EDA POSITION PAPER ON THE REQUIREMENT FOR THE THIRD STATES ENTERING PESCO PROJECTS TO HAVE AN ADMINISTRATIVE ARRANGEMENT WITH EDA

1. Background

Further to a request from a number of Member States, EDA was asked to provide additional information on the nature, scope and procedure for the conclusion of Administrative Arrangements (“AAs”) under the legal framework of Council Decision (CFSP) 2015/1835 (the “EDA Council Decision”). The Agency was also asked to assess in which cases the conclusion of AAs with third States should be a prerequisite for third States to enter PESCO projects, so as to enable EDA to provide support.

2. The conclusion of AAs under the EDA Council Decision

Legal basis

The EDA Council Decision (Chapter VI, Article 26) states that, for the purposes of fulfilling its mission, the Agency may enter into AAs with third countries, organisations and entities.

Scope and effect

Such AAs shall notably cover:

(a) the principle of a relationship between the Agency and the third party;
(b) provisions for consultation on subjects related to the Agency's work;
(c) security matters, namely on the basis of the Agreements for exchange of classified information between the EU and the specific third parties.

Furthermore, an AA is a prerequisite for a third party to:

(a) Participate in EDA ad hoc projects and programmes;
(b) Access/participate/subscribe to EDA activities such as databases, arrangements or Codes of Conduct, subject to Steering Board approval (e.g. CoDaBa, Defence Test and Evaluation Base, Framework Arrangement for Security of Supply, Code of Conduct on Pooling & Sharing);
(c) Participate as a regular member in EDA working bodies (e.g. Project Teams, CapTechs, Ad Hoc Working Groups).
(d) Exchange information with EDA. The Security Agreement between this third party and EU is usually referred to in the AA. With a view to exchange classified information, a dedicated bilateral Security Arrangement between the third party and EDA is to be put in place.

**Procedural steps**
The procedural steps in order to conclude an AA with EDA are as follows:

1) A letter from the interested third party at the appropriate level (e.g. Minister of Defence) is addressed to the High Representative in his/her capacity as Head of the Agency (HoA), formally seeking the conclusion of an AA with EDA;
2) The EDA Steering Board is invited to adopt the directives regarding the negotiation of the AA by the HoA. If agreed,
3) EDA CE, on behalf of the HoA, and the interested third party enter into negotiations;
4) A draft text of the AA is agreed;
5) Council of EU approves the draft text by unanimity;
6) EDA Steering Board concludes the AA and gives a mandate to HoA/EDA CE to sign the AA;
7) Signature of the AA by the third party representative and EDA HoA/CE.

From launching the negotiation mandate to the signature, the minimum time required is approximately 4-6 months, subject to the progress of the negotiations and the respective approval processes.

3. **EDA support provided to the implementation of PESCO**

**Key references and overarching principles**

- In accordance with Article 5.3(f) of the Council Decision (CFSP) 2015/1835 of 12 October 2015 defining the statute, seat and operational rules of the EDA, the Agency shall support PESCO subject to a Council Decision on the establishment of PESCO.

- In accordance with Article 7 of the Council Decision (CFSP) 2017/2315 of 11 December 2017 establishing PESCO (“PESCO Council Decision”), EDA shall support PESCO, in particular by:
  
  (a) Contributing to the High Representative’s assessment in his/her annual report on PESCO;

  (b) Facilitating capability development projects, in particular by coordinating the assessment of projects proposals.

- In accordance with the more binding PESCO commitments, pMS commit to the use of EDA as the European forum for joint capability development and consider the OCCAR as the preferred collaborative program managing organization. According to the Council Recommendation of 15 October 2018 (2018/C 374/01), by 2020, participating Member States should ensure making the best use of EDA as the European forum for joint capability development. To that end, the
participating Member States should indicate in their NIPs which projects they participate in and the associated financial volume channelled through the EDA, taking the figures of 2018 as a baseline and listing the intended activities for 2019 and 2020, including the capability domains and type of activity planned.

- In accordance with the LTR Conclusions and recommendations endorsed by Ministers in May 2017, the Agency is to be reinforced as major intergovernmental prioritisation instrument at EU level in support of capability development, coordinating with the EEAS (incl. EUMS) and EUMC in their respective areas of responsibility and as preferred cooperation forum and management support structure at EU level for participating Member States to engage in technology and capability development activities.

