

GREENS/EFA ALTERNATIVE PROPOSAL ON EDIDP
TABLED AS LEGISLATIVE AMENDMENTS IN ITRE, SEDE, BUDG AND IMCO

Our narrative:

Until today the European Defence Agency has not been able to increase Member States cooperation on defence research, development and procurement projects, most are still exclusively national. A more efficient cooperation mechanism must be set up to finally address the structural problems of the defence sector. As sufficient national funds could be made available for the financing of projects (Commission estimates annual savings between EUR 25-100 Billion of collective national defence spendings), no single EURO shall be transferred from EU budget to national defence administration or industries.

Our main points:

- Our alternative proposal has been introduced via **65 legislative amendments** to the draft regulation in all four committees concerned: **ITRE, SEDE, BUDG and IMCO**.
- Here are the **main elements**:
 1. We **do not want to use the EU budget for increasing the overall defence expenditure** in Europe. The **main objective** of the new programme should be **efficiency** and cooperation to generate high quality defence products. Compared to the US, the EU-28 spend 40 % on defence but only manage to generate **15 %** of the capabilities that the US gets out of the process. Around **80% of defence procurement** is run on a purely national basis. The lack of cooperation between Member States in the field of defence and security is estimated to cost annually between **EUR 25 billion and EUR 100 billion**.
 2. The **only legitimate aim** of European Union intervention in the field of defence is the strengthening of the **Common Security and Defence Policy - CSDP** - as defined in the Lisbon treaty. For the program to have a clear and precise focus it makes therefore a lot of sense to **ONLY help filling technology gaps** in the context of the so called CSDP “**Capability Development Plan**”. To give an example: We do not want EU involvement in the area of nuclear weapons or their means of delivery.
 3. It makes a lot of sense to give the Commission the task of organising and monitoring a European defence market in the making. Only the Commission has the **power and the expertise** to impose itself and to make sure that finally normal internal market rules are being respected in this still very special sector. So, what the EU would offer are the **human resources** of the Commission and **a bit of EU budget** when it comes to **administrative support**.
 4. The **European Defence Agency**, EDA, which exists since 2004, failed - it has not been able to deliver on the capabilities, cooperation or the market. It should phase out.
 5. **Regulatory pre-conditions must be fulfilled**: The **2009 Defence Procurement Directive** must be enforced by the Commission. A truly

efficient, cooperative and European defence market will only emerge in case the very important procurement stage in the cycle is being in line with EU public procurement rules. European defence will fail in case only research and development is being Europeanised but then procurement is being done in a very intransparent manner (plus offsets and other side-payments).

6. **Budget:** We **totally oppose** using the Connecting Europe Facility, Space Policy and other existing programs for generating 500 million as foreseen by the Commission. This will only add to the many duplication problems. Our model proposes to **extensively use the intergovernmental ATHENA financing mechanism**. Athena is a mechanism which handles the financing of common costs relating to EU military operations under the EU's common Security and Defence Policy (CSDP). Member States contribute an annual share based on their GNI. Member States should **radically increase their national contribution to ATHENA** coming from their existing military budgets and use the financial resources for joint research, development, procurement but also maintenance and training.
7. We also propose an **alternative governance model**: Commission and Member States shall not formally seek the advice of the defence industry but **independent experts, academia and civil society**. Strengthening European defence is not an industrial policy question but making the right choices strategically, politically and ethically.

Finally, it is very important that European cooperation has **no negative side-effects** which weaken European security. A European defence market should significantly **reduce arms exports to unstable, undemocratic and aggressive countries**. We also introduced language **excluding specific types of weapons** which are considered being specifically **inhuman** like weapons of mass destruction, landmines, cluster munitions, incendiary weapons, fully autonomous weapons or depleted uranium ammunition. Plus: We believe the EU can only support the **development of armed drones** in case Member States have agreed on a **legal framework for their use** in compliance with international law, meaning: No use for extrajudicial killings in non-combat areas.

