



Council of the European Union
General Secretariat

Brussels, 20 October 2022

WK 13003/2022 REV 1 ADD 11

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WORKING DOCUMENT

From:	Presidency
To:	Ad hoc working party on defence industry
Subject:	European defence industry reinforcement through common procurement act (EDIRPA) - Second Presidency compromise proposal - Comments by the Netherlands

Delegations will find enclosed the Dutch comments on the second Presidency compromise proposal on EDIRPA.



Council of the European Union
General Secretariat

Brussels, 14 October 2022

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From:	Presidency
To:	Ad hoc working party on defence industry
Subject:	European defence industry reinforcement through common procurement act (EDIRPA) - Second Presidency compromise proposal

With a view to the AHWP meeting on 17-18 October, delegations will find enclosed, both in clean and track changes format, the second Presidency compromise proposal on EDIRPA.

NL comments

WK 13003/2022 REV 1

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EN



Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on establishing the European defence industry Reinforcement through common
Procurement Act

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(3) 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, Acting

in accordance with the ordinary legislative procedure,

Whereas:

- (1) The EU Heads of State or Government, meeting in Versailles on 11 March, committed to “bolster European defence capabilities” in light of the Russian military aggression against Ukraine. They agreed to increase defence expenditures, step up cooperation through joint projects, and common procurement of defence capabilities, close shortfalls, boost innovation and strengthen and develop the EU defence industry, including SMEs.
- (2) The unjustified invasion of Ukraine by the Russian Federation on 24 February 2022 and the ongoing armed conflict in Ukraine has made it clear that it is critical to act without delay to address the existing shortfalls. It has led to the return of high-intensity warfare and territorial conflict in Europe, requiring a significant increase in the capacity of Member States to fill the most urgent and critical gaps, especially those exacerbated by the transfer of defence products to Ukraine.
- (3) The Commission and the High Representative presented a Joint Communication on “The Defence Investment Gaps Analysis and Way Forward” on 18 May 2022. The Communication highlighted the existence, within the EU, of defence financial, industrial and capability gaps.
- (4) A dedicated short term instrument, designed in a spirit of solidarity, was indicated as a tool to incentivise Member States, on a voluntary basis, to pursue common procurement to fill the most urgent and critical gaps, especially those created by the response to the current Russia’s aggression, in a collaborative way.

¹ OJ C , , p. .

- (5) Such a new instrument will contribute to reinforce common defence procurement and, through the associated Union financing, to strengthen EU defence industrial capabilities.
- (6) Reinforcing the European Defence Technological and Industrial Base (EDTIB) should therefore be at the core of those efforts. Indeed difficulties and gaps still exist and the European defence industrial base remains highly fragmented, lacking sufficient collaborative action and inter-operability of products.
- (6a) The Instrument will be a short-term measure. ~~Possible follow-on programmes should focus on the creation of autonomous European capabilities throughout the whole supply chain and the availability of critical resources with the goal of further building up Member States' defence manufacturing capabilities.~~
- (7) In the current defence market context, marked by an increased security threat and the realistic perspective of a high intensity conflict, Member States are rapidly increasing their defence budgets and aiming at similar purchases. This results in an amount of demand which could exceed European Defence Technological and Industrial Base manufacturing capacities, currently tailored for peace time.
- (8) As a result, strong price inflation can be anticipated, as well as longer delays in delivery time, potentially harming the security of the Union and its Member States. Defence industries need to secure the production capacity necessary to process orders, as well as critical raw materials and sub-components. In this context producers might privilege major orders, potentially leaving exposed the most vulnerable countries, lacking the critical size and financial means to ensure large orders.
- (9) Furthermore, efforts should be made so that the increased spending results in a much stronger European Defence Technological and Industrial Base throughout the Union. Indeed, without coordination and cooperation, the increased national investments are likely to deepen the fragmentation of the European defence industry.
- (10) In the light of the above challenges and the related structural changes, it appears necessary to speed up the adjustment of the EDTIB, to enhance its competitiveness and efficiency, and thereby to contribute to strengthening and reforming Member States' defence industrial capabilities, taking into account relevant initiatives outside of the Union with a view to ensuring coherence of output. Addressing industrial shortfalls should include promptly tackling the most urgent gaps.
- (11) Common investment and defence procurement should in particular be incentivised, as such collaborative actions would ensure that the necessary changes in the EDTIB take place in a collaborative manner, avoiding further fragmentation of the industry.
- (12) To that end a Short Term Instrument for increasing the collaboration of the Member States in the defence procurement phase (the 'Instrument') should be established. It will incentivise Member States to pursue collaborative actions and in particular, when they procure in order to fill these gaps, to do so jointly, increasing the level of interoperability and strengthening and reforming their defence industrial capabilities.
- (13) The Short Term Instrument should offset the complexity and risks associated with such common procurement while allowing economies of scale in the actions undertaken by Member States to reinforce and modernise the EDTIB, increasing thereby the Union's

