EUROPEAN DEFENCE FUND

VERSUS

PERMANENT STRUCTURED COOPERATION¹

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Introductory remarks

Throughout this year, much information has been published, both in the media and in opinion articles, as well as in a variety of academic and business analyses and discussions, about the potentialities, challenges and opportunities stemming from the current reinvigorating evolution, we may well speak of a "culture revolution", which is underway in the area of European security and defence, with the institutionalization of the European Defense Fund (EDF) and the Permanent Structured Cooperation (PESCO).

However, the form and content of this process of revitalizing new policies and instruments in the area of European security and defence has been delivered to the citizens in general - an essential element of the sovereignty of the member states - especially from mid-2016, has not always been the most correct and understandable one, misleading the ordinary citizen to the realization that both instruments are the same, or even that the EDF was created to finance exclusively PESCO.

By and large, the EDF and PESCO are instruments and mechanisms which, in their institutional essence and legal basis, constitute two distinct but complementary realities, subject to different forms of governance. In their complementarity, both are generally aimed at: (i) strengthening common security and defence: (ii) promoting European defence cooperation; (iii) establishing a more integrated, robust, sustainable, innovative and competitive European technological and industrial defence base; (iv) moving towards the creation of a more efficient defence market; (v) and last but not least enabling Europe with a broad and coherent set of credible, interoperable and highly operational ready-made military forces in complementarity with NATO.

The importance of the subject and its relevance in the context of a hypothetical evolution towards a "European Defense Union"² justifies further clarification on the subject, which is the main reason for this article of opinion.

The foundations of the European Defence Fund

¹ In the context of this article, the concept of capability is considered in its broadest sense, including weapons systems, equipment, interoperability, training / exercises, logistical support and leadership.

²Speech by the President of the European Commission, Jean Claude Juncker, at the PESCO launch event on 11 December 2017.

Essentially due to the perpetuation of a peace dividend culture inherited from the end of the Cold War, as well as the negative effects of the severe economic and financial crisis in Europe, in the decade 2005-2015 there was a massive decline in defence investment in the EU, which may swiftly lead to the condition of structural disarmament.

This continued defence disinvestment was especially marked in critical areas such as "technological research", with a decrease of 32.2%, and "development and industrialization of military equipment", with a decrease of 18.7%³, sectors that are fundamental to boosting the economy as a whole, creating growth, employment and a highly skilled workforce, and to ensure the requisite skills and competences of the European defence technological and industrial base needed for the development of the future European security and defence capabilities. Fortunately, this bleak trend of defense disinvestment began to be reversed from 2015 onwards, but however still in a very weak and inconsistent way.

As a result of this financial crisis and continued disinvestment in defence, not only member states emphasised their protectionist mechanisms, as they also practically failed to invest in European priority-related cooperative projects and programmes, as well as in common technical specifications, both in "technological research" and in "development and industrialization", with very low levels of European collaborative participation as compared to the established benchmarks⁴.

As a corollary, there has been a vicious cycle in which, on the one hand, there are large inefficiencies in the defence sector, such as the predominance of protectionism and excessive duplication and fragmentation of the defence market, and on the other hand, most of the Member States have different stages of development of its defence technological and industrial bases, which in turn naturally hampers European defence cooperation.

Thus, the lack of a systemic approach to defence cooperation has led to the current situation in which 80% of procurement contracts and 90% of defence technological research activities⁵ are managed on a purely national basis, with no scale and with unbearable unit costs, obviously with inevitable negative consequences on the competitiveness and sustainability of the European defence technological and industrial base.

Today, for example, there are fewer European collaborative defence projects than 20 years ago, with the great existing weapons systems in the EU being conceived at the end of the Cold War (EuroFighter, A-400M, NH-90, etc).

Therefore, following the deliberations of the European Defence Council in December 2013, exclusively dedicated to defence (Defence Matters), and in the context of the broad set of complementary and coherent actions for the implementation of the EU

³EDA, Defence Date 2005/2015.

⁴In 2015, European collaborative defence projects invested 8.6% and 19.9% of total defence investment, respectively for "technological research" and "development and industrialization". The benchmarks established in the EDA since 2007 are much higher, respectively 20% and 35% for these same sectors.

⁵ Information published by the European Commission, consistent with data from EDA Defence Data.

