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The Governance of the European Defence Fund

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The launch of the European Defence Fund is a true step forward. Its objective is to facilitate the emergence of a European defence industrial and technological base through cooperation between European industrialists and thus reduce European "capability bottlenecks" in the field of military equipment while attempting to increase the Union's "strategic autonomy". With a budget of €7 billion under the EU's new multi-annual budget, a new Directorate General, DG DEFIS, will be responsible for its management, under the supervision of the European Commissioner for the Internal Market, Thierry Breton. At the heart of European institutional and conceptual transformations, its operation and management are of particular importance.

Under the direction of General
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THE DILEMMA OF THE PROJECTS TO BE FUNDED

One significant debate surrounding the European Defence Fund is which projects (large or small) it will be able to support. Behind this question lies another key issue: is it better to fund ambitious projects in which the four big industrial States are in the driving seat, or to fund multiple, smaller, less ambitious but more inclusive projects? The Member States have taken a stand on this issue and there is a dichotomy between a group comprising Germany, Italy, Spain and France and a group of small industrial States. Each side of the divide is closing in on coalitions to influence the final decision.

The big four are coordinating to speak with one voice and then reach a consensus with the other Member States[1]. A Spanish expert from the Ministry of Defence told us that Spain was trying "*as much as possible to coordinate [its] views with France, Germany and Italy*". An expert from the Austrian Federal Army confirmed that the same dynamic was at work in the other camp: "*They are trying to form a coalition of small countries before the Commission's deliberations so as to obtain a certain balance with respect to the large countries.*" According to him, the coalition allows us to create a fair balance of power: "*We will have the same power in the deliberations as the other big countries.*" This national opposition can also be found in European bodies that are not based solely on national representations. This is the case, for example, in the European Parliament: Zdzisław

Krasnodębski (ECR, PL), rapporteur for the EDF, testifies that, during discussions on the subject in the ITRE Committee[2], the French were almost all of the same opinion, although they belonged to different parties.

Differences in defence industry traditions in the various countries form the basis of the opposition on this issue. Héléne Masson[3] Three circles of national defence industries can thus be observed: firstly, States with large historical industries for which export is a major traditional activity (Germany, Italy, Spain, France and Sweden); secondly, States with a fairly extensive industrial base and export capabilities (the Netherlands, Finland and the Czech Republic); and thirdly, States with mainly industrial subcontractors or niche capabilities (Belgium, Denmark and Austria). For those States with a strong defence industrial and technological base, dissemination is equivalent to "fragmentation" and "sprinkling the money around". For them, the choice should not be made on the basis of geographical return, but on the basis of the impact that such projects can have on European defence. On the other hand, Bram Vranken, a member of ENAAT (European Network Against Arms Trade), points out that small industrial States could feel they are being short-changed if the EDF favours countries with a strong industry. However, as the Fund's money is European, it seems important for these countries to be able to benefit from it, through projects that directly serve their industry: this is the question of fair return.

[1] Interview with Jean-Xavier Chabane, member of EARTO (European association of research and technology organisations) and head of the defence programme at the French Atomic Energy Commission.

[2] The Commission for Industry, Research and Energy (ITRE) was the lead committee when the regulation was drafted. The Budget, Internal Market and Foreign Affairs Committees were involved for opinion only. Thus the Subcommittee on Security/Defence was not involved in the substance, as the EDF was anchored on industry and not on defence.

[3] Masson, Héléne, « Quelle industrie de défense pour quelle Europe ? », *Revue Défense Nationale*, vol. 832, no. 7, 2020, pp. 61-66, <https://www.cairn.info/revue-defense-nationale-2020-7-page-61.htm>

This reduction in the funds that are allocated mechanically increases the dilemma facing the Commission: either concentrate the EDF on a few very ambitious projects, or multiply the programmes to ensure a fairer distribution among companies in the largest number of Member States. The shrinking budget could push the Commission to adopt one philosophy rather than another. Karl-Erik Goffinet, an expert at Dassault's International Directorate General, believes that the Commission should focus on the key capability priorities that the Union needs. He sees this budget as an opportunity to select emblematic structural projects that will help meet the objectives of strengthening Europe's strategic autonomy and industrial competitiveness. This view is not shared by all. For example, the Austrian expert we interviewed considers that the reduction in the EDF budget should force the Commission to lower its ambitions while concentrating on the financing of small-scale projects. These testimonies clearly show the differences in philosophy between States.

