

Defence Agency vs. Commission? Claims and Realities of a Comprehensive European Armaments Policy Strategy

Thomas Bauer

Key Points:

- The European Defence Agency (EDA), established at the end of 2004, has the dual role of both the identification of requirement and acquisition of defence equipment in the context of an armaments policy process dedicated to improving European military capabilities. However, EDA cannot replace the lack of a comprehensive EU strategy in this area.
- The cross-pillar conflict of interests and competences between the Commission and EDA in the area of industrial, market and innovation policy affects the procurement of military goods, and thus stands in the way of a pan-European armaments policy.
- Questions relating to the market for defence equipment and the consolidation of the armaments industry can only be resolved by the cooperation of a core group within the EDA and the Commission.
- Further progress with regard to the *Headline Goal 2010* and the *European Capability Action Plan* is primarily dependent on the provision of adequate financial resources by the member states and their willingness to engage in genuine armaments cooperation.
- To cover the wide range of its tasks, the Defence Agency needs additional staff and financial support.

The European Union's (EU) role as an international security actor has increased significantly. In December 2004 the EU took over the ISAF mission in Bosnia and Herzegovina from NATO, thereby commencing the largest military operation in EU history, codenamed ALTHEA. In addition to such operational tasks, EU defence capabilities are about to be expanded. The Union is seeking to increase its effectiveness in the area of security and defence policy, thereby contributing to the implementation of the European Security Strategy (ESS) that was adopted by the Council in December 2003. This strategy envisages the use of military force in addition to civilian conflict management.

The creation of a central EU authority for the coordination of defence policy cooperation between the member states was called for and stipulated during the work on the European

Constitutional Treaty (TCE). The European Defence Agency (EDA) began to operate in Brussels at the end of 2004. One of its central tasks will be to support and evaluate the implementation of the *Headline Goal 2010* adopted by the Council in May 2004, which elaborates on the 1999 *Helsinki Headline Goal* (see below).

In addition to the activities of the new authority, the European Commission has participated in the process of strengthening the security and defence capabilities of the Union. The Commission has promoted two initiatives on the procurement process relating to defence equipment and the development of a European programme devoted to security research. However, what is missing is a comprehensive armaments policy strategy combining the industrial and technological policy ambitions of the Commission with the Council's initiatives designed to increase European defence capabilities. This linkage is problematic as a result of the highly uneven distribution of military capacities in the member states and diverging industrial interests.

First Steps to Establish Comprehensive Military Capabilities

The political responsibility for European Security and Defence Policy (ESDP) and thus for an increase in EU defence capabilities lies primarily with the member states. In 1999 the first *European Headline Goal* (EHG) was defined in Helsinki; it called for the creation of a *European Rapid Reaction Force* (ERRF) consisting of 60,000 soldiers by the end of 2003. The investments required to develop and procure complex weapons systems, which fulfil the need for interoperability between the various information, communications and command networks, cannot be shouldered by one member state economy on its own. European solutions had and still have to be found. In 2001 the Council inaugurated the *European Capability Action Plan* (ECAP) that intended to overcome the most pressing ESDP deficits.

Since September 2003 the initial analysis of the remaining deficits has led to the formation of project groups aiming to ensure the provision of the most important capacities and capabilities. Furthermore, in 2004 an agreement was reached with regard to the *Headline Goal 2010*. While in quantitative terms the EU had reached the target set forth in the first EHG by the end of 2003, qualitative deficits continued to exist in the upper intensity scale of the extended Petersberg tasks – humanitarian operations, rescue missions, peacekeeping operations, combat missions for crisis resolution and peacemaking measures.

In addition the EU had to react to the developments in international crisis and conflict management. New security challenges require smaller units that can be put in place swiftly to bridge the gap during the initial phase of an operation before the arrival of larger forces.

The concept of the *EU Battlegroups*, which was originally an idea proposed by France and the United Kingdom, forms part of the new *Headline Goal 2010*. In November 2003 the member states agreed on the establishment of the first 13 *Battlegroups* – the term refers to mobile

combat groups ready for action within a few days. Provisions have been made for close consultation with the North Atlantic Alliance on account of the fact that troops may also have to be made available for the *NATO Response Force* (NRF). Neither of the two concepts envisages permanent units. The latter are to be assembled from the armed forces of the member states.