Commented [A1]: The NL is not in favor of already taking a position on future programs.

capacity resilience and security of supply. Incentivizing common procurement would also result into diminished costs in terms of lifecycle management of the systems. The Instrument shall be accompanied by efforts strengthening the defence and security markets, services and systems with a level-playing-field for suppliers from all EU member states. Common procurement on a Common Market for the EDTIB allows for economies of scale and assures innovation and efficiency in production and technology.

- (14) This Instrument will build on and take into account the work of the Defence Joint Procurement Task Force established by the Commission and the High Representative/Head of Agency, in line with the Joint Communication ‘Defence Investment Gaps Analysis and Way Forward’, to coordinate very short-term defence procurement needs and engage with Member States and EU defence manufacturers to support joint procurement to replenish stocks, notably in light of the support provided to Ukraine.
- (15) The Instrument should ensure coherence with existing collaborative EU defence related initiatives such as the Capability Development Plan (CDP), the Coordinated Annual Review on Defence (CARD), the European Defence Fund (EDF) as well as the Permanent Structured Cooperation (PESCO), and generates synergies with other EU programmes. The Instrument is fully coherent with the ambition of the Strategic Compass.
- (16) As the instrument aims to enhance the competitiveness and efficiency of the Union’s defence industry, to benefit from the instrument, common procurement contracts will need to be placed with contractors or subcontractors which are established in the Union or in associated countries and are not subject to control by non-associated third countries or by non-associated third-country entities. In that context, control of a contractor or subcontractor should be understood to be the ability to exercise a decisive influence on a contractor or subcontractor directly, or indirectly through one or more intermediate legal entities. Additionally, in order to ensure the protection of security and defence interests of the Union and its Member States, the infrastructure, facilities, assets and resources of the contractors and subcontractors involved in the common procurement which are used for the purposes of the common procurement shall be located on the territory of a Member State or of an associated country.
- (17) In certain circumstances, it should be possible to derogate from the principle that contractors and subcontractors involved in a common procurement supported by the Instrument are not subject to control by non-associated third countries or non associated third-country entities. In that context, a contractor or subcontractor established in the Union or in an associated country and controlled by a non-associated third country or a non-associated third country entity may participate as contractor or subcontractor involved in the common procurement if strict conditions relating to the security and defence interests of the Union and its Member States, as established in the framework of the Common Foreign and Security Policy pursuant to Title V of the Treaty on European Union (TEU), including in terms of strengthening the European Defence Technological and Industrial Base, are fulfilled.
- (18) Furthermore, the common procurement procedures and contracts shall also include a requirement for the defence product to not be subject to control or restriction by a nonassociated third country or a non-associated third country entity.

Commented [A2]: Should be brought in line with art. 8 when there is agreement on the text.

