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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 comments by France on the Presidency Input Paper.

CONTRIBUTIONS ECRITES DE LA FRANCE

La France se réserve le droit de proposer d'autres contributions écrites au-delà de celles qui figurent dans le présent document.

Les parties en italique correspondent aux propositions de la Présidence autrichienne auxquelles nous souscrivons.

Dans un souci de sécurité juridique, nous souhaitons préciser la distinction entre les volets recherche et développement capacitaires. Les propositions de définitions et d'amendement en ce sens sont alignées sur le texte de la directive 2009/81 :

<i>Article 2 Definitions</i>	
2.3	<p>(3) 'development action' means any action consisting primarily exclusively of defence-oriented activities covering new products or technologies or the upgrading of existing ones in experimental and industrial the development phases, excluding the production or use of weapons;</p> <p>Experimental development consists in work based on existing knowledge obtained from research and/or practical experience with a view to initiating the manufacture of new materials, products or devices, establishing new processes, systems and services or considerably improving those that already exist. Experimental development may include the realisation of technological demonstrators, i.e. devices demonstrating the performance of a new concept or a new technology in a relevant or representative environment.</p> <p>Industrial development covers the rest of development activities.</p>
2.11	<p>(11) 'research action' means any action consisting of fundamental and applied research activities with an exclusive focus on defence applications;</p> <p>Fundamental research consists in experimental or theoretical work undertaken mainly with a view to acquiring new knowledge regarding the underlying foundation of phenomena and observable facts, without any particular application or use in view. Applied research also consists of original work undertaken with a view to acquiring new knowledge. However, it is directed primarily towards a particular practical end or objective.</p>

Certaines définitions mériteraient également d'être précisées pour s'assurer que la responsabilité de répondre aux exigences du règlement porte bien sur chacune des entités légales, plutôt que sur le consortium comme un tout.

<i>Article 2 Definitions</i>	
	'applicant' means a legal entity within a consortium submitting an application for support by the Fund after a call for proposals or after application of Article [195(e)] of the Financial Regulation
	(10) 'beneficiary' means a legal entity within a consortium with which a funding or financing agreement has been signed or to which a funding or financing decision has been notified;

	<i>Article 3 Objectives</i>
3.1	<p>1. The general objectives of the Fund are :</p> <ul style="list-style-type: none"> - is to foster the competitiveness, efficiency and innovation capacity of the European defence industry throughout the Union; - to by supporting collaborative actions and cross-border cooperation between Member states and legal entities throughout the Union, including SMEs and mid-caps by strengthening and improving the agility of both defence supply and value chains; - as well as to fostering the better exploitation of the industrial potential of innovation, research and technological development, at each stage of the industrial life cycle of defence products and technologies, notably by ensuring the exploitation of research results in the development phase, thus contributing to the Union's 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 , by reducing dependency on non-EU sources and strengthening the security of supply; - to contribute 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. <p>Ultimately, the Fund will lead to greater interoperability between Member States' capabilities.</p>
3.2 (a) et (b)	<p>(a) support collaborative research projects of defence products and technologies that could significantly boost the performance of future capabilities, aiming at maximising innovation and introducing new defence products and technologies, including disruptive ones, consistent with research priorities commonly agreed by Member States, and particularly in the context of the Overarching Strategic Agenda on Research (OSRA);</p> <p>(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 and particularly in the context of the Capability Development Plan (CDP), 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.</p>
	<i>Article 6 Disruptive technologies</i>
6.2	The Commission may work programme shall define , on a case by case basis, find the most appropriate form of funding to finance innovative solutions.

	<i>Article 8 Implementation and forms of EU funding</i>
8.1	1. The Fund shall be implemented in directly or indirectly management by entrusting budget implementation tasks to the entities listed in [point (c) of Article 62(1)] in accordance with of the Financial Regulation.

En complément, un considérant supplémentaire pourrait être ajouté

Additional Recital --	
	When a project manager has been appointed by Member States co-funding an awarded action, the budget implementation tasks and project management should, if requested, be delegated for this specific project to this project manager .