Tasks of the European Defence Agency

All EU member states with the exception of Denmark have agreed to participate in the newly established European Defence Agency (EDA). EDA has a key role to play in the implementation of the *Headline Goal*, the *European Capability Action Plan* and the *Battlegroup* concept. The provisions concerning the tasks of the Agency are laid down in the security and defence policy sections of the European Constitution (Article I-41 para. 3 and Article III-311 TCE). Irrespective of the outcome of the ratification process, the Agency was established in July 2004 by a Joint Action of the Council, which exercises political control over it. This proved possible because the text of the Constitution merely refers to the establishment of the Agency, and is not a precondition for it. Javier Solana, EU High Representative for Common Foreign and Security Policy, is head of the EDA. Decision-making powers have been assigned to a Steering Board, which is made up of the Ministers of Defence of the member states participating in the Agency. The operational work of the Agency is directed by a chief executive elected for a period of three years – currently Nick Witney from the UK. He and the five heads of the directorates for Armaments, Capabilities, Research and Technology, Industry and Market, and Corporate Services, form the Agency Management Board. By the summer of 2005 the Agency had a staff of 80 (see EDA diagram in the appendix).

The wide-ranging list of EDA tasks includes

- participation in the evaluation and definition of the current and planned military capabilities of the member states;
- harmonisation of operational requirements and the establishment of efficient and compatible procurement procedures;
- development of suggestions for multilateral projects and programmes of the member states and coordination of specific cooperation programmes;
- coordination of joint research activities; and
- strengthening of the European defence industry with the help of appropriate measures and a targeted use of defence expenditure.

The Defence Agency is supposed to function as a central body able to coordinate and evaluate the implementation of the *Headline Goal 2010*. However, the Agency does not have the power to instruct member states with regard to their national armed forces or armaments policy. Acting in conjunction with the Council, its task is to draw up evaluation criteria on the basis of which the performance of the member states can be assessed with regard to the implementation and realization of their commitments. Furthermore, the Agency is supposed (i) to sum up the lessons learned from already existing cooperation programmes, (ii) to analyze the underlying procedures and structures and (iii) to identify potential synergies between the various action plans. The Agency reports will flow directly into the ongoing *Headline Goal* implementation process. As a result of the work of the European Defence Agency, greater political pressure will be exerted on the member states to honour their commitments, since these are now embedded in a centrally evaluated and coordinated process.

However, EDA will not find it easy to fulfil the large array of tasks. Considering its limited staff and an annual budget of merely 20 million Euro one can indeed express some doubts concerning the Agency's efficiency and effectiveness in practice. The whole ECAP process, which is currently comprised of 15 multinational project groups, will be coordinated in one of ten subsections of the Capabilities Directorate. And a staff of no more than five is responsible for the extremely complex and multilayered area covered by the Industry and Market Directorate.

In general terms, the improvement of military capabilities on the basis of a concerted approach is certainly a good idea. However, dealing with both defence requirements and capability development on the European level may well prove to be difficult. Concerning the defence equipment market and the defence industry, the Agency is not only moving into sensitive areas involving genuine national security interests. The Agency's work also affects EU action programmes for more conformity in the areas of innovation, technology and public procurement.

On the European level a conflict might emerge between the European Defence Agency and the European Commission with regard to who is responsible for what area. There are no generally accepted rules in the area of armaments, which clearly define the competences of the various EU bodies and institutions. Since policy issues related to the areas of industry, markets and innovation are rather located at the supranational level and thus situated in the Commission's field of competencies, it is a foregone conclusion that it will sometimes be difficult to reach agreement with the intergovernmental Defence Agency.

Competence Disputes Between the Commission and EDA

In order to implement the *Headline Goal*, it is not only important to identify the necessary defence requirements. The development and procurement of the appropriate technologies and defence equipment are equally significant. In this respect the activities of the Defence Agency

affect the competencies of the European Commission. Competitiveness, internal EU trade, industrial and research policy, and questions relating to standardization and exports are dealt with by the Commission's responsible Directorates-General, albeit restricted to the civilian sector.

As early as 1996 the Commission emphasized the need for a holistic concept designed to preserve Europe's competitive technological and industrial base as the foundation of a European security and defence identity. The decline in investment in this sector led to a decrease in employment and a reduction in industrial capacities and defence technology. To counter further negative developments in the sector, the Commission produced a strategy concerning Europe's defence industry in November 1997. Core elements were a simplification of the internal EU transportation of defence equipment, a rise in investment in the area of research and technological development, an increase in the transfer of technology, and a growing competitiveness achieved by restructuring the defence industry.