Beyond the debate between stakeholders, the fund must satisfy European public opinion. This satisfaction requires the adoption of ambitious and high profile projects, which argues in favour of a greater concentration of the EDF. The German expert interviewed explains that if the Commission only funds small projects, this will harm the visibility and promotion of the programme. This aspect is also taken into account by the Austrian expert who concedes that the adoption of a large project is more likely to appeal to public opinion but warns of the risk that this is likely to pose to the efficiency of the EDF.

THE ISSUE OF THIRD PARTIES

The project to finance European defence capabilities is not entirely popular with the United States, which sees the EDF as a threat to its arms exports to Europe. Thus, there has been a lot of pressure from the US to allow non-EU companies to benefit from the Fund. The question of the participation of companies from third countries, or third parties, was the subject of intense debate during the negotiations on the regulation. Some States, such as Sweden[4] or Italy[5], support the participation of third parties, particularly to avoid the duplication of capabilities within NATO. Carl-Johan

Lind, head of European affairs at Saab, who regretted that companies from the United Kingdom and the United States could not benefit from the fund as it stood, while they represented significant partners, confirmed the Swedish position. Conversely, some countries, such as France, are less in favour of the participation of third parties. This position is based on two arguments: firstly, the fear that third-party entities will interfere (particularly through the ITAR regulation) in the capabilities produced in Europe; secondly, the idea that an EU fund should not finance companies outside European territory. It is therefore a matter of allowing European preference[6].

The thorniest point of the issue was the eligibility of European subsidiaries of non-European groups. An agreement was finally reached in the second half of 2020. Thus, only entities from "European Free Trade Association (EFTA) countries that are members of the European Economic Area (EEA)"[7] can participate.

Beyond the debate between concentration and dissemination of the fund, there is the issue of enabling real industrial cooperation. The reduced budget allocated to the EDF could lead to an imbalance in the allocation of projects between large industries and SMEs. Indeed, as less money is available, this could lead to competition for the fund in favour of large industries. These industries, if they do not open up to smaller ones, would de facto limit cooperation and reinforce competition. How can this programme, which aims to support Member States' defence industries and reduce barriers to industrial cooperation, be fully realised and benefit a variety of industrial entities with an amount that has almost been halved? David Luengo, Director of Indra Belgium, is quite categorical: there will be winners and losers, because the market is competitive. So, a real stakes are being played out for small and medium-sized industries. The latter risk being side-lined by the competition imposed by the larger ones.

However, Anne Fort points out that the EDF is also based on competition and is not a redistributive programme. The best industries are selected according to their level of excellence, without discrimination on the basis of size. However, she recalls that the European industrial

[4] Interview with Nicolas Gros-Verheyde.

[5] Interview with Lieutenant-Colonel Sergi Battocchio.

[6] Information Report n° 626 (2018-2019) de Ronan LE GLEUT et Hélène CONWAY-MOURET, on behalf of the Committee on Foreign Affairs, Defence and the Armed Forces, submitted on 3 July 2019.

[7] Article 5 of the proposal for a Regulation of 13 June 2018 establishing the European Defence Fund.

structure means that it is impossible to include every type of company from every Member State, since not all companies are capable of responding to certain projects, which is normal given the industrial reality. However, she believes that a balance is needed within the large projects led by large European industries that must include smaller companies or SMEs in the technological niches.

