Council of the European Union
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2024/0061 (COD)

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Ad hoc working party on defence industry
Subject:	Compilation of comments on the proposed EDIP Regulation (chapter I, II, V)

Delegations will find attached comments and drafting suggestions received from Austria, Belgium, Germany, Greece, Finland, Hungary, Italy, Latvia, Lithuania, The Netherlands and Slovenia on the proposed EDIP Regulation (chapters I, II and V, excl. Art. 57).

EDIP Proposal Deadline: ***18 April 2024***

From: AT, BE, DE, EL, FI, HU, IT, LT, LV, NL, SI **Updated: 21/04/2024 23:46**

Please add your contributions in the table below, only in the columns **'Drafting' and/or 'Comments'.**

Before returning your contribution, please save the MS Word document with a name starting with the two initials of your delegation's Country followed by a space, only then you may add any text to the file name, for example, for Austria: "**AT** comments on EDIP.docx".

Thank you for your cooperation!

Commission proposal	Drafting Suggestions and Comments
	DE (Comments): In general, we reserve the right to propose further amendments at a later date. This applies in particular to parts of the proposed regulation that are already referred to here before the corresponding article(s) is/are discussed at a later date. FI (Comments): Finland is still in the process of forming its national position on the EDIP proposal. Therefore, we are only able to provide preliminary comments at this stage.
2024/0061 (COD)	AT (Comments): AT considers, that the time frame set by the Presidency for submitting comments basically for the whole legal act is extremely challenging. AT reserves its right to submit additional comments at a later stage of the negotiating process.
Proposal for a	

Commission proposal	Drafting Suggestions and Comments
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL	
establishing the European Defence Industry Programme and a framework of measures to ensure the timely availability and supply of defence products ('EDIP')	
(Text with EEA relevance)	
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114(1), Article 173(3), Article 212(2) and Article 322(1) thereof,	AT (Comments): AT takes the view, that Comments/Drafting proposals for Recitals make no sense at this point of negotiations. Since the Recitals reflect/explain the text of the legislative act the Recitals need to be adapted in the light of the negotiated results and therefore should be dealt with after the text has been finalized in the negotiations. AT reserves its right to come back to the Recitals at a later stage! DE (Comments): DE kindly asks for clarification as to whether the legal bases mentioned are

Commission proposal	Drafting Suggestions and Comments
	appropriate and sufficient for the intended measures. Corresponding questions have already been forwarded to the Council's legal service.
Having regard to the proposal from the European Commission,	DE (Comments): The effectiveness and proportionality of measures needs to be better justified. Therefore, we ask the Commission to provide an impact assessment concerning the proposal, as required by the European Commission's Better Regulation Guidelines for initiatives that are likely to have significant economic impacts. Further detailed examination of the draft regulation depends on this as much as the answers from the legal service.
After transmission of the draft legislative act to the national parliaments,	
Having regard to the opinion of the European Economic and Social Committee[1],	
Having regard to the opinion of the European Court of Auditors[2],	

[1] OJ C , , p. .
[2] OJ C , , p. .

Commission proposal	Drafting Suggestions and Comments
Acting in accordance with the ordinary legislative procedure,	
Whereas:	NL (Comments): General remark on the recitals: we did not have sufficient time to closely read the recitals, therefore we wish to come back to these at a later stage.
(1) The Heads of State or Government of the Union, meeting in Versailles on 11 March 2022, committed to "bolster European defence capabilities" in light of Russia's unprovoked and unjustified war of aggression against Ukraine. They agreed to increase defence expenditures, step up cooperation through joint projects and common procurement of defence capabilities, close shortfalls, boost innovation and strengthen and develop the EU defence industry, including through establishing a European Defence Industry Programme (the 'Programme').	
(2) The long-term deterioration of regional and global threat levels requires a step-change in the scale and speed with which Europe's defence technological and industrial base (EDTIB) can develop and produce the full spectrum of military capabilities. The return of high-intensity warfare and territorial conflict to Europe has a negative impact on the security of the Union and the Member States and requires a significant increase in the capacity of Member States to reinforce their defence capabilities.	LT (Drafting Suggestions): The long-term deterioration of regional and global ~~threat levels~~ security situation requires a step-change in the scale and speed with which Europe's defence technological and industrial base (EDTIB) can develop and produce the full spectrum of military capabilities. The return of high-intensity warfare and territorial conflict to Europe ~~has a negative impact on the security of the Union and the Member States and~~ requires a significant increase in the capacity of Member States to reinforce their defence capabilities to strengthen seurity of the Union and contribute to

Commission proposal	Drafting Suggestions and Comments
	Euro-Atlantic security.
(3) On 14 and 15 December 2023, the European Council, in its conclusions, having considered work carried out to implement the Versailles declaration and the Strategic Compass for Security and Defence, underlined that more needs to be done to fulfil the Union's objectives of increasing defence readiness. To achieve such a readiness and defend the Union, a strong defence industry is a pre-requisite, making the European defence industry more resilient, innovative and competitive.	
(4) The Commission and the High Representative of the Union for Foreign Affairs and Security Policy presented a Joint Communication on the Defence Investment Gaps Analysis and Way Forward on 18 May 2022 highlighting the existence, within the Union, of defence financial, industrial and capability gaps. On 18 October 2023 a Regulation (EU) 2023/2418 of the European Parliament and the Council[3] was adopted establishing an instrument for the reinforcement of the European defence industry through common Procurement (EDIRPA), aimed at supporting collaboration between Member States in the procurement phase to fill the most urgent and critical gaps, especially those created by the response to Russia's war of aggression against Ukraine, in a collaborative way. On 20 July 2023 a Regulation (EU) 2023/1525 of the European Parliament and the Council[4] supporting ammunition production (ASAP) was adopted,	DE (Drafting Suggestions): The Commission and the High Representative of the Union for Foreign Affairs and Security Policy presented a Joint Communication on the Defence Investment Gaps Analysis and Way Forward on 18 May 2022 highlighting the existence, within the Union, of defence financial, industrial and capability gaps. On 18 October 2023 a Regulation (EU) 2023/2418 of the European Parliament and the Council[5] was adopted establishing an instrument for the reinforcement of the European defence industry through common Procurement (EDIRPA), aimed at supporting collaboration between Member States ~~in~~ ~~the~~ **through common procurement** ~~phase~~ to fill the most urgent and critical gaps **and**

[3] Regulation (EU) 2023/2418 of the European Parliament and of the Council of 18 October 2023 on establishing an instrument for the reinforcement of the European defence industry through common procurement (EDIRPA) (OJ L, 2023/2418, 26.10.2023, ELI: http://data.europa.eu/eli/reg/2023/2418/oj).

[4] Regulation (EU) 2023/1525 of the European Parliament and of the Council of 20 July 2023 on supporting ammunition production (ASAP) (OJ L 185, 24.7.2023, p. 7, ELI: http://data.europa.eu/eli/reg/2023/1525/oj).

Commission proposal	Drafting Suggestions and Comments
aimed at urgently supporting the ramp-up of manufacturing capacities of the European defence industry, secure supply chains, facilitate efficient procurement procedures, address shortfalls in production capacities and promote investments.	**replenish stocks** especially those created by the response to Russia's war of aggression against Ukraine, in a collaborative way. On 20 July 2023 a Regulation (EU) 2023/1525 of the European Parliament and the Council[6] supporting ammunition production (ASAP) was adopted, aimed at urgently supporting the ramp-up of manufacturing capacities of the European defence industry **limited to ammunition and missiles, ~~secure supply chains~~**, facilitate efficient procurement procedures, address shortfalls in production capacities and promote investments. DE (Comments): The initially proposed regulatory part of ASAP was not adopted. This part included the "security of supply chains" part, which is not part of the final regulation. EDIRPA calls for **common procurement to** particularly **replenish stocks** of urgently needed defence material and/or in addition to deliver material to UKR/Moldavia.
(5) EDIRPA and ASAP were designed as emergency response and short-term programmes, both expiring in 2025 (30 June 2025 for ASAP and 31 December 2025 for EDIRPA). The Programme should build on EDIRPA and ASAP achievements and extend their logic until 2027, by	HU (Drafting Suggestions): "extend the Union support **to** a broader scope"

[5] Regulation (EU) 2023/2418 of the European Parliament and of the Council of 18 October 2023 on establishing an instrument for the reinforcement of the European defence industry through common procurement (EDIRPA) (OJ L, 2023/2418, 26.10.2023, ELI: http://data.europa.eu/eli/reg/2023/2418/oj).

[6] Regulation (EU) 2023/1525 of the European Parliament and of the Council of 20 July 2023 on supporting ammunition production (ASAP) (OJ L 185, 24.7.2023, p. 7, ELI: http://data.europa.eu/eli/reg/2023/1525/oj).

Commission proposal	Drafting Suggestions and Comments
providing financial support for the reinforcement of the EDTIB, in a predictable, continuous and timely manner on the basis of an integrated approach. In the light of the current security situation, it appears necessary to extend the Union support a broader scope of defence equipment including consumables such as unmanned systems that play a decisive role in the war theatre in Ukraine.	LV (Drafting Suggestions): EDIRPA and ASAP were designed as emergency response and short-term programmes, both expiring in 2025 (30 June 2025 for ASAP and 31 December 2025 for EDIRPA). The Programme should build on EDIRPA and ASAP achievements and extend **and expand** their logic until 2027, by providing financial support for the reinforcement of the EDTIB, in a predictable, continuous and timely manner on the basis of an integrated approach. In the light of the current security situation, it appears necessary to extend the Union support a broader scope of defence equipment including consumables such as unmanned systems that play a decisive role in the war theatre in Ukraine. LV (Comments): We suggest that more general wording be used in this paragraph and further in the text, just to mention that EDIRPA and ASAP logic will be extended and expanded by the Programme.
(6) The European Council of 23 June 2022 decided to grant the status of candidate country to Ukraine, which expressed a strong will to link reconstruction with reforms on its European path. In December 2023, EU leaders decided to open accession negotiations with Ukraine. On 15 December 2023, the European Council declared that the Union and Member States remain committed to contributing, for the long term and together with partners, to security commitments to Ukraine, which will help Ukraine to defend itself, resist destabilization efforts and deter acts of aggression in the future. Strong support to Ukraine is a key priority for the Union and an appropriate response to the Union's strong political	HU (Drafting Suggestions): Strong support to Ukraine is a key priority for the Union and an appropriate response to the Union's strong political commitment to support Ukraine for as long as necessary. **Military support and security commitments will be provided in full respect of the security and defence policy of certain Member States and taking into account the security and defence interests of all Member States.**

Commission proposal	Drafting Suggestions and Comments
commitment to support Ukraine for as long as necessary.	HU (Comments): Reference to the security and defence interests of all MSs to be included. (text from Dec 2023 EUCO conclusions LT (Drafting Suggestions): an appropriate response to the Union's strong political commitment to support Ukraine until Ukraine's victory on it's own terms ~~for as long as necessary.~~
(7) The damage from Russia's war of aggression to the Ukrainian economy, society and infrastructure, and in particular damage caused to the Ukraine defence technological and industrial base (Ukrainian DTIB) require comprehensive support to rebuild the latter. This is essential in order to provide the capacity to the Ukrainian State to maintain its essential functions and allow the fast recovery, reconstruction and modernisation of the country and foster its integration into the European Defence Equipment Market. A strong Ukrainian DTIB is vital for Ukraine's long-term security as well as its reconstruction.	EL (Drafting Suggestions): ...is vital for Ukraine's long-term security, **enhance its resilience and support** ~~as well as~~ its reconstruction. EL (Comments): Achieving both Ukrainian security and resilience is of high importance HU (Drafting Suggestions): Allow **for** the fast recovery HU (Comments): Why does the text use the term "European Defence Equipment Market", and not EDTIB, as elsewhere? (There is no previous or later reference to EDEM in the text.)

Commission proposal	Drafting Suggestions and Comments
	LV (Drafting Suggestions): (7) The damage from Russia's war of aggression to the Ukrainian economy, society and infrastructure, and in particular damage caused to the Ukraine defence technological and industrial base (Ukrainian DTIB) require comprehensive support to rebuild the latter. This is essential in order to provide the capacity to the Ukrainian State to maintain its essential functions and allow the fast recovery, reconstruction and modernisation of the country and foster its integration into the European Defence Equipment Market**, as well to strenghten Ukraine's military capability to defend itself**. A strong Ukrainian DTIB is vital for Ukraine's long-term security **and the capacity to defend itself,** as well as its reconstruction. LV (Comments): Linking paragraph 6 to 7. This paragraph should include and emphasis on why support for Ukraine defence technological and industrial base is needed, emphasizing the military needs in order for Ukraine to defend itself.
(8) In this regard actions supporting the reinforcement of the Ukrainian defence technological and industrial base should be financed. This support is complementary to that provided under the Ukraine Facility as well as military support provided to Ukraine under the European Peace Facility and through bilateral assistance by Member States.	

Commission proposal	Drafting Suggestions and Comments
(9) Russia must be held fully accountable and pay for the massive damage caused by its war of aggression against Ukraine, which constitutes a blatant violation of the Charter of the United Nations. The Union and its Member States should, in close cooperation with other international partners, continue to work towards this goal, in accordance with Union and international law, taking into account Russia's serious breach of the prohibition on the use of force enshrined in Article 2(4) of the Charter of the United Nations and the principle of State responsibility for internationally wrongful acts, including the obligation to compensate for the financially assessable damage caused. It is important that, inter alia, progress is made, in coordination with international partners, on how extraordinary revenues held by private entities stemming directly from immobilised Russian assets could be directed to support Ukraine, including its defence technological and industrial base, in a manner that is consistent with applicable contractual obligations and in accordance with Union and international law. If the Council were to adopt a CFSP decision under Article 29 TEU upon a proposal by the High Representative to transfer to the Union extraordinary cash balances of central securities depositories arising from the unexpected and extraordinary revenues from Russia's immobilised sovereign assets, such additional support could be drawn from these revenues, in line with the objectives of the Union's Common Foreign and Security Policy.	AT (Comments): Needs to be checked/formulated in accordance with the final conclusions by the European Council. HU (Comments): We should not pre-empt any decisions on the use of extraordinary revenues from Russia's immobilised sovereign assets. LV (Comments): We propose this paragraph be revisited when there is more clarity and decisions on the use of frozen Russian assets.
(10) A Framework agreement should be concluded with Ukraine to set up the principles of the cooperation between the Union and Ukraine under this Regulation. Grant agreements or joint procurement should also be concluded with Ukraine and legal entities established in Ukraine to define conditions for releasing funds.	AT (Comments): It would be desirable to state the legal basis for the conclusion of a Framework Agreement with Ukraine and to provide more context in this regard. E.g. whether the Framework Agreement is to be concluded only between the EU and Ukraine or whether the Member States also have to

Commission proposal	Drafting Suggestions and Comments
	be party to such an agreement. This framework agreement shall not be part of the EU-regulation. DE (Comments): Is this suitable to be mentioned in recitals or should this ambition rather be part of the regulation itself?
(11) To fund the actions that aim at strengthening the competitiveness, responsiveness and ability of the EDTIB based on Article 173 TFEU and the actions of cooperation with Ukraine for reinforcement of the Ukrainian DTIB under Article 212 TFEU, this Regulation should establish common objectives, common financial mechanisms while clearly distinguishing two budget lines corresponding to each of the objectives pursued as well as establish a Programme setting out the conditions for Union financial support under Article 173 TFEU and an Ukraine Support Instrument setting out the specific conditions for Union financial support under Article 212 TFEU.	EL (Comments): What are the projected economic, financial and technical cooperation measures, including assistance, consistent with the development policy of the Union, that will be supported in third countries by the new regulation that justify the use of article 212 TFEU as its legal basis?
(12) This Regulation lays down a financial envelope for the entire duration of the Programme which is to constitute the prime reference amount, within the meaning of point 18 of the Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, for the European Parliament and the Council during the annual budgetary procedure.	

Commission proposal	Drafting Suggestions and Comments
(13) The possibilities provided for in Article 73(4) of Regulation (EU) 2021/1060 of the European Parliament and of the Council could be applied provided that the project complies with the rules set out in that Regulation and the scope of the European Regional Development Fund and the European Social Fund Plus as set out in Regulations (EU) 2021/1058 and (EU) 2021/1057 of the European Parliament and of the Council, respectively. This could, in particular, be the case where the production of relevant defence products faces specific market failures or suboptimal investment situations in the Member States' territories, notably in vulnerable and remote areas, and such resources contribute to the achievement of the objectives of the programme from which they are transferred. In line with Article 24 of Regulation (EU) 2021/1060, the Commission is to assess the amended programmes submitted by the Member State and make observations within two months of the submission of the amended programme.	HU (Comments): More details should be given on the term "relevant defence products".
(14) In view of the need invest better and together in defence capabilities of the Member States and associated countries as well as in the recovery, reconstruction and modernisation of Ukraine's defence industrial base, it should be possible for Member States, third countries, international organisations, international financial institutions or other sources to contribute to the implementation of the Programme. Such contributions should be implemented in accordance with the same rules and conditions and should constitute external assigned revenue within the meaning of Article 21(2)(a)(ii), (d), and (e) of the Regulation (EU, Euratom) No 2018/1046. In addition, Member States should be able to use the flexibility in the implementation of their shared management allocations offered by Regulation (EU) 2021/1060 of the European	AT (Comments): A further clarification of 'third countries, international organisations, international financial institutions' should be discussed.

