

Draft
Regulation of the European Parliament and of the Council establishing
the Neighbourhood, Development and International Cooperation Instrument
(NDICI) *

Peace and security, with focus on Capacity building of military actors in support of development and security for
development ('CBDSD')

To be integrated in the relevant clusters following agreement in trilogue

- ✓ Article 8 : Line 148 bis (cluster 1)
- ✓ Article 9: Lines 149 quinquies-162 (cluster 2)
- ✓ Article 31: Line 419 (cluster 3)
- ✓ Recitals: Lines 40ter-sexies and 50 bis (cluster 2)

Lines in **dark green** are provisionally closed.

Lines in **light green** are provisionally closed, pending agreement on parts of them related to issues outside this cluster.

Parts in **grey** are not discussed under this cluster, either because they are not part of the Council's partial mandate for negotiations or because they are part of another cluster. In both cases, they will be discussed at a later stage.

Parts in **yellow** are not agreed yet but an agreement could be reached at technical level.

The proposed Regulation is part of the package of proposals linked to the MFF 2021-2027 and therefore dependent on the outcome of the horizontal negotiations. Pending these, the reference amounts in Article 6 are put within square brackets. Other provisions of the draft NDICI Regulation appear in square brackets due to their inclusion in the draft Negotiating Box set out in ST 10010/19. Moreover, other provisions have been bracketed and the discussions on them are ongoing. All provisions which appear between square brackets are excluded from the Council negotiating mandate at this stage. Provisions related to the participation of non-EU countries have not been amended due to the horizontal nature of such provisions.

Parts in **red** are not agreed and should be discussed during the Trilogue.

<i>Line</i>	<i>Commission proposal</i>	<i>EP position</i>	<i>Council partial negotiating mandate</i>	<i>Compromise proposal</i>	<i>Comments</i>
Article 8 - General principles					
149. quin- quies			<i>Article 8 bis</i>	<i>New 8.7 b</i>	
149. sexies			<i>Union funding under this Regulation shall not be used to finance the procurement of arms or ammunition, or operations having military or defence implications.</i>	<i>Union funding under this Regulation shall not be used to finance the procurement of arms or ammunition, or operations having military or defence implications.</i>	<i>Provisionally closed</i>
148. bis		<i>7a. The Commission shall ensure that actions adopted under this Regulation in relation to security, stability and peace, in particular with regard to capacity building of military actors in support of development and security for development, fight</i>		<i>8 (7) c The Commission shall ensure that actions adopted under this Regulation in relation to the fight against terrorism and organised crime, cyber security and the fight against cybercrime, and capacity building of military actors in support of development and</i>	<i>Provisionally closed pending agreement on governance</i> {1} EP: develop / adopt a delegated act in accordance with Article 34 supplementing this Regulation by establishing CL: <i>develop</i>

<i>Line</i>	<i>Commission proposal</i>	<i>EP position</i>	<i>Council partial negotiating mandate</i>	<i>Compromise proposal</i>	<i>Comments</i>
		<p><i>against terrorism and organised crime, and cyber-security, are carried out in accordance with international law, including international human rights and humanitarian law.</i></p> <p><i>The Commission may develop roadmaps jointly with the beneficiary partners to improve the institutional and operational compliance of military actors with transparency and human rights standards.</i></p> <p><i>The Commission shall carefully monitor, evaluate and report on the application of such actions for each relevant objective pursuant to Article 31 in order to ensure compliance with human rights obligations.</i></p> <p><i>For such actions, the</i></p>		<p><i>security for development are carried out in accordance with international law, including international human rights and humanitarian law. To this end the Commission shall establish an appropriate risk assessment and monitoring framework. In this framework, the Commission shall {1} operational guidance to ensure that human rights are taken into consideration in the design and implementation of these actions.</i></p> <p><i><u>Art.8 (7) d</u> Security related actions in point c shall be based on regular and robust conflict analysis to ensure conflict sensitivity and implement a security</i></p>	

