into weapon systems.
- Review the rules on **subcontracting** in order to promote **local production**.
- Promote **joint procurement** through administrative facilitation.
- Support **industrial ramp-up**, notably by facilitating the procurement of production capacity (i.e. the possibility of reserving production capacity)[16].
- Introduce procedural provisions capable of **favouring European industry**, notably by drawing on the concept of security of supply.

The Commission also appears to be pursuing another, less explicit objective, which Andrius Kubilius set out in a speech delivered at Eurosatory in France on 17 June 2026. On that occasion, the Commissioner for Defence and Space called on Member States to reduce the dominance of Europe's large defence companies, which he regards as problematic for innovation and competitiveness in the sector.

Andrius Kubilius did acknowledge the importance of Europe's major defence companies. In his view, however, the EU must at the same time establish rules that facilitate access to European public procurement for SMEs, innovative start-ups, mid-caps and new industrial players, thereby improving their growth opportunities. To support his argument, the

[16] Provisions along these lines already exist under the European Defence Industrial Programme (EDIP), which, however, will only run until 2028.

Commissioner cited Ukraine, which has become one of the most innovative defence hubs thanks to the rapid development of drones and battlefield technologies driven by SMEs[17].

The major contractors readily respond to the Commission's criticism by pointing out that they are often the principal customers of SMEs and mid-caps active in the defence sector, even more so than States themselves. If the objective is to reduce the fragmentation of the European market, setting large groups against smaller companies would therefore miss the point. In their view, the priority should instead be to encourage cooperation between companies of different sizes and profiles, while helping new entrants to become durably embedded in Europe's industrial fabric[18].

Directive 2009/81/EC has, admittedly, encountered a number of other difficulties that help explain its ineffectiveness and warrant closer examination here.

WHY THE DIRECTIVE WAS NOT IMPLEMENTED: MEMBER STATE AND INDUSTRY CONCERNS

Commissioner Kubilius's statements at Eurosatory highlighted a first line of tension. On one side are Member States that do not host large defence groups but have a network of SMEs and mid-caps seeking a place within the European Defence Technological and Industrial Base (EDTIB). On the other are the countries that host the sector's leading prime contractors — chiefly Germany, France, Italy, Spain and Sweden — and seek to strengthen, or even protect, them[19].

Yet the divisions within the Union over defence procurement are far more numerous and complex. They certainly cannot be reduced to a possible opposition between small and large companies.

To understand how Member States might position themselves on the reform of Directive 2009/81/EC, it is first necessary to revisit the reasons that led them to circumvent it. The main reasons can be grouped into four categories:

- **A national rather than European preference in countries with a substantial Defence Technological and Industrial Base (DTIB)** — Unsurprisingly, the largest Member States

[17] European Commission, Keynote speech by Commissioner Kubilius at Eurosatory (17 June 2026).
[18] Interview with a representative of a prime contractor.
[19] See Bertrand de Cordoue, "Pour sa défense, l'Europe a besoin d'un marché unique de l'armement" [For its defence, Europe needs a single armament market], Institut Jacques Delors (23 January 2026).

did not fully apply the Directive because they wished to protect and favour their national industrial champions for economic, strategic and sovereignty-related reasons. Economically, this was of course about preserving employment, but also about supporting national technological development. Strategically, states with a comprehensive DTIB — first and foremost **France** — regard defence contracts not only as instruments of sovereignty, but also as levers for forging strategic partnerships that shape their foreign policy. For these countries, the issue is therefore not merely to secure the best price or promote intra-European competition, but to retain control over these political levers.

