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WORKING DOCUMENT

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

Delegations will find attached, both in clean and track changes format, a Presidency compromise on chapters I, II and V of the Commission proposal on EDIP.

WK 7226/2024 INIT

LIMITE

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing the European Defence Industry Programme and a framework of measures to ensure the timely availability and supply of defence products ('EDIP')

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114(1), Article 173(3), Article 212(2) and Article 322(1) thereof,
Having regard to the proposal from the European Commission,
After transmission of the draft legislative act to the national parliaments,
Having regard to the opinion of the European Economic and Social Committee¹,
Having regard to the opinion of the European Court of Auditors²,
Acting in accordance with the ordinary legislative procedure,
Whereas:

- (1) The Heads of State or Government of the Union, meeting in Versailles on 11 March 2022, committed to “bolster European defence capabilities” in light of Russia’s unprovoked and unjustified war of aggression against Ukraine. They agreed to increase defence expenditures, step up cooperation through joint projects and common procurement of defence capabilities, close shortfalls, boost innovation and strengthen and develop the EU defence industry, including through establishing a European Defence Industry Programme (the ‘Programme’).
- (2) The long-term deterioration of regional and global threat levels requires a step-change in the scale and speed with which Europe’s defence technological and industrial base (EDTIB) can develop and produce the full spectrum of military capabilities. The return of high-intensity warfare and territorial conflict to Europe has a negative impact on the security of the Union and the Member States and requires a significant increase in the capacity of Member States to reinforce their defence capabilities.
- (3) On 14 and 15 December 2023, the European Council, in its conclusions, having considered work carried out to implement the Versailles declaration and the Strategic Compass for Security and Defence, underlined that more needs to be done to fulfil the Union’s objectives of increasing defence readiness. To achieve such a readiness and defend the Union, a strong defence industry is a pre-requisite, making the European defence industry more resilient, innovative and competitive.

¹ OJ C , , p. .

² OJ C , , p. .

- (4) The Commission and the High Representative of the Union for Foreign Affairs and Security Policy presented a Joint Communication on the Defence Investment Gaps Analysis and Way Forward on 18 May 2022 highlighting the existence, within the Union, of defence financial, industrial and capability gaps. On 18 October 2023 a Regulation (EU) 2023/2418 of the European Parliament and the Council³ was adopted establishing an instrument for the reinforcement of the European defence industry through common Procurement (EDIRPA), aimed at supporting collaboration between Member States in the procurement phase to fill the most urgent and critical gaps, especially those created by the response to Russia's war of aggression against Ukraine, in a collaborative way. On 20 July 2023 a Regulation (EU) 2023/1525 of the European Parliament and the Council⁴ supporting ammunition production (ASAP) was adopted, aimed at urgently supporting the ramp-up of manufacturing capacities of the European defence industry, secure supply chains, facilitate efficient procurement procedures, address shortfalls in production capacities and promote investments.
- (5) EDIRPA and ASAP were designed as emergency response and short-term programmes, both expiring in 2025 (30 June 2025 for ASAP and 31 December 2025 for EDIRPA). The Programme should build on EDIRPA and ASAP achievements and extend their logic until 2027, by providing financial support for the reinforcement of the EDTIB, in a predictable, continuous and timely manner on the basis of an integrated approach. In the light of the current security situation, it appears necessary to extend the Union support a broader scope of defence equipment including consumables such as unmanned systems that play a decisive role in the war theatre in Ukraine.
- (6) The European Council of 23 June 2022 decided to grant the status of candidate country to Ukraine, which expressed a strong will to link reconstruction with reforms on its European path. In December 2023, EU leaders decided to open accession negotiations with Ukraine. On 15 December 2023, the European Council declared that the Union and Member States remain committed to contributing, for the long term and together with partners, to security commitments to Ukraine, which will help Ukraine to defend itself, resist destabilization efforts and deter acts of aggression in the future. Strong support to Ukraine is a key priority for the Union and an appropriate response to the Union's strong political commitment to support Ukraine for as long as necessary.
- (7) The damage from Russia's war of aggression to the Ukrainian economy, society and infrastructure, and in particular damage caused to the Ukraine defence technological and industrial base (Ukrainian DTIB) require comprehensive support to rebuild the latter. This is essential in order to provide the capacity to the Ukrainian State to maintain its essential functions and allow the fast recovery, reconstruction and modernisation of the country and foster its integration into the European Defence Equipment Market. A strong Ukrainian DTIB is vital for Ukraine's long-term security as well as its reconstruction.

³ Regulation (EU) 2023/2418 of the European Parliament and of the Council of 18 October 2023 on establishing an instrument for the reinforcement of the European defence industry through common procurement (EDIRPA) (OJ L, 2023/2418, 26.10.2023, ELI: <http://data.europa.eu/eli/reg/2023/2418/oj>).

⁴ Regulation (EU) 2023/1525 of the European Parliament and of the Council of 20 July 2023 on supporting ammunition production (ASAP) (OJ L 185, 24.7.2023, p. 7, ELI: <http://data.europa.eu/eli/reg/2023/1525/oj>).

- (8) In this regard actions supporting the reinforcement of the Ukrainian defence technological and industrial base should be financed. This support is complementary to that provided under the Ukraine Facility as well as military support provided to Ukraine under the European Peace Facility and through bilateral assistance by Member States.
- (9) Russia must be held fully accountable and pay for the massive damage caused by its war of aggression against Ukraine, which constitutes a blatant violation of the Charter of the United Nations. The Union and its Member States should, in close cooperation with other international partners, continue to work towards this goal, in accordance with Union and international law, taking into account Russia's serious breach of the prohibition on the use of force enshrined in Article 2(4) of the Charter of the United Nations and the principle of State responsibility for internationally wrongful acts, including the obligation to compensate for the financially assessable damage caused. It is important that, inter alia, progress is made, in coordination with international partners, on how extraordinary revenues held by private entities stemming directly from immobilised Russian assets could be directed to support Ukraine, including its defence technological and industrial base, in a manner that is consistent with applicable contractual obligations and in accordance with Union and international law. If the Council were to adopt a CFSP decision under Article 29 TEU upon a proposal by the High Representative to transfer to the Union extraordinary cash balances of central securities depositories arising from the unexpected and extraordinary revenues from Russia's immobilised sovereign assets, such additional support could be drawn from these revenues, in line with the objectives of the Union's Common Foreign and Security Policy.
- (10) A Framework agreement should be concluded with Ukraine to set up the principles of the cooperation between the Union and Ukraine under this Regulation. Grant agreements or joint procurement should also be concluded with Ukraine and legal entities established in Ukraine to define conditions for releasing funds.
- (11) To fund the actions that aim at strengthening the competitiveness, responsiveness and ability of the EDTIB based on Article 173 TFEU and the actions of cooperation with Ukraine for reinforcement of the Ukrainian DTIB under Article 212 TFEU, this Regulation should establish common objectives, common financial mechanisms while clearly distinguishing two budget lines corresponding to each of the objectives pursued as well as establish a Programme setting out the conditions for Union financial support under Article 173 TFEU and an Ukraine Support Instrument setting out the specific conditions for Union financial support under Article 212 TFEU.
- (12) This Regulation lays down a financial envelope for the entire duration of the Programme which is to constitute the prime reference amount, within the meaning of point 18 of the Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, for the European Parliament and the Council during the annual budgetary procedure.
- (13) The possibilities provided for in Article 73(4) of Regulation (EU) 2021/1060 of the European Parliament and of the Council could be applied provided that the project complies with the rules set out in that Regulation and the scope of the European Regional Development Fund and the European Social Fund Plus as set out in Regulations (EU) 2021/1058 and (EU) 2021/1057 of the European Parliament and of

the Council, respectively. This could, in particular, be the case where the production of relevant defence products faces specific market failures or suboptimal investment situations in the Member States' territories, notably in vulnerable and remote areas, and such resources contribute to the achievement of the objectives of the programme from which they are transferred. In line with Article 24 of Regulation (EU) 2021/1060, the Commission is to assess the amended programmes submitted by the Member State and make observations within two months of the submission of the amended programme.

- (14) In view of the need invest better and together in defence capabilities of the Member States and associated countries as well as in the recovery, reconstruction and modernisation of Ukraine's defence industrial base, it should be possible for Member States, third countries, international organisations, international financial institutions or other sources to contribute to the implementation of the Programme. Such contributions should be implemented in accordance with the same rules and conditions and should constitute external assigned revenue within the meaning of Article 21(2)(a)(ii), (d), and (e) of the Regulation (EU, Euratom) No 2018/1046. In addition, Member States should be able to use the flexibility in the implementation of their shared management allocations offered by Regulation (EU) 2021/1060 of the European Parliament and the Council. It should therefore be possible to transfer certain levels of funding between shared management allocations and the Programme subject to the conditions set out in the relevant provisions of Regulation (EU) 2021/1060 of the European Parliament and the Council. Uncommitted resources at the latest in 2028 may be transferred back to one or more respective source programmes, at the request of the Member State, in accordance with the conditions set out in the relevant provisions of Regulation (EU) 2021/1060.
- (15) As the Programme aims to enhance the competitiveness and efficiency of the Union's and Ukraine's defence industry, to benefit from the Programme, recipients of financial support should be legal entities which are established in the Union, in associated countries or in Ukraine and which are not subject to control by non-associated third countries, other than Ukraine or by, non-associated third-country entities. Where Member States, associated countries or Ukraine are the recipients of the financial support, in particular for common procurement actions, these rules should apply *mutatis mutandis* for the contractors or subcontractors to the procurement contracts. In that context, control should be understood to be the ability to exercise a decisive influence on a legal entity directly, or indirectly through one or more intermediate legal entities. Additionally, in order to ensure the protection of essential security and defence interests of the Union and its Member States, the infrastructure, facilities, assets and resources of the legal entities involved in the actions which are used for the purposes of the action should be located on the territory of a Member State, of an associated country or of Ukraine.
- (16) In certain circumstances, it should be possible to derogate from the principle that legal entities involved in an action supported by the Programme are not subject to control by non-associated third countries or non-associated third-country entities. In that context, a legal entity established in the Union or in an associated third country and controlled by a non-associated third country or a non-associated third country entity may participate as recipient if strict conditions relating to the security and defence interests of the Union and its Member States, as established in the framework of the Common Foreign and Security Policy pursuant to Title V of the Treaty on European Union

(TEU), including in terms of strengthening the European Defence Technological and Industrial Base, are fulfilled.

- (17) Furthermore, the defence products subject to actions supported by the Programme should not be subject to control or restriction by a non-associated third country or a non-associated third country entity.
- (18) Given the specificities of the defence industry, where demand comes almost exclusively from States, which also control all acquisition of defence-related products and technologies, including exports, the functioning of the defence industry sector does not follow the conventional rules and business models that govern more traditional markets. The industry does not therefore engage in substantial self-funded industrial investments but only does so as a consequence of firm orders. While firm orders from Member States are a precondition for any investment, the Commission can intervene by offsetting the complexity of cooperation for common procurement and de-risking industrial investments via grants and loans allowing a faster adaptation to ongoing structural market change. As a general rule, Union support should cover up to 100% of direct eligible costs or 100% of the amount determined for actions applying the financing not linked to costs option. The Union support for industry reinforcement actions should cover up to 50 % of direct eligible costs in order to enable recipients to implement actions as soon as possible, to de-risk their investment and therefore to speed up the availability of relevant defence products.
- (19) The Programme should provide financial support, via means provided for in the Regulation (EU, Euratom) No 2018/1046, to actions contributing to the timely availability and supply of defence products such as cooperation for common procurement of public authorities, industrial coordination and networking activities including reservation and stockpiling of defence products, access to finance for undertakings involved in the manufacturing of relevant defence products, reservation of manufacturing capacities ('ever warm facilities'), industrial processes of reconditioning of expired products, expansion, optimisation, modernisation, upgrading or repurposing of existing, or the establishment of new, production capacities in that field as well as the training of personnel.
- (20) Grants under the Programme may take the form of financing not linked to cost based on the achievement of results by reference to work packages, milestones or targets of the common procurement process, in order to create the necessary incentive effect.
- (21) Where the Union grant takes the form of financing not linked to costs, the Commission should determine in the work programme the funding conditions for each action, in particular (a) a description of action involving cooperation for common procurement with a view to addressing the most urgent and critical capacity needs, (b) the milestones for the implementation of the action and (c) the maximum Union contribution available.
- (22) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission with respect to the adoption of work programmes to set out the funding priorities and the applicable funding conditions. The specificities of the defence sector, in particular the responsibility of Member States, associated countries or Ukraine for the planning and acquisition process, should be taken into account. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

- (23) In accordance with Article 193(2) of the Regulation (EU, Euratom) No 2018/1046, a grant may be awarded for an action which has already begun, provided that the applicant can demonstrate the need for starting the action prior to signature of the grant agreement. However, costs incurred prior to the date of submission of the grant application are not eligible, except in duly justified exceptional cases. In order to enable continuity of funding perspective for actions that could have been supported by 2024 funding under ASAP and EDIRPA, in the financing decision it should be possible to provide for financial contributions in relation to actions that cover a period starting from 5 March 2024.
- (24) When assessing proposals submitted by applicants, the Commission should pay particular attention to their contribution to the objectives of the Programme. The proposals should be assessed, in particular, against their contribution to the increase in defence industrial readiness, in particular increasing production capacities and eliminating bottlenecks. They should also be assessed against their contribution to fostering defence industrial resilience, by reference to considerations such as timely availability and supply to all locations, strengthening security of supply throughout the Union in response to identified risks, including in particular to those Member States most exposed to the risk of materialisation of conventional military threats. Assessments should also refer to the contribution to defence industrial cooperation through genuine armament cooperation among Member States, associated countries and Ukraine and the development and the operationalisation of cross-border cooperation of undertakings, in particular, to a significant extent, small and medium-sized enterprises (SMEs) and small middle capitalization companies (small mid-caps) operating in the supply chains concerned.
- (25) When designing, awarding and implementing Union financial support, the Commission should pay particular attention to ensuring that such support does not adversely affect the conditions of competition in the internal market.
- (26) The Regulation (EU, Euratom) No 2018/1046 and subsequent amendments applies to this Programme. It lays down rules on the implementation of the Union budget, including the rules on grants, prizes, procurement, indirect implementation, and financial instruments.
- (27) In accordance with the Regulation (EU, Euratom) No 2018/1046, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council and Council Regulations (EC, Euratom) No 2988/95, (Euratom, EC) No 2185/96 and (EU) 2017/1939, the financial interests of the Union are to be protected by means of proportionate measures, including measures relating to the prevention, detection, correction and investigation of irregularities, including fraud, to the recovery of funds lost, wrongly paid or incorrectly used, and, where appropriate, to the imposition of administrative penalties. In particular, in accordance with Regulations (Euratom, EC) No 2185/96 and (EU, Euratom) No 883/2013, the European Anti-Fraud Office (OLAF) has the power to carry out administrative investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. The European Public Prosecutor's Office (EPPO) is empowered, in accordance with Regulation (EU) 2017/1939, to investigate and prosecute criminal offences affecting the financial interests of the Union as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council. In accordance with the Regulation (EU, Euratom) No 2018/1046, any person or entity receiving Union funds is to fully cooperate in the protection of the financial interests of the Union, grant the necessary

rights and access to the Commission, OLAF, the Court of Auditors and, in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, the EPPO, and ensure that any third parties involved in the implementation of Union funds grant equivalent rights.

- (28) Third countries which are members of the European Economic Area (EEA) may participate in Union programmes in the framework of the cooperation established under the Agreement on the European Economic Area, which provides for the implementation of the programmes on the basis of a decision adopted under that Agreement. A specific provision should be introduced in this Regulation requiring those third countries to grant the necessary rights and access required for the authorising officer responsible, OLAF and the Court of Auditors to comprehensively exercise their respective competences. Pursuant to Article 85 of Council Decision (EU) 2021/1764 (18), natural persons and bodies and institutions established in overseas countries and territories (OCTs) are eligible for funding subject to the rules and objectives of the Programme and possible arrangements applicable to the Member State to which the relevant OCT is linked.
- (29) Building inter alia on the experience of the defence equity facility, established in the context of the European Defence Fund as an InvestEU blending operation, the Commission should endeavour to set up a dedicated facility as part of the Programme to be referred to as the ‘Fund for the acceleration of defence supply chain transformation (‘FAST’)’. FAST should be implemented under indirect management. FAST will leverage, de-risk and speed-up investments needed to increase the defence manufacturing capacities of EU-based SMEs and small mid-caps, in the form of a blending operation offering support in the form of debt and/or equity. FAST should be established as a blending operation, including under the InvestEU Programme established by Regulation (EU) 2021/523 of the European Parliament and Council (20), in close cooperation with its implementing partners.
- (30) FAST should achieve a satisfactory multiplier effect in line with the debt and equity mix and contribute to attracting both public and private-sector financing. In order to contribute to the overall objective of enhancing the EDTIB’s competitiveness, FAST should also provide support to SMEs (including start-ups and scale-ups) and small mid-caps across the EU, manufacturing defence technologies and products as well as companies actually or potentially part of the defence industry’s supply chain, facing difficulties in accessing finance. FAST should as well accelerate investment in the field of manufacturing defence technologies and products, and therefore strengthen the security of supply of the Union’s defence industry value chains.
- (31) Cooperative armament programmes in the Union face significant challenges, being mostly set up on ad hoc basis and being plagued by complexity, delays and cost overruns. To remediate this situation and ensure continuous Member States’ commitment throughout the whole life cycle of defence capabilities, a more structured approach is required at EU level. To make this happen, the Commission should support Member States’ efforts by making available a new legal framework – the Structure for European Armament Programme (SEAP) - to underpin and strengthen defence cooperation. Actions undertaken in this framework should be mutually reinforcing with those carried out under the Common Foreign and Security Policy (CFSP), in particular in the context of the Capability Development Plan (CDP) and of PESCO

- (32) Within this Structure for European Armament Programme, Member States should benefit from standardised procedures for initiating and managing cooperative defence programmes. A cooperation under this framework should also allow Member States, under certain conditions, to benefit from an increased funding rate, simplified and harmonised procurement procedures, and, where Member States jointly own the procured equipment, a VAT exemption. The international organisation status should also allow Member States, if they wish so, to issue bonds to ensure the long-term financing plan of armament programmes. While the Union would not be liable for debt issuance by Member States, contributions under EDIP to the functioning of SEAP might improve the conditions for financing by the Member States of the armament programmes, which are eligible for Union support.
- (33) In order to permit an efficient procedure for the setting-up of a SEAP, it is necessary for the Member States, associated countries or Ukraine willing to set up a SEAP to submit an application to the Commission which should assess, whether the proposed statutes of the armament programme are in conformity with this Regulation. Such an application should contain a declaration of the host Member State recognising the SEAP as an international body or organisation for the purpose of the application of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty, as of its setting up.
- (34) For reasons of transparency, the decision setting-up a SEAP should be published in the *Official Journal of the European Union*. For the same reasons, the essential elements of its Statutes should be annexed to such decisions.
- (35) In order to carry out its tasks in the most efficient way, a SEAP should have legal personality and the most extensive legal capacity as from the day on which the decision setting it up takes effect. It should have a statutory seat, in order to determine the applicable law, within the territory of a member of that SEAP which is a Member State.
- (36) Membership of a SEAP should comprise at least three Member States and may include associated countries and Ukraine.
- (37) For the implementation of the SEAP, more detailed provisions should be laid down in Statutes, on the basis of which the Commission should examine the compliance of an application with the rules established in this Regulation.
- (38) It is necessary to ensure that, on the one hand, a SEAP has the necessary flexibility to amend its Statutes and, on the other hand, that certain essential elements, in particular those which were necessary for the granting of the SEAP statutes, are preserved through a necessary control at Union level. If an amendment concerns an essential element of the Statutes annexed to the decision setting up the SEAP, such amendment should be approved, prior to taking effect, by a Commission decision taken following the same procedure as that for setting up the SEAP. Any other amendment should be notified to the Commission, which should have an opportunity to object if it considers the amendment contrary to this Regulation.
- (39) A SEAP should be able to appoint a Procurement Agent acting in its own name. A SEAP should be able to procure defence products on its own behalf or on behalf of its members. In the case it procures on its own behalf, the SEAP should be considered as an international organisation purchasing for its own purposes within the meaning of Article 12(c) of Directive 2009/81/EC in conformity with State aid rules. Where it

procures on behalf of its members, in order to ensure an adequate incentive for Member States to engage in a cooperation within the SEAP, the SEAP should be able to define its own rules of procurement by derogation to Directive 2009/81/EC. These rules should ensure compliance with EU primary law principles applicable to procurement, in particular those of transparency, non-discrimination and competition.

- (40) A SEAP could qualify for funding in accordance with Title VI of the Regulation (EU, Euratom) No 2018/1046. Funding under the Cohesion Policy could also be possible, in conformity with the relevant Community legislation.
- (41) In order to carry out its tasks in the most efficient way and as a logical consequence of its legal personality, a SEAP should be liable for its debts. In order to allow the members to find appropriate solutions regarding their liability, the option should be given to provide in the Statutes for different liability regimes going above the liability limited to the contributions of the members.
- (42) Since a SEAP is established under Union law, it should be governed by Union law, in addition to the law of the State where it has its statutory seat. However, the SEAP could have a place of operation in another State. The law of that latter State should apply in respect of specific matters defined by the Statutes of the SEAP. Furthermore, a SEAP should be governed by implementing rules complying with the Statutes.
- (43) In order to ensure sufficient control of compliance with this Regulation, a SEAP should transmit to the Commission and relevant public authorities its annual report and any information about circumstances threatening to seriously jeopardise the achievement of its tasks. If the Commission obtains indications, through the annual report or otherwise, that the SEAP acts in serious breach of this Regulation or other applicable law, it should request explanations and/or actions from the SEAP and/or its members. In extreme cases and if no remedial action is taken, the Commission could repeal the decision setting up the SEAP, thus triggering the winding-up of the SEAP.
- (44) Upon the adoption of ASAP, the European Parliament and the Council called on the Commission to consider, putting forward a legal framework aimed at ensuring the security of supply (Joint Statement of 11 July 2023). This joint statement by co-legislators echoed the conclusions of the European Council in December 2013 calling for a comprehensive EU-wide Security of Supply regime and the European Parliament's recommendation of 8 June 2022 urging the Commission to present, without delay, such a regime.
- (45) The crisis resulting from Russia's war of aggression against Ukraine has not only demonstrated deficiencies in the Union's and Ukraine's defence industrial sector, but has also posed challenges to the functioning of the internal market for defence products. Indeed, the steady degradation of the geopolitical context has already entailed a significant and lasting increase in the demand that may affect the functioning of the internal market for the production and sale of certain defence products and of their components in the Union. While certain Member States have taken or are likely to take measures to preserve their own stocks as a matter of national security, others are faced with difficulties of access to the goods needed to manufacture or acquire the relevant defence products. Sometimes, difficulties in accessing one raw material or a specific component hamper entire production chains. To ensure the functioning of the internal market under any circumstances and to make it resilient to any shock, it is necessary to establish, in a coordinated way, harmonised rules for increasing the security of supply of defence products. Those measures should be based on Article 114 TFEU.

- (46) To pursue the general public policy objective of security, it is necessary that production facilities related to the production of relevant defence products are set up as quickly as possible, while keeping the administrative burden to a minimum. For that reason, Member States should treat applications related to the planning, construction and operation of plants and installations for the production of relevant defence products in the most rapid manner possible. Such applications should be given priority when balancing legal interests in the individual case.
- (47) In view of the objective of this Regulation, and of the emergency situation and the exceptional context of its adoption, Member States should consider using defence-related exemptions under national and applicable Union law, on a case-by-case basis, if they deem that the use of such exemptions would facilitate the achievement of that objective. That could in particular apply to Union law concerning environmental, health and safety issues, which is indispensable to improving the protection of human health and the environment, as well as to achieving a sustainable and safe development. However, the implementation of that law could also produce regulatory barriers hampering the Union defence industry's potential to ramp up the production and deliveries of relevant defence products. It is a collective responsibility for the Union and its Member States to urgently look into any action they could take to mitigate possible obstacles. Any such action, whether at Union, regional, or national level, should not compromise the environment, health and safety.
- (48) Directive 2009/81/EC of the European Parliament and of the Council aims at harmonising procurement procedures for the award of public contracts in the field of defence and security thus enabling the security requirements of Member States and the obligations arising from the TFEU to be met. That Directive contains, in particular, specific provisions governing situations of urgency resulting from a crisis, in particular shortened periods for the receipt of tenders and the possibility to use the negotiated procedure without prior publication of a contract notice. However, in extreme urgency, in particular during supply and security crises, these rules could be incompatible even with those provisions in cases where two or more Member States intend to engage in a common procurement. In some cases, the only solution that ensures the security interests of those Member States is to open an existing framework agreement to contracting authorities of Member States that were not originally party to it, even though that possibility had not been provided for in the original framework agreement.
- (49) In accordance with the case law of the Court of Justice of the European Union, modifications to a public contract are to be strictly limited to what is absolutely necessary in the circumstances, while complying to the maximum extent possible with the principles of non-discrimination, transparency and proportionality. In that regard, it should be possible to derogate from Directive 2009/81/EC by increasing the quantities provided for in a framework agreement while opening it to contracting authorities of other Member States. With respect to those additional quantities, those contracting authorities should enjoy the same conditions as the original contracting authority/entity that concluded the original framework agreement. In such cases, the original contracting authority/entity should also allow any economic operator who fulfils the contracting authority's/entity's conditions initially laid down in the procurement procedure for the framework agreement, including requirements for qualitative selections as referred to in Articles 39 to 46 of Directive 2009/81/EC, to join that framework agreement. In addition, appropriate transparency measures should be taken to ensure that all potentially interested parties are informed.

- (50) While the response of the EU and its Member States to the immediate challenge of the Russian war of aggression against Ukraine has been rapid and decisive, it is time for the EU to move from the emergency response to building the EU's long-term readiness. Resilience is a precondition of the EDTIB's readiness and competitiveness. The EU has already developed tools and frameworks to increase industrial readiness and resilience to tackle future crisis situations. However, such measures are not available to support the EDTIB.
- (51) It is therefore necessary to set up a modular and gradual EU Security of Supply regime to enhance solidarity and effectiveness in response to tensions along the supply chains or to security crises and allow for the timely identification of potential bottlenecks. Such a regime should enable the EU and its Member States to anticipate and address the consequences of supply crises, where shortages of civilian or dual-use components, or of raw materials, seriously threaten the timely availability and supply of defence products, and also the consequences of supply crises which are directly linked to the existence of a security crisis within the Union or its neighbourhood and which result in shortages of certain defence products.
- (52) To enable anticipation of potential shortages, national competent authorities should alert the Commission if they become aware of a risk of serious disruption in the supply of crisis relevant products or have concrete and reliable information of any other relevant risk factor or event materialising. In order to ensure a coordinated approach, the Commission should, where it learns of a risk of serious disruption in the supply of defence products or has concrete or reliable information of any other relevant risk factor or event materialising, convene an extraordinary meeting of the Defence Industrial Readiness Board to discuss the severity of the disruptions and possible initiating of the procedure for activating the supply crisis state, and whether it may be appropriate, necessary and proportionate for Member States to enter into dialogue with stakeholders, with a view to identifying, preparing and possibly coordinating such preventive measures. The Commission should, where relevant, consult and cooperate with relevant third countries with a view to jointly addressing supply-chain disruptions, in compliance with international obligations and without prejudice to procedural requirements.
- (53) In light of the complexities of defence supply chains and the risk of shortages in a foreseeable future, this Regulation should provide instruments for a coordinated approach to mapping and monitoring of the supply chains of certain defence products and effectively tackling possible market disruptions in a proportionate manner.
- (54) The objective of a mapping of the Union's defence supply chains should be to provide an analysis of their strengths and weaknesses with a view to ensure security of supply and resilience. To that end, the Commission should identify products, components as well as raw materials that are deemed critical for the supply of defence products particularly important for the defence interests of the Union and its Member States (crisis-relevant products), based on the inputs and advice from the Defence Industrial Readiness Board. The mapping should be based on publicly and commercially available data and, if necessary, on data obtained through voluntary information requests of undertakings, in consultation with the Defence Industrial Readiness Board.
- (55) In order to forecast and prepare for future disruptions of the different stages of the Union's defence supply chains and of trade within the Union, the Commission should, assisted by the Defence Industrial Readiness Board and on the basis of the outcome of the mapping, identify and develop a list of early warning indicators. Such indicators

could include atypical increases in lead time, the availability of raw materials, intermediate products and human capital needed for manufacturing crisis-relevant products, or appropriate manufacturing equipment, forecasted demand, price surges exceeding normal price fluctuation, the effect of security crises, accidents, attacks, natural disasters or other serious events, the effect of trade policies, tariffs, export restrictions, trade barriers and other trade-related measures, and the effect of business closures, offshoring or acquisitions of key market actors. Monitoring activities of the Commission should focus on these early warning indicators.

