

More Information

INDEX

A400M airlifter, 92 OCCAR as, 183 programme management entities as, administrative activities, 83 aeronautical and missiles programmes, 123-125, 129-130 centralised purchasing activities, Airlift Management Programme, 118 63 - 65Albania, 193 CEPMO. See Central Europe Pipeline Alpha Jet programme, 114–115 Organisation ancillary purchasing activities, 65 CNAD. See Conference of National Arms Export Control Act, 110–111, Armaments Directors Code of Best Practice in the Supply 113 associations, 62 Chain, 56 Austria, 193 Code of Conduct, 56 Cold War, end of, 11 collaborative defence procurement Belgium, 91, 92, 104, 116-117 BENESAM (Belgium-Netherlands compliance with EU law, 213–216 Cooperation), 116–117 in awards of contract by bodies governed by public law, 61 programme management Boxer armoured vehicle, 92 entity, 215-216 Bulgaria, 104, 118 in drafting of international agreements, 214–215 C-17 strategic transport aircraft, 118 in launching and assigning Canada, 193 collaborative programme, Capability Development Plan (CDP) 213-214 aims of, 21 cost benefits of, 15-16 definition of, 2–3 **European Armaments Cooperation** downsides of, 5 Strategy and, 36, 204 European Defence Agency and, EU laws and, 5 general transfer licence and, 75 201-202 Central Europe Pipeline Organisation increasing efficiency of, 201–211 decision-making, streamlining, (CEPMO), 102 Central Europe Pipeline Programme, 208-210 financing and, 204–207 central purchasing bodies, 63-65, integrated management 69 - 70structures, 207-208, 224 definition of, 129 monopoly creation, avoiding, EDA as, 189 210-211 international organisations as, 123 preparation phase, 201-204



More Information

INDEX 239

initiation phase, 223 initiatives to improve, 33-36 by international organisations, 91 - 108European Defence Agency, 95 - 101NATO Support and Procurement Organisation, 101-108 interoperability of Member State's defence equipment and services, 225 legal improvements of, 212-221 coherent legal framework, 212-213 compliance with EU law, 213-216 EU public procurement law, clarifications of, 218–221 juste retour principle and, 218-221 simplification of intra-EU transfers, 221 need for, 11-16 organisation of, 17-20 industrial structure, 18-20 intergovernmental cooperation, 17 - 18preparation phase, 223-224 procurement process, 21-32 award of contracts, 25–27 intergovernmental agreements, 22 - 25programme costs and funding, 27 - 30programme identification, 21–22 programme management, 30-32 requirement definition, 22–25 programme management entity in, 4,25-26common funding, 106 Common Military List, 74, 76, 131 Common Security and Defence Policy (CSDP), 17, 95, 207 Common Staff Requirement, 203-204 competition, obligation of, 45 Concessions Directive, 59, 72-73 Conference of National Armaments Directors (CNAD), 21, 34

contracting authorities concept of, 60 definition of, 123, 136 EU public procurement directives and, 43, 220 international organisations and, 163-164 Member States as, 123 contractors, 158 contracts award of, 25-27 between entities within public sector, 65, 126-127 in-house, 47-49, 70 non-commercial, 48 OCCAR's contract route, 184 public, 60, 121-123, 129 quasi in-house, 47 Court of Justice of the EU (CJEU), 154, 157, 165, 170, 219-220 cross-border interest, 42 CSDP. See Common Security and Defence Policy Cyprus, 193 Defence and Security Directive, 68-72,

189-192 applicability and scope, 68-69 applicability of, 129-133 central purchasing bodies, 69-70, 129 - 130cooperative programmes exclusion, 176 EDA as central purchasing body under, 189 European public bodies and, 219 exclusions, 70-72 government to government exclusion in, 130-132 in-house contracts exemption, 70 international agreements with third counties exclusion, 175 Member States and, 166-169 cooperative programmes exclusion, 167-169 international agreements with third countries exemption, 166-167



