**Babeş-Bolyai University**
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# DOCTORAL THESIS

***Public Procurement for Defence and Security in the Context of Enhanced Integrated Cooperation within the European Union and NATO***

## EXECUTIVE SUMMARY

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## EXECUTIVE SUMMARY

In the field of defence and security, the need for various products does not follow the same algorithm that was designed by classical economics for widespread products and those that derive from basic needs, as it follows an inherently occult logic, owing on geopolitical, geostrategic and national security considerations which are most often devised behind the closed doors of national governments. However, this should not mean that the logical framework and underlying dynamics of defence markets are completely obscure, especially in today's increasingly interconnected world, with widespread access to information and various levels of intelligence. Moreover, the contemporary multipolar security environment, with its ever-evolving clustering of resources and interests, has driven national governments into pooling their capabilities in order to ensure mutually advantageous defence and security prerogatives.

From a political point of view, public procurement for defence and security forms an integral part of the wider architecture of what is known as the Common Foreign and Security Policy of the EU (hereinafter "CFSP"), more specifically the Common Security and Defence Policy (hereinafter "CSDP").

Some would argue that EU legislation for security and defence procurement has reached "the end of history",[1] an approximation which would not be without its merits, if one were to consider the significant volume of scholarly debate surrounding the subject and consecutive assessments made by EU bodies[2] highlighting the opportune and "fit for purpose" nature of existing regulations. Nevertheless, as recent international political events and strategic security shifts have shown, it is submitted that history is very much alive and in a creative effervescence giving ample reasons for reflection.[3] *Mutatis mutandis*, it is the basic understanding and humble contention of this thesis that the normative substance of the legal framework for defence and security procurement in the EU merits additional consideration in order to assess its overall aptitude to serve its goals. For this reason, the research presented here is predicated on the assumption that additional scrutiny of several key legal institutions and instruments provided by the Defence Directive can supply relevant insights as to their limitations and potential avenues for reform. To this end, the analysis

[1] In this context, the expression borrows the general and approximate understanding attributed to the core hypothesis in Francis Fukuyama's "The End of History and the Last Man" (1992).

[2] Most recently by the European Parliament, in 'Report on the implementation of Directive 2009/81/EC, concerning procurement in the fields of defence and security, and of Directive 2009/43/EC, concerning the transfer of defence-related products (2019/2204(INI))' <https://www.europarl.europa.eu/doceo/document/A-9-2021-0025_EN.pdf> accessed 30 March 2022.

[3] In the context created by the military aggression of the Russian Federation on the territory of Ukraine, 11 prominent academics and analysts from the field of defence and security co-signed an op-ed, which highlighted the limited progress towards the strategic autonomy of the EU and the consolidation of the Defence and Technological Industrial Base. To reverse this trend, they argued that "if Europeans are to provide the lasting means of protecting their interests and their continent, they do not have a choice: they will need to stand side by side, but invest together"; see A group of defence advisers, 'To face the Russian threat, Europeans need to spend together – not side by side' (*Euractiv*, 19 April 2022) <https://www.euractiv.com/section/defence-and-security/opinion/to-face-the-russian-threat-europeans-need-to-spend-together-not-side-by-side/> accessed 29 April 2022.

is built on the solid foundations of existing research, to which references are often made also in situations where additional background information on important issues is warranted but not directly examined in this thesis.

Against this backdrop, this research intends to contribute to the body of existing knowledge with a comprehensive legal perspective, attuned to current and future policy developments, which focuses on a critical re-evaluation of the legal instruments and the context of procurement for defence and security in the EU, seen as an important part of the legal framework on which EU defence and security integration is constructed. It is also within the scope of this research to assess whether a continued harmonised normative approach is beneficial in terms of medium and long-term EU policy for defence and security integration.

Thus, building on the understanding that the lack of political will[4] is the underlying obstacle for concrete progress towards the objectives of EU defence integration in general, the thesis does not purport to analyse the issue in terms of causal determinants. Therefore, the perspective used here is utilitarian in nature, seeking to ascertain whether the existing normative instruments are adequate in a situation where political will would no longer be an issue.

The ambition of this thesis in terms of adding something new to the existing body of knowledge is predicated on the following goals: (1) to identify and explain the main findings of existing doctrine, set against the backdrop of the most recent developments in the policy and strategic environments relevant for the scope of Defence Procurement; (2) extract the fundamental concepts that describe and define the ecosystem surrounding the Defence Directive, as provided in doctrine, case law, normative and policy documents; (3) analyse whether said concepts provide valid arguments in support of the contention that the normative content of the Defence Directive should be re-evaluated (and in which respects).