Commission proposal	Drafting Suggestions and Comments
Parliament and the Council. It should therefore be possible to transfer certain levels of funding between shared management allocations and the Programme subject to the conditions set out in the relevant provisions of Regulation (EU) 2021/1060 of the European Parliament and the Council. Uncommitted resources at the latest in 2028 may be transferred back to one or more respective source programmes, at the request of the Member State, in accordance with the conditions set out in the relevant provisions of Regulation (EU) 2021/1060.	
(15) As the Programme aims to enhance the competitiveness and efficiency of the Union's and Ukraine's defence industry, to benefit from the Programme, recipients of financial support should be legal entities which are established in the Union, in associated countries or in Ukraine and which are not subject to control by non-associated third countries, other than Ukraine or by, non-associated third-country entities. Where Member States, associated countries or Ukraine are the recipients of the financial support, in particular for common procurement actions, these rules should apply mutatis mutandis for the contractors or subcontractors to the procurement contracts. In that context, control should be understood to be the ability to exercise a decisive influence on a legal entity directly, or indirectly through one or more intermediate legal entities. Additionally, in order to ensure the protection of essential security and defence interests of the Union and its Member States, the infrastructure, facilities, assets and resources of the legal entities involved in the actions which are used for the purposes of the action should be located on the territory of a Member State, of an associated country or of Ukraine.	AT (Comments): A distinction of the two budget lines should also be considered in this regard. The term 'associated third countries' is only clarified in Article 9 of the Regulation Proposal. This should already be clarified in the Recitals and defined in Article 2.
	DE (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
	(15 a) This Regulation provides for more specific eligibility requirements than Directive 2009/81/EC. Directive 2009/81/EC provides that Member States may include in their legislation the possibility to impose, in the contract documentation, requirements related to the protection of security of supply or the security of information. This Regulation builds upon those provisions of Directive 2009/81/EC and creates obligations for procurement agents regarding eligibility requirements to be included in contract documentation. Such obligations should prevail over conflicting legislation of the Member State and associated countries in which the procurement agent concerned is established. DE (Comments): Due to Article 12 paragraph 5, that refers to the eligibility criteria in Article 10 for common procurement, this recital should, comparable to EDIRPAs recital 28, be included
(16) In certain circumstances, it should be possible to derogate from the principle that legal entities involved in an action supported by the Programme are not subject to control by non-associated third countries or non-associated third-country entities. In that context, a legal entity established in the Union or in an associated third country and controlled by a non-associated third country or a non-associated third country entity may participate as recipient if strict conditions relating to 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 Treaty on European Union (TEU), including in terms of strengthening the European Defence Technological and Industrial Base, are fulfilled.	HU (Comments): These circumstances should be clearly stated, or more explanation should be provided in the text, as it may have a serious impact on the implementation of the previous article which can be considered as a crucial part of the Regulation (“recipients of financial support should be legal entities which are established in the Union, in associated countries or in Ukraine and which are not subject to control by non-associated third countries, other than Ukraine or by, non-associated third-country entities.”) NL (Drafting Suggestions): In certain circumstances, it should be possible to derogate from the

Commission proposal	Drafting Suggestions and Comments
	principle that ~~legal~~ entities involved in an action supported by the Programme are not subject to control by non-associated third countries or non-associated third-country entities. In that context, a legal entity established in the Union or in an associated third country and controlled by a non-associated third country or a non-associated third country entity may participate as recipient ~~if strict conditions~~ relating to 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 Treaty on European Union (TEU), including in terms of strengthening the European Defence Technological and Industrial Base, are fulfilled. NL (Comments): The Netherlands proposes to stick with the earlier agreed language in the European Defence Fund (EDF).
(17) Furthermore, the defence products subject to actions supported by the Programme should not be subject to control or restriction by a non-associated third country or a non-associated third country entity.	DE (Drafting Suggestions): x HU (Comments): the defence products subject to actions supported by the Programme – the supported products need further explanation
(18) Given the specificities of the defence industry, where demand comes almost exclusively from States, which also control all acquisition of defence-related products and technologies, including exports, the	AT (Comments):

Commission proposal	Drafting Suggestions and Comments
functioning of the defence industry sector does not follow the conventional rules and business models that govern more traditional markets. The industry does not therefore engage in substantial self-funded industrial investments but only does so as a consequence of firm orders. While firm orders from Member States are a precondition for any investment, the Commission can intervene by offsetting the complexity of cooperation for common procurement and de-risking industrial investments via grants and loans allowing a faster adaptation to ongoing structural market change. As a general rule, Union support should cover up to 100% of direct eligible costs or 100% of the amount determined for actions applying the financing not linked to costs option. The Union support for industry reinforcement actions should cover up to 50 % of direct eligible costs in order to enable recipients to implement actions as soon as possible, to de-risk their investment and therefore to speed up the availability of relevant defence products.	Request for clarification which budget lines are comprised by this wording. DE (Comments): See also Art. 17 para 1: We ask for an adequate explanation why this derogation from the Financial Regulation is deemed necessary. The explanation would need to be reflected in the recitals. Without proper explanations, such derogations cannot be justified. LV (Comments): There needs to be more clarity on what is meant by "eligible costs", as well as why and on what basis Union support is granted. We would ask the Commission to clarify which regulation articles this paragraph refers to.
(19) The Programme should provide financial support, via means provided for in the Regulation (EU, Euratom) No 2018/1046, to actions contributing to the timely availability and supply of defence products such as cooperation for common procurement of public authorities, industrial coordination and networking activities including reservation and stockpiling of defence products, access to finance for undertakings involved in the manufacturing of relevant defence products, reservation of manufacturing capacities ('ever warm facilities'), industrial processes of reconditioning of expired products, expansion, optimisation, modernisation, upgrading or repurposing of existing, or the establishment of new, production capacities in that field as well as the training of personnel.	NL (Comments): The Netherlands wishes further clarification on 'financial regulation supported actions'.

Commission proposal	Drafting Suggestions and Comments
(20) Grants under the Programme may take the form of financing not linked to cost based on the achievement of results by reference to work packages, milestones or targets of the common procurement process, in order to create the necessary incentive effect.	
(21) Where the Union grant takes the form of financing not linked to costs, the Commission should determine in the work programme the funding conditions for each action, in particular (a) a description of action involving cooperation for common procurement with a view to addressing the most urgent and critical capacity needs, (b) the milestones for the implementation of the action and (c) the maximum Union contribution available.	EL (Drafting Suggestions): Add the following: **(d) the relevance with EU Capability Development Priorities.** EL (Comments): The Capability Development Plan (CDP) and resulting priorities serve as a key reference for all defence -related initiatives and instruments, and any future EU supporting tools. [Agreed on 2023].
(22) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission with respect to the adoption of work programmes to set out the funding priorities and the applicable funding conditions. The specificities of the defence sector, in particular the responsibility of Member States, associated countries or Ukraine for the planning and acquisition process, should be taken into account. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.	LV (Comments): This should be reverted back to when the roles of EU institutions will be clearer.

Commission proposal	Drafting Suggestions and Comments
(23) In accordance with Article 193(2) of the Regulation (EU, Euratom) No 2018/1046, a grant may be awarded for an action which has already begun, provided that the applicant can demonstrate the need for starting the action prior to signature of the grant agreement. However, costs incurred prior to the date of submission of the grant application are not eligible, except in duly justified exceptional cases. In order to enable continuity of funding perspective for actions that could have been supported by 2024 funding under ASAP and EDIRPA, in the financing decision it should be possible to provide for financial contributions in relation to actions that cover a period starting from 5 March 2024.	DE (Comments): We ask for a more detailed explanation on the necessity to cover a period starting from 5 March 2024 in order to enable continuity of funding. Continuity of funding for actions that could have been (or already are) funded under ASAP and EDIRPA is not per se an objective of EDIP – this needs to be discussed among MS, also bearing in mind the intended incentive effects of funding under EDIP and the need to avoid double funding. HU (Comments): except in duly justified exceptional cases. Which would be…?
(24) When assessing proposals submitted by applicants, the Commission should pay particular attention to their contribution to the objectives of the Programme. The proposals should be assessed, in particular, against their contribution to the increase in defence industrial readiness, in particular increasing production capacities and eliminating bottlenecks. They should also be assessed against their contribution to fostering defence industrial resilience, by reference to considerations such as timely availability and supply to all locations, strengthening security of supply throughout the Union in response to identified risks, including in particular to those Member States most exposed to the risk of materialisation of conventional military threats. Assessments should also	LV (Drafting Suggestions): (24) When assessing proposals submitted by applicants, the Commission should pay particular attention to their contribution to the objectives of the Programme. The proposals should be assessed, in particular, against their contribution to the increase in defence industrial readiness, in particular increasing production capacities and eliminating bottlenecks. They should also be assessed against their contribution to fostering defence industrial resilience, by reference to considerations such as timely availability and supply **in** all locations, strengthening security of supply throughout the Union in response to identified risks, including in

Commission proposal	Drafting Suggestions and Comments
refer to the contribution to defence industrial cooperation through genuine armament cooperation among Member States, associated countries and Ukraine and the development and the operationalisation of cross-border cooperation of undertakings, in particular, to a significant extent, small and medium-sized enterprises (SMEs) and small middle capitalization companies (small mid-caps) operating in the supply chains concerned.	particular **in** those Member States most exposed to the risk of materialisation of conventional military threats. Assessments should also refer to the contribution to defence industrial cooperation through genuine armament cooperation among Member States, associated countries and Ukraine and the development and the operationalisation of cross-border cooperation of undertakings, in particular, to a significant extent, small and medium-sized enterprises (SMEs) and small middle capitalization companies (small mid-caps) operating in the supply chains concerned. LV (Comments): We would ask to change the wording from "to" to "in" (see the bolded words in draft suggestion). This would emphasise the need to establish Security of Supply already within all locations and Member States
(25) When designing, awarding and implementing Union financial support, the Commission should pay particular attention to ensuring that such support does not adversely affect the conditions of competition in the internal market.	
(26) The Regulation (EU, Euratom) No 2018/1046 and subsequent amendments applies to this Programme. It lays down rules on the implementation of the Union budget, including the rules on grants, prizes, procurement, indirect implementation, and financial instruments.	
(27) In accordance with the Regulation (EU, Euratom) No 2018/1046, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council and Council Regulations (EC, Euratom) No 2988/95,	HU (Comments):

Commission proposal	Drafting Suggestions and Comments
(Euratom, EC) No 2185/96 and (EU) 2017/1939, the financial interests of the Union are to be protected by means of proportionate measures, including measures relating to the prevention, detection, correction and investigation of irregularities, including fraud, to the recovery of funds lost, wrongly paid or incorrectly used, and, where appropriate, to the imposition of administrative penalties. In particular, in accordance with Regulations (Euratom, EC) No 2185/96 and (EU, Euratom) No 883/2013, the European Anti-Fraud Office (OLAF) has the power to carry out administrative investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. The European Public Prosecutor's Office (EPPO) is empowered, in accordance with Regulation (EU) 2017/1939, to investigate and prosecute criminal offences affecting the financial interests of the Union as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council. In accordance with the Regulation (EU, Euratom) No 2018/1046, any person or entity receiving Union funds is to fully cooperate in the protection of the financial interests of the Union, grant the necessary rights and access to the Commission, OLAF, the Court of Auditors and, in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, the EPPO, and ensure that any third parties involved in the implementation of Union funds grant equivalent rights.	funds lost How would funds be lost? COM is not paying in cash. Is that an established terminus technicus for stealing/corruption?
(28) Third countries which are members of the European Economic Area (EEA) may participate in Union programmes in the framework of the cooperation established under the Agreement on the European Economic Area, which provides for the implementation of the programmes on the basis of a decision adopted under that Agreement. A specific provision should be introduced in this Regulation requiring those	EL (Drafting Suggestions): ..to which the relevant OCT is linked. I**t is essential that at least one of the participants in the programme is an m-s.** EL

Commission proposal	Drafting Suggestions and Comments
third countries to grant the necessary rights and access required for the authorising officer responsible, OLAF and the Court of Auditors to comprehensively exercise their respective competences. Pursuant to Article 85 of Council Decision (EU) 2021/1764 (18), natural persons and bodies and institutions established in overseas countries and territories (OCTs) are eligible for funding subject to the rules and objectives of the Programme and possible arrangements applicable to the Member State to which the relevant OCT is linked.	(Comments): EU funds must go to m-s. Furthermore, the purpose of EDIS and EDIP is the empowerment of EDTIB.
(29) Building inter alia on the experience of the defence equity facility, established in the context of the European Defence Fund as an InvestEU blending operation, the Commission should endeavour to set up a dedicated facility as part of the Programme to be referred to as the 'Fund for the acceleration of defence supply chain transformation ('FAST')'. FAST should be implemented under indirect management. FAST will leverage, de-risk and speed-up investments needed to increase the defence manufacturing capacities of EU-based SMEs and small mid-caps, in the form of a blending operation offering support in the form of debt and/or equity. FAST should be established as a blending operation, including under the InvestEU Programme established by Regulation (EU) 2021/523 of the European Parliament and Council (20), in close cooperation with its implementing partners.	AT (Drafting Suggestions): Building inter alia on the experience of the defence equity facility, established in the context of the European Defence Fund as an InvestEU blending operation, the Commission should endeavour to set up a dedicated facility as part of the Programme to be referred to as the 'Fund for the acceleration of defence supply chain transformation ('FAST')'. FAST should be implemented under indirect management. FAST **would** leverage, de-risk and speed-up investments needed to increase the defence manufacturing capacities of EU-based SMEs and small mid-caps, in the form of a blending operation offering support in the form of debt and/or equity. **Depending on the availability of InvestEU implementing partners for intensified defence-related operations,** FAST **would** be established as a blending operation, including under the InvestEU Programme established by Regulation (EU) 2021/523 of the European Parliament and Council (20). AT (Comments): The EIB Group (EIB and EIF) would play a central role in implementing

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	blending operations; but it is still unknown whether the EIBG will be able to engage further in defence-related activities. AT is highly cautious in this regard. DE (Drafting Suggestions): Building inter alia on the experience of the defence equity facility, established in the context of the European Defence Fund as an InvestEU blending operation, the Commission should endeavour to set up a dedicated facility as part of the Programme to be referred to as the 'Fund for the acceleration of defence supply chain transformation ('FAST')'. FAST should be implemented under indirect management. FAST will leverage, de-risk and speed-up investments needed to increase the defence manufacturing capacities of EU-based SMEs and small mid-caps, in the form of a blending operation offering support in the form of debt and/or equity. FAST should be established as a blending operation, including under the InvestEU Programme established by Regulation (EU) 2021/523 of the European Parliament and Council (20), in close cooperation with its implementing partners**, while fully respecting applicable financing policies of the implementing partners.** DE (Comments): Due to the ongoing discussion related to the scope of EIB's lending policy related to defence and security, a clarification should be included according to which FAST has no implications on the lending policy of the respective implementing partners.
(30) FAST should achieve a satisfactory multiplier effect in line with the debt and equity mix and contribute to attracting both public and	DE

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private-sector financing. In order to contribute to the overall objective of enhancing the EDTIB's competitiveness, FAST should also provide support to SMEs (including start-ups and scale-ups) and small mid-caps across the EU, manufacturing defence technologies and products as well as companies actually or potentially part of the defence industry's supply chain, facing difficulties in accessing finance. FAST should as well accelerate investment in the field of manufacturing defence technologies and products, and therefore strengthen the security of supply of the Union's defence industry value chains.	(Drafting Suggestions): FAST should achieve a satisfactory multiplier effect in line with the debt and equity mix and contribute to attracting both public and private-sector financing. In order to contribute to the overall objective of enhancing the EDTIB's competitiveness, FAST should also provide support to SMEs (including start-ups and scale-ups) and small mid-caps across the EU, manufacturing defence technologies and products**, fully respecting applicable financing policies of the implementing partners,** as well as companies actually or potentially part of the defence industry's supply chain, facing difficulties in accessing finance. FAST should as well accelerate investment in the field of manufacturing defence technologies and products, and therefore strengthen the security of supply of the Union's defence industry value chains. DE (Comments): Cf. above Recital 29. NL (Drafting Suggestions): FAST should achieve a satisfactory multiplier effect in line with the debt and equity mix and contribute to attracting both public and private-sector financing. In order to contribute to the overall objective of enhancing the EDTIB's competitiveness, FAST should also provide support to SMEs (including start-ups and scale-ups) and small mid-caps across the EU, manufacturing defence and dual-use technologies and products as well as companies actually or potentially part of the defence industry's supply chain, facing difficulties in accessing finance. FAST should as well accelerate investment in the field of manufacturing defence technologies and products, and therefore strengthen the security of supply of the

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	Union's defence industry value chains. NL (Comments): FAST aims to provide support to SMEs, which more often develop dual-use technologies. These companies are crucial in the supply chain and face similar difficulties with access to finance, therefore should also be included in scope of FAST. SI (Drafting Suggestions): 30) FAST should achieve a satisfactory multiplier effect in line with the debt and equity mix and contribute to attracting both public and private-sector financing. **Here, the role and financial mechanisms of the EIB can be particularly well exploited**. In order to contribute to the overall objective of enhancing the EDTIB's competitiveness, FAST should also provide support to SMEs (including start-ups and scale-ups) and small mid-caps across the EU, manufacturing defence technologies and products as well as companies actually or potentially part of the defence industry's supply chain, facing difficulties in accessing finance. FAST should as well accelerate investment in the field of manufacturing defence technologies and products, and therefore strengthen the security of supply of the Union's defence industry value chains. SI (Comments): The impact of FAST as a multiplier could be concretely increased, in particular by the injection of capital from the EIB, in a way that EIB funds would be used exclusively for infrastructure. In this way, the EIB would maintain its AAA financial capacity and maintain ESG standards, while private capital would be used primarily for the production and

Commission proposal	Drafting Suggestions and Comments
	provision of raw materials. In this way, investment security would be increased for both for the private partner and the public partner-MS. This would relieve the financial burden on production and remove bottlenecks in the supply chain. The impact on EDTIB would be concrete.
(68) This Regulation should apply without prejudice to Union competition rules, in particular Articles 101 to 109 TFEU and the legal acts that give effect to those Articles.	
(69) In accordance with Article 41(2) TEU, operating expenditure arising from Chapter 2 of Title V TEU is to be charged to the Union budget, except for such expenditure arising from operations having military or defence implications.	DE (Comments): The recital just quotes the wording of Art. 41 (2) TEU. Some measures of the EDIP might raise the question regarding the prohibition on defence expenditure with the EU budget under art. 41 (2) TEU. This needs to be examined in more detail with regard to all measures of EDIP. HU (Comments): How is that relevant here? This regulation is operating under TFEU. NL (Drafting Suggestions): (69) **The implementation of this Regulation shall not affect the exercise of Union competences under the Common Foreign and Security Policy as stipulated in Article 40 TEU.** In accordance with

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	Article 41(2) TEU, operating expenditure arising from Chapter 2 of Title V VEU is to be charged to the Union budget, except for such expenditures arising from operations having military or defence implications.
(70) This Regulation should apply without prejudice to the specific character of the security and defence policy of certain Member States,	AT (Comments): It should be considered to emphasise this more in previous recitals, in particular recital (9) and (10), since this is of relevance for interpretation of the provisions in the Regulation.
	EL (Drafting Suggestions): Add the following recital: Member States shall have the opportunity to express their position on any of the cases of Article 10 (5) and Article 21 (5) during the sequencing of the various stages of the process and well in advance of the signing of the Grant Agreements. In this regard, Member States in which a legal entity is controlled by a non-associated third country or by a non-associated third country entity shall share, upon request, the guarantees required under Article 10 (5) and Article 21 (5) with any Member State having security and defence concerns, bilaterally, and in a manner that will not put any relevant sensitive information at risk. Additionally, upon request, the Commission shall provide any concerned Member State with its assessment on the entities control by non-associated third countries which are relevant under Article 10 (5) and Article 21 (5)

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HAVE ADOPTED THIS REGULATION:	
Chapter I	
General Provisions	
Article 1	DE (Comments): The duration of the Programme must be aligned with the duration of the MFF 2021-2027 (as in Regulation (EU) 2021/697, European Defence Fund, Article 1).
Subject Matter	
This Regulation establishes a budget and lays down a set of measures aimed at supporting defence industry readiness of the Union and its Member States through the strengthening of the competitiveness, responsiveness and ability of the European Defence Technological and Industrial Base (EDTIB) to ensure the timely availability and supply of defence products and at contributing to the recovery, reconstruction and modernisation of the Ukraine Defence Technological and Industrial Base (Ukrainian DTIB), in particular by means of the following:	DE (Comments): Why are associated countries not mentioned here? HU (Drafting Suggestions): defence industr**ial** readiness

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	NL (Drafting Suggestions): This Regulation establishes ~~a budget~~ programmes and a set of measures ….
(1) the establishment of the European Defence Industrial Programme (the 'Programme'), comprising measures for the strengthening of the competitiveness, responsiveness and ability of the EDTIB, which may include the establishment of a fund for the acceleration of defence supply chain transformation ('FAST');	HU (Comments): Suggest to find a better word than ability. Taken out of context (ability to do what?) it means nothing. How about productivity? LV (Drafting Suggestions): (1) the establishment of the European Defence Industrial Programme (the 'Programme'), comprising measures for the strengthening of the competitiveness, responsiveness and ability of the EDTIB, which **will** include the establishment of a fund for the acceleration of defence supply chain transformation ('FAST'); LV (Comments): We would ask the Commission to use stronger wording
(2) the establishment of a cooperation programme with Ukraine with a view to the recovery, reconstruction and modernisation of the Ukraine Defence Technological and Industrial Base (the 'Ukraine Support Instrument');	

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(3) a legal framework laying down the requirements and procedures for and the effects of setting-up the Structure for European Armament Programme ('SEAP') as set out in Chapter III;	
(4) a legal framework aiming at ensuring security of supply, removing obstacles and bottlenecks and supporting the production of defence products as set out in Chapter IV;	DE (Comments): We reserve the right to propose changes here in particular at a later moment, since this part (on crisis etc.) is not currently part of the active text work, but is being referred to here. NL (Comments): The Netherlands would welcome an explanation on the added value of a new legal framework compared to existing international cooperation instruments. Which problems or bottlenecks does this address?
(5) the establishment of a Defence Industrial Readiness Board as set out in Chapter V.	HU (Comments): Have to come up with a better name than DIRB. If there are two formations of the DIRB, one for EDIP and one for EDIS, whatever the regulation will call this body, people will call them EDIP Board and EDIS Board, respectively, because we have to be able to differentiate the two and also, the name has to be understandable to the political level as well. They will not appreciate "DIRB". Better to already give them names that will catch on. (This from the person who came up with the name PESCO, and that is why you don't have to say "PermStrucCoop" 43 times a day, or confuse it

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	with PSC. You are welcome☺) LV (Comments): The Board's work its work will duplicate the formats of the European Defence Agency and NATO. The recommendation would be to avoid duplication of work in Europe. The Board's role is should not be purely advisory and there should be a veto power over the Commission's decisions within the framework of this Regulation. The suggestion is that an existing format should be found that can not only inform the commission but also monitor it.
	EL (Drafting Suggestions): As a general statement: (6) Commission should not only be informed but has to approve or reject third countries. (7) The priority has to be given to EU entities (companies, undertakings etc.)

