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**EDIRPA: LATEST ADVANCEMENT IN
EU DEFENCE PROCUREMENT
REGULATION**

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In the aftermath of Russia's invasion of Ukraine, Europe has been battling a series of challenges, including the pressing need to fortify its defence capabilities. This realisation has led to significant developments in the EU's defence policy landscape, including adopting the European Defence Industry Reinforcement through the Common Procurement Act (EDIRPA) in October 2023. This Act's adoption symbolises Europe's determined response to the evolving security dynamics on the continent and the world stage.

Delving into EDIRPA, its primary imperative is jointly leading the way, with other EU legal initiatives, of the European Union's defence capabilities reform. It seeks to promote and incentivise cooperation among the Member States in the defence procurement domain. This cooperative route underlines the pooling of resources and coordinating procurement efforts to create an environment that ushers military interoperability among EU nations (Clapp, 2023). Therefore, the ultimate purpose of the Act is to enrich the competitiveness of the European Defence Technological and Industrial Base (EDTIB), the core framework regarding the reinforcement of the European Defence Industry. It would do so by ensuring that Europe can suitably defend its interests and respond to emerging security challenges.

This paper will closely examine this latest adopted instrument, dissecting its implications as it comes into play to mark one of the most recent steps in the ongoing journey towards a unified European defence industry.

An overview of the Act

In order to provide a comprehensive summary of the Act it is relevant to highlight that EDIRPA introduces the establishment of a joint EU defence procurement fund, the current endowment of which reaches €300 million euros, spanning from 2022 to 2023, with an extension to 2025. However, the budget allocation has been hotly debated. Several experts have argued that the current sum must include the necessary investments to strengthen the EU's defence industry properly. What heightens this criticism more is the fact that the budget was remarkably reduced from the initially proposed €500 million euros, which was already seen as insufficient to meet the goals set forth by the regulation (Besch, 2022). To further illustrate, in 2022, European defence spending surpassed the €200-billion-euro barrier, making these experts' concerns more than plausible (European Defence Agency, 2022).

Moreover, the Act outlines specific provisions that govern the allocation of the previous funds and establishes the eligibility criteria for contractors and subcontractors, which has also sparked some criticism. These measures, nevertheless, aim to guarantee transparency, fairness and accountability in the procurement process whilst also incentivising cooperation and interoperability among the Member States.

EDIRPA also complements several EU defence programs, such as the European Defence Fund (EDF) and aligns with other initiatives like Permanent Structured Cooperation (PESCO) and the Coordinated Annual Review on Defence (CARD). Nonetheless, despite being associated with these programmes EDIRPA is designed to serve as a short-term instrument to address immediate capability gaps, while concurrently laying the groundwork for other potential collaborative defence programs.

Apart from the budgetary and procedural aspects of the Act, EDIRPA places a meaningful emphasis on the protection of EU classified information, the safeguarding of the financial interests of the Union and the adherence to security rules (European Commission, 2022). This priority further accentuates the EU's allegiance to maintaining the highest standards of security and integrity in its defence undertakings. In concordance with this, it is also imperative to note that the Act also acknowledges the discretion of the Member States in shaping their policies regarding the export of defence products. Thus, it is a reminder that arms export control is a national competence just as established in Article 346 of the Treaty on the Functioning of the European Union (TFEU). However, this does not mean that the Act is going to maintain the general fragmented stance established in the sector.

Unlocking EDIRPA: Navigating the Impact and Implications

Beyond the foundational elements of EDIRPA, it is pivotal to consider the broader implications of its implementation. To understand this, we must first delve into the core philosophy underpinning the Act. The legal basis of EDIRPA is ingrained in Article 173 of the TFEU, which centres exclusively on competitiveness. It aims to enhance the framework and competitive landscape, facilitating a more favourable industrial development and competitiveness among operators within the EU.

One of the most insightful connotations of EDIRPA is its approach to confront the long-standing fragmentation issue within the European defence industry (Barbieux, 2023). Historically, the European defence sector has been distinguished by its fragmentation, with individual companies mainly operating within their national limits. This competitive constitution, often at the expense of European-wide collaboration, has presented challenges to accomplish the full potential of the European defence industry. Remarkably, Article 346 of the TFEU has enabled this fragmented market as it reserves to each Member State the authority to “take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material,...” (Treaty on the Functioning of the European Union, 2012, p. 148) and these may involve arms purchase. Nonetheless, in the context of the EU defence industry policy, the year 2022, heavily influenced by the Ukrainian conflict, witnessed a Europeanisation shift, whereby companies in different European countries aim to cooperate in developing joint programmes (Béraud-Sudreau & Scarazzato, 2023). Proposals for measures to tackle this embedded fragmentation and boost interoperability emerged, making EDIRPA a relevant component of this far-reaching effort.

