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PROPOSAL

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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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Subject:	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')

Delegations will find attached document COM(2024) 150 final.

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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)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

On 24 February 2022, Russia launched a full-scale military invasion of Ukraine, with devastating consequences for Ukraine and its people. Two years of intense fighting, heavy artillery shelling and airstrikes have resulted in high numbers of civilian casualties and immense human suffering. Russia's war of aggression has caused extensive damage to civilian and defence critical infrastructure, production capacities and services across Ukraine and the wholesale destruction of cities and towns in some parts of the country. The resulting humanitarian crisis has displaced millions of Ukrainians from their homes and left many in desperate need of food, shelter and medical assistance. To this day, Russian aerial strikes continue to attack targets throughout the country. It will take years, if not decades, to heal the trauma of this senseless war. The EU supports Ukraine's independence, sovereignty and territorial integrity within its internationally recognised borders, its inherent right of self-defence, and its pursuit of a comprehensive, just and sustainable peace in line with international law and the UN Charter. Russia's war of aggression against Ukraine poses a fundamental threat not only to Ukraine but also to the European and global security. The EU's contribution to Ukraine's self-defence is a crucial investment in the EU's own security. In this vein, the European Union and Member States will contribute, together with partners, to future security commitments to Ukraine, which will help Ukraine to defend itself, resist destabilization efforts and deter acts of aggression in the future. There is no defence without a defence industry. Ukraine is heavily dependent on military support made available by the EU and its Member States, including due to its largely destroyed defence industrial base.

Russia's military aggression against Ukraine has marked the dramatic return of territorial conflict and high-intensity warfare on European soil. The production capacity of the European Defence Technological and Industrial Base (EDTIB) has been tailored to respond primarily to limited Member States needs, mostly along national dividing lines, due to decades of public underinvestment. In such a scenario, defence companies often faced the need to reduce production rates in order to keep production lines afloat and maintain skilled personnel, while producing limited quantity of defence systems for national customers. Today, for many European defence companies the export of defence equipment to non-EU customers is a major market.

The surge of demand for certain defence products in Europe caused by the radically changed security environment happened against this backdrop of an EDTIB constrained by limited "peace time" production capacity. On the long run, this situation raises the question of defence industrial readiness in Europe, i.e. the capacity of the EDTIB to respond effectively (in time and scale) to changes in European demand for defence products. This is closely linked to the broader challenge of security of supply (SoS) of defence equipment in Europe. Although this topic is not new to EU Member States, the recent ammunition plan has put it in the spotlight, by raising the question of the EDTIB's ability to ensure Europe's SoS of defence equipment both in peace and war times.

Following the outbreak of the war and the invitation of the Versailles declaration of March 2022, in May 2022, the Commission, and the High Representative of the Union for Foreign Affairs and Security Policy ("the High Representative")/Head of the European Defence Agency (EDA) adopted the Joint Communication on Defence Investment Gaps Analysis and Way Forward (JOIN/2022/24 final). The Joint Communication highlighted that the past

decades of underinvestment in defence from Member States resulted into both capability and industrial gaps within the Union.

Since the presentation of the Joint Communication of May 2022, several measures have been tabled to react to the most immediate consequences of Russia's war of aggression against Ukraine:

- As announced in the Joint Communication of May 2022, the Commission, and the High Representative/Head of Agency established the **Defence Joint Procurement Task Force (DJPTF)** to work with Member States to support the coordination of their very short-term procurement needs. The Task Force focused on de-confliction and coordination to avoid a race to secure orders. The Task Force also established an aggregate estimate of needs and mapped and highlighted the need for expansion of the EU industrial manufacturing capacities necessary to answer the needs.
- Also, as announced in the Joint Communication of May 2022, in July 2022 the Commission presented the **European Defence Industrial Reinforcement through common Procurement Act (EDIRPA)**, aimed at incentivising through financial support, Member States' cooperation on procurement of the most urgent and critical defence equipment. EDIRPA was adopted by co-legislators on 18 October 2023 and contributes to strengthen the adaptation of Union's defence industry to structural market changes. EDIRPA will end on 31 December 2025.
- The capability gaps highlighted by the Joint Communication of May 2022 were various, but in light of the evolution of the situation in Ukraine, a specific pressing need for ground-to-ground ammunition and artillery ammunition, as well as missiles emerged. This was formally recognised by the Council, which agreed on 20 March 2023 on a three-track approach for the delivery and joint procurement of ammunition for Ukraine. In this context, in May 2023 the Commission tabled a new proposal for a Regulation on **supporting ammunition production (ASAP)** to face the sudden surge of demand for these products and urgently enable their timely availability, by mobilising EU budget to support investments in the ramp up of the EDTIB's production capacities in this field. ASAP was adopted by co-legislators on 20 July 2023. It will end on 30 June 2025.

The unlawful war of Russia against Ukraine not only raised urgent challenges for the EU and its Member States, but its continuation over time also keeps aggravating structural issues affecting the competitiveness of the EDTIB and questions its ability to ensure a sufficient level of SoS to Member States. Hence, the EU now needs to **move from punctual emergency responses** (illustrated by the above-described measures) **to EU defence industrial readiness**, from securing the availability of consumables in the requisite volumes during crisis times, to ensuring the timely delivery of tomorrow's high end critical capabilities in the coming years. This is the exact purpose of the **European defence industrial strategy** (EDIS) presented on 5 March. In order to implement the orientations set out in EDIS as well as the actions it announces, the Commission proposes a new regulation on the **European defence Industry Programme (EDIP)**. Announced by the Joint Communication of May 2022, and called for by the European Council, EDIP aims to **reconcile the urgent with the long term**, by maintaining support for the EDTIB under this Multiannual Financial Framework (MFF) and preparing for the EU's defence industrial readiness for the future. In doing so, EDIP will translate in effect part of EDIS as its action is structured around 3 main pillars.

- **Strengthen the competitiveness and responsiveness of the EDTIB**. In order to increase efforts to aggregate and harmonise European demand for defence equipment requirements from the EDTIB, EDIP proposes a ready-to-use legal framework, the Structures for European Armament Programme (SEAP), for cooperating and jointly managing defence equipment throughout its life cycle. In a similar logic, EDIP extends the EDIRPA logic beyond 2025, to continue to defragment and harmonise European demand. EDIP also replicates the logic of ASAP to support the EDTIB's productive investments, helps the EDTIB to move towards more flexible production capacities, as well as ensures the productization phase of EDF projects. In order to enhance access to finance for the EDTIB, EDIP also entails the establishment of a fund in order to leverage, de-risk and speed-up investments needed to increase the defence manufacturing capacities of EU-based SMEs and small mid-caps, building on the Commission's experience of the ASAP "ramp up fund" as well as the successful set-up of the EUDIS' defence equity facility.
- **Enhance the ability of the EDTIB to ensure the timely availability and supply of defence products**. EDIP's aims is to support Member States' efforts in pursuing the highest possible level of SoS when it comes to defence equipment, by creating an EU wide SoS regime. The latter would also enhance Member State's trust in cross-border supply chains, creating at the same time a key competitive advantage for the EDTIB. A comprehensive crisis management framework would enable the coordination of responses to possible future supply crises on specific defence equipment or along their supply chains.
- **Contribute to the recovery, reconstruction and modernisation of the Ukraine Defence Technological and Industrial Base (Ukrainian DTIB)**. Ukraine's current needs in military equipment far exceed its industrial production capacities while the EU and its Member States provide military assistance from their own - largely depleted – stocks and with a defence industry tailored for peace time. In this context, both industry's interests are to engage in a more in-depth cooperation. Failing to create a strong relationship between the respective industrial bases may result in a missed business opportunity in the short-term and in economic and strategic dependencies in the medium to long-term. In view of Ukraine's future accession to the EU, it is necessary that EDIP enhances cooperation with Ukraine at industrial level. As part of the EU's future security commitments to Ukraine[1], the EU should foster greater cooperation with the Ukrainian DTIB to boost its capacity to deliver for the immediate needs, as well as to work towards alignment of standards and improved interoperability. A stronger cooperation with the Ukrainian DTIB will contribute to strengthen Ukraine's ability to defend itself, and will benefit the EDTIB's capacity to support both Member States' and Ukraine's needs.

- **Consistency with existing policy provisions in the policy area**

The support under EDIP will be consistent and complementary with existing collaborative EU initiatives in the field of defence industrial policy and with other forms of bilateral support for Ukraine provided through other EU instruments, including the Ukraine Facility. It will complement, the EU's main programme in this policy area, the European Defence Fund (EDF), notably by supporting, at a later stage of the life-cycle of defence equipment, the EDF's projects, thereby helping the future market uptake of the programme's results. EDIP will also build on the experience acquired in the context of other EU programmes, such as EDIRPA or ASAP, in particular by extending their financial support logic and expanding

[1] Framework on the EU's future Security Commitments to Ukraine, endorsed by the Council on 27 November 2023.

their scope to other types of equipment. It will finally consolidate the efforts and dialogue undertaken as part of the DJPTF.

- **Consistency with other Union policies**

EDIP will generate synergies with the EU defence policy and the implementation of the Strategic Compass for Security and Defence. It will be implemented in full consistency with the EU Capability Development Plan (CDP) identifying the defence capability priorities at EU level, as well as with the EU Coordinated Annual Review on Defence (CARD), which inter alia identifies new opportunities for defence cooperation. EDIP will also facilitate Member States cooperation efforts in the Permanent Structured Cooperation (PESCO) framework. It should serve the implementation of PESCO projects, and contribute to speed up, ease and support the fulfilment of the more binding commitments undertaken by Member States in this context. EDIP will complement the European Defence Agency's (EDA) pre-existing action in the field of SoS. EDIP will also build notably upon EDA's Key Strategic Activities work strand to inform discussions held in the framework of the Defence Industrial Readiness Board. EDIP will also be implemented in full consistency with the EU's military assistance to Ukraine in the context of the European Peace Facility (EPF). EDIP will usefully complement the objectives of recovery and reconstruction pursued by the EU under the Ukraine Facility, notably by strengthening Ukraine's ability to defend itself by relying on a resilient and responsive DTIB. More broadly, account may also be taken of relevant activities carried out by the North Atlantic Treaty Organisation (NATO) and other partners where they serve the Union's security and defence interests and do not exclude any Member State from participating.

By providing an EU-wide SoS Regime through notably a two-tier crisis framework, EDIP will complement the Internal market emergency and resilience act' (IMERA), which does not concern defence products. Measures available to the Commission within the EDIP crisis framework for certain non-defence products critical for the supply of defence products identified as having priority only aims at ensuring that concerned defence supply chains may access, as a matter of priority, the components and materials required for ensuring an adequate level of SoS at EU level.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

EDIP establishes a set of measures and lays down a budget aimed at supporting defence readiness of the Union and its Member States through the strengthening of the competitiveness, responsiveness and ability of the EDTIB to ensure the timely availability and supply of defence products and at contributing to the recovery, reconstruction and modernisation of the Ukrainian DTIB. Hence the regulation relies on 3 different legal bases:

– Article 173 TFEU in relation to the competitiveness of the EDTIB

– Article 114 TFEU in relation to the European Defence Equipment Market (EDEM)

– Article 212 TFEU in relation to the strengthening of the Ukrainian DTIB

– Article 322 TFEU in relation to the financial provisions.

To reflect these multiple legal bases, EDIP is structured around 3 pillars, each corresponding to one of the legal bases of this regulation.

– The first pillar is composed of measures to ensure that the conditions necessary for the competitiveness of the EDTIB exist, the appropriate legal basis for such measures is Article 173. As described in the EDIS, Russia's unlawful war of aggression against Ukraine has drastically and structurally modifed the security environment in Europe which results into a new market situation for the EDTIB. Yet two years after the outbreak of Russia's unjustified war in Ukraine, the EDTIB still needs to adapt to this new reality. Also, as stated in the EDIS, the EDTIB needs to adopt a flexible production apparatus, able to adapt and adjust to the evolution of European demand. Hence, in line with Article 173 paragraph 1, the Commission can take action aiming at speeding up the adjustment of the defence industry to structural changes. Measures like the extension of the EDIRPA and ASAP logic, the set-up of the SEAP legal framework as well as the establishment of the fund will aim at helping the EDTIB to adapt to the new market reality. Finally, according to Article 173 paragraph 2, the Commission may take any useful initiative to promote coordination amongst Member States in the field of defence industrial policy.

– The second pillar is composed of measures which have as their object the functioning of the internal market and in particular the EDEM, the appropriate legal basis for such measures is Article 114. Ensuring the public security of the territory of the Union constitutes an overriding public policy objective and this security depends also on the availability of defence goods and services in sufficient quantities. As described in the EDIS, the current geopolitical context results in a general increase for defence equipment and potential future peak of demand for specific defence products in the Union and possibly at global scale. This situation affects the functioning of internal market for these products and threatens their security of supply. Member States are primarily responsible to ensure their military SoS, as a matter of national defence. However, as explained in the EDIS, there is an increasingly European dimension to SoS. Also, notably as illustrated in the supply crisis of ammunition addressed by ASAP, divergent national legislation, in particular regarding the certification of defence products and divergent approaches to national security have proven to be bottlenecks for European defence products supply chains and obstacles to interoperability. Therefore, ensuring the functioning of the internal market, by avoiding shortages of defence products in the Union, can be best addressed through Union harmonising legislation based on Article 114 of the Treaty. The set-up of an EU-wide SoS regime for defence equipment relies on several aspects. Firstly, EDIP includes measures to enhance the preparedness of Member States in the new geopolitical context characterized notably by the need to replenish stocks and further expand defence capabuilities as soon as possible. EDIP notably includes measures to simplify the re-opening of existing and future framework contracts with the EDTIB to other Member States. Secondly, EDIP entails measures to perform an identification and monitoring of critical products and industrial capacities in the supply chains of certain defence products. Finally, when a supply crisis arises, EDIP provides for a modular and gradual crisis management framework, with the possibility given to the Board to decide on the most appropriate mode of crisis management and, for the more serious crises, on measures to be activated. Hence, EDIP will ensure that supply disruption are well anticipated and addressed without delay in order to preserve the functioning of the internal market and ensure an adequate level of SoS for Member States.

– The third pillar is composed of measures contributing to the recovery, reconstruction and modernisation of the Ukrainian DTIB and progressive integration into the EDTIB. The appropriate legal basis for such measures is Article 212. Special

attention shall be given to the objective to support Ukraine to progressively align with Union rules, standards, policies and practices ('acquis') with a view to future Union membership. With this third pillar, the Union's operations will complement and reinforce those of the Member States.

Other articles of the TFEU or each article on its own cannot justify the three of the above pillars and the measures they entail. The proposed elements are provided in one act, as all the measures constitute a coherent approach to address, in different ways, the need for strengthening of the Union's defence industrial readiness.

- **Subsidiarity (for non-exclusive competence)**

Member States critically rely on the capacity of the EDTIB to meet the needs of their armed forces in time and scale. The size of damages caused to Ukraine and to the Ukraine defence industrial base by Russia's war of aggression is such that Ukraine will require extensive and sustained support that no Member State can provide alone. It is therefore key to ensure that both the EDTIB and the Ukrainian DTIB are capable of performing this strategic role. Action at European level appears to be the most suitable in this area.

As for the support to the competitiveness of the EDTIB:

– The Union and its Member States are faced on one side with a brutal change of their security environment resulting in an increase of European demand for defence equipment, and on the other side an EDTIB constrained by limited "peace time" production capacity. If this situation persists over the long term, it will continue to structurally affect and worsen the competitiveness of the EDTIB. Although at lower tier levels, the EDTIB's supply chains tend to span across borders, the latter remains structurally divided along national lines in the higher tier levels. This results from EU Member States' demand for defence equipment, which, despite its recent increase, remains fundamentally fragmented and thereby deprives the EDTIB of the benefits of a trully functional EU defence market. Member States never achieved the collective benchmark of dedicating 35% of their total defence equipment procurement to European collaborative procurement, that they set for themselves in 2007. This demonstrates that Member States face considerable difficulties preventing them from increasing their joint procurement of defence equipment. Therefore, the Union is best placed to take measures to incentivise aggregation and harmonisation of EU demand for defence equipment, as well as to facilitate Member States' long-term cooperation throughout the life cycle of defence equipment.

– Also, lack of coordination and over-concentration of Member States' demand on the same type of defence products, in the same time-frame, and possibly coupled with shortages of supplies, would result in spiralling prices and crowding-out effect (i.e. difficulties for Member States with more limited purchasing power to secure required defence items). Therefore, by preventing potential conflicts between parallel national procurement efforts, measures put in place at European level to aggregate EU Member States' demand, will also strengthen solidarity between Member States.