GREENS/EFA ALTERNATIVE PROPOSAL ON EDIDP
TABLED AS LEGISLATIVE AMENDMENTS IN ITRE, SEDE, BUDG AND IMCO

RED TEXT: Greens/EFA

BLACK: Original Commission draft

2017/0125 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing the European Defence Industrial Development -Cooperation Programme ~~aiming at supporting the competitiveness and innovative capacity of the EU defence industry for an efficient cooperation within the defence sector~~

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 173 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 Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In the European Defence Action Plan, adopted on 30 November 2016, the Commission described the many structural problems in the European defence sector which hamper the efficient use of national resources for providing the defence capabilities needed for an effective Common Security and Defence Policy (CSDP). The Commission in particular underlines that duplications, fragmentation, and other structural problems have led to a sector which generates only 15% of capabilities compared to the same investment by the US. The highly inefficient structures and mechanism, coupled with a very low rate of collaborative projects currently leads to a loss of an estimated EUR 25-100 Billion annually. This is why in the European Defence Action Plan, the Commission committed to complement, leverage and consolidate collaborative efforts by Member States in developing defence capabilities to respond to security challenges, as well as to

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

foster ~~a competitive and innovative~~ an efficient European defence industry. To realise these objectives it is therefore at Union level necessary to enhance at the level of the Union the institutional framework for cooperation of Member States and undertakings in the defence industrial development sector. It proposed in particular to launch a ~~European Defence Fund~~ efficient cooperation actions that would lead to support investments by the Member States in joint research and the joint development of defence equipment and technologies. ~~The Fund would support cooperation during the whole cycle of defence product and technology development.~~

- (1a) In order for the establishment of an efficient European defence market, including for this Programme to have real impact, it is of crucial importance that the key regulatory preconditions are fulfilled. The Directive on procurement was adopted eight years ago with a view to improve the functioning of the defence market and increasing competition. If fully applied, it still could make a significant contribution to achieving the goal of an integrated open and competitive European Defence Equipment Market. However, the evaluations of the Directive identified a number of shortcomings. In particular, despite a more than twofold increase in the value of the contracts published EU-wide, a large share of defence procurement is still done outside EU public procurement rules leaving a significant untapped potential to generate further public savings. Furthermore, public authorities to some extent still use, offsets/industrial return requirements which can lead to uncertainties for the industry. Finally, the subcontracting provisions of the Directive, which enable procurement authorities to require the successful tenderer to subcontract a share of the contract to third parties via competitive tendering, are rarely used. After eight years on inactivity, it is now time for effective implementation of the Directive, including through enforcement by the Commission.
- (2) In order to contribute to the ~~enhancement of the competitiveness and innovation capacity~~ efficiency of the Union's defence industry, a European Defence Industrial Development Cooperation Programme (hereinafter referred to as the Programme) should be established jointly by the Member States and the Commission. The Programme should ~~aim at enhancing the competitiveness of the Union's defence industry inter alia cyber defence by consist of a cooperation mechanism which aims supporting the cooperation between Member States, the Commission and undertakings and address in~~ the development phase of defence products and technologies. The development phase, which follows the research and technology phase, ~~which~~ entails significant risks and costs that hamper the further exploitation of the results of research ~~and adversely impact the competitiveness of the Union's defence industry~~. By ~~supporting~~ addressing the development phase, the Programme would contribute to a better exploitation of the results of defence research and it would help to cover the gap between research and production as well as to promote all forms of innovation. The Programme should complement activities carried out in accordance with Article 182 TFEU and it does not cover the production of defence products and technologies.
- (3) To better exploit economies of scale in the defence industry, the Programme should support the cooperation between Member States ~~undertakings~~ in the development of defence products and technologies.
- (4) The Programme should cover a two year period from 1 January 2019 to 31 December 2020 ~~whereas the amount for the implementation of the Programme should be determined for this period.~~