- **Subcontracting and local production (industrial compensation) for countries with a limited EDTIB** — Smaller Member States, as well as those with a less developed EDTIB, have often circumvented the Directive on the grounds that it imposed overly complex rules that were difficult for SMEs and mid-caps to access. The provisions on subcontracting have attracted particular criticism, as they are considered ill-suited to these countries' efforts to integrate their companies into the European defence industrial base, notably through industrial offset arrangements[20]. This issue is especially sensitive in **Poland**. Warsaw is devoting substantial resources to defence and, in doing so, intends to develop its own national defence industry, with a view to playing a more prominent political role in the European Union's defence policies.
- **Excessive administrative complexity** — Another reason for the limitations of Directive 2009/81/EC is that several Member States lacked the administrative capacity required to implement it. This difficulty did not affect only smaller countries: **Germany** faced it as well. Administrative simplification is therefore a major priority for Berlin, especially now that the country has significant budgets available to reinvest in defence and must make these investments within relatively short timeframes, which presupposes limiting administrative burdens.
- **The elephant in the room: the United States and Foreign Military Sales (FMS)** — Lastly, successive evaluations of Directive 2009/81/EC have shown that Member States regularly relied on the exemption provided for in Article 13(f) for government-to-government, or G2G, procurement. In practice, this provision appears to have facilitated the sale of US military equipment to Europeans, notably through the FMS system. The US FMS programme is a well-established G2G sales mechanism, whereas

[20] In principle, offsets motivated by economic considerations or national preference are prohibited under EU law. However, certain industrial participation requirements may be permitted where they are justified on grounds of security of supply or the protection of an essential security interest. In practice, however, offsets remain widespread in the EU defence sector.

Europeans have never developed a comparable and equally effective instrument, although the Union is now attempting to do so through the EDIP programme.

WHAT POSSIBLE SOLUTIONS? THREE PRIORITIES TO CONSIDER

As seen, each Member State had its own reasons for not fully implementing Directive 2009/81/EC. Those reasons differ from one country to another, making the equation more difficult to resolve. But the same Member States also have priorities that they would like to see better reflected at Union level. A possible area of common ground might be identified precisely by focusing on those priorities. They are admittedly far from fully aligned, but neither are they fixed nor wholly incompatible.

In this respect, it may be useful to begin with the priorities expressed by three countries that play a particularly important role in the debate: France, Germany and Poland. They can be summarised briefly as follows:

- **France** is certainly seeking to preserve its industrial sovereignty, its freedom of strategic action and its international role. It is, however, also strongly interested in introducing a form of European preference.
- **Germany**, for its part, attaches particular importance to administrative simplification. Now that it has substantial fiscal room to reinvest in defence, it wishes to enjoy the greatest possible flexibility in this field.
- **Poland**, meanwhile, intends to develop its own defence industry and pays particular attention to European mechanisms capable of supporting local production, including, where appropriate, in the form of industrial offsets.

These three priorities could be accommodated within a new regulatory framework for defence procurement. Subject to certain conditions and compromises, they are not mutually incompatible:

1) **Ensuring administrative simplification to address Germany's expectations** — The Commission has already fully embraced the objective of simplifying, as far as possible, the rules governing the award of public defence contracts. Indeed, this is one of the central strands of the amendments introduced into Directive 2009/81/EC by the Defence Omnibus. The Commission nevertheless intends to go further.

Some Member States, including France, nevertheless view this simplification with concern. In their eyes, excessive deregulation could ultimately weaken the essential safeguards that preserve national sovereignty and take account of the specific characteristics of the military sector. Yet administrative simplification that did not call those safeguards into question does not appear beyond reach. It could even provide useful common ground with Germany, while making it possible to seek other concessions from Berlin in return. As discussed in point 3 below, **administrative simplifications could primarily apply to the procurement of European products, thereby reinforcing the principle of European preference sought by Paris**.

2) **Guaranteeing local production to meet Poland's expectations** — To accommodate countries with less developed defence industries, the EU also appears inclined to promote what it calls "local production". In practice, this means abandoning the dogmatic approach it has sometimes taken in the past towards industrial offsets. Such offsets could be acceptable, provided that they took place **exclusively between Member States — in other words, that they were intra-EU**. To facilitate intra-European offsets, the Commission appears keen to present them as measures designed to strengthen security of supply by allowing purchasing countries to host part of the production or assembly of the equipment concerned on their territory. This would also enable countries close to a conflict zone to have production facilities available.

