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WORKING PAPER

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Space
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the space programme of the Union and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013, (EU) No 377/2014 and Decision 541/2014/EU - MS comments on WK 9566/20 (Article 25 and related Recital 37)

Delegations will find attached table with MS comments received on WK 9566/20 (Art. 25 related Recital 37).

<i>Presidency compromise text - WK 9566/20</i>	MS drafting suggestions and comments (AT - CZ - ES - FR - IE - IT - NL - PL -PT -SE)
[Art. 25]	
<p><u>Eligibility and participation</u> Conditions for the preservation of the security, integrity and resilience of operational systems of the European Union</p>	<p>SE (Drafting): <u>Eligibility and participation</u> Conditions for the preservation of the security, integrity and resilience of operational systems of the European Union</p> <p>SE (Comments): SE comment: see comment below</p> <p>NL (Comments): NL can support the new title.</p> <p>PT (Comments): Support to the new title</p>
<p>1. The Commission shall propose may lay down <u>may lay down</u>-requisite eligibility and participation conditions applicable to the procurements, grants or prizes covered by this Title in accordance with paragraph 4 of this Article if it deems that this is necessary to preserve the security, integrity and resilience of the operational Union systems, taking into account the objective to promote the Union autonomy, in particular in terms of technology <u>across key technologies and value chains</u> while respecting the principles of an open economy. <u>The Commission shall first carry out appropriate consultations with the competent security authorities of the Member States and seek agreement</u></p>	<p>SE (Drafting): 1. The Commission shall propose may lay down <u>may lay down</u>-requisite eligibility and participation conditions applicable to the procurements, grants or prizes covered by this Title in accordance with paragraph 4 of this Article if it deems that this is necessary to preserve the security, integrity and resilience of the operational Union systems, taking into account the objective to promote the Union autonomy, in particular in terms of technology <u>across key technologies and value chains</u> while respecting the principles of an open economy. <u>The Commission shall first</u></p>

with them on the scope of application of those eligibility and participation conditions.

carry out appropriate consultations with the ~~Space Programme Committee~~ in accordance with art. 107.1 (e) of this regulation in order to ~~competent security authorities of the Member States~~ and seek agreement with them on the scope of application of those eligibility and participation conditions.

SE

(Comments):

1) it needs to be clarified what Union systems the title and art.25.1 refer to (highlighted in yellow here and above). A definition can not be ad hoc but needs to be agreed upon with the MS since it can affect national security concerns more than EU security concerns.

2) In the Space Programme Committee (security configuration) participates the MS NSA and other relevant authorities. Thus, the last sentence of this text has been amended in order to properly reflect their advisory function.

PL

(Comments):

Poland shares the concerns expressed by some MS and the Commission about the practicalities of such consultations. The idea as such deserves for support, nonetheless in practical terms it may slow down the public procurement process.

NL

(Comments):

NL prefers the PRES text which includes ‘consultation and seek agreement’ with competent security authority of Member States, because of the importance of MS involvement in determining the scope of application of this article. At the same time a practical and efficient process is necessary to prevent undue delays. We could therefore also agree with a text in which COM consults the competent security authorities, without seeking agreement with

them.

IE

(Comments):

For Ireland it is important that Member States are involved in the process of deciding when Article 25 shall be used.

On this basis, Ireland welcomes the addition of the last sentence to paragraph 1.

For us the current text does not imply a requirement for EC to consult with all MS for every tender. It provides for high level agreement on standard terms, which will avoid the creation of a “black box” for every tender.

We acknowledge that seeking agreement for every tender would be unworkable and inefficient. This proposed mechanism also allows for the conditions to be revisited and for them to evolve periodically as the need emerges.

ES

(Drafting):

1. The Commission ~~shall propose~~ ~~may lay down~~ **may lay down** requisite eligibility and participation conditions applicable to the procurements, grants or prizes covered by this Title ~~in accordance with paragraph 4 of this Article~~ if it deems that this is necessary to preserve the security, integrity and resilience of the operational Union systems, taking into account the objective to promote the Union autonomy, in particular in terms of technology **across key technologies and value chains** while respecting the principles of an open economy. **The Commission shall first carry out appropriate consultations with the competent security authorities of the Member States and seek agreement**

~~with them on the scope of application of those eligibility and participation conditions.~~

ES

(Comments):

ES considers that it is essential to clarify and define the scope, conditions and requisites to avoid legal uncertainty. Are the scope and eligibility criteria of application in the remit of NSAs?

