

**ADS RESPONSE TO THE CALL FOR EVIDENCE ON THE GOVERNMENT'S REVIEW OF THE
BALANCE OF COMPETENCES BETWEEN
THE UNITED KINGDOM AND THE EUROPEAN UNION**

Foreign Policy Report

KEY POINTS

- The Government should assess EU competences in defence in light of the concept of 'sovereignty' in the *National Security Through Technology* White Paper. ADS believes that a more refined discussion of 'sovereignty' than that articulated in the White Paper should provide vital context for the Government's Foreign Policy Report and certainly later reports on the defence industry and Research & Development.
- The European Defence Agency (EDA) now performs a useful role as a 'marriage-broker' between Member States in terms of the EU's Pooling and Sharing initiative and in stimulating co-operation over Research & Technology (R&T). Some of the Agency's capability projects have also yielded tangible results and the EDA can potentially fulfil a useful role in generating common programmes and purchases. In light of the ongoing pressure on European defence budgets, these are necessary and welcome functions.
- Industry's primary concern relates to R&T activity that is actually led by the EDA. Many Prime companies in the UK do not want to bid for EDA projects because those projects do not lead to capability development. The Agency should be more capability focused. EDA's effectiveness in R&T is also limited by its Intellectual Property management regime. It would greatly help UK companies partake in EDA activities if the EDA were to provide better levels of control over Intellectual Property, and in particular background IP.
- Any extension of EDA's role in standard setting beyond current initiatives in practical, low complexity areas would be of concern.
- There is merit in the UK extending its membership of the EDA after 2013 to ensure that British industry interests at EDA level are protected and to have influence over the focus and scope of the Agency.
- The EU's approach to Civil Protection both internally and externally adds value globally and complements Member State approaches and best practice.
- The EU's capability-led approach to Civil Protection is a model of best practice. Whilst the security and defence sectors are different, the capability-led approach (which is focused on supporting, co-ordinating or supplementing the actions of Member States) works well and should be adopted for defence.
- There should be greater alignment between the priorities of Member States and the priorities and budget of the European External Action Service for international capacity building.

I. INTRODUCTION

This submission is in response to the FCO consultation related to the overall *Review of the Balance of Competences between the United Kingdom and the European Union*.

ADS is the trade organisation advancing the UK Aerospace, Defence, Security and Space industries. ADS comprises approximately 900 member companies, of which over 850 are small and medium enterprises (SMEs). With its regional partners, ADS represents over 2,600 companies across the UK supply chain. The defence and security sectors represented by ADS have an interest in the FCO's Foreign Policy Report (which includes Defence and Civil Protection issues).

- The defence industry employs 314,000 people in the UK – directly and through the supply chain. Export orders were £5.4bn in 2011 and UK held 15 per cent of the world defence market. The sector has more SMEs than France, Germany, Italy, Spain and Norway combined.
- In 2011 there were more than 11,000 UK companies in the security sector with sales accounting for around £11.8bn. The security industry is estimated by UKTI to employ 335,000 people, an increasing percentage of whom are employed in highly-skilled roles. The sector currently has a 4% share of the global market. Exports in 2011 stood at £2.6bn – a like for like increase of 5% over the previous year, but down against the previous 4 year average of 9%. This burgeoning market will be worth £535bn in 2015 and the government has stated its ambition to increase security exports by £1.7 billion by 2015.

ADS notes that there will be separate and more detailed sectoral reports, including for the defence industry (and therefore the work of the EU Defence Task Force), and reports on topics such as Research and Development. This submission outlines the perspectives of the defence and security sectors on the strategic and institutional level issues being considered by FCO at present. The submission covers Questions 2 and 5 in particular, namely:

- What are the comparative advantages/disadvantages of working through the EU in the area you wish to comment on, rather than the UK working independently?
- Would a different division of EU and Member State competence in a particular area produce more effective policies? If so, how and why?

The latter question (Question 5) is addressed first as it should provide important context for the Foreign Policy Report and overall *Review of the Balance of Competences between the United Kingdom and the European Union*.

II. WOULD A DIFFERENT DIVISION OF EU AND MEMBER STATE COMPETENCE IN A PARTICULAR AREA PRODUCE MORE EFFECTIVE POLICIES? - THE UK'S DEFINITION OF 'SOVEREIGNTY' IN DEFENCE AND SECURITY

Of particular relevance to the Foreign Policy Report is the discussion in the Government's *National Security Through Technology White Paper* (Cm 8278, February 2012) of the issue of 'sovereignty' in relation to the procurement of defence and security capabilities. The Government should to assess EU competences in defence in light of the discussion of sovereignty in the White Paper.

