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The European defence agency –  
reply to the annual report of the Council

**REPORT**

submitted on behalf of the Technological and Aerospace Committee  
by Mr Braga, Rapporteur (Portugal, Socialist Group)

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*The European defence agency – reply to the annual report of the Council*

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*submitted on behalf of the Technological and Aerospace Committee<sup>2</sup>  
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<sup>1</sup> Adopted unanimously by the Committee on 6 May 2004.

<sup>2</sup> *Members of the Committee:* Mr Arnau Navarro (Chairman); MM Mauro, O'Hara (Vice-Chairmen); MM Agramunt Font de Mora, Anacoreta Correia, Atkinson, Azzolini (Alternate: Barbieri), Bindig, Braga, Van den Brande, Danieli, Dimas, Duivesteijn, Etherington, Hauptert, Höfer, Kucheida, Le Guen (Alternate: Branger), Letzgus, Martínez Casañ, Meale (Alternate: Cox), Mrs Melandri, MM Monfils, Pintat, Reymann, Siebert, Verivakis, van Winsen.

*Associate members:* MM Açikgöz, Ates, Çavusoglu, Eörsi, Gawlowski (Alternate: Lorenz), Mrs Hlödversdottir, MM Komorowski, Konradsen, Rockenbauer, Mrs Senyszyn, Mr Titz, N..., N...

*N.B: The names of those taking part in the vote are printed in italics.*

**RECOMMENDATION 747<sup>1</sup>**

***on the European defence agency – reply to the annual report of the Council***

The Assembly,

- (i) Taking note of the second part of the 49<sup>th</sup> annual report of the Council and in particular of the information it gives on the activities of WEAG and the WEAO Research Cell during the second half of 2003;
- (ii) Regretting the decision of the WEAG Ministers not to meet in autumn 2003 as originally planned, despite the major difficulties there would appear to be for the proper transfer of the *acquis* of WEAG and WEAO to the European Union;
- (iii) Welcoming the decision of the European Union member states to create an Agency “in the field of defence capabilities development, research, acquisition and armaments”, which marks the end of the first phase in the process of establishing the European Security and Defence Policy (ESDP);
- (iv) Considering that the European Union will in the near future also be acquiring a Constitution and has adopted a strategic concept, and that it has military capabilities (the headline goal);
- (v) Recalling that in Bosnia and Herzegovina, Kosovo and the former Yugoslav Republic of Macedonia (FYROM) it is the European states of the EU and NATO that are now shouldering the greatest responsibilities;
- (vi) Noting that the European states together are developing common capabilities and that those efforts are vitally necessary, for no country is in a position on its own to deal with all aspects (combat, establishing security, post-conflict stabilisation and reconstruction) of the so-called extended Petersberg missions or the tasks of the NATO Response Force (NRF);
- (vii) Considering that the creation of a European Agency (EA) “in the field of defence capabilities development, research, acquisition and armaments” is part of the process of setting up a European capability for intervention in international crises;
- (viii) Noting that since the adoption by the EU Council in its General Affairs and External Relations format of the report on the EA in November 2003, an initial working structure for the Agency has been set up;
- (ix) Considering that clearly the EU states will progress slowly during the initial phase of the EA, but that as its responsibilities increase, the Agency will provide the focus for European efforts in the field of capabilities, technologies and armaments;
- (x) Taking account of the fact that the EU Council decision of 17 November 2003 identifies four major objectives for the EA;
- (xi) Noting that the first objective is directly linked to achieving the EU’s headline goal, efforts towards which are under way in the framework of the European Capability Action Plan (ECAP), and that the following three objectives go beyond the strict area of crisis management and constitute a fresh attempt to rationalise and concentrate under a single authority the currently dispersed efforts of the European states in the field of armaments policy and defence R&T;
- (xii) Considering that as far as forces are concerned, the notions of concepts and doctrine, structures and support, personnel and training are important and that if the Agency’s remit includes those areas too, then it is much more than a simple structure in charge of technical and technological matters;
- (xiii) Noting furthermore that to date the only semblance of organisation and real efforts to cooperate on defence R&T have come from WEAO with its Research Cell, which, in particular, provides a legal basis for cooperation projects through the EUROPA Memorandum of Understanding, but which, given its limited resources, cannot give decisive impetus in this area;

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<sup>1</sup> Adopted unanimously and without amendment by the Assembly on 3 June 2004 (4<sup>th</sup> sitting).

- (xiv) Stressing, nevertheless, that most European cooperation in the field of defence R&T takes place outside WEAO, since France, Germany and the United Kingdom prefer restricted bilateral or multilateral cooperation, which can be explained by their budgetary resources and technical/technological level;
- (xv) Recalling that in 1999, the European Technology Acquisition Programme (ETAP) was launched at France's initiative, with a view to making R&T projects part of a coherent overall strategy and providing structure for defence-related areas;
- (xvi) Considering that the EA's responsibility for the coordination and planning of joint research activities – currently carried out by WEAG and WEAO in a multilateral framework that is broader than that of the EU – will help to rationalise existing cooperation and clarify the chain of responsibilities in the field of defence R&T;
- (xvii) Noting that, if WEAG's tasks are fully taken over by the Agency, the arrangements proposed for involving WEAG member states that are not members of the European Union in specific Agency projects, where appropriate, fall fundamentally short of the rights currently enjoyed by those states in the field of European armaments cooperation;
- (xviii) Stressing that the EA must serve as the instrument of a European armaments policy that in turn is part of a European defence policy, and that whatever interpretation is given to Article I-40.7 of the future EU Constitution, the EU will have *de facto* a direct responsibility for the territorial defence of its member states;
- (xix) Recalling that the preservation and development of the European defence industrial and technological base (EDITB) is a strategic objective for the European states;
- (xx) Noting that the EDITB, which also includes R&T, R&D, evaluation and expertise, research institutes and universities, is having some difficulty with the process of consolidation and that scattered structures, piecemeal budgets, conflicting or overlapping national priorities and the effects of transatlantic cooperation all contribute to this state of affairs;
- (xxi) Considering that European investment in American programmes is quite high, which reduces the funding for “autonomous” European programmes;
- (xxii) Recalling in that regard the participation of several European countries in the Joint Strike Fighter (F-35) programme, an example which illustrates the de-structuring effect that transatlantic cooperation can have on the EDITB;
- (xxiii) Wishing to know more about the role of the EA in transatlantic cooperation;
- (xxiv) Emphasising that in the report on the EA adopted by the EU Council it is stipulated that specific cooperation programmes must be managed through OCCAR (Organisation for Joint Armament Cooperation) or through specific arrangements on the basis of OCCAR experience, and by an EU-wide application of rules and procedures drawn up on the model of the Letter of Intent (LoI);
- (xxv) Taking the view that the EA's role would seem to be subordinated to the interests of the OCCAR states, in other words, the big western European armaments-producing countries;
- (xxvi) Considering that the Agency would bring together most of the activities of ECAP, WEAG and WEAO, as well as coordinating European cooperation, but that when it came to the most important phase – the practical implementation of programmes – it would hand over their management to a body outside the EU structures, such as OCCAR;
- (xxvii) Noting furthermore that there are two complementary, but also divergent approaches concerning the EA's future: that of certain states in favour of an Agency with limited powers, and that of industry, for which the Agency is an important step in the process of framing a European defence industrial policy;
- (xxviii) Noting that the Agency's budget is an unknown factor, despite the fact that its financial resources are the key to its ability to play a role “in the field of defence capabilities development, research, acquisition and armaments”;

(xxix) Stressing that the EA must have sufficient human and budgetary resources to be able to work effectively in close cooperation with all other relevant bodies, including the Commission;

(xxx) Considering that the budgetary issue is also decisive for lending real weight to the Agency's legal personality, which in turn is essential in the area of contracts and for determining responsibilities in the case of disputes (and claims for damages);

(xxxi) Noting that notwithstanding the maintenance of Article 296 of the Treaty establishing the European Community, which stipulates that armaments are the preserve of the member states, the Commission is today fully involved in this sector through two channels, industry and R&T;

(xxxii) Stressing that with the ambiguity surrounding the so-called dual-use (civil and military) technologies and products, and with defence companies that are no longer state-controlled forming industrial groups with dual competences, the Commission is inevitably a player in this sector;

(xxxiii) Deeming, moreover, that in connection with its activities the EA will sooner or later have to tackle the question of cooperation with third countries;