Global Strategy, European Commission⁶, in a bold, creative and unprecedented interpretation of Art. 173 et seq. and Art. 183 of the TFEU, launched a series of innovative initiatives (Jun2017) with the general designation of the European Defence Action Plan (EDAP) with three fundamental elements: (i) the EDF, including the European Defence Industrial Development Programme (EDIDP)⁷; (ii) the support for SMEs; (iii) and the strengthening of the single defence market.

So, large sums of money from the Community budget have been devoted to defence, in particular as regards "windows" for research and defence technology (R&T)⁸ and defence capability development (R&D)⁹, to be included in the next European Multiannual Financing Framework (Europe-2021/2017), thus contributing to the strategic autonomy of the EU.

Fundamentally, the large sums earmarked for the EDF and EDIDP are intended to contribute to attenuating or minimizing current inefficiencies in the European defence sector¹⁰, such as excessive duplication and fragmentation of demand and supply. The aim is to achieve this objective through financial incentives to promote the harmonization of the operational requirements and the common technical specifications, as well as to foster the European defence cooperation so as to generate critical mass and economies of scale that can leverage the European defence technological and industrial base and make it apt, competitive, innovative and sustainable, with the least possible strategic dependence from abroad, for the development of the necessary future military capabilities.

According to the terms of the EDIDP Regulation, approved by the European Parliament and the Council at the beginning of 2018, the access to the EDF is subject to the very condition that projects should have common technical specifications so as to promote interoperability, create critical mass and economies of scale and reduce unnecessary duplication and redundancies.

⁶ Speech on the "State of the Union 2016", President of the European Commission, Jean Claude Juncker.

⁷European Commission COM (2017) 294 final, 7.6.2017. "Proposal on the Regulation of the European Defense Industrial Development Programme".

⁸For the "defence technological research window" the EDF foresees a grant of EUR 500 million / year in the period 2021/2027 (in fact, for the period 2021/2027, 4.1 billion of euros were allocated). For the 2017/2020 transition period, the Preparatory Action provides for a grant of EUR 90 million for R&T projects directly related to the Common Security and Defence Policy (CSDP).

⁹For the "defence capability development window" the EDF foresees a Community co-financing of EUR 1000+ billion/year for the period 2021/2027 (in fact, in the period 2021/2027, 8,9 billion of euros were allocated). For the 2019/2020 transition period, the EDIDP provides for a co-financing of EUR 500 million for enhancing the competitiveness of the European Defence Technological and Industrial Base.

¹⁰ According to the European Commission, the inefficiencies of the defence sector are around 30% and may correspond to efficiency losses of 30/100 billion euros per year. Thus, if we take into account that in 2017, according to EDA data (EDA, Defense Date 2016-2017 / Key Findings and Analysis, Figure 1, 10 Sept2018), the EU spent about EUR 214 billion in defence, with the existence of a more efficient defence sector and with a more and better rational European defence cooperation, this same financial effort could correspond to a 30% higher real investment, ie a total value of around 280 billion euros. This demonstrates that it is possible to do more and better in defence with the same investment in defence.

It has been demonstrated that it is possible to do more and better in defence with the same investment, provided that the inefficiencies and constraints currently existing in the overly protected and fragmented European defence market are corrected. At the same time, if all Member States were to meet the established target of spending 2% of GDP^{II} on defence investment, it would be injected into the defence market a large amount of money by around 40-60 billion euros.

As a corollary, the EDF and EDIDP will contribute decisively to ensuring the structured and systematic linkage between the defence technological research investment (R&T) and the consequent shift to the product through the technological development of the defence capabilities priorities (R&D). Today, this concatenation is practically non-existent and random, resulting in a high level of inefficiencies.

The "windows" of financial support, which are the essence of the EDF/EDIDP, are also two separates but not unique pillars on how to secure community funding. On the one hand, the "technological research window", by virtue of its eminently dual-use nature, is susceptible of receiving direct grants under the terms of the Treaties in force. On the other hand, the 'window of technological development and the acquisition of defence capabilities', because of its intergovernmental nature, according to the specific provisions of the Treaty of Lisbon relating to foreign policy and security and defence, will only be partially co-financed by around 20% of the total amount estimated by the European Commission as necessary to secure the "bridge" between technology and product¹², ie to ensure and compensate for the high costs and risks associated with the technological development phase, including the definition of common technical specifications, feasibility studies, prototype, qualification, certification and testing activities (commonly known as "death valley").