L'article 11 est modifié pour correspondre aux définitions de l'article 2 et afin d'assurer l'articulation entre les volets « recherche » et « développement ». La présentation des actions éligibles de manière séquentielle (c'est-à-dire de manière cohérente avec le déroulement de projet) est plus claire. L'action (j) n'a pas de lien direct avec les objectifs du Fonds et devrait être supprimée. Enfin, les conditions d'éligibilité doivent être les mêmes pour toutes les actions (suppression de l'article 11.5).

<i>Article 11 Eligible actions</i>	
11.2	The Fund shall provide support for actions covering both new and upgrade of existing products and technologies inside 2009/81/EC directive field of application where the use of pre-existing information needed to perform the upgrade is not subject, directly or indirectly to a restriction by non-associated third countries or non-associated third country entities
11.3(a)	(a) fundamental research : activities aiming to create, underpin and improve new knowledge and defence technology which can achieve significant effects in the area of defence, without any particular application or use in view ;
11.3(b)	(bf) 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;
11.3(c)	(be) applied research : studies, such as feasibility studies to explore the feasibility of a new or improved technology, product, process, service, solution directed primarily towards a particular practical end, project or objective or statistics on the defence industry and projects to pilot the collection of data ;
11.3(d)	(cd) experimental development : the design of a defence product, tangible or intangible component or technology as well as the definition of the technical specifications on which such design has been developed which may include partial tests for risk reduction in an industrial or representative environment;
11.3(e)	(d) Industrial development : d(1e) the development of a model-system prototyping of a defence product, tangible or intangible component or technology, which can demonstrate the element's performance in an operational environment (system prototype);
11.3(f)	d(2f) the testing of a defence product, tangible or intangible component or technology;
11.3(g)	d (3g) 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;
11.3(h)	d (4h) the certification of a defence product, tangible or intangible component or technology. Certification is the process according to which a national authority certifies that the defence product, tangible or intangible component or technology complies with the applicable regulations;
11.3(i)	(ei) the development of technologies or assets increasing efficiency across the life cycle of defence products and technologies;

11.3(j)	(j) ————— dissemination activities, networking events and awareness raising activities.
11.3	3.bis : Where an action covers both research and development activities title III shall apply for the action.
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-eligible 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.
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.

Les règles de la double comitologie devraient s'appliquer aux deux volets du Fonds :

	<i>Article 12 Selection and award procedure</i>
12.3	3. For the award of funding for development actions , the Commission shall act by means of implementing acts adopted in accordance with the procedure referred to in Article 28 paragraph 2.

	<i>Article 22 Ownership of results</i>
22.3	3. If justified the grant agreement may require that The results of actions receiving support from the Fund shall not be subject to 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, directly or indirectly through one or more intermediate legal entities, including in terms of technology transfer.
22.4	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 regarding 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 neither contravene the defence and security interests of the Union and its Member States nor the objectives of this Regulation as set out in Article 3.
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.
22.8	8. Any two or more Member States or associated countries that, multilaterally or within the frame of an EU organization, jointly have concluded one or several contracts with one or more participants to further develop together results obtained within the frame of a specific action that has received funding under the EDF, shall enjoy access rights to the results of the action that are owned by such participant(s) and are necessary for the execution of the contract(s). Such access rights shall be granted on a royalty-free basis and under specific conditions aimed at ensuring that those rights will be used only for the purpose of the contract(s) and that appropriate confidentiality obligations will be in place.
22.9	9. The provisions laid down in this article shall not affect the export of products, equipment nor technologies integrating results, and do not affect the discretion of Member States as regards policy on the export of defence-related product.

Nos contributions pour l'article 22 s'inspirent des règles de participation de la PADR (Art. 38 et Art. 43.3).