More Information

240 INDEX

Defence and Security Directive (cont.) international organisations exclusion, 167 materials and personal scope, 166 OCCAR as central purchasing body under, 183 overview, 59 personal scope, 174–175 programme management entity, 129 - 130public contracts in, 129 specific exclusions, 132-133 defence articles, 110 defence expenditures in 2005-2013, 1 collaborative, 3 government-to-government, 4 defence goods, transfer of, 74-76 defence procurement collaborative. See collaborative defence procurement defined, 1 economic impact of, 1 EU Treaties and, 41-57 Public Contracts Directive and, state-to-state cooperation in, 109-118 defence procurement organisations, 124 defence services, 110 Department of Defence, 114 Department of Defence FAR Supplement (DFARS), 111 Diehl BFT Defence, 115 Direct Commercial Sales (DCS), 111 Directive 2004/18/EC. See Public Sector Directive Directive 2009/81/EC. See Defence and Security Directive Directive 2014/23/EU. See Concession Directive Directive 2014/24/EU. See Public Contracts Directive Directive 89/665/EEC. See Remedies Directive Directives Concessions, 59, 72–73

Defence and Security. See Defence and Security Directive obligation to implement, 144-145 overview, 58-59 Public Contracts. See Public Contracts Directive Public Sector, 58, 100, 190, 191 Remedies, 59 domestic law, 81 domestic public procurement law, 149-153 dual-use goods, 76 economic operator, 60, 121 EDA. See European Defence Agency EDEM. See European Defence **Equipment Market** EDTIB. See European Defence Technological and Industrial Effective Procurement Methods initiative, 203-204 Estonia, 104, 118 EU law compliance with, 213-216 in awards of contract by programme management entity, 215-216 in drafting of international agreements, 214-215 in launching and assigning collaborative programme, 213-214 exemptions, 216 international agreements and, 139 - 143international organisations and, 153 - 155obligations of EU Member states and, 161-170 obligations of international organisations and, 153-161 EU Member States. See Member States EU public procurement directives, 155-157, 218-221 EU Treaties, 41-57 applicability of, 41-44, 134-136 EDA procurement rules and, 192



More Information

INDEX 241

EU Member States and, 224 exemptions from, 49-57, 165, 170-172, 177 Article 345 TFEU, 51-55 European Defence Agency initiatives, 55-57 general principles, 49-51 in-house contracts exemption, 46 international organisations and, 153-154, 158-161 principles, 169-170, 176 equal treatment, 44 judicial protection of rights, 46 mutual recognition of technical standards and licenses, 45-46 non-discrimination on grounds of nationality, 44 obligation of competition, 45 obligation of transparency, 44-45 proportionality, 46 procurement rules and, 157, 169-170 public procurement law and, 41 rules and generic principles, 215 substance, 44-47 **European Armaments Cooperation** Strategy aims of, 36, 202, 204 EDTIB and, 210 European Defence Agency (EDA), 95 - 101administrative and operational expenditures, 96-97 Capability Development Plan (CDP), 201-202, 204 as central purchasing body, 189 Chief Executive, 98 Code of Conduct, 56 Common Staff Requirement, 203-204 creation of, 17, 35-36 Effective Procurement Methods initiative, 204 EU Treaties exemptions, 55–57 financial and procurement rules, 100 financing of, 99 harmonisation of requirements, 202-203

Head of the Agency, 97 immunities, 99-100 legal personality of, 98-99 nature and role of, 95-97 OCCAR and, 96, 203, 208 organisation of, 97-98 participating member states, 96 privileges, 99-100 procurement rules, 189-192 programme identification, 22 programme management entity and, Programme Preparation Phase model, 203f projects and programmes, 187-188 Category A, 188 Category B, 188 rule-making within, 100-101 rules for projects and programmes, 187-192 general rules, 188-189 Steering Board, 98, 100 European Defence Equipment Market (EDEM), 2, 210 characteristics of demand-driven, 12 industrial concentration, 13 industrial fragmentation, 12-13 requirement for supply security, 14 cross-border competition in, 56 European Defence Industry Restructuring Framework Agreement (EDIR-FA), 35 European Defence Technological and Industrial Base (EDTIB) EDIR-FA and, 35 **European Armaments Cooperation** Strategy and, 210 inefficiencies of, 224 integration of, 16, 222 OCCAR and, 183 optimisation of, 13 reducing fragmentation of, 19 European Investment Bank, 159, European public body, 69, 130, 219 European System of Accounts, 206



