


EUROPEAN DEFENCE: CAN THE EU PICK UP THE SLACK?

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European Defence: can the EU pick up the slack?

by Stefano Stefanini and Martin Reguli

The pace of European Defence has suddenly picked up. Sparked by a few root causes, addressed in a previous GESI paper¹, the full range of EU defence initiatives² is now moving towards the implementation stage with the new Commission taking office on December 1st. The Commission's incoming President, Ursula von der Leyen, has outlined the institution's priorities. The predominant issue is strengthening Europe's defence industrial base through the newly created Directorate General for Defence, Industry and Space³. In parallel, the issue of European contributions to transatlantic security and defence – “burden sharing” – will once again be on the table at NATO's London summit taking place December 3rd and 4th. European Defence was, and is, supposed to be the answer. However, out of concern for U.S. industrial interests, doubts are now being raised by the Trump administration⁴. Finally, French President Emmanuel Macron has made a strong case for European defence without fully clarifying the extent to which it should be “complementary” to NATO and serve the purpose of allowing Europe to “regain military sovereignty”.

For now, these questions are likely to remain unanswered. A more immediate concern though is simply how the EU's new role in defence and security is shaping up, what the EU brings to the table of European and transatlantic security, and the extent to which initiatives in the pipeline – once implemented – will fill existing gaps in European capabilities and military preparedness. These are the issues addressed in this paper.

This paper outlines what the EU can do for European defence: quite a lot and more than meets the eye. For instance, the EU is in the driving seat on force movement which is essential just as much to NATO. No point in more troops or more military readiness, if those troops cannot be moved rapidly when needed. Military mobility across EU borders depends on EU infrastructure and EU regulations. But it must be crystal clear also what the EU cannot do and should not be asked to do. Those limitations are structural. Therefore, European defence has to be a cooperative effort between the EU and other players and formats. Even its most ardent advocates know it. It is no coincidence that the ongoing talk about a “European Security Council”⁵ originates in two EU capitals (Paris and Berlin) but has a scope and reach that extends beyond the EU.

The EU is not a collective defence organisation. It has no nuclear deterrent in a nuclear world; in addition to the P5 (USA, Russia, China, UK, France), there are now at least four nuclear powers – and counting. EU institutions may not want to talk about the nuclear dimension but silence will not make it fade away. There is only one way to offset the loss of a quarter of pre-Brexit EU military assets and capabilities: to engage post-Brexit London in European defence – and the UK needs to give a clear indication of its willingness to be part of it instead of sailing solo across the Atlantic. The same with two non-EU “front-line” states on the European perimeter: Norway in the Arctic North and Turkey in the Mediterranean, Middle East, Caucasus, and Central Asia flank. Relations with Ankara are at a difficult juncture for a number of reasons, but Turkey is a lynchpin to European security: if it is out of the defensive architecture, Southern

¹ European Defence at Crossroads, GLOBSEC European Security Initiative, June 2019, <https://www.globsec.org/publications/european-defence-at-a-crossroads-gesi-political-framework-paper/>

² EEAS (2018, June 27). Implementing the Global Strategy: EU delivers on security and defence. Retrieved from https://eeas.europa.eu/topics/eu-global-strategy/47517/implementing-global-strategy-eu-delivers-security-and-defence_en.

³ “The new DG's activities are focused on the defence market rather than on defence policy per se”. Besch, S. (2019, November 18). Can the European Commission develop Europe's defence industry? Retrieved from <https://www.cer.eu/node/8173/view-email>.

⁴ “The real transatlantic difference revolves around industrial interests” Brattberg, E., & Valášek, T. (2019, November 21). EU Defense Cooperation: Progress Amid Transatlantic Concerns. Retrieved from https://carnegieendowment.org/2019/11/21/eu-defense-cooperation-progress-amid-transatlantic-concerns-pub-80381?utm_source=carnegieemail&utm_medium=email&utm_campaign=announcement&mkt_tok=eyJpIjoiT0dOa1ltTXpZMik0TVRrMyIsInQiOiJ5V2I5bkVkYmZnYWVYRjMnZzN2VySDZEUThtVFZOazZPUFI2V1VEUHB6Q1wvaTN6cXk5MUITeG1wZ1AzWDInMFdmNFFkOXdzd0RGUnlTRE14OE55OHBUa2w0VVNwYUJ2N3k0dnJWU3loK2NwUG5FdTZiMIJGOW8xMkJcL1QxcmdteEN6In0=.

⁵ Scazzieri, L. (2019, November 27). Towards a European Security Council? Retrieved from <https://www.cer.eu/node/8209/view-email>

Europe and the Mediterranean are simply indefensible. Finally, while the EU can certainly carry out operations within Permanent Structured Cooperation (PESCO), there might be circumstances better met by a coalition of the willing formats, witness French European Intervention Initiative (E2I) initiative.

1. Setting the scene

The debate on European defence is now inevitably structured by Emmanuel Macron's interview to *The Economist*⁶. If NATO is "brain dead" (having previously been called "obsolete" by then candidate Donald Trump), is it up to the European Union to fill the gap in European security?

