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EUROPE,  
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# EU DEFENCE INDUSTRIAL POLICY AND STRATEGIC AUTONOMY: HOW TO SQUARE THE CIRCLE WITH NATO?

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## AUTHOR'S PRESENTATION



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## EXECUTIVE SUMMARY

The European Union's defence industrial policy must reconcile two objectives that may at first sight appear contradictory. On the one hand, it must promote Europe's strategic autonomy by strengthening the continent's military industry. But it is also supposed to strengthen the Atlantic Alliance, which Europeans have no intention of calling into question, and to which they remain deeply attached. Squaring the circle is not easy, since the autonomous ambitions of the Europeans are essentially defined in relation to their main ally within NATO, the United States.

How can the EU develop autonomous military-industrial capabilities while demonstrating to its Anglo-Saxon allies that this should consolidate the transatlantic link? This paper analyses the terms of this equation. In the final paragraph, it also attempts to identify possible solutions.

The analysis is based primarily on the following findings:

- When it comes to defence industrial issues, the strategic documents adopted by the EU on the one hand, and by NATO and the United States on the other, use different language and move in opposite directions. This is nothing new. Since its inception in the early 2000s, European defence has always been viewed with suspicion by the United States. When, some fifteen years later, the EU began to develop a finally incisive defence industrial policy, this mistrust was further accentuated. In the late 2010s, the first Trump administration lobbied the EU hard, and at times brutally, to change the eligibility rules for the European Defence Fund (EDF).
- The British, who at the time did not speak out on this subject because they were embroiled in the Brexit negotiations, could now re-enter the debate. They seem intent on challenging the arguments and data on which the Commission bases its justification for the EU's interventionist ambitions in the defence industry.
- More specifically, the Americans and the British consider that the EU's propensity to regulate in detail the standards of accessibility of third countries to its military-industrial programmes is a form of discrimination against them, and against NATO members who are not members of the Union.
- At a time when the European Defence Industrial Programme (EDIP) is being set up and Donald Trump is preparing to return to power, the EU is divided on the issue of third countries and could once again come under pressure from its allies. By its very nature, EDIP is more

vulnerable to such pressure than EDF. In this context, the notion of "European design authority", which has recently emerged, seems central.

In its final paragraph, the note attempts to understand how the EU could find a solution that would enable it to pursue its objective of strategic autonomy, while at the same time being constructive towards its closest allies. To achieve this, rather than opening the doors of its military-industrial programmes to third countries, the Union could formulate a counter-proposal. It could, for example, propose to its partners to cooperate outside the initiatives it has set up to develop its own strategic autonomy, while maintaining strict eligibility rules for programmes as EDF and EDIP.

## INTRODUCTION

The relationship between the European Union (EU) and the North Atlantic Treaty Organisation (NATO) covers many areas. Among them, issues relating to military industry are particularly complex and delicate to deal with. Transatlantic dialogue in this sector represents a challenge for Europeans, for a simple reason: NATO does not have a genuine defence industrial policy, whereas the EU does, and it attracts a great deal of interest.

This alone illustrates how complicated the equation is for the members of the Union, many of whom are also members of the Alliance. Squaring the circle is not easy. On the one hand, the military-industrial policy that the EU is trying to develop must provide Europeans with autonomous military capabilities, so that they can defend themselves on their own, if need be without the United States. On the other hand, the countries of the Union also see their common industrial policy as a means of strengthening the Alliance, to which they remain strongly attached and which they in no way wish to call into question.

Strengthening NATO at the same time as reinforcing Europe's strategic autonomy is, however, not an obvious objective to explain to Anglo-Saxon countries that are not part of the Union. They do not understand why EU members should launch military-industrial cooperation among themselves, while keeping them on the sidelines. Why, they ask, within an alliance and a circle of friendly countries, should some of them go their own way to strengthen their ties by excluding the others?

To appreciate the extent of this misunderstanding, we need only read what *NATO's Strategic Concept* and the *EU's Strategic Compass* have to say on the subject.

Point 43 of the NATO Concept states that:

"The European Union is an **essential and unique partner** for NATO. [For the strategic partnership between NATO and the European Union to deepen further, **it will be essential for non-EU Allies to be fully involved in EU defence initiatives. NATO recognises the value of** a stronger and more effective **European defence** that makes a real contribution to transatlantic and global security, **complements NATO's action** and is interoperable with NATO. Initiatives to increase defence budgets and build coherent capabilities in a mutually reinforcing way while avoiding **unnecessary duplication** are an essential part of our joint effort to make the Euro-Atlantic area more secure.

