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WORKING PAPER

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CONTRIBUTION

From:	Polish Delegation
To:	Friends of the Presidency Group on the European Defence Fund (EDF)
Subject:	PL comments on the Commission proposal for a Regulation establishing the European Defence Fund

Delegations will find attached Poland's comments on the Commission proposal for a Regulation establishing the European Defence Fund.

POLAND'S COMMENTS TO THE EUROPEAN DEFENCE FUND 2021-27

Poland's main comments (detailed comments will be provided during the FoP meetings) to the text are related to:

Ensuring inclusiveness, geographical balance/ diversity of participants

European Council and FAC conclusions of 2013, 2015, 2016 and 2017 supported the objective of greater and more effective cooperation in order to deliver capabilities, while at the same time underlining the importance of ensuring a competitive, innovative and balanced basis for Europe's defence industry across the EU.

This agreement should be properly reflected in the EU work on defence, particularly in the European Defence Fund (EDF).

In Poland's understanding, the "geographical balance" should mean involvement of countries from different parts of the Union - taking into account geopolitical risks in the East and the role of countries of the "Eastern EU/NATO flank" and involvement of countries of various sizes in individual projects. The Fund should be inclusive, facilitate participation of smaller actors (also SMEs or enterprises with medium capitalisation) and take into account a broad spectre of capacities. The Fund has the potential to attract many actors not yet used to multinational cooperation and contribute to closing the gap between the advanced and developing defence industries. In our opinion, the EDF should be a driving force of inclusiveness, in particular for industry from countries that are still building their defence potential. It cannot contribute to deepening economic differences and create barriers in development of the European industry (it is worth to recall a study: "Balanced Access to the European Defence Technological and Industrial Base-Central and Eastern European Countries").

This could be achieved by:

- introducing an award criterion on geographical diversity of beneficiaries (art. 13),
- introducing strategic approach related to mapping projects,
- dedicated evaluation criteria,
- specifying that support should be granted taking into account the need for evenly distributed industrial potential throughout the Union and creation of interdependencies between the Member States.

In addition, information on origin of beneficiaries should be also included in the interim report (art. 32.2).

Regional and international priorities and initiatives, including NATO

We are satisfied with the provisions referring to other regional and international priorities, including those in the North Atlantic Treaty Organisation context, that should be taken into account and serve as an award criterion if they are in line with Union priorities and do not prevent any Member State or an associated country from participating. It is important to keep this reference in the proposal for a regulation as commitments undertaken by Member States in the EU framework should be consistent with their obligations in NATO in the spirit of the joint EU-NATO declaration of July 2016. Actions supported by the EDF should be coherent with NATO Defence Planning Process and take into account Alliance's priorities in military capability development. This is key for long – term defence cooperation between the EU and NATO as well as for strengthening NATO's collective defence.

In our opinion, this issue should be included in art. 3 (Objectives). In art. 13, we propose to combine para 2 with 1d) and to delete "where appropriate".

Support for SMEs and mid-caps

It is, in our opinion, important that the Fund will support new cooperation, opening up the supply chains and cooperation with smaller actors. We therefore support the provisions related to SMEs involvement in the consortia.

Poland also welcomes the references to the involvement of the mid-cap companies. However, the currently proposed solutions remain rather theoretical – the only concrete instrument for supporting mid-cap companies is the bonus for their cross-border participation (14.3 c). At the same time, it is too low to provide any serious incentive to include such companies in the consortia and should be increased.

Additionally, Poland proposes to include reference to mid-caps also in award criteria (art. 13e).

Moreover, whilst cross-border cooperation between entities is the main objective of the Fund, in our opinion data on participation of SMEs and mid-caps in general (not only through the cross-border aspect) will be interesting in assessing the interest of these companies and their involvement in cooperation. Therefore we propose that both interim and final report should provide numerical data on general participation of SMEs and mid-caps, as well as cross-border participation (monitoring: para 40 of the preamble, art. 32).

Eligible entities art. 13

Provisions concerning the eligibility of an applicant established in the Union or in an associated country and controlled by a non – associated third country or a non – associated third country

entity are too restrictive. The current text should be replaced with the compromise wording which we managed to agree upon during negotiations on the EDIDP Regulation.

We believe that companies that:

- are located in the EU,
- carry out tasks for the armed forces of MS,
- and are “historically” established by MS but now – due to the restructuring of the industry – are controlled by third countries or by third country entities,

under certain conditions, should be eligible as a beneficiary or subcontractor. Such undertakings are legally based in the EU and employ many European citizens. In this context, especially non – EU NATO Allies should be considered as eligible to help implement commitments under the joint EU – NATO Declaration and advance transatlantic security cooperation.

Particularly, the following elements of art. 10 raise our concerns:

- “if this is necessary for achieving the objectives of the action” in art. 10.2,
- reference to non-classified sensitive information art. 10.2 b),
- obligation to cooperate only with entities established in the Union and non-controlled by third country or third country entities – 10.3,
- 10.5 – “further conditions” in the call for proposal or grant agreement related to the protection of the security interests of the Union and its Member States.

Again, in Poland’s opinion the EDIDP text should constitute a basis for further discussion on this issue.

Moreover, we would like to point out that in upcoming discussions on eligible entities we should also reflect on the issue of future EU – UK cooperation on defence capabilities as the UK declares that London would like to agree arrangements for participation in the EDF.

Disruptive technologies

In general, Poland supports the idea to dedicate part of the budget to projects related to disruptive technologies, but the current text is very general and needs more details, particularly in relation to definition of disruptive technology and the criteria of qualification, selection and award.

Additionally:

- Clarification is needed (preferably directly in the text of the regulation) on the way contracts will be awarded for the final product or technology, following the development phase. Our legal experts have doubts if in such case the contract can be

awarded through negotiated procedure or if the regulations of the Directive 2009/81/EC will require a competitive dialogue.

- Definitions in art. 2 require more details, in particular research and development actions – e.g. through relation to TRL levels. Definitions on beneficiary and applicant should also be developed.
- More discussion is needed on art. 7 (Ethics) – this issue is quite sensitive and without a clear link to legal acts and regulations the assessment of experts might be discretionary and based mainly on their moral beliefs. In our opinion, 7.3 and 7.5 should be deleted.
- According to the preamble (para 8), the support might be provided for Member States' actions leading to development of common requirements etc. This should be reflected also in art. 11 (Eligible actions). Taking this into account, government institutions defining common requirements or norms should also be considered as beneficiaries (this should be specified in the definitions) and they should be exempted from verification of financial capacity (art. 15).

We reserve the right to complement, amend or specify the position and commentaries expressed in this document.