



Council of the European Union  
General Secretariat

**Brussels, 17 September 2018**

**WK 10662/2018 INIT**

**LIMITE**

**POLMIL  
COMPET  
RECH  
CSDP/PSDC  
CODEC  
CADREFIN  
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**WORKING PAPER**

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From:	Presidency
To:	Friends of the Presidency Group on the European Defence Fund (EDF)
N° prev. doc.:	WK 10198 2018 INIT
Subject:	Presidency supporting discussion paper for articles 3, 10, 11 and 17-39

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With a view to the FoP EDF meeting on 17 September, Delegations will find attached a Presidency supporting discussion paper concerning articles 3, 10, 11 and 17-39 of the Commission proposal as compared with the relevant EDIDP-PADR texts.

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**EN**

Row #	Art. & subart. #	TEXT OF ARTICLE OR SUBARTICLE	EDIDP 2018/1092 Participation Rules for PADR	PRESIDENCY PROPOSAL
128		<i>Article 17 Use of single lump sum or contribution not linked to costs</i>	[No EDIDP equivalent, Com proposal refers to HE]	
129	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:		
130	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		
131	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.		
132	17.2	2. Indirect costs shall be included in the lump sum.		
133		<i>Article 18 Pre-commercial procurement</i>		
134	18.1	1. The Union may support pre-commercial procurement		<i>Description will be provided by EC.</i>

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		through awarding a grant to contracting authorities or contracting entities as defined in Directives 2014/24/EU <sup>1</sup> , 2014/25/EU <sup>2</sup> and 2009/81/EC <sup>3</sup> of the European Parliament and of the Council, which are jointly procuring research and development of defence services or coordinating their procurement procedures.		
<b>135</b>	<b>18.2</b>	2. The procurement procedures:		
<b>136</b>	<b>18.2(a)</b>	(a) shall be in line with the provisions of this Regulation;		
<b>137</b>	<b>18.2(b)</b>	(b) may authorise the award of multiple contracts within the same procedure (multiple sourcing);		
<b>138</b>	<b>18.2(c)</b>	(c) shall provide for the award of the contracts to the tender(s) offering best value for money.		
<b>139</b>		<i>Article 19</i>		

<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> 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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		<i>Guarantee Fund</i>		
140		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.		
141		<b>CHAPTER IV OTHER FORMS OF UNION FUNDING</b>		<b>CHAPTER IV OTHER FORMS OF UNION FUNDING</b>
142		<i>Article 20 Eligibility conditions for procurement and prizes</i>		
143		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 be effectively controlled by non-associated		

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		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.		
144		<i>Article 21 Blending operations</i>		Request for Explanation by the commission.
145		Blending operations decided under this Fund shall be implemented in accordance with the [InvestEU regulation] and Title X of the Financial Regulation.		
146		<b>TITLE II SPECIFIC PROVISIONS APPLICABLE FOR RESEARCH</b>		
147		<i>Article 22 Ownership of results</i>	Ownership of results PADR Article 35 ff. (Rules for the participation) EDIDP Art 12	
148	22.1	1. The results of the actions shall be owned by the beneficiaries generating them. Where legal entities jointly generate results, and where their respective contribution cannot be ascertained, or where it is not possible to separate such joint results, the legal entities shall	PADR Art 35 1. Results shall be owned by the participant generating them. 2. Where participants in an action have jointly generated results, and where their respective contribution to the joint results cannot be ascertained, or where it is not possible to separate such joint results for the purpose of applying for, obtaining or maintaining the relevant intellectual property	

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		<p>have joint ownership of the results.</p>	<p>rights protection, they shall have joint ownership of those results. The joint owners shall establish an agreement regarding the allocation and terms of exercise of that joint ownership in accordance with their obligations under the grant agreement. The joint owners may agree not to continue with joint ownership but decide on an alternative regime, inter alia by transferring their ownership shares to a single owner with access rights for the other participants, once the results have been generated.</p> <p>Unless otherwise agreed in the joint ownership agreement, each joint owner shall be entitled to grant non-exclusive licences to third parties to exploit the jointly owned results, without any right to sub-license, subject to the following conditions:</p> <p>(a) prior notice shall be given to the other joint owners;</p> <p>(b) Fair, reasonable and non-discriminatory compensation shall be provided to the other joint owners.</p> <p>3. If employees or any party working for a participant are entitled to claim rights to the results generated, the participant concerned shall ensure that it is possible for those rights to be exercised in a manner compatible with its obligations under the grant agreement. (RP-PADR)</p>	
149	22.2	<p>2. If Union assistance is provided in the form of public procurement, results shall be owned by the Union. Member</p>	<p>PADR Article 44 Procurement</p> <p>1. Any procurement carried out by the Commission on its own behalf or jointly with</p>	<p>2. If Union assistance is provided in the form of public procurement, results shall be owned by the Union. Member</p>