While cooperation can achieve a balance between dissemination and concentration, it should also enable "synergies between companies, which remains a long-term objective"[8]. It aims to build a genuine European defence industry, which will give Member States an opportunity to turn to their European partners as a priority when acquiring military capabilities. The Commission has a number of tools at its disposal to encourage industry and, through it, the Member States to work together. It can draw on its own management experience from Horizon 2020[9], which gives it the competence and legitimacy to act. It was able to learn from the PEDID 2019 missions, for which "the incentive mechanism seemed to work well". It is thus easier for the Commission to encourage the creation of links between industrialists based on cooperation between Member States that goes beyond the objectives, the financing capacities and the end of the first EDF cycle.

THE COMMISSION'S CENTRAL ROLE

The allocation of these grants involves striking a balance between concentration and dissemination. While this is the Commission's task, it is not the only one involved in this process. The Commission is responsible for appointing the independent experts who will analyse the projects submitted and define the awards. These are to be distinguished from the group of experts who will then be called the Programme Committee, comprising one representative per Member State. The independent experts are representative of the Commission's power, while at the same time constituting a guarantee for the Member States. They are neutral and specialised actors, intervening to judge the quality of the projects to be subsidised. This guarantee is ensured by their independence, an important criterion in the choice of experts: their skills, experience and knowledge, their

geographical diversity, their gender and their lack of interest in the projects they assess[10] embody the official selection criteria.

However, the Member States do not have control over their selection, which remains the responsibility of the Commission. This is not without its problems, explains Élise Daniel, a legal expert at the Ministry of the Armed Forces: "The mention of experts gave rise to real fears on the part of the French authorities during the negotiations, because we did not know who was going to be appointed, in what way and according to what criteria" The selection process remains unclear for the States: despite the probable existence of national lists of suggested candidates, the Commission is the only actor involved in the choice of experts and the list of selected experts is not made public, "by derogation to Article [237] of the Financial Regulation"[11]. The list of selected experts is transmitted annually by the Commission to the Programme Committee. Furthermore, "the Commission is not obliged to follow the position of the experts".[12]

The Commission also has a central role in the transparency of this mechanism, as provided for in Article 7 of the proposed Regulation[13]. The allocation of projects is done internally, and the various expert assessments are not public, making access to information difficult. The composition of these independent expert groups is also confidential. The Commission also defends its management of the selection of experts so as to avoid certain States exercising more or less control over them[14]. The European Parliament proposed an amendment requiring the Commission to select a variety of expert profiles (philosophers, academics, experts in international law) and not just experts in defence ethics. This amendment was rejected.[15]. A German expert from the Ministry of Defence deplored the Commission's lack of transparency in the selection of these expert groups. This interlocutor fears that this lack of transparency will imply too much political influence in the outcome of the evaluation of proposals, as was the case for the PEDID. More generally, he believes that the States have the means, through comitology, to force the European Commission to be more transparent, to ensure better compliance with and understanding of the rules.

[8] Interview with a French expert from the Ministry of Defence, 12 November 2020.

[9] Horizon 2020 or H2020 is the European programme for research and development for the period 2014-2020. It has a budget of €79 billion.

[10] https://ec.europa.eu/info/jobs-european-commission/experts/call-experts-european-defence-industrial-development-programme/conditions-registration-calls-experts-european-defence-industrial-development-programme_frc

[11] Article 29 of the proposal for a Regulation of the European Parliament and of the Council of 13 June 2018 establishing the European Defence Fund.

[12] Interview with a French expert from the Ministry of Defence, 21 December 2020.

[13] Article 7(2) of the proposal for a Regulation of the European Parliament and of the Council of 13 June 2018 establishing the European Defence Fund: "Proposals shall be systematically screened in order to identify actions which raise complex or serious ethical issues and to subject them to an ethical evaluation. Ethical reviews and evaluations shall be carried out by the Commission, with the assistance of experts on ethical issues in the field of defence. The Commission shall ensure as far as possible the transparency of ethical procedures".

[14] Interview with Pierre Haroche, researcher in European Security at IRSEM.

[15] Interview with Laëtitia Sedou.

