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WORKING DOCUMENT

From: Presidency
To: Working Party on defence industry (DIWP)

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 proposal on the 'Programme' and 'Ukraine Support Instrument' parts of the draft EDIP Regulation. A 'track changes' version of the document is provided separately.

The provisions in Art. 12(10) and (11) as well as Art. 20(5)(b) have been bracketed in light of ongoing discussions about eligibility criteria.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

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

[...]

HAVE ADOPTED THIS REGULATION:

¹ OJ C , , p. .

² OJ C , , p. .

Chapter I

[...]

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) enhance cooperation in defence procurement by incentivising the aggregation of demand for defence products, the harmonisation of defence capability requirements, the strengthening of solidarity between Member States, and the improvement of predictability of demand for the EDTIB, corresponding 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 reduce lead production time for defence products, and support the industrialisation and commercialisation of defence products supported by actions funded by the Union or other EU cooperative activities conducted with support of Member States 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 commonly agreed by Member States within the framework of the Common Foreign and Security Policy (CFSP), 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 be consistent with 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
 - (a) EUR 1 500 millions in current prices for the period from [...] - insert a specific date] until 31 December 2027 as well as
 - (b) additional contributions in accordance with Article 5.
- 1a. At least 30% of the financial envelope referred to in point (a) of paragraph 1 shall be allocated to actions referred to in Article 13 (industrial reinforcement). Up to 25% of the financial envelope referred to in point (a) of paragraph 1 may be allocated to actions referred to in Article 16 (EDPCIs).
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, in accordance with the procedure set out in Article 31(4) and (6) to (8) of the Financial Regulation.
3. Up to 2% 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 Council³. 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 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 under 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.

³ 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).

2. Without prejudice to Article 20(3), 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. With respect to 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. By way of derogation from Article 192(2) of the Financial Regulation, 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. 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

0. Recipients of Union funding shall be legal entities as defined in paragraph 9 of Article 2.
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 infrastructure, 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 5 to 7 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 of 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).
2. The following actions shall not be eligible for funding under the Programme:
 - (a) actions related to defence products which are prohibited by applicable international law;
 - (b) actions related to lethal autonomous weapons without the possibility of meaningful human control over selection and engagement decisions when carrying out strikes against humans;
 - (c) actions related to defence products 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. Without prejudice to the cases referred to in Article 5, paragraph 2, of Directive 2009/43/EC, Member States may publish general transfer licences for transfer to other Member States of 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 the procurement of defence products, 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 be carried out by:
 - (a) a consortium of legal entities as referred to in paragraph 2 out of which at least three Member States or associated countries; or
 - (b) 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.

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 the establishment and internal functioning of Structures for European Armament Programme, including for the purpose of issuing securities;
 - [(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 common procurement actions as referred to in Article 12, of defence industrial readiness pools by a SEAP.
2. 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 fostering better exploitation of the industrial potential in the Union by developing capabilities and, as appropriate, systems acting as European defence infrastructure of common interest and use, including those securing access to strategic domains and contested spaces, and strategic enablers;
 - (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) the project involves the highest possible number of Member States, but no less than four. EDPCI participating Member States may unanimously decide to involve the European Commission as an observer.

3. The Commission shall present the proposal for the Implementing Act referred to in paragraph 1 after consulting with and duly considering the advice provided by the EDA. The Commission proposal shall take into account any possible views expressed by Member States.
- 3a. In the Implementing Act referred to in paragraph 1, the Council 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; and
 - (c) estimate the financing needs.
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 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) 2021/523⁴.

⁴ 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>).

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.

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 one or more of 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, 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 one or more of 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

