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WORKING PAPER

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From:	Presidency
To:	Delegations
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Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing the European Defence Industrial Development Programme - Revised Presidency compromise proposal

With a view to the EDIDP FoP meeting on 29 November 2017, Delegations will find attached a further revised Presidency compromise proposal on the Proposal for a Regulation of the European Parliament and of the Council establishing the European Defence Industrial Development Programme.

This document reflects the outcome of discussions on 28 November.

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing the European Defence Industrial Development Programme aiming at supporting the competitiveness and innovation capacity of the Union's defence industry

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 committed to complement, leverage and consolidate collaborative efforts by Member States in developing defence capabilities to respond to security challenges, as well as to foster a competitive and innovative European defence industry. It proposed in particular to launch a European Defence Fund to support investment in joint research and the joint development of defence equipment and technologies, and to incentivise joint procurement and maintenance. The Fund would support cooperation during the whole cycle of defence product and technology development, thus fostering synergies and cost effectiveness. The objective is to deliver capabilities, ensure a competitive, innovative and balanced basis for Europe's defence industry across the Union, including by cross border cooperation and participation of small and medium-sized enterprises (SMEs)³, and to contribute to greater European defence cooperation, by exploiting synergies and mobilising Union support in addition to Member States' financing.
- (2) In order to contribute to the enhancement of the competitiveness and innovation capacity of the Union's defence industry, a European Defence Industrial Development Programme (hereinafter "the Programme") should be established. The Programme should aim at enhancing the competitiveness of the Union's defence industry inter alia cyber defence by supporting the cooperation between Member States and undertakings, including research centres and universities, in the development phase of defence products and technologies. The development phase, which follows the research and technology phase, 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 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

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (*Official Journal L 124*, 20/05/2003 P. 0036 – 0041).

out in accordance with Article 182 TFEU and it does not cover the production nor the procurement of defence products and technologies.

- (3) Undertakings should be understood as entities engaged in an economic activity regardless of their legal status and the way in which they are financed. For the purpose of this Regulation, an undertaking is established in the Member State in which it is incorporated, in accordance with the national law of that Member State.
- (4) To better exploit economies of scale in the defence industry, the Programme should support the cooperation between undertakings in the development of defence products and technologies. To achieve more innovative solutions and an open internal market, the Programme supports the cross-border participation of SMEs.
- (5) 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.
- (6) 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 17 of the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management⁴, for the European Parliament and the Council during the annual budgetary procedure.
- (7) Without prejudice to the powers of the Budgetary Authority, the overall budget for the implementation of the Programme should be exclusively made available through redeployments under Sub-heading 1a (Competitiveness for growth and jobs) of the Multiannual Financial Framework 2014-2020.
- (8) The Programme should be implemented in full compliance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council⁵. Funding may take in particular the form of grants and, ~~where appropriate, public procurement such as~~ for the provision of studies. Financial instruments could also be used in the future based on the experience of this Programme, notably for the post-2020 European Defence Fund capability window. The Commission ~~will~~ ~~should~~ start the preparatory work, assessment and relevant proposals as soon as possible.
- (9) The Commission may entrust part of the implementation of the programme to entities referred to in Article 58(1) (c) of Regulation (EU, Euratom) No 966/2012.
- (10) After having defined common defence capability priorities at Union level through the Capability Development Plan, also taking into account the Coordinated Annual Review on Defence, and with a view to fulfilling the EU's Level of Ambition as agreed by the Council in its conclusions of 14 November 2016 and endorsed by the European Council on 15 December 2016, 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.
- (11) In case an action supported by the Programme is managed by a project manager, including an international project management organisation such as the Organisation for Joint

⁴ OJ C 373, 20.12.2013, p. 1.

⁵ 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).

Armament Cooperation, appointed by Member States, the Commission should consult 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.