In this context, the overarching objective of the research is to ascertain whether further EU regulation of defence and security procurement is a valid solution for achieving the objectives set forth within the context of defence integration at EU level and, if so, what legal initiatives should be pursued. This general inquiry is divided into several complementary or specific subject-oriented questions.

Following the red thread stemming from the general and auxiliary research questions, the thesis has a standard threefold design (introduction, main subject, conclusions), with a complementary section on the results of brief empirical research (interviews) conducted by the author. The thesis is thus divided into seven chapters, each of them in turn branched into sections and subsections, as appropriate.

Chapter 1 sets the scene of the research thesis, by providing an introduction into the context of the topic, the fundamental research hypotheses and questions. Furthermore, it provides details as to the sources used for documentation and the methodology employed.

[4] The issue of the absence of political will as the main obstacle for defence integration (including in terms of an effective application of the Defence Directive) is widely acknowledged. A recent example is the explicit reference in this respect made by the President of the European Commission, in the 2021 State of the Union Speech, see '2021 State of the Union Address by President von der Leyen: Strengthening the Soul of our Union' (Strasbourg, 15 September 2021) <https://ec.europa.eu/commission/presscorner/detail/ov/SPEECH_21_4701> accesed 29 April 2022.

Chapter 2 deals with the fundamental legal and policy-related concepts used throughout the thesis. It first provides a succinct overview of current perspectives on the scope and reach of the concept of "defence and security". Secondly, the chapter presents the regulatory context of the EU Common Security and Defence Policy, tackling the provisions of the Fundamental Treaties, as well as indirect secondary legislation and position papers published by the EU institutions on the subject. Furthermore, it provides insight into the NATO Smart Defence Policy, as the main instrument for defence procurement integration in the Euro-Atlantic perspective, and the basic distinctive features of public procurement for defence and security.

Chapter 3 reaches the main subject matter of the thesis and it sets the scene for further reflections on the primary and complementary research questions. This chapter provides a contextual overview of the various existing instruments that have been and are currently used to integrate defence procurement, starting with the framework for intergovernmental cooperation under the EU Treaties and the initiatives coordinated by the European Defence Agency and continuing with the World Trade Organization's Agreement on Government Procurement, as well as the Letter of Intent Framework Agreement.

The fourth and fifth chapters form the main corpus of the thesis in substantial terms, as they provide an in-depth critical analysis of the Defence Directive. Thus, Chapter 4 deals with the fundamental legal concepts enshrined in the Directive, such as the tailored procurement and review procedures, and the impact of EU/NATO mandatory standards and requirements on establishing qualification and selection criteria for the participants in public procurement procedures. Further on, Chapter 5 tackles the inherent limitations of the Defence Directive, highlighting the essential mechanisms conceived to boost harmonised procurement in the EU Member States and their perceived shortcomings: the scope of the Directive, security of information provisions and exclusions.

Chapter 6 is focused on providing insight into evolving policy and strategic concepts and initiatives in the field of defence and security integration at the EU level and the relevance of an EU-wide legal framework for procurement in this field. To this end, the intricacies of the Permanent Structure Cooperation (PESCO) framework are analysed, complemented by a focus on the current context for joint initiatives in cybersecurity and artificial intelligence. Building on knowledge and conclusions stemming from the previous chapters, it aims to provide information and data creating the context in which to further ascertain whether the existing legal framework is sufficient and how/if it should be further developed.

Chapter 7 is reserved for a synthetic presentation of the conclusions resulting from the various stages of the research and detailed argumentation pertaining to the answer(s) provided for the main research questions. Furthermore, the chapter provides a brief a prospective analysis of the possible ramifications of said conclusions.

When designing the main guidelines of the methodological approach in this thesis, the author was mindful of the pervasive trap of automatically assuming that the "societal" problem at the core of the research is a legal (normative) issue. In this respect, due regard has been given, firstly, to the fundamental issue of political will underpinning progress in the consolidation of defence industry and, implicitly, in the coordination of defence procurement rules and practices. In addition, the author noted the merits of the view that the limited results in terms of the consolidation of the defence procurement market under EU rules are an issue pertaining to the deficient implementation and enforcement of existing regulations, rather than the content and quality thereof. Against this backdrop, it was submitted that a discussion on the potential of existing rules to answer practical

conundrums is capable of providing relevant insight and potentially generating novel perspectives without ignoring the referenced realities.