(xxxiv) Considering therefore that the EA's activities will inevitably at an early stage involve cooperation with the United States, particularly in view of the some five billion euros invested thus far by European states in the JSF/F-35 fighter aircraft, in addition to off-the-shelf procurements by European firms of American equipment and technologies, the takeover of European firms by American companies, and the investments made by European companies in order to ensure their presence on the US defence market;

(xxxv) Wishing to know more about the EA's role in international defence cooperation in the transatlantic and other frameworks,

#### RECOMMENDS THAT THE COUNCIL

1. Ensure that the legitimate rights and interests of the WEAG countries that are not yet EU member states are taken into account in the process of setting up the European Agency;
2. Hold a WEAG ministerial meeting in 2004 with a view to reaching agreement on transferring the *acquis* of WEAG and WEAO and giving the President of the Assembly the opportunity to address the Ministers;
3. Energetically support the request of the WEAG countries that are not members of the EU to be granted observer status at meetings of the National Armaments Directors of the EU member states and their representatives and of the *ad hoc* preparatory group;
4. Consult the Assembly prior to any decision with repercussions for the future activities of WEAG Panels I, II and III;
5. Ensure that the expertise and responsibilities of WEAG and WEAO are included in the transfer of the functions of those two bodies to the EA;
6. Ensure that the WEU member states and observer countries, in their capacity as members of the EU, take account of the following elements for the setting-up of the EA:
  - to begin with its role will be essentially confined to providing a central and visible forum for the discussions among the member states on the capabilities and equipment that are necessary for the “extended” Petersberg missions;
  - an exchange of information and the creation of a database on national and common capability projects are also two initial tasks that could be envisaged for the Agency;
  - the work of the various ECAP project groups will be grouped together under the Agency's auspices, so that the EA can deal not only with the development and supervision of ongoing capability projects, but also help identify future capabilities and operational requirements in accordance with the ESDP's evolving objectives;
  - the Agency's field of action concerns forces and equipment, hence the following tasks:

- monitoring progress on and compliance with the capability commitments entered into by the member states through the ECAP process and Capability Development Mechanism (CDM);
- promoting and coordinating harmonisation of military requirements;
- identifying and proposing collaborative activities in the operational domain;
- providing appraisals on financial priorities for capabilities development and acquisition;
- the Agency will play a useful role for the small and medium-sized states that do not possess the full range of capabilities needed for current and future military crisis-management operations, but which often have centres of excellence that are complementary, and among which it is important to ensure that there is synergy as far upstream in the process as possible;
- the Agency will be able in the future to incorporate the ECAT programme in its activities, which would send a strong political signal in favour of a framework programme on defence research, technological development and demonstration equivalent to that which exists in the civilian field;
- in that respect it must be recalled that many military technologies are not dual-use;
- a “European” armaments market will only really be able to develop if a “European preference” is introduced at some point and if there is genuine reciprocity and transparency in transatlantic relations;
- the tripartite relationship between the Agency, OCCAR and the LoI/Framework Agreement makes the Agency an instrument for extending to the EU and its future armaments policy, as well as to its policy on defence R&D and R&T, the rules and arrangements drawn up and agreed by the main armaments producers/consumers, which may in the long run prove beneficial for creating a single European armaments market and for consolidating the EDITB;
- the Agency’s role in transatlantic cooperation remains to be defined;
- the Agency staffing system as described in the report adopted by the Council (a lean core staff that can be augmented according to requirements by national officials and experts) may have the advantage of providing the Agency with expertise and giving it decisive national impetus for certain R&T programmes and sectors, but could also mean that the Agency could find itself hostage to disagreements among the “big countries” on its orientations;
- a sufficient operating budget and specific budgets for individual programmes will enable the Agency to get off to a good start;
- the use of appropriate funds should be envisaged for the European defence project;
- contract authority founded on significant budgetary resources could become an instrument for consolidating the EDITB;
- the Agency’s role in transatlantic defence cooperation must be defined as of now, not only in political, but also industrial, technological, social and economic terms;
- in order to improve the level of transatlantic cooperation and balance the roles of the different partners; a united European approach will be necessary for which the Agency could provide the appropriate framework, particularly in view of its aim of creating an internationally competitive European defence equipment market;
- only a European armaments policy can provide guidelines for an agreement among governments on how to share the responsibility for the Agency’s activities and mode of operation;

- finally, the Agency can contribute to avoiding a repetition of past mistakes provided it is given the means to achieve the objectives that the EU member states have agreed upon.

## EXPLANATORY MEMORANDUM

*submitted by Mr Braga, Rapporteur (Portugal, Socialist Group)*

### **I. Introduction**

1. The decision of the European Union (EU) member states to create a European agency “in the field of defence capabilities development, research, acquisition and armaments”<sup>2</sup> marked the end of the first phase in the process of framing the European Security and Defence Policy (ESDP). This phase in the Union’s development, which had commenced with the Maastricht Treaty, was to end on the eve of the Union’s enlargement to include ten new member states.

2. The new Union will have a Constitution. It has already adopted a strategic concept<sup>3</sup> and established military capabilities (the headline goal) and is now in the process of setting up an Agency responsible for research and technology (R&T), defence and armaments. It will be different in nature from the EU of the past ten years, because the member states – at least the most influential among them – want to make it a leading security player in and around Europe, and in the rest of the world.

3. In Bosnia and Herzegovina, Kosovo and the former Yugoslav Republic of Macedonia (FYROM) the European states of the EU and NATO are now shouldering the greatest share of military responsibilities, and stabilisation and reconstruction tasks. Their troops constitute the bulk of the International Security Assistance Force (ISAF) in Afghanistan and a large proportion of the coalition forces in Iraq (20 000 men and women<sup>4</sup>).

4. This “interventionist” approach is likely to continue in the years to come, depending on developments in the global war on terrorism declared by the Bush Administration following the attacks of 11 September 2001 and which has now spread to the “greater” Middle East region. At stake are not only military, but also political, economic, social and even cultural issues, which by definition fall within the remit of multilateral organisations like the United Nations and the European Union.

5. As demonstrated by the recent events in Haiti, the military aspects of intervention remain decisive. In this area the European states have major assets, but also a number of large gaps to fill, in order to achieve the autonomy to which some European countries and leaders aspire. Both within NATO and the EU there is a consensus on this objective, although opinions diverge on the means of attaining it. Together, step by step, the European states are forging ahead with the development of common capabilities. Those efforts are vitally necessary, for no country is in a position on its own to deal with all aspects of the “extended” Petersberg missions or the tasks of the NATO Response Force (NRF).

6. The creation of a European Agency “in the field of defence capabilities development, research, acquisition and armaments” is part of that process of developing a European intervention capability for managing international crises. That capability has not only a military, but also a civil component, through the European Commission. Indeed, the Union is a complex construction that is a combination of purely intergovernmental, community and mixed elements. The ESDP is not an end in itself, but rather is part of that overall construction; one which is still seeking coherence but which, following the adoption of the strategic concept (12 December 2003) and, in the near future, a Constitution, will take on a hybrid form somewhere between a federal structure and a Europe of increasingly interdependent and inseparable nation states.

### **II. The European Agency: scope and objectives**

7. The historical steps in the development of an Agency with competence for armaments and defence technologies were set out in a previous report submitted by the Technological and Aerospace Committee on “the development of armaments policy in Europe”. Since November 2003 and the

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<sup>2</sup> Referred to henceforth in this report as “European Agency” (EA) for the purpose of simplification.

<sup>3</sup> *A secure Europe in a better world*, adopted by the European Council, Brussels, 12 December 2003; <http://ue.eu.int>

<sup>4</sup> There are 130 000 US troops (April 2004).

adoption by the EU General Affairs and External Relations Council (composed of the Foreign Affairs and Defence Ministers of the member states) of the report<sup>5</sup> on the European Agency (EA) an initial working structure has been defined.

8. On 28 January 2004, the Secretary-General of the EU Council/High Representative for the CFSP (SG/HR), Javier Solana, appointed a Director of the Agency Establishment Team (AET). The EA was referred to on that occasion for the first time as a “Defence Agency”, which is a very loose interpretation of its mandate as initially defined. The AET has the task of preparing and submitting to the EU Council proposals on the “institutional, legal and financial aspects relating to the basic functions and tasks of the Agency”. On the basis of those elements the EA will be able to start work sometime in 2004.

