

Sustainable EU funding of European defence cooperation?

Accountable and transparent coordination of arms export policies needed

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EXECUTIVE SUMMARY

The European Union (EU) has been increasingly and actively encouraging European defence cooperation. Driven by geopolitical changes and economic motives, the EU has set up a European Defence Fund (EDF), which for the first time commits EU funding to military research and development projects. Although the EDF's primary aims are to increase intra-EU defence cooperation, to support the European defence industry and to strengthen European strategic autonomy, it will also pose challenges to the coordination and governance of national arms exports control systems and policies. The main thesis of this paper is that if defence co-development funded by the EU budget is to stimulate sustainable Europe-wide defence cooperation, EU member states must coordinate their activities and develop clear arrangements to govern and control arms exports.

Although the issue of arms exports is occasionally referred to in discussions on the EDF, little action has been taken to deal effectively with this issue. In this paper, therefore, after a concise description of the EDF's goals and provisions, we discuss the centrality of arms exports in collaborative development programmes and briefly describe the challenges facing any future EDF-related consortia in light of the lack of a real European defence market. Building on arms export arrangements that have evolved in previous and current collaborative armament projects and on the political and public salience of the issue of arms exports, the main part of this paper presents two important lessons that should be taken into account if European defence cooperation is to be sustainable: (1) the need to develop consensus-based arms export procedures in co-development programmes, and (2) the need to ensure parliamentary involvement at the national and European levels in arms export controls. The paper therefore aims to fill the knowledge gap characterizing these two issues that is to be found in the growing literature on the EDF and European defence cooperation. We do not aim merely to discuss the need to pay more attention to the issue of arms exports, but also formulate some constructive suggestions to move this issue forward. We hope that European and national policy-makers and lawmakers will find these suggestions of use in the current policy-making process dealing with European defence cooperation.

The EU: from soft power to hard power?

Collaboration among European countries in the development of military equipment is not a new phenomenon, but has been a distinct feature of European defence industrial policy.¹

In the second half of the 20th century more than 50 collaborative programmes were set up and many more are currently under way.² Ultimately, however, European defence-related industrial cooperation continues to be the exception, not the rule.³ In 2016, 17% of European Union (EU) member states' defence procurement budgets was spent on collaborative projects, while only 9% of their defence-related research and development (R&D) budgets was spent collaboratively.⁴

Several systemic incentives are pushing EU countries to stimulate intra-European defence cooperation. Firstly, the increasing instability in the near abroad (to the south and east of Europe) in combination with the growing doubts about the engagement of the United States (US) in European security via NATO have triggered a sense of uncertainty and insecurity among European politicians and policy-makers. Secondly, the rising costs of new armament systems and the general decline in European defence budgets (despite some recent increases)⁵ have made it necessary for countries and industries to set up transnational cooperation schemes in order to be able to continue the development of new military systems.⁶ This awareness explains why, despite the apparent shortcomings and problems that previous European defence cooperation programmes struggled with,⁷ European countries continue to promote further initiatives of this kind.

A distinctively new element in the current trend towards defence cooperation is the EU's formal involvement in this process. Although the EU has shown a long-standing interest in the defence policy field, reluctance among member states to allow European involvement in what

they see as an exclusive national competence hindered the effective development of formal EU defence cooperation initiatives.⁸ Even the adoption of the EU Common Security and Defence Policy (CSDP) in 1998, the founding of the European Defence Agency (EDA) in 2004 and the adoption of the Defence Package in 2009 (which introduced Procurement Directive 2009/81 and Directive 2009/43 on intra-community trade in defence-related products) in reality did relatively little to address this lack of EU involvement in defence.

In recent years political openness to defence cooperation and coordination within the EU framework accelerated. The 2016 EU Global Strategy effectively triggered several initiatives. A first important step illustrating the increased willingness of EU member states to cooperate in the field of defence is the initiation of the Permanent Structured Cooperation (PESCO) on defence in late 2017 by 25 member states as part of the CSDP.⁹ PESCO is a legally binding framework that aims to deepen defence cooperation among EU member states and to move to the joint development of defence capabilities. PESCO is complemented by other key initiatives taken within the EU, including the Coordinated Annual Review on Defence (CARD), the purpose of which is to assess EU members states' implementation of defence cooperation and assist in planning non-duplicative defence procurement.¹⁰ The Capability Development Plan (CDP), which the EDA developed in close cooperation with member states, identifies priorities for cooperative activities implemented by member states. The formal integration of the European Defence Fund (EDF) into the European Commission's multi-annual EU budget proposal 2021-2027 marks an additional important development in the EU's normative and political approach. For the first time the EU budget will be directly used to support defence-related R&D programmes.

Through these initiatives the EU is attempting to facilitate an integrative and structured approach to the issue of defence cooperation, using CARD

to identify gaps in military capabilities, the CDP and PESCO to define and develop common military capabilities and the projects needed to deal with current common needs, and the EDF to function as a financial tool to support the implementation of EU programmes to fulfil these needs. As a consequence, in recent years the EU has substantially increased its formal involvement in defence cooperation.

The EDF: goals and provisions

The European Commission (EC) sees the EDF as a tool to fund joint defence R&D projects. Its aims are threefold: (1) to support the defence industry in the EU and to foster the development of a competitive European defence technological industrial base; (2) to stimulate European strategic autonomy; and (3) to close the technology gap between the US and EU.¹¹ Cooperative armament programmes aim to share the financial burden of defence procurement, in order to 'spend taxpayer money more efficiently, reduce duplications in spending, and get better value for money'.¹²

The EC aims to develop a comprehensive approach to the entire arms procurement process, ranging from R&D to the acquisition of new military systems. For the first two parts of the process – R&D – the EC foresees the provision of financial support via the EDF; for the latter part – the acquisition phase – the Commission will provide practical support for member states planning the joint procurement of military systems. The EDF will thus consist of a research window – the European Defence Research Programme – and a window for capability development – the European Defence Industrial Development Programme (EDIDP). The current proposal foresees a total budget of €13 billion for the 2021–2027 period, of which €4.1 billion will fund research

and €8.9 billion euro will be spent on joint development.¹³ While military research projects will receive up to 100% of eligible costs under EU funding, development projects will be funded via a co-funding structure, with the EU funding up to 20% of eligible costs for certain aspects of capability development and participating governments funding the remaining 80%. For EDF-funded PESCO projects, EU co-funding will increase to 30% of eligible costs. Through the co-funding principle the EC expects to leverage a minimum of a further €4 billion per year that member states will spend on European joint armament development programmes.¹⁴