– Uncoordinated demand also reduces the visibility of market trends. In turn, the lack of visibility and predictability of European demand hampers the capacity of industry to invest, in a sector that is entirely demand driven. Yet, pressed by a new security environment, the Union cannot afford to wait until the EDTIB has sufficient predictability of orders to invest in adapting its production capacity. The European

defence industry needs to adapt as quickly as possible to the new market situation. This means that there is a need to support de-risking industry's investments in flexible manufacturing capacities. An intervention of this type at Member State level only could lead to inbalances in the geographical distribution of investment and in an increase of the fragmentation of supply chains. The European level would also appear to be the most appropriate for taking action to de-risk investment in the EDTIB, throughout the Union and with a view to helping the sector develop a flexible production apparatus.

– It is also important for the EDTIB's competitiveness to capitalise on the results of the EDF, both in terms of products or technologies resulting from the programmes' projects, and of the opening up of supply chains achieved thanks to them. However, several issues might hamper or even deter common procurement of end products stemming from EDF R&D. This means that EDF project results may face a new 'commercialisation gap' in their post R&D phases that Member States alone cannot address. The Union is best positioned to take action to ensure that collaborative efforts initiated under EDF continue beyond the R&D phase.

As for the SoS of defence equipment in Europe:

- Even though defence SoS has been primarily defined at Member State's level since defence is a national competence, there is an increasingly European dimension to SoS, as industrial supply chains increasingly span across the EU internal market and beyond. This is in particular true for critical components and raw materials on which Member States are also increasingly interdependent. Also as illustrated by the ammunition plan, Member States have little visibility on the overall capacities and of the supply chains of the EDTIB, preventing them from making informed decisions. Therefore, in order to ensure a sufficient level of SoS, including in crisis time, it is appropriate to envisage at Union level the establishment of an EU-wide SoS regime under EDIP. Such framework will enhance the coordination of responses to supply crises of defence products and Member States' trust in cross-border supply chains, as well as strenghtening the EDTIB's resilience, for the benefit of all Member States, in a more effective way than through a patchwork of parallel national measures.

As for the strengthening of the Ukrainian DTIB:

- The Ukraine's defence industry is a strategically important sector of the Ukrainian's economy. The country is seeking to maintain and increase its production capacity to meet its national defence equipment needs. However, the scale of damage caused by Russia's war of aggression to the Ukrainian DTIB infrastructures is such that Ukraine will require a specific support that no Member State could provide alone. Measures proposed under EDIP will directly strengthen the Ukrainian DTIB and enhance its industrial cooperation with the EDTIB. With EDIP, the EU is in a unique position to encourage in time and at scale both DTIBs to meet in a joint effort the needs of Ukraine and of Member States. With its presence on the ground in Ukraine through its Delegation, the EU can ensure comprehensive access to information on developments affecting the country. The EU is a major actor in the field of military assistance provided to Ukraine and also participates in most of the multilateral processes aimed at addressing defence challenges that Ukraine is facing. This allows the EU to be constantly aware of new needs in terms of defence equipment and circumstances of Ukraine's defence production capacities and, therefore, to adapt support according to evolving needs, coordinating closely with other national or industrial stakeholders. The objective of preparing candidate countries and potential candidates for Union membership can also be best addressed at Union level.

- **Proportionality**

The proposal complies with the proportionality principle in that it does not go beyond the minimum required to achieve the stated objectives at the European level and which is necessary for that purpose.

In view of the unprecedented geopolitical situation and the significant threat for security of the Union, the proposed policy approach is proportionate to the scale and gravity of the problems that have been identified. The need to support the adjustment of industry to structural changes, enhance the EU's SoS for defence equipment, and strengthen the Ukrainian DTIB are adequately addressed, within the limits of possible Union intervention under the Treaties. The measures set out in EDIP do not go beyond what is strictly necessary to achieve their objectives, are proportionate to the scale and gravity of the problems that have been identified to those objectives. The financial support to various actions aiming at reinforcing the competitiveness of the industry within a system of open and competitive markets. The support to the Ukrainian DTIB is based on the extension of the logic of existing support to Ukraine and constitutes a targeted response to the specific circumstances of Ukraine due to the Russian war of aggression.

- **Choice of the instrument**

The Commission proposes a Regulation of the European Parliament and of the Council. This is the most suitable legal instrument as only a Regulation, with its uniform application, binding nature and direct applicability, can provide the necessary degree of uniformity needed to strengthen the defence industrial readiness across Europe and ensure the SoS of defence products in Europe. In addition, this is in line with Article 114, 173 and 212 of the Treaty on the Functioning of the European Union, which all set out the ordinary legislative procedure to be used to adopt measures in their respective fields of application.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

A formal stakeholder consultation could not be carried out due to the urgency of preparing the proposal so that it can be adopted in a timely manner by the co-legislators to render it operational as of beginning of 2025, when new needs will have to be met relating to the geopolitical situation as well as for recovery and reconstruction of the Ukraine defence industrial base.

The Commission, in close cooperation with the High Representative, has conducted a comprehensive consultation process with Member States, Industry, the financial sector and think tanks to inform the work on the EDIS. The consultation was based on contributions from stakeholders during events (workshops, meetings) and written contributions.. Ahead of these workshops, the Commission shared issue papers (publicised on the website of the European Commission), notably covering thematics pertaining to EDIP's measures, to serve as a basis for the discussion during the events. Those same issue papers also served as a basis for the written contributions that were shared by the consulted stakeholders with the Commission and the High Representative. Any EU citizen willing to take part in the consultation was invited to send a written contribution to a dedicated email address. In total, more than 270 written contributions from over 90 different stakeholders have been sent to the Commission and the High Representative and have been analysed to feed the preparatory work of EDIS. A meeting with Ukraine's representatives has also been organised and the latter have also shared written contributions to express their views on the upcoming EDIS.

EDIP's purpose being to start implementing the vision developed in EDIS and translating into effect actions anounced in this strategy, the inputs received in the context of EDIS, have been largely taken into account to devise EDIP's measures. In broad terms, the inputs received related to the main actions of EDIP can be described as followed:

- on the support to the EDTIB's adaptation to the structural changes resulting from the new security situation, most stakeholders were supportive of the idea. The extension of ASAP and EDIRPA intervention logic as well as the need to capitalise on the results of the EDF were often seen positively. These mostly converging positions have been considered by the Commission, as illustrated, inter alia, by the proposal of measures to expand the logic of ASAP and EDIRPA and to ensure the market uptake of EDF products.
- On SoS, most stakeholders underlined the importance of the issue at EU level. Most of contributions also underlined that a satisfactory balance should be struck between the need to improve SoS at EU level and the respect of Member States' sovereignty and prerogatives in the field of defence. In order to strike such a balance, the Commission notably proposes a gradual and proportionate regime for SoS, where Member States are fully and constantly involved, and where industry's economic interests are duly considered and proportionately protected.
- On the mainstreaming of a defence industrial readiness culture, most stakeholders consulted aknowledged the need to ensure a sufficient access to finance for the defence sector and in particular for SMEs active in the EDTIB. The Commission paid particular attention to the views expressed in this regard, notably by proposing the Fund to Accelerate defence Supply-chains Transformation (FAST) which by design will benefit SMEs and small mid-caps.
- On the cooperation with Ukraine on defence industrial matters, most stakeholders were sympathetic to the idea. The Commission has taken into account stakeholders' inputs as well as Ukraine's views to tailor in the most appropriate way dedicated actions under EDIP.

The EU will ensure appropriate communication and visibility around the objectives and the actions delivered within the scope of this Regulation, within the Union, in Ukraine and beyond.

- **Collection and use of expertise**

The EDIS comprehensive consultation has enabled the Commission and the High Representative, to receive a large number of inputs from different types of experts (e.g. National administration experts, defence industry experts, financial sector experts, think tank experts, Academics). The expertise gathered by the Commission and High Representative in the context of EDIS has been used to developped the measures proposed under EDIP.

- **Impact assessment**

Due to the urgent nature of the proposal, which is designed to support the rapid adaptation of the European defence industry to the new geopolitical environment and provide assistance to a country at war as of beginning of 2024, no impact assessment could be carried out.

The geopolitical context and in particular the continuation in time of Russia's military aggression against Ukraine, led the Commission to decide to quickly move from adopting punctual emergency responses in July (i.e. ASAP) and October (i.e. EDIRPA) 2023, to taking

a more structural approach to address the long-term consequences faced by the EDTIB and continue to support Ukraine.

In addition, the European Council called in its Conclusions of 14 and 15 December 2023 to "*swiftly*" present a proposal for the EDIP and indicated in its Conclusions of 1 February 2024 that it "*will revert to the matter of security and defence, including Europe's need to increase its overall defence readiness and further strengthen its defence technological and industrial base, at its next meeting in March 2024, with a view to agreeing on further steps to make the European defence industry more resilient, innovative and competitive*".

Hence, it was not possible to deliver an impact assessment in the timeframe available to table an EDIP proposal in time for the discussion that will take place at the European Council of March 2024. However, the EDIP proposal draws on the work undertaken in the framework of the DJPTF, on the early lessons learned from the implementation of ASAP and EDIRPA, and builds on the comprehensive consultation process that has been conducted in the context of EDIS. Within 3 months after the publication of this regulation proposal, the Commission will publish a Staff working document to present the justification for this legislative EU action and explain its appropriateness to achieve the identified policy objectives.

- **Regulatory fitness and simplification**

EDIP is not expected to increase the administrative burden. The proposed performance-based approach available for its eligible actions, relying on the conditionality between the disbursement of payments and the achievement of milestones and targets by the consortium, is also an element of simplification in the implementation of the instrument.

- **Fundamental rights**

Enhancing the security of EU citizens can contribute to safeguarding their fundamental rights.

Also, actions related to defence common procurement of goods or services, which are prohibited by applicable international law, shall not be eligible for support from the Programme. Moreover, actions with a view to the common procurement of lethal autonomous weapons without the possibility for meaningful human control over selection and engagement decisions when carrying out strikes against humans shall not be eligible for support from the EDIP.

In addition, Article 16 of the Charter of Fundamental Rights of the European Union ('the Charter') provides for the freedom to conduct a business. Nevertheless, some measures under pillar 2 needed to ensure the SoS of defence equipment in the Union may temporarily limit the freedom to conduct a business and the freedom of contract, protected by Article 16 and the right to property, protected by Article 17 of the Charter. Any limitation of those rights in this proposal will, 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.

– First EDIP entails provisions on requests for information and prioritization mechanisms (priority rated orders and priority rated requests) which are strictly conditional on the activation of the most appropriate crisis mode through the adoption of a Council implementing act when it comes to a supply crisis mode and when it comes to a security-related supply crisis mode.

– Second, the obligation to disclose specific information to the Commission, provided that certain conditions are met, respects the essence of and will not disproportionately affect the freedom to conduct a business (Article 16 of the

Charter). Any information request serves the objective of general interest of the Union to enable the information gathering about the production capabilities, production capacities and primary disruptions of potential mitigation measures to shortages affecting the production of crisis-relevant products or defence products. These information requests are appropriate and effective to attain the objective by providing information strictly necessary to assess the crisis at hand. The Commission in principle only requests the desired information from representative organisations and may issue requests to individual undertakings only if it is necessary in addition. Since information on the supply situation is not available otherwise, there is not any equally effective measure to attain the information necessary to enable European decision-makers to take mitigation action. In light of the serious geopolitical and security consequences of defence products shortages and the respective importance of mitigation measures, information requests are proportionate to the desired aim. Furthermore, the limitation to the freedom to conduct a business and the right to property are offset by appropriate safeguards. Any request for information may only be launched for crisis-relevant defence products, raw materials or components thereof, that are specifically identified by the Commission through an implementing act, and that are affected by disruptions or potential disruptions leading to significant shortages.

– Third, the obligation to accept and prioritise priority rated orders respects the essence of and will not disproportionately affect the freedom to conduct a business and the freedom of contract (Article 16 of the Charter) and the right to property (Article 17 of the Charter). This obligation serves the objective of general interest of the Union to address crisis-relevant products supply disruptions. The obligation is appropriate and effective to attain this objective by ensuring the available resources are preferentially utilised for production of such relevant defence products. There is no equally effective measure. When it comes to crisis-relevant products idenfied as affected by a supply crisis, it is proportionate to oblige undertakings which are involved in the supply chain of the latter to accept and prioritise certain orders. Appropriate safeguards ensure that any negative impact of the prioritisation obligation on the freedom to conduct a business, the freedom of contract and the right to property does not amount to a violation of these rights. Any obligation to prioritise certain orders may only be launched for crisis-relevant products that are specifically identified, by the Commission and through an implementing act, and that are affected by disruptions or potential disruptions leading to significant shortages. The undertaking concerned may request the Commission to review the priority rated order if it is unable to perform the order or if performing the order would place unreasonable economic burden on them and entail particular hardship. Furthermore, the subject of the obligation is exempt from any liability for damages for the violation of contractual obligations resulting from compliance with the obligation.

4. BUDGETARY IMPLICATIONS

The financial envelope for the implementation of the Regulation for the period from period XX XX XXXX to 31/12/2027 shall be EUR 1 500 million in current prices.

The impact on the multi-annual financial framework period in terms of required budget and human resources is detailed in the legislative financial statement annexed to the proposal.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission should draw up an evaluation report for the Programme and communicate it to the European Parliament and to the Council no later than 30/6/2027. This report will notably assess the progress made towards the achievement of the objectives set in the proposal. Also, taking into account the evaluation report, the Commission may submit proposals for any appropriate amendments to this Regulation, notably with a view to addressing any persisting risks hampering the defence industrial readiness of the EU or in relation to the security of supply of defence products in Europe.

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[2],

Having regard to the opinion of the European Court of Auditors[3],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) The Heads of State or Government of the Union, meeting in Versailles on 11 March 2022, committed to "bolster European defence capabilities" in light of Russia's unprovoked and unjustified war of aggression against Ukraine. They agreed to increase defence expenditures, step up cooperation through joint projects and common procurement of defence capabilities, close shortfalls, boost innovation and strengthen and develop the EU defence industry, including through establishing a European Defence Industry Programme (the 'Programme').

(2) The long-term deterioration of regional and global threat levels requires a step-change in the scale and speed with which Europe's defence technological and industrial base (EDTIB) can develop and produce the full spectrum of military capabilities. The return of high-intensity warfare and territorial conflict to Europe has a negative impact on the security of the Union and the Member States and requires a significant increase in the capacity of Member States to reinforce their defence capabilities.

(3) On 14 and 15 December 2023, the European Council, in its conclusions, having considered work carried out to implement the Versailles declaration and the Strategic Compass for Security and Defence, underlined that more needs to be done to fulfil the Union's objectives of increasing defence readiness. To achieve such a readiness and defend the Union, a strong defence industry is a pre-requisite, making the European defence industry more resilient, innovative and competitive.

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[2] OJ C , , p. .

[3] OJ C , , p. .

(4) The Commission and the High Representative of the Union for Foreign Affairs and Security Policy presented a Joint Communication on the Defence Investment Gaps Analysis and Way Forward on 18 May 2022 highlighting the existence, within the Union, of defence financial, industrial and capability gaps. On 18 October 2023 a Regulation (EU) 2023/2418 of the European Parliament and the Council[4] 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[5] supporting ammunition production (ASAP) was adopted, aimed at urgently supporting the ramp-up of manufacturing capacities of the European defence industry, secure supply chains, facilitate efficient procurement procedures, address shortfalls in production capacities and promote investments.

(5) EDIRPA and ASAP were designed as emergency response and short-term programmes, both expiring in 2025 (30 June 2025 for ASAP and 31 December 2025 for EDIRPA). The Programme should build on EDIRPA and ASAP achievements and extend their logic until 2027, by providing financial support for the reinforcement of the EDTIB, in a predictable, continuous and timely manner on the basis of an integrated approach. In the light of the current security situation, it appears necessary to extend the Union support a broader scope of defence equipment including consumables such as unmanned systems that play a decisive role in the war theatre in Ukraine.

(6) The European Council of 23 June 2022 decided to grant the status of candidate country to Ukraine, which expressed a strong will to link reconstruction with reforms on its European path. In December 2023, EU leaders decided to open accession negotiations with Ukraine. On 15 December 2023, the European Council declared that the Union and Member States remain committed to contributing, for the long term and together with partners, to security commitments to Ukraine, which will help Ukraine to defend itself, resist destabilization efforts and deter acts of aggression in the future. Strong support to Ukraine is a key priority for the Union and an appropriate response to the Union's strong political commitment to support Ukraine for as long as necessary.