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Article 2	
Definitions	HU (Comments): We should include definitions for EDEM and EDTIB.
	EL (Drafting Suggestions): Add a new definition : **(24) 'undertaking'** EL (Comments): Clarification of the term undertaking versus entity. Although the term is used in EDIS, there is no definition of it. Moreover, The notion of undertaking is not defined in the EU Treaties. Please consider moving the second half of the definition ("While an advance … the concerned contractors") to the art. 36 (Advance Purchase of defence products).
For the purposes of this Regulation, the following definitions apply:	
(1) 'advance purchasing agreement' means a public contract with one or several undertakings which aims at supporting the swift development and/or production of a product and by virtue of which the right to buy a specified number of products in a given timeframe and at a given price is subject to the prefinancing of part of the upfront costs faced by the concerned undertakings. While an advance purchasing agreement is	AT (Drafting Suggestions): Add at the end: "… contracts, which may not alter the terms or the subject matter of the advance purchasing agreement."

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legally binding upon the participating contracting authorities and upon the contractor, it needs to be further implemented by means of the conclusion of contracts with the concerned contractors;	AT (Comments): This definition clarifies that such agreements need to be further implemented by means of the conclusion of contracts with the concerned contractors. It must be ensured however, that the major contractual terms of the advance purchasing agreements may not be altered by this subsequent contracts otherwise the latter could not be considered to be concluded under the umbrella of the respective advance purchasing agreement.
(2) 'bottleneck' means a point of congestion in a production system that stops or severely slows the production;	DE (Comments): "Severely slows" is not clearly defined. EL (Comments): Please reconsider the necessity of the definition. Moreover, the wording "severely" is not easily determinable. HU (Drafting Suggestions): 'bottleneck' means a point of congestion in a production system that stops, **hinders or otherwise** severely slows the production; SI (Drafting Suggestions): '"bottleneck" means a point of congestion in the ~~**system'**~~s production process that stops or significantly slows down production **capacity.** It

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	also means the point at which the supply chain of raw materials is halted or interrupted, which in turn has a disruptive effect on the production process SI (Comments): It is important to address bottlenecks along the entire chain, from the supply of raw materials to the production line.
(3) 'blending operation' means an action supported by the Union budget, including within a blending facility or platform as defined in Article 2, point (6) of Regulation (EU, Euratom) No [2018/1046], that combines non-repayable forms of support and/or financial instruments from the Union budget with repayable forms of support from development or other public finance institutions, or from commercial finance institutions and investors	
(4) 'common procurement' means a procurement jointly conducted by at least three Member States;	AT (Comments): This definition defines "common procurement" as procurement by at least three Member States; the rest of the text seems to also cover associated countries and Ukraine (see e.g. Art. 12 – also referring to international organisations, EDA and SEAP) – should the definition not also cover these third countries? DE (Comments): We suggest adding "associated countries" to the minimum requirement.

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	In EDIRPA, this was not done and later on presented to be an issue in the elaboration of the Working Programme, since NOR was – by mistake – not considered in an article of the regulation. EL (Comments): Please clarify/reconsider along with art. 22 and 26, since under this definition it can be assumed that there is no common procurement when UA and associated countries procure jointly with a MS. HU (Drafting Suggestions): 'common procurement' means a procurement jointly conducted by at least three **participating countries in the setup of at least two** Member States **and an additional Member state / an associated country (solely under the Programme)/ Ukraine (solely under Ukraine Support Instrument)**; NL (Drafting Suggestions): 'common procurement' means a procurement jointly conducted by at least two Member States NL (Comments): Often, successful armaments cooperation starts bilaterally and then expands (e.g. MRTT). As such, it makes much sense to support bilateral joint procurement as a 'stepping stone' for multilateral cooperation

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(5) 'control' means the ability to exercise a decisive influence on a legal entity directly, or indirectly through one or more intermediate legal entities;	AT (Comments): This definition defines control – this concept is well-known in the procurement Directives within the in-house context (see for ex Art. 12 (1) letter a of Dir 2014/24). The definition here diverges slightly; is there a reason for this or should this definition establish a different concept (see for ex Art. 29 (2) of Dir 2014/25)? A definition that is in line with other corresponding Union acts, in particular the FDI Screening Regulation (Regulation [EU] 2019/452). The legislative process for the revision of the FDI Screening Regulation should thus be considered, see Proposal for a Regulation of the European Parliament and of the Council on the screening of foreign investments in the Union and repealing Regulation (EU) 2019/452 of the European Parliament and of the Council. EL (Comments): In the text (e.g. art. 5 and 59), this term is not used only with this definition. Please consider using the term "decisive influence" instead. HU (Comments): An exact percentage in numbers, or referencing another regulation should be included in the definition of "decisive influence" to avoid future controversies.
(6) 'classified information' means information or material, in any form, the unauthorised disclosure of which could cause varying degrees	AT (Comments):

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of prejudice to the interests of the Union, or of one or more of the Member States, and which bears an EU classification marking or a corresponding classification marking, as established in 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;	This definition substantially deviates from the definition in Art. 1 Nr. 8 of Dir 2009/81/EC. What is the reason for this? From which legal hact has COM taken this definition and what was the reason for doing so? Since EDIP should establish rules deviating from 2009/81 such definitions should be aligned. EL (Comments): Please consider harmonization with Decision 2013/488/EU.
(7) ‘defence products’ means any defence-related products as referred to in Article 2 of Directive 2009/43/EC;	AT (Comments): Art. 2 of Directive 2009/43/EC just refers to the Annex – why not referencing the Annex (which is regularly updated)? EL (Comments): In order to avoid needless multiple terminology, please consider the use of term “defence-related products” instead.
	LT (Drafting Suggestions): (7a) defence technologies… LT (Comments): Proposal for new definition needed
(8) ‘executive management structure’ means a body of a legal entity, appointed in accordance with national law, and, where applicable, reporting to the chief executive officer, which is empowered to establish	AT (Comments):

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the legal entity's strategy, objectives and overall direction, and which oversees and monitors management decision-making;	This definition is used only once in the text - in the definition of "'non-associated third-country entity". Why not incorporate there? Does it correspond to the concept in Art. 57 (1) last indent of Dir 2014/24 ("member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control therein")? HU (Comments): We support FR in putting executive management structure back into eligible entities as well.
(9) 'legal entity' means a legal person created and recognised as such under Union, national or international law, which has legal personality and the capacity to act in its own name, exercise rights and be subject to obligations, or an entity which does not have legal personality as referred to in Article 197(2), point (c), of the Regulation (EU, Euratom) No 2018/1046;	AT (Comments): Can COM explain why national entities (with no legal personality) are included in this definition (via reference to Art. 197 (2) letter c of Reg 2018/1046)? What is the reason for doing so? NL (Drafting Suggestions): 'legal entity' means an entity ~~legal person~~ created and recognised as such under Union, national or international law, which has legal personality and the capacity to act in its own name, exercise rights and be subject to obligations, or an entity which does not have legal personality as referred to in Article 197(2), point (c), of the Regulation (EU, Euratom) No 2018/1046;
(10) 'defence innovation action' means an action primarily consisting of activities directly aiming to produce plans and arrangements or designs	AT

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for new, altered or improved defence products, processes or services, possibly including prototyping, testing, demonstrating, piloting, large-scale product validation and market replication	(Comments): This definition is only relevant in the context of Art. 52; it should be incorporated in this Article.
(11) 'middle capitalisation company' or 'mid-cap' means an enterprise that is not a SME and that employs a maximum of 3 000 persons, where the headcount of staff is calculated in accordance with Articles 3 to 6 of the Annex to Recommendation 2003/361/EC	EL (Comments): Please consider the "turnover" and the "balance sheet total" as additional criteria for the classification of the companies.
(12) 'non-associated third-country entity' means a legal entity that is established in a non-associated third country or, a legal entity that is established in the Union or in an associated country, but has its executive management structures in a non-associated third country;	AT (Comments): The definition refers to the non-associated third-country entity. This entity is, according to the definition, also an entity established in Ukraine or that has its executive management structure in Ukraine. Recital 15 however seems to exclude such Ukrainian or Ukraine-controlled entities from the definition. Which is the intended definition? The definition of Nr. 12 also raises the question how an "associated third-country" is defined! Are those only the countries listed in Art. 9 (so only EEA countries)? Further discussion/clarification might be required. In particular, the term 'associated third country' appears to be used differently in other contexts and could lead to confusions, e.g. states that have concluded association agreements with the EU.

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(13) ‘off-take agreement’ means any contractual agreement between at least [three] Member States and at least one manufacturer of defence products containing either a commitment on the Member States to procure a certain quantity of defence products over a certain period of time or a commitment on the manufacturer of defence products to provide the Member States with the option to do so.	AT (Comments): Off-take agreements are defined as any contractual agreement between a minimum number of Member States. Article 37 however includes associated countries and Ukraine. Which is the intended definition? EL (Comments): Please clarify/reconsider along with art. 37, since under this definition it can be assumed that UA and associated countries cannot conclude such agreements. HU (Comments): Why is the number three in parentheses? NL (Drafting Suggestions): ‘off-take agreement’ means any contractual agreement between at least [**two**] Member States and at least one manufacturer of defence products containing either a commitment on the Member States to procure a certain quantity of defence products over a certain period of time or a commitment on the manufacturer of defence products to provide the Member States with the option to do so.

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(14) ‘procurement agent’ means a contracting authority as defined in Article 2(1), point (1), of Directive 2014/24/EU and Article 3(1) of Directive 2014/25/EU established in a Member State or an associated country, the European Defence Agency, a Structure for European Armament Programme or an international organisation that is designated by Member States, associated countries or Ukraine to conduct a common procurement on their behalf;	AT (Comments): A procurement agent is defined by (among others) reference to the definition of contracting authorities. The reference to Directive 2014/25/EU does not seem necessary, as it is identical to the definition in Directive 2014/24 /EU. The current definition excludes the possibility that Ukrainian authorities act as a “procurement agent” – is this intentional? AT considers that for ex OCCAR and NSPA are included in this definition (via “international organisation”). DE (Comments): Our understanding is that the wording is not supposed to stipulate additional requirements with regard to the international organization itself. To avoid misapprehension, we propose to delete the half sentence. Since Article 12 paragraph 2 as well as Article 29 paragraph 1 regulate, that a procurement agent has to be appointed by the participants (Art. 12) or the SEAP (Art 29) the half sentence seems to be unnecessary. We understand that e.g. OCCAR and NSPA could be procurement agents under EDIP. Is that understanding correct? Suggest to be clear on this. EL (Comments): In order to avoid needless multiple terminology, please consider the use of term “contracting authority” instead.

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(15) 'lead time' means the period of time between a purchase order being placed and the manufacturer completing the order;	EL (Comments): Please reconsider the necessity of the definition.
(16) 'raw materials' means the materials required to produce defence products;	AT (Drafting Suggestions): raw material' means a substance in processed or unprocessed state used as an input for the manufacturing of intermediate or final defence products. AT (Comments): The current definition of "raw materials" could cover "components" used to produce defence products – is this intended? See as well the definition of "crisis-relevant products" (Art. 2 Nr. 23) where a clear distinction is made between "components" and "raw materials". See in this regard also the definition of raw materials in the Critical Raw Materials Act: 'raw material' means a substance in processed or unprocessed state used as an input for the manufacturing of intermediate or final products, excluding substances predominantly used as food, feed or combustion fuel. See as well for ex. Art. 3 (3) of Reg 2018/848:'[agricultural] raw material' means an [agricultural] product that has not been subjected to any operation of preservation or processing. DE (Comments):

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	Suggest a close coherence to the definition proposed Raw Materials Act. EL (Comments): Please reconsider the necessity of the definition. If deemed necessary, it appears to be too broad, since it seems to include literally every single substance utilized to produce the defence product (meaning components as well – of article 35 para 3 of EDIP). Please consider the alignment with the definition of raw materials in the Critical Raw Materials Act (Art 2).
(17) 'seal of excellence' means a quality label which shows that a proposal submitted to a call for proposals under the Instrument has passed all of the evaluation thresholds set out in the work programme, but could not be funded due to a lack of budget available for that call for proposals in the work programme, and might receive support from other Union or national sources of funding;	
(18) 'security crisis' means any situation in a Member State, an associated third country or non-associated third country in which a harmful event has occurred or is deemed to be impending which clearly exceeds the dimensions of harmful events in everyday life and which substantially endangers or restricts the life and health of people, or requires measures in order to supply the population with necessities, or has a substantial impact on property values, including armed conflicts and wars;	AT (Comments): This definition is broad enough that it may inter alia cover events such as a pandemic or a financial crisis. The definition should be more precise. Why does it cover in particular harmful events leading to a substantial impact on property values? Why has this definition not been taken from Art. 1 (10) of Directive 2009/81/EC? As it includes any situation "in a Member State, an associated third country or non-associated third country" it would include any such situation in any country – correct?

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	BE (Comments): Is it an already agreed definition in other relevant EU documents ? Or is it coherent with already agreed definitions ? DE (Comments): We reserve the right to propose changes here in particular at a later moment, since this part (on crisis etc.) is not currently part of the active text work, but is being referred to already. NL (Comments): Look closely to this definition to make it clearly defined and bounded. Does this for instance include a situation in any non-associated third country, also for instance in countries that are far away from Europe and do have minor links to Europe, let's say in Central America?
(19) 'sensitive information' means information and data, including classified information, that is to be protected from unauthorised access or disclosure because of obligations laid down in Union or national law or in order to safeguard the privacy or security of a natural or legal person;	EL (Comments): Please reconsider the two last lines ("or in order to … person") since it seems to be too broad and not to derive from any legal obligations.
(20) 'small and medium-sized enterprises' or 'SMEs' means small and medium-sized enterprises as defined in Article 2 of the Annex to Commission Recommendation 2003/361/EC;	EL (Comments): Please consider the "turnover" and the "balance sheet total" as additional

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	criteria for the classification of the companies.
(21) 'subcontractors in the common procurement' means any legal entity which provides critical inputs that possess unique attributes essential for the functioning of a product and which is allocated at least 15 % of the value of the contract.	AT (Comments): The definition of subcontractors in common procurement lacks the crucial and essential element of what a subcontractor is, i.e. its contractual relationship with the main contractor (and not with the contracting authority). It diverges substantially from the definition in Art. 1 (22) of the Directive 2009/81/EC. It also seems pointless as it is only used once more in Art. 12(5) of EDIP; instead, the reference could be made in that provision without referring to subcontractors. It is also unclear who the definition is meant to cover as it is very narrow – could COM provide examples? Additionally the current definition blurs the line between "subcontractors" and (mere) "suppliers" (see the differentiation in Art. 71 (5) supara 4 of Directive 2014/24/EU). Furthermore, it raises the question what "status" legal entities have that provide critical input but do not reach the 15% threshold! Could COM explain why it chose the 15% threshold (are there any objective reasons) and what the legal status below this threshold would be? DE (Comments): The limit of 15% seems arbitrarily. A subcontractor can provide input that is valued less than 15% of the total contract value but at the same time poses a super essential part of the product as such – but will not be considered a subcontractor in the common procurement.

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	At the same time, not every supplier is a subcontractor. There has to be a differentiation! What does "unique attribute" mean? EL (Comments): Please reconsider the terms "critical" and "essential" since they are not easily determinable. Please consider the use of the term as per art. 1 point (22) Directive 2009/81, enhanced, instead. NL (Comments): 'subcontractor' is and should be an objectively defined term: it is a contractor providing goods or services to a recipient or principal contractor. Subjective characteristics like 'critical input' 'essential' 'unique attributes' 't least 15 %' should be relegated to the operative provisions regarding eligibility as in EDIRPA
(22) 'small middle capitalisation company' or 'small mid-cap' means an enterprise that is not a SME and whose number of employees does not exceed 499, calculated in accordance with Articles 3 to 6 of the Annex to Recommendation 2003/361/EC, the annual turnover of which does not exceed EUR 100 million or the annual balance sheet of which does not exceed EUR 86 million;	EL (Comments): Please consider the "turnover" and the "balance sheet total" as additional criteria for the classification of the companies.
(23) 'crisis-relevant products' means defence products or key components or raw materials thereof or any products or services critical	AT (Comments):

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to their production that have been identified as being seriously affected by a disruption or potential disruption of the functioning of the internal market and its supply chains resulting in actual or potential significant shortages.	This definition is extremely wide as it also covers "any products or services critical to [the] production" of "crisis relevant products. It would therefore cover also the whole (civil) supply/service chain for such products and would effectively cover large areas of the Internal Market. Since it covers "services" as well, the definition should refer to "crisis-relevant products and services". BE (Comments): Who identifies the "products or services critical to their production that have been identified as being seriously affected by a disruption or potential disruption of the functioning of the internal market"? DE (Comments): We reserve the right to propose changes here in particular at a later moment, since this part (on crisis etc.) is not currently part of the active text work, but is being referred to already.