The French President does not go that far⁷. He retreats to the notion of "complementarity" to NATO but still advocates an enhanced European role and responsibility in defence and military affairs. But when he talks about Europe being able to defend itself, he has clearly set his mind on a Europe that is broader than the EU. It certainly includes the United Kingdom.

In fact, Macron makes reference⁸ to four European ongoing projects: the European Intervention Initiative⁹ (E2I – which is not EU but a coalition of the willing with United Kingdom's participation); Permanent Structured Cooperation (PESCO)¹⁰; the European Defence Fund (EDF)¹¹; the Franco-German decision to develop a future -generation tank and a fighter plane¹² (which is not an EU but a bilateral industrial cooperation project). Though a fervent supporter of the EU, Macron consequently has acknowledged that European defence cannot be confined solely to the EU.

The underlying problem of entrusting European defence to the EU is that the EU is **not** a collective defence organisation. Under the Lisbon Treaty, military assistance and cooperation among Member States (MS) is provided on an essentially voluntary basis¹³. Moreover, the EU budget cannot finance military or defence expenditures¹⁴. It is of fundamental importance to

⁶ *The Economist*. (2019, November 7). Emmanuel Macron in his own words. Retrieved from <https://www.economist.com/europe/2019/11/07/emmanuel-macron-in-his-own-words-english>.

⁷ **The gap between Europe's defence, which doesn't have an Article Five equivalent, and NATO is very hard to bridge though, isn't it? It's very hard to guarantee each other's security with the same credibility that NATO has, even allowing for the weakening of NATO that you've just spoken of. So how do you get from an idea of collaboration to the guarantee of security, that NATO perhaps can't provide anymore? How do you cross that gap, and project power too if necessary?**

EM: First of all, NATO is only as strong as its member states, so it only works if the guarantor of last resort functions as such. I'd argue that we should reassess the reality of what NATO is in the light of the commitment of the United States. Secondly, in my opinion, Europe has the capacity to defend itself. European countries have strong armies, in particular France. We are committed to ensuring the safety of our own soil as well as to many external operations. I think that the interoperability of NATO works well. But we now need to clarify what the strategic goals we want to pursue within NATO are.

Europe may be in a position to do so if it accelerates the development of European defence. We've decided on enhanced cooperation between several member states, which involves pooling, a solidarity clause between member states. A European Defence Fund has been set up. We have the European Intervention Initiative, designed to be complementary to NATO. But you also need to have stress tests on these issues. France knows how to protect itself. After Brexit, it will become the last remaining nuclear power in the European Union. And so it's also essential to think about this in relation to others.

⁸ *The Economist*. (2019, November 7). Emmanuel Macron on Europe's fragile place in a hostile world. Retrieved from <https://www.economist.com/briefing/2019/11/07/emmanuel-macron-on-europes-fragile-place-in-a-hostile-world>.

⁹ Boffey, D. (2018, June 25). Nine EU states sign off on joint military intervention force. Retrieved from <https://www.theguardian.com/world/2018/jun/25/nine-eu-states-to-sign-off-on-joint-military-intervention-force>.

¹⁰ EEAS. (2019, November 12). Permanent Structured Cooperation (PESCO) - factsheet. Retrieved from https://eeas.europa.eu/headquarters/headquarters-homepage/34226/permanent-structured-cooperation-pesco-factsheet_en.

¹¹ European Commission. (n.d.). European defence fund. Retrieved from https://ec.europa.eu/growth/sectors/defence/european-defence-fund_en.

¹² "So I think the first thing to do is to regain military sovereignty. I pushed European defence issues to the forefront as soon as I took office, at the European level, at the Franco-German level. At the Franco-German Council of Ministers on 13 July 2017, we launched two major projects: the tank and the aircraft of the future." *The Economist*. (2019, November 7). Emmanuel Macron in his own words. Retrieved from <https://www.economist.com/europe/2019/11/07/emmanuel-macron-in-his-own-words-english>.

¹³ See Articles 42-44, in particular 42.7.

"If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States. Commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation." Official Journal of the European Union. (2007, December 17). Treaty of Lisbon. Retrieved from: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:306:FULL:EN:PDF>.

¹⁴ Lisbon Treaty, Article 41.2.

understand these constraints (what the EU cannot do) in order to appreciate the opposite (what the EU can – and will – do).

While the EU has institutional limitations in the area of military-defence, it carries significant strengths and competencies in the broader security sphere, including development of the defence industry, dual use infrastructures, cybersecurity, and neighbourhood policy in, for example, the Mediterranean and Africa. Moreover, a) it can mobilize financial resources and b) it holds regulatory power (mandatory legislation) over Member States (MS). NATO has neither. Therefore, the EU is not able to do as much as is often claimed¹⁵ in the area of European “defence” but it can do more than meets the eye for European “security”.

