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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 ('Programme' and 'Ukraine Support Instrument')

Delegations will find attached, in 'clean' format, a Presidency compromise on the 'Programme' and 'Ukraine Support Instrument' parts of the draft EDIP Regulation. A 'track changes' version of the document is provided separately.

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 Committee[1],

Having regard to the opinion of the European Court of Auditors[2],

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

[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 Council[3] 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 Council[4] 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) Considering the need to safeguard the operational capacity of Member States' armed forces, the operational use of defence products, including technologies and services, related to actions supported by the Programme should not be subject to restrictions imposed by non-associated third countries, including restrictions which apply indirectly through a non-associated third country legal entity. While recognizing the need to gradually reduce strategic dependencies, defence products related to actions supported by the Programme subject to restrictions not affecting their operational use by Member States, including restrictions on the sale and transfer of defence products, should be allowed in the interest of ensuring Member States' ability to satisfy their product needs and of safeguarding the competitiveness of the EDTIB. The absence of restrictions affecting the operational use of a defence product or service should be assessed at the time of the award decision only.

(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.

(26a) To strengthen the competitiveness, responsiveness and ability of the European defence technological and industrial base it is necessary to support the commercialisation of defence products. To mitigate any distortion of the market, profits generated by successful commercialisation supported by the Union budget should be recovered in accordance with the principle of proportionality. By derogation from Regulation [FR recast], this should take fully into account all revenue generated, including revenues from Member State and third-party support to the action, in addition to the Union

support itself. The recovered profits should be re-used to benefit the objectives of the Programme.

(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.

(28a) With a view to increasing defence readiness and securing access to strategic domains and contested spaces in the current security context, the Union should identify European Defence Projects of Common Interest ('EDPCI') on which to focus efforts and resources. Due to the sensitive nature of the decision to identify an EDPCI in light of its potential impact on national security interests, and the importance of ensuring the contribution of such projects to the defence readiness of all Member States, the power to adopt implementing acts to identify an EDPCI should be conferred on the Council. The Commission should consult and duly consider advice provided by the EDA when preparing such implementing acts to ensure that EDPCIs contribute to the capability priorities identified in the context of the CFSP, notably of the Capability Development Plan, and the objectives of the Strategic Compass for Security and Defence.

(28b) The ability of the EDTIB to ensure availability in time and in volume is essential to its competitiveness, especially during periods of heightened security tensions. During such periods, the EDTIB may lack the production capacity to meet Member States' urgent needs or its products may be less visible to Member States than third country offers. The Programme should therefore provide measures to increase the speed to market of defence products from the EDTIB by leveraging the use of government to government contracts. With support from the Programme, Member States should be able to commonly procure and maintain defence industrial readiness pools made up of defence products which Member States, associated countries, and Ukraine could easily purchase or use. To improve Member States' awareness of the availability of EDTIB products to meet product needs, the Programme should also provide for the establishment of a catalogue of defence products, based on voluntary contributions of the EDTIB and in cooperation with the EDA, and provide support for administrative capacity building, in particular to speed up common procurement procedures.

(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.

(43a) Increasing the number and magnitude of joint procurements in defence products is necessary to achieve the objectives of the Programme and of the Ukraine Support Instrument and reach a level of security of supply in defence products that is appropriate to the situation. For that purpose, it should be possible for the Commission to conduct joint procurements with the Member States, and to act a central purchasing body as appropriate. To further intensify the incentive for the Member States to have recourse to joint procurements, by derogation to [Article 168 of the recast Financial Regulation] associated countries and Ukraine, as a Union candidate country, should be allowed to participate to these joint procurements.

(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 for the period 2025-2027 of the European Defence Industrial Programme (the 'Programme'), comprising measures for the strengthening of the competitiveness, responsiveness and ability of the EDTIB as set out in Chapter II;

   (2) the establishment for the period 2025-2027 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) '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;

(5) 'contracting authorities' means contracting authorities/entities as defined in Article 2(1), point (1), of Directive 2014/24/EU and in Article 3(1) of Directive 2014/25/EU.

(6) 'control' means the ability to exercise decisive influence over a legal entity directly, or indirectly through one or more intermediate legal entities;

(7) ['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.]