Importantly, EDF funding will only be available for transnational projects. To be eligible for EDF financing, international consortia should comprise companies or research institutes from at least three EU member states. The aim of fostering EU-wide inclusion is also channelled through the explicit inclusion of small and medium-sized enterprises (SMEs) and mid-caps. Such companies are more widely distributed over the EU, as opposed to large defence companies, which are concentrated in a few large member states

The EC's involvement in the field of defence and its initiative to set up the EDF has raised various questions as to the feasibility and desirability of this initiative. The first issue to arise is the size of the proposed budget. Despite the fact that the EDF marks a fundamental reversal of the EU's previous reluctance to fund military projects, the overall budget remains relatively limited. In 2016, for example, the annual military R&D budget in the US amounted to US\$82 billion, with up to US\$7.5 billion allocated to fundamental and applied research.¹⁵ A related question is whether it would be practically feasible and politically desirable to strive for strategic and technological autonomy from the US, given the strong interconnectedness between the European and US defence industries.¹⁶ Various US government concerns regarding the EDF suggest that this initiative may negatively impact EU-US relations.¹⁷ Secondly, the strong

focus on capability-driven research, combined with the relatively low budget, implies that the possibilities for genuine high-risk, innovative research will be very limited, making the aim of technological autonomy unrealistic, even though 5% of the EDF budget will be directly invested in disruptive innovation projects.¹⁸ Moreover, doubts remain as to whether real political will exists to work towards developing a European defence industry. Such a shift could result in a further consolidation of national markets and companies to constitute a European market and the development of a secure supply chain no longer at the national, but at the European level. Further, several concerns about EDF-related transparency and accountability have been expressed, and about the substantial but unclear influence of and role played by powerful industry-driven lobbying in determining the EDF's content and procedures.¹⁹ Finally, at a fundamental level, the legitimacy of the EU's role in the field of defence and security is being challenged. From various and diverging sides of the political spectrum (albeit for different reasons) substantial objections have been raised to the idea of EU funds being used to build military capacities.²⁰

In spite of these concerns, in April 2019 the European Parliament adopted a legislative resolution on the EC's proposal for a regulation establishing the EDF.²¹ Although some formal aspects will need to be further clarified and the actual size of the budget still has to be decided on, the EDF will effectively be set up and will receive funding via the upcoming EU multi-annual budget 2021-2027. Preparatory programmes for both the research and the development windows – the 2017-2019 Preparatory Action on Defence Research (PADR) and the 2019-2020 EDIDP, respectively – are currently already operational, indicating the EU's determination to financially support military R&D projects.

Although the EDF primarily aims to support intra-European industrial cooperation, it will

inevitably result in the emergence of important challenges that will affect current arms export control regimes and practices in the EU. These challenges will be apparent both during the intra-European workings of the consortia that will be formed to implement the new programme, and – more importantly – after the military technologies or products are developed and eventually exported to non-EU countries. Although the relevance of the issue of arms export controls is occasionally discussed, little appetite seems to exist to systematically deal with it. In this paper we therefore aim to identify some lessons that could be learned from previous and existing European defence-related co-development programmes and from current evolutions in how both the EU and its member states deal with the issue of arms exports, and what these lessons could mean for future EU cooperative initiatives.

The relevance of arms exports in joint defence cooperation projects

Exports of military equipment from EU member states make up about 25-30% of the global arms trade.²² The defence industry in the EU therefore currently depends heavily on arms exports to remain viable and to continue the current level of production, employment and turnover. In addition, European states rely on the export model to achieve their own procurement aims, because national defence budgets are often too small to absorb the level of production that will ensure the viability and profitability of production. Because of the economies of scale that result from export orders, exports allow European states to procure nationally developed and produced defence products at lower unit costs.²³

Because the European defence industry's dependence on exports results partly from decreased national procurement budgets, one could expect

that the EDF and EU member states' commitment to increasing their defence budgets could lower this dependency on extra-EU arms exports. Cooperation could stimulate a decrease in over-production and link arms production more directly to existing European capability needs, resulting in a growing European defence market. However, it is unlikely that an increase in procurement programmes would fully compensate for the European defence industry's current export-reliant model. Moreover, because the EDF aims to support the development of innovative and technologically advanced military products, foreign demand for these European defence products is likely to continue or increase.

Because of the European defence industry's strong reliance on extra-EU exports, discrepancies in member states' arms exports policies may negatively affect transnational collaborative armament programmes.²⁴ Given the existing differences among member states' arms exports policies and member states' continued competence in issuing export licences, concerns have also been voiced about the lack of coherence of policies governing the export of co-developed goods. Acknowledging the diverging arms exports policies of France and Germany, the French defence minister, Florence Parly, noted in March 2018: "we know perfectly well that if we cooperate on the industrial level and do not have the possibility to sell these capabilities to others, the economic model of [multinational armament] cooperation will not be sustained".²⁵ Leading experts in armament policies have also highlighted the problematic nature of this issue in the context of the EDF.²⁶ Differences in arms export policies are especially consequential for exports of military equipment produced by jointly developed programmes, as has been most recently illustrated by the Franco-German tensions over exports of Eurofighter Typhoons, the A330 tanker aircraft, and other military equipment to Saudi Arabia after Germany's imposition of an arms embargo on that country in the aftermath of the Khashoggi case.²⁷

Despite the European Parliament calling in a November 2018 resolution for it to play a more formal role in the arms export decision-making process and to exercise more accountability in terms of the export of goods developed as the result of the EDF, and the EC showing an interest in participating in the control of these exports, member states have opposed this. This opposition was expressed in the 15 November 2018 Council Position on the EDF regulation, which emphasised that member states exercise control over exports and that the EU's financial support for cooperative programmes should not affect these states' arms exports policies.²⁸ The 2018 EU Regulation establishing the forerunner of the EDIDP explicitly affirms in a similar way that

*The Union financial support should not ... affect the discretion of Member States regarding policy on the transfer within the Union and the export of such products, including in line with the common rules governing control of exports of military technology and equipment laid down in Council Common Position 2008/944/CFSP.*²⁹

As a consequence, while defence collaboration among participating states is one of the EDF's objectives, the issue of arms export controls has not been formally dealt with in the relevant legislative or related policy documents.