- (19) Grants under the Instrument should take the form of financing not linked to cost based on the achievement of results by reference to work packages, milestones or targets of the common procurement process, in order to create the necessary incentive effect.
- (20) The Commission should determine the funding priorities and the applicable funding conditions in the work programme.
- (21) To generate the incentive effect, the level of Union contribution for each action should be able to be differentiated based on ~~the estimated value, factors such as the complexity of the common procurement, the characteristics of the cooperation~~ or the number of participating Member States or associated countries or the inclusion of additional Member States or associated countries to existing cooperations.
- (22) Member States should appoint a procurement agent to conduct a common procurement on their behalf. The procurement agent should be a contracting authority established in a Member State or an associated country, including international organisations or Union agencies.
- (23) In accordance with Article 193(2) of the Financial Regulation, a grant may be awarded for an action which has already begun, provided that the applicant can demonstrate the need for starting the action prior to signature of the grant agreement. However, financial contribution should not cover a period prior to the date of submission of the grant application, except in duly justified exceptional cases. In order to avoid any disruption in Union support which could be prejudicial to the interests of the Union, it should be possible to provide in the financing decision for financial contributions to actions that cover a period from the 24 February 2022, even if they have started before the grant application was submitted.
- (23a) This Regulation is without prejudice to the rules laid down in particular by Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security. However, this Regulation provides for more specific eligibility requirements in Article 8.
- (24) Regulation (EU, Euratom) No 2018/1046 (the 'Financial Regulation') applies to this Programme. It lays down rules on the implementation of the Union budget, including the rules on grants.
- (25) This Regulation lays down a financial envelope for the Fund for the period from the entry into force of this Regulation to 31 December 2024, which is to constitute the prime reference amount, within the meaning of point 18 of the Inter-institutional Agreement of 16 December 2020 between the European Parliament, the Council and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources² (Interinstitutional Agreement of 16 December

Commented [A3]: Suggestion to bring more in line with proposal for art. 6(a)

Commented [A4]: Streamline with new art. 8 tekst.

² OJ L 433I, 22.12.2020, p. 28.

2020), for the European Parliament and for the Council during the annual budgetary procedure.

- (26) In accordance with the Financial Regulation, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council³, Council Regulation (Euratom, EC) No 2988/95⁴, Council Regulation (Euratom, EC) No 2185/96⁵ and Council Regulation (EU) 2017/1939⁶, the financial interests of the Union are to be protected through proportionate measures, including the prevention, detection, correction and investigation of irregularities and fraud, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, the imposition of administrative sanctions. In particular, in accordance with Regulation (EU, Euratom) No 883/2013 and Regulation (Euratom, EC) No 2185/96 the European Anti-Fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. In accordance with Regulation (EU) 2017/1939, the European Public Prosecutor's Office (EPPO) may investigate and prosecute fraud and other illegal activities affecting the financial interests of the Union as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council⁷. In accordance with the Financial Regulation, any person or entity receiving Union funds is to fully cooperate in the protection of the Union's financial interests, to grant the necessary rights and access to the Commission, OLAF, the EPPO and the European Court of Auditors (ECA) and to ensure that any third parties involved in the implementation of Union funds grant equivalent rights.
- (27) Pursuant to Article 94 of Council Decision 2013/755/EU⁸, persons and entities established in overseas countries and territories (OCTs) are eligible for funding subject to the rules and objectives of the Instrument and possible arrangements applicable to the Member State to which the relevant overseas country or territory is linked.
- (27a) In accordance with Article 4(2) TEU, national security remains the sole responsibility of each Member State. Member States determine among themselves the arrangements applicable to the protection of classified information for the purposes of the common procurements, in accordance with national laws and regulations
- (27b) The Commission protects EU classified information in accordance with the security rules set out in Decision (EU, Euratom) 2015/444. In line with Agreement 2011/C 202/05 and

³ 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 L248, 18.9.2013, p. 1).