NATO's message to the EU is clear and precise. The Alliance has understood that the Union has become an "essential and unique" partner, especially since it has acquired a military-industrial policy that it does not have. The importance of a stronger European defence is thus

recognised, provided that it "complements" what the Alliance is doing. NATO therefore wants the Union's initiatives, particularly its industrial initiatives, to be accessible to all its members and to avoid unnecessary duplication. Implicitly, the Alliance is asking to be associated with the choices made by the EU in this area.

In its chapter on partnerships, the *EU's Strategic Compass* laconically replies:

"The EU's strategic partnership with NATO is **essential** for our Euro-Atlantic security [...]. We will further intensify existing cooperation on political dialogue [...], military capability building and military mobility [...]."

In this position, the EU is evasive, almost embarrassed, contrary to the specific requests made by NATO, which, it should be remembered, wishes to be "fully associated" with the Union's policies. Of course, the Alliance is seen as an "essential" partner. Of course, the Union wants to intensify its dialogue with it. However, it does not go beyond this vague notion of dialogue. It says nothing about the possible involvement of non-EU NATO countries in its industrial programmes. So how do the Europeans intend to go about this?



## A PROBLEM AS OLD AS THE CSDP

The misunderstandings that characterise the EU-NATO relationship are not new. European defence has always been viewed with suspicion on the other side of the Atlantic, if not outright hostility, depending on the government in power in Washington. The diatribe about involving third countries in EU initiatives, in particular, coincides almost to the day with the birth of the Common Security and Defence Policy (CSDP) in the early 2000s.

On 8 December 1998, just four days after the historic Franco-British summit in Saint-Malo, which launched the CSDP, the then US Secretary of State, Madeleine Albright, had already expressed her concern about the new ambitions displayed by the Europeans. She asked them not to take any initiatives that might “discriminate” against non-EU NATO allies<sup>1</sup>. Since then, the refrain of discrimination has become increasingly frequent in the EU-NATO dialogue, especially since 2017.

In 2017, Washington's view of European defense became even harsher. The reason is that, for the first time in its history, the EU began to pursue truly serious and incisive military-industrial policies, backing them financially and making them exclusive. Between 2017 and 2021, to be precise, the Union launched the European Defence Fund (EDF) and Permanent Structured Cooperation (PESCO), with the aim of promoting military-industrial collaboration between its own Member States. The issue of opening up these initiatives to non-EU allies quickly rose to the top of the transatlantic agenda. And the first Trump administration of 2017 did not pull any punches: it launched a brutal lobbying campaign against the Europeans, pushing them to change the eligibility rules for PESCO and, above all, EDF (see box below).

Despite this pressure, the EU stood firm. It did not budge from its positions and finally managed to adopt rather strict rules on how third countries should be involved in its industrial cooperation programmes. It did partially open the doors of the Fund and PESCO to its allies, but only on its own terms, terms that were clearly incompatible with the United States' *International Traffic in Arms Regulations* (ITAR).

The example of the EDF is the most emblematic. Only subsidiaries of third countries established in the EU (or an associated country) may, in exceptional cases, be involved in projects financed by the Fund. However, they must remain in a subordinate position in relation to European companies and the EU governments where they are based (see Annex 1 for more details). Above all, the intellectual property and export rights of any product financed

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<sup>1</sup> Speech by Madeleine Albright at NATO headquarters, 8 December 1998.



by the FEDEF must remain strictly within the EU. It is these last two points that cause the most problems for Anglo-Saxon countries.

### The Trump I administration against the FEDEF

The controversy fuelled by the first Trump administration over the FEDEF's eligibility rules is worth mentioning here, as it provides a better understanding of the United States' position on EU defence industrial programmes. If Donald Trump can be given credit for anything, it is for clearly and explicitly setting out the objectives that the United States generally tries to achieve more subtly.

The first salvo against the European Defence Fund was fired by the American Chamber of Commerce to the EU (AmCham) at the beginning of 2018. At that time, the European Parliament (EP), the Council and the Commission were negotiating the terms of the regulation to set up the EDF. AmCham took the opportunity to publish, on 5 February 2018, a document challenging the rules on third-country access to the Fund, and calling for it to be opened up to companies from non-EU NATO countries<sup>2</sup>. A few days later, Kay Bailey Hutchison, the then US ambassador to NATO, well known for her outspokenness towards the Europeans, raised the issue at a more official level, warning the Europeans against any protectionist policy in the military field and threatening them with trade reprisals.<sup>3</sup>