In other words, member states are not open to transferring additional arms export control competences to the European level, which makes the question of how to deal effectively with this issue even more relevant. In the remainder of this paper we discuss the various ways in which differences in arms export control systems and policies will pose additional challenges to the goal of furthering defence cooperation within the EU. On a more practical level, these issues will be highly influential in the processes involved in setting up international consortia within the framework of the EDF. In this respect, we identify lessons learned from previous and current examples of international armament cooperation programmes in Europe. While sev-

eral political-economic analyses of these programmes have been conducted, we will focus more particularly on what these programmes can teach us about how to deal with the issue of arms exports. Firstly, we look at the challenges that the lack of a real European defence market will cause for European defence cooperation consortia. In a second step we turn to the issue of extra-European arms exports and identify lessons from previous and current joint development and procurement programmes.

Discrepancies in intra-EU transfer procedures: challenging a stumbling block facing EU-wide participation in the EDF

The trade in defence-related goods is explicitly excluded from the European single market. However, both strands of the EDF – the defence research programme and the development programme – will be oriented towards a military end use and end user. Even within the research strand, the focus will be on research programmes that address specific military capability needs, excluding basic or blue sky research, which will be funded through other EU funds.³⁰ As a consequence, the international consortia that will be set up within the EDF framework will exchange technical information and R&D output that are subjected to export controls, even when these outputs are transferred within the EU. The EU Common Military List, which delineates the material scope of member states' respective export control systems, not only subjects finished military systems to export controls, but also software, technology and other (intangible) goods needed for the development of these military systems.

Although the EC has made several attempts to liberalise and regulate the European defence

equipment market, significant differences continue to exist among EU member states' arms export control systems. Via the 2009 EU Directive on intra-Community transfers of defence equipment, the EC attempted to establish common procedures and standards for member states' intra-EU arms transfers control systems. The EC also aimed to facilitate the intra-EU trade in military equipment by installing a three-tier licensing system that privileges the use of more flexible and less bureaucratic general and global licences, and encouraged national authorities to refrain from imposing end-use controls and re-export restrictions on non-sensitive transfers of military goods within the EU.³¹

Importantly, however, EU member states continue to have sole competence to implement these general principles in their national control systems. The incomplete and highly diverse national implementation of the various licences is the first important issue. Individual licensing remains the standard practice for intra-European transfers, with only some member states – the United Kingdom (UK), Germany and Sweden – using global and general licences more substantially.³² Not all countries have implemented such licences in their national systems, and member states differ significantly in terms of the material and geographical scope of these licences.³³ Identifying the substantial differences in the content of general licences (i.e. defining which military products can be traded) and the obligations included in them (such as eligible countries of end use and end-user restrictions) constitutes an important administrative burden.³⁴ Moreover, global and general licences shift the burden of regulation from the state to the companies producing defence equipment, requiring complex administrative and industrial adaptation on their part: when using a global or general licence, a company must ensure that its transfers comply with the terms of such a licence, otherwise it will be penalised by the state in which it is based, while responsibility for individual licences lies mainly with the state. Such compliance necessitates appropriate

staffing, knowledge and experience. Because of this, SMEs find it more difficult to comply with the requirements of global and general licences, making states with defence-related SMEs rather than large defence firms less likely to use such licences.

Secondly, national procedures and policies governing end-use controls still differ significantly. Not only do the end-user certificates (EUCs) that member states require have different structures and contents and are written in different languages, but member states also differ as to the cases in which EUCs are required, how re-export restrictions are applied and how (non-)sensitive transfers are defined. In general, despite the EC's attempts to harmonise end-use controls and to avoid re-export restrictions, EU member states continue to be reluctant to transfer the responsibility for the control of the end use of defence-related goods to another member state.³⁵

National control systems and existing procedures in several EU member states, especially those with no or little tradition of exporting arms or participating in international collaboration programmes, are not adapted to such international cooperation requirements. The discrepancies in intra-EU transfer rules and exports policies, and the lesser ability of smaller industrial bases to implement the system of compliance required by global and general licensing may be a substantial stumbling block to the successful implementation of the EDF.³⁶ The uneven implementation of the national regulation of intra-EU transfers may be a challenge to the goal of fostering the involvement of SMEs from other member states than those of the prime companies in the proposed consortia. In the EU, 48% of defence-related SMEs are hosted outside the main defence industrial base of the countries in question, but their inclusion in the supply chain of the largest prime defence companies faces difficulties. This is mainly because in the largest industrial bases trusted relationships have been built over time between national prime companies and national SMEs.³⁷ It is therefore ques-

tionable whether the incentives provided through the EDF could achieve a large-scale restructuring of SMEs' participation in collaborative ventures.

Discrepancies in rules and policies on intra-EU transfers create an uneven field for industrial participation. For different reasons, EU member states' arms export control systems and practices differ substantially and several member states lack experience in participating in international cooperative programmes.³⁸ Although some argue as a result that unsuitable subcontractors (because of the laws and policies of the country in question) should be avoided,³⁹ the systematic exclusion of some member states' companies and research institutes would result in increasing opposition from these countries to the fact that European funds will be used to finance military R&D. A more constructive and politically sustainable approach would be for the EC to invest in "inreach" activities and to develop awareness-raising and capacity-building initiatives among national authorities and (potential) licence applicants. There is a need for capacity-building within licensing agencies in order to best manage the move towards the use of global and general licences for intra-EU transfers, and to harmonise administrative and substantive end-user requirements.

