EU Defence Fund for 2021-2027: main features and decision process

What does the draft Regulation says?

The main provisions of the draft Regulation for an EU Defence Fund are as follows:

- **The general objective of the Fund** is to "foster the competitiveness, efficiency and innovation capacity of the European defence industry", by "supporting collaborative actions and cross-border cooperation" and "fostering the better exploitation of the industrial potential of innovation, research and technological development". This is supposed to "contribute to the freedom of action of the Union and its autonomy";

- **A global budget of €13 billion over 7 years**, with a proposed distribution of €4.9 billion for Research projects and €8.1 billion for Development projects.

To note that as it will be a single fund for both types of projects, this share could be modified during implementation. Annual commitments will increase overtime, starting with €1.5 billion during the first 3 years, and then gradually increase up to €2.8 billion in 2027.

Beneficiaries of the EU funds could also ask for complementary funding from other -civilian- EU programmes in case their military projects cannot be 100% covered by the Defence Fund, something that is not authorised to human rights or development organisations for example...

- **Funding rate**: the general rule is that the Fund may finance up to 100% of the eligible costs both for Research and for Development projects, with 2 exceptions: limited to 20% for the development of system prototypes, and to 80% for activities relating to testing, qualification and certification.

However through bonuses (for projects agreed under PESCO or for the participation of SMEs and MidCaps),
this rate can go up to 50% for prototypes and up to 100% for testing, qualification and certification. As a comparison, human rights or development projects are usually funded with a 70 to 80% rate; only small grass-root organisations may exceptionally get up to 90%.

**Indirect costs:** a 25% flat-rate is provided to cover the indirect eligible costs, and could even go beyond that if in line with national practices. Moreover the use of single lump sums or contributions not linked to costs will be encouraged in order to reduce "administrative burden", that is financial checks.

This is the most favourable treatment ever granted to beneficiaries of EU funds even under the civilian research programme, and much more than what non-profit organisations receive: the flat-rate in human rights or development projects is 7% and the use of lumps-sums is extremely limited.

**Nationality of beneficiaries:** participants shall be established in and controlled by the Union or an associated country (currently Norway, Iceland and the Liechtenstein*). However, a derogation allows entities controlled by a non-EU/non-associated country to participate and receive EU funding, if "it is necessary for achieving the objectives of the action" and if this "will not put at risk the security interests of the Union and its Member States".

This general provision opens a rather easy avenue for non-EU companies to access EU funding. This derogation also applies to assets, infrastructure, facilities and resources used during the project. Lastly, entities located in a third country may also participate in a project but cannot receive EU funding.

**Consortium:** Projects should be submitted by a consortium of at least 3 legal entities established in at least 3 different EU/associated countries. This rule does not apply for prototyping, dissemination, networking and awareness-raising activities, nor activities related to disruptive technologies.

**What about exports?** Only the export of results directly generated by an EU-funded project may be subject to a certain level of control by the EC, which shall be notified of any transfer of ownership or grant of a licence to non-associated third countries. The EC cannot prevent such transfer to happen, but may ask for the reimbursement of the EU funding if the transfer "contravenes the defence and security interests of the EU". The export of goods and technologies further produced thanks to the results of EU-funded projects remains in the hands of the Member States.

**What type of activities and military technology will be funded?** The Fund will support actions covering both new and upgrade of existing products and technologies. The text also says that up to 5% shall be devoted to support disruptive technologies (defined as "a technology the application of which can radically change the concepts and conduct of defence affairs").

Apart from that, the draft Regulation remains vague on the type of military technology to be developed. The objectives and award criteria provide a general picture, with a focus on innovative/ground-breaking/novel defence products and technologies “presenting a significant advantage” and “contributing to competitiveness”.

Funded projects should also be in line with the Defence capability priorities agreed by Member States under the Common Foreign and Security Policy.

**Which weapons are explicitly prohibited?** The rules are similar to the ones under the EDIDP: "actions for the development of products and technologies the use, development or production of which is prohibited by applicable international law shall not be eligible".

Thus they don’t exclude R&D contributing to fully autonomous weapons: only a recital (less legal value than an article) mentions that the "eligibility of actions related to new defence products or technologies, such as those that are specifically designed to carry out lethal strikes without any human control over the engagement decisions, should also be subject to developments in international law."

**A new provision on ethical assessments** foresees that projects selected under the Fund should "comply with ethical principles and relevant national, Union and international legislation." Thus all submitted proposals should be screened in order to "identify those actions raising complex or serious ethics issues and submit them to an ethics assessment". Such screenings and assessments would be carried out by the EC itself, "with the support of experts on defence ethics". The EC commit to the transparency of the ethics procedures "as much as possible", but in parallel includes a
derogatory provision so as not to publish the list of independent experts to assist the programme implementation. Moreover the draft text does not include precise ethical benchmarks except a general reference to international law and to data protection...

Ethics checks could be carried out during a project implementation, and the latter could be terminated in case not being “ethically acceptable”. However this provision was already contested by the EP rapporteur, under the argument that this was an excessive level of uncertainty for the industry. Another key question is how the EC will select experts on defence ethics...

Among the main implementation aspects it is worth noting that the Commission plans to carry out the Programme directly for both Research and Development, thus stopping the current delegation to the EU Defence Agency for the Preparatory Action on Defence Research (PADR), and through implementing acts; that is decisions about annual work programmes and other related acts would be made without consulting the European Parliament, in derogation with the usual practices in EU funding programmes. This was already the case for the EDIDP but allegedly an exception because of the short time-frame to start the implementation. Now the exception becomes the rule, it seems that again MEPs have been fooled...