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		<p><i>Commission shall pursue a conflict sensitive approach, including a rigorous and systematic ex ante conflict analysis which fully integrates gender analysis, in addition to the provisions on risk management under Article 8(8)b.</i></p> <p><i>The Commission shall adopt a delegated act in accordance with Article 34 supplementing this Regulation by establishing an operational framework, based on the existing guidance to ensure that human rights are taken into consideration in the design and application of the measures referred to in this Article, in particular as regards the prevention of torture and other cruel, inhuman or degrading treatment and respect for due process,</i></p>		<p><i>sector reform approach that contributes to , , democratic governance, accountability and human security including benefits for the local population. These measures shall be embedded, where relevant, in the context of a longer term assistance aimed at reforming the security sector.</i></p> <p><i>New recital</i></p> <p><i>Actions adopted under this Regulation in relation to the fight against terrorism and organised crime, cyber security and the fight against cybercrime, and capacity building of military actors in support of development and security for development should aim to generate direct human security benefits for the population, contain relevant good</i></p>	

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		<i>including the presumption of innocence, the right to a fair trial and rights of defence.</i>		<i>practices to ensure sustainability and accountability in the medium and long term including effective democratic oversight, and should promote the rule of law, transparency, and established international law principles.</i>	
150.	Article 9 Capacity building of military actors in support of development and security for development	Article 9 Capacity building of military actors in support of development and security for development	Article 9 Capacity building of military actors in support of development and security for development	Article 9 Capacity building of military actors in support of development and security for development	<i>Provisionally closed</i>
151.	1. In accordance with Article 41(2) of the Treaty on European Union, Union funding under this Regulation shall not be used to finance the procurement of arms or ammunition, or operations having military or defence implications.	1. In accordance with Article 41(2) of the Treaty on European Union , Union funding under this Regulation shall not be used to finance the procurement of arms or ammunition, or operations having military or defence implications. Any equipment, service or technology supplied under this Regulation shall be subject to strict	1. In accordance with Article 41(2) of the Treaty on European Union , Union funding under this Regulation shall not be used to finance the procurement of arms or ammunition, or operations having military or defence implications.	New recital: <i>Actions under this Regulation involving the provision or financing of equipment, services or technology should be in line with relevant Union, national and international provisions and in particular the rules set out in the Common Position 944/2008/CFSP defining</i>	<i>Provisionally closed</i>

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		<p><i>transfer controls as set out in the Common Position 944/2008/CFSP, the Dual-Use Regulation and any other Union restrictive measures in force. In accordance with Regulation (EU) .../... [EU Regulation on Products used for Capital Punishment and Torture], this Regulation shall not be used to finance the provision of any type of equipment that may be used for torture, mistreatment or other human rights violations.</i></p>		<p><i>common rules governing control of exports of military technology and equipment with Union restrictive measures as well as with Regulation (EC) No 428/2009 on dual-use.</i></p> <p><i>Risk assessments by the Commission under this Regulation are without prejudice to the assessment of export license applications by Member States. Each Member State should assess the export license applications made to it, including those relating to government-to-government transfers, for items on the EU Common Military List, on a case-by-case basis against the criteria established in the aforementioned Common Position.</i></p> <p><i>In accordance with Regulation (EU) 2019/125 such actions</i></p>	

