

An inclusive European Defence Fund for a stronger European Defence Technological and Industrial Base

The American Chamber of Commerce to the EU (AmCham EU) welcomes the work that has been done by both Council and the European Parliament to finalise their positions on the European Defence Fund (EDF). Taking into account that European companies with US-parentage make considerable contributions to the European Defence Technological and Industrial Base (EDTIB) through the creation of high-skilled jobs and innovation, policy-makers should come to an agreement, that facilitates like-minded third-country participation to the benefit of a stronger Transatlantic Defence Technological and Industrial Cooperation (TADIC) and ultimately a reinforced EDTIB. Ahead of the trilogue negotiations significant concerns still remain regarding the scope of the derogation for third-country participants, including European entities with third-country parentage and the indirect restrictions that will make participation practically unworkable.

Avoiding a too restrictive scope

The scope for the derogation that was established in the European Defence Industrial Development Programme (EDIDP) presents a well-balanced approach, that will ensure that European companies with third-country parentage or third-country entities fulfilling the eligibility conditions can fully participate when this does not contravene the security and defence interests of the EU and its Member States. The scope of the derogation should however not be made more restrictive through some of the proposals made by parliament, such as in art. 10: *'if necessary for achieving the objectives of the action'*. While the derogation should aim to contribute to the objectives of the overall EDF (i.e. to boost the performance of future capabilities, maximise innovation and introduce new defence products and technologies) it should not be undermined by the specific requirements of a single action. Moreover, with the addition of *'shall not be subject to any control or restriction by a non-associated third country or by a non-associated third-country entity'* in art. 10 (3), the scope is further restricted and the feasibility diminished.

Reverting back to the EDIDP

Policy-makers should revert back to the well-balanced approach in EDIDP regarding the derogation for third-country entities and their European subsidiaries. The EDIDP not only introduces a functional mechanism that facilitates like-minded third-country entity participation that does not contravene the security and defence interests of the EU and its Member States, but also represents an existing agreement between policy-makers that will allow the EDF to be completed before the end of the current mandate.

No unnecessary obligations

Under the EDIDP and the Council's partial approach, applicants are asked to provide all relevant information for the assessment of eligibility to the Member State it is located in ahead of submission. With the introduction of the concept of requiring applicants to *'commit to implement appropriate measures before the beginning of the action'*, there is a risk of further burdening companies before they are even considered for acceptance to an EDF action. Such a requirement represents an unnecessary burden that would disincentivise involvement from like-minded third-country entities that are already a part of and provide critical contributions to the EDTIB.

Flexibility for IPR restrictions

The control of existing and resulting Intellectual Property Rights (IPR) in an EDF action remains a significant hurdle for effective third-country participation. The majority of actions will not result in capabilities that do not make use of any existing IPR, but instead will be based on existing technologies and/or components. Existing background IP will therefore often be brought in and be present in the final results of an action.

Alignment with articles 22 and 25 will however require that companies rescind their rights in the ownership of their existing IPR and/or forego rights from what results from an action. With IPR forming the bedrock of all companies, this could make participation difficult, even impossible. The EDF should facilitate the use of the best available technology in the development of new capabilities, while also sufficiently protecting participating companies' IPR.