COM may seek consultation with MS based on Art. 107 (see Art. 25.4).

FR

(Drafting):

1. The Commission ~~shall propose the shall propose may lay down~~ ~~maycan lay down~~ requisite eligibility and participation conditions applicable to the procurements, grants or prizes covered by this Title ~~in accordance with paragraph 4 of this Article~~ if it deems that this is necessary to preserve the security, integrity and resilience of the operational Union systems, taking into account the objective to promote the Union autonomy, in particular in terms of technology **across key technologies and value chains** while respecting the principles of an open economy.

~~**The Commission shall first carry out appropriate consultations with the competent security authorities of the Member States and seek agreement with them on the scope of application of those eligibility and participation conditions.**~~

FR

(Comments):

FR asks to maintain “shall propose” otherwise according to this article it will be possible to have procurements, grants and prizes without any specific participation conditions.

This sentence must be deleted as an agreement is needed in this article. We cannot afford diverse interpretation later on. Moreover the scope of this article exceeds the competence of the national

security authorities. MS should keep their decision making power. FR proposes a mechanism of transparency and information of the program committee.

PT

(Drafting):

1. The Commission ~~shall propose~~ ~~may lay down~~ **may lay down** requisite eligibility and participation conditions applicable to the procurements, grants or prizes covered by this Title ~~in accordance with paragraph 4 of this Article~~ if it deems that this is necessary to preserve the security, integrity and resilience of the operational Union systems, taking into account the objective to ~~achieving~~ **promote** the Union **strategic** autonomy, in particular in terms of technology **across key technologies and value chains** ~~while respecting the principles of alongside~~ an open economy.

The Commission shall first carry out appropriate consultations with the competent security authorities of the Member States and seek agreement with them on the scope of application of those eligibility and participation conditions.

PT

(Comments):

There is no reference in the TFEU to the principles of open economy. It is not legally sound.

We could support a sentence stemming from the forthcoming EUCO conclusions which in its current version reads out:

„Achieving strategic autonomy alongside an open economy is a key objective of the Union.“ (to be adapted according to the final draft). The same should apply to recital 37.

On the last sentence, PT is flexible but would wish for a process which is implementable, transparent and efficient

CZ

(Drafting):

1. The Commission ~~may lay down~~ **shall propose** requisite eligibility and participation conditions applicable to the

procurements, grants or prizes covered by this Title if it deems that this is necessary to preserve the security, integrity and resilience of the operational Union systems, taking into account the objective to promote the Union autonomy, in particular in terms of technology across key technologies and value chains while respecting the principles of an open economy. The Commission shall first carry out appropriate consultations with the competent security authorities of the Member States and seek agreement with them on the scope of application of those eligibility and participation conditions.

CZ

(Comments):

CZ is concerned that the broad consultation and the involvement of the NSAs in decision-making process will have a significant impact on the whole procedure and in some cases could block the activity at all. At the same time, the NSAs are not experts on space technologies / application, so there is a risk that the decision will not be based on expertise.

Procurement of non-EU technology / system is a matter of project management. In case, there is no EU provider, the programme manager should be able to procure it outside EU if the satellite / system should be implemented.

In order to speed up the decision making process, we propose to set-up these eligibility and participation conditions at the beginning of the Programme.

IT

(Comments):

The addition seems to imply that the Commission shall seek agreement from the 27 NSAs beforehand whenever it is needed to lay down requisite eligibility and participation conditions. This may result in a cumbersome application of the provision and on a

	risk of blockage. IT propose to delete the text to modify it in the sense that the NSA are duly informed by the Commission.
2. The conditions referred to in paragraph 1 shall specify that eligible legal entities shall:	FR (Drafting): 2. The conditions referred to in paragraph 1 <u>shall be defined as follows</u> shall specify are that eligible legal entities shall: FR (Comments): This proposed change is to be more explicit on the eligibility criteria and to reassure on the facts that no additional criteria could be set by the Commission that would exceed the ones that are set in these articles.
(a) be established in a Member State and their executive management structures be established therein,	
(b) commit to carry out all relevant activities in one or more Member States and	FR (Drafting): (b) commit to carry out all relevant activities in one or more Member States and FR (Comments): It shall be effective and not only a commitment.
(c) not be subject to control by a third country or by a third country entity.	
For the purpose of this Article, control means the ability to exercise a decisive influence on a legal entity directly or indirectly through one or more intermediate legal entity.	IE (Drafting): For the purpose of this Article, control means the ability to exercise a decisive influence on a legal entity directly or indirectly through one or more intermediate legal entities . FR