The matter took on a new dimension in June 2019, following the sending of a letter drafted in a comminatory tone by the Trump Administration, which again demanded more openness on the part of the EU authorities towards third countries<sup>4</sup>. The tone and injunctions of the letter took Europeans by surprise. They had never before been so brutally rebuked by their ally on the other side of the Atlantic. From the outset, the EU responded with a calm but firm letter, pointing out to its interlocutors that its capability programmes were just as open as those of the United States.<sup>5</sup>

<sup>2</sup> American Chamber of Commerce to the European Union (AmChamEU), "The European Defence Action Plan - Challenges and perspectives for a genuine transatlantic defence and industrial relationship," *Position Paper*, February 5, 2018. [https://www.amchameu.eu/system/files/position\\_papers/final\\_website\\_edap\\_with\\_recommendations.pdf](https://www.amchameu.eu/system/files/position_papers/final_website_edap_with_recommendations.pdf)

The American Chamber of Commerce will intervene on several occasions on this issue. See the list of documents published on this subject: [https://www.amchameu.eu/position-papers?field\\_position\\_paper\\_committee\\_tid%5B%5D=46](https://www.amchameu.eu/position-papers?field_position_paper_committee_tid%5B%5D=46)

<sup>3</sup> Aaron Mehta, "U.S. warns against 'protectionism' with new EU defense agreement," *Defense News*, February 14, 2018. <https://www.defensenews.com/smr/munich-security-forum/2018/02/14/us-warns-against-protectionism-with-new-eu-defense-agreement/>

<sup>4</sup> Letter sent on 1<sup>st</sup> of May 2019 by Ellen M. Lord, U.S. Under Secretary of Defense, and Andrea L. Thompson, U.S. Under Secretary of State, to Federica Mogherini, High Representative of the Union for Foreign Affairs and Security Policy.

<sup>5</sup> Letter sent on 16 May 2019 by Pedro Serrano, Deputy Secretary General of the European External Action Service, and Timo Pesonen, Director General of the European Commission's DG Growth, to the US authorities.

The following month, at a meeting with the US authorities in Washington, the ambassadors of the EU Political and Security Committee (PSC) experienced first-hand the charms of the Trump presidency: they were lectured like schoolchildren by the head of European and Eurasian Affairs at the US State Department, Michael J. Murphy<sup>6</sup>. He left the meeting without giving his interlocutors a chance to respond.<sup>7</sup>

## EU AND US: DIFFERENT INDUSTRIAL STRATEGIES

Since war broke out in Ukraine, the EU has launched new initiatives to strengthen its defence industrial base. In 2023, it urgently adopted two transitional programmes to enable its industry to better support Kiev (ASAP for production aid, and EDIRPA to promote joint procurement). The European Peace Facility (EPF) was also requested to provide better support for arms transfers from Member States to Ukraine. In 2024, the Commission then drafted a European Defence Industrial Strategy (EDIS)<sup>8</sup> and, above all, proposed a new programme to finance and regulate the defence industry (European Defence Industry Programme - EDIP)<sup>9</sup>. In this way, it hopes to perpetuate and deepen the skills it has acquired through the EDIRPA and ASAP programmes<sup>10</sup>. Finally, the EU is also preparing to rethink its defence budgets, with a view to increasing them.

In the face of such initiatives, which testify the Union's gradual and inexorable rise to power in the defence industry, pressure from the United States has inevitably begun to reappear, even under the Biden administration. The return of Donald Trump to power will not help matters, but it would be a mistake to believe that the disagreement between Brussels and Washington is linked to the identity of the occupant of the White House. Comparing the defence industrial strategy adopted by the United States in 2023, under Biden, with the EU's

<sup>6</sup> Speech by Michael J. Murphy, Head of European and Eurasian Affairs, U.S. Department of State, Washington, D.C., 22 May 2019. <https://docplayer.net/142903032-U-begin-text-of-eur-a-pdas-murphy-s-may-22-remarks-to-the-political-and-security-committee-ambassadors.html>

<sup>7</sup> This information was reported in the article: Steven Erlanger, "Europe Vows to Spend More on Defense, but U.S. Still Isn't Happy," *New York Times*, June 6, 2019. <https://www.nytimes.com/2019/06/06/world/europe/us-defense-spending-nato.html>

<sup>8</sup> European Commission, "Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A new European Defence Industrial Strategy: Achieving EU readiness through a responsive and resilient European Defence Industry", JOIN(2024) 10 final, 5 March 2024. [https://defence-industry-space.ec.europa.eu/document/download/3b4ec5fb-395c-49ea-abf2-fb54ca6dfd6c\\_en?filename=EDIS%20Joint%20Communication\\_0.pdf](https://defence-industry-space.ec.europa.eu/document/download/3b4ec5fb-395c-49ea-abf2-fb54ca6dfd6c_en?filename=EDIS%20Joint%20Communication_0.pdf)