The fact that the Commission does not disclose the details of the amounts granted to each beneficiary is regrettable, according to Laëticia Sedou and our German interlocutor, especially as this could be a way to identify potential conflicts of interest. Another point raised by the ENAAT member is the absence of an advisory board or a high experts panel, an external body that can provide the Commission with technical skills and expertise. These monitoring committees, created for most of the Commission's funding programmes, have to be registered in the Commission's database of expert groups, thus imposing a certain amount of transparency - the members of these groups are known, as are the dates of their meetings, for example. The absence of such a body for the PEDID, but also for the EDF is problematic, as the Commission has felt that it has not been able to find qualified people without a conflict of interest - which in itself is questionable. It was also argued that the Commission could be both judge and jury.

THE NEED TO FIND COOPERATION IN A COMPETITIVE ENVIRONMENT

Since 2015, the Commission has taken on European defence issues through an essentially industrial prism. The Europeanisation of this issue has been driven in particular by the international context. The Commission has found its legitimacy in launching the EDF because it is the leading institution in industrial issues. Indeed, the Fund is established based on Article 173 of the Treaty on the Functioning of the European Union (TFEU), which allows the Union to intervene to ensure industrial competitiveness. As Pieter Taal, Head of Unit 'Industrial Strategy and European Policies' at the European Defence Agency, explains, the EDF allows the Commission to establish itself as a European organisation in the defence world by providing support to industries[16].

The Commission is also a legitimate actor in rallying the positions of Member States. Its role differs from that of other competences, such as competition, in that it is all about getting the Member States to work together rather than encouraging the emergence of several champions[17]. The Commission is thus "in its proper role as leader and working together with the Member

States"[18]. According to a French expert from the Ministry of the Armed Forces, "it is also the only one that is legitimate to succeed in bringing to the table interests as diverse as those of the five Member States which alone account for 80% of defence spending and those of the smaller countries with smaller companies and less advanced technologies". The Commission sees itself as an actor in pursuit of the general European interest, which is why it must position itself above simple arbitration between the particular interests of the Member States. In this way, it can avoid the politicisation of the EDF.[19]. There is therefore "a certain amount of cooperation between the Commission and the Member States" which places the institution in the position of a link between the Member States.

The Commission's legitimacy is strengthened by the advantages of its approach and structure. According to Anne Fort, "the great strength of the Commission and the Community approach is that it allows for faster progress than an agreement at intergovernmental level". According to Guillaume de la Brosse, planning cooperation "has always failed [...] because we were in an intergovernmental framework, without financial incentives"[20]. The European approach allows for the long-term nature of policies, which is necessary for long-term industrial programmes. This is because the Commission has a sustainable administration that is independent of the Member States and is not subject to constant political change or changes in budgetary orientation[21]. This enables the establishment of a long-term policy. Finally, the legitimacy of the European approach is enhanced by the difficulties of the intergovernmental method[22], for which the results have only ever been very relative[23].

It should be noted that if the legitimacy of the European Commission to influence industrial policy at EU level is increasing, it is to the detriment of other institutions, particularly the European Defence Agency (EDA). This marginalisation can also be seen in the internalisation of expertise by the Commission, with the creation of DG DEFIS, dedicated mainly to the EDF[24], which has "recruited quite a few people, particularly from the French DGA, who have the technical knowledge and who will be able to bring this to the Commission, which until now has not necessarily had these skills"[25].

[16] « I guess that the EDF is a way to establish the Commission as a communitarian organization in the defence world. The strategy of the Commission is to get a clearer and a bigger role in this domain. The entrance is not military capabilities, but the entrance is providing support to industries », interview with Pieter Taal, 18 December 2020.

[17] Interview with a French operational coherence officer from the Ministry of the Armed Forces' General Staff, speaking on his own behalf.

[18] Interview with an expert from the Austrian Federal Army, "the Commission is in its right role as leader and working together with the Member States".

[19] Interview with Tania Lađici.

[20] Interview with Guillaume de la Brosse.

[21] Interview with Nicolas Gros-Verheyde.

[22] Interview with Pierre Haroche, researcher at the IRSEM.