Extra-EU consequences of intra-EU differences in arms export policies

National discrepancies in the rules governing exports and transfers affect the political economy of cooperative programmes. They are not only relevant to the smooth functioning of the programmes themselves, but also raise questions regarding the coordination of extra-EU arms exports of the goods developed in these programmes. Coordination of this kind is of particular relevance given the existing differences

in EU member states' perspectives on extra-EU arms exports. Moreover, procedural differences in licensing systems and administrative requirements are often driven by diverging national perspectives on extra-European arms exports.⁴⁰ In other words, the movement towards a European defence market is also hampered by the lack of a harmonised European approach to extra-EU arms exports.

A shared perspective on how to deal with and assess future exports of the goods developed with EDF financing is therefore imperative. If joint armament programmes are to succeed, greater mutual trust and reliability regarding arms export controls will be crucial.⁴¹ A brief overview of how past and current defence development programmes in Europe have dealt with the issue of arms exports could help to assess the feasibility and desirability of dealing with exports of military equipment. Although these programmes were primarily focused on developing and producing military equipment for domestic use, they always included implicit or explicit principles on how to deal with possible future international arms sales. From this overview and from current discussions on the issue of arms exports across the EU, two lessons can be identified that will affect the development of a sustainable European defence cooperation initiative.

Lesson 1: the unsustainability of transferring arms exports responsibilities to the states where prime contractors in cooperative ventures are based

The current structure of the European defence industry suggests that most extra-EU exports of EDF co-funded goods will originate from the five largest defence industrial states in the EU:

France, Germany, Spain, Italy and Sweden. In the last decade 87% of total European defence production originated from these five states and the UK.⁴² Firms established in these major defence industrial bases are likely to lead cooperative EDF-funded projects not only because of their size and economic clout,⁴³ but also because of the R&D spending of their host states, since complementary state funding is one of the determinants of EDF funding.⁴⁴ Moreover, current PESCO projects that entail the production of exportable defence goods are mostly led by prime contractors established in large industrial bases and coordinated by their host states.⁴⁵ This dynamic is also verified in the funding that the EU has awarded to defence research consortia through the PADR, which is the forerunner programme to the EDF's research window.⁴⁶

But while extra-EU exports of goods co-developed through the EDF are likely to originate mainly from member states where the prime contractors are based, this does not imply that effective coordination requires that these states should be solely responsible for deciding on extra-EU export destinations. Rather, the history of past international coordination – at least for exports resulting from cooperative programmes – suggests that coordination without partnering states having an equal say in decisions regarding extra-EU exports has become increasingly unsustainable.

The first paradigm of international arms exports for cooperative programmes was the non-veto principle of the **Schmidt-Debré agreement** of 1972, named after the French and German defence ministers at the time. A basic principle of the agreement was that states participating in cooperative armament programmes could not withhold transfers to their partner if according to the export contract the decision to export a good to a non-partner state lay with the other state. Only in exceptional circumstances could a state oppose a final export, and when doing so it was first required to consult the partnering state.

While initially providing stability, this arrangement proved to be unsustainable. Applying the Schmidt-Debré principles was possible in the 1970s, given the uneven balance of power between Germany and France. This context had significantly changed by the late 1990s, because of German reunification, but also as a result of the growing power of German industry, resulting in a much stronger German position.⁴⁷ Divergent views on exporting the Eurocopter to Turkey⁴⁸ and the German denial of licences for components that France wished to export to Saudi Arabia and Lebanon, including for components of the Milan ER cooperative armament programme,⁴⁹ indicate that the German government was finding it increasingly difficult to implement contracts governed by the Schmidt-Debré agreement.

Perceiving the ineffectiveness of unequitable coordination rules based on non-veto,⁵⁰ France, Germany, Italy, Spain, Sweden, and the UK introduced a shift away from the Schmidt-Debré principle by designing consensus-based rules for exports procedures in the 1998 Framework Agreement, which emerged from the need to strengthen the European defence industry. Although the Schmidt-Debré principle of non-veto was not formally dropped, the consensus principle was introduced, which made consensus among all participating states the guiding principle when partner states drew up lists of permissible destinations for exports, including when adding destinations to such lists and modifying them in some other way. This provision was a departure from the previous principle applied in Europe, which placed the responsibility for an export on the country in which the final assembly of a piece of defence equipment took place.⁵¹ This principle of consensus with regard to lists of destination countries was combined with the inclusion of objective requirements for the removal of countries from such lists; these requirements were grounded in changes in the situation of destination states. By introducing these steps the countries participating in joint defence projects wanted to

avoid unilateral decisions on arms exports based on political preferences, changes of government or legal revisions. The shift to the consensus principle can be illustrated by the case of the A400M transport aircraft cooperative programme involving five EU member states (Belgium, France, Germany, Spain and the UK) and Turkey within the OCCAR framework. In this programme a list of permissible destinations was established, and additions to the list require consensus among the partner states before the company producing the A400M, i.e. Airbus, can sign export contracts with buyers.

Assessing arms exports in EU-driven cooperation schemes

States involved in cooperative programmes include export procedures in the contracts they sign among themselves and with participating companies. Based on the apparent failure of unequitable agreements in the past, a more sustainable and effective way forward for partnering states is to use the consensus principle to coordinate the eventual export of the goods resulting from cooperative programmes. In the past the EC has held that “ideas developed [in the Framework Agreement group] should serve as a basis for future EU rules” and in particular that “a decision to export outside the European Union should take account of the need for prior consultation with the Member States involved in authorisations while recognizing the political responsibility of the final exporting state”.⁵²