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				<i>should not finance the provision of any type of equipment that may be used for torture or other cruel, inhuman or degrading treatment or punishment.</i>	
152.	2. In order to contribute to sustainable development, which requires the achievement of stable, peaceful and inclusive societies, Union assistance under this Regulation may be used in the context of a wider security sector reform or to build the capacity of military actors in partner countries, under the exceptional circumstances set out in paragraph 4, to deliver development activities and security for development activities.	2. In order to contribute to sustainable development, which requires the achievement of stable, peaceful and inclusive societies, Union assistance under this Regulation may be used in the context of a wider security sector reform or to build the capacity of military actors in partner countries, under the exceptional circumstances set out in paragraph 4, to deliver development activities and security for development activities, <i>in line with the overarching objective of achieving sustainable development.</i>	2. In order to contribute to sustainable development, which requires the achievement of stable, peaceful and inclusive societies, Union assistance under this Regulation may be used in the context of a wider security sector reform or to build the capacity of military actors in partner countries, under the exceptional circumstances set out in paragraph 4 to deliver development activities and security for development activities.	1. In order to contribute to sustainable development, which requires the achievement of stable, peaceful and inclusive societies, Union assistance under this Regulation may be used in the context of a wider security sector reform or to build the capacity of military actors in partner countries, under the exceptional circumstances set out in paragraph 4, to deliver development activities and security for development activities.	<i>Provisionally closed</i>
153.	3. Assistance pursuant to this Article may cover in	3. Assistance pursuant to this Article may cover in	3. Assistance pursuant to this Article may cover in	2. Assistance pursuant to this Article may cover in	<i>Provisionally closed</i>

<i>Line</i>	<i>Commission proposal</i>	<i>EP position</i>	<i>Council partial negotiating mandate</i>	<i>Compromise proposal</i>	<i>Comments</i>
	particular the provision of capacity building programmes in support of development and security for development, including training, mentoring and advice, as well as the provision of equipment, infrastructure improvements and services directly related to that assistance.	particular the provision of capacity building programmes in support of development and security for development, including training, mentoring and advice, as well as the provision of equipment, infrastructure improvements and services directly related to that assistance.	particular the provision of capacity building programmes in support of development and security for development, including training, mentoring and advice, as well as the provision of equipment, infrastructure improvements and services directly related to that assistance.	particular the provision of capacity building programmes in support of development and security for development, including training, mentoring and advice, as well as the provision of equipment, infrastructure improvements and services directly related to that assistance.	
154.	4. Assistance pursuant to this Article shall be provided only:	4. Assistance pursuant to this Article shall be provided only:	4. Assistance pursuant to this Article shall be provided only:	3. Assistance pursuant to this Article shall be provided only:	<i>Provisionally closed</i>
155.	(a) where requirements cannot be met by recourse to non-military actors to adequately reach Union objectives under this Regulation and there is a threat to the existence of functioning State institutions or to the protection of human rights and fundamental freedoms and State institutions cannot cope with that threat; and	(a) where requirements cannot be met by recourse to non-military actors to adequately reach Union objectives under this Regulation and there is a threat to the existence of functioning State institutions or to the protection of human rights and fundamental freedoms and State institutions cannot cope with that threat; and	(a) where requirements cannot be met by recourse to non-military actors to adequately reach Union objectives under this Regulation and there is a threat to the existence of functioning State institutions or to the protection of human rights and fundamental freedoms and State institutions cannot cope with that threat; and	(a) where requirements cannot be met by recourse to non-military actors to adequately reach Union objectives under this Regulation and there is a threat to the existence of functioning State institutions or to the protection of human rights and fundamental freedoms and State institutions cannot cope with that threat; and	<i>Provisionally closed</i>
156.	(b) where a consensus exists between the partner country	(b) where a consensus exists between the partner country	(b) where a consensus exists between the partner country	(b) where a consensus exists between the partner country	<i>Provisionally closed</i>