- (5) The Programme should be implemented in full compliance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council³. ~~Funding may take in particular the form of grants. Financial instruments or public procurement may be used where appropriate.~~
- (6) ~~The Commission may entrust part of the implementation of the programme to entities referred to in Article 58(1) (c) of Regulation (EU, Euratom) N°966/2012. In view of its expertise, the Commission may entrust the European Defence Agency with such a role.~~
- (7) In view of the specificities of the sector, ~~in practice~~ no collaborative project between undertakings ~~will should~~ be launched if the Member States have not first agreed to support such projects. After having defined common defence capability priorities via the Capability Development Plan in the context of the Common Security and Defence Policy (CSDP) at Union level and also taking into account where appropriate collaborative initiatives on a regional basis, Member States identify and consolidate military requirements and define the technical specifications of the project. They may also appoint a project manager in charge of leading the work related to the development of a collaborative project.
- (8) The Union financial contribution, to be drawn from existing administrative budget of the Union, will be available exclusively to support actions of administrative and organisational nature, necessary for establishing the appropriate cooperation mechanisms and leading to the development and the implementation of the Programme; actions implemented under the Programme itself shall be fully financed by the Member States and as appropriate by the Athena Mechanism; as the aim is to enable better efficiency of spending of available investments in the Member States, under no circumstances should financing of projects under for this programme be drawn from existing EU programmes established under the MFF;
- ~~(8) In case an action supported by the Programme is managed by a project manager appointed by Member States, the Commission should inform the project manager prior to executing the payment to the beneficiary of the eligible action so that the project manager can ensure that the time frames are respected by the beneficiaries.~~
- ~~(9) The Union financial support should not affect the export of products, equipment or technologies, and it should not affect the discretion of Member States regarding policy on the export of defence related products. The Union financial support should not affect Member States' export policies on defence related products. Military or dual-use technology supported by this Programme should only be exported to NATO allies and friendly nations which fully comply with the provisions of the Arms Trade Treaty (ATT). Also any technology supported by this Programme should, when exported to third countries, comply with the eight criteria of Common Position 944/2008/CFSP. Those Member States involved in a particular action should all agree to the export and the Commission should monitor and report back on the end-use and end-users of that particular technology.~~

³ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

- (10) As the objective of the Programme is to increase the level of efficiency of cooperation between Member States support the competitiveness of the Union defence industry by and de-risking the development phase of cooperative defence industry projects, actions related to the development of a defence product or technology, namely definition of common technical specifications, design, prototyping, testing, qualification, certification should be considered under the Programme as well feasibility studies and other supporting measures, should be eligible to benefit from it. This will also apply to the upgrade of existing defence products and technologies.
- (11) Given that the Programme aims particularly at enhancing cooperation between undertakings across and between Member States, an action should be considered eligible for funding under the Programme only if it is undertaken by a cooperation of at least three-four undertakings based in at least two-three different Member States.
- (12) Cross-border collaboration in the development of defence products and technologies has often been hampered by the difficulty to agree on common technical specifications. The absence or limited level of common technical specifications have led to increased complexity, delays and inflated costs in the development phase. The agreement on common technical specifications should be a condition in order to benefit from the Union's administrative support under this Programme. Actions aiming at supporting the creation of a common definition of technical specifications should also be eligible for support under the Programme.
- (13) As the Programme aims at enhancing the efficiency of the cooperation the competitiveness of the Union's defence industry, only entities established in the Union and effectively controlled by Member States or their nationals should be eligible for support. Additionally, in order to ensure the protection of essential security interests of the Union and its Member States, the infrastructure, facilities, assets and resources used by the beneficiaries participants and subcontractors in actions funded supported under the Programme, shall not be located on the territory of non-Member States and shall not be subject to control or restrictions by third-countries, undertakings or public entities in third countries.
- (14) Eligible actions developed in the context of Permanent Structured Cooperation in the institutional framework of the Union would ensure enhanced cooperation between undertakings in the different Member States on a continuous basis and thus directly contribute to the aims of the Programme. Such projects should thus be eligible for an increased funding rate administrative support by the Commission.
- (15) ~~If a consortium of undertakings wishes to participate in an eligible action under the Programme and financial assistance of the Union is to take form of a grant, the consortium should appoint one of its members as a coordinator who will be the principle point of contact with the Commission.~~
- (16) The promotion of innovation and technological development in the Union defence industry should take place in a manner coherent with the security interests of the Union as defined objectively within the context of the Common Security and Defence Policy (CSDP). Accordingly, the action's contribution to those interests and to the defence capability priorities commonly agreed by Member States within the context of CSDP should serve as an award criterion. Within the Union, common defence capability priorities are identified notably through the Capability Development Plan. Other Union processes such as the Coordinated Annual Review on Defence (CARD) and the Permanent Structured Cooperation will support the implementation of relevant priorities through enhanced cooperation. ~~Where appropriate regional or international cooperative~~

