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General Secretariat

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WORKING DOCUMENT

From:	Presidency
To:	Ad hoc working party on defence industry
Subject:	Proposal for a Regulation on establishing the European Defence Industry Programme (EDIP)- Consolidation of comments on the Presidency compromise proposal (chapters I, II and V)

Delegations will find attached a compilation of the comments and drafting suggestions that were received from Austria, Czechia, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, The Netherlands, Poland, Spain and Sweden on the Presidency compromise on chapters I, II and V of the Commission proposal on EDIP.

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2024/0061 (COD)	PL (Comments): Poland generally assesses the changes introduced in financial provisions positively. There are, however, some substantial reservations to the certain statements, which are as follows: 1. Reservations regarding: - retroactivity anchored in Art. 8.4, 26.4, and in recital 23; - article 64.2 subpar. a to c, regarding the protection of the Union financial interest. As for retroactivity, we ask the Presidency for a detailed explanation on the necessity to introduce it and its expected outcome. As for provision on protection of the financial interest, Poland proposed a small change in wording in the Article 64.2 This is an important change, as the wording in point a to c on the prevention, detection and correction of "fraud, corruption, conflicts of interests and irregularities" differs significantly from that used in recital 27 (and in other standard formulas on protection of financial interests contained in EU legal acts), which refers to the prevention of "irregularities - including fraud". The issue may seem editorial, but at the stage of program implementation such an approach to the issue may have specific consequences for the beneficiaries. We ask the Presidency to take into consideration our proposal and justification for it. We may share it with the other Member States.

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	2. As for derogations from the Financial Regulation (FR), Poland is not necessarily opposed to them. We note that the justification and scope of these derogations will be explained in the recitals of the final text. We support this approach of the Presidency. But here Poland emphasizes, before we give final consent to the financial provisions the new wording of respective recitals on derogations from the FR must be presented and agreed. The principle that nothing is agreed until everything is agreed applies here. At the previous meetings the EC announced, that it would present a written justification for each derogation? When it will be ready? 3. Regarding the additional contributions from Member States constituting external assigned revenues – this issue requires additional clarification from the Commission. At the meeting on 15 May, the EC concluded that references in EDIP to the FR should be to the recast, not to the current Regulation No. 1046/2018, because: - the amended FR will enter into force before the EDIP; - and it offers new opportunities that the Commission wants to use in EDIP. We have an urgent request for clarification in written form, what exactly are these new possibilities? Is the Commission referring to Article 21(2) and (5) of FR concerning the recognition of the additional Member States' contributions to EDIP as the EAR? This needs to be clarified because we believe there are limits to the allocation of EARs from additional contributions from Member States. According to the Treaty (Article 311) the EU budget shall be financed wholly from OR. How will these additional contributions be collected from Member States, will they be monthly calls from the Commission? 4. Moreover, Poland is awaiting the CLS's opinion on the introduction of

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	the Article 322.1 of the Treaty as a legal basis for EDIP and allowing the derogations from budgetary rules. When it will be delivered? SE (Comments): SE considers that the time for submitting comments and text proposals at this stage is challenging as there are still many remaining questions that needs to be addressed before we can reach finalised positions. SE will therefore only be able to send preliminary written comments and draft suggestions based on an initial overview and reserves the right to submit additional comments and revisit the articles at a later stage of the negotiating process.
Proposal for a	
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL	FI (Comments): **Finland reserves the possibility to provide further comments on chaper I,II and VI at a later stage.** FR (Comments): A titre général, les autorités françaises remercient la présidence belge

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	pour sa proposition de compromis. Elles considèrent que la restructuration envisagée rend le Programme et l'instrument de soutien à l'Ukraine, en particulier les actions éligibles dans ce cadre, plus intelligibles. Par ailleurs, elles proposent une rédaction alternative de l'article 10 sur les critères d'éligibilité afin de flécher de manière claire les financements vers l'industrie de défense européenne. Nous sommes ouverts à travailler à cette formulation. SE (Comments): In regards to the recitals SE reserves the right to submit additional comments at a later stage of the negotiating process, since the recitals reflect/explain the text of the legislative act and thus need to be adapted in the light of the negotiated results and to be dealt with after the text has been finalized.
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)	

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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,	
Having regard to the proposal from the European Commission,	
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. .

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Acting in accordance with the ordinary legislative procedure,	
Whereas:	
(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.	PL (Comments): In the view of EDIS's target of procuring at least 50% of MS's defence investments within the EU by 2030 and 60% by 2035 - the validity of such an intention will vary significantly depending on the selected sector of defence industry. Where the EU does not offer sufficiently competitive solutions for defence purposes based on solid foundations – such as innovation, reliability, and cost-effectiveness (where the example is sector of satellite launches and reusable rocket systems), there is a need for a provision included in EDIP for MS to execute a conditional clause where the order from the European market will not maintain the priority

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	(in the case of a negative cost-effect balance in relation to competitive foreign solutions). Alternatively, EDIP might include a mechanism obliging EDTIB suppliers to ensure a minimum acceptable level of technological excellence, below which PCs participating in the project under EDIP will be released from the obligation to choose from the European market. At the same time, special preferential accelerated development programs could be launched in EDTIB sectors experiencing a competitive decline (the principles of which should be included in EDIP). The goal for EDTIB to "develop and produce the full spectrum of military capabilities" appears to be unrealistic. Although this is in the interests of European arms companies to accumulate procurement in each of the available fields, countries will also be guided by political and military imperatives, such as diversifying the supply sources, narrowing delivery timelines, aiming at the best cost-effect ratio, and strengthening the crucial alliances (NATO). In the current situation, the EC should first and foremost work to increase the production and facilitate access to basic defence supplies and products, with European autonomy as a secondary aim.
(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.	

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(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, 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.	
(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	

[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).

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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.	
(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 commitment to support Ukraine 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.	

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(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.	
(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	AT (Drafting Suggestions): (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 The Council has on 21 May were to adopted a CFSP decision [insert decision number] under Article 29 TEU

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additional support could be drawn from these revenues, in line with the objectives of the Union's Common Foreign and Security Policy.	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): Update necessary, see presse release: Extraordinary revenues generated by immobilised Russian assets: Council greenlights the use of net windfall profits to support Ukraine's self-defence and reconstruction - Consilium (europa.eu)
(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.	
(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	

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Ukraine Support Instrument setting out the specific conditions for Union financial support under Article 212 TFEU.	
(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.	
(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.	

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(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 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.	PL (Drafting Suggestions): (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 Parliament and the Council. It should therefore be possible to transfer certain levels of funding between shared management allocations and the Programme **for the benefit of the Member State concerned and** 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 PL (Comments): As for contributions of Member States assigned revenues, please clarify

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	their nature. Is it a new category above listed in Article 22(2)(a) (ii), or is this case already covered by the current Article 21(2) (a) (ii)? Why cannot it be financed from the OR? **Proposed wording in first scenario**: Such contributions constitute external assigned revenue within the meaning of Article 21(2)(a)(ii), (d), and (e). ~~**and should be implemented in accordance with the same rules and conditions and should**~~ **Proposed wording in second scenario:** Such contributions should be implemented in accordance with the same rules and conditions and should constitute external assigned revenue **in addition to the** Article 21(2)(a)(ii), and within the meaning of Article 21(2) (d), and (e). Justification: From a legal perspective, external assigned revenues (EAR) are additional in nature. The primary source of financing EU expenditures is own resources transferred to the EU budget under the Own Resources Decision. Assigned revenue is a budgetary mechanism in the FR that ensures that revenues go to a specific item of expenditure. However, this is an exception in the EU budget, as the principle of universality applies. The FR lists EAR categories (this is a limited list in Article 22(2) (a)), in which Member States may transfer funds for specific expenditure. If this case is not covered by this list, an additional EAR category will need to be created. It is legally possible by adding Article 322.2 TFEU as an additional legal basis. It is worth to consider adding that transfer between the shared management programmes and this Programme will be **for the benefit of the Member State concerned.** The wording will be aligned with the Art. 6.3.

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	SE (Drafting Suggestions): (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 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.~~ SE (Comments): The regulation should not go beyond the current MFF.

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(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.	
(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	

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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.	
(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.	PL (Drafting Suggestions): ~~(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.~~ PL (Comments): This stipulation will pose too serious obstacles e.g. to using non-EU components in EU defence systems. On the other hand, stipulations of recital (16) provide sufficient guarantees regarding EU's and its Member States' security and defence interests – including the ones related to equipment's control or restriction by a non-associated third country or a non-associated third country entity. SE (Comments): This general writing regarding "restrictions" from third countries regarding products and services including technology transfer limits the market significantly. For example, there may always be certain intellectual property law restrictions and export control regulations.

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	Does this writing mean that all actions where there is some form of restriction, for example regarding export control, are excluded from financing? This is a limitation that goes further than in previous regulations and thus SE want to remove this recital.
(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 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.	DE (Comments): See also Art. 20 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. PL (Drafting Suggestions): (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 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

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	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~~ **100** % 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. PL (Comments): Common procurement takes precedence over a national procurement with the possible time consuming coordination between the States. In regard to EU priority orders - a short time for preparation of response to the priority orders accepted by EU require the additional organisational efficiency from the company and quick approvals from the Ministry of National Defence. Industry reinforcement, including its production capacity reinforcement is a top priority and support in this area should not be restricted. 'Up to 100%' does not mean that 100% rate will always apply. SE (Drafting Suggestions): (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 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

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	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. SE (Comments): It is preferable to have a lower EU funding rate than 100% since it leads to more careful selection of projects and measures and aligns the ownership of the action with the funding.
(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,	

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modernisation, upgrading or repurposing of existing, or the establishment of new, production capacities in that field as well as the training of personnel.	
(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.	
(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.	

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(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. PL (Comments): Retroactivity. We ask the Presidency for a detailed explanation on the necessity to introduce it. SE (Drafting Suggestions): (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~~

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	~~decision it should be possible to provide for financial contributions in relation to actions that cover a period starting from 5 March 2024.~~ SE (Comments): The implementation of the regulation should not be retroactive as it impedes good implementation.
(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 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.	ES (Comments): Complementarity and coherence with CDP, PESCO and EDF should also be assessed. The text should include that the proposals should be assessed, in particular, against their contribution towards building the capabilities identified in the CDP, their relation to PESCO commitments and projects and/or support to the further development or uptake of EDF results PL (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 to all locations, strengthening security of supply throughout the Union in response to identified risks, including in

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	particular to 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, **inclusive and balanced** 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.
(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.	PL (Drafting Suggestions): (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 **including by a risk of monopolisation of a market or its sector by one or few entities**.
(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,	

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(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.	
(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	

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specific provision should be introduced in this Regulation requiring those 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.	
	PL (Drafting Suggestions): New recital **(28a): Third countries' participation in this programme may be an element of free trade agreements or defence and security partnerships between such country and the EU. A specific provision should be introduced in this Regulation requiring those 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**.
(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)	AT (Drafting Suggestions): (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 **would** leverage, de-risk and speed-up investments needed to increase the defence manufacturing capacities of EU-based SMEs and small mid-caps,

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2021/523 of the European Parliament and Council (20), in close cooperation with its implementing partners.	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): Under the proposed FAST, the EIB Group could be a central implementing partner for blending operations in the defence industry; AT notes that the EIBG – as other IFIs – has its restrictions when it comes to defence finance that have to be respected. DE (Drafting Suggestions): 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**, while fully respecting applicable financing policies of the implementing partners**.

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	DE (Comments): A clarification should be included according to which FAST has no implications on the lending policy of the respective implementing partners. PL (Comments): What is the expected possibility (conditions) and timeframe for the activation of FAST? - the provision regarding the multiplier effect needs to be clarified; - the " FAST should be implemented under indirect management" expression needs to be clarified; - what are the expected proportions for the FAST blending operation between InvestEU and EDF?
(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. 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	DE (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. 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**

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and products, and therefore strengthen the security of supply of the Union's defence industry value chains.	**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.
(31) Cooperative armament programmes in the Union face significant challenges, being mostly set up on ad hoc basis and being plagued by complexity, delays and cost overruns. To remediate this situation and ensure continuous Member States' commitment throughout the whole life cycle of defence capabilities, a more structured approach is required at EU level. To make this happen, the Commission should support Member States' efforts by making available a new legal framework – the Structure for European Armament Programme (SEAP) - to underpin and strengthen defence cooperation. Actions undertaken in this framework should be mutually reinforcing with those carried out under the Common Foreign and Security Policy (CFSP), in particular in the context of the Capability Development Plan (CDP) and of PESCO	DE (Comments): Aspect of "mutually reinforcing" is welcomed, especially with regard to PESCO.
(32) Within this Structure for European Armament Programme, Member States should benefit from standardised procedures for initiating and managing cooperative defence programmes. A cooperation under this	

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framework should also allow Member States, under certain conditions, to benefit from an increased funding rate, simplified and harmonised procurement procedures, and, where Member States jointly own the procured equipment, a VAT exemption. The international organisation status should also allow Member States, if they wish so, to issue bonds to ensure the long-term financing plan of armament programmes. While the Union would not be liable for debt issuance by Member States, contributions under EDIP to the functioning of SEAP might improve the conditions for financing by the Member States of the armament programmes, which are eligible for Union support.	
(33) In order to permit an efficient procedure for the setting-up of a SEAP, it is necessary for the Member States, associated countries or Ukraine willing to set up a SEAP to submit an application to the Commission which should assess, whether the proposed statutes of the armament programme are in conformity with this Regulation. Such an application should contain a declaration of the host Member State recognising the SEAP as an international body or organisation for the purpose of the application of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty, as of its setting up.	
(34) For reasons of transparency, the decision setting-up a SEAP should be published in the *Official Journal of the European Union*. For the same reasons, the essential elements of its Statutes should be annexed to such decisions.	

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(35) In order to carry out its tasks in the most efficient way, a SEAP should have legal personality and the most extensive legal capacity as from the day on which the decision setting it up takes effect. It should have a statutory seat, in order to determine the applicable law, within the territory of a member of that SEAP which is a Member State.	
(36) Membership of a SEAP should comprise at least three Member States and may include associated countries and Ukraine.	
(37) For the implementation of the SEAP, more detailed provisions should be laid down in Statutes, on the basis of which the Commission should examine the compliance of an application with the rules established in this Regulation.	
(38) It is necessary to ensure that, on the one hand, a SEAP has the necessary flexibility to amend its Statutes and, on the other hand, that certain essential elements, in particular those which were necessary for the granting of the SEAP statutes, are preserved through a necessary control at Union level. If an amendment concerns an essential element of the Statutes annexed to the decision setting up the SEAP, such amendment should be approved, prior to taking effect, by a Commission decision taken following the same procedure as that for setting up the SEAP. Any other amendment should be notified to the Commission, which should have an opportunity to object if it considers the amendment contrary to this Regulation.	

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(39) A SEAP should be able to appoint a Procurement Agent acting in its own name. A SEAP should be able to procure defence products on its own behalf or on behalf of its members. In the case it procures on its own behalf, the SEAP should be considered as an international organisation purchasing for its own purposes within the meaning of Article 12(c) of Directive 2009/81/EC in conformity with State aid rules. Where it procures on behalf of its members, in order to ensure an adequate incentive for Member States to engage in a cooperation within the SEAP, the SEAP should be able to define its own rules of procurement by derogation to Directive 2009/81/EC. These rules should ensure compliance with EU primary law principles applicable to procurement, in particular those of transparency, non-discrimination and competition.	
(40) A SEAP could qualify for funding in accordance with Title VI of the Regulation (EU, Euratom) No 2018/1046. Funding under the Cohesion Policy could also be possible, in conformity with the relevant Community legislation.	
(41) In order to carry out its tasks in the most efficient way and as a logical consequence of its legal personality, a SEAP should be liable for its debts. In order to allow the members to find appropriate solutions regarding their liability, the option should be given to provide in the Statutes for different liability regimes going above the liability limited to the contributions of the members.	

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(42) Since a SEAP is established under Union law, it should be governed by Union law, in addition to the law of the State where it has its statutory seat. However, the SEAP could have a place of operation in another State. The law of that latter State should apply in respect of specific matters defined by the Statutes of the SEAP. Furthermore, a SEAP should be governed by implementing rules complying with the Statutes.	
(43) In order to ensure sufficient control of compliance with this Regulation, a SEAP should transmit to the Commission and relevant public authorities its annual report and any information about circumstances threatening to seriously jeopardise the achievement of its tasks. If the Commission obtains indications, through the annual report or otherwise, that the SEAP acts in serious breach of this Regulation or other applicable law, it should request explanations and/or actions from the SEAP and/or its members. In extreme cases and if no remedial action is taken, the Commission could repeal the decision setting up the SEAP, thus triggering the winding-up of the SEAP.	
(44) Upon the adoption of ASAP, the European Parliament and the Council called on the Commission to consider, putting forward a legal framework aimed at ensuring the security of supply (Joint Statement of 11 July 2023). This joint statement by co-legislators echoed the conclusions of the European Council in December 2013 calling for a comprehensive EU-wide Security of Supply regime and the European Parliament's recommendation of 8 June 2022 urging the Commission to present, without delay, such a regime.	

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(45) The crisis resulting from Russia's war of aggression against Ukraine has not only demonstrated deficiencies in the Union's and Ukraine's defence industrial sector, but has also posed challenges to the functioning of the internal market for defence products. Indeed, the steady degradation of the geopolitical context has already entailed a significant and lasting increase in the demand that may affect the functioning of the internal market for the production and sale of certain defence products and of their components in the Union. While certain Member States have taken or are likely to take measures to preserve their own stocks as a matter of national security, others are faced with difficulties of access to the goods needed to manufacture or acquire the relevant defence products. Sometimes, difficulties in accessing one raw material or a specific component hamper entire production chains. To ensure the functioning of the internal market under any circumstances and to make it resilient to any shock, it is necessary to establish, in a coordinated way, harmonised rules for increasing the security of supply of defence products. Those measures should be based on Article 114 TFEU.	
(46) To pursue the general public policy objective of security, it is necessary that production facilities related to the production of relevant defence products are set up as quickly as possible, while keeping the administrative burden to a minimum. For that reason, Member States should treat applications related to the planning, construction and operation of plants and installations for the production of relevant defence products in the most rapid manner possible. Such applications should be given priority when balancing legal interests in the individual case.	

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(47) In view of the objective of this Regulation, and of the emergency situation and the exceptional context of its adoption, Member States should consider using defence-related exemptions under national and applicable Union law, on a case-by-case basis, if they deem that the use of such exemptions would facilitate the achievement of that objective. That could in particular apply to Union law concerning environmental, health and safety issues, which is indispensable to improving the protection of human health and the environment, as well as to achieving a sustainable and safe development. However, the implementation of that law could also produce regulatory barriers hampering the Union defence industry's potential to ramp up the production and deliveries of relevant defence products. It is a collective responsibility for the Union and its Member States to urgently look into any action they could take to mitigate possible obstacles. Any such action, whether at Union, regional, or national level, should not compromise the environment, health and safety.	
(48) Directive 2009/81/EC of the European Parliament and of the Council aims at harmonising procurement procedures for the award of public contracts in the field of defence and security thus enabling the security requirements of Member States and the obligations arising from the TFEU to be met. That Directive contains, in particular, specific provisions governing situations of urgency resulting from a crisis, in particular shortened periods for the receipt of tenders and the possibility to use the negotiated procedure without prior publication of a contract notice. However, in extreme urgency, in particular during supply and security crises, these rules could be incompatible even with those	

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provisions in cases where two or more Member States intend to engage in a common procurement. In some cases, the only solution that ensures the security interests of those Member States is to open an existing framework agreement to contracting authorities of Member States that were not originally party to it, even though that possibility had not been provided for in the original framework agreement.	
(49) In accordance with the case law of the Court of Justice of the European Union, modifications to a public contract are to be strictly limited to what is absolutely necessary in the circumstances, while complying to the maximum extent possible with the principles of non-discrimination, transparency and proportionality. In that regard, it should be possible to derogate from Directive 2009/81/EC by increasing the quantities provided for in a framework agreement while opening it to contracting authorities of other Member States. With respect to those additional quantities, those contracting authorities should enjoy the same conditions as the original contracting authority/entity that concluded the original framework agreement. In such cases, the original contracting authority/entity should also allow any economic operator who fulfils the contracting authority's/entity's conditions initially laid down in the procurement procedure for the framework agreement, including requirements for qualitative selections as referred to in Articles 39 to 46 of Directive 2009/81/EC, to join that framework agreement. In addition, appropriate transparency measures should be taken to ensure that all potentially interested parties are informed.	
(50) While the response of the EU and its Member States to the immediate challenge of the Russian war of aggression against Ukraine	

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has been rapid and decisive, it is time for the EU to move from the emergency response to building the EU's long-term readiness. Resilience is a precondition of the EDTIB's readiness and competitiveness. The EU has already developed tools and frameworks to increase industrial readiness and resilience to tackle future crisis situations. However, such measures are not available to support the EDTIB.	
(51) It is therefore necessary to set up a modular and gradual EU Security of Supply regime to enhance solidarity and effectiveness in response to tensions along the supply chains or to security crises and allow for the timely identification of potential bottlenecks. Such a regime should enable the EU and its Member States to anticipate and address the consequences of supply crises, where shortages of civilian or dual-use components, or of raw materials, seriously threaten the timely availability and supply of defence products , and also the consequences of supply crises which are directly linked to the existence of a security crisis within the Union or its neighbourhood and which result in shortages of certain defence products.	
(52) To enable anticipation of potential shortages, national competent authorities should alert the Commission if they become aware of a risk of serious disruption in the supply of crisis relevant products or have concrete and reliable information of any other relevant risk factor or event materialising. In order to ensure a coordinated approach, the Commission should, where it learns of a risk of serious disruption in the supply of defence products or has concrete or reliable information of any other relevant risk factor or event materialising, convene an extraordinary meeting of the Defence Industrial Readiness Board to discuss the severity	

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of the disruptions and possible initiating of the procedure for activating the supply crisis state, and whether it may be appropriate, necessary and proportionate for Member States to enter into dialogue with stakeholders, with a view to identifying, preparing and possibly coordinating such preventive measures. The Commission should, where relevant, consult and cooperate with relevant third countries with a view to jointly addressing supply-chain disruptions, in compliance with international obligations and without prejudice to procedural requirements.	
(53) In light of the complexities of defence supply chains and the risk of shortages in a foreseeable future, this Regulation should provide instruments for a coordinated approach to mapping and monitoring of the supply chains of certain defence products and effectively tackling possible market disruptions in a proportionate manner.	
(54) The objective of a mapping of the Union's defence supply chains should be to provide an analysis of their strengths and weaknesses with a view to ensure security of supply and resilience. To that end, the Commission should identify products, components as well as raw materials that are deemed critical for the supply of defence products particularly important for the defence interests of the Union and its Member States (crisis-relevant products), based on the inputs and advice from the Defence Industrial Readiness Board. The mapping should be based on publicly and commercially available data and, if necessary, on data obtained through voluntary information requests of undertakings, in consultation with the Defence Industrial Readiness Board.	IT (Comments): Additional clarification is required on the governance, with special regard to the Defence Industrial Readiness Board's formats (EDIS/EDIP), tasks, and responsibilities. In general, Italy believes that EDIP governance should be structured on clear principles based on accountability. While the Commission is responsible for making final decisions in implementing the regulation, Member States should be allowed to assist by providing recommendations and strategic guidance through direct and transparent engagement with the Commission. Italy reserves the right to propose alternative language as necessary.

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(55) In order to forecast and prepare for future disruptions of the different stages of the Union's defence supply chains and of trade within the Union, the Commission should, assisted by the Defence Industrial Readiness Board and on the basis of the outcome of the mapping, identify and develop a list of early warning indicators. Such indicators could include atypical increases in lead time, the availability of raw materials, intermediate products and human capital needed for manufacturing crisis-relevant products, or appropriate manufacturing equipment, forecasted demand, price surges exceeding normal price fluctuation, the effect of security crises, accidents, attacks, natural disasters or other serious events, the effect of trade policies, tariffs, export restrictions, trade barriers and other trade-related measures, and the effect of business closures, offshoring or acquisitions of key market actors. Monitoring activities of the Commission should focus on these early warning indicators.	IT (Comments): Additional clarification is required on the governance, with special regard to the Defence Industrial Readiness Board's formats (EDIS/EDIP), tasks, and responsibilities. In general, Italy believes that EDIP governance should be structured on clear principles based on accountability. While the Commission is responsible for making final decisions in implementing the regulation, Member States should be allowed to assist by providing recommendations and strategic guidance through direct and transparent engagement with the Commission. Italy reserves the right to propose alternative language as necessary
(56) In order to minimise the burden for undertakings responding to the monitoring and to ensure that the acquired information can be compiled in a meaningful way, the Commission should provide for standardised and secure means for any information collection. These means should ensure that any collected information is treated confidentially, ensuring business secrecy and cybersecurity.	
(57) On this basis, the Commission should draw up a list, identifying the crisis-relevant defence products, raw materials or components thereof, that are affected by disruptions or potential disruptions of the functioning of the Single Market and its supply chains leading to significant	

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shortages. The Commission should regularly update this list, to focus only on possible disruptions or bottlenecks affecting the security of supply of relevant defence products, as well as raw materials and components thereof.	
(58) Due to the sensitive nature of the decision to activate the supply-crisis state or the security-related supply-crisis state and of the potential measures that may be taken in response thereof, including the significant impact which such measures might have on private undertakings in the Union, the power to adopt an implementing act as regards activating, prolonging and terminating these states should be conferred on the Council.	
(59) Where the supply-crisis state or the security-related supply-crisis state is activated, the Commission, should be able to request to receive necessary information to ensure the timely availability of crisis relevant products from undertakings, dealing with these products, raw materials or components thereof, in agreement with the Member State in which they are established. Such information should inform the Commission's decision on appropriate measures under this regulation to address possible disruptions or bottlenecks affecting the security of supply of relevant defence products as well as relevant raw materials and components.	
(60) Such an identification, mapping and continuous monitoring mechanism should allow a near real time analysis of the production capacity in the Union, critical factors impacting security of supply of relevant defence products, and stockpiles' status. It should also enable	

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Commission to design emergency response measures to actual or anticipated shortages.	
(61) Avoiding shortages of relevant defence products is essential to preserve the objective of general interest of security of the Union and its Member States and justifies, where necessary, proportionate interferences with fundamental rights of the undertakings providing crisis relevant products, such as the freedom to conduct a business in accordance with Article 16 of the Charter and the right to property in accordance with Article 17 of the Charter, in the respect of Article 52 of the Charter. Such interferences may be justified in particular where several Member States have undertaken specific efforts to consolidate demand through joint procurement, hence contributing to the further integration and smooth functioning of the Internal Market for relevant defence products.	
(62) As an instrument of last resort to ensure that critical sectors can continue to operate in a time of crisis and only when necessary and proportionate for that purpose, relevant undertakings could be required by the Commission to accept and prioritise orders of crisis-relevant products. The decision on a priority-rated order should be taken in accordance with all applicable Union legal obligations, having regard to the circumstances of the case. The priority rating obligation should take precedence over any performance obligation under private or public law except those directly related to military orders while it should have regard for the legitimate aims of the undertakings and the cost and effort required for any change in production sequence. Each priority-rated order should be placed at a fair and reasonable price which should take into account the undertaking's opportunity costs vis-à-vis existing contracts.	

