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WK 10124/2018 INIT

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WORKING PAPER

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CONTRIBUTION

From:	Danish Delegation
To:	Friends of the Presidency Group on the European Defence Fund (EDF)
Subject:	DK comments on the Commission proposal for a Regulation establishing the European Defence Fund

Delegations will find attached Denmark's comments on the Commission proposal for a Regulation establishing the European Defence Fund.

Denmark has three main priorities going forward:

1. The funding must take place in an economically responsible manner that support a competitive defense industry.
2. We must make sure to get the best and most relevant products out of the investment.
3. All companies must have a good starting point for participating, including SMV's.

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Row no.	Art. & subart.	TEXT OF ARTICLE OR SUBARTICLE	CORRESPONDING RECITAL (IF APPLICABLE)	CORRESPONDING DEFINITION (IF APPLICABLE)	COMMENTS
1.		TITLE I COMMON PROVISIONS APPLICABLE FOR RESEARCH AND DEVELOPMENT			
2.		CHAPTER I GENERAL PROVISIONS			
3.		<i>Article 1 Subject matter</i>			
4.		This Regulation establishes the European Defence Fund ('the Fund').	(1) In the European Defence Action Plan, adopted on 30 November 2016, the Commission committed to complement, leverage and consolidate collaborative efforts by Member States in developing defence technological and industrial capabilities to respond to security challenges, as well as to foster a competitive, innovative and efficient European defence industry. It proposed in particular to launch a European Defence Fund (the 'Fund') to support investments in joint research and the joint development of defence products and technologies, thus fostering synergies and cost-effectiveness, and to promote the Member States' joint purchase and maintenance of defence equipment. This Fund would complement national funding already used for this purpose and should act as an incentive for Member States to cooperate and invest more in defence. The Fund would support cooperation		

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			during the whole cycle of defence products and technologies.		
5.		It lays down the objectives of the Fund, the budget for the period 2021-2027, the forms of Union funding and the rules for providing such funding.			
6.		<i>Article 2 Definitions</i>			
7.		For the purposes of this Regulation, the following definitions apply:			
8.	2.1	(1) 'blending operations' means actions supported by the EU budget, including within blending facilities pursuant to Article [2(6)] of the Financial Regulation, combining non-repayable forms of support and/or financial instruments from the EU budget with repayable forms of support from development or other public finance institutions, as well as from commercial finance institutions and investors;			
9.	2.2	(2) 'control' means the ability to exercise a decisive influence on an legal entity directly or indirectly through one or more intermediate legal entities;			
10.	2.3	(3) 'development action' means any action consisting primarily of defence-oriented activities in the development phase, covering new products or technologies or the upgrading of			

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		existing ones, excluding the production or use of weapons;			
11.	2.4	(4) 'disruptive technology for defence' means a technology the application of which can radically change the concepts and conduct of defence affairs;			“radically change the concept and conduct of defence affairs”. We would like a clear definition of what this means.
12.	2.5	(5) 'executive management structures' means any body or bodies, appointed in accordance with national law, which are empowered to set the legal entity's strategy, objectives and overall direction, and which oversee and monitor management decision-making;			
13.	2.6	(6) 'legal entity' means any natural or legal person created and recognised as such under national law, Union law or international law, which has legal personality and which may, acting in its own name, exercise rights and be subject to obligations, or an entity without a legal personality in accordance with Article [197(2)(c)] of the Financial Regulation;			
14.	2.7	(7) 'mid-cap' means an enterprise that is not a micro-, small - and medium size enterprises ('SME'), as defined in Commission recommendation 2003/361/EC ¹ and			

¹ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

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		that has a number of employees of up to 3 000 employees, where the staff headcount is calculated in accordance with Articles 3, 4, 5 and 6 of Title I of the Annex to that Recommendation;			
15.	2.8	(8) 'pre-commercial procurement' means the procurement of research and development services involving risk-benefit sharing under market conditions, competitive development in phases, where there is a clear separation of the research and development services procured from the deployment of commercial volumes of end-products;			
16.	2.9	(9) 'project manager' means any contracting authority established in a Member State or an associated country, set up by a Member State or an associated country or a group of Member States and/or associated countries to manage multinational armament projects permanently or on an ad-hoc basis;			
17.	2.10	(10) 'recipient' means any legal entity receiving funding under this Fund;			
18.	2.11	(11) 'research action' means any action consisting of research activities with an exclusive focus on defence applications;			See point 2.3

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19.	2.12	(12) 'results' means any tangible or intangible effect of the action, such as data, know-how or information, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including intellectual property rights;			
20.	2.13	(13) 'special report' means a specific deliverable of a research action summarising its results, providing extensive information on the basic principles, the aims, the actual outcomes, the basic properties, the performed tests, the potential benefits, the potential defence applications and the expected exploitation path of the research;			
21.	2.14	(14) 'system prototype' means a model of a product or technology that can demonstrate performance in an operational environment;			Technology Readiness Level (TRL) definition could be applied.
22.	2.15	(15) 'third country' means a country that is not a member of the Union;			
23.	2.16	(16) 'non-associated third country' means a third country that is not an associated country in accordance with Article 5;			
24.	2.17	(17) 'non-associated third country entity' means a legal entity established in a non-associated third country or having its executive			

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		management structures in a non-associated third country.			
25.		<i>Article 3 Objectives of the Fund</i>			
26.	3.1	1. The general objective of the Fund is to foster the competitiveness, efficiency and innovation capacity of the European defence industry, by supporting collaborative actions and cross-border cooperation between legal entities throughout the Union, including SMEs and mid-caps as well as fostering the better exploitation of the industrial potential of innovation, research and technological development, at each stage of the industrial life cycle, thus contributing to the Union strategic autonomy. The Fund should also contribute to the freedom of action of the Union and its autonomy, in particular in technological and industrial terms.	(3) Following an integrated approach and in order to contribute to the enhancement of the competitiveness and innovation capacity of the Union's defence industry, a European Defence Fund should be established. The Fund should aim at enhancing the competitiveness, innovation, efficiency and autonomy of the Union's defence industry thereby contributing to the Union's strategic autonomy by supporting the cross border cooperation between Member States and between enterprises, research centres, national administrations, international organisations and universities, in the research phase and in the development phase of defence products and technologies. To achieve more innovative solutions and an open internal market, the Fund should support the cross-border participation of defence small and medium sized enterprises (SMEs) and middle capitalisation companies (mid-caps).	'legal entity' means any natural or legal person created and recognised as such under national law, Union law or international law, which has legal personality and which may, acting in its own name, exercise rights and be subject to obligations, or an entity without a legal personality in accordance with Article [197(2)(c)] of the Financial Regulation 'mid-cap' means an enterprise that is not a micro-, small - and medium size enterprises ('SME'), as defined in Commission recommendation 2003/361/EC and that has a number of employees of up to 3 000 employees, where the staff headcount is calculated in accordance with Articles 3, 4, 5 and 6 of Title I of the Annex to that Recommendation	We encourage to keep the primary focus on competitiveness, efficiency and innovation. Competitiveness should be kept as the first and main priority in line with the funds' objectives.
27.	3.2	2. The Fund shall have the following specific objectives:			

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28.	3.2(a)	(a) support collaborative research projects that could significantly boost the performance of future capabilities, aiming at maximising innovation and introducing new defence products and technologies, including disruptive ones;	<p>(4) <u>The research phase is a crucial element as it conditions the capacity of the European industry and the autonomy of the European industry to develop products and the independence of Member States as defence end-users. The research phase linked to the development of defence capabilities may include significant risks, in particular related to the low level of maturity and the disruption of technologies.</u> The development phase, which follows the research and technology phase, also entails significant risks and costs that hamper the further exploitation of the results of research and adversely impact the competitiveness and innovation of the Union's defence industry.</p> <p>(5) The Fund should not support pure basic research which should instead be supported through other schemes but may include defence oriented basic research likely to form the basis of the solution to recognised or expected problems or possibilities.</p>	'disruptive technology for defence' means a technology the application of which can radically change the concepts and conduct of defence affairs	
29.	3.2(b)	(b) support collaborative development projects of defence products and technologies consistent with defence capability priorities commonly agreed by Member States within the framework of the Common Foreign and Security Policy, thus contributing to greater	(4) The research phase is a crucial element as it conditions the capacity of the European industry and the autonomy of the European industry to develop products and the independence of Member States as defence end-users. The research phase linked to the development of		We will in general like to point to the correlation with Horizon Europe activities and NATO Science & Technology activities with respect to the research phase.

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		efficiency of defence spending within the Union, achieving greater economies of scale, reducing the risk of unnecessary duplication and as such reducing the fragmentation of defence products and technologies throughout the Union. Ultimately, the Fund will lead to greater interoperability between Member States' capabilities.	defence capabilities may include significant risks, in particular related to the low level of maturity and the disruption of technologies. <u>The development phase, which follows the research and technology phase, also entails significant risks and costs that hamper the further exploitation of the results of research and adversely impact the competitiveness and innovation of the Union's defence industry.</u>		We should hence avoid duplication of effort.
30.		<i>Article 4 Budget</i>			
31.	4.1	1. The financial envelope for the implementation of the European Defence Fund for the period 2021 – 2027 shall be EUR 13 000 000 000 in current prices.	(35) This Regulation lays down a financial envelope for the European Defence Fund which is to constitute the prime reference amount, within the meaning of [the new inter-institutional agreement] between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, for the European Parliament and the Council during the annual budgetary procedure.		We will have to make a reservation on this point as the discussion regarding the proposed budgetary allocation for this programme is part of the horizontal negotiations in the MFF WP.
32.	4.2	2. The indicative distribution of the amount referred to in paragraph 1 shall be:			
33.	4.2(a)	(a) up to EUR 4 100 000 000 for research actions;		'research action' means any action consisting of research activities with	

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				an exclusive focus on defence applications	
34.	4.2(b)	(b) up to EUR 8 900 000 000 for development actions.		'development action' means any action consisting primarily of defence-oriented activities in the development phase, covering new products or technologies or the upgrading of existing ones, excluding the production or use of weapons	
35.	4.3	3. The amount referred to in paragraph 1 may be used for technical and administrative assistance for the implementation of the Fund, such as preparatory, monitoring, control, audit and evaluation activities including corporate information technology systems.			
36.	4.4	4. Up to 5 % of the financial envelope referred to in paragraph 1 shall be devoted to support disruptive technologies for defence.		'disruptive technology for defence' means a technology the application of which can radically change the concepts and conduct of defence affairs	
37.	4.5	5. Resources allocated to Member States under shared management may, at their request, be transferred to the Fund. The Commission shall implement those resources directly in accordance with Article [62(1)(a)] of the Financial Regulation. Where possible those resources shall be used for the benefit of the Member State concerned.			