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		States and associated countries shall enjoy access rights to the results, free of charge, upon their explicit request.	Member States shall be subject to the rules on public procurement set out in Regulation (EU, Euratom) No 966/2012 and Regulation (EU) No 1268/2012.	States and associated countries shall enjoy access rights to the results, free of charge, upon their <del>explicit</del> <b>written</b> request.
<b>150</b>	<b>22.3</b>	3. If justified the grant agreement may require that the results of actions receiving support from the Fund shall not be subject to 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.	PADR Article 39 Background Participants shall identify the background for their action in any manner in a written agreement. The written agreement shall set out in detail all existing restrictions on the use or export of this background. The work programme or the grant agreement may lay down specific provisions excluding any background which is subject to export control or restriction by a third country not associated to the Preparatory Action on Defence Research.	3. <del>If justified</del> The grant agreement may require that the results of actions <del>receiving support</del> supported by the Fund shall not be subject to any control or restriction <b>by a non-associated third country or by a non-associated third country entity</b> , directly, or indirectly through one or more intermediate legal entities, including in terms of technology transfer.
<b>151</b>	<b>22.4</b>	4. The grant agreement shall, if justified, lay down the right of the Commission to be notified of and 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.	PADR Article 38  Transfer and licensing of results  1. Where a participant transfers ownership of results, it shall pass on its obligations under the grant agreement regarding those results to the transferee, including the obligation to pass them on in any subsequent transfer.  Without prejudice to confidentiality obligations arising from laws or regulations in the case of mergers and acquisitions, where other participants still enjoy access rights or may still request the granting of access rights	4. The grant agreement shall, <b>if justified</b> , lay down the right of the Commission to be notified of and object to the transfer of ownership regarding results <del>or to the granting of a license</del> to a non-associated third country or a non-associated third country entity. Such transfers shall neither contravene the defence and security interests of the Union and its Member States nor the objectives set out in Article 3.

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			<p>to the results to be transferred, a participant which intends to transfer the results shall give prior notice to the other participants, together with sufficient information concerning the intended new owner of the results, to permit the other participants to analyse the effect of the intended transfer on the possible exercise of their access rights.</p> <p>Following notification, a participant may object to the transfer of ownership if it demonstrates that the intended transfer would adversely affect the exercise of its access rights. In such a case, the transfer may not take place until agreement has been reached between the participants concerned. The grant agreement shall lay down time-limits in this respect.</p> <p>The other participants may by prior written agreement waive their right to prior notice and to object to transfers of ownership from one participant to a specifically identified third party.</p> <p>2. Provided that access rights to the results can be exercised, and that any additional exploitation obligations are complied with by the participant who owns the results, the latter may grant licences or otherwise grant the right to exploit them to any legal entity, including on an exclusive basis. Exclusive licences for results may be granted subject to consent by all the other participants concerned that they will waive their access</p>	

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			<p>rights thereto. Granting of exclusive licenses shall not affect the access rights of the Union, the Member States and the associated countries.</p> <p>3. With regard to results which are generated by participants that have received funding under the Preparatory Action on Defence Research, the grant agreement may provide that the Commission may object to transfers of ownership or to grants of a licence to third parties established in a third country not associated with the Preparatory Action on Defence Research, if it considers that the grant or transfer is not in accordance with the interests of developing the competitiveness of the Union economy, or is inconsistent with ethical principles or security considerations.</p> <p>In such cases, the transfer of ownership or grant of licence shall not take place unless the Commission is satisfied that appropriate safeguards will be put in place.</p> <p>Where appropriate, the grant agreement shall provide that the Commission is to be notified in advance of any such transfer of ownership or grant of a licence. The grant agreement shall lay down time-limits in this respect.</p> <p>Non-compliance with the provisions of this article shall be subject to measures stipulated in Regulation (EU, Euratom) No 966/2012 and</p>	

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			<p>Regulation (EU) No 1268/2012.</p> <p>These provisions do not affect the export of products, equipment nor technologies integrating results, and do not affect the discretion of Member States and associated countries regarding policy on the export of defence related products.</p>	
152	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>		
153	22.6	<p>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,</p>		

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		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.		
154	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.		
155	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 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		

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		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.		
156			EDIDP Art 12 (3). This Regulation shall not affect the discretion of Member States as regards policy on the export of defence-related products.	<b>9.</b> <del>This Regulation</del> <b>The provisions laid down in this Article</b> shall not affect the discretion of Member States as regards policy on the export of defence-related products.
157		<b>TITLE III SPECIFIC PROVISIONS APPLICABLE FOR DEVELOPMENT</b>		
158		<i>Article 23 Additional eligibility criteria</i>		<i>Technical adjustments in line with EDIDP language</i>
159	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	EDIDP Art. 6 3. The consortium as referred to in paragraph 2 shall offer proof of viability by demonstrating that the costs of the action that are not covered by Union support are to be covered by other means of financing, such as by Member States' contributions.	1. Where applicable, the consortium shall demonstrate that the <del>remaining</del> costs of <del>an</del> the eligible action <del>which</del> that are not covered by Union support are to be covered by other means of financing such as Member States' and/or

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		countries' contributions or co-financing from legal entities.		associated countries' contributions or co-financing from legal entities.
<b>160</b>	<b>23.2</b>	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.	EDIDP Art 6 (5). Actions as referred to in point (b) of paragraph 1 shall be based on common requirements jointly agreed by at least two Member States. Actions as referred to in points (c) to (g) of paragraph 1 shall be based on common technical specifications jointly agreed by the Member States that are to co-finance or that intend to jointly procure the final product or to jointly use the technology, as referred to in paragraphs 3 and 4, thereby strengthening the standardisation and interoperability of systems.	2. <del>When it relates to</del> Actions as referred to in point (d) of Article 11 paragraph 3 <del>the action</del> shall be based on harmonised capability requirements jointly agreed by the relevant Member States and/or associated countries.
<b>161</b>	<b>23.3</b>	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:	EDIDP Art 6 (4).With regard to actions referred to in points (c) to (g) of paragraph 1, the consortium shall provide proof of their contribution to the competitiveness of the European defence industry by demonstrating that	3. <b>With regard to</b> <del>for</del> 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:
<b>162</b>	<b>23.3(a)</b>	(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;	at least two Member States intend to procure the final product or to use the technology in a coordinated way, including through joint procurement where applicable.	(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 <b>through</b> joint procurement <b>where applicable</b> ;
<b>163</b>	<b>23.3(b)</b>	(b) the action is based on common technical specifications jointly agreed by the Member	(see ROW 160) [5. Actions as referred to in point (b) of paragraph 1 shall be based on common requirements jointly agreed by at	(b) the action is based on common technical specifications jointly agreed