	<i>Article 25</i> <i>Ownership of results</i>
25.2	<p>2. The results of actions receiving supported from by the Fund shall not be subject to any control or restriction by non-associated third countries or by non-associated third country entities, directly or indirectly through one or more intermediate legal entities, including in terms of technology transfer.</p> <p><i>This Regulation shall not affect the discretion of Member States as regards policy on the export of defence-related products.</i></p>
25.3	<p>3. With regard to the results generated by recipients 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 or grant of a licence to a non-associated third country or to a non-associated third country entity.</p> <p><i>If such transfer of ownership or granting of a licence shall not contravenes the defence and security interests of the Union and its Member States or the objectives this Regulation set out in Article 3, otherwise it will necessitate reimbursement of the funding provided under the Fund shall be reimbursed.</i></p>
25.4	<p>Where the Union assistance is provided in the form of public procurement, the Union, shall own the results and all Member States and/or associated countries, shall have the right, free of charge, to a non-exclusive licence for the use of the results study upon their written request.</p>

	TITLE IV GOVERNANCE, MONITORING, EVALUATION AND CONTROL
	<i>Article 26</i> <i>Information of the project manager</i>
26	<p>In case a project manager is appointed by Member States and associated countries, the Commission shall execute the payment to the recipients after consulting the project manager.</p>

	<i>Article 27</i> <i>Work programmes</i>
27.3	<p>3. During the elaboration of the work programmes, and before the award of funding, the Commission shall ensure, through appropriate consultations with the Committee, that the proposed research or development actions avoid duplication with existing capabilities or already funded research or development projects within the EU. In case a duplication is identified, the Commission shall carry out further consultations.</p>
27.4	<p>4. The work programmes shall set out the categories of projects to be funded under the Programmes. Those categories shall be in line with the defence priorities referred to in Article 3.</p>

	<i>Article 28</i> <i>Committee</i>
28.1	<p>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.</p> <p>The Committee shall also meet in special configurations, including in order to discuss defence and security aspects.</p>
28.2	<p>2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.</p> <p>Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third sub-paragraph of Article 5(4) of regulation (EU) No 182/2011 shall apply.</p>

<i>Article 29 Independent expert</i>	
29.1	1. The Commission shall appoint independent experts to assist in the evaluation of proposals pursuant to Article [237] of the Financial Regulation. It may also appoint independent experts to advise on or assist with the monitoring of the implementation of actions carried out.
29.2	2. Independent experts shall be Union's citizens identified and selected on the basis of calls for expressions of interest addressed to relevant organisations such as Ministries of Defence or other relevant public administration and subordinated agencies, research institutes, universities, business associations or enterprises of the defence sector with a view to establishing a list of experts. Each expert should be validated by its Member state's Ministry of defence before being added to the list. By derogation from Article [237] of the Financial Regulation, this list shall not be made public.
29.4	4. The committee referred to in Article 28 shall be informed annually on the list of experts, <i>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.</i> To assess whether an expert is in a position of conflict of interest, his nationality shall not be a criteria.

COPIE DE COURTOISIE DE L'ARTICLE 11 SANS TRACK CHANGE

Article 11

Eligible actions

1. Only actions implementing the objectives referred to in Article 3 shall be eligible for funding.
2. The Fund shall provide support for actions covering both new and upgrade of existing products and technologies inside 2009/81/EC directive field of application where the use of pre-existing information needed to perform the upgrade is not subject, directly or indirectly to a restriction by non-associated third countries or non-associated third country entities.
3. An eligible action shall relate to one or more of the following items:
 - (a) Fundamental research : activities aiming to create, underpin and improve knowledge and defence technology which can achieve significant effects in the area of defence, without any particular application or use in view;
 - (b) Applied research : studies, such as feasibility studies to explore the feasibility of a new or improved technology, product, process, service, solution directed primarily towards a particular practical end, project or objective
 - (c) Experimental development : the design of a defence product, tangible or intangible component or technology as well as the definition of the technical specifications on which such design has been developed which may include partial tests for risk reduction in an industrial or representative environment;
 - (d) Industrial development :
 - the system prototyping of a defence product, tangible or intangible component or technology
 - the testing of a defence product, tangible or intangible component or technology;
 - the qualification of a defence product, tangible or intangible component or technology
 - the certification of a defence product, tangible or intangible component or technology.
 - (e) the development of technologies or assets increasing efficiency across the life cycle of defence products and technologies;
 - (f) 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;
4. Where an action covers both research and development activities title III shall apply for the action.
5. 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 eligible 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.
6. Actions for the development of products and technologies the use, development or production of which is prohibited by applicable international law shall not be eligible.