The White Paper recognised that the UK's commitment to open procurement could not always apply in these sectors – the UK might need to derogate under Article 346 of the Treaty on the Functioning of the European Union (TFEU) to maintain:

1. Operational advantage, which is defined as the ability to 'find and maintain an edge over potential adversaries'. The White Paper went on to say that 'obtaining and maintaining any operational advantage involving technology and equipment inevitably requires investment, often long-term in nature'.
2. Freedom of action, which is defined as the assurance that the UK will be able to use capabilities – or continue to use capabilities – whenever needed, and that those capabilities perform as required.

The White Paper noted that different acquisition options offer differing levels of assurance in these two areas, particularly where a potential supplier is based overseas. It was clear that the decision about whether to take action to protect operational advantage or freedom of action would include an assessment of balance of risk, affordability and value for money. The Paper also outlined general cases in which the UK would seek to protect operational advantage and freedom of action, namely where the capability required is fundamental to UK freedom of action (for example secure information and communications at national level); where operation of a capability is heavily dependent on access to highly classified intelligence or technologies; where changes to in-service capability can only be met by having an assured ability to respond with necessary technical expertise and knowledge at speed; and where operational advantage relies on being an intelligent customer across a range of domains.

In addition, and importantly, the White Paper went on to say that a key issue for the UK is the ability to assure the operation of critical sub-systems, which will require assurances relating to processes and components used in manufacturing and support. This implied that, without such assurances and knowledge transfer, the UK should not buy from an external supplier. It is however questionable whether 'assurances' are a sufficient substitute for indigenous knowledge and skills. Overall, the White Paper did not recognise that the creation of intellectual property on-shore lies at the heart of vibrant defence and industrial security sectors. As a strategic national resource, an indigenous defence and security industry thus provides the UK with security of supply, assured access and a constantly evolving and proximate 'body of knowledge' on which to rely when it is necessary to refine capability in the face of imminent operations.

- The Government should assess EU competences in defence in light of the concept of 'sovereignty' in the *National Security Through Technology* White Paper. ADS believes that a more refined discussion of 'sovereignty' than that articulated in the White Paper should provide vital context for the Government's Foreign Policy Report and certainly later reports on the defence industry and Research & Development.

III. THE COMPARATIVE ADVANTAGES/DISADVANTAGES OF WORKING THROUGH THE EU FOR THE DEFENCE AND SECURITY INDUSTRY

a. Defence Sector

Of particular relevance to the defence industry is the European Defence Agency. The Agency was founded in 2004 and is now enshrined in the Lisbon Treaty. When the EDA was founded, it was claimed the Agency would follow a 'capability driven approach' and this was reflected in its four directorates: Research & Technology, Industry and Market, Capability and Armaments. This was partly in response to the perceived failings of the then Western European Armaments Group (WEAG). WEAG was seen as broadly successful in encouraging collaborative R&T but failed in broader aspects such as harmonising requirements. The European defence industry – including the UK defence industry – welcomed EDA at the time, viewing the Agency as providing a means of overcoming the weaknesses of WEAG through a more holistic approach.

However, during its first few years of operation the EDA failed to adopt a capability driven approach and also had a negative effect on collaborative R&T. The reasons were three-fold: the Terms of Reference for the EDA were unclear, with different Member States taking contradictory views on the Agency's functions; the Agency chose to focus on pan-European activities rather than supporting Member States in 'variable geometry' collaboration; and there was a limited focus on the requirements of the (then) European Security and Defence Policy rather than the broader requirements of Member States and the importance of NATO.

That said, the EDA has now come to perform a useful role as a 'marriage-broker' between Member States in terms of the EU's Pooling and Sharing initiative and in stimulating co-operation over R&T. Although such activity is somewhat distant from the Agency's founding objectives, in light of the ongoing pressure on European defence budgets, these are necessary and welcome functions. Equally, some of the EDA's capability projects have yielded tangible results. For example, in operational helicopter training, 6,000 personnel have been trained using 123 helicopters; there is common procurement of satellite services; and diplomatic clearances for military aircraft have been

harmonised. Therefore, the EDA can potentially fulfil a useful role in generating common programmes and purchases as well.

Conversely, most of the R&T activity actually led by EDA remains a matter of concern in two respects. First, the research activity should be more focussed to better connect research with capability development needs. The EDA's role in tackling the key capability issue of Air-to-Air Refuelling is a good start in this direction. The UK's defence industry supports the idea that the Agency should be more capability focused. We believe that this would be preferable to the Agency spreading its activity over a wider range of research areas. The review of the Capability Development Plan in 2013 will provide the opportunity to shape the EDA's work plan to prioritise effort in critical areas (such as fuel and energy). The UK should continue to engage in this process and influence the Agency's activity to meet UK priorities.