   In this context, it would also be desirable for the Commission to consider **facilitating intra-EU cross-procurement**, meaning reciprocal purchases between Member States, whereby each acquires equipment produced by the other's defence industry in order to foster industrial cooperation and ensure a more balanced distribution of the economic benefits generated by defence procurement. In some cases, cross-procurement may resemble forms of industrial offset, which could be acceptable provided they remain within the EU.

   At first sight, the idea of allowing intra-European industrial offsets may appear incongruous, since it sits uneasily with the principle of competition. Defence industry, however, cannot be subjected to competition rules in the same way as ordinary goods and products. Moreover, intra-European offsets could contribute to the Union's repeatedly stated objective of consolidating the European defence industry. Such consolidation does not only mean promoting mergers and acquisitions alone. It may also, more simply, involve fostering long-term, structuring industrial partnerships. These partnerships are all the more important because the Union's industrial policy must avoid any excessive centralisation of industry in a handful of Member States at the expense of others. The European integration project itself could not be sustained over the long term if it resulted in an excessive concentration of industry in a limited number of countries.

3) **Introducing European preference to address France's expectations** — Lastly, to accommodate the larger countries with substantial defence industries, new legislation on defence procurement should include measures promoting European preference. In particular, those measures should incorporate the concept of a **European Design Authority**, already introduced under SAFE (Security Action for Europe) and EDIP (European Defence Industry Programme), provided that the concept is more precisely specified and defined this time — which it is not under either EDIP or SAFE[21]. It would also be desirable to extend the concept of a European Design Authority to all complex weapons systems, including missiles, rather than limiting it to certain categories, as is currently the case under the SAFE programme. Such a development could help reassure Member States such as France, which remain reluctant to reform Directive 2009/81/EC, by making EU legislative intervention in this particularly sensitive area of national sovereignty more acceptable.

One issue nevertheless remains to be resolved: the European preference criterion mentioned in point 3 above could come into tension with the objective of administrative simplification set out in point 1.

EUROPEAN PREFERENCE VERSUS ADMINISTRATIVE SIMPLIFICATION?

The idea of introducing some form of European preference into defence procurement rules remains contentious. Many Member States continue to believe that, by purchasing military equipment from the United States, they can help preserve American security guarantees in Europe, however uncertain those guarantees may have become. This is particularly true of Germany, Poland and the Baltic states. Other countries have defence industries that are closely integrated with those of the United States or the United Kingdom and therefore fear the effects of possible European protectionism. This concern is especially pronounced in Sweden, the Netherlands, Denmark and Italy.

[21] The concept of a European Design Authority is present in the SAFE and EDIP programmes, although it is neither named as such nor clearly defined.

The intensity of the debates surrounding the adoption of the Defence Omnibus illustrates just how sensitive the issue of European preference remains, even though the text introduces only limited amendments to the Directive.

The Commission had not originally intended to address European preference as part of the Omnibus, which was primarily designed to simplify administrative procedures. The issue was instead to be considered at a later stage, as part of the forthcoming and more substantial reform of the Directive.

The European Parliament (EP), however, sought to introduce initial European preference measures through the Omnibus itself, by making certain administrative simplifications available only for European equipment. It therefore proposed allowing R&D contracts and certain joint procurements to be awarded through a negotiated procedure without prior publication, provided that they concerned European equipment[22].

A majority of Member States in the Council nevertheless opposed the introduction of this criterion. Despite France's objections, the Council maintained that the Omnibus should remain focused on simplification, without adding eligibility conditions that might create new administrative burdens or restrict Member States' freedom to procure. Following a hard-fought diplomatic battle, the Council ultimately prevailed[23]. Frustrated, the EP nonetheless succeeded in imposing a joint declaration with the Council, annexed to the text on the Defence Omnibus, explicitly acknowledging the persistence of "divergent views" on European preference. The matter was ultimately referred to the broader revision of Directive 2009/81/EC[24].