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(63) The obligation to prioritise the production of certain products should not disproportionately affect the freedom to conduct a business and the freedom of contract laid down in Article 16 of the Charter of Fundamental Rights of the European Union ('the Charter') and the right to property laid down in Article 17 of the Charter. Any limitation of those rights should, in accordance with Article 52(1) of the Charter, be provided for by law, respect the essence of those rights and freedoms, and comply with the principle of proportionality.	
(64) Where the security-related supply crisis state is activated, based on the assessment of the Commission with the support of the High-Representative, the measures available under the supply crisis state should also be available. In addition to the latter, the Council should activate the measures it considers appropriate to the crisis. To do so, the Council should pay particular to the need to ensure a high level of security of the Union, Member States and European citizens.	
(65) Where the security-related supply crisis state is activated and in order to address cases where a Member State faces or may face severe difficulties either in the placing of an order or in the execution of a contract for the supply of defence products due to shortages or serious risks of shortages of crisis-relevant products, the Council should be able to activate measures at Union level aimed to ensure the availability of crisis-relevant goods, such as priority rated requests to ensure the proper functioning of the internal market and its defence supply chains.	

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(66) As an instrument of last resort, priority-rated requests should aim at addressing situations where the production or supply of crisis relevant products which are defence products could not be achieved by other measures. The priority-rated request should be taken based on objective, factual, measurable, and substantiated data. It should have regard for the legitimate interests of the undertakings and the cost and effort required for any change in production sequence. When accepted, the obligation to perform the priority-rated request should take precedence over any performance obligation under private or public law. Each priority rated request should be placed at a fair and reasonable price.	
(67) With a view to support the Commission in implementing this Regulation, a European Defence Industrial Readiness Board should be established, composed of the Commission, the High Representative/Head of the Agency and Member States. In addition, outside the framework of the current Regulation, the High Representative/Head of Agency and the Commission will at their initiative convene and co-chair meetings of the members in the context of the Board to exercise the joint programming and procurement function and provide strategic guidance and advice with a view to increase defence industrial readiness of the EDTIB, in line with the European Defence Industrial Strategy.	IT (Drafting Suggestions): With a view to support the Commission in implementing this Regulation, a ~~European~~ Defence Industrial Readiness Board should be established, composed of the Commission, the High Representative/Head of the Agency and Member States. ~~In addition, outside the framework of the current Regulation, the High Representative/Head of Agency and the Commission will at their initiative convene and co-chair meetings of the members in the context of the Board to exercise the joint programming and procurement function and provide strategic guidance and advice with a view to increase defence industrial readiness of the EDTIB, in line with the European Defence Industrial Strategy~~. IT (Comments):

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	Additional clarification is required on the governance, with special regard to the Defence Industrial Readiness Board's formats (EDIS/EDIP), tasks, and responsibilities. In general, Italy believes that EDIP governance should be structured on clear principles based on accountability. While the Commission is responsible for making final decisions in implementing the regulation, Member States should be allowed to assist by providing recommendations and strategic guidance through direct and transparent engagement with the Commission. Italy reserves the right to propose alternative language as necessary. No need to mention/rule actions nor activities outside the framework of the current regulation. NL (Drafting Suggestions): With a view to support the Commission in implementing this Regulation, a European Defence Industrial Readiness Board should be established, composed of the Commission, the High Representative **and** Head of the Agency and Member States. In addition, outside the framework of the current Regulation, the High Representative **and** Head of Agency and the Commission will at their initiative convene and co-chair meetings of the members in the context of the Board to exercise the joint programming and procurement function and provide strategic guidance and advice with a view to increase defence industrial readiness of the EDTIB, in line with the European Defence Industrial Strategy. NL (Comments): Representatives of the High Representatives are EEAS staff while

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	representatives of Head of Agency are EDA staff. These are two different staffs with separate roles and therefore should be both included separately.
(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.	
(70) This Regulation should apply without prejudice to the specific character of the security and defence policy of certain Member States,	AT (Drafting Suggestions): (70) This Regulation should apply without prejudice to the specific character of the security and defence policy of certain Member States, and is not intended to lead to a common defence in the sense of Article 42(2) TEU AT (Comments): In order to more strictly circumscribe the scope, in particular, of expressions such as „European defence infrastructure of common interest and use“ e.g. in Art. 16(3)(a) [see below, comment there]

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	SE (Comments): We believe it could be added a paragraph (71) in the recital as following: *"This Regulation is without prejudice to each Member State having sole responsibility for its national security, as provided for in Article 4(2) TEU, and to the right of each Member State to protect its essential security interests in accordance with Article 346 TFEU"*
	EL (Comments): We receive our right to come back with further observations on the legal basis.
HAVE ADOPTED THIS REGULATION:	

Presidency Compromise	Drafting Suggestions and Comments
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	SE (Comments): Add “and Scope”
1. 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:	AT (Comments): If it is already known that a text is to be revisited – something that is the case for Article 1 and Article 2 – what is the process foreseen by the Presidency in getting to an agreement? How will the case of “revisiting” be described in a general position? It is important to know this beforehand, because it determines what exactly Member States are agreeing to.

Presidency Compromise	Drafting Suggestions and Comments
(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'), as set out in Chapter II;	
(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'), as set out in Chapter III;	
(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 IV;	NL (Comments): All provisions mentioning SEAP under study reserve, these should be assessed together with chapter IV.
(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 V;	
(5) the establishment of a [Defence Industrial Readiness Board] as set out in Chapter VI.	IT (Comments): Additional clarification is required on the governance, with special regard

Presidency Compromise	Drafting Suggestions and Comments
	to the Defence Industrial Readiness Board's formats (EDIS/EDIP), tasks, and responsibilities. In general, Italy believes that EDIP governance should be structured on clear principles based on accountability. While the Commission is responsible for making final decisions in implementing the regulation, Member States should be allowed to assist by providing recommendations and strategic guidance through direct and transparent engagement with the Commission. Italy reserves the right to propose alternative language as necessary. NL (Comments): All provisions mentioning the Board under study reserve, these should be assessed together with chapter VI.
2. This Regulation is without prejudice to Member State having the sole responsibility for their national security, as provided for in Article 4(2) TEU and the right of each Member State to protect its essential security interests in accordance with Article 346 TFEU.	AT (Drafting Suggestions): 2. This Regulation is without prejudice to Member State**s** having the sole responsibility for their national security, as provided for in Article 4(2) TEU**,** and the right of each Member State to protect **the** ~~its~~ essential ~~security~~ interests **of its security** in accordance with Article 346 TFEU. AT (Comments): Typo correction and alignment with the text of Article 346 TFEU suggested.

Presidency Compromise	Drafting Suggestions and Comments
	FR (Comments): Les autorités françaises soutiennent pleinement l'inclusion de ce paragraphe faisant référence aux articles 4(2) TUE et 346 TFUE.

Presidency Compromise	Drafting Suggestions and Comments
Article 2	AT (Comments): Generally, the provision on definitions should be one of the last provisions which is agreed upon, as this is a dynamic provision which may change at any stage of the negotiation.
Definitions	FI (Comments): Favourable changes to article 2. FR (Comments): Les définitions figurant dans le projet de texte devraient être harmonisées avec les définitions figurant dans textes existants (CRM Act, IMERA, MPDS) (voir ci-dessous). Les autorités françaises saluent par ailleurs l'inclusion de nouvelles définitions, en particulier celle de « *defence industrial readiness pool* ». Il manque néanmoins d'autres définitions, telles que les réserves stratégiques (*strategic reserve*) et les installations mobilisables en permanence (*ever warm facilities* ou *reserved surge manufacturing capacities*). **Enfin, la France souhaite que ne soient étudier uniquement les définitions qui se réfèrent aux articles visés par le compromis de la présidence**.

Presidency Compromise	Drafting Suggestions and Comments
	SE (Comments): This clause needs to be revisited during and at the end of the negotiation as there are many terms throughout the regulation that are not defined or mentioned in the regulation with different meaning, for example Framework Agreement in article 34 and recital 48-49 in comparison to article 59 and recital 10. Also, a general comment is that the definitions should be consistent with existing EU legislation.
For the purposes of this Regulation, the following definitions apply:	
(1) 'advance purchasing agreement' means a public contract with one or several legal entities 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 legal entities. While an advance purchasing agreement is 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 (Drafting Suggestions): (1) 'advance purchasing agreement' means a ~~public~~ contract **awarded in the field of defence** ~~with one or several legal entities~~ 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 legal entities. While an advance purchasing agreement is legally binding upon the participating contracting authorities and upon the contractor, it needs to be further

Presidency Compromise	Drafting Suggestions and Comments
	implemented by means of the conclusion of contracts with the concerned contractors; **such implementing contracts may not alter the subject matter or the terms of the advance purchasing agreement;** AT (Comments): (Better) alternative: deletion and incorporation into Article 36, since this concept is otherwise not mentioned in EDIP. Explanation of amendments: Art. 2 of Directive 2009/81/EC does not speak of "public contracts" when describing the scope, but of contracts "awarded in the fields of defence and security" (since "security" covers a different area than EDIP, it is not mentioned here). Presumable, EDIP does not aim to cover the scope of the other procurement Directives such as 2014/24/EU. "with one or several legal entities" – this text does not seem to have any relevant meaning; that is, without the text it would still be possible to award to one or multiple legal entities, correct? Addition of last sentence: as we have pointed out before, it is necessary to clarify that the implementing contracts may not derogate from the "umbrella" contract. NL (Comments): What does 'swift' mean? SE (Comments): It is not clear if the definition for "contract" in this context concurs with other Union law/regulations.

Presidency Compromise	Drafting Suggestions and Comments
(2) 'bottleneck' means a point of congestion in a production system that stops or severely slows the production;	AT (Comments): Is it sufficient to refer to the production system or should reference be made to the "production **or supply** system"? This would more clearly cover such issues as e.g. a lack of the supply of certain raw materials.
(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 (the 'Financial Regulation'), 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	PL (Comments): Clarification is needed, why the definition of blending from the FR – as foreseen in the Article 2 (6) cannot be introduced one to one.
(4) 'common procurement' means a procurement jointly conducted by at least three Member States;	AT (Drafting Suggestions): deleted AT (Comments): As pointed out previously, common procurement is considered to be also procurement of Member States with international organisations or within a SEAP, in other provisions of EDIP (and see also Article 168 of the Financial Regulation). This definition is therefore confusing as it only refers to MS. It is furthermore unclear why the term "joint procurement"

Presidency Compromise	Drafting Suggestions and Comments
	is not used here as a definition, but is referred to in EDIP at various points. If the only meaningful provision contained here is how many Member States should participate, then this is already provided for in Article 12(3). For SEAP there is already a provision due to membership requirements, see Art. 23(1)(b). DE (Drafting Suggestions): "common procurement" means a procurement jointly conducted by at least three two Member States and/or associated countries or a Member State and an associated country, DE (Comments): EDIP aims at supporting defence industry readiness of the Union and its Member States. If cooperation between just two Member States or one Member State and an associated country (e.g. Norway) were covered by EDIP, even more joint procurements would be made possible. This would further strengthen the defence industry. Furthermore, "associated countries" are included in Art. 12 (3), which is another reason why the amendment should be included. NL (Drafting Suggestions): 'common procurement' means a procurement jointly conducted by **at least two** Member States; NL (Comments):

Presidency Compromise	Drafting Suggestions and Comments
	Preferably by at least two MS. Joint procurement often starts with just two MS and other MS join in a later phase (due to non aligning procurement cycles). This will stimulate joint procurement with EU MS, contributes to interoperability/interchangeability and possible harmonization of planning/procurement in the future. This definition is also consistent with the definition of "joint procurement" in Directive 2014/24/EU Art. 38 & 39(4). PL (Drafting Suggestions): (4) 'common procurement' means a procurement jointly conducted by at least ~~three~~ **two** Member States;
(5) 'control' means the ability to exercise decisive influence over a legal entity directly, or indirectly through one or more intermediate legal entities;	AT (Comments): Could Commission elaborate why this concept of control is diverging from other similar concepts (Art. 12(1)(a) of Directive 2014/24/EU, Article 29(2) of Directive 2014/25/EU, Article 1 (23) of Directive 2009/81/EC) and what the aim is? We need a response before we can suggest a text, our question on this did not receive a response. It is recommended to use an existing concept because a divergence is highly confusing for contracting authorities.
(6) 'classified information' means information or material, in any form, the unauthorised disclosure of which could cause varying degrees 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	AT (Drafting Suggestions): (6) 'classified information' means **any** information or material, ~~in any~~

Presidency Compromise	Drafting Suggestions and Comments
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;	**regardless of the** form, **to which a certain level of security classification or protection has been attributed and which, in the interests of national security and in accordance with the laws, regulations or administrative provisions in force in the Member State concerned, requires protection against any misappropriation, destruction, removal, disclosure, loss or access by any unauthorised individual, or any other type of compromise** ~~the unauthorised disclosure of which could cause varying degrees 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;~~ AT (Comments): The definition should not deviate from the definition in Art. 1(8) unless there is a reason to. We have not received a response to our question regarding the reason for the deviation and the possible source of the text. NL (Drafting Suggestions): classified information' means information or material, in any form, the unauthorised disclosure of which could cause varying degrees 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 **from a Member State, associated country or Ukraine**, as established in the Agreement between the Member States of the European Union, meeting within the Council, regarding the protection

Presidency Compromise	Drafting Suggestions and Comments
	of classified information exchanged in the interests of the European Union NL (Comments): Addition necessary to clarify that it is not restricted to EU classified info, or that any info exchanged within the context of the programme and instrument is EU classified. Classification is determined by the originator SE (Comments): The definition needs to be in accordance with Council decision 2013/488 och Commission decision 2015/444
	FR (Drafting Suggestions): *(6') Proposition d'ajout d'une définition de* ***« Information subject to export and transfers control » :*** ***Recorded or documented information of defence-related products, including hardware, software, technology or information, defined in EU Military list and national regulations as requiring an export or transfer license to the EU. The Information may include, but is not limited to, any of the following: experimental and test data, specifications, designs and design processes, inventions and discoveries whether patentable or not, technical descriptions and other works of a technical nature, semiconductor topography/mask works, technical and manufacturing, data packages, know-how and trade secrets and information relating to industrial techniques, commercial and financial data. It may be presented in the form of documents, pictorial***

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	reproductions, drawings and other graphic representations, disk and film recordings (magnetic, optical and laser), computer software both programmatic and database, and computer memory printouts or data retained in computer memory, or any other form. FR (Comments): Les dispositions du règlement porte sur le matériel de guerre et non pas sur le matériel assimilé et les produits liés à la défense qui nécessiteront potentiellement une licence d'exportation ou de transfert.
(7) 'defence products' means any defence-related products as referred to in Article 2 of Directive 2009/43/EC;	FR (Comments): Réserve d'examen - Les autorités françaises s'interrogent sur la pertinence de faire référence à la directive 2009/43, plutôt que de s'inspirer de la notion d' « équipements militaires » issue de la directive 2009/81. La définition d'équipement militaire apparait plus souple et fexible et permettrait d'adapter la liste selon la destination de l'équipement concerné. PL (Comments): Why defence directive as it is in EDIRPA has been changed to the one on transfers? SE (Drafting Suggestions): defence products' means any defence-related products as referred to in Article **3**~~2~~ of Directive 2009/43/EC;

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	SE (Comments): It seems that it is referred to the wrong article. (Compare with definition in "Regulation on the single market emergency instrument" article 3 para 1) defence products' means any defencerelated products as referred to in Article 3 of Directive 2009/43/EC; In this regulation the term defence products is used in several various combinations such as i.e. "… defence products …" (article 1 and article 2.7) "… defence products, processes or services …" (article 2.10) "… defence products, technologies or services …" (article 22.2 a) "… defence products, including the procurement of spare parts, logistic services …" (article 22.2 b) "… defence products and services …" (article 23.1 a) "… defence product or technology …" (article 23.1 d) "… defence equipment, technology and/or services …" (article 27.1 c) "… goods or services …" (article 35.3) "… key defence products …" (article 41.5 and

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	article 42.1) "… crisis-relevant products …" (article 41.6, artikel 43.1, artikel 46.1) "… products, which are not defence products …" (article 44 and article 47.1) These various broadened definitions need to be harmonised or clarified.
(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 the legal entity's strategy, objectives and overall direction, and which oversees and monitors management decision-making;	AT (Drafting Suggestions): deleted AT (Comments): Incorporate in Art. 2(12) because that is the only mention.
(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 the Financial Regulation;	AT (Comments): Could COM explain why national entities with no legal personality are included in this definition, by reference to Art. 197 (2) letter c of the Financial Regulation? We have not yet received a response to this question. FR (Comments): Il est nécessaire d'examiner les implications d'une ouverture de la

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	définition aux entités dépourvues de personnalité juridique.
(10) 'defence innovation action' means an action primarily consisting of activities directly aiming to produce plans and arrangements or designs for new, altered or improved defence products, processes or services, possibly including prototyping, testing, demonstrating, piloting, large-scale product validation and market replication	AT (Drafting Suggestions): deleted AT (Comments): Incorporate in Art. 52 (only mentioned there).
(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	
(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 (Drafting Suggestions): (12) 'non-associated third-country entity' means a legal entity that is established in a non-associated third country **with the exception of Ukraine** 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 **with the exception of Ukraine**; an executive management structure ~~means~~**is** 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 the legal entity's

Presidency Compromise	Drafting Suggestions and Comments
	strategy, objectives and overall direction, and which oversees and monitors management decision-making; AT (Comments): We reiterate our question: 1) this definition seems to contradict the exemption of Ukrainian or Ukraine-controlled entities from this definition; is this intended or not? We have formulated a text suggestion which would be in conformity with the apparent intention of Recital 15. The "where applicable" portion of the definition added from above is superfluous – if it is "where applicable", then it does not matter for the definition. In the current context, it does also not seem necessary to refer to the appointment in accordance with national law – even if the structure where appointed in non-compliance with national law, this definition should apply.
(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 (Drafting Suggestions): (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. **Associated countries and Ukraine may also be parties of the contractual agreement on the side of the Member States.** AT

Presidency Compromise	Drafting Suggestions and Comments
	(Comments): We reiterate our question: Whereas Article 37 includes associated countries and Ukraine in off-take agreements, the definition does not – which is the intended definition? We have tried to align the text with Article 37. NL (Drafting Suggestions): (13) 'off-take agreement' means any contractual agreement between at least [~~three~~**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~~ **from** the manufacturer of defence products to provide the Member States with the option to do so. NL (Comments): Preferably by at least two MS. Joint procurement often starts with just two MS and other MS join in a later phase (due to non aligning procurement cycles). This will stimulate joint procurement by EU MS, contributes to interoperability/interchangeability and possible harmonization of planning/procurement in the future. PL (Drafting Suggestions): '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

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	Member States with the option to do so.
(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 (Drafting Suggestions): (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~~**joint** procurement on their behalf; AT (Comments): We reiterate our question: is it intentional that Ukrainian authorities may not be designated as procurement agents? Deletion: reference to Directive 2014/25/EU is identical to Directive 2014/24/EU and therefore superfluous. Regardless of EDIRPA, the term "joint" procurement is much more common and established; there is no good reason to deviate. Addition in Recital: OCCAR and NSPA are covered by the definition of a "procurement agent". DE (Drafting Suggestions): "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

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	European Defence Agency, a Structure for European Armament Ptrogramme or an international organisation ~~that is designated by Member States, associated countries or Ukraine to conduct a common procurement on their behalf~~ DE (Comments): Our understanding is that the wording is not supposed to stipulate additional requirements with regard to the international organisation itself or with regard to the procurement agent that go beyond what is stipulated in the EDIP-regulation. To avoid misapprehension, we propose to delete the last 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? COM please confirm.
(15) 'lead time' means the period of time between a purchase order being placed and the manufacturer completing the order;	
(16) 'raw materials' means the materials required to produce defence products;	AT (Drafting Suggestions): (16) 'raw materials' means **a substance in processed or unprocessed state used as an input for the manufacturing of intermediate or final** ~~the materials required to produce~~ defence products; AT

Presidency Compromise	Drafting Suggestions and Comments
	(Comments): We are suggesting a clearer definition that draws a distinction to components, which the current definition does not. The text is taken from the Critical Raw Materials Act, Art. 2(1) of Regulation (EU) 2024/1252. FR (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, […]" FR (Comments): Les autorités françaises souhaitent aligner la définition des matières premières sur celle déjà agréée dans le Critical Raw Material Act (CRM Act).
(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;	AT (Drafting Suggestions): deleted AT (Comments): Again, this definition is only used in Art. 7 paragraph 2 and 3 and could therefore be incorporated there.
(18) 'security crisis' means any situation in a Member State, an	NL

Presidency Compromise	Drafting Suggestions and Comments
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;	(Comments): Definition is same as in directive 2009/81 but NL places study reserve, because it should be assessed in relation to SoS (chapter V) and needs to be discussed. Also: does 'or' mean that this characteristic by itself can trigger such a status, i.e. if property prices are impacted (by whatever cause) such a crisis can be triggered SE (Comments): This definition is wide and should be specified and compared to other union law.
(19) 'sensitive information' means unclassified information and data that are to be protected from unauthorised access or disclosure because of obligations laid down in Union or national law, where applicable, or in order to safeguard the privacy or security of a natural or legal person ;	FI (Comments): Good clarifications. FR (Comments): Les autorités françaises saluent la suppression des informations classifiées du champ de cette définition.
(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;	
(21) 'subcontractors in the common procurement' means any legal	AT

Presidency Compromise	Drafting Suggestions and Comments
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.	(Drafting Suggestions): deleted AT (Comments): This definition is only used once in Art. 12(5). DE (Drafting Suggestions): '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~~. 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. FR (Drafting Suggestions): ~~'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.~~

Presidency Compromise	Drafting Suggestions and Comments
	'subcontractors involved in an action'refers to subcontractors with a direct contractual relationship to a recipient, other subcontractors to which at least 10 % of the total eligible costs of the action is allocated, and subcontractors which may require access to classified information in order to carry out the action. Subcontractors involved in an action are not members of the consortium. FR (Comments): La reprise du texte agréé dans le règlement FED (art. 9 (8)) permet de couvrir l'esprit de la proposition tout en intégrant des éléments vérifiables. Par exemple, la notion d'accès aux informations classifiées permet de déterminer la contribution critique (« *critcal input* ») d'un sous-traitant au matériel considéré.
(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;	
(23) 'crisis-relevant products' means defence products or key components or raw materials thereof or any 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 and its supply chains resulting in actual or potential significant shortages.	SE (Drafting Suggestions): 2.23 to be deleted ~~(23) 'crisis-relevant products' means defence products or key components or raw materials~~

Presidency Compromise	Drafting Suggestions and Comments
	~~thereof or any 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 and its supply chains resulting in actual or potential significant shortages.~~ SE (Comments): The use of a "catch-all" term including both defence products and other goods is problematic since it does not take into account the specific nature of defence products and the differing regulations between them, dual use products and other goods. For this reason this term should not be used.
(24) 'defence industrial readiness pool' means a quantity of defence products procured and maintained for the purpose of ensuring their timely availability to the armed forces of Member States, associated countries and Ukraine.	SE (Drafting Suggestions): 'defence industrial readiness pool' means a quantity of defence products procured **with funding from /supported by funds from this regulation** and maintained for the purpose of ensuring their timely availability to the armed forces of Member States, associated countries and Ukraine.
(25) 'contracting authorities' means contracting authorities/entities as defined in Article 1(17) of Directive 2009/81/EC.	

