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provides an exemption for defence products and armaments procurement from EU competition law. Although the Commission has long sought to eliminate or narrow down this exemption, it remains in force (Mörth 2000, 2003). During the 1990s, as the EU developed its Common Foreign and Security policy and moved towards closer defence cooperation, the Article 296 exemption came under increasing criticism. The Commission's recent focus on 'dual use' product (i.e. products that have both civilian and military uses) and it narrow definition of 'military use' has also contributed to blurring the line that excludes defence products from common EU rules. Finally the EU absorbed most of the WEU's functions (though not cooperation on armaments) with the Nice Treaty, and has proceeded to develop its own military agencies. The EU's old civilian character was thus subject to considerable revision in the late 1990s and early 2000s.

Second, the resilience of Article 296 is as much down to some member states' protectionist industrial policy as to the EU's civilian status. The central issue in the defence sector has been the balance between national sovereignty and the benefits of European co-ordination, in military as well as economic terms (De Vestel 1998; Mawdsley 2000). Industrial policy concerns have therefore encroached on the debate on common procurement because as defence procurement generates demand for domestic industry. Although a number of member states oppose the EU-wide practice of offset provisions (whereby if country A imports defence products from country B, these are 'offset' by country B reciprocally importing defence products from country A), none are prepared unilaterally to abandon this practice. Offset arrangements are a type of prisoners' dilemma, where individual rational pursuit of self interest prevents co-operation that would benefit the actors involved. But if this were merely a problem of co-ordination, it could be solved by expanding the role of the European Commission. The close identification of interests between nation defence industry and governments ensures that it is not. To be sure, with a shift toward increasing focus on the benefits of free trade, the states that believe their companies to be competitive on the international markets (such as Sweden and the Netherlands) increasingly regard offset as a necessary evil rather than an unequivocal benefit. Yet even eliminating offset might make sense in economic terms, and according to common theories of trade, the domestic defence industries have proven sufficiently strong to oppose such moves. Many states regard offset as necessary to compensate for defence expenditure

abroad, and it has long been considered apparent that their industry benefits from such protection. Arguments are generally cast in terms of industrial policy, protecting employment in vulnerable sectors and maintaining technological competence. Even in states which governments are generally sceptical of offset, and where even the defence industry is opposed to it in principle (such as in the Netherlands), particular offset provisions are often defended as a necessary evil (Eliassen & Skriver 2002).

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(JSF) aircraft, which was intended to create a possibility of joint development and technological cooperation. During the 1990s the European defence industry and the Commission frequently expressed concerns about this transatlantic gap and tried to use this as an argument for increased European armament cooperation, but in vain.

agency, it has been limited to research and technology projects, and even these have been limited.

More successful initiatives have launched by a more limited number of states. The Organisation for Joint Armaments Co-operation was formed in 1996 by Germany, France, Italy and the UK, and designed to improve the management of collaborative armament programmes. It central principles included replacing the *just retour* principle (see below), promoting the armaments industry, promoting a competitive industrial base, harmonisation of requirements and technology and cooperation with third countries. The four original signatories covered well over two-thirds of European defence production, and the organisation has since been expanded to include Belgium and Spain. Other non-members are invited to participate in its programmes on a case-by-case basis. The governments involved agreed to allot shares of work based on the total set of projects OCCAR manages, rather than share work on a programme-by-programme basis. This replaced the *juste retour* principle, which sought to align work-share and cost-share between countries in each collective programme. In this sense it was the first European organisation for management of arms procurement (Cornu 2001). In 2001 the organisation acquired legal status, which allows it to sign contracts with industry on behalf of its member sates. OCCAR inherited a number of projects including the GTK/MRAV armoured vehicle, Tiger helicopters, Roland air defence systems and Milan and Hot anti-tank missiles, as well as a series of bi- and tri-lateral projects. The Corba anti--1.0.000DtR m8(i)-20r/98 Tw -11l/.72 Td[al

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production and programme management, rather than the definition of requirements (Damro 2005).

In July 2000, the UK, France, Germany, Italy, Spain and Sweden singed the Framework Agreement based on the Letter of Intent of 1998, an accord designed to ease export restrictions and thereby encourage cross-border mergers and joint ventures in the defence industry and harmonise national rules related to defence procurement (Dumoulin et al 2003). Like OCCAR, it was thus an initiative launched by a small number of EU members, the states most heavily involved in the industry. Signed after more than two years of negotiations, it indicated the continuing difficulties involved in co-ordinating defence procurement. The signatories committed themselves to simplifying export procedures, not to hinder the supply of defence material to other states, to simplify security procedures, harmonise contracting procedures regarding technical information, to harmonise military requirements and equipment planning, and foster joint research programmed. The initiative has seen some success on procedures for research and technology and the states have agreed to harmonise procurement policy and joint requirements as well as procurement

strongest competence. The recent confluence of three developments made this development possible.

First, the EU's role in foreign and security policy, and even in defence matters, increased considerably in the 1990s and early 2000s (Duke 2000). The linking of the EU and West European Union with the Maastricht Treaty; the establishment of the Petersberg tasks (humanitarian, peacekeeping and 'peacemaking' including combat tasks) in 1994; the organisation of the WEU-NATO relationship with the Combined Joint Task Force in 1994 and European Security and Defence Identity in 1996; and the integration of most of the Petersberg tasks into the EU with the Amsterdam Treaty set the set the scene for the development of a European Security and Defence Policy and the integration of most of the WEU system into the EU with the Nice Treaty, as well as the development of an EU military staff. The joint military and police actions in particular brought defence matters to the fore of the EU agenda. The need for European standardisation of equipment due to common military activities added to the pressure for a common approach to armaments. This is closely linked to the main aim of EDA of "developing defence capabilities in the filed of crises management" (EDA art.5). Although this was part of the ill-fated process of establishing the Constitutional Treaty, the EDA initiative was separated from the convention and secured a separate life of its own.

