

EUROPEAN DEFENCE COOPERATION:

Relevance and challenges for national arms export control policies.

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EXECUTIVE SUMMARY

Defence and security are traditionally considered to be exclusive national competences. But more recently, the EU and its Member States have increased European defence cooperation. The initiatives set up to strengthen EU defence cooperation and the EU defence industry – more specifically the European Defence Fund and the European Peace Facility – will have profound effects on existing (national) practices and policies in the sphere of arms export control.

Increased European defence cooperation creates both real challenges to and possible opportunities in applying the so-called humanitarian norms, enshrined in the EU Common Position on Arms Exports, on decisions to export military equipment. More specifically, increased cooperation risks resulting in a strong push for convergence at the level of the lowest common denominator and the transfer of the effective decision-making powers pertaining to arms exports to a small group of EU Member States. The current review process of the Common Position however also creates an opportunity for Member States, especially those with more restrictive policies, to actively strive for the development of principles that ensure the involvement of all governments in collaborative programmes and the strengthening of the language of the Common Position to guarantee adherence to the humanitarian norms set out in it.

Enhanced EU defence cooperation may also result in reduced transparency in arms export policies and fewer opportunities for parliamentary and democratic oversight due to the increased division of competencies across the national and the EU levels and the strong focus on intergovernmental processes. Whereas national and European parliamentarians need to become more actively involved in this matter, increased interparliamentary cooperation and scrutiny would be both necessary and beneficial for sharing information and building expertise. Strengthening the role and involvement of the national parliamentary bodies and the European Parliament would reflect a core value of the EU and contribute to sustaining the legitimacy of the programmes currently being implemented.

European Union and defence: from taboo to indispensable actor?

In recent years, the EU has adopted several initiatives to strengthen European defence cooperation, including the joint development of new military systems to address shared capability gaps.

Although the process towards an EU defence pillar has not been particularly impressive, several recent developments appear to be strengthening this process effectively.¹

Profound geopolitical transformations have created a fertile ground for a new security and defence dynamic in the EU.² While this evolving development was triggered by several events during the 2014–2016 period, the escalation of the armed conflict between Russia and Ukraine in February 2022 substantially increased the EU's willingness to develop European defence cooperation further. Illustrative of this dynamic are recent developments such as the establishment of the permanent structured cooperation (PESCO) in December 2017³; the installation of the first permanent military command centre (MPCC) in June 2017; the launch of a mechanism to link EU-level and national-level defence planning (CARD) in 2017; the creation of the European Defence Fund (EDF) and the Military Mobility Fund in the 2021–2027 multi-annual EU budget; the implementation of the European Peace Facility (EPF) in 2021; and the adoption of the EU's first Strategic Compass in March 2022.⁴

In the course of 2023, additional initiatives have been launched to strengthen EU defence cooperation and the European defence industry. While the 'European defence industry reinforcement

through common procurement act' (EDIRPA) aims to incentivise EU Member States to procure weapons jointly, the 'act in support of ammunition production' (ASAP) has been set up to support the EU's defence industry in ramping up its production capacities in ammunition and missiles.⁵ Agreements between the EP and the Council of the EU on both Acts were reached on 27 June 2023 and 7 July 2023 respectively.⁶

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EDIRPA will have a budget of €300 million (to be spent by the end of 2025), with consortia of at least three Member States being able to receive an EU contribution of a maximum of 20%

of the estimated value of the procurement costs. Via ASAP, €500 million from the EU budget will be dedicated to strengthening manufacturing capacities for ground-to-ground and artillery ammunition and missiles for delivery to Ukraine; this funding will also enable EU Member States to replenish their depleted ammunition stocks.

In this article, we focus on a specific element of the various initiatives taken to strengthen European defence cooperation: the impact that these initiatives may have on arms transfers and national arms export controls. Although all the initiatives and instruments aimed at strengthening EU defence cooperation and the EU defence industry will influence the control policies relevant to arms exports, we focus on two instruments specifically that have, in somewhat differing ways, clear implications for the current organisation of arms export controls: the European Defence Fund (EDF) and the European Peace Facility (EPF). The fact that both initiatives have been running effectively since 2021, and because substantial EU budgets are dedicated to the EDF and the EPF (see below), makes them of particular interest.^a In a

^a PESCO equally aims to strengthen EU defence cooperation through the implementation of collaborative development programmes to deal with common capability gaps. However, we do not focus specifically on these projects, because most of these projects have a clear link to the EDF: EDF funding for development projects is greater if there is a clear link to a PESCO project (see further).

context in which the collaborative development of military equipment (via the EDF) and the EU-funded export of military equipment (via the EPF) are becoming increasingly relevant, it is crucial to explore the ways in which these initiatives have an impact on the capacity of national authorities to develop and implement their own arms export policies.

Since the 1990s, the EU and EU Member States have taken steps to develop a convergent, coherent and responsible approach to arms exports. In this approach, considerations of human rights, international humanitarian law (IHL) and conflict prevention have taken precedence over economic considerations, as laid out in the 2008 EU Common Position on arms exports.⁷ In reality, though, the interpretation of the criteria in the Common Position still varies between Member States:⁸ while some Member States implement a more lenient interpretation and give priority to economic and security considerations, other states have implemented a more restrictive policy. This was illustrated during the Arab Spring and, more recently, regarding arms exports to Saudi Arabia and its coalition partners involved in the Yemen conflict.⁹ As increased EU defence cooperation will result in a strong push for further convergence in arms export practices, this article analyses the challenges posed by this increased EU involvement in the spheres of national export controls and possible ways in which to take on these challenges with a view to maintaining the relevance of the humanitarian norms enshrined in the Common Position.

In addition to the challenges posed by the push for further convergence, increased EU involvement in defence matters may also have an impact on parliamentary oversight and the democratic legitimacy of arms export policies. Public reporting on arms exports has increased gradually since the

1990s, resulting in substantial space for parliamentary oversight over policy-making on the control of national arms exports.¹⁰ Most parliamentary oversight remains ex-post and its levels continue to differ between the various national parliaments. And for as long as this competence has been solely a national matter, national parliaments have at least theoretically been able to hold their governments accountable for their arms export policies and were able to influence national arms export policies and practices. The involvement of the EU and EU institutions in policy-making in this domain risks influencing transparency negatively and increasing the extent of intergovernmental decision-making on arms exports.

To identify these challenges and possible ways of overcoming them, this article uses a literature analysis to identify the current context of and

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contemporary debates about the matter of EU arms export policies. In addition, interviews were conducted with stakeholders such as representatives of national export control authorities; the European Commission (EC); the European External

Action Service (EEAS); the EU Working Group on Conventional Arms Exports (COARM); research institutes; and the defence industry. This combination of methods was selected in order to collect insights into and perspectives on the prospects, challenges and opportunities that might arise from further EU cooperation in the field of defence and security, especially regarding the matter of arms export controls.