- (12) The Union financial support should not affect the transfer of defence-related products within the Union in accordance with Directive 2009/43/CE of the European Parliament and of the Council⁶, nor the export of products, equipment or technologies, and it should also not affect the discretion of Member States regarding policy on the transfer within the Union and the export of defence related products.
- (13) As the objective of the Programme is to support the competitiveness of the Union defence industry by de-risking the development phase of cooperative projects, actions related to the development of a defence product or technology, namely definition of common technical specifications, design, prototyping, testing, qualification, certification as well as feasibility studies, life-cycle management efficiency and other supporting measures, should be eligible to benefit from it. This will also apply to the upgrade of existing defence products and technologies.
- (14) Given that the Programme aims particularly at enhancing cooperation between undertakings across Member States, an action should be eligible for funding under the Programme only if it is undertaken by a cooperation of at least three undertakings based in at least two different Member States. This experience will be used to assess the possibility of increasing the minimum number of Member States in the context of any future programme.
- (15) Cross-border collaboration between undertakings based in different Member States 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 support under this Programme for actions involving a higher level of technological readiness. Feasibility studies and actions aiming at supporting the creation of a common definition of technical specifications should also be eligible for support under the Programme.
- (16) As the Programme aims at enhancing the competitiveness of the Union's defence industry, only entities established in the Union 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 and subcontractors in actions funded under the Programme should not be located on the territory of third countries. Subcontractors should be understood within the meaning of Article 101(1)(n) of Regulation (EU, Euratom) No 966/2012, **as amended by Regulation (EU, Euratom) 2015/1929 of the European Parliament and of the Council of 28 October 2015.**
- (17) The beneficiaries and their subcontractors should in principle not be subject to control by third countries or third country entities. However, for particular cases where undertakings located in the Union are controlled by a third country or a third country entity, such undertakings can be eligible if the Member State in which they are located provides sufficient assurances that this would not contravene the security and defence interests of the Union and its Member States as established in the framework of the Common Foreign and Security Policy in accordance with Title V of the Treaty on European Union, including in terms of strengthening the European Defence Technological and Industrial Base. For the

⁶ Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community (OJ L 146 10.6.2009, p. 1).

purpose of this Regulation, a third country entity should mean a legal entity established outside the Union or having its executive management structures outside the Union or a legal entity which is under the control of a third country, a national of a third country or of another such third country entity. The control should be defined as the ability to exercise a decisive influence on an undertaking. Beneficiaries should provide before the signature of the funding agreement all relevant information about elements and infrastructure to be used in the action. Member States' concerns regarding security of supply should also be taken into account.

- (18) Eligible actions developed ~~in the framework of the Common Foreign and Security Policy, in particular~~ 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.

Eligible actions developed with a considerable participation of SMEs and middle capitalisation companies (Mid-caps), and in particular cross-border SMEs, that support the opening up of the supply chains, directly contribute to the aims of the programme. Such projects should thus be eligible for an increased funding rate, including to compensate for increased risk and administrative burden. Eligible actions with any SMEs established in Member States other than those where the undertakings in the consortium which are not SMEs are established can benefit from a higher funding rate.

- (19) If a consortium wishes to participate in an eligible action under the Programme and financial assistance of the Union is to take the form of a grant, the consortium should appoint one of its members as a coordinator who will be the principal point of contact with the Commission.
- (20) The promotion of innovation and technological development in the Union defence industry should take place in a manner consistent with the security interests of the Union. Accordingly, the action's contribution to those interests and to the defence capability priorities agreed by Member States within the framework of the Common Foreign and Security Policy 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 (PESCO) will support the implementation of relevant priorities through enhanced cooperation. Where appropriate, regional and international actions, initiatives and priorities, including those in the NATO context, when they serve the Union's security and defence interests and taking into account that unnecessary duplication should be avoided, may also be taken into account whenever they do not exclude the possibility of participation of any EU Member State. **[An action may be in support of cooperation between Member States and third countries.]**
- (21) The Member States' commitment to effectively contribute to the financing of the action should be demonstrated e.g. by a letter of intent by these Member States, in order to ensure that the funded actions are viable.
- (22) In order to ensure that the funded actions will contribute to the competitiveness and efficiency of the European defence industry, they should be market-oriented, demand driven and commercially viable in the medium to long term. Therefore, the fact that Member States already intend to jointly procure the final product or use the technology, possibly in a coordinated way, should be taken into account in the eligibility criteria. In order to support an open internal market, a credible participation of cross-border SMEs, either as members of consortia or as subcontractors, should also be taken into account.