[23] For example, the Defence Directives 2009/81 and 2009/43 have only been partially implemented by Member States and the work of the EDA has been considered slow and difficult.

[24] Interview with Pierre Haroche.

[25] Interview with Elise Daniel.

There are several reasons for the exclusion of the European Defence Agency, the first being one of a legal nature. Since the Fund is established on an industrial basis, it is by definition outside the Common Security and Defence Policy (CSDP). However, the Agency is exclusively part of this policy (articles 42.3 and 45 of the TEU). Guillaume de la Brosse adds that an EDF, under the authority of the EDA of an intergovernmental nature, would escape the control of the Parliament. Furthermore, he wonders whether the EDA's €30 million budget gives it the capacity and credibility to manage a fund committing nearly €1 billion per year under the multi-annual financial framework 2021-2027[26].

While the marginalisation of the EDA benefits the Commission, the latter is not the only one to welcome this. Many Member States want to keep the EDA out of EDF governance because it already has a number of prerogatives: the EDA is responsible for prioritising capacity needs and research and technology requirements. This sidelining is also due to the difficulties inherent in the EDA's decision-making mechanism, which, as an intergovernmental body, finds it difficult to reach a consensus among Member States with different capability agendas. It is easier for Member States to influence the Programme Committee directly than through the intergovernmental agency.

Although the Commission intended to retain its autonomy in steering the EDF budget, a certain amount of cooperation between the EDA and the Commission has been necessary to ensure that EDF projects meet capability needs. Pieter Taal explains that the Agency intervenes at intergovernmental level in the framework of the capability prioritisation mechanism, identifying capability needs and potential cooperation. The EDA's objective is to act as a project manager on behalf of the Member States in developing initiatives funded by the Commission. Lieutenant-Colonel Sergi Battocchio suggests that the EDA should at the very least support Member States with a poorly structured defence technological and industrial base (DTIB) and "help small States to join certain projects"[27]. For Claude-France Arnould, it is not enough to simply involve the Agency more in the management of the fund: "The role of the Commission in the EDA must be strengthened and the role of the EDA in the structures set up to manage the EDF must be reinforced. Ultimately,

if the intergovernmental pillar is to be strengthened, and given that the defence ministers are not the ones who manage the EDF, the solution could be to better integrate the EDA, whose steering committee is composed of the defence ministers".

However, the predominant role of the Commission needs to be qualified. As Nicolas Gros-Verheyde points out, the EDF depends on a European fund, which will in the medium and long-term trigger the role of other European institutions such as the Court of Auditors or the Court of Justice. Moreover, the marginalisation of the EDA does not mean that the Member States will be side-lined in this restructuring; on the contrary, it underlines the major stake represented by the voice of the Member States, which can lock in the work programme and certain project choices, and which are responsible for ensuring that security regulations are respected, in accordance with Article 30 of the proposed regulation. As a French expert from the Ministry of Defence reminds us, this step is a major change in the EDF compared to the APRD and the PEDID[28]. It is now the Member States that have control over the management and ownership of classified information, a guarantee that they demanded following the preparatory stages.

THE EDF AND THE DIFFICULTY OF STATES HAVE IN WORKING TOGETHER

In view of the enthusiasm generated, the financial incentive provided by the European Defence Fund seems to be a lever for greater cooperation between industries and States. Nevertheless, it cannot alone overcome the difficulties inherent in the European defence industry, which are the lack of contacts between industries, the assurance of the purchase of capabilities by the Member States and the absence of common export rules.

While it is fairly easy for States to announce their readiness to cooperate, it is not so easy for industrialists, who operate in a competitive system. "The negotiations for the first projects submitted to the PEDID were long and difficult," confides David Luengo. Not all European defence industries are used to working together and, when they do, they would like

[26] Interview with Guillaume de la Brosse.

[27] Interview with a French expert from the Ministry for the Army, 12 November 2020.