The next section of this article sets out concisely the developments that have taken place since the 1990s at the European level regarding arms export controls. In the next section, the two EU programmes (EDF and EPF) and their relevance to policy-making in the area of control over national arms exports are described. The challenges these

initiatives lead to and the opportunities for and prospects of arms export control policy-making are discussed in depth in the fourth section. The fifth section contains the final conclusions and our reflections on this topic.

Arms export controls: increasingly Europeanised?

In the EU, arms exports are an exclusive national competence. This is substantiated by article 346 of the Treaty on the Functioning of the European Union (TFEU), which states that: *“any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material”*¹¹

While Member States, as a consequence, remain exclusively competent to evaluate and decide to allow or deny arms exports, ongoing efforts at the EU level to facilitate the convergence of the arms export policies of Member States have been in existence for almost 30 years.¹²

Since the turn of the century, though, two European legislative frameworks have attempted to converge the policies and practices that pertain to national arms export control: the Council Common Position of 2008 defining common rules governing control of exports of military technology and equipment (EU Common Position); and the Directive of 2009 simplifying terms and conditions of transfers of defence-related products within the EU (Transfer Directive).¹³

The Transfer Directive applies to the trade in military equipment between EU Member States and

tries to facilitate the intra-EU trade in such equipment. Extra-EU transfers are governed by the EU Common Position, which regulates the export of military equipment to non-EU states through a set of common assessment criteria.¹⁴ While the Common Position was adopted only in 2008, the first initiative of the European Council to formulate common criteria for the assessment arms exports had already been launched in 1991–1992, when the eight common criteria were first formulated. At the same time, an ad hoc working group on conventional arms exports (COARM) was installed within the Council of the EU. Consisting of representatives of the Member States, this working group’s tasks were and have been to compare national legislation and to explore avenues for further convergence in the arms export policies of Member States.¹⁵

These criteria were further elaborated on in the politically binding 1998 Code of Conduct on arms exports.¹⁶ Alongside the common criteria, in this Code of Conduct Member States agreed to share information and in certain cases consult in advance on their arms export licensing decisions. Moreover, the code initiated the publication of an annual report on arms exports, which increased the public transparency of arms exports from EU Member States.¹⁷ As a consequence, the set of criteria that EU Member States have needed to use

to assess arms exports have been the same for more than 30 years. These substantive criteria include economic, security and humanitarian norms, with the latter to be understood in the broad sense, including

respect for human rights, respect for international humanitarian law, preventing armed conflict and promoting economic development.¹⁸ Therefore, while the EU includes market concerns and security concerns in its criteria, it has played a particularly important role in establishing humanitarian norms that guide arms export decisions.¹⁹ Furthermore, the EU has been pivotal in

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increasing public reporting practices on arms export decisions: the Common Position contains a clause that obliges Member States to submit national reports annually and to contribute to a consolidated EU annual report on arms exports.

However, while the EU has gradually increased its role in the domain of arms export controls, Member States remain exclusively competent to make concrete arms export decisions. Because of this, important differences continue to exist between Member States' interpretation of the common assessment criteria in their national export control decisions.²⁰ Further convergence of policy and practice has equally proven to be difficult, as became apparent during the two review processes of the Common Position that took place during 2011–2014 and 2018–2019.²¹ Although (or because) both processes took place in times of vibrant discussions about Member States' arms exports – the Arab Spring in 2011–2014 and the Yemen conflict in 2018–2019 – very few steps were taken to proceed with implementing the Common Position towards greater convergence.²²

National sensitivity about transferring competences on arms export controls to the supranational EU level is explicitly reflected in the legal instruments that set up the EDF and the EPF.²³ The EDF's Regulation states that the funding: *"shall not affect the export of products ..., and shall not affect the Member States' discretion as regards their policy on the export of defence-related products"*.²⁴ Likewise, the Council Decision which established the EPF states that any assistance measure which includes transferring or exporting items on the EU Common Military List must be implemented in accordance with the principles of the EU Common Position, *"without prejudice to the national procedure by Member States for such export or transfer."*²⁵ The Member States therefore retain a discretion over the export decision-making process and their risk assessment.²⁶

While at first sight these preambles in the EU legislation clearly state that these instruments do

not plan to affect the policy on national export control, the EU involvement in defence in general and the EDF and EPF more specifically inevitably have a substantial impact on the export control practices and policies of Member States. The next part describes the main pillars of both instruments and describes their relevance to and impact on national arms export controls.

Two European programmes: the European Defence Fund and the European Peace Facility

Although this article focuses on the impact that EU initiatives such as the EDF and the EPF have on arms export control practices at the national level, these are two separate legal instruments. As summarised in Table 1, they originate from different institutions within the EU polity, their focus and means of financing are different, parliamentary oversight is differently organised and their relevance to national arms exports is different. We therefore discuss these instruments separately in the remainder of this section.

European Defence Fund: strengthening collaborative development of military equipment

The EDF is a fund for defence-related research and development (R&D) that is based on the EU's competencies in research and industrial support.²⁷ The goals of the fund are to increase the competitiveness of the European defence industry, to

Table 1: A comparative analysis of the EDF and the EPF

	EDF	EPF
Competent organ and decision-making procedure	European Commission – Supranational	European Council – Intergovernmental
Financing	Part of the European Multiannual Financial Framework (MFF)	Off-budget programme funded by national budgets
Focus	Intra-EU programme on military R&D cooperation and co-development of new military equipment	Export of military equipment to non-EU states
Parliamentary oversight	EP: oversight via the budgetary competence and as co-legislator of the EDF-regulation National parliaments: no direct competence	EP: No formal role National parliaments: general budgetary competence over national contribution to EPF
Impact on arms exports	Intra- and extra-EU transfers	Extra-EU transfers

foster competition and innovation for defence, and to improve the strategic autonomy of the EU by producing the capability and equipment needed by the Member States.²⁸ It supports collaborative industrial projects financially, co-finances the costs of prototype development and encourages small and medium enterprises to participate. Funding is made available for R&D projects conducted by at least three legal entities from at least three different Member States; these projects are aimed at developing new defence products and technologies or upgrading existing products and technologies.²⁹

The EDF was first tabled in November 2016 by the European Commission in line with the European defence action plan. It was then included in the Commission's multi-annual budget proposal for 2021–2027.³⁰ In June 2018, the legislative proposal for this fund was presented by the European Commission.³¹ The EDF was formally adopted in May 2021 and is part of the Multiannual Financial

Framework (MFF) of the EU. Between 2021 and 2027 approximately €8 billion will be available to support collaborative R&D projects financially. Of this amount, €2.7 billion will be available for collaborative defence research and €5.3 billion to fund collaborative capability development projects.

