NEWS FROM THE BRUSSELS’ BUBBLE  
#2018-4, 24 JULY 2018

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• European Defence Fund for 2021-2027: draft Regulation presented on 13 June

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EU Calendar related to EU Defence policy
29-30 August: Informal EU Defence Ministers meeting (Vienna)
  13-14 Sept.: Conference on Security and Migration - “Promoting Partnership and Resilience” (Vienna)
20 September: Informal meeting of Heads of States/government (Salzburg)
  02 October: EU High-level conference on EU Defence Fund, Vienna
  18 October: European Summit
20 November: Foreign Affairs Council focusing on Defence
  13-14 Dec.: European Summit, traditionally includes Defence issues

Access the previous Newsletters here

The Defence Industrial Development Programme was definitely adopted: what are the main points of the final text?

On Tuesday 3 July, the European Parliament definitely adopted the European Defence Industrial Development Programme with a large majority (477 votes in favour, 180 against and 23 abstentions). You can find here the list of MEPs and their vote. Below a recap of the main features of this programme that could be of interest to you, in line with what was presented in previous Newsletters:

➢ Main features

The Programme will dedicate €500 million to the development phase of military technology over 2 years (2019-2020). As the EU budget is already fixed till 2020, this money will be mainly diverted from civilian areas: 75% (300 millions) will be taken from a number of existing programmes*, while 25% (200 million) will be taken from unallocated margins. This is also a form of diversion, as in principle those unallocated funds could be devoted to other civilian programmes by 2020. EU Member States (MS) however fiercely resist the use of this margin because if it is not used by the end of the budgetary cycle, it will be paid back to them.
Another aspect of diversion is the stated intention "to maintain a dialogue with a broad spectrum of Europe’s industry, including SMEs and non-traditional suppliers to the defence sector" (recital 31), another signal of diverting civilian resources under a self-fulfilling prophecy approach: by promoting and encouraging civilian companies to shift part of their resources to the military sector, the latter will become more prominent in the EU economy. A careful analysis of the beneficiaries under the Preparatory Action and the EDIDP could help highlight this trend.

Projects should include at least 3 entities (private or public) from 3 different countries (art 6.2). In a given consortium, at least 3 entities of at least 2 different countries should be completely independent from each other. As a principle, those entities (and subcontractors) should be ‘EU-located’ and ‘EU-controlled’, and all activities, infrastructures and assets used should take place in the EU (art.7). However derogations to this rule are possible under certain conditions (see below).

➢ Programme Committee and database of independent experts to assist the EC

When implementing the Programme, the EC should be assisted by 2 bodies:

- a Programme Committee made up of Member States representatives (art.13): it will assist the EC for the definition and implementation of a 2-years work programme, from defining priorities and categories of projects to final award of funding. The EC will act through ‘implementing acts’, meaning that the EP will have no say on any aspect of the programme during 2 years (contrary to ‘delegated acts’ for which the EP and Council have 2 months to reject EC draft acts). In contrast, through the Programme Committee MS will be involved at an early stage (recital 29) and benefit a de facto veto power: when the Committee delivers no opinion on a draft implementing act, the EC cannot adopt it and has to start again consultations in the Committee (art 13). The European Defence Agency is invited to participate and share its views in this Committee. The EDA could also be appointed as project manager to take the lead of a given collaborative action; in such case it should be consulted by the EC on progress made before executing payments to the beneficiaries (recital 9).

- Independent experts will assist the EC for the evaluation and selection of proposals, and for the monitoring and evaluation of projects funded (art.15). Those experts should be EU nationals with security clearance from their government, and the EC should select them respecting diversity in terms of background, public-private sector, gender, nationality, etc. Experts should no be involved in the evaluation or monitoring of projects where they could face a conflict of interest. The list will be submitted annually to the Programme Committee, but will not be made public (recital 34). Thus playing a watchdog role will be difficult, something ENAAT might consider to challenge...

➢ Participation of non EU companies: conditions

As a derogation to the general rule, companies located in the EU but controlled by a non-EU country or entity can participate in a project and benefit from EU funding under the following conditions (art.7.4):

- the EU country where it is located provides the EC with guarantees that this would not contravene the security and defence interests of the EU and its Member States as defined in the EU treaties; such guarantee is based on the MS national procedures and as a minimum “should substantiate that, for the purpose of the action, measures are in place to ensure” that: the non-EU control does not restrain or restrict the undertaking’s ability to participate in the action ; access to sensitive information is prevented and staff involved have national security clearance ; ownership of the intellectual property remain with the beneficiary and are not exported without the approval of the MS where the undertaking is located. Which means that it could be exported if authorized...

- the MS can provide additional guarantees if it considers it appropriate, and the Programme Committee is to be informed "of any undertaking deemed to be eligible in accordance with this paragraph".
To add on, assets, infrastructures, facilities and resources located or held outside the EU can be used by the project’s beneficiaries or subcontractors “where no competitive substitutes are readily available”; the costs related to those activities cannot be funded with the EU budget (art.7.5).