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	concerned and the Union that military actors are key for preserving, establishing or re-establishing the conditions essential for sustainable development, including in crises and fragile or destabilised contexts and situations.	concerned and the Union that military actors are key for preserving, establishing or re-establishing the conditions essential for sustainable development and that those military actors are not implicated in human rights violations or pose a threat to the functioning of State institutions , including in crises and fragile or destabilised contexts and situations.	concerned and the Union that military actors are key for preserving, establishing or re-establishing the conditions essential for sustainable development, including in crises and fragile or destabilised contexts and situations.	concerned and the Union that military actors are key for preserving, establishing or re-establishing the conditions essential for sustainable development, including in crises and fragile or destabilised contexts and situations.	
157.	5. Union assistance pursuant to this Article shall not be used to finance capacity building of military actors for purposes other than the delivery of development activities and security for development activities. In particular, it shall not be used to finance:	5. Union assistance pursuant to this Article shall not be used to finance capacity building of military actors for purposes other than the delivery of development activities and security for development activities. In particular, it shall not be used to finance:	5. Union assistance pursuant to this Article shall not be used to finance capacity building of military actors for purposes other than the delivery of development activities and security for development activities. In particular, it shall not be used to finance:	4. Union assistance pursuant to this Article shall not be used to finance capacity building of military actors for purposes other than the delivery of development activities and security for development activities. In particular, it shall not be used to finance:	<i>Provisionally closed</i>
158.	(a) recurrent military expenditure;	(a) recurrent military expenditure;	(a) recurrent military expenditure;	(a) recurrent military expenditure;	<i>Provisionally closed</i>
159.	(b) the procurement of arms and ammunition, or any other equipment	(b) the procurement of arms and ammunition, or any other equipment	(b) the procurement of arms and ammunition, or any other equipment	(b) the procurement of arms and ammunition, or any other equipment	<i>Provisionally closed</i>

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	designed to deliver lethal force;	designed to deliver lethal force;	designed to deliver lethal force;	designed to deliver lethal force;	
160.	(c) training which is designed to contribute specifically to the fighting capacity of the armed forces.	(c) training which is designed to contribute specifically to the fighting capacity of the armed forces.	(c) training which is designed to contribute specifically to the fighting capacity of the armed forces.	(c) training which is designed to contribute specifically to the fighting capacity of the armed forces.	<i>Provisionally closed</i>
161.	6. When designing and implementing measures pursuant to this Article, the Commission shall promote ownership by the partner country. It shall also develop the necessary elements and the good practices required to ensure sustainability in the medium and long term and shall promote the rule of law and established international law principles.	6. When designing and implementing applying measures pursuant to this Article, the Commission shall promote ownership by the partner country. It shall also develop the necessary elements and the good practices required to ensure sustainability and accountability in the medium and long term and shall promote the rule of law and established international law principles. <i>The Commission shall ensure that those measures generate direct human security benefits for the population, are integrated into a broader security sector reform policy comprising strong</i>	6. When designing and implementing measures pursuant to this Article, the Commission shall promote ownership by the partner country. It shall also develop the necessary elements and the good practices required to ensure sustainability in the medium and long term and shall promote the rule of law and established international law principles.	5. When designing and {1} measures pursuant to this Article, the Commission shall promote ownership by the partner country. It shall also develop the necessary elements and the good practices required to ensure sustainability and accountability in the medium and long term and shall promote the rule of law and established international law principles.	<i>Provisionally closed pending agreement on governance</i> {1} EP: applying CL: implementing

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		<p><i>democratic and parliamentary oversight and accountability elements, including in terms of improved security service provision, and fit into long-term peace and development strategies designed to address the root causes of conflict. The Commission shall also ensure that actions aimed at reforming military forces contribute to making them more transparent, accountable and compliant with the human rights of those coming under their jurisdiction. For measures aimed at providing partner military forces with equipment, the Commission shall specify the type of equipment to be provided in the context of each measure. The Commission shall apply</i></p>			

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		<i>the provisions specified under Article 8 – paragraph 8 b (new) in order to ensure that this equipment will be used only by its intended beneficiaries.</i>			
162.	7. The Commission shall establish appropriate risk assessment, monitoring and evaluation procedures for measures pursuant to this Article.	7. The Commission shall establish appropriate risk assessment, monitoring and undertake, within the evaluation procedures for measures pursuant to this Article 32, and in particular with regard to a mid-term evaluation, joint evaluations with Member States. The results shall inform programme design and resource allocation, and further enhance the consistency and complementarity of the Union's external action.	7. The Commission shall establish appropriate risk assessment, monitoring and evaluation procedures for measures pursuant to this Article.		<i>Provisionally closed</i> Covered under Art.8.7.c
Article 31: Reporting					
419.	5. The annual report shall contain information relating to the previous year on the measures financed, the results of	5. The annual report shall contain information relating to the previous year on the measures financed, the results of	5. The annual report shall contain information, relating to the previous year on the measures financed, the results of	5. The annual report shall contain information relating to the previous year on the measures financed, the results of	<i>Provisionally closed pending agreement on {1}</i> {1}