	<p>(Drafting): For the purpose of this Article, control means the ability to exercise a decisive influence on a legal entity directly or indirectly through one or more intermediate legal entity, <u>including in terms of results of technology transfer</u></p> <p>FR (Comments): Addition in order to precise the definition of control and strengthen the protection of the European industry from the US law <u>(ITAR)</u>.</p>
<p>For the purpose of this Article, executive management structure means body of a legal entity appointed in accordance with national law, and, where applicable, reporting to the chief executive officer, <u>or any other person having comparable decisional power</u>, which is empowered to establish the legal entity's strategy, objectives and overall direction, and which oversees and monitors management decision-making.</p>	<p>SE (Drafting): For the purpose of this Article, executive management structure means body of a legal entity appointed in accordance with national law, and, where applicable, reporting to the chief executive officer, <u>or any other person having comparable decisional power</u>, which is empowered to establish the legal entity's strategy, objectives and overall direction, and which oversees and monitors management decision-making.</p> <p>SE (Comments): <u>SE comment: high-lighted subordinate clause creates a very wide and undefined category of subjects. A more defined category is probably necessary. Are, for example, both physical persons and legal persons concerned?</u></p> <p>NL (Comments): Support for the addition</p> <p>IE (Comments): Welcome the broadening of the text to include person with comparable decisional power.</p> <p>FR</p>

	(Comments): <u>OK</u>
3. The Commission may propose to waive the conditions under points (a) or and or (b) of paragraph 2 for a particular legal entity upon evaluation based on the following cumulative criteria:	3. The Commission may propose to waive the conditions under points (a) or and or (b) of paragraph 2 for a particular legal entity upon evaluation based on the following cumulative criteria: IE (Drafting): 3. The Commission may propose to waive the conditions under points (a) and (b) of paragraph 2 for a particular legal entity upon evaluation based on the following cumulative criteria: IE (Comments): Suggest (a) and (b) to address all possible scenarios FR (Drafting): 3. The Commission may propose to propose to waive the conditions under points (a) or and and or (b) of paragraph 2 for a particular legal entity upon evaluation based on the following cumulative criteria: FR (Comments): The three criteria of §3 leads to waive simultaneously both condition under paragraph 2. PT (Comments): Support to the changes introduced in this paragraph
(a) For specific technologies , goods or services needed for the activities referred to in paragraph 1 no competitive substitutes are readily available in the Member States,	FR (Comments): <u>OK</u>
(b) the legal entity is established in an EEA country or an EFTA country which has concluded an international agreement	FR (Comments):

with the Union as referred to in Article 7 and their executive management structures are established therein and the activities linked to the procurement, grant or prize are carried out in this third country or in one or more such third country ; and	OK
(c) sufficient measures are implemented to ensure the protection of EU classified information under Article 42 as well as ensure the integrity, security and resilience of the Programme components, their operation and their services.	<p>ES (Drafting): (c) sufficient measures are implemented to ensure the protection of EU classified information under Article 42 <u>which shall be controlled through the existence of a Security Agreement on the exchange of Classified Information between the Union and the Third country</u>, as well as ensure the integrity, security and resilience of the Programme components, their operation and their services.</p> <p>ES (Comments): In compliance with existing EU law (Council Decision 488)</p>
By derogation to point (b), a legal entity established in another third country may only be authorised if no <u>competitive</u> substitutes are readily available in the EEA or EFTA countries and the conditions of point (a) and (c) are met.	<p>FR (Drafting): By derogation to point (b), a legal entity established in another third country <u>which has concluded an international agreement with the Union as referred to in Article 7</u> may only be authorised if no <u>competitive</u> substitutes are readily available in the EEA or EFTA countries and the conditions of point (a) and (c) are met.</p> <p>FR (Comments): Only legal entities established in an associated Member states which participation in one of the Programme's components is ruled by an international agreement should be allowed to have access to procurements, grants, prizes.</p>
3a. The Commission may propose to waive the condition	SE