Of note in this context is the Agency's evolving relationship with the Organisation for Joint Armament Co-operation (OCCAR). OCCAR is a separate European intergovernmental organisation (not part of the EU) which facilitates and manages collaborative armament programmes between the UK, France, Germany, Italy, Spain and Belgium. Under an Administrative Arrangement agreed in July 2012, EDA and OCCAR will share information on projects and programmes throughout their lifecycle and identify cooperative (research) projects initiated and prepared by EDA that may be managed by OCCAR. This development should not distract from the fact that EDA itself should become more capability focused.

Secondly, the EDA's effectiveness in R&T is limited by its Intellectual Property management regime. It would greatly help UK companies partake in EDA activities if the EDA were to provide better levels of control over Intellectual Property, and in particular background IP.

Finally, there is an ongoing question about whether – and if so to what extent – the Agency should set European-wide standards in the defence sector. EU standard setting where it is not duplicative and where it can support appropriate European technology development is generally supported by industry. The EDA has already published a Code of Conduct on Pooling and Sharing (December 2012) and harmonised technical requirements on smart munitions. These are two pragmatic examples of European-wide standards setting. However, there has to be a limit to the EDA's competence beyond these practical examples in that the Agency lacks the deep technical and operational experience of NATO that is necessary to address matters of higher complexity.¹ It would thus be a matter of concern for UK industry if there were to be any attempt to extend the EDA's competencies in setting European defence standards beyond the current initiatives in practical, low complexity areas.

As part of the 2010 Strategic Defence and Security Review (SDSR), the UK Government decided to extend its membership of the EDA subject to a further review in 2012. In 2012 the Government announced that the UK would extend its membership until at least late 2013, noting that there was 'more to be done to improve its [EDA] operational effectiveness, and so the case for continued membership remains finely balanced'. The FCO's Foreign Policy Report should influence the UK's review of EDA membership later this year. Only participating Member States are able to shape the work and set the priorities of the EDA. ADS believes there is merit in the UK extending its membership of the EDA after 2013 to ensure that British industry interests at EDA level are protected and have influence in relation to the Capability Development Plan, Intellectual Property management regime and the overall scope of Agency activities. In addition, the UK's involvement in the R&T arrangements for the Letter of Intent (LoI) countries² provide a useful mechanism for France,

¹ As the EDA is a European Organisation, Turkey is excluded. This has tended to hinder engagement between EDA and NATO, a situation exacerbated by EU members who are not part of NATO, thus enhancing duplication. However, the level of staff-to-staff engagement between EDA and NATO has increased and is very valuable. Industry supports this engagement, particularly as the 'business models' for R&T in both organisations are largely complementary.

² The Letter of Intent signed in 1998 by the six main European arms producing countries – France, Germany, Italy, Spain, Sweden and the UK – focuses on six areas: security of supply, export procedures, security of information, research and technology, harmonising military requirements, and intellectual property rights. The six states signed a treaty in July 2000 on the basis of the Letter of Intent. The LoI countries (except for Sweden) are also the principal players in OCCAR.

Germany, Italy, Spain, Sweden and the UK to agree and adopt common positions vis-a-vis the EDA R&T activities.

- ADS believes that, despite a troubled start, the European Defence Agency has now come to perform a useful role as a 'marriage-broker' between Member States in terms of the EU's Pooling and Sharing initiative and in stimulating co-operation over R&T. Some of the EDA's capability projects have also yielded tangible results and the Agency can potentially fulfil a useful role in generating common programmes and purchases. These functions are necessary in light of the ongoing pressure on European defence budgets.
- ADS' primary concern relates to R&T activity that is actually led by the EDA. Many Prime companies in the UK do not want to bid for EDA projects because those projects do not lead to capability development. ADS considers that the Agency should be more capability focused. We believe this would be preferable to the Agency spreading its activity over a wider range of research areas.
- ADS believes the EDA's effectiveness in R&T is limited by its Intellectual Property management regime. It would greatly help UK companies partake in EDA activities if the EDA were to provide better levels of control over Intellectual Property, and in particular background IP.
- ADS would be very concerned about any extension of EDA's role in standard setting beyond the current initiatives in practical, low complexity areas.
- ADS believes there is merit in the UK extending its membership of the EDA after 2013 to ensure that British industry interests at EDA level are protected and to have influence over the focus and scope of the Agency. The FCO's Foreign Policy Report should therefore influence the UK's review of EDA membership later this year.

b. Security Sector – Civil Protection

The EU's competence in the area of Civil Protection (both within the EU and externally) is confined to carrying out actions to support, co-ordinate or supplement the actions of Member States. This is a sensible arrangement. Projects funded under the Community Mechanism for Civil Protection are capability rather than research based. This is welcome and contrasts to the approach of the EDA in the defence sector. Other areas of work try to build on national best practice and should continue to do so.