Commission proposal	Drafting Suggestions and Comments
Chapter II	
Section 1: General provisions applicable to the Programme and to the Ukraine Support Instrument	
Article 3	
Use of financing not linked to costs	
1. Grants may take the form of financing not linked to costs, pursuant to Article 180(3) of Regulation (EU, Euratom) 2018/1046.	FI (Comments): Is the aim to use financing not linked to costs in all of the eligible actions? This could be more precise in the regulation text.
2. Where the Union grant takes the form of financing not linked to costs for actions reinforcing the EDTIB, the level of the Union contribution attributed to each action may be defined on the basis of factors such as:	NL (Comments): The Netherlands wishes clarification on the question when funding goes to EDTIB or the Member States.
(a) the complexity of the common procurement, for which a	NL

Commission proposal	Drafting Suggestions and Comments
proportion of the estimated value of the common procurement contract and the experience gained in similar actions may serve as an initial proxy;	(Drafting Suggestions): (a) the complexity of the common procurement, for which a proportion of the estimated value of the common procurement contract and the experience gained in similar initiatives ~~actions may serve as an initial proxy;~~ NL (Comments): last part unclear drafting, 'inititaives' allows to include inititiatives of EU MS started outside an EU funded framework but could still be valuable as a start to develop further
(b) the characteristics of the cooperation which are likely to give rise to greater interoperability outcomes and long-term investment signals to industry, in particular where the common procurement covers activities that would be eligible for funding from the Union budget, e.g. research and development, testing and certification, initial production or in-service support activities;	
(c) the number of participating Member States and associated countries or the inclusion of additional Member States or associated countries in existing cooperations;	
(d) the effort linked to ramp-up of necessary manufacturing capacities;	

Commission proposal	Drafting Suggestions and Comments
(e) the procurement of additional quantities for other Member States (defence readiness pool).	
3. Where the Union grant takes the form of financing not linked to costs for actions reinforcing the Ukrainian DTIB, the level of Union contribution may in addition to the factors referred to in paragraph 2, be based on factors such as:	
(a) the complexity of the Ukraine accession process, including structural reforms and measures to promote convergence with the Union 'acquis';	HU (Drafting Suggestions): the ~~**complexity**~~ **efforts** ~~**the**~~ of Ukraine **in the** accession process, including **implementing** structural reforms and measures to promote convergence with the Union 'acquis' LT (Drafting Suggestions): ~~the complexity of the Ukraine accession process, including~~ Ukraine's efforts to carry out structural reforms and measures to promote convergence with the Union 'acquis'; LT (Comments): Factor difficult to measure, not relevant to this Programme. Changes proposed.
(b) the efforts of adapting the Ukrainian defence procurement processes and the environment for the Ukrainian defence industry, including to meet NATO standards;	

Commission proposal	Drafting Suggestions and Comments
(c) the efforts and risks associated with the ongoing war of aggression, taking into account the need to rebuild and modernise infrastructure damaged by the war in a resilient way, and, where relevant, by appropriate measures to avoid, prevent or reduce and, if possible, offset these effects.	
Article 4	
Objectives	DE (Comments): what is the legal basis of the objectives as enumerated below (Art 212 TFEU?)
1. The Programme and the Ukraine Support Instrument aim at increasing the defence industrial readiness of the EDTIB and of the Ukrainian DTIB in particular through:	
(a) initiating and speeding up the adjustment of industry to structural changes, including through the creation and ramp-up of its manufacturing capacities and the opening of the supply chains for cross-border cooperation and effective availability and supply throughout the Union, involving in particular, to a significant extent, SMEs, small mid-caps and other mid-caps;	AT (Drafting Suggestions): "…. to a significant extent, SMEs and mid-caps." AT (Comments):

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	Art. 4 (1) letter a) refers to "small mid-caps and other mid-caps"; as there are only" small mid-caps" (see Art. 2 Nr 22) and "mid-caps" (see Art. 2 Nr. 11) letter a) could simply refer to "mid-caps". NL (Drafting Suggestions): initiating and speeding up the adjustment of industry to structural changes, including through the creation and ramp-up of its manufacturing capacities and the opening of the **defence industrial** supply chains for cross-border cooperation **through a Europeanisation of defence supply chains** and effective availability and supply throughout the Union, involving in particular, to a significant extent, SMEs, small mid-caps and other mid-caps; NL (Comments): There are no clear measures in the Programme to reach the objective to open up the supply chains for cross-border cooperation.
(b) incentivising cooperation in defence procurement in order to contribute to solidarity, prevent crowding-out effects, increase the effectiveness of public spending and reduce excessive fragmentation, ultimately leading to an increase in the standardisation of defence systems and greater interoperability.	LT (Drafting Suggestions): , ultimately leading to an increase in the standardisation of defence systems that are compatible with NATO standards and greater interoperability. NL (Drafting Suggestions): incentivising cooperation in defence procurement in order to contribute to solidarity, prevent crowding-out effects, increase the effectiveness of public spending and reduce excessive fragmentation **of demand**,

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	ultimately leading to an increase in the standardisation of defence systems and greater interoperability.
2. Actions contributing to the recovery, reconstruction and modernisation of the Ukrainian DTIB shall take into account its possible future integration into the EDTIB, thereby contributing to mutual stability, security, peace, prosperity and sustainability.	EL (Drafting Suggestions): 2. Actions contributing...to mutual stability, security, peace, prosperity, **resilience** and sustainability. EL (Comments): EDIS (Page 2) states: "Finally, partnerships should be leveraged to enhance readiness and resilience (Section 6)." Also from Strategic Compass "We will continue to invest in the **resilience** of partners in neighboring states and beyond."
3. The objectives set out in paragraph 1, point (a), shall be pursued with an emphasis on initiating and speeding up the adjustment of industry to the rapid structural changes imposed by the evolving security environment. This may include the improvement and acceleration of the capacity of adaptation of supply chains for crisis-relevant products, the creation of manufacturing capacities or their ramp-up, and a reduction of their lead production time for defence products throughout the Union, taking into account the objectives of the Strategic Compass for Security and Defence and the advice of the Defence Industrial Readiness Board.	HU (Comments): the advice of which (format of the) defence industrial readiness board? LT (Drafting Suggestions): and the advice of the Defence Industrial Readiness Board when supply crisis state is activated LV (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
	The objectives set out in paragraph 1, point (a), shall be pursued with an emphasis on initiating and speeding up the adjustment of industry to the rapid structural changes imposed by the evolving security environment. This may include the improvement and acceleration of the capacity of adaptation of supply chains for crisis-relevant products, the creation of manufacturing capacities or their ramp-up, and a reduction of their lead production time for defence products throughout the Union, taking into account the objectives of the Strategic Compass for Security and Defence and the advice of the Defence Industrial Readiness Board **in alignment with the collective capability needs of NATO** LV (Comments): NATO capability planning processes should not be duplicated. NL (Drafting Suggestions): The objectives set out in paragraph 1, point (a), shall be pursued with an emphasis on initiating and speeding up the adjustment of industry throughout the Union to the rapid structural changes imposed by the evolving security environment. This may include the improvement and acceleration of the capacity of adaptation of supply chains for crisis-relevant products, the creation of manufacturing capacities or their ramp-up, and a reduction of their lead production time for defence products throughout the Union, taking into account the objectives of the Strategic Compass for Security and Defence and the advice of the Defence Industrial Readiness Board. NL (Comments): 'throughout the Union' is very important in this context.

Commission proposal	Drafting Suggestions and Comments
	What does 'location' mean in this context? Clarifiction: Funding to DTIB?
4. The objectives set out in paragraph 1, point (b), shall be pursued with an emphasis on developing the EDTIB throughout the Union to allow it to address, in particular, Member States' defence product needs in terms of quality, availability, delivery time and location, in line with the defence capability priorities commonly agreed by Member States within the framework of the Common Foreign and Security Policy (CFSP), in particular in the context of the Capability Development Plan, taking into account the objectives of the Strategic Compass for Security and Defence and the advices of the Defence Industrial Readiness Board.	HU (Drafting Suggestions): Common Security and Defence Policy (CSDP) instead of CFSP HU (Comments): which Board? LT (Drafting Suggestions): taking into account the objectives of the Strategic Compass for Security and Defence ~~and the advices of the Defence Industrial Readiness Board.~~ LT (Comments): General task of the Board is to assist COM in supply crisis state, not in capability prioritisation area. CDP and Strategic Compass are sufficient references in this para. LV (Drafting Suggestions): The objectives set out in paragraph 1, point (b), shall be pursued with an emphasis on developing the EDTIB throughout the Union to allow it to address, in particular, Member States' defence product needs in terms of quality, availability, delivery time and location, in line with the defence

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	capability priorities commonly agreed by Member States within the framework of the Common Foreign and Security Policy (CFSP), in particular in the context of the Capability Development Plan, taking into account the objectives of the Strategic Compass for Security and Defence and the advices of the Defence Industrial Readiness Board **in alignment with the collective capability needs of NATO** LV (Comments): NATO capability planning processes should not be duplicated. NL (Comments): Clarification: Funding to MS?
	LT (Drafting Suggestions): 4(a) The objectives set out in paragraph 1 shall be pursued with an emphasis on importance of closer cooperation and coordination with NATO in the area of defence industry, ensuring continuous cooperation with like-minded third countries and not hindering the implementation of existing joint defence initiatives. LT (Comments): Proposal for new para
5. The objectives set out in paragraph 2 shall be pursued with an emphasis on enhancing cross-border cooperation between the EDTIB and the Ukrainian DTIB, taking into account the defence product needs of Ukraine, through creation of manufacturing capacities or their ramp-up in line with NATO standards, protection of assets, technical assistance and	AT (Comments): Request for clarification: Budget allocated under lit a cannot be reallocated to the second budget line for the UDTIB according to Article 5 (1) lit b?

Commission proposal	Drafting Suggestions and Comments
exchange of personnel, increased cooperation on common procurement of defence products for Ukraine and licensing production cooperation through public-private partnerships or other forms of cooperation, e.g. joint ventures. Special attention shall be given to the objective to support Ukraine to progressively align with Union rules, standards, policies and practices ('acquis') with a view to future Union membership.	BE (Comments): why being so specific about licensing ?
Article 5	
Budget	FI (Comments): The sections related to budget and financial regulations that differ from commonly used ones raises concerns, but at this stage, it is too early to propose concrete draft suggestions.
1. The financial envelopes for the implementation of the Programme and the Ukraine Support Instrument shall be composed of:	
(a) for actions reinforcing the EDTIB: EUR 1 500 millions in current prices for the period from [… - insert a specific date] until 31 December 2027 as well as additional contributions in accordance with Article 6;	EL (Drafting Suggestions): ...**from January 2025 or earlier** until 31 December 2027. EL (Comments): Any project, such as the issue of EDIP, even with an agile PM approach,

Commission proposal	Drafting Suggestions and Comments
	must be predetermined in time regarding its implementation.
(b) for actions reinforcing the Ukrainian DTIB: the amount of the additional contributions in accordance with Article 6 to the extent earmarked, subject to the conclusion of the agreement referred to in Article 57.	LT (Drafting Suggestions): Article ~~57~~ 59. LT (Comments): Mistype in Regulation.
2. In order to respond to unforeseen situations or to new developments and needs, the Commission may reallocate the amount allocated to actions referred to in paragraph 1, by a maximum of 20 %, except for the additional financial resources as referred to in Article 6(2), which shall not be reallocated.	DE (Comments): What are possible scenarios that would require reallocations and what kinds of reallocations are envisaged here – from Heading 5 of the MFF (amounts dedicated to finance actions reinforcing the EDTIB) to Heading 6 (for actions reinforcing the UKR DTIB)? How does the proposed 20% relate to the 15% granted by paragraph 18 in the Interinstitutional Agreement of 16 December 2020? HU (Comments): Need clarification whether this means that COM could reallocate 20 % of the 1.5 billion EUR in Heading 5 to Heading 6 without the agreement of Member States. If yes, this provision could further decrease the already small amount

Commission proposal	Drafting Suggestions and Comments
	allocated to the Programme, and weaken the purpose and functioning of the EDIP Regulation.
3. The amount referred to in paragraph 1 and 5 of this Article and the amounts of additional contributions referred to in Article 6 may also be used for technical and administrative assistance for the implementation of the Programme, such as preparatory, monitoring, control, audit and evaluation activities, including price investigations and corporate information technology systems and platforms, and all other technical and administrative assistance or staff-related expenses incurred by the Commission for the management of the Programme/other elements of the subject matter.	LT (Drafting Suggestions): and all other technical and administrative assistance or staff-related expenses incurred by the Commission for the management of the Programme/other elements of the subject matter. LT (Comments): QUESTION: what is the meaning of this additional part?
4. In addition to Article 12(4) of Regulation (EU, Euratom) 2018/1046, unused commitment and payment appropriations shall be automatically carried over and may be committed and used, respectively, until 31 December of the following financial year. The amount carried over shall be used first in the following financial year. The Commission shall inform the European Parliament and the Council of commitment appropriations carried over in accordance with Article 12(6) of Regulation (EU, Euratom) 2018/1046.	AT (Drafting Suggestions): DELETION AT (Comments): This should be deleted, as it is in contradiction with budgetary principles. Any deviation from the Financial Regulation should be discussed in the Budget Committee DE (Comments): We ask for an adequate explanation why this derogation from the Financial Regulation is deemed necessary. The explanation would need to

Commission proposal	Drafting Suggestions and Comments
	be reflected in the recitals. Without proper explanations, such derogations cannot be justified. NL (Drafting Suggestions): ~~**In addition to Article 12(4) of Regulation (EU, Euratom) 2018/1046, unused commitment and payment appropriations shall be automatically carried over and may be committed and used, respectively, until 31 December of the following financial year. The amount carried over shall be used first in the following financial year. The Commission shall inform the European Parliament and the Council of commitment appropriations carried over in accordance with Article 12(6) of Regulation (EU, Euratom) 2018/1046.**~~ NL (Comments): No exceptions to the rules on carry-overs in article 12 (4) of the Financial Regulation (2018/1046).
5. By way of derogation from Article 209(3), first, second and fourth subparagraphs of Regulation (EU, Euratom) 2018/1046, any revenues and repayments from financial instruments established under this Regulation shall constitute internal assigned revenue within the meaning of Article 21(5) of Regulation (EU, Euratom) 2018/1046, to the Programme or its successor programme.	AT (Drafting Suggestions): DELETION AT (Comments): This should be deleted, as it is in contradiction with budgetary principles. Any deviation from the Financial Regulation should be discussed in the Budget Committee

Commission proposal	Drafting Suggestions and Comments
	DE (Comments): We ask for an adequate explanation why this derogation from the Financial Regulation is deemed necessary. The explanation would need to be reflected in the recitals. Without proper explanations, such derogations cannot be justified.
6. In addition to Article 15 of Regulation (EU, Euratom) 2018/1046, commitment appropriations corresponding to the amount of recoveries and of decommitments shall be made available again to the Programme or the Ukraine Support Instrument or their successors in the context of the budgetary procedure.	AT (Drafting Suggestions): DELETION AT (Comments): This should be deleted, as it is in contradiction with budgetary principles. Any deviation from the Financial Regulation should be discussed in the Budget Committee DE (Comments): We ask for an adequate explanation why this derogation from the Financial Regulation is deemed necessary. The explanation would need to be reflected in the recitals. Without proper explanations, such derogations cannot be justified. HU (Comments):

Commission proposal	Drafting Suggestions and Comments
	"To the Programme or the USI?" Who decides which? NL (Drafting Suggestions): ~~**In addition to Article 15 of Regulation (EU, Euratom) 2018/1046, commitment appropriations corresponding to the amount of recoveries and of decommitments shall be made available again to the Programme or the Ukraine Support Instrument or their successors in the context of the budgetary procedure.**~~ NL (Comments): No exceptions for the use of decommitments, except for what's already specified in article 15 of the Financial Regulation (2018/1046).
7. Budgetary commitments for activities extending over more than one financial year may be broken down over several years into annual instalments.	
8. Appropriations may be entered in the Union budget beyond 2027 to cover the expenses necessary to fulfil the objectives set out in Article 4, to enable the management of actions not completed by the end of the Programme, as well as expenses covering critical operational activities and services.	DE (Comments): Rationale of this paragraph is not clear. Please specify if commitment or payment appropriations are meant. NL (Drafting Suggestions): ~~**Appropriations may be entered in the Union budget beyond 2027 to cover the expenses necessary to fulfil the objectives set out in Article 4, to enable the management of actions not completed by the end of**~~

Commission proposal	Drafting Suggestions and Comments
	~~**the Programme, as well as expenses covering critical operational activities and services.**~~ NL (Comments): No prejudgement of the negotiations on the next MFF.
Article 6	
Additional financial resources	
1. Member States, European Union institutions, bodies and agencies, third countries, international organisations, international financial institutions or other third parties, may provide additional financial contributions to the Programme, including to the Fund Accelerating the defence Supply Chains Transformation (FAST) referred to in Article 19 in accordance with Article 208(2) of the Regulation (EU, Euratom) No 2018/1046. Such financial contributions shall constitute external assigned revenue within the meaning of Article 21(2), points (a)(ii) [point (a) FR recast], (d), or (e) or Article 21(5) of the Regulation (EU, Euratom) No 2018/1046.	AT (Comments): Further discussion/clarification might be required. In particular, the FAST and other EU agencies/bodies are also financed by the EU budget. However, such funds shall not be used for the UDTIB (Article 5 [1] lit b)
2. Any additional amounts received under the relevant Union restrictive measures shall be external assigned revenue within the meaning of Article 21(5) of Regulation (EU, Euratom) 2018/1046 and shall be used for actions under the Ukraine Support Instrument, including	AT (Comments): What are the “relevant Union restrictive measures”- should this refer to

Commission proposal	Drafting Suggestions and Comments
actions reinforcing the Ukrainian DTIB.	the EU sanctions regime according to Reg. 833/2014 and 269/2014? This is relevant to be able to have an overview of what is to be external assigned revenue and used for actions under the Ukraine Support Instrument. Could it be possible, that additional amounts result from other sanctions regimes (like the UN)? NL (Comments): The Netherlands would like to request the Commission to elaborate on the relation of this provision to Article 21 of Regulation 2018/1046.
3. Resources allocated to Member States under shared management may, at their request, be transferred to the Programme subject to the conditions set out in the relevant provisions of Regulation (EU) 2021/1060 of the European Parliament and the Council[7]. The Commission shall implement those resources directly in accordance with Article 62(1), point (a) of the first subparagraph, of the Regulation (EU, Euratom) No 2018/1046 or indirectly in accordance with point (c) of that subparagraph. They shall be added to the resources referred to in Article 5(3), point (a). Those resources shall be used for the benefit of the Member State concerned.	BE (Drafting Suggestions): Resources allocated to Member States under shared management may, at their request, be transferred to the Programme subject to the conditions set out in the relevant provisions of Regulation (EU) 2021/1060 of the European Parliament and the Council[8]. The Commission shall implement those resources directly in accordance with Article 62(1), point (a) of the first subparagraph, of the Regulation (EU, Euratom) No 2018/1046 or indirectly in accordance with point (c) of that subparagraph. They shall be added to the resources referred to in Article 5(3)~~, point (a).~~ Those

[7] Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Programme for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159–706).

[8] Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Programme for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159–706).

Commission proposal	Drafting Suggestions and Comments
	resources shall be used for the benefit of the Member State concerned. BE (Comments): Art 5(3) has no sub-points DE (Drafting Suggestions): […]They shall be added to the resources referred to in Article 5(~~3~~**1**), point (a). […] DE (Comments): There seems to be a typo, please verify. Does "for the benefit of the MS concerned" mean that resources will be used to procure products for the MS or that industry located in the MS can receive those resources or that the MS can decide on the use if the resources (separately from the PC's decision)?
4. Where the Commission has not entered into a legal commitment under direct or indirect management for resources transferred in accordance with paragraph 3 and at the latest in the year 2028, the corresponding uncommitted resources may be transferred back to one or more respective source programmes, at the request of the Member State, in accordance with the conditions set out in the relevant provisions of Regulation (EU) 2021/1060 of the European Parliament and of the Council.	

