

European Defence Market Integration: Taking Stock of the State of Play and of Future Trends

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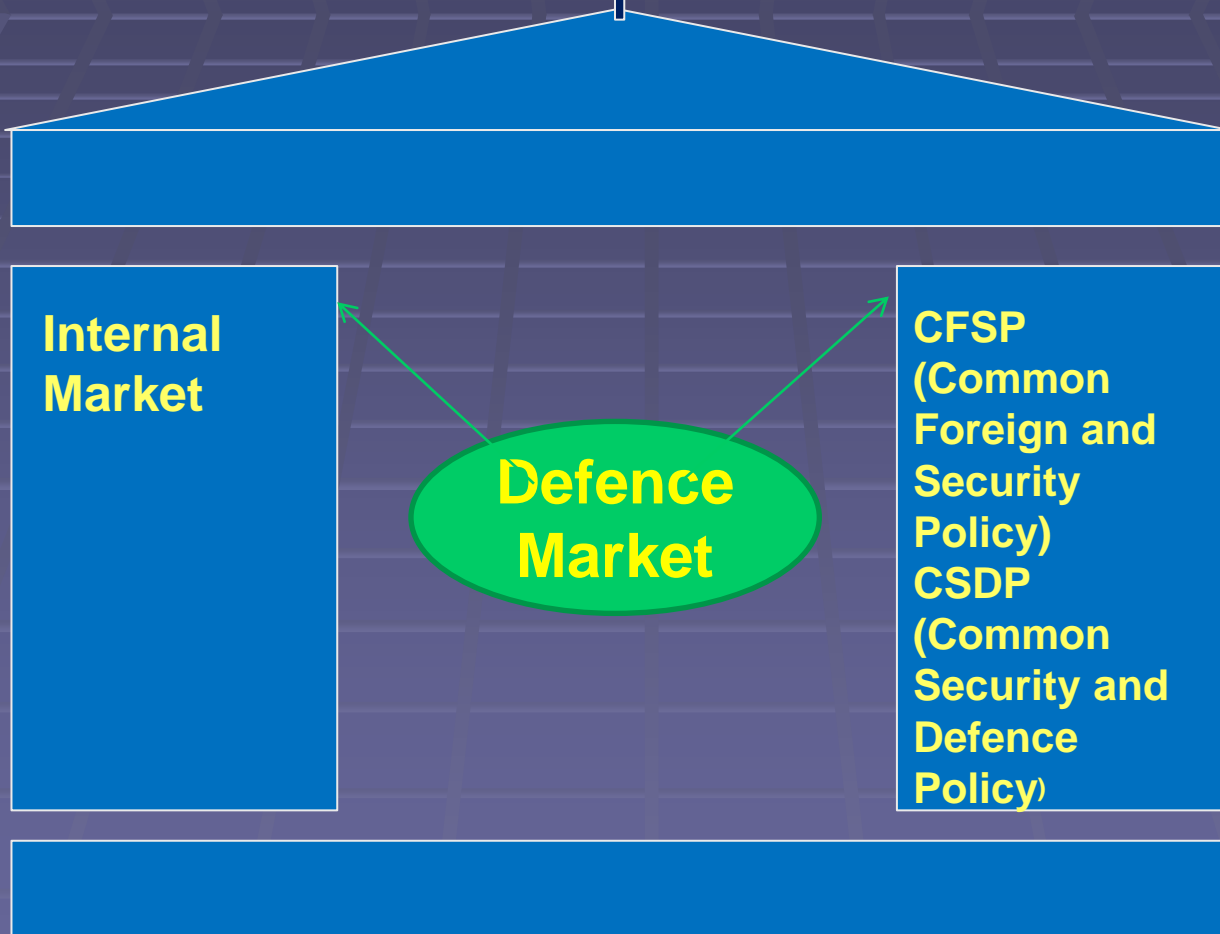
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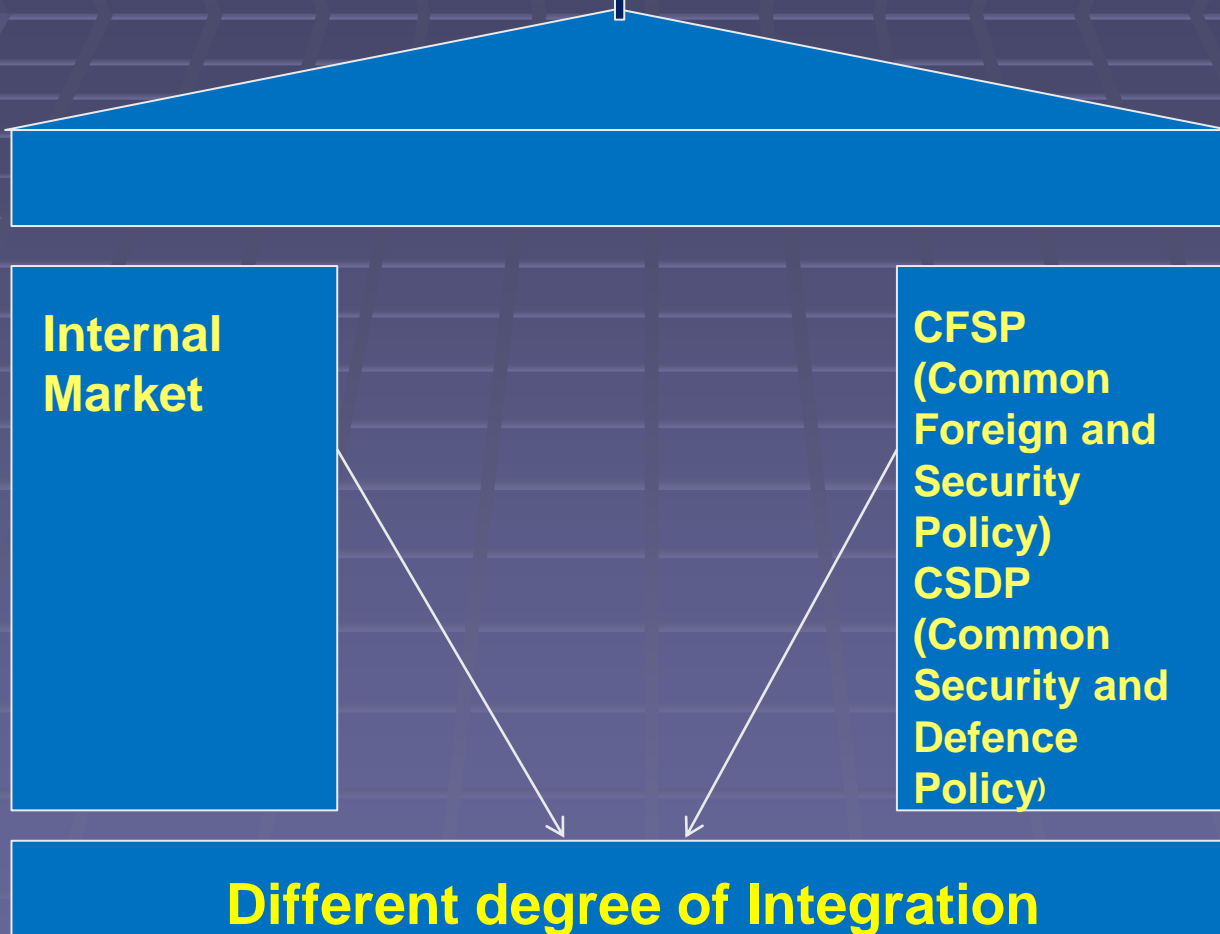
Outline