In the present circumstances (an incoming new Commission; ongoing negotiations of the EU 7-year budget – Multiannual Financial Framework/MFF 2021-27), there are four main initiatives in the EU pipeline that are intended to beef up European Defence and/or European security at large:

- PESCO;
- Trans-European Transport Network (TEN-T)¹⁶;
- European Defence Fund (EDF);
- European Peace Facility (EPF)¹⁷;

The last three projects in the list will bring fresh money to European security. The amounts are not final; current figures are tentative, subject to ongoing MFF negotiations that are extremely complex and highly controversial among MS.

2. Permanent Structured Cooperation (PESCO)

PESCO is part of the EU’s Common Foreign and Security Policy and involves endeavours to pursue structural integration of the defence capabilities of the armed forces of individual member states. This cooperation itself was enabled by changes introduced in the Treaty of Lisbon in 2009, namely article 42.6 and Protocol 10. PESCO, however, was only first initiated in 2017 with its first projects launched in 2018. *It is part of the intergovernmental component of EU defence cooperation; decision making processes are vested in the Member States.*

The founding agreement between the EU foreign affairs ministers was signed on 7th September 2017, with the aim of developing ten initial PESCO projects¹⁸. The agreement was originally adopted by 23 out of 28 EU member states, with Ireland and Portugal expressing their desire to join PESCO in early December 2017^{19,20}. The activation of PESCO by the 25 participating states occurred on 11th December²¹. The three countries deciding to opt-out were Denmark, the

“Operating expenditure to which the implementation of this Chapter gives rise shall also be charged to the Union budget, except for such expenditure arising from operations having military or defence implications and cases where the Council acting unanimously decides otherwise.

In cases where expenditure is not charged to the Union budget, it shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise. As for expenditure arising from operations having military or defence implications, Member States whose representatives in the Council have made a formal declaration under Article 31(1), second subparagraph, shall not be obliged to contribute to the financing thereof.” Official Journal of the European Union. (2007, December 17). Treaty of Lisbon. Retrieved from: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:306:FULL:EN:PDF>.

¹⁵ Forget the misplaced fantasies about “European army”.

¹⁶ European Commission. (n.d.). Trans-European Transport Network (TEN-T). Retrieved from https://ec.europa.eu/transport/themes/infrastructure/ten-t_en.

¹⁷ EEAS. (2018, June 13). European Peace Facility - An EU off-budget fund to build peace and strengthen international security. Retrieved from https://eeas.europa.eu/headquarters/headquarters-homepage/46285/european-peace-facility-eu-budget-fund-build-peace-and-strengthen-international-security_en.

¹⁸ Foreign Affairs Council (FAC). (2017, September 7). EU defence ministers: defence cooperation needs to be brought to a new level. Retrieved from <https://www.eu2017.ee/news/press-releases/PESCO>.

¹⁹ Council of the European Union. (2017, December 8). Permanent Structured Cooperation (PESCO) - Council Decision - adoption. Retrieved from <http://data.consilium.europa.eu/doc/document/ST-15511-2017-INIT/en/pdf>.

²⁰ Council of the European Union. (2017, December 8). COUNCIL DECISION establishing Permanent Structured Cooperation (PESCO) and determining the list of Participating Member States. Retrieved from <https://www.consilium.europa.eu/media/32000/st14866en17.pdf>.

²¹ European Council. (2017, December 11). Defence cooperation: Council establishes Permanent Structured Cooperation (PESCO), with 25 member states participating. Retrieved from <https://www.consilium.europa.eu/en/press/press-releases/2017/12/11/defence-cooperation-pesco-25-member-states-participating/#>.

UK, and Malta. The UK was already in the process of withdrawal from the EU while Denmark has an opt-out from the CSDP. Malta, meanwhile, also chose not to participate²²²³²⁴.

The key principles of PESCO revolve around the binding commitment that member states with better military capabilities establish permanent structured cooperation within the EU framework. This cooperation is governed under Article 46 of the Treaty of the European Union. Under this article, states notified the Council and the High Representative of their intention to undertake this initiative. The Council then decided through a qualified majority, establishing PESCO and determining its list of participating Member States. From that point on, states could join or withdraw from PESCO following an established procedure. All the different decisions concerning PESCO issues not related to the participation of a country require a unanimous vote of participating member states²⁵.

There are several central aspects and criteria of PESCO cooperation. Firstly, criteria is specified for cooperation, the harmonisation of requirements, and the pooling of resources related to the funding, research, acquisition, and utilisation of defence equipment. This particularly applies to programmes and specific initiatives of the European Defence Agency, including, for example, the Code of Conduct on Defence Procurement. Secondly, relevant cooperation includes the capacity to supply targeted combat units for planned missions. Lastly, the countries should be capable of carrying out, within the given timeframes, the tasks of joint disarmament operations, conflict prevention, humanitarian and rescue interventions, peace-keeping, crisis management, peace-making and post-conflict stabilisation, and military advice and assistance²⁶.

Overall, PESCO has a two-layered governance structure with a clear division of responsibility between the Council and contributing member countries of respective projects. The Council is responsible for the policy direction of the initiative and key decision-making concerning such processes as the assessment mechanisms for member countries' fulfilment of commitments. Each of the specific projects, meanwhile, is managed by the respective contributing member countries. The process has to be conducted in accordance with the general rules of project management, which will be developed at the Council level.