- (23) The financial assistance of the Union under the Programme should not exceed 20% of the eligible cost of the action, within the meaning of Article 126 of Regulation (EU, Euratom) No 966/2012, where it relates to system prototyping which is often the most costly action in the development phase. The totality of the eligible costs could however be covered for other actions in the development phase.
- (24) As the Union support aims at enhancing the competitiveness of the sector and concerns only the specific development phase, it should not have ownership or intellectual property rights over the products or technologies resulting from the funded actions. The applicable intellectual property rights regime will be defined contractually by the beneficiaries. Interested Member States should have the possibility to participate in follow-up cooperative procurement.
- (25) The Commission should establish a multiannual work programme in line with the objectives of the Programme. With a view to ensuring the effective distribution of funding, the work programme should set out the categories of projects to be funded under the Programme, the type of financing and the allocated budget, and the desired categories of eligible actions, including where appropriate the evaluation methodology including weightings and minimum thresholds for the fulfillment of the award criteria.
- (26) The Commission should be assisted in the establishment of the work programme by a committee of Member States (hereinafter "committee"). The Commission should endeavour to find solutions which command the widest possible support within the committee. In this context, the committee may meet in the format of national defence experts to provide specific assistance to the Commission. It is for the Member States to designate their representatives to this committee.
- (27) In light of the Union policy on 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 is of importance that the work programme will reflect and enable open, fair and transparent cross-border access and participation of SMEs, and that therefore a proportion of the overall budget will benefit such actions.
- ~~(2827)~~ In order to benefit from its expertise in the defence sector, and in accordance with the competences attributed to it by the Treaty on European Union, the European Defence Agency should be invited as observer in the committee of Member States. The European External Action Service should also be invited to attend the committee of Member States.
- ~~(2829)~~ The Commission should endeavour to maintain dialogue with **a broad spectrum of Europe's industry, including SMEs and non-traditional suppliers to the defence sector**, to ensure the success of the Programme.
- ~~(2930)~~ As a general rule, 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 (EU, Euratom) No 966/2012 should organise competitive calls as provided for by that Regulation and ensure that the administrative procedures are kept as simple as possible and incur a minimum amount of additional expenses. However, in certain duly justified and exceptional circumstances, Union funding may also be granted in accordance with Article 190 of Commission Delegated Regulation (EU) No 1268/12⁷.
- ~~(3031)~~ After evaluation of the received proposals with the help of independent experts validated upon request by Member States, 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 Council⁸. Member States should be informed of the evaluation results and progress in the funded actions.

- (3132) The examination procedure should be used for the adoption of those implementing acts taking into account their substantial implications for the implementation of this Regulation.
- (3233) The Commission should draw up 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 and Mid-caps 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 Defence Industrial Development Programme (hereinafter "the Programme") for Union action covering the period from 1 January 2019 to 31 December 2020 is hereby established.

Article 2

Objectives

The Programme shall have the following objectives:

- (a) to foster the competitiveness and innovation capacity of the defence industry throughout the Union which contributes to European strategic autonomy by supporting actions in their development phase;
- (b) to support and leverage collaboration between Member States and cross-border cooperation between undertakings throughout the Union, including SMEs **and Mid-caps**, in the development of technologies or products consistent with defence capability priorities commonly agreed by Member States within the framework of the Common Foreign and Security Policy, while improving the agility of supply chains. Where appropriate, regional and international actions, initiatives and priorities, including those in the NATO context, when they serve the Union's security and defence interests as determined under the Common Foreign and Security Policy and taking into account the need to avoid unnecessary duplication, may also be taken into account in this regard whenever they do not exclude the possibility of participation of any Member State;
- (c) to foster better exploitation of the results of defence research and contribute to development after the research phase and thus, to support the competitiveness of the European defence industry on the internal market and the global marketplace, including by consolidation, where appropriate.