⁴ Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.95, p.1).

⁵ 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 L292, 15.11.96, p.2).

⁶ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L283, 31.10.2017, p.1).

⁷ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

⁸ Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union (Overseas Association Decision) (OJ L 344, 19.12.2013, p. 1).

Council Decision 2013/488/EU, Member States provide an equivalent degree of protection to EU classified information to that provided by the security rules of the Council set out in Council Decision 2013/488/EU.

- (27c) This Regulation is without prejudice to Member States' discretion as regards their policy on the export of defence-related products.
- (28) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

HAVE ADOPTED THIS REGULATION:

Article 1
Subject matter

This Regulation establishes an instrument for the reinforcement of the European defence industry through common procurement (the 'Instrument'), for the period from the entry into force of this Regulation to 31 December 2024.

Article 2
Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) '**common procurement**' means a procurement jointly conducted by Member States;
- (2) '**control** of a contractor or subcontractor' means the ability to exercise a decisive influence on a contractor or subcontractor directly, or indirectly through one or more intermediate legal entities;
- (3) '**executive management structure**' means a body of a legal entity, appointed in accordance with national law, and, where applicable, reporting to the chief executive officer, which is empowered to establish the legal entity's strategy, objectives and overall direction, and which oversees and monitors management decision-making;
- (4) '**non-associated third-country entity**' means a legal entity that is established in a nonassociated third country or, where it is established in the Union or in an associated country, that has its executive management structures in a non-associated third country;
- (5) '**procurement agent**' means a contracting authority established in a Member State or an associated country, including international organisations or Union agencies, designated by Member States to conduct a common procurement on their behalf;

(6) ‘**defence products**’ means the equipment, supplies and other hard- or software needed to meet Member States’ defence requirements, including dual-use goods, services and all related works necessary for their lifecycle.

(7) ‘**classified information**’ means information or material, in any form, the unauthorised disclosure of which could cause varying degrees of prejudice to the interests of the Union, or of one or more of the Member States, and which bears an EU classification

marking or a corresponding classification marking, as established in the Agreement between the Member States of the European Union, meeting within the Council, regarding the protection of classified information exchanged in the interests of the European Union.

(8) ~~‘**sensitive information**’ means unclassified information and data that is to be protected~~

Objectives

1. The Instrument has the following objectives:
 - (a) to foster the competitiveness and efficiency of the European Defence Technological and Industrial Base (EDTIB), including SMEs, for a more resilient Union, in particular by speeding up, in a collaborative manner, the adjustment of industry to structural changes, including the creation and rampup of manufacturing capacities, thereby allowing the EDTIB to provide the defence products needed by Member States;
 - (b) to foster cooperation in defence procurement process between Member States in order to contribute to solidarity, interoperability and the prevention of crowding-out effects, to avoid fragmentation and to increase the effectiveness of public spending.
2. The objectives shall be pursued with an emphasis on strengthening and developing the EDTIB throughout the Union to allow it to address in particular the most urgent and critical defence products needs, especially those revealed or exacerbated by the response to the Russian aggression against Ukraine, including shipment of defence products to Ukraine, considering the work of the Defence Joint Procurement Task Force.

Article 4

Budget

1. The financial envelope for the implementation of the Instrument for the period from the entry into force of this Regulation to 31 December 2024 shall be EUR 500 million in current prices.
2. The amount referred to in paragraph 1 may be used for technical and administrative assistance for the implementation of the Instrument, such as preparatory, monitoring, control, audit and evaluation activities including corporate information technology systems.
3. Resources allocated to Member States under shared management may, at their request, be transferred to the Instrument subject to the conditions set out in the relevant

Commented [A5]: Sensitive information is not an official classification of information. This should not be used in the text.

provisions of the Common Provisions Regulation for 2021-2027. The Commission shall implement those resources directly in accordance with point (a) of the first subparagraph of Article 62(1) of Regulation (EU, Euratom) No 2018/1046

(the 'the Financial Regulation'). Those resources shall be used for the benefit of the Member State concerned.