EDIP Proposal - First Presidency Compromise (Chapters I II and V) Deadline: ***29 May 2024***

From: AT, CZ, DE, EE, EL, ES, FI, FR, HU, IT, LT, NL, PL, SE **Updated: 30/05/2024 13:06**

Presidency Compromise	Drafting Suggestions and Comments

Presidency Compromise	Drafting Suggestions and Comments
Chapter II	IT (Comments): IT can agree with splitting up Chapter II into two chapters to separately address the Programme and the Ukraine Support Instrument.
The Programme	FI (Comments): Simplified new draft is more better. Good that UA instrument is separated.
Section 1: General provisions applicable to the Programme	
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 the Financial Regulation.	FI (Comments): If and where using FNLC should be stated in the regulation text.

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	Applicability should not be left to Work Programme preparation.
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 for actions reinforcing the EDTIB may be defined on the basis of the following factors:	DE (Comments): Can you explain the reasoning behind the factors for the use of financing not linked to costs? We welcome any changes that aim at strengthening a cost oriented approach. The contribution not linked to cost are mainly intended for actions where MS or public authorities are the recipients. This should be reflected in the text by referencing the different actions (e.g. Article 12). The factors have been much simplified. We reserve the right to propose further amendments at a later date. FI (Comments): Same comment as for art. 3 paragraph 1. SE (Drafting Suggestions): 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 for actions reinforcing the EDTIB ~~may~~ **will** be defined on the basis of the following factors: SE (Comments):

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	The writing "may be defined" is very broad and opens up for a subjective assessment.
(a) the estimated value of the action;	DE (Drafting Suggestions): The complexity of the cooperation, as indicated by the estimated value of the action
(b) the contribution of the action to achieving interoperability between defence products produced by the EDTIB and the DTIB of associated countries;	FR (Drafting Suggestions): ~~(~~b) the contribution of the action to achieving interoperability between defence products **produced within the EDTIB, and between defence products produced by the EDTIB and the DTIB of associated countries;** FR (Comments): Il semble trop restrictif de viser l'interopérabilité entre les produits de défense de la BITDE et des autres pays associés. Il faut aussi parler de l'interopérabilité entre produits au sein même de la BITDE. SE (Comments): There is no definition for DTIB. In this regulation Ukraine DTIB and EDTIB are the terms that have been defined so far.

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(c) the number of participating Member States and associated countries;	DE (Drafting Suggestions): Link to Article 12 (common procurement actions) FR (Drafting Suggestions): the number of participating Member States and associated countries **or the inclusion of additional Member States or associated countries in existing cooperation**; FR (Comments): Les autorités françaises estiment pertinent de conserver la version initiale de ce paragraphe.
(d) the contribution of the action to the ramp-up of necessary manufacturing capacities;	FI (Comments): What is the definition of necessary manufacturing capacities? Should there a reference to eg. CDP, investment gap analysis, DJPTF? These should be discussed and commonly agreed.
(e) the procurement of additional quantities for other Member States (defence industrial readiness pool).	DE (Comments): This is a boolean criteria. Does that mean that procuring additional quantities would lead to a bonus, regardless of the form of action?

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	NL (Comments): Is it not possible for the procuring agent (possibly a MS) to procure additional quantities for a readiness pool for its own use in the future?
	NL (Drafting Suggestions): **(f) the contribution of the action to cross border industrial collaboration and the opening up defence supply chains;**
Article 4	FI (Comments): Good additions.
	LT (Comments): Missing the mentioning of strengthening and integration of Ukraine's defence industry into EDTIB as an overall additional objective to the whole EDIP.Would that be compatible with the chosen legal basis?
Objectives	DE (Comments): We reserve the right to propose further amendments at a later date.
1. The Programme aims to increase the competitiveness and readiness of the EDTIB by initiating and speeding up the adjustment of industry to the rapid structural changes imposed by the evolving security environment and by incentivising cooperation in defence procurement	AT (Drafting Suggestions): 5. The Programme should apply without prejudice to the specific character of the security and defence policy of certain Member States,

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between Member States. In particular, the Programme shall aim to:	and is not intended to lead to a common defence in the sense of Article 42(2) TEU AT (Comments): In addition to Recital 70, it would be desirable to also make a reference to certain member states' security and defence policy in the provision on the objectives. EE (Drafting Suggestions): EE: The Programme aims to increase the **European Union defence readiness via investments into critical supplies of ammunition and joint Union capabilities, and via increasing the** competitiveness and readiness of the EDTIB by initiating and speeding up the adjustment of industry to the rapid structural changes imposed by the evolving security environment and by incentivising cooperation in defence procurement between Member States. In particular, the Programme shall aim to: EE (Comments): EE: The overarching objective of Union defence readiness needs to spelt out clearly. The recitals above as well as EDIS set the Union defence readiness as a clear objective. Therefore, we believe it needs to be mentioned here as an objective. Alongside with setting the objective, this paragraph should also be clearer in terms of how to achieve the defence readiness objective. Strenghtening EDTIB is indeed one of the means, however, there is also a clear need to focus on critical supplies of ammunition that Union currently lacks as well as on joint capability development. For instance, in the form of joint air defence capabilities.

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	PL (Comments): The focus on speeding up the adjustment to structural changes and building up reserved surge manufacturing capacities could require significant resources, making it not feasible for the majority of the companies SE (Drafting Suggestions): The Programme aims to increase the competitiveness ~~**and readiness**~~ of the EDTIB by initiating and speeding up the adjustment of industry to the rapid structural changes imposed by the evolving security environment and by incentivising cooperation in defence procurement between Member States. In particular, the Programme shall aim to: SE (Comments): Referring to art 173. Pillar 1.
(a) incentivise cooperation in defence procurement by aggregating demand for defence products, harmonising requirements, strengthening solidarity between Member States, supporting the commercialisation of products and technologies supported by the European Defence Fund and improving predictability of demand for the EDTIB;	ES (Drafting Suggestions): incentivise cooperation in defence procurement**,** ~~by~~ **including the aggregation of** demand for defence products, **the harmonization** of requirements, **and** strengthening solidarity between Member ES (Comments): With “by” is not clear it a means or one of the types of cooperation of

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	defence FI (Comments): Sub paragraphs a and be could be switched the other way, ie. (b.) first and (a.) second. The (b.) is more important than (a.). FR (Drafting Suggestions): incentivise cooperation in defence procurement by aggregating demand for defence products, harmonising requirements, strengthening solidarity between Member States, supporting the **industrialisation and** commercialisation of products and technologies supported by the European Defence Fund and improving predictability of demand for the EDTIB FR (Comments): Il est nécessaire de produire en série un produit avant de pouvoir le commercialiser.
(b) initiate and speed up the adjustment of industry to the rapid structural changes imposed by the evolving security environment by improving and accelerating the capacity of adaptation of defence industrial supply chains for crisis-relevant products and open supply chains for cross-border cooperation, by increasing manufacturing capacity and reducing lead production time for defence products throughout the Union, and by ensuring the availability and supply of defence products throughout the Union, in particular for SMEs and mid-	EE (Drafting Suggestions): (b) initiate and speed up the adjustment of industry to the rapid structural changes imposed by the evolving security environment by improving and accelerating the capacity of adaptation of defence industrial supply chains for crisis-relevant products and open supply chains for cross-border cooperation, by increasing manufacturing **capacity, especially focusing on adding new, technologically innovative, manufacturing capacity,**

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caps.	and reducing lead production time for defence products throughout the Union, and by ensuring the availability and supply of defence products throughout the Union, in particular for SMEs and mid-caps. EE (Comments): EE: In order to deal with the shortage of defence industrial capacity and to ensure security of supply of critical defence goods across the Union, the focus should be on adding new, technologically modern and innovative, manufacturing capacity. NL (Drafting Suggestions): (b) initiate and speed up the adjustment of industry to the rapid structural changes imposed by the evolving security environment by improving and accelerating the capacity of adaptation of defence industrial supply chains for ~~crisis-relevant~~ **defence** products and open supply chains for cross-border cooperation, by increasing manufacturing capacity and reducing lead production time for defence products throughout the Union, and by ensuring the availability and supply of defence products throughout the Union, in particular **through fair access to supply chains** for SMEs and mid-caps.
	EE (Drafting Suggestions): NEW **(c) incentivise cross-border cooperation between the Member States via identifying and investing into the European Defence Projects of Common Interest.** EE

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	(Comments): EE: We believe that incentivising cross-border cooperation via indentifying the European Defence Projects of Common Interest is an important objective and should thus be spelt out. We believe that it would significantly support increasing the European defence readiness and would therefore merit explicit mentioning. Furthermore, we believe that the Regulation should be more explicit about the areas in which the projects of common interest are to be identified. The broad categories should be outlined in the Regulation. The Regulation allows a significant amout of funding to projects of common interest, but is mute about the areas.
2. The Programme shall be implemented taking into account the objectives of the Strategic Compass for Security and Defence and shall be fully consistent with the Capability Development Plan agreed by Member States. It shall take into account the collaborative opportunities identified in the Coordinated Annual Review on Defence [and the advice of the Defence Industrial Readiness Board].	DE (Comments): Mention of CDP and CARD welcomed. EL (Drafting Suggestions): …Capability Development ~~Plan~~ Priorities… EL (Comments): What will be the role of DIRB? ES (Drafting Suggestions): The Programme shall be implemented taking into account the objectives of the Strategic Compass for Security and Defence and shall be fully consistent with the Capability Development Plan agreed by Member States. **During the elaboration of the Work Programmes**, **it shall be**

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	taken into ~~account~~ **consideration** the collaborative opportunities identified in the Coordinated Annual Review on Defence [and the advice of the Defence Industrial Readiness Board] **and existing PESCO Projects related to capability development.** ES (Comments): **Take into consideration** reinforces slightly the languague PESCO Projects are prove of the MS concrete interest in certain capabilities, and should be part of the information related to capabilities to take into consideration. FI (Comments): Consistency with CDP is a good addition. IT (Comments): Additional clarification is required on the governance, with special regard to the Defence Industrial Readiness Board's formats (EDIS/EDIP), tasks, and responsibilities. In general, Italy believes that EDIP governance should be structured on clear principles based on accountability. While the Commission is responsible for making final decisions in implementing the regulation, Member States should be allowed to assist by providing recommendations and strategic guidance through direct and transparent engagement with the Commission. Italy reserves the right to propose alternative language as necessary.

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3. The Programme shall complement Member States' cooperation within the framework of the Permanent Structured Cooperation, European Defence Agency initiatives and projects, and the EU's civil and military assistance to Ukraine. It shall be compatible with the relevant activities carried out by the North Atlantic Treaty Organisation and other partners where they serve the Union's security and defence interests.	DE (Drafting Suggestions): "the programme shall bolster MS' cooperation with the framework of PESCO, EDA…" [] DE (Comments): Presidency input regarding Art. 4 is welcomed and should be considered the baseline. Coherence of of the initiatives is paramount, existing tools should be sharpened in order to achieve results. Stronger language will signal this important aspect. FI (Comments): Very supportable addition. FR (Comments): La France salue également le souhait d'assurer la cohérence avec les initiatives en matière de développement capacitaire prévues dans le cadre de la CSP, de l'AED et de l'OTAN. LT (Drafting Suggestions): The Programme shall complement Member States' cooperation within the framework of the Permanent Structured Cooperation, European Defence Agency initiatives and projects, and the EU's civil and military assistance to Ukraine. It shall be compatible with **and complementary to** the relevant activities carried out by the North Atlantic Treaty Organisation

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	and other partners where they serve the Union's security and defence interests.
Article 5	
Budget	
1. The financial envelopes for the implementation of the Programme shall be composed of 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.	AT (Drafting Suggestions): 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 %, to actions under the Ukraine Support Instrument in accordance with Art.31 of the Financial Regulation. AT (Comments): Guarantees right to have a say and transparency to co-legislators/budget authority. We regret that the COM has not provided the promised written answers on a justification of the 20% flexibility. FI (Drafting Suggestions):

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	The financial envelopes for the implementation of the Programme shall be composed of 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. **Atleast 50% of the Programme's budget shall be reserved for industrial reinforcement actions referred to in article 13**. FI (Comments): The use of the program's budget allocation should be more precisely defined in the regulation. The prioritization of industrial reinforcement actions should be included as proposed. FR (Comments): La France est opposée à la possibilité de demander aux États membres des contributions supplémentaires *ad hoc* (hors revenus d'aubaine issus des avoirs immobilisés), qui constitue un contournement des plafonds du cadre financier pluriannuel. Les délais de mise en œuvre de telles contributions, qui nécessiteraient la ratification d'accords bilatéraux de contribution, seraient excessivement longs au regard de la période couverte par le programme (2025-2027).
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 %, to actions under the Ukraine Support Instrument.	AT (Comments): In order to design the Regulation in a way that respects the specific character of the security and defence policy of certain Member States, a clear distinction between the EU programme and the UA support

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	programme is required. In addition, the formulation "unforseen situations or to new developments" is very vague. A further clarification may be required if a similar provision were to be included in chapter III.
3. The amount referred to in paragraph 1 and 5 of this Article 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.	FR (Drafting Suggestions): The amount referred to in paragraph 1 and 5 of this Article 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~~. FR (Comments): En lien avec le commentaire sur l'article 14 (1) (f), le catalogue pourrait éventuellement être mentionné dans cet article. Une telle affectation des dépenses administratives, sans limite de montant, diminuera d'autant les crédits effectivement disponibles pour le soutien à la BITDE et à l'Ukraine. Il conviendrait d'imputer les strictes dépenses administratives engendrées sur la rubrique 7 du budget de l'UE. SE (Drafting Suggestions): The amount referred to in paragraph 1 and 5 of this Article may also be

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	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.~~ SE (Comments): The costs incurred by the Commission should not be financed through the programme but should be financed through redeployments within heading 7. SE also want to underline the stable staffing principle. This also applies to the corresponding articles under the USI.
4. In addition to Article 12(4) of the Financial Regulation, 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 the Financial Regulation.	AT (Drafting Suggestions): DELETION ~~In addition to Article 12(4) of the Financial Regulation, 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 the Financial Regulation.~~ AT (Comments):

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	We regret that the COM has not provided the promised written answers on a justification of this derogation of the Financial Regulation. As these answers are absent, AT calls for a deletion of this paragraph. 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. EL (Comments): IE Comments, Justifications FI (Drafting Suggestions): ~~In addition to Article 12(4) of the Financial Regulation, 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 the Financial Regulation.~~ FI (Comments): We pay attention to the fact that the compromise proposal says nothing about derogations from and additions to the Financial Regulation. We do

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	not support the proposal on the automatic carrying over of unused appropriations and the recycling of decommitments. Especially Article 5 paragraphs 4 and 6 should be deleted. FR (Drafting Suggestions): ~~In addition to Article 12(4) of the Financial Regulation, 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 the Financial Regulation.~~ FR (Comments): Malgré les justifications apportées, la France est opposée au report automatique des crédits non consommés. NL (Drafting Suggestions): 4. ~~In addition to Article 12(4) of the Financial Regulation, 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 the Financial Regulation.~~ NL

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	(Comments): No exceptions to the rules on carry-overs in article 12 (4) of the Financial Regulation (2018/1046). The Presidency compromise text did not explain why these exceptions should be kept. PL (Comments): This is derogation from the Article 12(4) of the FR. It is legally possible, by introducing legal basis of the Art. 322(2) of the Treaty, but justification is necessary. SE (Drafting Suggestions): ~~4. In addition to Article 12(4) of the Financial Regulation, 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 the Financial Regulation.~~ SE (Comments): SE do not agree with derogations from existing budgetary principles and regulations. The budget should be unified and annual in accordance with the principles. Article 5 point 4 should be removed. This also applies to the corresponding articles under

Presidency Compromise	Drafting Suggestions and Comments
	the USI.
5. By way of derogation from Article 209(3), first, second and fourth subparagraphs of the Financial Regulation, any revenues and repayments from financial instruments established under this Chapter shall constitute internal assigned revenue within the meaning of Article 21(5) of the Financial Regulation, to the Programme or its successor programme.	AT (Drafting Suggestions): DELETION ~~By way of derogation from Article 209(3), first, second and fourth subparagraphs of the Financial Regulation, any revenues and repayments from financial instruments established under this Chapter shall constitute internal assigned revenue within the meaning of Article 21(5) of the Financial Regulation, to the Programme or its successor programme.~~ AT (Comments): We regret that the COM has not provided the promised written answers on a justification of this derogation of the Financial Regulation. As these answers are absent, AT calls for a deletion of this paragraph. 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. EL (Comments):

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	IE Comments, Justifications PL (Comments): It is legally possible, but justification, as requested above, is necessary. SE (Drafting Suggestions): ~~5. By way of derogation from Article 209(3), first, second and fourth subparagraphs of the Financial Regulation, any revenues and repayments from financial instruments established under this Chapter shall constitute internal assigned revenue within the meaning of Article 21(5) of the Financial Regulation, to the Programme or its successor programme~~ SE (Comments): SE do not agree with derogations from existing budgetary principles and regulations. The budget should be unified and annual in accordance with the principles. Article 5 point 5 should be removed. This also applies to the corresponding articles under the USI.
6. In addition to Article 15 of the Financial Regulation, commitment appropriations corresponding to the amount of recoveries and of decommitments under the Programme shall be made available again to the Programme in the context of the budgetary procedure.	AT (Drafting Suggestions): In addition to Article 15 of the Financial Regulation, commitment appropriations corresponding to the amount of recoveries and of decommitments under the Programme ~~shall~~ **may** be made available again to the Programme in the context of the budgetary procedure.

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	AT (Comments): Consistency of wording with exception in Art. 15(3) of the Financial Regulation. We regret that the COM has not provided the promised written answers on a justification of this derogation of the Financial Regulation. As these answers are absent, AT calls for a deletion of this paragraph. 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. EL (Comments): IE Comments, Justifications FI (Drafting Suggestions): ~~In addition to Article 15 of the Financial Regulation, commitment appropriations corresponding to the amount of recoveries and of decommitments under the Programme shall be made available again to the Programme in the context of the budgetary procedure.~~ FR

Presidency Compromise	Drafting Suggestions and Comments
	(Drafting Suggestions): ~~In addition to Article 15 of the Financial Regulation, commitment appropriations corresponding to the amount of recoveries and of decommitments under the Programme shall be made available again to the Programme in the context of the budgetary procedure.~~ FR (Comments): Malgré les justifications apportées, la France est opposée à la possibilité de reconstituer les crédits désengagés, qui nuit au principe d'annualité budgétaire et aux prérogatives de l'autorité budgétaire. NL (Drafting Suggestions): ~~6. In addition to Article 15 of the Financial Regulation, commitment appropriations corresponding to the amount of recoveries and of decommitments under the Programme shall be made available again to the Programme 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). The Presidency compromise text did not explain why these exceptions should be kept. PL (Comments): Derogation form budgetary rules.

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	It is legally possible, by introducing legal basis of the Art. 322(2) of the Treaty, but justification is necessary here as well. SE (Drafting Suggestions): ~~6. In addition to Article 15 of the Financial Regulation, commitment appropriations corresponding to the amount of recoveries and of decommitments under the Programme shall be made available again to the Programme in the context of the budgetary procedure~~ SE (Comments): SE do not agree with derogations from existing budgetary principles and regulations. The budget should be unified and annual in accordance with the principles. Article 5. point 6 should be removed. This also applies to the corresponding articles under the USI.
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.	AT (Drafting Suggestions): ~~**Appropriations may be entered in the Union budget beyond 2027 to cover the expenses necessary to fulfil the objectives**~~

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	~~**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.**~~ **If necessary to enable the management of actions not completed by 31 December 2027, appropriations may be entered in the Union budget beyond 2027 to cover the expenses provided for in paragraph 3.** AT (Comments): Consistent wording with Art. 12(7) of Horizon Europe Regulation DE (Comments): Rationale of this paragraph is not clear. Please specify if commitment or payment appropriations are meant. FR (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 the Programme, as well as expenses covering critical operational activities and services. FR (Comments): La possibilité d'engager des crédits après 2027 devrait être strictement limitée aux dépenses de soutien liées au programme, c'est-à-dire

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	essentiellement des dépenses liées à la gestion des actions non achevées et à l'évaluation du programme. NL (Drafting Suggestions): ~~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.~~ NL (Comments): No prejudgement of the negotiations on the next MFF. The Presidency compromise text did not explain why this should be kept. SE (Drafting Suggestions): 8. Appropriations may be entered in the Union budget ~~beyond~~**up until** 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~~. SE (Comments): The Programme should not reach beyond 2027 and the current MFF. This also applies to the corresponding articles under the USI.

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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 17 in accordance with Article 208(2) of the Financial Regulation. 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 Financial Regulation.	FR (Drafting Suggestions): ~~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 17 in accordance with Article 208(2) of the Financial Regulation. 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 Financial Regulation. FR (Comments): La France est opposée à la possibilité de demander aux États membres des contributions supplémentaires *ad hoc* (hors revenus d'aubaine issus des avoirs immobilisés), qui constitue un contournement des plafonds du cadre financier pluriannuel. Les délais de mise en œuvre de telles contributions, qui nécessiteraient la ratification d'accords bilatéraux de contribution, seraient excessivement longs au regard de la période

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	couverte par le programme (2025-2027). Cette possibilité ne doit donc être ouverte que pour l'instrument de soutien à l'Ukraine afin de prévoir le transfert des revenus d'aubaine issus des avoirs immobilisés. PL (Comments): The references should be to the currently applicable Financial Regulation (FR) and not to the recast of FR, because the new numbering of the articles, their final wording, and the date of entry into force are not known yet. SE (Comments): There is a questionable added value to the externally assigned revenue and it is contrary to the principle of the budget being unified. Thus, the possibility of having externally assigned revenue should be removed.
2. 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[5]. The	SE (Comments): We want to support the change made by the presidency that these

[5] 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).

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Commission shall implement those resources directly in accordance with Article 62(1), point (a) of the first subparagraph, of the Financial Regulation or indirectly in accordance with point (c) of that subparagraph. They shall be added to the resources referred to in Article 5(1). Those resources shall be used for the benefit of the Member State concerned.	resources are added to those referred to in Article 5(1).
3. Where the Commission has not entered into a legal commitment under direct or indirect management for resources transferred in accordance with paragraph 2 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.	
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.	ES (Comments): There is a need for clarification on how cost-based funding and funding not linked to cost can be combined under different programmes, avoiding

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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.	double financing. In addition, different financing rules combined in one programme/project could cause more administrative costs and difficulties in the management. Has this been analysed or evaluated? On the other hand, it is not clear if performance-based methodology for private projects would be implemented
	AT (Drafting Suggestions): **1a. An action may receive a seal of excellence which is a quality label showing 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. Such an action may receive support from other Union or national sources of funding.** AT (Comments): Added and slightly adapted definition from Art. 2(17). A reference to paragraph 1 being applicable could be considered as well.
2. In order to be awarded a Seal of Excellence under the Programme, actions shall comply with all of the following conditions:	ES (Comments): The Seal of Excellence is welcomed but we consider that synergies coming from its implementation could be further exploited. This kind of recognition/award is to avoid duplicity in administrative work. As this Seal of Excellence would coexist with the Sovereignty Seal from STEP, due to EDIP's potential link with STEP, it could be beneficial their

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	harmonization to allow their equivalence or mutual recognition.
(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.	
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 Financial Regulation or in indirect management	

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with bodies referred to in Article 62(1), point (c), of the Financial Regulation.	
2. Union funding may be provided in any of the forms laid down in the Financial Regulation, in particular grants, prizes, procurement, and financial instruments within blending operations under the InvestEU programme in accordance with Title X of the Financial Regulation.	
3. By way of derogation from Article 192(2) of the Financial Regulation, activities referred to in Article 13(1), 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 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.	DE (Comments): We ask for an adequate explanation why this derogation from the Financial Regulation is deemed necessary. The explanation needs to be reflected in the recitals. Without proper explanations, such derogations cannot be justified. EL (Comments): IE, 192 (2) FIN REG, ‘’JUSTIFICATIONS’’ NL (Comments): Which subcontractors? The defined ‘subcontractors in the common procurement’? Or other kind of subcontractors? SE (Drafting Suggestions):

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	~~3. By way of derogation from Article 192(2) of the Financial Regulation, activities referred to in Article 13(1), 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 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.~~ SE (Comments): SE do not agree with derogations from existing budgetary principles and regulations. The budget should be unified and annual in accordance with the principles. Article 8. point 3 should be removed.
4. By way of derogation from Article 193(2) of the Financial Regulation, 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 FR (Comments): Les actions ayant débuté depuis le 5 mars 2024, soit avant l'adoption du

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	programme, pourraient bénéficier des fonds. Une telle rétroactivité dérogeant au règlement financier peut être envisageable dès lors qu'il s'agit de répondre à une situation d'urgence. Néanmoins, est-il possible d'expliquer la cohérence de cette disposition avec la programmation financière estimée de l'instrument, prévoyant l'essentiel des dépenses à partir de 2026 ? PL (Comments): As for retroactivity, we ask the Presidency for a detailed explanation on the necessity to introduce it. SE (Drafting Suggestions): ~~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.~~ SE (Comments): The implementation should not be retroactive as it impedes good implementation. Further, the implementation of the regulation should not be retroactive as it impedes good implementation.