<p>under point (c) of paragraph 2, <u>pursuant to paragraph 4 of this Article</u>, if the legal entity provides the following guarantees:</p>	<p>(Drafting): 3a. The Commission may shall propose to waive the condition under point (c) of paragraph 2, <u>pursuant to paragraph 4 of this Article</u>, if the legal entity provides the following guarantees: SE (Comments): <u>SE: the proposed change to “shall” serves to underline that if a MS has provided a guarantee regarding an entity it has to be accepted and the condition under point (c) automatically shall be waived. This is a “red line” for Sweden.</u></p> <p><u>The above is also connected to our comment regarding art.25.4 below.</u></p> <p>NL (Comments): We can support the change, as it preserves the role of the commission as programme manager while respecting MS competence in matters of national security.</p> <p>FR (Drafting): 3a. The Commission <u>may propose to</u> can may propose to waive the condition under point (c) of paragraph 2, <u>pursuant to paragraph 4 of this Article</u>, if the legal entity provides the following guarantees:</p>
<p>(a) control over the legal entity is not exercised in a manner that restrains or restricts its ability to carry out the procurement, grant or prize and to deliver results, in particular through reporting duties;</p>	
<p>(b) the controlling third country or a third country entity shall commit to refrain from exercising any directive rights over or calling in any reporting duties from the legal entity in relation to the procurement, grant or prize; and</p>	<p>FR (Drafting): (b) the controlling third country or a third country entity shall commit to refrain from exercising any directive rights over or</p>

	<p>calling in any reporting duties from the legal entity in relation to the procurement, grant or prize, <u>including in terms of results of technology transfer</u>; and</p> <p>FR</p> <p>(Comments):</p> <p><u>Addition in order to ease the reading of the article by the European industry and strengthen its protection (ITAR).</u></p>
<u>(c) the legal entity complies with Article 34(5).</u>	
<p>3b. The Member State's competent security authorities where the legal entity is established shall assess whether the legal entity complies with the guarantees referred to in paragraphs 3 and 3a of this article. The Commission shall comply with this assessment.</p>	<p>NL</p> <p>(Comments):</p> <p>We continue to support the inclusion of a binding NSA assessment for determining whether the legal entity complies with the guarantees.</p> <p>FR</p> <p>(Drafting):</p> <p>3b. The Member State's competent security authorities where the legal entity is established shall assess whether the legal entity complies with the guarantees referred to in paragraphs 3 and 3 and 3a of this article and inform t. The Commission thereof shall comply with this assessment.</p> <p>FR</p> <p>(Comments):</p> <p>MS NSAs are competent to assess paragraph 2c but not 2a and 2b : consequently here mention "security" should be removed.</p> <p>Moreover FR would like to stress that, in case 2a 2b and 2c are simultaneously waived, the process is missing in this article. This case should be foreseen and specify that the conditions of both paragraphs should then apply on a cumulative way.</p> <p>The dialogue of the Commission can only be established with the NSA where the entity is settled. However it seems difficult to envisage that the Commission can discuss with the NSA of a third</p>

	<p>country.</p> <p>CZ</p> <p>(Drafting):</p> <p>3b. The Member State's competent security authorities where the legal entity is established shall assess whether the legal entity complies with the guarantees referred to in paragraphs 3 and 3a of this article. The Commission shall be informed accordingly.</p> <p>CZ</p> <p>(Comments):</p> <p>Only the assessment of NSA of the Member State where the entity is located should be taken into account while Commission is deciding on the waiver.</p> <p>IT</p> <p>(Comments):</p> <p>IT welcomes the involvement of the competent NSAs of the MSs where the entities are located.</p>
<p>4. The Commission shall submit for decision <u>provide the following</u> to the <u>competent security authorities of the Member States:</u> Committee referred to in point (e) of Article 107(1) the implementing measures it intends to take proposals in accordance with paragraphs 1, 3 and 3a of this Article. The Commission shall provide to the Committee:</p>	<p>NL</p> <p>(Comments):</p> <p>NL supports the new proposal in which the Commission informs the NSAs on granted waivers and the evaluation thereof, as well as implementation measures. We are also open towards proposals that were raised during the SWP, regarding the Commission informing the programme committee in security configuration instead of the NSAs.</p> <p>ES</p> <p>(Drafting):</p> <p>4. The Commission shall submit for decision <u>provide the following</u> to the <u>competent security authorities of the Member States:</u> Committee referred to in point (e) of Article 107(1) Committee referred to in point (e) of Article 107(1) the implementing measures it intends to take proposals in accordance with paragraphs 1, 3 and 3a of this Article. The Commission shall</p>

provide to the Committee:

ES

(Comments):

COM should interact with MS through the Committee of Art. 107.

However it may be efficient to provide the NSA of the MS in which the entity is located, information on the waivers to be granted in order to help NSAs to conduct a proper risk assessment concerning classified information but not sensitive information.

