



Her Excellency Federica Mogherini
High Representative of the European Union
for Foreign Affairs and Security Policy, and
Vice-President of the European Commission
Brussels, Belgium



MAY 01 2019

Dear Madam High Representative:

The United States is closely following the European Union (EU) process of finalizing the draft regulation for the European Defence Fund (EDF) and the draft Council decision on general conditions for third-state participation in the EU's Permanent Structured Cooperation (PESCO) projects. The United States is eager to see EU Member States develop defense capabilities that complement North Atlantic Treaty Organization (NATO) objectives as a force multiplier for the already strong transatlantic security relationship. It is vital that we continue to increase coordination and collaboration between NATO and the EU, and that independent EU initiatives like EDF and PESCO do not detract from NATO activities and NATO-EU cooperation.

Although the EDF and PESCO are EU undertakings, we are concerned that, as currently drafted, they do not reflect the principles and shared understanding that NATO Allies and EU Member States committed to uphold in the 2016 and 2018 NATO-EU Joint Declarations. The Declarations encouraged "the fullest possible involvement of NATO Allies that are not members of the EU in [the EU's defense initiatives]." The 2016 Joint Declaration asserted that "[c]ooperation is a strategic priority" in areas such as "facilitating greater defence research and industrial cooperation within Europe and across the Atlantic." Unfortunately, neither the EDF nor the PESCO draft text in their current form identifies any requirement to remain coherent, complementary, and interoperable with NATO – precisely the opposite of what the EU pledged together with NATO in 2016 and 2018.

The United States is deeply concerned that approval of the EDF regulations and PESCO general conditions as they stand now risks EU capabilities developing in a manner that produces duplication, non-interoperable military systems, diversion of scarce defense resources, and unnecessary competition between NATO and the EU, reversing the considerable progress we have made over the past several years in advancing NATO-EU cooperation.

European Defence Fund (EDF)

We welcome the language in Article 10 of the EDF text that provides for non-associated third-country participation. Even though these non-associated third-countries or entities would receive EDF funds, it is crucial that the project consortia themselves are able to determine the composition of the participants in each project. They should be able to make these decisions based on technical expertise, capability, and value-for-money. We are concerned therefore about the continued discriminatory nature of the phrase "financially supported by the Fund" (Articles

10.1b, 22.3, 25.2), which while theoretically granting additional flexibility for Member States to determine the composition of the participation in each project, would likely still have the practical effect of excluding third-country entities from participating in EDF projects by forcing project members to utilize their own national funds in order to include outside providers.

In addition, the positive revisions to Article 10 to allow for third-country participation have been effectively reversed by the insertion of evident “poison pills” that would preclude third-country participation by non-EU headquartered companies, including those from the United States, non-EU NATO Allies, and longstanding transatlantic partner countries. The integrated defense industrial base spanning Europe and North America is robust, but excluding third-country entity participation would undermine the competitive technological base the EU itself has identified as a key goal. It is clear that similar reciprocally imposed U.S. restrictions would not be welcomed by our European partners and Allies, and we would not relish having to consider them in the future. In fact, the United States has taken great pains to create an open atmosphere that encourages cooperative transatlantic research and development (R&D). For example, in 2016 the Department of Defense (DoD) obligated \$118.7 million in direct defense assistance and awards for R&D projects to European companies and research entities based in 24 out of 28 Member States.

Articles 10.2.c, 11.1, 13.d, 22.2, and 25.4 in the draft EDF text are of concern to the United States because they require that ownership of intellectual property arising from an EU project remain with the recipient in Europe during and after completing the project, disincentivizing non-EU companies from bidding and penalizing European companies that have cultivated well-established relationships with third-country entities. Articles 11.2, 13.d, 22.3, and 25.2 are also of concern, as these articles effectively exclude the EU from engaging in projects that contain items and technologies subject to outside export controls by non-EU Member States. We ask for the removal of this language, as it hinders the ability of EU and U.S. industries to partner in order to leverage their expertise and financial resources. Further, not unlike the U.S., many EU member states administer export controls that effectively control the use of their indigenous technology by third parties that have not been approved to receive it. Such controls are in fact a hallmark of an effective export control system. Noting this, the United States continues to reform our export controls to better support trade with our allies and partners, including those in Europe.

The United States believes that minor changes to the draft EDF regulation could alleviate our concerns, and we will continue to work with you in support of a broader EDF framework.

Permanent Structured Cooperation (PESCO)

The United States is also concerned by the restrictive language and provisions in the draft PESCO general conditions for third-State participation. First, in Articles 1 and 3, the word “exceptionally” is used to qualify third-State participation. Second, even if third-State participation is approved for a specific project, Article 2 would only allow participation for a duration limited to meet the general conditions set forth in Article 3, and would require additional approvals by the Council for continued participation. This would be onerous for non-EU countries and Armed Forces and would effectively preclude participation by non-EU

headquartered companies, which could not risk investing undue time and resources in such an uncertain business climate.

Article 2.4 requires that the Council must approve by unanimity any third-State participants, again effectively giving any single Member State a full veto. The United States has direct experience with the negative effect of such an approach. For example, Article 3.g, which requires an Administrative Arrangement (AA) in force with the European Defense Agency (EDA) for third-State participation, sounds reasonable but has proved an insuperable obstacle for U.S.-EU cooperation on defense. In 2016, the EDA approached DoD to establish an AA, but since that time, one EU Member State has blocked the EDA from even beginning a negotiation process with the U.S. Government for such an arrangement. Given this experience, the United States believes that the Member State(s) leading a PESCO project should be allowed to invite third-State participants as long as the latter meet the criteria established in Article 2, and the AA requirement should in that instance be waived or removed altogether.

The draft PESCO general conditions (in Article 3.d and Annex 2.c) have intellectual property and export control restrictions similar to those currently in the EDF text. These provisions would again act as “poison pills” to effectively preclude participation by any company that uses U.S.-origin technology. An unintended consequence could be that EU-based companies active outside of the EU (especially in the U.S. market through partnerships with U.S. companies) may opt not to participate in PESCO projects rather than risk isolating their intellectual property within the EU or falling afoul of U.S. export control regulations.

Consequences of the Current EDF and PESCO Language

The draft EDF regulation and PESCO general conditions represent a dramatic reversal of the last three decades of increased integration of the transatlantic defense sector. EU companies now play a critical role in the U.S. defense industrial base. In 2017, the U.S. DoD procured \$2.6 billion from 12 EU companies and again awarded major contracts to EU companies in 2018, including an Italian defense company (in partnership with Boeing) winning a \$2.8 billion contract to develop and manufacture helicopters to replace the U.S. Air Force’s UH-1N Huey.

Continued EU cooperation with NATO Allies and longstanding transatlantic partners that are not EU members is vital. These partners bring technical capabilities that will ensure that EDF and PESCO projects produce the best outcomes in the form of complementary activities with NATO and cutting-edge technology and equipment for all our forces. Discouraging third-country participation so as to increase “non-dependency on non-EU sources” (EDF Article 13.d) will only lead to a waste of finite resources and move us away from greater interoperability, the very hazards the EU and its Member States pledged to avoid.

As drafted, the EDF regulation and PESCO general conditions would not only damage the constructive NATO-EU relationship we have built together over the past several years but could potentially turn the clock back to the sometimes divisive discussions about EU defense initiatives that dominated our exchanges 15 years ago. Before these texts move any further, we encourage you to review them with an eye to our shared long-term objectives for the transatlantic

security partnership. Let us continue to move forward with a fully united vision and commitment.



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