

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION AND DOCUMENTS

COM(2018) 476 Final

10084/18 - PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING THE EUROPEAN DEFENCE FUND

Submitted by the Ministry of Defence on:

27 June 2018

SUBJECT MATTER

1. The European Commission proposes a new regulation establishing the European Defence Fund (EDF). The EDF is intended as an instrument to foster competition and innovation in the European defence technological and industrial base thereby contributing to the EU's strategic autonomy. It aims to trigger cooperative programmes that would not happen without EU contribution and, by supporting research and development activities, to provide the necessary incentives to boost cooperation at each stage of the industrial cycle.
2. The EDF regulation brings together the Research (Preparatory Action in Defence Research) and Capability (European Defence Industrial Development Programme) "Windows" of the Fund into a single Regulation to provide financial support during the 2021-2027 Multi-Annual Financial Framework (MFF). Under the Regulation the Fund will have a budget of €13 billion over seven years (split €4.1 billion on research and €8.9 billion on capability). The aspiration is that the European Council and European Parliament will agree the Regulation by March 2019.

SCRUTINY HISTORY

3. On 21 Feb 2017 the MOD submitted Explanatory Memorandum 15160/16, COM(2016) 950 (*Commission Communication: European Defence Action Plan*). This was the first reference to the European Defence Fund. Both Committees cleared the document from scrutiny on 22 March 2017. On 10 July 2017 the MOD submitted Explanatory Memorandum 10589/17 (15536/17), COM(2017) 294 (*Regulation of the European Parliament and of the European Council Establishing the European Defence Industrial Development Programme*) and Explanatory Memorandum 10164/17, COM(2017) 295 (*Launching the European Defence Fund*). Furthermore, on 13 July 2017 MOD submitted Explanatory Memorandum 10165/17, COM(2017) 315 (*Reflection Paper on the Future of European Defence*). The Committees cleared all but one of these documents. The European Union Select Committee has since cleared 10589/17 (15536/17), COM(2017) 294 (*Regulation of the European Parliament and of the European Council Establishing the European Defence Industrial Development Programme*), while the European Scrutiny Committee continues to hold it under scrutiny.

MINISTERIAL RESPONSIBILITY

4. The Secretary of State for Defence has overall responsibility for policy on Defence research, capability and procurement. The Secretary of State for Foreign and Commonwealth Affairs, the Chancellor of the Exchequer, Secretary of State for International Trade, the Secretary of State for Business, Energy and Industrial Strategy and the Secretary of State for Exiting the European Union also have interest.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

5. Defence is a reserved matter under the UK's devolution settlements, but the devolved administrations have an interest in European defence industrial policy and have been consulted on this Explanatory Memorandum.

LEGAL AND PROCEDURAL ISSUES

- i. Legal basis: The Commission cites Articles 173, 182, 183 and 188 of the Treaty on the Functioning of the European Union as the legal bases for the Regulation. These Articles concern 'Industry' and 'Research and technological development and space'. In the context of the draft EDIDP Regulation, UK legal analysis suggested there was a concern that these activities reached into the domain that is covered by Article 45 of the Treaty on the European Union, which specifies the European Defence Agency's (EDA) lead role in defence research. However, the Draft EDIDP Regulation establishes a precedent for Commission funding programmes working alongside the EDA for the purposes of promoting defence industry competitiveness. Nevertheless, it remains important to maintain the subsidiarity position that defence investments and defence development programmes remain the prerogative and the responsibility of Member States and that Commission programmes should not seek to limit or restrict activity in this sphere.
- ii. European Parliament Procedure: The Ordinary Legislative Procedure
- iii. Voting Procedure: Qualified Majority Voting
- iv. Impact on United Kingdom Law: None
- v. Application to Gibraltar: Yes
- vi. Fundamental rights analysis: No Issues

APPLICATION TO THE EUROPEAN ECONOMIC AREA

6. This measure is applicable to members of the European Free Trade Association (EFTA) which are members of the European Economic Area (EEA).