Since the EU, with a handful of exceptions, possessed no competences in this area, the implementation of the strategy was primarily dependent on the willingness of the member states to cooperate. However, their reservations about giving up sovereign rights in sensitive areas such as defence equipment or the engagement of the military made any progress impossible.

In a 2003 communication entitled "European Defence – Industrial and Market Issues", the Commission announced several measures intended to ensure greater economic efficiency in the development and procurement of defence equipment thereby paving the way towards a single European defence equipment policy. The establishment of a "European Security Research Programme" was announced in the wake of the terrorist attacks of September 11, 2001. It will be implemented from 2007 onwards as part of the 7th Framework Programme with an annual budget of 1 billion Euro. As a preparatory measure a total of 65 million Euro is being made available until the end of 2006 for projects and supporting activities dedicated to the optimization of situation awareness, the improvement of the security of networked systems, the enhancement of crisis management, and the interoperability and integration of information and communications systems.

A second Commission initiative is dedicated to market aspects of the procurement of defence equipment. Free and fair competition in the EU is primarily impeded by Article 296 para. 1 TEC (Art. III-436 of the Constitutional Treaty), which permits every member state to withhold information that could harm its essential security interests. In the past, member states have used this clause to protect their domestic markets.

The Commission intends to curtail the obvious abuse of this article, especially in the area of non-sensitive defence equipment – including civilian and dual-use (products and technologies suitable for civilian and military use) products for the defence domain. As a solution the

Commission has proposed both a more precise definition of the very vague exception rules currently in force as well as the elaboration of a new public procurement directive for non-sensitive goods. However, a new directive for non-sensitive goods, which would have to differ from the public procurement directive in the civilian domain, cannot be implemented without the cooperation and assent of the member states. At this point the limits of the extent to which the Commission can influence the development and procurement process in the area of defence equipment becomes apparent.

For this reason the European Defence Agency has prompted high hopes and expectations. At the third meeting of its Steering Board in early March 2005 – for the first time composed of the National Armaments Directors – the Agency proposed the formulation of an action plan concerning the creation of an intergovernmental regime for the procurement of defence equipment in the context of Article 296 TEC. This proposal aimed at the collection of information and data about the application of Article 296 in the member states to increase transparency and trust among EU countries. Furthermore, the goal is to ensure that companies do not gain a competitive advantage by means of hidden state subsidies. Moreover, there were proposals for transitional rules concerning compensatory agreements within the framework of armaments accords, which in effect hinder free competition within this regime.

In the *Code of Conduct* presented on 21 November 2005, which is the member states' answer to the Commission's activities associated with the Green Paper on the procurement of defence equipment in Europe, the last two points have been skipped. The new code of conduct is not binding, participation is voluntary, and sanctions for not adhering to its stipulations are not envisaged. The relevant national authorities continue to have the final word on procurement. It is merely envisaged that there will be public tenders for all defence sector contracts worth more than 1 million Euro. This is designed to enable companies from member states participating in the new regime to submit an offer. However, numerous exceptions such as pressing operational urgency, procurement of research and technology, multinational projects or compelling reasons of national security dilute this attempt to at least partially open the defence market in Europe.

With its initiatives the Defence Agency has already ventured a long way into areas of European defence policy, which the Commission has dealt with since the mid 1990s. Since the Commission has announced that it will issue a position on this subject, which will take into account the results of a public consultation phase, two parallel lines of development seem to be emerging, which might negatively influence the overall coherence of the measures adopted.

New Forms of Cooperation – the Significance of Permanent Structured Cooperation for the Improvement of Military Capabilities

The member states themselves still constitute the greatest uncertainty factor in this multilevel structure. With the exception of the European Security Research Programme, the EU itself

possesses no security policy instruments. *Headline Goal*, ECAP and *EU Battlegroups* are dependent on the commitments and contributions of the member states. Here the Defence Agency can merely make a contribution with regard to coordination and evaluation.