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	monitoring and evaluation exercises, the involvement of the relevant partners, and the implementation of budgetary commitments and of payment appropriations broken down by country, region and cooperation sector. It shall assess the results of the Union funding using, as far as possible, specific and measurable indicators of its role in meeting the objectives of this Regulation. In the case of development cooperation, the report shall also assess, where possible and relevant, the adherence to development effectiveness principles, including for innovative financial instruments.	monitoring and evaluation exercises, the involvement and level of cooperation of the relevant partners, and the implementation application of budgetary commitments and of payment appropriations broken down by country, region and cooperation sector. It shall include an assessment of progress made towards expected results and regarding the incorporation of cross-cutting issues as mentioned in Article 8(6). It shall assess the results of the Union funding using, as far as possible, specific and measurable indicators of its role in meeting the objectives of this Regulation. In the case of development cooperation, the report shall also assess, where possible and relevant, the adherence to development	monitoring and evaluation exercises, the involvement of the relevant partners, and broken down by type of entity as referred to in Article 62 of the Financial Regulation for both direct and indirect management, the implementation of budgetary commitments and of payment appropriations broken down by programming document when applicable, country, region and cooperation sector. It shall assess the results of the Union funding using, as far as possible, specific and measurable indicators of its role in meeting to show progress towards the targets and objectives of this Regulation. It shall also present a breakdown on the forms of EU funding as defined in Article 23 of this Regulation. The	monitoring and evaluation exercises, the involvement and level of cooperation of the relevant partners, and broken down by type of entity as referred to in Article 62 of the Financial Regulation for both direct and indirect management, as well as the implementation of budgetary commitments, including contracted amounts, and of payment appropriations, broken down by country, region and cooperation sector. It shall assess the results of the Union funding using, as far as possible, specific and measurable indicators of its role in meeting to show progress towards the targets and objectives of this Regulation, as well as the progress made towards mainstreaming issues referred to in Article 8(6). It shall also present a breakdown on	CL: and on the use of funds dedicated to the incentive-based approach referred to in Article 17 EP: link to discussions on Neighbourhood +

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		effectiveness principles, including for innovative financial instruments.	report shall contain qualitative and quantitative information on the emerging challenges and priorities cushion referred to in Article 15 and on the use of funds dedicated to the incentive-based approach referred to in Article 17. In the case of development cooperation, the report shall also assess, where possible and relevant, the adherence to development effectiveness principles, including for innovative financial instruments.	the forms of EU funding as defined in Article 23 of this Regulation. The report shall contain qualitative and quantitative information including on measures taken pursuant to Article 9 and on the use of the emerging challenges and priorities cushion referred to in Article 15{1}. In the case of development cooperation, the report shall also assess, where possible and relevant, the adherence to development effectiveness principles, including for innovative financial instruments.	
Recitals					
40. ter		<i>(30b) The 2030 Agenda for Sustainable Development, adopted by a Resolution of the United Nations General Assembly on 25 September 2015, underlined the</i>		<i>(30b) The 2030 Agenda for Sustainable Development, adopted by a Resolution of the United Nations General Assembly on 25 September 2015, underlined the</i>	<i>Provisionally closed</i>