9. However, the EU Council already defined the objectives, competences and *modus operandi* of the Agency when it adopted the abovementioned report on 17 November 2003. These were taken up in adapted form in the SG/HR’s decision on the appointment of the AET Director. The two documents describe fairly precisely what the member states wish to accomplish by setting up the EA.

### ***1. Enhancing and developing Europe’s military capabilities***

10. The EA’s lengthy title illustrates the ambitious objectives for its future role, but also the ambiguity surrounding it. With responsibilities in areas ranging from capabilities management to drawing up a European armaments policy, it appears to be the embryonic form of a European defence ministry. Clearly the member states’ progress during the initial phase of the EA will be slow. But as its range of responsibilities is broadened (provided that budgets can keep up) the Agency should centralise all European efforts in the field of capabilities, technologies and armaments. The structure of the national budgets is conducive to the development of cooperation in this field and on major projects in particular, especially in the aerospace field.

#### ***(a) Capabilities and equipment***

11. The EU Council’s decision of 17 November 2003 identifies four major objectives for the EA:

- a) “developing defence capabilities in the field of crisis management (...);
- b) promoting and enhancing European armaments cooperation (...);
- c) contributing to identifying and, if necessary, implementing policies and measures aimed at strengthening the European defence industrial and technological base (...);
- d) promoting, in liaison with the Community’s research activities where appropriate, research aimed at fulfilling future defence and security capabilities requirements and thereby strengthening Europe’s industrial potential in this domain (...).”

12. The first objective is directly linked with the achievement of the EU’s headline goal and in particular with the initiatives being taken under the European Capability Action Plan (ECAP). The following three aims go beyond the strict area of crisis management and are an attempt to rationalise and bring together under a single authority the different efforts being made in the field of armaments policy and defence R&T that are currently dispersed among the member states.

13. The role of the Agency is essential for capabilities and it is therefore highly likely that the work of the various ECAP project groups will be grouped together under its auspices. The EA must not only deal with the development and supervision of ongoing capability projects, but also help identify future capabilities and operational requirements in accordance with the ESDP’s evolving objectives. The interesting point is not so much the fact that the Agency has a role at all in this field, but that its field of action concerns forces and equipment.

14. Those two elements together constitute a given capability, defined for example, as “the power to achieve a desired operational effect in a nominated environment within a specified time and to sustain

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<sup>5</sup> Report on an Agency “in the field of defence capabilities development, research, acquisition and armaments”; 2541<sup>st</sup> session of the External Relations Council, Brussels, 17 November 2003, <http://www.ue.eu.int>

that effect for a designated period. Capability is delivered by systems that consist of people, organisation, doctrine, training, materiel, logistics, infrastructure and information”<sup>6</sup>. In the UK, where this definition comes from, a capability is divided into the following sub-components known as “lines of development” (LOD): concepts and doctrine; equipment and technology; structures; sustainability; people and training.

15. As far as forces are concerned, the notions of concepts and doctrine, structures and support, personnel and training are important. If the Agency’s remit includes those areas too, then it is much more than a simple structure in charge of technical and technological matters. Indeed, it has been given the following tasks:

- monitoring progress on and compliance with the capability commitments entered into by the member states through the ECAP process and Capability Development Mechanism (CDM, which acts as an interface between the EU and NATO in the field of capabilities, in order to prevent unnecessary duplication);
- promoting and coordinating harmonisation of military requirements;
- identifying and proposing collaborative activities in the operational domain;
- providing appraisals on financial priorities for capabilities development and acquisition.

16. Those tasks also raise the question, which is analysed further on in this report, of the relations between the EA and the Union’s military bodies, as well as with the national authorities represented by the defence ministries. Even if one interprets the concept of EU crisis management that is currently at the crux of the ESDP in the strictest terms, those responsibilities can only be exercised with the consent and full involvement of the national authorities. While these may agree on European capability requirements (which in reality are national) and on the need to meet them, we know from experience that there is less of a consensus on the methods that should be used to do so, particularly when these call for budgetary efforts.

17. Under these circumstances, to what extent can the EA really fulfil the tasks entrusted to it by the EU Council? It is likely that, to begin with, its role will be essentially confined to providing a central and visible forum for the discussions among the member states on the capabilities and equipment that are necessary for the “extended” Petersberg missions. An exchange of information and the creation of a database on national and common capability projects (ECAP and CDM) are certainly two initial tasks that could be envisaged for the Agency.

18. Tasks relating to the harmonisation of requirements, industrial cooperation and economic priorities are more complex. Indeed, they depend almost exclusively on national choices, for which social and industrial aspects are of the highest importance. The EA will play a very useful role for the small and medium-sized states that do not possess the full range of capabilities needed for current and future military crisis-management operations. In many cases those countries have centres of excellence that are complementary, and it is important to ensure that there is synergy among them as far upstream in the process as possible, as of the operational planning phase. Moreover, since those states have more limited resources, they are more interested in any measures that will optimise their investments.

19. Those questions will remain under WEAG’s responsibility until its member states have agreed on the functions which are to be transferred to the EA. That has become a central issue for WEAG and a consensus has been reached on the transfer itself. The discussions concern the modalities of that transfer, and in particular the status within the Agency of the European states that are not members of WEAG. Regarding the harmonisation of requirements and programmes (WEAG Panel I), it was decided at the meeting of the National Armaments Directors (NADs) of the WEAG states on 23 and 24 October 2003, that the “assets mentioned in the WEAG inventory, including the ERS<sup>7</sup> database and the Manual<sup>8</sup>, should be offered to the European Defence Agency”<sup>9</sup>.

<sup>6</sup> “Network Enabled Capability Outline Concept”, Ministry of Defence, UK, May 2003, [www.mod.uk](http://www.mod.uk)

<sup>7</sup> Equipment Review Schedule: Panel I compares WEAG nations’ armaments replacement schedules, which are

20. At that meeting, the NADs also decided to suspend the activities of WEAG Panel III (procedures and defence economic matters). That Panel had studied subjects such as the simplification of intra-EU transfers (equipment), security of supply, small and medium-sized enterprises and maintaining design expertise<sup>10</sup>. Those matters fall within the remit of the EA and also concern the European Commission. In reality the majority of member states of WEAG had already agreed to suspend its main activities and to transfer them to the EA. In so doing they are applying (for the first time) one of the basic principles of that organisation: that there “should be a single European armaments cooperation forum”<sup>11</sup>.

*(b) Defence research and technology (R&T)*

21. European R&T is said by some to be in crisis, by others to be a booming sector; the truth lies somewhere between the two. European capabilities certainly fall far short of those of the United States (in terms of the ratio of investment to real return), and the fragmentation of European research, which is divided among a myriad of national laboratories (both public and private) means that the gap with the United States continues to grow in many areas. There is no extensive network for exchanges of defence-related R&T among the EU member states comparable to the one that exists in the civilian field (which, moreover, benefits from financial aid from the Commission through the sixth framework programme of the European Community for research, technological development and demonstration activities<sup>12</sup>).

22. To date the only real cooperation and semblance of organisation in this area has come from WEAO and its Research Cell. However, given its limited resources – 12 contracts worth a total of 49.38 million euros<sup>13</sup> in 2003 – it cannot give decisive impetus in this area. In reality WEAO acts as an intermediary between countries, but does not itself conduct research. It provides a legal basis for cooperation projects, in the form of the EUROPA<sup>14</sup> memorandum of understanding. The exchanges of information among the WEAO member countries, in particular regarding the results of their R&T programmes, are also very useful for helping to avoid duplication and bringing forward research in general.

23. Because of the expertise and experience thus acquired, “the WEAO is among the organisations which may be transferred to the EU at some time in the future, as part of the proposed new intergovernmental Agency in the field of defence capabilities development, research, acquisition and armaments.”<sup>15</sup>, according to the second part of the 49<sup>th</sup> annual report of the Council to the Assembly on the activities of the Council (for the period 1 July to 31 December 2003). Nevertheless, the bulk of European cooperation in the field of defence R&T falls outside WEAO. France, Germany and the United Kingdom prefer limited bilateral or multilateral cooperation, which makes sense in view of their budgetary resources and their technical and technological level. These countries were the founders of OCCAR and of initiatives such as the LoI (Letter of Intent)/Framework Agreement.

24. In 1999 the European Technology Acquisition Programme (ETAP) was launched at France’s initiative, with a view to making R&T projects part of a coherent overall strategy and providing a

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collated and presented in an annual document. Where cooperation is considered possible, subgroups involving the collaborating nations are established in order to harmonise requirements.