Article 3

Budget

⁸ 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 (OJ L 55, 28.2.2011, p. 13).

The financial envelope for the implementation of the Programme for the period from 1 January 2019 to 31 December 2020 shall be EUR 500 million in current prices.

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, in particular grants and **in exceptional circumstances** ~~where appropriate~~ public procurement.
2. The types of financing referred to in paragraph 1 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) (c) of that Regulation.
4. In case a project manager is appointed by Member States, the Commission shall consult the project manager on progress in the project before executing the payment to the eligible beneficiaries.

Article 5

Eligible actions

1. The Programme shall provide support for actions by beneficiaries in the development phase covering both new and the upgrade of existing products and technologies. An eligible action may relate to one or more of the following items:
 - (a) studies such as feasibility studies and other accompanying measures;
 - (b) 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 which may include partial tests for risk reduction in an industrial or representative environment;
 - (c) the system prototyping of a defence product, tangible or intangible component or technology. A system prototype is a model of a product or technology that can demonstrate the element's performance in an operational environment;
 - (d) the testing of a defence product, tangible or intangible component or technology;
 - (e) the qualification of a defence product, tangible or intangible component or technology; qualification is the entire process of demonstrating that the design of a defence product, tangible or intangible component or technology meets the specified requirements. This process provides objective evidence by which particular requirements of a design are demonstrated to have been achieved;
 - (f) the certification of a defence product, tangible or intangible component or technology. Certification is the process according to which a national authority certifies that the defence product, tangible or intangible component or technology complies with the applicable regulations;
 - (g) the development of technologies or assets increasing efficiency across the life cycle of defence products and technologies.
2. The action shall be undertaken in a cooperation of undertakings within a consortium of at least three eligible entities which are established in at least two different Member States.

At least three of these eligible entities established in at least two different Member States shall not be effectively 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. Consortia as defined in Article 8(1) shall offer proof of viability via a demonstration that the remaining costs of the eligible action which are not covered by the Union support will be covered by other means of financing such as Member States' contributions.
5. For actions described in points (c) to (f) of paragraph 1, consortia shall prove their contribution to the competitiveness of the European defence industry through the demonstration that at least two Member States intend to procure the final product or use the technology in a coordinated way, including joint procurement where applicable.
6. When it relates to actions defined under point (b) of paragraph 1, the action must be based on common requirements jointly agreed by at least two Member States. When it relates to actions under points (c) to (f) of paragraph 1, the action must be based on common technical specifications jointly agreed by the Member States that will co-finance or intend to jointly procure the final product or use the technology, as referred to in paragraphs 4 and 5.

Article 6

Eligible entities

1. Beneficiaries shall be public or private undertakings established in the Union.
2. The beneficiaries' and their subcontractors' infrastructure, facilities, assets and resources used for the purposes of the actions funded under the Programme shall be located on the territory of the Union during the entire duration of the action, and their executive management structures shall be established in the Union.
3. For the purposes of the actions funded under the Programme, the beneficiaries and their subcontractors shall not be subject to **exclusive** control by third countries or by third country entities.
4. By derogation from paragraph 3, an undertaking controlled by third countries or by third country entities is eligible if the Member State it is located in provides sufficient assurances, in accordance with its national procedures, that this would not contravene the security and defence interests of the Union and its Member States as established in the framework of the Common Foreign and Security Policy in accordance with Title V of the Treaty on European Union.
5. If there are no competitive substitutes readily available in the Union, and if this usage would not contravene the security and defence interests of the Union and its Member States, beneficiaries and their subcontractors may use assets, infrastructure, facilities and

resources located or held outside the territory of Member States or controlled by third countries. When performing an eligible action, beneficiaries and their subcontractors may also cooperate with undertakings established outside the territory of Member States or **exclusively** controlled by third countries or third country entities, if this would not contravene the security and defence interests of the Union and its Member States. The costs related to these activities shall not be eligible for funding under the Programme.