<sup>9</sup> European Commission, "European Defence Industry Programme". [https://defence-industry-space.ec.europa.eu/eu-defence-industry/edip-future-defence\\_en](https://defence-industry-space.ec.europa.eu/eu-defence-industry/edip-future-defence_en)

<sup>10</sup> For an overview of the EDIP programme, see Federico Santopinto, "Understanding the challenges of EDIP - The Main Proposals on the Table Isolated and Explained", ARES Group / IRIS, September 2024.

defence industrial strategy, EDIS, may help to understand. The two documents are heading in opposite directions.

The US Defence Industrial Strategy is the first of its kind. It is around fifty pages long and seems to have been designed to appeal to the United States' allies. The message from Washington is clear: more cooperation is needed, under American leadership, of course. The text uses the word "*allies*" 66 times, "*partners*" 99 times and "*partnership*" 20 times. Above all, it refers to the notion of "*production diplomacy*", through which the United States wishes to strengthen its defence industrial partnerships with countries close to it, both in Asia and in Europe. To Europeans in particular, the Americans are calling for "*greater defence industrial cooperation with Europe and across the Atlantic*". <sup>11</sup>

Washington's stance contrasts with that of the European Defence Industrial Strategy (EDIS). It is true that in this document the Europeans recognise from the outset that NATO is the foundation of their territorial defence. In fact, the term "NATO" is mentioned several times in the text and, out of the thirty or so pages that make up the document, a small paragraph is devoted to the Alliance. But the EU confines itself to stating that its defence industrial policies must be designed to strengthen NATO, the interoperability of its members and the standardisation of their equipment. At no point does EDIS mention the question of the participation of third countries in the Union's industrial policies, or that Brussels should cooperate more with its NATO allies. On the contrary, the Commission document repeatedly deplores the Union's dependence on foreign countries and criticises the fact that its Member States continue to purchase most of their equipment outside the EU. Partnerships are only mentioned in relation to the need to secure supply chains. <sup>12</sup>

In short, the least that can be said is that European and American defence industrial strategies are not on the same wavelength, at least as far as cooperation is concerned: Washington would like to strengthen them, while Brussels is seeking autonomy and therefore, in a way, emancipation.

<sup>11</sup> U.S. Department of Defence, *National Defense Industrial Strategy*, (Washington, November 2023). <https://www.businessdefense.gov/docs/ndis/2023-NDIS.pdf>

<sup>12</sup> European Commission, "Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A new European Defence Industrial Strategy: Achieving EU readiness through a responsive and resilient European Defence Industry", JOIN(2024) 10 final, 5 March 2024. [https://defence-industry-space.ec.europa.eu/document/download/3b4ec5fb-395c-49ea-abf2-fb54ca6dfd6c\\_en?filename=EDIS%20Joint%20Communication\\_0.pdf](https://defence-industry-space.ec.europa.eu/document/download/3b4ec5fb-395c-49ea-abf2-fb54ca6dfd6c_en?filename=EDIS%20Joint%20Communication_0.pdf)

## THE SOURCE OF TENSIONS

More specifically, what are the demands of the Anglo-Saxon NATO countries vis-à-vis the EU? They are essentially asking two things of their European allies.

### *Aligning the EU's priorities more closely with those of NATO*

First and foremost, the United States and the United Kingdom would like the new EU programmes to be more clearly oriented towards the NATO planning processes (NATO Defence Planning Process - NDPP, Partnership for Peace Planning and Review Process - PARP), in order to better serve the Alliance. They fear that, without this, the Europeans will end up acting in a way that is disconnected from the Alliance's collective needs, and that their meagre financial resources will be channelled towards priorities that are not those established within the transatlantic framework. They also fear unnecessary duplication.

This demand is undoubtedly the easiest to meet. Politically, it poses no problem for the EU. For a long time now, Europeans have been proclaiming loud and clear that their common defence policy is not only compatible with the Alliance, but that it must reinforce it. The EU's most recent defence industrial strategy is a repeated reminder of this. It announces that the Union intends to strengthen the standardisation of equipment through its programmes, in particular through NATO mechanisms such as NATO STANAG. The EU therefore seems well-intentioned to take account of the priorities identified within the Alliance in its defence industrial programmes. And it considers that it is within NATO that standards should be defined.