<sup>8</sup> WEAG Manual D-106: Principles, Procedures and Methods for the Harmonisation of Military Requirements and the Facilitation of Armaments Cooperation in Europe.

<sup>9</sup> Second part of the 49<sup>th</sup> annual report of the Council to the Assembly on the activities of the Council for the period 1 July to 31 December 2003), [www.assembly-weu.org](http://www.assembly-weu.org)

<sup>10</sup> *Ibid*

<sup>11</sup> “WEU Today”, WEU Secretariat General, 1997.

<sup>12</sup> The sixth framework programme of the European Community for research, technological development and demonstration activities (civilian) has a budget of 17.5 billion euros for the period 2002/3-2006; <http://europa.eu.int>

<sup>13</sup> Annual reports of the WEU Council to the Assembly 2002 and 2003, [www.assembly-weu.org](http://www.assembly-weu.org)

<sup>14</sup> European Understandings for Research Organisation, Programmes and Activities.

<sup>15</sup> Second part of the 49<sup>th</sup> annual report of the Council to the Assembly on the activities of the Council for the period 1 July to 31 December 2003), [www.assembly-weu.org](http://www.assembly-weu.org)

structure for defence-related areas<sup>16</sup>. The programme, which focuses on air combat systems, involves six countries (France, Germany, Italy, Spain, Sweden and the United Kingdom) which signed a memorandum of understanding at the end of 2001. ETAP, with its initial project on development, technological integration and demonstrators, is a very ambitious programme worth more than a billion euros and scheduled to run until 2010 (and beyond)<sup>17</sup>.

25. The EA's objectives in the field of defence R&T as defined by the EU Council must take on board these differences of interests and positions of strength among the "major" EU states and the others. The innovative feature of the Agency is that it will have the task of conducting "R&T studies relevant to future operational needs". There is a certain analogy here with the United States' Defense Advanced Projects Research Agency (DARPA). What remains to be defined are the practical and budgetary arrangements that will allow the EA to give European defence R&T the impetus it needs in order to match its American partner/competitor.

26. The Agency is also tasked with "the coordination and planning of joint research activities", currently carried out by WEAG and WEAO in a multilateral framework close to that of the EU (19 + 6 countries for WEAG, 19 for WEAO, 25 for the EU). The aim is to rationalise existing cooperation and to gradually bring together the different European defence activities being conducted within the EU. That approach should provide both short and medium-term benefits, in that it will help clarify the chain of responsibilities in the field of defence R&T.

27. However, for the EA to centralise the activities in this area, it will also have to be able to assimilate the big strategic technology projects. The problem is that these projects involve only a limited number of participants, in other words the "major" member states and those that are the most advanced in terms of R&T and R&D. Political and economic considerations and the concern to protect intellectual property play a preponderant role in this area and are not conducive to a sharing of know-how or to a transfer of technology towards all EU member states. The real challenge facing the EA will be to incorporate the ECAT programme in its activities; this would send a strong political signal in favour of a framework programme on defence research, technological development and demonstration equivalent to that which exists in the civilian field.

28. The Agency's contribution in this area will necessarily be modest to begin with: it will act as a coordinator and database, rather than as a "creator" of programmes. A link is to be established between the EA and the Commission, the EA acting "in liaison with the Community's research activities". A possible reason for this is to enable the EA – on the grounds of the dual-use nature of modern technologies – to benefit from some of the financial resources available under the framework programme for civilian research, which would save the member states from having to invest major sums in the Agency's R&T activities. It should, however, be borne in mind that many military technologies are not dual-use; this is the case for example in the aeronautical sector of the "technologies for low observability, sensors, weapons, internal carriage, unmanned vehicles, secured communications"<sup>18</sup>, and also applies to stealth (which is not really a European priority).

## **2. The Agency's role in European armaments policy**

29. The EA must serve as the instrument of a European armaments policy that in turn is part of a European defence policy. Currently the ESDP is confined essentially to the military and civil management of crises, but that restriction will not be able to last for any length of time if a Constitution containing a collective defence clause is adopted. Whatever interpretation is given to Article I-40.7 of the future EU Constitution<sup>19</sup>, the EU will have *de facto* a direct responsibility for the

<sup>16</sup> "La coopération en Europe en matière de recherche et technologie de défense" (European cooperation on defence R&T), 2003 ; [www.defense.gouv.fr](http://www.defense.gouv.fr)

<sup>17</sup> "European Air and Space Conference", Brussels, 28-29 May 2002, [www.aaaf.asso.fr](http://www.aaaf.asso.fr)

<sup>18</sup> *Ibid*

<sup>19</sup> Article I-40.7 : "If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States".

territorial defence of its member states. This means that the question of armaments must be seen in broader terms, and not just in terms of the equipment needed for the Petersberg missions.

*(a) Industrial policy: the EDITB and the single defence market*

30. The preservation and development of the European Defence Industrial and Technological Base (EDITB) is a strategic objective for the European states. There is general agreement on its essential importance for enhancing both national and European defence capabilities. In just over ten years there has been a massive drop in investments in the EDITB (due to stagnating or declining defence budgets in the EU and NATO member states). It has had to restructure on its own or under pressure from governments and by now has almost reached its limits.

31. The fragmentation of the already small European market and the difficulties involved in winning large export contracts and acquiring a strong and stable capital base are weakening “fortress Europe” and making it more vulnerable to its highly aggressive partners/competitors in the United States defence industry. Large European groups such as Thales and EADS have achieved good results in the civilian sector but, unlike their American counterparts, they do not enjoy the corresponding spin-off in the defence sector<sup>20</sup>. Moreover, with EU enlargement a large number of new companies will arrive on the EU defence equipment market and one way or another will have to be integrated in the “western” DITB. The alternative, for those that are able to do so, will be to survive by becoming suppliers to non-EU companies or being taken over by them.

32. The EDITB<sup>21</sup> (which, in addition to companies and their suppliers/subcontractors also includes R&T, R&D, evaluation and expertise, research institutes and universities) is also having some difficulty with the process of consolidation. Scattered structures, piecemeal budgets, conflicting or overlapping national priorities and the effects of transatlantic cooperation all contribute to this state of affairs. The latter offers undeniable advantages, in terms for example of access to the US civil and – to a more limited extent, military – market, as well as to considerable funds (the Pentagon has a budget of more than 135 billion dollars for equipment, research, development, evaluation and expertise<sup>22</sup>) and American advanced technologies.

33. This confronts the EDITB with two dilemmas. Investment in American programmes is quite high, which means less funds are available for “autonomous” European programmes. Technology transfers (where they take place at all) are subjected to major restrictions regarding the provision of information to third parties (other European companies, for example) and concerning exports. This concerns for example the European participation in the Joint Strike Fighter (F-35) programme; eight European countries are currently engaged in the development phase of the programme worth some 4.5 billion euros. The United Kingdom (which has invested more than two billion euros) is the only country to have pledged to purchase the aircraft.

34. Poor sales opportunities and the small number of jobs created in Europe are also a source of disappointment<sup>23</sup> for some “partner” companies, according to the Norwegian industrialists who addressed members of the Assembly’s Technological and Aerospace and Defence Committees during their visit to Oslo in March 2004. Similarly, in a report published in 2002 by the CPB Netherlands Bureau for Economic Policy Analysis, the authors drew attention to the relations of dependency arising for participants in the programme, stressing that in order to recover part of the sums invested, the government would be obliged to purchase JSF aircraft (the same debate took place in Canada) during the production phase. They also noted that the result, rather than to create new jobs, would be

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<sup>20</sup> In 2003, Boeing – the direct competitor of EADS – was awarded more than 50 billion dollars’ worth of contracts by the Pentagon. Over half (56%) of Boeing’s profits come from the company’s defence activities; [www.boeing.com](http://www.boeing.com).

<sup>21</sup> The EDITB can be defined as “the combination of people, institutions, technological know-how, and facilities used to design, develop, manufacture, and maintain the weapons and supporting defense equipment needed to meet (...) security objectives. This base has three broad components: research and development, production, and maintenance and repair, each of which includes public and private sector employees and facilities”; US Congressional Office of Technology Assessment (closed in 1995); [www.access.gpo.gov/ota/](http://www.access.gpo.gov/ota/).

<sup>22</sup> 2004 Department of Defense Budget Release; [www.defenselink.mil](http://www.defenselink.mil).