(8) ‘defence products’ means any defence-related products as referred to in Article 2 of Directive 2009/43/EC, including defence services and technologies directly related to these products for any and all elements of their life cycle;

(9) ‘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;

(10) [‘defence industrial readiness pool’ means a quantity of defence products procured and maintained for the purpose of ensuring their timely availability within the Union, associated countries and Ukraine;]

(11) [‘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;]

(12) ‘lead time’ means the period of time between a purchase order being placed and the manufacturer completing the order;

(13) ‘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;

(14) ‘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;

(15) ‘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;

(16) [‘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;]

(17) ‘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, [a Structure for European Armament Programme,] the European Defence Agency (EDA), or an international organisation that is designated by Member States, associated countries, Ukraine[, or a SEAP] to conduct a common procurement on their behalf;

(18) ‘raw materials’ means the materials required to produce defence products;

(19) ‘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;

(20) [‘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;]

(21) ‘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;

(22) ‘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;

(23) 'subcontractors in the common procurement’ means any legal entity which provides critical inputs that possess unique attributes essential for the functioning of a defence product and which is allocated at least 15 % of the value of the contract;

(24) ‘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.

Chapter II

The Programme

Section 1: General provisions applicable to the Programme

Article 3

Objectives

1. The Programme aims to increase the competitiveness and readiness of the EDTIB by initiating and speeding up the adjustment of industry to structural changes imposed by the evolving security environment. In particular, the Programme shall aim to:

   (a) incentivise cooperation in defence procurement by aggregating demand for defence products, coordinating requirements, strengthening solidarity between Member States, supporting the industrialisation and commercialisation of defence products supported by actions funded by the Union or other cooperative activities conducted with support of Member States and improving predictability of demand for the EDTIB, in line with Member States’ defence product needs;

(b) improve and accelerate the capacity of adaptation of defence industrial supply chains, open up supply chains for cross-border cooperation, in particular for SMEs and mid-caps, increase manufacturing capacities, and reducelead production time for defence products, with a view to ensuring the availability and supply of defence products throughout the Union.

2. The Programme shall be implemented taking into account the objectives of the Strategic Compass for Security and Defence and shall be consistent with the defence capability priorities agreed by Member States, in particular within the context of the Capability Development Plan, and with the collaborative opportunities identified in the Coordinated Annual Review on Defence.

3. The Programme shall complement Member States' cooperation within the framework of the Permanent Structured Cooperation, EDA initiatives and projects, and the EU's civil and military assistance to Ukraine. It shall duly take into account 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 4

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 5.

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. Up to 3% of the amount referred to in paragraph 1 and 5 of this Article and the amounts of additional contributions referred to in Article 5 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. [Budgetary commitments for activities extending over more than one financial year may be broken down over several years into annual instalments.

5. If necessary to enable the management of actions not completed by 31 December 2027, appropriations may be entered in the Union budget until 2033 to cover the expenses necessary to fulfil the objectives set out in Article 3, 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 5

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), (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 Council[5]. 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 be added to the resources referred to in Article 4(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 6

Use of financing not linked to costs

1. Actions referred to in Article 12 shall be funded by way of grants in the form of financing not linked to costs, pursuant to Article 180(3) of the Financial Regulation.

2. The level of the Union contribution attributed for each action referred to in Article 12 may be defined on the basis of 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;

   (b) the contribution of the action to improving interoperability outcomes;

   (c) the degree to which the action offers a long-term investment signal to industry, in particular where the action 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;

   (d) the contribution of the action to cross-border industrial collaboration and the opening up of defence supply chains, for which the number of participating Member States and associated countries or the inclusion of additional Member States or associated countries in existing cooperations may serve as a proxy;

   (e) the contribution of the action to the ramp-up of necessary manufacturing capacities;

[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).

(f) the contribution of the action to administrative or industrial costs linked to the procurement of additional quantities for other Member States through a defence industrial readiness pool.

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 under indirect management with bodies referred to in Article 62(1), point (c), of the Financial Regulation.

2. Without prejudice to Article 6, 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. [Such financial contributions shall be awarded on the condition that they comply with the criteria set out in Article 193(2) of the Financial Regulation.]

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 and have their executive management structures in the Union or in an associated country.

3. The infrastructure, facilities, assets and resources of the recipients 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.

4. By way of derogation from paragraph 3, where recipients involved in an action have no readily available alternatives or relevant infrastructure, facilities, assets and resources in the Union or in an associated country, they 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 or its Member States, including respect for the principle of good neighbourly relations, and is consistent with the objectives set out in Article 3. The costs related to activities using these inrastructure, facilities, assets or resources shall not be eligible for support from the Programme.