In December 2011, the Commission adopted a new legislative proposal on a Union Civil Protection Mechanism. This proposal builds on previous Mechanisms, Communications and experience of emergency planning, response and recovery operations. Within the EU, the proposal aims to establish a European Emergency Response Capacity in the form of a voluntary pool of pre-identified capabilities which Member States may make available; increased visibility of Member State civil capabilities for the purposes of identifying gaps in response capacities; and better targeting Member State and EU funding. This approach should not result in duplication of effort and resource, again in contrast to the defence sector.

Externally, the December 2011 proposal will ensure better co-ordination between the Commission and European External Action Service (EEAS) for the purposes of international civil protection. This is a welcome development.

The EU's ongoing work to improve co-ordination between the use of civilian and military means under the Common Security and Defence Policy is welcome. ADS supports the objectives of identifying and deploying the most appropriate resources to respond to any given disaster and of improving synergies between civilian and military crisis management. Improved synergies should help identify priority requirements which is important as budgets remain under pressure.

Just as the EEAS is active in international civil protection, so the Service is also active in other areas of relevance to the Foreign Policy Report – in particular defence and counter terrorism through international capacity building. EEAS has a significant budget for capacity building work. As Member

State defence and security budgets reduce, there is an argument for ensuring better alignment between the international capacity building priorities of Member States and the priorities of the EEAS, including the allocation of relevant parts of the EEAS budget (whether the budget funds projects through EEAS or Member States). The defence and security sectors often support Member States in capacity building and would benefit from this alignment of Member State priorities and the EEAS budget.

- ADS supports the EU drawing on and supporting Member State best practice in its Civil Protection work.
- ADS supports the capability-based approach to Civil Protection adopted by the EU.
- ADS supports the fact that the EU's efforts in Civil Protection do not result in unnecessary duplication of effort and resource.
- ADS would support greater co-ordination between the European Commission and the European External Action Service in the area of international civil protection.
- ADS believes there should be greater alignment between the priorities of Member States and the priorities and budget of the EEAS for international capacity building.

IV. CONCLUSION

This submission outlines the perspectives of the defence and security sectors on the strategic and institutional level issues being considered by FCO as part of the Government's overall *Review of the Balance of Competencies between the United Kingdom and the European Union*.

In summary, ADS believes that:

- The Government should assess EU competences in defence in light of the concept of 'sovereignty' in the *National Security Through Technology* White Paper. ADS believes that a more refined discussion of 'sovereignty' than that articulated in the White Paper should provide vital context for the Government's Foreign Policy Report and certainly later reports on the defence industry and Research & Development.
- The European Defence Agency (EDA) now performs a useful role as a 'marriage-broker' between Member States in terms of the EU's Pooling and Sharing initiative and in stimulating co-operation over Research & Technology (R&T). Some of the Agency's capability projects have also yielded tangible results and the EDA can potentially fulfil a useful role in generating common programmes and purchases. In light of the ongoing pressure on European defence budgets, these are necessary and welcome functions.
- Industry's primary concern relates to R&T activity that is actually led by the EDA. Many Prime companies in the UK do not want to bid for EDA projects because those projects do not lead to capability development. The Agency should be more capability focused. EDA's effectiveness in R&T is also limited by its Intellectual Property management regime. It would greatly help UK companies partake in EDA activities if the EDA were to provide better levels of control over Intellectual Property, and in particular background IP.
- Any extension of EDA's role in standard setting beyond current initiatives in practical, low complexity areas would be of concern.
- There is merit in the UK extending its membership of the EDA after 2013 to ensure that British industry interests at EDA level are protected and to have influence over the focus and scope of the Agency.
- The EU's approach to Civil Protection both internally and externally adds value globally and complements Member State approaches and best practice.

- The EU's capability-led approach to Civil Protection is a model of best practice. Whilst the security and defence sectors are different, the capability-led approach (which is focused on supporting, co-ordinating or supplementing the actions of Member States) works well and should be adopted for defence.
- The objectives of identifying and deploying the most appropriate resources to respond to any given disaster and of improving synergies between civilian and military crisis management are correct. Improved synergies should help identify priority requirements which is important as budgets remain under pressure.
- There should be greater alignment between the priorities of Member States and the priorities and budget of the European External Action Service for international capacity building.