[28] Interview with a French expert from the Ministry for the Army, 21 December 2020.

to be able to set the conditions for their cooperation. In his view, companies are not paid enough attention by Member States, which mainly think about cooperation but not about how to achieve it. Thus, the whole point of the EDF is to systematise cooperation, an objective that already seems to be proving itself, since Airbus has already contacted Leonardo to prepare the future European helicopter that would benefit from the Fund. Of course, as far as the big names in European industry are concerned, it is easy to find potential partners. Indra, for example, is frequently approached by SMEs. The same cannot be said for cooperation between European SMEs, especially those that are not specialised in the defence field, but whose products are on the Commission's roadmap. This is the case, for example, of the company Nexedi, which specialises in the application software sector and is the coordinator of the smallest project benefiting from PEDID funds, involving four companies in all. This project was made possible thanks in particular to the support of personal relations, since the project leader knew someone working in a Bulgarian company. This lack of knowledge between the companies represents a significant challenge for the implementation of the EDF. Indeed, it seems difficult for these companies to cooperate with actors they do not know. Jean-Marc Edenwald, who works in Nexter's France and Europe Institutional Relations Department, explains that the EDF would help create a directory of European companies specialising in niche areas. It might be interesting for these companies to have more frequent opportunities to meet, as recommended by the Hague Centre for Strategic Studies for Dutch companies[29]. This might now be possible thanks to the Market Places organised by the European Defence Agency.

THE LIMITS OF THE EUROPEAN APPROACH

The Commission's levers for acquisition are limited. The Europeanisation of production chains can only fulfil its promise of rationalisation and gains in competitiveness if the results of the projects are ultimately acquired by the States and, preferably, jointly in view of benefiting from economies of scale[30]. States do not want to be forced by the supranational level to acquire capabilities that do not meet their needs. Moreover, some States,

such as Germany, are reluctant to accept any form of European procurement pooling[31]. This reluctance to delegate on procurement is reflected in the EDF text, where the Commission seems far less equipped than in earlier phases of the process. It has established the intention of acquisition by at least two States as an eligibility criterion[32], but it lacks the incentive leverage that is its strength elsewhere in the EDF. It is limited to putting forward a "financial toolbox" that encourages States to use innovative financing mechanisms to better pool acquisitions. The Commission would have liked to do more, without committing direct expenditure from the European budget[33]. It did in fact put forward more ambitious funding proposals, such as "defence bonds", i.e. joint European loans to help acquire[34]. As this proposal was not successful, the added value of the Commission regarding acquisition appears "less obvious". However, Guillaume de la Brosse confides that these are "debates that will reappear" in the second half of the mandate, when the question of the commercialisation of projects that will have benefited from European co-financing will be raised. "And there, he says, *"it will be necessary to involve European financing instruments"*.

The European approach is also limited with regard to arms exports. The TFEU establishes the decision to export arms, munitions and war material as a national competence[35]. European law provides little guidance on arms export policies outside the EU: in 2008, a Council Common Position[36] established an embryonic European framework by setting eight binding criteria[37] with which Member States' exports must comply. However, these criteria are not supported by a sanction mechanism[38], while interpretations of the Common Position vary from State to State[39]. Differences in national policies can therefore have important consequences for the viability of jointly developed weapons systems. If national approaches clash and Member States block each other's export of the product of cooperation, these economies of scale and gains in competitiveness will be limited to the potential of European demand. This situation could be all the more damaging as it would prevent the benefits of the autonomy acquired by cooperation under the incentive of the EDF: the results of the EDF cannot be

[29] « To prepare Dutch SMEs for a successful participation in the EDF, it is necessary to raise their awareness through information campaigns and provide them with assistance in making the "big" step into the European defence market. Such assistance could take the form of matchmaking events (some of which are already taking place) [...] », [The European Defence Fund: Challenges and Opportunities for Dutch Participation](#), The Hague Centre for Strategic Studies, December 2018, p.10.

[30] Fort, Anne, «European Commission and the Defence Industries: state of play of transitional programmes (PADR, PEDID) and next steps (web conference)», op. cit.