### *Rules wrongly perceived as discriminatory*

The second request from the Anglo-Saxon countries is that companies in NATO countries that do not belong to the EU should be more closely associated with EDF, PESCO or the future EDIP. This demand is more complex than it appears, and deserves some further explanation.

In fact, EU defence industrial programmes are already open to third countries. But to take part in them, entities from third countries must accept the technical and political conditions set by the EU. Under a programme as the EDF, for example, it is the Union and its Member States that decide what will be financed, with what technical specifications and why. And it is they who will own the intellectual property and control exports of technologies co-financed by the Union. The problem is that a country like the United States is not used to having the conditions of defence cooperation dictated to it. On the contrary, the Americans are used to setting these conditions themselves. In other words, the Anglo-Saxon countries find it hard to accept the

idea of the EU assuming a leadership position in military cooperation, relegating them to a secondary role.

### *The EU's bureaucratic rigidity as a source of misunderstanding*

Furthermore, the Anglo-Saxon countries do not understand why the EU insists on adopting such strict, precise and detailed rules on the association of third countries, systematically and mechanically closing the doors to their companies. They blame the Europeans of being bureaucratically rigid and inflexible, by imposing permanent restrictions which they see as a form of discrimination. And on this point, they are quick to point out that their own legislation is less detailed, and therefore more flexible, than that prevailing within the EU, which leads them to say that it would be more open to allies.

This way of interpreting EU policies and legislation is emblematic of the misunderstandings that characterise the relationship between the Union and the Alliance. The problem is that the EU is a semi-supranational organisation, not a fully sovereign state. It does not have a real government, with discretionary powers which, in the context of a defence industrial policy, would give it a wide margin of manoeuvres in its choices. The EU must negotiate the rules it will follow with its member states beforehand. And once a compromise has been reached, it must be set in stone.

The United States or the United Kingdom, on the other hand, can afford to adopt more vague and imprecise legislation, in the knowledge that their government will subsequently be able to benefit from a wider and more flexible discretionary power when it comes to identifying who to fund. So while their laws may appear more open at first glance, in reality they are far from it. Their administrations systematically favour their own industries, which is perfectly legitimate. The problem is that Europeans would like to do the same *via* the EU. But to do so, they need strict rules established upstream.

## **EDIP: BATTLE OVER THE CONCEPT OF "DESIGN AUTHORITY"**

As the Europeans negotiate the contours of their new EDIP programme, should they expect to come under the same pressure as they did during the EDF negotiations between 2018 and 2021? There's every reason to believe so. Washington and London have a vested interest in EDIP being more open than the European Defense Fund is at present.

The problem is that the restrictions on third countries imposed by the EU in the EDF regulation are more difficult to implement in the EDIP framework. The EDF is only aimed at collaborative military R&D programmes. It must therefore fund actions capable of producing new

technologies that are likely to benefit from intellectual property (IP) protection. By imposing strict eligibility criteria, the EU simply wanted to ensure that the IP and sovereignty over the goods and services produced by an action co-financed by the Fund remained on its territory.

EDIP, on the other hand, can support a myriad of activities, including joint procurement of existing weapons systems or the simple industrial production of military equipment. In its initial proposal, the European Commission had established, as an eligibility criterion, that EDIP recipients had to be established on EU or Norwegian soil (see Annex 3). During the negotiations on its adoption, however, the question arose as to whether EDIP could finance the simple production of equipment of non-European origin, which would be manufactured under licence in an EU country. For example, could EDIP finance the production of American Patriot missiles in Germany under licence from Washington?

Faced with the urgency dictated by the war in Ukraine, several countries were in favour of this option, while others, including France, were opposed. It was in the context of negotiations on this thorny issue that the notion of "*desiring authority*" emerged. The idea behind it is that EDIP funding to support industrial production or joint purchasing must be for products designed by EU entities and controlled by them. The compromise currently being negotiated at the time of writing stipulates that 65% of the products financed by EDIP must be of European origin.

A number of questions remain unanswered, however. The concept of "*desiring authority*" has yet to be clearly defined. What exactly does it mean? Would it be sufficient to ensure the EU's strategic autonomy over EDIP-funded products? And how will it be received by the Anglo-Saxon members of the Atlantic Alliance?

## THE RETURN OF THE BRITISH?

While waiting to see what surprises the Trump II administration has in store for the Europeans regarding their autonomous defence industry ambitions, it is interesting to note that the British also seem intent on revisiting this debate. During the EDF negotiations, between 2018 and 2021, the UK kept a low profile on this subject, as it was inhibited by the Brexit negotiations. But since Labour returned to power in 2024, London seems intent on putting pressure on the EU to make the eligibility rules for its EU defence programmes more favourable to them.