Commission proposal	Drafting Suggestions and Comments
Section 2: The Programme	NL (Comments): Each component of the Instrument (e.g. EDIRPA+ and ASAP+) would benefit from a different set of eligibility criteria, in particular the level of involvement of non-EU entities. Joint procurement is short term focussed and involves existing supply chains. Production capacity is inherently more EU-focused. We would therefore prefer to distinguish between these different instruments.
Article 7	
Alternative, combined and cumulative funding	
1. The Programme shall be implemented in synergy with other Union programmes. An action that has received a contribution from another Union programme may also receive a contribution under the Programme provided that the contribution does not cover the same costs. The rules of the relevant Union programme shall apply to the corresponding contribution or a single set of rules of any of the contributing Union programmes may be applied to all contributions and a single legal commitment may be concluded. The cumulative support from the Union budget shall not exceed the total eligible costs of the action and may be calculated on a pro-rata basis in accordance with the documents setting out the conditions for support.	HU (Drafting Suggestions): may also receive a contribution under **this** Programme HU (Comments): (to be absolutely clear)

Commission proposal	Drafting Suggestions and Comments
2. In order to be awarded a Seal of Excellence under the Programme, actions shall comply with all of the following conditions:	AT (Comments): Who will award a "Seal of Excellence"? COM? Would this be a legal act? EL (Drafting Suggestions): Add the following: **(d) they have been completed within a predetermined time period.** EL (Comments): If not included in the minimum quality requirements of that call for proposals.
(a) they have been assessed in a call for proposals under the Programme;	
(b) they comply with the minimum quality requirements of that call for proposals;	
(c) they are not financed under that call for proposals due to budgetary constraints.	

Commission proposal	Drafting Suggestions and Comments
3. In accordance with the relevant provisions of Regulation (EU) 2021/1060, the ERDF or ESF+ may support proposals submitted to a call for proposals under the Programme, which were awarded a Seal of Excellence in accordance with the Programme.	
Article 8	
Implementation and forms of Union funding	
1. The Programme shall be implemented under direct management in accordance with the Regulation (EU, Euratom) No 2018/1046 or in indirect management with bodies referred to in Article 62(1), point (c), of the Regulation (EU, Euratom) No 2018/1046.	
2. Union funding may be provided in any of the forms laid down in the Regulation (EU, Euratom) No 2018/1046, in particular grants, prizes, procurement, and financial instruments within blending operations under the InvestEU programme in accordance with Title X of the Regulation (EU, Euratom) No 2018/1046.	
3. By way of derogation from Article 192(2) of the Regulation (EU, Euratom) No 2018/1046, activities referred to in Article 11(3), point (d), for which Union funding is provided in the form of a grant, and profit is made, the Commission may recover the percentage of the profit corresponding to the Union contribution to the eligible costs actually	DE (Comments): We ask for an adequate explanation why this derogation from the Financial Regulation is deemed necessary. The explanation needs to be

Commission proposal	Drafting Suggestions and Comments
incurred by the beneficiary carrying out the action, up to the final amount of the Union contribution. The profit is calculated by a surplus of receipts over the eligible costs of the action, where receipts are limited to Union funding, Member State funding, including procurement, other revenue generated during the action and any revenue resulting from the action. The work programme may set out further details.	reflected in the recitals. Without proper explanations, such derogations cannot be justified. HU (Comments): Could you please elaborate on that? In what form and for what would the Commission use these amounts? It will materialize most probably only years after the work programme is over. Maybe it could be assigned to the follow-on defence industrial programme(s) of EDIP. LT (Drafting Suggestions): and profit is made, Commission may recover the percentage of the profit corresponding to the Union contribution to the eligible costs actually incurred by the beneficiary carrying out the action, up to the final amount of the Union contribution. LT (Comments): QUESTION: what does that mean in practice?
4. By way of derogation from Article 193(2) of Regulation (EU, Euratom) 2018/1046, financial contributions may, where relevant and necessary for the implementation of an action, cover actions started and costs incurred prior to the date of the submission of the proposal for those actions, provided that those actions did not start before 5 March 2024 and have not been completed before the signature of the grant agreement.	DE (Comments): Cf. comment on recital 23

Commission proposal	Drafting Suggestions and Comments
Article 9	
Third countries associated to the Programme	
The Programme shall be open to the participation of members of the European Free Trade Association which are members of the EEA, in accordance with the conditions laid down in the Agreement on the European Economic Area (associated countries).	AT (Comments): This should already be clarified under the Definitions in Article 2. NL (Drafting Suggestions): The Programme shall be open to the participation of members of the European Free Trade Association which are members of the EEA, in accordance with the conditions laid down in the Agreement on the European Economic Area (associated countries), and NATO-trusted allies.

Commission proposal	Drafting Suggestions and Comments
Article 10	NL (Comments): The pursuit of increased European cooperation does not negate the importance of continued collaboration with non-associated partner countries, such as NATO allies that are not EU member states. Consider, for example, the United States. In this context, NL considers acquiring production licenses from entities originating in non-associated third countries, thus enabling licensed production within the EU. NL believes that this will also strengthen the EDTIB.
Eligible legal entities	HU (Comments): Very confusing article, needs better structure. For example: for legal entities participating in common procurement actions, only 2018/1046 criteria apply. For legal entities participating in defence industry actions, 2018/1046 criteria apply, and in addition, the following criteria apply as well: - - - NL (Comments): NL holds the position that we should stick to agreed language in the EDF.
1. The eligibility criteria set out in paragraphs 2 to 7 shall apply in addition to the criteria set out in accordance with Regulation (EU, Euratom) 2018/1046.	AT (Comments):

Commission proposal	Drafting Suggestions and Comments
	Why has COM set up the Programme in a way that Ukrainian recipients may not be eligible under Art. 10 but only under Art. 21? It seems that Art. 10 and 21 are mutually exclusive, can COM confirm? What about an action including MS, associated countries and Ukraine – neither Art. 10 nor Art. 21 would cover that situation. Is this intended, if yes, why? EL (Comments): On the eligible legal entities for funding, what is the reasoning for the use of Regulation (EU, Euratom) 2018/1046? Which articles in particular reference are made to?
2. Recipients of Union funding shall be established in the Union or in an associated country.	
3. The infrastructure, facilities, assets and resources of the recipients which are used for the purposes of the action shall be located on the territory of a Member State or of an associated country. Where recipients have no readily available alternatives or relevant infrastructure, facilities, assets and resources in the Union or in an associated country, they may use their infrastructure, facilities, assets and resources which are located or held outside the territory of the Member States or of the associated countries, provided that such use does not contravene the security and defence interests of the Union and the Member States and is consistent with the objectives set out in Article 4.	AT (Comments): Further discussion how to ensure that the member states' security and defence interests are not contravened is required. See in particular para 6 of this Article BE (Comments): This clause may bring some danger of disclosure of information. EL (Drafting Suggestions): 3. The infrastructure, facilities, assets and resources of the recipients

Commission proposal	Drafting Suggestions and Comments
	which are used for the purposes of the action shall be located on the territory of a Member State or of an associated country. Delete the paragraph : ~~Where ... member States and is consistent with the objectives set out in Article 4.~~ EL (Comments): 1. EU funds must go to m-s. 2. Strategic Compass & EDIS primary supports the EDTIB. 3. This might be only an exception under specific conditions on Ad -Hoc basis. 4. Paragraph 4 can be merged with 5 of this article. 5. On the eligible legal entities for funding, what is the mechanism envisaged that would make sure that there are no readily available alternatives to EU or EU associated country established production facilities and/or capacities and hence eligible entities may use facilities and/or capacities outside the territory of Member States or associated countries?
4. For the purposes of an action supported by the Programme, the recipients shall not be subject to control by a non-associated third country or by a non-associated third-country entity.	NL (Comments): The Netherlands holds the position that co-production of munition and materiel in Europe should be possible under EDIP. Reference to the Patriot-production line in Germany (co-production with the EDTIB).

Commission proposal	Drafting Suggestions and Comments
5. By way of derogation from paragraph 4, a legal entity established in the Union or in an associated country and controlled by a non-associated third country or a non-associated third-country entity shall be eligible to be a recipient if the acquisition of its control by a non-associated third country or a non-associated third-country entity, has been subject to screening within the meaning of Regulation (EU) 2019/452 of the European Parliament and of the Council and, where necessary, to appropriate mitigation measures, taking into account the objectives set out in Article 4 of this Regulation, or if guarantees approved 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.	AT (Comments): What kind of "guarantees" (approved by a MS) are we talking about? The legislative process for the revision of the FDI Screening Regulation should be considered, see Proposal for a Regulation of the European Parliament and of the Council on the screening of foreign investments in the Union and repealing Regulation (EU) 2019/452 of the European Parliament and of the Council. EL (Drafting Suggestions): Add the paragraph. Where recipients have no readily available alternatives or relevant infrastructure, facilities, assets and resources in the Union or in an associated country, they may use their infrastructure, facilities, assets and resources which are located or held outside the territory of the Member States or of the associated countries, provided that such use does not contravene the security and defence interests of the Union and the Member States and is consistent with the objectives set out in Article 4. EL (Comments): 1. EU funds must go to m-s. 2. Strategic Compass & EDIS primary supports the EDTIB. 3. This might be only an exception under specific conditions on Ad -Hoc

Commission proposal	Drafting Suggestions and Comments
	basis. IT (Drafting Suggestions): By way of derogation from paragraph 4, a legal entity established in the Union or in an associated country and controlled by a non-associated third country or a non-associated third-country entity shall be eligible to be a recipient **if the acquisition of its control by a non-associated third country or a non-associated third-country entity**, has been subject to screening within the meaning of Regulation (EU) 2019/452 of the European Parliament and of the Council and, where necessary, to appropriate mitigation measures, taking into account the objectives set out in Article 4 of this Regulation, or if guarantees approved 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 IT (Comments): Could you please provide clarification on the reasoning behind the inclusion of red wording, and explain why this provision differs from Article 21, as well as the EDIRPA and ASAP texts? NL (Drafting Suggestions): By way of derogation from paragraph 4, a ~~legal~~ entity established in the Union or in an associated country and controlled by a non-associated third country or a non-associated third-country entity shall be eligible to be a recipient if the acquisition of its control by a non-associated third country or a non-associated third-country entity, has been subject to

Commission proposal	Drafting Suggestions and Comments
	screening within the meaning of Regulation (EU) 2019/452 of the European Parliament and of the Council and, where necessary, to appropriate mitigation measures, taking into account the objectives set out in Article 4 of this Regulation, or if guarantees approved 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.
The guarantees shall provide 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 CFSP pursuant to Title V of the Treaty on European Union (TEU), or the objectives set out in Article 4. The guarantees shall also comply with Article 11(8), point (c). The guarantees shall in particular substantiate that, for the purposes of an action, measures are in place to ensure that:	AT (Comments): Does the reference to Art. 11 (8) c) imply that for ex no export control rules (e.g. FSM regime) or PRO regimes do apply? What kind of means of proof must be made available for the "guarantees"? Would a self-declaration be sufficient? EL (Comments): 4. On the eligible legal entities for funding, given that Regulation (EU) 2019/452 on FDI screening is under review; How will the outcome of this review be incorporated into EDIP?
(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 knowhow needed for the purposes of the action, or that undermines its capabilities and standards necessary to carry out the action;	

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(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 national security clearance issued by a Member State or an associated country, where appropriate;	AT (Comments): Given the fact that the legal entity established in the Union or in an associated country is controlled by a non-associated third country or a non-associated third-country entity (see subpara 1) – what kind of means of proof are thinkable to show that the controlling entity (!) potentially has no access to sensitive information? LT (Drafting Suggestions): non-associated third-country entity to sensitive or classified information relating to the action
If considered to be appropriate by the Member State or the associated country in which the legal entity is established, additional guarantees may be provided.	
The Commission shall inform the committee referred to in Article 57 of any legal entity considered to be eligible in accordance with this paragraph.	EL (Drafting Suggestions): ..Commission shall submit ~~inform~~ the committee referred to in Article 58 ~~57~~.... EL (Comments): Will this affect the relevant comitology process? How could be the two

Commission proposal	Drafting Suggestions and Comments
	procedures better articulated? HU (Drafting Suggestions): Article 5**8** HU (Comments): Article 57 is about the Board, Article 58 is about the EDIP PC. I guess you have the latter in mind. LT (Drafting Suggestions): Article ~~57~~ 58 LT (Comments): Mistype in Regulation.
6. When carrying out an eligible action, recipients 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 4 and comply with Article 11(8), point (c).	AT (Comments): What kind of "cooperation" is addressed in this context? Further discussion how to ensure that the member states' security and defence interests are not contravened is required. EL (Comments): Full respect of the principle of good neighborly relations, in the case of

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	contractors or subcontractors controlled by a non-associated third country or a non-associated third country entity, remains a crucial factor in the determination of the Union's and member states' security and defence interests, as well as in the award of Union's grants in relation to proposals of common procurement. The HellenicRebublic recalls that the short-term instruments, like the ASAP and the EDIRPA Regulations, designated in a spirit of solidarity, to pursue common procurement to fill the most urgent and critical defence capability gaps, under specific conditions and criteria determined by specific circumstances, namely those created by the response to the current Russia's aggression and does not create in any way a precedent as to the proposal of other instruments in the area of defence capabilities and the conditions and the criteria of application thereof, including the definition of security and defence interests of the Union and its Member States in the case of contractors or subcontractors controlled by a non-associated third country or a non-associated third country entity, with a view to strengthening the European defence industry. HU (Comments): Specificities of this kind of cooperation should be detailed as this may imply indirect financial support for legal entities established outside the territory of the MSs/associated countries. Furthermore, using certain kinds of components ("assets, resources") may entail extraterritorial jurisdiction of third countries in case of EU-made defence products. NL (Comments): 'cooperate' is not clearly defined in this case. Does this include any cooperation?

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There shall be no unauthorised access by a non-associated third country, or other non-associated third-country entity to classified information relating to the carrying out of the action and potential negative effects over security of supply of inputs critical to the action shall be avoided.	EL (Comments): On the eligible legal entities for funding, what is the mechanism envisaged making sure that the guarantees provided for in article 10.5 (a) & (b) above are observed and the security and defence interests of the Union and the Member States respected?
The costs related to those activities shall not be eligible for support from the Programme.	HU (Drafting Suggestions): The costs related to those activities shall not be eligible for **funding/financial** support from the Programme.
7. Paragraphs 2 to 6 shall not apply to:	AT (Comments): The meaning of this paragraph must be explained. Why is Para 1 not mentioned? DE (Comments): What is the aim of paragraph 7? Is it supposed to clarify that the mentioned entities are not qualified for funding except in cases of common procurement? Relation to Article 12 para. 1 is unclear.

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	HU (Comments): So, eligibility criteria for industry actors will not apply to procurement actors. Which, if the two were clearly separated at the beginning of the Article, would be clear and would not have to be stated in this hard to understand way at the end.
(a) contracting authorities of Member States and associated countries;	
(b) International Organisations;	
(c) Structures for European Armament Programme;	
(d) the European Defence Agency.	EL (Drafting Suggestions): Add paragraph 8. A member State can request from the Commission the guarantees provided by the State or the associated country in which the entity/undertaking is established. If a Member State considers (with due reason) that essential interests of its security and/or its defence are likely to be affected, the Commission shall state its reasons as to the eligibility of the entity/undertaking concerned

Commission proposal	Drafting Suggestions and Comments
Article 11	
Eligible actions	DE (Comments): Could UA companies / UA receive funding for all "eligible actions" mentioned in Art. 11? Or would this benefit only specific actions, which do not have an immediate link to defence/armament, as mentioned in AHWPDI by COM? If the latter is the case, what is the reason for UA not being able to take part in EDIP measures in the same way as EU MS/companies? FI (Comments): The funding between eligible actions is left open in the draft proposal. It could be useful to include in the regulation text a more detailed plan on how to use the 1,5 billion budget. The share of budget allocation between eg. SEAP, production capacity, EPDCI etc. is ambiguous.
1. Only actions implementing the objectives set out in Article 4 shall be eligible for funding. An eligible action shall relate to one or more of the activities referred to in paragraph 2 to 5:	
2. Activities related to cooperation of public authorities in defence procurement processes (defence cooperation actions) may cover the	AT

Commission proposal	Drafting Suggestions and Comments
cooperation for common procurement of defence products, throughout the life cycle of defence products, including for the purpose of building a Defence Industrial Readiness Pool as referred to Article 14(1), point (b).	(Comments): Can COM explain the term "throughout the life cycle of defence products" in the given context. Could a defence cooperation action for ex cover only R&D phase, or only development of a prototype. Could MS join such a cooperation at any stage of a procurement process? What is the legal status of a "Defence Industrial Readiness Pool"? DE (Comments): Does"common procurement of defence products, throughout the life cycle of defence products" include R&D from outset of a product in general and also R&D measures for performance upgrades (New Generation product upgrades)?
3. Activities related to speeding up the adjustment to structural changes of the production capacity of defence products, including their components and corresponding raw materials insofar as they are intended or used wholly for the production of defence products (industry reinforcement actions) may cover:	AT (Comments): Is it correct, that activities for dual-use goods or crisis relevant goods may never fall under para 3 (because they are not intended wholly for the production of defence products)? If it is a case by case analysis – how to proof that such goods are intended wholly for the production of defence products? NL (Drafting Suggestions): Activities related to speeding up the adjustment to structural changes of the production capacity of defence products, including their components and corresponding raw materials insofar as they are intended or used wholly for the production of defence products (industry reinforcement actions) ~~may~~ cover:

Commission proposal	Drafting Suggestions and Comments
(a) the optimisation, expansion, modernisation, upgrading or repurposing of existing, or the establishment of new, production capacities insofar as those components and raw materials are intended or used wholly for the production of defence products, in particular with a view to increasing production capacity or reducing lead production times, including on the basis of the procurement or acquisition of the requisite machine tools and any other necessary input;	AT (Comments): The requirement that components and raw materials are intended or used wholly for the production of defence products seems overly restrictive (specifically “raw materials”)! HU (Comments): Some raw materials and components are used for the production of other products than defence products, however they are still necessary for defence products as well. Are the producers of these items included in the project? Do they need any kind of proof that they are the supplier of a defence product manufacturer? The main point of the comment is the usage of the word “wholly”. These companies may be the targets of a priority rated order, so in our view they should be eligible for the support from the funds established by this regulation. This also relates to article 13 (1) NL (Drafting Suggestions): the optimisation, expansion, modernisation, upgrading or repurposing of existing, or the establishment of new, production capacities **of defence products, components and raw materials** insofar as those components and raw materials are intended or used wholly for the production of defence products, in particular with a view to increasing production capacity or reducing lead production times, including on the basis of the procurement or acquisition of the requisite machine tools and any other necessary input

Commission proposal	Drafting Suggestions and Comments
(b) the establishment of cross-border industrial partnerships, including through public private partnerships or other forms of industrial cooperation, in a joint industrial effort, including activities that aim to coordinate the sourcing or reservation and stockpiling of defence products, components and corresponding raw materials insofar as those components and raw materials are intended or used wholly for the production of defence products, as well as to coordinate production capacities and production plans;	AT (Comments): The requirement that components and raw materials are intended or used wholly for the production of defence products seems overly restrictive (specifically “raw materials”)! LV (Drafting Suggestions): (b) the establishment of cross-border industrial partnerships with **at least three Member States to facalitite the decentraliztion of EDTIB**, **including and not limited to transfer of technology, direct investments** etc. including through public private partnerships or other forms of industrial cooperation, in a joint industrial effort, including activities that aim to coordinate the sourcing or reservation and stockpiling of defence products, components and corresponding raw materials insofar as those components and raw materials are intended or used wholly for the production of defence products, as well as to coordinate production capacities and production plans; LV (Comments): The scope of this paragraph should be wider to incentivize large industry players to decentralize and to establish their presence and partnerships with industry in all location, including countries most exposed to the conventional military threats. We would suggest that the minimum number of countries is determined with at least three Member States to promote cross-border partnerships. NL

