NEWS FROM THE BRUSSELS’ BUBBLE
#2018-6, 20 December 2018

News items:
- Defence Fund 2021-2027: EU Parliament and Council position before entering negotiations
- Ombudsman decision on As-if-Committee for the Preparatory Action (PADR)

Links to interesting news/articles
✗ New list of PESCO projects: Eurodrone MALE and land robot to receive EU funding under EDIDP

2019 EU Calendar related to EU Defence Fund

21-22 March EU summit
14 May: Foreign Affairs Council (Defence)
23-26 May: European Parliament elections
October Planned adoption of the next EU budgetary cycle for 2021-2027 (“multi-annual financial framework”), including budget for the Defence Fund

Access the previous Newsletters here

EU governments and Parliament adopt respective positions on Defence Fund proposal for 2021-2027, ahead of compromise negotiations

➢ what EU governments want: limit ethical assessments and preserve national sovereignty
At the 19/11 Foreign Affairs Council, EU governments adopted their position, called ‘General approach’, on the EC proposal for the Defence Fund in 2021-2027. The most problematic modifications relate to the ethical assessment of projects and to implementation aspects that exclude the Parliament under derogatory rules.

Regarding the type of military R&D to be funded, Member States preserve their capacity to decide later about the type of military technology, under the annual work programmes rather than in this initial Regulation, thus excluding the European Parliament from the process (see below). Under the award criteria, they mainly add that the projects should “contribute to the autonomy of the European defence technological and industrial base, including by increasing the non-dependency on non-EU sources and strengthening security of supply”.

Regarding the transfers of results and exports of future EU-funded military technologies, Member States insist on their full sovereignty by adding that “this Regulation shall not affect the export of products, equipment or technologies integrating results of research activities supported by the Fund, and shall not affect the discretion of Member States as regards policy on the export of defence-related products.”
They also introduce a number of amendments to clarify and somehow strengthen the ownership of results by EU or associated entities versus entities controlled by non-EU/non-associated countries or entities.

**Regarding the ethical assessments** of projects proposals, EU Member States (MS) suppress the possibility to carry out ethical checks during the implementation of the funded projects and thus the possibility to put a stop to a problematic one. They also task the EC with ensuring “that experts do not evaluate, advise or assist on matters with regard to which they have a conflict of interests”.

They also call for “a balanced composition within the expert groups and evaluation panels in terms of variety of skills, experience, knowledge, geographical diversity and gender”, as well as “an appropriate rotation of experts and appropriate private-public sector balance”.

**Regarding monitoring**, MS ask for more details on the governance of the Fund “including independent experts [and] rates of reimbursement of indirect costs”. Not sure though that this is meant to be public information...

**Regarding the governance of the Fund**, Member States want to keep control on the work of the Commission while excluding the Parliament as much as possible by using all possible derogations, as they did for the Defence Industrial programme. In particular, the annual work programmes and the selection of projects will be done through implementing acts and with a specific derogation: the EC would not need to consult the EP but only the Programme Committee (made up of MS experts), and in case the Programme Committee delivers no opinion on a given implementing act, the EC cannot adopt it; In a recital MS also call the EC “to find solutions which command the widest possible support within the committee”.

In other words, a de facto veto power to member State... Rather than strengthening the EU as a collective project, this is jeopardizing the fundamental principle of community rules for community budget.

Member States even re-open the possibility to have the EDA as implementing body (although this sounds quite unlikely due to both EP and EC fierce position).

Lastly, **regarding the funding rates**, EU Member States want to reintroduce the same EU funding level and bonuses than under the Defence Industrial Programme for 2019-2020, with more advantageous bonuses for SMEs and MidCaps and increasing the maximum level of bonuses to 35% instead of 30% (thus for prototypes the EU funding could go up to 55% again). In other words, more subsidies for the arms industry.

- What the European Parliament wants: lethal autonomous weapons and other excluded technologies, stronger role of the EP

Main amendments put by the EP relevant to us relate to the type of military R&D to be funded, the transfer of results and exports, and elements of implementation in particular the ethical assessment.