The issue of European preference has therefore been deferred. The question remains, however, as to how the Union can technically reconcile this objective with that of administrative simplification. This difficulty is compounded by the method chosen by the EU to determine whether a defence product qualifies as European.

Under the EDIP and SAFE programmes, a product is considered European when components of European origin account for at least 65% of its value. Components originating in third countries may therefore represent up to 35%—the so-called "65–35% rule". Inevitably, tracing

[22] European Parliament, Simplification of intra-EU transfers of defence-related products and the simplification of security and defence procurement (Omnibus V), 2025/0177(COD) (22 December 2025).
[23] Council of the EU, "Defence industry: Council agrees position on simplification package to boost Europe's defence industry and readiness" (26 November 2025).
[24] See the Joint Declaration annexed to the "Provisional agreement resulting from interinstitutional negotiations" adopted by the EP and the Council; it appears at the end of the document.

the origin and value of every component in a complex weapons system is an extremely burdensome exercise and, in some cases, almost impossible.

To reconcile European preference with administrative simplification, one possible solution would therefore be to create a catalogue of products carrying a 'Made and Designed in Europe' label[25]. The label would not, however, be awarded on the basis of the "65%–35% rule". Industry and Member States would be unlikely to accept providing the Union, or any other authority, with detailed and confidential information on the components of their weapon systems for the purpose of compiling such a catalogue.

The label could instead be awarded on the basis of criteria that are easier to verify and less sensitive from a confidentiality perspective, such as control over intellectual property rights and/or the exercise of design authority—a concept that would need to be clearly defined. Where an entity established in the Union held the intellectual property rights and/or exercised design authority over a defence product, that product could qualify as 'Made and Designed in Europe'.

Its inclusion in the catalogue would then allow it to benefit automatically from simplified procurement procedures. Such an approach would not be entirely new: the EDIP programme, adopted at the end of 2025, already provides for the establishment of a European Military Sales Mechanism, including a centralised catalogue of European defence products—the 'EU Military Sales Catalogue'[26].

Directive 2009/81/EC and European preference

The current Directive 2009/81/EC on defence procurement contains no genuinely effective provisions on European preference.

- Recital 18 of the Directive recognises that Member States retain the power to decide on the participation of third countries in defence procurement. It nevertheless states that Member States should take their decisions on the basis of value for money and the reciprocal openness of the third countries concerned, in accordance with

[25] The expression "Made in Europe" alone would be inadequate. It may refer to equipment produced or assembled in the European Union under licence from a third-country company. In such a case, the Member State in which the equipment is manufactured controls neither the product's intellectual property nor the rights required to develop, adapt or use it autonomously. "Made and Designed in Europe" therefore appears more appropriate, since it takes account not only of the place of production, but also of sovereignty over the technology concerned.
[26] Article 38 of Regulation (EU) 2025/2643 of 16 December 2025 on EDIP.

internationally agreed rules. Such vague wording cannot, however, be taken to mean that the EU imposes any form of European preference.

- Article 13(c) could also be regarded as a form of European preference. This provision on exclusions states that the Directive does not apply to contracts awarded under a cooperative research and development programme conducted jointly by at least two Member States for the development of a new product. All projects managed by OCCAR, for example, fall into this category.

- Articles 22 and 23 of the Directive, by contrast, introduce provisions that might at first sight appear slightly more concrete in protectionist terms. They allow Member States to impose restrictive requirements to ensure security of information and security of supply, both of which are indispensable in the military field. Articles 22 and 23, however, make no distinction between third countries and EU countries. Legally, therefore, they do not create an explicit European preference. It is nevertheless true that, by allowing Member States to impose safeguards relating to security of information and supply, they enable them to justify, on a case-by-case basis, requirements that may be more difficult for operators from third countries to satisfy. This is particularly true where export licences, extraterritorial rules or transfer restrictions may affect performance of the contract. In practice, however, Articles 22 and 23 primarily allow EU states to pursue a form of protectionism at national rather than European level.