Because the EDF is part of the MFF, the EP has an oversight role in the EDF's evaluation process but not in the definition of its capability priorities or the selection of projects.³² As the annual work programmes are defined as implementing acts and not as delegating acts, the EP is not involved in the drafting of the annual call for proposals. Instead, the EC together with representatives of the Member States draws up the annual work plans and decides on the project calls. Within the European Commission a new Directorate-General Defence Industry and Space (DG DEFIS) has been created and put in charge of the EDF. In addition to the priorities of the Member States, the EDF's annual work programmes are also informed by

the Capability Development Plan (CDP) and the Coordinated Annual Review on Defence (CARD), both of which aim to increase coherence between Member States' defence planning and to encourage European cooperation by defining common EU Capability Development Priorities.³³ Although the EDF was set up as a purely intra-EU programme to support the European defence industry, clear links with the EU's external Common Security and Defence Policy (CSDP) are envisaged.³⁴ Projects put forward in the context of the Permanent Structured Cooperation (PESCO) as EU-wide priorities can, for example, benefit from an additional 10% in funding.³⁵

This explicit link with the CSDP already hints at the external relevance of the EDF. Its impact on arms export control policies and practices lies in both the intra-EU trade in defence goods and the extra-EU exports of co-produced goods. First, the EDF will increase the levels of cross-border collaboration, implying significant intra-EU transfers of defence-related products and technologies.³⁶ The consortia set up under the EDF exchange R&D

output and technical information, which are also subject to licensing obligations, even when they take place within the EU.³⁷ The projects funded under the 2021 call for proposals illustrate the reality of building such European consortia: on average, 18 entities from eight different Member States participate in each project.³⁸

Second, the activities of the EDF will have effects beyond the EU's borders, since domestic arms production is inherently intertwined with international exports.³⁹ The EDF will boost the competitiveness of the EU defence industry, therefore increasing the attractiveness of their products and

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their global market position. While collaborative programmes have been in existence in Europe for decades, the EDF will increase the number of programmes substantially, resulting in an ever-growing amount of military equipment being developed and produced collaboratively. Because arms exports are a national competence, formal cooperation between the partners in the consortia of these co-produced goods is necessary.

Project MARSEUS as an illustration

Project MARSEUS (Modular Architecture Solution for EU States) was selected in the 2021 EDF call. It aims to develop a collaborative close combat architecture to enhance existing missile systems with a Beyond-Line-of-Sight capability.⁴⁰ It relates to the PESCO project 'EU Beyond Line of Sight (BLOS) Land Battlefield Missile Systems (EU BLOS) and comprises 14 companies from four EU Member States (France, Cyprus, Sweden and Belgium). The types of activity included in the project are studies, design, prototyping and testing, which implies that the information and output exchanged between the partners would be subject to transfer controls. Given the strategic importance of BLOS capability, there will probably be an export market for the technologies that are developed. In theory, four governments will therefore be involved in delivering export licences of the specific goods, components and technologies that are used in the developed products.

European Peace Facility: sending military equipment to support third states

The EPF was formally established in 2021 to fill a gap in the EU's external actions by creating one instrument to finance Common Foreign and Security Policy (CFSP) actions in the areas of the military and defence.⁴¹ It followed the African Peace Facility (APF), which was intended to provide resources to fund African peace-keeping operations and missions. In addition, it absorbed the inter-governmental Athena mechanism that partially financed the EU's own military operations.⁴² The goal of the EPF is to strengthen international security, prevent conflicts and build peace. In addition, it empowers regional and international organisations and partner countries to contribute to this incentive.⁴³ It has a two-pillar structure that comprises operations and assistance measures. The first pillar covers the costs of military missions and the operations of the CSDP. The second pillar enables support for international and/or regional organisations in addition to EU foreign partners for conducting Peace Support Operations or strengthening the EU partners' armed forces. This could be achieved through standalone assistance measures and/or actions under a general (multi-annual) programme.⁴⁴

Importantly, the EPF is not part of the EU MFF but relies on an off-budget mechanism.⁴⁵ The EU Member States pay their contributions directly to the EPF every year, based on the EPF's calls for contributions in accordance with the approved spending in line with the agreed-upon annual ceiling.⁴⁶ When it was launched in March 2021,⁴⁷ the proposed financial ceiling was €5.7 billion, with annual ceilings of €420 million in 2021 to €1.13 billion in 2027 – an important part of which was expected to be spent on EU support in Africa.⁴⁸

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The armed conflict between Russia and Ukraine drastically changed the expected volume of EPF expenditure that was revealed to be the pool for EU support to the Ukrainian armed forces. Because it was the only way of delivering equipment from existing stocks swiftly, the EU's immediate and massive support took the form of reimbursing Member States' arms deliveries to the Ukrainian armed forces. Since 28 February 2022, assistance packages for the Ukrainian armed forces have amounted to €4.6 billion of support through the EPF.⁴⁹ In 2022, as much as 86% of the financial ceiling for 2021–2027 had been committed. Therefore, in March 2023, the Council decided to increase the financial ceiling for 2022 by €2 billion, followed by a further €3.5 billion increase agreed to in June 2023. The current total EPF budget commitment until 2027 therefore amounts to €12 billion (€10.5 billion in 2018 prices).⁵⁰ Alongside financial support to reimburse Member States for military equipment sent to Ukraine, several other assistance measures have been adopted by the European

Council since the EPF's implementation in 2021. Besides Ukraine, the EPF has been used to support armed forces in countries across Africa, the Middle East and the EU's eastern neighbourhood (Table 2).

A potential beneficiary – a non-EU government – can request assistance from the EPF. Following such a request, the High Representative for Foreign Affairs and Security Policy (EU HR) would present a proposal to the Council for an assistance measure in line with the strategic orientation of the Council. This initial proposal would be explained in a concept note, which would include a risk analysis and an impact analysis by the European External Action Service (EEAS). These analyses would then include recommendations to mitigate the risks, and also conditions and commitments. On the basis of this concept note the European Council would decide on the esta-

Table 2: Overview of assistance measures under the European Peace Facility (to August 2023)⁵¹

Recipient	Number of assistance measures via Council decisions	Total amount of financial support (€)	Equipment: lethal/non-lethal
Ukraine	8	4.6 billion	Lethal & non-lethal
Mozambique	2	89 million	Non-lethal
African Union	2	730 million	Non-lethal
Bosnia and Herzegovina	2	20 million	Non-lethal
Moldova	3	87 million	Non-lethal
Georgia	3	62.75 million	Non-lethal
Mali	1	24 million	Non-lethal
Balkan Medical Task Force	1	6 million	Non-lethal
Niger	3	69.7 million	Non-lethal & lethal
Lebanon	1	6 million	Non-lethal
Jordan	1	7 million	Non-lethal
Mauritania	1	12 million	Non-lethal
Rwanda ^a	1	20 million	Non-lethal
Ghana	1	8.25 million	Non-lethal
North Macedonia	1	9 million	Non-lethal
DR Congo	1	20 million	Non-lethal

blishment of the assistance measure, the elements of the measure (e.g., the beneficiary, implementing actor and financial scope), the conditions that should be attached to the assistance measure and provisions for monitoring and evaluation.