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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): The term "associated countries" should already be defined in Article 2 (Definitions)
	PL (Drafting Suggestions): New subpara: **The programme shall be open to the participation of the Third States for which participation in the programme is an element of free trade agreements or defence partnership agreements they are parties of.**

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Article 10	
Eligible legal entities	DE (Comments): The numerous changes introduced in this section require further analysis. We reserve the right to propose further amendments at a later date. FR (Comments): Les autorités françaises remercient la présidence d'avoir pris en considération certaines de leurs préoccupations, tenant notamment à rapprocher les critères d'éligibilités prévus par EDIP avec ceux issus du règlement FED. La France souhaite souligner le manque de garanties concernant les droits de propriété intellectuelles et la nécessité d'harmoniser cet article avec le règlement du FED (notamment l'article 9 (4) (c) : « [Les garanties] attestent, en particulier, que, aux fins d'une action, des mesures sont en place pour faire en sorte que: […] c) les droits de propriété intellectuelle découlant de l'action et les résultats de l'action restent avec le destinataire pendant et après la réalisation de l'action et ne soient pas soumis à un contrôle ou une restriction par un pays tiers non associé ou une entité de pays tiers non associé, qu'ils ne soient ni exportés en dehors de l'Union ou en dehors de pays associés, ni accessibles depuis un lieu situé en dehors de l'Union ou en dehors de pays associés sans l'approbation de l'État membre ou du pays associé

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	dans lequel l'entité juridique est établie et conformément aux objectifs énoncés à l'article 3 » La France souhaite qu'il soit précisé dans l'article que les critères d'éligibilité s'appliquent aux sous-traitants, en particulier pour assurer la cohérence ave le FED. L'article devrait comporter une clause permettant à la Commission de s'assurer que les critères d'éligibilité soient remplis. Toutes les remarques formulées sous cet article sont applicables mutatis mutandis à l'article 27 nouveau (ancien article 21).
1. The eligibility criteria set out in paragraphs 2 to 8 shall apply in addition to the criteria set out in accordance with the Financial Regulation.	PL (Comments): It would be useful to point to a specific RF article containing the criteria applicable to this Programme.
2. Recipients of Union funding shall be established in the Union or in an associated country.	FR (Drafting Suggestions): Recipients of Union funding **and subcontractors** shall be established in the Union or in an associated country.
3. The infrastructure, facilities, assets and resources of the recipients	ES

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and subcontractors involved in an action which are used for the purposes of the action shall be located on the territory of a Member State or of an associated country for the entire duration of the action, and their executive management structures shall be established in the Union or an associated country.	(Drafting Suggestions): The infrastructure, facilities, assets and resources of the recipients ~~and subcontractors involved in an action~~ which are used for the purposes of the action shall be located on the territory of a Member State or of an associated country for the entire duration of the action, and their executive management structures shall be established in the Union or an associated country. ES (Comments): The term "subcontractors involved in an action" was not included in the previous version and it does not provide more clarity. The term subcontractors in the common procurement is defined at srticle 2 (definitions) and it provides a clear definition for an specific action. The new term in article 10 is neither defined not limited to a ceratin limit what could make most of the actions inelegibles. It is better to come back to the ASAP definition of this point. FI (Comments): Should UA be included as a possible territory in this context? More flexibility concerning subcontractors should be considered. SE (Drafting Suggestions): 3. The infrastructure, facilities, assets and resources of the recipients **~~and subcontractors~~** involved in an action which are used for the purposes of the action shall be located on the territory of a Member State or of an associated country for the entire duration of the action, and their

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	executive management structures shall be established in the Union or an associated country. SE (Comments): In accordance with the writing in ASAP article 10.5
4. By way of derogation to paragraph 3, recipients may use 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:	FR (Comments): Nous soutenons l'esprit originel du FED qui permet une certaine souplesse (composant hors UE dans un produit) tout en en limitant le financement européen. La France soutient l'encadrement plus strict du recours à des infrastructures, installations, biens et ressources qui sont situés ou détenus en dehors du territoire des États membres. Toutefois, la France ne soutient pas l'idée que des activités réalisées dans des infrastructures hors UE puissent être éligibles.
(a) is consistent with the objectives set out in Article 4;	
(b) is strictly necessary as a result of a lack of readily available alternatives or relevant infrastructure, facilities, assets and resources in the Union or an associated country;	FI (Drafting Suggestions): (b) is ~~strictly~~ necessary as a result of a lack of readily available

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	alternatives or relevant infrastructure, facilities, assets and resources in the Union or an associated country; FI (Comments): We think the use of word strictly is unnecessary. FR (Comments): La notion de « solution de substitution facilement disponible » (« *readily available alternatives* ») devrait être définie afin d'éviter un contournement trop souple de l'exigence de localisation dans l'UE ou dans un pays associé SE (Drafting Suggestions): is ~~**strictly necessary as**~~ a result of a lack of readily available alternatives or relevant infrastructure, facilities, assets and resources in the Union or an associated country; SE (Comments): To be in accordance e.g EDIRPA article 9.9 and not implement new writings.
(c) does not contravene the security and defence interests of the Union and its Member States.	EL (Drafting Suggestions): Added suggestion: ‘’.. taking into account the eventual screening within the meaning of

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	[Regulation (EU) 2019/452] of the European Parliament and of the Council and, where necessary, to appropriate mitigation measures,as wel as the objectives set out in art 4.’’ FR (Drafting Suggestions): does not contravene the security and defence interests of the Union ~~and~~ **or** its Member States. FR (Comments): La référence aux intérêts de sécurité et de défense de l’Union et des Etats mériterait d’être remplacée par les « intérêts de sécurité et de défense de l’Union ou des Etats » afin que les Etats conservent une marge de manœuvre dans la définition de ces intérêts.
	ES (Drafting Suggestions): **For industry reinforcement actions, the cost associated to these activities shall not be eligible.** ES (Comments): ASAP-like actions could be perfomed outside EU but related costs should not be eligible. For EDF actions, they were not eligible and for ASAP, they were not allowed FR (Drafting Suggestions): **The costs related to activities using these inrastructure, facilities,**

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	assets or ressources shall not be eligible for support from the Programme FR (Comments): La France propose l'ajout de ce paragraphe inspiré du FED (article 9 (5)).
5. Recipients of Union funding under the Programme shall not be subject to control by a non-associated third country or by a non-associated third-country entity.	
6. 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 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 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 (Drafting Suggestions): 6. By way of derogation from paragraph **45**, […] AT (Comments): It seems that there is a drafting error and that it should read "By way of derogation from paragraph 5 …" EL (Drafting Suggestions): Added suggestion. ''or the ms concerned, taking into account the eventual screening within the meaning of [Regulation (EU) 2019/452] of the European Parliament and of the Council and, where necessary, to appropriate mitigation measures,as wel as the objectives set out in art 4 of this Requlation.'' Final Recasted paragraph 6 suggestion: 6. By way of derogation from paragraph 4, a legal entity established in

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	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 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 or the MS concerned, taking into account the eventual screening within the meaning of [Regulation (EU) 2019/452] of the European Parliament and of the Council and, where necessary, to appropriate mitigation measures,as wel as the objectives set out in art 4 of this Requlation. EL (Comments): We express our concerns about the final regulation of 452/2019 (after it's reform), in order to finalize our positions. FI (Drafting Suggestions): By way of derogation from ~~paragraph 4~~ **paragraph 5**, 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 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 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. FR

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	(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 **or subcontractor** 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 FR (Comments): Le filtrage au titre de la directive 2019/452 relative au filtrage des investissements directs étrangers, ne nous apparaît pas présenter de garanties suffisantes. Cela résultait d'un accord trouvé dans des conditions d'urgence pour permettre l'adoption d'EDIRPA. IT (Comments): Our understanding is that the square brackets are a placeholder while the revision of Regulation 2019/452 is under way. In our view, a reference to the EU regulation on FDI screening is essential in the economy of this Article.

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	NL (Drafting Suggestions): 6. By way of derogation from paragraph **5**, 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 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 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. NL (Comments): Should refer to paragraph 5. PL (Comments): Other provisions in the project, apart from associated states, also mention the participation of Ukraine - is not mentioned here. Does this mean that a company registered in Poland and controlled by Ukrainian entities will have to go through the guarantee process? SE (Drafting Suggestions): By way of derogation from paragraph ~~4~~**5**, 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

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	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 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. SE (Comments): (Paragraph 5 not 4)
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 in particular substantiate that, for the purposes of an action, measures are in place to ensure that:	EL (Drafting Suggestions): Added sentence. …objectives set out in Article 4. Third countries where legal entities are established should respect the good neighorly relations and does not risk or put at stake the regional peace and security. The quarantee shall ..ensure that:.. EL (Comments): Following the Common position of council 2008/944 CFSP of Dec 8, 2008. FR (Comments): La France regrette l'absence de préservation des droits de propriété intellectuelle sur le territoire européen qui nous semble être une condition

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	essentielle à la résilience de notre BITDE et à la sauvegarde de notre savoir-faire (notamment dans le cadre par exemple de l'emergency innovation action ou des SEAP à venir). Ainsi elle souhaite également inclure le point c) de l'article 9(4) du règlement FED (voir infra).
(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;	PL (Drafting Suggestions): (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;
(b) access by a non-associated third country or by a non-associated third-country entity to classified or 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;	PL (Drafting Suggestions): b) access by a non-associated third country or by a non-associated third-country entity to sensitive information relating to the action, other than strictly necessary for this country or entity to participate in the action effectively ('need to know' principle) 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; SE

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	(Drafting Suggestions): access by a non-associated third country or by a non-associated third-country entity to classified or 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 **in accordance with national laws and regulations.** SE (Comments): This paragraph is mixing up the scheme of PSC and the "sensitive matters" relating to internal COM rules. If there is information that should have restrictions, you need to classify it. We suggest changing the writing in order to clarify the procedure. The prerogative to issue a PSC is the sole responsibility of a MS in which the employee is a citizen of. According to Council Decision 2013/488 and COM decision 2015/444 PSCs are issued at the level of CONFIDENTIEL UE/EU CONFIDENTIAL not for Restricted level. The baseline for participation for a nonassociated or associated countries is a security of information agreement. Otherwise, there is no legal means to exchange EUCI in this programme. This has been added to give the paragraph a more legally sound meaning.

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	FR (Drafting Suggestions): **« (c) ownership of the intellectual property arising from, and the results of, the action remain within the recipient during and after completion of the action, are not subject to control or restriction by a non-associated third country or by a non-associated third-country entity, and are neither exported outside the Union or outside associated countries nor accessible from outside the Union or outside associated countries without the approval of the Member State or the associated country in which the legal entity is established and in accordance with the objectives set out in Article 3.”**
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.	
7. The Commission shall inform [the committee referred to in Article 57] of any legal entity considered to be eligible in accordance with paragraph 6.	EL (Drafting Suggestions): Added. ‘’…paragraph 6, following its own assessment. The Commission monitors the eligible legal entities throughout the action.’’ EL (Comments): 1. The MS or the MS concerned should acquire the information on legal entities controlled by third entities,or by third countries at every stage of the Programme, upon request.

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	2. It is crucial to follow up eventual changes in the ownership and control of participated legal entities.
8. 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 or its Member States or the objectives set out in Article 4. 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. The costs related to cooperation 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, shall not be eligible for support from the Programme.	AT (Comments): We reiterate our question: What is cooperation in this context? In particular with the addition that costs of cooperation with legal entities outside of the Union or associated countries are not eligible for support from the Programme, it needs to be much clearer what “cooperation” is and what it is not. EL (Comments): We express our concerns about the control of the broad ‘’cooperation’’ with others outside MS and the necessity of using the quarantees of paragraphs 4 and 6 above. FI (Drafting Suggestions): The costs related to cooperation 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, shall not be eligible for support from the Programme. FI (Comments): How do you specify costs related to entities outside of EU? FNLC doesn’t require to report cost breakdown of a cooperative project and rather works as a lump sum. Therefore, under FNLC this will be difficult

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	to follow up. IT (Drafting Suggestions): 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 or its Member States or the objectives set out in Article 4. 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. The costs related to cooperation 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,~~ shall not be eligible for support from the Programme IT (Comments): The proposed change is required to avoid contraddiction with art 10.6 SE (Drafting Suggestions): 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,

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	infrastructure, facilities and resources of such legal entities, provided that this does not contravene the security and defence interests of the Union or its Member States or the objectives set out in Article 4. 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. The costs related to cooperation 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~~, shall not be eligible for support from the Programme. SE (Comments): What is meant by "costs related to cooperation with legal entities" in this context? Needs to be clarified. Remove "or controlled by a non-associated third country or by a non-associated third-country entity" in last sentence.
9. Paragraphs 2 to 8 shall not apply to:	AT (Drafting Suggestions): 9. **The eligibility criteria set out in p**aragraphs 2 to 8 shall not apply to: AT (Comments): Request for clarification why this exception is necessary. It appears that paras 2 to 8 particularly address companies and not the actors in para 9

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	(a-d). DE (Drafting Suggestions): Deletion of Art. 10 (9). DE (Comments): Should the regulation merely clarify that the organisations mentioned cannot receive funding (but only companies) or should it mean the other way round that the organisations mentioned here can also receive funding if they do not meet the criteria in paragraphs 2-8. This would enable simplified funding for international organisations. What is the regulatory content of section 9 and how does it relate to Art. 12 para. 2? COM please explain.
(a) contracting authorities of Member States and associated countries;	
(b) International Organisations;	
(c) Structures for European Armament Programme;	NL (Comments): NL study reserve (see art 1)

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(d) the European Defence Agency.	
Section 2: Eligible Actions	FI (Comments): We should hold discussions on the programme's budget allocation between different eligible actions. First on the general allocation between common procurement, industrial reinforcement, EPDCI and R&D commercialisation. Then identify what are the necessary manufacturing capacities and most critical defence materiel for common procurement. These could then be stated already in the regulation. FR (Comments): La France juge la restructuration du chapitre II, et notamment l'inclusion d'une section entière dédiée aux actions éligibles, pertinente.

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Article 11	
General provisions	
1. Actions eligible for funding under the Programme shall implement the objectives set out in Article 4 and may take one of the following forms:	FR (Drafting Suggestions): Actions eligible for funding under the Programme shall implement the objectives set out in Article 4 and may take one **or more** of the following forms: FR (Comments): Il nous semble nécessaire de conserver cette mention car une action peut recouvrir plusieurs formes.
(a) common procurement actions (Article 12);	AT (Drafting Suggestions): (a) ~~common~~ **joint** procurement actions (Article 12); SE (Drafting Suggestions): common **defence** procurement actions (Article 12);

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(b) industrial reinforcement actions (Article 13);	
(c) supporting actions (Article 14);	
(d) actions relating to defence industrial readiness pools (Article 15);	
(e) European Defence Projects of Common Interest (Article 16);	
(f) the establishment of a Fund to Accelerate defence Supply chains Transformation (Article 17).	
2. The following actions shall not be eligible for funding under the Programme:	
(a) actions related to goods or services which are prohibited by 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;	

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(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;	ES (Drafting Suggestions): ~~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~~; ES (Comments): We propose to move this criteria/condition to each of the types of actions, together with posiblities of derogation that can be adjusted depending of the type of action, to provide the programme with a pragmatic and flexible approach while focusing mainly in the reinforcement of the EDITB. IT (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,~~ **that limits Member States' ability to use it**; IT (Comments): This amendment, whose rationale was explained at length by IT in the AHWPDI meetings, would also ensure consistency with EDIRPA and ASAP.

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	SE (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~~; SE (Comments): This general writing regarding "restrictions" from third countries regarding products and services including technology transfer limits the market significantly. For example, there may always be certain intellectual property law restrictions and export control regulations. Does this writing mean that all actions where there is some form of restriction, for example regarding export control, are excluded from financing? This article is a limitation that goes further than in previous regulations and thus SE wants to remove this 11.2.c
(d) actions or parts thereof, that are already fully financed from other public or private sources.	AT (Comments): Request for clarification: Is this in line with Art 7 (1) that provides that the Programme shall be implemented in synergy with other Union

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	programmes?
	AT (Drafting Suggestions): **(e) actions related to nuclear weapons.** IT (Drafting Suggestions): **The cost of components originating in the European Union or associated countries shall not be lower than [x%] of the estimated value of the end product. No components shall be sourced from non-associated third countries that contravene the security and defence interest of the Union and its Member States, including respect for the principle of good neighbourly relations.** IT (Comments): We suggest a new para 3, similar to the language agreed in EDIRPA, with the percentage to be defined at a later stage on the basis of the complexity of the system.

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Article 12	
Common procurement actions	AT (Drafting Suggestions): ~~Common~~ **Joint** procurement actions AT (Comments): Is it necessary to call this a procurement "action" or would it be more precise to call the provision "joint procurement **procedures**"? In other words, would it be possible to fund anything else but a procurement procedure be eligible for funding? SE (Drafting Suggestions): **Common defence procurement actions**
	EE (Drafting Suggestions): **EE: Common procurement actions shall focus on the following priorities:** **(a) Critical supplies of ammunition, including loitering munition;** **(b) Air and missile defence capabilities;** **(c) Long Range Fire systems;** **(d) Unmanned Aerial Vehicles for various missions;** (e) **…**

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	EE (Comments): EE: We welcome the Presidency´s approach to structure the regulation based on different actions set forth by the regulation. This will provide clarity. We believe that in addition to restructuring, all the actions also need specific funding priorities. Outlining the funding priorities in the main act will provide for the transparency on what the Union funding is intended for. The Article lacks a specific overarching paragraph, which indentifies the main priorities for the common procurement actions. Based on the lessons learned from the aggression against Ukraine, the focus must be on ensuring sufficient supply of ammunition (including loitering munition), air and missile defence capabilities, Long Range Fire Systems and Unmanned Aerial Vehicles for various missions. Currently, the basic act lacks specific funding priorities. Focusing on a limited set of priorities is crucial for the instrument to deliver strategic impact. We believe they should relate to well-known strategic gaps in our defence capability, as also identified by NATO.
1. Common procurement actions shall consist of activities related to cooperation of public authorities in defence procurement processes, at any point in the lifecycle of defence products, including for the purpose of building a defence industrial readiness pool as referred to Article 15.	AT (Drafting Suggestions): ~~Common~~ **Joint** procurement actions shall consist of activities related to cooperation of ~~public authorities~~ **legal entities** in defence procurement ~~processes~~ **actions**, at any point in the lifecycle of defence products, including for the purpose of building a defence industrial readiness pool as referred to Article 15. DE

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	(Comments): We support this inclusion but reserve the right for further comments. FI (Comments): Should we exclude R&D from the "at any point of the lifecycle"? Duplication with EDF should be avoided. SE (Drafting Suggestions): Common procurement actions shall consist of activities related to cooperation of **contracting** ~~public~~ authorities in defence procurement processes, at any point in the lifecycle of defence products, including for the purpose of building a **D**~~d~~efence industrial readiness pool as referred to Article 15. SE (Comments): public authorities is not defined in EDIP neither in 2009/81/EG or other procurementdirectives.
2. Only the following legal entities shall be eligible for common procurement actions:	AT (Drafting Suggestions): 2. Only the following legal entities shall be eligible for ~~common~~ **joint** procurement actions:

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(a) contracting authorities of Member States or associated countries;	
(b) International Organisations;	AT (Comments): We reiterate our question: does this include <u>any</u> international organisation, such as OCCAR or NSPA? To our understanding, it does.
(c) the Structures for European Armament Programme;	NL (Comments): NL study reserve (see art 10)
(d) the European Defence Agency.	
3. Common procurement actions shall involve cooperation between legal entitities referred to in paragraph 2 and be carried out by a consortium of at least three Member States or associated countries, or by a Structure for European Armament Programme.	AT (Drafting Suggestions): 3. ~~Common~~ **Joint** procurement actions shall involve cooperation between **the** legal entitities referred to in paragraph 2 and be carried out by a consortium of at least three Member States or associated countries, or by a Structure for European Armament Programme. AT (Comments):

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	Does this mean that 1) Three associated countries may "go it alone"? 2) One SEAP may "go it alone"? The last part of the sentence is contradicted by the reference to the "legal entities referred to in paragraph 2". 3) EDA or an international organisation are always an "add-on" to three other parties? DE (Drafting Suggestions): Common procurement actions shall involve cooperation between legal entities referred to in paragraph 2 and be carried out by a consortium of at least ~~three~~ **two Member States** or associated countries or **one Member State and an associated country**, or by a Structure for Eurupean Armament Programme DE (Comments): EDIP aims at supporting defence industry readiness of the Union and its Member States. If cooperation between just two Member States or one Member State and an associated country (e.g. Norway) were covered by EDIP, even more joint procurements would be made possible. This would further strengthen the defence industry NL (Drafting Suggestions): a consortium of at least **two** Member States or associated countries, NL (Comments):

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	Preferably by at least two MS. Joint procurement often starts with just two MS and other MS join in a later phase (due to non aligning procurement cycles). This will stimulate joint procurement with EU MS, contributes to interoperability/interchangeability and possible harmonization of planning/procurement in the future.
4. Member States and associated countries carrying out a common procurement action 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): 4. ~~Member States and associated countries~~ **Legal entities** carrying out a ~~common~~ **joint** procurement action shall appoint~~, by unanimity,~~ an eligible legal entity as procurement agent to act on their behalf for the purposes of that ~~common~~ **joint** procurement. The procurement agent shall carry out the procurement procedures and conclude the resulting contracts with contractors on behalf of the participating **legal entities** ~~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 (Comments): Does this provision mean that international organisations, EDA and a SEAP do not have a vote in the appointment of a procurement agent? Explanation of the replacement of the word “countries” by “legal entities”: It is our assumption that the contract can be concluded also on behalf of participants who are not countries, otherwise they have little reason to participate. How can the procurement agent participate in the action as a beneficiary?

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	Does this mean that e.g. EDA may conduct the procurement procedure and award the contract to itself? This should not be possible. We note that paragraphs 4 and 6 suddenly talks of public procurement "procedures" – the terminology should be streamlined, see the initial comment on Article 12.
5. 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 in the fields of defence and security laid down in Directive 2009/81/EC, unless this Regulation stipulates otherwise.	DE (Comments): We support the insertion of the last half-sentence. FR (Drafting Suggestions): This Regulation **shall respect** ~~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 in the fields of defence and security laid down in Directive 2009/81/EC, unless this Regulation stipulates otherwise FR (Comments): Les autorités françaises entendent assurer le respect et la cohérence d'EDIP avec la directive relative aux marchés publiques de sécurité et de défense (MPDS) et proposent un affermissement du langage en ce sens. NL (Comments): Last addition is positive: the proposal should accommodate better, clear

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	and usable derogations.
6. The procurement procedures referred to in paragraph 4 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 (Drafting Suggestions): 6. The procurement procedures referred to in paragraph 4 shall be based on an agreement to be signed by the participating ~~Member States and associated countries~~**legal entities** 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~~ **joint** 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): We reiterate our question: Does the agreement mentioned here imply that the participating MS may design their own procurement rules and would be covered by the exemption of Article 12 a) of Directive 2009/81/EC? Does this provision mean that international organisations, EDA and a SEAP cannot sign an agreement with the procurement agent? How could they participate in a common procurement action in this case? DE (Comments): Does “the choice of procedure” in this paragraph refer to the specific kind of procurement procedure according to Directive 2009/81/EC?
7. The procurement agent shall apply the conditions set out in	AT

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Article 10 to its procurement procedures and contracts with contractors in the common procurement.	(Drafting Suggestions): 7. The procurement agent shall apply the conditions set out in Article 10 to its procurement procedures and contracts with **such** contractors in the ~~common~~ **joint** procurement **that provide critical input that possesses unique attributes essential for the functioning of a product and which is allocated at least 15 % of the value of the contract**. AT (Comments): Does the Presidency intend to remove the applicability of the definition of Art. 2(21) in this context by reference to contractors in the common procurement? If not, then the definition from that provision should be incorporated here. In this context, we reiterate our questions: Why did COM choose the 15% threshold, what are the objective reasons for it? Is the definition intended to also cover suppliers (see Art. 71(5) of Directive 2014/24/EU for the differentiation between subcontractor and supplier)? How would a contracting authority determine that the requirements in this case are met or not met? The definition is exceedingly vague and as such not acceptable. DE (Comments): To our understanding, the reference to Art. 10 in this context means that the procurement agent shall apply in the procurement procedures the criteria of Art. 10 vis-à-vis the bidders in the procurement procedure. This would mean, inter alia, that the bidders have to have a seat in the EU/associated countries/UA. We will have to make sure that this provision is in line with relevant

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	international trade law. Under GPA, there is the exception of Art. III para. 1. However, we would like the COM to give more details about the compliance of this rule with relevant WTO-law and applicable free trade agreements. Are all defence products that will be procured commonly under EDIP excluded from GPA/applicable free-trade agreements? FR (Drafting Suggestions): The procurement agent shall apply the conditions set out in Article 10 to its procurement procedures and contracts with contractors **and subcontractors** in the common procurement FR (Comments): Les autorités françaises jugent nécessaire de soumettre les sous-traitants aux critères d'éligibilité.
8. Procurement agents shall provide the Commission with notification on 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.	AT (Comments): We reiterate our question: What is the content and process of the notification? Since this is not just a national process, but the notification needs to go to the Commission, we need more information and guidance for this as it cannot be up to the "best practices" of MS as these may diverge significantly. FR (Drafting Suggestions): 8. Procurement agents shall provide the Commission with notification on the guarantees and mitigation measures referred to in Article 10(6).