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 5, 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 3 of this Regulation, or if guarantees approved in accordance with the national procedures of the Member State or associated country in which it is established 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), including respect for the principle of good neighbourly relations, or the objectives set out in Article 3. 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, in accordance with national laws and regulations;

(c) the ownership of intellectual property arising from actions referred to in Article 13(1), point (d), is not subject to restriction by a non-associated third country or a non-associated third-country entity nor transferred to entities established outside the territory of the Member States or of associated countries, without the approval of the Member State or the associated country in which the legal entity is established. Such approval shall not contravene objectives set out in Article 3.

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 58 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, including respect for the principle of good neighbourly relations, or the objectives set out in Article 3. 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 3 and may take one the following forms, or a combination thereof:
   (a) common procurement actions (Article 12), including for the establishment and maintenance of defence industrial readiness pools (Article 15);
   (b) industrial reinforcement actions (Article 13);
   (c) supporting actions (Article 14);
   (d) European Defence Projects of Common Interest (Article 16);
   (e) 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 restriction by non-associated third countries or by non-associated third-country entities, directly, or indirectly through one or more intermediate legal entities, which limits the ability of a Member State to use those products or services;
   (d) actions or parts thereof, that are already fully financed from other public or private sources.
3. Article 5(3) of Directive 2009/43 of the European Parliament and of the Council shall apply to defence products related to actions supported by the Programme.

Article 12

Common procurement actions

1. Common procurement actions shall consist of activities related to cooperation of legal entities in defence procurement processes, at any point in the lifecycle of defence products, including for the purpose of building and maintaining 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 entitities referred to in paragraph 2 and be carried out by a consortium of at least three Member States or associated countries[, or by a SEAP].

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, and to subcontractors 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. Before launching a common procurement procedure, the contracting authority shall inform, Ukraine and those Member States and associated countries which do not participate, of the planned procedure, and provide them the opportunity to submit a substantiated request for the contracting authority to purchase additional quantities of defence products for them. If such a request is submitted, the common procurement contract shall reserve the right of participating contracting authorities to purchase additional quantities of defence products for these 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. By way of derogation from Article 11(2), point (c), and in light of the geopolitical situation and the urgent need to procure defence products with the support of the Programme, the requirement referred to in that paragraph shall not apply to urgent and critical defence products, provided that both of the following conditions are met:

    (a) legal entities participating in the common procurement commit to studying the feasibility of replacing the components that cause the restriction with an alternative, restriction-free, component originating in the Union;

(b) the procured defence products were in use prior to [insert the date of the entry into force of this Regulation] by a majority of the Member States participating in the common procurement.

11. The cost of components originating in the Union or associated countries shall not be lower than 65 % of the estimated value of the end product. No components shall be sourced from non-associated third countries that contravene the security and defence interests of the Union or its Member States, including respect for the principle of good neighbourly relations.

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 including SMEs and mid-caps, in a joint industrial effort, including activities that aim to coordinate the sourcing or reservation 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. 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 SEAP.

3. 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:

   (a) activities 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 standards;

   (b) activities to facilitate 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;

   [(g) support to Structures for European Armament Programme;

   (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. The activities referred to in paragraph 1, point (a), may also be carried out by a SEAP.

3. For activities referred to in paragraph (1), point (f), the Commission shall consult and cooperate with with the EDA in drawing up the technical specifications for and, where appropriate, procure the corporate IT platform required to establish the catalogue.

Article 15

Defence industrial readiness pools

1. The Programme shall support the establishment and maintenance, through a common procurement action as referred to in Article 12, of defence industrial readiness pools by a consortium of at least three Member States or associated countries, [or by a SEAP].

2. Member States, associated countries and SEAPs 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. For the purpose of Member States, associated countries or Ukraine buying from the defence industrial readiness pool managed by a SEAP, 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 Project of Common Interest (EDPCI)

1. The Council, upon a proposal of the Commission, may adopt Implementing Acts identifying European Defence Projects of Common Interest.

2. EDPCIs 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 benefits of the project, including the reduction of strategic dependencies, the establishment of new cross-border cooperations including with SMEs and mid-caps, and positive spill-over effects on the internal market, outweigh its costs.

   (c) EDPCIs shall involve at least four Member States. The European Commission shall be able, where relevant, to participate in the project.