The British *think-tank* International Institute for Strategic Studies (IISS) was the first to intervene on this issue. In a report on the impact of the EDF on third countries published on

24 October 2024, it challenged the obstacles imposed by the programme on the businesses of the EU's NATO allies, and called for greater openness. The vexed questions are always the same: the British today, like the Americans yesterday, are contesting the fact that the sovereignty of the technologies that the EU co-finances remains on the soil of its Member States, as regards both intellectual property and export controls.<sup>13</sup>

To push Europeans to change the rules governing access to their programmes, the IISS appears to be adopting a strategy that aims to turn the arguments used by the EU to justify its policies on their head. The EU has based its arguments on figures compiled by IRIS, according to which 78% of foreign military purchases made by EU countries between the start of the war in Ukraine and June 2023 would have been made outside the Union<sup>14</sup>. This figure was used by the Commission in the arguments of EDIS and EDIP to demonstrate the urgent need for financial and administrative support for its defence industry.

However, this figure has now been challenged by the IISS, which claims that European arms purchases abroad account for only 48% of their total arms purchases<sup>15</sup>. EU countries would therefore be less dependent on foreign countries, which would make the Union's interventionist policies less justifiable, especially when it comes to third countries access to its programmes.

However, the IISS figures relate to the European NATO countries, whereas the IRIS figures relate only to the EU Member States. The IISS also uses a longer timeframe than IRIS (February 2022 to September 2024 for the IISS, June 2022 to June 2023 for IRIS). Finally, the two *think-tanks* start from two different points of view, and want to demonstrate two different things. The IRIS did not take into account domestic purchases, unlike the IISS, because its aim was to show that when EU Member States do not have a military industry, or when it is weak, they buy their weapons outside the EU. The goal was to prove that, to date, Europeans do not have the reflex to promote the continent's strategic autonomy. The IISS, on the other hand, also counted domestic purchases by European NATO countries, omitting to specify that most of these are made by France and the United Kingdom, which is no longer in the Union. This means that the share of foreign purchases by the other 26 EU Member States is much higher than the 48 % mentioned.

Whether you look at the data provided by the IISS or those of the IRIS, the political problem remains intact: EU countries' military supplies remain, today more than ever, excessively dependent on foreign countries. Yet if there is one thing that the war in Ukraine has

<sup>13</sup> Tim Lawrenson, Ester Sanatino, "[The Impact of the European Defence Fund on Cooperation with Third-country Entities](#)", IISS, October 2024.

<sup>14</sup> Jean-Pierre Maulny, "[The impact of the war in Ukraine on the European defence market](#)", IRIS, September 2023.

<sup>15</sup> Ben Schreer, "[Europe's defence procurement since 2022: a reassessment](#)", IISS, 23 October 2024.



demonstrated, it is that Europeans must have sovereignty over the weapons they use to defend themselves. In the event of an attack, they cannot depend on anyone's authorisation to use them, as the Ukrainians are forced to do. As a result, they have no choice but to build a defense industry of their own, free from outside control, and to do this they need public action at the EU level.

## STRATEGIC AUTONOMY AND TRANSATLANTIC IMPERATIVES: WHAT ARE THE POSSIBLE OPTIONS?

By adopting the European Defence Fund, the Union has shown a firm stance towards third countries, at the cost of fuelling a certain bitterness beyond the Atlantic and the English Channel. If it wants to reduce its strategic dependence, it has no choice. It must maintain this course, extending it to the EDIP as well, especially now that the United States seems to be irrevocably distancing itself from the European continent.

However, the Europeans could also make a gesture towards their NATO allies who are not members of the EU, in order to prove their good intentions and their commitment to the Alliance. They should not, however, open up their defence industrial programmes any more than they did under the EDF. Instead, they could make a counter-proposal. The Europeans could offer their Anglo-Saxon allies another avenue for cooperation, but one that would be distinct and separate from the programs and budgets intended for the Union's strategic autonomy, which would maintain strict eligibility criteria.

In other words, the EU could have two different approaches to the defence industry. One would be inward-looking and the other outward-looking. The first approach, which would remain much larger and better funded than the second, would in fact correspond to what the EU has putted in place via EDF and PESCO. These programmes, as well as the EDIP, would remain focused on the objective of promoting European industrial autonomy, and would continue to be based on restrictive eligibility criteria for third countries. On the other hand, however, the Union could also establish separate procedures that would be specifically calibrated to undertake possible joint strategic cooperation with NATO countries that are not members of the Union. These other procedures, this time outward-looking, should enable the EU as an institution to negotiate *ad hoc* industrial agreements with its closest allies, to cooperate with them on the basis of rules that would this time be defined together and not just by the EU, in a spirit of partnership between equals.