Commission proposal	Drafting Suggestions and Comments
	(Drafting Suggestions): the establishment of **truly European defence supply chains and** cross-border industrial partnerships, including through public private partnerships or other forms of industrial cooperation, in a joint industrial effort, including activities that aim to coordinate the **cross border** sourcing or reservation and stockpiling of defence products, components and corresponding raw materials insofar as those components and raw materials are intended or used wholly for the production of defence products, as well as to coordinate production capacities and production plans
(c) the building-up and making available of reserved surge manufacturing capacities (ever warm facilities) of defence products, their components and corresponding raw materials, insofar as those components and raw materials are intended or used wholly for the production of defence products, in accordance with ordered or planned production volumes;	AT (Comments): The requirement that components and raw materials are intended or used wholly for the production of defence products seems overly restrictive (specifically "raw materials")!
(d) fostering industrialisation and commercialisation of defence products that have been developed in the framework of actions funded by the Union or other cooperative activities conducted with support by at least two Member States including through the establishment of cross-border industrial partnerships, public private partnerships or other forms of industrial cooperation, ramping-up of initial production as well as licensing production, where appropriate;	BE (Comments): Common procurement are defined by 3 MS and the rest of the text speaks about 3 MS – why 2 MS here ?
(e) the testing, including the necessary infrastructure, and, as appropriate, reconditioning certification of defence products with a view	

Commission proposal	Drafting Suggestions and Comments
to addressing their obsolescence and making them useable by end users.	
	NL (Drafting Suggestions): **(f) the production through licenses of defence products that do not originate in Union but are developed and produced by entities in non-associated third countries.**
4. Activities aiming at supporting the deployment of a European Defence Project of Common Interest.	NL (Comments): What is meant by deployment?
5. Supporting activities ('support actions') may cover:	EL (Comments): Please consider deleting ("support actions") – No added value.
(a) activities that aim to increase interoperability and interchangeability, including the cross certification of defence products and activities leading to mutual recognition of certification or to facilitate the implementation of military standards;	LT (Drafting Suggestions): or to facilitate the implementation of military standards in line with NATO standards.
(b) activities to strengthen security of supply and resilience, in particular by facilitating the access to the defence market for SMEs, small mid-caps, other mid-caps and start-ups and support to obtain the necessary quality and production certifications;	AT (Drafting Suggestions): "for SMEs, mid-caps and start-ups" AT

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	(Comments): See comment re Art. 4 (1) a)
(c) the training, reskilling or upskilling of personnel in relation to the activities referred to in this Article;	
(d) the procurement of physical and cyber protection systems in relation to the activities referred to in paragraph 3, including effective engagement;	DE (Comments): What is the meaning of "effective engagement"? If related to activities in paragraph 3, why does it need to be mentioned specifically? NL (Drafting Suggestions): (d) the procurement of physical and cyber protection systems in relation to the activities referred to in paragraph 3, ~~including effective engagement~~; NL (Comments): 'what does 'effective engagement' mean? Is Cyber security of industry not covered by NIS2? This proposal cannot impose measures from which Defense organsiations are excluded by the NIS2 directive
(e) coordination and (technical) support actions, in particular addressing identified bottlenecks in production capacities and supply chains with a view to securing and accelerating the production of crisis-	

Commission proposal	Drafting Suggestions and Comments
relevant products in order to ensure their effective supply and timely availability;	
(f) Union support to Structures for European Armament Programme notably for the purpose of managing and maintaining a Defence Industrial Readiness Pool as referred to in Article 14(1), point (b);	
(g) Emergency activities, including emergency defence innovation where the measure referred to in Article 52 is activated.	
	NL (Drafting Suggestions): **h. contribution to entities for creating stockpiles and strategic reserves of defence products.**
6. For activities referred to in paragraphs 2, in paragraph 3, point (d), and in paragraph 55, point (a), the action shall be carried out by legal entities cooperating within a consortium of at least three eligible legal entities which are established in at least three different Member States or associated countries. At least three of those eligible legal entities established in at least two different Member States or associated countries shall not, during the entire period in which the action is carried out, be controlled, directly or indirectly, by the same legal entity and shall not control each other.	BE (Drafting Suggestions): For activities referred to in paragraphs 2, in paragraph 3, point (d), and in paragraph 5~~5~~, point (a), the action shall be carried out by legal entities cooperating within a consortium of at least three eligible legal entities which are established in at least three different Member States or associated countries. At least three of those eligible legal entities established in at least two different Member States or associated countries shall not, during the entire period in which the action is carried out, be controlled, directly or indirectly, by the same legal entity and shall not control each other. BE (Comments): I think Par 5 – Pt a is meant.

Commission proposal	Drafting Suggestions and Comments
	DE (Drafting Suggestions): **DE:** For activities referred to in paragraphs 2, in paragraph 3, point (d), and in paragraph **~~5~~5**, point (a), the action shall be carried out by legal DE (Comments): There seems to be a typo. EL (Comments): Please consider editorial: “paragraph 5” instead of “paragraph 55”. SI (Drafting Suggestions): For activities referred to in paragraphs 2, in paragraph 3, point (d), and in paragraph **~~5~~5**, point (a), th SI (Comments): Article 11 has no paragraph 55
7. By derogation from paragraph 6, the action may be carried out by a Structure for European Armament Programme.	
8. The following actions shall not be eligible for funding under the Programme:	

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(a) actions related to goods or services which are prohibited by applicable international law;	
(b) actions related to lethal autonomous weapons without the possibility of meaningful human control over selection and engagement decisions when carrying out strikes against humans;	DE (Comments): reservation of further review of the exact wording
(c) actions related to goods or services which are subject to 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;	IT (Comments): 1. Please clarify the meaning of control related to “goods and services”. 2. Can we consider action related to goods and services subject to restriction and control by Ukraine or by Ukrainian entities as “eligible action”? NL (Drafting Suggestions): ~~(c) actions related to goods or services which are subject to 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~~ NL (Comments): This exemption is too broad and will lead to difficulties with setting up joint projects with for example US companies in the EU, which we think would actually benefit the EDTIB.

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(d) actions or parts thereof, that are already fully financed from other public or private sources.	
Article 12	
Specific provisions applicable for common procurement actions	
1. Only the following legal entities shall be eligible for funding under the Programme:	
(a) public contracting authorities of Member States or associated countries;	
(b) International Organisations;	AT (Comments): Any (!!) international organisation? OCCAR, NSPA?
(c) the Structures for European Armament Programme;	NL (Comments): Is SEAP considered as an international organisation? Or only in the

Commission proposal	Drafting Suggestions and Comments
	context of article12(c), Directive 2009/81/EC?
(d) the European Defence Agency.	
2. Member States and associated countries participating in a common procurement shall appoint, by unanimity, an eligible legal entity as procurement agent to act on their behalf for the purposes of that common procurement. The procurement agent shall carry out the procurement procedures and conclude the resulting contracts with contractors on behalf of the participating countries. The procurement agent may participate in the action as a beneficiary and may act as the coordinator of the consortium and may therefore be able to manage and combine funds from the Programme and funds from the participating Member States and associated countries.	AT (Drafting Suggestions): by unanimity AT (Comments): Why is unanimity required? It is up to MS/associated countries to decide about the internal rules of their common procurement. EL (Comments): Can IOs, SEAP and EDA take part in consortia? Please clarify.
3. This Regulation is without prejudice to the rules on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities/entities in the fields of defence and security laid down in Directive 2009/81/EC.	DE (Drafting Suggestions): This Regulation is without prejudice to the rules on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities/entities in the fields of defence and security laid down in Directive 2009/81/EC **unless this Regulation stipulates otherwise**. DE

Commission proposal	Drafting Suggestions and Comments
	(Comments): Would be useful for clarification since EDIP provides for derogations from Directive 2009/81/EC.
4. The procurement procedures referred to in paragraph 2 shall be based on an agreement to be signed by the participating Member States and associated countries with the procurement agent under the conditions set out in the work programme. The agreement shall, in particular, determine the practical arrangements governing the common procurement and the decision-making process on the choice of the procedure, the assessment of the tenders and the award of the contract.	AT (Comments): "The procurement procedures … shall be based on an agreement" – does this imply that MS/associated countries (which can only be EEA countries) could design their own procurement rules? Would this fall under the exemption of Art. 12 a) of Dir 2009/81/EC? Which "conditions set out in the work programme" are referred to in this context? DE (Comments): Does *"the choice of procedure"* in this paragraph refer to the specific kind of procurement procedure according to Directive 2009/81/EC? Are the conditions set out in the WP refer to the procurement procedures or to the agreements to be signed?
5. The procurement agent shall apply conditions equivalent to those set out in Article 10, *mutatis mutandis,* to procurement procedures and in contracts with contractors and subcontractors in the common procurement.	AT (Comments): Since the agent shall apply the conditions of Art. 10 to the contractor(s) and subcontractors (which might include the suppliers as well – see

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	comments re Art. 2 (21)), it implies that in principle the whole supply chain for the procurement including the infrastructure must be situated in the territory of a MS/associated country (with the limited possibility to go beyond under the conditions set out in Art. 10 (5) and (6))? This seems quite unrealistic! Can COM elaborate? EL (Comments): Excessive use of the term "mutatis mutandis" may result into interpretation problems. Please reconsider. NL (Comments): NL wishes differentiate between the criteria for all components of the Instrument separately. This also applies for this article. We would prefer to discuss this crucial topic separately.
6. Procurement agents shall provide the Commission with guarantees and mitigation measures referred to in Article 10(6). Further information on the guarantees and mitigation measures shall be made available to the Commission upon request. The Commission shall inform the committee referred to in Article 58 of any notification provided in accordance with this paragraph.	AT (Comments): See Comments re Art. 10 (5) and (6) – what kind of proof required? NL (Drafting Suggestions): 6. Procurement agents shall provide the Commission with the guarantees and mitigation measures referred to in Article 10(6). Further information on the guarantees and mitigation measures shall be made available to the Commission upon request. The Commission shall inform the committee referred to in Article 58 of any notification provided in accordance with this paragraph.

Commission proposal	Drafting Suggestions and Comments
7. The common procurement contract shall include provisions governing the purchase of additional quantities of defence products for other Member States, associated countries or Ukraine.	AT (Comments): What are the "provisions governing the purchase of additional quantities of defence products" in paragraph 7? Is this an option or a mandatory component of a (framework) agreement ("shall")? How would one calculate the estimated value of such an option or (framework) agreement? Could COM describe the process by which such a provision would be added in compliance with procurement rules? Would it also be G2G if a Member State buys these additional quantities if the initial procurement is not "managed" by a SEAP according to Article 14(4)? DE (Comments): Is the inclusion of provisions governing the purchase of additional quantities of defence products for other MS, associated countries or Ukraine mandatory and therefore to be included in any contract, even without any specific information on the possible demand of other MS, associated countries or Ukraine? Is this specific enough to be legally valid in cases where there is no specific information on the possible additional demand? EL (Comments): Please clarify what provisions should be included. HU (Drafting Suggestions): The common procurement contract **may** ~~**shall**~~ include provisions

Commission proposal	Drafting Suggestions and Comments
	governing the purchase of additional quantities of defence products for other Member States, associated countries or Ukraine. NL (Drafting Suggestions): 7. The common procurement contract shall include provisions governing the purchase of additional quantities of defence products for other Member States, associated countries, Ukraine or Moldova. NL (Comments): In line with EDIRPA, NL wishes to open the instrument for Moldova.
Such rules shall be without prejudice to applicable Union law and be in line with Member States' national laws and regulations relating to the export of defence-related products.	AT (Comments): See above and jurisprudence of the ECJ (see for ex Cases C-454/06, C-91/08, C-549/14 concerning amendments of procurement contracts; see as well Art. 72 (1) a) of Dir 2014/24/EU). DE (Comments): Does this last sentence of Article 12 only refer to paragraph 7 or to the whole Article 12?
	NL (Drafting Suggestions): **8. A procurement agent that implements an EDIP procurement shall oblige the prime contractor selected to demonstrate it will award subcontracts in a competitive manner**

Commission proposal	Drafting Suggestions and Comments
	9. Member States shall grant General Transfer Licences for the transfer of defence related products related to the production of concerning end products procured through EDIP in accordance with Directive 2009/43 Article 5 (3).
Article 13	NL (Comments): Clarification: Funding to DTIB?
Specific provisions applicable for industrial reinforcement actions	
1. For activities referred to in Article 11(3), point (a), (b) and (c), in order to be eligible for funding actions shall be exclusively related to the production capacities of defence products, including their components and raw materials insofar as they are intended or used wholly for the production of defence products.	AT (Comments): The requirement that components and raw materials are intended or used wholly for the production of defence products seems overly restrictive (specifically “raw materials”)!
2. These actions shall be without prejudice to Union competition rules, and in particular Article 101 Treaty on the Functioning of the European Union (TFEU).	

Commission proposal	Drafting Suggestions and Comments
Article 14	LV (Comments): Latvia has reservations regarding Article 14 NL (Comments): The Netherlands holds the position that article 14 should encompass a reference the NATO NDPP.
Specific provisions applicable for activities contributing to a European Military Sales Mechanism	
1. To ensure the availability of EU defence products in time and in volume thereby fostering the competitiveness of the EDTIB as well as, where relevant, of the Ukrainian DTIB, the Commission shall support the following set of measures (EU MSM):	HU (Comments): We need more detail regarding this catalogue, and how the readiness pool is supposed to work. There are a lot of questions relating to this idea, as which products will be included in the list (only the ones produced 100% in the EU, or will there be a percentage, only available items etc.) Also, it is important to keep in mind the obsolescence, maintenance, storage and priority problems of the readiness pool.
(a) the establishment of a single, centralised, up to date catalogue of defence products developed by the EDTIB;	AT (Comments): AT considers this centralised catalogue as sensitive information. Can COM elaborate how the updating mechanism is envisaged to work (via the IT platform according to para 2)?

Commission proposal	Drafting Suggestions and Comments
	Why is this database established instead of enhancing the EDA-provided database EUCLID? What will happen to EUCLID? What is the added value of the suggested IT platform in comparison to what EDA provides? HU (Drafting Suggestions): developed **and produced** by the EDTIB LT (Drafting Suggestions): the establishment, on voluntary basis, of a single, centralised, up to date catalogue of defence products developed by the EDTIB; LT (Comments): Inclusion of additional information from COM presentation.
(b) the creation of a defence industrial readiness pool, to increase availability and speed up delivery time of EU-made defence products, ensuring an immediate and preferential purchase or use/lease option for Member States, associated countries and Ukraine;	AT (Comments): What is the legal status of the "defence industrial readiness pool"? How should this pool ensure "preferential purchase" or "use/lease option"? Can COM elaborate? HU (Comments): How many defence industrial readiness pools are we talking about? Here it seems like one, but in EDIS it's "pools" and in EDIP, each SEAP can get money from EDIP for managing the readiness pool, so that would many as many readiness pools as SEAPs who want to establish and manage such pools. Either should say **pools**, or say, the creation of a

Commission proposal	Drafting Suggestions and Comments
	single pool. NL (Drafting Suggestions): (b) the creation of a defence industrial readiness pool, to increase availability and speed up delivery time of predominantly EU-made defence products, ensuring an immediate and preferential purchase or use/lease option for Member States, associated countries and Ukraine; NL (Comments): Clarification: What constitutes an "EU-made defence product"? What is a "defense industrial readiness pool" ?
(c) the facilitation and speeding up of procurement procedures in a spirit of solidarity;	AT (Comments): COM shall support the "speeding up of procurement procedures" – how shall this be accomplished? How does COM want to support the "facilitation of procurement procedures" beyond Art. 35 (joint procurement)? DE (Comments): What does this mean or refer to? Is this (exclusively) linked to the exemptions on public procurement law mentioned for the SEAP in article 29 Nr. 3? FI (Comments):

Commission proposal	Drafting Suggestions and Comments
	What does "facilitation and speeding up of procurement procedures" entail? The definition is very unclear. NL (Comments): Clarification: What measures does the EC intend to take in order to facilitate and speed up the procurement processes?
(d) the support to administrative capacity building related to public procurement of defence products, with the aim of facilitating joint procurement.	AT (Comments): How does COM want to support administrative capacity building related to PP and why would this be limited to "joint procurement"?
2. The Commission shall draw up the technical specifications for and procure the corporate IT platform required to establish the catalogue referred to in paragraph 1, point (a) of this Article based on consultations with the Defence Industrial Readiness Board.	HU (Comments): Probably the EDIP Board, but that should be made clear. NL (Drafting Suggestions): 2. The Commission shall, in consultation with its Member States, draw up the technical specifications for and procure the corporate IT platform required to establish the catalogue referred to in paragraph 1, point (a) of this Article based on consultations with the Defence Industrial Readiness Board.
3. Where Member States jointly procure additional quantities or contribute through in-kind contributions to build up a defence industrial	AT

Commission proposal	Drafting Suggestions and Comments
readiness pool as referred to in paragraph 2, point (b), in the context of a Structure for European Armament Programme, the Commission shall financially support the initiative through:	(Comments): The text refers to "additional quantities" – additional to what? NL (Drafting Suggestions): Where …. a defence industrial readiness pool as referred to in paragraph ~~2~~,1, point (b),
(a) support to common procurement of additional quantities as referred to in Article 11(2);	AT (Comments): See comment above NL (Comments): What does this support entail?
(b) contribution to the direct and indirect costs of managing and maintaining the Defence Industrial Readiness Pool as referred to in Article 11(5), point (f);	
(c) contribution to administrative capacity building as referred to in Article 11(5).	
	SI (Drafting Suggestions): (d) the establishment of a portal or other form of display where Member States or partner countries or purchasing entities can connect to each

Commission proposal	Drafting Suggestions and Comments
	other in order to carry out joint purchasing procedures SI (Comments): Such a portal would facilitate the search for links between MS by making it easier to create partnerships and to join forces for joint procurement.
4. For the purpose of Member States, associated countries or Ukraine buying from the defence industrial readiness pool managed by a Structure for European Armament Programme, the procurement shall be considered as a government-to-government contract as referred to in Article 13, point (f) of Directive 2009/81/EC.	AT (Comments): When is a defence industrial readiness pool considered to be "managed" by a SEAP according to paragraph 4? Could such a management be passed from a Member State contracting authority to a SEAP? Since a SEAP is to be considered as an "international organisation" (see Art. 24 (1) d) AT wonders, why in this context [purchasing from the defence industrial readiness pool; again what is this legally? – see comment re Art. 11 (2)] procurement shall be considered falling under the G2G exemption. Why not referring to Art. 12 a) of Dir 2009/81 or exempting this procurement via a (new) exemption from 2009/81 in EDIP? Systematically the current wording doesn't fit in the system of 2009/81.
Article 15	
Specific provisions applicable for activities contributing to European Defence Projects of Common Interest	
1. The Commission may identify European Defence Projects of Common Interest for funding in the work programme referred to in	DE

Commission proposal	Drafting Suggestions and Comments
Article 18.	(Comments): We see this as a duplication of already established processes. Why should the Projects be identified by the COM? What does this mean in connection to the Programme Committee and the Work Programmes? Does the Commission identify the Projects themselves or the Projects that may receive funding on the basis of the WP? Like the common European Capabilities (CDP) are harmonised via an EDA process, it seems obvious that a similar EDA process as well under the control of MS could be appropriate? LT (Drafting Suggestions): The Commission may ~~identify~~ propose European Defence Projects of Common Interest for funding in the work programme referred to in Article 18. NL (Drafting Suggestions): The EDA steering board may identify European defence projects of common interest, as identified through the CDP and CARD instruments, for funding in the work programme referred to in Article 18. NL (Comments): NL is interested in the possible identification of European Defence Projects of Common Interest as a way to stimulate joint capability development and to address crucial capability gaps. However, NL believes that Member states' input should be decisive in this process, and

Commission proposal	Drafting Suggestions and Comments
	underline the importance of making optimal use of tools already at the disposal of Member States through the EDA. Notably CDP and CARD and the collaborative opportunities identified.
2. The Commission shall, when identifying projects referred to in paragraph 1:	NL (Drafting Suggestions): The Commission shall, when ~~identifying~~ supporting projects referred to in paragraph 1:
(a) duly consider the guidance provided in the context of the Defence Industrial Readiness Board, in particular the contribution of the project to the capability priority identified in the context of the CFSP, notably of the Capability Development Plan, and the objectives of the Strategic Compass for security and defence;	DE (Comments): Does DIRB affect EDA´s mandate according to Council Decision (CFSP) 2015/1835? EL (Drafting Suggestions): 2.(a) ...the Capability Development Plan and the relative **EU priorities**, and **finally** the objectives of the Strategic Compass for security and defence; EL (Comments): The 2023 EU Capability Development Priorities is the key reference for all EDP. HU (Comments):

Commission proposal	Drafting Suggestions and Comments
	This time, my guess is this is the EDIS Board. LT (Drafting Suggestions): duly consider ~~the guidance provided in the context of the Defence Industrial Readiness Board, in particular~~ the contribution of the project to the capability priority identified LV (Drafting Suggestions): (a) duly consider the guidance provided in the context of the Defence Industrial Readiness Board, in particular the contribution of the project to the capability priority identified in the context of the CFSP, notably of the Capability Development Plan, the objectives of the Strategic Compass for security and defence **and in alignment with collective capability priorities of NATO**; LV (Comments): It's important to not duplicate NATO capability priority plans in the EU context, but to ensure alignment within planning processes and priority setting It is not fully clear how "European Defence Projects of Common Interest" will be defined, since essentially everything that is included in the EU's Capability Development Plan already counts as "common interest", and all of these priorities are considered to be of equal importance. In the absence of clear criteria for prioritising "common interest", we see a risk of prioritising large projects where the volume is higher, which in turn means that the consequences will be felt most by SMEs.