6. Beneficiaries shall provide before the signature of the funding agreement all relevant information necessary for the assessment of the eligibility criteria.

Article 7

Declaration by consortia

Each consortium wishing to participate in an action 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 8

Consortium

1. A consortium for the purpose of this Regulation is a group of undertakings as defined in Article 5(2) wishing to participate in an action under the Programme, and that meet the eligibility criteria laid down in this Regulation. The beneficiaries that will receive funding pursuant to the award procedure in Article 14 shall also be considered a consortium for the purpose of this Regulation.
2. Where the Union's financial assistance 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.
3. 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 9

Award criteria

Actions proposed for funding under the Programme shall be evaluated on the basis of the following criteria:

- (a) contribution to excellence in particular by showing that the proposed work goes beyond the state of the art by showing significant advantages over existing products or technologies;
- (b) contribution to innovation in particular by showing that the proposed actions include ground-breaking or novel concepts and approaches, new promising future technological improvements or the application of technologies or concepts previously not applied in defence sector;

- (c) contribution to the competitiveness of the European defence industry, in particular by creating new market opportunities ~~throughout the Union~~ and accelerating the growth of companies **throughout the Union**;
- (d) contribution to the industrial autonomy of the European defence industry and to the security and defence interests of the Union in line with defence capability priorities agreed by Member States within the framework of the Common Foreign and Security Policy and, where appropriate, regional and international cooperative agreements;
- (e) the proportion of the overall budget of the action to be allocated to the participation of SMEs established in the Union bringing added value, either as members of the consortium, as subcontractors or as other undertakings in the supply chain, and in particular to SMEs which are established in Member States other than those where the undertakings in the consortium which are not SMEs are established;
- (f) for actions described in points (b) to (e) of Article 5(1), the contribution to the further integration of the European defence ~~sector~~ **industry** through the demonstration by the beneficiaries that Member States intend to jointly use, own or maintain the final product or technology in a coordinated way.

Under points (a) to (c) of this Article, where relevant, contribution to increasing efficiency across the life cycle of defence products and technologies, including cost-effectiveness and the potential for synergies in the procurement and maintenance process, shall be taken into consideration.

Non-fulfilment of any of these criteria shall not be considered eliminatory.

Article 10

Funding rates

1. The financial assistance of the Union provided under the Programme shall not exceed 20% of the eligible cost of the actions defined in Article 5(1)(c). In all the other cases, the assistance may cover up to the eligible cost of the action. The part of the indirect cost to be covered shall be defined in the work programme.
2. If a consortium is developing an action as defined in Article 5(1) ~~which is carried out in the framework of the Common Foreign and Security Policy, in particular~~ in the context of Permanent Structured Cooperation, it may benefit from a funding rate increased by an additional 10 percentage points.
3. If a consortium is developing an action as defined in Article 5(1) and commits to allocate at least 5% of the of the eligible cost of the action to SMEs which are established in the EU, it may benefit from a funding rate increased by percentage points equivalent to the percentage of the cost of the action allocated to SMEs but not exceeding 8 percentage points.
4. If a consortium is developing an action as defined in Article 5(1), it may benefit from a funding rate increased by percentage points equivalent to double the percentage of the cost of the action allocated to SMEs established in Member States other than those where the undertakings in the consortium which are not SMEs are established.
5. If a consortium is developing an action as defined in Article 5(1) and commits to allocate at least 5% of the of the eligible cost of the action to Mid-caps which are established in the Union, it may benefit from a funding rate increased by percentage points equivalent to the percentage of the cost of the action allocated to Mid-caps but not exceeding 8 percentage points.