<sup>23</sup> “Frustration mounts among JSF partners”, *Jane’s Defence Weekly* (JDW), 24 March 2004.

to redistribute existing ones (specialised jobs that would remain “captive” for the duration of the aircraft’s lifetime, from 2007 to 2030)<sup>24</sup>.

35. The JSF example illustrates the de-structuring effect that transatlantic cooperation can have on the EDITB. Another aspect is the takeover by American companies or pension funds of European high-tech companies occupying niches of excellence, or the acquisition of holdings in those companies. The EDITB is too fragmented, or too weakened by the lack of investment in European strategic programmes (which have still not materialised) to be able to resist that American offensive. Furthermore, the loss of European experts attracted to the United States by the better working conditions and career prospects on offer there is also contributing to depleting the human resources that are of major strategic importance for strengthening and developing the EDITB.

36. How could the creation of an Agency help consolidate and further develop the EDITB? The EU Council has given the EA the task of “contributing to identifying and, if necessary, implementing policies and measures aimed at strengthening the European defence industrial and technological base; supporting the creation in liaison with Commission, as appropriate, of an internationally competitive European Defence Equipment market, providing further impulse and input to the development and harmonisation of rules and regulations affecting the European defence market (...)”.

37. That is a laudable aim, but can the EA bring any real influence to bear on the future of the EDITB? For the Agency to be able to implement such “policies and measures” it needs to have authority – which has to be delegated to it by the political authorities – as well as the means (programmes, funding) that could be decisive for consolidating the EDITB and making it internationally competitive. As for the “European” armaments market, it will only really be able to develop if a “European preference” is introduced at some point and if there is genuine reciprocity and transparency in transatlantic relations.

38. This is a major political and strategic problem that cannot be resolved by means of the EA alone. The Agency can only be an instrument for implementing a general plan aimed at preserving and developing the EDITB so as to enable it to meet the full range of operational requirements (on the ground, in the air, at sea or in space) and provide enough up-to-standard equipment to be able to cooperate fairly with the United States without being overly dependent on it, while performing competitively and efficiently on the international market.

*(b) The European Agency, OCCAR and the rules of the LoI/Framework Agreement*

39. The report on the Agency adopted by the EU Council attaches particular importance to OCCAR and the LoI/Framework Agreement. It stipulates that the EA must strive “for coordination of programmes implemented by Member States and for management of specific cooperation programmes through the (...) OCCAR or specific programme arrangements on the basis of OCCAR experience (...) particularly by an EU wide application of rules and procedures adapted from those negotiated in the Letter of Intent (LoI) Framework Agreement process”.

40. The role of the EA as described here seems to be subordinated to the interests of the OCCAR states (which are the big western European armaments-producing countries). The programmes that are mentioned can only be future projects, emanating in the majority of cases from the ECAP project groups. The management of European programmes would be assured by OCCAR, which has both a legal personality and the financial support of its members (through programmes such as the Airbus A400M transport aircraft), while the EA would only play a minor role. That is a rather ambivalent position for an initiative which is supposed to be decisive for European armaments policy.

41. The Agency would bring together most of the activities of ECAP, WEAG and WEAO and it would coordinate European cooperation (exchanges of information, networking of countries, databases). But when it came to the most important phase – the practical implementation of the programmes defined by means of this process – it would hand over their management to a body

<sup>24</sup> “Better buy JSF off-the-shelf than participate in its development”; by Martin Koning and Bert Minne, CPB report, 2002/1; [www.cpb.nl](http://www.cpb.nl). The CPB is an independent structure linked with the Dutch Ministry for the Economy.

outside the EU structures. Hence OCCAR would be the only executive body in the field of defence equipment and possibly also R&T and R&D in Europe. Thus, under the guise of a quest for efficiency, what would actually develop would be a “European preference”. And in budgetary terms this would also limit the different countries’ contribution to the EA.

42. OCCAR was created in 1996<sup>25</sup> in order to “provide more effective and efficient arrangements for the management of certain existing and future collaborative armament programmes”<sup>26</sup>. With WEAG’s activities becoming bogged down due to its failure to generate innovative and strategic programmes, the OCCAR states wished to give fresh impetus to European armaments cooperation. In order to do so, they agreed not to apply the rule of *juste retour*, considered to have been an obstacle to the implementation of collaborative programmes. The other WEAG countries did not agree with that abandonment and OCCAR was set up outside the WEAG cooperation framework, with no functional link being established between the two structures.

43. The same debate on the ways and means of making European cooperation more efficient has now resurfaced in connection with the European Agency. OCCAR has the advantage of three years of proven cooperation behind it, even though its ongoing programmes, with the notable exception of the A400M transport aircraft, are not of major strategic importance<sup>27</sup>. What makes this organisation a key player is its membership: Belgium (2003), France, Germany, Italy, the Netherlands (Convention undergoing ratification), Spain (2004) and the United Kingdom. Finland and Sweden are thinking of joining. These are same countries, with a few variations, that are represented in the LoI/Framework Agreement and the ECAT.

44. They are the biggest producers and consumers of defence equipment, as well as being the most technologically advanced. Naturally enough they wish to shape and direct European armaments policy, which explains the decision to give OCCAR the role of procurement agency for the EA and to extend to European level (in the armaments sector) the principles set out in the LoI/Framework Agreement.

45. The LoI/Framework Agreement on restructuring the European armaments industry signed on 27 July 2001 covers the following six major areas: security of supply; export procedures; management of classified information; processing of technical information; research and technology and harmonisation of military requirements. Together those measures constitute a corpus of law (the Framework Agreement is ratified by parliaments) designed to promote the development of a more or less unified armaments market, in other words, a “single” market controlled by the main producers and with the states themselves having the last word, in accordance with their national interests.

46. This tripartite relationship between the Agency, OCCAR and the LoI/Framework Agreement makes the EA an instrument for extending to the EU and its future armaments policy, as well as to its policy on defence R&D and R&T, the rules and arrangements drawn up and agreed by the main armaments producers/consumers. This may in the long run prove beneficial for creating a single European armaments market that is strong and competitive – particularly vis-à-vis the United States – and for consolidating the EDITB. However, in a Europe at 25 (or even 27 or 28 around horizon 2010), it will become necessary to also take account of the interests of the small and medium-sized states and of the new members with defence industrial and technological capacities. Failing that, the EA is likely to encounter the same problems as those that transformed WEAG into a discussion forum – albeit a useful one – and WEAO into a simple Research Cell which works well but has only limited resources.

### ***III. The Agency’s role in the ESDP***

47. The creation of a European Agency is one step in the development of an autonomous ESDP. It is an integral part of the process launched at Cologne, Helsinki and the subsequent EU summits, with a view to giving the EU the means to take military action in response to crises in Europe or elsewhere.

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<sup>25</sup> The OCCAR Convention is an international treaty that entered into force on 28 January 2001.

<sup>26</sup> “What is OCCAR?”, [www.occar-ea.org](http://www.occar-ea.org).

<sup>27</sup> “The development of armaments policy in Europe – reply to the annual report of the Council”, Assembly Document 1840, 3 December 2003, [www.assembly-weu.org](http://www.assembly-weu.org)

Whatever the terms and arrangements (interim bodies that subsequently become permanent, Political and Security Committee, Military Committee, Military Staff, an EU Planning Cell in NATO/Multinational headquarters), and even if the word “civil” is added alongside the word “military” (as in civil-military crisis management), the fact is that the EU is evolving into a political and military organisation. The Constitutional Treaty, if it is adopted, and the European strategic concept only confirm that development.

48. The Agency, then, is part and parcel of that approach and even if its temporary title is couched in very broad terms, clearly its main role will be in the field of defence R&T/R&D and armaments. Research, procurement and armaments are the key terms here. However, we should not expect the EA to be able, from the moment of its inception, to assume the full and very broad range of tasks conferred upon it by the EU Council of 17 November 2003. It will have gradually to work up to speed until it is able to bring together the essential European activities in the abovementioned areas. The Council decision pragmatically recognised that the EA would co-exist for an indeterminate period with existing structures such as WEAG, WEOA and OCCAR.

49. Like civil crisis management (the Commission) and military crisis management (the governments), the Agency will come under the Community pillar of the EU. This will be particularly true for the field of security research (with applications for defence research), in which the European Commission has just launched a major initiative<sup>28</sup>. EU activities will represent the bulk of the Agency’s work, but in the area of defence research and equipment the United States has a considerable slice of the European “market”, with no real reciprocity. The Commission is the United States’ dialogue partner for agricultural, trade, industrial and (civil) research policy. What role will the Agency play with regard to transatlantic cooperation?