In principle, the analysis was performed based on a two-way process, which combined descriptive and philosophical research with a critical account of the relevant provisions of the Defence Directive. In this respect, the normative text of the Directive was examined directly, with references to evaluations and commentaries made in doctrine, where available. This approach aimed at providing contextual information to better understand the scope of the hypothesis and to identify and understand the key issues that underscore the conclusion that the existing rules are not adequate in respect to their objective.

The philosophical approach was used to define and describe key legal institutions and policy and/or strategy related concepts which served a twofold purpose: (1) to justify the evaluation that existing norms are not appropriate and (2) to provide a minimal frame of reference to be used in *lege ferenda* exercises[5] (drawing from doctrine on classic procurement, the case law of the Court of Justice of the European Union and, where relevant, the jurisprudence of the European Court of Human Rights).

The extensive contribution that the CJEU has brought to the development of the EU legal framework is an important component of the conceptual perspective on which the research is based. Building on this axiomatic principle, an openly creative approach towards normative solutions was adopted when dealing with specific topics throughout the thesis, as a tool intended to serve two overarching purposes: (1) to foster original legal reasoning and (2) to curb to some extent the natural inclination to "recycle" the products of the CJEU and EU institutional policy makers, a danger rightfully outlined by doctrine.[6]

Relevant statistical data has been readily available in recent studies published either by the European Parliament,[7] the European Commission[8] or by individual research organisations.[9] Thus, no further in-depth survey-based empirical research was needed. Additional insight was provided

[5] See, mainly, Section 4.2.5. of the thesis.
[6] Rob van Gestel and Hans-Wolfgang Micklitz, 'Why Methods Matter in European Legal Scholarship' (2014) 20 European Law Journal 299, 300.
[7] Isabelle Ioannides, 'EU Defence Package: Defence Procurement and Intra-Community Transfers Directive. European Implementation Assessment' [2020] European Parliamentary Research Service 52 <https://www.europarl.europa.eu/RegData/etudes/STUD/2020/654171/EPRS_STU(2020)654171_EN.pdf> accessed 29 April 2022; European Parliament – Committee on the Internal Market and Consumer Protection, 'Report on the implementation of Directive 2009/81/EC, concerning procurement in the fields of defence and security, and of Directive 2009/43/EC, concerning the transfer of defence-related products (2019/2204(INI))' <https://www.europarl.europa.eu/RegData/etudes/STUD/2020/654171/EPRS_STU(2020)654171_EN.pdf> accessed 29 April 2022.
[8] European Commission, 'Commission Staff Working Document: Evaluation of Directive 2009/81/EC on public procurement in the fields of defence and security, Brussels, 30.11.2016, SWD(2016) 407 final' <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2016:0407:FIN:EN:PDF> accessed 29 April 2022.
[9] Kévin Martin, 'Observatoire directive MPDS. Bulletin no. 2/2019' [2019] Fondation pour la Recherche Stratégique <https://www.frstrategie.org/sites/default/files/documents/specifique/Bulletin%20n2%202019.pdf> accessed 29 April 2022; Hélène Masson and Kévin Martin, 'The Directive 2009/81/EC on Defence and Security Procurement under Scrutiny' [2015] Fondation pour la Recherche Stratégique <https://www.frstrategie.org/sites/default/files/documents/publications/recherches-et-documents/2015/201503.pdf> accessed 29 April 2022.

by interviews with relevant government stakeholders in Romania, on select issues relevant for the research.

The choice of the research methods and, concurrently, the overall theoretical approach of the thesis – which translates into "doctrinal legal research" – were predicated on the knowledge that the latter is especially relevant for the EU ecosystem precisely through its focus on interpretation, systematisation and comparative approach. In this respect, considering the "melting pot" of 27 different legal systems and cultures, with the added complexity of an overarching supranational construct, doctrinal scholarship remains an important contributor to the evolution of European law.[10]

The literature review and conceptual analysis provided in Chapter 2 have outlined the extensive and complex relationships defining the notions of defence and security, across a range of domains, from the classic approach on national defence to cutting-edge developments in cyber and space security. Furthermore, the field specific dynamics are characterised by fast-paced changes with profound implications.

