



The Commission's proposals for a stronger and more responsive European defense industry

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📖 EU AND COMPETITION LAW, DEFENSE, PERSPECTIVES

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In 5 March 2024, the Commission presented its first-ever European Defence Industrial Strategy (EDIS)¹, an ambitious set of actions meant to enable Member States to spend more, better and together, and to support the competitiveness and readiness of the European defence industry.

The EDIS finds its rationale in the need to fulfil the objectives of an enhanced defence readiness, that is, a steady state of preparedness of the Union and its Member States to protect the security of its citizens, the integrity of its territory and its critical assets and infrastructures, as well as its core democratic values and processes. Following Russia's invasion

of Ukraine in 2022, there is a wide consensus on the need for the Union to swiftly upgrade its defence readiness even with regard to the so-called "hybrid threats" such as, amongst others, cyberattacks, sabotage, hacking of critical IT infrastructure and disinformation. Hence, it is now time for the EU to move forward, from *ad hoc* emergency responses into establishing a long-term vision. In that perspective, the EDIS paves the way towards a comprehensive and ambitious approach to support the European Defence Technological and Industrial Base (EDTIB)'s greater competitiveness, responsiveness and resilience over the next decade².

In the first place, the EDIS highlights the need for significantly greater investments

¹ Com. Comm. JOIN(2024) 10 final of 05.03.2024, *A new European Defence Industrial Strategy: Achieving EU readiness through a responsive and resilient European Defence Industry*.

² Com. Comm. COM(2013) 542 final of 24.07.2013, *Towards a more competitive and efficient defence and security sector*.



to make the European industry more innovative, competitive and self-sufficient. Therefore, a Defence Industrial Readiness Board bringing together Member States, the High Representative/Head of the European Defence Agency (EDA) and the Commission will be created, to provide for a structured approach to planning and procurement in an environment of reinforced transparency, coordination and consistency. More particularly, the Board will provide a forum to be convened by the Commission and the High Representative/Head of the EDA to discuss and refine identified priorities at EU level and will support the coordination and de-conflicting of Member States procurement plans providing strategic guidance in view of more effectively matching demand and supply.

Since investing more together is the pre-requisite of a stronger EU defence readiness, Member States are moreover encouraged to cooperate more closely throughout the capability life cycle, starting at the research and development stages. In this regard, the Commission will make available a new legal framework, the Structure for European Armament Programme (SEAP), as a tool to underpin and strengthen defence cooperation on a voluntary basis. Specifically, three or more Member States willing to cooperate to jointly develop, procure, use and maintain defence equipment will be able to use the SEAP framework to implement their cooperation. The participation in a SEAP, however, requires Member States to invest in the Union defence industry, providing in return specific benefits such as, amongst others, preferential access to EU funding, harmonised and simplified joint procurement rules and VAT waiver in case of joint ownership by the SEAP.

Investing more, better, and together, however, will increase the Union's defence readiness only if the investments

resulting from increased resources allocated by national budgets are well conceived. For that reason the Commission, in cooperation with the High Representative/Head of the EDA, aims at establishing a European Military Sales Mechanism to facilitate the availability of defence products from the EDTIB and increase awareness of such availability. Such a mechanism will be tested through a pilot project resting on four pillars³, with a view to its launch with Member States and the industry from 2028 onwards.

In the second place, despite the possibility to already rely on an overall competitive, world-class EDTIB, in a constantly changing geopolitical context, where the Union and its Member States must take responsibility for the security of their citizens, a yet more responsive and more resilient EDTIB is fundamental in order to create the conditions for the EU's industry to meet Member States' demand in time as well as scale. More particularly, the mobilisation of the EDTIB should aim to increase the resilience and security of supply across Europe, fully considering the specific needs of those Member States most directly exposed to the risk of military threats. At the same time, however, Europe should remain at the cutting edge of innovation, and therefore a sustained research and development effort will be necessary to maintain the EDTIB's competitiveness in the longer term, especially by tapping the full potential of its scientists, engineers and innovators. The EU Defence Innovation Scheme (EUDIS)⁴ will propose within the current Multiannual Financial Framework (MFF) innovation support services for single entities, including by matchmaking with investors, partners and end-users, and by strengthening support to innovative product and technology testing and validation. Since the tools and frameworks developed to tackle future crisis situations are

³ Specifically, i) a catalogue of defence products, ii) financial support for the creation of pools of defence capabilities being quickly available, iii) provisions to ease procurement processes, and iv) capacity building measures for procurement agents.