Central to the process of deciding on assistance measures is the **Integrated Methodological Framework** (IMF), which sets out the guiding principles and possible concerns to be noted and dealt with when assisting partners in the military and defence areas. While it is not a public document, the EEAS provides information on the process and key principles of the IMF.⁵² It sets out a risk-assessment procedure that must be followed to ensure that the EU respects arms transfer

standards such as the EU Common Position, the Arms Trade Treaty (ATT) and other international laws. The IMF also explicitly includes post-delivery controls as a key principle.⁵³

The EU High Representative (i.e., in practice the EEAS) monitors the beneficiary's compliance with the conditions and requirements set out in the Council Decision. In the case of any infringement, the assistance measure can either be suspended or terminated.⁵⁴ The Council may decide on other actions concerning the beneficiary, as appropriate. Once a Council Decision is formally taken, a procurement procedure is launched through selected implementing actors. The Foreign Policy Instrument of the European Commission then

^a The assistance measure for Rwanda is particularly meant to support the deployment of the Rwanda Defence Force in Mozambique.

assumes this role as EPF administrator to provide assistance. If equipment subject to an export licence should be delivered, the contracted suppliers – that is, the companies or government bodies that will supply the proposed equipment – must then apply for the necessary national export licence.⁵⁵ The previous assistance measures for Ukraine were so urgently required that following the usual full procurement procedure was not possible.

The implementing actors that are listed in the Council Decision are the national ministries of defence of the 24 Member States, since it was agreed that the assistance would come from their armed forces' stocks.⁵⁶ The EPF assistance measures to strengthen the capacity of the Balkan Medical Task Force of June 2022, on the other hand, assigned the implementation to the ITF Enhancing Human Security, a humanitarian non-profit organisation established by the Government of the Republic of Slovenia.⁵⁷

While any decision in the Council must be taken unanimously by all Member States,⁵⁸ it is possible to abstain constructively by not financing an assistance measure that includes military equipment or a platform designed to deliver a lethal force. In such a case, the Member States can allocate the funding to another assistance measure.⁵⁹ This alternative accommodates Member States that practice neutrality or those which have other constitutional constraints. Regarding the assistance to Ukraine, for example, Austria, Ireland and Malta do not contribute to the supply of weapons, while they do contribute to the

non-lethal assistance package.⁶⁰ Because the EPF is a CSDP instrument funded directly by the Member States external to the EU budget, the European Commission and the EP play only a very limited role in this context. While the Commission's role is purely an executive one,⁶¹ the EP's capacity is limited to playing an advisory role. Because of this, it is the responsibility of the Council to ensure that the deliveries of arms meet international standards.⁶²

The EPF has direct consequences for policy-making on the control of national arms exports. The EEAS undertakes a preliminary risk analysis and

an impact analysis for the proposed assistance, building on information made available by the EU diplomatic network and the relevant departments in the EU institutions, and on any other appropriate source. In its assessment, the EEAS ensures that the proposed support complies with the relevant legal instruments and best practices based on inter-national and EU rules, standards, and policies in the area of the supply of military equipment. Such support must also consider the beneficiary's record of respect for international law, including international human rights law (IHRL) and international humanitarian law (IHL). Moreover, it must include, in particular, compliance with the EU Common Position.⁶³

The support is delivered under an agreement between the EU HR and the beneficiary, which must include

the signing of a Statement on the End-use^a (SEU) of the delivered equipment. The SEU includes provisions such as identifying the end-user and the final

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^a The SEU is equivalent to an end-use certificate (EUC) that national governments often use to assess the end-use and end-user of the goods, but it is applicable to all items delivered under the EPF assistance measure (irrespective of whether the goods are included in the EU military list or not).

end-use, the use, and a non-re-export clause, post-export controls or other measures to mitigate the risks associated with the export of military goods.⁶⁴

The EU does not have the competence to deliver an arms export licence: this remains a full national competence. This means that the exporting state must ensure that its own processes are in accordance with its national rules and regulations for delivering the export licences, including the related national risk assessment.⁶⁵ Because an arms transfer takes place from the territory of one of the Member States, an export licence from the competent national authority will always be needed, irrespective of whether the items were procured by the EU and whether the EEAS has undertaken a preliminary assessment. The exporting Member States therefore in theory fully retain their prerogative to refuse an export or to attach conditions to a licence, such as non-re-export clauses without authorisation and post-shipment controls.⁶⁶

Challenges and ways forward for policy-making on national arms export control

Because of the clear implications of the EDF and EPF for arms export controls in the EU, it is necessary to underline the challenges that may arise, especially considering that Member States remain, at least formally, exclusively competent to make arms export decisions. It is crucial to understand, first, how these initiatives may have an impact on national governments' policy-making on export controls and, second, how a coherent and responsible arms export policy and sufficient and meaningful parliamentary oversight over these EU initiatives can be guaranteed. Convergence at the lowest common denominator (with market and security considerations outweighing humani-

tarian norms) and an increased transfer of export decisions to a small set of Member States in which the large system integrators are located is a first challenge. A second challenge is how to retain effective parliamentary and democratic oversight over arms export policies and practices. In what follows, these challenges and possible ways of overcoming or resolving them are discussed.

Challenges and opportunities to overcome diverging interpretations of export licences

As EU Member States are still exclusively competent to decide on arms exports, differences in export policies and practices between Member States are inevitable, even after 30 years of attempting to strengthen convergence.⁶⁷ Consequently, diverging interpretations of the common criteria in concrete cases and differences between national legal systems hamper cross-border cooperation between EU Member States. But both the EDF and the EPF incentivise the (need for) further convergence in the interpretation of the common assessment criteria and therefore of national arms export policy-making. Although European convergence in itself is an accepted goal, concerns exist about the direction this convergence may take: harmonisation at the level of the lowest common denominator could lead to economic considerations being prioritised, a de facto transfer of decision-making to the largest EU Member States, and also minimal involvement in this process by the relevant national authorities.