(7) The damage from Russia's war of aggression to the Ukrainian economy, society and infrastructure, and in particular damage caused to the Ukraine defence technological and industrial base (Ukrainian DTIB) require comprehensive support to rebuild the latter. This is essential in order to provide the capacity to the Ukrainian State to maintain its essential functions and allow the fast recovery, reconstruction and modernisation of the country and foster its integration into the European Defence Equipment Market. A strong Ukrainian DTIB is vital for Ukraine's long-term security as well as its reconstruction.

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[4] 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).

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

(8) In this regard actions supporting the reinforcement of the Ukrainian defence technological and industrial base should be financed. This support is complementary to that provided under the Ukraine Facility as well as military support provided to Ukraine under the European Peace Facility and through bilateral assistance by Member States.

(9) Russia must be held fully accountable and pay for the massive damage caused by its war of aggression against Ukraine, which constitutes a blatant violation of the Charter of the United Nations. The Union and its Member States should, in close cooperation with other international partners, continue to work towards this goal, in accordance with Union and international law, taking into account Russia's serious breach of the prohibition on the use of force enshrined in Article 2(4) of the Charter of the United Nations and the principle of State responsibility for internationally wrongful acts, including the obligation to compensate for the financially assessable damage caused. It is important that, inter alia, progress is made, in coordination with international partners, on how extraordinary revenues held by private entities stemming directly from immobilised Russian assets could be directed to support Ukraine, including its defence technological and industrial base, in a manner that is consistent with applicable contractual obligations and in accordance with Union and international law. If the Council were to adopt a CFSP decision under Article 29 TEU upon a proposal by the High Representative to transfer to the Union extraordinary cash balances of central securities depositories arising from the unexpected and extraordinary revenues from Russia's immobilised sovereign assets, such additional support could be drawn from these revenues, in line with the objectives of the Union's Common Foreign and Security Policy.

(10) A Framework agreement should be concluded with Ukraine to set up the principles of the cooperation between the Union and Ukraine under this Regulation. Grant agreements or joint procurement should also be concluded with Ukraine and legal entities established in Ukraine to define conditions for releasing funds.

(11) To fund the actions that aim at strengthening the competitiveness, responsiveness and ability of the EDTIB based on Article 173 TFEU and the actions of cooperation with Ukraine for reinforcement of the Ukrainian DTIB under Article 212 TFEU, this Regulation should establish common objectives, common financial mechanisms while clearly distinguishing two budget lines corresponding to each of the objectives pursued as well as establish a Programme setting out the conditions for Union financial support under Article 173 TFEU and an Ukraine Support Instrument setting out the specific conditions for Union financial support under Article 212 TFEU.

(12) This Regulation lays down a financial envelope for the entire duration of the Programme which is to constitute the prime reference amount, within the meaning of point 18 of the Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, for the European Parliament and the Council during the annual budgetary procedure.

(13) The possibilities provided for in Article 73(4) of Regulation (EU) 2021/1060 of the European Parliament and of the Council could be applied provided that the project complies with the rules set out in that Regulation and the scope of the European Regional Development Fund and the European Social Fund Plus as set out in Regulations (EU) 2021/1058 and (EU) 2021/1057 of the European Parliament and of

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

(14) In view of the need invest better and together in defence capabilities of the Member States and associated countries as well as in the recovery, reconstruction and modernisation of Ukraine's defence industrial base, it should be possible for Member States, third countries, international organisations, international financial institutions or other sources to contribute to the implementation of the Programme. Such contributions should be implemented in accordance with the same rules and conditions and should constitute external assigned revenue within the meaning of Article 21(2)(a)(ii), (d), and (e) of the Regulation (EU, Euratom) No 2018/1046. In addition, Member States should be able to use the flexibility in the implementation of their shared management allocations offered by Regulation (EU) 2021/1060 of the European Parliament and the Council. It should therefore be possible to transfer certain levels of funding between shared management allocations and the Programme subject to the conditions set out in the relevant provisions of Regulation (EU) 2021/1060 of the European Parliament and the Council. Uncommitted resources at the latest in 2028 may be transferred back to one or more respective source programmes, at the request of the Member State, in accordance with the conditions set out in the relevant provisions of Regulation (EU) 2021/1060.

(15) As the Programme aims to enhance the competitiveness and efficiency of the Union's and Ukraine's defence industry, to benefit from the Programme, recipients of financial support should be legal entities which are established in the Union, in associated countries or in Ukraine and which are not subject to control by non-associated third countries, other than Ukraine or by, non-associated third-country entities. Where Member States, associated countries or Ukraine are the recipients of the financial support, in particular for common procurement actions, these rules should apply mutatis mutandis for the contractors or subcontractors to the procurement contracts. In that context, control should be understood to be the ability to exercise a decisive influence on a legal entity directly, or indirectly through one or more intermediate legal entities. Additionally, in order to ensure the protection of essential security and defence interests of the Union and its Member States, the infrastructure, facilities, assets and resources of the legal entities involved in the actions which are used for the purposes of the action should be located on the territory of a Member State, of an associated country or of Ukraine.

(16) In certain circumstances, it should be possible to derogate from the principle that legal entities involved in an action supported by the Programme are not subject to control by non-associated third countries or non-associated third-country entities. In that context, a legal entity established in the Union or in an associated third country and controlled by a non-associated third country or a non-associated third country entity may participate as recipient if strict conditions relating to the security and defence interests of the Union and its Member States, as established in the framework of the Common Foreign and Security Policy pursuant to Title V of the Treaty on European Union

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

(17) Furthermore, the defence products subject to actions supported by the Programme should not be subject to control or restriction by a non-associated third country or a non-associated third country entity.

(18) Given the specificities of the defence industry, where demand comes almost exclusively from States, which also control all acquisition of defence-related products and technologies, including exports, the functioning of the defence industry sector does not follow the conventional rules and business models that govern more traditional markets. The industry does not therefore engage in substantial self-funded industrial investments but only does so as a consequence of firm orders. While firm orders from Member States are a precondition for any investment, the Commission can intervene by offsetting the complexity of cooperation for common procurement and de-risking industrial investments via grants and loans allowing a faster adaptation to ongoing structural market change. As a general rule, Union support should cover up to 100% of direct eligible costs or 100% of the amount determined for actions applying the financing not linked to costs option. The Union support for industry reinforcement actions should cover up to 50 % of direct eligible costs in order to enable recipients to implement actions as soon as possible, to de-risk their investment and therefore to speed up the availability of relevant defence products.

(19) The Programme should provide financial support, via means provided for in the Regulation (EU, Euratom) No 2018/1046, to actions contributing to the timely availability and supply of defence products such as cooperation for common procurement of public authorities, industrial coordination and networking activities including reservation and stockpiling of defence products, access to finance for undertakings involved in the manufacturing of relevant defence products, reservation of manufacturing capacities ('ever warm facilities'), industrial processes of reconditioning of expired products, expansion, optimisation, modernisation, upgrading or repurposing of existing, or the establishment of new, production capacities in that field as well as the training of personnel.

(20) Grants under the Programme may take the form of financing not linked to cost based on the achievement of results by reference to work packages, milestones or targets of the common procurement process, in order to create the necessary incentive effect.

(21) Where the Union grant takes the form of financing not linked to costs, the Commission should determine in the work programme the funding conditions for each action, in particular (a) a description of action involving cooperation for common procurement with a view to addressing the most urgent and critical capacity needs, (b) the milestones for the implementation of the action and (c) the maximum Union contribution available.

(22) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission with respect to the adoption of work programmes to set out the funding priorities and the applicable funding conditions. The specificities of the defence sector, in particular the responsibility of Member States, associated countries or Ukraine for the planning and acquisition process, should be taken into account. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

(23) In accordance with Article 193(2) of the Regulation (EU, Euratom) No 2018/1046, a grant may be awarded for an action which has already begun, provided that the applicant can demonstrate the need for starting the action prior to signature of the grant agreement. However, costs incurred prior to the date of submission of the grant application are not eligible, except in duly justified exceptional cases. In order to enable continuity of funding perspective for actions that could have been supported by 2024 funding under ASAP and EDIRPA, in the financing decision it should be possible to provide for financial contributions in relation to actions that cover a period starting from 5 March 2024.

(24) When assessing proposals submitted by applicants, the Commission should pay particular attention to their contribution to the objectives of the Programme. The proposals should be assessed, in particular, against their contribution to the increase in defence industrial readiness, in particular increasing production capacities and eliminating bottlenecks. They should also be assessed against their contribution to fostering defence industrial resilience, by reference to considerations such as timely availability and supply to all locations, strengthening security of supply throughout the Union in response to identified risks, including in particular to those Member States most exposed to the risk of materialisation of conventional military threats. Assessments should also refer to the contribution to defence industrial cooperation through genuine armament cooperation among Member States, associated countries and Ukraine and the development and the operationalisation of cross-border cooperation of undertakings, in particular, to a significant extent, small and medium-sized enterprises (SMEs) and small middle capitalization companies (small mid-caps) operating in the supply chains concerned.

(25) When designing, awarding and implementing Union financial support, the Commission should pay particular attention to ensuring that such support does not adversely affect the conditions of competition in the internal market.

(26) The Regulation (EU, Euratom) No 2018/1046 and subsequent amendments applies to this Programme. It lays down rules on the implementation of the Union budget, including the rules on grants, prizes, procurement, indirect implementation, and financial instruments.

(27) In accordance with the Regulation (EU, Euratom) No 2018/1046, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council and Council Regulations (EC, Euratom) No 2988/95, (Euratom, EC) No 2185/96 and (EU) 2017/1939, the financial interests of the Union are to be protected by means of proportionate measures, including measures relating to the prevention, detection, correction and investigation of irregularities, including fraud, to the recovery of funds lost, wrongly paid or incorrectly used, and, where appropriate, to the imposition of administrative penalties. In particular, in accordance with Regulations (Euratom, EC) No 2185/96 and (EU, Euratom) No 883/2013, the European Anti-Fraud Office (OLAF) has the power to carry out administrative investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. The European Public Prosecutor's Office (EPPO) is empowered, in accordance with Regulation (EU) 2017/1939, to investigate and prosecute criminal offences affecting the financial interests of the Union as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council. In accordance with the Regulation (EU, Euratom) No 2018/1046, any person or entity receiving Union funds is to fully cooperate in the protection of the financial interests of the Union, grant the necessary

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

(28) Third countries which are members of the European Economic Area (EEA) may participate in Union programmes in the framework of the cooperation established under the Agreement on the European Economic Area, which provides for the implementation of the programmes on the basis of a decision adopted under that Agreement. A specific provision should be introduced in this Regulation requiring those third countries to grant the necessary rights and access required for the authorising officer responsible, OLAF and the Court of Auditors to comprehensively exercise their respective competences. Pursuant to Article 85 of Council Decision (EU) 2021/1764 (18), natural persons and bodies and institutions established in overseas countries and territories (OCTs) are eligible for funding subject to the rules and objectives of the Programme and possible arrangements applicable to the Member State to which the relevant OCT is linked.

(29) Building inter alia on the experience of the defence equity facility, established in the context of the European Defence Fund as an InvestEU blending operation, the Commission should endeavour to set up a dedicated facility as part of the Programme to be referred to as the 'Fund for the acceleration of defence supply chain transformation ('FAST')'. FAST should be implemented under indirect management. FAST will leverage, de-risk and speed-up investments needed to increase the defence manufacturing capacities of EU-based SMEs and small mid-caps, in the form of a blending operation offering support in the form of debt and/or equity. FAST should be established as a blending operation, including under the InvestEU Programme established by Regulation (EU) 2021/523 of the European Parliament and Council (20), in close cooperation with its implementing partners.

(30) FAST should achieve a satisfactory multiplier effect in line with the debt and equity mix and contribute to attracting both public and private-sector financing. In order to contribute to the overall objective of enhancing the EDTIB's competitiveness, FAST should also provide support to SMEs (including start-ups and scale-ups) and small mid-caps across the EU, manufacturing defence technologies and products as well as companies actually or potentially part of the defence industry's supply chain, facing difficulties in accessing finance. FAST should as well accelerate investment in the field of manufacturing defence technologies and products, and therefore strengthen the security of supply of the Union's defence industry value chains.

(31) Cooperative armament programmes in the Union face significant challenges, being mostly set up on ad hoc basis and being plagued by complexity, delays and cost overruns. To remediate this situation and ensure continuous Member States' commitment throughout the whole life cycle of defence capabilities, a more structured approach is required at EU level. To make this happen, the Commission should support Member States' efforts by making available a new legal framework – the Structure for European Armament Programme (SEAP) - to underpin and strengthen defence cooperation. Actions undertaken in this framework should be mutually reinforcing with those carried out under the Common Foreign and Security Policy (CFSP), in particular in the context of the Capability Development Plan (CDP) and of PESCO

(32) Within this Structure for European Armament Programme, Member States should benefit from standardised procedures for initiating and managing cooperative defence programmes. A cooperation under this framework should also allow Member States, under certain conditions, to benefit from an increased funding rate, simplified and harmonised procurement procedures, and, where Member States jointly own the procured equipment, a VAT exemption. The international organisation status should also allow Member States, if they wish so, to issue bonds to ensure the long-term financing plan of armament programmes. While the Union would not be liable for debt issuance by Member States, contributions under EDIP to the functioning of SEAP might improve the conditions for financing by the Member States of the armament programmes, which are eligible for Union support.

(33) In order to permit an efficient procedure for the setting-up of a SEAP, it is necessary for the Member States, associated countries or Ukraine willing to set up a SEAP to submit an application to the Commission which should assess, whether the proposed statutes of the armament programme are in conformity with this Regulation. Such an application should contain a declaration of the host Member State recognising the SEAP as an international body or organisation for the purpose of the application of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty, as of its setting up.

(34) For reasons of transparency, the decision setting-up a SEAP should be published in the *Official Journal of the European Union*. For the same reasons, the essential elements of its Statutes should be annexed to such decisions.

(35) In order to carry out its tasks in the most efficient way, a SEAP should have legal personality and the most extensive legal capacity as from the day on which the decision setting it up takes effect. It should have a statutory seat, in order to determine the applicable law, within the territory of a member of that SEAP which is a Member State.

(36) Membership of a SEAP should comprise at least three Member States and may include associated countries and Ukraine.

(37) For the implementation of the SEAP, more detailed provisions should be laid down in Statutes, on the basis of which the Commission should examine the compliance of an application with the rules established in this Regulation.

(38) It is necessary to ensure that, on the one hand, a SEAP has the necessary flexibility to amend its Statutes and, on the other hand, that certain essential elements, in particular those which were necessary for the granting of the SEAP statutes, are preserved through a necessary control at Union level. If an amendment concerns an essential element of the Statutes annexed to the decision setting up the SEAP, such amendment should be approved, prior to taking effect, by a Commission decision taken following the same procedure as that for setting up the SEAP. Any other amendment should be notified to the Commission, which should have an opportunity to object if it considers the amendment contrary to this Regulation.

(39) A SEAP should be able to appoint a Procurement Agent acting in its own name. A SEAP should be able to procure defence products on its own behalf or on behalf of its members. In the case it procures on its own behalf, the SEAP should be considered as an international organisation purchasing for its own purposes within the meaning of Article 12(c) of Directive 2009/81/EC in conformity with State aid rules. Where it

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

(40) A SEAP could qualify for funding in accordance with Title VI of the Regulation (EU, Euratom) No 2018/1046. Funding under the Cohesion Policy could also be possible, in conformity with the relevant Community legislation.

(41) In order to carry out its tasks in the most efficient way and as a logical consequence of its legal personality, a SEAP should be liable for its debts. In order to allow the members to find appropriate solutions regarding their liability, the option should be given to provide in the Statutes for different liability regimes going above the liability limited to the contributions of the members.

(42) Since a SEAP is established under Union law, it should be governed by Union law, in addition to the law of the State where it has its statutory seat. However, the SEAP could have a place of operation in another State. The law of that latter State should apply in respect of specific matters defined by the Statutes of the SEAP. Furthermore, a SEAP should be governed by implementing rules complying with the Statutes.

(43) In order to ensure sufficient control of compliance with this Regulation, a SEAP should transmit to the Commission and relevant public authorities its annual report and any information about circumstances threatening to seriously jeopardise the achievement of its tasks. If the Commission obtains indications, through the annual report or otherwise, that the SEAP acts in serious breach of this Regulation or other applicable law, it should request explanations and/or actions from the SEAP and/or its members. In extreme cases and if no remedial action is taken, the Commission could repeal the decision setting up the SEAP, thus triggering the winding-up of the SEAP.

(44) Upon the adoption of ASAP, the European Parliament and the Council called on the Commission to consider, putting forward a legal framework aimed at ensuring the security of supply (Joint Statement of 11 July 2023). This joint statement by co-legislators echoed the conclusions of the European Council in December 2013 calling for a comprehensive EU-wide Security of Supply regime and the European Parliament's recommendation of 8 June 2022 urging the Commission to present, without delay, such a regime.