242

More Information

INDEX

exemptions in-house contracts EU law, 216 exemption, 47–49, 70 from EU Treaties, 49-57, 165, quasi, 47 intergovernmental agreements, 22-25 170-172, 177 intergovernmental cooperation, 17-18, Article 345 TFEU, 51-55 European Defence Agency initiatives, 55-57 international agreements general principles, 49-51 constitutive, 78-80 drafting of, 214-215, 223-224 procurement rules, 177 in-house contracts, 46, 47–49, 70 EU laws and, 139-143 international financing exclusion, juste retour principle, 49, 177 165-166 1958 list of EU Treaties exemption, international institutional law, 77 VAT (value-added tax), 206-207 international law, 171-172 export of defence goods, 74 customary, 77 public, 80-81 international organisations, 77-87 F-16 combat aircraft, 113-114 as central purchasing bodies, 123 Federal Acquisition Regulation (FAR), collaborative defence procurement 111 Finland, 91, 104, 118, 193 by, 91-108 Foreign Military Sales Act, 113 European Defence Agency, 95–101 Foreign Military Sales (FMS), NATO Support and Procurement Organisation, 101-108 110-114 definition of, 77-78, 162, 163, 218 France, 34, 75, 91, 92, 95, 104, EU laws and, 153-155 114-115 Franco-Italian multimission frigates, EU Treaties and, 134 financing of, 84 92 frigates, 92 immunities, 84-87 functional necessity principle, 86 international agreements, 78–80 legal personality of, 80-81, 134-135 general transfer licence, 75 under domestic law, 81 Germany, 34, 75, 91, 92, 95, 104, 114, under public international law, 80-81 115 global balance principle, 183 obligations of, 153-161, 224-225 global return principle, 190 privileges, 84–87 government, definition of, 72 procurement rules of programmes under, 149-172, 224-225 Greece, 115 domestic public procurement law, Hamburg doctrine, 49, 65, 127, 135, 149-153 136, 176 public contracts and, 122 Hungary, 104, 118 rule-making powers, 81-83 intra-EU trade, 158 Iceland, 193 intra-EU transfers, 221 immunities of international Ireland, 193 organizations, 84-87 IRIS-T air-to-air missile, 115 Iron Curtain, fall of, 11-12 Independent European Programme Istanbul Co-operation Initiative, 105 Group (IEPG), 33 Italy, 34, 91, 92, 95, 115 industrial structure, 18-20



Index

More Information

INDEX 243

Jaguar aircraft, 115	OCCAR'S renunciation of, 183-184
joint funding, 106	procurement rules and, 26
Joint Organisation for Armaments	replacement of, 224
Cooperation (OCCAR), 91–95	work allocation and, 4, 19
aims, 91–92	work-sharing agreements and, 23,
annual budget, 92	28–30
Board of Supervisors, 92–93	
as central purchasing body, 183	lead nations, 24
European Defence Agency and, 96,	non-Member States as, 136, 225
203, 208	public contracts and, 122
Executive Administration, 93	States acting as, 222
financing of, 93–94	in state-to-state defence
founding of, 17, 34	procurement cooperation,
functions, 91–92	114–115
immunities, 94	leading authority, 135–136
legal personality of, 93	Letter of Offer and Acceptance (LOA),
Management Procedures, 95	111
Member States, 91, 181	Letter of Request (LOR), 111
operational expenditures, 92	life cycle, 68
organisation of, 92–93	Lithuania, 104, 118
participation by non-member states, 92	Luxembourg, 104
privileges, 94	Malta, 193
procurement rules, 182-186	matryoshka doll of legal relationships,
Programme Board, 182	4, 39–40
Programme Committee, 182, 184	participation in collaborative
Programme Decision, 182	programme
programme integration within,	Defence and Security Directive,
181–182	129–133
Programme Management	EU Treaties, 134–136
Authorisation, 182	Public Contracts Directive,
rule-making within, 94	121–128
rules for, 181–186	procurement rules of programme
tendering principle, limitations of,	management entity
185–186	international organizations,
oint procurement, 63–65, 125–126	149–172
<i>juste retour</i> principle	lead nations, 173–177
balancing of production, 196	relationship between participating
defence procurement and, 14–15	states
EDEM and, 12	international agreements and EU
EU law and, 142	law, 139–143
EU Treaties exemptions and, 49, 177	obligation to implement directives, 144–145
intergovernmental agreements and,	Mediterranean Dialogue, 105
115	Member States
justification for, 216–217	compliance with EU procurement
MOU of collaborative programmes	law, 213–214
and, 214	as contracting authorities, 123
	-