Lastly, undertakings established or controlled outside the EU can cooperate in EDIDP-funded projects “provided that this does not contravene security and defence interests of the EU and its Member States”; they cannot have access to classified information and their costs are not eligible for EU funding (art.7.6).

To note that in this Programme no mention is made of ‘associate countries’ like Norway, which would in this case be considered as non-EU.

➢ type of activities and priorities, funding rates, excluded technologies

The Regulation is not very precise in terms of categories of projects to be funded (art.14): they should be in line with the defence capability priorities agreed by Member States within the Common Foreign and Security Policy (CFSP), in particular the Capability Development Plan (CDP), and could take into account regional and international priorities. This is a reference to NATO needs, after lengthy discussions and negotiations resulting a complex wording (see art.3.b). As for the EP, in an attempt to compensate the fact that it won't have a say in the implementation over the next 2 years, it negotiated that "those categories shall cover capabilities regarding innovative defence products and technologies in the fields of:

(a) preparation, protection, deployment and sustainability;
(b) information management and superiority and command, control, communication, computers, intelligence, surveillance and reconnaissance (C4ISR), cyber-defence and cybersecurity; and
(c) engagement and effectors" (art.14)

A category of projects should be devoted to SMEs and at least 10% of the overall budget should benefit the cross-border participation of SMEs.

As regards the type of activities that can be funded (art.6.1), they cover feasibility studies (and other accompanying measures), design, system prototyping, testing, qualification & certification “of a defence product, tangible or intangible component or technology”, as well as technologies or assets increasing the efficiency across the life cycle of existing defence products and technologies.

As a general rule the EU should fund maximum 20% of prototypes activities, and up to 100% of other types of activities. However, through a number of bonuses for PESCO projects or for the participation of SMEs and MidCaps, the EU budget could fund up to 55% of prototyping activities. To that, one should add a 25% flat-rate for indirect eligible costs (art.11).

Design activities shall be based on common requirements agreed by at least 2 MS, and prototyping, testing, qualification & certification shall be based on common technical specifications by the countries that are to co-finance or intend to jointly procure or use the final product or technology. Those elements are part of the award criteria, however their non-fulfilment does not automatically prevent a project from being funded.

Last but not least, thanks to the EP, the Regulation explicitly excludes to fund “the development of products and technologies the use, development or production of which is prohibited by international law” (art.6.6). However, the fact that stating the obvious is considered a victory by the EP is a matter of concern. Another worrying signal is that this article does not include the -weak- reference to fully autonomous weapons appearing in recital 14 (thus with lower legal status than an article): “the eligibility of actions for the development of 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”.

And as a matter of clarification, recital 21 clearly states that the EU has and will continue to fund R&D activities related to unmanned systems, both military and civilian, and that “Nothing in this Regulation should hinder the legitimate use of such defence products or technologies developed under the Programme.”
 ➢ what about IPR, transfers of results and exports?

About the ownership of results, the Regulation says a minimum (art.12): “the Union shall not own the products or technologies resulting from the action nor shall it have any intellectual property rights claim pertaining to the action”. Results will thus be owned by the beneficiaries of the funding (including non-EU entities as defined above) under arrangements they will agree in an internal agreement establishing their rights and obligations (art.9). That is, the partners of the project will define themselves the IPR regime, while respecting some minimum rules (defined in art.12):

- “results (...) shall not be subject to control or restriction by a third country or by a third country entity, directly, or indirectly (...), including in terms of technology transfer”
- “the Commission shall be notified of any transfer of ownership to a third country or to a third country entity. If such transfer of ownership contravenes the objectives set out in Article 3, the funding provided under the Programme shall be reimbursed”
- “If Union assistance is provided in the form of public procurement of a study, all Member States shall have the right, free of charge, to a non-exclusive licence for the use of the study upon their written request”

As said before, when results are owned by a non-EU entity, any transfer should be authorised by the EU country where it is located (art.7.4.c). Respect of those rules relies heavily on the goodwill of the beneficiaries and nothing is said about the EC capacity to double-check this is indeed the case.

In terms of exports, the text remains very clear (art.12.3): “This Regulation shall not affect the discretion of Member States as regards policy on the export of defence-related products”. And this is reiterated in more details in recital 10, covering also transfers within the EU.

Interesting to note that in parallel competitiveness on the global market is part of the objectives (art.3.a: “to foster the competitiveness, efficiency and innovation capacity of the defence industry” including on “the global marketplace”, art.3.c). And among the award criteria, art.10 lists the “contribution to the competitiveness and growth of defence undertakings throughout the Union, in particular by creating new market opportunities”.

This is reinforced by recital 23 which states that the funded actions “should be market-oriented, demand driven and commercially viable in the medium to long term”. As in parallel Member States’ commitment to jointly procure, acquire or use the technology is not an eliminatory award criteria, projects could respond to these conditions only thanks to exports prospects.

*75% of the EDIDP will be diverted from the same programmes listed in the initial proposal, with slightly smaller amounts (see also Newsletter 2017-3): €116,1 million from the Connecting Europe Facility, €3,9 million from Egnos, €104,1 million from Galileo, €12 million from Copernicus, €63,9 million from ITER.