- Finally, the EU has sought to limit the exemptions available for G2G contracts involving third-country governments. Noting the systematic use of the US FMS by several EU countries, the Commission issued guidance in 2016 suggesting that Member States conduct a market analysis to determine whether competition was possible, notably within the European internal market[27]. This recommendation was, of course, non-binding and was not genuinely followed by the Member States.

[27] Commission guidance note on G2G, Guidance on the award of government-to-government contracts in the fields of defence and security, *Official Journal of the European Union*, Article 13.f of Directive 2009/81/EC, December 2016.

LINKING DEFENCE PROCUREMENT TO A PROVISION INSPIRED BY THE "ESCAPE CLAUSE"?

No EU rules on defence procurement could—or should—prevent Member States from purchasing whatever equipment they choose. To encourage the acquisition of European equipment, the EU must therefore rely primarily on administrative support measures, as discussed throughout this paper. Could it nevertheless also consider more substantial incentives extending beyond procedural facilitation alone?

The idea of linking a budget directly to a legislative provision, so as to provide automatic co-financing for procurement meeting a European preference requirement, is not a viable option. Funding is already available through dedicated programmes, but it cannot be granted automatically or systematically. Still less could such funding be attached directly to defence procurement legislation.

One avenue that could be explored at a later stage would be to link defence procurement legislation to a new mechanism modelled on the 'escape clause' provided for under the EU fiscal rules.

The national escape clause (country-specific escape clause)28

The European Union's national escape clause — or country-specific escape clause — is a mechanism under the Stability and Growth Pact (SGP). Introduced in 2011 following the financial crisis, it allows Member States temporarily to depart from the EU's strict fiscal rules in the event of a major economic crisis.

Under normal circumstances, the Stability and Growth Pact impose two key fiscal rules on EU countries: a public deficit below 3% of GDP and public debt below 60% of GDP. When the escape clause is activated, these limits may be temporarily suspended. This allows governments to exceed the EU's fiscal rules without risking financial sanctions from Brussels.

To activate the escape clause, the Council of the EU must approve its use by qualified majority on a proposal from the European Commission. Activation is not, however, a blank cheque. The EU may impose specific conditions and continues to monitor countries' medium-term fiscal sustainability.

[28] Article 26 of Regulation (EU) 2024/1263.

The EU has already allowed Member States, should they so choose, to activate the ‘escape clause’ in order to increase national defence spending in response to the challenges arising from the war in Ukraine. This possibility is nevertheless subject to certain limits: the increase in expenditure is capped at 1.5% of GDP, and activation of the clause may be requested only until the end of 2028. The ‘escape clause’ remains an exceptional mechanism, designed to address a crisis situation—in this case, the war in Ukraine.

The question, therefore, is whether future defence procurement legislation could provide for a comparable mechanism from 2029 onwards, subject to limits and conditions that would remain to be defined. Such a mechanism should, however, apply only where a Member State procured equipment subject to European Design Authority or participated in the joint procurement of European equipment.

Such a provision, whose technical arrangements would still need to be defined in their entirety, might also require amendments to the Stability and Growth Pact. Its implementation would clearly be complex. It should nevertheless be recalled that the idea of excluding defence investment from the calculation of the deficit permitted under EU fiscal rules is not new. It has been raised on several occasions in the past. The reform of Directive 2009/81/EC on defence procurement could therefore provide an opportunity to reopen this debate.

Admittedly, drawing inspiration from the escape clause to promote European preference in defence procurement legislation would be no panacea—far from it. Highly indebted Member States facing high interest rates, such as France or Italy, would not necessarily have an incentive to take on additional debt, even if the expenditure concerned were excluded from the calculation of the deficits. By contrast, less indebted countries with greater fiscal headroom, such as Germany, the Netherlands or Sweden, might find such a mechanism more attractive.