The results of the legal and policy analyses conducted in Chapter 2 and reiterated throughout the thesis – especially in Section 4.3. and in Chapter 6 – have confirmed the validity of the perspective defined by liberal intergovernmentalism as a descriptor of choice for the European integration process. It is especially salient in the field of defence and security procurement, which is shaped by the fundamental role of states and the subsidiary contribution of supranational actors, as well as by economic interdependence and its role in national preference formation and interstate negotiations.

The concept of EU security entails both protecting and projecting. The latter translates into the need to strengthen the EU's crisis management mechanisms, i.e. endowing them with the necessary civil and military capabilities while also ensuring interoperability with NATO infrastructure and assets. Reaching this outcome demands coordinated efforts to restructure the Union's defence sector into a synergistic and cost-effective system (this is where the regulation of defence procurement gains relevance). There is little question that, since the Lisbon Treaty's fundamental amendments, security and defence have become the new front lines of the European project.

It is against this backdrop that the research has shown how the particular area of law dealing with defence and security procurement is notably reliant on considerations pertaining to the strategic and security environments in terms of enforcement and regulating procedures. Thus, when understood in the context of defence and security, public procurement emerges from its fundamentally legalistic conceptual framework and inherits a blend of mechanisms for functioning and evolution derived from more disruptive fields such as politics, national security, strategic foresight, and industrial planning, among others.

The research presented in Chapters 2 and 3 has underscored the fact that the intergovernmental approach on policy coordination is a valid and effective avenue for promoting and, admittedly, achieving deeper integration. It is also capable of generating binding rules, albeit less effective than normative acts *per se*, which only result from the assigned competence of the EU to legislate in specific fields.

[10] Rob van Gestel and Hans-Wolfgang Micklitz (n 6) 294.

Furthermore, the research has shown how continuous interaction between various economic and administrative actors, national and international, slowly determine new decision-making paradigms. This conclusion is especially relevant when discussing the future of cross-border collaborative defence procurement.

From a constitutional perspective, the Treaty provisions do not provide enough normative substance to enable a stand-alone defence integration mechanism to emerge. Nonetheless, their most obvious flaw (a lack of clarity and concreteness) can be their most valuable asset. Thus, with enough political will and strategic discourse, the EU's many stakeholders may exploit regulatory lacunae and profit from a more flexible approach.

Furthermore, the various instruments devised and progressively implemented at EU level – PESCO, EDA codes, EU military staff, among others – have proven able to steadily push for reform and for the adoption of consolidated cooperation mechanisms that have filled the gaps in the Fundamental Treaties leading to substantive second-tier EU legislation (such as the two Directives in the 2009 defence package). This is the trickle-down effect in action.

Against this backdrop, the EU Strategic Compass published in 2022 sets the shared strategic vision and potential avenues for action for the next decade. A key ingredient is the joint development, procurement and operation of military equipment – an ambitious goal that has been impeded by the long-standing fragmentation of the defence markets among Member States. To address this problem, the EU has adopted many cooperation tools, including the Capability Development Plan (CDP), PESCO, CARD, and the European Defence Fund (EDF).

The constantly shifting security scenario in the EU's Eastern neighbourhood has affected and will continue to influence the agenda of the Strategic Compass. The conflict in Ukraine is a very important security trigger with unprecedented disruptive power, not witnessed since 1945. Concurrently, it is also a source of fresh political and strategic will for the EU and Member States to seek and accomplish incremental progress towards an EU-wide Defence Union. At the same time, the Declaration underscores the agreement of the Member States to increase defence expenditures, with a focus on the collaborative development of technology, joint procurement of defence capabilities as well as the development of the defence industry, with a focus on SMEs.

In this respect, research has revealed *inter alia* that, although the Defence Directive's special regime is altogether better suited to meet the needs of contracting authorities in the respective fields in a general sense, the most recent Directives in classical procurement are better equipped to provide much needed flexibility in key areas where the Defence Directive is silent.

The research and analysis further focused on the main legal instruments provided by the Defence Directive in terms of review and remedies, which dovetail the two fundamental tenants of access to sensitive (classified) information and security of supply (in relation to the impact of delays in the procurement procedure on defence/security interests). In this respect, the current provisions of the Defence Directive pertaining to the way review and remedies work afford a large margin of appreciation to Member States, allowing for normative solutions that might differ widely from jurisdiction to jurisdiction, causing uncertainty and mistrust. The same margin allows Member States to shelter behind their national transposition instruments in order to discourage or even successfully resist enforcement actions by the Commission. Thus, the general enforceability of the Directive would be improved by a more precise and pragmatic regulation of a customised system of review and remedies for military and security procurement.