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38.		<i>Article 5 Associated countries</i>			
39.		The Fund shall be open to the European Free Trade Association (EFTA) members which are members of the European Economic Area (EEA), in accordance with the conditions laid down in the EEA agreement.	(39) <u>Third countries which are members of the European Economic Area (EEA) may participate in Union programmes in the framework of the cooperation established under the EEA agreement, which provides for the implementation of the programmes by a decision under that agreement.</u> A specific provision should be introduced in this Regulation to grant the necessary rights for and access to the authorising officer responsible, the European Anti-Fraud Office (OLAF) as well as the European Court of Auditors to comprehensively exert their respective competences.		
40.		<i>Article 6 Support to disruptive technologies for defence</i>	(27) An integrated approach should be ensured by bringing together activities covered by the Preparatory Action on Defence Research launched by the Commission within the meaning of Article [58 (2) (b)] of Regulation (EU, Euratom) 2018/... of the European Parliament and of the Council (the ‘Financial Regulation’) and the European Defence Industrial Development Programme established by Regulation (EC) No ... of the European Parliament and of the Council and to harmonise the conditions for participation, to create	'disruptive technology for defence' means a technology the application of which can radically change the concepts and conduct of defence affairs	

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			<p>a more coherent set of instruments, to increase the innovative, collaborative and economic impact, while avoiding unnecessary duplication and fragmentation. With this integrated approach, the Fund would also contribute to a better exploitation of the results of defence research, covering the gap between research and development taking into account the specificities of the defence sector, and promoting all forms of innovation, including disruptive innovation where possible failure should be accepted.</p>		
41.	6.1	<p>1. The Commission shall award funding through open and public consultations on the areas of intervention defined in the work programmes.</p>			
42.	6.2	<p>2. The Commission may, on a case by case basis, find the most appropriate form of funding to finance innovative solutions.</p>			<p>We are unsure what it means when it is stated that “the Commission may, on a case by case basis find the most appropriate form of funding”. Does this mean that the open call for competition is derogated from? In this case we do not support art. 6.2. It is a very open definition and it might lead to an inexpedient and little transparent use</p>

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					of funds. If there is a documented need for not using open calls specific criteria should as a minimum be developed before being appointed funding.
43.		<i>Article 7 Ethics</i>			
44.	7.1	1. Actions carried out under the Fund shall comply with ethical principles and relevant national, Union and international legislation.			Where are these ethical principles defined?
45.	7.2	2. Proposals shall be systematically screened to identify those actions raising complex or serious ethics issues and submit them to an ethics assessment. Ethics screenings and assessments shall be carried out by the Commission with the support of experts on defence ethics. The Commission shall ensure the transparency of the ethics procedures as much as possible.			How are experts chosen?
46.	7.3	3. Entities participating in the action shall obtain all approvals or other mandatory documents from the relevant national, local ethics committees or other bodies such as data protection authorities before the start of the relevant activities. Those documents shall be kept on file and provided to the Commission.			What does this entail for the national authorities? How do we secure uniform application of the approval rules?

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47.	7.4	4. If appropriate, ethics checks shall be carried out by the Commission during the implementation of the action. For serious or complex ethics issues, the checks shall be carried out by the Commission with the support of experts on defence ethics.			“During the implementation of the action”? This is not very precise language. Will participants to the action not request pre-approval?
48.	7.5	5. Actions which are not ethically acceptable may be rejected or terminated at any time.			
49.		CHAPTER II FINANCIAL PROVISIONS			
50.		<i>Article 8 Implementation and forms of EU funding</i>			
51.	8.1	1. The Fund shall be implemented in direct management in accordance with the Financial Regulation.	(36) The Financial Regulation applies to the Fund, unless otherwise specified. It lays down rules on the implementation of the Union budget, including the rules on grants, prizes, procurement, financial assistance, financial instruments and budgetary guarantees.		
52.	8.2	2. The Fund may provide funding in any of the forms laid down in the Financial Regulation, in particular grants, prizes and procurement . It may also provide financing in the form of financial instruments within blending operations.	(28) The policy objectives of this Fund will be also addressed through financial instruments and budgetary guarantees under the policy window(s) [...] of the InvestEU Fund. (29) Financial support should be used to address market failures or sub-optimal investment situations, in a proportionate manner and actions	'blending operations' means actions supported by the EU budget, including within blending facilities pursuant to Article [2(6)] of the Financial Regulation, combining non-repayable forms of support and/or financial instruments from the EU budget with repayable forms of support from development or other	What is meant by procurement in this regard? Please provide specific examples of application.

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			<p>should not duplicate or crowd out private financing or distort competition in the internal market. Actions should have a clear European added value.</p> <p>(30) The types of financing and the methods of implementation under this Regulation should be chosen on the basis of their ability to achieve the specific objectives of the actions and to deliver results, taking into account, in particular, the costs of controls, the administrative burden, and the expected risk of non-compliance. This should include consideration of the use of lump sums, flat rates and unit costs, as well as financing not linked to costs as referred to in Article [125(1)] of the Financial Regulation.</p> <p>(36) The Financial Regulation applies to the Fund, unless otherwise specified. It lays down rules on the implementation of the Union budget, including the rules on grants, prizes, procurement, financial assistance, financial instruments and budgetary guarantees.</p> <p>(37) Horizontal financial rules adopted by the European Parliament and the Council on the basis of Article 322 of the Treaty on the Functioning of the European Union apply to this Regulation. These rules are laid down in the Financial</p>	<p>public finance institutions, as well as from commercial finance institutions and investors</p>	

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			<p>Regulation and determine in particular the procedure for establishing and implementing the budget through grants, procurement, prizes, indirect implementation, and provide for checks on the responsibility of financial actors. Rules adopted on the basis of Article 322 TFEU also concern the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, as the respect for the rule of law is an essential precondition for sound financial management and effective EU funding.</p>		
53.		<p><i>Article 9 Cumulative, complementary and combined funding</i></p>			
54.	9.1	<p>1. An action that has received a contribution from another Union programme may also receive a contribution under the Fund, provided that the contributions do not cover the same costs. The rules of each contributing Union programme/Fund shall apply to its respective contribution to the action. The cumulative funding shall not exceed the total eligible costs of the action and the support from the different Union programmes may be calculated on a pro-rata basis in accordance with the documents setting out the conditions for support.</p>			

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55.	9.2	2. Actions awarded a Seal of Excellence certification, or which comply with the following cumulative, comparative, conditions:			Where is a “Seal of Excellence” defined? It sounds more like minimum standards
56.	9.2(a)	(a) they have been assessed in a call for proposals under the Fund;			
57.	9.2(b)	(b) they comply with the minimum quality requirements of that call for proposals;			
58.	9.2(c)	(c) they may not be financed under that call for proposals due to budgetary constraints,			
59.		may receive support from the European Regional Development Fund, the Cohesion Fund, the European Social Fund or the European Agricultural Fund for Rural Development, in accordance with paragraph 5 of Article [65] of Regulation (EU) XX [Common Provisions Regulation] and Article [8] of Regulation (EU) XX [Financing, management and monitoring of the Common Agricultural Policy], provided that such actions are consistent with the objectives of the programme concerned. The rules of the Fund providing support shall apply.			Why are these funds singled out? European Regional Development Fund, the Cohesion Fund, the European Social Fund or the European Agricultural Fund for Rural Development. A necessary legal prerequisite to allow derogation from the Financial Regulation?
60.		CHAPTER III GRANTS			

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61.		<i>Article 10 Eligible entities</i>			
62.	10.1	1. Applicants and their subcontractors shall be eligible for funding provided that they are established in the Union or in an associated country, have their executive management structures in the Union or in an associated country and are not controlled by a non-associated third country or by a non-associated third country entity.	(11) Pursuant to [reference to be updated as appropriate according to a new decision on OCTs: Article 94 of Council Decision 2013/755/EU], entities established in overseas countries and Territories (OCTs) are to be eligible for funding subject to the rules and objectives of the Fund and possible arrangements applicable to the Member State to which the OCTs is linked. (12) As the Fund aims at enhancing the competitiveness, efficiency and autonomy of the Union's defence industry, only entities established in the Union or associated countries and not subject to control by non-associated third countries or non-associated third country entities should in principle be eligible for support. Additionally, in order to ensure the protection of essential security and defence interests of the Union and its Member States, the infrastructure, facilities, assets and resources used by the recipients and their subcontractors in actions supported by the Fund should not be located on the territory of non-associated third countries.	' control ' means the ability to exercise a decisive influence on an legal entity directly or indirectly through one or more intermediate legal entities ' executive management structures ' means any body or bodies, appointed in accordance with national law, which are empowered to set the legal entity's strategy, objectives and overall direction, and which oversee and monitor management decision-making ' third country ' means a country that is not a member of the Union ' non-associated third country ' means a third country that is not an associated country in accordance with Article 5 ' non-associated third country entity ' means a legal entity established in a non-associated third country or having its executive management structures in a non-associated third country	Important to keep the wording so we make sure that the funding goes to European companies.
63.	10.2	2. By derogation from paragraph 1, an applicant established	(13) In certain circumstances, if this is necessary for achieving the	' third country ' means a country that is not a member of the Union	This article should not take away powers from

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		<p>in the Union or in an associated country and controlled by a non-associated third country or a non-associated third country entity may be eligible for funding if this is necessary for achieving the objectives of the action and provided that its participation will not put at risk the security interests of the Union and its Member States. In order to ensure protection of the security interests of the Union and its Member States, the call for proposals shall require the applicant to provide information demonstrating notably that:</p>	<p>objectives of the action, it should be possible to derogate from the principle that recipients and their subcontractors should not be subject to control by non-associated third countries or non-associated third country entities. In that perspective, legal entities established in the Union that are controlled by a non-associated third country or a non-associated third country entity can be eligible if relevant and strict conditions relating to the security and defence interests of the Union and its Member States are fulfilled. The participation of such entities should not contravene the objectives of the Fund. Applicants should provide all relevant information about the infrastructure, facilities, assets and resources to be used in the action.</p>	<p>'non-associated third country' means a third country that is not an associated country in accordance with Article 5</p> <p>'non-associated third country entity' means a legal entity established in a non-associated third country or having its executive management structures in a non-associated third country</p>	<p>MS. If procedures are already in place in a MS this should be sufficient. This will also minimize the reporting burden on companies, which could particularly hamper small undertakings.</p>
64.	10.2(a)	(a) the control over the applicant will not be exercised in a manner that restricts in any way its ability to perform and complete the action;		'control' means the ability to exercise a decisive influence on an legal entity directly or indirectly through one or more intermediate legal entities	
65.	10.2(b)	(b) the access by non-associated third countries or by non-associated third country entities to classified and non-classified sensitive information relating to the action will be prevented; and the persons involved in the action will have national security clearance issued by		<p>'third country' means a country that is not a member of the Union</p> <p>'non-associated third country' means a third country that is not an associated country in accordance with Article 5</p> <p>'non-associated third country entity' means a legal entity</p>	