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	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 FR (Comments): Les autorités françaises souhaient une harmonisation avec le fonctionnement du FED. De plus, les mesures de d'atténuation (« *mitigation measures* ») sont considérées comme sensibles au niveau national et n'ont pas vocation à être communiquées.
9. The common procurement contract shall reserve the right of the contracting authority to purchase additional quantities of defence products for other Member States, associated countries or Ukraine, without prejudice to applicable Union law and Member States' laws and regulations relating to the export of defence products.	AT (Drafting Suggestions): 9. The ~~common~~ **joint** procurement contract shall reserve the right of the contracting authority to purchase additional quantities of defence products for other Member States, associated countries or Ukraine, without prejudice to applicable Union law and Member States' laws and regulations relating to the export of defence products. AT (Comments): We reiterate our question: How should a contracting authority calculate the estimated value of the procurement procedure with a view to this provision? In particular in the context of a framework agreement, the contracting authority is required to calculate and also publish the estimated maximum value (see ECJ Simonsen/Weel, C-23/20). This

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	means that a right to purchase additional quantities, in our opinion, needs to be expressed in a monetary value, otherwise it would not comply with applicable procurement rules. Is this purchase of additional quantities for other countries by definition always covered by the G2G exemption of Directive 2009/81/EC? Further request for clarification: Is the right to purchase additional quantities of defence products for UA required in this setion in light of the third chapter on the UA support instrument? DE (Comments): Does "shall" means mandatory? Is the Wording specific enough to be legally valid in cases where there is no specific information on the possible additional demand? With regard to Nr. 5 – which other Union Law ist meant? Directive 2014/24/EU? FR (Drafting Suggestions): The common procurement contract shall reserve the right of the contracting authority to purchase additional quantities of defence products for other Member States, associated countries or Ukraine, without prejudice to applicable Union law and Member States' laws and regulations relating to the **the intra-Union transfers and** export of defence products. FR (Comments): La France s'interroge sur le caractère souhaitable de prévoir

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	obligatoirement dans un contrat d'acquisition conjoint une disposition permettant d'acheter des quantités supplémentaires pour d'autres Etats. Toutefois, elle propose un ajout permettant d'assurer une distinction claire entre les transferts intracommunautaires (directive 2009/43/EC) et l'export hors UE (position commune du Conseil 2008/944/PESC). NL (Drafting Suggestions): 9. The common procurement contract shall reserve the right of the contracting authority to purchase additional quantities of defence products for other Member States, associated countries, Ukraine **or Moldova**, without prejudice to applicable Union law and Member States' laws and regulations relating to the export of defence products. NL (Comments): Is it not possible for the procuring agent (possibly a MS) to procure additional quantities for a readiness pool for its own use in the future? In line with EDIRPA, NL wishes to open the instrument for Moldova. SE (Drafting Suggestions): The common procurement contract ~~shall~~ **may** reserve the right of the contracting authority to purchase additional quantities of defence products for other Member States, associated countries or Ukraine, without prejudice to ~~applicable~~ Union law and Member States' laws and regulations relating to the export of defence products. SE

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	(Comments): This concerns unpredictable volumes. It is unclear how the value of the contract is to be calculated, and how much and what the option shall include. This needs to be clarified. Proposal to rewrite this paragraph so that it constitutes a possibility instead of a requirement.
10. Member States shall publish a General Transfer Licence in referred to in Article 5(3) of Directive 2009/43 for transfers of defence products procured through common procurement actions.	AT (Drafting Suggestions): 10. Member States shall publish a General Transfer Licence in referred to in Article 5(3) of Directive 2009/43 for transfers of defence products procured through ~~common~~ **joint** procurement actions. ES (Comments): This new paragraph needs further analysis FR (Drafting Suggestions): Member States shall **use the most appropriate licencing instrument such as those** ~~publish a General Transfer Licence in~~ referred to ~~in Article 5(3) of~~ Directive 2009/43 for transfers of defence products procured through common procurement actions. **The choise of the instrument can be the subject of mutual convergence between participating Member States.** FR (Comments): Les autorités françaises souhaitent préserver la liberté des Etats de choisir

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	l'instrument d'autorisation approprié, en particulier considérant l'absence de certitude concernant les matériels acquis. Le wording proposé permet tout de même de converger sur le principe d'une licence générale. Il convient néanmoins de souligner le délais important de la mise en place d'une licence générale de transfert. SE (Comments): This a new provision that could potentially be of concern to Sweden. We would appreciate clarifications on its intended implementation and ramifications before we take a position. Our preliminary analysis may suggest that this rule establish an obligation to decide on general licenses for all military equipment covered by EDIP. If this is correct, that is that it will cover all jointly procured equipment, even such where Sweden is not involved, it would be a substantial limitation of national export controls.
	ES (Drafting Suggestions): **11They shall not be elegible for funding actions to procure goods or services which are subject to restriction of use (or of export, if part of a defence readiness pool) 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;** **12. By way of derogation from paragraph 11, in light of the geopolitical situation and the need to give enough flexibility to procure defence products, without creation unnecessary limitations**

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	or bottlenecks, the requirement referred to in that paragraph shall not apply if the following conditions are met: **(a) Member States or associated countries participating in the common procurement commit to studying the feasibility of replacing the components that cause the restriction with an alternative, restriction-free, component Union origin;** **(b) The cost of components originating in the Union or associated countries shall not be lower than 65 % of the estimated value of the end product. No components shall be sourced from non-associated third countries that contravene the security and defence interests of the Union and the Member States, including respect for the principle of good neighbourly relations.** ES (Comments): Having in mind the current situation and also not being possible to evaluate, neither the effects of this condition in the different type of defence products nor the retroactive effects of their application, during the whole life. It is deemed necesay to limit the effect of the condition and also to give some flexibility in its application.

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Article 13	
Industrial reinforcement actions	
	EE (Drafting Suggestions): **EE: NEW: The industrial reinforcement actions shall focus on the following priorities:** **(a) Production of ammunition, including loitering munition, and their components;** **(b) Unmanned aerial vehicles for various missions;** **(c) Critical raw materials for defence products that Europe is currently dependant on third countries;** **(d) …** EE (Comments): EE: In line with the comments above, the Article lacks a specific overarching paragraph, which indentifies the main priorities for the industrial reinforcement actions. Based on the lessons learned from the aggression against Ukraine, we believe the European efforts should focus on production of ammunition and their components, mass production of drones and critical raw materials that the Union currently lacks. Focusing on a limited set of priorities is crucial for the instrument to deliver strategic impact.

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1. Industrial reinforcement actions shall consist of 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, in particular:	AT (Comments): We reiterate our question: Is it correct that dual-used goods or crisis-relevant goods may never be covered by paragraph 1? If yes, how would this be proven, in particular in the case of components and raw materials? This should be clarified in a Recital. FI (Comments): We should look into any legal possibilities to deviate from using the word "wholly". PL (Drafting Suggestions): Industrial reinforcement actions shall consist of activities related to speeding up the adjustment to structural changes of the production capacity of defence and dual-use products, including their components and corresponding raw materials insofar as they are intended or used wholly for the production of defence products, in particular: PL (Comments): The purpose of the Regulation is to ramp up the production needed for the modern army which uses many dual-use products (e.g. drones) SE (Drafting Suggestions): Industrial reinforcement actions shall consist of activities related to speeding up the adjustment **of industry to the rapid** ~~**to**~~ structural changes of the production capacity of defence products, including their

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	components and corresponding raw materials insofar as they are intended or used wholly for the production of defence products, in particular:
(a) the optimisation, expansion, modernisation, upgrading or repurposing of existing, or the establishment of new, production capacity of defence products, components and corresponding raw materials, including on the basis of the procurement or acquisition of the requisite machine tools and any other necessary input;	FR (Drafting Suggestions): (a) the optimisation, expansion, modernisation, upgrading or repurposing of existing, or the establishment of new, production capacities, **in relation to relevant** defence products **or their** components and corresponding raw materials, **insofar as those components and raw materials are used as direct input for the production of relevant 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; FR (Comments): Il apparait pertinent d'harmoniser le langage avec celui agréé dans le règlement ASAP (art. 13(a)). NL (Drafting Suggestions): (a) the optimisation, expansion, modernisation, upgrading or repurposing of existing, or the establishment of new, production capacity of defence products, components and corresponding raw materials, including **through licensed production** ~~on the basis of the procurement~~

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	~~or acquisition of the requisite machine tools and any other necessary input~~
(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, as well as to coordinate production capacities and production plans;	FI (Drafting Suggestions): (b) the establishment of cross-border industrial partnerships, including through public private partnerships or other forms of industrial cooperation, **including SMEs and mid-caps,** 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, 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, in accordance with ordered or planned production volumes;	
(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 of 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;	FR (Drafting Suggestions): (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 of Member States (**in particular the European Defence Fund**) including through the establishment of cross-border industrial partnerships, public private partnerships or other forms of industrial cooperation, ramping-up of

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	initial production as well as licensing production, where appropriate FR (Comments): La France soutient une référence claire au FED permettant le soutien à une phase d'industrialisation des produits développés dans le cadre du FED. Le maintien et l'assurance d'une propriété intellectuelle européenne (donc n'impliquant ni restriction à l'usage ou l'export) apparait nécessaire pour le renforcement de l'autonomie stratégique de l'Union. Par ailleurs, la France note que ce type d'actions pourrait être intégré à l'article 12, car il s'agit d'industrialiser et de commercialiser des produits issus du FED et cela relève donc du *common procurement*. NL (Drafting Suggestions): 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 of 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~~; NL (Comments): Licensed production is unrelated to the commercialisation of defence products developed in an EU framework. Added a reference under Article 13 (1)d. Article 13 (3) is also unrelated to licensed production.

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(e) the testing, including the necessary infrastructure, and, as appropriate, reconditioning certification of defence products with a view to addressing their obsolescence and making them useable by end users.	
2. In order to be eligible for funding, activities referred to in paragraph 1, point (a), (b) and (c), shall exclusively benefit 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.	SE (Comments): "used wholly for the production of defence products" has been removed from point 1b and 1c, thus is it necessary to then mention it here under point 2?
3. For activities referred to in paragraph 1, point (d) 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. The activities referred to in paragraph 1, point (d) may be also carried out by a Structure for European Armament Programme.	AT (Drafting Suggestions): 3. For activities referred to in paragraph 1, point (d)**,** 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, **cooperating within a consortium of at least three legal entities**. At least three of the **cooperating** ~~those eligible~~ legal entities **which are** 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. The activities referred to in paragraph 1, point (d) may be also carried out by a Structure for European Armament Programme. AT

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	(Comments): Which are the "eligible" legal entities according to Article 13? Are they any legal entities according to the definition in Article 2, as long as they are established in a Member State or associated country? Or can they only be contracting authorities? This is also relevant for the understanding of Article 18(3)(d). FR (Comments): En lien avec le commentaire précédent, les autorités françaises s'interrogent sur l'intégration de ces actions à l'article 12.
4. For activities referred to in paragraph 1, point (a), the urgent need to produce key defence products in light of the geopolitical situation may justify a derogation from the requirement set out in Article 11(2), point (c), provided that both of the following conditions are met:	ES (Drafting Suggestions): ~~For activities referred to in paragraph 1, point (a), the urgent need to produce key defence products in light of the geopolitical situation may justify a derogation from the requirement set out in Article 11(2), point (c), provided that both of the following conditions are met:~~ **4. It will not be elegible for funding actions directed mainly to the production of a defence product which is subject to 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;** **5. By way of derogation from paragraph 4, in light of the geopolitical situation and the need to give enough flexibility to produce defence products, without creating unnecessary limitations or bottlenecks, the requirement referred to in that paragraph shall not apply if the**

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	following conditions are met: ES (Comments): Having in mind the current situation and also not being possible to evaluate, neither the effects of this condition in the different types of defence products nor the retroactive effects of their application during the whole life. It is deemed necesary to limit the effect of the condition and also to give some flexibility in its application. FR (Drafting Suggestions): ~~4. For activities referred to in paragraph 1, point (a), the urgent need to produce key defence products in light of the geopolitical situation may justify a derogation from the requirement set out in Article 11(2), point (c), provided that both of the following conditions are met:~~ FR (Comments): **Les autorités françaises sont opposés à cet ajout, inspiré du règlement EDIRPA, et qui n'est pas adapté au sujet du *ramp up*. Si l'acquisition de matériel sur étagère immédiatement disponible dans un contexte d'urgence pouvait faire sens dans le cadre d'EDIRPA, il ne saurait s'appliquer à la mise en place de l'augmentation des capacités de productions des matériels de défense de la BITDE.** **Cet ajout permer d'instaurer sur le long terme des chaînes de productions de produits potentiellement non européens – ce qui semble difficilement compatible avec l'objectif d'autonomie stratégique collectivement fixé à Versailles et dans la Boussole stratégique, ainsi que celui de renforcement et de soutien à la BITDE.**

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	IT (Drafting Suggestions): For activities referred to in paragraph 1, point (a), ~~the urgent~~ **a demanding operational** need to produce key defence products ~~in light of the geopolitical situation~~ may justify a derogation from the requirement set out in Article 11(2), point (c), provided that both of the following conditions are met: NL (Drafting Suggestions): For activities referred to in paragraph 1, point (a), **where it is not possible to switch large platforms within 5 years, it is necessary to support the establishment of license production of such platforms.** In light of the geopolitical situation this may justify a derogation from the requirement set out in Article 11(2), point (c), **to ensure security of supply and the continuity of defense and deterrence capacities, by building and enhancing an EDTIB that will ultimately lead to strategic autonomy of supply by 2035 at the latest.**
(a) legal entities participating in the action procurement commit to studying the feasibility of replacing the key defence product with an alternative, restriction-free, product of Union origin;	AT (Drafting Suggestions): (a) legal entities participating in the action ~~procurement~~ commit to studying the feasibility of replacing the key defence product with an alternative, restriction-free, product of Union origin; AT (Comments): Why does the word “procurement” suddenly show up here in particular?

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	What form is the commitment mentioned here required to have? What meaning does the provision have when there is a commitment to study, but not commitment to replace depending on the outcome of the study? ES (Drafting Suggestions): legal entities participating in the **industry reinforcement** action ~~procurement~~ commit to studying the feasibility of replacing the key defence product with an alternative, restriction-free, product of Union origin; ES (Comments): This text is ok but the action is not procurement but industry reinforcement. On the other hand, we propose a similar text for common procurement action FR (Drafting Suggestions): ~~(a) legal entities participating in the action procurement commit to studying the feasibility of replacing the key defence product with an alternative, restriction-free, product of Union origin;~~ IT (Drafting Suggestions): legal entities participating in the action ~~procurement~~ commit to studying the feasibility of replacing the key defence product with an alternative, restriction-free, product of Union origin;

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	NL (Drafting Suggestions): ~~(a) legal entities participating in the action procurement commit to studying the feasibility of replacing the key defence product with an alternative, restriction-free, product of Union origin;~~ NL (Comments): This requirement was introduced in the context of EDIRPA for a specific reason that is not related to strengthening production capacity of the EDTIB through non EU licenses. This is not about procurement (EDIRPA) but about strengthening the production capacity of the EDTIB by making use of non EU licenses (ASAP+). This is completely unrelated to procurement of these defence products.
(b) the procured defence products were in use prior to 24 February 2022 within the armed forces of at least three Member States.	ES (Drafting Suggestions): ~~the procured defence products were in use prior to 24 February 2022 within the armed forces of at least three Member States~~ ES (Comments): This para creates conditions related to an specific circumstance that might not be best suited for time scope of this regulation. FR (Drafting Suggestions): ~~(b) the procured defence products were in use prior to 24 February 2022~~

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	~~within the armed forces of at least three Member States.~~ IT (Drafting Suggestions): ~~the procured defence products were in use prior to 24 February 2022 within the armed forces of at least three Member States.~~ **The legal entities partecipating in the action notify the Commission on the operational, technical and financial reasons that giustify such restrictions proposing a targeted EDF R&D initiative to cultivate a competitive EU alternative** NL (Drafting Suggestions): ~~(b) the procured defence products were in use prior to 24 February 2022 within the armed forces of at least three Member States~~ NL (Comments): This requirement was introduced in the context of EDIRPA for a specific reason that is not related to strengthening production capacity of the EDTIB through non EU licenses. This is not about procurement (EDIRPA) but about strengthening the production capacity of the EDTIB by making use of non EU licenses (ASAP+). This is completely unrelated to procurement of these defence products.
	ES (Drafting Suggestions): (b) **The cost of components originating in the Union or associated countries shall not be lower than 65 % of the estimated value of the**

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	end product. No components shall be sourced from non-associated third countries that contravene the security and defence interests of the Union and the Member States, including respect for the principle of good neighbourly relations.
5. Industrial reinforcement actions shall be without prejudice to Union competition rules, and in particular Article 101 Treaty on the Functioning of the European Union (TFEU).	FR (Drafting Suggestions): ~~5. Industrial reinforcement actions shall be without prejudice to Union competition rules, and in particular Article 101 Treaty on the Functioning of the European Union (TFEU).~~ SE (Drafting Suggestions): These actions shall be without prejudice to Union competition rules, and in particular Article 101 **to 109** Treaty on the Functioning of the European Union (TFEU). **and the legal acts that give effect to those Articles.** SE (Comments): To have a coherence with writings in earlier regulations (i.e. recital 40 in ASAP) we propose for this change to be made.
	FR (Drafting Suggestions): **4. By derogation, for activities referred to in this article, legal entities providing machine tools or [for instance] participating to the builiding of infrastructures that contribute to fullfill the objectives of**

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	paragraph 1, point a), are not considered as subcontractors. FR (Comments): Les autorités françaises souhaitent exclure la qualification de sous-contractant pour les entités légales qui fabriqueraient des machines outils, ou participeraient à des activités non directement liées aux produits de défense.
Article 14	SE (Comments): Still uclear in several of the cases/writings who is eligible for support. Can the funds from the Programme go to the Commission for example for work on maintaining lists or for other activities? Several writings in this paragraph also relates to chapters yet not negotiated or discussed, e.g. chapter on SoS and the board (DIRB), and thus these paragraphs need to be revisited.
Supporting actions	
1. Supporting actions shall consist of:	

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(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;	FR (Drafting Suggestions): 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): 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 **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, mid-caps and start-ups and support to obtain the necessary quality and production certifications;	NL (Drafting Suggestions): (b) activities to strengthen security of supply and resilience, in particular by facilitating the access to the defence market **and supply chains** for SMEs, mid-caps and start-ups and support to obtain the necessary quality and production certifications;
(c) the capacity building, training, reskilling or upskilling of personnel in relation to the activities referred to in Article 11(1);	FR (Drafting Suggestions): the capacity building, training, reskilling or upskilling of personnel in relation to the ~~activities~~ **actions** referred to in Article 11(1);

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	FR (Comments): La France suggère l'harmonisation avec le titre de l'article visé.
(d) the procurement of physical and cyber protection systems in relation to the activities referred to in Article 13;	FR (Drafting Suggestions): (d) the procurement of physical and cyber protection systems ~~in relation to the activities referred to in Article 13~~ FR (Comments): Les autorités françaises estiment nécessaire de financer la sécurisation des systèmes d'information d'un maximum d'entreprises de la BITDE et non pas de réduire le champ de cette action à l'article 13.
(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-relevant products in order to ensure their effective supply and timely availability;	SE (Comments): How will bottlenecks and crisis relevant products be identified? Chapter on SoS is yet not negotiated and thus the agreement on these paragraphs can not be be preceded by that negotiation.
(f) the establishment of a single, centralised, voluntary, catalogue of defence products involved in actions eligible for support under this Programme, managed and kept up to date by the Commission;	AT (Comments): What is the intended effect of merging Article 14 into the provision of

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	"supporting actions"? In particular, since these actions are eligible and some of these actions, to our understanding, are carried out by the Commission, does this mean that the Commission can request funding for these actions, such as the establishment of the catalogue of defence products? We reiterate our questions: Could COM elaborate on the update mechanism for this catalogue? What is the added value and how do we avoid overlap with existing databases such as EDA's EUCLID database? We are not convinced there is a need for this database. FR (Comments): Les autorités françaises soutiennent le caractère volontaire du catalogue. Pour autant, elles considèrent qu'il ne faut pas mélanger l'élaboration de ce catalogue réalisé par la Commission, avec les actions de l'article 14 menées par des entreprises (a, b, c, d, e) ou des Etats membres (g). LT (Drafting Suggestions): ~~**the establishment of a single, centralised, voluntary, catalogue of defence products involved in actions eligible for support under this Programme, managed and kept up to date by the Commission;**~~ LT (Comments): Is this to be understood as MS receiving financing for disclosing information about their defence industry or COM receiving budget to manage the catalogue? Better to move this para somewhere else, maybe in Section on Security of Supply NL

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	(Comments): What does managed by the Commission mean? Why only defence products involved in eligible actions? SE (Comments): Who will receive the support? The Commission that establishes the list of the MS that register products to the list?
(g) 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 15;	SE (Drafting Suggestions): Union support to Structures for European Armament Programme notably for the purpose of managing and maintaining a **D**~~d~~efence industrial readiness pool as referred to in Article 15; SE (Comments): Who will receive the support? Shall financing to from the Programme go to the Commission?
(h) emergency activities, including emergency defence innovation where the measure referred to in [Article 52] is activated;	FR (Comments): La France propose de réserver l'examen de ce paragraphe, l'article visé n'étant pas traité dans le compromis. SE

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	(Comments): Article 52 yet not discussed/negotiated. This paragraph to be revisited after that discussion/ negotiation has been held.
(i) up-front payments to a contractor in the case of advance purchase of defence products referred to in [Article 36(2)];	FR (Comments): La France propose de réserver l'examen de ce paragraphe, l'article visé n'étant pas traité dans le compromis.
(j) non recurrent costs and/or reservation of manufacturing capacities in the case of off-take agreements referred to in [Article 37(6)].	FR (Comments): La France propose de réserver l'examen de ce paragraphe, l'article visé n'étant pas traité dans le compromis.
2. For activities referred to in paragraph 1, 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.	AT (Drafting Suggestions): 2. For activities referred to in paragraph 1, 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 **which are** 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.

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	SE (Drafting Suggestions): For activities referred to in paragraph 1, 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.**The activities referred to in paragraph 1, point (a) may be also carried out by a Structure for European Armament Programme.** SE (Comments): In accordance with writing in art 13.3
3. By derogation from paragraph 2, the action may be carried out by a Structure for European Armament Programme.	AT (Comments): Why is this seen as a derogation while it is not in Article 13(3) or Article 15(1)? The text should be the same with regard to SEAP. SE (Drafting Suggestions): ~~By derogation from paragraph 2, the action may be carried out by a Structure for European Armament Programme.~~ SE

Presidency Compromise	Drafting Suggestions and Comments
	(Comments): See comment under 14.2
4. For activities referred to in paragraph (1), point (f), the Commission shall draw up the technical specifications for and procure the corporate IT platform required to establish the catalogue based on consultations with [the Defence Industrial Readiness Board].	IT (Comments): Additional clarification is required on the governance, with special regard to the Defence Industrial Readiness Board's formats (EDIS/EDIP), tasks, and responsibilities. In general, Italy believes that EDIP governance should be structured on clear principles based on accountability. While the Commission is responsible for making final decisions in implementing the regulation, Member States should be allowed to assist by providing recommendations and strategic guidance through direct and transparent engagement with the Commission. Italy reserves the right to propose alternative language as necessary. SE (Drafting Suggestions): For activities activities referred to in paragraph (1), point (f), the Commission shall draw up the technical specifications in close cooperation with **COMMISSION SECURITY EXPERTS GROUP (COMSEG) and the Council Security Committee (CSC) for the IT platform required. The Commission should** 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 **Member States** ~~Defence~~

Presidency Compromise	Drafting Suggestions and Comments
	~~Industrial Readiness Board.~~ SE (Comments): The Board (DIRB) has yet not been discussed/negotiated and this paragraph thus needs to be revisited after that discussion has been held.
Article 15	
Defence industrial readiness pools	FI (Comments): The separation from EU MSM is welcomed.
1. The Programme shall support the establishment and maintenance by a consortium of at least three Member States or associated countries, or by a Structure for European Armament Programme, to increase availability and speed up delivery time of defence products.	AT (Drafting Suggestions): 1. The Programme shall support the establishment and maintenance **of a defence industrial readiness pool** by a consortium of at least three Member States or associated countries, or by a Structure for European Armament Programme, to increase availability and speed up delivery time of defence products. AT (Comments): How is a defence industrial readiness pool to be established in compliance with the applicable procurement rules?