Commission proposal	Drafting Suggestions and Comments
	The Strategic Compass was approved before 2022 and as a result needs to be revised if capacity development priorities are to be based on it. If the EU is gradually becoming a more important player in strengthening the defence capabilities of European countries, then capability development priorities need to be aligned with the current threat. NL (Drafting Suggestions): duly consider the guidance provided ~~in the context of the Defence Industrial Readiness~~ by the EDA Steering Board, in particular the contribution of the project to the capability priority identified in the context of the CFSP, notably of the Capability Development Plan, and the objectives of the Strategic Compass for security and defence; NL (Comments): Clarification: what is the definition of " duly consider"?
(b) identify overall financing needs and potential impacts for the Union budget;	NL (Drafting Suggestions): ~~identify~~ support [or : **consider]** overall financing needs as identified by the EDA SB and identify potential impacts for the Union budget;
(c) take into account any views of Member States.	DE (Comments): "Duly consider" the guidance of the DIRB but only "take into account" the views of Member States? How does this work with the PC?

Commission proposal	Drafting Suggestions and Comments
	LV (Comments): It is important to ensure that as a result of the implementation of EDIP, all MSs should be able to use its tools to address identified capacity gaps, and the program will not stand in the way of implementing measures to address capacity gaps identified in national and NATO contexts. Member states role is should not be purely advisory and there should be a veto power over the Commission's decisions within the framework of this Regulation NL (Comments): In which format will Commission take views of MS into account?
3. European Defence Projects of Common Interest shall meet the following general criteria:	NL (Comments): Clarify with examples.
(a) the project aims at developing capabilities, including those securing access to strategic domains and contested spaces, strategic enablers, and, as appropriate, systems acting as European defence infrastructure of common interest and use;	NL (Drafting Suggestions): the project aims at developing capabilities, as identified by CDP, those securing access to strategic domains and contested spaces, strategic enablers, and, as appropriate, systems acting as European defence infrastructure of common interest and use; NL

Commission proposal	Drafting Suggestions and Comments
	(Comments): again this should be linked to CDP and Strat Compass and PESCO
(b) the potential overall benefits of the project outweigh its costs, including in the longer term.	DE (Comments): Benefits in term of costs or in terms of security? How can that be measured? HU (Comments): This is a broad statement, and needs further details regarding the evaluation according to the overall benefits. NL (Comments): Clarification: How are benefits and costs determined? EV: who determines this ? This is prevalently a political and not merely factual assessment
4. A European Defence Project of Common Interest shall involve at least four Member States. The European Commission shall be able, where relevant, to participate in the project.	HU (Comments): How would COM participation in an EDPCI be different from COM financial support to an EDPCI through EDIP and/or other EU programmes? IT

Commission proposal	Drafting Suggestions and Comments
	(Comments): Who will decide where EC participation would be relevant? LT (Drafting Suggestions): The European Commission shall be able, where relevant, to participate in the project. LT (Comments): QUESTION: How COM envisages its participation? NL (Drafting Suggestions): A European Defence Project of Common Interest shall involve at least ~~four~~ two Member States. The European Commission shall be ~~able~~, granted where relevant, observer status ~~to participate in the project~~. NL (Comments): Clarification: what role does the European Commission see itself have in such projects? European Commission should be an objective supporter through providing financial incentives/support and thus not finance its own partnership role.
5. A European Defence Project of Common Interest shall be considered to contribute to the defence capabilities critical for the security and defence interests of the Union and its Member States and therefore to be in the public interest. They may be established in the framework of Structures for European Armament Programmes referred to in Chapter 3.	NL (Drafting Suggestions): A European Defence Project of Common Interest ~~shall~~ should ~~be considered to~~ contribute to the defence capabilities critical for the security

Commission proposal	Drafting Suggestions and Comments
	and defence interests of the Union and its Member States, as identified through the Headline Goal Process and CDP, and are therefore ~~to be~~ in the public interest. They may ~~be established~~ managed in the framework of Structures for European Armament Programmes referred to in Chapter 3. NL (Comments): Critical defence capabilities are already identified through Headline Goal Process, including the identified prioritized critical shortfalls (the High Impact Capability Goals), and the Capability Development Priorities.
6. Member States may, without prejudice to Articles 107 and 108 TFEU, apply support schemes and provide for administrative support to European Defence Projects of Common Interest.	HU (Comments): what do you mean by support schemes?
7. The Union financial contribution referred to in Article 17 shall not exceed 25% of the amount referred to in Article 5(1).	EL (Comments): Please consider moving this para. to art. 17. FI (Comments): The regulation text leaves room of interpretation whether the budget ceiling of 25 % is per single EPDCI-project or all of them in total. HU (Drafting Suggestions): shall not exceed 25 % of the amount referred to in Article 5(1) **for all**

Commission proposal	Drafting Suggestions and Comments
	EDPCIs combined.
8. The deployment of European Defence Projects of Common Interest may be considered an imperative reason of overriding public interest within the meaning of Article 6(4) and Article 16(1), point (c), of Directive 92/43/EEC and of overriding public interest within the meaning of Article 4(7) of Directive 2000/60. Therefore, the planning, construction and operation of related production facilities may be considered of overriding public interest, provided that the remaining other conditions set out in these provisions are fulfilled.	AT (Comments): According to the latest consolidated version of Dir 2009/43 (dated 2023-06-07) this Directive has neither an Art. 6 (4) nor an Article 16 (1) point c – and neither Art. 6 (4) nor Art. 16 (1) c) of EDIP do refer to imperative reasons of overriding public interest! The reference to Directive 2000/60 (establishing a framework for Community action in the field of water policy) is also not understandable. Art. 4 (7) – consolidated version from 2014-11-20 - deals with "environmental objectives". Can COM explain the references? EL (Comments): Since this deployment may be considered an imperative reason of overriding public interest, what is the added value / benefit of this provision? NL (Drafting Suggestions): The ~~deployment~~ activities developed for or by ~~of~~ European Defence Projects of Common Interest may be considered as an imperative reason of overriding public interest within the meaning of Article 6(4) and Article 16(1), point (c), of Directive 92/43/EEC and of overriding public interest within the meaning of Article 4(7) of Directive 2000/60. NL (Comments):

Commission proposal	Drafting Suggestions and Comments
	Clarification: What is definition of "deployment"?
	NL (Drafting Suggestions): **9. Member States shall make arrangements on cross border industrial collaboration within a European Defence Project of Common Interest on the basis of competition between suppliers and fair access to relevant supply chains for entities includes SMEs from across the Union.**

Commission proposal	Drafting Suggestions and Comments
Article 16	
Award criteria	AT (Drafting Suggestions): Criteria for awarding proposals AT (Comments): The term "award criteria" has a very specific meaning in the area of public procurement (see for ex Art. 47 of Dir 2009/81). To avoid misunderstanding a new wording is proposed DE (Comments): None of the criteria mentioned here refers to the capability requirements of the member states. Theoretically, a co-operative co-operative industrial project with a pure export focus could be funded.
1. Each proposal shall be assessed on the basis of the following criteria:	
(a) defence industrial readiness: contribution to competitiveness, increase production capacities, reduce lead times, eliminate bottlenecks thereby increasing interoperability and interchangeability;	DE (Comments): "Readiness" is vague. The relation between lead times and interoperability and interchangeability is not clear. This award criteria

Commission proposal	Drafting Suggestions and Comments
	seems to encompass different aspects that need to be better defined.
(b) defence industrial resilience: contribution to resilience, increase timely availability and supply to all locations, strengthening security of supply throughout the Union in response to identified risks, including in particular high exposure to the risk of materialisation of conventional military threats, and the non-dependency on non-associated third country sources.	EL (Drafting Suggestions): 1.(b)….in response to identified threats, including in particular high exposure to the risk of materialization of conventional military threats, and the non-dependency on non-associated third country sources. EL (Comments): Risk is either a threat or opportunity. If 'risk' is chosen, then the exploitation of an opportunity shall be included. HU (Drafting Suggestions): **no dependence on** non-associated third country sources LT (Drafting Suggestions): including in particular high exposure to the risk of materialisation of conventional military threats, and ~~the~~ reducing ~~non-~~dependency on non-associated third country sources. LV (Drafting Suggestions): (b) defence industrial resilience: contribution to resilience, increase timely availability and supply **in** all locations, strengthening security of supply throughout the Union in response to identified risks, including in particular high exposure to the risk of materialisation of conventional military threats, and the non-dependency on non-associated third country

Commission proposal	Drafting Suggestions and Comments
	sources. LV (Comments): We would ask to change the wording from "to" to "in" (see the bolded words in draft suggestion). This would emphasise the need to establish Security of Supply already within all locations and Member States NL (Comments): Clarification: "who and how are risks identified"? Conventional military risks should be identified by the Member States Military staffs supported by EU Military Staff.
(c) defence industrial cooperation: fostering genuine armament cooperation among Member States, associated countries or Ukraine and development and operationalisation of cross-border cooperation between undertakings established in different Member States, associated countries or Ukraine, involving in particular, to a significant extent, SMEs, small mid-caps and other mid-caps as recipients, as subcontractors or as other undertakings in the supply chain;	DE (Comments): We recommend to include a more capacity driven approach.
(d) the quality of the implementation plan of the action, in particular measures to respect delivery lead times, including in terms of its processes and monitoring.	DE (Comments): Not all of the activities may lead to the delivery of defence products (e.g. support actions). Or is this referring to the delivery of project deliverables?

Commission proposal	Drafting Suggestions and Comments
2. The work programme shall lay down further details concerning the application of the award criteria laid down in paragraph 1, including any weighting to be applied. The work programme shall not set individual thresholds.	NL (Comments): NL would like to discuss which factors are included, for example cross border collaboration.
Article 17	
Union financial contribution	
1. By way of derogation from Article 190 of the Regulation (EU, Euratom) No 2018/1046, the Programme may finance up to 100 % of the eligible costs. However, for activities referred to in Article 11(3) the support from the Programme shall not exceed 35 % of the eligible costs.	DE (Comments): See also recital 18: We ask for an adequate explanation why this derogation from the Financial Regulation is deemed necessary. The explanation would need to be reflected in the recitals. Without proper explanations, such derogations cannot be justified
2. An action shall be eligible for an increased funding rate where it fulfils one or more of the following criteria:	DE (Comments): Increased funding rates should be specified. Bonuses cannot exceed 15%, in order to be consistent with maximum funding rate of 50% as indicated in recital 18. Is Article 17(2) only applicable to industry recipients, given that MS can

Commission proposal	Drafting Suggestions and Comments
	receive up to 100% of eligible cost or 100% of the amount for actions applying FNLC (cf. recital 18)? Pls specify in the text. FI (Comments): The bonus rates could be stated in the regulation as it has been in previous instruments. HU (Comments): We should add one more criterium here, give increased funding rate where there is an effort to Europeanize the supply chain, meaning, x % of the industrial actors in the supply chain/at least X number of industrial actors in the supply chain are from other Member States than the main contractor. LV (Comments): We would suggest to add another paragraph (e) that would include additional eligibility criteria that "the action is taking place in a Member State with high exposure to the risk of materialisation of conventional military threats. This would incentivize large industry players to establish their presence and partnerships within frontline states which would contribute to the overall resilience of EDTIB. We also suggest to determine the amount for increased funding, for at least 10%. The amount of increased funding should be identified in the Regulation as it is in paragraph 1.
(a) the action is developed in the context of a Structure for European	DE

Commission proposal	Drafting Suggestions and Comments
Armament Programme SEAP, as referred to in Chapter III of this Regulation or in the context of a project of PESCO, provided that this project complies with obligations comparable to those under Article 22(1), 23(1), 25 and 26 of this Regulation and that it did not benefit from a comparable increased funding rate in another EU funding programme;	(Comments): We see no need for an increased/additional funding for SEAP, as the existence of a SEAP is already – by claims of the COM - a facilitation by itself. Whats is the rational and reasoning for this additional funding? Why should the second option (PESCO) for an additional funding be linked and therefore limited if performed under the obligations comparable to those under SEAP. We see a disproportionate discrimination against other models of cooperation, e.g.: the lead nation model. This may incentivize the creation of SEAPs with the goal to receive additional funding, thereby increasing administrative burden (including on the Commission), instead of using more adapted cooperation schemes. We explicitly reserve the right to hand in text work at a later moment. NL (Drafting Suggestions): (a) ~~the action is developed in the context of a Structure for European Armament Programme SEAP, as referred to in Chapter III of this Regulation or in the context of a project of PESCO,~~ the action is developed in the contex of an EDA category A or B project or in the context of a project of PESCO, provided that this project complies with obligations comparable to those under Article 22(1), 23(1), 25 and 26 of this Regulation and that it did not benefit from a comparable increased funding rate in another EU funding programme; NL (Comments):

Commission proposal	Drafting Suggestions and Comments
	Actions in the context of EDA category A and B projects should be also eligible.
(b) Ukraine is the recipient of defence products produced or procured under the Programme and those products are subject to financial support under the European Peace Facility;	DE (Comments): What is meant here? Do the products have (in order to receive additional funding under EDIP) be eligible products under the rules of EPF or is the actual refund within the EPF mechanism prerequisite? What kind of costs should be covered in this context? With a view to reimbursements via EPF, any kind of double funding must be avoided.
(c) Member States agree on a common approach to exports for defence products developed and procured in the context of a Structure for European Armament Programme (SEAP);	AT (Comments): Can COM elaborate? 1) What is a “common approach” in this context? 2) Export of defence products to whom? Any third country, associated countries, Ukraine? A financial support would be possible, if MS procure defence goods through a SEAP with the aim of exporting these goods – is this correct? DE (Comments): We see no need for an increased/additional funding for SEAP, as the existence of a SEAP is already – by claims of the COM - a facilitation by itself. Whats is the rational and reasoning for this additional funding?

Commission proposal	Drafting Suggestions and Comments
	We see a disproportionate discrimination against other models of cooperation, e.g.: the lead nation model.
(d) the beneficiary is an SME or small mid-cap or the majority of beneficiaries participating in a consortium are SMEs or small mid-caps.	
	LT (Drafting Suggestions): (e) creation of new cross-border cooperation throughout the Union LT (Comments): Proposal for additional para NL (Comments): Important that cross border industrial collaboration throughout the Union is included. As mentioned, this should be discussed per instrument.
3. The work programme shall lay down further details, including, where relevant, the increased funding rates referred to in paragraph 3.	DE (Comments): What does this mean? Which authorisations are granted by "… the WP shall lay down further details…"? HU (Drafting Suggestions): 3. The work programme shall lay down further details, including, where relevant, the increased funding rates referred to in paragraph ~~3~~ **2**. LV (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
	The work programme shall lay down further details, including, where relevant, the increased funding rates referred to in paragraph 3 **comparable to ASAP/EDIRPA**
Article 18	
Work programmes	LT (Drafting Suggestions): ***Work programme(s)***
1. The Programme shall be implemented by work programmes as referred to in Article 110 of the Regulation (EU, Euratom) No 2018/1046. Work programmes shall set out the actions and associated budget required to meet the objectives of the Programme and, where applicable, the overall amount reserved for blending operations.	LT (Drafting Suggestions): The Programme shall be implemented by work multiannual programme/ annual programmes (?) as referred to in Article 110 of the Regulation (EU, Euratom) No 2018/1046. Work multiannual programme/ annual programmes (?) shall set out the actions and associated budget required to meet the objectives of the Programme and, where applicable, the overall amount reserved for blending operations. LT (Comments): As EDIP financing is envisaged until 31 Dec 2027, should there be several work programmes? If so, might be better to specify that it is annual, or have one multiannual work programme as was done in EDIRPA and ASAP for 2 year period.

Commission proposal	Drafting Suggestions and Comments
2. The Commission shall adopt work programmes by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(3).	LT (Drafting Suggestions): The Commission shall adopt work multiannual programme/ annual programmes (?) by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(3). NL (Drafting Suggestions): The Commission shall adopt work programmes, with the assistance of the EDA, by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58~~(3)~~.

Commission proposal	Drafting Suggestions and Comments
Article 19	
Fund to Accelerate defence Supply chains Transformation (FAST)	FI (Comments): The regulation proposal is ambiguous about the budget allocation of the FAST-instrument and its source of funding. HU (Comments): Access to finance for SMEs has been identified by the Commission as a crucial problem, however we need more information on the detailed rules on how the Regulation intends to facilitate access to finance through FAST. NL (Comments): How will the fund be financed from the EU budget?
1. In order to leverage, de-risk and speed-up investments needed to increase the defence manufacturing capacities of SMEs and small mid-caps, a blending operation offering debt and/or equity support may be established (Fund to Accelerate defence Supply-chains' Transformation (FAST). It shall be implemented in accordance with Title X of the	AT (Drafting Suggestions): 1. In order to leverage, de-risk and speed-up investments needed to increase the defence manufacturing capacities of SMEs and small mid-caps, a blending operation offering debt and/or equity support may be

Commission proposal	Drafting Suggestions and Comments
Regulation (EU, Euratom) No 2018/1046 and Regulation (EU) 2021/523[9].	established (Fund to Accelerate defence Supply-chains' Transformation (FAST). It **would** be implemented in accordance with Title X of the Regulation (EU, Euratom) No 2018/1046 and Regulation (EU) 2021/523[10]. AT (Comments): As FAST "may be established" conditional on lending policies of InvestEU implementing partners, having a "shall be implemented" is too strong Can COM explain why "mid-caps" (see Art. 2 (11)) are excluded?
2. The specific objectives pursued by the FAST shall be the following:	DE (Comments): Are the "specific objectives" linked to the choice of entities and actions that will be supported by the fund? If the objectives are broadly defined ("satisfactory", "facing difficulties", "accelerate"), there is a risk that the effective choice of the beneficiaries will not mirror the EDIP objectives.
(a) achieve a satisfactory multiplier effect in line with the debt and equity mix and contributing to attracting both public and private-sector	

[9] Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU Programme and amending Regulation (EU) 2015/1017 (OJ L 107, 26.3.2021, p. 30–89, ELI: http://data.europa.eu/eli/reg/2021/523/oj).