⁴ Enabled by the European Defence Fund (EDF), the EUDIS offers specifically designed support measures to help European innovative companies bring their ideas to defence end-users.

either unavailable or applied only to a limited extent by Member States, the Commission will put in place an EU-wide Security of Supply regime warranting greater resilience and offering a competitive advantage for the EDTIB and EU defence supply chains.

To achieve its objectives, the EDIS should be accompanied by a bold increase of funding, commensurate to the geo-political challenges the EU is facing. Given the scale of the effort needed to ensure defence readiness across the Union, the new budget will provide a “bridge” towards the next MFF, foreshadowing an ambitious financial endowment with relevant budgets for the period from 2028 onwards.

Finally, inasmuch as the European defence industry is a crucial contributor to resilience, security and social sustainability, the EDIS aims at ensuring that the EDTIB enjoys access to finance commensurate to the level of investments needed, operates in an adequate regulatory environment and is sufficiently attractive for the young generations. In this regard, the Commission and the High Representative/Head of the EDA will i) work with Member States, industry and the financial sector to improve EDTIB's access to both private and public finance, ii) include in their initiatives defence industrial readiness considerations on a more systematic basis, and iii) explore actions with the aim of improving workforce mobility and supporting defence-related education, namely through the opportunities provided by the EU defence industrial programmes.

As a first mean to deliver the EDIS, the Commission tabled a legislative proposal for a European Defence Industry Programme (EDIP)⁵, which aims at reconciling short-term and long-term

by maintaining support for the EDTIB under the prevalent MFF and preparing for the future.

More particularly, the EDIP is structured around three pillars.

As a first pillar, the EDIP aims at increasing the defence industrial readiness of the EDTIB and of Ukraine by, on the one hand, initiating and speeding up the industry's adjustment to structural changes and, on the other hand, incentivising cooperation in defence procurement to increase the effectiveness of public spending and reduce excessive fragmentation⁶. Significantly, the EDIP will allow Ukraine to participate in cooperation on common procurement, as well as Ukrainian defence companies to be supported in their industrial ramp-up. Only public contracting authorities of Member States or associated countries, International Organisations, the SEAPs and the EDA shall be eligible for funding under the EDIP⁷, and each proposal will be assessed on the basis of its defence industrial readiness, resilience and cooperation, as well as the quality of the implementation plan⁸.

As a second pillar, the EDIP lays down the requirements and procedures for and the effects of setting-up the SEAP. More particularly, an SEAP shall i) support the collaborative development and procurement of defence products and services in line with the capability priorities agreed by Member States within the framework of the Common Foreign and Security Policy (CFSP), ii) be established by at least three Member States, associated countries or Ukraine, iii) have as members at least two EU States, and iv) secure the lifecycle of the defence product or technology until its decommissioning⁹. The Member States willing to set up a SEAP shall apply to

⁵ Com. Comm. COM(2024) 150 final of 05.03.2024, *Proposal for a Regulation of the European Parliament and of the Council establishing the European Defence Industry Programme and a framework of measures to ensure the timely availability and supply of defence products*.

⁶ See Article 4 of the Proposal.

⁷ See Article 12 of the Proposal.

⁸ See Article 16 of the Proposal.

⁹ See Article 23 of the Proposal.

the Commission¹⁰. The SEAP shall have legal personality as from the date on which the decision setting it up takes effect¹¹, shall be liable for its debts¹² and shall produce an annual report containing a technical description and a financial report of its activities¹³.