Moreover, the research demonstrated that alternative normative instruments could be designed and implemented to protect the sensitive character of defence and security procurements while still satisfying the required minimal criteria of publicity and competition. In this respect, it was submitted that, in defence and security procurement, ineffectiveness should only be used as a last option, where a contracting authority has purposefully disregarded the rules or inadequately applied the instruments at its disposal. This should, to some extent, mitigate the strong deterring role of ineffectiveness which pushes contracting authorities into (successfully) invoking article 346 TFEU for going completely outside the EU procurement framework. This notwithstanding, the analysis conducted on this issue has also established that any regulations limiting access to justice in defence procurement matters must be explicit, proportionate and predictable.

In relation to the use of standards in defence procurement, it is submitted that imposing national models would become increasingly difficult once EU-wide standards would be established and implemented across all relevant fields (especially considering the order of precedence provided by the Defence Directive). This issue is addressed in part by developing an internal demand or acceptability for standardising from the very start of the process of product research and development – with the extensive contribution of projects carried out under PESCO and the EDF.

On the issue of security of information, the research has highlighted *inter alia* that there are adequate grounds to infer that the EU has established a proprietary and functional system for dealing with classified material, spanning both institutional actors and relations with member states. Building on these findings, the research further outlined that an EU-wide integrated system for managing classified information would better serve the interests of all stakeholders. It would address basic concerns like security screening and permission. A common approach would also build a framework that would meet the contracting authority's security demands by providing a safe and unitary environment for managing sensitive (i.e. classified) information. Economic operators would also benefit from a consistent set of regulations and processes, which would provide predictability and reduce risks and administrative expenses. To this end, either the one-fold or the two-fold solutions presented in Section 5.2.5. have been proposed as potential instruments for providing the required institutional framework.

Article 346 TFEU demonstrates the national governments' persistent commitment to maintaining prompt and unflinching authority over (important) issues of national security. To this end, the analysis has shown that the way in which specific notions such as "public security" or "national security" are defined and understood by the relevant stakeholders has a direct influence on the effectiveness of the Treaties' provisions. This notwithstanding, the research has also shown that the existing legal framework provides enough margin of appreciation to the Member States and their national authorities to use their prerogatives in handling classified information in order to apply preference-based procurement practices, with Article 346 exemptions as the definitive example in this respect.

Furthermore, the research has revealed pertinent reasons to expect that PESCO, in combination with complementary instruments, will shape the way defence and security procurement will be done in the EU in the medium to long term, with collaborative cross-border projects serving as a key enabler. An additional benefit of this enhanced cooperation framework, which is supported by collaborative procurement programmes, is that it can encourage the development of innovative legal instruments capable of overcoming the inherent administrative protectionism and normative nationalism that have stymied progress toward true market integration goals. These phenomena are a manifestation of the trickle-down effect outlined in Section 3.2.

Thus, drawing on the research conducted in Section 6.2., it is submitted that collaborative cross-border procurement – especially in the fields of cybersecurity and AI – should be included in a *sui generis* legal and procedural framework based on rules comparable to those provided in the Defence Directive. A coherent and effective framework is required to push for technology adoption across Member States through joint procurement or any other overarching strategic cooperation effort. That is why, in order to limit some of the dangers and, more significantly, to relieve the fear of the key stakeholders, a predictable administrative framework is required. The research conducted in respect of the joint procurement framework implemented for medical supplies (the JPA) has highlighted various normative solutions and instruments that could fill the administrative void identified in relation to collaborative procurements in defence and security.

It is quintessential to note, in this context, that doctrine has correctly defined a clear red line that should not be crossed simply for the sake of developing trans-EU collaborative procurement. This red line refers to the fundamental values of public law that are common to the legal traditions of the Member States and indeed framed according to the EU's principled approach: transparency, accountability and effective judicial review.

As explained in Section 1.2., the research at the heart of this thesis set out to provide pertinent ideas for advancing the existing debate on the effectiveness of the legal regime for defence and security procurement in the EU. Subsequently, the research was intended to contribute to the assessment on the usefulness of a continued harmonised normative approach in terms of medium and long-term EU policy for defence and security integration through public procurement.