3. Trans-European Transport Network (TEN-T)

TEN-T is the centrepiece of EU-NATO cooperation. It addresses a major European defence vulnerability: logistical and administrative difficulties in moving military assets across borders. In this area, the EU can deliver something that NATO needs but cannot deliver by itself. The EU brings to the fore money and regulatory power.

The importance of tackling the issue of force movement across Europe cannot be stressed enough. It is a main, if not the main, area where NATO-EU cooperation will be tested – and certainly a primary area where it can deliver²⁷. Lack of military mobility frustrates any progress in defence spending and equipment standardization. Without it, more troops will sit idle at borders and fresh ammunition will remain in storage for precious days, if not weeks. NATO has no real handle on military mobility. The problem is two-fold. It requires (1) more suitable/usable infrastructure and, above all, (2) less red tape. The second issue of bureaucracy is indeed

²² Erlanger, S. (2017, November 13). E.U. Moves Closer to a Joint Military Force. Retrieved from <https://www.nytimes.com/2017/11/13/world/europe/eu-military-force.html>.

²³ Times Malta. (2017, December 11). Malta among three countries opting out of EU's new defence agreement. Retrieved from <https://timesofmalta.com/articles/view/malta-among-three-countries-opting-out-of-eus-new-defence-agreement.665421>.

²⁴ DW. (2017, November 13). PESCO: EU paves way to defense union. Retrieved from <https://www.dw.com/en/pesco-eu-paves-way-to-defense-union/a-41360236>.

²⁵ Council of the European Union. (2008, April 15). Consolidated versions of the Treaty on European Union and the Treaty on the functioning of the European Union. Retrieved from <https://register.consilium.europa.eu/doc/srv?l=EN&f=ST 6655 2008 INIT>.

²⁶ *Ibid.*

²⁷ NATO's Ulm Command, in Germany, is at the centre of current efforts: "In the future, USAREUR will use Exercise Defender 2020 to gather further lessons. Defender 2020 is a Department of the Army-directed, USAREUR-led exercise designed to demonstrate the United States' ability to rapidly deploy a division to the European theater. This exercise, the largest in 25 years, will test echelons-above-brigade units in operational-level warfighting and its associated sustainment." Fraser, A., & Abernethy, R. (2019, May 1). Strong Europe: A continental-scale combat sustainment laboratory. Retrieved from https://www.army.mil/article/219091/strong_europe_a_continental_scale_combat_sustainment_laboratory.

paramount. Cross-border transport of any military asset is subject to national regulations on dangerous goods. Here the EU can kick in with all its regulatory power. The final goal should be to achieve a common EU set of rules. Given the complexity of the task and the various layers of legislation, it will take considerable time. A two-step approach should aim in the short term at providing measures and waivers to be activated in case of emergency, while pursuing EU-wide legislative uniformity over the long term.

TEN-T is *not* a military/defence project. It is an old EU project aimed at transportation across Europe²⁸ *but would now also be employed as a vehicle to address the problem of adapting infrastructure to military mobility, a major NATO concern.* This is possible on account of the fact that railways, bridges, ports, airports are dual use by definition.

The proposed funding by the EU Commission²⁹ amounts to € 6.5 billion over a 7-year cycle and it is to be matched by an equal amount from MS, bringing the total expenditure to € 13 billion.

TEN-T would provide a significant contribution to security in making Europe more “defensible” by overcoming current logistical and regulatory constraints to moving troops and military assets within Europe. It would be an area of informal coordination with NATO.

In the context of these move to enhance the EU’s security standing and environment, the High Representative, alongside the European Commission, proposed several initiatives to support the development of the EU’s capacity in the area of military mobility. The Joint Communication has provided an outline of key issues needing to be addressed. These concern obstacles currently hampering the logistical movement of military equipment and personnel throughout different countries of the European Union. There is a need to facilitate and expedite mobility in order to increase the flexibility, speed, and efficiency of the EU’s reaction to both external and internal crises. In this vein, both the European Commission and the High Representative are seeking to fulfil their commitments to utilise available means for development of a Union that protects.³⁰

Outgoing/former High Representative Mogherini has claimed this is necessary to ensure the EU helps tackle the security challenges of the day through increased cooperation with our partners. This demands that the member states fully coordinate their defence capabilities, efforts and infrastructure. One of these elements is the strengthening of the EU’s military mobility and cooperation with NATO partners³¹.