This push for convergence in export control systems and decision-making processes will become increasingly relevant. In its conclusions regarding the review of the Common Position on arms exports in September 2019, the Council noted explicitly that the strengthening of the European

defence's technological and industrial base, which contributes to the implementation of the CSDP, should be accompanied by closer cooperation and convergence in the field of arms export controls.⁶⁸ In the first instance, though, further convergence of national policies poses the risk of lowering the standard across the EU in favour of prioritising economic and security considerations.⁶⁹ It will inevitably be driven by the increased internationalisation of the defence industry and its involvement in cooperative transnational projects; and this will in turn result in a push for further liberalisation of the internal EU market for defence products.

Second, further convergence could have a substantial impact on the extent to which some states will continue to be able to pursue a more stringent approach to arms exports compared to other states. This applies especially to the parts and components of military equipment. In the case of both intra-EU transfers and extra-EU exports further harmonisation will become increasingly necessary and it is feared that the convergence of norms will result in the lowest common denominator effect.⁷⁰

The EDF: the need for clear procedures on arms exports as risk and opportunity for humanitarian norms

The lack of convergence in national licensing procedures for intra-EU transfers of military goods and technologies is already influencing the efficient functioning of the consortia set up under the EDF. This is mainly because of the involvement of new players, mostly SMEs, in the field of defence, which often possess very limited knowledge of the existing legal obligations. Alongside the need to raise awareness among these newcomers about the legal obligations under

the export control laws, both industry representatives and EU institutions have called for the Transfer Directive increasingly to facilitate the implementation of EDF projects.⁷¹ The incentive provided by the EDF could therefore help to advance its implementation, which has been shown to be slow or incomplete in several Member States.⁷² But one of the most important impediments to the further harmonisation of intra-EU

controls and to the development of a common EU defence industry appears to be the lack of a common definition of "components specially designed or adapted for military purpose or use".⁷³

In the past, matters regarding arms exports have had an impact on the success and sustainability of collaborative programmes between EU Member States. Since the

inception of the EDF, besides its direct impact on intra-EU transfers of military goods and technologies, it has inevitably also affected the substance and administration of extra-EU export controls, and will continue to do so.⁷⁴ This is because **when joint development and production becomes more important, so will the need for joint export policies.**⁷⁵

The current lack of joint export policies could lead to several problems with sustained defence cooperation in Europe. It is feared that should this situation persist, it could shift the final arms export decision to the state with the least restrictive standards.⁷⁶ This clearly highlights the two different sets of concerns and interests that are involved here: bigger countries fear the possibility of smaller states that are involved in these consortia exercising their veto; smaller states – some with stricter controls – are concerned about losing their decision-making powers over export controls when they join these consortia.⁷⁷ Regarding the EDF, some argue that there is an

The current lack of joint export policies could lead to several problems with sustained defence cooperation in Europe. It is feared that should this situation persist, it could shift the final arms export decision to the state with the least restrictive standards.

urgent need to define the nature and extent of export control governance;⁷⁸ others indicate the difficulties in discussing later phases at this point, since exports of the final products will take place only in 10 to 15 years' time.⁷⁹ It is nonetheless widely recognised that the final export decision will lead to challenges, since it is unclear who will be responsible for the final export, whether that decision will depend only on the bigger players of the consortia, and which measures can be taken.⁸⁰

Despite the real challenges posed to the current practice of export control policy-making, the push for further convergence also creates opportunities for Member States to steer this process. The widely shared concern that prioritising economic and security-related considerations in arms export practices and policies would necessarily result in the downgrading of humanitarian norms is, however, an over-simplification: *“during periods when export controls are the subject of processes of review and revision, the goal is not necessarily to resolve but rather to manage the process of norm contestation by ensuring that some aspect of the process designed or implemented addresses several sets of competing pressures.”*⁸¹

This means that certain aspects of controls can therefore be adjusted to meet the demands of the economic and security norms, whereas others can be adjusted to support the humanitarian demands. This insight creates space for Member States to push actively for substantive discussions on the interpretation of the criteria set out in the Common Position and for the development of guiding principles to deal with future arms exports resulting from collaborative projects. This, however, requires them to have a proactive strategy and perspective on which norms to prior-

itise in which part of the export control system. Although these uncertainties about the future in certain countries appear to have led to a wait-and-see approach,⁸² such an approach could impede their ability to influence the decision-making process and enforce their own policies. This is because an overwhelming majority of the persons interviewed agree that decisions and agreements are expected to be developed in the coming period.⁸³

Particularly during processes of policy review, as in the current review of the Common Position, state actors possess the agency to promote a particular change in policy

Particularly during such processes of policy review, as in the current review of the Common Position, state actors possess the agency to promote a particular change in policy.⁸⁴ In the preparatory process of this review of the Common Position by the European

Council, which is to take place in 2024, a specific working group was formed within COARM to deal with the matter of commonly produced military equipment. This working group is being facilitated by France and the Netherlands. Another focus group is dealing with the further harmonisation of export control practices and is being chaired by Germany and Sweden.^a Compared to the previous review processes, the current context of the review process may be more conducive to effective progress towards greater convergence.

During the 2011–2014 and 2018–2019 review processes, when Member States were still implementing different national export policies, there was scant political appetite for working on a stronger convergence in national arms export policies. The current geopolitical environment, however, is characterized by stronger consensus and a shared felt need to develop common approaches to and procedures for export controls. The discussions currently underway have not yet been concluded, but it is likely that the result will

a A third working group, led by Italy and Czechia (former Czech Republic), deals with the issue of challenges to the enforcement of export control legislation.

focus mainly on exports of jointly produced goods, with the goal to make them as unimpeded as possible by the multiplicity of licensing approaches and authorities.⁸⁵ The ultimate approach could follow the 2019 Franco-German Aachen Treaty, which has already set out some basic principles regarding arms export decisions on co-produced military goods and technologies.⁸⁶ Importantly, the agreement promotes the principle that no export restrictions will be applied when the proportion of components delivered by one country to the country of final integration and export is less than 20% of the complete military system.

A similar arrangement for co-produced equipment under the EDF terms would once again give the final export decision to the large group integrators, leaving smaller contributors with no say in export policy. However, further convergence on the EU Common Position for all EU Member States could ensure that the demands of these smaller Member States are met in the process, which would avoid export policies being implemented at the lowest common denominator. But the *de minimis* rule would also negate larger contributors' concern that smaller contributors might veto decisions.

If increased European cooperation on defence is combined with meaningful reforms of the system at the EU level, then such enhanced cooperation could support a stricter and more coherent policy on arms exports.⁸⁷ Building explicit linkages between the activities and outcomes of both focus groups could therefore be

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Substantial risks of violations of several of the criteria in the Common Position exist when military items are part of the adopted assistance measures: the risk of diversion, violations of international humanitarian law and human rights, or the prolonging of armed conflicts.

crucial to taking effective concrete steps in this direction. More specifically, linking the development of common rules and procedures for dealing with the export of commonly developed products to initiatives aimed at strengthening and clarifying the language of the common assessment criteria – effectively reducing the likelihood of substantial national differences arising in their interpretation – could be a useful way to balance security and economic motives against the humanitarian norms enshrined in the Common Position.