- ~~initiatives, such as in the NATO context, and serving the Union security and defence interest, may also be taken into account.~~
- (17) ~~In order to ensure that the funded actions are viable, the Member States commitment to effectively contribute to the financing of the action should be an award criterion for such actions. Member States should consider whether to make use of the already existing intergovernmental ATHENA mechanism of the Common Security and Defence Policy (CSDP) for co-funding actions under this Programme.~~
- (18) In order to ensure that the ~~funded~~ actions will contribute to a higher level of efficiency ~~the competitiveness~~ of the European defence industry, they should be market-oriented and demand driven. Therefore, the fact that Member States have already committed to jointly produce and procure the final product or technology, possibly in a coordinated way, should be taken into account in the award criteria. In order to reduce market distortions in the defence sector, which often hamper efficient projects, it is of crucial importance to not subsidise the defence industry via the use of EU funds.
- (19) ~~The financial assistance of the Union under the Programme should not exceed 20% of the total eligible cost of the action when it relates to prototyping which is often the most costly action in the development phase. The totality of the eligible costs should however be covered for other actions in the development phase.~~
- (20) As the Union support aims at enhancing the ~~competitiveness~~ efficient cooperation within of the sector and concerns only the specific development phase, the Commission should not have ownership or intellectual property rights over the products or technologies resulting from the ~~funded~~ actions supported. The applicable intellectual property rights regime will be defined contractually by the beneficiaries participants.
- (21) The Commission should establish a multiannual work programme in line with the objectives of the Programme. The Commission should be assisted in the establishment of the work programme by a committee of Member States (hereinafter referred to as Programme Committee). ~~In light of the Union policy on Small and Medium Enterprises (SMEs) as key to ensuring economic growth, innovation, job creation, and social integration in the Union and the fact that the supported actions will typically require trans-national collaboration, it~~ It is of importance that the work programme will reflect and enable ~~such~~ cross-border participation of SMEs and that therefore a proportion of the overall budget will benefit such action.
- (22) In order to benefit from its expertise in the defence sector, the European Defence Agency will be given the status of an observer in the committee of Member States. The European External Action Service should also assist in the committee of Member States.
- (23) ~~For the selection of actions to be funded by the Programme, the Commission or the entities referred to in Article 58(1)(c) of Regulation N°966/2012 should organise competitive calls as provided for by Regulation No 966/2012. After evaluation of the received proposals with the help of independent experts, the Commission will select the actions to be funded under the Programme. In order to ensure uniform conditions for the implementation of this Regulation implementing powers should be conferred on the Commission as regards the adoption and the implementation of the work programme, as well as for awarding the funding to selected actions. Those powers should be~~

~~exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁴.~~

- (24) The examination procedure should be used for the adoption of the above-mentioned implementing acts taking into account their substantial implications for the implementation of the basic act.
- (25) The Commission should draw up an interim progress report by the end of the first year of implementation and an implementation report at the end of the Programme, examining the financial activities in terms of financial implementation results and where possible, impact. This report should also analyse the cross border participation of SMEs in projects under the Programme as well as the participation of SMEs to the global value chain.

HAVE ADOPTED THIS REGULATION:

Article 1

A European cooperation mechanism between the Commission, Member States and undertakings supporting the development and implementation of a joint European Defence Industrial Development Programme (hereinafter referred to as the Programme) covering the period from 1st January 2019 to 31 December 2020 is hereby established.

Article 2

Objectives

Member States shall cooperate with each other and with the Commission in a transparent manner in order to adopt and implement a ~~The~~ Programme ~~shall that~~ have the following objectives:

- (a) to ~~foster the competitiveness and innovation capacity~~ increase efficient cooperation of the between Member States ~~Union defence industry~~ by supporting joint actions on Union territory in their industrial development phase;
- (b) to support and leverage the cooperation between Member States and with undertakings, including small and medium-sized enterprises, in the development of technologies or products solely in line with defence capability priorities commonly agreed by Member States within the Union in the context of the Capability Development Plan of the Common Security and defence Policy (CSDP);
- (c) To foster better exploitation of the results of defence research and contribute to closing the gaps between research and development.