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		a Member State or associated country;		established in a non-associated third country or having its executive management structures in a non-associated third country	
66.	10.2(c)	(c) the results of the action shall remain within the beneficiary and shall not be subject to control or restrictions by non-associated third countries or other non-associated third country entities during the action and for a specified period after its completion;		<p>'results' means any tangible or intangible effect of the action, such as data, know-how or information, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including intellectual property rights</p> <p>'control' means the ability to exercise a decisive influence on an legal entity directly or indirectly through one or more intermediate legal entities</p> <p>'third country' means a country that is not a member of the Union</p> <p>'non-associated third country' means a third country that is not an associated country in accordance with Article 5</p> <p>'non-associated third country entity' means a legal entity established in a non-associated third country or having its executive management structures in a non-associated third country</p>	Does this limit the possibility of export of the new product?
67.	10.3	3. All infrastructure, facilities, assets and resources used in actions financed under the Fund shall be located on the territory of the Union or associated countries. Furthermore, when performing an eligible action,	(11) Pursuant to [reference to be updated as appropriate according to a new decision on OCTs: Article 94 of Council Decision 2013/755/EU], entities established in overseas countries and Territories (OCTs) are	'control' means the ability to exercise a decisive influence on an legal entity directly or indirectly through one or more intermediate legal entities	

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		beneficiaries and their subcontractors shall cooperate only with legal entities established in the Union or in an associated country and not controlled by non-associated third countries or non-associated third country entities.	to be eligible for funding subject to the rules and objectives of the Fund and possible arrangements applicable to the Member State to which the OCTs is linked. (12) As the Fund aims at enhancing the competitiveness, efficiency and autonomy of the Union's defence industry, only entities established in the Union or associated countries and not subject to control by non-associated third countries or non-associated third country entities should in principle be eligible for support. Additionally, in order to ensure the protection of essential security and defence interests of the Union and its Member States, the infrastructure, facilities, assets and resources used by the recipients and their subcontractors in actions supported by the Fund should not be located on the territory of non-associated third countries.	'legal entity' means any natural or legal person created and recognised as such under national law, Union law or international law, which has legal personality and which may, acting in its own name, exercise rights and be subject to obligations, or an entity without a legal personality in accordance with Article [197(2)(c)] of the Financial Regulation 'third country' means a country that is not a member of the Union 'non-associated third country' means a third country that is not an associated country in accordance with Article 5 'non-associated third country entity' means a legal entity established in a non-associated third country or having its executive management structures in a non-associated third country	
68.	10.4	4. By derogation from the paragraph 3 beneficiaries and subcontractors involved in the action may use their assets, infrastructure, facilities and resources located or held on the territory of a non-associated third country if this is necessary for achieving the objectives of an action and provided that this will not put at risk the security of the Union and its Member		'third country' means a country that is not a member of the Union 'non-associated third country' means a third country that is not an associated country in accordance with Article 5	This should be a real alternative. A new wording could be: “if this is necessary for achieving the objectives of an action in an effective way provided that this will not put a serious risk on the security of the Union and its MS”.

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		States. Under the same conditions, when performing an eligible action, beneficiaries and their subcontractors may cooperate with an entity established in a non-associated third country. The costs related to the use of such infrastructure, facilities, assets or resources and to such cooperation shall not be eligible under the Fund.			
69.	10.5	5. In order to ensure protection of the security interests of the Union and its Member States, the call for proposals or grant agreement shall specify further conditions. These conditions shall relate, in particular to the provisions on ownership of results of the action and access to classified and non-classified sensitive information and to guarantees on security of supply.		'results' means any tangible or intangible effect of the action, such as data, know-how or information, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including intellectual property rights	
70.	10.6	6. Applicants shall provide all relevant information necessary for the assessment of the eligibility criteria and the conditions referred to in paragraphs 1 to 4.			
71.	10.7	7. Applications which require the verifications under paragraph 2 or paragraph 4 may only be submitted with the agreement of the Member State or associated country in which the applicant is established.			
72.	10.8	8. In the event of a change during the implementation of an			Which criteria and conditions?

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		action which might question the fulfilment of those criteria and conditions, the beneficiary shall inform the Commission, which shall assess whether those criteria and conditions are still met and address the potential impact on the funding of the action.			
73.	10.9	9. For the purpose of this Article, subcontractors means subcontractors with a direct contractual relationship to a beneficiary, other subcontractors to which at least 10% of the total eligible costs of the action is allocated, and subcontractors which may require access to classified information according to Commission Decision (EU, Euratom) 2015/444 in order to carry out the action.			
74.		<i>Article 11 Eligible actions</i>			
75.	11.1	1. Only actions implementing the objectives referred to in Article 3 shall be eligible for funding.			
76.	11.2	2. The Fund shall provide support for actions covering both new and upgrade of existing products and technologies where the use of pre-existing information needed to perform the upgrade is not subject, directly or indirectly to a restriction	(6) The Fund could support actions pertaining to both new and the upgrade of existing products and technologies, wherever the use of pre-existing information needed to perform the action for the upgrade is not subject to restriction by non-associated third countries or non-	'third country' means a country that is not a member of the Union 'non-associated third country' means a third country that is not an associated country in accordance with Article 5	

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		by non-associated third countries or non-associated third country entities.	<p>associated third country entities. When applying for the Union funding, legal entities should be required to provide the relevant information to establish the absence of restrictions. In the absence of such information, the Union funding should not be possible.</p> <p>(9) As the objective of the Fund is to support the competitiveness and innovation of the Union defence industry by leveraging and complementing collaborative defence research and technology activities and de-risking the development phase of cooperative projects, actions related to the research and development of a defence product or technology should be eligible to benefit from it. This will also apply to the upgrade, including the interoperability thereof, of existing defence products and technologies.</p>	<p>'non-associated third country entity' means a legal entity established in a non-associated third country or having its executive management structures in a non-associated third country</p>	
77.	11.3	3. An eligible action shall relate to one or more of the following items:	(8) The difficulty to agree on consolidated defence capability requirements and common technical specifications or standards hampers cross-border collaboration between Member States and between legal entities based in different Member States. The absence of such requirements, specifications and standards has led to increased fragmentation of the defence sector, technical complexity, delays and		

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			<p>inflated costs as well as decreased interoperability. The agreement on common technical specifications should be a prerequisite for actions involving a higher level of technological readiness. Activities of Member States leading to common defence capability requirements and supporting studies as well as actions aiming at supporting the creation of a common definition of technical specifications or standards should also be eligible for support by the Fund.</p>		
78.	11.3(a)	(a) activities aiming to create, underpin and improve new knowledge and defence technology which can achieve significant effects in the area of defence;	(18) Given the specificities of the defence industry where demand comes almost exclusively from Member States and associated countries, which also control all acquisition of defence-related products and technologies, including exports, the functioning of the defence sector is unique and does not follow the conventional rules and business models that govern more traditional markets. Industry therefore cannot undertake substantial self-funded defence Research and Development (R&D) projects and Member States and associated countries normally fully fund all R&D cost. To achieve the objectives of the Fund, notably to incentivise cooperation between companies from different Member States and associated countries, and		

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			taking into account the specifics of the defence sector, up to totality of the eligible costs should be covered for actions that take place ahead of the development of prototypes phase.		
79.	11.3(b)	(b) activities aiming to increase interoperability and resilience, including secured production and exchange of data, master critical defence technologies, strengthen the security of supply or enable effectively exploitation of results for defence products and technologies;	(18) Given the specificities of the defence industry where demand comes almost exclusively from Member States and associated countries, which also control all acquisition of defence-related products and technologies, including exports, the functioning of the defence sector is unique and does not follow the conventional rules and business models that govern more traditional markets. Industry therefore cannot undertake substantial self-funded defence Research and Development (R&D) projects and Member States and associated countries normally fully fund all R&D cost. To achieve the objectives of the Fund, notably to incentivise cooperation between companies from different Member States and associated countries, and taking into account the specifics of the defence sector, up to totality of the eligible costs should be covered for actions that take place ahead of the development of prototypes phase.	'results' means any tangible or intangible effect of the action, such as data, know-how or information, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including intellectual property rights	
80.	11.3(c)	(c) studies, such as feasibility studies to explore the feasibility of a new or improved	(18) Given the specificities of the defence industry where demand comes almost exclusively from		

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		technology, product, process, service, solution or statistics on the defence industry and projects to pilot the collection of data;	Member States and associated countries, which also control all acquisition of defence-related products and technologies, including exports, the functioning of the defence sector is unique and does not follow the conventional rules and business models that govern more traditional markets. Industry therefore cannot undertake substantial self-funded defence Research and Development (R&D) projects and Member States and associated countries normally fully fund all R&D cost. To achieve the objectives of the Fund, notably to incentivise cooperation between companies from different Member States and associated countries, and taking into account the specifics of the defence sector, up to totality of the eligible costs should be covered for actions that take place ahead of the development of prototypes phase.		
81.	11.3(d)	(d) the design of a defence product, tangible or intangible component or technology as well as the definition of the technical specifications on which such design has been developed which may include partial tests for risk reduction in an industrial or representative environment;	(18) Given the specificities of the defence industry where demand comes almost exclusively from Member States and associated countries, which also control all acquisition of defence-related products and technologies, including exports, the functioning of the defence sector is unique and does not follow the conventional rules and business models that govern more traditional markets. Industry		

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			therefore cannot undertake substantial self-funded defence Research and Development (R&D) projects and Member States and associated countries normally fully fund all R&D cost. To achieve the objectives of the Fund, notably to incentivise cooperation between companies from different Member States and associated countries, and taking into account the specifics of the defence sector, up to totality of the eligible costs should be covered for actions that take place ahead of the development of prototypes phase.		
82.	11.3(e)	(e) the development of a model of a defence product, tangible or intangible component or technology, which can demonstrate the element's performance in an operational environment (system prototype);	(19) The prototype phase is a crucial phase where Member States or associated countries usually decide on their consolidated investment and start the acquisition process of their future defence products or technologies. This is the reason why, at this specific stage, Member States and associated countries agree on the necessary commitments including cost-sharing and ownership of the project. To ensure the credibility of their commitment, the financial assistance of the Union under the Fund should normally not exceed 20 % of the eligible costs.	'system prototype' means a model of a product or technology that can demonstrate performance in an operational environment	
83.	11.3(f)	(f) the testing of a defence product, tangible or intangible component or technology;	(20) For actions beyond the prototype phase, funding up to 80% should be foreseen. These actions which are closer to product and		

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			technology finalisation may still involve substantial costs.		
84.	11.3(g)	(g) the qualification of a defence product, tangible or intangible component or technology. Qualification is the entire process of demonstrating that the design of a defence product, tangible or intangible component or technology meets the specified requirements. This process provides objective evidence by which particular requirements of a design are demonstrated to have been achieved;	(20) For actions beyond the prototype phase, funding up to 80% should be foreseen. These actions which are closer to product and technology finalisation may still involve substantial costs.		
85.	11.3(h)	(h) the certification of a defence product, tangible or intangible component or technology. Certification is the process according to which a national authority certifies that the defence product, tangible or intangible component or technology complies with the applicable regulations;	(20) For actions beyond the prototype phase, funding up to 80% should be foreseen. These actions which are closer to product and technology finalisation may still involve substantial costs.		
86.	11.3(i)	(i) the development of technologies or assets increasing efficiency across the life cycle of defence products and technologies;	(18) Given the specificities of the defence industry where demand comes almost exclusively from Member States and associated countries, which also control all acquisition of defence-related products and technologies, including exports, the functioning of the defence sector is unique and does not follow the conventional rules and business models that govern more		