It should be noted that, according to the Lisbon Treaty, in the area of development and acquisition of defence capabilities, EU co-financing should only be a complement and not a substitute for the primary responsibility residing in the Member States. In this way, the EU budget will be taken as an enabler of the European and regional cooperation and will be mainly used to support the competitiveness of the defence sector.

It should be noted that the eligibility criterion of the projects proposed for European financing under EDF/ EDIDP "windows" must meet the following constraints: (i) to meet the identified common priority technologies and capabilities for the short, medium and long term of the Capability Development Plan (CDP/2018)¹³; (ii) to ensure

¹¹The value estimated by EDA for 2017 is 1.43% of GDP. (EDA, Defence Date 2016-2017 / Key Findings and Analysis).

¹² Member States will have to contribute to the remaining costs required for each project/programme through mutuality formulas or joint sharing of national contributions.

¹³ CDP/2018 - Revised and approved within the EDA Steering Committee (MDN format), in line with the new level of ambition set out in the EU Global Strategy. A key instrument of national and EU strategic planning for: (i) defining priority defence capabilities; (ii) identification of critical technology areas by 2035+; (iii) facilitating European defence cooperation in capability development; (iv) strengthening coherence between R&T, R&D and industry (facilitating the "technology / product" bridge).

consistency between the following available instruments CARD¹⁴, EDF and PESCO; (iii) to set up European and regional consortia involving preferably at least 3 entities¹⁵ from 2/3 Member States, with a special focus on SMEs.

In the 2035+ timeframe, CDP/ 2018 identified 11 priority defence capability areas¹⁶ and 12 critical technology areas¹⁷. Cross-analysis of this valuable information, as well as lessons learned from CSDP military operations and current shortfalls, will result in a document entitled "Overarching Strategic Research Agenda" (OSRA), to be presented by EDA until the end of the current year. This document will be feeding the European Defence Research Programme (EDRP), to be included in the European Financial Framework Programme 2021/2027, which will be financed by EDF through the "technological research window".

The "bridge" between the investment in "defence technological research" (financed by the EDF) and the "technological development/defence industrialization" (co-financed at 20% by the EDF/EDIDP) will be a structured and systematic way of applying the "capability-oriented output" principle of the CDP, with the identification of Key Strategic Activities (KSA)¹⁸.

According to the European Commission, the application of this principle to the EDF/ EDIDP makes it clear that priority should be given to technological research projects which meet the priority capabilities identified in the CDP/2018. This explains why the EDF is to dedicate 5% of the allocated funds to the "technological research window" (i.e.25 million euros/year), especially for the so-called "disruptive technologies", which will revolutionize the future nature of the war and by doing so it will change in a substantial way the current doctrinal concepts and operational employment.

¹⁴ CARD-Coordinated Annual Review on Defence. It is a voluntary, structured, systematic, coherent and coordinated process of evaluation and synchronization of "annual national defence plans," with a view to avoiding duplication and identifying opportunities for European cooperation on priority defence capabilities identified in the CDP.

The test phase of the CARD (voluntary) is running between Oct2017/Nov.2018. In the first quarter of 2019 a Report by the AR / VP Federica Mogherini will be presented for this test phase, hoping that the process may reach the cruising speed in the course of 2019.

¹⁵ For the purposes of this Article, "entities" shall mean the main players and agents in the procurement cycle of military equipment and armaments, including universities, institutes/technology centers, industry, preferably SMEs, and government institutions.

¹⁶EDA, Fact Sheet, June 28, 2018.

⁽¹⁾ Enabling capabilities for cyber responsive operation; (2) Space-based information and communication services; (3) Information superiority; (4) Ground combat capabilities; (5) Enhanced logistic and medical supporting capabilities; (6) Naval maneuverability; (7) Underwater control contributing to resilience at sea; (8) Air superiority; (9) Air mobility; (10) Integration of military air capabilities in a changing aviation sector; (11) Cross-domain capabilities to achieve the EU level of ambition.

¹⁷ EDA, Exploring Europe's capability requirements for 2035 and beyond, June 2018.