- (56) In order to minimise the burden for undertakings responding to the monitoring and to ensure that the acquired information can be compiled in a meaningful way, the Commission should provide for standardised and secure means for any information collection. These means should ensure that any collected information is treated confidentially, ensuring business secrecy and cybersecurity.
- (57) On this basis, the Commission should draw up a list, identifying the crisis-relevant defence products, raw materials or components thereof, that are affected by disruptions or potential disruptions of the functioning of the Single Market and its supply chains leading to significant shortages. The Commission should regularly update this list, to focus only on possible disruptions or bottlenecks affecting the security of supply of relevant defence products, as well as raw materials and components thereof.
- (58) Due to the sensitive nature of the decision to activate the supply-crisis state or the security-related supply-crisis state and of the potential measures that may be taken in response thereof, including the significant impact which such measures might have on private undertakings in the Union, the power to adopt an implementing act as regards activating, prolonging and terminating these states should be conferred on the Council.
- (59) Where the supply-crisis state or the security-related supply-crisis state is activated, the Commission, should be able to request to receive necessary information to ensure the timely availability of crisis relevant products from undertakings, dealing with these products, raw materials or components thereof, in agreement with the Member State in which they are established. Such information should inform the Commission's decision on appropriate measures under this regulation to address possible disruptions or bottlenecks affecting the security of supply of relevant defence products as well as relevant raw materials and components.
- (60) Such an identification, mapping and continuous monitoring mechanism should allow a near real time analysis of the production capacity in the Union, critical factors impacting security of supply of relevant defence products, and stockpiles' status. It should also enable Commission to design emergency response measures to actual or anticipated shortages.
- (61) Avoiding shortages of relevant defence products is essential to preserve the objective of general interest of security of the Union and its Member States and justifies, where necessary, proportionate interferences with fundamental rights of the undertakings providing crisis relevant products, such as the freedom to conduct a business in accordance with Article 16 of the Charter and the right to property in accordance with Article 17 of the Charter, in the respect of Article 52 of the Charter. Such interferences may be justified in particular where several Member States have undertaken specific efforts to consolidate demand through joint procurement, hence contributing to the further integration and smooth functioning of the Internal Market for relevant defence products.

- (62) As an instrument of last resort to ensure that critical sectors can continue to operate in a time of crisis and only when necessary and proportionate for that purpose, relevant undertakings could be required by the Commission to accept and prioritise orders of crisis-relevant products. The decision on a priority-rated order should be taken in accordance with all applicable Union legal obligations, having regard to the circumstances of the case. The priority rating obligation should take precedence over any performance obligation under private or public law except those directly related to military orders while it should have regard for the legitimate aims of the undertakings and the cost and effort required for any change in production sequence. Each priority-rated order should be placed at a fair and reasonable price which should take into account the undertaking's opportunity costs vis-à-vis existing contracts.
- (63) The obligation to prioritise the production of certain products should not disproportionately affect the freedom to conduct a business and the freedom of contract laid down in Article 16 of the Charter of Fundamental Rights of the European Union ('the Charter') and the right to property laid down in Article 17 of the Charter. Any limitation of those rights should, in accordance with Article 52(1) of the Charter, be provided for by law, respect the essence of those rights and freedoms, and comply with the principle of proportionality.
- (64) Where the security-related supply crisis state is activated, based on the assessment of the Commission with the support of the High-Representative, the measures available under the supply crisis state should also be available. In addition to the latter, the Council should activate the measures it considers appropriate to the crisis. To do so, the Council should pay particular to the need to ensure a high level of security of the Union, Member States and European citizens.
- (65) Where the security-related supply crisis state is activated and in order to address cases where a Member State faces or may face severe difficulties either in the placing of an order or in the execution of a contract for the supply of defence products due to shortages or serious risks of shortages of crisis-relevant products, the Council should be able to activate measures at Union level aimed to ensure the availability of crisis-relevant goods, such as priority rated requests to ensure the proper functioning of the internal market and its defence supply chains.
- (66) As an instrument of last resort, priority-rated requests should aim at addressing situations where the production or supply of crisis relevant products which are defence products could not be achieved by other measures. The priority-rated request should be taken based on objective, factual, measurable, and substantiated data. It should have regard for the legitimate interests of the undertakings and the cost and effort required for any change in production sequence. When accepted, the obligation to perform the priority-rated request should take precedence over any performance obligation under private or public law. Each priority rated request should be placed at a fair and reasonable price.
- (67) With a view to support the Commission in implementing this Regulation, a European Defence Industrial Readiness Board should be established, composed of the Commission, the High Representative/Head of the Agency and Member States. In addition, outside the framework of the current Regulation, the High Representative/Head of Agency and the Commission will at their initiative convene and co-chair meetings of the members in the context of the Board to exercise the joint programming and procurement function and provide strategic guidance and advice

with a view to increase defence industrial readiness of the EDTIB, in line with the European Defence Industrial Strategy.

- (68) This Regulation should apply without prejudice to Union competition rules, in particular Articles 101 to 109 TFEU and the legal acts that give effect to those Articles.
- (69) In accordance with Article 41(2) TEU, operating expenditure arising from Chapter 2 of Title V TEU is to be charged to the Union budget, except for such expenditure arising from operations having military or defence implications.
- (70) This Regulation should apply without prejudice to the specific character of the security and defence policy of certain Member States,

HAVE ADOPTED THIS REGULATION:

Chapter I

General Provisions

Article 1

Subject Matter

1. This Regulation establishes a budget and lays down a set of measures aimed at supporting defence industry readiness of the Union and its Member States through the strengthening of the competitiveness, responsiveness and ability of the European Defence Technological and Industrial Base (EDTIB) to ensure the timely availability and supply of defence products and at contributing to the recovery, reconstruction and modernisation of the Ukraine Defence Technological and Industrial Base (Ukrainian DTIB), in particular by means of the following:
 - (1) the establishment of the European Defence Industrial Programme (the 'Programme'), comprising measures for the strengthening of the competitiveness, responsiveness and ability of the EDTIB, which may include the establishment of a fund for the acceleration of defence supply chain transformation ('FAST'), as set out in Chapter II;
 - (2) the establishment of a cooperation programme with Ukraine with a view to the recovery, reconstruction and modernisation of the Ukraine Defence Technological and Industrial Base (the 'Ukraine Support Instrument'), as set out in Chapter III;
 - (3) a legal framework laying down the requirements and procedures for and the effects of setting-up the Structure for European Armament Programme ('SEAP') as set out in Chapter IV;
 - (4) a legal framework aiming at ensuring security of supply, removing obstacles and bottlenecks and supporting the production of defence products as set out in Chapter V;
 - (5) the establishment of a [Defence Industrial Readiness Board] as set out in Chapter VI.

2. This Regulation is without prejudice to Member State having the sole responsibility for their national security, as provided for in Article 4(2) TEU and the right of each Member State to protect its essential security interests in accordance with Article 346 TFEU.

Article 2

Definitions

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

- (1) 'advance purchasing agreement' means a public contract with one or several legal entities which aims at supporting the swift development and/or production of a product and by virtue of which the right to buy a specified number of products in a given timeframe and at a given price is subject to the prefinancing of part of the upfront costs faced by the concerned legal entities. While an advance purchasing agreement is legally binding upon the participating contracting authorities and upon the contractor, it needs to be further implemented by means of the conclusion of contracts with the concerned contractors;
- (2) 'bottleneck' means a point of congestion in a production system that stops or severely slows the production;
- (3) 'blending operation' means an action supported by the Union budget, including within a blending facility or platform as defined in Article 2, point (6) of Regulation (EU, Euratom) No 2018/1046 (the 'Financial Regulation'), that combines non-repayable forms of support and/or financial instruments from the Union budget with repayable forms of support from development or other public finance institutions, or from commercial finance institutions and investors
- (4) 'common procurement' means a procurement jointly conducted by at least three Member States;
- (5) 'control' means the ability to exercise decisive influence over a legal entity directly, or indirectly through one or more intermediate legal entities;
- (6) 'classified information' means information or material, in any form, the unauthorised disclosure of which could cause varying degrees of prejudice to the interests of the Union, or of one or more of the Member States, and which bears an EU classification marking or a 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;
- (7) 'defence products' means any defence-related products as referred to in Article 2 of Directive 2009/43/EC;
- (8) 'executive management structure' means a body of a legal entity, appointed in accordance with national law, and, where applicable, reporting to the chief executive officer, which is empowered to establish the legal entity's strategy, objectives and overall direction, and which oversees and monitors management decision-making;
- (9) 'legal entity' means a legal person created and recognised as such under Union, national or international law, which has legal personality and the capacity to act in its own name, exercise rights and be subject to obligations, or an entity which does not

have legal personality as referred to in Article 197(2), point (c), of the the Financial Regulation;

- (10) 'defence innovation action' means an action primarily consisting of activities directly aiming to produce plans and arrangements or designs for new, altered or improved defence products, processes or services, possibly including prototyping, testing, demonstrating, piloting, large-scale product validation and market replication
- (11) 'middle capitalisation company' or 'mid-cap' means an enterprise that is not a SME and that employs a maximum of 3 000 persons, where the headcount of staff is calculated in accordance with Articles 3 to 6 of the Annex to Recommendation 2003/361/EC
- (12) 'non-associated third-country entity' means a legal entity that is established in a non-associated third country or, a legal entity that is established in the Union or in an associated country, but has its executive management structures in a non-associated third country;
- (13) 'off-take agreement' means any contractual agreement between at least [three] Member States and at least one manufacturer of defence products containing either a commitment on the Member States to procure a certain quantity of defence products over a certain period of time or a commitment on the manufacturer of defence products to provide the Member States with the option to do so.
- (14) 'procurement agent' means a contracting authority as defined in Article 2(1), point (1), of Directive 2014/24/EU and Article 3(1) of Directive 2014/25/EU established in a Member State or an associated country, the European Defence Agency, a Structure for European Armament Programme or an international organisation that is designated by Member States, associated countries or Ukraine to conduct a common procurement on their behalf;
- (15) 'lead time' means the period of time between a purchase order being placed and the manufacturer completing the order;
- (16) 'raw materials' means the materials required to produce defence products;
- (17) 'seal of excellence' means a quality label which shows that a proposal submitted to a call for proposals under the Instrument has passed all of the evaluation thresholds set out in the work programme, but could not be funded due to a lack of budget available for that call for proposals in the work programme, and might receive support from other Union or national sources of funding;
- (18) 'security crisis' means any situation in a Member State, an associated third country or non-associated third country in which a harmful event has occurred or is deemed to be impending which clearly exceeds the dimensions of harmful events in everyday life and which substantially endangers or restricts the life and health of people, or requires measures in order to supply the population with necessities, or has a substantial impact on property values, including armed conflicts and wars;
- (19) 'sensitive information' means unclassified information and data that are to be protected from unauthorised access or disclosure because of obligations laid down in Union or national law, where applicable, or in order to safeguard the privacy or security of a natural or legal person ;
- (20) 'small and medium-sized enterprises' or 'SMEs' means small and medium-sized enterprises as defined in Article 2 of the Annex to Commission Recommendation 2003/361/EC;

- (21) 'subcontractors in the common procurement' means any legal entity which provides critical inputs that possess unique attributes essential for the functioning of a product and which is allocated at least 15 % of the value of the contract.
- (22) 'small middle capitalisation company' or 'small mid-cap' means an enterprise that is not a SME and whose number of employees does not exceed 499, calculated in accordance with Articles 3 to 6 of the Annex to Recommendation 2003/361/EC, the annual turnover of which does not exceed EUR 100 million or the annual balance sheet of which does not exceed EUR 86 million;
- (23) 'crisis-relevant products' means defence products or key components or raw materials thereof or any products or services critical to their production that have been identified as being seriously affected by a disruption or potential disruption of the functioning of the internal market and its supply chains resulting in actual or potential significant shortages.
- (24) 'defence industrial readiness pool' means a quantity of defence products procured and maintained for the purpose of ensuring their timely availability to the armed forces of Member States, associated countries and Ukraine.
- (25) 'contracting authorities' means contracting authorities/entities as defined in Article 1(17) of Directive 2009/81/EC.

Chapter II

The Programme

Section 1: General provisions applicable to the Programme

Article 3

Use of financing not linked to costs

1. Grants may take the form of financing not linked to costs, pursuant to Article 180(3) of the Financial Regulation.
2. Where the Union grant takes the form of financing not linked to costs for actions reinforcing the EDTIB, the level of the Union contribution attributed for actions reinforcing the EDTIB may be defined on the basis of the following factors:
 - (a) the estimated value of the action;
 - (b) the contribution of the action to achieving interoperability between defence products produced by the EDTIB and the DTIB of associated countries;
 - (c) the number of participating Member States and associated countries;
 - (d) the contribution of the action to the ramp-up of necessary manufacturing capacities;
 - (e) the procurement of additional quantities for other Member States (defence industrial readiness pool).

Article 4

Objectives

1. The Programme aims to increase the competitiveness and readiness of the EDTIB by initiating and speeding up the adjustment of industry to the rapid structural changes imposed by the evolving security environment and by incentivising cooperation in defence procurement between Member States. In particular, the Programme shall aim to:
 - (a) incentivise cooperation in defence procurement by aggregating demand for defence products, harmonising requirements, strengthening solidarity between Member States, supporting the commercialisation of products and technologies supported by the European Defence Fund and improving predictability of demand for the EDTIB;
 - (b) initiate and speed up the adjustment of industry to the rapid structural changes imposed by the evolving security environment by improving and accelerating the capacity of adaptation of defence industrial supply chains for crisis-relevant products and open supply chains for cross-border cooperation, by increasing manufacturing capacity and reducing lead production time for defence products throughout the Union, and by ensuring the availability and supply of defence products throughout the Union, in particular for SMEs and mid-caps.
2. The Programme shall be implemented taking into account the objectives of the Strategic Compass for Security and Defence and shall be fully consistent with the Capability Development Plan agreed by Member States. It shall take into account the collaborative opportunities identified in the Coordinated Annual Review on Defence [and the advice of the Defence Industrial Readiness Board].
3. The Programme shall complement Member States' cooperation within the framework of the Permanent Structured Cooperation, European Defence Agency initiatives and projects, and the EU's civil and military assistance to Ukraine. It shall be compatible with the relevant activities carried out by the North Atlantic Treaty Organisation and other partners where they serve the Union's security and defence interests.

Article 5

Budget

1. The financial envelopes for the implementation of the Programme shall be composed of EUR 1 500 millions in current prices for the period from [... - insert a specific date] until 31 December 2027 as well as additional contributions in accordance with Article 6.
2. In order to respond to unforeseen situations or to new developments and needs, the Commission may reallocate the amount allocated to actions referred to in paragraph 1, by a maximum of 20 %, to actions under the Ukraine Support Instrument.
3. The amount referred to in paragraph 1 and 5 of this Article may also be used for technical and administrative assistance for the implementation of the Programme, such as preparatory, monitoring, control, audit and evaluation activities, including price investigations and corporate information technology systems and platforms, and all other technical and administrative assistance or staff-related expenses incurred by the Commission for the management of the Programme.

4. In addition to Article 12(4) of the Financial Regulation, unused commitment and payment appropriations shall be automatically carried over and may be committed and used, respectively, until 31 December of the following financial year. The amount carried over shall be used first in the following financial year. The Commission shall inform the European Parliament and the Council of commitment appropriations carried over in accordance with Article 12(6) of the Financial Regulation.
5. By way of derogation from Article 209(3), first, second and fourth subparagraphs of the Financial Regulation, any revenues and repayments from financial instruments established under this Chapter shall constitute internal assigned revenue within the meaning of Article 21(5) of the Financial Regulation, to the Programme or its successor programme.
6. In addition to Article 15 of the Financial Regulation, commitment appropriations corresponding to the amount of recoveries and of decommitments under the Programme shall be made available again to the Programme in the context of the budgetary procedure.
7. Budgetary commitments for activities extending over more than one financial year may be broken down over several years into annual instalments.
8. Appropriations may be entered in the Union budget beyond 2027 to cover the expenses necessary to fulfil the objectives set out in Article 4, to enable the management of actions not completed by the end of the Programme, as well as expenses covering critical operational activities and services.

Article 6

Additional financial resources

1. Member States, European Union institutions, bodies and agencies, third countries, international organisations, international financial institutions or other third parties, may provide additional financial contributions to the Programme, including to the Fund Accelerating the defence Supply Chains Transformation (FAST) referred to in Article 17 in accordance with Article 208(2) of the Financial Regulation. Such financial contributions shall constitute external assigned revenue within the meaning of Article 21(2), points (a)(ii) [point (a) FR recast], (d), or (e) or Article 21(5) of the Financial Regulation.
2. Resources allocated to Member States under shared management may, at their request, be transferred to the Programme subject to the conditions set out in the relevant provisions of Regulation (EU) 2021/1060 of the European Parliament and the Council⁵. The Commission shall implement those resources directly in accordance with Article 62(1), point (a) of the first subparagraph, of the Financial Regulation or indirectly in accordance with point (c) of that subparagraph. They shall

⁵ Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Programme for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159–706).

be added to the resources referred to in Article 5(1). Those resources shall be used for the benefit of the Member State concerned.

3. Where the Commission has not entered into a legal commitment under direct or indirect management for resources transferred in accordance with paragraph 2 and at the latest in the year 2028, the corresponding uncommitted resources may be transferred back to one or more respective source programmes, at the request of the Member State, in accordance with the conditions set out in the relevant provisions of Regulation (EU) 2021/1060 of the European Parliament and of the Council.

Article 7

Alternative, combined and cumulative funding

1. The Programme shall be implemented in synergy with other Union programmes. An action that has received a contribution from another Union programme may also receive a contribution under the Programme provided that the contribution does not cover the same costs. The rules of the relevant Union programme shall apply to the corresponding contribution or a single set of rules of any of the contributing Union programmes may be applied to all contributions and a single legal commitment may be concluded. The cumulative support from the Union budget shall not exceed the total eligible costs of the action and may be calculated on a pro-rata basis in accordance with the documents setting out the conditions for support.
2. In order to be awarded a Seal of Excellence under the Programme, actions shall comply with all of the following conditions:
 - (a) they have been assessed in a call for proposals under the Programme;
 - (b) they comply with the minimum quality requirements of that call for proposals;
 - (c) they are not financed under that call for proposals due to budgetary constraints.
3. In accordance with the relevant provisions of Regulation (EU) 2021/1060, the ERDF or ESF+ may support proposals submitted to a call for proposals under the Programme, which were awarded a Seal of Excellence in accordance with the Programme.

Article 8

Implementation and forms of Union funding

1. The Programme shall be implemented under direct management in accordance with the Financial Regulation or in indirect management with bodies referred to in Article 62(1), point (c), of the Financial Regulation.
2. Union funding may be provided in any of the forms laid down in the Financial Regulation, in particular grants, prizes, procurement, and financial instruments within blending operations under the InvestEU programme in accordance with Title X of the Financial Regulation.
3. By way of derogation from Article 192(2) of the Financial Regulation, activities referred to in Article 13(1), point (d), for which Union funding is provided in the form of a grant, and profit is made, the Commission may recover the percentage of the profit corresponding to the Union contribution to the eligible costs actually incurred by the beneficiary carrying out the action, up to the final amount of the Union contribution. The profit is calculated by a surplus of receipts over the eligible

costs of the action, where receipts are limited to Union funding, Member State funding, including procurement, other revenue generated during the action and any revenue resulting from the action. The work programme may set out further details.

4. By way of derogation from Article 193(2) of the Financial Regulation, financial contributions may, where relevant and necessary for the implementation of an action, cover actions started and costs incurred prior to the date of the submission of the proposal for those actions, provided that those actions did not start before 5 March 2024 and have not been completed before the signature of the grant agreement.

Article 9

Third countries associated to the Programme

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

Article 10

Eligible legal entities

1. The eligibility criteria set out in paragraphs 2 to 8 shall apply in addition to the criteria set out in accordance with the Financial Regulation.
2. Recipients of Union funding shall be established in the Union or in an associated country.
3. The infrastructure, facilities, assets and resources of the recipients and subcontractors involved in an action which are used for the purposes of the action shall be located on the territory of a Member State or of an associated country for the entire duration of the action, and their executive management structures shall be established in the Union or an associated country.
4. By way of derogation to paragraph 3, recipients may use infrastructure, facilities, assets and resources which are located or held outside the territory of the Member States or of the associated countries, provided that such use:
 - (a) is consistent with the objectives set out in Article 4;
 - (b) is strictly necessary as a result of a lack of readily available alternatives or relevant infrastructure, facilities, assets and resources in the Union or an associated country;
 - (c) does not contravene the security and defence interests of the Union and its Member States.
5. Recipients of Union funding under the Programme shall not be subject to control by a non-associated third country or by a non-associated third-country entity.
6. By way of derogation from paragraph 4, a legal entity established in the Union or in an associated country and controlled by a non-associated third country or a non-associated third-country entity shall be eligible to be a recipient if it has been subject to screening within the meaning of [Regulation (EU) 2019/452] of the European Parliament and of the Council and, where necessary, to appropriate mitigation measures, taking into account the objectives set out in Article 4 of this Regulation, or

if guarantees approved by the Member State or the associated country in which it is established in accordance with its national procedures are made available to the Commission.

The guarantees shall provide assurances that the involvement in an action of such a legal entity would not contravene the security and defence interests of the Union and its Member States as established in the framework of the CFSP pursuant to Title V of the Treaty on European Union (TEU), or the objectives set out in Article 4. The guarantees shall in particular substantiate that, for the purposes of an action, measures are in place to ensure that:

- (a) control over the legal entity is not exercised in a manner that restrains or restricts its ability to carry out the action and to deliver results, that imposes restrictions concerning its infrastructure, facilities, assets, resources, intellectual property or knowhow needed for the purposes of the action, or that undermines its capabilities and standards necessary to carry out the action;
- (b) access by a non-associated third country or by a non-associated third-country entity to classified or sensitive information relating to the action is prevented and the employees or other persons involved in the action have national security clearance issued by a Member State or an associated country, where appropriate;

If considered to be appropriate by the Member State or the associated country in which the legal entity is established, additional guarantees may be provided.

7. The Commission shall inform [the committee referred to in Article 57] of any legal entity considered to be eligible in accordance with paragraph 6.
8. When carrying out an eligible action, recipients may also cooperate with legal entities established outside the territory of the Member States or of associated countries, or controlled by a non-associated third country or by a non-associated third-country entity, including by using the assets, infrastructure, facilities and resources of such legal entities, provided that this does not contravene the security and defence interests of the Union or its Member States or the objectives set out in Article 4. There shall be no unauthorised access by a non-associated third country, or other non-associated third-country entity to classified information relating to the carrying out of the action and potential negative effects over security of supply of inputs critical to the action shall be avoided. The costs related to cooperation with legal entities established outside the territory of the Member States or of associated countries, or controlled by a non-associated third country or by a non-associated third-country entity, shall not be eligible for support from the Programme.
9. Paragraphs 2 to 8 shall not apply to:
 - (a) contracting authorities of Member States and associated countries;
 - (b) International Organisations;
 - (c) Structures for European Armament Programme;
 - (d) the European Defence Agency.

Section 2: Eligible Actions

Article 11

General provisions

1. Actions eligible for funding under the Programme shall implement the objectives set out in Article 4 and may take one of the following forms:
 - (a) common procurement actions (Article 12);
 - (b) industrial reinforcement actions (Article 13);
 - (c) supporting actions (Article 14);
 - (d) actions relating to defence industrial readiness pools (Article 15);
 - (e) European Defence Projects of Common Interest (Article 16);
 - (f) the establishment of a Fund to Accelerate defence Supply chains Transformation (Article 17).
2. The following actions shall not be eligible for funding under the Programme:
 - (a) actions related to goods or services which are prohibited by international law;
 - (b) actions related to lethal autonomous weapons without the possibility of meaningful human control over selection and engagement decisions when carrying out strikes against humans;
 - (c) actions related to goods or services which are subject to control or restriction by non-associated third countries or by non-associated third-country entities, directly, or indirectly through one or more intermediate legal entities, including in terms of technology transfer;
 - (d) actions or parts thereof, that are already fully financed from other public or private sources.

Article 12

Common procurement actions

1. Common procurement actions shall consist of activities related to cooperation of public authorities in defence procurement processes, at any point in the lifecycle of defence products, including for the purpose of building a defence industrial readiness pool as referred to Article 15.
2. Only the following legal entities shall be eligible for common procurement actions:
 - (a) contracting authorities of Member States or associated countries;
 - (b) International Organisations;
 - (c) the Structures for European Armament Programme;
 - (d) the European Defence Agency.
3. Common procurement actions shall involve cooperation between legal entities referred to in paragraph 2 and be carried out by a consortium of at least three Member States or associated countries, or by a Structure for European Armament Programme.

4. Member States and associated countries carrying out a common procurement action shall appoint, by unanimity, an eligible legal entity as procurement agent to act on their behalf for the purposes of that common procurement. The procurement agent shall carry out the procurement procedures and conclude the resulting contracts with contractors on behalf of the participating countries. The procurement agent may participate in the action as a beneficiary and may act as the coordinator of the consortium and may therefore be able to manage and combine funds from the Programme and funds from the participating Member States and associated countries.
5. This Regulation is without prejudice to the rules on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities in the fields of defence and security laid down in Directive 2009/81/EC, unless this Regulation stipulates otherwise.
6. The procurement procedures referred to in paragraph 4 shall be based on an agreement to be signed by the participating Member States and associated countries with the procurement agent under the conditions set out in the work programme. The agreement shall, in particular, determine the practical arrangements governing the common procurement and the decision-making process on the choice of the procedure, the assessment of the tenders and the award of the contract.
7. The procurement agent shall apply the conditions set out in Article 10 to its procurement procedures and contracts with contractors in the common procurement.
8. Procurement agents shall provide the Commission with notification on the guarantees and mitigation measures referred to in Article 10(6). Further information on the guarantees and mitigation measures shall be made available to the Commission upon request. The Commission shall inform the committee referred to in Article 58 of any notification provided in accordance with this paragraph.
9. The common procurement contract shall reserve the right of the contracting authority to purchase additional quantities of defence products for other Member States, associated countries or Ukraine, without prejudice to applicable Union law and Member States' laws and regulations relating to the export of defence products.
10. Member States shall publish a General Transfer Licence in referred to in Article 5(3) of Directive 2009/43 for transfers of defence products procured through common procurement actions.