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			<p>traditional markets. Industry therefore cannot undertake substantial self-funded defence Research and Development (R&D) projects and Member States and associated countries normally fully fund all R&D cost. To achieve the objectives of the Fund, notably to incentivise cooperation between companies from different Member States and associated countries, and taking into account the specifics of the defence sector, up to totality of the eligible costs should be covered for actions that take place ahead of the development of prototypes phase.</p>		
87.	11.3(j)	(j) dissemination activities, networking events and awareness-raising activities.	(18) Given the specificities of the defence industry where demand comes almost exclusively from Member States and associated countries, which also control all acquisition of defence-related products and technologies, including exports, the functioning of the defence sector is unique and does not follow the conventional rules and business models that govern more traditional markets. Industry therefore cannot undertake substantial self-funded defence Research and Development (R&D) projects and Member States and associated countries normally fully fund all R&D cost. To achieve the objectives of the Fund, notably to incentivise cooperation between		

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			companies from different Member States and associated countries, and taking into account the specifics of the defence sector, up to totality of the eligible costs should be covered for actions that take place ahead of the development of prototypes phase.		
88.	11.4	4. Unless otherwise provided for in the work programme referred to in Article 27, the action shall be undertaken in a cooperation of at least three legal entities which are established in at least three different Member States and/or associated countries. At least three of these eligible entities established in at least two Member States and/or associated countries shall not, during the whole implementation of the action, be effectively controlled, directly or indirectly, by the same entity, and shall not control each other.	(10) Given that the Fund aims particularly at enhancing cooperation between legal entities and Member States across Europe, an action should be eligible for funding only if it is undertaken by a cooperation of at least three legal entities based in at least three different Member States and/or associated countries. At least three of these legal eligible entities established in at least two different Member States and/or associated countries should not be effectively controlled, directly or indirectly, by the same entity or should not control each other. In order to boost the cooperation between Member States the Fund may support joint pre-commercial procurement.	'control' means the ability to exercise a decisive influence on an legal entity directly or indirectly through one or more intermediate legal entities	We suggest to shorten it to 3 independent entities localised in 3 different MS, where <i>none</i> of the entities are controlled by each other or is controlled by the same entity. In order to emphasize the “cross border” aspect it could even be considered to raise the amount of entities from three to four in at least four different (instead of three) Members States.
89.	11.5	5. Paragraph 4 shall not apply to for actions referred to in points c) and j) of paragraph 3 and to actions referred to in Article 6.			
90.	11.6	6. Actions for the development of products and technologies the use, development or production of which	(7) In order to ensure that the Union's and its Member States' international obligations are respected in the implementation of		

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		is prohibited by applicable international law shall not be eligible.	this Regulation, actions relating to products or technologies the use, development or production of which are prohibited by international law should not receive funding under the Fund. In this respect, the eligibility of actions related to new defence products or technologies, such as those that are specifically designed to carry out lethal strikes without any human control over the engagement decisions, should also be subject to developments in international law.		
91.		<i>Article 12 Selection and award procedure</i>			
92.	12.1	1. Grants may be awarded without a call for proposals to legal entities identified in the work programme in accordance with Article [195(e)] of the Financial Regulation.		'legal entity' means any natural or legal person created and recognised as such under national law, Union law or international law, which has legal personality and which may, acting in its own name, exercise rights and be subject to obligations, or an entity without a legal personality in accordance with Article [197(2)(c)] of the Financial Regulation	We suggest deleting art 12.1. All funds should be subject to competition so that application of the funds will happen in a transparent way.
93.	12.2	2. The Commission shall award the funding for selected actions after each call or after application of Article [195(e)] of the Financial Regulation.			We suggest to delete “or after application of Article [195(e)] of the Financial Regulation”. For the same reasons as stated in art 12.1.
94.	12.3	3. For the award of funding for development actions, the	(32) In order to ensure uniform conditions for the implementation of	'development action' means any action consisting primarily of	

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		Commission shall act by means of implementing acts adopted in accordance with the procedure referred to in Article 28 paragraph 2.	this Regulation implementing powers should be conferred on the Commission as regards the adoption of the work programme and for awarding the funding to selected development actions.. In particular, while implementing development actions, the specificities of the defence sector, notably the responsibility of Member States and/or associated countries for the planning and acquisition process, should be taken into account. These implementing powers should be exercised in accordance with Regulation (EU) [No 182/2011 of the European Parliament and of the Council].	defence-oriented activities in the development phase, covering new products or technologies or the upgrading of existing ones, excluding the production or use of weapons	
95.		<i>Article 13 Award criteria</i>			
96.	13.1	1. Each proposal shall be assessed on the basis of the following criteria:			
97.	13.1(a)	(a) contribution to excellence or potential of disruption in the defence domain in particular by showing that the expected results of the proposed action present significant advantages over existing products or technologies;		'results' means any tangible or intangible effect of the action, such as data, know-how or information, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including intellectual property rights	
98.	13.1(b)	(b) contribution to the innovation and technological development of the European defence industry, in particular by showing			Important to keep the wording "or the application of technologies or concepts

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		that the proposed action includes ground-breaking or novel concepts and approaches, new promising future technological improvements or the application of technologies or concepts previously not applied in defence sector;			previously not applied in defence sector”, to keep the incentive for innovation at the forefront.
99.	13.1(c)	(c) contribution to the competitiveness of the European defence industry, in particular by creating new market opportunities and accelerating the growth of companies throughout the Union;			Important to keep focus on the competitiveness. We suggest to add that:” creating new market opportunities globally and...”
100.	13.1(d)	(d) contribution to the security and defence interests of the Union in line with the priorities referred to in Article 3 paragraph 2 and, where appropriate, regional and international cooperative agreements;	(23) The promotion of innovation and technological development in the Union defence industry should take place in a manner coherent with the security and defence interests of the Union. Accordingly, the action's contribution to those interests and to the defence research and capability priorities commonly agreed by Member States should serve as an award criterion. Within the Union, common defence research and capability shortfalls are identified in the Common Security and Defence Policy (CSDP) framework notably through Overarching Strategic Research Agenda and the Capability Development Plan. Other Union processes such as the Coordinated Annual Review on Defence and the Permanent Structured Cooperation will support the implementation of		The development of Europe’s defence and security policy should be in line with other existing cooperation’s.... (NATO etc.) It is important to correlate with already ongoing cooperation, hereunder in particular technology programs within the NATO organization in particular for the research window to correlate with NATO Science & Technology. Suggest establishment of a “permanent group” to cover this aspect. Initiatives have already

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			<p>relevant priorities through identifying and taking forward opportunities for enhanced cooperation with a view to fulfilling the EU level of ambition on security and defence. Where appropriate, regional and international priorities, including those in the North Atlantic Treaty Organisation context, may also be taken into account if they are in line with Union priorities and do not prevent any Member State or an associated country from participating, while also taking into account that unnecessary duplication should be avoided.</p>		<p>been initiated from the NATO STO side.</p> <p>Also we need to ensure correlation with Horizon Europe activities.</p> <p>Proposal for new text for Art. 13.1(d): (d) contribution to the security and defence interests of the Union in line with the priorities referred to in Article 3 paragraph 2 and, where appropriate, in line with other existing regional and international cooperative agreements, including those in the North Atlantic Treaty Organisation;</p>
101.	13.1(e)	(e) contribution to the creation of new cross-border cooperation between legal entities, in particular for SMEs which are established in Member States and/or associated countries other than those where the entities in the consortium which are not SMEs are established;		'legal entity' means any natural or legal person created and recognised as such under national law, Union law or international law, which has legal personality and which may, acting in its own name, exercise rights and be subject to obligations, or an entity without a legal personality in accordance with Article [197(2)(c)] of the Financial Regulation	We suggest to add: "contribution to the creation of new cross-border cooperation between independent legal entities"

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102.	13.1(f)	(f) quality and efficiency of the implementation of the action.			What is meant by this? And what does the quality criteria bring that is not already covered?
103.	13.2	2. Under points (d) of paragraph 1, regional and international priorities may be taken into account, in particular to avoid unnecessary duplication, provided they serve the Union's security and defence interests and do not exclude the participation of any Member State.	(23) The promotion of innovation and technological development in the Union defence industry should take place in a manner coherent with the security and defence interests of the Union. Accordingly, the action's contribution to those interests and to the defence research and capability priorities commonly agreed by Member States should serve as an award criterion. Within the Union, common defence research and capability shortfalls are identified in the Common Security and Defence Policy (CSDP) framework notably through Overarching Strategic Research Agenda and the Capability Development Plan. Other Union processes such as the Coordinated Annual Review on Defence and the Permanent Structured Cooperation will support the implementation of relevant priorities through identifying and taking forward opportunities for enhanced cooperation with a view to fulfilling the EU level of ambition on security and defence. Where appropriate, regional and international priorities, including those in the North Atlantic Treaty Organisation context, may also be		

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			taken into account if they are in line with Union priorities and do not prevent any Member State or an associated country from participating, while also taking into account that unnecessary duplication should be avoided.		
104.		<i>Article 14 Co-financing rate</i>			
105.	14.1	1. The Fund may finance up to 100% of the eligible costs of an action without prejudice to the co-financing principle.	(18) Given the specificities of the defence industry where demand comes almost exclusively from Member States and associated countries, which also control all acquisition of defence-related products and technologies, including exports, the functioning of the defence sector is unique and does not follow the conventional rules and business models that govern more traditional markets. Industry therefore cannot undertake substantial self-funded defence Research and Development (R&D) projects and Member States and associated countries normally fully fund all R&D cost. To achieve the objectives of the Fund, notably to incentivise cooperation between companies from different Member States and associated countries, and taking into account the specifics of the defence sector, up to totality of the eligible costs should be covered		

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			for actions that take place ahead of the development of prototypes phase.		
106.	14.2	2. By derogation from paragraph 1:			
107.	14.2(a)	(a) for actions defined in Article 11(3)(e) the financial assistance of the Fund shall not exceed 20% of the eligible costs of the action,	(19) The prototype phase is a crucial phase where Member States or associated countries usually decide on their consolidated investment and start the acquisition process of their future defence products or technologies. This is the reason why, at this specific stage, Member States and associated countries agree on the necessary commitments including cost-sharing and ownership of the project. To ensure the credibility of their commitment, the financial assistance of the Union under the Fund should normally not exceed 20 % of the eligible costs.		
108.	14.2(b)	(b) for actions defined in Article 11(3) f) to h) the financial assistance of the Fund shall not exceed 80% of the eligible costs of the action.	(20) For actions beyond the prototype phase, funding up to 80% should be foreseen. These actions which are closer to product and technology finalisation may still involve substantial costs.		
109.	14.3	3. For development actions the funding rate shall be increased in the following cases:		'development action' means any action consisting primarily of defence-oriented activities in the development phase, covering new products or technologies or the upgrading of existing ones, excluding the production or use of weapons	