FR

(Drafting):

4. The Commission shall ~~submit for decision~~ **provide the following** to the **competent security authorities of the Member States; Committee referred to in point (e) of Article 107(1) :** ~~the implementing measures it intends to take proposals in accordance with paragraphs 1, 3 and 3a of this Article. The Commission shall provide to the Committee:~~

PT

(Comments):

A solution should be sought to guarantee CION's autonomy in the process, alongside transparent information to MS. One should avoid delays in the programme implementation which should be efficient and reliable. The operation of Galileo and Copernicus should not have negative impacts due to administrative procedures.

CZ

(Drafting):

4. The Commission shall **provide the following** to the **competent security authorities of the Member States;** ~~Committee referred to in point (e) of Article 107(1) the implementing measures it intends to take proposals in accordance with paragraphs 1, 3 and 3a of this Article. The Commission shall~~

	<p>provide to the Committee;</p> <p>IT</p> <p>(Comments):</p> <p>IT suggest that Commision provides full information on the procedure and consult the Space Programme Committee in the Security configuration.</p>
<p>(a) reasons for the necessity of laying down requisite eligibility and participation conditions, as regards the implementing measures in accordance with paragraph 1 of this Article,</p>	<p>SE</p> <p>(Drafting):</p> <p>(a) reasons for the necessity of laying down requisite eligibility and participation conditions, as regards the implementing measures in accordance with paragraph 1 of this Article,</p> <p>SE</p> <p>(Comments):</p> <p><u>SE comment: the proposed deletion makes the sentence lacking in clarity, is there any particular cause for why it is not deemed necessary to provide reasons?</u></p> <p>ES</p> <p>(Drafting):</p> <p>(a) reasons for the necessity of laying down requisite eligibility and participation conditions, as regards the implementing measures in accordance with paragraph 1 of this Article,</p>
<p><u>(a) details on the waivers to be granted to each legal entity in accordance with this Article; and</u> (b) information on any legal entity deemed to be eligible in accordance with this Article and</p>	<p>SE</p> <p>(Drafting):</p> <p><u>(a) details on the waivers to be granted to each legal entity in accordance with this Article; and</u> (b) information on any legal entity deemed to be eligible in accordance with this Article and</p> <p>SE</p> <p>(Comments):</p> <p><u>SE comment: proposed deletion because this is too intrusive and extensive as this might be subject to issues related to national security, subject to existing agreements only</u></p> <p>IE</p>

	<p>(Drafting): (a) details on the waivers granted to each legal entity in accordance with this Article; and IE (Comments): Suggest deleting “to be”. This information could be shared with NSAs after the procurement/grant/prize has been awarded to avoid any confidentiality issues.</p>
<p>(b) (e) the evaluation that is the basis for a proposed waiver, as regards the implementation of subject to paragraph 3 of this Article.</p>	
<p>The Committee Commission shall discuss the proposed measures and take decisions by unanimity voting based on the <u>decide on a waiver in full respect of the assessment of</u> decisions taken by a <u>Member States' competent security authorities.</u> in matters of national security.</p>	<p>SE (Drafting): The Committee Commission shall shall discuss the proposed measures and take decisions by unanimity voting based on the <u>decide on a waiver in full respect of the assessment of</u> decisions taken by a <u>Member States' competent security authorities.</u> in matters of national security. SE (Comments): <u>SE comment: verb inserted.</u> NL (Comments): Strong support, the inclusion of a binding NSA assessment, and the Commission deciding on a waiver in full respect of said assessment is essential for NL. IE (Comments): Fully support this clear statement FR (Drafting): The Committee Commission shall discuss the proposed measures</p>

	<p>and take decisions by unanimity voting based on the <u>decides on a waiver in full respect of the assessment of</u> decisions taken by a <u>Member States' competent security authorities</u>. in matters of national security.</p> <p>FR</p> <p>(Comments):</p> <p><u>“in full respect of the assessment of Member States’ competent authorities”, not only “security” authorities.</u></p> <p>CZ</p> <p>(Drafting):</p> <p><u>Commission shall decide on a waiver taking into full respect of account the assessment of Member States' competent security authority of a Member State where the entity is located.</u></p> <p>CZ</p> <p>(Comments):</p> <p>CZ doesn't see reason why all 27 NSAs should provide the assessment on the entity that is located in a certain Member State. Only the opinion of the NSA of the relevant Member State should be taken into account.</p>
<p>5. Those conditions set out in paragraphs 2 and three3 of this Article shall be included in the documents relating to the procurement, grant or prize, as applicable. In the case of procurement, the conditions shall apply to the full life cycle of the resulting contract.</p>	
<p>6. This article is without prejudice to Decision 1104/2011/EU and Commission Delegated Decision C(2015) 6123, Regulation (EU) 2019/452, Council Decision 2013/488/EU and Commission Decision 2015/444 <u>as well as without prejudice to the security vetting carried out by Member States with regard to legal</u></p>	<p>NL</p> <p>(Comments):</p> <p>NL supports the addition to this paragraph.</p>