- ❑ The EU Legal Architecture
- ❑ DSPD a preliminary assessment: Ambition v Reality
- ❑ The two 'Elephants in the Room'
- ❑ Possible Game Changers
- ❑ Conclusions and Future Trends
- ❑ PS. Relevant Papers

EU Architecture Implications



EU Architecture Implications



The 'Geography' and 'History' of Defence Procurement Regulation



Defence Procurement Directive

Code of Conduct Defence Procurement (EDA)

Internal Market

**CFSP
CSDP**

Offsets Guidance

CoC on Offsets

Current 'Geography' of Defence Procurement Regulation in the EU



Defence Procurement Directive

Internal Market

CFSP

CSDP

Offsets Guidance

Defence Procurement Directive (DSPD) – The Ambition...

Before the DSPD (Reality):

**EU Public Procurement
Rules**

Article 346 TFEU

After the DSPD (Ambition):

DSPD 2009/81/EC

**Art 346
TFEU**

Use of DSPD 2011-2018



Combined Sources: EPRS/IRIS/IAI Study, Oct. 2020, EU Commission Report, SWD(2016) 407 Final

Defence Procurement Directive (DSPD) – The Reality...

Before the DSPD (Reality):

**EU Public Procurement
Rules**

Article 346 TFEU

After the DSPD (Ambition):

DSPD 2009/81/EC

**Art 346
TFEU**

10 years on (Reality):

DPSD 2009/81/EC

Article 346 TFEU

Explanation/Challenge?

❑ Article 346 TFEU

❑ Long List of exemptions under the DSPD

Examples:

- Government to Government Procurement (G2G)
- Research & Development Collaborative Programmes

The Big Elephant in the Room (1): Article 346 TFEU

- Article 346 (1b) TFEU:

‘Any Member State may take such measures as it considers necessary for the protection of the essential interests of its security the production of or trade in arms, munitions and war material: such measures shall not adversely affect the conditions of competition in the common market regarding products which are not intended for specifically military purposes’

The Big Elephant in the Room (1): Article 346 TFEU

- CJEU's Interpretation of Article 346 TFEU

e.g.:

- *Case C- 414/97 Commission v. Spain*
- *Case C-252/01 Commission v. Belgium*
- *Case C-337/05 Commission v. Italy*
- *Case C-409/05 Commission v. Greece*
- *Case C-239/06 Commission v. Italy*

Another Elephant in the Room (2)?

DSPD Exclusions

- Exclusions:
 - International rules (Art.12)
 - Disclosure of information (Art. 13(a))
 - Intelligence activities (Art.13(b))
 - Cooperative programmes (Art. 13(c))
 - Contract awards in third countries (Art. 13(d))
 - Government to government sales (Art. 13(f))

Possible Game Changers...

- ❑ Strengthening of the incentives for Defence R&D Collaborative projects (example EDF - €8 billion for 2021-2027)
- ❑ Creation of DG Defence Industry and Space (DEFIS)
- ❑ Conflict in Ukraine

Conclusions and Future Trends

- ❑ The **re-configuration** of the **EU competences** (Commission, CJEU) in this area has knock on effects on both the internal and external EU arms trade dimensions
- ❑ Possible **shift (or rather ‘nudge’)** of the centre of gravity of policymaking in the field
- ❑ Germany’s Decision to increase considerably military Spending

Relevant Papers - Submissions

❑ 'EDA and Defence Procurement Integration', 2015

(<http://ssrn.com/abstract=2618357>)

❑ 'Revisiting Offset Practices in European Defence Procurement: The European Defence Agency's Code of Conduct on Offsets', 2011

(<http://ssrn.com/abstract=2757378>)

❑ 'The Commission's Interpretative Communication on the Application of Article 346 TFEU (ex Article 296 EC) in the Field of Defence Procurement', 2007

(<http://ssrn.com/abstract=2757349>)

❑ Written Evidence submitted to the Defence Select Committee of the House of Commons

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/defence-committee/defence-acquisition-and-procurement/written/41544.html>

Thank You

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