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	FR (Drafting Suggestions): The Programme shall support the establishment and maintenance **of a Defence industrial readiness pool** by a consortium of at least three Member States or associated countries, or by a Structure for European Armament Programme, to increase availability and speed up delivery time of defence products. NL (Drafting Suggestions): The Programme shall support the establishment and maintenance by a consortium of at least ~~**three**~~ **two** Member States or associated countries, or by a Structure for European Armament Programme, to increase availability and speed up delivery time of defence products
2. Member States and associated countries that establish a defence industrial readiness pool shall grant all Member States, associated countries and Ukraine an immediate and preferential purchase or use/lease option for defence products that are part of the defence industrial pool.	AT (Comments): We reiterate our question: we ask COM to elaborate on how the preferential purchase or the use/lease option should be ensured. EL (Comments): Please clarify how the term “preferential purchase” is to be achieved
3. Where a Structure for European Armament Programme procures additional quantities of defence products or its Member State or associated country members make in-kind contributions to build up a	FR (Comments):

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defence industrial readiness pool within a Structure for European Armament Programme, the Programme shall support the initiative through:	Les autorités françaises souhaiteraient des éléments d'explication sur les différentes possibilités de financement pour le *pool* constitué par une SEAP ou en dehors, puisqu'il est désormais clair qu'un *pool* puisse être constitué en dehors d'une SEAP. Au vu de la rédaction actuelle des articles, seul le financement prévu au point b) serait exclusivement réservé au *pool* créé dans une SEAP.
(a) support to common procurement of additional quantities as referred to in Article 12;	AT (Drafting Suggestions): (a) support to ~~common~~ **joint** procurement of additional quantities as referred to in Article 12;
(b) contribution to the direct and indirect costs of managing and maintaining the defence industrial readiness pool as referred to in Article 14(1), point (g);	SE (Drafting Suggestions): contribution to the direct and indirect costs of managing and maintaining the **D**~~d~~efence industrial readiness pool as referred to in Article 14(1), point (g);
(c) contribution to administrative capacity building as referred to in Article 14(c).	
4. For the purpose of Member States, associated countries or Ukraine buying from the defence industrial readiness pool managed by a	AT (Comments):

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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.	We find the response of the Presidency that SEAP is a "quasi-international" organisation confusing and propose placing this paragraph under embargo until the legal status of a SEAP has been clarified and agreed upon in the relevant provisions. FR (Comments): La France s'interroge sur la raison pour laquelle la SEAP, personne morale soumise au droit primaire et qui est une quasi-organisation internationale, peut bénéficier d'une exception réservée à un gouvernement d'un Etat membre. SE (Comments): According to the Precidency SEAP is a "quai- international organisation", and thus that government to government provisions do not apply. Needs to be further explained what is meant by "quai-international organisation" and the legal status of a SEAP.
	ES (Drafting Suggestions): **5. They will not be elegible for funding actions related to the procurement of goods or services which are subject to restriction to use 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;** **6. By way of derogation from paragraph 11, in light of the geopolitical situation and the need to give enough flexibility to**

Presidency Compromise	Drafting Suggestions and Comments
	procure defence products, without creation unnecessary limitations or bottlenecks, the requirement referred to in that paragraph shall not apply if the following conditions are met: **(a) Member States or associated countries participating in the common procurement commit to studying the feasibility of replacing the components that cause the restriction with an alternative, restriction-free, component Union origin;** **(b) The cost of components originating in the Union or associated countries shall not be lower than 65 % of the estimated value of the end product. No components shall be sourced from non-associated third countries that contravene the security and defence interests of the Union and the Member States, including respect for the principle of good neighbourly relations.**

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Article 16	NL (Comments): Agree with BE presidency to put article 16 under embargo until DIRB has been dealt with and/or agreed – should therefore not have bee part of this document.
European Defence Projects of Common Interest	FR (Comments): La France soutient la proposition de réserve de la présidence sur cet article, en attendant l'accord des Etats membres sur la forme du *Board*. Les autorités françaises attirent toutefois l'attention sur le fait que nous ne savons toujours pas ce qui sera subventionné dans un EDPCI. Il serait nécessaire de le préciser dans l'article 14 ou le présent article. Le cas échéant, il faudrait introduire la notion de « déploiement » d'infrastructures, tel qu'envisagé intialement par la Commission. SE (Comments): This article to be discussed/revisited after the board (DIRB) has been discussed.
	EE (Drafting Suggestions): EE: NEW: **The European Defence Projects of Common interest shall focus on the following priorities:**

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	(a) <u>European air and missile defence systems;</u> **(b) <u>European critical undersea infrastructure surveillance and protection capabilities</u>** **(c) <u>Joint production of ammunition, including loitering munition, and their components;</u>** **(d) <u>…</u>** EE (Comments): EE: In line with the comments above, the article lacks specific overarching paragraph, which indentifies the main priorities for the European Defence Projects of Common Interest. The Regulation foresees a significant amount of funding the projects of common interest, but does not specify the areas in which the projects are to be chosen. We believe that the projects of common European interest should focus on the areas that no Member State can address alone. Therefore, we propose to set the focus on air defence, critical undersea infrastructure and on joint production capabilities. Focusing on a limited set of priorities is crucial for the instrument to deliver strategic impact.
1. The Commission may identify European Defence Projects of Common Interest for funding in the work programme referred to in Article 20.	CZ (Drafting Suggestions): **The Member States alongside** the Commission may identify (…) CZ (Comments): Member states should be the ones identifying any European Defence Project of Common Interest. The principle should be aligned with already established practices, e.g. in the EDF, where MS define the topics and the

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	COM shall act as "chairmain". ES (Comments): The text should specify that MS are to identify the EDPCI, in coordination with the Commission. The definition of what it is of Common Interest for the European Defence, and what could be a European Defence Project of Common Interest should be led by MS. Besides setting the measures for the EDPCI implementation, COM would always have the final decision on its inclusion in the WP. COM involvement in specific project/programme procurement may be positive, but all the possible implications must be thoroughly assessed PL (Drafting Suggestions): ~~The Commission~~ The Council may identify European Defence Projects of Common Interest for funding in the work programme referred to in Article 20. SE (Comments): SE would want to revisit the writing that the Commission may identify EDPCI after discussion has been held on DIRB.
2. The Commission shall, when identifying projects referred to in paragraph 1:	PL (Drafting Suggestions): ~~The Commission~~ The Council shall, when identifying projects referred to

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	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;	ES (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 in the context of the CFSP, notably of the Capability Development Plan, ~~and~~ the objectives of the Strategic Compass for security and defence, and **the existence of PESCO Projects related to capability development meeting the criteria of para 3**. ES (Comments): The text should clearly state that MS agreed priorities should be the main driving factor for the identification of Defence Projects of Common Interest. A reference to CARD and PESCO Commitments and Projects should be included: - CARD provides an overview of the EU Defence landscape and facilitates cooperation by identifying collaborative opportunities. It is based on a review of Member States defense plans and aims at improving coherence, serving as a pathfinder for Defense cooperative activities; - PESCO Commitments are legally binding for the MS; and PESCO Projects prove MS prioritization, interest and commitment in certain capabilities.

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(b) identify overall financing needs and potential impacts for the Union budget;	
(c) take into account any views of Member States.	CZ (Drafting Suggestions): take into account views of Member States CZ (Comments): There is no need for a word "any" in this context. As the COM should take into account views of MS, regardless of their nature. SE (Comments): SE believe this phrasing "take into account" is to weak. Also, as this is concerning defence projects and decisions within the area of defence and security we are wondering if this does not require unanimity.
3. European Defence Projects of Common Interest shall meet the following general criteria:	

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(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;	AT (Comments): AT comment: This should not in any way develop in direction of a „common defence“ (in the sense of Art. 42(2) TEU. See AT addition to Recital 70 [and AT comment thereto, above] Question: What is meant by “European defence infrastructure of common interest and use”? ES (Drafting Suggestions): ~~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~~ **the objective is the development and adquisition of capabilities: to secure access to strategic domains and contested spaces; strategic enablers; or systems acting as European defence infrastructure of common interest.** ES (Comments): Intention is to provide more clarity to the criteria/objective of the EDPCI, on the basis of the original drafting.
(b) the potential overall benefits of the project outweigh its costs, including in the longer term.	CZ (Comments): This paragraph seems a bit vague. How do we define the benefit – costs ratio? In case there are meaningful and transparent award criteria, CZ has

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	no objection to this point.
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.	CZ (Comments): What would be the role of the COM in the projects? CZ needs a deeper understanding of COM's possible participation in any project ES (Drafting Suggestions): 3 (c) A European Defence Project of Common Interest shall involve at least four Member States. The European Commission shall be able, where relevant, **and as requested by the participating Member states,** to participate in the project. ES (Comments): This is a criteria. It should be included as part of the previous point. The degree and nature of the participation of the Commission is not clearly defined, so as it is a Defence matter, it should be in the pMS decision to define it case by case. PL (Comments): The detailed explanation and description of Commission's participation frames should be included. SE (Comments): The article states that EDPCI shall involve four

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	participating Member States instead of three (which is the rule in e.g. EDF and EDIRPA). We believe this can make implementation difficult. Can the Commission please clarify the reasons for the need to be four participating MS and not three? The possibility for the Commission to participate also needs to be explained/clarified.
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 IV.	CZ (Comments): We also need to define what will be the capacibilities critical for the security and defence interests of the Union and its MS. And what will be the updating mechanism of those capabilities, as they might vary in time. ES (Comments): Who/how would decide what are 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? Is this a criteria or a consecuence? FR (Drafting Suggestions): 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

Presidency Compromise	Drafting Suggestions and Comments
	public interest. **It** may be established in the framework of **PESCO or** Structures for European Armament Programmes referred to in Chapter IV. PL (Drafting Suggestions): 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, including NATO deterrence and defence, 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 IV. SE (Drafting Suggestions): A European Defence Project of Common Interest shall ~~be considered to~~ contribute to (…)
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.	
7. The Union financial contribution referred to in Article 19 shall not exceed 25% of the amount referred to in Article 5(1).	
8. The deployment of European Defence Projects of Common Interest may be considered an imperative reason of overriding public	ES

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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.	(Comments): The word "deployment" needs to be clarified, it can be understand as "launched", "started", "establishment" SE (Drafting Suggestions): 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 **and in the interests of public health and safety within the meaning of Article 9(1), point (a) of Directive 2009/147/EC**. Therefore, the planning, construction and operation of related production facilities may be considered of overriding public interest **or in the interests of public health and safety**, provided that the remaining other conditions set out in these provisions are fulfilled. SE (Comments): The paragraph should be amended to also cover the species protection of birds under the Wild Birds Directive 2009/147/EC. A similar provision, which refers the Wild Birds Directive,can be found in paragraph 3 of Article 15 on Priority status of net-zero strategic projects

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	of the draft NZIA Regulation, as agreed by the Council and the EP. The provisions on species protection and derogations of the Wild Birds Directive, are very similar to the provisions on species protection and derogations of the Habitats Directive 92/43/EEC. Article 9 of the Wild Birds Directive corresponds to Article 16 of the Habitats Directive.
	ES (Drafting Suggestions): **9. It will not be elegible for funding those components, goods or services for an EDPCI which are subject to restriction in its use 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;** **10 By way of derogation from paragraph 9, in light of long term of the EDPCI and the need provide enough flexibility for future needs or eventualities, the requirement referred to in that paragraph shall not apply if the following conditions are met:** **(a) Member States or associated countries participating in the common procurement commit to studying the feasibility of replacing the components that cause the restriction with an alternative, restriction-free, component Union origin;** **(b) The cost of components originating in the Union or associated countries shall not be lower than 65 % of the estimated value of the end product. No components shall be sourced from non-associated third countries that contravene the security and defence interests of the Union and the Member States, including respect for the principle**

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	of good neighbourly relations. ES (Comments): During the possible development and adquisition of a capability related to and EDPCI, there should be also the objective to focus on the reinforcement of the EDITB and increase progressively the Strategic autonomy. Due to the long term scope of an EDPCI and not being possible to evaluate, neither the effects of this condition in the different type of defence products nor the retroactive effects of their application during the whole life. It is deemed necesay to limit the effect the unforeseen possible effects of the conditions by giving expemtions andsome flexibility in its application.
Article 17	
Fund to Accelerate defence Supply chains Transformation (FAST)	
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): 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

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Financial Regulation and Regulation (EU) 2021/523[6].	(Fund to Accelerate defence Supply-chains' Transformation (FAST). It would be implemented in accordance with Title X of the Financial Regulation and Regulation (EU) 2021/523 . AT (Comments): As FAST "may be established" conditional on lending policies of InvestEU implementing partners, having a "shall be implemented" is too strong We reiterate our question: why are mid-caps (see Art. 2(11)) not mentioned here?
2. The specific objectives pursued by the FAST shall be the following:	
(a) achieve a satisfactory multiplier effect in line with the debt and equity mix and contributing to attracting both public and private-sector financing;	CZ (Comments): What is a satisfactory multiple effect? We need to come up with SMART criteria on the basis of which we will be able to say whether the objectives were met or not.

[6] 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).

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(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:	CZ (Drafting Suggestions): provide **financial** support to SMEs (including start-ups and scale-ups) and small midcaps across the Union, which are facing difficulties in accessing finance and which CZ (Comments): CZ proposes to add a word "financial", even though it might be obvious from the context. PL (Drafting Suggestions): (b) provide support to SMEs (including start-ups and scale ups), **mid caps** ~~and small midcaps~~ across the Union, which are facing difficulties in accessing finance and which: PL (Comments): "Mid caps" previously omitted, which may exclude wide variety of the known fitting industrial potential from delivering additional assets.
(i) industrialise defence technologies and/or manufacture defence products or have imminent plans to so; or	AT (Comments): We reiterate our question: when is a plan considered to be sufficiently "imminent"? PL

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	(Drafting Suggestions): industrialise defence technologies and/or manufacture defence products ~~or have imminent plans to so; or~~ PL (Comments): Due to the urgent needs and to maximise the effect of incentives, the program should be focusing on the industrial entities with proved heritage of defence production and services. SE (Comments): ”defence technologies” is yet a new term in this regulation that is not defined. Should be added.
(ii) are part of the defence industry’s supply chain or have imminent plans to become part it.	AT (Comments): We reiterate our question: when is a plan considered to be sufficiently “imminent”? CZ (Comments): How do we define imminent plans? Will there be a specifically defined time period? PL (Drafting Suggestions): are part of the defence industry’s supply chain ~~or have imminent plans to~~

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	~~become part it~~ PL (Comments): Accordingly.
(c) 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.	SE (Comments): Same comment as above. "defence technologies" is yet a new term in this regulation that is not defined. Should be added.
Section 3: Award criteria and work programme	AT (Drafting Suggestions): **Section 3: ~~Award~~ General** criteria and work programme ES (Comments): Award criteria should be aligned with the activity of the action. MS cooperation in common procurement needs other criteria different from purely industrial activities.

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	The award criteria are to be demonstrable and measurable; a high number of criteria makes difficult the WP elaboration and proposals' evaluation
	ES (Comments): Procurement or development/commercialisation of PESCO/EDA Cat B/EDF projects should be considered both as award criteria and funding bonus

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Article 18	
Award criteria	AT (Drafting Suggestions): **General ~~Award~~** criteria AT (Comments): The term "award criteria" has a very specific meaning within public procurement and it is confusing to use it within this context where the eligible action may be procurement or other actions. CZ (Comments): The award criteria need to, to some extent, be measurable criteria. Otherwise, it will not be possible to come up with a meaningful evaluation process. FI (Comments): Very promising changes. SE (Comments): The general comment to this clause from SE is that these award criteria are very general and difficult to understand how these will be measured. We believe it should be rephrased to

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	be made more measurable. For example by adding "**a demonstration of the actions** contribution"
1. Each proposal shall be assessed on the basis of the following general criteria:	FR (Drafting Suggestions): Each proposal shall be assessed **on the basis of one or more** of the following criteria:
(a) defence industrial readiness: contribution to competitiveness, increase production capacities, reduce lead times, eliminate bottlenecks thereby increasing interoperability and interchangeability;	ES (Comments): This criteria should be for "industrial reinforcement actions" and **some** "supporting actions" FR (Drafting Suggestions): (a) defence industrial readiness: contribution to competitiveness, increase production capacities, reduce lead times, eliminate bottlenecks thereby increasing interoperability ~~and interchangeability~~ IT (Drafting Suggestions): defence industrial readiness: contribution to competitiveness, **increase** in **capabilities and realiability of defence products,** increase in production capacities, **increase in** interoperability and interchangeability, reduced lead times **and through life costs**, elimination of bottlenecks,

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	~~thereby~~ ~~increasing~~
(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.	ES (Comments): Purely industrial award criteria, similar comment as above PL (Drafting Suggestions): 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 unlike-minded non-associated third country sources. PL (Comments): The programme identifies high exposure to the risk of materialisation of conventional military threats as a particular concern. Companies must have strategies in place to manage these risks. Non-associated third countries cannot be treated equally in this regard (e. g. U.S. or UK and Russia or China)
(c) defence industrial cooperation: fostering genuine armament cooperation among Member States, associated countries or Ukraine and development and operationalisation of cross-border cooperation between legal entities established in different Member States, associated countries	ES (Comments): How will the term “genuine” be evaluated and measured? How the measurement will be carried out regarding “SMEs, small mid-caps and

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or Ukraine, involving in particular, to a significant extent, SMEs, small mid-caps and other mid-caps as recipients, as subcontractors or as other legal entities in the supply chain;	other mid-caps" as recipients? Would it be in terms of number of participants? Or in percentage of their participation? FR (Comments): La France s'interroge sur la portée juridique du terme « genuine ». NL (Comments): Why should defence industrial cooperation be linked to armament cooperation among MS? PL (Drafting Suggestions): defence industrial cooperation: fostering genuine, inclusive and balanced armament cooperation among Member States, associated countries or Ukraine and development and operationalisation of cross-border cooperation between legal entities 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 legal entities in the supply chain;
(d) the quality and efficiency of the implementation plan of the action, in particular measures to respect delivery lead times, including in terms of its processes and monitoring.	ES (Comments): "delivery lead times" is for industry, not feasible for incentivising MS cooperation PL (Comments):

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	Companies must have robust plans and processes in place to respect delivery lead times – in crisis environment that might be an issue.
2. Proposals for common procurement actions referred to in Article 12 shall additionally be evaluated based on the following criteria:	AT (Drafting Suggestions): 2. Proposals for ~~common~~ **joint** procurement actions referred to in Article 12 shall additionally be evaluated based on the following criteria: SE (Comments): When comparing with EDIRPA the awardcriterias in art. 11.1 a-d, f, h and i is mentioned here also in EDIP. Why have e.g. the following criterias from EDIRPA been excluded? 11.1 e) ” the extent of the action’s contribution to strengthening cooperation among Member States or associated countries …” 11.1. g) “the extent of the action’s contribution to the competitiveness and adaptation of the EDTIB to structural changes…” 11.1. j) “the quality and efficiency of the plans for carrying out the action.”
(a) the number of Member States or associated countries participating in the action;	

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(b) the estimated value of the procured defence products or services;	CZ (Comments): What is defined as "value" in this context? Is it the price of the defence product and if so, are lifecycle costs of the product included? Without knowing what "value" precisely means, we are not able to conclude whether this award criterion makes any sense. Secondly, we need to consider "volume of the procured defence products or services" as one of the award criteria. Various defence products (such as MBT or IFV, or assault rifle for example) may vary in price (value). Therefore we need to take into accont the estimated volume of the common procurement. FI (Comments): The value and size of a project should not be an award criteria. Small and large projects should be on the same level, also considering the different buyers, budgets and products.
(c) a demonstration of the action's contribution to the strengthening of the competitiveness and to the adaptation, modernisation and development of the EDTIB in order to allow it to address, including with regard to delivery lead times, availability and supply;	
(d) a demonstration of the action's contribution to the replenishment	FR

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of stockpiles, including those depleted as a result of the response to Russia's war of aggression against Ukraine, to the replacement of obsolete equipment, and to the reinforcement of capabilities;	(Drafting Suggestions): a demonstration of the action's contribution to the ~~replenishment of stockpiles, including those depleted as a result of the response to Russia's war of aggression against Ukraine~~needs of the armed forces of Members States or associated countries, to the replacement of obsolete equipment, and to the reinforcement of capabilities; FR (Comments): Il semble nécessaire de sortir de la logique du règlement EDIRPA mais d'insister sur le fait que l'action doit contribuer à répondre aux besoins des forces armées.
(e) the action's contribution to overcoming obstacles to common procurement;	AT (Drafting Suggestions): (e) the action's contribution to overcoming obstacles to ~~common~~ **joint** procurement; CZ (Comments): This criterion is rather vague. What precisely the obstacles mean in this context? How are we able to measure it and evaluate it? Will the obstacles be defined somewhere?
(f) the participation of SMEs and mid-caps;	

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(g) the creation of new cross-border cooperation between contractors and subcontractors in the supply chains throughout the Union;	CZ (Comments): Will there be the same definition of "new cross-border cooperation as was used during the ASAP Regulation and Work Programme preparation? Otherwise, it needs to be defined in the Work Programme. ES (Comments): More industrial than for MS.
3. Proposals for indusrial reinforcement actions referred to in Article 13 shall additionally be evaluated based on the following criteria:	AT (Drafting Suggestions): 3. Proposals for ~~indusrial~~ **industrial** reinforcement actions referred to in Article 13 shall additionally be evaluated based on the following criteria: AT (Comments): Typo correction. SE (Drafting Suggestions): Proposals for indus**t**rial reinforcement actions referred to in Article 13 shall additionally be evaluated based on the following criteria: SE

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	(Comments): When comparing with ASAP the awardcriterias in ASAP regulation art 11.a-c och e are mentioned also in EDIP as award criterias. Why have e.g. the following criterias from ASAP been excluded (Article 11 d and f)? 11 d "resilience through cross-border cooperation…" 11 f "the quality of the implementation plan of the action, including in terms of its processes and monitoring."
(a) increase in production capacity in the Union: the contribution of the action to the increase, ramp-up or reservation of manufacturing capacities, their modernisation or the reskilling and upskilling of the related workforce;	
(b) reduction of lead production time: the contribution of the action to the timely satisfaction of the demand expressed through procurement in terms of reduced lead production times, including via order reprioritisation mechanisms;	ES (Comments): Assuming that the beneficiaries of these actions will be industry, reprioritisation mechamism could be controversial due to customers are always MS
(c) elimination of sourcing and production bottlenecks: the contribution of the action to the swift identification and rapid and lasting elimination of any sourcing (raw material and any other input) or	

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production (manufacturing capability) bottlenecks;	
(d) support to procurement: the demonstration by the applicants of the link between the action and newly placed orders stemming from the joint procurement of relevant defence products by at least three Member States or associated countries especially if done in a Union framework;	AT (Drafting Suggestions): (d) support to procurement: the demonstration by the applicants of the link between the action and newly placed orders stemming from the joint procurement of relevant defence products by ~~at least three Member States or associated countries~~ **the eligible entities** especially if done in a Union framework; AT (Comments): Why are SEAP and international organisations not considered in this provision? What does "especially if done in a Union framework" mean in this context? What other frameworks are possible here? ES (Comments): Learnt from ASAP evaluation, the expression "newly placed orders" goes against "new green field plants" or "new actors" FI (Drafting Suggestions): (d) support to procurement: the demonstration by the applicants of the link between the action and ~~newly placed~~ orders ~~stemming from the joint procurement~~ of relevant defence products by ~~at least three~~ Member States or associated countries especially if done in a Union framework;

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	FI (Comments): It's not in the hands of the applicants whtether they receive orders stemming from common procurements or individual ones. The objective is to increase necessary production capacity. NL (Drafting Suggestions): support to procurement: the demonstration by the applicants of the link between the action and newly placed orders stemming from the joint procurement of relevant defence products by at least ~~**three**~~ **two** Member States or associated countries especially if done in a Union framework;
4. 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.	FR (Drafting Suggestions): The work **programmes** 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 **programmes** shall not set individual thresholds FR (Comments): La France est favorable à la mise en place de plusieurs programmes de travail au regard de la multiplicité des instruments prévus dans EDIP. PL (Comments): "…any weighting to be applied." As some industrial partners claim, this

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	could introduce a relative uncertainty for those preparing their proposals.
	FR (Drafting Suggestions): 5. **The Commission shall, by means of implementing acts, award the funding referred to in Article 8(1). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58.** FR (Comments): S'agissant de la procédure d'attribution des fonds, la France s'interroge sur le fait de savoir si le recours à des *direct awards* ne serait pas judicieux pour un certain nombre de projets représentant un intérêt pour une grande majorité d'Etats membres (notamment les PIIEC).
Article 19	
Selection and award procedure	
1. Union funding shall be granted following competitive calls for proposals issued in accordance with the Financial Regulation.	NL (Comments): Full support for this addition.
2. The Commission shall, by means of implementing acts, award the funding under this Regulation. Those implementing acts shall be adopted	AT

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in accordance with the examination procedure referred to in [Article 58(3)], except with respect to common procurement actions referred to in Article 12.	(Drafting Suggestions): 2. The Commission shall, by means of implementing acts, award the funding under this Regulation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in [Article 58(3)], except with respect to ~~common~~ **joint** procurement actions referred to in Article 12. AT (Comments): Considering e.g. Article 14(1)(f), does this mean that the Commission would be called upon to potentially award funding to itself? FR (Drafting Suggestions): The Commission shall, by means of implementing acts, award the funding under this Regulation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in [**Article 58],** except with respect to common procurement actions referred to in Article 12 FR (Comments): La France souhaiterait un renvoi à l'article 58 (*committee procedure*) dans sa totalité. SE (Drafting Suggestions): The Commission shall, by means of implementing acts, ~~award the funding under this Regulation~~ **adopt the work programme**. Those implementing acts shall be adopted in accordance with the examination

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	procedure referred to in [Article 58(3)], except with respect to common procurement actions referred to in Article 12. SE (Comments): Please explain the last sentence "except with respect to common procurement actions referred to in Article 12" Why this exception? If it is due to that it is the Commission that takes decision on award of funding, what is the basis for this?
Article 20	
Union financial contribution	
1. By way of derogation from Article 190 of the Financial Regulation, the Programme may finance up to 100 % of the eligible costs. However, for actions referred to in Article 13 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 EE (Drafting Suggestions):

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	EE: 1. By way of derogation from Article 190 of the Financial Regulation, the Programme may finance up to 100 % of the eligible costs. However, for actions referred to in Article 13 the support from the Programme shall not exceed 45 % of the eligible costs. EE (Comments): EE: Given the investment needs and the capital intensity of the industrial reinforcement actions, we propose to increase the basic funding rate to 45%. FI (Comments): Finland sees the need to examine the proposed 100 % financial contribution in more detail. Finland will reserve the possibility to comment this article at a later stage. FR (Drafting Suggestions): By way of derogation from Article 190 of the Financial Regulation, the Programme may finance up to [XX] % of the eligible costs. However, for actions referred to in Article 13 the support from the Programme shall not exceed 35 % of the eligible costs. FR (Comments): Cette disposition dérogatoire au règlement financier et au principe d'additionnalité de budget de l'UE priverait les financements européens de tout effet de levier sur les budgets nationaux et pourrait donc avoir un effet d'éviction sur les cofinancements des Etats membres.