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		States and/or associated countries which co-finance the action.	least two Member States. Actions as referred to in points (c) to (g) of paragraph 1 shall be based on common technical specifications jointly agreed by the Member States that are to co-finance or that intend to jointly procure the final product or to jointly use the technology, as referred to in paragraphs 3 and 4, thereby strengthening the standardisation and interoperability of systems.	by the Member States and/or <b>associated countries</b> which <del>that are to co-finance the action</del> or that intend to <b>jointly procure the final product or to jointly use the technology.</b>
<b>164</b>		<i>Article 24 Additional award criteria</i>		
<b>165</b>		In addition to the award criteria referred to in Article 13, the work programme may also take into consideration:		
<b>166</b>	<b>24(a)</b>	(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;	(Art 10 EDIDP) Where relevant, 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, shall be taken into consideration in relation to the application of the criteria referred to in points (a), (b) and (c) of the first paragraph.	
<b>167</b>	<b>24(b)</b>	(b) the level of cooperation between Member States in the eligible action.		
<b>168</b>		<i>Article 25 Ownership of results</i>	<i>Article 12 EDIDP <b>Ownership and intellectual property rights</b></i>	
<b>169</b>	<b>25.1</b>	1. The Union shall not own the products or technologies	1. The Union shall not own the products or technologies resulting from the action nor	

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		resulting from development actions, nor shall it have any intellectual property rights regarding the results of the actions.	shall it have any intellectual property rights claim pertaining to the action.	
170	25.2	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.	2. The results of actions which receive funding under the Programme shall not be subject to control or restriction by a third country or by a third-country entity, directly, or indirectly through one or more intermediate undertakings, including in terms of technology transfer.  (Art. 12 EDIDP) 3. This Regulation shall not affect the discretion of Member States as regards policy on the export of defence-related products.	2. The results of actions <del>receiving support</del> <b>supported by from</b> the Fund shall not be subject to control or restriction by <b>non-associated third countries</b> or by <b>non-associated third country entities</b> , directly, or indirectly through one or more intermediate legal entities, including in terms of technology transfer.  <b>2a. This Regulation shall not affect the discretion of Member States as regards policy on the export of defence-related products.</b>
171	25.3	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	EDIDP Art 12 (4).With regard to the results generated by beneficiaries that have received funding under the Programme and without prejudice to paragraph 3 of this Article, the Commission shall be notified of any transfer of ownership to a third country or to a third-country entity. If such transfer of ownership contravenes the objectives set out in Article 3, the funding provided under the Programme shall be reimbursed.	3. With regard to the results generated by <del>recipients</del> <b>beneficiaries through actions supported by the Fund and without prejudice to paragraph 3 of this Article, the Commission shall be notified of any transfer of ownership to a non-associated third country or to a non-associated third country entity. If such transfer of ownership contravenes the</b>

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		3, otherwise it will necessitate reimbursement of the funding provided under the Fund.		<i>defence and security interests of the Union and its Member States or the objectives set out in Article 3, the funding provided under the Fund shall be reimbursed.</i>
172	25.4	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-exclusive licence for the use of the results upon their written request.	5. If Union assistance is provided in the form of public procurement of a study, all Member States shall have the right, free of charge, to a non-exclusive licence for the use of the study upon their written request.	
173		<i>Article 26 Information of the project manager</i>		
174		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.	(Art 5 EDIDP) 4. Member States shall, where appropriate, appoint a project manager. The Commission shall consult the project manager on the progress achieved in connection with the action before executing the payment to the eligible beneficiaries.	In case a project manager is appointed by Member States and associated countries, the Commission shall execute the payment to the recipients after <del>informing</del> <b>consulting</b> the project manager
175		<b>TITLE IV GOVERNANCE, MONITORING, EVALUATION AND CONTROL</b>		
176		<i>Article 27</i>	<i>Article 14</i>	

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		<i>Work programmes</i>	<b>Work programme</b>	
177	27.1	<p>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.</p>	<p>1. The Commission, by means of an implementing act, shall adopt a two-year work programme. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 13(2). The work programme shall be consistent with the objectives set out in Article 3.</p>	<p><i>Proposal for recital 31:</i> <b>Proposal for recital:</b> (31) The Commission should establish annual or multiannual work programmes in line with the objectives of the Fund. The Commission should be assisted in the establishment of the work programme by a committee of Member States ('committee'). The Commission should endeavour to find solutions which command the widest possible support within the committee. In that context, the committee may meet in the format of national defence experts to provide specific assistance to the Commission. It is for the Member States to designate their respective representatives on that committee. Committee members should be given early and effective opportunities to examine the draft implementing acts and express their views.</p> <p>(31a) In order to benefit from its expertise in the defence sector, the European</p>