(45) The crisis resulting from Russia's war of aggression against Ukraine has not only demonstrated deficiencies in the Union's and Ukraine's defence industrial sector, but has also posed challenges to the functioning of the internal market for defence products. Indeed, the steady degradation of the geopolitical context has already entailed a significant and lasting increase in the demand that may affect the functioning of the internal market for the production and sale of certain defence products and of their components in the Union. While certain Member States have taken or are likely to take measures to preserve their own stocks as a matter of national security, others are faced with difficulties of access to the goods needed to manufacture or acquire the relevant defence products. Sometimes, difficulties in accessing one raw material or a specific component hamper entire production chains. To ensure the functioning of the internal market under any circumstances and to make it resilient to any shock, it is necessary to establish, in a coordinated way, harmonised rules for increasing the security of supply of defence products. Those measures should be based on Article 114 TFEU.

(46) To pursue the general public policy objective of security, it is necessary that production facilities related to the production of relevant defence products are set up as quickly as possible, while keeping the administrative burden to a minimum. For that reason, Member States should treat applications related to the planning, construction and operation of plants and installations for the production of relevant defence products in the most rapid manner possible. Such applications should be given priority when balancing legal interests in the individual case.

(47) In view of the objective of this Regulation, and of the emergency situation and the exceptional context of its adoption, Member States should consider using defence-related exemptions under national and applicable Union law, on a case-by-case basis, if they deem that the use of such exemptions would facilitate the achievement of that objective. That could in particular apply to Union law concerning environmental, health and safety issues, which is indispensable to improving the protection of human health and the environment, as well as to achieving a sustainable and safe development. However, the implementation of that law could also produce regulatory barriers hampering the Union defence industry's potential to ramp up the production and deliveries of relevant defence products. It is a collective responsibility for the Union and its Member States to urgently look into any action they could take to mitigate possible obstacles. Any such action, whether at Union, regional, or national level, should not compromise the environment, health and safety.

(48) Directive 2009/81/EC of the European Parliament and of the Council aims at harmonising procurement procedures for the award of public contracts in the field of defence and security thus enabling the security requirements of Member States and the obligations arising from the TFEU to be met. That Directive contains, in particular, specific provisions governing situations of urgency resulting from a crisis, in particular shortened periods for the receipt of tenders and the possibility to use the negotiated procedure without prior publication of a contract notice. However, in extreme urgency, in particular during supply and security crises, these rules could be incompatible even with those provisions in cases where two or more Member States intend to engage in a common procurement. In some cases, the only solution that ensures the security interests of those Member States is to open an existing framework agreement to contracting authorities/entities of Member States that were not originally party to it, even though that possibility had not been provided for in the original framework agreement.

(49) In accordance with the case law of the Court of Justice of the European Union, modifications to a public contract are to be strictly limited to what is absolutely necessary in the circumstances, while complying to the maximum extent possible with the principles of non-discrimination, transparency and proportionality. In that regard, it should be possible to derogate from Directive 2009/81/EC by increasing the quantities provided for in a framework agreement while opening it to contracting authorities/entities of other Member States. With respect to those additional quantities, those contracting authorities/entities should enjoy the same conditions as the original contracting authority/entity that concluded the original framework agreement. In such cases, the original contracting authority/entity should also allow any economic operator who fulfils the contracting authority's/entity's conditions initially laid down in the procurement procedure for the framework agreement, including requirements for qualitative selections as referred to in Articles 39 to 46 of Directive 2009/81/EC, to join that framework agreement. In addition, appropriate transparency measures should be taken to ensure that all potentially interested parties are informed.

(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

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

(1) the establishment of the European Defence Industrial Programme (the 'Programme'), comprising measures for the strengthening of the competitiveness, responsiveness and ability of the EDTIB, which may include the establishment of a fund for the acceleration of defence supply chain transformation ('FAST');

(2) the establishment of a cooperation programme with Ukraine with a view to the recovery, reconstruction and modernisation of the Ukraine Defence Technological and Industrial Base (the 'Ukraine Support Instrument');

(3) a legal framework laying down the requirements and procedures for and the effects of setting-up the Structure for European Armament Programme ('SEAP') as set out in Chapter III;

(4) a legal framework aiming at ensuring security of supply, removing obstacles and bottlenecks and supporting the production of defence products as set out in Chapter IV;

(5) the establishment of a Defence Industrial Readiness Board as set out in Chapter V.

Article 2

Definitions

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

(1) 'advance purchasing agreement' means a public contract with one or several undertakings which aims at supporting the swift development and/or production of a product and by virtue of which the right to buy a specified number of products in a given timeframe and at a given price is subject to the prefinancing of part of the upfront costs faced by the concerned undertakings. 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], that combines non-repayable forms of support and/or financial instruments from the Union budget with repayable forms of support from development or other public finance institutions, or from commercial finance institutions and investors

(4) 'common procurement' means a procurement jointly conducted by at least three Member States;

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

(6) 'classified information' means information or material, in any form, the unauthorised disclosure of which could cause varying degrees of prejudice to the interests of the Union, or of one or more of the Member States, and which bears an EU classification marking or a corresponding classification marking, as established in the Agreement between the Member States of the European Union, meeting within the Council, regarding the protection of classified information exchanged in the interests of the European Union;

(7) 'defence products' means any defence-related products as referred to in Article 2 of Directive 2009/43/EC;

(8) 'executive management structure' means a body of a legal entity, appointed in accordance with national law, and, where applicable, reporting to the chief executive officer, which is empowered to establish the legal entity's strategy, objectives and overall direction, and which oversees and monitors management decision-making;

(9) 'legal entity' means a legal person created and recognised as such under Union, national or international law, which has legal personality and the capacity to act in its own name, exercise rights and be subject to obligations, or an entity which does not have legal personality as referred to in Article 197(2), point (c), of the Regulation (EU, Euratom) No 2018/1046;

(10) 'defence innovation action' means an action primarily consisting of activities directly aiming to produce plans and arrangements or designs for new, altered or improved

defence products, processes or services, possibly including prototyping, testing, demonstrating, piloting, large-scale product validation and market replication

(11) ‘middle capitalisation company’ or ‘mid-cap’ means an enterprise that is not a SME and that employs a maximum of 3 000 persons, where the headcount of staff is calculated in accordance with Articles 3 to 6 of the Annex to Recommendation 2003/361/EC

(12) ‘non-associated third-country entity’ means a legal entity that is established in a non-associated third country or, a legal entity that is established in the Union or in an associated country, but has its executive management structures in a non-associated third country;

(13) ‘off-take agreement’ means any contractual agreement between at least [three] Member States and at least one manufacturer of defence products containing either a commitment on the Member States to procure a certain quantity of defence products over a certain period of time or a commitment on the manufacturer of defence products to provide the Member States with the option to do so.

(14) ‘procurement agent’ means a contracting authority as defined in Article 2(1), point (1), of Directive 2014/24/EU and Article 3(1) of Directive 2014/25/EU established in a Member State or an associated country, the European Defence Agency, a Structure for European Armament Programme or an international organisation that is designated by Member States, associated countries or Ukraine to conduct a common procurement on their behalf;

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

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

(17) ‘seal of excellence’ means a quality label which shows that a proposal submitted to a call for proposals under the Instrument has passed all of the evaluation thresholds set out in the work programme, but could not be funded due to a lack of budget available for that call for proposals in the work programme, and might receive support from other Union or national sources of funding;

(18) ‘security crisis’ means any situation in a Member State, an associated third country or non-associated third country in which a harmful event has occurred or is deemed to be impending which clearly exceeds the dimensions of harmful events in everyday life and which substantially endangers or restricts the life and health of people, or requires measures in order to supply the population with necessities, or has a substantial impact on property values, including armed conflicts and wars;

(19) ‘sensitive information’ means information and data, including classified information, that is to be protected from unauthorised access or disclosure because of obligations laid down in Union or national law or in order to safeguard the privacy or security of a natural or legal person;

(20) ‘small and medium-sized enterprises’ or ‘SMEs’ means small and medium-sized enterprises as defined in Article 2 of the Annex to Commission Recommendation 2003/361/EC;

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

(22) ‘small middle capitalisation company’ or ‘small mid-cap’ means an enterprise that is not a SME and whose number of employees does not exceed 499, calculated in accordance with Articles 3 to 6 of the Annex to Recommendation 2003/361/EC, the annual turnover of which does not exceed EUR 100 million or the annual balance sheet of which does not exceed EUR 86 million;

(23) ‘crisis-relevant products’ means defence products or key components or raw materials thereof or any products or services critical to their production that have been identified as being seriously affected by a disruption or potential disruption of the functioning of the internal market and its supply chains resulting in actual or potential significant shortages.

Chapter II

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

Article 3

Use of financing not linked to costs

1. Grants may take the form of financing not linked to costs, pursuant to Article 180(3) of Regulation (EU, Euratom) 2018/1046.

2. Where the Union grant takes the form of financing not linked to costs for actions reinforcing the EDTIB, the level of the Union contribution attributed to each action 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 characteristics of the cooperation which are likely to give rise to greater interoperability outcomes and long-term investment signals to industry, in particular where the common procurement covers activities that would be eligible for funding from the Union budget, e.g. research and development, testing and certification, initial production or in-service support activities;

   (c) the number of participating Member States and associated countries or the inclusion of additional Member States or associated countries in existing cooperations;

   (d) the effort linked to ramp-up of necessary manufacturing capacities;

   (e) the procurement of additional quantities for other Member States (defence readiness pool).

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

   (a) the complexity of the Ukraine accession process, including structural reforms and measures to promote convergence with the Union ‘acquis’;

(b) the efforts of adapting the Ukrainian defence procurement processes and the environment for the Ukrainian defence industry, including to meet NATO standards;

(c) the efforts and risks associated with the ongoing war of aggression, taking into account the need to rebuild and modernise infrastructure damaged by the war in a resilient way, and, where relevant, by appropriate measures to avoid, prevent or reduce and, if possible, offset these effects.

Article 4

Objectives

1. The Programme and the Ukraine Support Instrument aim at increasing the defence industrial readiness of the EDTIB and of the Ukrainian DTIB in particular through:

(a) initiating and speeding up the adjustment of industry to structural changes, including through the creation and ramp-up of its manufacturing capacities and the opening of the supply chains for cross-border cooperation and effective availability and supply throughout the Union, involving in particular, to a significant extent, SMEs, small mid-caps and other mid-caps;

(b) incentivising cooperation in defence procurement in order to contribute to solidarity, prevent crowding-out effects, increase the effectiveness of public spending and reduce excessive fragmentation, ultimately leading to an increase in the standardisation of defence systems and greater interoperability.

2. Actions contributing to the recovery, reconstruction and modernisation of the Ukrainian DTIB shall take into account its possible future integration into the EDTIB, thereby contributing to mutual stability, security, peace, prosperity and sustainability.

3. The objectives set out in paragraph 1, point (a), shall be pursued with an emphasis on initiating and speeding up the adjustment of industry to the rapid structural changes imposed by the evolving security environment. This may include the improvement and acceleration of the capacity of adaptation of supply chains for crisis-relevant products, the creation of manufacturing capacities or their ramp-up, and a reduction of their lead production time for defence products throughout the Union, taking into account the objectives of the Strategic Compass for Security and Defence and the advice of the Defence Industrial Readiness Board.

4. The objectives set out in paragraph 1, point (b), shall be pursued with an emphasis on developing the EDTIB throughout the Union to allow it to address, in particular, Member States' defence product needs in terms of quality, availability, delivery time and location, in line with the defence capability priorities commonly agreed by Member States within the framework of the Common Foreign and Security Policy (CFSP), in particular in the context of the Capability Development Plan, taking into account the objectives of the Strategic Compass for Security and Defence and the advices of the Defence Industrial Readiness Board.

5. The objectives set out in paragraph 2 shall be pursued with an emphasis on enhancing cross-border cooperation between the EDTIB and the Ukrainian DTIB, taking into account the defence product needs of Ukraine, through creation of manufacturing capacities or their ramp-up in line with NATO standards, protection of assets, technical assistance and exchange of personnel, increased cooperation on

common procurement of defence products for Ukraine and licensing production cooperation through public-private partnerships or other forms of cooperation, e.g. joint ventures. Special attention shall be given to the objective to support Ukraine to progressively align with Union rules, standards, policies and practices ('acquis') with a view to future Union membership.

Article 5

Budget

1. The financial envelopes for the implementation of the Programme and the Ukraine Support Instrument shall be composed of:

   (a) for actions reinforcing the EDTIB: EUR 1 500 millions in current prices for the period from [… - insert a specific date] until 31 December 2027 as well as additional contributions in accordance with Article 6;

   (b) for actions reinforcing the Ukrainian DTIB: the amount of the additional contributions in accordance with Article 6 to the extent earmarked, subject to the conclusion of the agreement referred to in Article 57.

2. In order to respond to unforeseen situations or to new developments and needs, the Commission may reallocate the amount allocated to actions referred to in paragraph 1, by a maximum of 20 %, except for the additional financial resources as referred to in Article 6(2), which shall not be reallocated.

3. The amount referred to in paragraph 1 and 5 of this Article and the amounts of additional contributions referred to in Article 6 may also be used for technical and administrative assistance for the implementation of the Programme, such as preparatory, monitoring, control, audit and evaluation activities, including price investigations and corporate information technology systems and platforms, and all other technical and administrative assistance or staff-related expenses incurred by the Commission for the management of the Programme/other elements of the subject matter.

4. In addition to Article 12(4) of Regulation (EU, Euratom) 2018/1046, unused commitment and payment appropriations shall be automatically carried over and may be committed and used, respectively, until 31 December of the following financial year. The amount carried over shall be used first in the following financial year. The Commission shall inform the European Parliament and the Council of commitment appropriations carried over in accordance with Article 12(6) of Regulation (EU, Euratom) 2018/1046.

5. By way of derogation from Article 209(3), first, second and fourth subparagraphs of Regulation (EU, Euratom) 2018/1046, any revenues and repayments from financial instruments established under this Regulation shall constitute internal assigned revenue within the meaning of Article 21(5) of Regulation (EU, Euratom) 2018/1046, to the Programme or its successor programme.

6. In addition to Article 15 of Regulation (EU, Euratom) 2018/1046, commitment appropriations corresponding to the amount of recoveries and of decommitments shall be made available again to the Programme or the Ukraine Support Instrument or their successors in the context of the budgetary procedure.

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

8. Appropriations may be entered in the Union budget beyond 2027 to cover the expenses necessary to fulfil the objectives set out in Article 4, to enable the management of actions not completed by the end of the Programme, as well as expenses covering critical operational activities and services.

Article 6

Additional financial resources

1. Member States, European Union institutions, bodies and agencies, third countries, international organisations, international financial institutions or other third parties, may provide additional financial contributions to the Programme, including to the Fund Accelerating the defence Supply Chains Transformation (FAST) referred to in Article 19 in accordance with Article 208(2) of the Regulation (EU, Euratom) No 2018/1046. Such financial contributions shall constitute external assigned revenue within the meaning of Article 21(2), points (a)(ii) [point (a) FR recast], (d), or (e) or Article 21(5) of the Regulation (EU, Euratom) No 2018/1046.

2. Any additional amounts received under the relevant Union restrictive measures shall be external assigned revenue within the meaning of Article 21(5) of Regulation (EU, Euratom) 2018/1046 and shall be used for actions under the Ukraine Support Instrument, including actions reinforcing the Ukrainian DTIB.

3. Resources allocated to Member States under shared management may, at their request, be transferred to the Programme subject to the conditions set out in the relevant provisions of Regulation (EU) 2021/1060 of the European Parliament and the Council[6]. The Commission shall implement those resources directly in accordance with Article 62(1), point (a) of the first subparagraph, of the Regulation (EU, Euratom) No 2018/1046 or indirectly in accordance with point (c) of that subparagraph. They shall be added to the resources referred to in Article 5(3), point (a). Those resources shall be used for the benefit of the Member State concerned.

4. Where the Commission has not entered into a legal commitment under direct or indirect management for resources transferred in accordance with paragraph 3 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.

Section 2: The Programme

Article 7

Alternative, combined and cumulative funding

1. The Programme shall be implemented in synergy with other Union programmes. An action that has received a contribution from another Union programme may also

[6] 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).

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 Regulation (EU, Euratom) No 2018/1046 or in indirect management with bodies referred to in Article 62(1), point (c), of the Regulation (EU, Euratom) No 2018/1046.