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	PL (Comments): The adequacy of funding for the mentioned activities is contingent upon various elements, such as the costs tied to each activity, the company's financial resources, and the total budget allocated for these initiatives to fully implement these activities. Activities such as optimizing, expanding, modernizing, or repurposing existing production capacities, establishing new ones, and procuring necessary inputs can be capital-intensive. Similarly, establishing cross-border industrial partnerships, coordinating production capacities and plans, building up reserved surge manufacturing capacities, fostering industrialization and commercialization of defence products, and testing and reconditioning certification of defence products also require significant investment. Therefore, while 35% funding could provide substantial support, it's crucial to conduct a detailed cost analysis to determine if this funding level is adequate. If the costs of these activities exceed the available funding, additional financial resources may be needed. Justification for derogation from Article 190 of the Regulation – co-financing is necessary. How it is possible for this Programme to finance up to 100 % of the eligible costs? On what premises the decision on the level of co-financing will be taken? In what cases 100% financing will be possible? SE (Drafting Suggestions): 1.~~By way of derogation from Article 190 of the Financial Regulation,~~

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	ŧThe Programme may finance up to ~~10~~70 % of the eligible costs. However, for actions referred to in Article 13 the support from the Programme shall not exceed 35 % of the eligible costs. SE (Comments): SE do not agree with derogations from existing budgetary principles and regulations. It is preferable to have a lower EU funding rate than 100% since it leads to more careful selection of projects and measures and aligns the ownership of the action with the funding. What is the basis for these percentages set?
2. Actions shall be eligible for an increased funding rate in the following cases:	SE (Comments): Why these specific actions? What are the basis for these percentages set? If there is to be an increase in funding rate, then the funding rate cannot be set at 100% from the start
(a) actions carried out by a Structure for European Armament Programme as referred to in Chapter IV of this Regulation may benefit from a funding rate increased by an additional [15] percentage points;	
(b) actions carried out, for their entire duration, in the context of a PESCO or EDA Category A or B projects that comply with the requirements set out in Article 10(1) and 27(1) of this Regulation and do	DE (Comments):

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not benefit from a comparable increased funding rate in another EU funding programme may benefit from a funding rate increased by an additional [15] percentage points;	Equal treatment of PESCO and EDA Projects is supported
(c) actions which relate to the commercialisation of defence products supported by the European Defence Fund may benefit from a funding rate increased by an additional [15] percentage points;	FR (Drafting Suggestions): actions which relate to the **industrialisation and** commercialisation of defence products supported by the European Defence Fund may benefit from a funding rate increased by an additional [15] percentage points;
(d) actions whereby 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 may benefit from a funding rate increased by an additional [15] percentage points;	AT (Drafting Suggestions): Deletion AT (Comments): AT comment: This would result in such actions being treated more favourably in terms of funding rate than actions benefiting companies even in Member States proper. Request for clarification: Is this paragraph necessary in light of the specific provisions on the UA support programme in chapter III? DE (Comments): **DE:** What is meant here? Do the products have (in order to receive additional

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	funding under EDIP) be eligible products under the rules of EPF or is the actual refund within the EPF mechanism prerequisite? **DE:** 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.
(e) actions whereby the beneficiary is an SME or the majority of beneficiaries participating in a consortium are SMEs may benefit from a funding rate increased by an additional [15] percentage points;	CZ (Drafting Suggestions): (e) actions whereby the beneficiary is an SME or the majority of beneficiaries participating in a consortium are SMEs **and where at least 20 % of the total eligible costs of the activity are allocated to SMEs** may benefit from a funding rate increased by an additional [15] percentage points; (e) actions whereby the beneficiary is an SME or the majority of beneficiaries participating in a consortium are SMEs may benefit from a funding rate increased by an additional [15] percentage points, **which will be allocated to SMEs participating in the action;** CZ (Comments): In case of the European Defence Fund, the majority of subjects in the consortium might be SMEs. However, the majority of financial contribution will be provided by the large companies. Therefore**, CZ strongly proposes an amendment, which would define that the SMEs need to have at least 20 % of financial contribution** dedicated to the action, otherwise there will be no increased funding rate.

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	Alternatively, we propose to dedicate the increased funding rate of 15 % for the SMEs, as it is the bonus for their participation. ES (Comments): Not clear if the term majority would properly address/guarantee a significant participation of SMEs. Rather than the majority of beneficiaries, it would be better to speak of a percentage of the Union's financial contribution going to SMEs-small mid-caps (and also maybe mid-caps), similar to EDF bonuses for this type of entities (see arts. 13.3(b,c) of the EDF regulation). It could be the case that a prime with a majority of workshare may benefit of this bonus by being accompanied by several SMEs. FR (Comments): La France soutient la suppression de la mention aux *mid caps*.
	HU (Drafting Suggestions): f) actions whereby at least 40 % of the contribution comes from legal entities established in different Member States or associated countries than the other beneficiaries of the same action, may benefit from a funding rate increased by an additional [15] percentage points; HU (Comments): The Europeanisation of supply chains should be more than a talking point. We see no other provision in EDIP that targets opening our supply

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	chains.
(f) actions whereby 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 may benefit from a funding rate increased by an additional [5] percentage points.	AT (Comments): We reiterate our questions: Can COM elaborate on what the definition of a "common approach" is? When does the "common approach" have to be agreed on – according to the text, this is only required after the development and/or procurement of the products? Does it matter what country the defence products are exported to? FR (Drafting Suggestions): ~~(f) actions whereby 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 may benefit from a funding rate increased by an additional [5] percentage points.~~ FR (Comments): La France n'est pas favorable à la mise en place d'un bonus dépendant de l'harmonisation des règles d'export entre Etats membres. En effet, les SEAP ont vocation à s'engager sur un horizon de long terme. Dans de telles conditions, s'engager entre Etats membres *a priori* en matière d'export ne paraît pas réalisable. HU (Drafting Suggestions): g)
	EE (Drafting Suggestions):

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	EE: NEW **(g) actions which relate to the development of new production capacities may benefit from a funding rate increased by an additional [15] percentage points**. NEW **(f) actions which are carried out by Member States or associated countries as a cross-border cooperation project may benefit from a funding rate increased by an additional [15] percentage points.** EE (Comments): EE: New production capacity is needed to ensure the EDTIB's ability to ensure the security of supply of critical defence products. Greenfield investments are generally more capital intensive than upgrading existing capacities. An incentive of cross-border cooperation will ensure necessary integration of EDTIB and would foster joint actions by the Member States. Cross-border cooperation projects would also facilitate joint procurements by the countries involved. NL (Drafting Suggestions): **(g) actions whereby the procurement agent in a common procurement obliges the contractor to source in a competitive manner from all its subcontractors may benefit from a funding rate increased by an additional [15] percentage points**
3. The overall increase in the funding rate of an activity following the application of the increased funding rates under paragraph 2 shall not exceed [50] percentage points.	EL (Comments): What is the restriction factor/s for funding not higher from [50] percentage points, according to paragraph 2?

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4. The work programme shall lay down further details.	

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Article 21	FR (Comments): Compte tenu de la diversité des actions éligibles, la France s'interroge sur la faisabilité d'un programme de travail unique. La comitologie associée doit être précisée et être examinée avec l'étude de l'article 58.
Work programme	FR (Drafting Suggestions): Work **programmes** IT (Drafting Suggestions): Work programme**s** IT (Comments): Considering the number of different actions proposed by the regulation and the reference timeframe (2025-2027) IT proposed to keep the initial ambition of implementing multiple Work Programmes.
1. The Programme shall be implemented by a work programme as referred to in Article 110 of the Financial Regulation. The work programme 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.	FI (Comments): The use of the program's budget allocation should be more precisely defined in the regulation as commented in article 5. **(Proposed addition; Atleast 50% of the Programme's budget shall be reserved for industrial reinforcement actions referred to in article**

Presidency Compromise	Drafting Suggestions and Comments
	13.) FR (Drafting Suggestions): The Programme shall be implemented by a work **programmes** as referred to in Article 110 of the Financial Regulation. ~~The~~ 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. FR (Comments): La France souhaiterait ici inclure la liste des *European Defence Projects of Common Interest* à valider, sur le même modèle que l'article 24 du réglement du Fonds Européen de Défense. IT (Drafting Suggestions): The Programme shall be implemented by ~~a~~ work programme**s** as referred to in Article 110 of the Financial Regulation. The work programme**s** 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
2. The Commission shall adopt the work programme by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(3).	FR (Drafting Suggestions): The Commission shall adopt the 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).

Presidency Compromise	Drafting Suggestions and Comments
	IT (Drafting Suggestions): The Commission shall adopt the 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).
	FR (Drafting Suggestions): **"3. The work programmes shall set out in detail the categories of actions to be supported. Those categories shall be in the line with defence priorities referred to in article 15(2)a."**
3. The work programme shall at least set out:	FR (Drafting Suggestions): **4.** ~~3.~~ Work **programmes** shall at least set out : IT (Drafting Suggestions): The work programmes shall at least set out
(a) the overall amount of the Union contribution to each type of action referred to in Article 11(1);	
(b) with respect to actions referred to in Article 12 and Article 13, the minimum financial size of the actions;	ES (Comments): Art. 12 is common procurement, it has sense Art.13 is industrial reinforcement actions (ASAP-like)

Presidency Compromise	Drafting Suggestions and Comments
	We consider that for the latter has not sense to set a limit FI (Drafting Suggestions): (b) with respect to actions referred to in Article 12 and Article 13 **as well as budgetary terms in Article 5,** the minimum financial size of the actions; FI (Comments): This paragraph should be in line with the proposed additions in Article 5. FR (Comments): Les autorités françaises s'interrogent sur la limitation aux actions des articles 12 (acquisitions conjointes) et 13 (renforcement de l'industrie), et non à celles de l'article 14 (actions de soutien).
(c) with respect to actions referred to in Article 13, the maximum number of legal entities forming part of the consortium, which shall in any event not exceed [15] legal entities.	ES (Comments): We would need more clarity about this limitation NL (Comments): Why is this introduced? EDF Consortia are already bigger and supply chains of EDF developed defence products will be even bigger.

Presidency Compromise	Drafting Suggestions and Comments
(c) the procedure for the evaluation and selection of proposals, including, where relevant, a description of the milestones, which are to be designed in such a way as to mark substantial progress in the implementation of actions, the results to be achieved and the associated amounts that are to be disbursed, as well as the arrangements for the verification of the milestones, the fulfilment of conditions and the achievement of results;	
(d) the methods for determining and, where applicable, adjusting the funding.	

Presidency Compromise	Drafting Suggestions and Comments
Chapter III	AT (Comments): Insofar as the provisions here are repeated from Chapter II, we refer to our comments above. FR (Comments): Les autorités françaises indiquent que ces dispositions sont toujours à l'étude.
The Ukraine Support Instrument	EL (Comments): After second reading , we do have some concerns about the integration. SE (Comments): How does this instrument relate to other support for UA, e.g. EPF?
Section 1: General provisions applicable to the Instrument	
Article 22	

Presidency Compromise	Drafting Suggestions and Comments
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 the Financial Regulation.	
2. Where the Union grant takes the form of financing not linked to costs, the level of Union contribution for actions reinforcing the Ukrainian DTIB may be based on factors such as:	
(a) the estimated value of the action;	
(b) the contribution of the action to achieving interoperability of defence products produced by the EDTIB and the Ukrainian DTIB;	
(c) the number of participating Member States;	
(d) the contribution of the action to the ramp-up of necessary manufacturing capacities;	
(e) the procurement of additional quantities for other Member States or Ukraine (defence industrial readiness pool);	

Presidency Compromise	Drafting Suggestions and Comments
(f) the efforts of Ukraine in the accession process, including structural reforms and measures to promote convergence with Union rules, standards, policies and practices ('acquis');	
(g) the efforts of adapting the Ukrainian defence procurement processes and the environment for the Ukrainian defence industry, including to meet NATO standards;	PL (Drafting Suggestions): (g) the efforts of restoring and strengthening Ukrainan Armed Forces, adapting the Ukrainian defence procurement processes and the environment for the Ukrainian defence industry, including to meet NATO standards;
(h) 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.	

Presidency Compromise	Drafting Suggestions and Comments
Article 23	
Objectives	
1. The Ukraine Support Instruments shall contribute to the recovery, reconstruction, and modernisation of the Ukrainian DTIB with a view to increasing its defence readiness and taking into account its possible future integration into the EDTIB, through cooperation between the European Union and Ukraine, thereby contributing to mutual stability, security, peace, prosperity, resilience and sustainability.	LT (Drafting Suggestions): The Ukraine Support Instruments shall contribute to the recovery, reconstruction, and modernisation of the Ukrainian DTIB with a view to increasing its defence readiness and taking into account ~~**its possible**~~ **the goal of its** future integration into the EDTIB, through cooperation between the European Union and Ukraine, thereby contributing to mutual stability, security, peace, prosperity, resilience and sustainability.
2. The objective set out in paragraph 1 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 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 acquis with a view to future Union membership.	LT (Comments): We think it might be beneficial to include somewhere in this para “direct procurement from UA companies”.

Presidency Compromise	Drafting Suggestions and Comments
	AT (Drafting Suggestions): 3. The objective set out in paragraph 1 is without prejudice to the specific character of the security and defence policy of certain Member States, and is not intended to lead to a common defence in the sense of Article 42(2) TEU. AT (Comments): In addition to recital 70, a specific reference to certain Member States' security and defence policy should also be included in the provision on the objective of the UA support instrument. IT (Drafting Suggestions): **The implementation of the relevant provisions of this Chapter will be regularly reviewed on the basis that Ukraine respects and is committed to promoting the values on which the Union is founded, referred to in Article 2 of the Treaty of the European Union, namely the respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.** IT (Comments): This would be a new para 3. The language suggested is lifted from the Security Commitments for Ukraine in order to ensure that EU funds and efforts are not, in case of significant policy changes in Ukraine, misused or abused. We are flexible on the placement and the language, but we

Presidency Compromise	Drafting Suggestions and Comments
	believe this could be a good caveat to have also in EDIP,
Article 24	SE (Comments): See comment on article 5
Budget	
1. The budget for the implementation of the Ukraine Support Instrument shall be composed of:	
(a) the amount of the additional contributions in accordance with Article 25 to the extent earmarked, subject to the conclusion of the agreement referred to in [Article 59]; and	
(b) amounts reallocated from the Programme in response to unforeseen situations or new developments in accorandance with Article 5(2).	AT (Drafting Suggestions): Deletion of para (b) AT (Comments): In light of the specific character of the security and defence policy of certain Member States, a clear distinction between the budget for the EDIP and the UA support programme is requried.

Presidency Compromise	Drafting Suggestions and Comments
2. The budget referred to in paragraph 1 of this Article may also be used for technical and administrative assistance for the implementation of the Ukraine Support Instrument, 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 Ukraine Support Instrument.	FR (Drafting Suggestions): The budget referred to in paragraph 1 of this Article may also be used for technical and administrative assistance for the implementation of the Ukraine Support Instrument, 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 Ukraine Support Instrument~~. FR (Comments): Une telle affectation des dépenses administratives, sans limite de montant, diminuera d'autant les crédits effectivement disponibles pour le soutien à la BITDE et à l'Ukraine. Il conviendrait d'imputer les strictes dépenses administratives engendrées sur la rubrique 7 du budget de l'UE. LT (Comments): Given limited resources we think that the budget for USI under "second track of financing" should be used for UA DTIB only SE (Drafting Suggestions): The budget referred to in paragraph 1 of this Article may also be used for technical and administrative assistance for the implementation of the Ukraine Support Instrument, such as preparatory, monitoring, control,

Presidency Compromise	Drafting Suggestions and Comments
	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 Ukraine Support Instrument.~~ SE (Comments): See comment on article 5.
4. In addition to Article 12(4) of the Financial Regulation, 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 the Financial Regulation.	FR (Drafting Suggestions): ~~In addition to Article 12(4) of the Financial Regulation, 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 the Financial Regulation.~~ FR (Comments): Malgré les justifications apportées, la France est opposée au report automatique des crédits non consommés.
5. By way of derogation from Article 209(3), first, second and fourth subparagraphs of the Financial Regulation, any revenues and repayments	

Presidency Compromise	Drafting Suggestions and Comments
from financial instruments established under this Chapter shall constitute internal assigned revenue within the meaning of Article 21(5) of the Financial Regulation, to the Ukraine Support Instrument or its successor programme.	
6. In addition to Article 15 of the Financial Regulation, commitment appropriations corresponding to the amount of recoveries and of decommitments under the Ukraine Support Instrument shall be made available again to the Instrument or its successors in the context of the budgetary procedure.	FR (Drafting Suggestions): ~~In addition to Article 15 of the Financial Regulation, commitment appropriations corresponding to the amount of recoveries and of decommitments under the Ukraine Support Instrument shall be made available again to the Instrument or its successors in the context of the budgetary procedure.~~ FR (Comments): Malgré les justifications apportées, la France est opposée à la possibilité de reconstituer les crédits désengagés, qui nuit au principe d'annualité budgétaire et aux prérogatives de l'autorité budgétaire.
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 23, to enable the management of actions not completed by the end of the	FR (Drafting Suggestions):

Presidency Compromise	Drafting Suggestions and Comments
Ukraine Support Instrument, as well as expenses covering critical operational activities and services.	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. FR (Comments): La possibilité d'engager des crédits après 2027 devrait être strictement limitée aux dépenses de soutien liées au programme, c'est-à-dire essentiellement des dépenses liées à la gestion des actions non achevées et à l'évaluation du programme.
Article 25	
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 Ukraine Support Instrument in accordance with Article 208(2) of the Financial Regulation. 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 Financial Regulation.	AT (Drafting Suggestions): 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 Ukraine Support Instrument in accordance with Article 208(2) of the Financial Regulation. Such financial contributions shall constitute external assigned revenue within the meaning of Article 21(2), points

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	(a)(ii) [point (a) FR recast], (d), or (e) or Article 21(5) of the Financial Regulation. AT (Comments): In order to design the Regulation in a way that respects the specific character of the security and defence policy of certain Member States, a strict distinction between EDIP and the UA support programme is requried. Thus, additional financial resources should only stem from Member States, third countries, IOs etc. on a voluntary basis. Request for clarification: Which "third parties" can make contributions? In the interest of a clear structure, it could be considered to merge Art 24 and 25. FR (Drafting Suggestions): ~~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 Ukraine Support Instrument in accordance with Article 208(2) of the Financial Regulation. 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 Financial Regulation. FR (Comments): La France est opposée à la possibilité de demander aux États membres

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	des contributions supplémentaires *ad hoc* (hors revenus d'aubaine issus des avoirs immobilisés), qui constitue un contournement des plafonds du cadre financier pluriannuel. Les délais de mise en œuvre de telles contributions, qui nécessiteraient la ratification d'accords bilatéraux de contribution, seraient excessivement longs au regard de la période couverte par le programme (2025-2027). Cette possibilité ne doit donc être ouverte que pour l'instrument de soutien à l'Ukraine afin de prévoir le transfert des revenus d'aubaine issus des avoirs immobilisés.
2. Any additional amounts received under the relevant Union restrictive measures shall be external assigned revenue within the meaning of Article 21(5) of the Financial Regulation and shall be used for actions reinforcing the Ukrainian DTIB.	AT (Drafting Suggestions): 2. Any additional amounts received under ~~the~~ **Council Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine** ~~relevant Union restrictive measures~~ shall be external assigned revenue within the meaning of Article 21(5) of the Financial Regulation and shall be used for actions reinforcing the Ukrainian DTIB. AT (Comments): We reiterate our question: what are the relevant Union restrictive measures? These have to be mentioned in the legal text.

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Article 26	
Implementation and forms of Union funding	
1. The Ukraine Support Instrument shall be implemented under direct management in accordance with the Financial Regulation or in indirect management with bodies referred to in Article 62(1), point (c), of the Financial Regulation.	
2. Union funding may be provided in any of the forms laid down in the Financial Regulation except for blending operations under the InvestEU programme in accordance with Title X of the Financial Regulation.	
3. By way of derogation from Article 192(2) of the Financial Regulation, activities referred to in Article 13(1), point (d), for which Union funding is provided in the form of a grant under the Ukraine Support Instrument pursuant to Article 26(1), and profit is made, the 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. 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	SE (Comments): See comment on article 8.3

Presidency Compromise	Drafting Suggestions and Comments
during the action and any revenue resulting from the action. The work programme may set out further details.	
4. By way of derogation from Article 193(2) of the Financial Regulation, 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.	FR (Comments): Les actions ayant débuté depuis le 5 mars 2024, soit avant l'adoption du programme, pourraient bénéficier des fonds. Une telle rétroactivité dérogeant au règlement financier peut être envisageable dès lors qu'il s'agit de répondre à une situation d'urgence. Néanmoins, est-il possible d'expliquer la cohérence de cette disposition avec la programmation financière estimée de l'instrument, prévoyant l'essentiel des dépenses à partir de 2026 ? PL (Comments): Retroactivity. We ask the Presidency for a detailed explanation on the necessity to introduce it. SE (Comments): See comment on article 8.4

Presidency Compromise	Drafting Suggestions and Comments
Article 27	FR (Comments): Les autorités françaisessouhaitent indiquer que l'alignement sur les critères d'éligibilité prévus pour le Programme en ce qui concerne les droits de propriété intellectuelle leur apparait nécessaire. Elles souhaiteraient ainsi ajouter le point c) de l'article 9(4) du règlement FED à la fin du paragraphe 6 du présent article.
Eligible legal entities	
1. The eligibility criteria set out in paragraphs 2 to 9 shall apply in addition to the criteria set out in accordance with the Financial Regulation.	
2. Recipients of Union funding shall be established in the Union or Ukraine. Recipients established in the non-government controlled areas of Ukraine shall not be eligible for support under this Regulation.	CZ (Comments): Even though CZ agrees with this paragraph, we also need to take in mind that the situation on the battlefield may change for both sides, and so may the area controlled by the government.
3. The infrastructure, facilities, assets and resources of the recipients and subcontractors involved in an action shall be located on the territory of a Member State or of Ukraine for the entire duration of the action, and their executive management structures shall be established in the Union	CZ (Drafting Suggestions): The infrastructure, facilities, assets and resources of the recipients and

Presidency Compromise	Drafting Suggestions and Comments
or Ukraine.	subcontractors involved in an action shall be located on the territory of a Member State or of **government controlled areas** of Ukraine for the entire duration of the action, and their executive management structures shall be established in the Union or **in government controlled areas of** Ukraine. CZ (Comments): We propose to add "government controlled areas of Ukraine".
4. By way of derogation to paragraph 3, recipients may use infrastructure, facilities, assets and resources which are located or held outside the territory of the Member States or of Ukraine, provided that such use:	CZ (Drafting Suggestions): 4. By way of derogation to paragraph 3, recipients may use infrastructure, facilities, assets and resources which are located or held outside the territory of the Member States or of g**overnment controlled areas** Ukraine, provided that such use: CZ (Comments): The EU needs to make sure that there will be no usage of facilities, assets or any other structures which might be on the Russian occupied territory of Ukraine.
(a) is consistent with the objectives set out in Article 23;	

Presidency Compromise	Drafting Suggestions and Comments
(b) is strictly necessary as a result of a lack of readily available alternatives or relevant infrastructure, facilities, assets and resources in the Union or Ukraine;	CZ (Drafting Suggestions): (b) is strictly necessary as a result of a lack of readily available alternatives or relevant infrastructure, facilities, assets and resources in the Union or **government controlled areas of** Ukraine; SE (Drafting Suggestions): is ~~strictly necessary as~~ a result of a lack of readily available alternatives or relevant infrastructure, facilities, assets and resources in the Union or Ukraine; SE (Comments): Same comment as in article 10.4 b
(c) does not contravene the security and defence interests of the Union and its Member States.	
5. 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 other than Ukraine.	CZ (Comments): What does Ukraine mean in this context? Is it the Armed Forces of Ukraine alongside the state-owned companies and state universities etc. only, or is it also for the private subjects in Ukraine? CZ needs more explanation in this context.