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110.	14.3(a)	(a) an action developed in the context of the Permanent Structured Cooperation as established by Council Decision (CFSP) 2017/2315 of 11 December 2017, it may benefit from a funding rate increased by an additional 10 percentage points;	(24) Eligible actions developed in the context of Permanent Structured Cooperation (PESCO) in the institutional framework of the Union should ensure enhanced cooperation between legal entities in the different Member States on a continuous basis and thus directly contribute to the aims of the Fund. If selected, such projects should thus be eligible for an increased funding rate.		
111.	14.3(b)	(b) a consortium shall benefit from a funding rate increased by the percentage points equivalent to the percentage of the total eligible costs allocated to SMEs established in a Member State or an associated country other than those in which the consortium members that are not SMEs are established in;	(33) In order to support an open internal market, participation of cross-border SMEs and mid-caps, either as members of consortia or as subcontractors, should be encouraged.		Important that the benefit is given to <i>cross border</i> SMV participation not just SMV participation. Following our comment to Art. 11.4, the cross border perspective could be incentivised further by increasing the funding rate even more.
112.	14.3(c)	(c) a consortium shall benefit from a funding rate increased by the percentage points equivalent to the quarter of the percentage of the total eligible costs allocated to mid-caps established in a Member State or an associated country other than those in which the other consortium members that are not SMEs or mid-caps are established in;	(33) In order to support an open internal market, participation of cross-border SMEs and mid-caps, either as members of consortia or as subcontractors, should be encouraged.	'mid-cap' means an enterprise that is not a micro-, small - and medium size enterprises ('SME'), as defined in Commission recommendation 2003/361/EC and that has a number of employees of up to 3 000 employees, where the staff headcount is calculated in accordance with Articles 3, 4, 5 and 6 of Title I of the Annex to that Recommendation	We do not see the need for this article. Mid-caps will not experience the same difficulties with integration into the value chains as the smaller undertakings.

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113.	14.3(d)	(d) the overall increase in the funding rate of an action shall not exceed 30 percentage points.			
114.		<i>Article 15 Financial capacity</i>			
115.		By derogation from Article [198] of the Financial Regulation:			
116.	15(a)	(a) the financial capacity shall be verified only for the coordinator and only if the requested funding from the Union is equal to or greater than EUR 500 000. However, if there are grounds to doubt the financial capacity, the Commission shall verify also the financial capacity of other applicants or of coordinators below the threshold referred to in the first sentence;	(14) If a consortium wishes to participate in an eligible action and the financial assistance of the Union is to take the form of a grant, the consortium should appoint one of its members as a coordinator who will be the principal point of contact.		In general, EU funding should not be exposed to unnecessary risks. This article leaves a lot of room for interpretation and discretion on part of the managing authority. What is the justification for this article?
117.	15(b)	(b) the financial capacity shall not be verified in respect of legal entities whose viability is guaranteed by a Member State and in respect of universities;		'legal entity' means any natural or legal person created and recognised as such under national law, Union law or international law, which has legal personality and which may, acting in its own name, exercise rights and be subject to obligations, or an entity without a legal personality in accordance with Article [197(2)(c)] of the Financial Regulation	
118.	15(c)	(c) if the financial capacity is structurally guaranteed by another legal entity, the financial capacity of the latter shall be verified.		'legal entity' means any natural or legal person created and recognised as such under national law, Union law or international law, which has	

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				legal personality and which may, acting in its own name, exercise rights and be subject to obligations, or an entity without a legal personality in accordance with Article [197(2)(c)] of the Financial Regulation	
119.		<i>Article 16 Indirect costs</i>			
120.	16.1	1. Indirect eligible costs shall be determined by applying a flat rate of 25 % of the total direct eligible costs, excluding direct eligible costs for subcontracting, financial support to third parties and any unit costs or lump sums which include indirect costs.	(21) Stakeholders in the defence sector are facing specific indirect costs, such as costs for security. Furthermore, stakeholders are working in a specific market where they – without any demand on the buyers' side – cannot recover the research and development costs like in the civilian sector. Therefore, it is justified to allow a flat rate of 25 % as well as the possibility, on a project base, to charge indirect costs calculated in accordance with the usual accounting practises of beneficiaries if these practises are accepted by their national authorities under comparable national funding schemes, which have been communicated to the Commission. The authorising officer responsible should justify its decision to accept indirect eligible costs beyond the flat rate of 25 % in the work programme or in the call for proposals.		

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121.	16.2	<p>2. Where appropriate, indirect eligible costs beyond the flat rate of 25 % may be determined in accordance with the beneficiary's usual cost accounting practices on the basis of actual indirect costs provided that these cost accounting practices are accepted by national authorities under comparable funding schemes in accordance with Article [185] of the Financial Regulation and communicated to the Commission.</p>	<p>(21) Stakeholders in the defence sector are facing specific indirect costs, such as costs for security. Furthermore, stakeholders are working in a specific market where they – without any demand on the buyers' side – cannot recover the research and development costs like in the civilian sector. Therefore, it is justified to allow a flat rate of 25 % as well as the possibility, on a project base, to charge indirect costs calculated in accordance with the usual accounting practises of beneficiaries if these practises are accepted by their national authorities under comparable national funding schemes, which have been communicated to the Commission. The authorising officer responsible should justify its decision to accept indirect eligible costs beyond the flat rate of 25 % in the work programme or in the call for proposals.</p>		
122.		<p><i>Article 17</i> <i>Use of single lump sum or contribution not linked to costs</i></p>	<p>(30) The types of financing and the methods of implementation under this Regulation should be chosen on the basis of their ability to achieve the specific objectives of the actions and to deliver results, taking into account, in particular, the costs of controls, the administrative burden, and the expected risk of non-compliance. This should include consideration of the use of lump</p>		

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			sums, flat rates and unit costs, as well as financing not linked to costs as referred to in Article [125(1)] of the Financial Regulation.		
123.	17.1	1. For grants awarded to actions referred to Article 11(3)(e) and other actions where Member States and/or associated countries finance the major part of the budget, the Commission may use:			
124.	17.1(a)	(a) a contribution not linked to costs referred to in Article [180(3)] of the Financial Regulation and based on the achievement of results measured by reference to previous set milestones or through performance indicators; or		'results' means any tangible or intangible effect of the action, such as data, know-how or information, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including intellectual property rights	
125.	17.1(b)	(b) a single lump sum referred to in Article [182] of the Financial Regulation and based on the provisional budget of the action already endorsed by the national authorities of the co-financing Member States and associated countries.			
126.	17.2	2. Indirect costs shall be included in the lump sum.			
127.		<i>Article 18</i> <i>Pre-commercial procurement</i>			
128.	18.1	1. The Union may support pre-commercial procurement through awarding a grant to contracting authorities or contracting entities as	(10) Given that the Fund aims particularly at enhancing cooperation between legal entities and Member States across Europe, an action	'pre-commercial procurement' means the procurement of research and development services involving risk-benefit sharing under market	

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		defined in Directives 2014/24/EU ² , 2014/25/EU ³ and 2009/81/EC ⁴ of the European Parliament and of the Council, which are jointly procuring research and development of defence services or coordinating their procurement procedures.	should be eligible for funding only if it is undertaken by a cooperation of at least three legal entities based in at least three different Member States and/or associated countries. At least three of these legal eligible entities established in at least two different Member States and/or associated countries should not be effectively controlled, directly or indirectly, by the same entity or should not control each other. <u>In order to boost the cooperation between Member States the Fund may support joint pre-commercial procurement.</u>	conditions, competitive development in phases, where there is a clear separation of the research and development services procured from the deployment of commercial volumes of end-products	
129.	18.2	2. The procurement procedures:			
130.	18.2(a)	(a) shall be in line with the provisions of this Regulation;			
131.	18.2(b)	(b) may authorise the award of multiple contracts within the same procedure (multiple sourcing);			

² Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC. (OJ L 94, 28.03.2014, p. 65).

³ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.03.2014, p. 243).

⁴ Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.08.2009, p.76).

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132.	18.2(c)	(c) shall provide for the award of the contracts to the tender(s) offering best value for money.			
133.		<i>Article 19 Guarantee Fund</i>			
134.		Contributions to a mutual insurance mechanism may cover the risk associated with the recovery of funds due by recipients and shall be considered a sufficient guarantee under the Financial Regulation. The provisions laid down in [Article X of] Regulation XXX [successor of the Regulation on the Guarantee Fund] shall apply.	(28) The policy objectives of this Fund will be also addressed through financial instruments and budgetary guarantees under the policy window(s) [...] of the InvestEU Fund.	'recipient' means any legal entity receiving funding under this Fund	
135.		CHAPTER IV OTHER FORMS OF UNION FUNDING			
136.		<i>Article 20 Eligibility conditions for procurement and prizes</i>			
137.		Where necessary for the protection of the essential security interest of the Union and its Member States, the Commission shall set the requisite eligibility conditions applicable to the procurement or prizes financed by the Fund. Particular regard shall be had, for that purpose, to the need for recipients to be established in the Union or in associated countries, to commit to carry out any relevant activities inside the Union and not to		'control' means the ability to exercise a decisive influence on an legal entity directly or indirectly through one or more intermediate legal entities 'recipient' means any legal entity receiving funding under this Fund 'third country' means a country that is not a member of the Union 'non-associated third country' means a third country that is not an	

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		be effectively controlled by non-associated third countries or non-associated third country' entities. Those conditions shall be included in the documents relating to the procurement or prize, as applicable, and shall apply to the full life cycle of the resulting contract.		associated country in accordance with Article 5	
138.		<i>Article 21 Blending operations</i>			
139.		Blending operations decided under this Fund shall be implemented in accordance with the [InvestEU regulation] and Title X of the Financial Regulation.	(28) The policy objectives of this Fund will be also addressed through financial instruments and budgetary guarantees under the policy window(s) [...] of the InvestEU Fund. (29) Financial support should be used to address market failures or sub-optimal investment situations, in a proportionate manner and actions should not duplicate or crowd out private financing or distort competition in the internal market. Actions should have a clear European added value.	'blending operations' means actions supported by the EU budget, including within blending facilities pursuant to Article [2(6)] of the Financial Regulation, combining non-repayable forms of support and/or financial instruments from the EU budget with repayable forms of support from development or other public finance institutions, as well as from commercial finance institutions and investors	
140.		TITLE II SPECIFIC PROVISIONS APPLICABLE FOR RESEARCH			
141.		<i>Article 22 Ownership of results</i>			
142.	22.1	1. The results of the actions shall be owned by the beneficiaries generating them. Where legal entities jointly generate results, and where		'results' means any tangible or intangible effect of the action, such as data, know-how or information, whatever its form or nature, whether	Export control should remain a national competence.