Article 13

Industrial reinforcement actions

1. Industrial reinforcement actions shall consist of activities related to speeding up the adjustment to structural changes of the production capacity of defence products, including their components and corresponding raw materials insofar as they are intended or used wholly for the production of defence products, in particular:
 - (a) the optimisation, expansion, modernisation, upgrading or repurposing of existing, or the establishment of new, production capacity of defence products, components and corresponding raw materials, including on the basis of the procurement or acquisition of the requisite machine tools and any other necessary input;

- (b) the establishment of cross-border industrial partnerships, including through public private partnerships or other forms of industrial cooperation, in a joint industrial effort, including activities that aim to coordinate the sourcing or reservation and stockpiling of defence products, components and corresponding raw materials, as well as to coordinate production capacities and production plans;
 - (c) the building-up and making available of reserved surge manufacturing capacities (ever warm facilities) of defence products, their components and corresponding raw materials, in accordance with ordered or planned production volumes;
 - (d) fostering industrialisation and commercialisation of defence products that have been developed in the framework of actions funded by the Union or other cooperative activities conducted with support of Member States including through the establishment of cross-border industrial partnerships, public private partnerships or other forms of industrial cooperation, ramping-up of initial production as well as licensing production, where appropriate;
 - (e) the testing, including the necessary infrastructure, and, as appropriate, reconditioning certification of defence products with a view to addressing their obsolescence and making them useable by end users.
2. In order to be eligible for funding, activities referred to in paragraph 1, point (a), (b) and (c), shall exclusively benefit production capacities of defence products, including their components and raw materials insofar as they are intended or used wholly for the production of defence products.
 3. For activities referred to in paragraph 1, point (d) the action shall be carried out by legal entities cooperating within a consortium of at least three eligible legal entities which are established in at least three different Member States or associated countries. At least three of those eligible legal entities established in at least two different Member States or associated countries shall not, during the entire period in which the action is carried out, be controlled, directly or indirectly, by the same legal entity and shall not control each other. The activities referred to in paragraph 1, point (d) may be also carried out by a Structure for European Armament Programme.
 4. For activities referred to in paragraph 1, point (a), the urgent need to produce key defence products in light of the geopolitical situation may justify a derogation from the requirement set out in Article 11(2), point (c), provided that both of the following conditions are met:
 - (a) legal entities participating in the action procurement commit to studying the feasibility of replacing the key defence product with an alternative, restriction-free, product of Union origin;
 - (b) the procured defence products were in use prior to 24 February 2022 within the armed forces of at least three Member States.
 5. Industrial reinforcement actions shall be without prejudice to Union competition rules, and in particular Article 101 Treaty on the Functioning of the European Union (TFEU).

Supporting actions

1. Supporting actions shall consist of:
 - (a) activities that aim to increase interoperability and interchangeability, including the cross certification of defence products and activities leading to mutual recognition of certification or to facilitate the implementation of military standards;
 - (b) activities to strengthen security of supply and resilience, in particular by facilitating the access to the defence market for SMEs, mid-caps and start-ups and support to obtain the necessary quality and production certifications;
 - (c) the capacity building, training, reskilling or upskilling of personnel in relation to the activities referred to in Article 11(1);
 - (d) the procurement of physical and cyber protection systems in relation to the activities referred to in Article 13;
 - (e) coordination and (technical) support actions, in particular addressing identified bottlenecks in production capacities and supply chains with a view to securing and accelerating the production of crisis-relevant products in order to ensure their effective supply and timely availability;
 - (f) the establishment of a single, centralised, voluntary, catalogue of defence products involved in actions eligible for support under this Programme, managed and kept up to date by the Commission;
 - (g) Union support to Structures for European Armament Programme notably for the purpose of managing and maintaining a defence industrial readiness pool as referred to in Article 15;
 - (h) emergency activities, including emergency defence innovation where the measure referred to in [Article 52] is activated;
 - (i) up-front payments to a contractor in the case of advance purchase of defence products referred to in [Article 36(2)];
 - (j) non recurrent costs and/or reservation of manufacturing capacities in the case of off-take agreements referred to in [Article 37(6)].
2. For activities referred to in paragraph 1, point (a), the action shall be carried out by legal entities cooperating within a consortium of at least three eligible legal entities which are established in at least three different Member States or associated countries. At least three of those eligible legal entities established in at least two different Member States or associated countries shall not, during the entire period in which the action is carried out, be controlled, directly or indirectly, by the same legal entity and shall not control each other.
3. By derogation from paragraph 2, the action may be carried out by a Structure for European Armament Programme.
4. For activities referred to in paragraph (1), point (f), the Commission shall draw up the technical specifications for and procure the corporate IT platform required to establish the catalogue based on consultations with [the Defence Industrial Readiness Board].

Article 15

Defence industrial readiness pools

1. The Programme shall support the establishment and maintenance by a consortium of at least three Member States or associated countries, or by a Structure for European Armament Programme, to increase availability and speed up delivery time of defence products.
2. Member States and associated countries that establish a defence industrial readiness pool shall grant all Member States, associated countries and Ukraine an immediate and preferential purchase or use/lease option for defence products that are part of the defence industrial pool.
3. Where a Structure for European Armament Programme procures additional quantities of defence products or its Member State or associated country members make in-kind contributions to build up a defence industrial readiness pool within a Structure for European Armament Programme, the Programme shall support the initiative through:
 - (a) support to common procurement of additional quantities as referred to in Article 12;
 - (b) contribution to the direct and indirect costs of managing and maintaining the defence industrial readiness pool as referred to in Article 14(1), point (g);
 - (c) contribution to administrative capacity building as referred to in Article 14(c).
4. For the purpose of Member States, associated countries or Ukraine buying from the defence industrial readiness pool managed by a Structure for European Armament Programme, the procurement shall be considered as a government-to-government contract as referred to in Article 13, point (f) of Directive 2009/81/EC.

Article 16

European Defence Projects of Common Interest

1. The Commission may identify European Defence Projects of Common Interest for funding in the work programme referred to in Article 20.
2. The Commission shall, when identifying projects referred to in paragraph 1:
 - (a) duly consider the guidance provided in the context of the Defence Industrial Readiness Board, in particular the contribution of the project to the capability priority identified in the context of the CFSP, notably of the Capability Development Plan, and the objectives of the Strategic Compass for security and defence;
 - (b) identify overall financing needs and potential impacts for the Union budget;
 - (c) take into account any views of Member States.
3. European Defence Projects of Common Interest shall meet the following general criteria:
 - (a) the project aims at developing capabilities, including those securing access to strategic domains and contested spaces, strategic enablers, and, as appropriate, systems acting as European defence infrastructure of common interest and use;

- (b) the potential overall benefits of the project outweigh its costs, including in the longer term.
4. A European Defence Project of Common Interest shall involve at least four Member States. The European Commission shall be able, where relevant, to participate in the project.
 5. A European Defence Project of Common Interest shall be considered to contribute to the defence capabilities critical for the security and defence interests of the Union and its Member States and therefore to be in the public interest. They may be established in the framework of Structures for European Armament Programmes referred to in Chapter IV.
 6. Member States may, without prejudice to Articles 107 and 108 TFEU, apply support schemes and provide for administrative support to European Defence Projects of Common Interest.
 7. The Union financial contribution referred to in Article 19 shall not exceed 25% of the amount referred to in Article 5(1).
 8. The deployment of European Defence Projects of Common Interest may be considered an imperative reason of overriding public interest within the meaning of Article 6(4) and Article 16(1), point (c), of Directive 92/43/EEC and of overriding public interest within the meaning of Article 4(7) of Directive 2000/60. Therefore, the planning, construction and operation of related production facilities may be considered of overriding public interest, provided that the remaining other conditions set out in these provisions are fulfilled.

Article 17

Fund to Accelerate defence Supply chains Transformation (FAST)

1. In order to leverage, de-risk and speed-up investments needed to increase the defence manufacturing capacities of SMEs and small mid-caps, a blending operation offering debt and/or equity support may be established (Fund to Accelerate defence Supply-chains' Transformation (FAST). It shall be implemented in accordance with Title X of the Financial Regulation and Regulation (EU) 2021/523⁶.
2. The specific objectives pursued by the FAST shall be the following:
 - (a) achieve a satisfactory multiplier effect in line with the debt and equity mix and contributing to attracting both public and private-sector financing;
 - (b) provide support to SMEs (including start-ups and scale-ups) and small midcaps across the Union, which are facing difficulties in accessing finance and which:
 - (i) industrialise defence technologies and/or manufacture defence products or have imminent plans to so; or
 - (ii) are part of the defence industry's supply chain or have imminent plans to become part it.

⁶ Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU Programme and amending Regulation (EU) 2015/1017 (OJ L 107, 26.3.2021, p. 30–89, ELI: <http://data.europa.eu/eli/reg/2021/523/oj>).

- (c) accelerate investment in the field of manufacturing defence technologies and products, and therefore strengthen the security of supply of the Union's defence industry value chains.

Section 3: Award criteria and work programme

Article 18

Award criteria

1. Each proposal shall be assessed on the basis of the following general criteria:
 - (a) defence industrial readiness: contribution to competitiveness, increase production capacities, reduce lead times, eliminate bottlenecks thereby increasing interoperability and interchangeability;
 - (b) defence industrial resilience: contribution to resilience, increase timely availability and supply to all locations, strengthening security of supply throughout the Union in response to identified risks, including in particular high exposure to the risk of materialisation of conventional military threats, and the non-dependency on non-associated third country sources.
 - (c) defence industrial cooperation: fostering genuine armament cooperation among Member States, associated countries or Ukraine and development and operationalisation of cross-border cooperation between legal entities established in different Member States, associated countries or Ukraine, involving in particular, to a significant extent, SMEs, small mid-caps and other mid-caps as recipients, as subcontractors or as other legal entities in the supply chain;
 - (d) the quality and efficiency of the implementation plan of the action, in particular measures to respect delivery lead times, including in terms of its processes and monitoring.
2. Proposals for common procurement actions referred to in Article 12 shall additionally be evaluated based on the following criteria:
 - (a) the number of Member States or associated countries participating in the action;
 - (b) the estimated value of the procured defence products or services;
 - (c) a demonstration of the action's contribution to the strengthening of the competitiveness and to the adaptation, modernisation and development of the EDTIB in order to allow it to address, including with regard to delivery lead times, availability and supply;
 - (d) a demonstration of the action's contribution to the replenishment of stockpiles, including those depleted as a result of the response to Russia's war of aggression against Ukraine, to the replacement of obsolete equipment, and to the reinforcement of capabilities;
 - (e) the action's contribution to overcoming obstacles to common procurement;
 - (f) the participation of SMEs and mid-caps;

- (g) the creation of new cross-border cooperation between contractors and subcontractors in the supply chains throughout the Union;
3. Proposals for industrial reinforcement actions referred to in Article 13 shall additionally be evaluated based on the following criteria:
- (a) increase in production capacity in the Union: the contribution of the action to the increase, ramp-up or reservation of manufacturing capacities, their modernisation or the reskilling and upskilling of the related workforce;
 - (b) reduction of lead production time: the contribution of the action to the timely satisfaction of the demand expressed through procurement in terms of reduced lead production times, including via order reprioritisation mechanisms;
 - (c) elimination of sourcing and production bottlenecks: the contribution of the action to the swift identification and rapid and lasting elimination of any sourcing (raw material and any other input) or production (manufacturing capability) bottlenecks;
 - (d) support to procurement: the demonstration by the applicants of the link between the action and newly placed orders stemming from the joint procurement of relevant defence products by at least three Member States or associated countries especially if done in a Union framework;
4. The work programme shall lay down further details concerning the application of the award criteria laid down in paragraph 1, including any weighting to be applied. The work programme shall not set individual thresholds.

Article 19

Selection and award procedure

1. Union funding shall be granted following competitive calls for proposals issued in accordance with the Financial Regulation.
2. The Commission shall, by means of implementing acts, award the funding under this Regulation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in [Article 58(3)], except with respect to common procurement actions referred to in Article 12.

Article 20

Union financial contribution

1. By way of derogation from Article 190 of the Financial Regulation, the Programme may finance up to 100 % of the eligible costs. However, for actions referred to in Article 13 the support from the Programme shall not exceed 35 % of the eligible costs.
2. Actions shall be eligible for an increased funding rate in the following cases:
 - (a) actions carried out by a Structure for European Armament Programme as referred to in Chapter IV of this Regulation may benefit from a funding rate increased by an additional [15] percentage points;

- (b) actions carried out, for their entire duration, in the context of a PESCO or EDA Category A or B projects that comply with the requirements set out in Article 10(1) and 27(1) of this Regulation and do not benefit from a comparable increased funding rate in another EU funding programme may benefit from a funding rate increased by an additional [15] percentage points;
 - (c) actions which relate to the commercialisation of defence products supported by the European Defence Fund may benefit from a funding rate increased by an additional [15] percentage points;
 - (d) actions whereby Ukraine is the recipient of defence products produced or procured under the Programme and those products are subject to financial support under the European Peace Facility may benefit from a funding rate increased by an additional [15] percentage points;
 - (e) actions whereby the beneficiary is an SME or the majority of beneficiaries participating in a consortium are SMEs may benefit from a funding rate increased by an additional [15] percentage points;
 - (f) actions whereby Member States agree on a common approach to exports for defence products developed and procured in the context of a Structure for European Armament Programme may benefit from a funding rate increased by an additional [5] percentage points.
3. The overall increase in the funding rate of an activity following the application of the increased funding rates under paragraph 2 shall not exceed [50] percentage points.
 4. The work programme shall lay down further details.

Article 21

Work programme

1. The Programme shall be implemented by a work programme as referred to in Article 110 of the Financial Regulation. The work programme shall set out the actions and associated budget required to meet the objectives of the Programme and, where applicable, the overall amount reserved for blending operations.
2. The Commission shall adopt the work programme by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(3).
3. The work programme shall at least set out:
 - (a) the overall amount of the Union contribution to each type of action referred to in Article 11(1);
 - (b) with respect to actions referred to in Article 12 and Article 13, the minimum financial size of the actions;
 - (c) with respect to actions referred to in Article 13, the maximum number of legal entities forming part of the consortium, which shall in any event not exceed [15] legal entities.
 - (c) the procedure for the evaluation and selection of proposals, including, where relevant, a description of the milestones, which are to be designed in such a way as to mark substantial progress in the implementation of actions, the

- results to be achieved and the associated amounts that are to be disbursed, as well as the arrangements for the verification of the milestones, the fulfilment of conditions and the achievement of results;
- (d) the methods for determining and, where applicable, adjusting the funding.

Chapter III

The Ukraine Support Instrument

Section 1: General provisions applicable to the Instrument

Article 22

Use of financing not linked to costs

1. Grants may take the form of financing not linked to costs, pursuant to Article 180(3) of the Financial Regulation.
2. Where the Union grant takes the form of financing not linked to costs, the level of Union contribution for actions reinforcing the Ukrainian DTIB may be based on factors such as:
 - (a) the estimated value of the action;
 - (b) the contribution of the action to achieving interoperability of defence products produced by the EDTIB and the Ukrainian DTIB;
 - (c) the number of participating Member States;
 - (d) the contribution of the action to the ramp-up of necessary manufacturing capacities;
 - (e) the procurement of additional quantities for other Member States or Ukraine (defence industrial readiness pool);
 - (f) the efforts of Ukraine in the accession process, including structural reforms and measures to promote convergence with Union rules, standards, policies and practices ('acquis');
 - (g) the efforts of adapting the Ukrainian defence procurement processes and the environment for the Ukrainian defence industry, including to meet NATO standards;
 - (h) the efforts and risks associated with the ongoing war of aggression, taking into account the need to rebuild and modernise infrastructure damaged by the war in a resilient way, and, where relevant, by appropriate measures to avoid, prevent or reduce and, if possible, offset these effects.

Article 23

Objectives

1. The Ukraine Support Instruments shall contribute to the recovery, reconstruction, and modernisation of the Ukrainian DTIB with a view to increasing its defence

readiness and taking into account its possible future integration into the EDTIB, through cooperation between the European Union and Ukraine, thereby contributing to mutual stability, security, peace, prosperity, resilience and sustainability.

2. The objective set out in paragraph 1 shall be pursued with an emphasis on enhancing cross-border cooperation between the EDTIB and the Ukrainian DTIB, taking into account the defence product needs of Ukraine, through creation of manufacturing capacities or their ramp-up in line with NATO standards, protection of assets, technical assistance and exchange of personnel, increased cooperation on common procurement of defence products for Ukraine and licensing production cooperation through public-private partnerships or other forms of cooperation, e.g. joint ventures. Special attention shall be given to the objective to support Ukraine to progressively align with Union acquis with a view to future Union membership.

Article 24

Budget

1. The budget for the implementation of the Ukraine Support Instrument shall be composed of:
 - (a) the amount of the additional contributions in accordance with Article 25 to the extent earmarked, subject to the conclusion of the agreement referred to in [Article 59]; and
 - (b) amounts reallocated from the Programme in response to unforeseen situations or new developments in accordance with Article 5(2).
2. The budget referred to in paragraph 1 of this Article may also be used for technical and administrative assistance for the implementation of the Ukraine Support Instrument, such as preparatory, monitoring, control, audit and evaluation activities, including price investigations and corporate information technology systems and platforms, and all other technical and administrative assistance or staff-related expenses incurred by the Commission for the management of the Ukraine Support Instrument.
4. In addition to Article 12(4) of the Financial Regulation, unused commitment and payment appropriations shall be automatically carried over and may be committed and used, respectively, until 31 December of the following financial year. The amount carried over shall be used first in the following financial year. The Commission shall inform the European Parliament and the Council of commitment appropriations carried over in accordance with Article 12(6) of the Financial Regulation.
5. By way of derogation from Article 209(3), first, second and fourth subparagraphs of the Financial Regulation, any revenues and repayments from financial instruments established under this Chapter shall constitute internal assigned revenue within the meaning of Article 21(5) of the Financial Regulation, to the Ukraine Support Instrument or its successor programme.
6. In addition to Article 15 of the Financial Regulation, commitment appropriations corresponding to the amount of recoveries and of decommitments under the Ukraine Support Instrument shall be made available again to the Instrument or its successors in the context of the budgetary procedure.

7. Budgetary commitments for activities extending over more than one financial year may be broken down over several years into annual instalments.
8. Appropriations may be entered in the Union budget beyond 2027 to cover the expenses necessary to fulfil the objectives set out in Article 23, to enable the management of actions not completed by the end of the Ukraine Support Instrument, as well as expenses covering critical operational activities and services.

Article 25

Additional financial resources

1. Member States, European Union institutions, bodies and agencies, third countries, international organisations, international financial institutions or other third parties, may provide additional financial contributions to the Ukraine Support Instrument in accordance with Article 208(2) of the Financial Regulation. Such financial contributions shall constitute external assigned revenue within the meaning of Article 21(2), points (a)(ii) [point (a) FR recast], (d), or (e) or Article 21(5) of the Financial Regulation.
2. Any additional amounts received under the relevant Union restrictive measures shall be external assigned revenue within the meaning of Article 21(5) of the Financial Regulation and shall be used for actions reinforcing the Ukrainian DTIB.

Article 26

Implementation and forms of Union funding

1. The Ukraine Support Instrument shall be implemented under direct management in accordance with the Financial Regulation or in indirect management with bodies referred to in Article 62(1), point (c), of the Financial Regulation.
2. Union funding may be provided in any of the forms laid down in the Financial Regulation except for blending operations under the InvestEU programme in accordance with Title X of the Financial Regulation.
3. By way of derogation from Article 192(2) of the Financial Regulation, activities referred to in Article 13(1), point (d), for which Union funding is provided in the form of a grant under the Ukraine Support Instrument pursuant to Article 26(1), and profit is made, the Commission may recover the percentage of the profit corresponding to the Union contribution to the eligible costs actually incurred by the beneficiary carrying out the action, up to the final amount of the Union contribution. The profit is calculated by a surplus of receipts over the eligible costs of the action, where receipts are limited to Union funding, Member State funding, including procurement, other revenue generated during the action and any revenue resulting from the action. The work programme may set out further details.
4. By way of derogation from Article 193(2) of the Financial Regulation, financial contributions may, where relevant and necessary for the implementation of an action, cover actions started and costs incurred prior to the date of the submission of the proposal for those actions, provided that those actions did not start before 5 March 2024 and have not been completed before the signature of the grant agreement.

Eligible legal entities

1. The eligibility criteria set out in paragraphs 2 to 9 shall apply in addition to the criteria set out in accordance with the Financial Regulation.
2. Recipients of Union funding shall be established in the Union or Ukraine. Recipients established in the non-government controlled areas of Ukraine shall not be eligible for support under this Regulation.
3. The infrastructure, facilities, assets and resources of the recipients and subcontractors involved in an action shall be located on the territory of a Member State or of Ukraine for the entire duration of the action, and their executive management structures shall be established in the Union or Ukraine.
4. By way of derogation to paragraph 3, recipients may use infrastructure, facilities, assets and resources which are located or held outside the territory of the Member States or of Ukraine, provided that such use:
 - (a) is consistent with the objectives set out in Article 23;
 - (b) is strictly necessary as a result of a lack of readily available alternatives or relevant infrastructure, facilities, assets and resources in the Union or Ukraine;
 - (c) does not contravene the security and defence interests of the Union and its Member States.
5. For the purposes of an action supported by the Ukraine Support Instrument, the recipients shall not be subject to control by a third country or by a third-country entity other than Ukraine.
6. By way of derogation from paragraph 5, a legal entity established in the Union and controlled by a third country or by a third-country entity other than Ukraine shall be eligible to be a recipient if it has been subject to screening within the meaning of [Regulation (EU) 2019/452] of the European Parliament and of the Council and, where necessary, to appropriate mitigation measures, taking into account the objectives set out in Article 23 of this Regulation, or if guarantees approved by the Member State in which it is established in accordance with its national procedures are made available to the Commission.

The guarantees shall provide assurances that the involvement in an action of such a legal entity would not contravene the security and defence interests of the Union and its Member States as established in the framework of the CFSP pursuant to Title V of the Treaty on European Union (TEU), or the objectives set out in Article 23. The guarantees shall in particular substantiate that, for the purposes of an action, measures are in place to ensure that:

- (a) control over the legal entity is not exercised in a manner that restrains or restricts its ability to carry out the action and to deliver results, that imposes restrictions concerning its infrastructure, facilities, assets, resources, intellectual property or knowhow needed for the purposes of the action, or that undermines its capabilities and standards necessary to carry out the action;
- (b) access by a third country or by a third-country entity other than Ukraine to classified or sensitive information relating to the action is prevented and the

employees or other persons involved in the action have national security clearance issued by a Member State, where appropriate;

If considered to be appropriate by the Member State or the associated country in which the legal entity is established, additional guarantees may be provided.

7. The procedures and security guarantees applicable to recipients established in Ukraine and controlled by a third country or by a third-country entity other than Ukraine shall be governed by the agreement referred to in Article 59, provided that this does not contravene the security and defence interests of the Union and its Member States or the objectives set out in Article 23.
8. The Commission shall inform [the committee referred to in Article 57] of any legal entity considered to be eligible in accordance with paragraph 6.
9. When carrying out an eligible action, recipients may also cooperate with legal entities established outside the territory of the Member States or of Ukraine, or controlled by a third country or by a third-country entity other than Ukraine, including by using the assets, infrastructure, facilities and resources of such legal entities, provided that this does not contravene the security and defence interests of the Union or its Member States or the objectives set out in Article 23. There shall be no unauthorised access by a third country or an entity established in a third country other than Ukraine to classified information relating to the carrying out of the action and potential negative effects over security of supply of inputs critical to the action shall be avoided. The costs related to those activities shall not be eligible for support from the Ukraine Support Instrument.
10. Paragraphs 2 to 9 shall not apply to:
 - (a) contracting authorities of Member States and Ukraine;
 - (b) International Organisations;
 - (c) The Structures for European Armament Programme;
 - (d) The European Defence Agency.

Section 2: Eligible actions

Article 28

Eligible actions

1. Actions eligible for funding under the Ukraine Support Instrument shall implement the objectives set out in Article 23 and may take one of the following forms:
 - (a) common procurement actions referred to in Article 12;
 - (b) industrial reinforcement actions referred to in Article 13;
 - (c) supporting actions referred to in Article 14(1), points (a) to (e);
 - (d) actions relating to defence industrial readiness pools referred to in Article 15.
2. The following actions shall not be eligible for funding under the Ukraine Support Instrument:
 - (a) actions related to goods or services which are prohibited by international law;

- (b) actions related to lethal autonomous weapons without the possibility of meaningful human control over selection and engagement decisions when carrying out strikes against humans;
 - (c) actions related to goods or services which are subject to control or restriction by third countries or entities established in third-countries other than Ukraine, directly, or indirectly through one or more intermediate legal entities, including in terms of technology transfer;
 - (d) actions or parts thereof, that are already fully financed from other public or private sources.
3. References to Member States in Articles 12, 13, 14 and 15 shall be understood to include Ukraine for the purpose of this section. References to associated countries in Articles 12, 13, 14 and 15 shall not apply to this section.

Section 3: Award and work programme

Article 29

Award criteria

1. The Proposals for actions under Ukraine Support Instrument shall be evaluated on the basis of the criteria laid down in Article 18, paragraph 1.
2. References to Member States in Article 18 shall be understood to include Ukraine for the purpose of this section. References to associated countries in Article 18 shall not apply to this section.
2. The work programme shall lay down further details concerning the application of the award criteria, including any weighting to be applied. The work programme shall not set individual thresholds.
4. The Commission shall, by means of implementing acts, award the funding under this Regulation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in [Article 58(3)].

Article 30

Selection and award procedure

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

Article 31

Union financial contribution

1. By way of derogation from Article 190 of the Financial Regulation, the Ukraine Support Instrument may finance up to 100 % of the eligible costs.

Article 32

Work programme

1. The Ukraine Support Instrument shall be implemented by a work programme as referred to in Article 110 of the Financial Regulation. The work programme shall set out the actions and associated budget required to meet the objectives of the Ukraine Support Instrument.
2. The Commission shall adopt the work programme by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(3).
3. The work programme shall at least set out:
 - (a) the overall amount of the Union contribution to each type of action referred to in Article 28(1);
 - (b) with respect to actions referred to in Article 28(1), points (a) and (b), the minimum financial size of the actions;
 - (c) with respect to actions referred to in Article 28(1), point (b), the maximum number of legal entities forming part of the consortium, which shall in any event not exceed [15] legal entities.
 - (c) the procedure for the evaluation and selection of proposals, including, where relevant, a description of the milestones, which are to be designed in such a way as to mark substantial progress in the implementation of actions, the results to be achieved and the associated amounts that are to be disbursed, as well as the arrangements for the verification of the milestones, the fulfilment of conditions and the achievement of results;
 - (d) the methods for determining and, where applicable, adjusting the funding.