SUBSIDIARITY

7. Defence is a national competence; however, action at the European level is appropriate here as the resources involved in developing defence capabilities are regularly too high for countries to pursue individually so cooperation is often a necessity. Moreover, while the defence industry is becoming increasingly international there is still significant duplication and fragmentation across national borders, which impede the internal market and add significant costs to defence.
8. Action at the European level can reduce these barriers thus strengthening the UK and the European Defence Technology Industrial Base. However, it must be noted that there is a competency constraint on the EU under Article 346(1) TFUE, which protects member state autonomy over measures in the essential interests of its security which are connected with the production of or trade in arms, munitions and war material. Close attention will be paid to the development of this programme, in particular as it applies to common standards, to maintain the role of the European Defence Agency (EDA) and ensure nothing interferes with member state autonomy in these areas.

POLICY IMPLICATIONS (excluding Exit implications where appropriate)

9. On 23 June 2016, the EU referendum was held and the people of the United Kingdom voted to leave the European Union. The Government respected the result and triggered Article 50 of the Treaty on European Union on 29th March 2017 to begin the process of exit. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will also continue to negotiate, implement and apply EU legislation.
10. The Joint Report of 8 December 2017^[1] on progress during phase 1 of negotiations sets out the principles regarding the UK's rights and obligations in respect of the EU budget following its withdrawal. In the context of the wider Article 50 negotiations, these principles will become legally binding through a Withdrawal Agreement.
11. Negotiations on EU programmes starting in the next Multiannual Financial Framework are primarily a matter for the 27 remaining member states, as the UK will no longer be a member state of the European Union when it begins in 2021.
12. As the Prime Minister made clear in Florence and in subsequent speeches, the UK will want to continue working with the EU in ways that promote the long-term economic development of our

^[1] <https://www.gov.uk/government/publications/joint-report-on-progress-during-phase-1-of-negotiations-under-article-50-teu-on-the-uks-orderly-withdrawal-from-the-eu>

continent. This includes continuing to take part in those specific policies and programmes which are greatly to the UK and the EU's joint advantage.

13. As the Prime Minister has also made clear, in relation to any UK participation in policies and programmes in the next MFF, the UK would obviously want to make an ongoing contribution to cover our fair share of the costs involved and the exact terms would be subject to negotiation.

14. The Government broadly welcomes the intent of the EDF to strengthen Europe's defence capabilities and to foster competition and innovation in our shared defence industry. The UK has, however, been consistent in setting out that EU defence initiatives should complement other activity (not least NATO), be open to third parties and promote a competitive European defence industry. The Government will seek to ensure that the EDF meets these objectives as the regulation proceeds through the EU legislative process.

CONSULTATION

15. In addition to consulting member states the Commission has consulted the defence industry sector, in particular through the Aerospace and Defence Industries of Europe trade organisation of which the UK Aerospace Defence Security and Space trade organisation is a member.

IMPACT ASSESSMENT

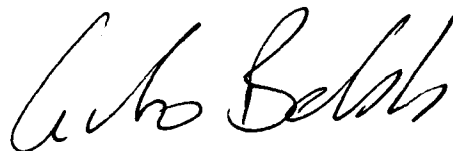
16. The Commission has produced its own Impact Assessment. The impact on the UK will be dependent on the results of our ongoing negotiations with the European Commission.

FINANCIAL IMPLICATIONS

17. There are no direct financial implications for the UK from these proposals. As set out above, where it would be in the mutual interest of the UK and the EU for the UK to participate in an EU programme, the UK would make an ongoing contribution to cover our fair share of the costs involved in any participation. The exact terms would be subject to negotiation.

TIMETABLE

18. The draft EDF regulation was released on 13th June. The Commission has stated that it wishes the Council and Parliament to approve the Regulation by March 2019.



GUTO BEBB MP