Presidency Compromise	Drafting Suggestions and Comments
6. By way of derogation from paragraph 5, a legal entity established in the Union and controlled by a third country or by a third-country entity other than Ukraine 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 appropriate mitigation measures, taking into account the objectives set out in Article 23 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.	
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 23. The guarantees shall in particular substantiate that, for the purposes of an action, measures are in place to ensure that:	
(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;	PL (Drafting Suggestions): 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;

Presidency Compromise	Drafting Suggestions and Comments
(b) access by a third country or by a third-country entity other than Ukraine to classified or 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;	PL (Drafting Suggestions): access by a third country or by a third-country entity other than Ukraine to classified or sensitive information relating to the action other than strictly necessary for this country or entity to participate in the action effectively ('need to know' principle) is prevented and the employees or other persons involved in the action have national security clearance issued by a Member State, where appropriate; SE (Drafting Suggestions): access by a third country or by a third-country country entity to classified or sensitive information relating to the action ~~is~~ **should be** prevented ~~and the~~. **E**mployees or other persons involved in the action **should, when needed,** have ~~national~~ **a** security clearance ~~issued by a Member State, where appropriate~~; **in accordance with national laws and regulations. A nonassociated third country, or an associated third country needs a security of information agreement with the EU to be able to participate.** SE (Comments): This paragraph is mixing up the proper scheme

Presidency Compromise	Drafting Suggestions and Comments
	of PSC and the "sensitive matters" relating to internal COM rules. If there is information that should have restrictions, it needs to be classified. The prerogative to issue a PSC is the sole responsibility of a MS in which the employee is a citizen of. Almost no country in the world has the legal mean to do what the COM is suggestion. Let alone EU MS. According to Council Decision 2013/488 and COM decicion 2015/444 PSCs are issued at the level of CONFIDENTIEL UE/EU CONFIDENTIAL not for Restricted level or any other marking. The baseline for participation for a nonassociated or associated countries is a security of information agreement. Otherwise, there is no legal means to exchange EUCI in this programme. This has been added to give the paragraph a more legally sound meaning.
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.	SE (Comments): Why has "associated country" been added?
7. The procedures and security guarantees applicable to recipients established in Ukraine and controlled by a third country or by a third-	

Presidency Compromise	Drafting Suggestions and Comments
country entity other than Ukraine shall be governed by the agreement referred to in Article 59, provided that this does not contravene the security and defence interests of the Union and its Member States or the objectives set out in Article 23.	
8. The Commission shall inform [the committee referred to in Article 57] of any legal entity considered to be eligible in accordance with paragraph 6.	
9. 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 other than Ukraine, 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 or its Member States or the objectives set out in Article 23. There shall be no unauthorised access by a third country or an entity establised in a third country other than Ukraine 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 Ukraine Support Instrument.	AT (Comments): AT comment: The last sentence “The costs related to those activities shall not be eligible for support from the Ukraine Support Instrument.” is unclear. What exactly do “those activities” entail?
10. Paragraphs 2 to 9 shall not apply to:	SE (Comments): Will paragraph 2 to 9 be applicable to associated countries?

Presidency Compromise	Drafting Suggestions and Comments
(a) contracting authorities of Member States and Ukraine;	
(b) International Organisations;	
(c) The Structures for European Armament Programme;	SE (Drafting Suggestions): ~~The~~ Structures for European Armament Programme; SE (Comments): Compare with article 10.9.c
(d) The European Defence Agency.	
Section 2: Eligible actions	

Presidency Compromise	Drafting Suggestions and Comments
Article 28	
Eligible actions	
1. Actions eligible for funding under the Ukraine Support Instrument shall implement the objectives set out in Article 23 and may take one of the following forms:	
(a) common procurement actions referred to in Article 12;	
(b) industrial reinforcement actions referred to in Article 13;	
(c) supporting actions referred to in Article 14(1), points (a) to (e);	
(d) actions relating to defence industrial readiness pools referred to in Article 15.	

Presidency Compromise	Drafting Suggestions and Comments
2. The following actions shall not be eligible for funding under the Ukraine Support Instrument:	
(a) actions related to goods or services which are prohibited by 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;	
(c) actions related to goods or services which are subject to control or restriction by third countries or entities established in third-countries other than Ukraine, directly, or indirectly through one or more intermediate legal entities, including in terms of technology transfer;	
(d) actions or parts thereof, that are already fully financed from other public or private sources.	
3. References to Member States in Articles 12, 13, 14 and 15 shall be understood to include Ukraine for the purpose of this section. References to associated countries in Articles 12, 13, 14 and 15 shall not apply to this section.	

Presidency Compromise	Drafting Suggestions and Comments
Section 3: Award and work programme	
Article 29	
Award criteria	
1. The Proposals for actions under Ukraine Support Instrument shall be evaluated on the basis of the criteria laid down in Article 18, paragraph 1.	SE (Comments): Are not the other paragraphs in article 18 applicable?
2. References to Member States in Article 18 shall be understood to include Ukraine for the purpose of this section. References to associated countries in Article 18 shall not apply to this section.	SE (Drafting Suggestions): References to Member States in Article 18**, paragraph 1** shall be understood to include Ukraine for the purpose of this section. References to associated countries in Article 18**, paragraph 1** shall not apply to this section. SE

Presidency Compromise	Drafting Suggestions and Comments
	(Comments): See comment above (under 29.1)
2. The work programme shall lay down further details concerning the application of the award criteria, including any weighting to be applied. The work programme shall not set individual thresholds.	
4. The Commission shall, by means of implementing acts, award the funding under this Regulation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in [Article 58(3)].	ES (Drafting Suggestions): ~~The Commission shall, by means of implementing acts, award the funding under this Regulation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in [Article 58(3)].~~ ES (Comments): This paragraph is duplicated in article 30.1 and has to be deleted SE (Drafting Suggestions): ~~The Commission shall, by means of implementing acts, award the funding under this Regulation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in [Article 58(3)].~~ SE (Comments):

Presidency Compromise	Drafting Suggestions and Comments
	See article 30.2)
Article 30	
Selection and award procedure	
1. Union funding shall be granted following competitive calls for proposals issued in accordance with the Financial Regulation.	
2. The Commission shall, by means of implementing acts, award the funding under this Regulation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in [Article 58(3)], except with respect to common procurement actions referred to in Article 28(1).	

Presidency Compromise	Drafting Suggestions and Comments
Article 31	
Union financial contribution	
1. By way of derogation from Article 190 of the Financial Regulation, the Ukraine Support Instrument may finance up to 100 % of the eligible costs.	FR (Drafting Suggestions): By way of derogation from Article 190 of the Financial Regulation, the Ukraine Support Instrument may finance up to [XX] % of the eligible costs. FR (Comments): Cette disposition dérogatoire au règlement financier et au principe d'additionnalité de budget de l'UE priverait les financements européens de tout effet de levier sur les budgets nationaux et pourrait donc avoir un effet d'éviction sur les cofinancements des Etats membres.

Presidency Compromise	Drafting Suggestions and Comments
Article 32	
Work programme	CZ (Comments): Will there be any role for Ukraine in the context of Work programme drafting? CZ needs more explanation in this context. FR (Comments): Aussi, les autorités françaises réitereraient leurs remarques sur leur préférénce pour plusieurs programmes de travail.
1. The Ukraine Support Instrument shall be implemented by a work programme as referred to in Article 110 of the Financial Regulation. The work programme shall set out the actions and associated budget required to meet the objectives of the Ukraine Support Instrument.	
2. The Commission shall adopt the work programme by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(3).	
3. The work programme shall at least set out:	

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(a) the overall amount of the Union contribution to each type of action referred to in Article 28(1);	
(b) with respect to actions referred to in Article 28(1), points (a) and (b), the minimum financial size of the actions;	
(c) with respect to actions referred to in Article 28(1), point (b), the maximum number of legal entities forming part of the consortium, which shall in any event not exceed [15] legal entities.	
(c) the procedure for the evaluation and selection of proposals, including, where relevant, a description of the milestones, which are to be designed in such a way as to mark substantial progress in the implementation of actions, the results to be achieved and the associated amounts that are to be disbursed, as well as the arrangements for the verification of the milestones, the fulfilment of conditions and the achievement of results;	
(d) the methods for determining and, where applicable, adjusting the funding.	

Presidency Compromise	Drafting Suggestions and Comments
Chapter VI	ES (Comments): This chapter needs a further analysis and comments will be send later
Governance, evaluation and control	
Article 57	FR (Comments): Les autorités françaises soutiennent la réserve sur l'article 57. SE (Comments): Our understanding was that this article was not to be negotiated/discussed at this stage.
Defence Industrial Readiness Board	
1. The Defence Industrial Readiness Board is hereby established.	EL

Presidency Compromise	Drafting Suggestions and Comments
	(Comments): Please clarify the decision making process of the Board (unaminity, consensus, majority ecc.) and the character of its decisions, especially the guidances (just consulting or binding?))
2. The general task of the Board is to assist and provide advice and recommendations to the Commission pursuant to this Regulation, in particular pursuant to its Chapter IV [Security of Supply].	IT (Drafting Suggestions): The general task of the Board is to assist and provide advice and recommendations to the Commission pursuant to this Regulation, ~~in particular pursuant to its Chapter IV [Security of Supply~~
3. To assist the Commission in the implementation of the measures referred to in Chapter II, the Defence Industrial Readiness Board shall assist the latter in the identification of funding priority areas, taking into account 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.	IT (Drafting Suggestions): ~~To assist the Commission in the implementation of the measures referred to in Chapter II, the Defence Industrial Readiness Board shall assist the latter in the identification of funding priority areas, taking into account 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.~~
4. The Commission shall maintain a regular flow of information to the Defence Industrial Readiness Board on any planned measures or measures that have been taken related to the activation of the supply crisis or security-related supply crisis state. The Commission shall provide the necessary information through a secured IT system.	

Presidency Compromise	Drafting Suggestions and Comments
5. For the purposes of the supply-crisis state as referred to in Article 44, the Defence Industrial Readiness Board shall assist the Commission in the following tasks:	
(a) analysing crisis-relevant information gathered by Member States or the Commission;	
(b) assessing whether the criteria for activation or deactivation of the supply-crisis state have been fulfilled;	
(c) providing guidance on the implementation of the measures chosen to respond to supply crisis at Union level;	
(d) performing a review of national crisis measures;	
(e) facilitating exchanges and sharing of information, including with other crisis-relevant bodies at Union level, as well as, as appropriate, third countries, with particular attention paid to developing countries, and international organisations.	
6. For the purposes of the security-related supply-crisis state as	

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referred to in Article 48, the Defence Industrial Readiness Board shall:	
(a) facilitate coordinated action by the Commission and the Member States;	
(b) adopt opinions and guidance, including specific response measures, for the Member States for ensuring the timely availability and supply of crisis-relevant products;	
(c) assist and provide guidance on the activation of measures as referred to in Articles 49 to 54;	
(d) provide a forum for the coordination of actions of the Council, the Commission, and other relevant Union bodies.	
7. The Defence Industrial Readiness Board shall be composed of the representatives of the Commission, the High-Representative and Head of the European Defence Agency, Member States and associated countries. Each Member State or associated country shall nominate one representative and one alternate representative. The Board shall be chaired by the Commission for the purposes of the tasks laid down in this Regulation. The secretariat of the Defence Industrial Readiness Board shall be ensured by the Commission.	IT (Drafting Suggestions): The Defence Industrial Readiness Board shall be composed of the representatives of the Commission, ~~the High-Representative and Head of the European Defence Agency~~, Member States and associated countries. Each Member State or associated country shall nominate one representative and one alternate representative. The Board shall be chaired by the **MS holding the precidency of the Council** ~~Commission~~ for the purposes of the tasks laid down in this Regulation. The secretariat

Presidency Compromise	Drafting Suggestions and Comments
	of the Defence Industrial Readiness Board shall be ensured by the Commission.
8. The Defence Industrial Readiness Board shall meet whenever the situation requires, upon request from the Commission or a Member State or an associated country. It shall adopt its rules of procedure on the basis of a proposal submitted by the Commission.	IT (Drafting Suggestions): The Defence Industrial Readiness Board shall meet whenever the situation requires, upon request from the Commission or a Member State or an associated country. **Decision in the Defence Industrial Readiness Board are taken by qualified majority vote of Member States**. It shall adopt its rules of procedure on the basis of a proposal submitted by the ~~Commission~~ **Chairman**.
9. The Defence Industrial Readiness Board may issue opinions, upon the request of the Commission or on its own initiative. The Defence Industrial Readiness Board shall endeavour to find solutions which command the widest possible support.	
10. The Defence Industrial Readiness Board shall invite, at least once a year, representatives from National Defence Industrial Associations and selected industrial representatives, taking into account the necessity to ensure a balanced geographical representation (structured dialogue with defence industry). Where the supply crisis state referred to in Article 44 or the security supply crisis state referred to in Article 48 has been activated, the Defence Industrial Readiness Board shall invite high-level industrial representatives to meet in special configuration in order to discuss issues linked to crisis-relevant products.	

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11. The Defence Industrial Readiness Board shall invite the representatives of other crisis-relevant bodies at Union level as observers to the relevant meetings of the Board.	
12. The Defence Industrial Readiness Board shall invite, where relevant and notably with a view to actions reinforcing the Ukrainian DTIB, in line with its rules of procedure and with due respect to the security and defence interests of the Union and its Member States, a representative from Ukraine to attend meetings as an observer.	
13. The Commission shall ensure transparency and provide members of the Board with equal access to information, in order to ensure that the decision-making process reflects the situation and the needs of all Member States.	IT (Drafting Suggestions): The ~~Commission~~ **Chairman** shall ensure transparency and provide members of the Board with equal access to information, in order to ensure that the decision-making process reflects the situation and the needs of all Member States
14. The Commission may, on its own initiative or on the proposal of the Defence Industrial Readiness Board, set up working groups on an *ad hoc* basis to support the Defence Industrial Readiness Board in its work for the purpose of examining specific questions on the basis of the tasks referred to in paragraph 1. Member States shall nominate experts for the working groups.	IT (Drafting Suggestions): The ~~Commission~~ **Chairman** may, on its own initiative or on the proposal of the Defence Industrial Readiness Board, set up working groups on an *ad hoc* basis to support the Defence Industrial Readiness Board in its work for the purpose of examining specific questions on the basis of the

Presidency Compromise	Drafting Suggestions and Comments
	tasks referred to in paragraph 1. Member States shall nominate experts for the working groups
15. The Commission shall set up a working group on legal, regulatory and administrative hurdles. The objectives of this working group are:	IT (Drafting Suggestions): The ~~Commission~~ **Chairman** shall set up a working group on legal, regulatory and administrative hurdles. The objectives of this working group are:
(a) to identify existing or potential legal, regulatory and administrative obstacles at international, EU and national levels to the achievement of the objectives listed in Article 4;	
(b) to identify potential solutions and/or mitigation measures to identified obstacles.	
Article 58	
Committee Procedure	
1. The Commission shall be assisted by a committee within the meaning of Regulation (EU) No 182/2011.	

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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.	
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.	
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	AT (Comments): AT position reserved on this Article (including any provisions linked to it, such as Article 64, para. 2), at least until we see the full draft text of this future 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 Ukraine Support Instrument, 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;	

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(c) the right of the Commission to monitor activities under this Regulation carried out by the legal entities established in Ukraine, along 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 and sensitive information and confidentiality equivalent to that set out in Articles 60 and 61;	
(f) provisions on protection of personal data;	
(g) procedures and guarantees applicable to recipients under the Ukraine Support Instrument established in Ukraine and controlled by a third country or a third country entity other than Ukraine.	
4. Funding shall only be granted to Ukraine after the framework	AT

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agreement has entered into force and that the actions needed to implement the requirements it establishes have been implemented by the parties.	(Comments): We reiterate our question: can COM share the planned timeframe for the framework agreement?

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Article 60	
Application of the rules on classified information	AT (Comments): We reiterate our question: which rules on classified information are applicable to associated countries, international organisations and SEAP? FR (Comments): La France demande à ce que soient soumis au Comité de Sécurité les articles relatifs aux enjeux de sécurité de l'information/confidentialité. PL (Comments): • Participation in the EDIP will require from industrial partners a disclosure of the information on production capacity, • the data sent to the European Supply Chain Mapping may reveal sensitive information that allows the identification of the characteristics of the equipment and could violate intellectual property rights, • monitoring of projects and EU procurement is an administrative burden for the companies, which also requires additional security control.
1. The originatorship of classified foreground information generated in implementing eligible actions listed under Article 26(1), shall be under the responsibility of the participating Member States who will establish	CZ (Comments): A term "originatorship" seems confusing. We, therefore, propose to use a

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the applicable security framework, in accorance with relevant national laws and reglations.	different term. If a term "classified foreground information" means a specific kind of classified information, it should be stated in "Definitions". Moreover, it is not stated what would be the purpose of applicable security framework and what would be the use of it. More clarification needed regarding Article 60.
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, including the verification of milestones, the fulfilment of conditions and the achievement of results, as defined in the relevant work programme.	FI (Comments): How is the "achievement of results" applicable to EDIP projects? EDIP does not fund R&D where such results are essential for the Commission. FR (Drafting Suggestions): 2. Such **informations** ~~a security framework~~ shall **be accessible for the Commission through procedure, mutually agreed with the originator, and in line with relevant Union and national law governing the handling of sensitive and classified information** ~~without prejudice to the possibility for the Commission to have access to the necessary information for carrying out the action, including the verification of milestones, the fulfilment of conditions and the achievement of results, as defined in the relevant work programme~~. **Any individual who is responsible for compromising or losing classified, controlled or sensitive non-classified information, which is identified as such in the rules regarding its handling and storage, [may be liable to legal or criminal proceedings] by the competent**

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	national authorities of the Member States in accordance with their laws and regulations and to contractual remedies FR (Comments): La rédaction du second alinéa (en particulier la partie « *may be liable to legal or criminal proceedings* ») est ouverte à modification. SE (Drafting Suggestions): ~~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, including the verification of milestones, the fulfilment of conditions and the achievement of results, as defined in the relevant work programme~~ SE (Comments): Article 60.2 is of concern for Sweden. Member States should be able to withhold information from the Commission since that may be necessary due to national security. Propose to remove this paragraph.
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.	CZ (Comments): Paragraph 3 needs to be clarified. The second Decision (2013/488/EU is applicable for the Council, its bodies etc. and is not applicable for the Commission. It needs to be clarified how the EC shall protect classified

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	information received in accordance with the security rules set out in Decision 2013/488/EU. CZ proposes to rewrite paragraph 3 and to use different wording, e.g. "The protection of classified information shall be ensured/assured in accordance with the security rules set out in Decision (EU, Euratom) 2015/444 and Decision 2013/488 EU SE (Drafting Suggestions): The Commission shall protect classified information received in accordance with the security rules set out in Decision (EU, Euratom) 2015/444 **and each member state shall ensure that it offers a degree of protection equivalent to that provided in Decision** 2013/488/EU. SE (Comments): In accordance with writing in previous regulations
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 contract. The relevant documents shall form integral part of the Grant Agreement.	

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5. The Commission shall make available approved and accredited existing systems to facilitate the exchange of classified information between the Commission, the EEAS, the EDA, Member States and associated countries and, where appropriate, with the applicants and the recipients. This system shall take into account Member States' national security regulations.	FR (Comments): La France s'interroge sur le type d'informations devant être échangées dans le cadre de ce système (classifié UE, classifié national). En cas de partage d'informations classifiées au niveau national, il est nécessaire que les autorités de sécurité nationale valident ces échanges. Les autorités françaises saluent l'ajout de la prise en considération des réglementations nationales en matière de sécurité nationale.
Article 61	CZ (Comments): In the opinion of CZ, Article 61 includes both classified & unclassified information which is not common in other regulations.
Confidentiality and processing of information	AT (Comments): We reiterate our question to COM: What is the relationship of Regulation 1049/2001 to Article 61? Is all information covered by EDIP information falling under the exemption according to Art. 4(1)(a) of Regulation 1049/2001? This should be clarified at least in a Recital.
1. Information received as a result of the application of this Regulation shall be used only for the purpose for which it was requested.	FR (Drafting Suggestions):

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	1. Information **provided by the Commission and** received as a result of the application of this Regulation shall be used only for the purpose for which it was requested. FR (Comments): La France souligne la nécessité de respecter le principe selon lequel c'est à l'émetteur de l'information de décider de l'utilisation qui en est faite.
2. Member States, the Commission, the EEAS and the EDA shall ensure the protection of classified and sensitive information acquired and generated in application of this Regulation in accordance with Union law and the respective national law.	FR (Drafting Suggestions): **Taking into acount the respective procedure**, Member States, the Commission, the EEAS and the EDA shall ensure the protection of classified and sensitive information, **informations subject to export and transfers control as well as business secret** acquired and generated in application of this Regulation in accordance with Union law and the respective national law. FR (Comments): La France entend couvrir à la fois trois types d'informations sur lesquelles les règles de sécurité ont un impact, tout en prenant en compte les processus afférents.

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	SE (Drafting Suggestions): 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 SE (Comments): SENSITIVE is an internal marking for the Commission, so we propose to delete "and other sensitive".
3. Member States, the Commission, the EEAS and the EDA shall ensure that classified information provided or exchanged under this Regulation is not downgraded or declassified without the prior written consent of the originator.	FR (Drafting Suggestions): Member States, the Commission, ~~and~~ the EDA shall ensure that classified **and sensitive informations,** informations **subject to export and transfers control,** provided or exchanged under this Regulation is not downgraded or declassified without the prior written consent of the originator, **unless otherwise specified**. .

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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 information, which includes the application of the "need to know principle" and the handling and sharing in appropriate encrypted environments.	SE (Drafting Suggestions): 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 information, which includes the application of the "need to know principle" and the handling and sharing in appropriate encrypted environments **regulated via SLAs or in accordance with Decision (EU, Euratom) 2015/444.** SE (Comments): Article 61.5 is of concern for Sweden. The marking "sensitive information" is an internal marking used by the Commission and does not exist in national security legislation. The definition of sensitive information is defined in 1049/2001. It is not the same as in 2015/444. However, Commission has in its own regulation

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	2015/444 set out rules how to handle this type of information so we propose to add this for clarity.
Article 62	
Personal data protection	
1. This Regulation shall be without prejudice to the obligations of Member States relating to their processing of personal data under Regulation (EU) 2016/679 of the European Parliament and of the Council ([7]) and Directive 2002/58/EC of the European Parliament and of the Council ([8]), 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 ([9]), when fulfilling their responsibilities.	

[7] 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).

[8] 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).

[9] 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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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.	CZ (Comments): According to experts on GDPR/EUDPR, this paragraph might present a significant administrative burden should it be applied. The EC should clarify the rationale behind this paragraph, e.g. its necessity
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.	CZ (Comments): The EC should clarify the rationale behind this paragraph, e.g. its necessity.

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Article 63	
Audits	FR (Comments): La France propose de réserver l'étude de cet article tant qu'une compréhension commune n'est pas atteinte car des interrogations subsisent, notamment sur l'habilitation des auditeurs par les Etats membres.
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	

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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 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;	PL (Drafting Suggestions): a) to take appropriate measures to prevent, detect and correct **irregularities including** fraud, corruption, conflicts of interests and **double funding** ~~irregularities~~ affecting the financial interests of the Union, ~~to avoid double funding~~ and to take legal actions to recover funds that have been misappropriated; PL (Comments): **Poland emphasizes the importance of this provision. We insist on them.** The wording in point a to c on the prevention, detection and correction of "fraud, corruption, conflicts of interests and irregularities" differs significantly from that used in recital 27 (and in other standard formulas

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	on protection of financial interests contained in EU legal acts), which refers to the prevention of "irregularities - including fraud". Financial irregularity is a specific phenomenon in which an intentional act took place. **The issue may seem editorial, but at the stage of program implementation such an approach to the issue may have specific consequences for the beneficiaries.** Moreover, the draft regulation does not contain definitions of concepts important for the protection of the EU's financial interests (irregularities or fraud), which may also lead to similar doubts and be important at the stage of program implementation. Such definitions are not included in the Financial Regulation but Poland proposes the use the wording introduced in the latest recast of Financial Regulation when defining the scope of irregularities.
(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;	PL (Drafting Suggestions): 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 **irregularities including** fraud, corruption, conflicts of interests and **double funding**;
(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;	PL (Drafting Suggestions): 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

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	complemented by international standards, on prevention, detection and correction of irregularities **including** fraud, corruption, ~~and~~ conflicts of interests and **double funding**;
(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.	
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 and the Ukraine Support Instrument, to actions taken pursuant to the Programme and to the results obtained.	

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3. Financial resources allocated to the Programme and the Ukraine Support Instrument 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 and 23.	
4. Financial resources allocated to the Programme and the Ukraine Support Instrument 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.	
Article 66	
Evaluation	
1. By [insert a date four years after the entry into force of this Regulation], 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): We reiterate our question: Considering that EDIP does not contain a sunset clause, what does the "opportunity to extend their [the measures'] applicability" refer to? SE (Comments): Who are the key stakeholders in this context?

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2. By [insert a date two years after the entry into force of this Regulation], the Commission shall carry out an interim evaluation of the Programme and of the Ukraine Support Instrument, which shall include:	
(a) an assessment of the governance of the Programme and of the Ukraine Support Instrument, including as regards the provisions related to [the committee referred to in Article 57];	
(b) the lessons learned from ASAP and EDIRPA;	
(c) the implementation rates;	
(d) the project award results, including the level of involvement of SMEs and mid-caps and the degree of their cross-border participation;	
(e) the agreement referred to in Article 59.	
(f) funding granted in accordance with Title X of the Financial Regulation.	

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2. The Commission shall present the report to the European Parliament and the Council, accompanied, where appropriate, by relevant legislative proposals.	SE (Comments): What is meant "by relevant legislative proposals" in this context?
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.	AT (Comments): AT is in favour of a sunset clause limiting the instrument to the current financial period 2021-2027.

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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*	