### ***1. The European Agency and the development of European defence***

50. The creation of the EA coincides with the enlargement of the Union and the drawing-up of the EU Constitutional Treaty. Both events will mobilise the political and economic resources of the member states. For the moment attention is focused on the announcement of the Agency’s creation, rather than on its actual existence. The Agency is the subject of lively interest and high expectations on all sides, whether it be on the part of states and industry or of the WEU Assembly, research institutes and experts in the field. At the end of the day, however, it is the Agency Establishment Team that will bear the heavy responsibility for setting up the initial EA structure. Although of necessity an evolving structure, it will be decisive for the Agency’s future role.

#### *(a) The structures of the European Agency*

51. Will the Agency be a purely technical body or a political entity with responsibility for drawing up and implementing European armaments policy? There are two complementary, but also divergent approaches: that of states and that of industry. The different positions were expressed during a conference organised by the European forum “New Defence Agenda” on 19 January 2004. Representatives of the German and British armaments authorities expressed support for an Agency with limited powers, with no responsibility for defining European defence industrial policy and at the service of national interests<sup>29</sup>. For industry (this is true of EADS, for example) the Agency is an important step in the process of framing a European defence industrial policy<sup>30</sup>.

52. For the moment, the two approaches exist side-by-side without a final decision having been taken in favour of either. Judging by the report adopted by the EU Council on 17 November 2003, the EA will to begin with be a lightweight structure dependent on national expertise, with limited autonomy and budgetary resources. But as the EU takes on greater responsibilities in the field of

<sup>28</sup> Commission Communication on the implementation of the preparatory action on the enhancement of the European industrial potential in the field of security research – towards a programme to advance European security through Research and Technology; European Commission, COM (2004) 72, 3 February 2004; <http://europa.eu.int>

<sup>29</sup> “EU’s Acquisition Central?”, *Defense News*, 2 February 2004.

<sup>30</sup> “EADS views on defence in Europe”, EADS, September 2003.

European defence above and beyond crisis management<sup>31</sup>, the Agency will have to develop accordingly.

53. The report on the Agency describes a structure that is tightly controlled by the governments of the member states:

“The Agency’s structure is the following:

- “– a Steering Board (SB), which is the governing body of the Agency, is composed of representatives of the participating EU Member States, authorised to commit their governments, and a representative of the Commission. It meets at the level of the Ministers of Defence or their representatives;
- the Head of the Agency, who shall be the SG/HR, and who will chair the SB meetings;
- a Staff consisting of a lean core component of standing EU personnel selected on the base of individual capabilities, augmentable on a temporary basis by national secondees, according to specific tasks and projects;
- a Chief executive, recommended by the Head of the Agency and appointed by the SB.

3.3 The SB determines the Agency’s activities during meetings chaired by the Head of the Agency, within the framework of such directives as the Council may issue to it. It also approves the Agency’s programme of work and budget”.

54. The first thing we learn from these provisions is that the Agency will use “structured” cooperation, in which the EU member states will participate on a voluntary basis. EU membership does not automatically entail participation in the EA. This will allow certain countries to preserve their “neutrality” or their non-participation in the European defence project (of which the Agency is part) represented by the ESDP. However, the EA’s mandate is sufficiently flexible and varied to allow participation at several different levels. This is the case for example of the security R&T and R&D in which the European Commission is also involved.

55. The Steering Board is a direct emanation of the member states, at the level of the ministers of defence. In similar European structures – WEAG/WEAO and the NATO working groups – it is the national armaments directors (NADs) who play a preponderant role. By analogy, and for practical reasons, one can imagine that very soon the SB will also be composed of the NADs and their representatives, in which case the EA will have a marked “armaments” bias. This being the case, the question is whether the Commission representative will be able to play a role other than that of point of contact or coordinator for some of the projects and programmes conducted in the EA framework.

56. The appointment of the Secretary-General/High Representative for the CFSP at the head of the Agency is doubtless a temporary measure. The post of High Representative is to be replaced by that of Union Minister for Foreign Affairs (UMFA) once the Treaty establishing a Constitution for Europe enters into force<sup>32</sup>. This “Minister” is also a Commission Vice-President responsible for the Union’s external relations and external action. In addition he would be in charge of EU armaments policy through the Agency. It would be logical to appoint a separate person to head the EA under the authority of the UMFA in order to avoid double-hatting and a conflict of responsibilities that could be detrimental to the Agency’s efficient functioning.

57. Even in its present configuration there are a number of contradictions in the basic structure of the Agency, in terms of the importance attributed to its role. The report adopted by the Council, for example, refers to a “lean core” of staff that can be augmented according to requirements by national officials and experts. Thus the EA will be dependent on the national administrations, in particular those of countries that have highly developed (and diversified) armaments and defence R&T sectors. While that solution has the advantage of providing the Agency with expertise and giving it decisive national impetus for certain R&T programmes and sectors, the Agency could also find itself hostage to disagreements among the “big countries” on its orientations.

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<sup>31</sup> Via Article I-40 of the draft Constitutional Treaty.

<sup>32</sup> See Article 27 on the Union Minister for Foreign Affairs;

58. The report also refers to a Chief Executive of the Agency to be appointed by the Steering Board on the recommendation of the Head of the Agency. That person would have fairly wide-ranging responsibilities: organisational and administrative tasks, oversight and coordination of the “functional units” (defined according to the Agency’s activities) and ensuring the overall coherence of their work. Since no mention is made of a deputy head, and unless the SG/HR occupies his post as Agency Head full time, this Chief Executive is *de facto* the person responsible for running all areas of the Agency’s activities. Once the Union Minister for Foreign Affairs takes up his duties, it is not impossible that the Chief Executive will become the Head of the Agency. Hence that post, for the moment a subordinate one, would take on major political importance for the countries in “control” of the Agency.

59. The Agency as described by the EU Council report of 17 November 2003 is also an integral part of the ESDP structures. In the declaration appointing the head of the Agency Establishment Team (AET), it is stipulated that the Agency comes under the direct authority of the Council of the Union (in its General Affairs and External Relations plus Defence Ministers format) and under the responsibility of the Defence Ministers. The role of the Political and Security Committee (PSC) is to provide general guidelines and to receive the Agency’s reports, but it is not specified whether the guidelines are drawn up within the General Affairs and External Relations Council, or whether the reports stay with the PSC or are passed on to the Council for a reply or decision regarding their content. The Military Committee and the NADs have an expert advisory role that is likely to evolve.

60. However, no reference is made to the role of the POLARM and COARM groups. The POLARM group<sup>33</sup> set up in 1995 under the responsibility of the Council of the Union has been at the origin of several proposals on European armaments policy and European industrial defence policy. It has dealt in particular with the issue of security of supply and diversifying sources of defence equipment<sup>34</sup>. POLARM’s work concerns both the Community pillar (pillar I) and the intergovernmental pillar (pillar II) of the Union and the Commission is represented in it by an observer.

61. The group on conventional armaments exports, COARM<sup>35</sup>, emanates from the POLARM group. Its task is to monitor the application of the Code of Conduct on arms exports adopted by the EU Council in 1998. The activities of those two groups fall within the remit given to the European Agency. It would therefore make sense to integrate them in the EA, to avoid the overlapping responsibilities and unnecessary bureaucracy that would make the decision-making process in the field of European armaments policy (and the ESDP in general) even more complex in a Union at 25 (or more in the future).

*(b) Budget and legal personality*

62. The Agency’s budget remains an unknown factor, despite the fact that its financial resources are the key to its ability to play a role “in the field of defence capabilities development, research, acquisition and armaments”. One can deduce from the report of 17 November 2003 that the Agency will receive an operating budget (to cover staff and basic activities) plus specific budgets for individual programmes. Nothing has been said for the moment about the share of Community funding that should go to projects conducted in cooperation with the Commission (security R&T and R&D).

63. The budgetary arrangements are to be defined by the AET and will only be known when the latter submits its final report to the EU Council. If existing intergovernmental structures in the area of cooperation on armaments and defence technologies are anything to go by, there is little reason to be optimistic about the level of resources that is likely to be granted to the EA, at least in the initial phase. Indeed, those resources will be provided solely by the countries participating in its activities and the

<sup>33</sup> The POLARM (armaments policy) *ad hoc* group has the task of assisting the Committee of Permanent Representatives (COREPER) and the PSC with drawing up proposals and a European armaments policy.