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		<i>importance of promoting peaceful and inclusive societies both as a Sustainable Development Goal (SDG) 16 and in order to achieve other development policy outcomes. SDG 16.a specifically requests to ‘Strengthen relevant national institutions, including through international cooperation, for building capacities at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime’.</i>		<i>importance of promoting peaceful and inclusive societies both as a Sustainable Development Goal (SDG) 16 and in order to achieve other development policy outcomes. SDG 16.a specifically requests to ‘Strengthen relevant national institutions, including through international cooperation, for building capacities at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime’.</i>	
40. quater		<i>(30c) In the High Level Meeting Communiqué of 19 February 2016, the Development Assistance Committee of the Organisation for Economic Cooperation and Development updated the reporting directives on Official Development Assistance in the field of peace and</i>		<i>(30c) In the High Level Meeting Communiqué of 19 February 2016, the Development Assistance Committee of the Organisation for Economic Cooperation and Development updated the reporting directives on Official Development Assistance in the field of peace and</i>	<i>Provisionally closed</i>

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		<i>security. The financing of the actions undertaken in accordance with this Regulation constitutes Official Development Assistance when it fulfils the criteria set out in those reporting directives or any subsequent reporting directives, upon which the Development Assistance Committee is able to agree.</i>		<i>security. The financing of the actions undertaken in accordance with this Regulation constitutes Official Development Assistance when it fulfils the criteria set out in those reporting directives or any subsequent reporting directives, upon which the Development Assistance Committee is able to agree.</i>	
40. quin-ques		<i>(30d) The capacity building in support of development and security for development should be used in exceptional cases only, where the objectives of the Regulation cannot be met by other development cooperation activities. Giving support to security sector actors in third countries, including, under exceptional circumstances, the military, in a conflict</i>		<i>(30d) Capacity building in support of development and security for development should be used in exceptional cases only, where the objectives of the Regulation cannot be met by recourse to non-military actors.</i>	<i>Provisionally closed</i>

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		<i>prevention, crisis management or stabilisation context is essential to ensure appropriate conditions for poverty eradication and development. Good governance, effective democratic control and civilian oversight of the security system, including of the military, as well as compliance with human rights and the rule of law principles are essential attributes of a well-functioning State in any context, and should be promoted through a wider security sector reform support to third countries.</i>			
40. sexies		<i>(30e) This Regulation should build on the conclusions of the evaluation by the Commission requested for June 2020, including a wide-ranging, multi-stakeholder public consultation, assessing the coherence of</i>		<i>(30e) This Regulation should build on the experience gained and lessons learned from actions on capacity-building for development and security for development, in particular from relevant consultations and</i>	<i>Provisionally closed</i>

<i>Line</i>	<i>Commission proposal</i>	<i>EP position</i>	<i>Council partial negotiating mandate</i>	<i>Compromise proposal</i>	<i>Comments</i>
		<i>capacity building in support of development and security for development within the security-development nexus funded by the Union and its Member States with the Global Strategy and the UN Sustainable Development Goals.</i>		<i>evaluations, conducted within the framework of Regulation 2017/2306 of 12 December 2017. In this context, Commission should also take into account, where appropriate, joint evaluations with Member States.</i>	
50. bis			<i>(40 bis) Capacity building of military actors in third countries should be undertaken as part of the Union's development cooperation policy when it mainly pursues objectives in the field of development and as part of the Union's CFSP when it mainly pursues objectives in the field of peace and security, in compliance with Article 40 of the Treaty on European Union. This Regulation respects the application of the procedures and the extent of the powers of the institutions under</i>	<i>(40 bis) Capacity building of military actors in third countries should be undertaken as part of the Union's development cooperation policy when it mainly pursues objectives in the field of development and as part of the Union's CFSP when it mainly pursues objectives in the field of peace and security, in compliance with Article 40 of the Treaty on European Union. This Regulation respects the application of the procedures and the extent of the powers of the institutions under</i>	<i>Provisionally closed</i>

<i>Line</i>	<i>Commission proposal</i>	<i>EP position</i>	<i>Council partial negotiating mandate</i>	<i>Compromise proposal</i>	<i>Comments</i>
			<i>the Union's development cooperation policy and the Union's CFSP.</i>	<i>the Union's development cooperation policy and the Union's CFSP.</i>	