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WORKING PAPER

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CONTRIBUTION

From:	French Delegation
To:	Friends of the Presidency Group on the European Defence Fund (EDF)
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Subject:	FR comments on the Presidency Input Paper

Delegations will find attached additional comments by France on the Presidency Input Paper.

CONTRIBUTIONS ECRITES DE LA FRANCE

Pour rappel, toutes les dispositions relatives à la participation d'États tiers, y compris celles qui impliquent la création d'un statut d'État associé (quel qu'il soit), seront discutées ultérieurement.

En conséquence toutes les mentions de « *associated country* » ou « *non associated third country* » sont surlignées en jaune.

Les critères de sélection devraient mieux refléter les objectifs de l'article 3 et correspondre à l'objectif d'autonomie stratégique de l'Union européenne.

Award criteria shall be consistent with the objectives set up in article 3 and take into account strategic autonomy of the European Union.

	<i>Article 13 Award criteria</i>
13.1	<p>1. Each proposal shall be assessed on the basis of the following criteria:</p> <p>(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 or already funded defence products or technologies within the European Union;</p> <p>(b) contribution to the innovation and technological development of the European defence industry, in particular :</p> <ul style="list-style-type: none"> – by showing that the proposed action does not duplicate existing capabilities or already funded research or development projects within the European union; – by demonstrating that it 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; <p>(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;</p> <p>(d) contribution to the security and defence interests of the Union in line with the defence capability priorities commonly agreed by Member States within the framework of the Common Foreign and Security Policy referred to in Article 3 paragraph 2 and, where appropriate, regional and international cooperative agreements;</p> <p>(e) contribution to the strategic autonomy of the European Union and its Member States, in particular by reducing dependency on non-EU sources and by strengthening the security of supply;</p> <p>(ef) contribution to the creation of new cross-border cooperation between legal entities;</p> <p>(g) the proportion of the overall budget of the action to be allocated to the participation of competitive SMEs established in the Union bringing industrial or technological added value, 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;</p> <p>(fh) quality and efficiency of the implementation of the action.</p>
13.2	<p>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.</p>

Pour être attractif pour les industriels, et pour une utilisation optimale du Fonds européen de défense, il doit permettre la prise en charge des coûts indirects au plus juste.

To remain attractive for industrials, and to enhance the efficiency of European funding, indirect eligible costs shall be determined in accordance with cost accounting practices where possible.

<i>Article 16 Indirect costs</i>	
16.1	1. Indirect eligible costs shall be determined by applying a flat rate of 25 % of the total direct eligible costs, excluding including direct eligible costs for subcontracting, but excluding financial support to third parties and any unit costs or lump sums which include indirect costs.
16.2	2. Where appropriate As an alternative , 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 certified by national authorities under comparable funding schemes in accordance with Article [185] of the Financial Regulation and communicated to the Commission.

Les critères d'évaluation du Fonds devraient mieux refléter les objectifs de l'article 3 et correspondre à l'objectif d'autonomie stratégique de l'Union européenne.

Evaluation criteria shall be consistent with the objectives set up in article 3 and take into account strategic autonomy of the European Union.

<i>Article 32 Evaluation of the Fund</i>	
32.2	<p>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.</p> <p>The interim evaluation report will include notably, an assessment of the governance of the Fund, implementation rates, project award results including :</p> <ul style="list-style-type: none"> - SMEs and mid-caps involvement and their integration in the global value chain; - and the degree of their cross-border participation of legal entities; - contribution to the European Union strategic autonomy, in particular in technological and industrial terms, notably by demonstrating the reduction on dependence from third countries and the improvement of the security of supply; - and funding granted in accordance with Article [195] of the Financial Regulation by 31 July 2024. <p>The Commission may submit proposals for any appropriate amendments to the present regulation.</p>
32.3	<p>3. At the end of the implementation period but no later than four years after the 31 December 2031 2027, a final evaluation of the Fund implementation shall be carried out by the Commission.</p> <p>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, in particular contribution to the European Union strategic autonomy through the reduction on dependence from third countries and the improvement of the security of supply. It shall also analyse cross border participation of legal entities, including of SMEs and mid-caps involvement in projects implemented under the Fund as well as and their 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.</p>

SECURITE ET CONFIDENTALITE DES INFORMATIONS

En matière de protection des informations classifiées, les États membres sont liés **par l'accord entre les États membres de l'Union européenne, réunis au sein du Conseil, relatif à la protection des informations classifiées échangées dans l'intérêt de l'Union européenne** du 4 mai 2011 (2011/C 202/05), qui impose des standards équivalents aux règles de sécurité du Conseil (**décision du Conseil 2013/488**). Les définitions proposées se réfèrent au cadre légal existant et juridiquement contraignant.

Les règles relatives aux informations classifiées ne peuvent faire référence à aucune règle interne ou décision de la Commission, car elles n'ont pas d'effet juridiquement contraignant pour les États membres. Par ailleurs, la Commission ne dispose pas de la compétence pour imposer la transmission des réglementations des États membres dans ce domaine (article 30.2).

Au regard de la protection des informations classifiées, les pays associés et non associés sont des États tiers sans qu'aucune distinction ne puisse être faite (article 30.1(a) et (c)). Les règles relatives à l'échange d'informations classifiées avec de tels pays relèvent de l'accord de sécurité qu'ils concluent avec l'Union Européenne spécifiquement à cette fin (décision du Conseil 2013/488 - article 13).

*Member States are bound by the 4th of May 2011 **agreement between the Member States of the European Union, meeting within the Council, regarding the protection of classified information exchanged in the interests of the European Union** (2011/C 202/05), which imposes standards equivalent to the Council's security rules (**Council decisions 2013/488**). Proposed definitions refer to already existing legal binding framework.*

Rules on classified information cannot refer to any internal rule or Commission decision since it does not have any legally binding effect over Member states. Moreover, the Commission does not have competence to require the communication of Member States' regulations in this field (Article 30.2).

With regard to rules on classified information, associated and non-associated countries are third countries without any distinction whatsoever (Article 30.1(a) and (c)). The rules on the exchange of classified information with such countries shall be set up in a specific security of information agreement concluded with the European Union (Council Decision 2013/488 - Article 13).

Recital
(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.
<i>Article 2 Definitions</i>
'Classified information' means any information or material, in any form, the unauthorised disclosure of which could cause varying degrees of prejudice to the interests of the European Union, or of one or more of the Member States, and which bears an EU classification markings or a corresponding classification marking, in line with the agreement between the Member States of the European Union, meeting within the Council, regarding the protection of classified information exchanged in the interests of the European Union (2011/C 202/05).
'Background information' means any data, know-how or information generated before or outside the performance of the European defence fund, classified or unclassified, whatever its form or nature, the originatorship of which remains with the original originator.
'Foreground information' means data, know-how or information, classified or unclassified, tangible or intangible, generated in the performance of the European defence fund. According to the project, Members States or legal entities within the consortium shall be the exclusive originator of classified foreground information generated from research and development actions.

<i>Article 30</i>	
<i>Application of the rules on classified information</i>	
30.1	1. Within the scope of this Regulation:
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 information⁵ and by the security rules of the Council set out in the Annexes to Decision 2013/488/EU 6;
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);
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;
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 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.
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 by communicating the Programme Security Instructions approved by Member States , the measures and requirements necessary to ensure the security of such information at the requisite level.
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 and secured exchange system.