Member states are unwilling to transfer any competence for the assessment of arms exports to the EU. In order for European defence cooperation to be sustainable, a sufficient level of trust among member states on the issue of the assessment of arms exports would therefore be needed. This firstly necessitates the establish-

ment of a **shared assessment framework**. Within the EU a commonly accepted, elaborated and legally binding set of assessment criteria already exists, laid out in the European Council's 2008 Common Position on arms exports.⁵³ The Council first formulated these criteria in 1991/2 and further elaborated and formalised them in the 1998 Code of Conduct on arms exports and eventually in the current Common Position 2008/944 on arms exports.⁵⁴ In addition to the assessment criteria, the Common Position also includes rules on public reporting mechanisms – both nationally and European – and on information exchanges among member states. Together with the criteria, the Council set up a Working Group on Arms Exports known as COARM where member states should meet, discuss their respective interpretations of the assessment criteria and work towards a further convergence in the assessment of extra-EU arms exports. In other words, although they are occasionally suggested, new procedures and radically revised criteria to assess future arms exports in the context of EDF-funded projects are not necessarily needed.⁵⁵

However, despite the fact that these common European assessment criteria have existed for almost 30 years, convergence in EU member states' arms exports policies is far from a reality. They still diverge significantly in their interpretation and application of the common criteria, as current discussions regarding arms exports to Saudi Arabia and the United Arab Emirates illustrate. A second element is therefore the need to work towards further **convergence of member states' interpretations of these criteria**. A continued lack of more substantial convergence of this kind may result in ad-hoc agreements on arms exports in EDF-supported armament programmes that could potentially ignore the eight common criteria. Such a situation could potentially jeopardise support for the EDF, not least from the European Parliament, which in a November 2018 resolution called on member states to, among other things, comply with the EU Common Position on arms exports when negotiating the export of co-developed goods.

In addition, a situation where arms exports violate the common criteria also risks negatively affecting the support of individual member states for the EDF, because such a situation may undermine their trust in other member states and decrease their willingness to participate in cooperative defence programmes. This situation might also exacerbate growing domestic political and public controversies regarding arms exports. In other words, if a situation arises where EU member states that have committed to applying the common criteria should deny or fail to apply these criteria within the EDF framework, this would be highly detrimental to the credibility of both the criteria and EU policy in general, and would negatively impact support for the EDF and European defence cooperation.

Lesson 2: The unsustainability closed-door intergovernmental coordination: “No integration without representation (?)”

A second aspect of arms exports arrangements in European armament programmes is – as is the case in defence and security policy in general – the fact that they are almost exclusively the prerogative of the executive branch of member states' systems of government. Apart from budgetary powers, national parliaments traditionally have restricted access to relevant defence- and security-related information. Despite some exceptions and differences among individual member states, the involvement of parliaments in defence and security policies has been very limited. Similarly, arms exports were treated exclusively by the executive branch and kept out of the public and political realm. However, parliaments have increasingly become more active

in this area. Across the EU (albeit not in all member states) national parliaments' growing involvement in arms exports can be observed, turning such exports increasingly into a politically and publicly relevant issue.⁵⁶ Increased parliamentary involvement in the drawing up of arms export policies has reduced governments' room for manoeuvre, and has increased the transparency and democratic control of EU member states' arms export policies, in several cases effectively leading to more stringent export practices.⁵⁷ Therefore, a second lesson regarding the sustainability (and effectiveness) of European defence cooperation is the need to take parliamentary involvement into account, given the increased political and public salience of this issue in several EU member states – although differences remain in the degree of parliamentary attention given to the EDF across the EU⁵⁸ – and in the European Parliament.

Parliaments' influence on arms exports in EU member states is not direct, with parliamentary veto power over arms exports being virtually non-existent. Such influence often takes the form of increased scrutiny through parliamentary questioning and interpellations of the executive's decisions on arms exports, and via other parliamentary instruments – motions, resolutions, etc. – available to limit political room for manoeuvre and increase democratic accountability.⁵⁹ Recent examples, such as the motion adopted in June 2019 by the Italian parliament prohibiting the sales of missiles and rockets to Saudi Arabia; the increased transparency with regard to arms exports in Germany pushed for by the German parliament; and more general debates and resolutions adopted by the parliaments of the Netherlands, Flanders, Finland, Sweden and Denmark illustrate the (in)direct influence of parliaments on their governments' arms export practices. The European Parliament, while having no direct competences in this field, has also been pushing for more stringent and harmonised European arms export policies.

In addition to the issue of arms exports, parliaments will also be involved in the EDF process in a more direct and formal way. The EDF, and in particular the EDIDP, has substantial budgetary implications for member states. Because of the co-financing mechanism, member states will either have to increase their budgets for defence-related R&D and the procurement of military equipment, or (mainly the large member states) will need to shift parts of their existing budget from national requirements, capacities and procurement to a process involving other EU member states. In both cases, national parliaments will be directly involved either through their budgetary powers or through their involvement in foreign policy decision-making, such as political scrutiny of governments' arms export policies and practices.

Given the influence parliaments may have on the success of European defence cooperation, parliamentary demands for involvement and greater parliamentary oversight need to be taken seriously. Political support is more sustainable when parliaments are involved in the decision-making process. Although the explicit involvement of parliaments in the processes of defence cooperation may potentially slow down negotiations, it clearly improves implementation records⁶⁰ and could make such cooperative arrangements more sustainable, even after changes in the composition of parliaments and governing coalitions that were in place at the time when such arrangements were made.

Additional issues affecting sustainable EU involvement in defence cooperation

Given the specific way in which the EDF and future European defence cooperation are organised, both the national and European level will (need to) be involved. National parliaments will

remain highly relevant to guarantee sufficient and sustained public support for current plans to achieve a European defence union and through their scrutiny of arms exports.⁶¹ In addition, they will have significant formal influence through their powers, given the substantial role of national co-funding foreseen in the EDF. Likewise, the European Parliament also has important budgetary powers through its control over the EU budget, which is the main way in which it has gradually increased its involvement in the fields of the Common Foreign and Security Policy (CFSP) and CSDP since the 2000s. Additionally, the European Parliament will probably also aim to play a substantive role in arms exports and European defence cooperation in general.