2. Union funding may be provided in any of the forms laid down in the Regulation (EU, Euratom) No 2018/1046, in particular grants, prizes, procurement, and financial instruments within blending operations under the InvestEU programme in accordance with Title X of the Regulation (EU, Euratom) No 2018/1046.

3. By way of derogation from Article 192(2) of the Regulation (EU, Euratom) No 2018/1046, activities referred to in Article 11(3), 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 Regulation (EU, Euratom) 2018/1046, financial contributions may, where relevant and necessary for the implementation of an action, cover actions started and costs incurred prior to the date of the submission of the proposal for those actions, provided that those actions did not start before 5 March 2024 and have not been completed before the signature of the grant agreement.

Article 9

Third countries associated to the Programme

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

Article 10

Eligible legal entities

1. The eligibility criteria set out in paragraphs 2 to 7 shall apply in addition to the criteria set out in accordance with Regulation (EU, Euratom) 2018/1046.

2. Recipients of Union funding shall be established in the Union or in an associated country.

3. The infrastructure, facilities, assets and resources of the recipients which are used for the purposes of the action shall be located on the territory of a Member State or of an associated country. Where recipients have no readily available alternatives or relevant infrastructure, facilities, assets 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 and the Member States and is consistent with the objectives set out in Article 4.

4. For the purposes of an action supported by the Programme, the recipients shall not be subject to control by a non-associated third country or by a non-associated third-country entity.

5. By way of derogation from paragraph 4, a legal entity established in the Union or in an associated country and controlled by a non-associated third country or a non-associated third-country entity shall be eligible to be a recipient if the acquisition of its control by a non-associated third country or a non-associated third-country entity, has been subject to screening within the meaning of Regulation (EU) 2019/452 of the European Parliament and of the Council and, where necessary, to appropriate mitigation measures, taking into account the objectives set out in Article 4 of this Regulation, or if guarantees approved by the Member State or the associated country in which it is established in accordance with its national procedures are made available to the Commission.

   The guarantees shall provide assurances that the involvement in an action of such a legal entity would not contravene the security and defence interests of the Union and its Member States as established in the framework of the CFSP pursuant to Title V of the Treaty on European Union (TEU), or the objectives set out in Article 4. The guarantees shall also comply with Article 11(8), point (c). 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 sensitive information relating to the action is prevented and the employees or other persons involved in the action have national security clearance issued by a Member State or an associated country, where appropriate;

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

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

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

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 those activities shall not be eligible for support from the Programme.

7. Paragraphs 2 to 6 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.

Article 11

Eligible actions

1. Only actions implementing the objectives set out in Article 4 shall be eligible for funding. An eligible action shall relate to one or more of the activities referred to in paragraph 2 to 5:

2. Activities related to cooperation of public authorities in defence procurement processes (defence cooperation actions) may cover the cooperation for common procurement of defence products, throughout the life cycle of defence products, including for the purpose of building a Defence Industrial Readiness Pool as referred to Article 14(1), point (b).

3. Activities related to speeding up the adjustment to structural changes of the production capacity of defence products, including their components and

corresponding raw materials insofar as they are intended or used wholly for the production of defence products (industry reinforcement actions) may cover:

(a) the optimisation, expansion, modernisation, upgrading or repurposing of existing, or the establishment of new, production capacities insofar as those components and raw materials are intended or used wholly for the production of defence products, in particular with a view to increasing production capacity or reducing lead production times, including on the basis of the procurement or acquisition of the requisite machine tools and any other necessary input;

(b) the establishment of cross-border industrial partnerships, including through public private partnerships or other forms of industrial cooperation, in a joint industrial effort, including activities that aim to coordinate the sourcing or reservation and stockpiling of defence products, components and corresponding raw materials insofar as those components and raw materials are intended or used wholly for the production of defence products, as well as to coordinate production capacities and production plans;

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

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

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

4. Activities aiming at supporting the deployment of a European Defence Project of Common Interest.

5. Supporting activities (‘support actions’) may cover:

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

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

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

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

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

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

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

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

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

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

(a) actions related to goods or services which are prohibited by applicable international law;

(b) actions related to lethal autonomous weapons without the possibility of meaningful human control over selection and engagement decisions when carrying out strikes against humans;

(c) actions related to goods or services which are subject to control or restriction by non-associated third countries or by non-associated third-country entities, directly, or indirectly through one or more intermediate legal entities, including in terms of technology transfer;

(d) actions or parts thereof, that are already fully financed from other public or private sources.

Article 12

Specific provisions applicable for common procurement actions

1. Only the following legal entities shall be eligible for funding under the Programme:

(a) public contracting authorities of Member States or associated countries;

(b) International Organisations;

(c) the Structures for European Armament Programme;

(d) the European Defence Agency.

2. Member States and associated countries participating in a common procurement 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.

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

4. The procurement procedures referred to in paragraph 2 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.

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

6. Procurement agents shall provide the Commission with 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.

7. The common procurement contract shall include provisions governing the purchase of additional quantities of defence products for other Member States, associated countries or Ukraine.

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

Article 13

Specific provisions applicable for industrial reinforcement actions

1. For activities referred to in Article 11(3), point (a), (b) and (c), in order to be eligible for funding actions shall be exclusively related to the production capacities of defence products, including their components and raw materials insofar as they are intended or used wholly for the production of defence products.

2. These 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

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

1. To ensure the availability of EU defence products in time and in volume thereby fostering the competitiveness of the EDTIB as well as, where relevant, of the Ukrainian DTIB, the Commission shall support the following set of measures (EU MSM):

   (a) the establishment of a single, centralised, up to date catalogue of defence products developed by the EDTIB;

   (b) the creation of a defence industrial readiness pool, to increase availability and speed up delivery time of EU-made defence products, ensuring an immediate and preferential purchase or use/lease option for Member States, associated countries and Ukraine;

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

   (d) the support to administrative capacity building related to public procurement of defence products, with the aim of facilitating joint procurement.

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

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

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

   (b) contribution to the direct and indirect costs of managing and maintaining the Defence Industrial Readiness Pool as referred to in Article 11(5), point (f);

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

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

Article 15

Specific provisions applicable for activities contributing to European Defence Projects of Common Interest

1. The Commission may identify European Defence Projects of Common Interest for funding in the work programme referred to in Article 18.

2. The Commission shall, when identifying projects referred to in paragraph 1:

(a) duly consider the guidance provided in the context of the Defence Industrial Readiness Board, in particular the contribution of the project to the capability priority identified in the context of the CFSP, notably of the Capability Development Plan, and the objectives of the Strategic Compass for security and defence;

(b) identify overall financing needs and potential impacts for the Union budget;

(c) take into account any views of Member States.

3. European Defence Projects of Common Interest shall meet the following general criteria:

(a) the project aims at developing capabilities, including those securing access to strategic domains and contested spaces, strategic enablers, and, as appropriate, systems acting as European defence infrastructure of common interest and use;

(b) the potential overall benefits of the project outweigh its costs, including in the longer term.

4. A European Defence Project of Common Interest shall involve at least four Member States. The European Commission shall be able, where relevant, to participate in the project.

5. A European Defence Project of Common Interest shall be considered to contribute to the defence capabilities critical for the security and defence interests of the Union and its Member States and therefore to be in the public interest. They may be established in the framework of Structures for European Armament Programmes referred to in Chapter 3.

6. Member States may, without prejudice to Articles 107 and 108 TFEU, apply support schemes and provide for administrative support to European Defence Projects of Common Interest.

7. The Union financial contribution referred to in Article 17 shall not exceed 25% of the amount referred to in Article 5(1).

8. The deployment of European Defence Projects of Common Interest may be considered an imperative reason of overriding public interest within the meaning of Article 6(4) and Article 16(1), point (c), of Directive 92/43/EEC and of overriding public interest within the meaning of Article 4(7) of Directive 2000/60. Therefore, the planning, construction and operation of related production facilities may be considered of overriding public interest, provided that the remaining other conditions set out in these provisions are fulfilled.

Article 16

Award criteria

1. Each proposal shall be assessed on the basis of the following criteria:

(a) defence industrial readiness: contribution to competitiveness, increase production capacities, reduce lead times, eliminate bottlenecks thereby increasing interoperability and interchangeability;

(b) defence industrial resilience: contribution to resilience, increase timely availability and supply to all locations, strengthening security of supply

throughout the Union in response to identified risks, including in particular high exposure to the risk of materialisation of conventional military threats, and the non-dependency on non-associated third country sources.

(c) defence industrial cooperation: fostering genuine armament cooperation among Member States, associated countries or Ukraine and development and operationalisation of cross-border cooperation between undertakings established in different Member States, associated countries or Ukraine, involving in particular, to a significant extent, SMEs, small mid-caps and other mid-caps as recipients, as subcontractors or as other undertakings in the supply chain;

(d) the quality of the implementation plan of the action, in particular measures to respect delivery lead times, including in terms of its processes and monitoring.

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

Article 17

Union financial contribution

1. By way of derogation from Article 190 of the Regulation (EU, Euratom) No 2018/1046, the Programme may finance up to 100 % of the eligible costs. However, for activities referred to in Article 11(3) the support from the Programme shall not exceed 35 % of the eligible costs.

2. An action shall be eligible for an increased funding rate where it fulfils one or more of the following criteria:

(a) the action is developed in the context of a Structure for European Armament Programme SEAP, as referred to in Chapter III of this Regulation or in the context of a project of PESCO, provided that this project complies with obligations comparable to those under Article 22(1), 23(1), 25 and 26 of this Regulation and that it did not benefit from a comparable increased funding rate in another EU funding programme;

(b) Ukraine is the recipient of defence products produced or procured under the Programme and those products are subject to financial support under the European Peace Facility;

(c) Member States agree on a common approach to exports for defence products developed and procured in the context of a Structure for European Armament Programme (SEAP);

(d) the beneficiary is an SME or small mid-cap or the majority of beneficiaries participating in a consortium are SMEs or small mid-caps.

3. The work programme shall lay down further details, including, where relevant, the increased funding rates referred to in paragraph 3.

Article 18

Work programmes

1. The Programme shall be implemented by work programmes as referred to in Article 110 of the Regulation (EU, Euratom) No 2018/1046. Work programmes shall set out the actions and associated budget required to meet the objectives of the Programme and, where applicable, the overall amount reserved for blending operations.

2. The Commission shall adopt work programmes by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(3).

Article 19

Fund to Accelerate defence Supply chains Transformation (FAST)

1. In order to leverage, de-risk and speed-up investments needed to increase the defence manufacturing capacities of SMEs and small mid-caps, a blending operation offering debt and/or equity support may be established (Fund to Accelerate defence Supply-chains' Transformation (FAST). It shall be implemented in accordance with Title X of the Regulation (EU, Euratom) No 2018/1046 and Regulation (EU) 2021/523[7].

2. The specific objectives pursued by the FAST shall be the following:

   (a) achieve a satisfactory multiplier effect in line with the debt and equity mix and contributing to attracting both public and private-sector financing;

   (b) provide support to SMEs (including start-ups and scale-ups) and small midcaps across the Union, which are facing difficulties in accessing finance and which:

      (i) industrialise defence technologies and/or manufacture defence products or have imminent plans to so; or

      (ii) are part of the defence industry's supply chain or have imminent plans to become part it.

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

Section 3: The Ukraine Support Instrument

Article 20

Specific provisions applicable to the Ukraine Support Instrument

1. Article 13 shall apply to actions under the Ukraine Support Instrument. Articles 8, 11, 12, 14, 16, 17 and Article 18 shall apply mutatis mutandis.

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[7] 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. By derogation from Article 17(1) activities referred to in Article 11(3) may finance up to 100 % of the eligible costs.

3. References to associated countries in Articles 8, 9, 11, 12, 14 and 16 shall not apply to this section.

4. References to blending operations in Articles 8 shall not apply to this section.

Article 21

Eligible legal entities

1. The eligibility criteria set out in paragraphs 2 to 7 shall apply in addition to the criteria set out in accordance with Regulation (EU, Euratom) 2018/1046.

2. Recipients of Union funding shall be established in the Union or in Ukraine.

3. The infrastructure, facilities, assets and resources of the recipients which are used for the purposes of the action shall be located on the territory of a Member State or of Ukraine. Where recipients have no readily available alternatives or relevant infrastructure, facilities, assets 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 of Ukraine, provided that such use does not contravene the security and defence interests of the Union and the Member States and is consistent with the objectives set out in Article 4.

4. 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.

5. By way of derogation from paragraph 4, a legal entity established in the Union and controlled by a third country or 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 mitigation measures, taking into account the objectives set out in Article 4 of this Regulation, or if guarantees approved by the Member State in which it is established in accordance with its national procedures are made available to the Commission.

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

   (a) control over the legal entity is not exercised in a manner that restrains or restricts its ability to carry out the action and to deliver results, that imposes restrictions concerning its infrastructure, facilities, assets, resources, intellectual property or knowhow needed for the purposes of the action, or that undermines its capabilities and standards necessary to carry out the action;

   (b) access by a third country or by a third-country entity to sensitive information relating to the action is prevented and the employees or other persons involved in the action have national security clearance issued by a Member State, where appropriate;

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

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

6. 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, including by using the assets, infrastructure, facilities and resources of such legal entities, provided that this does not contravene the security and defence interests of the Union and its Member States. Such cooperation shall be consistent with the objectives set out in Article 4 and comply with Article 11(8), point (c).

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

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

7. Paragraphs 2 to 6 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.

Chapter III

Structure for European Armament Programme

Article 22

Specific objective and activities of SEAP

1. A Structure for European Armament Programme (SEAP) shall foster the competitiveness of the EDTIB and of the Ukrainian DTIB by aggregating the demand for defence products throughout their lifecycle.

2. To reach the objective referred to in paragraph 1, the principal tasks of a SEAP shall be:

(a) the common procurement of defence products, technologies or services, including defence R&D, testing and certification, non-recurrent investments related to initial production or in-service support;

(b) the joint life-cycle management of defence products, including the procurement of spare parts, logistic services and, where appropriate, establishment of public private partnerships to ensure efficiency and high availability of defence products;

(c) the dynamic availability management for additional quantities, ensuring an immediate and preferential purchase or use/lease option for Member States, associated countries or Ukraine (Defence Industrial Readiness Pool).

Article 23

Requirements relating to the establishment of a SEAP

1. A SEAP shall meet the following requirements:

   (a) a SEAP shall support the collaborative development and procurement of defence products and services in line with the capability priorities commonly agreed by Member States within the framework of the CFSP, including in the context of the Capability Development Plan;

   (b) a SEAP shall be established by at least three Member States, associated countries or Ukraine.

   (c) a SEAP shall have as members at least two Member States;

   (d) a SEAP shall continue the lifecycle of the defence product or technology, until its decommissioning.

2. A SEAP shall use standardised procedures for initiating and managing cooperative defence programmes and shall respect any guidance or templates provided to it by the Commission, including guidelines on project management, funding, and reporting.

Article 24

Application for the establishment of a SEAP

1. The Member States applying for the setting-up of a SEAP (as the 'applicants') shall submit an application to the Commission. The application shall contain the following:

   (a) a request to the Commission to set up the SEAP;

   (b) the proposed Statutes of the SEAP referred to in Article 27, signed and adopted in due form by all legal entities that are applicants to the proposed SEAP;

   (c) a description of the defence equipment, technology or service to be jointly procured and managed by the SEAP, addressing in particular the requirements set out in Article 23(1), point (a) and (d);

   (d) a declaration by the host Member State recognising the SEAP as an international body within the meaning of Articles 143(1)(g) and 151(1)(b) of Directive 2006/112/EC and as international organisation within the meaning of Article 11(1) of Directive (EU) 2020/262, as of its setting up. The limits and conditions of the exemptions provided for in these provisions shall be laid down in an agreement between the members of the SEAP.

2. The Commission shall assess the application in line with the requirements laid down in this Regulation. The result of such assessment shall be communicated to the applicants who shall, if necessary, be invited to complete or amend the application.

3. The Commission shall, taking into account the results of the assessment referred to in paragraph 2 and in accordance with the procedure referred to in Article 58(3), adopt an implementing act:

   (a) setting up the SEAP after it has satisfied itself that the requirements laid down in this Regulation are met; or

   (b) reject the application if it concludes that the requirements laid down in this Regulation are not met, including in the absence of the declaration referred to in paragraph (1) (d).

4. The decision on the application shall be notified to the applicants. In the case of a rejection, the decision shall be explained in clear and precise terms to the applicants.

5. The decision setting up the SEAP shall be published in the L series of the *Official Journal of the European Union*.

Article 25

Status and seat of a SEAP

1. A SEAP shall have legal personality as from the date on which the decision setting up the SEAP takes effect.

2. A SEAP shall have in each Member State the most extensive legal capacity accorded to legal entities under the law of that Member State. It may, in particular conclude contracts and be a party to legal proceedings. All Member State national funding agencies shall consider it (and its national nodes) an eligible recipient of national financial contributions.