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				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.
178	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.		
179		<i>Article 28 Committee</i>	<i>Article 13 Committee procedure</i>	
180	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.	1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011. The European Defence Agency shall be invited to provide its views and expertise to the committee as an observer. The European External Action Service will also be invited to assist. The committee shall also meet in special configurations, including in order to discuss defence aspects.	
181	28.2	2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.	2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No	2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. <b>Where the committee delivers no opinion, the Commission shall not adopt the draft</b>

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			182/2011 shall apply.	<b>implementing act and the third sub-paragraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.</b>
<b>182</b>		<i>Article 29 Independent experts</i>	<i>Article 15 Evaluation and award procedure</i>	
<b>183</b>	<b>29.1</b>	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 the implementation of actions carried out.	2. [...] The Commission shall be assisted, in the context of the award procedure, by independent experts, whose security credentials shall be validated by Member States. Those experts shall be Union nationals from as broad a range of Member States as possible and shall be selected on the basis of calls for applications with a view to establishing a database of candidates.  The committee referred to in Article 13 shall be informed on an annual basis of the list of experts in the database, to be transparent as to the credentials of the experts. The Commission shall also ensure that experts do not evaluate, advise or assist on matters with regard to which they have a conflict of interests.	More information by EC needed.
<b>184</b>	<b>29.2</b>	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	Art 15 (2) EDIDP [...] Those experts shall be Union nationals from as broad a range of Member States as possible and shall be selected on the basis of calls for applications with a view to establishing a database of candidates.[...]	

Row #	Art. & subart. #	TEXT OF ARTICLE OR SUBARTICLE	EDIDP 2018/1092 Participation Rules for PADR	PRESIDENCY PROPOSAL
		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.		
185	29.3	3. Independent experts shall have the appropriate security clearance issued by a Member State.	<p>EDIDP Art 15 (2) [...], whose security credentials shall be validated by Member States.[...]</p> <p>PADR Art 34</p> <p>2. Independent experts shall be chosen on the basis of their skills, experience and knowledge appropriate to carry out the tasks assigned to them. The appropriate security clearance shall be required before appointment.</p> <p>Experts competent in defence research or related areas shall be identified and selected on the basis of calls for applications. A database of candidates shall be established. All candidates included in the database shall be required to be validated by the Member State that has issued their security clearance.</p> <p>The Commission or the relevant funding body may exceptionally, if deemed appropriate and in duly justified cases, select in a transparent manner any individual expert with the appropriate skills not included in the database.</p> <p>When appointing independent experts, the</p>	3. Independent experts shall have the appropriate security clearance issued by a Member State, <b>and their security credentials shall be validated by the Member State that has issued their security clearance.</b>

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			<p>Commission or the relevant funding body shall take appropriate measures to seek a balanced composition within the expert groups and evaluation panels in terms of various skills, experience, knowledge, geographical diversity and gender, and taking into account the situation in the field of the action.</p> <p>The Commission or the relevant funding body may call upon the advice of advisory bodies for the appointment of independent experts.</p>	
186	29.4	4. The committee referred to in Article 28 shall be informed annually on the list of experts.	<p>Art 15 (2) EDIDP [...] The committee referred to in Article 13 shall be informed on an annual basis of the list of experts in the database, to be transparent as to the credentials of the experts. The Commission shall also ensure that experts do not evaluate, advise or assist on matters with regard to which they have a conflict of interests.</p> <p>PADR Art 34</p> <p>3. The Commission or the relevant funding body shall ensure that an expert faced with a conflict of interest in relation to a matter on which the expert is required to provide an opinion does not evaluate, advise or assist on the specific matter in question.</p>	4. The committee referred to in Article 28 shall be informed annually on the list of experts, <b>to be transparent as to the credentials of the experts. The Commission shall also ensure that experts do not evaluate, advise or assist on matters with regard to which they have a conflict of interests.</b>
187	29.5	5. Independent experts shall be chosen on the basis of their skills, experience and knowledge appropriate to carry		

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		out the tasks assigned to them.		
188		<i>Article 30 Application of the rules on classified information</i>		
189	30.1	1. Within the scope of this Regulation:		
190	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 <sup>4</sup> and by the security rules of the Council set out in the Annexes to Decision 2013/488/EU <sup>5</sup> ;		
191	30.1(b)	(b) Member States and associated countries shall without delay inform the Commission of the national security regulations referred to in point (a);		
192	30.1(c)	(c) natural persons resident in and legal persons		

<sup>4</sup> OJ L 72, 17.3.2015, p. 53–88.

<sup>5</sup> OJ L 274, 15.10.2013, p. 1–50.

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		<p>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;</p>		
193	30.1(d)	<p>(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</p>		

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		person or legal 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.		
194	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.		
195	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.		<i>Clarification by the EC needed.</i>
196		<i>Article 31 Monitoring and reporting</i>	<i>Article 17 Monitoring and reporting</i>	
197	31.1	1. Indicators to monitor implementation and progress of the Fund towards the achievement of the general and	1. The Commission shall regularly monitor the implementation of the Programme and shall report annually on the progress made in accordance with point (e) of Article 38(3) of	<i>Proposal for recital 40 (new text in bold):</i>

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		specific objectives set out in Article 3 are set out in Annex.	Regulation (EU, Euratom) No 966/2012. To that end, the Commission shall put in place the necessary monitoring arrangements.	(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 to the extent possible at that point in time, results and impact. <b>In that context, the report should also help identify where the Union is dependent on third countries for the development of defence products and technologies.</b>