**Regarding the type of military R&D**, the following military technologies should be excluded from EU funding:
- Small arms sand light weapons if only for export purposes
- “products and technologies prohibited by applicable international law”, with a more detailed but not exhaustive list, including:
  - “lethal autonomous weapons, including unmanned aerial vehicles, without meaningful human control over the critical functions of selecting and attacking individual targets”; this is complemented by a Recital (less legal value than an article) saying that “The Council should endeavour to establish a decision on the use of armed unmanned aerial vehicles before [31 December 2020]; whereas no funding will be made available for developing armed unmanned aerial vehicles before that decision has entered into force”
  - products and technologies which could serve to commit or facilitate serious violations of International Law (this was passed quite unexpectedly and potentially relates to a wide range of military technology)

But on the other side the ITRE Report puts a stronger focus on disruptive technologies, including increased funding between 5 and 10% (originally “up to 5%”)

**Regarding transfers of results and exports**, only marginal positive elements were gained by progressive socialist MEPs (mainly Germans and the French Shadow Rapporteur E. Martin), such as:
- including a reference to art 7 of the ATT
- limiting the capacity of a beneficiary under derogation (that is, a beneficiary based in the EU but controlled by non-EU/non-associated third country or entity) to transfer the results they own
- for all beneficiaries, the Commission shall be notified “at least 6 weeks in advance” of any transfer of ownership or grant of a licence to a third country (e.g. non-EU and non-associated); in case this contravenes EU security interest, EU funds should be reimbursed as stated in the EC initiative proposal.

In clear, the EC has no capacity to prevent a problematic transfer or export to happen.

**Regarding ethical assessments and monitoring**, unfortunately the EP also undermines the ethical assessment by suppressing the EC proposal to carry out ethical checks during the implementation of the action, and thus the possibility to terminate a project on ethical grounds. It also accepts the non-disclosure of the list of experts assisting the EC, although it adds the possibly for full or partial non-disclosure and the need for justification.

On a more positive tone, the Commission should be assisted by “independent experts with various backgrounds” and not only “experts on defence ethics”, and the Parliament makes compulsory to reject project proposals that are not ethically acceptable (“shall” instead of “may”). It also asks for a specific paragraph on the implementation of this article 7 in monitoring and evaluation reports.

The EP also strengthens the monitoring and final evaluation of the Fund by asking more information on the categories of sub-contractors or on the budget allocated to disruptive technologies; this is positive to help our research work on the concrete implementation of the Fund.

**Regarding eligible entities**, some amendments intend to increase the European dimension by requesting that a consortium shall be made up by a majority of EU member States (instead of EU or associated countries) and excludes the participation of any entity directly subject to EU restrictive measures, or controlled by a country subject to EU restrictive measures.

To conclude and unsurprisingly, a number of amendments **reinforces the role of the Parliament to control the implementation of the Programme**, in particular by asking for ‘delegated acts’ for the adoption of the annual work programmes. In concrete terms this means that the Commission would have to consult the EP in a similar way that it does for the Council, and the Council or the PE can terminate this delegation at any time. The EP even goes as far as suppressing the Committee of Member States meant to assist the EC with the implementation of the Fund. This is a quite strong change and probably a strategic decision as bargaining chip (obviously Member States will NEVER accept that).

➢ **What are the next steps?**

Now that both Institutions have a position on the Defence Fund proposal, they will enter **into negotiations in January**, in order to find a compromise on what they disagree on.

Tough discussions are expected in particular on the technologies to be excluded from funding, and on the governance of the Fund: direct management by the Commission or a role for the EDA, delegated versus implementing acts defining the respective roles of the Council and the EP... EP proposals to make the programme look more “European” might also be in the balance as many Member States and the arms industry alike, possibly to the exception of the French one, consider cooperation with non-EU companies as essential. **The compromise agreement is expected by March**, and should be voted before the EP elections.

The recent vote at the EP Plenary showed **less consensus than before on this issue**: votes in favour of the Defence Fund proposal were only 49 more than votes against and abstentions together. A number of progressive amendments were lost due to abstention rather than explicit rejection. And the majority of the Socialists & Democrats group either abstained or voted against the proposal, which is quite a shift compared to previous votes. You can **access here the votes of your MEPs**, it can be sorted out by country and political group (final vote on the full proposal only).
To be noted also that the amount of the Fund is not yet under discussion: the current process is about the implementation aspects, while the budget to be made available will be negotiated within the general discussion on the next EU budgetary cycle (the Multi-annual Financial Framework (MFF) 2021-2027). Thus the Fund’s envelope could remain at €13 billion or be increased/decreased after the Parliament and the Council reach an agreement on the content of the Regulation. The agreement on the global MFF for 2021-2027 is expected to happen in fall 2019 and will be approved by the new EU Parliament.