⁽¹⁾ Artificial intelligence; (2) Human enhancement technologies; (3) Sensors; (4) Autonomous systems including manned unmanned teaming; (5) Nanotechnology; (6) Synthetic environments, virtual reality and augmented reality; (7) Smart/ complex materials; (8) Satellites and pseudo-satellites; (9) Additive and advanced manufacturing; (10) Directed energy weapons, electronic warfare, electronic countermeasures; (11) Communication systems: (12) Energy generation storage.

¹⁸."Key Strategic Activities" means the technical and industrial process skills and competencies that industry must develop and sustain in order to minimize its dependence from abroad, for the development and production of the required future defence capabilities.

In the future, it will be these documents and policies that will guide all decisions, with a view to the application of Community funding through the EDF instruments and mechanisms.

In a word, it can be said that in the medium/long term the EDF may somehow constitute a top-down approach to the whole cycle of defence capability development, within an institutional legal universe which is simultaneously intergovernmental and community.

We are facing a new security and defence architecture, still in its embryonic stage of construction, where the complex governance system to sustain the necessary institutional balances is presently being designed, and certainly the national authorities will not fail to accompany and fully participate with their own contributions to best serve their national interests.

The foundations of Permanent Structured Cooperation

The Treaty of Lisbon was signed¹⁹ in the middle of a decade of great disinvestment in defence and it is therefore not surprising that in the chapter on foreign policy and the common European security and defence policy some innovative mechanisms have been introduced, with a view to dynamizing and reinforcing the development of military capabilities addressing the long-identified priority gaps and shortfalls, as well as, of course, the strengthening of the European defence technological and industrial base.

In this context, it is not coming to surprise that Art. 42-6, Art. 46 and Protocol 10 of the Treaty of Lisbon have stated the possibility for "member states whose military capabilities meet higher criteria and have made more binding commitments, with a view to carrying out more demanding operations, voluntarily establish a permanent structured cooperation "(PESCO).

It is also not surprising that the European Defense Agency (EDA), set up by a "Joint Action"²⁰ on 12 July 2004, with a purely intergovernmental scope to support Member States in the development of military capabilities, has been intentionally integrated in the Treaty of Lisbon²¹ and institutionally placed under the political authority of the Council, with enhanced missions, functions and powers.

Several attempts to give substance to PESCO failed during the decade of 2007-2017, the last one being in 2010 during the EU's Belgian rotating presidency. The member states have certainly not shown the enough political will to at least test and allow the process to advance. Nonetheless, as a replacement, bearing in mind to foster the indispensable technological and industrial cooperation of defence, in a point in time of growing deterioration of its skills and competences due to the continued disinvestment in defence, a new concept of cooperation was launched called "Pooling & Sharing". Notwithstanding the general initial reluctance to implement it, very good examples of

¹⁹Treaty of Lisbon, December 13, 2017. Consolidated version.

²⁰Joint Action 2004/551/CFSP of the Council, 12 July 2004.

²¹Treaty of Lisbon, Artº 42º-3, Artºº 45º

the validity of the concept remain today, especially in Member States with a greater historical culture of strategic cooperation (Benelux, Scandinavian countries).

However, in September 2017²², with Europe in a strong economic recovery, at the same time as the Trump administration was pressing for a greater participation of Europe in the defence burden sharing, on the initiative of France and Germany, later on time joined by Italy, Spain, Belgium, Czech Republic, Finland and the Netherlands, it was finally proposed to re-launch the concept of an inclusive, ambitious and modular PESCO adapted to the geopolitical realities of the current European strategic and security environment.

The "letter of formal notification" sent by 23 Member States on 13 November 2017 to the Council and the High Representative pursuant to Article 46 of the Treaty of Lisbon²³, together with an annex with the principles for the reactivation of European security and defence and 20 more binding commitments under Article 2 of Protocol 10 of the Treaty of Lisbon, meant to make PESCO, that sleeping beauty of the Treaty of Lisbon, a process of choice both to redress the existing capability shortfalls and to develop a coherent set of forces, which will continue to belong to and be operated by the Member States, whether within the framework of the EU, NATO or the UN.