Chapter VI

Governance, evaluation and control

Article 57

Defence Industrial Readiness Board

1. The Defence Industrial Readiness Board is hereby established.
2. The general task of the Board is to assist and provide advice and recommendations to the Commission pursuant to this Regulation, in particular pursuant to its Chapter IV [Security of Supply].
3. To assist the Commission in the implementation of the measures referred to in Chapter II, the Defence Industrial Readiness Board shall assist the latter in the identification of funding priority areas, taking into account the defence capability priorities commonly agreed by Member States within the framework of the Common Foreign and Security Policy (CFSP), in particular in the context of the Capability Development Plan.
4. The Commission shall maintain a regular flow of information to the Defence Industrial Readiness Board on any planned measures or measures that have been taken related to the activation of the supply crisis or security-related supply crisis state. The Commission shall provide the necessary information through a secured IT system.
5. For the purposes of the supply-crisis state as referred to in Article 44, the Defence Industrial Readiness Board shall assist the Commission in the following tasks:
 - (a) analysing crisis-relevant information gathered by Member States or the Commission;
 - (b) assessing whether the criteria for activation or deactivation of the supply-crisis state have been fulfilled;
 - (c) providing guidance on the implementation of the measures chosen to respond to supply crisis at Union level;
 - (d) performing a review of national crisis measures;
 - (e) facilitating exchanges and sharing of information, including with other crisis-relevant bodies at Union level, as well as, as appropriate, third countries, with particular attention paid to developing countries, and international organisations.
6. For the purposes of the security-related supply-crisis state as referred to in Article 48, the Defence Industrial Readiness Board shall:
 - (a) facilitate coordinated action by the Commission and the Member States;
 - (b) adopt opinions and guidance, including specific response measures, for the Member States for ensuring the timely availability and supply of crisis-relevant products;
 - (c) assist and provide guidance on the activation of measures as referred to in Articles 49 to 54;

- (d) provide a forum for the coordination of actions of the Council, the Commission, and other relevant Union bodies.
7. The Defence Industrial Readiness Board shall be composed of the representatives of the Commission, the High-Representative and Head of the European Defence Agency, Member States and associated countries. Each Member State or associated country shall nominate one representative and one alternate representative. The Board shall be chaired by the Commission for the purposes of the tasks laid down in this Regulation. The secretariat of the Defence Industrial Readiness Board shall be ensured by the Commission.
 8. The Defence Industrial Readiness Board shall meet whenever the situation requires, upon request from the Commission or a Member State or an associated country. It shall adopt its rules of procedure on the basis of a proposal submitted by the Commission.
 9. The Defence Industrial Readiness Board may issue opinions, upon the request of the Commission or on its own initiative. The Defence Industrial Readiness Board shall endeavour to find solutions which command the widest possible support.
 10. The Defence Industrial Readiness Board shall invite, at least once a year, representatives from National Defence Industrial Associations and selected industrial representatives, taking into account the necessity to ensure a balanced geographical representation (structured dialogue with defence industry). Where the supply crisis state referred to in Article 44 or the security supply crisis state referred to in Article 48 has been activated, the Defence Industrial Readiness Board shall invite high-level industrial representatives to meet in special configuration in order to discuss issues linked to crisis-relevant products.
 11. The Defence Industrial Readiness Board shall invite the representatives of other crisis-relevant bodies at Union level as observers to the relevant meetings of the Board.
 12. The Defence Industrial Readiness Board shall invite, where relevant and notably with a view to actions reinforcing the Ukrainian DTIB, in line with its rules of procedure and with due respect to the security and defence interests of the Union and its Member States, a representative from Ukraine to attend meetings as an observer.
 13. The Commission shall ensure transparency and provide members of the Board with equal access to information, in order to ensure that the decision-making process reflects the situation and the needs of all Member States.
 14. The Commission may, on its own initiative or on the proposal of the Defence Industrial Readiness Board, set up working groups on an *ad hoc* basis to support the Defence Industrial Readiness Board in its work for the purpose of examining specific questions on the basis of the tasks referred to in paragraph 1. Member States shall nominate experts for the working groups.
 15. The Commission shall set up a working group on legal, regulatory and administrative hurdles. The objectives of this working group are:
 - (a) to identify existing or potential legal, regulatory and administrative obstacles at international, EU and national levels to the achievement of the objectives listed in Article 4;
 - (b) to identify potential solutions and/or mitigation measures to identified obstacles.

Article 58

Committee Procedure

1. The Commission shall be assisted by a committee within the meaning of Regulation (EU) No 182/2011.
2. The EDA shall be invited to provide its views and expertise to the committee as an observer. The EEAS shall also be invited to assist in the work of the committee.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
4. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and Article 5(4), third subparagraph, of Regulation (EU) No 182/2011 shall apply.

Article 59

EU – UA Framework agreement

1. The Commission shall conclude a framework agreement with Ukraine for the implementation of the actions set out in this Regulation which concern Ukraine or legal entities established in Ukraine receiving Union funds.
2. The framework agreement concluded with Ukraine, taken as a whole, and contracts and agreements signed with legal entities established in Ukraine receiving Union funds, shall ensure that the obligations set out in Article 129 of the Financial Regulation can be fulfilled.
3. The framework agreement shall lay down the obligations of the Ukrainian authorities and bodies entrusted of budget implementation tasks to take all the necessary measures including legislative, regulatory and administrative measures to respect the principles of sound financial management, transparency and non-discrimination, to ensure the visibility of Union action when managing the Union funds, to fulfil the appropriate control and audit obligations and assume the resulting responsibilities, and to protect the financial interests of the Union, by, in particular, detailed enacting provisions concerning:
 - (a) the activities related to control, supervision, monitoring, evaluation, reporting and audit of Union funding under the Ukraine Support Instrument, as well as investigations, anti-fraud measures and cooperation;
 - (b) rules on taxes, duties and charges in accordance with Article 27(9) and (10) of Regulation (EU) 2021/947;
 - (c) the right of the Commission to monitor activities under this Regulation carried out by the legal entities established in Ukraine, along the whole project cycle, including for cooperation for common procurement action, to take part in these as observer, as appropriate, and to make recommendations for the improvement of such activities and commitment by the Ukrainian authorities to make their best efforts to implement such recommendations of the Commission and to report on this implementation;

- (d) the obligations referred to in Article 64(2), including precise rules and timeframe on collection of data by Ukraine and access for the Commission and OLAF;
 - (e) the preservation of security interests, including a level of protection of classified and sensitive information and confidentiality equivalent to that set out in Articles 60 and 61;
 - (f) provisions on protection of personal data;
 - (g) procedures and guarantees applicable to recipients under the Ukraine Support Instrument established in Ukraine and controlled by a third country or a third country entity other than Ukraine.
4. Funding shall only be granted to Ukraine after the framework agreement has entered into force and that the actions needed to implement the requirements it establishes have been implemented by the parties.

Article 60

Application of the rules on classified information

1. The originatorship of classified foreground information generated in implementing eligible actions listed under Article 26(1), shall be under the responsibility of the participating Member States who will establish the applicable security framework, in accordance with relevant national laws and regulations.
2. Such a security framework shall be without prejudice to the possibility for the Commission to have access to the necessary information for carrying out the action, including the verification of milestones, the fulfilment of conditions and the achievement of results, as defined in the relevant work programme.
3. The Commission shall protect classified information received in accordance with the security rules set out in Decision (EU, Euratom) 2015/444 and Decision 2013/488/EU.
4. The applicable security framework for the action has to be put in place at the latest before the signature of the grant agreement or the contract. The relevant documents shall form integral part of the Grant Agreement.
5. The Commission shall make available approved and accredited existing systems to facilitate the exchange of classified information between the Commission, the EEAS, the EDA, Member States and associated countries and, where appropriate, with the applicants and the recipients. This system shall take into account Member States' national security regulations.

Article 61

Confidentiality and processing of information

1. Information received as a result of the application of this Regulation shall be used only for the purpose for which it was requested.
2. Member States, the Commission, the EEAS and the EDA shall ensure the protection of classified and sensitive information acquired and generated in application of this Regulation in accordance with Union law and the respective national law.

3. Member States, the Commission, the EEAS and the EDA shall ensure that classified information provided or exchanged under this Regulation is not downgraded or declassified without the prior written consent of the originator.
4. The Commission shall not share any information in a way that can lead to the identification of an entity when the sharing of the information results in potential commercial or reputational damage to that entity or in divulging any trade secrets.
5. The Commission shall handle information containing any data of an entity or any trade secrets in a way not less stringent than the handling of sensitive information, which includes the application of the “need to know principle” and the handling and sharing in appropriate encrypted environments.

Article 62

Personal data protection

1. This Regulation shall be without prejudice to the obligations of Member States relating to their processing of personal data under Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽⁷⁾ and Directive 2002/58/EC of the European Parliament and of the Council ⁽⁸⁾, or the obligations of the Commission and, where appropriate, other Union institutions, bodies, offices and agencies, relating to their processing of personal data under Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁽⁹⁾, when fulfilling their responsibilities.
2. Personal data shall not be processed or communicated except in cases where this is strictly necessary for the purposes of this Regulation. In such cases Regulations (EU) 2016/679 and (EU) 2018/1725 shall apply as appropriate.
3. Where the processing of personal data is not strictly necessary to the fulfilment of the mechanisms established in this Regulation, personal data shall be rendered anonymous in such a manner that the data subject is not identifiable.

Article 63

Audits

Audits on the use of the Union contribution carried out by persons or entities, including by persons or entities other than those mandated by the Union institutions, bodies, offices or agencies, shall form the basis of the overall assurance pursuant to Article 127 of the Financial Regulation. The Court of Auditors shall examine the accounts of all revenue and expenditure of the Union in accordance with Article 287 TFEU.

⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁸ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

⁹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

Article 64

Protection of the financial interests of the Union

1. Where an associated country participates in the Programme by means of a decision adopted pursuant to the Agreement on the European Economic Area or on the basis of any other legal instrument, the associated country shall grant the necessary rights and access required for the authorising officer responsible, OLAF and the Court of Auditors to comprehensively exercise their respective competences. In the case of OLAF, such rights shall include the right to carry out investigations, including on-the-spot checks and inspections, as provided for in Regulation (EU, Euratom) No 883/2013.
2. The agreement referred to in Articles 59 shall provide for the obligations of Ukraine:
 - (a) to take appropriate measures to prevent, detect and correct fraud, corruption, conflicts of interests and irregularities affecting the financial interests of the Union, to avoid double funding and to take legal actions to recover funds that have been misappropriated;
 - (b) to regularly check that the financing provided has been used in accordance with the applicable rules, in particular regarding the prevention, detection and correction of fraud, corruption, conflicts of interests and irregularities;
 - (c) to accompany a request for payment under the Programme by a declaration that the funds were used in accordance with the principle of sound financial management and for their intended purpose and managed appropriately in particular in accordance with Ukrainian rules complemented by international standards, on prevention, detection and correction of irregularities, fraud, corruption and conflicts of interests;
 - (d) to expressly authorise the Commission, OLAF, the Court of Auditors and, where applicable, EPPO to exert their rights as provided for in Article 129(1) of the Financial Regulation, in application of the principle of proportionality.

Article 65

Information, communication and publicity

1. The recipients of Union funding shall acknowledge the origin of the funds and ensure the visibility of the Union funding, in particular when promoting the actions and their results, by providing coherent, effective and proportionate targeted information to multiple audiences, including the media and the public.
2. The Commission shall implement information and communication actions relating to the Programme and the Ukraine Support Instrument, to actions taken pursuant to the Programme and to the results obtained.
3. Financial resources allocated to the Programme and the Ukraine Support Instrument shall contribute to the corporate communication of the political priorities of the Union, insofar as those priorities are related to the objectives referred to in Article 4 and 23.
4. Financial resources allocated to the Programme and the Ukraine Support Instrument may contribute to the organisation of dissemination activities, match-making events

and awareness-raising activities, in particular aiming at opening up supply chains to foster the cross-border participation of SMEs.

Article 66

Evaluation

1. By [insert a date four years after the entry into force of this Regulation], the Commission shall draw up a report evaluating the implementation of the measures set out in this Regulation and their results, as well as the opportunity to extend their applicability and provide for their funding, particularly with regard to the evolution of the security context and any persistent risks in relation to the supply of defence products. The evaluation report shall build on consultations of the Member States and key stakeholders.
2. By [insert a date two years after the entry into force of this Regulation], the Commission shall carry out an interim evaluation of the Programme and of the Ukraine Support Instrument, which shall include:
 - (a) an assessment of the governance of the Programme and of the Ukraine Support Instrument, including as regards the provisions related to [the committee referred to in Article 57];
 - (b) the lessons learned from ASAP and EDIRPA;
 - (c) the implementation rates;
 - (d) the project award results, including the level of involvement of SMEs and mid-caps and the degree of their cross-border participation;
 - (e) the agreement referred to in Article 59.
 - (f) funding granted in accordance with Title X of the Financial Regulation.
2. The Commission shall present the report to the European Parliament and the Council, accompanied, where appropriate, by relevant legislative proposals.

Article 67

Entry into force

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

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

PUBLIC



Formatted

2024/0061 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing the European Defence Industry Programme and a framework of measures to ensure the timely availability and supply of defence products ('EDIP')

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114(1), Article 173(3), Article 212(2) and Article 322(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the European Court of Auditors²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Heads of State or Government of the Union, meeting in Versailles on 11 March 2022, committed to “bolster European defence capabilities” in light of Russia’s unprovoked and unjustified war of aggression against Ukraine. They agreed to increase defence expenditures, step up cooperation through joint projects and common procurement of defence capabilities, close shortfalls, boost innovation and strengthen and develop the EU defence industry, including through establishing a European Defence Industry Programme (the ‘Programme’).
- (2) The long-term deterioration of regional and global threat levels requires a step-change in the scale and speed with which Europe’s defence technological and industrial base (EDTIB) can develop and produce the full spectrum of military capabilities. The return of high-intensity warfare and territorial conflict to Europe has a negative impact on the security of the Union and the Member States and requires a significant increase in the capacity of Member States to reinforce their defence capabilities.
- (3) On 14 and 15 December 2023, the European Council, in its conclusions, having considered work carried out to implement the Versailles declaration and the Strategic Compass for Security and Defence, underlined that more needs to be done to fulfil the Union’s objectives of increasing defence readiness. To achieve such a readiness and

Commented [A1]:
Presidency Note

To be revisited in function of the advice of the Council Legal Service, if needed.

¹ OJ C , , p. .

² OJ C , , p. .

defend the Union, a strong defence industry is a pre-requisite, making the European defence industry more resilient, innovative and competitive.

- (4) The Commission and the High Representative of the Union for Foreign Affairs and Security Policy presented a Joint Communication on the Defence Investment Gaps Analysis and Way Forward on 18 May 2022 highlighting the existence, within the Union, of defence financial, industrial and capability gaps. On 18 October 2023 a Regulation (EU) 2023/2418 of the European Parliament and the Council³ was adopted establishing an instrument for the reinforcement of the European defence industry through common Procurement (EDIRPA), aimed at supporting collaboration between Member States in the procurement phase to fill the most urgent and critical gaps, especially those created by the response to Russia's war of aggression against Ukraine, in a collaborative way. On 20 July 2023 a Regulation (EU) 2023/1525 of the European Parliament and the Council⁴ supporting ammunition production (ASAP) was adopted, aimed at urgently supporting the ramp-up of manufacturing capacities of the European defence industry, secure supply chains, facilitate efficient procurement procedures, address shortfalls in production capacities and promote investments.
- (5) EDIRPA and ASAP were designed as emergency response and short-term programmes, both expiring in 2025 (30 June 2025 for ASAP and 31 December 2025 for EDIRPA). The Programme should build on EDIRPA and ASAP achievements and extend their logic until 2027, by providing financial support for the reinforcement of the EDTIB, in a predictable, continuous and timely manner on the basis of an integrated approach. In the light of the current security situation, it appears necessary to extend the Union support a broader scope of defence equipment including consumables such as unmanned systems that play a decisive role in the war theatre in Ukraine.
- (6) The European Council of 23 June 2022 decided to grant the status of candidate country to Ukraine, which expressed a strong will to link reconstruction with reforms on its European path. In December 2023, EU leaders decided to open accession negotiations with Ukraine. On 15 December 2023, the European Council declared that the Union and Member States remain committed to contributing, for the long term and together with partners, to security commitments to Ukraine, which will help Ukraine to defend itself, resist destabilization efforts and deter acts of aggression in the future. Strong support to Ukraine is a key priority for the Union and an appropriate response to the Union's strong political commitment to support Ukraine for as long as necessary.
- (7) The damage from Russia's war of aggression to the Ukrainian economy, society and infrastructure, and in particular damage caused to the Ukraine defence technological and industrial base (Ukrainian DTIB) require comprehensive support to rebuild the latter. This is essential in order to provide the capacity to the Ukrainian State to maintain its essential functions and allow the fast recovery, reconstruction and modernisation of the country and foster its integration into the European Defence

³ Regulation (EU) 2023/2418 of the European Parliament and of the Council of 18 October 2023 on establishing an instrument for the reinforcement of the European defence industry through common procurement (EDIRPA) (OJ L, 2023/2418, 26.10.2023, ELI: <http://data.europa.eu/eli/reg/2023/2418/oj>).

⁴ Regulation (EU) 2023/1525 of the European Parliament and of the Council of 20 July 2023 on supporting ammunition production (ASAP) (OJ L 185, 24.7.2023, p. 7, ELI: <http://data.europa.eu/eli/reg/2023/1525/oj>).

Equipment Market. A strong Ukrainian DTIB is vital for Ukraine's long-term security as well as its reconstruction.

- (8) In this regard actions supporting the reinforcement of the Ukrainian defence technological and industrial base should be financed. This support is complementary to that provided under the Ukraine Facility as well as military support provided to Ukraine under the European Peace Facility and through bilateral assistance by Member States.
- (9) Russia must be held fully accountable and pay for the massive damage caused by its war of aggression against Ukraine, which constitutes a blatant violation of the Charter of the United Nations. The Union and its Member States should, in close cooperation with other international partners, continue to work towards this goal, in accordance with Union and international law, taking into account Russia's serious breach of the prohibition on the use of force enshrined in Article 2(4) of the Charter of the United Nations and the principle of State responsibility for internationally wrongful acts, including the obligation to compensate for the financially assessable damage caused. It is important that, inter alia, progress is made, in coordination with international partners, on how extraordinary revenues held by private entities stemming directly from immobilised Russian assets could be directed to support Ukraine, including its defence technological and industrial base, in a manner that is consistent with applicable contractual obligations and in accordance with Union and international law. If the Council were to adopt a CFSP decision under Article 29 TEU upon a proposal by the High Representative to transfer to the Union extraordinary cash balances of central securities depositories arising from the unexpected and extraordinary revenues from Russia's immobilised sovereign assets, such additional support could be drawn from these revenues, in line with the objectives of the Union's Common Foreign and Security Policy.
- (10) A Framework agreement should be concluded with Ukraine to set up the principles of the cooperation between the Union and Ukraine under this Regulation. Grant agreements or joint procurement should also be concluded with Ukraine and legal entities established in Ukraine to define conditions for releasing funds.
- (11) To fund the actions that aim at strengthening the competitiveness, responsiveness and ability of the EDTIB based on Article 173 TFEU and the actions of cooperation with Ukraine for reinforcement of the Ukrainian DTIB under Article 212 TFEU, this Regulation should establish common objectives, common financial mechanisms while clearly distinguishing two budget lines corresponding to each of the objectives pursued as well as establish a Programme setting out the conditions for Union financial support under Article 173 TFEU and an Ukraine Support Instrument setting out the specific conditions for Union financial support under Article 212 TFEU.
- (12) This Regulation lays down a financial envelope for the entire duration of the Programme which is to constitute the prime reference amount, within the meaning of point 18 of the Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, for the European Parliament and the Council during the annual budgetary procedure.
- (13) The possibilities provided for in Article 73(4) of Regulation (EU) 2021/1060 of the European Parliament and of the Council could be applied provided that the project complies with the rules set out in that Regulation and the scope of the European

Regional Development Fund and the European Social Fund Plus as set out in Regulations (EU) 2021/1058 and (EU) 2021/1057 of the European Parliament and of the Council, respectively. This could, in particular, be the case where the production of relevant defence products faces specific market failures or suboptimal investment situations in the Member States' territories, notably in vulnerable and remote areas, and such resources contribute to the achievement of the objectives of the programme from which they are transferred. In line with Article 24 of Regulation (EU) 2021/1060, the Commission is to assess the amended programmes submitted by the Member State and make observations within two months of the submission of the amended programme.

- (14) In view of the need invest better and together in defence capabilities of the Member States and associated countries as well as in the recovery, reconstruction and modernisation of Ukraine's defence industrial base, it should be possible for Member States, third countries, international organisations, international financial institutions or other sources to contribute to the implementation of the Programme. Such contributions should be implemented in accordance with the same rules and conditions and should constitute external assigned revenue within the meaning of Article 21(2)(a)(ii), (d), and (e) of the Regulation (EU, Euratom) No 2018/1046. In addition, Member States should be able to use the flexibility in the implementation of their shared management allocations offered by Regulation (EU) 2021/1060 of the European Parliament and the Council. It should therefore be possible to transfer certain levels of funding between shared management allocations and the Programme subject to the conditions set out in the relevant provisions of Regulation (EU) 2021/1060 of the European Parliament and the Council. Uncommitted resources at the latest in 2028 may be transferred back to one or more respective source programmes, at the request of the Member State, in accordance with the conditions set out in the relevant provisions of Regulation (EU) 2021/1060.
- (15) As the Programme aims to enhance the competitiveness and efficiency of the Union's and Ukraine's defence industry, to benefit from the Programme, recipients of financial support should be legal entities which are established in the Union, in associated countries or in Ukraine and which are not subject to control by non-associated third countries, other than Ukraine or by, non-associated third-country entities. Where Member States, associated countries or Ukraine are the recipients of the financial support, in particular for common procurement actions, these rules should apply mutatis mutandis for the contractors or subcontractors to the procurement contracts. In that context, control should be understood to be the ability to exercise a decisive influence on a legal entity directly, or indirectly through one or more intermediate legal entities. Additionally, in order to ensure the protection of essential security and defence interests of the Union and its Member States, the infrastructure, facilities, assets and resources of the legal entities involved in the actions which are used for the purposes of the action should be located on the territory of a Member State, of an associated country or of Ukraine.
- (16) In certain circumstances, it should be possible to derogate from the principle that legal entities involved in an action supported by the Programme are not subject to control by non-associated third countries or non-associated third-country entities. In that context, a legal entity established in the Union or in an associated third country and controlled by a non-associated third country or a non-associated third country entity may participate as recipient if strict conditions relating to the security and defence interests of the Union and its Member States, as established in the framework of the Common

Foreign and Security Policy pursuant to Title V of the Treaty on European Union (TEU), including in terms of strengthening the European Defence Technological and Industrial Base, are fulfilled.

- (17) Furthermore, the defence products subject to actions supported by the Programme should not be subject to control or restriction by a non-associated third country or a non-associated third country entity.
- (18) Given the specificities of the defence industry, where demand comes almost exclusively from States, which also control all acquisition of defence-related products and technologies, including exports, the functioning of the defence industry sector does not follow the conventional rules and business models that govern more traditional markets. The industry does not therefore engage in substantial self-funded industrial investments but only does so as a consequence of firm orders. While firm orders from Member States are a precondition for any investment, the Commission can intervene by offsetting the complexity of cooperation for common procurement and de-risking industrial investments via grants and loans allowing a faster adaptation to ongoing structural market change. As a general rule, Union support should cover up to 100% of direct eligible costs or 100% of the amount determined for actions applying the financing not linked to costs option. The Union support for industry reinforcement actions should cover up to 50 % of direct eligible costs in order to enable recipients to implement actions as soon as possible, to de-risk their investment and therefore to speed up the availability of relevant defence products.
- (19) The Programme should provide financial support, via means provided for in the Regulation (EU, Euratom) No 2018/1046, to actions contributing to the timely availability and supply of defence products such as cooperation for common procurement of public authorities, industrial coordination and networking activities including reservation and stockpiling of defence products, access to finance for undertakings involved in the manufacturing of relevant defence products, reservation of manufacturing capacities ('ever warm facilities'), industrial processes of reconditioning of expired products, expansion, optimisation, modernisation, upgrading or repurposing of existing, or the establishment of new, production capacities in that field as well as the training of personnel.
- (20) Grants under the Programme may take the form of financing not linked to cost based on the achievement of results by reference to work packages, milestones or targets of the common procurement process, in order to create the necessary incentive effect.
- (21) Where the Union grant takes the form of financing not linked to costs, the Commission should determine in the work programme the funding conditions for each action, in particular (a) a description of action involving cooperation for common procurement with a view to addressing the most urgent and critical capacity needs, (b) the milestones for the implementation of the action and (c) the maximum Union contribution available.
- (22) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission with respect to the adoption of work programmes to set out the funding priorities and the applicable funding conditions. The specificities of the defence sector, in particular the responsibility of Member States, associated countries or Ukraine for the planning and acquisition process, should be taken into account. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

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- (23) In accordance with Article 193(2) of the Regulation (EU, Euratom) No 2018/1046, a grant may be awarded for an action which has already begun, provided that the applicant can demonstrate the need for starting the action prior to signature of the grant agreement. However, costs incurred prior to the date of submission of the grant application are not eligible, except in duly justified exceptional cases. In order to enable continuity of funding perspective for actions that could have been supported by 2024 funding under ASAP and EDIRPA, in the financing decision it should be possible to provide for financial contributions in relation to actions that cover a period starting from 5 March 2024.
- (24) When assessing proposals submitted by applicants, the Commission should pay particular attention to their contribution to the objectives of the Programme. The proposals should be assessed, in particular, against their contribution to the increase in defence industrial readiness, in particular increasing production capacities and eliminating bottlenecks. They should also be assessed against their contribution to fostering defence industrial resilience, by reference to considerations such as timely availability and supply to all locations, strengthening security of supply throughout the Union in response to identified risks, including in particular to those Member States most exposed to the risk of materialisation of conventional military threats. Assessments should also refer to the contribution to defence industrial cooperation through genuine armament cooperation among Member States, associated countries and Ukraine and the development and the operationalisation of cross-border cooperation of undertakings, in particular, to a significant extent, small and medium-sized enterprises (SMEs) and small middle capitalization companies (small mid-caps) operating in the supply chains concerned.
- (25) When designing, awarding and implementing Union financial support, the Commission should pay particular attention to ensuring that such support does not adversely affect the conditions of competition in the internal market.
- (26) The Regulation (EU, Euratom) No 2018/1046 and subsequent amendments applies to this Programme. It lays down rules on the implementation of the Union budget, including the rules on grants, prizes, procurement, indirect implementation, and financial instruments.
- (27) In accordance with the Regulation (EU, Euratom) No 2018/1046, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council and Council Regulations (EC, Euratom) No 2988/95, (Euratom, EC) No 2185/96 and (EU) 2017/1939, the financial interests of the Union are to be protected by means of proportionate measures, including measures relating to the prevention, detection, correction and investigation of irregularities, including fraud, to the recovery of funds lost, wrongly paid or incorrectly used, and, where appropriate, to the imposition of administrative penalties. In particular, in accordance with Regulations (Euratom, EC) No 2185/96 and (EU, Euratom) No 883/2013, the European Anti-Fraud Office (OLAF) has the power to carry out administrative investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. The European Public Prosecutor's Office (EPPO) is empowered, in accordance with Regulation (EU) 2017/1939, to investigate and prosecute criminal offences affecting the financial interests of the Union as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council. In accordance with the Regulation (EU, Euratom) No 2018/1046, any person or entity receiving Union funds is to fully cooperate in the protection of the financial interests of the Union, grant the necessary

rights and access to the Commission, OLAF, the Court of Auditors and, in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, the EPPO, and ensure that any third parties involved in the implementation of Union funds grant equivalent rights.