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		their respective contribution cannot be ascertained, or where it is not possible to separate such joint results, the legal entities shall have joint ownership of the results.		or not it can be protected, as well as any rights attached to it, including intellectual property rights 'legal entity' means any natural or legal person created and recognised as such under national law, Union law or international law, which has legal personality and which may, acting in its own name, exercise rights and be subject to obligations, or an entity without a legal personality in accordance with Article [197(2)(c)] of the Financial Regulation	
143.	22.2	2. If Union assistance is provided in the form of public procurement, results shall be owned by the Union. Member States and associated countries shall enjoy access rights to the results, free of charge, upon their explicit request.	(42) As the Fund supports only the research and development phases of defence products and technologies, in principle the Union should not have ownership or intellectual property rights (IPRs) over the products or technologies resulting from the funded actions unless the Union assistance is provided through procurement. However, for research actions, interested Member States and associated countries should have the possibility to use the results of funded actions and participate in follow-up cooperative development and therefore derogations to that principle should be allowed.	'results' means any tangible or intangible effect of the action, such as data, know-how or information, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including intellectual property rights	What about third countries?
144.	22.3	3. If justified the grant agreement may require that the results of actions receiving support from the Fund shall not be subject to		'results' means any tangible or intangible effect of the action, such as data, know-how or information, whatever its form or nature, whether	

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		any control or restriction, directly or indirectly through one or more intermediate legal entities, including in terms of technology transfer by a non-associated third country or by a non-associated third country entity.		<p>or not it can be protected, as well as any rights attached to it, including intellectual property rights</p> <p>'control' means the ability to exercise a decisive influence on an legal entity directly or indirectly through one or more intermediate legal entities</p> <p>'legal entity' means any natural or legal person created and recognised as such under national law, Union law or international law, which has legal personality and which may, acting in its own name, exercise rights and be subject to obligations, or an entity without a legal personality in accordance with Article [197(2)(c)] of the Financial Regulation</p> <p>'third country' means a country that is not a member of the Union</p> <p>'non-associated third country' means a third country that is not an associated country in accordance with Article 5</p> <p>'non-associated third country entity' means a legal entity established in a non-associated third country or having its executive management structures in a non-associated third country</p>	
145.	22.4	4. The grant agreement shall, if justified, lay down the right of the Commission to be notified of and		'results' means any tangible or intangible effect of the action, such as data, know-how or information,	

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		<p>object to the transfer of ownership to results or to the granting of a license regarding results to a non-associated third country or a non-associated third country entity. Such transfers shall not contravene the defence and security interests of the Union and its Member States or the objectives of this Regulation as set out in Article 3.</p>		<p>whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including intellectual property rights</p> <p>'third country' means a country that is not a member of the Union</p> <p>'non-associated third country' means a third country that is not an associated country in accordance with Article 5</p> <p>'non-associated third country entity' means a legal entity established in a non-associated third country or having its executive management structures in a non-associated third country</p>	
146.	22.5	<p>5. The national authorities of Member States and associated countries shall enjoy access rights to the special report of a project that has received Union funding. Such access rights shall be granted on a royalty-free basis and transferred by the Commission to the Member States and associated countries after ensuring that appropriate confidentiality obligations are in place.</p>	<p>(42) As the Fund supports only the research and development phases of defence products and technologies, in principle the Union should not have ownership or intellectual property rights (IPRs) over the products or technologies resulting from the funded actions unless the Union assistance is provided through procurement. However, for research actions, interested Member States and associated countries should have the possibility to use the results of funded actions and participate in follow-up cooperative development and therefore derogations to that principle should be allowed.</p>	<p>'special report' means a specific deliverable of a research action summarising its results, providing extensive information on the basic principles, the aims, the actual outcomes, the basic properties, the performed tests, the potential benefits, the potential defence applications and the expected exploitation path of the research</p>	

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147.	22.6	6. The national authorities of Member States and associated countries shall use the special report solely for purposes related to the use by or for their armed forces, or security or intelligence forces, including within the framework of their cooperative programmes. Such usage shall include, but not be limited to, the study, evaluation, assessment, research, design, development, manufacture, improvement, modification, maintenance, repair, refurbishment, and product acceptance and certification, operation, training, disposal and other design services and product deployment, as well as the assessment and drafting of technical requirements for procurement.		'special report' means a specific deliverable of a research action summarising its results, providing extensive information on the basic principles, the aims, the actual outcomes, the basic properties, the performed tests, the potential benefits, the potential defence applications and the expected exploitation path of the research	
148.	22.7	7. The beneficiaries shall grant access rights to their results on a royalty-free basis to the Union institutions, bodies or agencies, for duly justified purpose of developing, implementing and monitoring Union policies or programmes. Such access rights shall be limited to non-commercial and non-competitive use.		'results' means any tangible or intangible effect of the action, such as data, know-how or information, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including intellectual property rights	
149.	22.8	8. Specific provisions regarding ownership, access rights and licensing shall be laid down in the grant agreements and contracts regarding pre-commercial procurement to ensure maximum	(42) As the Fund supports only the research and development phases of defence products and technologies, in principle the Union should not have ownership or intellectual property rights (IPRs) over the	'special report' means a specific deliverable of a research action summarising its results, providing extensive information on the basic principles, the aims, the actual outcomes, the basic properties, the	

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		uptake of the results and to avoid any unfair advantage. The contracting authorities shall enjoy at least royalty-free access rights to the results for their own use and the right to grant, or require the recipients to grant, non-exclusive licences to third parties to exploit the results under fair and reasonable conditions without any right to sub-license. All Member States and associated countries shall have royalty-free access to the special report. If a contractor fails to commercially exploit the results within a given period after the pre-commercial procurement as identified in the contract, it shall transfer any ownership of the results to the contracting authorities.	products or technologies resulting from the funded actions unless the Union assistance is provided through procurement. However, for research actions, interested Member States and associated countries should have the possibility to use the results of funded actions and participate in follow-up cooperative development and therefore derogations to that principle should be allowed.	performed tests, the potential benefits, the potential defence applications and the expected exploitation path of the research	
150.		TITLE III SPECIFIC PROVISIONS APPLICABLE FOR DEVELOPMENT			
151.		<i>Article 23 Additional eligibility criteria</i>			
152.	23.1	1. Where applicable, the consortium shall demonstrate that the remaining costs of an eligible action which are not covered by the Union support will be covered by other means of financing such as Member States' and/or associated countries'	(16) In order to ensure that the funded actions are financially viable, it is necessary that the beneficiaries demonstrate that the costs of the action not covered by the Union's funding are covered by other means of financing.	'legal entity' means any natural or legal person created and recognised as such under national law, Union law or international law, which has legal personality and which may, acting in its own name, exercise rights and be subject to obligations, or an entity without a legal	Important to keep “such as” so it does not become a condition that extra financing comes from MS.

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		contributions or co-financing from legal entities.		personality in accordance with Article [197(2)(c)] of the Financial Regulation	
153.	23.2	2. When it relates to actions referred to in point d) of Article 11 paragraph 3, the action shall be based on harmonised capability requirements jointly agreed by the relevant Member States and/or associated countries.	(8) The difficulty to agree on consolidated defence capability requirements and common technical specifications or standards hampers cross-border collaboration between Member States and between legal entities based in different Member States. The absence of such requirements, specifications and standards has led to increased fragmentation of the defence sector, technical complexity, delays and inflated costs as well as decreased interoperability. The agreement on common technical specifications should be a prerequisite for actions involving a higher level of technological readiness. Activities of Member States leading to common defence capability requirements and supporting studies as well as actions aiming at supporting the creation of a common definition of technical specifications or standards should also be eligible for support by the Fund.		This will require the different EU participating nations to agree on common requirements.
154.	23.3	3. For actions referred to in points e) to h) of Article 11 paragraph 3, the consortium shall demonstrate by means of documents issued by national authorities that:			

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155.	23.3(a)	(a) at least two Member States and/or associated countries intend to procure the final product or use the technology in a coordinated way, including joint procurement;	(22) In order to ensure that the funded actions will contribute to the competitiveness and efficiency of the European defence industry, it is important that Member States already intend to jointly procure the final product or use the technology, notably through joint cross-border procurement, where Member States jointly organise their procurement procedures in particular with the use of a central purchasing body.		Important to keep “intend” – should be both legal and political (statement of intent).
156.	23.3(b)	(b) the action is based on common technical specifications jointly agreed by the Member States and/or associated countries which co-finance the action.	(8) The difficulty to agree on consolidated defence capability requirements and common technical specifications or standards hampers cross-border collaboration between Member States and between legal entities based in different Member States. The absence of such requirements, specifications and standards has led to increased fragmentation of the defence sector, technical complexity, delays and inflated costs as well as decreased interoperability. The agreement on common technical specifications should be a prerequisite for actions involving a higher level of technological readiness. Activities of Member States leading to common defence capability requirements and supporting studies as well as actions aiming at supporting the creation of a common definition of technical		Delete “countries which co-finance” because it gives more flexibility and because MS cofinancing is not a requirement (see “such as”).

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			specifications or standards should also be eligible for support by the Fund.		
157.		<i>Article 24 Additional award criteria</i>			
158.		In addition to the award criteria referred to in Article 13, the work programme may also take into consideration:			
159.	24(a)	(a) the contribution to increasing efficiency across the life cycle of defence products and technologies, including cost-effectiveness and the potential for synergies in the procurement and maintenance process and disposal processes;			
160.	24(b)	(b) the level of cooperation between Members States in the eligible action.			We suggest to add that a criteria could also be to take into consideration the “security of supply” that can be guaranteed by the consortium.
161.		<i>Article 25 Ownership of results</i>			
162.	25.1	1. The Union shall not own the products or technologies resulting from development actions, nor shall it have any intellectual property rights regarding the results of the actions.	(42) As the Fund supports only the research and development phases of defence products and technologies, in principle the Union should not have ownership or intellectual property rights (IPRs) over the	'results' means any tangible or intangible effect of the action, such as data, know-how or information, whatever its form or nature, whether or not it can be protected, as well as	

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			<p>products or technologies resulting from the funded actions unless the Union assistance is provided through procurement. However, for research actions, interested Member States and associated countries should have the possibility to use the results of funded actions and participate in follow-up cooperative development and therefore derogations to that principle should be allowed.</p>	<p>any rights attached to it, including intellectual property rights</p> <p>'development action' means any action consisting primarily of defence-oriented activities in the development phase, covering new products or technologies or the upgrading of existing ones, excluding the production or use of weapons</p>	
163.	25.2	<p>2. The results of actions receiving support from the Fund shall not be subject to any control or restriction by non-associated third countries or by non-associated third country entities, directly or indirectly through one or more intermediate legal entities, including in terms of technology transfer.</p>		<p>'results' means any tangible or intangible effect of the action, such as data, know-how or information, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including intellectual property rights</p> <p>'control' means the ability to exercise a decisive influence on an legal entity directly or indirectly through one or more intermediate legal entities</p> <p>'third country' means a country that is not a member of the Union</p> <p>'non-associated third country' means a third country that is not an associated country in accordance with Article 5</p> <p>'non-associated third country entity' means a legal entity established in a non-associated third country or having its executive</p>	