Among the 20 binding commitments annexed to the letter of formal notification are the following: (i) to increase defence budgets on a regular basis in real terms; (ii) in the medium term, to increase investment in capability development with a view to reaching the minimum level of 20% of the total defence investment, according to the priorities defined in the CDP and CARD. Of this amount, at least 35% should be geared towards European collaborative equipment projects, which should contribute to enhancing Europe's strategic autonomy and ensuring the strengthening of the European defence technological and industrial base (EDTIB); (iii) to increase the investment allocated to defence technological research to 2% of the total defence budget. Of this amount, 20% should be dedicated to European collaborative research projects; (iv) to contribute substantially to the development of battlegroups; (v) to increase the number of European collaborative projects of strategic defence capabilities identified in the CDP, which should be financially supported by the EDF, if necessary and as appropriate; (vi) to support CARD, taking into account the voluntary nature of the exercise and possible constraints of the member states; (vii) to commit to a greater involvement of the EDF in the framework of the CARD for the development and acquisition of added-value equipment for the EU; (viii) to seek the harmonization of operational requirements and technical specifications in all capability development projects; (ix) to ensure consistency and complementarity with NATO defence planning.

On December 11, 2017, the Council adopted a Decision²⁴ establishing PESCO with the participation of 25-member states²⁵ in order to: (i) jointly develop defence capabilities;

²² Informal Meeting of the MDNs in Estonia (Tallinn), 11 September 2016. - Real Instituto Elcano, "The French-German impulse to the European defense", Enrique Fojón, 17 of December of 2017.

²³ On 7 December 2017, Ireland and Portugal notified the Council and the High Representative of their intention to join PESCO and associated themselves with the letter of formal notification of 13 November 2017.

²⁴ Council Decision 2017/2315 of 11 December 2017. Official Journal of the EU, L331 / 57, of 12/14/2017.

(ii) invest more in European cooperative defence projects; (iii) strengthen the operational readiness and contribution of its armed forces in key areas such as interoperability, availability, employability and sustainability.

At the outset, from a political-conceptual point of view, two opposing positions were struggling: on one hand, the position of France, which advocates a more ambitious PESCO in accordance with the spirit and letter of the Treaty of Lisbon, and on the other hand, the position of Germany, in favour of a more inclusive PESCO, in order to give all interested member states the opportunity to participate in the process, thus avoiding the fears and "demons" that plagued PESCO for a decade.

It ended up, at least in this initial phase, to come up with the German position, resulting in a first List of 17 Projects, of which Portugal participates in 6 of these projects²⁶, a set of rules for the governance of the projects and the general conditions for the "exceptional" participation of third countries. One of the projects in which Portugal participates, under the leadership of the Netherlands, is "Military Mobility", which will benefit from a Community investment of 6,000 million euros in the next European Multiannual Financial Framework 2021/2027.

Partly as a compensation for this "surrender", Macron has launched almost simultaneously a new initiative called the "European Intervention Initiative" (E2I), which aims at increasing the exchange of strategic intelligence (military intelligence) and fostering a European strategic-operational culture. This new initiative, set up outside the EU structures, consists of 9 countries, including the United Kingdom²⁷, and is considered in Paris as a centerpiece for the post-Brexit European security structure. Little is known about the contours of this initiative and its link with other EU projects such as PESCO, whose effectiveness might be undermined.

In addition to the necessary coherence and compatibility with CARD, the PESCO process is instrumental in the National Implementation Plans (NIPs)²⁸ communicated annually to the European External Action Service (EEAS) and EDA. Annual reports assessing compliance with the binding commitments on defence investment, capability development and operational aspects will be drawn up by the High Representative on the basis of the NIPs and taking into account the views of the PESCO Secretariat, which are made up of EDA and EEAS²⁹, respectively, for technical-related aspects to capability development and for operational-related aspects of readiness and availability of military forces³⁰.

²⁵ United Kingdom (Brexit), Denmark (opting out clause) and Malta do not participate in PESCO. Council Decision 6393/18 of 1 March 2018.

²⁶ Council Decision 6393/18 of 1 March 2018.

Portugal participates in the following 6 projects: (i) European Secure Software defined Radio (ESSOR); (ii) Military Mobility; (iii) Maritime (semi) Autonomous Systems for Mine Countermeasures (MAS MCM); (iv) Harbor & Maritime Surveillance and Protection (HARMSPRO); (v) Cyber Threats and Incident Response Information Sharing Platform; (vi) Strategic Command and Control (C2) System for CSDP Missions and Operations.