Yet these are precisely the Member States that are generally the most reluctant to introduce European preference. A provision modelled on the escape clause might therefore encourage them to soften their position.

CONCLUSIONS

Some Member States, as well as Europe's leading defence groups, question whether it is wise to reopen the Pandora's box of defence procurement at this particular juncture. Why now? If the EU wishes to promote the Europeanisation of the defence market and industry, should it not focus on consolidating its financial instruments in support of the supply side, rather than intervening on the demand side and, in doing so, encroaching on Member States' prerogatives?

In recent years, the EU has indeed focused primarily on a supply-side strategy, adopting programmes designed to finance cross-border industrial cooperation within Europe. The objective has been to bring EU companies closer together, enabling them to scale up and strengthen the continent's strategic autonomy in an increasingly uncertain world.

What is particularly noteworthy, however, is that all these EU funding programmes have been accompanied by relatively strict eligibility rules intended to limit the participation of companies from third countries. In this sense, for the first time in its history, the Union has adopted a genuinely strategic industrial policy that may — let us call it what it is — be described as interventionist and protectionist.

Any reform of Directive 2009/81/EC will make sense only if it complements this strategy by reinforcing the interventionist and protectionist dimension of EU action. In other words, if the Union is indeed to reopen this dossier, it should do so primarily with a view to introducing provisions designed to support European industry, in line with the supply-side policies pursued since the launch of the European Defence Fund in 2017.

This issue is essential to the overall coherence of EU action. Indeed, the ambition to protect the Union's key strategic sectors extends far beyond defence, as discussed throughout this article. It now runs through most of the economic, trade and industrial initiatives adopted by the EU over the past few years. The Chips Act, the Critical Raw Materials Act, the Space Act, the Industrial Accelerator Act and the regulation on steel are just some of the growing number of measures moving in this direction.

Against the backdrop of the geopolitical environment and the growing weaponisation of dependencies[29], this shift is hardly surprising. More surprising, by contrast, is the continuing reluctance of some Member States to extend the principle of European preference to defence procurement. That principle now appears to be coming under challenge. At the latest NATO

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[29] The expression "weaponisation of dependencies" derives from the English term "weaponised interdependence", which refers to states' use of economic dependencies as an instrument of coercion against another state.

summit in Ankara, the alternative concept of “NATO preference” emerged, potentially relegating European preference to second place[30]. Yet it is precisely in relation to the Alliance’s leading actor, the United States, that Europeans need to strengthen their industrial and strategic autonomy. Those in Europe who remain most reluctant should therefore fully recognise this and accept compromises on the issue.

Countries with substantial defence industries should also be prepared to compromise, notably by accepting a greater degree of local production for equipment whose design authority would remain within the EU. This could also serve their own interests, by enabling them to diversify their supply chains while making them more secure at European level.

Turning to the sensitive question of sovereignty, it is true that the creation of a European defence market cannot be regarded as an end in itself. Nor should its purpose be to challenge the primacy of political decision-making in military procurement. That political primacy can, however, be exercised at several levels: primarily at national level, certainly, but also at European level. The aim of reforming Directive 2009/81/EC should therefore not be to replace political decision-making with market forces, but rather to shift the exercise of sovereignty to a broader scale in order to reduce Europe’s military-industrial dependence.

Recognition of the primacy of political decision-making at both national and European levels, simplified procedures, intra-European industrial offsets and European preference: these could form the principal ingredients of an EU regulatory framework for defence procurement that, this time, secures genuine ownership among all stakeholders. For such a formula to prove acceptable to everyone, however, all sides will need to be prepared to compromise.

[30] Laura Kayali, Victor Jack and Chris Lunday, “Rutte’s ‘Made in NATO’ weapons push collides with EU’s ‘Buy European’ drive”, *Politico*, 7 June /2026.

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