As military equipment and the armed forces enjoy a special status under EU rules, military mobility is also legally bound primarily by the rules of national governments. However, there is considerable space for more coordination, even one could say harmonised approaches, optimising cooperation and maximising potential at the EU level. This would increase the EU’s added value and provide the foundation for civilian/military synergies across the EU. The EC and the High Representative have tried setting the basis for improvements in Europe’s military mobility. Based on the Joint Communication, the Council has set up guidance for an action plan,

²⁸ “The **Trans-European Transport Network** (TEN-T) is a planned network of roads, railways, airports and water infrastructure in the European Union. The TEN-T network is part of a wider system of Trans-European Networks (TENs), including a telecommunications network (eTEN) and a proposed energy network (TEN-E or Ten-Energy). The European Commission adopted the first action plans on trans-European networks in 1990.^[1] TEN-T envisages coordinated improvements to primary roads, railways, inland waterways, airports, seaports, inland ports and traffic management systems, providing integrated and intermodal long-distance, high-speed routes. A decision to adopt TEN-T was made by the European Parliament and Council in July 1996.^[2] The EU works to promote the networks by a combination of leadership, coordination, issuance of guidelines and funding aspects of development.” European Commission. (n.d.). Trans-European Transport Network (TEN-T). Retrieved from https://ec.europa.eu/transport/themes/infrastructure/ten-t_en.

²⁹ Part of the funding would compete with other projects financed by the EU Cohesion Fund. That creates opposition among MS that are net beneficiaries of EU regional policy, with the exception of the Baltic States.

³⁰ European Commission. (2017, November 10). JOINT COMMUNICATION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL. Retrieved from <https://ec.europa.eu/transport/sites/transport/files/join20170041-improving-military-mobility.pdf>.

³¹ European Commission. (2017, November 10). The European Union is stepping up efforts to improve military mobility. Retrieved from https://ec.europa.eu/transport/modes/road/news/2017-11-10-improve-military-mobility_en.

which was followed up in March 2018 by the Action plan on military mobility published by the European Commission³²³³.

The central measures needed to improve the mobility of the European countries' military capabilities are:

- to establish a common understanding of the needs and requirements, further discussed and agreed by the EU members;
- to reach a common understanding of what infrastructure needs to be utilised for this purpose and how this would impact the current infrastructure standards applied across the MS;
- to tackle specific regulatory and procedural concerns such as legal barriers, national procedures, customs, and dangerous goods.

In terms of infrastructure policy, the Joint Communication has proposed building upon the current Trans-European Transport Network (TEN-T). The statement defines the key areas where synergies could work. One of them is the possible dual use of available networks for both military and civilian use. Others include cooperation with crucial stakeholders of the defence policy following the TEN-T policy database (TENtec) and the evaluation of the use of the Connecting Europe Facility, which is the funding instrument for the implementation of the programme within the defence field³⁴³⁵.

4. European Defence Fund (EDF)

The EDF is allocating € 13 billion in the 2021-2027 EU budget to co-finance industrial projects carried out by at least three defence industry companies and three Member States. In tentative planning, € 8.9 billion would be spent to co-finance “collaborative capability development” projects and € 4.1 billion to fund “collaborative defence research”. In the Commission’s words, EDF fulfils three objectives related to national defence expenditures by having MS: “spending more (co-funding), better (research and development) and together (cooperation)”. It should promote projects aimed at standardizing equipment, addressing well known European gaps in military capability such as new technology for surveillance and reconnaissance, heavy lifting logistics, and air refuelling and supporting European innovative undertakings such as the French-German-Spanish sixth generation fighter plane.

The EDF will fall under the jurisdiction of the new Directorate General for Defence, Industry and Space under the French Commissioner for Industrial Policy and Digital Single Market, Thierry Breton³⁶. He, in turn, will be under the close scrutiny of the Commission President – herself a long-standing German Defence Minister – who has stressed the need to focus on implementation. Breton faces the challenge of managing an area that MS have always regarded as almost exclusively within the national domain and one that has traditionally been used to protect national industries, employment, exports, and geopolitical interests in a fiercely competitive environment. The most immediate task will be to confront the issue of cooperation with third countries. The US is leading the pack in questioning EDF but others will likely follow suit: the post-Brexit UK, Turkey, and Norway.

The EDF stands to be the EU’s main new contribution to European Defence – and it is also meant to strengthen NATO, albeit indirectly. The EU maintains that since it “aims to enhance the ability of the European Union to take care of its own security, the EDF will contribute to improve transatlantic burden-sharing”. Brussels has a point.

Yet the EDF is a source of tension between the EU and the US. The dispute arises from the Washington complaint that EDF will result in protectionism in favour of European defence

³² European Commission. (2018, March 28). JOINT COMMUNICATION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the Action Plan on Military Mobility. Retrieved from https://ec.europa.eu/transport/sites/transport/files/2018-military_mobility_action_plan.pdf.

³³ European Parliament. (2019, March). Military mobility. Retrieved from [http://www.europarl.europa.eu/RegData/etudes/ATAG/2019/635570/EPRS_ATA\(2019\)635570_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2019/635570/EPRS_ATA(2019)635570_EN.pdf).

³⁴ European Commission. (2017, November 10). The European Union is stepping up efforts to improve military mobility. Retrieved from https://ec.europa.eu/transport/modes/road/news/2017-11-10-improve-military-mobility_en.

³⁵ European Parliament. (2019, March). Military mobility. Retrieved from [http://www.europarl.europa.eu/RegData/etudes/ATAG/2019/635570/EPRS_ATA\(2019\)635570_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2019/635570/EPRS_ATA(2019)635570_EN.pdf).