3. The Commission proposal for the Implementing Act referred to in paragraph 1 shall:

   (a) set out the objectives of the project in relation to the general criteria laid down in paragraph 2;

   (b) set out the contribution of the project to the capability priorities identified in the context of the CFSP, notably of the Capability Development Plan, and the objectives of the Strategic Compass for security and defence;

   (c) estimate the financing needs and potential impacts for the Union budget;

   (d) be presented after consulting with and duly considering advice provided by the EDA.

4. EDPCIs 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 a SEAP.]

5. Member States may, without prejudice to Articles 107 and 108 TFEU, apply support schemes and provide for administrative support to EDPCIs.

6. The Union financial contribution referred to in Article 19 shall not exceed 25% of the amount referred to in Article 4(1).

7. The planning, construction and operation of production facilities related to an EDPCI 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 Article 4(7) of Directive 2000/60, in the interest of defence within the meaning of Article 2(3) of Regulation 1907/2006, and in the interests of public health and safety within the meaning of Article 9(1), point (a) of Directive 2009/147/EC, 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 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) 2021/523[6].

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 mid-caps across the Union, which are facing difficulties in accessing finance and which:

      (i) are needed for the industrialisation and/or manufacture defence products or 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 products, and development of defence technologies, 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 programmes

Article 18

Award criteria

1. Proposals shall be assessed in the light of the objectives and priorities set, the expected results and the quality and efficiency of the implementation.

2. Proposals for common procurement actions referred to in Article 12 may additionally be evaluated based on the following criteria:

   (a) the number of participating Member States or associated countries;

   (b) contribution to adaptation, modernisation and development of the EDTIB;

   (c) contribution to the replenishment of defence products in short supply demand, including by taking into account the response to Russia's war of aggression against Ukraine.

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

   (a) reduction of lead production time and increase in production capacity in the Union, reserved capacity, and skilled workforce;

   (b) contribution to ensuring availability and security of supply throughout the Union in response to identified risks, including of conventional military threats;;

   (c) contribution to cross-border defence industrial cooperation throughout the Union, improving the inclusion of SMEs and mid-caps, and link with orders stemming from the joint procurement of relevant defence products by at least three Member States or associated countries.

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. Except for actions referred to in [Articles 14(1), point (g), and] 16, 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. Except for actions referred to in Articles 12 and 16, those implementing acts shall be adopted in accordance with the examination procedure referred to in [Article 58(3)].

Article 20

Union financial contribution

1. Whenever the Union contribution takes the form of grants, [by way of derogation from Article 190(3) 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 SEAP may benefit from a funding rate increased by an additional 10 percentage points];

   (b) actions carried out in the context of a PESCO and/or EDA Category A or B projects that comply with the requirements set out in Article 10 and 27 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 10 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 10 percentage points;

   (d) 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 10 percentage points;

   (e) [actions whereby Member States agree on a common approach to exports for defence products developed and procured in the context of a SEAP may benefit from a funding rate increased by an additional 5 percentage points];

   (f) actions resulting in the substitution of components subject to restriction as referred to in Article 11(2)(c), representing at least 20 % of the value of the end products, with alternative, restriction-free, components originating in the Union may benefit from a funding rate increased by an additional 5 percentage points, and 10 percentage points where the substituted component is a critical input that possesses unique attributes essential for the functioning of the end products, taking into account the value the relevant end products represent in the overall funding.

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 20[a]

Implementation of financing not linked to costs

For actions referred to in Article 12, the support from the Programme shall not exceed 15% of the estimated value of the common procurement contract.

Article 21

Work programmes

1. The Programme shall be implemented by work programmes as referred to in Article 110 of the Financial Regulation. The 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)].

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) and a detailed description of each type of action;

   (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

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, taking into account its possible future integration into the EDTIB, through cooperation between the European Union and Ukraine, thereby enhancing 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 the 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 23

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 which the Commission has decided to reallocate from the Programme in response to unforeseen situations or new developments in accordance with Article 4(2).
2. Up to 3% of the budget referred to in paragraph 1 of this Article and the amounts of additional contributions referred to in Article 25 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.
3. Budgetary commitments for activities extending over more than one financial year may be broken down over several years into annual instalments.
4. If necessary to enable the management of actions not completed by 31 December 2027, appropriations may be entered in the Union budget until 2033 to cover the expenses necessary to fulfil the objectives set out in Article 22, 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 24

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), (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 25

Use of financing not linked to costs

1. Actions referred to in Article 28(1), point (a) shall be funded by way of grants may taking the form of financing not linked to costs, pursuant to Article 180(3) of the Financial Regulation.