<sup>34</sup> “The development of armaments policy in Europe – reply to the annual report of the Council”, Assembly Document 1840, 3 December 2003, [www.assembly-weu.org](http://www.assembly-weu.org)

<sup>35</sup> “Arms cooperation in Europe: WEAG and EU activities – reply to the annual report of the Council”, Assembly Document 1800, 4 December 2002, [www.assembly-weu.org](http://www.assembly-weu.org)

European states are not very inclined to spend a large enough proportion of their budgetary resources on defence equipment to have any overall positive effects as far as the EDITB is concerned.

64. Each country is sovereign in this area and the proposal to set up a common defence fund does not look as though it is likely to be realised in the very near future, despite the positive reactions from some quarters. This was an idea that already figured in the draft Treaty on the European Defence Community in 1952<sup>36</sup> as well as in the WEU Assembly's recommendations on the organisation of European defence and the ESDP<sup>37</sup>. The recent enlargement of the EU to 25 member states and further enlargement over the next three to five years could provide the opportunity to put this old idea into practice. The number of member states is not a guarantee of quality but in budgetary terms quantity is essential.

65. With great political strides being made in the field of European defence – the consolidation and development of political and military crisis-management structures, the strategic concept, the future mutual defence clause in the draft Constitutional Treaty, not to mention the concepts of enhanced, structured and close cooperation – the conditions are ripe for adding the budgetary component that is currently lacking at all levels, but particularly at national level.

66. The restructuring of the national defence industries and the development of European cooperation on defence equipment and technologies are not the result of any overall plan drawn up and implemented at the highest level, but rather offer the only solution in a context of stagnating and declining national investments in the defence sector. The decision by one country to invest more has little impact on overall European capabilities, given that such increases obey a national, rather than European, rationale.

67. Let us take the case, for example, of the United Kingdom and France. Both are leaders in Europe in terms of their capacity for power projection and forces deployment. They are making a considerable effort in the area of defence equipment, R&T and R&D. However, if the other European countries do not follow their example, they will be the ones, increasingly, that will be called upon to bear the costs and the burden of “European” intervention. The resulting financial constraints will reduce the scope for investment in equipment and technology. On the other hand, their projection capabilities are such that the Union is dependent on their availability and readiness to intervene in every crisis. Decisions will be taken according to national interests and priorities that may diverge, as was the case in the period leading up to the US and British intervention against Saddam Hussein's Iraq.

68. There are in any case limits to what either of those states can accomplish in terms of budgetary efforts. This is why it is necessary to envisage setting up structural or cohesion funds<sup>38</sup> for the project of a European defence. The Agency could be responsible for receiving and managing the sums paid into those funds which could be used for projects agreed among the member states, as well as for programmes defined and implemented by the EA (in cooperation with the Union's military authorities and in agreement with the Council). This would be a decisive step forward for European defence. It would also allow the effort to be shared among all states in a way that would be fairer and more beneficial for all. This would strengthen their political cohesion and solidarity, which could only give the Union greater weight.

69. The budgetary issue is also decisive for the question of a legal personality. The report on the EA stipulates that “The Agency shall have the legal personality necessary to perform its tasks and attain its

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<sup>36</sup> That draft Treaty refers to a draft common plan on armaments, equipment, procurement and infrastructure for which the member states of the Community are to make available appropriate contributions. The budgetary arrangements are defined under Titles IV (financial provisions) and V (economic provisions) of the draft treaty establishing the European Defence Community, Paris, 27 May 1952, <http://mjp.univ-perp.fr>

<sup>37</sup> Speech by Klaus Bühler, President of the WEU Assembly (1999-2002), at the opening of the Colloquy on “Equipping our forces for Europe's security and defence – priorities and shortcomings”, Madrid 5 March 2002, [www.assembly-weu.org](http://www.assembly-weu.org)

<sup>38</sup> Structural and cohesion funds are designed to reduce differences in the level of development of the different European regions and member states. They have a strong impact in terms of infrastructure, industrial fabric and R&T. For the period 2000-2006 their total value exceeded 210 billion euros, <http://europa.eu.int>

objectives". That is particularly important as regards contracts and for defining liability in the case of disputes and claims for damages. The Agency, then, will be able to place contracts in its own name and manage programmes. It will be able to place research contracts with WEAO and programme contracts with OCCAR, both organisations also having a legal personality.

70. If that contract authority is backed up by significant budgetary resources and if the Agency has considerable autonomy for the use of those resources, this would be conducive to the consolidation and development of the European Defence Industrial and Technological Base. This corresponds to an advanced phase of the Agency, according to the report of 17 November 2003:

*"C. Fully operational phase of the Agency*

6.4 In this stage the Agency will be responsible in particular for the integration between the operational aspects of capabilities (scenarios, requirements, non-equipment collaborative projects) and the capability acquisition and development ones (R&T scenarios, cooperative armament projects, programmes management, European Defence Industrial and Technological Base rules and regulations).

In this stage the Agency will incorporate or assimilate the principles and practices of the relevant elements of pre-existing arrangements/grouping/organisations (OCCAR, LoI, Framework Agreement, WEAG/WEAO)".

71. The Agency's legal personality is essential for it to be able to attain those objectives, which involve some important legal aspects. But it will not make any real impact unless its budgetary resources match those stated ambitions. To have contract authority without the corresponding financial resources would make the EA's legal personality meaningless and it would lose its attraction for the EU states and for the defence R&T industrial sector, which would pursue their aims by cooperating more closely with another EU "Agency", the European Commission, with its much more substantial financial resources. Others would seek salvation in transatlantic cooperation, even to the detriment of Europe's autonomy.

## **2. The European Agency's external relations**

72. The European Agency is without question a step forward, but it is not the only body with competence for defence equipment and R&T. Eventually it will provide the focal point for all other organisations and initiatives in this sector within the European Union. But it will nevertheless have to work with another "agency", the European Commission, which also has ambitions in the field of defence industrial policy and defence R&T and R&D. The EA will therefore sooner or later have to tackle the question of cooperation with third countries: the non-EU European NATO member countries, the Union's partner countries and the United States.

### *(a) The Commission in the Agency*

73. The report adopted by the European Council on 17 November 2003 contains three references to the role of the Commission with respect to the Agency. It stipulates that the Commission is fully associated with the work of the Agency (Basic Functions and Tasks), that there will be a Commission representative on the Steering Board (Organisation) and that the Agency will cooperate with the Commission on establishing a European defence equipment market and on security R&T (Basic Functions and Tasks – objectives). If, with the entry into force of the Constitutional Treaty, the post of head of the Agency goes to the Union Minister for Foreign Affairs, the Commission could play a more important role in the Agency's activities.

74. Notwithstanding the maintenance of Article 296 of the Treaty establishing the European Community, which stipulates that armaments are the preserve of the member states, the Commission these days is fully involved in this sector through two channels: industry and R&T. It does not exert direct control over the orientations of armaments policy in Europe (which remain the prerogative of the member states), but it does have at its disposal a broad range of legal and financial instruments for influencing the choices of governments, particularly with regard to the European defence equipment market.

75. The Commission has used its competences and resources in the field of markets and industry to establish a foothold in the armaments sector. With the ambiguity surrounding the so-called dual-use technologies and products, and with defence companies that are no longer state-controlled forming groups (such as EADS and Thales) with dual expertise, the Commission is inevitably a player in this sector. It has a say in a range of areas, from company acquisitions and mergers to public sector contracts, exports of dual-use goods, the arms imports tax regime and intra-community transfers; indeed it has prerogatives comparable to those of a state.

76. Thus the Commission has become the spokesman for the big European industrial groups with major defence activities, and is trying to encourage governments to increase the share of the national budgets devoted to equipment and R&T. In the 1990s<sup>39</sup> the Commission made public a series of documents, in some cases co-signed by the representatives of industry and of the Union's CFSP/ESDP authorities, on the industrial and R&T aspects and future priorities of this sector (space in particular).

77. In 2003/2004, for example, the Commission issued a Communication on "European defence industrial and market issues – Towards an EU Defence Equipment Policy" and a Communication on "the implementation of the Preparatory Action on the enhancement of the European industrial potential in the field of security research – Towards a programme to advance European security through Research and Technology" (February 2004). The Commission has also initiated numerous studies on standardisation in the defence industries and on European and transatlantic defence industrial cooperation. Since 2002 the Commission has been preparing, with help of the European standardisation authorities, a document entitled "Standardisation for defence procurement – European handbook".