In negotiating these possible agreements, the EU could draw on the mechanisms of the common commercial policy. Under this policy, the Council provides the Commission with a precise and detailed mandate so that the European executive can negotiate the terms of a new economic and industrial relationship with its international partners. However, the Commission does not negotiate the EU's trade agreements on its own. It is accompanied in this exercise by the committees, represented by the Member States, so that the latter can follow the talks step by step. Any agreement reached must then be validated by the Council, i.e. by the Member States. The Union could draw on this same approach to develop *ad hoc* defence industrial cooperation with one or more external partners, for example by establishing a preferential corridor for non-EU NATO countries.

To better illustrate this point, let's take the example of the FEDEF again. The Fund, and its budget, will have to be renegotiated before 2027. It currently has two components, one for research and the other for development (R&D). Why not, as part of the next review of the FEDEF, create a separate third component, which would only be activated in hypothetical cases, and which would this time be earmarked for possible international cooperation, with specific rules?

Of course, US legislation on intellectual property and military exports (including the ITAR corpus) is likely to complicate any possible form of joint cooperation between the two sides of the Atlantic. As would Donald Trump's return to the White House. But such a proposal would nevertheless have the merit of proving the EU's good intentions. Above all, it could be of interest to the UK.

## ANNEX 1 - FEDEF ELIGIBILITY RULES AND THE CASE OF THIRD COUNTRIES

As a general rule, only companies and research centres established in the EU (or in an associated country) are automatically eligible for FEDEF funding. Their infrastructure, assets and resources must be located in the EU or an associated country, as must their executive management structures. The aim behind this requirement is to ensure that the entities receiving FEDEF funding are not subject to the direct or indirect control of a third country. Intellectual property and sensitive information generated by an activity financed by the Fund, as well as export licensing rights, must remain in the hands of EU countries or countries associated with the EU. Products financed by the FEDEF cannot therefore be subject to US ITAR legislation.

The FEDEF regulation does, however, set out exceptions allowing its action to be extended to "non-associated third countries". These concern subsidiaries. Subsidiaries of a third country that are present on the territory of the EU or an associated country can access EDEF funding if the Member State (or associated country) where they are located provides guarantees that the management structure is European and that intellectual property, political control and sensitive information on the results of the action will remain within the EU. The specific case of subsidiaries is detailed below.

### Third-country subsidiaries in the EU

Subsidiaries may be eligible for actions financed by the Fund provided that the Member State (or associated country) in which they are established provides the Commission with a series of guarantees, namely:

- That the **security and defence interests** of the Union and its Member States will not be compromised (Art. 10.2).
- That **the objectives of the FEDEF** (in particular the promotion of the Union's strategic autonomy) will not be compromised (art. 10.2).
- That the subsidiary in question has an **executive management structure** on the territory of the State of the Union (or associated country) where it is located, or that the public authorities of the State of the Union (or associated country) where the subsidiary is located have governmental rights which enable them to control the subsidiary in question. If this is not the case, then the State of the Union (or associated country) where the subsidiary is located must prove that the entity controlling the

subsidiary is not in a position to hinder or restrict the activities of the subsidiary for the success of the action (art. 10.2).

- **Access to sensitive information** about the action by an entity from a third country must be "avoided" and any person involved in the action must have national security clearance issued by an EU Member State or associated country (art. 10.2).
- That the **intellectual property (IP)** of the results obtained thanks to the Fund's financing will not fall into the hands of a third country. They may not exercise any control or restriction over the results in question, either directly or indirectly. Intellectual property may not be exported or accessed from a location outside the EU or an associated country (art. 10.2 + 22.3 + 25.2). The EU is very fussy on this issue. It specifies that if the EU Member State (or associated country) holding the intellectual property of the product financed by the FEDEF decides to grant a licence or transfer this IP to a third country, the European Commission must be informed in advance. And if the EU considers that this transfer of technology or licence is contrary to its security and defence interests or to the objectives of the FEDEF, the funding granted under the Fund must be repaid (art. 22.4 + 25.3).

### Subsidiary of an EU country in a non-associated third country

They can be associated with a project financed by the FEDEF when there are no other solutions "readily available" in the Union or in an associated country for the success of the action. In this case, FEDEF beneficiaries may use the subsidiary, but it will not be able to benefit directly from financing from the Fund. Recourse to the subsidiary in question must not compromise the Union's security and defence interests, the Fund's objectives (in particular the Union's strategic autonomy) or the fact that the intellectual property of the action will remain in the Union or an associated country (art. 10.4).