- (28) Third countries which are members of the European Economic Area (EEA) may participate in Union programmes in the framework of the cooperation established under the Agreement on the European Economic Area, which provides for the implementation of the programmes on the basis of a decision adopted under that Agreement. A specific provision should be introduced in this Regulation requiring those third countries to grant the necessary rights and access required for the authorising officer responsible, OLAF and the Court of Auditors to comprehensively exercise their respective competences. Pursuant to Article 85 of Council Decision (EU) 2021/1764 (18), natural persons and bodies and institutions established in overseas countries and territories (OCTs) are eligible for funding subject to the rules and objectives of the Programme and possible arrangements applicable to the Member State to which the relevant OCT is linked.
- (29) Building inter alia on the experience of the defence equity facility, established in the context of the European Defence Fund as an InvestEU blending operation, the Commission should endeavour to set up a dedicated facility as part of the Programme to be referred to as the 'Fund for the acceleration of defence supply chain transformation ('FAST')'. FAST should be implemented under indirect management. FAST will leverage, de-risk and speed-up investments needed to increase the defence manufacturing capacities of EU-based SMEs and small mid-caps, in the form of a blending operation offering support in the form of debt and/or equity. FAST should be established as a blending operation, including under the InvestEU Programme established by Regulation (EU) 2021/523 of the European Parliament and Council (20), in close cooperation with its implementing partners.
- (30) FAST should achieve a satisfactory multiplier effect in line with the debt and equity mix and contribute to attracting both public and private-sector financing. In order to contribute to the overall objective of enhancing the EDTIB's competitiveness, FAST should also provide support to SMEs (including start-ups and scale-ups) and small mid-caps across the EU, manufacturing defence technologies and products as well as companies actually or potentially part of the defence industry's supply chain, facing difficulties in accessing finance. FAST should as well accelerate investment in the field of manufacturing defence technologies and products, and therefore strengthen the security of supply of the Union's defence industry value chains.
- (31) Cooperative armament programmes in the Union face significant challenges, being mostly set up on ad hoc basis and being plagued by complexity, delays and cost overruns. To remediate this situation and ensure continuous Member States' commitment throughout the whole life cycle of defence capabilities, a more structured approach is required at EU level. To make this happen, the Commission should support Member States' efforts by making available a new legal framework – the Structure for European Armament Programme (SEAP) - to underpin and strengthen defence cooperation. Actions undertaken in this framework should be mutually reinforcing with those carried out under the Common Foreign and Security Policy (CFSP), in particular in the context of the Capability Development Plan (CDP) and of PESCO

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- (32) Within this Structure for European Armament Programme, Member States should benefit from standardised procedures for initiating and managing cooperative defence programmes. A cooperation under this framework should also allow Member States, under certain conditions, to benefit from an increased funding rate, simplified and harmonised procurement procedures, and, where Member States jointly own the procured equipment, a VAT exemption. The international organisation status should also allow Member States, if they wish so, to issue bonds to ensure the long-term financing plan of armament programmes. While the Union would not be liable for debt issuance by Member States, contributions under EDIP to the functioning of SEAP might improve the conditions for financing by the Member States of the armament programmes, which are eligible for Union support.
- (33) In order to permit an efficient procedure for the setting-up of a SEAP, it is necessary for the Member States, associated countries or Ukraine willing to set up a SEAP to submit an application to the Commission which should assess, whether the proposed statutes of the armament programme are in conformity with this Regulation. Such an application should contain a declaration of the host Member State recognising the SEAP as an international body or organisation for the purpose of the application of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty, as of its setting up.
- (34) For reasons of transparency, the decision setting-up a SEAP should be published in the *Official Journal of the European Union*. For the same reasons, the essential elements of its Statutes should be annexed to such decisions.
- (35) In order to carry out its tasks in the most efficient way, a SEAP should have legal personality and the most extensive legal capacity as from the day on which the decision setting it up takes effect. It should have a statutory seat, in order to determine the applicable law, within the territory of a member of that SEAP which is a Member State.
- (36) Membership of a SEAP should comprise at least three Member States and may include associated countries and Ukraine.
- (37) For the implementation of the SEAP, more detailed provisions should be laid down in Statutes, on the basis of which the Commission should examine the compliance of an application with the rules established in this Regulation.
- (38) It is necessary to ensure that, on the one hand, a SEAP has the necessary flexibility to amend its Statutes and, on the other hand, that certain essential elements, in particular those which were necessary for the granting of the SEAP statutes, are preserved through a necessary control at Union level. If an amendment concerns an essential element of the Statutes annexed to the decision setting up the SEAP, such amendment should be approved, prior to taking effect, by a Commission decision taken following the same procedure as that for setting up the SEAP. Any other amendment should be notified to the Commission, which should have an opportunity to object if it considers the amendment contrary to this Regulation.
- (39) A SEAP should be able to appoint a Procurement Agent acting in its own name. A SEAP should be able to procure defence products on its own behalf or on behalf of its members. In the case it procures on its own behalf, the SEAP should be considered as an international organisation purchasing for its own purposes within the meaning of Article 12(c) of Directive 2009/81/EC in conformity with State aid rules. Where it

procures on behalf of its members, in order to ensure an adequate incentive for Member States to engage in a cooperation within the SEAP, the SEAP should be able to define its own rules of procurement by derogation to Directive 2009/81/EC. These rules should ensure compliance with EU primary law principles applicable to procurement, in particular those of transparency, non-discrimination and competition.

- (40) A SEAP could qualify for funding in accordance with Title VI of the Regulation (EU, Euratom) No 2018/1046. Funding under the Cohesion Policy could also be possible, in conformity with the relevant Community legislation.
- (41) In order to carry out its tasks in the most efficient way and as a logical consequence of its legal personality, a SEAP should be liable for its debts. In order to allow the members to find appropriate solutions regarding their liability, the option should be given to provide in the Statutes for different liability regimes going above the liability limited to the contributions of the members.
- (42) Since a SEAP is established under Union law, it should be governed by Union law, in addition to the law of the State where it has its statutory seat. However, the SEAP could have a place of operation in another State. The law of that latter State should apply in respect of specific matters defined by the Statutes of the SEAP. Furthermore, a SEAP should be governed by implementing rules complying with the Statutes.
- (43) In order to ensure sufficient control of compliance with this Regulation, a SEAP should transmit to the Commission and relevant public authorities its annual report and any information about circumstances threatening to seriously jeopardise the achievement of its tasks. If the Commission obtains indications, through the annual report or otherwise, that the SEAP acts in serious breach of this Regulation or other applicable law, it should request explanations and/or actions from the SEAP and/or its members. In extreme cases and if no remedial action is taken, the Commission could repeal the decision setting up the SEAP, thus triggering the winding-up of the SEAP.
- (44) Upon the adoption of ASAP, the European Parliament and the Council called on the Commission to consider, putting forward a legal framework aimed at ensuring the security of supply (Joint Statement of 11 July 2023). This joint statement by co-legislators echoed the conclusions of the European Council in December 2013 calling for a comprehensive EU-wide Security of Supply regime and the European Parliament's recommendation of 8 June 2022 urging the Commission to present, without delay, such a regime.
- (45) The crisis resulting from Russia's war of aggression against Ukraine has not only demonstrated deficiencies in the Union's and Ukraine's defence industrial sector, but has also posed challenges to the functioning of the internal market for defence products. Indeed, the steady degradation of the geopolitical context has already entailed a significant and lasting increase in the demand that may affect the functioning of the internal market for the production and sale of certain defence products and of their components in the Union. While certain Member States have taken or are likely to take measures to preserve their own stocks as a matter of national security, others are faced with difficulties of access to the goods needed to manufacture or acquire the relevant defence products. Sometimes, difficulties in accessing one raw material or a specific component hamper entire production chains. To ensure the functioning of the internal market under any circumstances and to make it resilient to any shock, it is necessary to establish, in a coordinated way, harmonised rules for increasing the security of supply of defence products. Those measures should be based on Article 114 TFEU.

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- (46) To pursue the general public policy objective of security, it is necessary that production facilities related to the production of relevant defence products are set up as quickly as possible, while keeping the administrative burden to a minimum. For that reason, Member States should treat applications related to the planning, construction and operation of plants and installations for the production of relevant defence products in the most rapid manner possible. Such applications should be given priority when balancing legal interests in the individual case.
- (47) In view of the objective of this Regulation, and of the emergency situation and the exceptional context of its adoption, Member States should consider using defence-related exemptions under national and applicable Union law, on a case-by-case basis, if they deem that the use of such exemptions would facilitate the achievement of that objective. That could in particular apply to Union law concerning environmental, health and safety issues, which is indispensable to improving the protection of human health and the environment, as well as to achieving a sustainable and safe development. However, the implementation of that law could also produce regulatory barriers hampering the Union defence industry's potential to ramp up the production and deliveries of relevant defence products. It is a collective responsibility for the Union and its Member States to urgently look into any action they could take to mitigate possible obstacles. Any such action, whether at Union, regional, or national level, should not compromise the environment, health and safety.
- (48) Directive 2009/81/EC of the European Parliament and of the Council aims at harmonising procurement procedures for the award of public contracts in the field of defence and security thus enabling the security requirements of Member States and the obligations arising from the TFEU to be met. That Directive contains, in particular, specific provisions governing situations of urgency resulting from a crisis, in particular shortened periods for the receipt of tenders and the possibility to use the negotiated procedure without prior publication of a contract notice. However, in extreme urgency, in particular during supply and security crises, these rules could be incompatible even with those provisions in cases where two or more Member States intend to engage in a common procurement. In some cases, the only solution that ensures the security interests of those Member States is to open an existing framework agreement to contracting authorities/entities of Member States that were not originally party to it, even though that possibility had not been provided for in the original framework agreement.
- (49) In accordance with the case law of the Court of Justice of the European Union, modifications to a public contract are to be strictly limited to what is absolutely necessary in the circumstances, while complying to the maximum extent possible with the principles of non-discrimination, transparency and proportionality. In that regard, it should be possible to derogate from Directive 2009/81/EC by increasing the quantities provided for in a framework agreement while opening it to contracting authorities/entities of other Member States. With respect to those additional quantities, those contracting authorities/entities should enjoy the same conditions as the original contracting authority/entity that concluded the original framework agreement. In such cases, the original contracting authority/entity should also allow any economic operator who fulfils the contracting authority's/entity's conditions initially laid down in the procurement procedure for the framework agreement, including requirements for qualitative selections as referred to in Articles 39 to 46 of Directive 2009/81/EC, to join that framework agreement. In addition, appropriate transparency measures should be taken to ensure that all potentially interested parties are informed.

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- (50) While the response of the EU and its Member States to the immediate challenge of the Russian war of aggression against Ukraine has been rapid and decisive, it is time for the EU to move from the emergency response to building the EU's long-term readiness. Resilience is a precondition of the EDTIB's readiness and competitiveness. The EU has already developed tools and frameworks to increase industrial readiness and resilience to tackle future crisis situations. However, such measures are not available to support the EDTIB.
- (51) It is therefore necessary to set up a modular and gradual EU Security of Supply regime to enhance solidarity and effectiveness in response to tensions along the supply chains or to security crises and allow for the timely identification of potential bottlenecks. Such a regime should enable the EU and its Member States to anticipate and address the consequences of supply crises, where shortages of civilian or dual-use components, or of raw materials, seriously threaten the timely availability and supply of defence products, and also the consequences of supply crises which are directly linked to the existence of a security crisis within the Union or its neighbourhood and which result in shortages of certain defence products.
- (52) To enable anticipation of potential shortages, national competent authorities should alert the Commission if they become aware of a risk of serious disruption in the supply of crisis relevant products or have concrete and reliable information of any other relevant risk factor or event materialising. In order to ensure a coordinated approach, the Commission should, where it learns of a risk of serious disruption in the supply of defence products or has concrete or reliable information of any other relevant risk factor or event materialising, convene an extraordinary meeting of the Defence Industrial Readiness Board to discuss the severity of the disruptions and possible initiating of the procedure for activating the supply crisis state, and whether it may be appropriate, necessary and proportionate for Member States to enter into dialogue with stakeholders, with a view to identifying, preparing and possibly coordinating such preventive measures. The Commission should, where relevant, consult and cooperate with relevant third countries with a view to jointly addressing supply-chain disruptions, in compliance with international obligations and without prejudice to procedural requirements.
- (53) In light of the complexities of defence supply chains and the risk of shortages in a foreseeable future, this Regulation should provide instruments for a coordinated approach to mapping and monitoring of the supply chains of certain defence products and effectively tackling possible market disruptions in a proportionate manner.
- (54) The objective of a mapping of the Union's defence supply chains should be to provide an analysis of their strengths and weaknesses with a view to ensure security of supply and resilience. To that end, the Commission should identify products, components as well as raw materials that are deemed critical for the supply of defence products particularly important for the defence interests of the Union and its Member States (crisis-relevant products), based on the inputs and advice from the Defence Industrial Readiness Board. The mapping should be based on publicly and commercially available data and, if necessary, on data obtained through voluntary information requests of undertakings, in consultation with the Defence Industrial Readiness Board.
- (55) In order to forecast and prepare for future disruptions of the different stages of the Union's defence supply chains and of trade within the Union, the Commission should, assisted by the Defence Industrial Readiness Board and on the basis of the outcome of the mapping, identify and develop a list of early warning indicators. Such indicators

could include atypical increases in lead time, the availability of raw materials, intermediate products and human capital needed for manufacturing crisis-relevant products, or appropriate manufacturing equipment, forecasted demand, price surges exceeding normal price fluctuation, the effect of security crises, accidents, attacks, natural disasters or other serious events, the effect of trade policies, tariffs, export restrictions, trade barriers and other trade-related measures, and the effect of business closures, offshoring or acquisitions of key market actors. Monitoring activities of the Commission should focus on these early warning indicators.

- (56) In order to minimise the burden for undertakings responding to the monitoring and to ensure that the acquired information can be compiled in a meaningful way, the Commission should provide for standardised and secure means for any information collection. These means should ensure that any collected information is treated confidentially, ensuring business secrecy and cybersecurity.
- (57) On this basis, the Commission should draw up a list, identifying the crisis-relevant defence products, raw materials or components thereof, that are affected by disruptions or potential disruptions of the functioning of the Single Market and its supply chains leading to significant shortages. The Commission should regularly update this list, to focus only on possible disruptions or bottlenecks affecting the security of supply of relevant defence products, as well as raw materials and components thereof.
- (58) Due to the sensitive nature of the decision to activate the supply-crisis state or the security-related supply-crisis state and of the potential measures that may be taken in response thereof, including the significant impact which such measures might have on private undertakings in the Union, the power to adopt an implementing act as regards activating, prolonging and terminating these states should be conferred on the Council.
- (59) Where the supply-crisis state or the security-related supply-crisis state is activated, the Commission, should be able to request to receive necessary information to ensure the timely availability of crisis relevant products from undertakings, dealing with these products, raw materials or components thereof, in agreement with the Member State in which they are established. Such information should inform the Commission's decision on appropriate measures under this regulation to address possible disruptions or bottlenecks affecting the security of supply of relevant defence products as well as relevant raw materials and components.
- (60) Such an identification, mapping and continuous monitoring mechanism should allow a near real time analysis of the production capacity in the Union, critical factors impacting security of supply of relevant defence products, and stockpiles' status. It should also enable Commission to design emergency response measures to actual or anticipated shortages.
- (61) Avoiding shortages of relevant defence products is essential to preserve the objective of general interest of security of the Union and its Member States and justifies, where necessary, proportionate interferences with fundamental rights of the undertakings providing crisis relevant products, such as the freedom to conduct a business in accordance with Article 16 of the Charter and the right to property in accordance with Article 17 of the Charter, in the respect of Article 52 of the Charter. Such interferences may be justified in particular where several Member States have undertaken specific efforts to consolidate demand through joint procurement, hence contributing to the further integration and smooth functioning of the Internal Market for relevant defence products.

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- (62) As an instrument of last resort to ensure that critical sectors can continue to operate in a time of crisis and only when necessary and proportionate for that purpose, relevant undertakings could be required by the Commission to accept and prioritise orders of crisis-relevant products. The decision on a priority-rated order should be taken in accordance with all applicable Union legal obligations, having regard to the circumstances of the case. The priority rating obligation should take precedence over any performance obligation under private or public law except those directly related to military orders while it should have regard for the legitimate aims of the undertakings and the cost and effort required for any change in production sequence. Each priority-rated order should be placed at a fair and reasonable price which should take into account the undertaking's opportunity costs vis-à-vis existing contracts.
- (63) The obligation to prioritise the production of certain products should not disproportionately affect the freedom to conduct a business and the freedom of contract laid down in Article 16 of the Charter of Fundamental Rights of the European Union ('the Charter') and the right to property laid down in Article 17 of the Charter. Any limitation of those rights should, in accordance with Article 52(1) of the Charter, be provided for by law, respect the essence of those rights and freedoms, and comply with the principle of proportionality.
- (64) Where the security-related supply crisis state is activated, based on the assessment of the Commission with the support of the High-Representative, the measures available under the supply crisis state should also be available. In addition to the latter, the Council should activate the measures it considers appropriate to the crisis. To do so, the Council should pay particular to the need to ensure a high level of security of the Union, Member States and European citizens.
- (65) Where the security-related supply crisis state is activated and in order to address cases where a Member State faces or may face severe difficulties either in the placing of an order or in the execution of a contract for the supply of defence products due to shortages or serious risks of shortages of crisis-relevant products, the Council should be able to activate measures at Union level aimed to ensure the availability of crisis-relevant goods, such as priority rated requests to ensure the proper functioning of the internal market and its defence supply chains.
- (66) As an instrument of last resort, priority-rated requests should aim at addressing situations where the production or supply of crisis relevant products which are defence products could not be achieved by other measures. The priority-rated request should be taken based on objective, factual, measurable, and substantiated data. It should have regard for the legitimate interests of the undertakings and the cost and effort required for any change in production sequence. When accepted, the obligation to perform the priority-rated request should take precedence over any performance obligation under private or public law. Each priority rated request should be placed at a fair and reasonable price.
- (67) With a view to support the Commission in implementing this Regulation, a European Defence Industrial Readiness Board should be established, composed of the Commission, the High Representative/Head of the Agency and Member States. In addition, outside the framework of the current Regulation, the High Representative/Head of Agency and the Commission will at their initiative convene and co-chair meetings of the members in the context of the Board to exercise the joint programming and procurement function and provide strategic guidance and advice

with a view to increase defence industrial readiness of the EDTIB, in line with the European Defence Industrial Strategy.

- (68) This Regulation should apply without prejudice to Union competition rules, in particular Articles 101 to 109 TFEU and the legal acts that give effect to those Articles.
- (69) In accordance with Article 41(2) TEU, operating expenditure arising from Chapter 2 of Title V TEU is to be charged to the Union budget, except for such expenditure arising from operations having military or defence implications.
- (70) This Regulation should apply without prejudice to the specific character of the security and defence policy of certain Member States.

HAVE ADOPTED THIS REGULATION:

Commented [A2]:
Presidency Note

To be revisited in function of the negotiated text.

Chapter I

General Provisions

Article 1

Subject Matter

1. This Regulation establishes a budget and lays down a set of measures aimed at supporting defence industry readiness of the Union and its Member States through the strengthening of the competitiveness, responsiveness and ability of the European Defence Technological and Industrial Base (EDTIB) to ensure the timely availability and supply of defence products and at contributing to the recovery, reconstruction and modernisation of the Ukraine Defence Technological and Industrial Base (Ukrainian DTIB), in particular by means of the following:

- (1) the establishment of the European Defence Industrial Programme (the 'Programme'), comprising measures for the strengthening of the competitiveness, responsiveness and ability of the EDTIB, which may include the establishment of a fund for the acceleration of defence supply chain transformation ('FAST'), as set out in Chapter II;
- (2) the establishment of a cooperation programme with Ukraine with a view to the recovery, reconstruction and modernisation of the Ukraine Defence Technological and Industrial Base (the 'Ukraine Support Instrument'), as set out in Chapter III;
- (3) a legal framework laying down the requirements and procedures for and the effects of setting-up the Structure for European Armament Programme ('SEAP') as set out in Chapter ~~III~~IV;
- (4) a legal framework aiming at ensuring security of supply, removing obstacles and bottlenecks and supporting the production of defence products as set out in Chapter ~~IV~~V;
- (5) the establishment of a Defence Industrial Readiness Board as set out in Chapter ~~V~~VI.

Commented [A3]:
Presidency Note

To be revisited in function of the advice of the Council Legal Service, if needed.

2. This Regulation is without prejudice to Member State having the sole responsibility for their national security, as provided for in Article 4(2) TEU and the right of each Member State to protect its essential security interests in accordance with Article 346 TFEU.

Commented [A4]:
Presidency Note

This additional paragraph implements the drafting suggestion of SE and other supportive MS.

Article 2

Definitions

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

- (1) 'advance purchasing agreement' means a public contract with one or several ~~undertakings~~ legal entities which aims at supporting the swift development and/or production of a product and by virtue of which the right to buy a specified number of products in a given timeframe and at a given price is subject to the prefinancing of part of the upfront costs faced by the concerned ~~undertakings~~ legal entities. While an advance purchasing agreement is legally binding upon the participating contracting authorities and upon the contractor, it needs to be further implemented by means of the conclusion of contracts with the concerned contractors;
- (2) 'bottleneck' means a point of congestion in a production system that stops or severely slows the production;
- (3) 'blending operation' means an action supported by the Union budget, including within a blending facility or platform as defined in Article 2, point (6) of Regulation (EU, Euratom) No ~~2018/1046~~, (the 'Financial Regulation'), that combines non-repayable forms of support and/or financial instruments from the Union budget with repayable forms of support from development or other public finance institutions, or from commercial finance institutions and investors
- (4) 'common procurement' means a procurement jointly conducted by at least three Member States;
- (5) 'control' means the ability to exercise ~~a~~ decisive influence ~~on~~ over a legal entity directly, or indirectly through one or more intermediate legal entities;
- (6) 'classified information' means information or material, in any form, the unauthorised disclosure of which could cause varying degrees of prejudice to the interests of the Union, or of one or more of the Member States, and which bears an EU classification marking or a 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;
- (7) 'defence products' means any defence-related products as referred to in Article 2 of Directive 2009/43/EC;
- (8) 'executive management structure' means a body of a legal entity, appointed in accordance with national law, and, where applicable, reporting to the chief executive officer, which is empowered to establish the legal entity's strategy, objectives and overall direction, and which oversees and monitors management decision-making;
- (9) 'legal entity' means a legal person created and recognised as such under Union, national or international law, which has legal personality and the capacity to act in its own name, exercise rights and be subject to obligations, or an entity which does not

Commented [A5]:
Presidency Note

For improved readability, references to Regulation 2018/1046 have been replaced by the Financial Regulation, in line with the practice under the EDF Regulation.

have legal personality as referred to in Article 197(2), point (c), of the the Financial Regulation (EU, Euratom) No 2018/1046;

- (10) ‘defence innovation action’ means an action primarily consisting of activities directly aiming to produce plans and arrangements or designs for new, altered or improved defence products, processes or services, possibly including prototyping, testing, demonstrating, piloting, large-scale product validation and market replication
- (11) ‘middle capitalisation company’ or ‘mid-cap’ means an enterprise that is not a SME and that employs a maximum of 3 000 persons, where the headcount of staff is calculated in accordance with Articles 3 to 6 of the Annex to Recommendation 2003/361/EC
- (12) ‘non-associated third-country entity’ means a legal entity that is established in a non-associated third country or, a legal entity that is established in the Union or in an associated country, but has its executive management structures in a non-associated third country;
- (13) ‘off-take agreement’ means any contractual agreement between at least [three] Member States and at least one manufacturer of defence products containing either a commitment on the Member States to procure a certain quantity of defence products over a certain period of time or a commitment on the manufacturer of defence products to provide the Member States with the option to do so.
- (14) ‘procurement agent’ means a contracting authority as defined in Article 2(1), point (1), of Directive 2014/24/EU and Article 3(1) of Directive 2014/25/EU established in a Member State or an associated country, the European Defence Agency, a Structure for European Armament Programme or an international organisation that is designated by Member States, associated countries or Ukraine to conduct a common procurement on their behalf;
- (15) ‘lead time’ means the period of time between a purchase order being placed and the manufacturer completing the order;
- (16) ‘raw materials’ means the materials required to produce defence products;
- (17) ‘seal of excellence’ means a quality label which shows that a proposal submitted to a call for proposals under the Instrument has passed all of the evaluation thresholds set out in the work programme, but could not be funded due to a lack of budget available for that call for proposals in the work programme, and might receive support from other Union or national sources of funding;
- (18) ‘security crisis’ means any situation in a Member State, an associated third country or non-associated third country in which a harmful event has occurred or is deemed to be impending which clearly exceeds the dimensions of harmful events in everyday life and which substantially endangers or restricts the life and health of people, or requires measures in order to supply the population with necessities, or has a substantial impact on property values, including armed conflicts and wars;
- (19) ‘sensitive information’ means unclassified information and data, ~~including classified information,~~ that isare to be protected from unauthorised access or disclosure because of obligations laid down in Union or national law, where applicable, or in order to safeguard the privacy or security of a natural or legal person~~;~~;
- (20) ‘small and medium-sized enterprises’ or ‘SMEs’ means small and medium-sized enterprises as defined in Article 2 of the Annex to Commission Recommendation 2003/361/EC;

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Presidency Note

In response to comments of ES and EL, we have streamlined the references to “undertaking” and “legal entity”, which are used interchangeably throughout the text, by consistently using “legal entities”. The reasons for this choice are the following:

- The specific meaning of an undertaking as developed by the CJEU in competition case law does is not of relevance to the current proposal.
- The term “undertaking” is not used in the text to differentiate between private and government entities.
- Further check is needed to confirm that “economic operator” could also be replaced with “legal entity” where it is used.

Commented [A7]:
Presidency Note

SE requested to omit classified information from this definition. In response to SE’s comment and in the interest of clarity, we propose using the definition from EDIRPA, which reflects agreed language.

- (21) 'subcontractors in the common procurement' means any legal entity which provides critical inputs that possess unique attributes essential for the functioning of a product and which is allocated at least 15 % of the value of the contract.
- (22) 'small middle capitalisation company' or 'small mid-cap' means an enterprise that is not a SME and whose number of employees does not exceed 499, calculated in accordance with Articles 3 to 6 of the Annex to Recommendation 2003/361/EC, the annual turnover of which does not exceed EUR 100 million or the annual balance sheet of which does not exceed EUR 86 million;
- (23) 'crisis-relevant products' means defence products or key components or raw materials thereof or any products or services critical to their production that have been identified as being seriously affected by a disruption or potential disruption of the functioning of the internal market and its supply chains resulting in actual or potential significant shortages.

(24) 'defence industrial readiness pool' means a quantity of defence products procured and maintained for the purpose of ensuring their timely availability to the armed forces of Member States, associated countries and Ukraine.

(25) 'contracting authorities' means contracting authorities/entities as defined in Article 1(17) of Directive 2009/81/EC.

Chapter II

The Programme

Section 1: General provisions applicable to the Programme ~~and to the Ukraine Support Instrument~~

Article 3

Use of financing not linked to costs

1. Grants may take the form of financing not linked to costs, pursuant to Article 180(3) of the Financial Regulation (EU, Euratom) 2018/1046.
2. Where the Union grant takes the form of financing not linked to costs for actions reinforcing the EDTIB, the level of the Union contribution attributed ~~to each action~~ for actions reinforcing the EDTIB may be defined on the basis of the following factors such as:
 - (a) ~~the complexity of the common procurement, for which a proportion of the estimated value of the common procurement contract and the experience gained in similar actions may serve as an initial proxy action;~~
 - (b) ~~the characteristics of the cooperation which are likely to give rise to greater interoperability outcomes and long term investment signals to industry, in particular where the common procurement covers activities that would be eligible for funding from the Union budget, e.g. research and development, testing and certification, initial production or in-service support activities;~~

Commented [A8]: Presidency Note

In response to the requests of several MS, we propose the following definition. To be read together with Article 15.