Links to the main documents
EU Council General Approach on Defence Fund proposal
EU Parliament Report on Defence Fund proposal
EU Commission initial proposal to establish a European Defence Fund (2021-2027)

Ombudsman decision on As-if-Committee for the Preparatory Action (PADR)

➢ EC in breach of its transparency rules

Last year Vredesactie had filed a complaint with the Ombudsman, about the lack of transparency on the as-if committee on defence research, a committee of member states representatives assisting the EC with the implementation of the Preparatory Action on Defence Research. The Ombudsman ruled that the Commission was indeed at fault, in its decision of July 2018:

"The Ombudsman believes it is unsatisfactory that, for more than a year since the As-If Programme Committee became operational, the Commission had published a draft agenda only in the case of its first meeting." After this decision, the EC published few more documents, but nothing again since June 2018.

ENAAT had also filled a complaint to the Ombudsman about the lack of transparency regarding the 2016 Group of Personalities who advised the Commission for the setting up of the Defence Fund. In its decision the Ombudsman could not conclude to a breach because this GoP could not be considered a formal experts group; however she was still recommending a similar level of transparency for this kind of Groups, and warned about the risk of multiplying such bodies to escape the transparency rules applying to formal experts and advisory groups. She also noted some problematic aspects like the fact that 6 out of the 9 industry representatives in this GoP were now receiving funding under the PADR, making it an argument for further transparency against apparent conflict of interest. (read summary of the case).

ENAAT and Vredesactie wrote to the Commission asking it to take the necessary measures in order to comply with those recommendations, and introduced a new complaint to the Ombudsman following the EC negative answer.

Furthermore, following another complaint from Vredesactie against the EDA, which was even not responding to Freedom of Information requests, the EDA started to publish much more information about the PADR, including recently the list of independents experts to assist in the evaluation of proposals. This is very helpful to monitor the concrete implementation of military research funding.

Links to interesting news/articles

➢ New list of PESCO projects: Eurodrone MALE and land robot to receive EU funding under EDIDP

On 19 November EU ministers also adopted a new list of project under PESCO (Permanent Structured Cooperation, an intergovernmental process "to deepen defence cooperation amongst EU Member States who are capable and willing to do so, (...) jointly develop defence capabilities and make them available for EU military operations"), reaching now a total of 34 projects. According to some experts, this list looks more like a Christmas tree of what Member States want rather than filling identified gaps. It also looks like an entry point for
EU funding. 2 projects in particular will probably benefit from the Defence Industrial Development programme (EDIDP) in 2019-2020:

- **the Eurodrone MALE**

As expected, the European Medium Altitude Long Endurance Remotely Piloted Aircraft Systems – MALE RPAS (Eurodrone) is now formally part of the PESCO list of projects, lead by Germany and involving the Czech republic, Spain, France and Italy. "The objective is a common use of the system in dedicated areas (e.g. operational testing & evaluation, logistics, training, exercises) of a newly developed, operationally relevant, affordable and sovereign European military capability for the next-generation of MALE RPAS, providing, by 2025, enhanced overall value compared to existing systems". Government representatives stated several times that this project should be funded under the Defence Industrial Development Programme (EDIDP).

- **30-40 million earmarked for a land robot (Integrated Unmanned Ground System (UGS)**

Lead by Estonia and involving Belgium, Czech Republic, Spain, France, Latvia, Hungary, Netherlands, Poland, Finland, in order to develop a Modular Unmanned Ground System along with an autonomous control system, cyber defence solution and integrated network of sensors. The system’s initial functions are associated with improving situational awareness on the battlefield and raising the level of efficiency of the manoeuvring and transportation capabilities of troops". According to the press release, about €30-40million have been already earmarked under the future EDIDP (Defence Industrial Development Programme for 201-2020), much before the work programme and call for proposal are officially designed by the EC.... The lead Estonian company is Milrem Robotics, which is considering joint developments with several firms like the french Nexter, the Belgian FN Herstal, the Singaporean ST Kinetics or the American Raytheon.

\*Wishing you all a peaceful winter break and a joyful 2019 \*