## ANNEX 2 - AMERICAN DEMANDS WHEN THE FEDEF WAS ADOPTED

Between 2018 and 2019, when the Europeans were negotiating the terms of association of third-country entities with FEDEF-eligible projects, the Trump administration made the following demands:

- **American companies based in the United States** - The United States would have liked companies participating in a consortium applying for Fund tenders to be able to decide for themselves what their composition should be and whether they should use entities from third countries. With this proposal, Washington seemed to be seeking to remove all decision-making powers in this area from the EU in favour of private players. The United States hoped that American companies based on its soil would be able to join European consortia while benefiting from EU funding. Washington also wanted intellectual property, political control (over exports, in particular) and sensitive information generated by actions financed by the Fund to be shared. The fact that export controls had to remain within EU territory, in particular, posed a problem for them in terms of ITAR legislation.
- **US subsidiaries in Europe** - The Washington government hoped that subsidiaries of US companies in Europe would be automatically eligible and put on an equal footing with their European competitors. The American Chamber of Commerce, on the other hand, was prepared to accept the idea that US subsidiaries would have to obtain specific authorisation from the state in which they were established in order to be eligible for the Fund. It did, however, ask that the EU harmonise procedures between the 27 EU Member States in this respect, so as not to create distortions and to ensure greater transparency.
- **Criteria for awarding funding** - The Americans were perplexed by the criteria that the EU ended up adopting when evaluating potential projects for funding. The contribution that projects must make to Europe's strategic autonomy in order to be selected by the Fund is in fact considered to be one of the most important award criteria that the selection committees must take into account when evaluating the projects submitted as part of the calls for tenders. The United States would have liked the Fund's award criteria to take into account the reinforcement of NATO's capabilities rather than the notion of Europe's strategic autonomy, which it considers to discriminate against non-European allies.
- **Protectionism** - The Trump Administration has objected to a provision of the Fund which states that development projects that have already reached a certain level of technological maturity can be financed by the Fund provided that at least two Member States commit to buying the final product. The Americans see this provision as a form of protectionism.

## ANNEX 3 - EDIP'S CURRENT PROVISIONS ON THIRD COUNTRIES ACCESS

### The basic rule (art.9-10 EDIP)

Recipients of EDIP funding must be established in the EU or in an associated country (as is the case for the EDF). The infrastructure they use must also be established in the EU or an associated country. Moreover, recipients must not be subject to the control of a third country or a third country entity. The eligibility rules for EDIP financing apply *mutatis mutandis* to joint acquisitions.

### Exceptions (art. 10 EDIP)

The general rule above mentioned provides for some exceptions, which can nevertheless be grouped into three major cases (any reference to the EU here extends to "associated countries"):

#### 1. *Infrastructure of an EU entity in a third country.*

When the recipients of EDIP grants do not have the necessary infrastructure to carry out the project in the EU, they may use infrastructure in third countries. However, this must not be to the detriment of the Union and MSs interests and of the objectives of EDIP.

#### 2. *Subsidiary of a foreign country established in the EU.*

The subsidiary of a foreign country established in the EU is eligible in these circumstances:

- Whether the third-country entity controlling it has been subject to foreign direct investment (FDI) screening within the meaning of Directive (EU) 2019/452.
- If the EU country where the subsidiary is established provides guarantees to the EC regarding the preservation of the EU's interests and security.
- If the EU country in which the subsidiary is established provides guarantees that the third country will not hinder the action or impose limitations, including in the area of intellectual property.
- If the third country does not have access to confidential information relating to the action and if the employees taking part in the action have security clearance issued by an EU MS.

- The EU State in which the subsidiary is located may provide other guarantees if it considers this necessary.

The EC must communicate to the EDIP Programme Committee (and therefore to all MS) the name of any subsidiary considered eligible under the above rules.

### 3. *Coordination of an EU entity with an entity in a third country.*

EDIP recipients may cooperate with third country entities provided that this is not against the security interests of the Union and that there is no unauthorised access to classified information relating to the action. However, such actions carried out in cooperation with third country entities are not eligible for EDIP funding.

### **The case of SEAPs (art.26.3 EDIP)**

A SEAP may cooperate with non-associated third countries or entities of non-associated third countries, including through the use of infrastructure, provided that the security and defence interests of the Union are not thereby prejudiced. When SEAPs interact with third country entities, the rules that apply are those mentioned above.



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