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				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	31.2	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 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.	2. To support the greater efficiency and effectiveness of future Union policy actions, the Commission shall draw up a retrospective evaluation report and shall submit it to the European Parliament and to the Council. The report shall build on relevant consultations of Member States and key stakeholders and shall, in particular, assess the progress made towards the achievement of the objectives set out in Article 3. It shall also analyse cross-border participation, including of SMEs and mid-caps, in actions carried out under the Programme as well as the integration of SMEs and mid-caps in the global value chain. The report shall also contain information on the countries of origin of the beneficiaries and, where possible, the distribution of the generated intellectual property rights.	
199	31.3	3. The Commission shall regularly monitor the implementation of the Fund and annually report on the progress made. To this end, the		

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		Commission shall put in place necessary monitoring arrangements.		
200	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.		
201		<i>Article 32 Evaluation of the Fund</i>		
202	32.1	1. Evaluations shall be carried out in a timely manner to feed into the decision-making process.		
203	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		

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		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.		
204	32.3	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 evaluation shall also contain information on the countries of origin of the	EDIDP Recital 20 (20) The promotion of innovation and technological development in the Union defence industry should enable the skills and know-how in the Union's defence industry to be maintained and developed and should contribute to strengthening its technological and industrial autonomy. In that context, the Programme could also help identify where the Union is dependent on third countries for the development of defence products and technologies. Such promotion of innovation and technological development should also take place in a manner consistent with the security and defence interests of the Union. Accordingly, an action's contribution to those interests and to the 7.8.2018 L 200/32 Official Journal of the European Union EN defence capability priorities agreed by Member States within the framework of the Common Foreign and Security Policy should serve as an award criterion. Within the Union, common defence capability priorities are identified in particular through the Capability Development Plan. Other Union processes such as the Coordinated	3. At the end of the implementation period but no later than four years after 31 December <del>2031</del> 2027, a final evaluation of the implementation of the Fund shall be carried out by the Commission. The final evaluation report shall include the results of the implementation and, to the extent possible given the timing, the impact of the Fund. The report, building on relevant consultations with Member States and, associated countries and key stakeholders, shall notably assess the progress made towards the achievement of objectives set out in Article 3. <b>In that context, it shall also help identify where the Union is dependent on third countries for the development of defence products and technologies.</b> It

Row #	Art. & subart. #	TEXT OF ARTICLE OR SUBARTICLE	EDIDP 2018/1092 Participation Rules for PADR	PRESIDENCY PROPOSAL
		recipients and, where possible, the distribution of the generated intellectual property rights.	Annual Review on Defence and the Permanent Structured Cooperation support the implementation of relevant priorities through enhanced cooperation. Where appropriate, regional and international priorities, including those in the NATO context, may also be taken into account, on condition that they serve the Union's security and defence interests and do not prevent any Member State from participating, while also taking account of the need to avoid unnecessary duplication.	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 evaluation shall also contain information on the countries of origin of the recipients and, where possible, the distribution of the generated intellectual property rights.
205	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.		
206		<i>Article 33 Audits</i>		
207		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		

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		accounts of all revenue and expenditure of the Union according to Article 287 TFEU.		
208		<i>Article 34 Protection of the financial interests of the Union</i>	<i>Article 18 Protection of the financial interests of the Union</i>	
209		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>1. The Commission shall take appropriate measures to ensure that, when actions financed under this Regulation are implemented, the financial interests of the Union are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the recovery of the amounts wrongly paid and, where appropriate, by effective, proportionate and dissuasive administrative and financial penalties.</p> <p>2. The Commission or its representatives and the Court of Auditors shall have the power of audit or, in the case of international organisations, the power of verification in accordance with agreements reached with them, on the basis of documents and on the spot, over all grant beneficiaries, contractors and subcontractors who have received Union funds under the Programme.</p> <p>3. The European Anti-Fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council (1) and Council Regulation (Euratom, EC) No</p>	

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			<p>2185/96 <sup>(2)</sup>, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement or grant decision or a contract funded under the Programme.</p> <p>4. Without prejudice to paragraphs 1, 2 and 3, cooperation agreements with third countries and with international organisations, contracts, grant agreements and grant decisions, resulting from the implementation of this Regulation shall contain provisions expressly empowering the Commission, the Court of Auditors and OLAF to conduct such audits and investigations, in accordance with their respective competences.</p>	
210		<p><i>Article 35</i> <i>Information, communication and publicity</i></p>		
211	35.1	<p>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.</p>		
212	35.2	<p>2. The Commission shall implement information and communication actions relating</p>		

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		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.		
213		<b>TITLE V DELEGATED ACTS, TRANSITIONAL AND FINAL PROVISIONS</b>		
214		<i>Article 36 Delegated acts</i>		
215	36.1	1. The power to adopt delegated acts referred to in Article 31 shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.		
216	36.2	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		

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		validity of any delegated acts already in force.		
217	36.3	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.		
218	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.		
219	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 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.		
220		<i>Article 37</i>		

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		<i>Repeal</i>		
221		Regulation (EU) No .../.... (European Defence Industrial Development Programme) is repealed with effect from 1 January 2021.		
222		<i>Article 38 Transitional provisions</i>		
223	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.		
224	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 predecessors, the [European Defence Industrial Development Programme Regulation] as well as the Preparatory Action for Defence Research.		
225	38.3	3. If necessary, appropriations may be entered in		