2. The level of Union contribution to each action carried out under Article 28(1), point (a) may be based on factors such as:

   (a) the complexity of the common procurement, for which a proportion of the estimated value of the action and the experience gained in similar actions may serve as an initial proxy;

   (b) the contribution of the action to improving interoperability outcomes

   (c) the number of participating Member States;

   (d) the contribution of the action to the ramp-up of necessary manufacturing capacities;

   (e) the contribution of the action to administrative or industrial costs linked to the procurement of additional quantities for other Member States or Ukraine (defence industrial readiness pool);

   (f) the degree of complexity for Ukraine to progress with the accession process, including structural reforms and measures to promote convergence with Union rules, standards, policies and practices ('acquis');

   (g) the degree of complexity for Ukraine to adapt its defence procurement processes and the environment for the Ukrainian defence industry, including to meet NATO standards;

   (h) the degree of risk 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 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 under indirect management with bodies referred to in Article 62(1), point (c), of the Financial Regulation.

2. Without prejudice to Article 26, 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. [Such financial contributions shall be awarded on the condition that they comply with the criteria set out in Article 193(2) of the Financial Regulation.]

Article 27

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 and have their executive management structures 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 involved in an action shall be located on the territory of a Member State or of Ukraine for the entire duration of the action.

4. By way of derogation from paragraph 3, where recipients involved in an action have no readily available alternatives or relevant infrastructure, facilities, assets and resources in the Union or in Ukraine, they may use their infrastructure, facilities, assets and resources which are located or held outside the territory of the Member States or in a third country other than Ukraine, provided that such use does not contravene the security and defence interests of the Union or its Member States, including respect for the principle of good neighbourly relations, and is consistent with the objectives set out in Article 22.

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 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 22 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), including respect for the principle of good

neighbourly relations, or the objectives set out in Article 22. 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, in accordance with national laws and regulations;

(c) the ownership of intellectual property arising from actions referred to in Article 28(1), point (c), relating to industrial reinforcement actions 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, is not subject to restriction by a non-associated third country or a non-associated third-country entity other than Ukraine nor transferred to entities established outside the territory of the Member States or of associated countries, without the approval of the Member State or the associated country in which the legal entity is established. Such approval shall not contravene the objectives set out in Article 22.

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

7. The Commission shall inform the committee referred to in Article 58 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 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, including respect for the principle of good neighbourly relations, or the objectives set out in Article 22. 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.

9. Paragraphs 2 to 8 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 22 and may take the following forms:
   (a) common procurement actions referred to in Article 12, including for the establishment and maintenance of defence industrial readiness pools referred to in Article 15;
   (b) industrial reinforcement actions referred to in Article 13;
   (c) supporting actions referred to in Article 14(1), points (a) to (e).
2. Actions eligible for funding under the Ukraine Support Instrument shall always include Ukraine or legal entities established in Ukraine.
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.
4. 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 restriction by third countries or entities established in third-countries other than Ukraine, directly, or indirectly through one or more intermediate legal entities, which limits the ability of a Member State to use those products or services;
   (d) actions or parts thereof, that are already fully financed from other public or private sources.

Section 3: Award and work programmes

Article 29

Award criteria

1. Proposals for actions under Ukraine Support Instrument shall be evaluated on the basis of the criteria laid down in Article 18, paragraphs 1 to 3.
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.

3. 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.

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), point (a).

Article 31

Union financial contribution

1. Whenever the Union contribution takes the form of grants, [by way of derogation from Article 190(3) of the Financial Regulation], the Ukraine Support Instrument may finance up to 100 % of the eligible costs for actions referred to in Article 28(1), points (b) and (c).

Article 32

Implementation of financing not linked to costs

For actions referred to in Article 28(1), point (a), the support from the Instrument shall not exceed 15% of the estimated value of the common procurement contract.

Article 33

Work programmes

1. The Ukraine Support Instrument shall be implemented by work programmes as referred to in Article 110 of the Financial Regulation. The work programmes shall set out the actions and associated budget required to meet the objectives of the Ukraine Support Instrument.

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).

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) and a detailed description of each type of action;

   (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.