Despite the need for both national parliaments and the European Parliament to be involved, relations between the national and the European level have become more controversial, especially in the fields of CFSP/CSDP. Therefore, the role of the European Parliament and national parliaments needs to be clarified and more structural cooperation between national and European members of parliament is essential. Replacing the parliamentary assembly of the Western European Union after its dissolution in 2011 by the (semi-annual) Inter-Parliamentary Conference of the CFSP has in fact replaced a *transnational* assembly with a mere conference involving *national* delegates without a specialised secretariat and little interaction with EU policymakers.⁶²

With regard to the relationship and division of roles between the national and the EU level, the principle of **subsidiarity** could be useful in enhancing the effectiveness of multilevel policies like the CFSP/CSDP. Discussions on the issue of arms exports could illustrate and clarify how the two levels could relate to each other. In November 2018 the European Parliament showed its interest in exercising oversight of the export of products developed with EDF funding, calling for the European Council and Parliament to “agree on a detailed interpreta-

tion 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 EDF”. However, it is clear that EU member states will not transfer the competence to issue export licences to the European level. Therefore, parliamentary accountability would still rely on the reality that national parliaments are the most central forums in which members of the executive responsible for approving national arms exports – even of goods co-developed with EU funding – can be effectively held to account. The European Parliament’s oversight role could only complement that of national parliaments and should be focused on sharing information and stimulating parliamentary interaction to foster the harmonised interpretation of the common criteria.

In the first instance, all parliaments should take their task of parliamentary scrutiny seriously, and actively demand sufficient reporting and transparency measures. At the national level, such measures should include information on arms exports and on the budgets foreseen for co-funding armament programmes with the EU budget. At the EU level, an important element of this monitoring – which has already been proposed by the European Parliament committee in charge of the EDF legislative process – could comprise governments’ reporting frequently and directly to the EC on the exports of goods co-developed with EU funds. Given the use of European money to (co-)finance the development of military equipment, the EC and the European Parliament should include **clear procedures for transparent reporting** on which projects are funded from the European budget.

In addition to the need to clarify the various roles national parliaments and the EU Parliament should play, these parliaments should foster **cooperation and information exchange**. In order to envisage a sustainable architecture for EU funding

for the early phases of cooperative armament programmes, all the partners involved should facilitate a more consultative system for coordinated action on arms exports by enabling comprehensive reporting on such exports, as well as monitoring and scrutiny by EU institutions.

Basically, therefore, national parliaments and the European Parliament should identify ways to foster inter-parliamentary cooperation and establish procedures to exchange relevant information. Interacting with each other will strengthen the parliamentary control function at both levels. The EC, the European Council and national governments need to acknowledge the vital role of parliaments in ensuring the sustainability of the EDF and of European defence cooperation in general. Rather than seeing parliamentary involvement as a liability that will impede the integration process, strong parliamentary involvement will be crucial to the EDF. It is at heart an end in itself, reflecting the value the EU places on democratic accountability and maximising political and public debates on the interlinked topics of the EDF and European defence cooperation.

Conclusions

Collaborative armament programmes have featured in Europe since the 1950s. What is new is the attempt to explicitly Europeanise this process and allow EU institutions – in particular the EC – to develop supranational involvement in a field that in the past has been seen as exclusively national, i.e. defence and security, through the direct EU funding of military R&D projects. For the first time the EDF will result in EU funding being directed to support military projects and will probably result in EU member states setting up even more transnational armament programmes.

However, the mere existence of internal and external systemic pressures does not always suffice to effectively result in more collaborative defence-industrial programmes and more

sustainable European defence cooperation.⁶³ Although initiatives such as PESCO, CARD and the EDF indicate member states' willingness to take steps to further defence cooperation, the history of European integration has too often shown that political momentum does not always result in harmonised and effective European policy-making. Numerous challenges will arise to threaten the successful implementation of the EDF, one of which this paper has addressed: the need to put clear arrangements in place and to institute a harmonised European approach to arms exports.

If defence co-development funded by the EU budget is to lead to ambitious projects to develop EU defence equipment, EU member states must coordinate their approach to the issue of exports. Current controversies on arms exports to Saudi Arabia and the decision of the German government to temporarily halt such exports, even within the framework of multinational collaboration programmes such as the Eurofighter Typhoon, illustrate the need to establish clear procedures for approving arms exports. Despite the centrality of this issue for European defence cooperation being acknowledged on various occasions in the past, little willingness and enthusiasm exist across the EU and member states to effectively deal with it. Or, to put it another way, the different approaches to arms exports that can be found across EU member states are likely to negatively affect the efforts to build a consolidated European defence industrial base.⁶⁴

The explicit acknowledgment of the need to develop a common understanding and set of principles to guide future arms exports illustrates once again the vital role that such principles play in the success of joint armament programmes. However, acknowledging this need does not lead to the establishment of a clear plan of action, but merely identifies the issues facing EU-wide defence cooperation.⁶⁵ Clear policy on how to deal with the issue of exports is required if export-reliant cooperative programmes are to

be successful. Achieving such clarity requires stakeholders not only to make use of consensus-based international coordination, but also to ensure the democratic legitimacy of the process by putting in place sufficient, clearly defined opportunities for adequate parliamentary oversight and involvement.

For goods and technologies co-developed through the EDF, this can be best pursued by giving the European Parliament a role in exercising scrutiny, and by enabling national parliamentary oversight through standardised and strengthened national reporting of intra- and extra-EU

exports. If these essential elements are overlooked, the implementation of the EDF could result in export control standards being lowered across the EU as a result of the search for competitiveness, and will likely mean that the EDF will lose public and political support, given the sustained public insistence on responsible arms exports in various European states and at the EU level. Concerted political will at the national level will be key to the eventual success of the quest for more European defence cooperation in general and for the successful implementation of the EDF in particular.