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		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.		
226		<i>Article 39 Entry into force</i>		
227		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 <sup>st</sup> January 2021.		
228		This Regulation shall be binding in its entirety and directly applicable in all Member States.		
229		Done at Brussels,		
230		<i>For the European Parliament</i>		
231		<i>The President</i>		
232		<i>For the Council</i>		
233		<i>The President</i>		
234				
235				
31.		<i>Article 3 Objectives of the Fund</i>	<i>Article 3 EDIDP Objectives of the Fund</i>	
32.	3.1	1. The general objective of the Fund is to foster the competitiveness, efficiency and	The Programme shall have the following objectives: (a) to foster the competitiveness, efficiency and innovation capacity of the	

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		<p>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.</p>	<p>defence industry throughout the Union, which contributes to the Union's strategic autonomy, by supporting actions in their development phase; (b) to support and leverage cooperation, including across borders, between undertakings, including SMEs and mid-caps, throughout the Union, and collaboration between Member States, in the development of defence products or technologies, while strengthening and improving the agility of defence supply and value chains, and fostering the standardisation of defence systems and their interoperability. Such cooperation shall take place in line with defence capability priorities agreed by Member States within the framework of the Common Foreign and Security Policy and particularly in the context of the Capability Development Plan. In that context, regional and international priorities, when they serve the Union's security and defence interests as determined under the Common Foreign and Security Policy, and taking into account the need to avoid unnecessary duplication, may also be taken into account, where appropriate, wherever they do not exclude the possibility of participation of any Member State; (c) to foster better exploitation of the results of defence research and contribute to development after the research phase, thereby supporting the competitiveness of the European defence industry on the internal market and the global marketplace, including by consolidation, where appropriate.</p>	
33.	3.2	<p>2. The Fund shall have the following specific objectives:</p>		

Row #	Art. & subart. #	TEXT OF ARTICLE OR SUBARTICLE	EDIDP 2018/1092 Participation Rules for PADR	PRESIDENCY PROPOSAL
34.	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;		
35.	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 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.		(b) support collaborative development projects of defence products and technologies consistent with defence capability <i>and technology</i> priorities commonly agreed by Member States within the framework of the Common Foreign and Security Policy <i>and particularly in the context of the Capability Development Plan (CDP)</i> , thus contributing to greater 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.

Row #	Art. & subart. #	TEXT OF ARTICLE OR SUBARTICLE	EDIDP 2018/1092 Participation Rules for PADR	PRESIDENCY PROPOSAL
67.		Article 10 Eligible entities	Art 7 EDIDP Eligible Entities	Article 10 Eligible entities
68.	10.1	1. Beneficiaries and subcontractors involved in the action shall be public or private undertakings established in the Union.	1. Beneficiaries and subcontractors involved in the action shall be public or private undertakings established in the Union.	1. Beneficiaries and subcontractors involved in the action shall be <b>legal entities</b> established in the Union <b>or in an associated country</b> .
69.	10.2	2. The infrastructure, facilities, assets and resources of the beneficiaries and subcontractors involved in the action which are used for the purposes of the actions funded under the Programme shall be located on the territory of the Union for the entire duration of the action, and their executive management structures shall be established in the Union.	2. The infrastructure, facilities, assets and resources of the beneficiaries and subcontractors involved in the action which are used for the purposes of the actions funded under the Programme shall be located on the territory of the Union for the entire duration of the action, and their executive management structures shall be established in the Union.	2. The infrastructure, facilities, assets and resources of the beneficiaries and subcontractors involved in the action which are used for the purposes of the actions supported by the Fund shall be located on the territory of <b>a Member State or of an associated country</b> for the entire duration of the action, and their executive management structures shall be established in the Union <b>or in an associated country</b> .
70.	10.2(a)	3. For the purposes of the actions funded under the Programme, the beneficiaries and subcontractors involved in the action shall not be subject to control by a third country or by a third-country entity.	3. For the purposes of the actions funded under the Programme, the beneficiaries and subcontractors involved in the action shall not be subject to control by a third country or by a third-country entity.	3. For the purposes of the actions <b>supported by the Fund</b> , the beneficiaries and subcontractors involved in the action shall not be subject to control by a <b>non-associated third country</b> or by a <b>non-associated third country</b> entity.
71.	10.2(b)	4. By derogation from paragraph 3 of this Article, and subject to Article 15(2), an undertaking established in the Union and controlled by a third country or by a third-country entity shall be eligible as a beneficiary or subcontractor involved in the	4. By derogation from paragraph 3 of this Article, and subject to Article 15(2), an undertaking established in the Union and controlled by a third country or by a third-country entity shall be eligible as a beneficiary or subcontractor involved in the action only if guarantees approved by the Member State in which it is established in accordance with its	4. By derogation from paragraph 3 of this Article, <del>and subject to Article 15(2)</del> , a legal entity established in the Union <b>or in an associated country</b> and controlled by a <b>non-associated third country</b> or a <b>non-associated third country</b> entity shall be eligible as a