⁴ ~~Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers~~

Article 3

~~Budget~~Financial resources

~~The amount for the implementation of the Programme for the period 2019-2020 is set at EUR 500 million in current prices.~~

Actions under this Programme shall be funded by the Member States and where appropriate via the use of the ATHENA mechanism. Only administrative and organisational expenditure to which the development and implementation of this Programme gives rise for the institutions may be charged to the Union budget. The financial resources will be drawn from the existing administrative resources available to the institutions. No financing of projects under for this Programme shall be drawn from existing EU programmes established under the MFF.

Article 4

General financing provisions

- ~~1. The Union's financial assistance may be provided through the types of financing envisaged by Regulation (EU, Euratom) No 966/2012, and in particular:
 - (a) grants;
 - (b) financial instruments;
 - (c) public procurement.~~
- ~~2. The types of financing referred to in paragraph 1 of this Article and the methods of implementation, shall be chosen on the basis of their ability to achieve the specific objectives of the actions and to deliver results, taking into account, in particular, the costs of controls, the administrative burden and the risk of conflict of interests.~~
- ~~3. The Union's financial assistance shall be implemented by the Commission as provided for by Regulation (EU, Euratom) No 966/2012 directly or indirectly by entrusting budget implementation tasks to the entities listed in Article 58(1) (e) of that Regulation.~~
- ~~4. In case a project manager is appointed by Member States, the Commission shall execute the payment to the eligible beneficiaries after informing the project manager.~~

Article 5

Types of financial instruments

- ~~1. Financial instruments set up in accordance with Title VIII of Regulation (EU, Euratom) No 966/2012 may be used to facilitate access to finance by entities implementing actions in accordance with Article 6.~~
- ~~2. The following types of financial instruments may be used:
 - (a) Equity or quasi-equity investments;
 - (b) Loans or guarantees;
 - (c) Risk-sharing instruments.~~

Article 6

~~Eligible actions~~ Areas of cooperation

1. The Programme shall ~~provide support~~identify and develop for actions ~~by beneficiaries~~by participants in the development phase covering both new and the upgrade of existing products and technologies, in relation to:
 - (a) the design of a defence product, tangible or intangible component or technology as well as the technical specifications on which such design has been developed;
 - (b) the prototyping of a defence product, tangible or intangible component or technology. A prototype is a model of a product or technology that can demonstrate the element's performance in an operational environment;
 - (c) the testing of a defence product, tangible or intangible component or technology;
 - (d) the qualification of a defence product, tangible or intangible component or technology; qualification is the entire process of demonstrating that the design of a product/component/technology meets the specified requirements. This process provides objective evidence by which particular requirements of a design are demonstrated to have been achieved;
 - (e) the certification of a defence product or technology. Certification is the process according to which a national authority certifies that the product/component/technology complies with the applicable regulations;
 - (f) ~~studies such as feasibility studies and other accompanying measures.~~
2. The action shall be undertaken in a cooperation of at least three undertakings which are established in at least two different Member States. The undertakings and their subcontractors which are ~~beneficiaries-participants~~ shall not effectively be controlled, directly or indirectly, by the same entity or shall not control each other.
3. For the purposes of paragraph 2, 'effective control' means a relationship constituted by rights, contracts or any other means which, either separately or jointly and having regard to the considerations of fact or law involved, confer the possibility of directly or indirectly exercising a decisive influence on an undertaking, in particular by:
 - (a) the right to use all or part of the assets of an undertaking;
 - (b) rights or contracts which confer a decisive influence on the composition, voting or decisions of the bodies of an undertaking or otherwise confer a decisive influence on the running of the business of the undertaking.
4. When it relates to actions defined under point (b) to (f) of the first paragraph, the action must be based on common technical specifications.