Numbering to be finalized later.

Commented [A9]: Presidency Note

In response to the request of SE to clarify the definition of public contracting authority, we propose using the same definition as under Directive 2009/81/EC and as used elsewhere in the proposal. See also Article 12(2).

Numbering to be finalized later.

Commented [A10]: Presidency Note

To accommodate requests of several MS, better link the Programme and the Ukraine Support Instrument to their respective legal basis, and simplify the text, we propose splitting Chapter II into two new Chapters covering the Programme (Chapter II) and the USI (Chapter III).

- (b) ~~the contribution of the action to achieving interoperability between defence products produced by the EDTIB and the DTIB of associated countries;~~
- (c) ~~the number of participating Member States and associated countries or the inclusion of additional Member States or associated countries in existing cooperations;~~
- (d) ~~the effort linked to contribution of the action to the~~ ramp-up of necessary manufacturing capacities;
- (e) the procurement of additional quantities for other Member States (defence industrial readiness pool).

~~3. Where the Union grant takes the form of financing not linked to costs for actions reinforcing the Ukrainian DTIB, the level of Union contribution may in addition to the factors referred to in paragraph 2, be based on factors such as:~~

- (a) ~~the complexity of the Ukraine accession process, including structural reforms and measures to promote convergence with the Union ‘acquis’;~~
- (b) ~~the efforts of adapting the Ukrainian defence procurement processes and the environment for the Ukrainian defence industry, including to meet NATO standards;~~
- (c) ~~the efforts and risks associated with the ongoing war of aggression, taking into account the need to rebuild and modernise infrastructure damaged by the war in a resilient way, and, where relevant, by appropriate measures to avoid, prevent or reduce and, if possible, offset these effects.~~

Article 4

Objectives

1. The Programme ~~aims to increase the competitiveness and the Ukraine Support Instrument aim at increasing the defence industrial readiness of the EDTIB and of the Ukrainian DTIB in particular through:~~
 - (a) ~~initiating and speeding up the adjustment of industry to structural changes, including through the creation and ramp up of its manufacturing capacities and the opening of the supply chains for cross-border cooperation and effective availability and supply throughout the Union, involving in particular, to a significant extent, SMEs, small mid-caps and other mid-caps;~~
 - (b) ~~incentivising cooperation in defence procurement in order to contribute to solidarity, prevent crowding out effects, increase the effectiveness of public spending and reduce excessive fragmentation, ultimately leading to an increase in the standardisation of defence systems and greater interoperability.~~
2. ~~Actions contributing to the recovery, reconstruction and modernisation of the Ukrainian DTIB shall take into account its possible future integration into the EDTIB, thereby contributing to mutual stability, security, peace, prosperity and sustainability.~~
3. ~~The objectives set out in paragraph 1, point (a), shall be pursued with an emphasis on~~ initiating and speeding up the adjustment of industry to the rapid structural changes imposed by the evolving security environment. ~~This may include the improvement and acceleration of the capacity of adaptation of supply chains for crisis-relevant products, the creation of manufacturing capacities or their ramp-up,~~

Commented [A11]: Presidency Note

We propose a to accommodate suggestions of MS to rephrase the objectives in paragraph 1 in a way that matches more closely with the objectives as spelled out in the explanatory memorandum (pp. 6-7).

We also propose, in paragraphs 2 and 3, to anchor the objectives more clearly in the Capability Development Process and ensure coherence with capability development initiatives pursued in PESCO, at the EDA and NATO.

~~and a reduction of their lead production time for defence products throughout the Union, taking into account the objectives of the Strategic Compass for Security and Defence and the advice of the Defence Industrial Readiness Board, and by incentivising cooperation in defence procurement between Member States. In particular, the Programme shall aim to:~~

~~4. The objectives set out (a) incentivise cooperation in paragraph 1, point (b), shall be pursued with an emphasis on developing the EDTIB throughout the Union to allow it to address, in particular, Member States' defence product needs in terms of quality, availability, delivery time and location, in line with the procurement by aggregating demand for defence capability priorities commonly agreed by Member States within the framework of the Common Foreign products, harmonising requirements, strengthening solidarity between Member States, supporting the commercialisation of products and technologies supported by the European Defence Fund and Security Policy (CFSP), in particular in improving predictability of demand for the EDTIB;~~

~~(b) initiate and speed up the adjustment of industry to the rapid structural changes imposed by the context of the Capability Development Plan, evolving security environment by improving and accelerating the capacity of adaptation of defence industrial supply chains for crisis-relevant products and open supply chains for cross-border cooperation, by increasing manufacturing capacity and reducing lead production time for defence products throughout the Union, and by ensuring the availability and supply of defence products throughout the Union, in particular for SMEs and mid-caps.~~

~~2. The Programme shall be implemented taking into account the objectives of the Strategic Compass for Security and Defence and ~~the advice~~ shall be fully consistent with the Capability Development Plan agreed by Member States. It shall take into account the collaborative opportunities identified in the Coordinated Annual Review on Defence [and the advice of the Defence Industrial Readiness Board].~~

~~5. The objectives set out in paragraph 2 shall be pursued with an emphasis on enhancing cross border cooperation between the EDTIB and the Ukrainian DTIB, taking into account the defence product needs of Ukraine, through creation of manufacturing capacities or their ramp up in line with NATO standards, protection of assets, technical assistance and exchange of personnel, increased cooperation on common procurement of defence products for Ukraine and licensing production cooperation through public-private partnerships or other forms of cooperation, e.g. joint ventures. Special attention shall be given to the objective to support Ukraine to progressively align with Union rules, standards, policies and practices ('acquis') with a view to future Union membership.~~

**Commented [A12]:
Presidency Note**

Throughout the revised Chapters, e have bracketed the Defence Industrial Readiness Board to provide time for MS to agree on the form of the Board before anchoring it in the text.

3. ~~The Programme shall complement Member States' cooperation within the framework of the Permanent Structured Cooperation, European Defence Agency initiatives and projects, and the EU's civil and military assistance to Ukraine. It shall be compatible with the relevant activities carried out by the North Atlantic Treaty Organisation and other partners where they serve the Union's security and defence interests.~~

Article 5

Budget

1. The financial envelopes for the implementation of the Programme ~~and the Ukraine Support Instrument~~ shall be composed of:
 - ~~(a) for actions reinforcing the EDTIB: EUR 1 500 millions in current prices for the period from [...] - insert a specific date] until 31 December 2027 as well as additional contributions in accordance with Article 6;~~
 - ~~(b) for actions reinforcing the Ukrainian DTIB: the amount of the additional contributions in accordance with Article 6 to the extent earmarked, subject to the conclusion of the agreement referred to in Article 57.~~
2. In order to respond to unforeseen situations or to new developments and needs, the Commission may reallocate the amount allocated to actions referred to in paragraph 1, by a maximum of 20 %, ~~except for the additional financial resources as referred to in Article 6(2), which shall not be reallocated to actions under the Ukraine Support Instrument.~~
3. The amount referred to in paragraph 1 and 5 of this Article ~~and the amounts of additional contributions referred to in Article 6~~ may also be used for technical and administrative assistance for the implementation of the Programme, such as preparatory, monitoring, control, audit and evaluation activities, including price investigations and corporate information technology systems and platforms, and all other technical and administrative assistance or staff-related expenses incurred by the Commission for the management of the Programme ~~other elements of the subject matter.~~
4. In addition to Article 12(4) of the Financial Regulation ~~(EU, Euratom) 2018/1046~~, unused commitment and payment appropriations shall be automatically carried over and may be committed and used, respectively, until 31 December of the following financial year. The amount carried over shall be used first in the following financial year. The Commission shall inform the European Parliament and the Council of commitment appropriations carried over in accordance with Article 12(6) of the Financial Regulation ~~(EU, Euratom) 2018/1046~~.
5. By way of derogation from Article 209(3), first, second and fourth subparagraphs of the Financial Regulation ~~(EU, Euratom) 2018/1046~~, any revenues and repayments from financial instruments established under this Regulation ~~Chapter~~ shall constitute internal assigned revenue within the meaning of Article 21(5) of the Financial Regulation ~~(EU, Euratom) 2018/1046~~, to the Programme or its successor programme.
6. In addition to Article 15 of the Financial Regulation ~~(EU, Euratom) 2018/1046~~, commitment appropriations corresponding to the amount of recoveries and of decommitments under the Programme shall be made available again to the Programme ~~or the Ukraine Support Instrument or their successors~~ in the context of the budgetary procedure.

7. Budgetary commitments for activities extending over more than one financial year may be broken down over several years into annual instalments.
8. Appropriations may be entered in the Union budget beyond 2027 to cover the expenses necessary to fulfil the objectives set out in Article 4, to enable the management of actions not completed by the end of the Programme, as well as expenses covering critical operational activities and services.

Article 6

Additional financial resources

1. Member States, European Union institutions, bodies and agencies, third countries, international organisations, international financial institutions or other third parties, may provide additional financial contributions to the Programme, including to the Fund Accelerating the defence Supply Chains Transformation (FAST) referred to in Article ~~19~~17 in accordance with Article 208(2) of the Financial Regulation ~~(EU, Euratom) No 2018/1046~~. Such financial contributions shall constitute external assigned revenue within the meaning of Article 21(2), points (a)(ii) [point (a) FR recast], (d), or (e) or Article 21(5) of the Financial Regulation ~~(EU, Euratom) No 2018/1046~~.
- ~~2. Any additional amounts received under the relevant Union restrictive measures shall be external assigned revenue within the meaning of Article 21(5) of Regulation (EU, Euratom) 2018/1046 and shall be used for actions under the Ukraine Support Instrument, including actions reinforcing the Ukrainian DTIB.~~
3. Resources allocated to Member States under shared management may, at their request, be transferred to the Programme subject to the conditions set out in the relevant provisions of Regulation (EU) 2021/1060 of the European Parliament and the Council⁵. The Commission shall implement those resources directly in accordance with Article 62(1), point (a) of the first subparagraph, of the Financial Regulation ~~(EU, Euratom) No 2018/1046~~ or indirectly in accordance with point (c) of that subparagraph. They shall be added to the resources referred to in Article 5(~~3~~), ~~point (a)~~1). Those resources shall be used for the benefit of the Member State concerned.
43. Where the Commission has not entered into a legal commitment under direct or indirect management for resources transferred in accordance with paragraph ~~3~~2 and at the latest in the year 2028, the corresponding uncommitted resources may be transferred back to one or more respective source programmes, at the request of the Member State, in accordance with the conditions set out in the relevant provisions of Regulation (EU) 2021/1060 of the European Parliament and of the Council.

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Presidency Note

In response to observations of MS regarding derogations from the Financial Regulation, we propose to clarify the reasoning behind and scope of these derogations clearly in the recitals of the final text.

⁵ Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Programme for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159–706).

Section 2: The Programme

Article 7

Alternative, combined and cumulative funding

1. The Programme shall be implemented in synergy with other Union programmes. An action that has received a contribution from another Union programme may also receive a contribution under the Programme provided that the contribution does not cover the same costs. The rules of the relevant Union programme shall apply to the corresponding contribution or a single set of rules of any of the contributing Union programmes may be applied to all contributions and a single legal commitment may be concluded. The cumulative support from the Union budget shall not exceed the total eligible costs of the action and may be calculated on a pro-rata basis in accordance with the documents setting out the conditions for support.
2. In order to be awarded a Seal of Excellence under the Programme, actions shall comply with all of the following conditions:-
 - (a) they have been assessed in a call for proposals under the Programme;-
 - (b) they comply with the minimum quality requirements of that call for proposals;-
 - (c) they are not financed under that call for proposals due to budgetary constraints.-
3. In accordance with the relevant provisions of Regulation (EU) 2021/1060, the ERDF or ESF+ may support proposals submitted to a call for proposals under the Programme, which were awarded a Seal of Excellence in accordance with the Programme.-

Article 8

Implementation and forms of Union funding

1. The Programme shall be implemented under direct management in accordance with the Financial Regulation (EU, Euratom) No 2018/1046 or in indirect management with bodies referred to in Article 62(1), point (c), of the Financial Regulation (EU, Euratom) No 2018/1046.
2. Union funding may be provided in any of the forms laid down in the Financial Regulation (EU, Euratom) No 2018/1046, in particular grants, prizes, procurement, and financial instruments within blending operations under the InvestEU programme in accordance with Title X of the Financial Regulation (EU, Euratom) No 2018/1046.
3. By way of derogation from Article 192(2) of the Financial Regulation (EU, Euratom) No 2018/1046, activities referred to in Article ~~11~~313(1), point (d), for which Union funding is provided in the form of a grant, and profit is made, the Commission may recover the percentage of the profit corresponding to the Union contribution to the eligible costs actually incurred by the beneficiary carrying out the action, up to the final amount of the Union contribution. The profit is calculated by a surplus of receipts over the eligible costs of the action, where receipts are limited to Union funding, Member State funding, including procurement, other revenue generated during the action and any revenue resulting from the action. The work programme may set out further details.

4. By way of derogation from Article 193(2) of ~~the Financial Regulation (EU, Euratom) 2018/1046~~, financial contributions may, where relevant and necessary for the implementation of an action, cover actions started and costs incurred prior to the date of the submission of the proposal for those actions, provided that those actions did not start before 5 March 2024 and have not been completed before the signature of the grant agreement.

Article 9

Third countries associated to the Programme

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

Article 10

Eligible legal entities

1. The eligibility criteria set out in paragraphs 2 to ~~7~~ shall apply in addition to the criteria set out in accordance with ~~the Financial Regulation (EU, Euratom) 2018/1046~~.
2. Recipients of Union funding shall be established in the Union or in an associated country.
3. ~~The infrastructure, facilities, assets and resources of the recipients and subcontractors involved in an action which are used for the purposes of the action shall be located on the territory of a Member State or of an associated country. Where recipients have no readily available alternatives or relevant infrastructure, facilities, assets for the entire duration of the action, and resources their executive management structures shall be established in the Union or in an associated country, they.~~
4. ~~By way of derogation to paragraph 3, recipients may use their infrastructure, facilities, assets and resources which are located or held outside the territory of the Member States or of the associated countries, provided that such use does not contravene the security and defence interests of the Union and the Member States and is consistent with the objectives set out in Article 4.~~

4. ~~For~~ (a) is consistent with the ~~purposes~~ objectives set out in Article 4;

(b) is strictly necessary as a result of a lack of readily available alternatives or relevant infrastructure, facilities, assets and resources in the Union or an ~~action supported by~~ associated country;

(c) does not contravene the security and defence interests of the Union and its Member States.
5. ~~Recipients of Union funding under the Programme, the recipients~~ shall not be subject to control by a non-associated third country or by a non-associated third-country entity.
6. By way of derogation from paragraph 4, a legal entity established in the Union or in an associated country and controlled by a non-associated third country or a non-associated third-country entity shall be eligible to be a recipient ~~if the acquisition of its control by a non-associated third country or a non-associated third country~~

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Presidency Note**

To accommodate requests of several MS, we propose to bring paragraph 3 in line with Article 9(2) of the EDF Regulation and 10(1) and (5) of the ASAP Regulation.

At the same time, at the request of FR, GR, and CY we have more clearly circumscribed the exception for use of third country facilities. Please note that while paragraph 4 does specify that the use of third country facilities must not result in the product becoming subject to third country restrictions, Article 11(2)(c) is applicable also when the exception under 10(4) is used.

~~entity-it~~ has been subject to screening within the meaning of [Regulation (EU) 2019/452-] of the European Parliament and of the Council and, where necessary, to appropriate mitigation measures, taking into account the objectives set out in Article 4 of this Regulation, or if guarantees approved by the Member State or the associated country in which it is established in accordance with its national procedures are made available to the Commission.

The guarantees shall provide assurances that the involvement in an action of such a legal entity would not contravene the security and defence interests of the Union and its Member States as established in the framework of the CFSP pursuant to Title V of the Treaty on European Union (TEU), or the objectives set out in Article 4. ~~The guarantees shall also comply with Article 11(8), point (e).~~ The guarantees shall in particular substantiate that, for the purposes of an action, measures are in place to ensure that:

- (a) control over the legal entity is not exercised in a manner that restrains or restricts its ability to carry out the action and to deliver results, that imposes restrictions concerning its infrastructure, facilities, assets, resources, intellectual property or knowhow needed for the purposes of the action, or that undermines its capabilities and standards necessary to carry out the action;
- (b) access by a non-associated third country or by a non-associated third-country entity to classified or sensitive information relating to the action is prevented and the employees or other persons involved in the action have national security clearance issued by a Member State or an associated country, where appropriate;

If considered to be appropriate by the Member State or the associated country in which the legal entity is established, additional guarantees may be provided.

7. The Commission shall inform [the committee referred to in Article 57] of any legal entity considered to be eligible in accordance with ~~this~~ paragraph.

6.

8.

When carrying out an eligible action, recipients may also cooperate with legal entities established outside the territory of the Member States or of associated countries, or controlled by a non-associated third country or by a non-associated third-country entity, including by using the assets, infrastructure, facilities and resources of such legal entities, provided that this does not contravene the security and defence interests of the Union ~~and/or~~ its Member States. ~~Such cooperation shall be consistent with or~~ the objectives set out in Article 4 ~~and comply with Article 11(8), point (e).~~

9. There shall be no unauthorised access by a non-associated third country, or other non-associated third-country entity to classified information relating to the carrying out of the action and potential negative effects over security of supply of inputs critical to the action shall be avoided. The costs related to cooperation with legal entities established outside the territory of the Member States or of associated countries, or controlled by a non-associated third country or by a non-associated third-country entity, shall not be eligible for support from the Programme.

~~The costs related to those activities shall not be eligible for support from the Programme.~~

79. Paragraphs 2 to 68 shall not apply to:

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Presidency Note

To ensure consistency with the eligibility provisions of the ASAP and EDIRPA Regulation FDI screening requirement, we propose omitting the requirement that screening must occur at the time of acquisition. Under the current FDI Regulation, the trigger for screening is a matter of MS law and screening may occur after the time of acquisition.

The proposed amended FDI Regulation would require MS to ensure that their screening mechanism imposes an authorisation requirement for entities participating in EDIP (Art. 4(4) of [COM/2024/23 final](#)), provided EDIP is added to Annex II of that proposal. This would thereby set a trigger for screening: "participation" in EDIP. The time at which screening should occur specification under the EDIP Regulation should be consistent with the updated screening regulation.

Because Regulation 2019/452 is being revised, we propose brackets for the Regulation reference.

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Presidency Note

We propose omitting the reference to product restrictions because the restrictions on use are linked to funding for a particular action, not to the identity of the beneficiary.

Requiring that the inclusion of a screened third country entity within a consortium "complies" with Article 11(2)(c) is superfluous if the action as a whole is eligible for funding only when the procured /produced equipment is not subject to third country restrictions.

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Presidency Note

In light of the change to the definition of "sensitive information" under Article 2, we propose this amendment to ensure that the same information as covered in the Commission proposal remains protected.

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Presidency Note

While we take note of the comments of MS that the concept of "security guarantees" is insufficiently clear, the Presidency considers that clarifying these provisions is a matter for competent authorities of MS to share best practices and establish common principles.

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Presidency Note

We propose omitting the reference to product restrictions because the restrictions on use are linked to funding for a particular action, not to the identity of the beneficiary.

Requiring that cooperation with a screened third country entity within a consortium "complies" with Article 11(2)(c) is superfluous if the action as a whole is eligible for funding only when the procured /produced equipment is not subject to third country restrictions.

- (a) contracting authorities of Member States and associated countries;
- (b) International Organisations;
- (c) Structures for European Armament Programme;
- (d) the European Defence Agency.

Section 2: Eligible Actions

Article 11

Eligible actions

General provisions

1. ~~Only actions implementing~~ **Actions eligible for funding under the Programme shall implement** the objectives set out in Article 4 ~~shall be eligible for funding. An eligible action shall relate to and may take one or more of the activities referred to in paragraph 2 to 5 following forms:~~
2. ~~Activities related to cooperation of public authorities in defence procurement processes (defence cooperation actions) may cover the cooperation for common procurement of defence products, throughout the life cycle of defence products, including for the purpose of building a Defence Industrial Readiness Pool as referred to Article 14(1), point (b).~~
3. ~~Activities related to speeding up the adjustment to structural changes of the production capacity of defence products, including their components and corresponding raw materials insofar as they are intended or used wholly for the production of defence products (industry reinforcement actions) may cover:~~
 - (a) ~~the optimisation, expansion, modernisation, upgrading or repurposing of existing, or the establishment of new, production capacities insofar as those components and raw materials are intended or used wholly for the production of defence products, in particular with a view to increasing production capacity or reducing lead production times, including on the basis of the procurement or acquisition of the requisite machine tools and any other necessary input;~~
 - (b) ~~the establishment of cross border industrial partnerships, including through public private partnerships or other forms of industrial cooperation, in a joint industrial effort, including activities that aim to coordinate the sourcing or reservation and stockpiling of defence products, components and corresponding raw materials insofar as those components and raw materials are intended or used wholly for the production of defence products, as well as to coordinate production capacities and production plans;~~
 - (c) ~~the building up and making available of reserved surge manufacturing capacities (ever warm facilities) of defence products, their components and corresponding raw materials, insofar as those components and raw materials are intended or used wholly for the production of defence products, in accordance with ordered or planned production volumes;~~

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To accommodate requests from several MS for a more readable overview of the different eligible actions under the Programme, we propose placing eligible actions under a separate Section and moving the relevant paragraphs from previous Article 11 that relate to a particular type of action to new dedicated Articles.

New Article 11 provides an overview of the eligible actions and forms the link between these actions and the objectives in Article 4.

~~(d) fostering industrialisation and commercialisation of defence products that have been developed in the framework of actions funded by the Union or other cooperative activities conducted with support by at least two Member States including through the establishment of cross-border industrial partnerships, public-private partnerships or other forms of industrial cooperation, ramping-up of initial production as well as licensing production, where appropriate;~~

~~(e) the testing, including the necessary infrastructure, and, as appropriate, reconditioning certification of defence products with a view to addressing their obsolescence and making them useable by end users.~~

~~4. — Activities aiming at (a) common procurement actions (Article 12);~~

~~(b) industrial reinforcement actions (Article 13);~~

~~(c) supporting the deployment of actions (Article 14);~~

~~(d) actions relating to defence industrial readiness pools (Article 15);~~

~~(e) European Defence ~~Project~~Projects of Common Interest (Article 16);~~

~~5. — Supporting activities ('support actions') may cover:~~

~~(a) activities that aim to increase interoperability and interchangeability, including the cross-certification of defence products and activities leading to mutual recognition of certification or to facilitate the implementation of military standards;~~

~~(b) activities to strengthen security of supply and resilience, in particular by facilitating the access to the defence market for SMEs, small mid-caps, other mid-caps and start-ups and support to obtain the necessary quality and production certifications;~~

~~(c) the training, reskilling or upskilling of personnel in relation to the activities referred to in this Article;~~

~~(d) the procurement of physical and cyber protection systems in relation to the activities referred to in paragraph 3, including effective engagement;~~

~~(e) coordination and (technical) support actions, in particular addressing identified bottlenecks in production capacities and supply chains with a view to securing and accelerating the production of crisis-relevant products in order to ensure their effective supply and timely availability;~~

~~(f) Union support to Structures for European Armament Programme notably for the purpose of managing and maintaining a Defence Industrial Readiness Pool as referred to in Article 14(1), point (b);~~

~~(g) Emergency activities, including emergency defence innovation where the measure referred to in Article 52 is activated.~~

~~6. — For activities referred to in paragraphs 2, in paragraph 3, point (d), and in paragraph 55, point (a), the action shall be carried out by legal entities cooperating within a consortium of at least three eligible legal entities which are established in at least three different Member States or associated countries. At least three of those eligible legal entities established in at least two different Member States or associated countries shall not, during the entire period in which the action is carried out, be controlled, directly or indirectly, by the same legal entity and shall not control each other.~~

~~7. By derogation from paragraph 6, the action may be carried out by a Structure for European Armament Programme.~~

~~§(f) the establishment of a Fund to Accelerate defence Supply chains Transformation (Article 17).~~

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

- (a) actions related to goods or services which are prohibited by applicable international law;
- (b) actions related to lethal autonomous weapons without the possibility of meaningful human control over selection and engagement decisions when carrying out strikes against humans;
- (c) actions related to goods or services which are subject to control or restriction by non-associated third countries or by non-associated third-country entities, directly, or indirectly through one or more intermediate legal entities, including in terms of technology transfer;
- (d) actions or parts thereof, that are already fully financed from other public or private sources.

Article 12

~~Specific provisions applicable for common~~ **Common procurement actions**

~~1. Common procurement actions shall consist of activities related to cooperation of public authorities in defence procurement processes, at any point in the lifecycle of defence products, including for the purpose of building a defence industrial readiness pool as referred to Article 15.~~

2. Only the following legal entities shall be eligible for ~~funding under the Programme~~ **common procurement actions**:

- (a) ~~public~~ contracting authorities of Member States or associated countries;
- (b) International Organisations;
- (c) the Structures for European Armament Programme;
- (d) the European Defence Agency.

~~3. Common procurement actions shall involve cooperation between legal entities referred to in paragraph 2— and be carried out by a consortium of at least three Member States and/or associated countries participating in, or by a Structure for European Armament Programme.~~

4. ~~Member States and associated countries carrying out~~ a common procurement action shall appoint, by unanimity, an eligible legal entity as procurement agent to act on their behalf for the purposes of that common procurement. The procurement agent shall carry out the procurement procedures and conclude the resulting contracts with contractors on behalf of the participating countries. The procurement agent may participate in the action as a beneficiary and may act as the coordinator of the consortium and may therefore be able to manage and combine funds from the Programme and funds from the participating Member States and associated countries.

35. This Regulation is without prejudice to the rules on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities/entities in the fields of defence and security laid down in Directive 2009/81/EC, ~~unless this Regulation stipulates otherwise.~~

46. The procurement procedures referred to in paragraph 24 shall be based on an agreement to be signed by the participating Member States and associated countries with the procurement agent under the conditions set out in the work programme. The agreement shall, in particular, determine the practical arrangements governing the common procurement and the decision-making process on the choice of the procedure, the assessment of the tenders and the award of the contract.

57. The procurement agent shall apply the conditions ~~equivalent to those~~ set out in Article 10, ~~mutatis mutandis,~~ to its procurement procedures and ~~in~~ contracts with contractors ~~and subcontractors~~ in the common procurement.

68. Procurement agents shall provide the Commission with notification on the guarantees and mitigation measures referred to in Article 10(6). Further information on the guarantees and mitigation measures shall be made available to the Commission upon request. The Commission shall inform the committee referred to in Article 58 of any notification provided in accordance with this paragraph.

79. The common procurement contract shall ~~include provisions governing~~ reserve the right of the contracting authority to purchase ~~of~~ additional quantities of defence products for other Member States, associated countries or Ukraine:

~~Such rules shall be,~~ without prejudice to applicable Union law and ~~be in line with~~ Member States' national laws and regulations relating to the export of defence ~~related~~ products.

10. Member States shall publish a General Transfer Licence in referred to in Article 5(3) of Directive 2009/43 for transfers of defence products procured through common procurement actions.