Endnotes

- 1 Hartley, K. & Braddon, D. (2014), Collaborative projects and the number of partner nations, *Defence and Peace Economics*, 25, (6), 356.
- 2 Heuninckx, B. (2008), A primer to collaborative defence procurement in Europe: troubles, achievement and prospects, *Public Procurement Law Review*, 17, (3), 123-145.
- 3 Calcara, A. (2018), Cooperation and conflict in the European defence-industrial field: the role of relative gains, *Defence Studies*, 18, (4), 475.
- 4 EDA (2018), *Defence data 2016-2017*, <https://www.eda.europa.eu/info-hub/publications/publication-details/pub/defence-data-2016-2017>
- 5 Tian, N., Fleurant, A., Kuimova, A., Wezeman, P. & Wezeman, S. (2019), *Trends in world military expenditure, 2018*. Stockholm: SIPRI, https://www.sipri.org/sites/default/files/2019-04/fs_1904_milex_2018.pdf
- 6 Calcara, A. (2018), Cooperation and conflict in the European defence-industrial field: the role of relative gains, *Defence Studies*, 18, (4), 474.
- 7 E.g. DeVore, M. (2011), The arms collaboration dilemma: between principal-agent dynamics and collective action problems, *Security Studies*, 20, 624-662; Hartley, K. (2011), Creating a defence industrial base, *Security Challenges*, 7, (3), 95-111.
- 8 EU Institute for Security Studies, (2017), *European Security and Defence: the basics*, p.3.
- 9 EEAS (2018), *Permanent structured cooperation – PESCO. Deepening defence cooperation among EU Member States*, fact sheet,
- 10 Drent, M., Wilms, E. & Zandee, D. (2017), *Making sense of European defence*, Den Haag: Clingendael, p.13.
- 11 Mawdsley, J. (2018), The emergence of the European defence research programme, In N. Karampekios, I. Oikonomou & E. Carayannis (eds.), *The emergence of EU defence research policy. From innovation to militarization*, New York: Springer, 210-211.
- 12 European Commission (2017) 'A European Defence Fund: €5.5 billion per year to boost Europe's defence capabilities'.
- 13 European Commission (2019), *The European Defence Fund. Stepping up the EU's role as a security and defence provider*, Press release European Commission, 19 March 2019.
- 14 European Commission (2017), *The European Defence Fund: questions and answers. Fact sheet*, Brussels: 7 June 2017.
- 15 <https://www.aaas.org/programs/r-d-budget-and-policy/historical-trends-federal-rd>
- 16 Interview member of the exports committee of the Aerospace and Defence Industries Association of Europe
- 17 <https://www.janes.com/article/88580/us-warns-of-retaliation-against-eu-plans-for-europe-only-defence-capability-projects>
- 18 Mawdsley, J. (2018), The emergence of the European defence research programme, In N. Karampekios, I. Oikonomou & E. Carayannis (eds.), *The emergence of EU defence research policy. From innovation to militarization*, New York: Springer, p. 212
- 19 Csernatoni, R. & Oliveira Martins, B. (2019), *The European Defence Fund: key issues and controversies*, PRIO policy brief, 03/2019, p. 3.

- 20 Voting behaviour when the various EDF-related resolutions and regulations were voted on in the European Parliament makes clear that there is substantial resistance to this initiative. Both the Left and Eurosceptic factions consistently voted against the EDF. The Left stresses the role of the EU as a normative power, while the Eurosceptic factions oppose the idea of the EU's becoming involved in a policy domain they see as an exclusively national competence.
- 21 European Parliament legislative resolution of 18 April 2019 on the proposal for a regulation of the European Parliament and of the Council establishing the European Defence Fund, *COM (2018) 0476, C8-90268/2018*, 18 April 2019.
- 22 Wezeman, P., Fleurant, A., Kuimova, A., Tian, N. & Wezeman, S. (2019), *Trends in international arms transfers, 2018*, SIPRI Fact Sheet, Stockholm: SIPRI.
- 23 Briani, V. & al. (2013), *The development of a European defence Technological and Industrial Base*, Brussels: Directorate General for External Policies of the Union p.57
- 24 Kunz, B. (2018) 'The Three Dimensions of Europe's Defense Debate', *German Marshall Fund* [\[access\]](#)
- 25 Lagneau, L. (2018) 'Armement : Mme Parly s'interroge au sujet des effets de l'accord gouvernemental allemand sur les coopérations industrielles'; 2 March 2018, *zone militaire opex360* [\[access\]](#). Authors' translation.
- 26 SIPRI (2018) The further development of the Common Position 944/2008/CFSP on arms exports control, [\[access\]](#) p.8
- 27 Béraud-Sudreau, L. (2019), Building Franco-German consensus on arms exports, *Survival*, 61, (4), 80.
- 28 Article 22 8a & article 25 2a of the Council Conclusions on the proposal for a regulation of the European Parliament and of the Council establishing the European Defence Fund, *2018/0254 (COD), Council of the European Union*, 15 November 2018.
- 29 Regulation (EU) 2018/1092 of the European Parliament and of the Council of 18 July 2018 establishing the European Defence Industrial Development Programme aiming at supporting the competitiveness and innovation capacity of the Union's defence industry, *Official Journal of the European Union, L200*, 7 August 2018, p. 31.
- 30 Consideration 5 of the Council Conclusions on the proposal for a regulation of the European Parliament and of the Council establishing the European Defence Fund, *2018/0254 (COD), Council of the European Union*, 15 November 2018, p. 5; Mawdsley, J. (2018), The emergence of the European defence research programme, In N. Karampekios, I. Oikonomou & E. Carayannis (eds.), *The emergence of EU defence research policy. From innovation to militarization*, New York: Springer, p. 212.
- 31 Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community, *Official Journal of the European Union, L146*, 10 June 2009.
- 32 Cops, D., Duquet, N. & Gourdin, G. (2017), *Towards Europeanised arms export controls? Comparing control systems in EU Member States*, Brussels: Flemish Peace Institute, p. 92-112.
- 33 Cops, D., Duquet, N. & Gourdin, G. (2017), *Towards Europeanised arms export controls? Comparing control systems in EU Member States*, Brussels: Flemish Peace Institute, p. 110-111.
- 34 Cops, D., Duquet, N. & Gourdin, G. (2017), *Towards Europeanised arms export controls? Comparing control systems in EU Member States*, Brussels: Flemish Peace Institute, p. 170.
- 35 Cops, D., Duquet, N. & Gourdin, G. (2017), *Towards Europeanised arms export controls? Comparing control systems in EU Member States*, Brussels: Flemish Peace Institute, p. 149.
- 36 Drent, M. & Zandee, D. (2018) *More European defence cooperation: the road to a European defence industry?*, Den Haag: Clingendael Institute.
- 37 Drent, M. & Zandee, D. (2018) *More European defence cooperation: the road to a European defence industry?*, Den Haag: Clingendael Institute.
- 38 Cops, D., Duquet, N. & Gourdin, G. (2017), *Towards Europeanised arms export controls? Comparing control systems in EU Member States*, Brussels: Flemish Peace Institute.
- 39 Bellouard, P. & Fonfria, A. (2018), *The relationship between prime contractors and SMEs. How to best manage and fund cooperative programmes*. Policy paper Armament Industry European Research Group n° 24, p.7.
- 40 Cops, D., Duquet, N. & Gourdin, G. (2017), *Towards Europeanised arms export controls? Comparing control systems in EU Member States*, Brussels: Flemish Peace Institute, p. 149.
- 41 Béraud-Sudreau, L. (2019), Building Franco-German consensus on arms exports, *Survival*, 61, (4), 81.
- 42 Marrone, A. & Ungaro, R. (2014), Actors in the European defence policy area: roles and development, CSF-IAI Report [\[access\]](#)
- 43 Roth, A. (2017) The size and location of Europe's defence industry, *Bruegel Institute* (June 2017) [\[access\]](#)
- 44 Mathis, A. (2018) 'Defence: Member States' Spending', *DG for Internal Policies* [\[access\]](#)
- 45 European Council (2018), *Updated list of PESCO projects - Overview* ' (19 November 2018)
- 46 <https://www.eda.europa.eu/what-we-do/activities/activities-search/preparatory-action-for-defence-research>
- 47 Schmitt, B. (2001) 'A Common European Exports Policy for Defence and Dual-Use items ?', *The institute for Security Studies of the Western European Union*, Occasional Paper n°25 [\[access\]](#) p.21
- 48 Krotz, U. (2011) *Flying Tiger: International Relations Theory and the Politics of Advanced Weapons* (Oxford: Oxford University Press, 2011) p.150
- 49 Merchet, J.D. (2014) 'L'industrie française de l'armement est l'otage de la coalition allemande', 27 Octobre 2014, *L'Opinion*
- 50 Schmitt, B. (2001) 'A Common European Exports Policy for Defence and Dual-Use items ?', *The institute for Security Studies of the Western European Union*, Occasional Paper n°25 [\[access\]](#) p.21
- 51 Bauer, S. & Remacle, E. (2004), Theory and practice of multi-level foreign policy: the European Union's policy in the field of arms export controls, In B. Tonra & T. Christiaensen (eds.), *Rethinking European Union foreign policy* (pp. 114-125), Manchester: Manchester University Press, p. 123.
- 52 European Commission (2003) 'Communication From The Commission To The Council, The European Parliament, The European Economic And Social Committee And The Committee Of The Regions European Defence - Industrial And Market Issues: Towards An EU Defence Equipment Policy', p.19