[31] Interview with Pierre Haroche.

[32] Article 23.3.a) the proposal for a Regulation of the European Parliament and of the Council of 13 June 2018 establishing the European Defence Fund.

[33] What Article 41.2 TEU prevents.

[34] Interview with Pierre Haroche.

[35] Article 346.b. of the TFEU: 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.

[36] Common Position 2008/944/PESC of the Council of 8 December 2008.

[37] Article 2 of the Common Position 2008/944/CFSP.

[38] [Report on arms exports : implementation of the common position 2008/944/CFSP](#), 17/07/2020, §18.

[39] Article 1 of the Common Position requires States to assess "on a case-by-case basis, having regard to the criteria in Article 2, applications for export authorisations submitted to it". This "having regard to" is not very binding and allows Member States to interpret quite freely whether or not the application submitted to them contravenes the criteria. The EU Court of Justice, whose jurisdiction does not extend to CFSP documents, cannot harmonise these interpretations.

subject to control or restriction by a third country[40]. This would mean overcoming the obstacle of the US ITAR and creating new, European ones.

Some qualify the extent of this risk, claiming that European demand, driven by a deteriorating geopolitical situation, will be sufficient to achieve economies of scale and competitiveness to trigger acquisition by European customers[41]. For others, like Julien Malizard, "we will have export needs to complete national demands". He takes the example of the missile industry: "MBDA, which has to some extent aggregated all the skills that existed at European level in the production of missiles, makes almost 50% of its turnover from exports [...] in this example, the relevant market is rather global, it is not only European". The Commission, as with acquisition, is aware of the sensitive nature of the subject. It has tried to reassure the Member States by ruling out any desire to interfere in the definition of national export policies[42]. With the EDF, European law on arms export controls has not been tightened. However, Article 25(3) of the Regulation stipulates that the Commission must be informed in the event of the export of a project co-financed by the EDF. If it considers that the export is "contrary to the interests of the Union and its Member States in the field of security and defence", it can demand the reimbursement of the EDF grant. No veto power, but a new duty to inform, according to Guillaume de la Brosse[43].

Although progress in terms of European coordination is tenuous, "the debate has been launched" according to Pierre Haroche. It is taking shape in Strasbourg, where Hannah Neumann (Greens/EFA), in a report adopted by the Parliament in September 2020, makes the link between strengthening the European DTIB and efforts to harmonise export controls[44]. Her report makes several proposals[45] which form the outline of a common export regime. Pierre Haroche sums it up as follows: "If we really aim to develop a European DTIB, with money in addition to the EU budget, it would make sense in terms of efficiency to have greater coordination on exports. The Commission would also have a role to play, because on these trade issues, we also come within its expertise".

It seems important to us that this draft debate should not remain a dead letter and that the Member States should

take up this subject and deepen the common export framework. To leave this debate unresolved is to maintain uncertainty about the exportability and viability of the most ambitious and costly EDF cooperation products, those most in need of foreign markets. The creation of a single export regime with supranational authorisation does not seem feasible, as confirmed by Guillaume de la Brosse. The unanimity of the revision of the treaties which would allow the delegation of this competence is not guaranteed. Several Member States, including France, are opposed to this transfer of competence[46]. In addition, ethical considerations around the sale of arms are pervasive and divide States. Yet there is no need to build this single regime to reduce uncertainty. Following the recommendation made by French MPs Jacques Maire (LaREM) and Michèle Tabarot (LR), we could at least consider a reformulation at European level of the Franco-German agreement of October 2019[47]. According to Pierre Haroche, this agreement establishes a "modus vivendi" for arms exports between France and Germany. For cooperative programmes, the blocking of exports by one of the two parties must be motivated by an "attack on its direct interests or its national security"[48] followed by extensive consultations. As for the delivery of components from one party necessary for the completion of the other party's weapon system, the agreement provides that the first party may not object to the export of the weapon system if its components represent less than 20% of the system ("unless its direct interests or national security are affected").[49] Finally, given the large number of transfers between States in the context of the implementation of the EDF, one could also ask whether the directive simplifying the conditions for transfers of defence-related products within the Community (2009/43/EC), which is complex to implement, should be revised in order to make it easier to implement.