4. Budgetary commitments for activities extending over more than one financial year may be broken down over several years into annual instalments.

Article 5 Associated countries

The Instrument shall be open to the participation of members of the European Free Trade Association which are members of the European Economic Area (associated countries), in accordance with the conditions laid down in the Agreement on the European Economic Area.

Article 6 Implementation and forms of EU funding

1. The Instrument shall be implemented in direct management in accordance with the Financial Regulation.
2. The EU funding shall incentivize the cooperation between Member States to fulfil the objectives referred to in Article 3. The financial contribution shall be set up taking into consideration the collaborative nature of the common procurement plus an appropriate amount to create the incentive effect necessary to induce cooperation.
3. Where necessary for the implementation of an action, financial contributions may cover a period prior to the date of the request for financial contributions for that action, provided that the action has not started prior to the 24 February 2022.
4. Grants implemented under direct management shall be awarded and managed in accordance with Title VIII of the Financial Regulation.

Article 6a Use of financing not linked to costs

1. Grants shall take the form of financing not linked to costs referred to in Article 180(3) of the Financial Regulation. ~~The work programme shall set out:~~

- ~~7.2.~~ The level of Union contribution attributed to each action may be defined based on factors such as:

- (a) ~~the complexity of the common procurement, for which a proportion of the estimated value of the procurement contract, based on experience gained in similar actions, may serve as an initial proxy; or~~

Commented [A6]: Suggestion to make it less complicated.

(b) ~~the activities of cooperation which directly or indirectly concern the maintenance and modernization of additional Member States or associated countries to existing cooperations.~~

Commented [A7]: This might be very difficult to quantify. Suggest to delete.

2a. The Union financial contribution shall be capped at 15 per cent of the estimated value of the procurement contract per consortium of Member States.

8. ~~The Commission decision approving the work programme referred to in Article 11 shall set out all the elements listed in paragraph 1.~~

Commented [A8]: Redundant with the transfer of the work program elements to art. 11.

Eligible actions

1. Only actions fulfilling all of the following criteria shall be eligible for Union funding under the Instrument:

- (a) the actions shall involve cooperation between eligible entities, as referred to in Article 9, for common procurement addressing the most urgent and critical defence products needs as referred to in Article 3 paragraph 2 and implementing the objectives of the Instrument;
- (b) the actions shall involve new cooperation or an extension of existing cooperation to at least one new Member State or associated country;
- (c) the actions involving new cooperation or an extension of existing cooperation shall be carried out by a consortium of at least three Member States;
- (d) the actions shall fulfil the additional conditions as set out in Article 8.

2. The following actions shall not be eligible for funding:

- (a) actions for common procurement of goods or services which are prohibited by applicable international law;
- (b) actions for common procurement of lethal autonomous weapons without the possibility for meaningful human control over selection and engagement decisions when carrying out strikes against humans.

Article 8

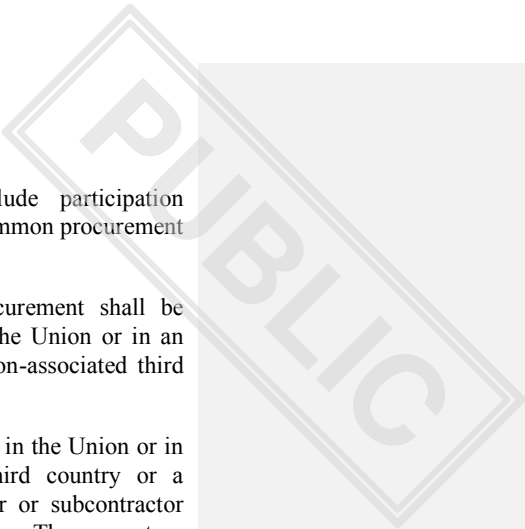
Additional eligibility conditions

1. Member States or associated countries shall appoint a procurement agent to act on their behalf for the purpose of the common procurement. The procurement agent shall carry out the procurement procedures and conclude the resulting contracts with contractors on behalf of the Member States and associated countries participating in the common procurement.