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				<p>management structures in a non-associated third country</p> <p>'legal entity' means any natural or legal person created and recognised as such under national law, Union law or international law, which has legal personality and which may, acting in its own name, exercise rights and be subject to obligations, or an entity without a legal personality in accordance with Article [197(2)(c)] of the Financial Regulation</p>	
164.	25.3	<p>3. With regard to results generated by recipients, the Commission shall be notified of any transfer of ownership or grant of a licence to non-associated third countries. Such transfer of ownership or granting of a licence shall not contravene the defence and security interests of the Union and its Member States or the objectives this Regulation as set out in Article 3, otherwise it will necessitate reimbursement of the funding provided under the Fund.</p>	<p>(43) The Union financial support should not affect the transfer of defence-related products within the Union in accordance with Directive 2009/43/CE of the European Parliament and the Council , nor the export of products, equipment or technologies.</p>	<p>'results' means any tangible or intangible effect of the action, such as data, know-how or information, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including intellectual property rights</p> <p>'recipient' means any legal entity receiving funding under this Fund</p>	
165.	25.4	<p>4. By derogation from paragraph 1, where the Union assistance is provided in the form of public procurement, the Union shall own the results and Member States and/or associated countries shall have the right, free of charge, to a non-</p>	<p>(42) As the Fund supports only the research and development phases of defence products and technologies, in principle the Union should not have ownership or intellectual property rights (IPRs) over the products or technologies resulting from the funded actions unless the</p>	<p>'results' means any tangible or intangible effect of the action, such as data, know-how or information, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including intellectual property rights</p>	

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		exclusive licence for the use of the results upon their written request.	Union assistance is provided through procurement. However, for research actions, interested Member States and associated countries should have the possibility to use the results of funded actions and participate in follow-up cooperative development and therefore derogations to that principle should be allowed.		
166.		<i>Article 26 Information of the project manager</i>			
167.		In case a project manager is appointed by Member States and associated countries, the Commission shall execute the payment to the recipients after informing the project manager.	(15) In case a development action supported by the Fund is managed by a project manager appointed by Member States or associated countries, the Commission should inform the project manager prior to executing the payment to the recipient so that the project manager can ensure that the time-frames are respected by the recipients. Under certain circumstances, the project manager could provide the Commission with its observations on the progress of the action so that the Commission can validate whether the conditions to proceed to the payment are fulfilled.	'project manager' means any contracting authority established in a Member State or an associated country, set up by a Member State or an associated country or a group of Member States and/or associated countries to manage multinational armament projects permanently or on an ad-hoc basis 'recipient' means any legal entity receiving funding under this Fund	
168.		TITLE IV GOVERNANCE, MONITORING, EVALUATION AND CONTROL			
169.		<i>Article 27 Work programmes</i>			

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170.	27.1	1. The Fund shall be implemented by annual or multi annual work programmes established in accordance with Article [110] of the Financial Regulation. Work programmes shall set out, where applicable, the overall amount reserved for blending operations.	(31) <u>The Commission should establish annual or multiannual work programmes in line with the objectives of the Fund.</u> The Commission should be assisted in the establishment of the work programme by a committee of Member States. In order to benefit from its expertise in the defence sector, the European Defence Agency will be given the status of an observer in the committee. Given the specificities of the defence area, the European External Action Service should also assist in the committee of Member States.	'blending operations' means actions supported by the EU budget, including within blending facilities pursuant to Article [2(6)] of the Financial Regulation, combining non-repayable forms of support and/or financial instruments from the EU budget with repayable forms of support from development or other public finance institutions, as well as from commercial finance institutions and investors	
171.	27.2	2. The Commission shall adopt the work programmes by means of implementing acts in accordance with the procedure referred to in Article 28 paragraph 2.	(32) In order to ensure uniform conditions for the implementation of this Regulation implementing powers should be conferred on the Commission as regards the adoption of the work programme and for awarding the funding to selected development actions. In particular, while implementing development actions, the specificities of the defence sector, notably the responsibility of Member States and/or associated countries for the planning and acquisition process, should be taken into account. These implementing powers should be exercised in accordance with Regulation (EU) [No 182/2011 of the		

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			European Parliament and of the Council].		
172.		<i>Article 28 Committee</i>			
173.	28.1	1. The Commission shall be assisted by a committee within the meaning of Regulation (EU) No 182/2011. The European Defence Agency shall be invited as an observer to provide its views and expertise. The European External Action Service shall also be invited to assist.	(31) The Commission should establish annual or multiannual work programmes in line with the objectives of the Fund. <u>The Commission should be assisted in the establishment of the work programme by a committee of Member States. In order to benefit from its expertise in the defence sector, the European Defence Agency will be given the status of an observer in the committee. Given the specificities of the defence area, the European External Action Service should also assist in the committee of Member States.</u>		
174.	28.2	2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.			
175.		<i>Article 29 Independent experts</i>			
176.	29.1	1. The Commission shall appoint independent experts to assist in the evaluation of proposals pursuant to Article [237] of the Financial Regulation. It may also appoint independent experts to advise on or assist with the monitoring of			

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		the implementation of actions carried out.			
177.	29.2	2. Independent experts shall be Union's citizens identified and selected on the basis of calls for expressions of interest addressed to relevant organisations such as Ministries of Defence and subordinated agencies, research institutes, universities, business associations or enterprises of the defence sector with a view to establishing a list of experts. By derogation from Article [237] of the Financial Regulation, this list shall not be made public.			We are pleased with the notion of independency of the selected experts and would like to emphasize that the experts shall be chosen on the basis of their skills, experience and knowledge appropriate to carry out the tasks assigned to them, as per Art. 29.5.
178.	29.3	3. Independent experts shall have the appropriate security clearance issued by a Member State.			
179.	29.4	4. The Committee referred to in Article 28 shall be informed annually on the list of experts.			
180.	29.5	5. Independent experts shall be chosen on the basis of their skills, experience and knowledge appropriate to carry out the tasks assigned to them.			
181.		<i>Article 30 Application of the rules on classified information</i>			Classification of the sensitive information should in general be kept at the lowest justifiable level and attention should be drawn to the

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					aspect of classification possibly becoming a barrier to reaching the objectives of the Fund. The exchange of sensitive information needs to be facilitated in an operative manner to the actors involved be it governments, research institutions or industries.
182.	30.1	1. Within the scope of this Regulation:			
183.	30.1(a)	(a) each Member State or associated country shall ensure that its national security regulations offer a degree of protection of European Union classified information equivalent to that provided by the rules on security as set out in Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information ⁵ and by the security rules of the Council set out in the Annexes to Decision 2013/488/EU ⁶ ;	(44) Use of sensitive background information or access by unauthorised individuals to sensitive results generated by research projects may have an adverse impact on the interests of the Union or of one or more of the Member States. Thus handling of confidential data and classified information should be governed by all relevant Union law, including the Institutions' internal rules, such as Commission Decision (EU, Euratom) 2015/444.		
184.	30.1(b)	(b) Member States and associated countries shall without delay inform the Commission of the			When should this information be given, is it to check whether it is sufficient?

⁵ OJ L 72, 17.3.2015, p. 53–88.

⁶ OJ L 274, 15.10.2013, p. 1–50.

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		national security regulations referred to in point (a);			Could we use the format from NATO, which we are familiar with?
185.	30.1(c)	(c) natural persons resident in and legal persons established in non-associated third countries may deal with EU classified information regarding the Fund only where they are subject, in those countries, to security regulations ensuring a degree of protection at least equivalent to that provided by the Commission's rules on security set out in Commission Decision (EU, Euratom) 2015/444 and by the security rules of the Council set out in the Annexes to Decision 2013/488/EU. The equivalence of the security regulations applied in a third country or international organisation shall be defined in a security of information agreement, including industrial security matters if relevant, concluded between the Union and that third country or international organisation in accordance with the procedure provided for in Article 218 TFEU and taking into account Article 13 of Decision 2013/488/EU;	(44) Use of sensitive background information or access by unauthorised individuals to sensitive results generated by research projects may have an adverse impact on the interests of the Union or of one or more of the Member States. Thus handling of confidential data and classified information should be governed by all relevant Union law, including the Institutions' internal rules, such as Commission Decision (EU, Euratom) 2015/444.	'third country' means a country that is not a member of the Union	
186.	30.1(d)	(d) without prejudice to Article 13 of Decision 2013/488/EU and to the rules governing the field of industrial security as set out in Commission Decision (EU, Euratom) 2015/444, a natural person or legal	(44) Use of sensitive background information or access by unauthorised individuals to sensitive results generated by research projects may have an adverse impact on the interests of the Union or of one or	'recipient' means any legal entity receiving funding under this Fund 'third country' means a country that is not a member of the Union	

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		person, third country or international organisation may be given access to European Union classified information where deemed necessary on a case-by-case basis, according to the nature and content of such information, the recipient's need-to-know and the degree of advantage to the Union.	more of the Member States. Thus handling of confidential data and classified information should be governed by all relevant Union law, including the Institutions' internal rules, such as Commission Decision (EU, Euratom) 2015/444.		
187.	30.2	2. When actions involve, require and/or contain classified information, the relevant funding body shall specify in the call for proposals/tenders documents the measures and requirements necessary to ensure the security of such information at the requisite level.			
188.	30.3	3. In order to facilitate exchange of sensitive information between the Commission, the recipients and, where applicable the Member states, the Commission shall set up an electronic exchange system.		'recipient' means any legal entity receiving funding under this Fund	The modalities of the electronic exchange system envisaged needs to be further clarified, especially the onwards distribution of classified information to research institutions and industries once received in the Member states' respective government facility.
189.		<i>Article 31 Monitoring and reporting</i>			
190.	31.1	1. Indicators to monitor implementation and progress of the Fund towards the achievement of the	(40) Pursuant to paragraph 22 and 23 of the Inter-institutional agreement for Better Law-Making of		

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		<p>general and specific objectives set out in Article 3 are set out in Annex.</p>	<p>13 April 2016, there is a need to evaluate this regulation on the basis of information collected through specific monitoring requirements, while avoiding overregulation and administrative burdens, in particular on Member States. These requirements, where appropriate, can include measurable indicators, as a basis for evaluating the effects of the regulation on the ground. The Commission should carry out an interim evaluation no later than four years after the start of the Fund implementation and a final evaluation at the end of the implementation period of the Fund, examining the financial activities in terms of financial implementation results and to the extent possible at that point in time, results and impact. This report should also analyse the cross-border participation of SMEs and mid-caps in projects supported by the Fund as well as the participation of SMEs and mid-caps to the global value chain. The Commission may also propose amendments to this Regulation to react on possible developments during the implementation of the Fund.</p>		
191.	31.2	<p>2. To ensure effective assessment of progress of the Fund towards the achievement of its objectives, the Commission is empowered to adopt delegated acts in</p>	<p>(40) Pursuant to paragraph 22 and 23 of the Inter-institutional agreement for Better Law-Making of 13 April 2016, there is a need to evaluate this regulation on the basis</p>		