[click here to access the final text in all EU languages]

The European Defence Fund for 2021-2027: draft Regulation presented on June 13

On June 13, the EC presented a “Proposal for a Regulation of the European Parliament and of the Council establishing the European Defence Fund”, for the next EU budgetary cycle (2021-2027).

The previous Newsletter (2018-3) already described some of the main features of the Defence Fund, which are confirmed by the detailed draft Regulation.

The overall budget for the 7 years will be €13 billion, with €4.1 billion dedicated to Research and €8.9 billion devoted to the Development Phase, with annual commitments increasing over time:

for the 3 first years the previous proposals will be maintained (that is €500 million for R&T and 1 billion for Capability Development every year), then annual commitments will start increasing from 2024 and almost double at the end of the 7-years cycle (933 million for R&T and 1.86 billion for Capability Development in 2027).
A detailed analysis of this draft will be provided in the next Newsletter to come early September, so as not to make this one too long and avoid confusions with the EDIDP described just above.

In a nutshell, one can already say that the main rules are pretty similar to the ones under the current Preparatory Action (for research projects) and the EDIDP to start (for the development projects). Major differences are related to:

- Associated countries will be allowed to participate in the EU Defence Fund from 2021 with a status similar to EU countries: this concerns so far Norway, Iceland and the Liechtenstein (e.g. countries that are both members of the European Free Trade Alliance – EFTA, and of the European Economic Area - EEA)
- further simplification of the funding rules with increased used of lump sums systems, and allowing also for more indirect costs to be eligible (that is, more than 125% funding)
- a specific article on ethical aspects as a way to respond to civil society concerns (see p.7 of the draft Regulation, results of the stakeholders consultation we participated in with thousands of citizens). However this article 7 is again merely stating the obvious: "actions carried out under the Fund shall comply with ethical principles and relevant, national, Union and international legislation". All project proposals should be ethically screened and the EC should be assisted by experts on defence ethics. It will interesting to follow how this will concretely happen.

➢ Final adoption by May 2019?

the EC is also pushing for a final adoption of this draft Regulation and of the overall EU next budgetary cycle before the EP election, that is by May 2019: more and more voices, including within the EP, are saying that at least a principle agreement should be found by this date so as to allow for a swift adoption by the newly elected EU Parliament. Thus the risk of an 8-months slot to try and influence this debate is to be taken seriously.

➢ Reputational risk: The ENAAT and peace groups work didn’t go unnoticed

Under the management measures accompanying the draft Regulation (p.50), the EC referred to a number of risks, including:

"Reputational risk: expected difficulties with some NGOs which contest the rationale of the European Defence Fund and will contest its implementation at all levels. The Commission envisages targeted communication activities – including recourse to crisis communication services – to justify the existence and the functioning of the European Defence Fund at Union level."

the next months to come will be tough but worth the challenge...

link to EC official Press Release
link to the Draft Regulation, its Annex and the EU Staff Working Document (impact assessment)

➢➢ For more information on the EU Defence Fund and our detailed arguments against it, you can refer to the ENAAT Online Info Tool produced by the EU programme

Links to interesting news/articles

➢ Defence Council Conclusions, 25 June

the EU Defence Ministers met on 25 June. The meeting and Conclusions main points are:

- welcoming the agreement reached on the European Defence Industrial Development Programme.
- taking note of the draft Regulation for the EU Defence Fund presented by the EC on June 13. Member States insist on the need to strongly involve them at all stages. This reflects the existing tension and contradiction between using the EU budget but not giving up anything about their full sovereignty on military issues
- welcoming the EU Capability Development Plan (CDP, see below) and the Coordinated Annual Review on Defence (CARD)
- adopting a Decision regarding PESCO project rules and commending PESCO collaborative projects under way and to come
- taking note of the European Peace Facility presented by Federica Mogherini
- welcoming the Action Plan on Military Mobility presented by the EC, with a number of comments and recommendations to MS and the EDA
- strengthening partnerships with third countries and international bodies on security and defence

In the next Newsletter a quick overview of those different military-related development will be provided.

Access the full conclusions here

➢ New 2018 EU Capability Development Priorities approved by the EDA steering board (28 June)

"Based on the identified trends, information gathered from Member States, the EU Military Committee and the EU Military Staff, a set of EU Capability Development Priorities were proposed by EDA and agreed by Member States. On the one hand, they address main capability shortfalls for deployed operations (land, maritime and air capabilities as well as logistic and medical support) with a reinforced focus on high-end warfare. On the other hand, they also cover other national focus areas, such as the adaptation of military capabilities required for territorial defence and security or cyber defence. The 2018 EU Capability Development Priorities cover the following lines of action:

- Enabling capabilities for cyber responsive operations
- Space-based information and communication services
- Information superiority
- Ground combat capabilities
- Enhanced logistic and medical supporting capabilities
- Naval manoeuvrability
- Underwater control contributing to resilience at sea
- Air superiority
- Air mobility
- Integration of military air capabilities in a changing aviation sector
- Cross-domain capabilities contributing to achieve EU’s level of ambition"

Access the EDA press release and the detailed factsheet

➢ NATO Summit: Joint Declaration on EU-NATO cooperation (10 July) accessible here