2. The procurement procedures referred to in paragraph 1 shall be based on an agreement to be signed by the participating Member States with the procurement agent under the conditions set out in the work programme referred to in Article 11.

Commented [A9]: The NL supports the DEU proposal for art. 8.

In addition: NL would be in favor of maintaining the reference to the standardized template.

- 
3. Common procurement procedures and contracts shall include participation requirements for contractors and subcontractors involved in the common procurement as referred to in paragraphs 4 to 10.
 4. Contractors and subcontractors involved in the common procurement shall be established and have their executive management structures in the Union or in an associated country. They shall not be subject to control by a non-associated third country or by a non-associated third country entity.
 5. By way of derogation from paragraph 4, a legal entity established in the Union or in an associated country and controlled by a non-associated third country or a nonassociated third country entity may participate as contractor or subcontractor involved in the common procurement only if it provides guarantees. The guarantees shall provide assurances that the involvement of the contractor or subcontractor involved in the common procurement does not contravene the security and defence interests of the Union and its Member States as established in the framework of the CFSP pursuant to Title V of the TEU, or the objectives set out in Article 3.
 6. The guarantees as referred to in paragraph 5 shall be based on a standardized template provided by the Commission, and shall be part of the tender specifications, to ensure a harmonised use throughout the European Union. The guarantees shall in particular substantiate that, for the purposes of the common procurement, measures are in place to ensure that:
 - (a) control over the contractor or subcontractor involved in the common procurement is not exercised in a manner that restrains or restricts its ability to carry out the order and to deliver results and;
 - (b) access by a non-associated third country or by a non-associated third-country entity to sensitive information relating to the common procurement is prevented and, where relevant, the employees or other persons involved in the common procurement have a national security clearance issued by a Member State, in accordance with national laws and regulations.
 7. The procurement agent shall provide to the Commission a notification on the guarantees received. The guarantees and related provisions in the procurement contract shall be made available to the Commission upon request. The Commission shall inform the committee referred to in Article 14 of any notification provided in accordance with this paragraph.
 8. The infrastructure, facilities, assets and resources of the contractors and subcontractors involved in the common procurement which are used for the purposes of the common procurement shall be located on the territory of a Member State or of an associated country. Where no competitive substitutes are readily available in the Union or in an associated country, contractors and subcontractors involved in the common procurement may use their assets, infrastructure, facilities and resources located or held outside the territory of the Member States or of the associated third countries provided that such use does not contravene the security and defence interests of the Union and its Member States and is consistent with the objectives set out in Article 3.

9. Common procurement procedures and contracts shall also include a requirement for the defence product to not be subject to a restriction by a non-associated third country or a non-associated third country entity directly, or indirectly through one or more intermediary legal entities, that limits Member States' ability to use it.
10. For the purposes of this Article, 'subcontractors involved in the common procurement' means all of the following:
- (a) subcontractors with a direct contractual relationship to a contractor;
 - (b) other subcontractors to which at least [x] % of the value of the contract is allocated;
 - (c) subcontractors which may require access to classified information in order to carry out the common procurement.

Article 9
Eligible entities

Provided that they comply with the eligibility criteria set out in Article 197 of the Financial Regulation, entities eligible for funding are:

- (a) public authorities of Member States;
- (b) public authorities of associated third countries;
- (c) procurement agents as referred to in Article 2 paragraph 5.