More Information

244 INDEX

Member States (cont.) Defence and Security Directive and, 166-169 cooperative programmes exclusion, 167-169 international agreements with third countries exemption, 166-167 international organisations exclusion, 167 materials and personal scope, 166 defence equipment procurement expenditures, 110 EU public procurement directives and, 155-157 EU Treaties and, 158, 160-161, 169-170, 224 Government-to-government exclusion, 131 international agreements, 144-145 legal personality of, 134-135 obligation to implement directives, 144-145 obligations of, 161-170 obligations of international organisations and, 153-154 as OCCAR Member States, 181 procurement rules, 215-216 Public Contracts Directive and, 161-166 international agreement exclusion, 162–163 international financing exclusion, 165-166 international organisation exclusion, 163-165 personal scope, 161–162 Memorandum of Understanding (MOU), 23-24, 79, 142, 214, 223-224 military equipment defined, 68 government-to-government exclusion in, 131 military offsets, 14-15 missiles programmes, 19 monopolies, 210-211 MOU. See Memorandum of Understanding

Multinational Fighter Programme (MNFP), 113-114 multinational funding, 106 NAC (North Atlantic Council), 101 NAHEMO (NATO Helicopter Management Organisation), 102, 208 NATO. See North Atlantic Treaty Organisation NATO Support and Procurement Organisation (NSPO), 101-108 Agency Supervisory Board, 103, 107, 193-194, 195 budget, 103 conferences, 193-194 financing, 106-107 functions and aims of, 102-103 immunities, 107 legal personality of, 105-106 mission and core activity of, 102-103 organisation of, 103-105 partnerships, 193-194 privileges, 107 procurement rules, 194-197 programmes, 193-194 rule-making within, 107 rules of, 193-197 subsidiary bodies, 101-102 NCIO (NATO Communications and Information Organisation), 102 Netherlands, 104, 116-117, 118 NFR (NATO Financial Regulations), 107, 194-197, 213 NH90 helicopters, 117 1958 list of EU Treaties exemption, 53, 69 non-EU Member States, 135, 158, 160, 216 North Atlantic Council (NAC), 101 North Atlantic Treaty, 101, 172 North Atlantic Treaty Organisation (NATO), 17, 34 Airborne Early Warning and Control Programme Management Organisation (NAPMO), 102, Airlift Management Organisation

(NAMO), 102



Inde

More Information

INDEX 245

Airlift Management Programme, collaborative programmes, 139 Communications and Information Organisation (NCIO), 102 Eurofighter and Tornado Management Organisation (NETMO), 102, 208 Financial Regulations (NFR), 107, 195, 213 Helicopter Management Organisation (NAHEMO), 102, Maintenance and Supply Organisation (NAMSO), 101, Partnership Programme, 105 Procurement, Logistics or Service Organisations (NPLSO), 101 programme management organisations within, 207-208 Science and Technology Organisation (STO), 102 smart defence concept, 117 Standardisation Office (NSO), 102 Strategic Airlift Capability, 118 subsidiary bodies, 101-102 Support and Procurement Agency (NSPA), 103-104, 196 Norway, 104, 118, 193 NPLSO. See NATO Procurement. Logistics or Service Organisations NSPA (NATO Support and Procurement Agency), 103-104, 196 NSPO. See NATO Support and

obligation of competition, 45 obligation of transparency, 44–45 OCCAR. See Joint Organisation for Armaments Cooperation OCCAR Convention, 91 oligopsony, 18 operational activities, 83 Ottawa Agreement, 105

Procurement Organisation

Partnership for Peace, 105

Phased Armaments Programming System (PAPS), 34 Poland, 104, 118 pooling and sharing concept, 117-118 principle of fair industrial return, 4 principle of functional necessity, 86 principle of speciality, 81 privileges of international organizations, 84-87, 159 procurement process, 21-32 award of contracts, 25-27 intergovernmental agreements, 22 - 25programme costs and funding, 27 - 30programme identification, 21–22 programme management, 30-32 requirement definition, 22-25 procurement rules Defence and Security Directive, 166-169, 174-176 EU law, 153-161 EU Treaties principles, 157 obligations of EU Member states and, 161–170 public procurement directives, 155-157 EU Treaties exemptions, 177 EU Treaties principles and, 169–170, European Defence Agency (EDA), 189-192 international organisations and, 149-155, 172 domestic public procurement law, 149 - 153*juste retour* principle and, 26 NATO Support and Procurement Organisation, 194-197 OCCAR, 182-186 of programme management entity, 149-172 of programmes managed by a lead nation, 173-177 Public Contracts Directive, 161–166, 173-174 Programme Board, OCCAR, 182