- 53 Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment. *Official Journal of the European Union*, L335/99, 13 December 2008.
- 54 Cops, D., Duquet, N. & Gourdin, G. (2017), *Towards Europeanised arms export controls? Comparing control systems in EU Member States*, Brussels: Flemish Peace Institute, p. 37-41.
- 55 Kempin, R. & Kunz, B. (2017), *France, Germany, and the quest for European strategic autonomy: France-German defence cooperation in a new era*. Policy paper collectif IFRI & Cerfa 141.
- 56 Cops, D., Duquet, N. & Gourdin, G. (2017), Scrutinizing Arms Exports in Europe: The Reciprocal Relationship Between Transparency and Parliamentary Control, *Sicherheit & Frieden*, 35. (2), 79-84; Bauer, S. (2003). The EU Code of Conduct on Arms Exports—Enhancing the Accountability of Arms Export Policies?. *European Security*, 12(3-4), 129-147.
- 57 Cops, D., Duquet, N. & Gourdin, G. (2017), Scrutinizing Arms Exports in Europe: The Reciprocal Relationship Between Transparency and Parliamentary Control, *Sicherheit & Frieden*, 35. (2), 79-84
- 58 Fiott, D. (2019), *The scrutiny of the European Defence Fund by the European Parliament and national parliaments*. Study requested by the SEDE subcommittee of the European Parliament, Brussels: DG for External Policies of the Union.
- 59 Rosén, G. & Raube, K. (2018), influence beyond formal powers: the parliamentarization of European Union security policy, *The British journal of Politics and International Relations*, 20, (1), 69-83; Bauer, S. (2003). The EU Code of Conduct on Arms Exports—Enhancing the Accountability of Arms Export Policies?. *European Security*, 12(3-4), 129-147.
- 60 Martin, L. (1995), The influence of national parliaments on European integration, in B. Eichengreen, J. Frieden & J. Von Hagen (eds.), *Politics and institutions in an integrated Europe* (pp. 65-92), Berlin: Springer-Verlag.
- 61 Herranz-Surrallés, A. (2019), Paradoxes of parliamentarization in European security and defence: when politicization and integration undercut parliamentary capital, *Journal of European Integration*, 41, (1), 29-45.
- 62 Herranz-Surrallés, A. (2014), The EU's multilevel parliamentary (battle)field: inter-parliamentary cooperation and conflict in foreign and security policy, *West European Politics*, 37, (5), 959.
- 63 Calcara, A. (2018), cooperation and conflict in the European defence-industrial field: the role of relative gains, *Defence Studies*, 18, (4), 494.
- 64 Maletta, G. (2019), *Legal challenges to EU member states' arms exports to Saudi Arabia: current status and potential implications*, <https://www.sipri.org/commentary/topical-background/2019/legal-challenges-eu-member-states-arms-exports-saudi-arabia-current-status-and-potential>
- 65 Kempin, R. & Kunz, B. (2019), the treaty of Aachen. New impetus for Franco-German defence cooperation? *Editoriaux de l'Ifri*, Ifri, 22 January 2019, p. 2.

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