4a (new) Actions which contribute in parts or entirely (parts and components including software, artificial intelligence features, and any relevant dual-use technologies), directly or indirectly to the following technologies shall be excluded by the Programme:

- (a) Weapons of mass destruction and related warhead and missile technology;
- (b) Banned weapons and munitions not compliant with international law such as:
 - (i) Cluster munitions and related aspects in line with the Convention on Cluster Munitions;
 - (ii) Anti-personal landmines and related aspects in line with the Convention on the Prohibition on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction;

(iii) Incendiary weapons including white phosphorus;

(iv) Depleted uranium ammunitions;

(c) Fully autonomous weapons that enable lethal actions without meaningful human intervention;

(d) Small and light weapons (SALW) mainly developed for export purposes, i.e. where no Member State has expressed a requirement for the action to be carried out.

4b (new) Actions which contribute directly or indirectly to the production of armed unmanned aerial vehicles or their parts, including the production of parts and components, software, artificial intelligence features and any relevant dual-use technologies, are excluded so long as no Council Decision on the use of such new military technology exists which upholds international human rights law and international humanitarian law and which addresses issues such as a legal framework, proportionality, protection of civilians and transparency.

4c (new) Military or dual-use technology supported by this Programme shall only be exported to NATO allies and friendly nations which fully comply with the provisions of the Arms Trade Treaty (ATT). Such exports shall also fully comply with the eight criteria of Common position 944/2008/CFSP on arms exports. The results of cooperation between Member States under this Programme shall only be authorised for export in case all participating Member States agree. The Commission shall put in place a tracking mechanism to verify the end-use and end-users of the technology supported by this Programme and report about their status every 6 months to Council and Parliament.

Article 7

Eligible Participating Entities

1. Beneficiaries–Participants in the actions foreseen by the Programme shall be undertakings and their subcontractors established in the Union, in which Member States and/or nationals of Member States own ~~more than 50% of~~ the undertaking and effectively control it within the meaning of Article 6(3), whether directly or indirectly through one or more intermediate undertakings. In addition, all infrastructure, facilities, assets and resources used by the participants, including subcontractors and other third parties, in actions ~~funded foreseen~~ under the Programme shall not be located on the territory of non-Member States during the entire duration of the action. The use of these infrastructures, facilities, assets and resources shall not be under the control of any third country or entity established outside of the Union.

1a (new) In case a change occurs regarding the effective control of an undertaking participating in the Programme, the undertaking concerned should inform without delay the Commission and competent authority in the Member State in which it is established which will then jointly decide on appropriate measures with regards to the protection of national and Union interests.

2. If the beneficiary participant, as defined in paragraph 1, is developing an action, as defined in Article 6, in the context of Permanent Structured Cooperation, it shall be

~~eligible-identified~~ for the increased ~~funding-administrative support~~ referred to in Article 11(2) in respect of that action.

Article 8

Declaration by ~~applicants~~ participants

Each applicant shall declare, by written statement, that it is fully aware of and compliant with applicable national and Union legislation and regulations relating to activities in the domain of defence.

Article 9

Consortium

1. Where the Union's ~~financial assistance~~ administrative support is provided ~~through a grant~~, the members of any consortium wishing to participate in an action shall appoint one of them to act as coordinator, which shall be identified in the ~~grant~~ agreement. The coordinator shall be the principal point of contact between the members of the consortium in relations with the Commission or the relevant funding body, unless specified otherwise in the ~~grant~~ agreement or in the event of non-compliance with its obligations under the ~~grant~~ agreement.
2. The members of a consortium participating in an action shall conclude an internal agreement establishing their rights and obligations with respect to the implementation of the action (in compliance with the ~~grant~~ agreement), except in duly justified cases provided for in the work programme or call for proposals.

Article 10

Award Selection criteria

Actions proposed for ~~funding-inclusion in~~ the Programme and eligible for administrative support shall be evaluated on the basis of the following cumulative criteria:

- (a) excellence
- (b) contribution to the innovation and technological development of defence industries and thus to fostering the industrial autonomy of the Union ~~in the field of defence technologies in relation to the capability requirements under the Common Security and Defence Policy (CSDP)~~; and,
- (c) contribution to the ~~security and defence interests of the Union~~ Common Security and Defence Policy (CSDP) by enhancing defence technologies which contribute to implement defence capability priorities commonly agreed by Member States ~~within the Union in the context of the Capability Development Plan~~; and,
- (d) viability notably via a demonstration by the ~~beneficiaries-participants~~ that the ~~remaining~~ costs of the eligible action are covered by ~~other~~ means of financing such as Member States' contributions and the ATHENA mechanism; and
- (e) for actions described in points (b) to (e) of Article 6(1), the contribution a more efficient and integrated European defence industry to the competitiveness of the European defence industry-inter alia through the demonstration by the ~~beneficiaries participants~~ that Member States have committed to jointly produce and procure the

final product or technology in a coordinated way, including joint procurement where applicable.