How the EPF implicitly steers convergence in the interpretation of the common criteria: the need for stronger coordination

As with the EDF, the EPF equally has the potential to drive further convergence in the assessment of arms exports. This is in addition to the extent to which the EDF can or will incentivise further convergence in arms export policies by reducing the barriers to intra-EU transfers of military equipment and developing common approaches to the extra-EU export of jointly developed military equipment.

Substantial risks of violations of several of the criteria in the Common Position exist when military items are part of the adopted assistance measures: the risk of diversion, violations of IHL and international human rights law, or the prolonging of armed conflicts. In the case of Ukraine, for example, the items are sent directly into an active conflict zone.⁸⁸ The preliminary risk analysis and the impact analysis conducted by the

EEAS already include an assessment of whether the proposed support is in accordance with the criteria set out in the Common Position.⁸⁹ The requirement of a unanimous Council decision does not necessarily mean that each Member State will agree to grant the necessary export licence. Member States may also agree to an assistance measure but may not be willing to be directly involved in the support and deliveries.⁹⁰ However, despite Member States' voting in favour of an assistance measure but not necessarily being willing to send military equipment themselves, the process of developing an EU-led assessment of the Common Position and its subsequent discussion in the Council has great potential to lead to an increasingly shared interpretation of the criteria in the Common Position. To guarantee coherence in this interpretation, stronger cooperation would be beneficial at both the EU and the national level.

Although COARM is referred to in the 2020 guidance document on the EPF and the COARM staff at EEAS is informally consulted during the development of EPF assistance measures, these EPF-measures are not formally discussed in COARM, in which national representatives participate.⁹¹ Should COARM and the national representatives engage more closely during the process of assessing adherence to the common criteria, the available expertise on arms export controls could certainly be integrated. This closer engagement could at the same time also strengthen the coherence of policy-making in the EU, between the European level and the competent national level. Equally, further coordination at the national level is necessary because any decision in the Council to support a measure and the EEAS assessment is not necessarily taken by those national authorities that are responsible for export control.⁹² As a result, whereas there might be agreement in the Council, national export control authorities may not necessarily have been

The path towards hollowing out arms export controls and downplaying humanitarian norms in favour of economic and security-related norms is by no means unavoidable.

consulted during the decision-making process. However, despite this, it is quite unlikely that an export will be refused by one national authority for its own industry when the Council already approved the EPF-measure (which, in a way, involved also a political risk assessment), and especially if another Member State then licenses it for its industry.⁹³ It remains unclear, though, what the role of the export authorities will be in the process of establishing EPF assistance measures – other than the eventual assessment of those arms exports taking place from their territory.⁹⁴

At the national level, less knowledge and awareness appear to exist about the EPF's set-up and its (in)direct consequences for national arms export control policies and practices.⁹⁵ Moreover, the potential role of export control authorities in the process of deciding on assistance measures remains unclear. This is particularly problematic

because an export licence must be granted by the national export authority, and this could lead to uncertainty over what might happen in a case of refusal.⁹⁶ Possible reasons for this lack of awareness and knowledge at the national level are that a different department in a national government is

involved in the decision-making process regarding the EPF and that the export control authorities themselves are not necessarily involved in these processes, as is the case in at least one of the Member States.⁹⁷

To summarise, concerns exist about the direction the increasing Europeanisation of export control practices might take and to what extent this would effectively result in a lowering of standards and the dominance of the large Member States in taking arms export decisions.⁹⁸ Although it is clear that these challenges need to be confronted and resolved, not in the least with a view to developing sustainable defence cooperation between EU Member States, the path towards hollowing out

arms export controls and downplaying humanitarian norms in favour of economic and security-related norms is by no means unavoidable. Next to taking economic and security-related norms into consideration, Member States (especially those following a more restrictive approach) need to argue continuously for improved and clearer language that enunciates the humanitarian norms of the Common Position.

In addition to the possibility of the current review process to push for a stronger adherence to the humanitarian norms in export control policies, the increased involvement of the EU in arms export controls could also offer other opportunities to strengthen national arms export policies and practices in various ways. First, the practical implementation of the EPF has resulted in the direct involvement of the EEAS in the process of arms export decision-making. This in turn creates an opportunity for smaller Member States also to obtain access to the knowledge and expertise available within the EU diplomatic network. This information could be used to

substantiate pre-export assessments further at the national level.⁹⁹ National export control authorities could, in other words, benefit substantially from EU expertise and intelligence so as to develop more substantial, better-informed risk-assessment procedures prior to export.¹⁰⁰

Second, next to strengthening pre-export assessments, the practices developed by the EEAS within the EPF framework also include several post-shipment measures to mitigate the risk of misuse and diversion of the goods delivered to a third country. Consequently, the mitigating measures that for a long time were considered exclusively national competences, such as post-shipment controls, are rapidly being implemented by the EU. With post-shipment controls still being the exception in the EU, the EPF could help signifi-

cantly to raise awareness of these controls.¹⁰¹ The current assistance measures include different ways for the EEAS to monitor, control, and evaluate this assistance, including by conducting on-site controls when requested to do so. Regarding the assistance to Ukraine, for example, granting access to the EEAS for these on-site controls is required as one of the safeguarding and mitigating measures. The fact that the EU is allowed to develop such measures also creates opportunities for Member States to strengthen their control practices. In particular, this would help small or medium-sized Member States that want to carry out these inspections but are unable to do so because of their limited diplomatic presence in certain countries or regions. Moreover, doing this at the EU level could facilitate the inspection on

behalf of those countries that lack diplomatic weight, since these inspections are invasive and are capable of causing diplomatic concern. Because the EU is new to implementing such controls and inexperienced in effecting them, given the remaining national competencies in this domain, it is unclear how they would be

planned and conducted in the future – and how Member States would be involved. At this stage it therefore remains uncertain how the cooperation and coordination would occur between the EU and the Member State from which the materiel is exported. Such coordination in defining and implementing end-user assurances would maximise the available resources while avoiding overlaps.¹⁰² Because exporting countries are able to include post-shipment controls separately from the EU, it would be beneficial if there were a common approach to the purpose of and the criteria for the two certificates issued.¹⁰³

Third, in addition to the opportunities the involvement of EEAS via the EPF presents to national export control authorities, these latter authorities could also make use of other EU CSDP-funded

The mitigating measures that for a long time were considered exclusively national competences, such as post-shipment controls, are rapidly being implemented by the EU.

instruments and initiatives to strengthen their control practices and policies. One example is the EU-funded iTrace project, developed by the British NGO Conflict Armament Research.¹⁰⁴ This project, which has received EU funding since 2013,¹⁰⁵ monitors and traces the transfers of diverted arms and makes available key information about effective cases of the diversion of exported weapons from the EU and the methods by which the diversion took place. Close collaboration with the iTrace programme could be extremely useful in two ways. First, it could help with gaining insights into historical cases of diversion in a particular country or region, which could guide the measures taken by the EU and its Member States to avoid future diversion. Second, this instrument could be used to track potential diversion in the future, which then could be instrumental in helping the authorities to take decisions regarding the (dis) continuation of the aid provided via the EPF.