Row #	Art. & subart. #	TEXT OF ARTICLE OR SUBARTICLE	EDIDP 2018/1092 Participation Rules for PADR	PRESIDENCY PROPOSAL
		<p>action only if guarantees approved by the Member State in which it is established in accordance with its national procedures are made available to the Commission. Those guarantees may refer to the undertaking's executive management structure established in the Union. If deemed to be appropriate by the Member State in which the undertaking is established, those guarantees may also refer to specific governmental rights in the control over the undertaking.</p> <p>The guarantees shall provide the assurances that the involvement in an action of such an undertaking would not contravene the security and defence interests of the Union and its Member States as established in the framework of the Common Foreign and Security Policy pursuant to Title V of the TEU, or the objectives set out in Article 3. The guarantees shall also comply with the provisions of Article 12. The guarantees shall in particular substantiate that, for the purpose of the action, measures are in place to ensure that:</p>	<p>national procedures are made available to the Commission. Those guarantees may refer to the undertaking's executive management structure established in the Union. If deemed to be appropriate by the Member State in which the undertaking is established, those guarantees may also refer to specific governmental rights in the control over the undertaking.</p> <p>The guarantees shall provide the assurances that the involvement in an action of such an undertaking would not contravene the security and defence interests of the Union and its Member States as established in the framework of the Common Foreign and Security Policy pursuant to Title V of the TEU, or the objectives set out in Article 3. The guarantees shall also comply with the provisions of Article 12. The guarantees shall in particular substantiate that, for the purpose of the action, measures are in place to ensure that:</p>	<p>beneficiary or subcontractor involved in the action only if guarantees approved [where appropriate] by the Member State or the associated country in which it is established, in accordance with its national procedures, are made available to the Commission. Those guarantees may refer to the legal entity's executive management structure established in the Union or in an associated country. If deemed to be appropriate by the Member State or associated country in which the legal entity is established, those guarantees may also refer to specific governmental rights in the control over the legal entity.</p> <p>The guarantees shall provide the assurances that the involvement in an action of such a legal entity would not contravene the security and defence interests of the Union and its Member States as established in the framework of the Common Foreign and Security Policy pursuant to Title V of the TEU, or the objectives set out in Article 3. The guarantees shall also comply with the provisions of Articles 22 and 25. The guarantees shall in particular substantiate that, for the purpose of the action, measures are in place to ensure that:</p>

Row #	Art. & subart. #	TEXT OF ARTICLE OR SUBARTICLE	EDIDP 2018/1092 Participation Rules for PADR	PRESIDENCY PROPOSAL
72.	10.2(c)	(a) control over the undertaking is not exercised in a manner that restrains or restricts its ability to carry out the action and to deliver results, that imposes restrictions concerning its infrastructure, facilities, assets, resources, intellectual property or know-how needed for the purpose of the action, or that undermines its capabilities and standards necessary to carry out the action;	(a) control over the undertaking is not exercised in a manner that restrains or restricts its ability to carry out the action and to deliver results, that imposes restrictions concerning its infrastructure, facilities, assets, resources, intellectual property or know-how needed for the purpose of the action, or that undermines its capabilities and standards necessary to carry out the action;	(a) control over the legal entity is not exercised in a manner that restrains or restricts its ability to carry out the action and to deliver results, that imposes restrictions concerning its infrastructure, facilities, assets, resources, intellectual property or know-how needed for the purpose of the action, or that undermines its capabilities and standards necessary to carry out the action;
73.	10.3	(b) access by a third country or by a third-country entity to sensitive information relating to the action is prevented and the employees or other persons involved in the action have national security clearances, where appropriate;	(b) access by a third country or by a third-country entity to sensitive information relating to the action is prevented and the employees or other persons involved in the action have national security clearances, where appropriate;	(b) access by a non-associated third country or by a non-associated third country entity to sensitive information relating to the action is prevented and the employees or other persons involved in the action have a national security clearances issued by a Member State or an associated country, where appropriate;
74.	10.4	(c) ownership of the intellectual property arising from, and the results of, the action remain within the beneficiary during and after completion of the action, are not subject to control or restriction by a third country or by a third-country entity, and are not exported outside the Union nor is access to them from outside the Union granted without the approval of the	(c) ownership of the intellectual property arising from, and the results of, the action remain within the beneficiary during and after completion of the action, are not subject to control or restriction by a third country or by a third-country entity, and are not exported outside the Union nor is access to them from outside the Union granted without the approval of the Member State in which the undertaking is established and in accordance with the objectives set out in Article 3.	(c) ownership of the intellectual property arising from, and the results of, the action remain within the beneficiary during and after completion of the action, are not subject to control or restriction by a non-associated third country or by a non-associated third country entity, and are not exported outside the Union or outside associated countries, nor is access to them from outside the Union or

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		Member State in which the undertaking is established and in accordance with the objectives set out in Article 3.		outside associated countries granted without the approval of the Member State or the associated country in which the legal entity is established and in accordance with the objectives set out in Article 3.
75.	10.5	If deemed to be appropriate by the Member State in which the undertaking is established, additional guarantees may be provided.	If deemed to be appropriate by the Member State in which the undertaking is established, additional guarantees may be provided.	If deemed to be appropriate by the Member State or the associated country in which the legal entity is established, additional guarantees may be provided.
76.	10.6	The Commission shall inform the committee referred to in Article 13 of any undertaking deemed to be eligible in accordance with this paragraph.	The Commission shall inform the committee referred to in Article 13 of any undertaking deemed to be eligible in accordance with this paragraph.	The Commission shall inform the committee referred to in Article 28 of any legal entity deemed to be eligible in accordance with this paragraph.
77.	10.7	5. Where no competitive substitutes are readily available in the Union, beneficiaries and subcontractors involved in the action may use their assets, infrastructure, facilities and resources located or held outside the territory of Member States provided that that usage does not contravene the security and defence interests of the Union and its Member States, is consistent with the objectives of the Programme and is fully in line with Article 12.	5. Where no competitive substitutes are readily available in the Union, beneficiaries and subcontractors involved in the action may use their assets, infrastructure, facilities and resources located or held outside the territory of Member States provided that that usage does not contravene the security and defence interests of the Union and its Member States, is consistent with the objectives of the Programme and is fully in line with Article 12.	5. Where no competitive substitutes are readily available in the Union or in an associated country, beneficiaries and subcontractors involved in the action may use their assets, infrastructure, facilities and resources located or held outside the territory of the Union's Member States or associated countries provided that that usage does not contravene the security and defence interests of the Union and its Member States, is consistent with the objectives set out in Article 3 and is fully in line with Article 28.
78.	10.8	The costs related to those activities shall not be eligible for	The costs related to those activities shall not be eligible for funding under the Programme.	The costs related to those activities shall not be eligible for