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. Grants may take the form of financing not linked to costs, pursuant to Article 180(3) of the Financial Regulation.
2. Where the Union grant takes the form of financing not linked to costs, the level of the Union contribution attributed to each action 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 characteristics of the action which are likely to give rise to greater long-term investment signals to industry;
 - (d) the number of participating Member States and associated countries or the inclusion of additional Member States or associated countries in existing cooperations;
 - (e) the contribution of the action to the ramp-up of necessary manufacturing capacities;
 - (f) the contribution of the action to enhancing cooperation between Member States or associated countries for the purpose of establishing or maintaining a defence industrial readiness pool.
3. Actions referred to in Article 12 (common procurement) 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.
4. The Union financial contribution to each action referred to in paragraph 3 shall not exceed 15% of the estimated value of the common procurement contract.
5. By way of derogation to paragraph 4, the Union financial contribution to each action referred to in Article 12 may amount up to 25% of the estimated value of the common procurement contract where at least one of the following conditions is met:
 - (a) the action entails continued cooperation until the end of the lifecycle of a defence product;
 - [(b) the action supports the common procurement of restriction-free end products;]
 - (c) the action results in the common procurement of additional quantities of defence products for Ukraine or Moldova;

- (d) the action ensures a wide distribution of suppliers across Member States whereby more than 20 % of the total value of the end product are made by suppliers established in at least one Member State other than the one where the prime contractor is established;
 - (e) the defence investment expenditure of the Member States participating in the common procurement action exceeds 30 % of their respective defence spending.
6. For actions referred to in Article 13 (industrial reinforcement), the Union financial contribution shall not exceed 35% of the eligible costs.
7. By way of derogation to paragraph 6, the Union financial contribution to each action referred to in Article 13 may amount up to 50% of the eligible costs where at least one of the following conditions is met:
- (a) the beneficiary of the action is an SME or mid-cap or a consortium of SMEs or mid-caps;
 - (b) the beneficiary demonstrates a contribution to the creation of new cross-border cooperation between entities established in Member States or associated countries;
 - (c) the action contributes to the ramping-up of manufacturing capacities of crisis-relevant products affected by a supply crisis.
8. For actions referred to in Article 14 (supporting actions) and Article 16 (EDPCIs), whenever the Union financial contribution takes the form of grants, by way of derogation from Article 190(1) of the Financial Regulation, the Programme may finance up to 100 % of the eligible costs.
- 8a. Union funding under the Programme shall not cover the costs of the purchase of defence products.
9. The work programme shall lay down further details.

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 industrial 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 relevant 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 24 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 2% 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

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.

[Placeholder for possible additional financial resources]

Article 25a

Alternative, combined and cumulative funding

1. The Instrument 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 Instrument 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 Instrument, actions shall comply with all of the following conditions:
 - (a) they have been assessed in a call for proposals under the Instrument;
 - (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 Instrument, which were awarded a Seal of Excellence under the Instrument.

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 31(2), Union funding may be provided in any of the forms laid down in the Financial Regulation except for blending operations under the InvestEU programme in accordance with Title X of the Financial Regulation.
3. With respect to 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. By way of derogation from Article 192(2) of the Financial Regulation, 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. 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

0. Recipients of Union funding shall be legal entities as defined in paragraph 9 of Article 2.
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. Legal entities 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. The costs related to activities using these infrastructures, facilities, assets or resources shall not be eligible for support from the USI.

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 5 to 7 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 and having their executive management structures 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 defence products which are prohibited by applicable international law;
 - (b) actions related to lethal autonomous weapons without the possibility of meaningful human control over selection and engagement decisions when carrying out strikes against humans;
 - (c) actions related to defence products 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.
5. Without prejudice to the cases referred to in Article 5, paragraph 2, of Directive 2009/43/EC, Member States may publish general transfer licences for transfer to other Member States of products related to actions supported by the Instrument.

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

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, pursuant to 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).

2. Actions referred to in Article 28(1), point (a) shall be funded by way of grants taking the form of financing not linked to costs, pursuant to Article 180(3) of the Financial Regulation.
3. 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;
 - (ba) the characteristics of the action which are likely to give rise to greater long-term investment signals to industry;
 - (c) the number of participating Member States;
 - (d) the contribution of the action to the ramp-up of necessary manufacturing capacities;
 - (e) 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');
 - (f) the degree of complexity for Ukraine to adapt its defence procurement processes and the environment for the Ukrainian defence industry, including to meet relevant standards;
 - (g) 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.
4. Actions referred to in Article 28(1), point (a), 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.
5. For actions referred to in Article 28(1), point (a), the support from the Instrument shall not exceed 25% of the estimated value of the common procurement contract.
6. Union funding under the Instrument shall not cover the costs of the purchase of defence products.

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.