In addition to iTrace, the EU has CSDP-funded projects that are aimed at strengthening the structures for weapons and ammunition management (WAM) in countries which receive military equipment from EU Member States. The improvement of WAM and increased compliance with international standards will reduce the risk of diversion. The EU could accordingly rely on existing expertise and structures in this field and support actors that are already active in it. This would relate to the financial support that the Council of the EU has given to the development of effective instruments for arms and ammunition management by the Ammunition Management Advisory Team (AMAT) with a view to preventing the diversion of conventional weapons.¹⁰⁶

Challenges related to democratic oversight and transparency on arms exports

A second domain in which recent EU initiatives may have an impact is the extent and organisation of parliamentary oversight over and involvement in arms export control practices and policies. Parliaments play a crucial role in democratic societies as they represent people, control public spending and the executive, and act as public forums in which to scrutinise policy-making.¹⁰⁷ Throughout the years, governments have become increasingly transparent and have been required to report publicly on arms export policies and practices. As a consequence, parliaments have been much more involved in keeping governments accountable for their arms export policies, despite the continuing differences in the levels of involvement in and control over the export control policies of national parliaments across the EU.¹⁰⁸ This transparency is also referred to in the EU Common Position: it obliges Member States to publish a national report annually on its arms exports; these reports then serve as the basis for the annual consolidated EU report on arms exports.^{a 109}

The recent initiatives at the EU level challenge the existing practices of parliamentary involvement and oversight over these instruments and over the impact these instruments may have on related policy domains such as arms export controls. The growing involvement of the EU in the defence and security domain poses challenges to the level of transparency in and parliamentary oversight on arms exports. Sufficient comprehensive parliamentary oversight and control would, however, be necessary. This is so not only because democracy and democratic oversight are among the key

^a Although the Common Position obliges Member States to publish data on arms exports, the lack of binding substantive guidelines on what information needs to be reported causes national submissions to the EU consolidated report to differ substantially. This has a negative impact on the quality of public transparency on arms exports in the EU (D Cops. (2018). *Strengthening EU arms export controls through increased information exchange* Brussels: Flemish Peace Institute).

values of the EU and its Member States, but also because they are crucial elements in developing sustainable cooperation in the domain of defence at the European level. As a consequence, parliamentary involvement and oversight at both the EU and the national level, plus interparliamentary dialogue, cooperation, and information-sharing are crucial – given the multi-layered nature of defence cooperation in the EU.¹¹⁰

For a long time, real and practical forms of defence cooperation have been lacking because of national hesitancy to give a stronger role to the EU in this domain, but recent years have seen the emergence of several initiatives at the EU level. The EDF and EPF are in this respect the most concrete initiatives, but other programmes are currently set up: the European defence industry reinforcement through the common procurement Act (EDIRPA) and the Act in support of ammunition production (ASAP). Whereas the former Act aims to incentivise Member States to procure military equipment collaboratively in order to fill the EU's most urgent and critical defence capability gaps,¹¹¹ the latter Act is a direct response to the Council's call to deliver ammunition to Ukraine urgently and to help Member States replenish their own national stocks.¹¹² Moreover, these programmes carry with them significant financial implications: the EDF foresees expenditure of €8 billion between 2021 and 2027, the EPF currently has a total budget of about €10 billion, ASAP has made provision for a €500 million budget until 30 June 2025; and for the EDIRPA, Council-parliament consensus was reached in June 2023 on a budget of €300 million until 31 December 2024.¹¹³ As a consequence, the EU will spend about €20 billion on defence and security in the coming years.

Although both programmes discussed in this article – the EDF and the EPF – have clear impli-

cations for arms export control policies, parliamentary oversight on both initiatives remains relatively limited in practice. The EP has formal competence only with regard to the EDF, being involved as co-legislator. It therefore has direct competence over the fund's budget and needs to be kept informed about its progress. However, the annual work programmes of the EDF are developed by the European Commission in close collaboration with national governments, without the EP being involved. This executive dominance in decision-making is even more present in the context of the EPF. Here, the EP will be involved only via its general information and advisory competences regarding the CSDP.¹¹⁴ More generally, the EP can make use of its generic competences to implement some kinds of control over the implementation of the EPF. It is established practice for other off-budget instruments to

Formalising relations with the European Parliament would ensure that Members of the European Parliament are properly informed about the developments with the EPF and that their suggestions and concerns can be taken into account.

include the European parliament in some way. The European Development Fund, for example, allows the EP to exercise discharge powers and briefs the members of parliament regularly on the implementation of the fund. This should also be the case for arms transfers under the EPF. The decisions of the Council could be explained by EPF representatives and discussed

in the EP, for instance.¹¹⁵ This would not include a power to question the budget, however, since any involvement beyond information would not have a legal basis in the treaty.¹¹⁶ Formalising relations with the EP would ensure that Members of the European Parliament (MEPs) are properly informed about the developments with the EPF and that their suggestions and concerns can be taken into account.¹¹⁷

In other words, although the EP is involved in several of these initiatives as a co-legislator, the European Commission is increasingly being placed at the heart of new EU defence projects.¹¹⁸ A recent

analysis of the EP's role in CSDP concluded that: *"despite the significant security and defence expansion at the EU level that is likely to continue, the CSDP role of the EP has not been formally recalibrated to fit this new, far more Europeanised realities."*¹¹⁹

In addition to the EP, national parliaments also need to ensure that they retain their ability to maintain oversight over policy-making for national arms export control, given the impact of the European initiatives on this policy domain. Although differences exist in the extent to which national parliaments can or do maintain oversight over their governments' export policies,¹²⁰ they should be aware that these European initiatives are having a substantial impact on their ability to control the policy-making processes of the national governments. Albeit indirectly, national parliaments have general competences to maintain oversight and control over these European programmes. Regarding the EDF, the fund's co-financing mechanism means that states will have to increase their budgets for R&D defence and shift these budgets to support these projects financially. National parliaments will therefore be involved through their budgetary powers. In addition, when deciding on participating in the collaborative development projects under the EDF, Member States will need to express a willingness to procure the goods to be developed. National governments therefore also commit themselves to future defence spending when they decide to join a development programme under the EDF. With regard to the EPF, national parliaments are in principle competent because they ultimately need to approve the national budget, a specific portion of which will be used for the EPF. They are, however, not involved in any specific assistance measures decided on by the Council.