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		<p>accordance with Article 36 to amend the Annex to review or complement the indicators where considered necessary and to supplement this Regulation with provisions on the establishment of a monitoring and evaluation framework.</p>	<p>of information collected through specific monitoring requirements, while avoiding overregulation and administrative burdens, in particular on Member States. These requirements, where appropriate, can include measurable indicators, as a basis for evaluating the effects of the regulation on the ground. The Commission should carry out an interim evaluation no later than four years after the start of the Fund implementation and a final evaluation at the end of the implementation period of the Fund, examining the financial activities in terms of financial implementation results and to the extent possible at that point in time, results and impact. This report should also analyse the cross-border participation of SMEs and mid-caps in projects supported by the Fund as well as the participation of SMEs and mid-caps to the global value chain. The Commission may also propose amendments to this Regulation to react on possible developments during the implementation of the Fund.</p>		
192.	31.3	<p>3. The Commission shall regularly monitor the implementation of the Fund and annually report on the progress made. To this end, the Commission shall put in place necessary monitoring arrangements.</p>			

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193.	31.4	4. The performance reporting system shall ensure that data for monitoring the Fund implementation and results are collected efficiently, effectively and in a timely fashion. To that end, proportionate reporting requirements shall be imposed on recipients of Union funds.		'results' means any tangible or intangible effect of the action, such as data, know-how or information, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including intellectual property rights 'recipient' means any legal entity receiving funding under this Fund	
194.		<i>Article 32 Evaluation of the Fund</i>			
195.	32.1	1. Evaluations shall be carried out in a timely manner to feed into the decision-making process.			
196.	32.2	2. The interim evaluation of the Fund shall be performed once there is sufficient information available about the implementation of the Fund, but no later than four years after the start of the Fund implementation. The interim evaluation report will include notably, an assessment of the governance of the Fund, implementation rates, project award results including SMEs and mid-caps involvement and the degree of their cross-border participation, and funding granted in accordance with Article [195] of the Financial Regulation by 31 July 2024. The Commission may submit proposals for any appropriate amendments to the present regulation.	(40) Pursuant to paragraph 22 and 23 of the Inter-institutional agreement for Better Law-Making of 13 April 2016, there is a need to evaluate this regulation on the basis of information collected through specific monitoring requirements, while avoiding overregulation and administrative burdens, in particular on Member States. These requirements, where appropriate, can include measurable indicators, as a basis for evaluating the effects of the regulation on the ground. The Commission should carry out an interim evaluation no later than four years after the start of the Fund implementation and a final evaluation at the end of the implementation period of the Fund, examining the	'results' means any tangible or intangible effect of the action, such as data, know-how or information, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including intellectual property rights 'mid-cap' means an enterprise that is not a micro-, small - and medium size enterprises ('SME'), as defined in Commission recommendation 2003/361/EC and that has a number of employees of up to 3 000 employees, where the staff headcount is calculated in accordance with Articles 3, 4, 5 and 6 of Title I of the Annex to that Recommendation	

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			<p>financial activities in terms of financial implementation results and to the extent possible at that point in time, results and impact. This report should also analyse the cross-border participation of SMEs and mid-caps in projects supported by the Fund as well as the participation of SMEs and mid-caps to the global value chain. The Commission may also propose amendments to this Regulation to react on possible developments during the implementation of the Fund.</p>		
197.	32.3	<p>3. At the end of the implementation period but no later than four years after the 31 December 2031, a final evaluation of the Fund implementation shall be carried out by the Commission. The final evaluation report shall include the results of the implementation and to the extent possible given timing the impact of the Fund. The report - building on relevant consultations of Member States and associated countries and key stakeholders - shall notably assess the progress made towards the achievement of objectives set out in Article 3. It shall also analyse cross border participation, including of SMEs and mid-caps in projects implemented under the Fund as well as the integration of SMEs and Mid-caps in the global value chain. The</p>	<p>(40) Pursuant to paragraph 22 and 23 of the Inter-institutional agreement for Better Law-Making of 13 April 2016, there is a need to evaluate this regulation on the basis of information collected through specific monitoring requirements, while avoiding overregulation and administrative burdens, in particular on Member States. These requirements, where appropriate, can include measurable indicators, as a basis for evaluating the effects of the regulation on the ground. The Commission should carry out an interim evaluation no later than four years after the start of the Fund implementation and a final evaluation at the end of the implementation period of the Fund, examining the financial activities in terms of financial implementation results and</p>	<p>'results' means any tangible or intangible effect of the action, such as data, know-how or information, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including intellectual property rights</p> <p>'mid-cap' means an enterprise that is not a micro-, small - and medium size enterprises ('SME'), as defined in Commission recommendation 2003/361/EC and that has a number of employees of up to 3 000 employees, where the staff headcount is calculated in accordance with Articles 3, 4, 5 and 6 of Title I of the Annex to that Recommendation</p> <p>'recipient' means any legal entity receiving funding under this Fund</p>	

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		evaluation shall also contain information on the countries of origin of the recipients and, where possible, the distribution of the generated intellectual property rights.	to the extent possible at that point in time, results and impact. This report should also analyse the cross-border participation of SMEs and mid-caps in projects supported by the Fund as well as the participation of SMEs and mid-caps to the global value chain. The Commission may also propose amendments to this Regulation to react on possible developments during the implementation of the Fund.		
198.	32.4	4. The Commission shall communicate the conclusions of the evaluations accompanied by its observations, to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.			
199.		<i>Article 33 Audits</i>			
200.		Audits on the use of the Union contribution carried out by persons or entities, including by other than those mandated by the Union Institutions or bodies, shall form the basis of the overall assurance pursuant to Article [127] of the Financial Regulation. The European Court of Auditors shall examine the accounts of all revenue and expenditure of the Union according to Article 287 TFEU.			

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201.		<p style="text-align: center;"><i>Article 34</i> <i>Protection of the financial interests of the Union</i></p>			
202.		<p>Where a third country participates in the Fund by a decision under an international agreement or by virtue of any other legal instrument, the third country shall grant the necessary rights and access required for the authorising officer responsible, the European Anti-Fraud Office (OLAF), the European Court of Auditors to comprehensively exert their respective competences. In the case of OLAF, such rights shall include the right to carry out investigations, including on-the-spot checks and inspections, provided for in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council concerning investigations conducted by the European Anti-Fraud Office (OLAF).</p>	<p>(38) In accordance with the Financial Regulation, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council, Council Regulation (Euratom, EC) No 2988/95, Council Regulation (Euratom, EC) No 2185/96 and Council Regulation (EU) 2017/1939, the financial interests of the Union are to be protected through proportionate measures, including the prevention, detection, correction and investigation of irregularities and fraud, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, the imposition of administrative sanctions. In particular, in accordance with Regulation (EU, Euratom) No 883/2013 and Regulation (Euratom, EC) No 2185/96 the European Anti-Fraud Office (OLAF) may carry out administrative investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. In accordance with Regulation (EU) 2017/1939, the European Public Prosecutor's Office</p>	<p>'third country' means a country that is not a member of the Union</p>	

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			<p>(EPPO) may investigate and prosecute fraud and other criminal offences affecting the financial interests of the Union as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council. In accordance with the Financial Regulation, any person or entity receiving Union funds is to fully cooperate in the protection of the Union's financial interests, to grant the necessary rights and access to the Commission, OLAF, the EPPO and the European Court of Auditors (ECA) and to ensure that any third parties involved in the implementation of Union funds grant equivalent rights.</p> <p>(39) Third countries which are members of the European Economic Area (EEA) may participate in Union programmes in the framework of the cooperation established under the EEA agreement, which provides for the implementation of the programmes by a decision under that agreement. A specific provision should be introduced in this Regulation to grant the necessary rights for and access to the authorising officer responsible, the European Anti-Fraud Office (OLAF) as well as the European Court of Auditors to comprehensively exert their respective competences.</p>		

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203.		<i>Article 35 Information, communication and publicity</i>			
204.	35.1	1. The recipients of Union funding shall acknowledge the origin and ensure the visibility of the Union funding (in particular when promoting the actions and their results) by providing coherent, effective and proportionate targeted information to multiple audiences, including, the media and the public.		'results' means any tangible or intangible effect of the action, such as data, know-how or information, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including intellectual property rights 'recipient' means any legal entity receiving funding under this Fund	
205.	35.2	2. The Commission shall implement information and communication actions relating to the Fund, and its actions and results. Financial resources allocated to the Fund shall also contribute to the corporate communication of the political priorities of the Union, as far as they are related to the objectives referred to in Article 3.		'results' means any tangible or intangible effect of the action, such as data, know-how or information, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including intellectual property rights	
206.		TITLE V DELEGATED ACTS, TRANSITIONAL AND FINAL PROVISIONS			
207.		<i>Article 36 Delegated acts</i>			
208.	36.1	1. The power to adopt delegated acts referred to in Article 31 shall be conferred on the Commission for an indeterminate	(45) In order to be able to supplement or amend the impact pathway indicators, where considered necessary, the power to adopt acts in accordance with Article 290 of the		

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		<p>period of time from the date of entry into force of this Regulation.</p>	<p>Treaty on the Functioning of the European Union should be delegated to the Commission. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.</p>		
209.	36.2	<p>2. The delegation of power referred to in Article 31 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.</p>	<p>(45) In order to be able to supplement or amend the impact pathway indicators, where considered necessary, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional</p>		

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			<p>Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.</p>		
210.	36.3	<p>3. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.</p>	<p>(45) In order to be able to supplement or amend the impact pathway indicators, where considered necessary, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert</p>		

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			groups dealing with the preparation of delegated acts.		
211.	36.4	4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.	(45) In order to be able to supplement or amend the impact pathway indicators, where considered necessary, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.		
212.	36.5	5. A delegated act adopted pursuant to Article 31 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament			

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		and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.			
213.		<i>Article 37 Repeal</i>			
214.		Regulation (EU) No .../.... (European Defence Industrial Development Programme) is repealed with effect from 1 January 2021.			
215.		<i>Article 38 Transitional provisions</i>			
216.	38.1	1. This Regulation shall not affect the continuation or modification of the actions concerned, until their closure, under [European Defence Industrial Development Programme Regulation] as well as the Preparatory Action for Defence Research, which shall continue to apply to the actions concerned until their closure.			
217.	38.2	2. The financial envelope of the Fund may also cover technical and administrative assistance expenses necessary to ensure the transition between the Fund and the measures adopted under its			

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		predecessors, the [European Defence Industrial Development Programme Regulation] as well as the Preparatory Action for Defence Research.			
218.	38.3	3. If necessary, appropriations may be entered in the budget beyond 2027 to cover the expenses provided for in Article 4 paragraph 4, to enable the management of actions not completed by 31 December 2027.			
219.		<i>Article 39 Entry into force</i>			
220.		This Regulation shall enter into force on the third day following that of its publication in the <i>Official Journal of the European Union</i> . It shall be applicable as from 1 st January 2021.			
221.		This Regulation shall be binding in its entirety and directly applicable in all Member States.			
222.		Done at Brussels,			
223.		<i>For the European Parliament</i>			
224.		<i>The President</i>			
225.		<i>For the Council</i>			
226.		<i>The President</i>			