~~Article 11~~

~~Funding rates~~

- ~~1. The financial assistance of the Union provided under the Programme may not exceed 20% of the total cost of the action where it relates to prototyping. In all the other cases, the assistance may cover up to the total cost of the action.~~
- ~~2. An action developed by a beneficiary referred to in Article 7 paragraph 2 may benefit from a funding rate increased by an additional 10 percentage points.~~

Article 12

Ownership and Intellectual Property rights

The Commission shall not own the products or technologies resulting from the action nor shall it have any IPR claim pertaining to the action.

The results of the actions under this Programme shall under no circumstances be under the control of any third country or entity established outside of the Union.

Article 13

Work programme

1. The Commission, by means of ~~an implementing act~~delegated act, shall adopt multiannual a work programme for the duration of the Programme. This ~~implementing delegated act shall be adopted in accordance with the examination procedure referred to in in Article 16(2)~~. This work programme shall be in line with the objectives set out in Article 2;
2. The work programme shall set out in detail the objectives and means for establishing Member States cooperation, the categories of projects to be funded included in the Programme as well as the commitment of the Member States for financing their implementation;
3. The work programme shall ensure that a credible proportion ~~of the overall budget actions foreseen~~ will benefit actions enabling the cross-border participation of SMEs.

Article 14

Award procedure

- ~~1. In the implementation of the Programme, Union funding shall be granted following competitive calls issued in accordance with Regulation (EU, Euratom) No 966/2012 and Commission Delegated Regulation (EU) No 1268/12⁵.~~
- ~~2. The proposals submitted following the call for proposals shall be evaluated by the Commission assisted by independent experts on the basis of the award criteria of Article 10.~~

⁵ ~~Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).~~

3. ~~The Commission shall award, after each call, the funding for selected actions, by means of an implementing act. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 16(2).~~

Article 15

Annual instalments

The Commission may divide budgetary commitments into annual instalments.

Article 16

Committee

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011. The European Defence Agency and representatives of the European Parliament, civil society and academia shall be invited as observer.

1a (new) The Commission shall establish an Advisory group composed of independent experts, academia and civil society organisations to provide advice to the Committee in particular on the compatibility of technology supported by this Programme with a view on moral, ethical and international law obligations of both the Union and its Member States.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 17

Monitoring and reporting

1. The Commission shall regularly monitor the implementation of the programme and ~~annually sent a monitoring report every six month to the Parliament and the Council~~ on the progress, made in accordance with Article 38(3)(e) of Regulation 966/2012. To this end, the Commission shall put in place necessary monitoring arrangements.
2. To support greater efficiency and effectiveness of future Union policy actions, the Commission shall draw up a retrospective evaluation report and send it to the European Parliament and to the Council. The report - building on relevant consultations of Member States and key stakeholders - shall notably assess the progress made towards the achievement of objectives set out in Article 2. It shall also analyse cross border participation of SMEs in projects implemented under the programme as well as the participation of SMEs to the global value chain.

Article 18

Protection of Union financial interests

1. The Commission shall take appropriate measures to ensure that, when actions financed under this Regulation are implemented, the financial interests of the Union are

protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the recovery or, where appropriate, the restitution of the amounts wrongly paid and, where appropriate, by effective, proportionate and dissuasive administrative and financial penalties.

2. The Commission and the Court of Auditors shall have the power of audit or, in the case of international organisations, the power of verification in accordance with agreements reached with them, on the basis of documents and on the spot, over all grant beneficiaries, contractors and subcontractors who have received Union funds under this Regulation.
3. The European Anti-Fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council⁶ and Council Regulation (Euratom, EC) No 2185/96⁷, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement or grant decision or a contract funded under this Regulation.

Article 19

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation is binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

⁶ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

⁷ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