For the purposes of this Programme and without prejudice to future programmes, Mid-caps should be understood as meaning enterprises having a number of employees up to 3000 where the staff headcount is calculated in accordance with Articles 3, 4, 5 and 6 of the Title I of the Annex to the Commission Recommendation 2003/361/EC and which are not SMEs.

6. If a consortium is developing an action as defined in Article 5(1) and its members are established in more than two Member States, each of which committing to cofinance or jointly procure or use the final product or technology, it may benefit from a funding rate increased by an additional 5 percentage points.
7. **The financial assistance of the Union provided under the Programme, including increased funding rates, shall not cover more than 100% of the eligible cost of the action.**

Article 11

Ownership and Intellectual Property Rights

1. The Union shall not own the products or technologies resulting from the action nor shall it have any intellectual property rights claim pertaining to the action.
2. Final results of actions receiving support from the Programme, including in terms of technology transfer, shall not be subject to restriction by third countries or by third country entities.
3. This Regulation shall not affect the discretion of Member States as regards policy on the export of defence-related products.
4. **If Union assistance is provided in the form of public procurement of a study, all Member States should have the right to a free of charge, non-exclusive license for the use of the study upon their explicit request.**

Article 12

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 shall be invited to provide its views and recommendations. The European External Action Service shall also be invited to attend the committee.

The committee shall be regularly consulted and may which shall meet also in specific special configurations, including to discuss defence aspects. Committee members **shall** ~~should~~ be given early and effective opportunities to examine the draft implementing acts and express their views.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

Article 13

Work programme

1. The Commission, by means of an implementing act, shall adopt a multiannual work programme for the duration of the Programme. This implementing act shall be adopted in accordance with the examination procedure referred to in Article 12(3). 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 categories of projects to be funded under the Programme, the type of financing and the allocated budget, including the maximum funding rates, and the desired categories of eligible actions as defined in Article 5(1), including where appropriate the evaluation methodology including weightings and minimum thresholds for the fulfillment of the award criteria.
3. The work programme shall ensure that at least 10% of the overall budget will benefit the cross-border participation of SMEs; in addition, a specific category of projects dedicated to SMEs shall be established by the work programme.

Article 14

Evaluation and 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 1268/12. Under certain duly justified and exceptional circumstances, Union funding may also be granted in accordance with Article 190 of Commission Delegated Regulation (EU) No 1268/12.
2. The proposals submitted following the call for proposals shall be evaluated by the Commission, assisted by independent experts to be validated upon request by Member States, on the basis of the eligibility and award criteria set out in Articles 5, 6, 7 and 9.
3. The Commission shall award the funding for selected actions after each call or after application of Article 190 of Commission Delegated Regulation (EU) No 1268/12. The Commission shall award 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 12(3).

Article 15

Annual instalments

The Commission may divide budgetary commitments into annual instalments.

Article 16

Monitoring and reporting

1. The Commission shall regularly monitor the implementation of the programme and annually report on the progress made in accordance with Article 38(3)(e) of Regulation (EU, Euratom) No 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, including of SMEs, and Mid-caps, in projects implemented under the

programme as well as the participation of SMEs, and Mid-caps in the global value chain. In addition the report should include information on the origin of beneficiaries and, where possible, the distribution of the generated intellectual property rights.

3. The Commission shall provide an interim report that will include an assessment of the governance of the Programme, implementation rates, project award results including SMEs and Mid-caps involvement and the degree of their cross-border participation, and funding granted in accordance with Article 190 of Commission Delegated Regulation (EU) No 1268/12 as set out in Article 14(1), by 30 July 2019.

Article 17

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 of the amounts wrongly paid and, where appropriate, by effective, proportionate and dissuasive administrative and financial penalties.
2. The Commission or its representatives 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 the Programme.
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 Council⁹ and Council Regulation (Euratom, EC) No 2185/96¹⁰, 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 18

This Regulation shall enter into force on the ~~twentieth~~ **third** 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.

⁹ 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).

¹⁰ 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).

Done at Brussels,

For the European Parliament
The President

For the Council
The President