3. A SEAP shall have a statutory seat, which shall be located on the territory of a Member State.

Article 26

Requirements for membership

1. The following legal entities may become members of a SEAP:

   (a) Member States;

   (b) associated countries;

   (c) Ukraine.

2. Member States, associated countries or Ukraine may join as members at any time after the establishment of the SEAP on fair and reasonable terms specified in the Statutes referred to in Article 27 and as observers without voting rights on conditions specified in the Statutes.

3. A SEAP may also cooperate with non-associated third countries or non-associated third country entities, including by using the assets, infrastructure, facilities and resources, provided that this does not contravene the security and defence interests of the Union and its Member States.

Article 27

Statutes

1. The Statutes of a SEAP shall contain at least the following:

   (a) a list of members, observers and, where applicable, of legal entities representing members and the conditions of and the procedure for changes in membership and representation in compliance with Article 26;

   (b) the specific objective, the tasks and activities of the SEAP, in compliance with Article 23;

   (c) a list of the jointly procured defence equipment, technology and/or services which are to be jointly owned, if any, and eligible for an exemption from VAT and/or Excise Duties;

   (d) the statutory seat of the SEAP in compliance with Article 25;

   (e) the name of the SEAP;

   (f) the duration, and the procedure for the winding-up of the SEAP in compliance with Article 32;

   (g) the liability regime, in compliance with Article 30;

   (h) the rights and obligations of the members, including the obligation to make contributions to a balanced budget and voting rights;

   (i) the bodies of the members, their roles and responsibilities and the manner in which they are constituted and in which they decide, including upon the amendment of the Statutes, in compliance with Articles 28,

   (j) the identification of the working language(s) of the SEAP;

   (k) references to rules implementing the Statutes;

   (l) the security policy for handling classified information.

2. In addition, where the members of a SEAP decide to use/manage a Defence Industrial Readiness Pool referred to in Article 14(1), point (b), the statutes shall include the rules governing the management of a Defence Industrial Readiness Pool referred to in Article 14(1), point (b), including, where relevant, a common approach to export.

Article 28

Amendment of the Statutes

1. Any amendment of the Statutes concerning the matters referred to in Article 27(1), points (a) to (h), shall be submitted to the Commission by the SEAP for approval. The Commission shall apply Articles 24(2), *mutatis mutandis*.

2. Any amendment of the Statutes other than that referred to in paragraph 1 shall be submitted to the Commission by the SEAP within 10 days after its adoption.

3. The Commission may raise an objection to amendments referred to in paragraph 1 within 60 days from the submission giving reasons why the amendment does not meet the requirements of this Regulation.

4. The amendment shall not take effect before the period for objecting has expired or has been waived by the Commission or before an objection raised has been lifted.

5. The application for the amendment shall contain the following:

   (a) the text of the amendment proposed or, where appropriate, the text of the amendment as adopted, including the date on which it enters into force;

   (b) the amended consolidated version of the Statutes.

Article 29

Specific conditions on procurement

1. A SEAP may appoint a Procurement Agent which will act in its name.

2. When procuring for a SEAP, the Procurement Agent shall be bound by the same rules as the SEAP concerned.

3. Where it procures a defence product on its own behalf and in its own name, a SEAP shall be considered as an international organisation within the meaning of Article 12(c) of Directive 2009/81/EC. Where it procures a defence product on behalf of its members, a SEAP shall, by derogation to Article 10 of Directive 2009/81/EC, define its own rules in lines with the principles of transparency, non-discrimination and competition.

4. Procurements of a SEAP shall comply with the requirements set out in Article 12 paragraphs 3 to 6.

Article 30

Liability and insurance

1. A SEAP shall be liable for its debts.

2. The financial liability of the members for the debts of the SEAP shall be limited to their respective contributions provided to the SEAP. The members may specify in the Statutes that they will assume a fixed liability above their respective contributions or unlimited liability.

3. If the financial liability of the members is limited, the SEAP shall take appropriate insurance to cover the risks specific to the establishment and management of the capability.

4. The Union shall not be liable, including for any debt of the SEAP.

Article 31

Applicable law and jurisdiction

1. The setting-up and internal functioning of a SEAP shall be governed:

   (a) by Union law, in particular this Regulation, and the implementing acts referred to in Article 24(3)(a);

   (b) by the law of the State where the SEAP has its statutory seat in the case of matters not, or only partly, regulated by acts referred to in point (a);

(c) by the Statutes and their implementing rules.

2. The Court of Justice of the European Union shall have jurisdiction over litigation among the members in relation to the SEAP, between the members and the SEAP and over any litigation to which the Union is a party.

3. Union legislation on jurisdiction shall apply to disputes between a SEAP and third parties. In cases not covered by Union legislation, the law of the State where the SEAP has its statutory seat shall determine the competent jurisdiction for the resolution of such disputes.

Article 32

Winding up and insolvency

1. The Statutes shall determine the procedure to be applied in the case of winding-up of the SEAP following a decision of the assembly of members or in case the Commission repeals the implementing act establishing the SEAP, as referred to in Article 33(6). Winding-up may include the transfer of activities to another legal entity.

2. Without undue delay after the adoption of a decision by the assembly of members to wind up the SEAP, and in any event within 10 days after such adoption, the SEAP shall notify the Commission thereof. The Commission shall publish an appropriate notice of the decision to wind-up in the C series of the Official Journal of the European Union.

3. Without undue delay after the closure of the winding-up procedure, and in any event within 10 days after such closure, the SEAP shall notify the Commission thereof. The Commission shall publish an appropriate notice of the closure in the C series of the Official Journal of the European Union. The SEAP shall cease to exist on the day of publication of the notice.

4. At any time, in the event that the SEAP is unable to pay its debts, it shall immediately notify the Commission thereof. The Commission shall publish an appropriate notice hereof in the C series of the Official Journal of the European Union.

Article 33

Reporting and control

1. A SEAP shall produce an annual activity report, containing a technical description and a financial report of its activities referred to in Article 22. It shall be transmitted to the Commission within six months from the end of the financial year.

2. The Commission may provide recommendations to the SEAP regarding the matters covered in the annual activity report.

3. A SEAP and the Member States concerned shall inform the Commission of any circumstances which threaten to seriously jeopardise the achievement of the task of the SEAP or to hinder the SEAP from fulfilling the requirements laid down in this Regulation.

4. Where the Commission obtains indications that a SEAP is acting in serious breach of this Regulation, the implementing act establishing it, its statutes or other applicable law, it shall request explanations from the SEAP and/or its members.

5. Where the Commission concludes, after having given the SEAP and/or its members a reasonable time to provide their observations, that the SEAP is acting in serious breach of this Regulation, the implementing act establishing it, its statutes or other applicable law, it may propose remedial action to the SEAP and its members.

6. Where no remedial action is taken, the Commission may repeal the implementing act establishing the SEAP. The repealing act shall be published in the L series of the Official Journal of the European Union. The publication of the act shall trigger the winding-up of the SEAP.

Chapter IV

Security of supply

SECTION 1

PREPAREDNESS

Article 34

Conditions to open framework agreements to other Member States

1. Where at least two Member States enter into an agreement to commonly procure defence products and where the extreme urgency of the situation justifies it, the rules provided for in paragraphs 2 to 6 may be applied to framework agreements that do not include rules governing the possibility to substantially amend it so that its provisions may apply to contracting authorities/entities which are not originally party to the framework agreement.

2. By way of derogation from Article 29(2), second subparagraph, of Directive 2009/81/EC, a contracting authority/entity may modify an existing framework agreement with an undertaking complying with the provisions laid out in Article 10, paragraphs 1 and 2, which has been concluded following one of the procedures provided for by Article 25 of that Directive so that its provisions may apply to contracting authorities/entities which are not originally party to the framework agreement.

3. By way of derogation from Article 29(2), third subparagraph, of Directive 2009/81/EC, a contracting authority/entity may make substantial amendments to the quantities laid down in an existing framework agreement with an undertaking complying with the provisions laid out in Article 10, paragraphs 1 and 2, insofar as that is strictly necessary for the application of paragraph 2 of this Article. Where quantities laid down in an existing framework agreement are substantially modified pursuant to this paragraph, any economic operator that meets the contracting authority's/entity's conditions initially laid down in the public procurement procedure for the framework agreement, including requirements for qualitative selection as referred to in Articles 39 to 46 of Directive 2009/81/EC, and which

complies with the provisions laid out in Article 10, paragraphs 1 and 2, shall be given the opportunity to join that framework agreement. The contracting authority/entity shall open that possibility by means of an ad hoc notice published in the Official Journal of the European Union.

4. The principle of non-discrimination shall apply to contracts and framework agreements referred to in paragraphs 2 and 3 with regard to the additional quantities, and particularly to the relationships between contracting authorities/entities of Member States referred to in paragraph 1.

5. Contracting authorities which modified a contract in the cases referred to in paragraphs 2 and 3 of this Article shall publish a notice to that effect in the Official Journal of the European Union. Such notice shall be published in accordance with Article 32 of Directive 2009/81/EC.

6. Contracting authorities/entities may not use the possibility provided for in paragraph 2 and 3 improperly or in such a way as to prevent, restrict or distort competition.

Article 35

Procurement

1. By derogation to [Article 168 of the Financial Regulation recast], Member States, associated countries and, where relevant, Ukraine may request the Commission:

   (a) to engage in a joint procurement with them as as referred to in [Article 168(2) of the Financial Regulation recast] whereby Member States, associated countries or Ukraine may acquire, rent or lease fully the defence products jointly procured;

   (b) to act as a central purchasing body to procure on behalf of the interested Member States or in their name defence products, as referred to in [Article 168(3) of the Financial Regulation recast].

2. The procurement procedure referred to in paragraph 1, shall comply with the following conditions:

   (a) participation in launching the procurement procedure shall be open to all Member States, associated countries and Ukraine, by way of derogation from [Article 168(2) and (3) of the Financial Regulation recast];

   (b) the Commission invites at least 4 experts with relevant experience for the negotiations from participating countries with production capacities for the concerned defence product to form a joint negotiation team;

   (c) participating countries explicitly state whether they decide to run parallel negotiation processes for that product. The decision to run parallel negotiation processes for that product shall be subject to unanimous approval by participating countries;

3. As part of the procurement referred to in paragraph 1(b), the Commission may procure relevant components and raw materials of defence products for the purpose of building strategic reserves.

When duly justified by the extreme urgency of the situation the Commission may, by way of derogation from Article 172(1) of Regulation (EU, Euratom) 2018/1046, request the delivery of goods or services from the date on which the draft contracts resulting from the procurement

carried out for the purposes of this Regulation are sent, which shall be no later than 24 hours as from the award.

4. In order to enter into purchase agreements with economic operators, representatives of the Commission, or experts nominated by the Commission, may carry out on-site visits in cooperation with relevant national authorities at the locations of production facilities of relevant defence products.

5. Ownership and export of defence products purchased under this Article shall remain the competence of the participating countries.

6. The Commission shall ensure that participating countries are treated equally when carrying out the procurement procedures and when implementing the resulting agreements.

7. The use of procurement pursuant to paragraph 1 shall be without prejudice to other instruments provided for in the Financial Regulation.

8. In addition to the conditions set out in the Financial Regulation, eligibility criteria equivalent to those laid down in Article 10 of this Regulation shall apply, *mutatis mutandis*, to tenderers, contractors and subcontractors in contracts resulting from the procurement conducted pursuant to this Article.

Article 36

Advance Purchase of defence products

1. Joint purchasing referred to in Article 35 may take the form of advanced purchasing agreements of defence products negotiated and concluded in the name and on behalf of participating countries. Those agreements may include a prepayment mechanism for the production of such products in exchange for the right to the result, which shall not exceed the parts of the contract on non-recurrent costs and/or the reservation of manufacturing capacities.

2. Where the agreements referred to in paragraph 1 of this Article include a prepayment mechanism, the up-front payment to the contractor shall be covered by the financial envelope referred to Article 5(1). Contributions of participating countries as referred to in Article 6 shall be taken into account in equal terms per item ordered by the participating countries.

3. In cases where the negotiated amounts exceed demand, the Commission, at the request of the Member States concerned, shall elaborate a mechanism for reallocation to national stockpiles or building up of the defence industrial readiness pool as referred to in Article 14(1), point (b).

Article 37

Facilitating off-take agreements

1. The Commission shall set up a system to facilitate the conclusion of off-take agreements related to the industrial ramp-up of the EDTIB's manufacturing capacities as well as those of the Ukrainian DTIB, taking into account the opinion and advice of the Defence Industrial Readiness Board and in compliance with competition and procurement rules.

2. The system referred to in paragraph 1 shall allow interested Member States, associated countries and, where relevant, Ukraine to make bids indicating:

   (a) the volume and quality of defence products they intend to purchase;

   (b) the intended price or price range;

   (c) the intended duration of the off-take agreement.

3. The system referred to in paragraph 1 shall allow manufacturers of defence products which comply with conditions laid out in Article 10 to make offers indicating:

   (a) the volume and quality of defence products for which they are seeking to conclude off-take agreements;

   (b) the intended price or price range at which they are willing to sell;

   (c) the intended duration of the off-take agreement.

4. Based on the bids and offers received pursuant to paragraph 2 and 3, the Commission shall bring relevant manufacturers of defence products in contact with interested Member States and associated countries as well as, where relevant, Ukraine.

5. On the basis of the contact referred to in paragraph 4, interested Member States and associated countries as well as, where relevant, Ukraine may request the Commission to engage in a joint procurement procedure or in a procurement procedure in their name and/or on their behalf pursuant Article 35.

6. The financial envelope referred to in Article 5(1) may cover the parts of the contract on non-recurrent costs and/or the reservation of manufacturing capacities.

Article 38

Acceleration of the permit-granting process for the timely availability and supply of relevant defence products

1. Member States shall ensure that administrative applications related to the planning, construction and operation of production facilities, transfer of inputs within the Union as well as qualification and certification of end products are processed in an efficient and timely manner. To that end, all national authorities concerned shall ensure that the most rapid treatment legally possible is given to such applications.

2. Member States shall ensure that in the planning and permit-granting process, the construction and operation of plants and installations for the production of relevant defence products are given priority when balancing legal interests in the individual case concerned.

Article 39

Easing cross-certification process

1. Member States shall adopt a list of national certification authorities for defence purposes and notify it to the Commission, which shall make it available to Member States.

2. The Commission shall, by the mean of implementing acts, draw and keep updated an official list of national certification authorities for defence purposes as identified by

Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(3).

3. A certification authority from one Member State may request from the certification authority of another Member State basic information about the scope of the certification of a certain defence product.

SECTION 2

SUPPLY CHAIN SURVEILLANCE AND MONITORING

Article 40

Mapping of defence supply-chains

1. The Commission shall carry out a mapping of the Union's defence supply-chains, in cooperation with the Defence Industrial Readiness Board.

2. The Defence Industrial Readiness Board shall draw up a list of defence products which are critical for the security and defence interests of the Union and of its Member States, in particular the reinforcement of Member States' defence capabilities and the readiness of the EDTIB ('key defence products'). That list shall be updated on a regular basis, at least every year.

3. The Commission shall, after consulting the Defence Industrial Readiness Board, develop a framework and methodology for the identification of crisis-relevant products, with an emphasis on identifying bottlenecks, as well as their related manufacturing capacities in the Union.

4. The mapping referred to in paragraph 1 and identification referred to in paragraph 6 of this Article shall provide an analysis of the Union's strengths and weaknesses as regards the supply chains of crisis-relevant products and shall inform the programming of the Programme established under Chapter II.

5. To do so, the Commission shall use, inter alia, publicly and commercially available data and relevant non-confidential information from undertakings, the result of similar analysis performed, including in the context of Union law on raw materials and renewable energy, as well as the evaluations carried out pursuant to Article 66(1). Where this is not enough to identify the crisis-relevant products, the Commission may issue voluntary information requests to relevant actors involved in the concerned value chains and based in the Union, after consulting the Defence Industrial Readiness Board.

6. The Commission shall, by means of implementing act, draw up and regularly update a list of crisis-relevant products. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(3).

7. The Commission shall inform the Defence Industrial Readiness Board of the aggregate results of the activities carried out pursuant to paragraph 4 on a regular basis.

8. The Commission shall, on the basis of the outcome of the activities carried out pursuant to paragraph 4 and after consulting the Defence Industrial Readiness Board, develop a list of early warning indicators. The Commission, after consulting the

Defence Industrial Readiness Board, shall review the list of early warning indicators on a regular basis, at least every two years.

9. Any information obtained pursuant to this Article shall be treated in compliance with the confidentiality obligations set out in Article 61.