Thus, as an overall conclusion of the thesis, a specific EU-wide legal framework for defence and security procurement remains a necessity in order to achieve the sum of defence and security integration objectives set out by the EU and its Member States. The incremental progress of defence cooperation mechanisms in the past two decades, coupled with the current compelling impetus generated by the volatile security context in the EU's vicinity, have pushed the idea of a functional European Defence Union at the centre stage of the EU integration process.

While the necessary policies are in place and funding has been ensured at an unparalleled level, the persistent mistrust of national authorities cannot be defeated without a clear and predictable normative framework providing the instruments needed by the national authorities to engage in enhanced cooperation while balancing out their security needs.

Furthermore, as shown in the discussions on exclusions and remedies provided by the Defence Directive or security of information issues, the necessary degree of clarity and predictability cannot be ensured without a harmonised approach, using a single set of rules devised and unanimously agreed upon by the Member States. For this reason, the answers to the questions of whether harmonization is in the general interest of defence and security procurement and whether further normative intervention represents an appropriate solution are both in the affirmative.

While some of the main limitations of the existing legal instruments in the field of defence procurement integration have been addressed in this thesis (e.g. provisions on reviews and remedies, fragmented security of information solutions, exclusions from the scope of the Defence Directive et.al.), the answer to the audacious question on their overall appropriateness remains divided. Thus, it is acknowledged that the research conducted in the ambit of the thesis has proved incapable of providing a definitive and clear-cut answer as to whether the Commission's assessment confirming the fitness of the Defence Directive stands on valid considerations. Thus,

absent definitive arguments to the contrary and in the face of the results of various empirical studies cited throughout the thesis, it is submitted that the debate is not closed.

This notwithstanding, the normative limitations that have been identified and examined provide pertinent arguments in support of the contention that the debate is valid and should be pursued further on. Furthermore, it should be noted that the assessment made by the Commission – and on which the relevant question of this thesis is predicated – was made in consideration of the context provided by the recitals of the Directive (dating back to 2008/2009), complemented by the approach of the EU' Global Strategy (launched in 2016). While not contesting the validity of that contextual approach, it is nonetheless submitted that the current strategic and security backgrounds suggest that, ultimately, a substantial update of the normative solutions provided by the Defence Directive would be in the benefit of the EU and its Member States. In this respect, the in-depth policy analysis conducted in this thesis has demonstrated that recent evolutions in the geopolitical and security scenarios have generated a paradigmatic shift in the EU's approach towards defence integration, with enhanced efforts to achieve capability development and force readiness at the core. This perspective has been validated in the Strategic Compass of the EU, published in March 2022. Since, as shown, issues pertaining to equipment interoperability, sustainable supply chains and industrial consolidation are inherently linked to procurement practices, it is thus submitted that an up-to-date and streamlined legal framework is a necessity. It is exceedingly relevant for the achievement of the enhanced integration goals pursued through PESCO, EDF and collaborative cross-border initiatives.

It follows that an overhaul of the Defence Directive is needed in order to properly cater to the new ambitions and future projects of the EU in the field of defence and security. As stated *supra*, the innovations should cover joint procurement, by providing clear and effective regulations. In this respect, the EU (through the EDA) should take centre stage in coordinating joint R&D and joint procurement projects.

It is further submitted that horizontal cooperation among national administrations across the EU, fostered by PESCO and EDF initiatives, generates a continuously evolving transformation process. This process comprises policies, communication and coordination channels, decision-making mechanisms *et alia* that will enhance defence integration, with procurement of the relevant equipment at the very core. All these organic developments inherently demand rules of functioning. These rules will appear and evolve regardless of formal intervention in this respect. That is why it is of the utmost importance that the EU adopts a proactive stance in this respect, if it seeks to avoid regulatory lacunae that would affect the integration in the EU landscape. Action should thus focus on the creation and gradual enforcement of normative provisions, especially ones that will effectively cater for the needs of stemming from PESCO and associated initiatives.

In conclusion, a regulatory overhaul based on innovation is a valid approach, which should be followed on three main strands: (1) a significant re-examination of the normative solutions provided by the Defence Directive in a new iteration, along the lines discussed in this thesis, together with (2) the implementation of a unitary EU-wide mechanism for security of information, catering for all potential needs of the Member States in this respect, and (3) a *sui generis* normative framework providing original rules for collaborative cross-border R&D projects with a procurement component, modelled on the essential principles and values established in the Fundamental Treaties.

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