Programme Committee, OCCAR, 182,

184



More Information

246

-1-

programme management, 30–32 Programme Management

Authorisation, 182

programme management entities, 4 award of contracts by, 25–26

awards of contracts by, 215–216 as central purchasing bodies,

123–125, 129–130

public contracts and, 122

programmed costs and funding, 27–30

proportionality, 46

protectionist measures, 51

public authorities, 43, 220

public contracts, 60, 121–123, 129

Public Contracts Directive, 60-68,

173-174

Annex I of, 173

applicability of, 121-128

applicability to defence

procurement, 62–63

central purchasing bodies, 63-65

contracts between entities within

public sector, 65, 126–127

EDA procurement rules and, 190

EU Member States and, 161–166

international agreement

exclusion, 162–163

international financing exclusion,

165–166

international organisation

exclusion, 163–165

personal scope, 161–162

exclusions, 66–68

innovation partnership procedure,

191

international agreement exclusion,

174

joint procurement, 63-65, 125-126

material and personal scope, 60-62

overview, 58

personal scope, 173–174

programme management entity as central purchasing body,

123-125

public contracts and, 121–123

specific exclusions, 127–128 public procurement law, 41, 218–221

Public Sector Directive, 100

INDEX

article 10, 190, 191

article 14, 190

overview, 58

quasi in-house contracts, 47. See also Teckal doctrine

Remedies Directive, 59

research and development, 71, 210-211

Romania, 104, 118

rules, procurement

Defence and Security Directive,

166-169, 174-176

EU law, 153-161

EU Treaties principles, 157

obligations of EU Member states

and, 161-170

public procurement directives,

155-157

EU Treaties and, 157, 169-170, 192,

215

EU Treaties exemptions, 177

EU Treaties principles and, 169-170,

176

European Defence Agency (EDA),

100, 187–192

under international organisations,

149–153, 172, 224–225

international organisations and,

149-172

juste retour principle and, 26

Member States, 215–216

NATO Support and Procurement

Organisation, 194–197

NATO Support and Procurement

Organisation (NSPO), 194–197

OCCAR, 182–186

of programme management entity,

149–172

of programmes managed by a lead

nation, 173–177

Public Contracts Directive, 161-166,

173-174

safeguard clauses, 49

service concessions, 41

Slovenia, 104, 118

smart defence, 117



More Information

INDEX 247

Spain, 34, 91, 92, 115 speciality principle, 81 States, definition of, 60 state-to-state defence procurement cooperation, 109-118 BENESAM, 116-117 general principles, 109 lead nations, 114–115 pooling and sharing concept, 117-118 Sweden, 34, 104, 115, 118, 193 Teckal doctrine, 47, 63-65, 126, 134, 181 Tiger attack helicopter, 92 Transall C-160 (transport aircraft), 114 transfer of defence goods, 74-76 transparency, 44-45 Treaty on the Functioning of European Union (TFEU), 50 article 36, 50 article 45, 50 articles 51-52, 50 article 65, 50 articles 72-73, 50 article 346, 49, 51-55, 63, 68, 69, 70, 76, 143, 159, 170–171, 176, 177, 181, 182, 183, 184, 185, 190, 192, 214, 215, 224

article 347, 49
article 351, 139–140, 142, 169,
214
article 36, 68, 76
articles 51–52, 68
article 62, 68
defence procurement and, 1
Tripartite Minehunters Programme,
116
Turkey, 92, 193

ultra vires, 83
unilateral measures, 51
United Kingdom, 34, 75, 91, 95
United States
Arms Export Control Act, 110–111, 113
Foreign Military Sales, 110–114
in NATO Airlift Management
Programme, 104, 118
NSPO membership, 193

VAT (value-added tax) exemption, 206–207

Western European Armaments Group (WEAG), 33–34, 96, 185 work-sharing agreements, 23, 28–30, 182