78. The link between the functions of Union Minister for Foreign Affairs and Commission Vice-President in charge of external affairs will mean that the Commission will quite legitimately be involved in the field of CFSP/ESDP, which for the moment is still intergovernmental. At present the Commission is involved above all in civilian crisis-management and police operations in the Balkans, for which it provides coordination and, more importantly, funding. The Commission's presence at the core of the Agency's activities is a logical development. It will also provide a channel through which industry can address requests and proposals to the government representatives on the Steering Board.

79. If the Agency does not have sufficient human and financial resources, its role in the areas in which it works jointly with the Commission will be weakened. This will gradually bolster the role of the Commission in the EA, all the more so in view of the fact that the Agency may well not be able in the short and medium term to fully assume all its functions and competences in the defence capabilities field. Moreover, the Commission may hold attraction for some EU member states for political and economic reasons, while the idea of having some or all projects funded by the Commission is advantageous in terms of national contributions.

80. It is necessary from both the organisational and budgetary standpoints to ensure that there is synergy between the two structures, thus avoiding unnecessary duplication. Nevertheless, the Commission will be at an advantage to begin with because of its much larger budgetary resources. This will have repercussions for projects and programmes, with the additional risk of conflicts of interests emerging between certain states (the "big" producers) and the Commission. The latter's advantage resides in the fact that despite its collegial structure, each Commissioner is solely in charge of his/her field and is at liberty to adopt a sectoral policy if it complies with the central guidelines defined by the "college" of Commissioners. Conversely, at intergovernmental level there is no specialisation and each state, at least theoretically, has the same rights.

81. Hence the Commission has the means of drawing up and implementing a strategy in the field of defence industrial policy that at the end of the day will shape European armaments policy. The failure of the member states to define a major strategy for this sector could irreversibly weaken the European defence industrial and technological base, which would then turn to the Commission for support – and

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<sup>39</sup> For example, the Communication sur "Implementing a European Union strategy on defence-related industries" (November 1997) and the "Strategic Aerospace Review for the 21st Century, STAR21" (July 2002, in cooperation with the leading European companies in this sector).

financial resources. This would lead to a gradual shift in industrial investment towards dual-use security research, to the detriment of defence R&T and R&D proper.

*(b) International cooperation*

82. International cooperation is not mentioned in the Agency's terms of reference as set out in the 17 November 2003 report. Yet it cannot be totally self-sufficient and at the same time develop. The EA has the task of developing and implementing common European projects and programmes. Some of these, like those within WEAO or OCCAR, involve countries with different types of status in the Union. The same applies to the headline goal, which involves not only the EU member states but also accession candidates and others. Only the member states are represented at the decision-making level, which is logical, but in practical terms all sorts of arrangements are possible.

83. The first question facing the Agency in that respect is that of the treatment that should be given to non-EU member states already involved in European armaments cooperation within WEAG and WEAO. The report on the Agency stipulates that "The Agency should seek ways to ensure that present non-EU members of WEAG<sup>40</sup> be associated, where appropriate, with specific programmes or projects". (4. External working relations). In the case of programmes that are already under way and provided that WEAG and WEAO are incorporated into the Agency, that is not a problem.

84. But how will such cooperation be organised for future programmes? Third countries are not represented on the Steering Board or in the other political and military structures of the ESDP. They therefore cannot be involved upstream in the definition of the programmes that they might be invited to join in the best of cases. The issue at stake here is not the technical implementation and funding of the programme, but rather participation in the decision-making process, from the identification of requirements through to the implementation phase. Even though they are not members of the EU the two countries concerned – Norway and Turkey – contribute through NATO and the headline goal towards strengthening European military crisis-management capabilities. The same question will arise for Bulgaria and Romania, scheduled to accede to the Union in 2007.

85. Those countries have advanced technological and defence industrial capabilities, with specialisation in certain niches that contribute to the overall development of the EDITB. If they are not present at all in the Agency or only involved in one-off projects (which, moreover, will be limited in scope: the economic aspects must be considered), then they run the risk of gradually being sidelined. If there is no more satisfactory solution, there is a real danger of those countries losing capacities, for their defence budgets are no longer sufficient to preserve the national DITB. This will make them all the more likely to opt for transatlantic cooperation, with consequences that will not necessarily be positive for Europe's autonomy in the defence field.

86. Cooperation with the United States will be necessary for the Agency at a very early stage. Indeed, it appears inevitable, particularly in view of the some five billion euros invested thus far by European states in the JSF/F-35 fighter aircraft. On top of that we must take account of off-the-shelf procurements by European firms of American equipment and technologies (computer software, radars, navigation systems, transport planes and combat helicopters, F-16 and F-18 aircraft and their weapons systems, for example), the takeover of European firms by American companies, subcontracting and investments conducted by European companies to ensure their presence on the US defence market (this applies to BAE Systems<sup>41</sup> in particular).

87. The Commission is responsible for trade negotiations with the United States and for industrial and technological cooperation projects conducted under the community pillar between the EU and the US. What role will the Agency play in transatlantic defence cooperation? No answer has as yet been given to that question, which leaves the way clear for the American approach, which consists of treating these questions in the multilateral framework of the Prague Capability Commitments adopted by NATO, or at the bilateral/coalition-of-the-willing level (as for the JSF/F-35 programme).

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<sup>40</sup> The countries concerned at present are Norway and Turkey.

<sup>41</sup> BAE North America employs 22 000 people and generates an estimated annual turnover of some 4 billion euros (2002 figures). This represents over 20% of the Group's labour costs and one third of its overall turnover.

88. This is of course a political issue with implications for transatlantic solidarity and the maintenance of a US presence in Europe. But it also has major industrial, technological, social (jobs, standard of living) and general economic (e.g. foreign trade) repercussions. A united European approach will be necessary in order to improve the level of transatlantic cooperation and ensure a balance among the roles of the different partners; the Agency could provide the appropriate framework for that purpose, particularly in view of its stated aim of “creating an internationally competitive European defence equipment market”<sup>42</sup>. It is up to the EU member states to agree among themselves on a common position that is neither protectionist (option rejected by the majority of countries) nor governed in simplistic fashion by purely political considerations.

89. In addition to cooperation with Europe’s main partner/competitor, the United States, the question arises of cooperating with other major actors in the armaments and defence technologies sector both in Europe (Russia and Ukraine) and Asia (China, India, Japan and South Korea). Those countries offer actual or potential<sup>43</sup> export markets for the European defence industries, generally in exchange for technology transfers or local assembly facilities. For the European defence equipment market to be internationally competitive it must have a genuinely global, and not purely transatlantic, scope, because in the field of transatlantic cooperation its role will always remain marginal.

90. A central role in the field of defence capabilities and equipment will only be established for the Agency once it has international responsibilities explicitly granted to it by the member states, which in any case will control the Agency through the Steering Board. In a Union at 25, 27 or 28, the governments will have to reach agreement as quickly as possible on how to share the responsibility for the Agency’s activities and mode of operation. To be effective in that respect they need guidelines in the form of a European armaments policy. With the current balance of power, the major orientations will be determined by the six or seven big European producers of defence technologies and equipment.

91. The interests of other countries will also need to be taken into account, but any attempts at obstruction will lead to a repetition of past mistakes and the Agency’s role will be confined to the provision of coordination and technical expertise. Unless there is a major political development and more effective channelling of national budgetary resources (in the absence of any real increase in budgets), the situation of the EDITB will not improve, and there is a danger that it will become no more than a pool of capabilities and expertise to be drawn upon on a one-way basis for transatlantic cooperation. This will partly solve problems of interoperability and of the technological gap between Europe and the United States, but to the detriment of European strategic autonomy (including in the civil sector). The Agency can contribute to avoiding growing dependence if it is given the means to achieve the objectives that all the countries of the Union have agreed upon. The time has come to translate words into deeds.

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<sup>42</sup> Report on an Agency “in the field of defence capabilities development, research, acquisition and armaments”; 2541<sup>st</sup> session of the External Relations Council, Brussels, 17 November 2003, <http://www.ue.eu.int>

<sup>43</sup> China is a special case, because it has been under embargo since 1989 as regards defence equipment.