Article 13

~~Specific provisions applicable for industrial~~ **Industrial** reinforcement actions

1. ~~For activities referred to in Article 11(3), point (a), (b) and (c), in order to be eligible for funding,~~ Industrial reinforcement actions shall ~~be exclusively consist of~~ activities related to speeding up the adjustment to structural changes of the production capacities- capacity of defence products, including their components and corresponding raw materials insofar as they are intended or used wholly for the production of defence products, in particular:

(a) the optimisation, expansion, modernisation, upgrading or repurposing of existing, or the establishment of new, production capacity of defence products, components and corresponding raw materials, including on the basis of the procurement or acquisition of the requisite machine tools and any other necessary input;

(b) the establishment of cross-border industrial partnerships, including through public private partnerships or other forms of industrial cooperation, in a joint industrial effort, including activities that aim to coordinate the sourcing or reservation and stockpiling of defence products, components and

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To avoid contradiction with the procurement provisions applying to SEAPs (Article 29 in unrevised numbering) in case a SEAP procures with Programme funding, we propose adding this caveat.

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We propose to include the draft text suggested by NL.

This provision would allow EU entities from Member State A sending defence products procured with EDIP funding to a recipient in Member State B without applying for an individual transfer license. Instead, the sending entity would have to notify the transfer to Member State A and report on specific quantities at the end of the year.

Commented [A23]: Presidency Note

While we have received comments on the practicability of this requirement, we understand that broadening the scope to goods used "predominantly" for defence uses would risk liability under international trade rules, as the discrimination against third country products not entirely required for defence purposes would not fall within the national security exception under WTO law.



corresponding raw materials, as well as to coordinate production capacities and production plans;

(c) the building-up and making available of reserved surge manufacturing capacities (ever warm facilities) of defence products, their components and corresponding raw materials, in accordance with ordered or planned production volumes;

(d) fostering industrialisation and commercialisation of defence products that have been developed in the framework of actions funded by the Union or other cooperative activities conducted with support of Member States including through the establishment of cross-border industrial partnerships, public private partnerships or other forms of industrial cooperation, ramping-up of initial production as well as licensing production, where appropriate;

(e) the testing, including the necessary infrastructure, and, as appropriate, reconditioning certification of defence products with a view to addressing their obsolescence and making them useable by end users.

-2. In order to be eligible for funding, activities referred to in paragraph 1, point (a), (b) and (c), shall exclusively benefit production capacities of defence products, including their components and raw materials insofar as they are intended or used wholly for the production of defence products.

2. These³. For activities referred to in paragraph 1, point (d) the action shall be carried out by legal entities cooperating within a consortium of at least three eligible legal entities which are established in at least three different Member States or associated countries. At least three of those eligible legal entities established in at least two different Member States or associated countries shall not, during the entire period in which the action is carried out, be controlled, directly or indirectly, by the same legal entity and shall not control each other. The activities referred to in paragraph 1, point (d) may be also carried out by a Structure for European Armament Programme.

4. For activities referred to in paragraph 1, point (a), the urgent need to produce key defence products in light of the geopolitical situation may justify a derogation from the requirement set out in Article 11(2), point (c), provided that both of the following conditions are met:

(a) legal entities participating in the action procurement commit to studying the feasibility of replacing the key defence product with an alternative, restriction-free, product of Union origin;

(b) the procured defence products were in use prior to 24 February 2022 within the armed forces of at least three Member States.

5. Industrial reinforcement actions shall be without prejudice to Union competition rules, and in particular Article 101 Treaty on the Functioning of the European Union (TFEU).

Article 14

Supporting actions

1. Supporting actions shall consist of:

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To accommodate the request of MS for more clarity regarding the required consortium size of eligible public or private legal entities for each type of action, we propose placing this requirement directly in the respective article, instead of previous Article 11(6).

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In response to NL request for a targeted flexibility for licensed production of legacy systems, we propose the following text.

- (a) activities that aim to increase interoperability and interchangeability, including the cross certification of defence products and activities leading to mutual recognition of certification or to facilitate the implementation of military standards;
- (b) activities to strengthen security of supply and resilience, in particular by facilitating the access to the defence market for SMEs, mid-caps and start-ups and support to obtain the necessary quality and production certifications;
- (c) the capacity building, training, reskilling or upskilling of personnel in relation to the activities referred to in Article 11(1);
- (d) the procurement of physical and cyber protection systems in relation to the activities referred to in Article 13;
- (e) coordination and (technical) support actions, in particular addressing identified bottlenecks in production capacities and supply chains with a view to securing and accelerating the production of crisis-relevant products in order to ensure their effective supply and timely availability;

Specific provisions applicable for activities contributing to a European Military Sales Mechanism

1. ~~To ensure the availability of EU defence products in time and in volume thereby fostering the competitiveness of the EDTIB as well as, where relevant, of the Ukrainian DTIB, the Commission shall support the following set of measures (EU MSM):~~
 - ~~(a)(f) the establishment of a single, centralised, up-to-date voluntary catalogue of defence products developed by the EDTIB involved in actions eligible for support under this Programme, managed and kept up to date by the Commission;~~
 - ~~(b) the creation of (g) Union support to Structures for European Armament Programme notably for the purpose of managing and maintaining a defence industrial readiness pool, to increase availability and speed as referred to in Article 15;~~
 - ~~(h) emergency activities, including emergency defence innovation where the measure referred to in [Article 52] is activated;~~
 - ~~(i) up-delivery time of EU-made defence products, ensuring an immediate and preferential front payments to a contractor in the case of advance purchase or use/lease option for of defence products referred to in [Article 36(2)];~~
 - ~~(j) non recurrent costs and/or reservation of manufacturing capacities in the case of off-take agreements referred to in [Article 37(6)].~~
2. For activities referred to in paragraph 1, point (a), the action shall be carried out by legal entities cooperating within a consortium of at least three eligible legal entities which are established in at least three different Member States, or associated countries and Ukraine. At least three of those eligible legal entities established in at least two different Member States or associated countries shall not, during the entire period in which the action is carried out, be controlled, directly or indirectly, by the same legal entity and shall not control each other.

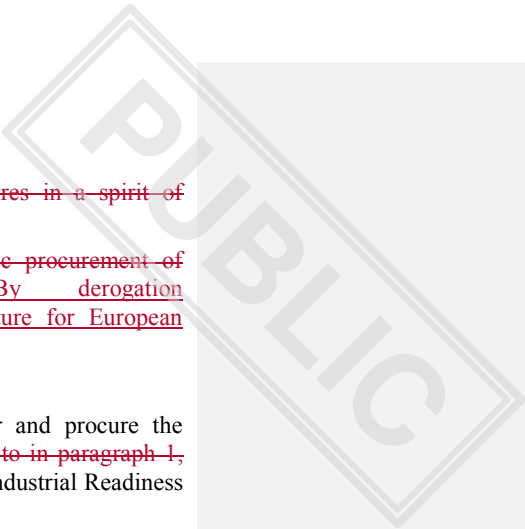
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Presidency Note

Added in response to ES observation that these costs had not been covered by any of the other descriptions of eligible actions.

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Presidency Note

To accommodate the request of MS for more clarity regarding the required consortium size of eligible public or private legal entities for each type of action, we propose placing this requirement directly in the respective article, instead of previous Article 11(6).

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~~(c) the facilitation and speeding up of procurement procedures in a spirit of solidarity;~~

~~(d) the support to administrative capacity building related to public procurement of defence products, with the aim of facilitating joint procurement³. By derogation from paragraph 2, the action may be carried out by a Structure for European Armament Programme.~~

~~4. For activities referred to in paragraph (1), point (f), the~~

~~2. The Commission shall draw up the technical specifications for and procure the corporate IT platform required to establish the catalogue referred to in paragraph 1, point (a) of this Article based on consultations with [the Defence Industrial Readiness Board].~~

~~3. Where Article 15~~

Defence industrial readiness pools

~~1. The Programme shall support the establishment and maintenance by a consortium of at least three Member States or associated countries, or by a Structure for European Armament Programme, to increase availability and speed up delivery time of defence products.~~

~~2. Member States and associated countries that establish a defence industrial readiness pool shall grant all Member States, associated countries and Ukraine an immediate and preferential purchase or use/lease option for defence products that are part of the defence industrial pool.~~

~~3. Where jointly procure a Structure for European Armament Programme procures additional quantities or contribute through of defence products or its Member State or associated country members make in-kind contributions to build up a defence industrial readiness pool as referred to in paragraph 2, point (b), in the context of within a Structure for European Armament Programme, the Commission Programme shall financially support the initiative through:~~

~~(a) support to common procurement of additional quantities as referred to in Article ~~11(2);12;~~~~

~~(b) contribution to the direct and indirect costs of managing and maintaining the ~~Defence Industrial Readiness Pool~~ defence industrial readiness pool as referred to in Article ~~11(5)14(1)~~, point (fg);~~

~~(c) contribution to administrative capacity building as referred to in Article ~~11(5)14(c)~~.~~

~~4. For the purpose of Member States, associated countries or Ukraine buying from the defence industrial readiness pool managed by a Structure for European Armament Programme, the procurement shall be considered as a government-to-government contract as referred to in Article 13, point (f) of Directive 2009/81/EC.~~

Commented [A28]:
Presidency Note
In response to several MS comments, we propose focusing this Article on Defence Industrial Readiness Pools as defined in Article 2.

- Retaining the defence equipment catalogue as a supporting action under Article 14. The products that may be included are limited to products eligible under Article 11(2).

- Retaining, as the focus of this Article, the establishment of a Defence Industrial Readiness pool as an eligible action.

- Omitting the "speeding up of procurement procedures" because this obligation is too vague and difficult to enforce.

- Omitting the administrative capacity building action, because it is already envisaged as a supporting action under Article 14 and would therefore be duplicative.

- Clarifying the legal obligation of the DIRP members to grant access to its contents to other MS, associated countries and Ukraine.

- Specifying that combined support by the Programme for SEAPs setting up a DIRP applies only when the SEAP procures itself (not SEAP as an PA) or its members contribute to the SEAP's DIRP.

While these changes mean that the term "EMSM" thereby disappears from the operative text, the Presidency proposes to include in the final text a recital which identifies the measures taken under this Regulation to implement the EMSM as identified in EDIS

Commented [A29]:
Presidency Note
In response to the comment of AT as to whether, when a MS buys from a SEAP, Art 12 or 13(f) of Dir 2009/81 applies, we understand that, because te SEAP is a quasi-international organisation only, the government to government provision would apply, not Art. 12.

Article 15

Specific provisions applicable for activities contributing to Article 16

European Defence Projects of Common Interest

1. The Commission may identify European Defence Projects of Common Interest for funding in the work programme referred to in Article ~~18~~20.
2. The Commission shall, when identifying projects referred to in paragraph 1:
 - (a) duly consider the guidance provided in the context of the Defence Industrial Readiness Board, in particular the contribution of the project to the capability priority identified in the context of the CFSP, notably of the Capability Development Plan, and the objectives of the Strategic Compass for security and defence;
 - (b) identify overall financing needs and potential impacts for the Union budget;
 - (c) take into account any views of Member States.
3. European Defence Projects of Common Interest shall meet the following general criteria:
 - (a) the project aims at developing capabilities, including those securing access to strategic domains and contested spaces, strategic enablers, and, as appropriate, systems acting as European defence infrastructure of common interest and use;
 - (b) the potential overall benefits of the project outweigh its costs, including in the longer term.
4. A European Defence Project of Common Interest shall involve at least four Member States. The European Commission shall be able, where relevant, to participate in the project.
5. A European Defence Project of Common Interest shall be considered to contribute to the defence capabilities critical for the security and defence interests of the Union and its Member States and therefore to be in the public interest. They may be established in the framework of Structures for European Armament Programmes referred to in Chapter ~~3~~IV.
6. Member States may, without prejudice to Articles 107 and 108 TFEU, apply support schemes and provide for administrative support to European Defence Projects of Common Interest.
7. The Union financial contribution referred to in Article ~~17~~19 shall not exceed 25% of the amount referred to in Article 5(1).
8. The deployment of European Defence Projects of Common Interest may be considered an imperative reason of overriding public interest within the meaning of Article 6(4) and Article 16(1), point (c), of Directive 92/43/EEC and of overriding public interest within the meaning of Article 4(7) of Directive 2000/60. Therefore, the planning, construction and operation of related production facilities may be considered of overriding public interest, provided that the remaining other conditions set out in these provisions are fulfilled.

**Commented [A30]:
Presidency Note**

We propose placing this Article under embargo until MS reach an agreement on the form of the DIRB.

~~Article 16~~

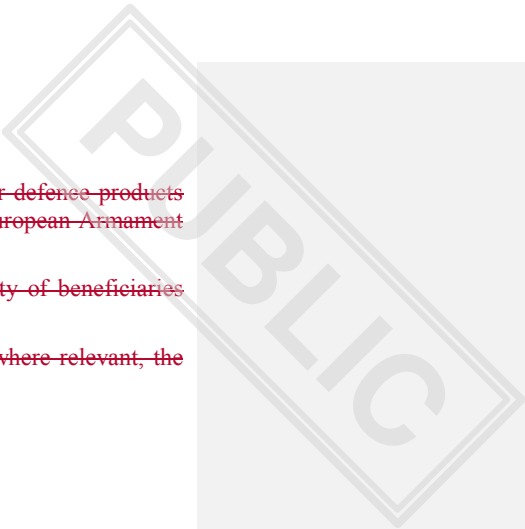
~~Award criteria~~

- ~~1. Each proposal shall be assessed on the basis of the following criteria:~~
 - ~~(a) defence industrial readiness: contribution to competitiveness, increase production capacities, reduce lead times, eliminate bottlenecks thereby increasing interoperability and interchangeability;~~
 - ~~(b) defence industrial resilience: contribution to resilience, increase timely availability and supply to all locations, strengthening security of supply throughout the Union in response to identified risks, including in particular high exposure to the risk of materialisation of conventional military threats, and the non-dependency on non-associated third country sources;~~
 - ~~(c) defence industrial cooperation: fostering genuine armament cooperation among Member States, associated countries or Ukraine and development and operationalisation of cross border cooperation between undertakings established in different Member States, associated countries or Ukraine, involving in particular, to a significant extent, SMEs, small mid caps and other mid caps as recipients, as subcontractors or as other undertakings in the supply chain;~~
 - ~~(d) the quality of the implementation plan of the action, in particular measures to respect delivery lead times, including in terms of its processes and monitoring.~~
- ~~2. The work programme shall lay down further details concerning the application of the award criteria laid down in paragraph 1, including any weighting to be applied. The work programme shall not set individual thresholds.~~

~~Article Article 17~~

~~Union financial contribution~~

- ~~1. By way of derogation from Article 190 of the Regulation (EU, Euratom) No 2018/1046, the Programme may finance up to 100 % of the eligible costs. However, for activities referred to in Article 11(3) the support from the Programme shall not exceed 35 % of the eligible costs.~~
- ~~2. An action shall be eligible for an increased funding rate where it fulfils one or more of the following criteria:~~
 - ~~(a) the action is developed in the context of a Structure for European Armament Programme SEAP, as referred to in Chapter III of this Regulation or in the context of a project of PESCO, provided that this project complies with obligations comparable to those under Article 22(1), 23(1), 25 and 26 of this Regulation and that it did not benefit from a comparable increased funding rate in another EU funding programme;~~
 - ~~(b) Ukraine is the recipient of defence products produced or procured under the Programme and those products are subject to financial support under the European Peace Facility;~~



- ~~(c) Member States agree on a common approach to exports for defence products developed and procured in the context of a Structure for European Armament Programme (SEAP);~~
- ~~(d) the beneficiary is an SME or small mid-cap or the majority of beneficiaries participating in a consortium are SMEs or small mid-caps.~~
- ~~3. The work programme shall lay down further details, including, where relevant, the increased funding rates referred to in paragraph 3.~~

Article 18

Work programmes

- ~~1. The Programme shall be implemented by work programmes as referred to in Article 110 of the Regulation (EU, Euratom) No 2018/1046. Work programmes shall set out the actions and associated budget required to meet the objectives of the Programme and, where applicable, the overall amount reserved for blending operations.~~
- ~~2. The Commission shall adopt work programmes by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(3).~~

Article 19

Fund to Accelerate defence Supply chains Transformation (FAST)

- 1. In order to leverage, de-risk and speed-up investments needed to increase the defence manufacturing capacities of SMEs and small mid-caps, a blending operation offering debt and/or equity support may be established (Fund to Accelerate defence Supply-chains' Transformation (FAST). It shall be implemented in accordance with Title X of the Financial Regulation ~~(EU, Euratom) No 2018/1046~~ and Regulation (EU) 2021/523⁶.
- 2. The specific objectives pursued by the FAST shall be the following:
 - (a) achieve a satisfactory multiplier effect in line with the debt and equity mix and contributing to attracting both public and private-sector financing;
 - (b) provide support to SMEs (including start-ups and scale-ups) and small midcaps across the Union, which are facing difficulties in accessing finance and which:
 - (i) industrialise defence technologies and/or manufacture defence products or have imminent plans to so; or
 - (ii) are part of the defence industry's supply chain or have imminent plans to become part it.
 - (c) accelerate investment in the field of manufacturing defence technologies and products, and therefore strengthen the security of supply of the Union's defence industry value chains.

⁶ Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU Programme and amending Regulation (EU) 2015/1017 (OJ L 107, 26.3.2021, p. 30–89, ELI: <http://data.europa.eu/eli/reg/2021/523/oj>).



Section 3: Award criteria and work programme

Article 18

Award criteria

1. Each proposal shall be assessed on the basis of the following general criteria:
 - (a) defence industrial readiness: contribution to competitiveness, increase production capacities, reduce lead times, eliminate bottlenecks thereby increasing interoperability and interchangeability;
 - (b) defence industrial resilience: contribution to resilience, increase timely availability and supply to all locations, strengthening security of supply throughout the Union in response to identified risks, including in particular high exposure to the risk of materialisation of conventional military threats, and the non-dependency on non-associated third country sources.
 - (c) defence industrial cooperation: fostering genuine armament cooperation among Member States, associated countries or Ukraine and development and operationalisation of cross-border cooperation between legal entities established in different Member States, associated countries or Ukraine, involving in particular, to a significant extent, SMEs, small mid-caps and other mid-caps as recipients, as subcontractors or as other legal entities in the supply chain;
 - (d) the quality and efficiency of the implementation plan of the action, in particular measures to respect delivery lead times, including in terms of its processes and monitoring.
2. Proposals for common procurement actions referred to in Article 12 shall additionally be evaluated based on the following criteria:
 - (a) the number of Member States or associated countries participating in the action;
 - (b) the estimated value of the procured defence products or services;
 - (c) a demonstration of the action's contribution to the strengthening of the competitiveness and to the adaptation, modernisation and development of the EDTIB in order to allow it to address, including with regard to delivery lead times, availability and supply;
 - (d) a demonstration of the action's contribution to the replenishment of stockpiles, including those depleted as a result of the response to Russia's war of aggression against Ukraine, to the replacement of obsolete equipment, and to the reinforcement of capabilities;
 - (e) the action's contribution to overcoming obstacles to common procurement;
 - (f) the participation of SMEs and mid-caps;
 - (g) the creation of new cross-border cooperation between contractors and subcontractors in the supply chains throughout the Union;

3. Proposals for industrial reinforcement actions referred to in Article 13 shall additionally be evaluated based on the following criteria:

- (a) increase in production capacity in the Union: the contribution of the action to the increase, ramp-up or reservation of manufacturing capacities, their modernisation or the reskilling and upskilling of the related workforce;
- (b) reduction of lead production time: the contribution of the action to the timely satisfaction of the demand expressed through procurement in terms of reduced lead production times, including via order reprioritisation mechanisms;
- (c) elimination of sourcing and production bottlenecks: the contribution of the action to the swift identification and rapid and lasting elimination of any sourcing (raw material and any other input) or production (manufacturing capability) bottlenecks;
- (d) support to procurement: the demonstration by the applicants of the link between the action and newly placed orders stemming from the joint procurement of relevant defence products by at least three Member States or associated countries especially if done in a Union framework;

4. The work programme shall lay down further details concerning the application of the award criteria laid down in paragraph 1, including any weighting to be applied. The work programme shall not set individual thresholds.

Article 19

Selection and award procedure

1. Union funding shall be granted following competitive calls for proposals issued in accordance with the Financial Regulation.
2. The Commission shall, by means of implementing acts, award the funding under this Regulation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in [Article 58(3)], except with respect to common procurement actions referred to in Article 12.

Article 20

Union financial contribution

1. By way of derogation from Article 190 of the Financial Regulation, the Programme may finance up to 100 % of the eligible costs. However, for actions referred to in Article 13 the support from the Programme shall not exceed 35 % of the eligible costs.
2. Actions shall be eligible for an increased funding rate in the following cases:
 - (a) actions carried out by a Structure for European Armament Programme as referred to in Chapter IV of this Regulation may benefit from a funding rate increased by an additional [15] percentage points;
 - (b) actions carried out, for their entire duration, in the context of a PESCO or EDA Category A or B projects that comply with the requirements set out in Article 10(1) and 27(1) of this Regulation and do not benefit from a comparable

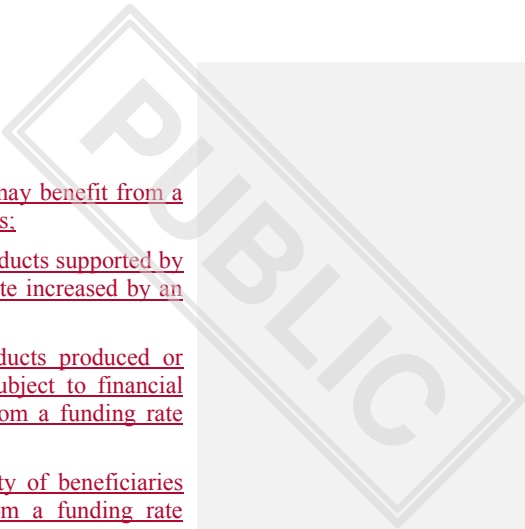
Commented [A31]: Presidency Note

In response to comments of several MS to further specify the award criteria for ASAP+ and EDIRPA+ actions, we have added additional criteria for these actions, based on the text of the ASAP and EDIRPA Regulations, omitting any criteria already covered under paragraph 1.

Commented [A32]: Presidency Note

In response to comments of several MS, and subject to further comments of MS as to the appropriate percentages, we propose making explicit the increased funding rates (bonuses) for actions having certain desirable effects, and added a maximum bonus cap. We have also:

- Added EDA Category A and B projects to bonus-eligible EDIP actions in addition to PESCO projects.
- Added commercialisation of defence products developed with EDF funding as a bonus.
- In line with the EDF Regulation, omitted the reference to "small mid-caps" to focus on SMEs.



increased funding rate in another EU funding programme may benefit from a funding rate increased by an additional [15] percentage points;

- (c) actions which relate to the commercialisation of defence products supported by the European Defence Fund may benefit from a funding rate increased by an additional [15] percentage points;
- (d) actions whereby Ukraine is the recipient of defence products produced or procured under the Programme and those products are subject to financial support under the European Peace Facility may benefit from a funding rate increased by an additional [15] percentage points;
- (e) actions whereby the beneficiary is an SME or the majority of beneficiaries participating in a consortium are SMEs may benefit from a funding rate increased by an additional [15] percentage points;
- (f) actions whereby Member States agree on a common approach to exports for defence products developed and procured in the context of a Structure for European Armament Programme may benefit from a funding rate increased by an additional [5] percentage points.

3. The overall increase in the funding rate of an activity following the application of the increased funding rates under paragraph 2 shall not exceed [50] percentage points.

4. The work programme shall lay down further details.

Article 21

Work programme

1. The Programme shall be implemented by a work programme as referred to in Article 110 of the Financial Regulation. The work programme shall set out the actions and associated budget required to meet the objectives of the Programme and, where applicable, the overall amount reserved for blending operations.
2. The Commission shall adopt the work programme by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(3).
3. The work programme shall at least set out:
 - (a) the overall amount of the Union contribution to each type of action referred to in Article 11(1);
 - (b) with respect to actions referred to in Article 12 and Article 13, the minimum financial size of the actions;
 - (c) with respect to actions referred to in Article 13, the maximum number of legal entities forming part of the consortium, which shall in any event not exceed [15] legal entities.
 - (c) the procedure for the evaluation and selection of proposals, including, where relevant, a description of the milestones, which are to be designed in such a way as to mark substantial progress in the implementation of actions, the results to be achieved and the associated amounts that are to be disbursed, as well as the arrangements for the verification of the milestones, the fulfilment of conditions and the achievement of results;

Commented [A33]: Presidency Note

The Presidency proposes a single work programme for EDIP, given the limited time horizon of the Regulation.

In response to comments of several MS to add more specific language, we also propose adding a paragraph 3 to specify the minimum content of the work programme.

(d) the methods for determining and, where applicable, adjusting the funding.

Chapter III

The Ukraine Support Instrument

Article 20

Section 1: General provisions applicable to the Instrument

Article 22

Use of financing not linked to costs

1. Grants may take the form of financing not linked to costs, pursuant to Article 180(3) of the Financial Regulation.
2. Where the Union grant takes the form of financing not linked to costs, the level of Union contribution for actions reinforcing the Ukrainian DTIB may be based on factors such as:
 - (a) the estimated value of the action;
 - (b) the contribution of the action to achieving interoperability of defence products produced by the EDTIB and the Ukrainian DTIB;
 - (c) the number of participating Member States;
 - (d) the contribution of the action to the ramp-up of necessary manufacturing capacities;
 - (e) the procurement of additional quantities for other Member States or Ukraine (defence industrial readiness pool);
 - (f) the efforts of Ukraine in the accession process, including structural reforms and measures to promote convergence with Union rules, standards, policies and practices ('acquis');
 - (g) the efforts of adapting the Ukrainian defence procurement processes and the environment for the Ukrainian defence industry, including to meet NATO standards;
 - (h) the efforts and risks associated with the ongoing war of aggression, taking into account the need to rebuild and modernise infrastructure damaged by the war in a resilient way, and, where relevant, by appropriate measures to avoid, prevent or reduce and, if possible, offset these effects.

Article 23

Objectives

1. The Ukraine Support Instrument shall contribute to the recovery, reconstruction, and modernisation of the Ukrainian DTIB with a view to increasing its defence readiness and taking into account its possible future integration into the EDTIB, through cooperation between the European Union and Ukraine, thereby

Commented [A34]:
Presidency Note

We propose to adjust this point for clarity, in line with the suggestions of HU and LT.

contributing to mutual stability, security, peace, prosperity, resilience and sustainability.

2. The objective set out in paragraph 1 shall be pursued with an emphasis on enhancing cross-border cooperation between the EDTIB and the Ukrainian DTIB, taking into account the defence product needs of Ukraine, through creation of manufacturing capacities or their ramp-up in line with NATO standards, protection of assets, technical assistance and exchange of personnel, increased cooperation on common procurement of defence products for Ukraine and licensing production cooperation through public-private partnerships or other forms of cooperation, e.g. joint ventures. Special attention shall be given to the objective to support Ukraine to progressively align with Union ~~4.~~ acquis with a view to future Union membership.