[10] Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU Programme and amending Regulation (EU) 2015/1017 (OJ L 107, 26.3.2021, p. 30–89, ELI: http://data.europa.eu/eli/reg/2021/523/oj).

Commission proposal	Drafting Suggestions and Comments
financing;	
(b) provide support to SMEs (including start-ups and scale-ups) and small midcaps across the Union, which are facing difficulties in accessing finance and which:	
(i) industrialise defence technologies and/or manufacture defence products or have imminent plans to so; or	AT (Comments): How are "imminent plans" defined (in a time-like manner) and could this be proven? HU (Drafting Suggestions): …or have imminent plans to **do** so…
(ii) are part of the defence industry's supply chain or have imminent plans to become part it.	AT (Comments): How are "imminent plans" defined (in a time-like manner) and could this be proven? HU (Drafting Suggestions): …or have imminent plans to become part **of** it.
(c) accelerate investment in the field of manufacturing defence technologies and products, and therefore strengthen the security of supply	

Commission proposal	Drafting Suggestions and Comments
of the Union's defence industry value chains.	
Section 3: The Ukraine Support Instrument	
Article 20	
Specific provisions applicable to the Ukraine Support Instrument	
1. Article 13 shall apply to actions under the Ukraine Support Instrument. Articles 8, 11, 12, 14, 16, 17 and Article 18 shall apply mutatis mutandis.	AT (Comments): As regards references to applicable provisions in Section 3 see comments to referenced Articles, esp. comments re Art. 12 (5). EL (Comments): Excessive use of the term "mutatis mutandis" may result into interpretation problems. Please reconsider.
2. By derogation from Article 17(1) activities referred to in Article 11(3) may finance up to 100 % of the eligible costs.	EL (Comments): Please consider moving this para. to art. 17. HU

Commission proposal	Drafting Suggestions and Comments
	(Comments): For Member States, this has been lowered to 35%. Preferential treatment to such an extent regarding Ukraine may result in production capacities relocating to Ukraine, which is not yet part of the Union, and also, this would weaken the main goal of the Regulation, which is the strengthening of our own EDTIB.
3. References to associated countries in Articles 8, 9, 11, 12, 14 and 16 shall not apply to this section.	AT (Comments): COM pls explain. For ex: Art. 9 defines associated third countries – what is the meaning that references "to associated countries in Articles … 9,…. shall not apply to this section"? If references to associated countries in Art. 11 shall not apply, how shall Art. 11 (6) be understood? Only activities carried out by eligible entities in MS can be supported? How does Art. 21 fit into this legal construct? EL (Comments): The said articles refer to different Section. Please consider revising.
4. References to blending operations in Articles 8 shall not apply to this section.	AT (Drafting Suggestions): 4. References to blending operations in Articles 8 shall not apply to this section, **i.e. no blending operations are foreseen under the Ukraine Support Instrument** AT

Commission proposal	Drafting Suggestions and Comments
	(Comments): Addition to clarify the purpose EL (Comments): The said articles refer to different Section. Please consider revising.
Article 21	
Eligible legal entities	AT (Comments): What is the legal relationship between Art. 10 and 21. Is Art. 21 a lex specialis to Art. 10?
1. The eligibility criteria set out in paragraphs 2 to 7 shall apply in addition to the criteria set out in accordance with Regulation (EU, Euratom) 2018/1046.	
2. Recipients of Union funding shall be established in the Union or in Ukraine.	AT (Comments): See comment re Art. 10 (2) DE (Comments):

Commission proposal	Drafting Suggestions and Comments
	Why are associated countries excluded? NL (Comments): Why can associated countries not participate in the Ukraine Support Instrument?
3. The infrastructure, facilities, assets and resources of the recipients which are used for the purposes of the action shall be located on the territory of a Member State or of Ukraine. Where recipients have no readily available alternatives or relevant infrastructure, facilities, assets and resources in the Union or in Ukraine, they may use their infrastructure, facilities, assets and resources which are located or held outside the territory of the Member States or of Ukraine, provided that such use does not contravene the security and defence interests of the Union and the Member States and is consistent with the objectives set out in Article 4.	DE (Comments): Why are recipients located in associated countries not eligible under the Ukraine Support Instrument? It is considered under "the Programme", article 9 + 10 and in the recitals. We suggest coherence. EL (Drafting Suggestions): 3. The infrastructure, facilities, assets and resources of the recipients which are used for the purposes of the action shall be located on the territory of a Member State or of Ukraine. ~~Where…the Union and the Member States and is consistent with the objectives set out in Article 4~~. EL (Comments): 1. EU funds must go to m-s. 2. Strategic Compass & EDIS primary supports the EDTIB. 3. This might be only an exception under specific condititions on Ad -Hoc basis.

Commission proposal	Drafting Suggestions and Comments
	4. Paragraph 4 can be merged with 5 of this article.
4. For the purposes of an action supported by the Ukraine Support Instrument, the recipients shall not be subject to control by a third country or by a third-country entity.	IT (Comments): What kind of guarantees should provide an Ukrainian entity to assure it would not contravene the security and defence interests of the Union and its Member States..? NL (Comments): Including Ukraine?
5. By way of derogation from paragraph 4, a legal entity established in the Union and controlled by a third country or a third-country entity shall be eligible to be a recipient if it has been subject to screening within the meaning of Regulation (EU) 2019/452 of the European Parliament and of the Council and, where necessary, to mitigation measures, taking into account the objectives set out in Article 4 of this Regulation, or if guarantees approved by the Member State in which it is established in accordance with its national procedures are made available to the Commission.	AT (Comments): See comment re Art. 10 (5) EL (Drafting Suggestions): Add the paragraph. Where recipients have no readily available alternatives or relevant infrastructure, facilities, assets and resources in the Union or in an associated country, they may use their infrastructure, facilities, assets and resources which are located or held outside the territory of the Member States or of the associated countries, provided that such use does not contravene the security and defence interests of the Union and the Member States and is consistent with the objectives set out in Article 4.

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	EL (Comments): 1. EU funds must go to m-s. 2. Strategic Compass & EDIS primary supports the EDTIB. 3. This might be only an exception under specific conditions on Ad -Hoc basis.
The guarantees shall provide 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 CFSP pursuant to Title V of the Treaty on European Union (TEU), or the objectives set out in Article 4. The guarantees shall also comply with Article 11(8), point (c). The guarantees shall in particular substantiate that, for the purposes of an action, measures are in place to ensure that:	AT (Comments): See comment re Art. 10 (5) EL (Comments): Since the said art. 11 belongs to different Section, please consider revising. 4. On the eligible legal entities for funding, given that Regulation (EU) 2019/452 on FDI screening is under review; How will the outcome of this review be incorporated into EDIP?
(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 knowhow needed for the	

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purposes of the action, or that undermines its capabilities and standards necessary to carry out the action;	
(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 clearance issued by a Member State, where appropriate;	AT (Comments): See comment re Art. 10 (5) b)
If considered to be appropriate by the Member State in which the legal entity is established, additional guarantees may be provided.	
The Commission shall inform the committee referred to in Article 57 of any legal entity considered to be eligible in accordance with this paragraph.	HU (Comments): you meant Article 58, we believe LT (Drafting Suggestions): The Commission shall inform the committee referred to in Article ~~57~~ 58 LT (Comments): Mistype in Regulation.
6. When carrying out an eligible action, recipients may also cooperate with legal entities established outside the territory of the Member States or of Ukraine, or controlled by a third country or by a third-country entity, including by using the assets, infrastructure, facilities	AT (Comments): See comment re Art. 10 (6)

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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 4 and comply with Article 11(8), point (c).	EL (Comments): Since the said art. 11 belongs to different Section, please consider revising. IT (Comments): How a third-country entity may cooperate without any form of control on the final goods and services (to be consistent with art. 11(8)c)? The meaning of "control" on goods and services should be defined.
There shall be no unauthorised access by a third country, or other third-country entity to classified information relating to the carrying out of the action and potential negative effects over security of supply of inputs critical to the action shall be avoided.	
The costs related to those activities shall not be eligible for support from the Programme.	
7. Paragraphs 2 to 6 shall not apply to:	
	AT (Comments): See comment re Art. 10 (7)
(a) contracting authorities of Member States and Ukraine;	

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(b) International Organisations;	
(c) The Structures for European Armament Programme;	
(d) The European Defence Agency.	
Article 58	
Committee Procedure	FI (Comments): It is important to ensure that the committee provides its opinion for both the work programme and the funding decision.
1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.	EL (Comments):

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	Please consider rewording "The Commission shall be assisted by a committee as per Regulation (EU) No 182/2011."
2. The EDA shall be invited to provide its views and expertise to the committee as an observer. The EEAS shall also be invited to assist in the work of the committee.	EL (Comments): Which will be the role of EEAS? (e.g. advisor, observer) Please clarify.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.	EL (Comments): Please clarify.
4. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and Article 5(4), third subparagraph, of Regulation (EU) No 182/2011 shall apply.	
Article 59	
EU – UA Framework agreement	
1. The Commission shall conclude a framework agreement with Ukraine for the implementation of the actions set out in this Regulation which concern Ukraine or legal entities established in Ukraine receiving	

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Union funds.	
2. The framework agreement concluded with Ukraine, taken as a whole, and contracts and agreements signed with legal entities established in Ukraine receiving Union funds, shall ensure that the obligations set out in Article 129 of the Financial Regulation can be fulfilled.	
3. The framework agreement shall lay down the obligations of the Ukrainian authorities and bodies entrusted of budget implementation tasks to take all the necessary measures including legislative, regulatory and administrative measures to respect the principles of sound financial management, transparency and non-discrimination, to ensure the visibility of Union action when managing the Union funds, to fulfil the appropriate control and audit obligations and assume the resulting responsibilities, and to protect the financial interests of the Union, by, in particular, detailed enacting provisions concerning:	
(a) the activities related to control, supervision, monitoring, evaluation, reporting and audit of Union funding under the Programme, as well as investigations, anti-fraud measures and cooperation;	
(b) rules on taxes, duties and charges in accordance with Article 27(9) and (10) of Regulation (EU) 2021/947;	
(c) the right of the Commission to monitor activities under this Regulation carried out by the legal entities established in Ukraine, along	

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the whole project cycle, including for cooperation for common procurement action, to take part in these as observer, as appropriate, and to make recommendations for the improvement of such activities and commitment by the Ukrainian authorities to make their best efforts to implement such recommendations of the Commission and to report on this implementation;	
(d) the obligations referred to in Article 64(2), including precise rules and timeframe on collection of data by Ukraine and access for the Commission and OLAF;	
(e) the preservation of security interests, including a level of protection of classified information and confidentiality equivalent to that set out in Articles 59 and 60;	EL (Comments): Please consider rewording "protection of classified and sensitive information and confidentiality equivalent to that set out in Articles 60 and 61"
(f) provisions on protection of personal data.	
4. Funding shall only be granted to Ukraine after the framework agreement has entered into force and that the actions needed to implement the requirements it establishes have been implemented by the parties.	AT (Comments): Can COM provide informations on the timeframe for concluding the framework agreement?

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Article 60	
Application of the rules on classified information	AT (Comments): Art. 60 deals only with MS. What are the requirements for associated countries and Ukraine (see for ex para 2 requirement)?
1. The originatorship of classified foreground information generated in implementing eligible actions listed under Article 11, shall be under the responsibility of the participating Member States who will establish the applicable security framework under relevant national laws.	HU (Comments): We believe the word “originatorship” does not exist. (Or if it does, it shouldn’t, looks awful.) Suggest asking native speakers for a better term.
2. Such a security framework shall be without prejudice to the possibility for the Commission to have access to the necessary information for carrying out the action.	
3. The Commission shall protect classified information received in accordance with the security rules set out in Decision (EU, Euratom) 2015/444 and Decision 2013/488/EU.	
4. The applicable security framework for the action has to be put in place at the latest before the signature of the grant agreement or the	

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contract. The relevant documents shall form integral part of the Grant Agreement.	
5. The Commission shall make available approved and accredited existing systems to facilitate the exchange of classified information between the Commission, the High-Representative / Head of Agency, the Member States and associated countries and, where appropriate, with the applicants and the recipients.	HU (Drafting Suggestions): **High Representative** HU (Comments): no hyphen! (and in all other instances the HR is mentioned, as well) LT (Drafting Suggestions): the High-Representative of the Union for Foreign Affairs and Security Policy, the EDA ~~/ Head of Agency~~, the Member States LT (Comments): Should state EDA clearly. Agreed language in ASAP. NL (Drafting Suggestions): The Commission shall make available approved and accredited existing systems to facilitate the exchange of classified information between the Commission, ~~the High-Representative / Head of Agency,~~ the High-Representative of the European External Action Service, the Head of the European Defence Agency, the Member States and associated countries and, where appropriate, with the applicants and the recipients. NL

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	(Comments): Representatives of the High Representatives are EEAS staff while representatives of Head of Agency are EDA staff. These are two different staff with separated roles and therefore should be both included separately.
Article 61	
Confidentiality and processing of information	AT (Comments): Can COM explain the relationship between EDIP rules on confidentiality and Reg. 1049/2001 (public access to European Parliament, Council and Commission documents)? Is EDIP a lex specialis? Are all informations/documents shared in the context of EDIP to be considered falling under the exception of Art. 4 (1) a) – "defence and military matters" and "international relations"?
1. Information received as a result of the application of this Regulation shall be used only for the purpose for which it was requested.	
2. Member States, the Commission and the High-Representative / Head of Agency shall ensure the protection of trade and business secrets and other sensitive and classified information acquired and generated in application of this Regulation in accordance with Union law and the respective national law.	LT (Drafting Suggestions): Member States, the Commission and the High-Representative of the Union for Foreign Affairs and Security Policy, the EDA ~~/ Head of~~

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	~~Agency~~ shall ensure NL (Drafting Suggestions): Member States, the Commission ~~and the High-Representative / Head of Agency,~~ the High-Representative, and the Head of Agency shall ensure… NL (Comments): Representatives of the High Representatives are EEAS staff while representatives of Head of Agency are EDA staff. These are two different staff with separated roles and therefore should be both included separately.
3. Member States,the Commission and the High-Representative / Head of Agency shall ensure that classified information provided or exchanged under this Regulation is not downgraded or declassified without the prior written consent of the originator.	LT (Drafting Suggestions): Member States,the Commission and the High-Representative of the Union for Foreign Affairs and Security Policy, the EDA ~~/ Head of Agency~~ shall ensure NL (Drafting Suggestions): Member States, the Commission ~~and the High-Representative / Head of Agency,~~ the High-Representative, and the Head of Agency shall ensure… NL (Comments): Representatives of the High Representatives are EEAS staff while representatives of Head of Agency are EDA staff. These are two different staff with separated roles and therefore should be both included

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	separately.
4. The Commission shall not share any information in a way that can lead to the identification of an entity when the sharing of the information results in potential commercial or reputational damage to that entity or in divulging any trade secrets.	
5. The Commission shall handle information containing any data of an entity or any trade secrets in a way not less stringent than the handling of Sensitive non Classified Information, including the application of the "need to know principle" and the handling and sharing in appropriate encrypted environments.	
Article 62	AT (Comments): AT check on data protection is still ongoing. If necessary, AT will submit additional comments to this provision.
Personal data protection	
1. This Regulation shall be without prejudice to the obligations of Member States relating to their processing of personal data under	

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Regulation (EU) 2016/679 of the European Parliament and of the Council ([11]) and Directive 2002/58/EC of the European Parliament and of the Council ([12]), or the obligations of the Commission and, where appropriate, other Union institutions, bodies, offices and agencies, relating to their processing of personal data under Regulation (EU) 2018/1725 of the European Parliament and of the Council ([13]), when fulfilling their responsibilities.	
2. Personal data shall not be processed or communicated except in cases where this is strictly necessary for the purposes of this Regulation. In such cases Regulations (EU) 2016/679 and (EU) 2018/1725 shall apply as appropriate.	
3. Where the processing of personal data is not strictly necessary to the fulfilment of the mechanisms established in this Regulation, personal data shall be rendered anonymous in such a manner that the data subject is not identifiable.	

[11] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

[12] Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

[13] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

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Article 63	
Audits	
Audits on the use of the Union contribution carried out by persons or entities, including by persons or entities other than those mandated by the Union institutions, bodies, offices or agencies, shall form the basis of the overall assurance pursuant to Article 127 of the Financial Regulation. The Court of Auditors shall examine the accounts of all revenue and expenditure of the Union in accordance with Article 287 TFEU.	
Article 64	
Protection of the financial interests of the Union	
1. Where an associated country participates in the Programme by means of a decision adopted pursuant to the Agreement on the European Economic Area or on the basis of any other legal instrument, the associated country shall grant the necessary rights and access required for the authorising officer responsible, OLAF and the Court of Auditors to comprehensively exercise 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, as provided for in	

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Regulation (EU, Euratom) No 883/2013.	
2. The agreement referred to in Articles 59 shall provide for the obligations of Ukraine:	
(a) to take appropriate measures to prevent, detect and correct fraud, corruption, conflicts of interests and irregularities affecting the financial interests of the Union, to avoid double funding and to take legal actions to recover funds that have been misappropriated;	
(b) to regularly check that the financing provided has been used in accordance with the applicable rules, in particular regarding the prevention, detection and correction of fraud, corruption, conflicts of interests and irregularities;	
(c) to accompany a request for payment under the Programme by a declaration that the funds were used in accordance with the principle of sound financial management and for their intended purpose and managed appropriately in particular in accordance with Ukrainian rules complemented by international standards, on prevention, detection and correction of irregularities, fraud, corruption and conflicts of interests;	
(d) to expressly authorise the Commission, OLAF, the Court of Auditors and, where applicable, EPPO to exert their rights as provided for in Article 129(1) of the Financial Regulation, in application of the principle of proportionality.	

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Article 65	
Information, communication and publicity	
1. The recipients of Union funding shall acknowledge the origin of the funds 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.	
2. The Commission shall implement information and communication actions relating to the Programme, to actions taken pursuant to the Programme and to the results obtained.	
3. Financial resources allocated to the Programme shall contribute to the corporate communication of the political priorities of the Union, insofar as those priorities are related to the objectives referred to in Article 4.	
4. Financial resources allocated to the Programme may contribute to the organisation of dissemination activities, match-making events and awareness-raising activities, in particular aiming at opening up supply chains to foster the cross-border participation of SMEs.	

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Article 66	
Evaluation	NL (Comments): The Netherlands wishes further clarification on the indicators for measurement in the evaluation report.
1. By 30 June 2027, the Commission shall draw up a report evaluating the implementation of the measures set out in this Regulation and their results, as well as the opportunity to extend their applicability and provide for their funding, particularly with regard to the evolution of the security context and any persistent risks in relation to the supply of defence products. The evaluation report shall build on consultations of the Member States and key stakeholders.	AT (Comments): Being aware that this date is linked to the MFF, AT considers the evaluation date of 30th June 2027 nevertheless unrealistically. Can COM elaborate what kind of "extension" could be possible? AT points out, that EDIP has no sunset clause so the timeframe could not be addressed by this term! DE (Comments): Why is there no regular reporting? On which basis will the effect of the Regulation be evaluated without impact assessment and definition of performance indicators?
2. The Commission shall present the report to the European Parliament and the Council, accompanied, where appropriate, by relevant legislative proposals.	

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Article 67	
Entry into force	
This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union.	
This Regulation shall be binding in its entirety and directly applicable in all Member States.	
Done at Brussels,	
For the European Parliament *For the Council*	
The President *The President*	

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