<p><u>entities involved in activities requiring access to EU classified information subject to the applicable national laws and regulations.</u></p>	
<p>[(37) An important aspect of the Programme consists in ensuring its security and strengthening the strategic autonomy <u>across key technologies and value chains</u>, while respecting the principles of an open economy including free and fair trade, and taking advantage of the possibilities that space offers for the security of the Union and its Member States. This objective requires in specific cases to set the requisite eligibility and participation conditions to ensure the protection of the integrity, security and resilience of the operational Union systems. <u>This should not undermine the necessity of competitiveness and cost-effectiveness.</u>]</p>	<p>SE (Drafting): [(37) An important aspect of the Programme consists in ensuring its security and strengthening the strategic autonomy across key technologies and value chains, while respecting the principles of an open economy including free and fair trade, and taking advantage of the possibilities that space offers for the security of the Union and its Member States. This objective requires in specific cases to set the requisite eligibility and participation conditions to ensure the protection of the integrity, security and resilience of the operational Union systems. <u>This should not undermine the necessity of maintaining an open economy, competitiveness and cost-effectiveness.</u>]</p> <p>SE (Comments): <u>SE comment:</u></p> <p><u>1) regarding “strategic autonomy” – autonomy is not an objective for the Union according to the TFEU. This issue is also being discussed in the context of the European Council. Therefore, the two references to “an open economy” (one added) are of central importance to this text,</u></p> <p><u>2) regarding “operational Union Systems” see comment on para 1.</u></p> <p>NL (Comments): Support to this paragraph. It is important for NL to also mention an open economy, as well as competitiveness and cost-effectiveness in the context of strategic autonomy.</p>

	<p>PT</p> <p>(Drafting):</p> <p>[(37) An important aspect of the Programme consists in ensuring its security and strengthening the strategic autonomy <u>across key technologies and value chains</u>, while respecting the principles of an alongside open economy including free and fair trade, and taking advantage of the possibilities that space offers for the security of the Union and its Member States. This objective requires in specific cases to set the requisite eligibility and participation conditions to ensure the protection of the integrity, security and resilience of the operational Union systems. <u>This should not undermine the necessity of competitiveness and cost-effectiveness</u></p> <p>PT</p> <p>(Comments):</p> <p>Same comment as regards paragraph 1</p>
	<p><u>General comments</u></p> <p>SE</p> <p>(Comments):</p> <p><u>Art.25 needs to be discussed by the CSC before it is finalised.</u></p> <p>FR</p> <p>(Comments):</p> <p>FR thanks the PRDE for this new version of the compromise, which takes better account of the concerns of the Member States. We are getting closer to a possible agreement. Several points need to be reworked To ensure that all cases are covered and that the text is legally sound for our industries.</p>
	<p>IE</p> <p>(Comments):</p> <p>The paragraphs should be renumbered for clarity.</p>

AT

(Comments):

- AT is not pleased with the developments of negotiating Art 25 (WK 8595/2020 Rev 1 vom 28.08.2020) as the proposal does not show a clear strategic approach. It is a mix of the HR and the DE proposals without being a compromise. And it has become overly complicated.

- AT supports the approach that Art 25 does not extend or amend the current EU security structure, but is embedded in this current security structure – in particular the distribution of responsibilities and competences.

- Generally the assessment of any legal entity established within a MS, is the responsibility of this MS within the FSC process. Standards, rules and requirements are and have to be regulated elsewhere. If amendments are necessary they should to be equally done elsewhere.

- By re-introducing Para 3a (HR proposal), which allows for a waiver of the condition under Para 2(c), these principles mentioned above are not followed and therefore are not supported by AT. Hence, the relationship between Para 3a and 3b is not clear.

- While the MS are in control of the assessment of the security, the Commission is responsible for the Programme. Therefore it shall lay down the conditions (Para 1 – not

	<u>proposed if deemed necessary) and waive the prerequisites if the conditions are fulfilled. Otherwise the process becomes too cumbersome. Apart from being informed, MS should rather concentrate on helping to define the security needs and objectives of the EU mentioned in Para 1.</u>
END	END