The European Defence Fund is an innovative tool, both in its objectives and in its governance structure: the "EDF is a way of establishing the Commission as a Community organisation in the world of defence"[50]. The success of the Defence Union will depend on it. The reduction in the budget allocated to it did not seem to

[40] Art 25.2 of the Proposal for a Regulation of the European Parliament and of the Council of 13 June 2018 establishing the European Defence Fund.

[41] Interview with an expert from the EUISS.

[42] Haroche, Pierre, «Supranationalism strikes back: a neofunctionalist account of the European Defence Fund », *Journal of European Public Policy*, vol. 27, no. 6, p. 860.

[43] Interview with Guillaume de la Brosse.

[44] "Member States have very different ways of interpreting the common position, leading to different export decisions", H. Neumann in Brzozowski, A., « SEDE rapporteur: EU badly needs common rules, transparency in arms export », *Euractiv*, 29/05/2020, §36.

[45] One example is the increased monitoring of exports of products developed under the auspices of the PEDID or the EDF, §44 of the report

[46] Rapport d'information de l'Assemblée Nationale sur le contrôle des exportations d'armement, partie 2 II.B 2.b.

[47] Decree No. 2019-1168 of 13 November 2019 publishing the agreement in the form of an exchange of letters between the Government of the French Republic and the Government of the Federal Republic of Germany on defence export controls (together with an annex), signed in Paris on 23 October 2019.

[48] Article 1 of the agreement of 23 October 2019 between France and Germany.

[49] Article 3 and Annex 1 of the agreement of 23 October 2019.

[50] "I guess that the EDF is a way to establish the Commission as a communitarian organization in the defence world" interview with Pieter Taal

undermine its potential, insofar as it represented a real upheaval. While much is at stake here, finding answers is essential. Its effective results will serve as a benchmark for the development of future joint European projects. These could benefit from the EDF's twofold positive impact on European industrial cooperation: upstream, the Fund should bring the coordination of Member States' defence planning closer together; downstream, it should Europeanise Europe's industrial fabric by opening up hitherto largely national value chains[51].

As such, the task of the programme stakeholders will be to cooperate in consensus with the aim of satisfying all involved parties. Cooperation seems to be one of the keys to solving the dilemma between concentration and dissemination. The Commission therefore has the difficult but fully assumed role of integrating all Member States and industries. It must thus allow a fair return in a competitive environment, while encouraging useful joint innovations to give the Union a certain strategic autonomy. The allocation of subsidies will have to obtain the confidence of the Member States and industrialists, which is more easily acquired by the former than by the latter.

However, the Commission alone cannot ensure the success of the EDF. It needs the support of the Member States and the European Defence Agency. While the relationship between the Commission and the Member States seems to be in line with expectations for the time being, the place of the Member States must be considered in the long term and the defence aspect of the Fund must be established. Its ability not to "undress national structures"[52] of their role (especially in

the defence budget) will determine its sustainability. Moreover, institutional power games persist and risk undermining the smooth running of the Fund. In this respect, recognising the added value of the EDA and giving a status to the OCCAr seem to us to be essential objectives. These agencies have recognised long-term expertise, each in their respective fields, which should be highlighted. Finally, better communication between the Commission and the Agency may prove relevant.

Finally, the EDF must take full account of the challenges facing industrialists, the direct beneficiaries. Defence industry players need to make themselves better known and find ways of cooperating, solidly supported by the States and possibly the EDA. The design of joint defence industrial projects raises the more delicate questions of acquisition and export regime, for which industrialists will need answers, so as to ensure the greatest efficiency of the EDF. The specificities of the defence market require greater European coordination in the field of arms exports if a genuine EDTIB is to be built.

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[51] Interview with Guillaume de la Brosse.

[52] Interview with Claude-France Arnould.

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