As a third pillar, the EDIP aims at ensuring the security of supply by removing obstacles and by supporting productions. More particularly, where at least two Member States enter into an agreement to commonly procure defence products, and where the extreme urgency of the situation justifies it, the EDIP allows for waivers to Article 29(2) of Directive 2009/81¹⁴ to be applied to framework agreements that do not include rules governing substantial amendments, so that its provisions will not concern contracting authorities/entities which are not original parties¹⁵. Furthermore, the Commission shall carry out, on the one hand, a mapping of the Union's defence supply-chains in cooperation with the Defence

Industrial Readiness Board¹⁶ and, on the other hand, regular monitoring of the Union's manufacturing capacities necessary for the supply of crisis-relevant products¹⁷. Where a national competent authority becomes aware of a risk of serious disruption of a crisis-relevant product, or has concrete and reliable information on any other relevant risk factor or event affecting the supply of such a product, it shall alert the Defence Industrial Readiness Board without undue delay, so that the Commission can carry out the required preventive actions¹⁸.

Finally, the EDIP establishes the Defence Industrial Readiness Board, which will meet whenever the situation requires upon request from a Member State or an associated country or the Commission and will assist and provide advice and recommendations to the latter in the implementation of the measures introduced by the Regulation¹⁹.

¹⁰ See Article 24 of the Proposal.

¹¹ See Article 25 of the Proposal.

¹² See Article 30 of the Proposal.

¹³ See Article 33 of the Proposal.

¹⁴ Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security and amending Directives 2004/17/EC and 2004/18/EC, OJ L 216 of 20.08.2009. Article 29 of the Directive, named "Framework Agreements", at paragraph 2 states: "... For the purpose of concluding a framework agreement, contracting authorities/entities shall follow the rules of procedure referred to in this Directive for all phases up to the award of contracts based on that framework agreement. The parties to the framework agreement shall be chosen by applying the award criteria set in accordance with Article 47.

Contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in paragraphs 3 and 4. Those procedures may be applied only between the contracting authorities/entities and the economic operators originally party to the framework agreement.

When awarding contracts based on a framework agreement, the parties may under no circumstances make substantial amendments to the terms laid down in that framework agreement, in particular in the case referred to in paragraph 3.

The term of a framework agreement may not exceed seven years, except in exceptional circumstances determined by taking into account the expected service life of any delivered items, installations or systems, and the technical difficulties which a change of supplier may cause.

In such exceptional circumstances, the contracting authorities/entities shall provide an appropriate justification for those circumstances in the notice referred to in Article 30(3).

Contracting authorities/entities may not use framework agreements improperly or in such a way as to prevent, restrict or distort competition...".

¹⁵ See Article 34 of the Proposal.

¹⁶ See Article 40 of the Proposal.

¹⁷ See Article 41 of the Proposal.

¹⁸ See Article 43 of the Proposal.

¹⁹ See Article 57 of the Proposal.

Following the return of warfare on European soil, the Commission's proposals aim at marking a turning point from the previous scenario where the EDTIB was constrained by limited peacetime production capacity. The production capacity of the EDTIB, indeed, has so far been tailored to respond primarily to limited Member States needs, mostly along national action lines, due to decades of public underinvestment. In such a context, defence companies often faced the need to reduce production rates to keep production lines afloat as well as skilled personnel employed, while producing exceedingly limited quantities of defence systems for national customers. The Commission's proposals are based instead on the assumption that defence industrial readiness can only be achieved if the Member States continued increase of defence spending results in joint initiatives. This will reinforce both

military capabilities and industrial base on which the Member States will rely, with a stronger EU as a security and defence player, also contributing to the global and transatlantic theatre in a way complementary to NATO, which remains the foundation of collective defence for its members.


Historically, however, geopolitics has always proven to move faster than legislators, and particularly the Union, with its complex institutional and operational architecture. It is worth noting that the involvement of associated States already at this stage - especially those in peripheral areas already exposed on the ground, such as Ukraine, or those in an objective "outpost" situation, such as Moldova and Georgia - could ensure a greater ability to respond should new crisis scenarios arise.



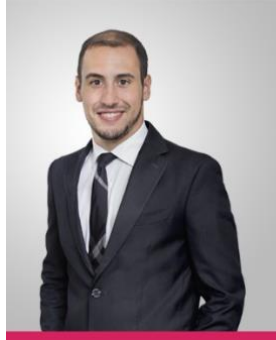
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