An article of the Act that sparked further discussion is Article 9(5) of EDIRPA, which introduces rigorous requirements for contractors and subcontractors participating in joint procurement. This article states that the contractors and subcontractors must be established in the EU or an associated country and should not be subject to control by a non-associated third country or entity. They should have undergone screening and, if necessary, mitigation measures as per Regulation (EU) 2019/452. While this approach attempts to strengthen the European defence landscape, it raises concerns about the participation of non-EU countries, especially the United States (Scazzieri, 2023). Despite being welcoming of the EU's defence endeavours, the US defence industry has displayed reservations about these restrictions (American Chamber of Commerce to the European Union, 2022). It raises its concerns on these requirements as they could affect its competitiveness due to the potential of reducing EU dependency on non-European defence equipment, thereby progressing towards a European strategic autonomy. The basis of this commentary is rooted in the desire to ensure long-term resilience and perseverance in maintaining opportunities for interchangeability among allies.

In other words, the implementation of EDIRPA might affect international trade relations in the defence sector, as non-EU countries and their national defence industries may face restrictions on entry into the EU defence market. On a more favourable note, instruments such as EDIRPA will likely encourage the forging of more bilateral agreements in order to facilitate non-EU countries' participation in joint procurement initiatives.

Finally, it is pertinent to highlight the bonus system established in Article 7(4) of EDIRPA to support EU policy objectives. In general, the financial contribution made within each action are capped at 15% of the estimated value of the joint procurement contract per consortium, according to article 7(3) of EDIRPA. However, there will be higher funding rates for the participation and procurement of additional material for Ukraine and Moldova and for SMEs and mid-caps representing at least 15% of the value chain, which represent the focal points meant to be tackled by the present instrument.

What is the path forward?

Looking ahead, EDIRPA, while significant, is in essence a short-term instrument designed to address immediate defence capability gaps and to stimulate cooperation among Member States. Thus, an establishment of a new long-term substantially funded initiative to facilitate joint procurement at the European level would be the crucial and proper next step in the EU's defence policy evolution (Håkansson, 2023). Nonetheless, EDIRPA is of huge importance, as its performance during implementation will likely influence the structure and foundation of this potential long-term instrument and the broader trajectory of the EU defence industry.

In addition, a recent study revealed that the path towards closer cooperation and coordination of EU Member States will be translated into savings between 24.5 and 75.5 billion Euros per year (Panella et al., 2023). Therefore, the shift towards collaboration makes sense not only security and defence-wise, but also economically.

Conclusion: Is EDIRPA the Complete Solution?

The underlying issue is whether EDIRPA is extensive enough to meet the ambitious goals set for the European defence industry. The European Union has been gradually following a trend toward the Europeanisation of its defence policies, and in that context, EDIRPA represents a significant step. However, many experts and observers assert that the budget allocation, both the initially proposed 500 million euros and the final 300 million euros, may need to be revised to achieve the Act's objectives effectively (Besch, 2022). Nevertheless, it is crucial to recognise that EDIRPA is just one part of a more complex policy machinery that the EU is attempting to set in motion. Its performance during the implementation phase will significantly influence the next steps in this strategic shift.

In conclusion, EDIRPA is a promising and much needed beginning of the EU's strategic shift towards a consolidated defence policy. It manages pressing issues such as fragmentation and interoperability, while seeking to bolster the European defence industry's competitiveness. Nevertheless, it needs complementation by additional instruments, together with the rest of the implemented or proposed initiatives. Then, it will be capable of effectively facing the hurdles posed by fragmentation and building a collaborative and consolidated EU defence industry that is resilient and free from the constraints of dependency and decentralisation. These critical developments and the EU's ability to adapt to an ever-evolving security landscape will determine the future of European defence policy. As Europe takes these steps forward, it remains committed to shaping a future that assures its security and resilience in a volatile world.

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