10. This Article shall be without prejudice to the protection of Member States' essential security interests, as referred to in Article 346 TFEU (1) (a).

Article 41

Monitoring

1. The Commission, in consultation with the Defence Industrial Readiness Board, shall carry out regular monitoring of the Union's manufacturing capacities necessary for the supply of crisis-relevant products, identified in accordance with Article 40, paragraph (6) with a view to identifying factors that may disrupt, compromise or negatively affect the supply of the key defence products they contribute to provide. The monitoring shall consist of the following activities:

   (a) monitoring of early warning indicators identified pursuant to Article 40(8);

   (b) monitoring by Member States of the integrity of activities carried out by the key market actors referred to in Article 42 and reporting by Member States on major events that may hinder the regular operations of such activities;

   (c) identifying best practices for preventive risk mitigation and increased transparency of the Union's manufacturing capacities necessary for the supply of crisis-relevant products.

   The Commission, after consulting the Defence Industrial Readiness Board, shall establish the frequency of the monitoring.

2. The Commission shall pay particular attention to SMEs to minimise administrative burden resulting from the information collection.

3. The Commission may invite, after consulting the Defence Industrial Readiness Board, key market actors referred to in Article 42, Member States, national defence industry associations and other relevant stakeholders to provide information, on a voluntary basis, for the purpose of carrying out monitoring activities in accordance with paragraph 1, first subparagraph, point (a).

4. For the purposes of paragraph 1, first subparagraph, point (b), Member States may request information, on a voluntary basis, from key market actors referred to in Article 42 where necessary and proportionate.

5. For the purposes of paragraph 3, national competent authorities shall establish and maintain a list of contacts of all relevant undertakings contributing effectively or potentially to the supply of the key defence products, which are established in their territory. That list shall be transmitted to the Commission. The Commission shall provide for a standardised format for the list of contacts with a view to ensuring interoperability.

6. Without prejudice to their essential security interests and the protection of commercially confidential information resulting from agreements entered into by Member States, Member States shall, where appropriate, provide the Defence Industrial Readiness Board with any additional relevant information, in particular on

the potential or future adoption at national level measures for the procurement, purchase or manufacturing of crisis-relevant products.

7. On the basis of the information collected through the activities under paragraph 1, the Commission shall provide a report of the aggregated findings to the Defence Industrial Readiness Board in the form of regular updates. The Defence Industrial Readiness Board shall meet to assess the results of the monitoring. Where relevant, the chair of the Defence Industrial Readiness Board may invite national defence industrial associations, key market actors, and experts from academia and civil society to such meetings.

8. This Article shall be without prejudice to the protection of Member States' essential security interests as referred to in Article 346 TFEU (1) (a).

Article 42

Key market actors

1. Member States shall, in cooperation with the Commission, identify key market actors involved in the supply of key defence products established in their territory, taking into account the following elements:

   (a) the Union or global market share of the key market actor in the market for that product;

   (b) the importance of a market actor in maintaining a sufficient level of supply of a product in the Union, taking into account the availability in the Union of alternative means for the provision of that product;

   (c) the impact that a disruption of supply of the product provided by the market actor could have on the supply of crisis-relevant products.

2. Member States shall report on major events that may hinder the regular operations of the activities as referred to in paragraph 1.

SECTION 3

SUPPLY CRISIS - PREVENTION AND MITIGATION

Article 43

Alerts and preventive action

1. Where a national competent authority becomes aware of a risk of serious disruption of a crisis-relevant products or has concrete and reliable information of any other relevant risk factor or event materializing affecting the supply of a crisis relevant product, it shall alert the Defence Industrial Readiness Board without undue delay.

2. Where the Defence Industrial Readiness Board or the Commission become aware of a risk of serious disruption of a crisis relevant product or has concrete and reliable information of any other relevant risk factor or event materializing affecting the supply of a crisis relevant product, including on the basis of early warning indicators, upon an alert pursuant to paragraph 1 or from international partners, the Commission shall, without undue delay, carry out the following preventive actions:

(a) convene an extraordinary meeting of the Defence Industrial Readiness Board to coordinate the following actions:

(1) discuss the severity of the disruptions to the availability and supply of the concerned crisis-relevant products;

(2) recommend to the Commission to initiate action in accordance with Chapter II of this Regulation;

(3) discuss approaches of the national competent authorities, including to assess the state of preparedness of the key market actors;

(4) enter into dialogue with stakeholders of the Union's manufacturing capacities necessary for the supply of crisis-relevant products with a view to identifying, preparing and possibly coordinating preventive measures;

(5) discuss the activation of the supply crisis state referred to in Article 44 where necessary and proportionate.

(b) on behalf of the Union, enter into consultations or cooperation with relevant third countries and international organisations with a view to seeking cooperative solutions to address supply-chain disruptions, in compliance with international obligations, which may involve, where appropriate, carrying out coordination in relevant international fora.

Article 44

Activation of the supply crisis state

1. A supply crisis shall be considered to occur where:

(a) there are serious disruptions in the provision of products, which are not defence products, or serious obstacles to trade in such products within the Union causing their significant shortage; and

(b) such significant shortages prevent the supply, repair or maintenance of defence products to the extent that it would have serious detrimental effect on the functioning of the Union's defence supply chains impacting the society, economy and security of the Union.

2. Where the Commission or the Defence Industrial Readiness Board become aware of a potential supply crisis pursuant to Article 43, the Commission shall assess whether the conditions set out in paragraph 1 of this Article are met. That assessment shall take into account the potential positive and negative impacts and consequences of the supply crisis state on the Union's defence supply chains as well as assessments performed in other relevant Union crisis management frameworks. Where that assessment provides concrete and reliable evidence, the Commission may, after consulting the Defence Industrial Readiness Board, propose to the Council to activate the supply crisis state.

3. The Council, acting by qualified majority, may activate the supply crisis state by means of a Council implementing act. The duration of the supply crisis state shall be specified in the Implementing Act and shall not exceed 12 months.

4. The Commission shall report on a regular basis and at least every three months to the Council and to the European Parliament on the state of the crisis.

5. Before the expiry of the duration of the supply crisis, the Commission shall assess whether it is appropriate to prolong the supply crisis state. Where such assessment provides concrete and reliable evidence that the conditions for the activation of the supply crisis state are still met, the Commission may, after consulting the Defence Industrial Readiness Board, propose to the Council to prolong the supply crisis state.

6. The Council, acting by qualified majority, may prolong the supply crisis state by means of a Council implementing act. The duration of the prolongation shall be limited and specified in the Council implementing act.

7. The Commission may propose prolonging the supply crisis state once or more frequently where duly justified.

8. During the supply crisis state, the Commission shall, after consulting the Defence Industrial Readiness Board, assess the appropriateness of an early termination of the crisis state. If the assessment indicates so, the Commission may propose to the Council to terminate the crisis state.

9. The Council may terminate the supply crisis state by means of a Council implementing act.

10. During the crisis state, the Commission shall, upon request from a Member State or on their own initiative, convene extraordinary meetings of the Defence Industrial Readiness Board where necessary. Member States shall work closely with the Commission, inform in a timely manner about and coordinate any national measures taken with regard to the concerned defence supply chain within the Defence Industrial Readiness Board.

11. Upon expiry of the period for which the supply crisis state is activated or in the event of its early termination pursuant to paragraph 8 of this Article, the measures taken in accordance with Articles 46 and 47 shall cease to apply immediately.

12. The Commission shall update the mapping and the monitoring of the Union's defence supply chains pursuant to Articles 40 and 41 taking into account the experience from the crisis no later than six months after the expiry of the supply crisis state.

Article 45

Supply-crisis emergency toolbox

1. Where the supply crisis state is activated pursuant to Article 44 and where necessary in order to address the supply crisis in the Union, the Commission may take the measures provided for in Article 45 and 46, under the conditions laid down therein.

2. The Commission shall, after consulting the Defence Industrial Readiness Board, restrict the application of the measures provided for in Articles 46 and 47 to the crisis-relevant products disturbed or under threat of disturbance on account of the supply crisis. The use of the measures referred to in paragraph 1 of this Article shall be proportionate and restricted to what is necessary for addressing serious disruptions affecting the supply chains of the crisis-relevant products in the Union and must be in the best interest of the Union. The use of those measures shall avoid placing disproportionate administrative burden in particular on SMEs.

3. Where the supply crisis state is activated pursuant to Article 44 and where appropriate in order to address the supply crisis in the Union, the Defence Industrial

Readiness Board may assess and advise on appropriate and effective emergency measures.

4. The Commission shall regularly inform the European Parliament and the Council of any measures taken in accordance with paragraph 1 and explain the reasons for its action.

5. The Commission may, after consulting the Defence Industrial Readiness Board, issue guidance on the implementation and the use of the emergency measures.

Article 46

Information gathering

1. Where the supply crisis state is activated pursuant to Article 44, the Commission may request the relevant undertakings contributing to the production of crisis-relevant products, which are not defence products, with the prior agreement of the Member State in which it is established, to provide information about their production capabilities, production capacities and current primary disruptions within a set time limit. The requested information shall be limited to what is necessary to assess the nature of the supply crisis or to identify and assess potential mitigation or emergency measures at Union or national level. The information requests shall not entail the supply of information the disclosure of which would be contrary to the Member States' essential security interests.

2. Before launching a request for information, the Commission may carry out a voluntary consultation of a representative number of relevant undertakings with a view to identifying the appropriate and proportionate content of such a request. The Commission shall prepare the request for information in cooperation with the Defence Industrial Readiness Board.

3. The Commission shall use secure means to launch the request for information and handle any acquired information in accordance with Article 61. For this purpose, national competent authorities shall transmit to the Commission the list of contacts established under Article 41(5).

4. The Commission shall without undue delay forward a copy of the request for information to the national competent authority of the Member State in whose territory the production site of the addressed undertaking is situated. If the national competent authority so requires, the Commission shall transmit the information acquired from the relevant undertaking in accordance with Union law.

5. The request for information shall state its legal basis, be limited to the minimum necessary and be proportionate in terms of the granularity and volume of the data and frequency of access to the data requested, have regard for the legitimate aims of the undertaking and the cost and effort required to make the data available, and set out the time limit within which the information is to be provided. It shall also state the penalties provided for in Article 55.

6. The owners of the undertakings or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution shall supply the information requested on behalf of the undertaking or the association of undertakings concerned.

7. If an undertaking established in the Union is subject to a request for information from a third country, related to its activities for a Union's critical defence supply chain, it shall inform the Commission, in due time, in such a manner as to enable the Commission to request similar information from the undertaking. The Commission shall inform the Defence Industrial Readiness Board of the existence of such request from a third country.

8. If an undertaking supplies incorrect, incomplete or misleading information in response to a request made pursuant to this Article, or does not supply the information within the prescribed time limit, it shall be subject to fines set in accordance with Article 55, except where the undertaking has sufficient reasons for not supplying the requested information.

Article 47

Priority-rated orders

1. Where the crisis state is activated pursuant to Article 44, a Member State which faces or may face severe difficulties either in the placing of an order or in the execution of a contract for the supply of key defence products due to shortages or serious risks of shortages along a Union's critical defence supply chain, may request the Commission to require an undertaking to accept, or to prioritise an order of crisis-relevant products, which are not defence products ('priority rated order').

2. Upon a request referred to in paragraph 1, the Commission may, after consulting the Member State of establishment of the undertaking concerned and with its agreement, notify the undertaking concerned of its intent to impose a priority rated order.

3. The notification referred to in paragraph 2 shall include information about the legal basis for the request, specify the product, specifications and quantities concerned as well as the schedule and time-limit within which the order would have to be performed, and state the reasons justifying the use of the priority rated order.

4. From the notification referred to in paragraph 2, the undertaking shall reply to the Commission, within five working days and state whether it can accept or not the order. Where the urgency of the situation requires it, the Commission may, based on a justification of such urgency, reduce the deadline for the undertaking to reply.

5. Where the undertaking declines the priority rated order, it shall provide the Commission with a detailed justification hereor.

6. Where the undertaking accepts the priority rated order, the order shall be deemed accepted under the conditions described in the Commission's order in accordance with the meaning of paragraph 1 and the undertaking shall be legally bound.

7. Where the notified undertaking declines the priority rated order, the order shall be deemed refused. Having due regard to the justifications invoked by the undertaking, the Commission may:

   (a) abstain from pursuing the order;

   (b) oblige, by way of implementing acts, the concerned undertakings to accept or perform the priority rated order at a fair and reasonable price.

8. The Commission shall take into account the objections raised by the undertaking under paragraph 7 and state the reasons why, in line with the proportionality

principle and the fundamental rights of the undertaking under the Charter of Fundamental rights of the Union, it was necessary to adopt the implementing act referred to in paragraph 7, point (b), in light of the circumstances described in paragraph 1.

9. The Commission shall state in the implementing act referred to in paragraph 7, point (b), the legal basis of the priority rated order, fix the time-limit within which the order is to be performed, and set out the product, specifications, volume, and any other parameter to be complied with. The Commission shall also state the penalties provided for in Article 55 for non-compliance with the obligation.

10. Where the undertaking has accepted the priority rated order of the Commission under paragraph 6 or where the Commission has adopted an implementing act under paragraph 7(b), the priority rated order shall:

    (a) be placed at a fair and reasonable price, adequately taking into account the economic operator's opportunity costs when fulfilling the priority rated orders vis-à-vis existing contractual obligations;

    (b) take precedence over any performance obligation under private or public law with the exception of these directly related to military orders.

11. Any conflict between a priority rated order and a measure under any other prioritisation mechanism of the Union shall be resolved by the Commission, based on the weighing of the public interest.

12. Where the undertaking has agreed to the order of the Commission under paragraph 6 or where the Commission has adopted an implementing act under paragraph 7(b), the undertaking may request the Commission to review the priority rated order where it considers it to be duly justified based on one of the following grounds:

    (a) the undertaking is unable to perform the priority rated order on account of insufficient production capability or production capacity, even under preferential treatment of the order;

    (b) acceptance of the order would place an unreasonable economic burden and entail particular hardship for the undertaking.

13. The undertaking shall provide all relevant and substantiated information to allow the Commission to assess the merits of the objections raised.

14. Based on the examination of the reasons and evidence provided by the undertaking, the Commission may, after consulting the Member State of establishment, amend its implementing Act to release, partially or in totality the undertaking concerned from its obligations under this Article.

15. This Article shall be without prejudice to the use of national mechanisms or initiatives having an equivalent effect.

16. When an undertaking established in the Union is subject to a measure of a third country which entails a priority rated order, it shall notify the Commission thereof. The Commission shall then inform the Committee of the existence of such measures.

17. Where an undertaking accepts or is obliged to accept and prioritise a priority rated order in accordance with paragraphs 6 or 7(b) it shall be shielded from any contractual or extra-contractual liability in relation to comply with the priority rated requests. The liability shall be excluded only to the extent the violation of contractual obligations was necessary for compliance with the mandated prioritisation.

18. Where an economic operator, after having expressly accepted or been obliged to accept to prioritise the orders requested by the Commission, intentionally or through gross negligence, does not comply with the obligation to prioritise those orders, it shall be subject to fines set in accordance with Article 54, except where the undertaking has sufficient reasons for not complying with the obligation to prioritise those orders.

19. The Commission shall adopt an implementing act laying down the practical and operational arrangements for the functioning of priority rated requests.

20. The implementing acts referred to in this Article shall be adopted in accordance with the examination procedure referred to in Article 58 (3).

SECTION 4

SECURITY-RELATED SUPPLY CRISIS STATE

Article 48

Activation of the security-related supply crisis state

1. A security-related supply crisis shall be considered to occur where:

   (a) A security crisis has arisen or is deemed to have arisen;

   (b) there are serious disruptions in the provision of products or serious obstacles to trade in defence products within the Union causing significant shortages of defence products or related intermediate products or raw or processed materials.

2. Where a security-related supply crisis occurs or where the Commission or the Defence Industrial Readiness Board becomes aware of a potential security-related supply crisis pursuant to Article 43, the Commission shall assess, with the support of the High-Representative, whether the conditions of paragraph 1 of this Article are met. That assessment shall take into account the potential positive and negative impacts and consequences of the security-related supply crisis state on the Union's defence supply chains. Where that assessment provides concrete and reliable evidence, the Commission may propose to the Council to activate the security-related supply crisis state.

3. The Council, upon the proposal of the Commission and acting by qualified majority, may adopt an Implementing Act activating the security-related supply crisis state where that is appropriate to address the crisis, taking into account the need to ensure a high level of security of the Union, Member States and Union citizens.