Article 10
Award criteria

1. The Commission shall evaluate the proposals submitted on the basis of the following award criteria:
- (a) the number of Member States or associated countries participating in the common procurement;
 - ~~(b) the demonstration of the action's contribution to strengthening and developing the EDTIB to allow it to address in particular the most urgent and critical defence products needs as referred to in Article 3, including with respect to delivery lead times, availability and supply;~~
 - (c) the demonstration of the action's contribution to strengthening and developing the EDTIB to allow it to address in particular the most urgent and critical defence products needs as referred to in Article 3, including with respect to delivery lead times, availability and supply;

~~(e) —~~

- (e) ~~the participation and cross border market access of SMEs as well as opening of supply chains for sub-suppliers throughout the Union~~ cross-border cooperation between contractors and subcontractors;
- (f) the demonstration of the action's contribution to solidarity between Member States, including through the replenishment of stocks that have been depleted as a result of the response to the unprovoked and unjustified military aggression against Ukraine;
- (g) the estimated value of the common procurement;
- (h) quality and efficiency of the plans for carrying out of the action;
- (i) ~~the proposals already submitted or the funding awarded under this Regulation, while applying the principles of equal treatment, solidarity, proportionality and transparency.~~

Commented [A11]: Suggestion to put more focus on the cross border access and opening of supply chains.

Commented [A12]: Unclear and no added value.

Article 11 *Work programme*

1. The Instrument shall be implemented through a single multiannual work programme as referred to in Article 110 of the Financial Regulation.
2. The Commission shall, by means of an implementing act, adopt the work programme referred to in paragraph 1. The implementing act shall be adopted in accordance with the examination procedure referred to in Article 14 paragraph 3.
3. The work programme shall set out:
 - a the funding priorities concerned, a description of actions involving cooperation for common procurement with a view to addressing the most urgent and critical needs and the estimated value of the common procurement;
 - b the overall amount of the Union contribution for each funding priority concerned;
 - c the minimum value of each joint procurement action and determine the indicative amount of financial support for actions carried out by the minimum number of Member States
 - d a description of the milestones, designed in such a way as to mark substantial progress in implementing the respective action or the results to be achieved, as well as the associated amounts for disbursement;
 - e the arrangements for verification of the milestones and of the fulfilment of conditions or achievement of results; and
 - f the methods for determination and adjustment of the amounts, where applicable.

Article 12

Monitoring and reporting

1. The Commission shall draw up an evaluation report for the Instrument not later than 31 December 2025 and submit it to the European Parliament and to the Council. The report shall evaluate the impact and effectiveness of the actions taken under the Instrument.
2. The report shall build on consultations of Member States and key stakeholders and shall, in particular, assess the progress made towards the achievement of the objectives set out in Article 3.

Article 12a

Application of the rules on classified information

1. Member States shall determine among themselves the arrangements applicable to the protection of classified information for the purposes of the common procurement, in accordance with national laws and regulations.
2. The Commission shall protect EU classified information received in relation to the Instrument in accordance with the security rules set out in Decision (EU, Euratom) 2015/444.
3. The Commission shall set up a secured exchange system in order to facilitate the exchange of sensitive information and classified information respectively between the Commission and the Member States and associated countries and, where appropriate, with the applicants and the recipients. That system shall take into account the Member States' national security regulations.

Article 13

Information, communication and publicity

1. Without prejudice to applicable Union or national laws and regulations for the protection of sensitive and classified information, the recipients of Union funding shall acknowledge the origin and ensure the visibility of the Union funding (in particular when promoting the actions and their results) by providing coherent, effective and proportionate targeted information to multiple audiences, including the media and the public.
2. The Commission shall implement information and communication actions relating to the Instrument, and its actions and results. Financial resources allocated to the Instrument shall also contribute to the corporate communication of the political priorities of the Union, as far as they are related to the objectives referred to in Article 3.

Article 14

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. The European Defence Agency shall be invited to provide its views and expertise to the committee as an observer. The European External Action Service shall also be invited to assist in the committee.
3. 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 15
Entry into force

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

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