A situation in which the 24 EDA member states themselves set a target and evaluate the progress they have made runs the risk of an agreement on the lowest common denominator. To counter the risk, one needs to acknowledge the fact that the distribution of industrial and technological resources in Europe is very heterogeneous and that the willingness on the part of the member states to participate in far-reaching initiatives differs substantially. It thus seems advisable to make use of Permanent Structured Cooperation. This instrument of differentiated integration, included in the Constitutional Treaty, foresees the possibility to form a group of member states, which are ready to provide comprehensive capacities and capabilities for demanding or most demanding operations.

This group shall in principle be open to all EU countries. However, in a protocol on Permanent Structured Cooperation, the member states wishing to join this cooperation need to comply with certain preconditions. These include the intensive development of defence capabilities by the following means:

- enlargement of national contributions,
- participation in multinational forces,
- participation in the most important European defence equipment programmes, and
- participation in the work of the European Defence Agency.

Furthermore, the member states are obliged to demonstrate by 2007 at the latest their ability to contribute to the concept of *EU Battlegroups* – either in the shape of a national contingent or as part of multinational units – and to participate in the development of multinational or European armaments programmes. The European Defence Agency will be asked to evaluate such contributions. The ensuing reports are intended to serve as the basis for recommendations and decisions of the European Council.

This linkage of defence policy involvement (Permanent Structured Cooperation for highly demanding operations) and the willingness to invest in defence technology (provision of sufficient investments and capacities to reach the *Headline Goal*) could prove to be a key element for ensuring the support of the member states for the project of a Common Security and Defence Policy (CSDP).

To prevent a blockade among member states, the heterogeneity of EU countries needs also be reflected in the Agency's structure and working methods. One should thus consider the

formation of an open group of states within the Defence Agency. The operation and goals of this group could be based on the stipulations of Permanent Structured Cooperation. As a point of departure one might establish an ad hoc project group, the formation of which is envisaged in the statutes of EDA. Various kinds of programme cooperation could be organized within the Agency. Stipulations concerning size, budget, implementation, and participation of third parties could be determined without the involvement of the Steering Board. The success of such a venture will depend on whether the participating member states agree to make binding commitments with regard to both their willingness to engage in crisis operations and their readiness to establish additional military capabilities.

Conclusions: New Initiatives – New Body – Old Worries

The new Defence Agency cannot resolve the tension between communitarian, intergovernmental and national areas of responsibility. The creation of a comprehensive European armaments policy agenda, which combines all aspects concerning the identification of requirement and acquisition of defence equipment, continues to have top priority. The Council and the Commission have promised to take into account all projects and action plans – even if these are outside their primary fields of competence. However, this does not exclude the possibility that the present situation might well lead to two separate initiatives in the field of armaments policy, which partially might be moving in different directions. It would thus be possible to imagine a security and defence policy based on integration and the provision of military capacities under the political responsibility of the Council, while the Commission concentrates its efforts on promoting the enhancement of a strategic high technology sector irrespective of national interests. As member states rather aim to strengthen their domestic companies, one could witness conflicts of interest, for example, concerning the equipment of multinational forces or the division of production shares related to European armaments programmes.

One question still remains unanswered: How will the proposals of the Commission and the EDA influence the division of responsibilities concerning the establishment of a European market for defence equipment aiming to strengthen the European defence industry and technological base? In spite of all the recent efforts, which certainly have the potential to contribute to a sustained increase of the Union's military capabilities if the member states provide their support, the fundamental drawback of the EU's armaments policy ambitions has not been solved: The lack of a single common agenda which combines the policy areas under community, intergovernmental and national responsibility in a meaningful way and which regulates mutual cooperation by providing clear responsibilities and decision-making procedures. This once again proves that new institutions are no substitute for a lack of political will to implement jointly agreed action plans.

Neither the Commission nor the Defence Agency acting independently can solve the numerous problems in the area of defence. It is not a question of preferring the use of the intergovernmental approach rather than the community method or vice versa. The two European institutions need to cooperate closely. Thus, as a first step, a core group should be formed within the Defence Agency in which the largest manufacturers of defence equipment (France, Germany, Italy, Spain and the United Kingdom) can settle their industrial differences. Subsequently it will be necessary to develop a common position within the Agency as the basis for negotiations with the Commission concerning the establishment of a European market for defence equipment – a market fulfilling the requirements of free competition and respecting the heterogeneous distribution of the defence industry and the technological base in the EU. This would be a decisive step towards a comprehensive armaments policy strategy for Europe.

December 2005

European Defence Agency (EDA)