³⁶ French “ownership” of the complex portfolio was not missed by President Macron in the Economist interviews.

manufacturers, thereby putting the American defence industry at an unfair disadvantage on the European defence market. The issue was raised by the US last May³⁷. After a testy exchange of letters, the two sides have engaged in – still ongoing - negotiations. Given the commercial-industrial nature of the dispute, there is a risk that it will become conflated with broader trade strains, possibly a trade war, between the US and the EU. This paper focuses on the specific differences regarding access to EDF by third countries. The wider context, however, must be taken into account because it could take impinge on the US-EU defence industry's cooperative access to the Fund.

The EDF addresses two crucial constraints of European Defence as well as of transatlantic burden-sharing: the shortfall of European military capabilities and insufficient defence spending. Since the EU cannot spend money on military outlays, it tackles the problem from the supply rather than the demand angle. The EDF *does not provide funds for defence but rather for the defence industry*. It is a defence *industry* cooperation project; it supports industry, in other words, not military procurement.

Given the high level of internationalisation and cross-border connections within the defence industry, it is not surprising that the EDF would immediately run into the issue of third country access. In fact, not only is it a bone of contention between the EU and the US, it is also controversial within the EU. Some MS, led by France but also including Germany and Spain, lean towards restricting access of third countries to EDF resources. Others (e.g. Italy, Poland, the Netherlands, and Sweden) are more open to the participation of companies from the US (and UK) in EDF financed projects through their EU based affiliates. The industrial cleavage runs between a tendentially Franco-German bloc that would prefer using the EDF to support an EU-wide “buy European” policy and other MS with defence companies that have close links and/or footprints in the US and in the UK – and want to preserve those ties in the context of EDF financed projects. The Commission is striving to strike a balance but has not been able to reach consensus among all MS. Its latest proposal³⁸ was not approved by EU COREPER³⁹ largely on account of French reservations.

In parallel, the Commission is negotiating with the US on the basis of rules for third country companies' participation in EDF-financed projects that were agreed by the European Parliament and the European Council last spring⁴⁰. They establish that “entities located in the EU but controlled by third country entities or by third countries will be eligible for EDF funding” if:

- there is no conflict with “EU security and defence interests”;
- “participation does not hamper security of supply, security of information to deploy and export the defence technologies developed within the EDF-financed project in question”.

Both conditions have to be “guaranteed” by the Member State where the entity is located. The host MS would act as “sponsor” of an application for EDF funding lodged by a foreign-owned or foreign-controlled company based on its territory⁴¹.

In practice, the main obstacles, especially with regard to the US, are maintaining intellectual property rights in the EU and avoiding export restrictions other than the ones imposed by EU legislation. Washington opposes EDF's intellectual property rules as being too stringent. The EU cannot accept that exports of systems developed with EDF funding be submitted to US International Traffic in Arms Regulations (ITAR)⁴² and Export Administration Regulations (EAR).

³⁷ France 24. (2019, May 14). US warns EU over 'poison pill' defence plans. Retrieved from <https://www.france24.com/en/20190514-us-warns-eu-over-poison-pill-defence-plans>.

³⁸ Barigazzi, J. (2019, May 11). UK, US could take part in EU military projects under draft plan. Retrieved from https://www.politico.eu/pro/eu-military-projects-draft-plan-uk-post-brex-it-involvement/?utm_source=POLITICO.EU&utm_campaign=2a27204180-EMAIL_CAMPAIGN_2019_11_05_06_36&utm_medium=email&utm_term=0_10959edeb5-2a27204180-189769197.

³⁹ EU MS meeting at Permanent Representatives' (Ambassadors) level.

⁴⁰ “Unlike the US, where decisions on foreign participation are discretionary and can be adapted to each specific project, the institutional nature of the EU requires having a prior clear and common understanding of the objective conditions for participation of third country entities”. *The devil, of course, is in the details*.

⁴¹ If, for example, Raytheon Deutschland GmbH were to apply for EDF funding, Germany would have to certify that the two conditions are met.

⁴² Ennis, H., Estevez, A., Mariani, J., Moran, J., & Pauloski, J. (2019, July 12). National security and technology regulation. Retrieved from <https://www2.deloitte.com/us/en/insights/industry/public-sector/national-security-technology-regulation.html>.

The EDF has real potential to spur defence spending by MS and to reduce market fragmentation by encouraging cooperation instead of competition between different EU countries. It faces the quandary of integrating the defence market across Europe without creating losers, particularly among MS that are not in the top tier of the defence industry. This is why the EDF is expected to “strongly encourage the cross-border participation of small and medium sized enterprises”⁴³. It will require a multi-pronged balancing act between cooperation and integration on the one side and respect for national interests on the other, between strengthening European innovation and the industrial base and the extent of openness to US and other third countries. *In spite of these difficulties, at the outset of the new von der Leyen Commission, the EDF is the EU’s best bet to play a significant role in building badly needed European military capabilities, in coordination with NATO⁴⁴, in order to achieve greater transatlantic interoperability.*

5. European Peace Facility

Threats to European security from the “South” include regional instability, terrorism, Jihadist inroads in Africa, illegal immigration, etc. The EU has sought to address these issues with its own missions and operations⁴⁵ within the Common Security and Defence Policy (CSDP)⁴⁶ and with capacity building support to African States through the African Peace Facility⁴⁷.