*Associated countries are the members of both EFTA (European Free Trade Association) and EEA (European Economic Area)*

The decision-making process

When the Parliament was discussing the Defence Industrial Programme (EDIDP) for 2019-2020, the lack of time for a proper debate was regularly pointed out. Critics were answered that the EDIDP was a “small” pilot programme, and that the real political debate could happen when considering the full Defence Fund for 2021-2027, as part of the larger discussion on the next EU budgetary cycle (2021-2027). However the decision-making process for this 7 years-long and €13 billion-worth Fund is even faster and less transparent than it was for the EDIDP:

The draft Regulation was released by the Commission on June 13. On July 18, just before the summer break, the recently nominated EP Rapporteur (Polish Conservative Krasnodebski), had already published a draft Report (probably a record in EP history). Most of the deadlines to submit amendments to the EC Draft Regulation in the relevant committees were set only 2 or 3 weeks after the EP work resumed late August, and “debates” were held early to mid-September. In practice the latter were short exchanges of views were the promoters of the Defence Fund were now pushing for a rapid adoption before May 2019, under the argument that this was just the continuation of an existing programme... The EP Committee leading the file, the Industry and Research Committee (ITRE), is to vote its Report on November 21, less than 6 months after the publication of the draft Regulation...

And at Member States level the lack of transparency is just blatant: as for the EDIDP, the draft Regulation for the Defence Fund is discussed by a special Friends of the Presidency Group, on which no public information is provided at all... However the adoption of the Member States position planned for November 12 was apparently postponed. Instead, on November 19 the Foreign and Defence Ministers will have a political debate on the different external and defence related budget lines of the next EU budgetary cycle, including in particular the Defence Fund.

The adoption of the Defence Fund is being disconnected from the global discussion about the next EU multi-annual Financial Framework. It would be another dramatic signal to make a €13 billion gift to the arms industry without having a clue of what the global EU budget will look like, and whether Member States will at least increase their national contributions to the EU budget to somehow limit the diversion of funds from civilian objectives to weapons.

If you’d like to know more about the draft Regulation provisions, please contact Laetitia for a detailed fact-sheet, or read the updated Online Information Tool.

Links to the main documents

Proposal for a Regulation establishing the European Defence Fund
EP Committee draft Report, and Procedure File
Links to interesting news/articles

➢ interesting articles on discussions about AI and autonomous weapons at EU level
By PETER TEFFER, EUObserver

"Two expert groups have been set up by EU institutions to discuss artificial intelligence (AI) - but they do not talk to each other, leading to the risk of duplication or even that they come up with conflicting results."

The first is the High-Level Expert Group on Artificial Intelligence, set up by the European Commission. It "has been tasked to produce draft ethical guidelines for developing AI, as well as recommendations for whether to adapt or introduce new legislation, and investment recommendations." The EC should put forward an EU Strategy on Artificial Intelligence the European Commission in November.

Read more: 'Dual EU 'expert groups' on AI risk duplication'.

The second is the Global Tech Panel, set up by EU diplomatic service, the European External Action Service (EEAS). "The group is looking into how to regulate lethal autonomous weapons systems in respect of human rights and international law."

Read more: 'Mogherini's tech experts talk more freely in secret'.

"Both groups had their first meetings in June. But while the goal of the first is to produce public reports, the second group operates behind closed doors. (…) A spokeswoman for the EEAS told EUobserver in a written comment, however, that the panel "does not aim to produce policy papers or otherwise contribute directly to the preparation or implementation of EU legislation, legislative proposals, policy initiatives or other delegated acts".

However, that contradicts an earlier statement from the EEAS website, which said that the panel was "set to feed into the EU Strategy on Artificial Intelligence the European Commission will put forward in November". "The group is looking into how to regulate lethal autonomous weapons systems in respect of human rights and international law."

"Last week, five MEPs from four political groups, who strongly oppose the weaponised use of artificial intelligence, sent a letter to Mogherini. The letter was signed by Reinhard Buetikofer (Greens), Bodil Valero (Greens), Norica Nicolai (Liberals), Ana Maria Gomes (Socialists & Democrats), and Fabio Massimo Castaldo (Europe of Freedom and Direct Democracy).

They reminded Mogherini that a 566-strong majority of MEPs have recommended her to start global talks on a legal ban on lethal autonomous weapons. In what can be seen as an indirect criticism of the current composition of the global tech panel, they asked Mogherini to include a representative from a civil society group that is part of the Campaign to Stop Killer Robots, as well as more academics."

➢ EP to adopt its annual report on EU arms exports

On Wednesday 14 November, the European Parliament plenary should adopt its annual Report on EU arms exports, after its adoption on 16 October by the Security and defence Committee.

The Report was drafted by Sabine Lösing, German GUE MEP, and calls, among others, for a stricter control of military goods funded by the EDIDP or the future Defence Fund: "projects funded from the newly launched EDIDP and the future Defence Fund must come under national and EU control and reporting mechanisms/regimes and be subject to full parliamentary scrutiny. (...) Suggests that exports of products financed under the EDIDP and/or the European Defence Fund (EDF) should be listed separately in the data submitted to COARM, in order to ensure a close monitoring of those products which have been financed from the European budget; calls on the Council and Parliament to agree on a detailed interpretation and implementation regime including a supervisory body, a sanctioning body and an ethical committee, to ensure that the criteria of the Common Position are applied at least to the products financed under EDIDP and/or the EDF, in order to ensure equal export frameworks for the countries involved".

You can read the official summary of the Report and access the full Report in all EU languages here. Bear in mind that the Report might still be rejected on Wednesday, although this is extremely rare.