At the same time, the drive toward expanding the Single Market rules has generated pressure for the modification of the armaments exemption. This took the form of the Commission's increasing focus on 'dual use' products in military hard- and software, and legal challenges to states' broad interpretations of the scope of article 296, in addition to a more general pressure for introducing real competition in the defence market. The key development is the change toward 'dual use' products, i.e. products that are designed for military use but have significant civilian applications (spin-off), or vice versa (spin-in). The increasing prevalence of dual use products means that the traditional distinction between military and civilian specification is becoming increasingly blurred, with the prospect that military specifications may be replaced with commercial standards. This in turn allows the European Commission some leeway in terms of beginning to comment on defence procurement, despite the

defence exemption (Mörth 2003). The Commission thus assumed a clear and active role in driving the extension of the single market rules to the defence sector.

new cooperation, managing specific programmes (the downstream part is likely to be done by OCCAR) and disseminating best practice. To date the main initiative has been the launch of a Code of Conduct designed to increase transparency and competition in the European defence equipment market, which the EDA press release headline (EDA 2006) lauded as "the birth of European defence equipment market." In principle the member states (or 22 of them: Hungary and Spain opted not to take part) committed to opt for the most competitive offer rather than a national supplier in defence procurement processes, even in the case of equipment that they exempt from EU public procurement rules under Article 296. However, the regime is voluntary and intergovernmental (operated by the EDA), and the EDa's role is primarily one of reporting and monitoring the system. The focus is therefore on transparency and voluntary compliance, or 'soft regulation', rather than the harder regulatory mechanisms associated with the single market and EU procurement policy.

Still 'Mission Impossible'?

The final question addressed in this paper concerns the prospects for a common armaments procurement policy in the European Union now that the EDA has been established: in the light of past experience, can the EDA be expected to be more successful than past attempts to coordinate and integrated EU arms procurement? An EDA's press release dated 20 June 2006 proclaimed the "Birth of European Defence Equipment Market with Launch of Code of Conduct." However, in the light of the substantial obstacles to cooperation on arms procurement that have been manifest up to this point, there are good reasons to be sceptical of the potential for rapid development of a common European armaments market. To be sure, some of the main obstacles to armaments cooperation have indeed become less significant, and the mere establishment of the EDA provides grounds for optimism, but several of the substantial obstacles identified in the first part of this paper remain.

The longest-running and perhaps most serious obstacle to a common arms market – the fact that the EU is principally a civilian organisation – has become less significant as a hindrance on the path to a common armaments policy for two reasons. First, the

EU's role in international politics has strengthened considerable since the Maastricht treaty was adopted, and been widened to include ever broader aspects of security and defence cooperation as well as missions to third countries (notably in the Balkans). The EU can no longer be identified as an 'economic giant but a military dwarf', at least not unambiguously (Duke 2000). Common security and defence initiatives have, much as neo-functionalists might have predicted, spilled over back into the ingle market: defence cooperation and joint action is making the EU's expectations – capabilities gap ever more salient, and strengthens the case for cooperation and standardisation of defence equipment. Second, the Commission has actively cultivated this spillover dynamic, constantly pushing for a narrow interpretation of the Article 296 exemption, for strict classification of 'dual use' equipment and application of single market rules to such equipment, as well as working to promote extension of the single market to armaments in principle. All three tactics have seen a degree of success, and the establishment of the EDA signals, at the very least, consensus around the idea of the development of a common armaments market in principle. Article 296 is hardly at risk, but the very establishment of the EDA can be seen partly as a consequence of the shifting consensus on this matter, and partly as a signal that further steps are likely to be taken.

Second, with the establishment of the EDA, the EU has overcome the bias toward the status quo that is inherent in its consensual decision making procedures and norms. The general aims of the EDA are very ambitious, and do not fall short of (eventually) a common armaments market. Even the operational programme is quite ambitious, as it covers the full range from development of defence capabilities and crisis management to cooperation on arms procurement and R&T. One hailed achievement of the EDA is the implementation on 1st of July 2006 of a Code of Conduct for military procurement shifting the "national" preference in armament procurement to

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that has something in common with the French procurement logic. Whether it will

relatively weak instruments compared to the Commission's competencies in the Single Market. The EDA is no exception. Moreover, there is no sign that the wide discrepancy between US and EU defence spending and technology development will be reduced in the near future. Finally, the most important factor is the very different structures that characterise the EU member states' defence industries. The difference between big and small states makes the problem particularly challenging: it will be practically impossible to design a system of *juste retour* or other arrangements for an equal or 'fair' distribution of jobs and technology transfers between *all* member states without using some kind of offset logic. The smaller states are insisting on some kind of return for their defence spending, but industry is consolidating in the big states (and specialised states such as Sweden). The big states have the power and resources to attract and develop industry, and could find solutions to a 'fair' distribution among themselves over time without using 'offset'. This is much more difficult for the smaller states, at least those with more limited defence industries. The creation of the EDA has not changed this fact. For very fundamental reasons, the mission still remains practically impossible.

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