The problem is that because of the limitations of Article 41.2 of the Lisbon Treaty, military expenditures cannot be financed by the EU budget. As a result, the financial burden of CSDP missions and operations is almost entirely covered by participating MS, with the ATHENA mechanism⁴⁸ providing only minimal relief of between 5% and 10% of the overall costs⁴⁹. The African Peace Facility is an off-budget fund but has its own limitations: at present, the EU “cannot train and equip” African (or other) partners.

The European Peace Facility is meant to overcome these difficulties. It would replace ATHENA and the African Peace Facility. The idea was originally proposed by the High Representative Federica Mogherini. This proposal called for financing all CFSP external action with specific military and defence implications. The objective of this initiative was to enhance the ability of the European Union to protect European security interests as well as to prevent conflict and support peace building processes in the EU vicinity⁵⁰. This process was set out by the European Parliament recommendation from the 28th of March 2019⁵¹. More broadly speaking,

U.S. Department of State. (n.d.). Understand the ITAR and Export Controls. Retrieved from https://www.pmddtc.state.gov/ddtc_public?id=ddtc_public_portal_itar_landing.

⁴³ “The Commission will have to strike a balance between two contradictory goals for the defence market: on the one hand, it is supposed to integrate and streamline the sector, which would mean the most globally competitive firms winning out over those that are kept afloat by state subsidies and national demand. On the other hand, it is supposed to keep member-states on board. But member-states that are not home to one of the EU’s top defence firms will not want to miss out on funds from the common budget. Member-state support for the EU’s defence programmes will hinge on how Breton manages this conundrum, and whether he can achieve a degree of regional balance by promoting investment in small and medium-sized defence companies across Europe.” Besch, S. (2019, November 18). CAN THE EUROPEAN COMMISSION DEVELOP EUROPE’S DEFENCE INDUSTRY? Retrieved from <https://www.cer.eu/node/8173/view-email>).

⁴⁴ By linking the EU Capability Development Plan (CDP) to NATO Defence Planning Process (NDPP).

⁴⁵ EEAS. (2019, March 5). Military and civilian missions and operations. Retrieved from https://eeas.europa.eu/headquarters/headquarters-homepage/430/military-and-civilian-missions-and-operations_nl.

⁴⁶ EEAS. (2019, September 4). The Common Security and Defence Policy (CSDP). Retrieved from https://eeas.europa.eu/topics/common-security-and-defence-policy-csdp_en.

European Commission. (n.d.). Common Security and Defence Policy (CSDP). Retrieved from https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_search/common-security-and-defence-policy_en.

⁴⁷ European Commission. (n.d.). African Peace Facility. Retrieved from https://ec.europa.eu/europeaid/regions/africa/continental-cooperation/african-peace-facility_en.

⁴⁸ European Council. (2019, April 8). Athena - financing security and defence military operations. Retrieved from <https://www.consilium.europa.eu/en/policies/athena/>.

⁴⁹ Not unlike NATO, “costs lie where they fall”, but even more in the EU’s operations than in NATO’s where there is more scope for common funding.

⁵⁰ European Parliament. (n.d.). LEGISLATIVE TRAIN SCHEDULE. Retrieved from <http://www.europarl.europa.eu/legislative-train/theme-new-boost-for-jobs-growth-and-investment/file-mff-european-peace-facility>.

⁵¹ European Parliament. (2019, March 28). European Parliament recommendation of 28 March 2019 to the Council and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy

the EPF aims to increase European effectiveness in defence and security operations by ensuring that funding is available on a permanent basis and facilitating rapid deployment of forces, thereby strengthening the EU's flexibility. Lastly, the EPF has the ambition of making the European Union a more reliable and supportive partner to its allies, a partner that is capable of carrying out a much broader range of actions. The main goals are to help the EU become an active player in the fields of peace preservation and conflict prevention and a central actor in countering security challenges more generally⁵².

Off-budget funding would total € 10.5 billion⁵³ for the 2021-2027 period. It is subject to the MFF negotiations, at risk of cutbacks⁵⁴, and the legislative process⁵⁵.

The management of the EPF will be under the authority of the High Representative, as it is a CFSP instrument. Support is provided by the European External Action Service and financial administration will be provided by the Commission's Service for Foreign Policy Instruments. There will also be an EPF committee established to oversee the day-to-day management of the EPF. This committee will be comprised of the representatives of member states and chaired by the representative of the High Representative managing the EPF, including namely the budget and accounts of the facility⁵⁶.