²⁷Portugal was invited and accepted to participate in this initiative.

²⁸NIP's should outline how member states will meet the most binding commitments.

²⁹ EUMS - Military Staff of the European Union

³⁰ The EU Military Committee (EUMC) shall provide the Political and Security Committee (PSC) with advice and recommendations on the annual evaluation process of PESCO.

The Foreign Affairs Council (Defence) of March 6, 2018 approved the roadmap for the implementation of PESCO projects in two successive phases (2018/2020 and 2021/2025), including common governance rules. The timetable for assessing NIPs and the possible participation of third countries³¹ were also defined.

On July 31, 2018, member states presented a new package of 33 more ambitious projects whose technical and operational evaluation is currently under way by the PESCO Secretariat, considering the CDP and CARD. The final decision will be taken at the next Council of Foreign Affairs (Defence) of November pf.

In a nutshell, as for the interaction between the EDF and PESCO it can be stated that while PESCO is a purely voluntary and intergovernmental botton-up process, the EDF within the Community institutional framework will create incentives for Member States to promote and foster European cooperation in the development and joint acquisition of defence technologies and equipment. However, as the EDF is a Community institutional instrument (funds from the Community budget), the access of PESCO projects to EDF funding is subject to several caveats such as the coordination and synchronization between the PESCO, CDP and CARD projects. In other words, only PESCO projects that meet the technological and capability priorities defined in the CDP (which is a purely intergovernmental strategic planning tool) and that are in harmony with CARD will be eligible for EDF funding. In this case, eligible PESCO projects in the EDF's *"defence capabilities development window"* will benefit from an extra bonus of 10%, i.e. 30% in total.

In conclusion, it can be said that PESCO is not an end, but a valuable instrument that, if properly used, can be a decisive factor in the change and reactivation of European security and defence, as well as the driving mechanism for more and better cooperation and integration of European defence within the institutional framework of the EU.

In the medium to long term, it would be highly desirable that a significant proportion of PESCO projects, if not all of them, be eligible for EDF funding, with the conditionalities of coordination and harmonization with the CDP and CARD being met.

After 10 years of lethargic sleep and a minimal restart, the future of PESCO will depend mainly on the achievement of three fundamental factors: (i) political will for the successful implementation and materialization of the approved projects; (ii) significant advances in coordination and synchronization of PESCO with the EDF, CDP, CARD and NIPs; (iii) precarious governance balance of the various instruments, owing to the intergovernmental nature of PESCO and the Community institutional nature of the EDF.

One of the factors that really differentiates European security and defence policy from other EU policies, such as the Eurozone and Schengen, is that it has not yet been politicized by the populists. This may explain the amazing progress that has been

³¹ The participation of third countries is, in principle, exceptional. See p. 9, §13, Council of the European Union, 6588/1/18 See 1, 6 March 2018.

achieved over the last three years towards a progressive integration of European defence³² not having in mind whatsoever the construction of a European Army.

In this context, EDA, which had already seen its powers reinforced by its institutionalization in the Treaty of Lisbon, with these new instruments and incentives to revitalize European security and defence, such as the EDF, CARD and PESCO, sees its powers substantially increased. As a matter of fact, EDA will play a central role as a privileged intergovernmental platform for dialogue between Member States and the Community institutions, particularly the European Commission, for defence cooperation in the fields of technological research as well as the development and acquisition of military equipment and capabilities.

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GLOSSARY

- CARD.....Coordinated Annual Review on Defence
- CDP..... Capability Development Plan
- EDA.....European Defence Agency
- EDAP..... European Defence Action Plan
- EDF.....European Defence Fund
- E2I.....European Intervention Initiative
- EDIDP.....European Defence Industrial Development Programme
- EDRA.....European Defence Research Agenda
- KSA.....Key Strategic Activities
- NIP.....National Implementation Plan

³². Center for European Reform, "One year since Macron's Sorbonne speech: Plus ça change?, Leonard Schuette, 25 Oct 2018.

OSRA.....Overarching Strategic Research Agenda

PA.....Preparatory Action

PESCO.....Permanent Structured Cooperation

SME.....Small and Medium-sized Enterprises