Article 13 shall apply to actions under 24

Budget

1. The budget for the implementation of the Ukraine Support Instrument. ~~Articles 8, 11, 12, 14, 16, 17 and Article 18 shall apply mutatis mutandis.~~ shall be composed of:
- (a) the amount of the additional contributions in accordance with Article 25 to the extent earmarked, subject to the conclusion of the agreement referred to in [Article 59]; and
 - (b) amounts reallocated from the Programme in response to unforeseen situations or new developments in accordance with Article 5(2).
2. The budget referred to in paragraph 1 of this Article may also be used for technical and administrative assistance for the implementation of the Ukraine Support Instrument, such as preparatory, monitoring, control, audit and evaluation activities, including price investigations and corporate information technology systems and platforms, and all other technical and administrative assistance or staff-related expenses incurred by the Commission for the management of the Ukraine Support Instrument.
4. In addition to Article 12(4) of the Financial Regulation, unused commitment and payment appropriations shall be automatically carried over and may be committed and used, respectively, until 31 December of the following financial year. The amount carried over shall be used first in the following financial year. The Commission shall inform the European Parliament and the Council of commitment appropriations carried over in accordance with Article 12(6) of the Financial Regulation.
5. By way of derogation from Article ~~17(1) activities referred to in Article 11~~209(3) ~~may finance up to 100 % of the eligible costs), first, second and fourth subparagraphs of the Financial Regulation, any revenues and repayments from financial instruments established under this Chapter shall constitute internal assigned revenue within the meaning of Article 21(5) of the Financial Regulation, to the Ukraine Support Instrument or its successor programme.~~
6. In addition to Article 15 of the Financial Regulation, commitment appropriations corresponding to the amount of recoveries and of decommitments under the Ukraine Support Instrument shall be made available again to the Instrument or its successors in the context of the budgetary procedure.

Commented [A35]:
Presidency Note:

Pending legal advice of the CLS, we propose paring back the text of the objectives underlying the Ukraine Support Instrument to bring them in line with Article 212 TFEU by retaining only those elements relating to the USI from Article 4 of the Commission's proposal.

7. Budgetary commitments for activities extending over more than one financial year may be broken down over several years into annual instalments.
8. Appropriations may be entered in the Union budget beyond 2027 to cover the expenses necessary to fulfil the objectives set out in Article 23, to enable the management of actions not completed by the end of the Ukraine Support Instrument, as well as expenses covering critical operational activities and services.

Article 25

Additional financial resources

1. Member States, European Union institutions, bodies and agencies, third countries, international organisations, international financial institutions or other third parties, may provide additional financial contributions to the Ukraine Support Instrument in accordance with Article 208(2) of the Financial Regulation. Such financial contributions shall constitute external assigned revenue within the meaning of Article 21(2), points (a)(ii) [point (a) FR recast], (d), or (e) or Article 21(5) of the Financial Regulation.
2. Any additional amounts received under the relevant Union restrictive measures shall be external assigned revenue within the meaning of Article 21(5) of the Financial Regulation and shall be used for actions reinforcing the Ukrainian DTIB.

Article 26

Implementation and forms of Union funding

1. The Ukraine Support Instrument shall be implemented under direct management in accordance with the Financial Regulation or in indirect management with bodies referred to in Article 62(1), point (c), of the Financial Regulation.
2. Union funding may be provided in any of the forms laid down in the Financial Regulation except for blending operations under the InvestEU programme in accordance with Title X of the Financial Regulation.
3. By way of derogation from Article 192(2) of the Financial Regulation, activities referred to in Article 13(1), point (d), for which Union funding is provided in the form of a grant under the Ukraine Support Instrument pursuant to Article 26(1), and profit is made, the Commission may recover the percentage of the profit corresponding to the Union contribution to the eligible costs actually incurred by the beneficiary carrying out the action, up to the final amount of the Union contribution. The profit is calculated by a surplus of receipts over the eligible costs of the action, where receipts are limited to Union funding, Member State funding, including procurement, other revenue generated during the action and any revenue resulting from the action. The work programme may set out further details.
4. By way of derogation from Article 193(2) of the Financial Regulation, financial contributions may, where relevant and necessary for the implementation of an action, cover actions started and costs incurred prior to the date of the submission of the proposal for those actions, provided that those actions did not start before 5 March 2024 and have not been completed before the signature of the grant agreement.

Article 27

- ~~3. References to associated countries in Articles 8, 9, 11, 12, 14 and 16 shall not apply to this section.~~
- ~~4. References to blending operations in Article 8 shall not apply to this section.~~

Article 21

Eligible legal entities

1. The eligibility criteria set out in paragraphs 2 to 7~~9~~ shall apply in addition to the criteria set out in accordance with the Financial Regulation (EU, Euratom) 2018/1046.
2. Recipients of Union funding shall be established in the Union or ~~in Ukraine~~ Ukraine. ~~Recipients established in the non-government controlled areas of Ukraine shall not be eligible for support under this Regulation.~~
3. The infrastructure, facilities, assets and resources of the recipients ~~which are used for the purposes of the and subcontractors involved in an~~ action shall be located on the territory of a Member State or of Ukraine. ~~Where recipients have no readily available alternatives or relevant infrastructure, facilities, assets for the entire duration of the action, and resources their executive management structures shall be established in the Union or in Ukraine, they,~~
4. ~~By way of derogation to paragraph 3, recipients~~ may use ~~their~~ infrastructure, facilities, assets and resources which are located or held outside the territory of the Member States or of Ukraine, provided that such use ~~does not contravene the security and defence interests of the Union and the Member States and is consistent with the objectives set out in Article 4.~~
 - 4(a) is consistent with the objectives set out in Article 23;
 - 4(b) is strictly necessary as a result of a lack of readily available alternatives or relevant infrastructure, facilities, assets and resources in the Union or Ukraine;
 - 4(c) does not contravene the security and defence interests of the Union and its Member States.
5. For the purposes of an action supported by the Ukraine Support Instrument, the recipients shall not be subject to control by a third country or by a third-country entity other than Ukraine.
6. By way of derogation from paragraph 4~~5~~, a legal entity established in the Union and controlled by a third country or by a third-country entity other than Ukraine shall be eligible to be a recipient if it has been subject to screening within the meaning of [Regulation (EU) 2019/452] of the European Parliament and of the Council and, where necessary, to appropriate mitigation measures, taking into account the objectives set out in Article 4~~23~~ of this Regulation, or if guarantees approved by the Member State in which it is established in accordance with its national procedures are made available to the Commission.

The guarantees shall provide assurances that the involvement in an action of such a legal entity would not contravene the security and defence interests of the Union and its Member States as established in the framework of the CFSP pursuant to Title V of the Treaty on European Union (TEU), or the objectives set out in Article 4. The

Commented [A36]: Presidency Note

Our approach to the revised Article is to stay as close as possible to the EDF, ASAP and EDIRPA texts to ensure that consortia established under these instruments may continue or expand their cooperation under EDIP.

Commented [A37]: Presidency Note

This language reflects agreed language used in EU restrictive measures in respect of occupied areas of Ukraine. (see, Council Regulation [2022/263](#))

~~guarantees shall also comply with Article 11(8), point (e)-23].~~ The guarantees shall in particular substantiate that, for the purposes of an action, measures are in place to ensure that:

- (a) control over the legal entity is not exercised in a manner that restrains or restricts its ability to carry out the action and to deliver results, that imposes restrictions concerning its infrastructure, facilities, assets, resources, intellectual property or knowhow needed for the purposes of the action, or that undermines its capabilities and standards necessary to carry out the action;
- (b) access by a third country or by a third-country entity ~~to other than Ukraine to classified or~~ sensitive information relating to the action is prevented and the employees or other persons involved in the action have national security clearance issued by a Member State, where appropriate;

If considered to be appropriate by the Member State or the associated country in which the legal entity is established, additional guarantees may be provided.

~~7. The procedures and security guarantees applicable to recipients established in Ukraine and controlled by a third country or by a third-country entity other than Ukraine shall be governed by the agreement referred to in Article 59, provided that this does not contravene the security and defence interests of the Union and its Member States or the objectives set out in Article 23.~~

~~8. The Commission shall inform [the committee referred to in Article 57] of any legal entity considered to be eligible in accordance with this paragraph.~~

~~6.]~~

~~9. When carrying out an eligible action, recipients may also cooperate with legal entities established outside the territory of the Member States or of Ukraine, or controlled by a third country or by a third-country entity other than Ukraine, including by using the assets, infrastructure, facilities and resources of such legal entities, provided that this does not contravene the security and defence interests of the Union and its Member States. Such cooperation shall be consistent with the objectives set out in Article 4 and comply with Article 11(8), point (e)-or its Member States or the objectives set out in Article 23. [There shall be no unauthorised access by a third country or an entity established in a third country other than Ukraine to classified information relating to the carrying out of the action and potential negative effects over security of supply of inputs critical to the action shall be avoided.] The costs related to those activities shall not be eligible for support from the Ukraine Support Instrument.~~

~~There shall be no unauthorised access by a third country, or other third-country entity to classified information relating to the carrying out of the action and potential negative effects over security of supply of inputs critical to the action shall be avoided.~~

~~The costs related to those activities shall not be eligible for support from the Programme.~~

~~710. Paragraphs 2 to 69 shall not apply to:~~

- (a) contracting authorities of Member States and Ukraine;
- (b) International Organisations;
- (c) The Structures for European Armament Programme;

Commented [A38]:

Presidency Note

We propose omitting the reference to product restrictions because the restrictions on use are linked to funding for a particular action, not to the identity of the beneficiary.

Requiring that the inclusion of a screened third country entity within a consortium "complies" with Article 11(2)(c) is superfluous if the action as a whole is eligible for funding only when the procured /produced equipment is not subject to third country restrictions.

Commented [A39]:

Presidency Note

While we take note of the comments of MS that the concept of "security guarantees" is insufficiently clear, the Presidency considers that clarifying these provisions is a matter for competent authorities of MS to share best practices and establish common principles.

Commented [A40]:

Presidency Note

The Commission proposal did not provide an exceptional regime for third-country controlled recipients established in Ukraine.

The Presidency proposes to extend the flexibility offered to EU established entities to UA entities, provided UA sets up equivalent security measures to be further defined in the UA-EU agreement.

Commented [A41]:

Presidency Note

The Presidency invites comments as to as to whether UA and UA entities should be regarded as third country (entities) for the purposes of this sentence.

- (d) The European Defence Agency.

Section 2: Eligible actions

Article 28

Eligible actions

1. Actions eligible for funding under the Ukraine Support Instrument shall implement the objectives set out in Article 23 and may take one of the following forms:
 - (a) common procurement actions referred to in Article 12;
 - (b) industrial reinforcement actions referred to in Article 13;
 - (c) supporting actions referred to in Article 14(1), points (a) to (e);
 - (d) actions relating to defence industrial readiness pools referred to in Article 15.
2. The following actions shall not be eligible for funding under the Ukraine Support Instrument:
 - (a) actions related to goods or services which are prohibited by international law;
 - (b) actions related to lethal autonomous weapons without the possibility of meaningful human control over selection and engagement decisions when carrying out strikes against humans;
 - (c) actions related to goods or services which are subject to control or restriction by third countries or entities established in third-countries other than Ukraine, directly, or indirectly through one or more intermediate legal entities, including in terms of technology transfer;
 - (d) actions or parts thereof, that are already fully financed from other public or private sources.
3. References to Member States in Articles 12, 13, 14 and 15 shall be understood to include Ukraine for the purpose of this section. References to associated countries in Articles 12, 13, 14 and 15 shall not apply to this section.

Commented [A42]:
Presidency Note

In response to comments of MS, we have avoided the use of « mutatis mutandis » while also not copying the full content of Articles 12-15 of the Programme.

Commented [A43]:
Presidency Note

For the purposes of the Ukraine Support Instrument, Ukraine export controls are not considered as third country restrictions.

Section 3: Award and work programme

Article 29

Award criteria

1. The Proposals for actions under Ukraine Support Instrument shall be evaluated on the basis of the criteria laid down in Article 18, paragraph 1.
2. References to Member States in Article 18 shall be understood to include Ukraine for the purpose of this section. References to associated countries in Article 18 shall not apply to this section.

2. The work programme shall lay down further details concerning the application of the award criteria, including any weighting to be applied. The work programme shall not set individual thresholds.
4. The Commission shall, by means of implementing acts, award the funding under this Regulation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in [Article 58(3)].

Article 30

Selection and award procedure

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

Article 31

Union financial contribution

1. By way of derogation from Article 190 of the Financial Regulation, the Ukraine Support Instrument may finance up to 100 % of the eligible costs.

Article 32

Work programme

1. The Ukraine Support Instrument shall be implemented by a work programme as referred to in Article 110 of the Financial Regulation. The work programme shall set out the actions and associated budget required to meet the objectives of the Ukraine Support Instrument.
2. The Commission shall adopt the work programme by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(3).
3. The work programme shall at least set out:
- (a) the overall amount of the Union contribution to each type of action referred to in Article 28(1);
 - (b) with respect to actions referred to in Article 28(1), points (a) and (b), the minimum financial size of the actions;
 - (c) with respect to actions referred to in Article 28(1), point (b), the maximum number of legal entities forming part of the consortium, which shall in any event not exceed [15] legal entities.
 - (c) the procedure for the evaluation and selection of proposals, including, where relevant, a description of the milestones, which are to be designed in such a way as to mark substantial progress in the implementation of actions, the

results to be achieved and the associated amounts that are to be disbursed, as well as the arrangements for the verification of the milestones, the fulfilment of conditions and the achievement of results;

(d) the methods for determining and, where applicable, adjusting the funding.

Chapter ~~V~~VI

Governance, evaluation and control

Article 57

Defence Industrial Readiness Board

1. The Defence Industrial Readiness Board is hereby established.
2. The general task of the Board is to assist and provide advice and recommendations to the Commission pursuant to this Regulation, in particular pursuant to its Chapter IV [Security of Supply].
3. To assist the Commission in the implementation of the measures referred to in Chapter II, the Defence Industrial Readiness Board shall assist the latter in the identification of funding priority areas, taking into account the defence capability priorities commonly agreed by Member States within the framework of the Common Foreign and Security Policy (CFSP), in particular in the context of the Capability Development Plan.
4. The Commission shall maintain a regular flow of information to the Defence Industrial Readiness Board on any planned measures or measures that have been taken related to the activation of the supply crisis or security-related supply crisis state. The Commission shall provide the necessary information through a secured IT system.
5. For the purposes of the supply-crisis state as referred to in Article 44, the Defence Industrial Readiness Board shall assist the Commission in the following tasks:
 - (a) analysing crisis-relevant information gathered by Member States or the Commission;
 - (b) assessing whether the criteria for activation or deactivation of the supply-crisis state have been fulfilled;
 - (c) providing guidance on the implementation of the measures chosen to respond to supply crisis at Union level;
 - (d) performing a review of national crisis measures;
 - (e) facilitating exchanges and sharing of information, including with other crisis-relevant bodies at Union level, as well as, as appropriate, third countries, with particular attention paid to developing countries, and international organisations.

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6. For the purposes of the security-related supply-crisis state as referred to in Article 48, the Defence Industrial Readiness Board shall:
 - (a) facilitate coordinated action by the Commission and the Member States;
 - (b) adopt opinions and guidance, including specific response measures, for the Member States for ensuring the timely availability and supply of crisis-relevant products;
 - (c) assist and provide guidance on the activation of measures as referred to in Articles 49 to 54;
 - (d) provide a forum for the coordination of actions of the Council, the Commission, and other relevant Union bodies.
 7. The Defence Industrial Readiness Board shall be composed of the representatives of the Commission, the High-Representative and Head of the European Defence Agency, Member States and associated countries. Each Member State or associated country shall nominate one representative and one alternate representative. The Board shall be chaired by the Commission for the purposes of the tasks laid down in this Regulation. The secretariat of the Defence Industrial Readiness Board shall be ensured by the Commission.
 8. The Defence Industrial Readiness Board shall meet whenever the situation requires, upon request from the Commission or a Member State or an associated country. It shall adopt its rules of procedure on the basis of a proposal submitted by the Commission.
 9. The Defence Industrial Readiness Board may issue opinions, upon the request of the Commission or on its own initiative. The Defence Industrial Readiness Board shall endeavour to find solutions which command the widest possible support.
 10. The Defence Industrial Readiness Board shall invite, at least once a year, representatives from National Defence Industrial Associations and selected industrial representatives, taking into account the necessity to ensure a balanced geographical representation (structured dialogue with defence industry). Where the supply crisis state referred to in Article 44 or the security supply crisis state referred to in Article 48 has been activated, the Defence Industrial Readiness Board shall invite high-level industrial representatives to meet in special configuration in order to discuss issues linked to crisis-relevant products.
 11. The Defence Industrial Readiness Board shall invite the representatives of other crisis-relevant bodies at Union level as observers to the relevant meetings of the Board.
 12. The Defence Industrial Readiness Board shall invite, where relevant and notably with a view to actions reinforcing the Ukrainian DTIB, in line with its rules of procedure and with due respect to the security and defence interests of the Union and its Member States, a representative from Ukraine to attend meetings as an observer.
 13. The Commission shall ensure transparency and provide members of the Board with equal access to information, in order to ensure that the decision-making process reflects the situation and the needs of all Member States.
 14. The Commission may, on its own initiative or on the proposal of the Defence Industrial Readiness Board, set up working groups on an *ad hoc* basis to support the Defence Industrial Readiness Board in its work for the purpose of examining specific

questions on the basis of the tasks referred to in paragraph 1. Member States shall nominate experts for the working groups.

15. The Commission shall set up a working group on legal, regulatory and administrative hurdles. The objectives of this working group are:
- (a) to identify existing or potential legal, regulatory and administrative obstacles at international, EU and national levels to the achievement of the objectives listed in Article 4;
 - (b) to identify potential solutions and/or mitigation measures to identified obstacles.

Article 58

Committee Procedure

1. The Commission shall be assisted by ~~a committee. That committee shall be~~ a committee within the meaning of Regulation (EU) No 182/2011.
2. The EDA shall be invited to provide its views and expertise to the committee as an observer. The EEAS shall also be invited to assist in the work of the committee.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
4. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and Article 5(4), third subparagraph, of Regulation (EU) No 182/2011 shall apply.

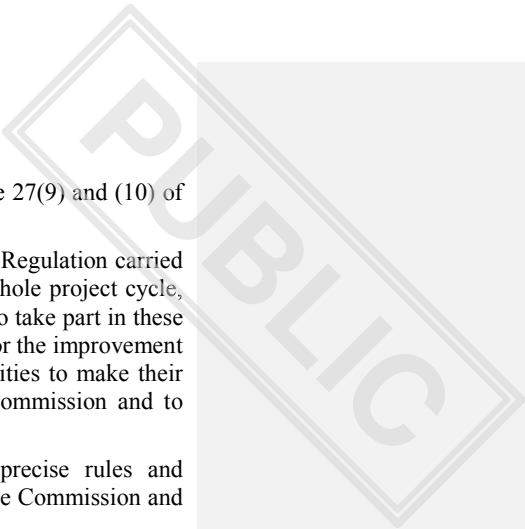
Article 59

EU – UA Framework agreement

1. The Commission shall conclude a framework agreement with Ukraine for the implementation of the actions set out in this Regulation which concern Ukraine or legal entities established in Ukraine receiving Union funds.
2. The framework agreement concluded with Ukraine, taken as a whole, and contracts and agreements signed with legal entities established in Ukraine receiving Union funds, shall ensure that the obligations set out in Article 129 of the Financial Regulation can be fulfilled.
3. The framework agreement shall lay down the obligations of the Ukrainian authorities and bodies entrusted of budget implementation tasks to take all the necessary measures including legislative, regulatory and administrative measures to respect the principles of sound financial management, transparency and non-discrimination, to ensure the visibility of Union action when managing the Union funds, to fulfil the appropriate control and audit obligations and assume the resulting responsibilities, and to protect the financial interests of the Union, by, in particular, detailed enacting provisions concerning:
 - (a) the activities related to control, supervision, monitoring, evaluation, reporting and audit of Union funding under the ~~Programme~~ Ukraine Support Instrument, as well as investigations, anti-fraud measures and cooperation;

Commented [A44]:
Presidency Note

We propose placing this Article under embargo until MS reach an agreement on the form of the DIRB.



- (b) rules on taxes, duties and charges in accordance with Article 27(9) and (10) of Regulation (EU) 2021/947;
 - (c) the right of the Commission to monitor activities under this Regulation carried out by the legal entities established in Ukraine, along the whole project cycle, including for cooperation for common procurement action, to take part in these as observer, as appropriate, and to make recommendations for the improvement of such activities and commitment by the Ukrainian authorities to make their best efforts to implement such recommendations of the Commission and to report on this implementation;
 - (d) the obligations referred to in Article 64(2), including precise rules and timeframe on collection of data by Ukraine and access for the Commission and OLAF;
 - (e) the preservation of security interests, including a level of protection of classified and sensitive information and confidentiality equivalent to that set out in Articles ~~5960~~ and ~~6061~~;
 - (f) provisions on protection of personal data;
 - (g) procedures and guarantees applicable to recipients under the Ukraine Support Instrument established in Ukraine and controlled by a third country or a third country entity other than Ukraine.
4. Funding shall only be granted to Ukraine after the framework agreement has entered into force and that the actions needed to implement the requirements it establishes have been implemented by the parties.

Article 60

Application of the rules on classified information

1. The originatorship of classified foreground information generated in implementing eligible actions listed under Article ~~44,26(1)~~, shall be under the responsibility of the participating Member States who will establish the applicable security framework under, in accordance with relevant national laws and regulations.
2. Such a security framework shall be without prejudice to the possibility for the Commission to have access to the necessary information for carrying out the action, including the verification of milestones, the fulfilment of conditions and the achievement of results, as defined in the relevant work programme.
3. The Commission shall protect classified information received in accordance with the security rules set out in Decision (EU, Euratom) 2015/444 and Decision 2013/488/EU.
4. The applicable security framework for the action has to be put in place at the latest before the signature of the grant agreement or the contract. The relevant documents shall form integral part of the Grant Agreement.
5. The Commission shall make available approved and accredited existing systems to facilitate the exchange of classified information between the Commission, the High-Representative / Head of Agency, the EEAS, the EDA, Member States and associated countries and, where appropriate, with the applicants and the recipients. This system shall take into account Member States' national security regulations.

**Commented [A45]:
Presidency Note**

At the suggestion of ES, we propose including this clarification to avoid disputes currently arising in the context of the EDF.

Article 61

Confidentiality and processing of information

1. Information received as a result of the application of this Regulation shall be used only for the purpose for which it was requested.
2. Member States, the Commission, ~~the EEAS~~ and the ~~High Representative / Head of Agency~~EDA shall ensure the protection of ~~trade~~classified and ~~business secrets and other sensitive and classified~~ information acquired and generated in application of this Regulation in accordance with Union law and the respective national law.
3. Member States, ~~the Commission, the EEAS~~ and the ~~High Representative / Head of Agency~~EDA shall ensure that classified information provided or exchanged under this Regulation is not downgraded or declassified without the prior written consent of the originator.
4. The Commission shall not share any information in a way that can lead to the identification of an entity when the sharing of the information results in potential commercial or reputational damage to that entity or in divulging any trade secrets.
5. The Commission shall handle information containing any data of an entity or any trade secrets in a way not less stringent than the handling of ~~Sensitive non-Classified Information, including sensitive information, which includes~~ the application of the “need to know principle” and the handling and sharing in appropriate encrypted environments.

Article 62

Personal data protection

1. This Regulation shall be without prejudice to the obligations of Member States relating to their processing of personal data under Regulation (EU)-2016/679 of the European Parliament and of the Council-⁽⁷⁾- and Directive-2002/58/EC of the European Parliament and of the Council-⁽⁸⁾, or the obligations of the Commission and, where appropriate, other Union institutions, bodies, offices and agencies, relating to their processing of personal data under Regulation (EU)-2018/1725 of the European Parliament and of the Council-⁽⁹⁾, when fulfilling their responsibilities.
2. Personal data shall not be processed or communicated except in cases where this is strictly necessary for the purposes of this Regulation. In such cases Regulations (EU)-2016/679 and (EU)-2018/1725 shall apply as appropriate.

⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁸ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

⁹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

3. Where the processing of personal data is not strictly necessary to the fulfilment of the mechanisms established in this Regulation, personal data shall be rendered anonymous in such a manner that the data subject is not identifiable.

Article 63

Audits

Audits on the use of the Union contribution carried out by persons or entities, including by persons or entities other than those mandated by the Union institutions, bodies, offices or agencies, shall form the basis of the overall assurance pursuant to Article 127 of the Financial Regulation. The Court of Auditors shall examine the accounts of all revenue and expenditure of the Union in accordance with Article 287 TFEU.

Article 64

Protection of the financial interests of the Union

1. Where an associated country participates in the Programme by means of a decision adopted pursuant to the Agreement on the European Economic Area or on the basis of any other legal instrument, the associated country shall grant the necessary rights and access required for the authorising officer responsible, OLAF and the Court of Auditors to comprehensively exercise their respective competences. In the case of OLAF, such rights shall include the right to carry out investigations, including on-the-spot checks and inspections, as provided for in Regulation (EU, Euratom) No 883/2013.
2. The agreement referred to in Articles 59 shall provide for the obligations of Ukraine:
 - (a) to take appropriate measures to prevent, detect and correct fraud, corruption, conflicts of interests and irregularities affecting the financial interests of the Union, to avoid double funding and to take legal actions to recover funds that have been misappropriated;
 - (b) to regularly check that the financing provided has been used in accordance with the applicable rules, in particular regarding the prevention, detection and correction of fraud, corruption, conflicts of interests and irregularities;
 - (c) to accompany a request for payment under the Programme by a declaration that the funds were used in accordance with the principle of sound financial management and for their intended purpose and managed appropriately in particular in accordance with Ukrainian rules complemented by international standards, on prevention, detection and correction of irregularities, fraud, corruption and conflicts of interests;
 - (d) to expressly authorise the Commission, OLAF, the Court of Auditors and, where applicable, EPPO to exert their rights as provided for in Article 129(1) of the Financial Regulation, in application of the principle of proportionality.

Article 65

Information, communication and publicity

1. The recipients of Union funding shall acknowledge the origin of the funds and ensure the visibility of the Union funding, in particular when promoting the actions and their results, by providing coherent, effective and proportionate targeted information to multiple audiences, including the media and the public.
2. The Commission shall implement information and communication actions relating to the Programme and the Ukraine Support Instrument, to actions taken pursuant to the Programme and to the results obtained.
3. Financial resources allocated to the Programme and the Ukraine Support Instrument shall contribute to the corporate communication of the political priorities of the Union, insofar as those priorities are related to the objectives referred to in Article 4 and 23.
4. Financial resources allocated to the Programme and the Ukraine Support Instrument may contribute to the organisation of dissemination activities, match-making events and awareness-raising activities, in particular aiming at opening up supply chains to foster the cross-border participation of SMEs.

Article 66

Evaluation

- ~~1. By 30 June 2027,]. By [insert a date four years after the entry into force of this Regulation], the Commission shall draw up a report evaluating the implementation of the measures set out in this Regulation and their results, as well as the opportunity to extend their applicability and provide for their funding, particularly with regard to the evolution of the security context and any persistent risks in relation to the supply of defence products. The evaluation report shall build on consultations of the Member States and key stakeholders.~~
- ~~2. [By [insert a date two years after the entry into force of this Regulation], the Commission shall carry out an interim evaluation of the Programme and of the Ukraine Support Instrument, which shall include:~~
 - ~~(a) an assessment of the governance of the Programme and of the Ukraine Support Instrument, including as regards the provisions related to [the committee referred to in Article 57];~~
 - ~~(b) the lessons learned from ASAP and EDIRPA;~~
 - ~~(c) the implementation rates;~~
 - ~~(d) the project award results, including the level of involvement of SMEs and mid-caps and the degree of their cross-border participation;~~
 - ~~(e) the agreement referred to in Article 59.~~
 - ~~(f) funding granted in accordance with Title X of the Financial Regulation.~~
2. The Commission shall present the report to the European Parliament and the Council, accompanied, where appropriate, by relevant legislative proposals.

**Commented [A46]:
Presidency Note**

In response to comments calling for additional reporting, we propose an interim evaluation limited to the deployment of the Programme and the USI.

Article 67

Entry into force

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

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*