In terms of the scope of activities covered by the EPF, the instrument will enable the EU to help fund its military operations, provide support to military peace-support operations conducted by its partners, and facilitate military and defence actions more broadly. It is expected that the EPF would streamline the different funding arrangements that were previously intended for these purposes. Measures receiving financing from the Facility would be chosen by the Council or the Political and Security Committee of the EPF, with decisions to be based on unanimity voting following a proposal from the High Representative⁵⁷. The EPF will enable the EU to finally finance peace support operations carried out by partners practically anywhere in the world. Up to the present, such support, meanwhile, has been confined to operations led by the African Union or by regional organisations in Africa. The Facility will also allow the European Union to aid the armies of partner countries through the provision of military assistance, equipment, infrastructure, or capacity building.⁵⁸

concerning the Proposal of the High Representative of the Union for Foreign Affairs and Security Policy, with the support of the Commission, to the Council for a Council Decision establishing a European Peace Facility. Retrieved from http://www.europarl.europa.eu/doceo/document/TA-8-2019-0330_EN.html?redirect.

⁵² EEAS. (2018, June 13). European Peace Facility - An EU off-budget fund to build peace and strengthen international security. Retrieved from https://eeas.europa.eu/headquarters/headquarters-homepage/46285/european-peace-facility-eu-budget-fund-build-peace-and-strengthen-international-security_en.

⁵³ EEAS. (2018, June 13). New European Peace Facility worth €10.5 billion to bolster international security. Retrieved from https://eeas.europa.eu/headquarters/headquarters-homepage/46331/new-european-peace-facility-worth-€105-billion-bolster-international-security_en https://eeas.europa.eu/headquarters/headquarters-homepage/46331/new-european-peace-facility-worth-€105-billion-bolster-international-security_en.

⁵⁴ **EU MILITARY OPS:** In the meantime, three senior EU diplomats told Playbook they expect the pot of cash for the European Peace Facility (EPF) to actually be lower than the envisaged €10.5 billion. [Described](#) as "another step towards cementing [the EU's] role as a global actor," the off-budget money proposed by the External Action Service is meant to be used for military operations. And in another possible sign of the lack of appetite for further integration, many EU countries don't want the European Commission in charge of the EPF. Ambassadors will discuss the issue at their so-called Coreper meeting next week, "to provide direction for further work," according to one of the diplomats. BARIGAZZI, J. (2019, November 21). POLITICO Brussels Playbook, presented by ExxonMobil: The East strikes back — EU military ops — Taking to the streets. Retrieved from <https://www.politico.eu/newsletter/brussels-playbook/politico-brussels-playbook-presented-by-exxonmobil-the-east-strikes-back-eu-military-ops-taking-to-the-streets/>.

⁵⁵ European Parliament. (n.d.). LEGISLATIVE TRAIN SCHEDULE. Retrieved from <http://www.europarl.europa.eu/legislative-train/theme-new-boost-for-jobs-growth-and-investment/file-mff-european-peace-facility>.

European Parliament. (2019, March 28). European Parliament recommendation of 28 March 2019 to the Council and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy concerning the Proposal of the High Representative of the Union for Foreign Affairs and Security Policy, with the support of the Commission, to the Council for a Council Decision establishing a European Peace Facility. Retrieved from http://www.europarl.europa.eu/doceo/document/TA-8-2019-0330_EN.html?redirect.

⁵⁶ EEAS. (2018, June 13). Questions & Answers: The European Peace Facility. Retrieved from https://eeas.europa.eu/headquarters/headquarters-homepage/46286/european-peace-facility-qa_en.

⁵⁷ European Parliament. (n.d.). LEGISLATIVE TRAIN SCHEDULE. Retrieved from <http://www.europarl.europa.eu/legislative-train/theme-new-boost-for-jobs-growth-and-investment/file-mff-european-peace-facility>.

⁵⁸ EEAS. (2018, June 13). Questions & Answers: The European Peace Facility. Retrieved from https://eeas.europa.eu/headquarters/headquarters-homepage/46286/european-peace-facility-qa_en.

Conclusion

In order to gauge the European Union's role in defence and security, the focus must shift away from a teleological debate to pragmatic endeavours aimed at identifying the deliverables of an array of new initiatives that are moving from the pipeline to implementation with the von der Leyen Commission. Indubitably, the jury is still out. The EU, nevertheless, is emerging as a decisive player in strengthening the industrial foundations of European military capabilities through the European Defence Fund and as a co-owner of European Defence with Member States and multinational initiatives such as the European Intervention Initiative. With its operations encountering the constraints of the Lisbon Treaty, namely Article 42.7, it cannot play a leading role in the defence and military sphere strictly defined. However, the EU has the potential to fully partner with NATO in the broader arena of European security. It provides an indispensable contribution to the Alliance's goals through the Trans-European Transport Network. The European Peace Facility will allow the EU to be actively engaged in geographical areas (Africa) where NATO is conspicuously absent.

The issues facing the EDF are possibly the most complex. It is crucial that in implementing the new facility the EU strikes a balance among Member States and among their respective industrial interests, avoids creating winners and losers, and keeps the door open - under clear and transparent regulations - to third country participation, especially to NATO Allies such as the US, the UK, Turkey, Canada, and Norway. The EDF and defence industry cooperation more generally should be sheltered from any fallout from trade tensions between the EU and the US. On the contrary, by easing the burden-sharing dispute and facilitating interoperability, the EDF should become a building bloc in strengthening transatlantic relations in the context of European Defence.



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