A crucial way forward to guarantee and even strengthen parliamentary oversight on arms exports in the current context is the development of interparliamentary scrutiny of the emerging multi-layered European Defence Union.

The role of national parliaments in CSDP matters in general is formally limited. However, the willingness of members of parliament to effectively scrutinise CSDP decisions plays a crucial role in determining the extent to which national parliaments can control and are involved in CSDP decision-making.¹²¹ Here, therefore, lies an important responsibility for national members of parliaments across the EU: they must be aware of the potential impact these evolving European developments have on national policy-making and must actively work at installing a culture in which CSDP initiatives are systematically scrutinised.

While both the EP and the respective national parliaments need to protect their democratic oversight role, increased cooperation and information exchange between both parliamentary levels may even be more appropriate.¹²² The division of competences between EU and national parliaments is increasing, with relevant information and different aspects shared at and dealt with by only one of the levels. Such coordination between the European and national level is not self-evident and does not happen often in practice. In the process of preparing for the EDF, political mobilisation took place mostly in the EP, with a rather limited vertical or transnational coordination aimed at ensuring a high level of parliamentary scrutiny of the EDF.¹²³

A crucial way forward to guarantee and even strengthen parliamentary oversight on arms exports in the current context is therefore the development of interparliamentary scrutiny of the emerging multi-layered European Defence Union.¹²⁴ Parliaments depend on each other to scrutinise EU defence policies and to advance their concerns and priorities during their democratic control of executive powers.¹²⁵ Currently, very

little concerted effort is being exerted to strengthen cooperation and meetings between European and national parliamentarians, mainly due to a lack of political will to build stronger ties between both levels.¹²⁶ The **biannual interparliamentary conferences on the CFSP/CSDP** possess untapped potential to facilitate the exchange of views and deliberation, provided that it is used more strategically by the EP and the national parliaments.¹²⁷ The effective implementation of two specific programmes, such as the EDF and the EPF, may help to incentivise such cooperation, as they make it very clear how both the European level and the national level are intertwined. Regarding the extent to which substantive issues are discussed, much appears to depend on the role of the presidency of the European Council, which is responsible for organising and hosting the interparliamentary conference.¹²⁸

Some concluding remarks

For a number of years, the EU has increasingly been involved in defence and security policy-making. Although traditionally considered an exclusive national prerogative, the changes in the geopolitical context have opened up the space for the European Commission and the Council to develop concrete initiatives to strengthen EU defence cooperation. Since the escalation of the armed conflict between Russia and Ukraine in February 2022, though, much has changed at the European level. While several of the initiatives currently in place – such as the EDF and the EPF – were adopted previously, the Russia-Ukraine conflict has served as an important catalyst to initiatives aimed at strengthening European

defence cooperation. This has resulted in different EU institutions becoming increasingly involved in the field of defence and security. Several of these initiatives have clear and explicit implications for arms export practices, whereas others will affect this policy domain in more indirect, but equally important, ways.

Despite the widely shared acknowledgment of the importance of discussing the issue of arms export controls, there appears to be much uncertainty and lack of clarity at the national level about the real

impact of the EDF and the EPF on national policy-making on export control. The intergovernmental character of the EPF results in a lack of understanding and acknowledgment at the national level of the impact of this programme on export policy-making. Although there still is some time before military equipment developed under the EDF is likely to be exported to non-EU or non-NATO countries, it is important to develop procedures for dealing with such exports in the near future. The discussions currently taking place in COARM in the context of the Common Position review create opportunities for Member States to influence this process. This broad push towards further convergence and the current review process of the CP – in other words, **offering an opportunity to make real progress** – will allow for clear procedures to be developed to facilitate efficient and pragmatic cooperation between EU industries. At the same time, the basic principles and goals set out in the Common Position can be strengthened. While the experience of the previous review processes does not offer much hope of success, given the urgent need for clear agreements and procedures, this option may be the most pragmatic and realistic. In addition, the increased involvement of the EU in arms export control practices creates opportunities for Member States to make use of the expertise, information and instruments

Although there still is some time before military equipment developed under the EDF is likely to be exported to non-EU or non-NATO countries, it is important to develop procedures for dealing with such exports in the near future.

developed by the EU aimed at strengthening their national export control systems.

While this article has focused specifically on the impact of two existing initiatives – the EDF and the EPF – on national arms export control practices, new initiatives under development at the EU level will equally have (in)direct consequences for export control practices: for instance, the European defence industry reinforcement through the common procurement Act (EDIRPA)¹²⁹ and the Act in support of ammunition production (ASAP). Although these two initiatives have a primarily intra-EU dimension, they will inevitably also have an impact on existing arms export control practices and policies. A case in point is the inclusion in the ASAP of a clause exempting the intra-EU transfers of ammunition, missiles and their specially designed components from the obligation of prior authorisation.¹³⁰ Although this derogation from an existing practice in the EU, with most Member States still requiring an individual licence for intra-EU transfers of these items,¹³¹ may make sense in the light of the specific goals and focus of ASAP – that is, the rapid production and supply of ammunition to Ukraine – it may also set a precedent for similar and more

general derogations implemented by the EU in the future.

This strong and steady increase in the number of initiatives taken to strengthen European defence cooperation and the military pillar of the CSDP also stresses the urgent need and responsibility for both the EP and the national parliaments to become more actively involved so as to guarantee sufficient parliamentary oversight over arms exports and adhere to the humanitarian norms set out in the Common Position. While the different parliaments formally play only a very limited role in CSDP-related matters, they can make use of their general competences to question and scruti-

nise the executive level at both the EU and the national level.

It is crucial that there be an increased awareness of the relevance to and impact of the various EU initiatives on national budgets, on national defence and security policy in general, and on national arms export control policies more specifically. Parliamentary involvement should not be seen as an inhibiting factor:

indeed, it should reflect a core value of the EU and will contribute to the sustainability of the programmes currently being developed and implemented.¹³²

It is crucial that there be an increased awareness of the relevance to and impact of the various EU initiatives on national budgets, on national defence and security policy in general, and on national arms export control policies more specifically.

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The Flemish Peace Institute was established in 2004 as a para-parliamentary institution within the Flemish Parliament. It provides thorough analyses, informs and organizes the debate and promotes peace and the prevention of violence.

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