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		funding under the Programme.		support by the Fund.
79.	10.9	6. When carrying out an eligible action, beneficiaries and subcontractors involved in the action may also cooperate with undertakings established outside the territory of Member States or controlled by a third country or by a third-country entity, including by using the assets, infrastructure, facilities and resources of such undertakings, provided that this does not contravene the security and defence interests of the Union and its Member States. Such cooperation shall be consistent with the objectives set out in Article 3 and shall be fully in line with Article 12.	6. When carrying out an eligible action, beneficiaries and subcontractors involved in the action may also cooperate with undertakings established outside the territory of Member States or controlled by a third country or by a third-country entity, including by using the assets, infrastructure, facilities and resources of such undertakings, provided that this does not contravene the security and defence interests of the Union and its Member States. Such cooperation shall be consistent with the objectives set out in Article 3 and shall be fully in line with Article 12.	6. When carrying out an eligible action, beneficiaries and subcontractors involved in the action may also cooperate with legal entities established outside the territory of the Member States or of associated countries, or controlled by a non-associated third country or by a non-associated third country entity, including by using the assets, infrastructure, facilities and resources of such legal entities, provided that this does not contravene the security and defence interests of the Union and its Member States. Such cooperation shall be consistent with the objectives set out in Article 3 and shall be fully in line with Article 28.
80.		<i>Article 11 Eligible actions</i>	<i>Article 6 EDIDP Eligible actions</i>	
81.	11.1	1. Only actions implementing the objectives referred to in Article 3 shall be eligible for funding.		
82.	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	1. The Programme shall provide support for actions by beneficiaries in the development phase covering both new defence products and technologies and the upgrade of existing products and technologies provided that the use of pre-existing information needed to carry out the action for the upgrade is not subject to a restriction by a	2. The Fund shall provide support for actions covering both new defence products and technologies and the upgrade of existing products and technologies provided that the use of pre-existing information needed to

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		restriction by non-associated third countries or non-associated third country entities.	third country or by a third-country entity, directly, or indirectly through one or more intermediary undertakings.	<p>carry out the action for the upgrade is not subject to a restriction by a non-associated third country or a non-associated third country entity, directly, or indirectly through one or more intermediary legal entities.</p> <p><i>Recital (6) could also be adapted in line with the final EDIDP text (new text in bold):</i></p> <p>(6) The Fund could support actions pertaining to both new and the upgrade of existing products and technologies. <b>Actions for the upgrade of existing defence products and technologies should be eligible only where pre-existing information needed to carry out the action is not subject to any restriction by non-associated third countries or non-associated third country entities in a way that limits the ability to carry out the action.</b> 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, Union</p>

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				funding should not be possible.
83.	11.3	3. An eligible action shall relate to one or more of the following items:	An eligible action shall relate to one or more of the following:	
84.	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;		
85.	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;		
86.	11.3(c)	(c) studies, such as feasibility studies to explore the feasibility of a new or improved technology, product, process, service, solution or statistics on the defence industry and projects to pilot the collection of data;	(a) studies, such as feasibility studies, and other accompanying measures	<i>New wording provided by EC.</i>
87.	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	(b) the design of a defence product, tangible or intangible component or technology as well as the technical specifications on which such design has been developed, including partial tests for risk reduction in an industrial or representative environment;	

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		for risk reduction in an industrial or representative environment;		
88.	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);	(c) the system prototyping of a defence product, tangible or intangible component or technology;	
89.	11.3(f)	(f) the testing of a defence product, tangible or intangible component or technology;	(d) the testing of a defence product, tangible or intangible component or technology;	
90.	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;	(e) the qualification of a defence product, tangible or intangible component or technology;	(g) the qualification of a defence product, tangible or intangible component or technology;
91.	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	(f) the certification of a defence product, tangible or intangible component or technology;	(h) the certification of a defence product, tangible or intangible component or technology;

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		technology complies with the applicable regulations;		
92.	11.3(i)	(i) the development of technologies or assets increasing efficiency across the life cycle of defence products and technologies;	(g) the development of technologies or assets increasing efficiency across the life cycle of defence products and technologies.	
93.	11.3(j)	(j) dissemination activities, networking events and awareness-raising activities.		Clarification provided by EC.
94.	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.		
95.	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.		
96.	11.6	6. Actions for the development of products and technologies the		<i>Recital (7) could be adapted in line with final EDIDP text:</i>

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		use, development or production of which is prohibited by applicable international law shall not be eligible.		(7) In order to ensure that, in the implementation of this Regulation, the international obligations of the Union and its Member States are respected, actions relating to products or technologies of which the use, development or production are prohibited by international law should not be eligible for funding under the Fund. In that respect, the eligibility of actions for the development of 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.