- In accordance with the principles applying to EDA’s engagement with Third Parties endorsed by Ministers in November 2017, when assessing the opportunity for engagement with a third party, the Agency shall consider as overarching principles to what extent such engagement would support the objectives of the CSDP as it stands today and develops in the future following the EU Global Strategy, notably as regards EDA’s mission and tasks as set out in the EDA Council Decision. Furthermore, such engagement would support participating Member States’ interest, as regards capability development across the full lifecycle and provide for mutual benefits with third parties on a balanced and reciprocal basis. This is why an AA with EDA can be seen as another indicator (political dimension) that a given third State signs up to the general conditions about third State participation to PESCO projects in terms of EU LoA/CSDP, amongst others.

Given the above, the PESCO Council Decision does not specify that AAs are prerequisites, but since the EDA legal framework also applies to the EDA, including when acting as part of the PESCO Secretariat, it needs to be considered, including the EDA Council Decision (CFSP) 2015/1835, but also applicable EDA rules and procedures.

As a result, to assess whether an AA would be a prerequisite for exceptional third State participation in PESCO projects, each type of support that EDA can provide to PESCO projects in light of the role foreseen for EDA under the PESCO Council Decision has to be assessed.

**Type of support provided**

- **Assessment of PESCO project proposals**: PESCO project members are responsible to submit PESCO project proposals to the PESCO Secretariat for an assessment based on the capability perspective and on the operational viewpoint. The project coordinator of the PESCO project proposal is responsible, on behalf of the project members, to provide to the PESCO Secretariat the project description template together with all the information required to assess the proposal from a capability perspective and an operational viewpoint. **Such support would not imply as a prerequisite the conclusion of an AA between EDA and the third State(s) involved in the related PESCO project proposal.**
• **Contribution to the HR annual report on PESCO:** The HR shall present an annual report on PESCO to the Council, based on contribution by EDA (and EEAS). With regards to the projects, the project coordinator (PESCO pMS) has the duty to provide information on the state of play of the projects to the PESCO Secretariat and to the other PESCO pMS. The information provided by the project coordinator will be used by the EDA to contribute to the HR annual report on PESCO. Such support **would not imply as a prerequisite the conclusion of an AA between EDA and the third State(s) involved in the related PESCO project.**

• **EDA support to PESCO projects implemented as EDA Cat-B projects/programmes:** PESCO project members may decide to take advantage of EDA expertise in multinational capability development projects requesting dedicated and specified support to all or some phases of the projects. This would be done by establishing the PESCO project or phases of the PESCO project as an ad hoc project within the EDA framework (Article 20, EDA Council Decision). In such case, the EDA legal framework would be fully applicable and support from EDA in the context of an ad hoc project **would imply as a prerequisite the conclusion of an AA between EDA and the third State(s) involved in the related PESCO project.**

• **EDA support to PESCO projects not implemented as EDA Cat-B projects/programmes:** EDA may support PESCO projects also without necessarily establishing an EDA ad hoc project, but through providing expertise, sharing already existing information from other projects/activities, exploiting synergies and complementarities with other initiatives, avoiding unnecessary duplications, developing roadmaps, etc. Support may be given to all or some phases of the project (e.g. the definition of the harmonized requirements, the transition from a prototype to an IOC, etc.). Considering that the EDA resources are provided by all EDA pMS, as well as that existing EDA expertise and information is owned by all EDA pMS, formal support of EDA to PESCO projects presupposes a legal framework to enable EDA to provide such expertise as well as share such information with third States and in that respect an AA is the sole legal basis to do so. To request such formal support from EDA, the project coordinator shall send a letter to the PESCO secretariat. The letter shall detail the type of support which is requested. Such formal support **would imply as a prerequisite the conclusion of an AA between EDA and the third State(s) involved in the related PESCO project.**

  Should the support to PESCO project be strictly limited to occasional administrative support (e.g. PESCO project members may request EDA to convene their meetings using the Agency’s facilities), such support **would not imply as a prerequisite the conclusion of an AA between EDA and the third State(s) involved in the related PESCO project.** However, this type of support would still take place under the general EDA rules and procedures related to the organization of events involving third States without AA.

• **EDA can provide support by providing a platform for the exchange of PESCO project information through the PESCO Common Workspace (CWS).** The PESCO CWS supports the exchange of
information between PESCO project members, including the sharing of state of play on PESCO projects. Similarly, the PESCO CWS provides to the project members a dedicated workspace to facilitate, within the project, the sharing of information. The use of the Advanced tool of the PESCO Common Workspace in support of PESCO Projects is limited to those members which are allowed access. Provided that the third State participating in a given PESCO project would not have access to the entire CWS, but only to the dedicated project-related “CWS module”, such support would not imply as a prerequisite the conclusion of an AA between EDA and the third State(s) involved in the related PESCO project.