4. The Council shall set out in the Implementing Act activating the security-related supply crisis state which of the measures set out in Articles 49 to 54 are appropriate to the crisis, taking into account the need to ensure a high level of security of the Union, Member States and Union citizens, and which measures are therefore to be activated.

5. The security-related supply crisis state shall be activated for a maximum period of twelve months. No later than three weeks before the expiry of the period for which the security-related supply crisis state was activated, the Commission with the support of the High-Representative shall submit to the Council a report, assessing

whether that period should be prolonged. The report shall in particular analyse the security situation and the economic consequences of the security crisis in the Union as a whole and in Member States, as well as the impact of the measures previously activated under this Regulation.

6. The Commission may propose prolongation to the Council, specifying which of the measures are appropriate for prolongation, when the assessment referred to in paragraph 4 concludes that it is appropriate that the period for which the security-related supply crisis state is activated be prolonged. The prolongation shall be for up to six months. The Council, acting by qualified majority, may repeatedly decide to prolong the period for which the security-related supply crisis state is activated where that is appropriate to address the crisis, taking into account the need to ensure a high level of security of the Union, Member States and European citizens.

7. The Commission, after consulting the Defence Industrial Readiness Board, may propose to the Council to adopt an implementing act activating additional measures or deactivating any activated measures set out in Articles 49 to 54, in addition to those measures that it had already activated, where that is appropriate to address the crisis, taking into account the need to ensure a high level of security of the Union, Member States and Union citizens.

8. Upon expiry of the period for which the security-related supply crisis state is activated, the measures taken in accordance with Articles 49 to 54 shall cease to apply.

In the course of the preparation and implementation of the measures set out in Articles 49 to 54, the Commission shall, whenever possible, act in close coordination with the Defence Industrial Readiness Board, which shall provide advice in a timely manner. The Commission shall inform the Defence Industrial Readiness Board on the action taken.

9. Where the security-related supply crisis state is activated, the Commission may take the measure provided for in Articles 46 and 47, under the conditions laid down therein and in Article 45.

Article 49

Information gathering

Where the Council activates this measure in accordance with Article 48(4), the Commission may take the measure provided for in Article 46 in relation to defence products, in accordance with the conditions defined therein.

Article 50

Prioritisation of defence products (Priority Rated Requests)

1. Where the Council activates this measure in accordance with Article 48(4), a Member State, which 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 and these difficulties may undermine the security of the Union and of its Member States, may ask the Commission to require an undertaking to accept, or to prioritise certain orders

of crisis-relevant products ('priority rated requests'). These requests may only concern defence products.

2. Upon a request referred to in paragraph 1, the Commission may, after the consultation of the Member State of establishment of the concerned undertaking and with its prior agreement, require the latter to accept the priority rated requests. The Commission's request shall explicitly indicate that the economic operator remains free to refuse the request.

3. Where the undertaking to which the request referred to in paragraph 1 is addressed has expressly accepted the request to prioritise the requests, the Commission shall, after the consultation of the Member State of establishment of the concerned undertaking and with its prior agreement, adopt an implementing act providing for:

   (a) the legal basis of the priority rated requests which has to be complied with by the undertaking;

   (b) the crisis-relevant products subject to the priority rated request and quantity in which they are to be supplied;

   (c) the time limits within which the priority rated request is to be completed;

   (d) the beneficiaries of the priority rated request, and

   (e) the waiver of contractual liability under the conditions laid down in paragraph 5.

4. The priority rated requests shall be placed at a fair and reasonable price adequately taking into account the economic operator's opportunity costs when fulfilling the priority rated requests vis-à-vis existing contractual obligations. The priority rated requests shall take precedence over any prior private or public contractual obligation related to the products subject to the priority rated request under private or public law.

5. The economic operator subject to that priority-rated request shall not be liable for any breach of contractual obligation that is governed by the law of a Member State, where:

   (a) the breach of contractual obligations is strictly necessary for compliance with the required prioritization,

   (b) the implementing act referred to in paragraph 3 has been complied with and

   (c) the acceptance of the priority rated request was not solely made with a view to unduly avoiding a prior performance obligation.

6. Where an economic operator, after having expressly accepted to prioritise the orders requested by the Commission, intentionally or through gross negligence, does not comply with the obligation to prioritise those orders, it shall be subject to fines set in accordance with Article 55, except where the undertaking has sufficient reasons for not complying with the obligation to prioritise those orders.

7. This Article shall be without prejudice to the use of national mechanisms or initiatives having an equivalent effect.

8. When an undertaking established in the Union is subject to a measure of a third country which entails a priority rated request, it shall notify the Commission thereof. The Commission shall then inform the Committee of the existence of such measures.

9. The implementing act referred to in paragraph 3 shall be adopted in accordance with the examination procedure referred to in Article 58(3).

Article 51

Intra-EU transfers of defence products

1. Where the Council activates this measure in accordance with Article 48(4) and without prejudice to Directive 2009/43/EC and Member States' prerogatives under that Directive, Member States shall ensure that applications related to intra-EU transfers are processed in an efficient and timely manner. To that end, all national authorities concerned shall ensure that the treatment of an application does not exceed 2 working days.
2. Transfers of crisis-relevant products cannot be considered as sensitive within the meaning of article 4, paragraph 8 of Directive 2009/43/EC.
3. Member States shall refrain from imposing restrictions to the transfer of defence-related products as defined in Article 2 of Directive 2009/43/EC within the Union. Where Member States impose such restrictions on grounds of security or defence, it shall be done only if those restrictions are:
   (a) transparent, i.e. enshrined in public statements/documents;
   (b) duly motivated, i.e. they need to spell out the reasons and the link to security or defence;
   (c) proportionate, i.e. not going beyond what is strictly necessary;
   (d) relevant and specific, i.e. a restriction needs to be specific to a defence-related product or a category of defence-related products;
   (e) non-discriminatory.

Article 52

Support to emergency defence innovation actions

Where the Council activates this measure in accordance with Article 48(4), innovation actions related to one of the following activities shall be deemed eligible under the Programme, provided for in Chapter II:

(a) activities that aim at rapid adaptation and modification of civilian products for defence applications;

(b) activities that aim at very significantly shortening the delivery lead time of defence products;

(c) activities that aim at significantly simplifying the technical specifications of defence products in order to enable their mass production;

(d) activities that aim at significantly simplifying the production process of defence products to enable their mass production.

Article 53

Certification in security-related supply crisis state

1. Where the Council activates this measure in accordance with Article 48(4), Member States shall ensure that administrative procedures related to the certification and where necessary technical adaptations are processed in the most rapid possible way, according to their applicable national laws and regulations.
2. Where such status exists in national law, certification of crisis-relevant defence products shall be allocated the status of the highest national significance possible.
3. Where this measure is activated, defence products certified in a Member State shall be deemed certified in another Member State without being subject to additional controls.
4. The Implementing Act of the Council referred to article 48(3) may lay down more precise provisions on the scope of this measure.
5. This measure shall be without prejudice to Member States' essential security interests.

Article 54

National fast-tracking of permit granting procedures

1. Where the Council activates this measure in accordance with Article 48(4)and where such status exists in national law the planning, construction and operation of production facilities of crisis-relevant products shall be allocated the status of the highest national significance possible and be treated as such in permit granting processes, including those relating to environmental assessments and if national law so provides, in spatial planning.
2. The security of supply of defence products may be considered an imperative reason of overriding public interest within the meaning of Article 6(4) and Article 16(1)(c) of Directive 92/43/EEC and of overriding public interest within the meaning of Article 4(7) of Directive 2000/60. Therefore, the planning, construction and operation of related production facilities may be considered of overriding public interest, provided that the remaining other conditions set out in these provisions are fulfilled.

SECTION 5

PENALTIES

Article 55

Penalties

1. The Commission may, by way of implementing act, impose on the undertakings or associations, including their owners or representatives, being the addressees of information gathering measures referred to in Articles 46, and 48, or of any of the

obligations to inform the Commission of a third-country obligation pursuant to Articles 47(16) and 50(8) or to prioritise the production of crisis-relevant products pursuant to Articles 47 or 49, where it deems it to be necessary and proportionate:

(a) fines not exceeding EUR 300 000, where it, intentionally or through gross negligence, supplies incorrect, incomplete or misleading information in response to a request made pursuant to Article 46 and 48, or does not supply the information within the prescribed time limit;

(b) fines not exceeding EUR 150 000, where it, intentionally or through gross negligence, does not comply with the obligation to inform the Commission of a third-country obligation pursuant to Article 47(16) and 50(8);

(c) periodic penalty payments not exceeding 1,5 % of the average daily turnover in the preceding business year for each working day of non-compliance from the date established in the decision in which the priority-rated order was issued, where it, intentionally or through gross negligence, does not comply with an obligation to prioritise the production of crisis-relevant products pursuant to Article 47. Where the undertaking concerned is an SME, the periodic penalty payments imposed shall not exceed 0,5 % of its average daily turnover in the preceding business year;

(d) fines not exceeding EUR 300 000, where it, intentionally or through gross negligence, does not comply with the obligation to prioritise the production of crisis-relevant products pursuant to Article 49.

2. Before taking a decision pursuant to paragraph 1 of this Article, the Commission shall provide an opportunity for the concerned undertakings and associations, including their owners or representatives, to be heard in accordance with Article 56. It shall take into account any duly reasoned justification presented by them for the purpose of determining whether fines or periodic penalty payments are deemed necessary and proportionate.

3. Implementing acts referred to in this Article shall be adopted in accordance with the examination procedure referred to in Article 58(3).

4. In fixing the amount of the fine or periodic penalty payment, the Commission shall take into consideration the nature, gravity and duration of the infringement, including in cases of non-compliance with the obligation to accept and prioritise a priority-rated order set out in Article 47, whether the undertakings or associations, including their owners or representatives referred to in paragraph (1), have partially complied with the priority-rated order.

5. The fines shall constitute external assigned revenue within the meaning of Article 21(5) of the Financial Regulation to the Programme and of the Ukraine Support Instrument.

Article 56

Right to be heard for the imposition of fines or periodic penalty payments

1. Before adopting a decision pursuant to Article 55, the Commission shall ensure that the concerned undertakings and associations, including their owners or representatives, have been given the opportunity to submit observations on:

(a) the preliminary findings of the Commission, including any matter to which the Commission has taken objections;

(b) the measures that the Commission may intend to take in view of the preliminary findings pursuant to point (a) of this paragraph.

2. The concerned undertakings and associations, including their owners or representatives may submit their observations to the Commission's preliminary findings within a time limit which shall be fixed by the Commission in its preliminary findings, and which may not be less than 14 working days.

3. The Commission shall base its imposition of fines or periodic penalty payments only on objections on which the concerned undertakings and associations, including their owners or representatives, have been able to comment.

4. Where the Commission has informed the concerned undertakings and associations, including their owners or representatives, of its preliminary findings as referred to in paragraph (1), it shall give access, if so requested, to the Commission's file under the terms of a negotiated disclosure, subject to the legitimate interest of undertakings in the protection of their business secrets, or in order to preserve business secrets or other confidential information of any person. The right of access to the file shall not extend to confidential information and internal documents of the Commission or the authorities of the Member States. In particular, the right of access shall not extend to correspondence between the Commission and the authorities of the Member States. Nothing in this paragraph shall prevent the Commission from disclosing and using information necessary to prove an infringement.

Chapter V

Governance, evaluation and control

Article 57

Defence Industrial Readiness Board

1. The Defence Industrial Readiness Board is hereby established.

2. The general task of the Board is to assist and provide advice and recommendations to the Commission pursuant to this Regulation, in particular pursuant to its Chapter IV [Security of Supply].

3. To assist the Commission in the implementation of the measures referred to in Chapter II, the Defence Industrial Readiness Board shall assist the latter in the identification of funding priority areas, taking into account the defence capability priorities commonly agreed by Member States within the framework of the Common Foreign and Security Policy (CFSP), in particular in the context of the Capability Development Plan.

4. The Commission shall maintain a regular flow of information to the Defence Industrial Readiness Board on any planned measures or measures that have been taken related to the activation of the supply crisis or security-related supply crisis state. The Commission shall provide the necessary information through a secured IT system.

5. For the purposes of the supply-crisis state as referred to in Article 44, the Defence Industrial Readiness Board shall assist the Commission in the following tasks:

   (a) analysing crisis-relevant information gathered by Member States or the Commission;

   (b) assessing whether the criteria for activation or deactivation of the supply-crisis state have been fulfilled;

   (c) providing guidance on the implementation of the measures chosen to respond to supply crisis at Union level;

   (d) performing a review of national crisis measures;

   (e) facilitating exchanges and sharing of information, including with other crisis-relevant bodies at Union level, as well as, as appropriate, third countries, with particular attention paid to developing countries, and international organisations.

6. For the purposes of the security-related supply-crisis state as referred to in Article 48, the Defence Industrial Readiness Board shall:

   (a) facilitate coordinated action by the Commission and the Member States;

   (b) adopt opinions and guidance, including specific response measures, for the Member States for ensuring the timely availability and supply of crisis-relevant products;

   (c) assist and provide guidance on the activation of measures as referred to in Articles 49 to 54;

   (d) provide a forum for the coordination of actions of the Council, the Commission, and other relevant Union bodies.

7. The Defence Industrial Readiness Board shall be composed of the representatives of the Commission, the High-Representative and Head of the European Defence Agency, Member States and associated countries. Each Member State or associated country shall nominate one representative and one alternate representative. The Board shall be chaired by the Commission for the purposes of the tasks laid down in this Regulation. The secretariat of the Defence Industrial Readiness Board shall be ensured by the Commission.

8. The Defence Industrial Readiness Board shall meet whenever the situation requires, upon request from the Commission or a Member State or an associated country. It shall adopt its rules of procedure on the basis of a proposal submitted by the Commission.

9. The Defence Industrial Readiness Board may issue opinions, upon the request of the Commission or on its own initiative. The Defence Industrial Readiness Board shall endeavour to find solutions which command the widest possible support.

10. The Defence Industrial Readiness Board shall invite, at least once a year, representatives from National Defence Industrial Associations and selected industrial representatives, taking into account the necessity to ensure a balanced geographical representation (structured dialogue with defence industry). Where the supply crisis state referred to in Article 44 or the security supply crisis state referred to in Article 48 has been activated, the Defence Industrial Readiness Board shall invite high-level

industrial representatives to meet in special configuration in order to discuss issues linked to crisis-relevant products.

11. The Defence Industrial Readiness Board shall invite the representatives of other crisis-relevant bodies at Union level as observers to the relevant meetings of the Board.

12. The Defence Industrial Readiness Board shall invite, where relevant and notably with a view to actions reinforcing the Ukrainian DTIB, in line with its rules of procedure and with due respect to the security and defence interests of the Union and its Member States, a representative from Ukraine to attend meetings as an observer.

13. The Commission shall ensure transparency and provide members of the Board with equal access to information, in order to ensure that the decision-making process reflects the situation and the needs of all Member States.

14. The Commission may, on its own initiative or on the proposal of the Defence Industrial Readiness Board, set up working groups on an *ad hoc* basis to support the Defence Industrial Readiness Board in its work for the purpose of examining specific questions on the basis of the tasks referred to in paragraph 1. Member States shall nominate experts for the working groups.

15. The Commission shall set up a working group on legal, regulatory and administrative hurdles. The objectives of this working group are:

    (a) to identify existing or potential legal, regulatory and administrative obstacles at international, EU and national levels to the achievement of the objectives listed in Article 4;

    (b) to identify potential solutions and/or mitigation measures to identified obstacles.

Article 58

Committee Procedure

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

2. The EDA shall be invited to provide its views and expertise to the committee as an observer. The EEAS shall also be invited to assist in the work of the committee.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

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

Article 59

EU – UA Framework agreement

1. The Commission shall conclude a framework agreement with Ukraine for the implementation of the actions set out in this Regulation which concern Ukraine or legal entities established in Ukraine receiving Union funds.

2. The framework agreement concluded with Ukraine, taken as a whole, and contracts and agreements signed with legal entities established in Ukraine receiving Union funds, shall ensure that the obligations set out in Article 129 of the Financial Regulation can be fulfilled.

3. The framework agreement shall lay down the obligations of the Ukrainian authorities and bodies entrusted of budget implementation tasks to take all the necessary measures including legislative, regulatory and administrative measures to respect the principles of sound financial management, transparency and non-discrimination, to ensure the visibility of Union action when managing the Union funds, to fulfil the appropriate control and audit obligations and assume the resulting responsibilities, and to protect the financial interests of the Union, by, in particular, detailed enacting provisions concerning:

   (a) the activities related to control, supervision, monitoring, evaluation, reporting and audit of Union funding under the Programme, as well as investigations, anti-fraud measures and cooperation;

   (b) rules on taxes, duties and charges in accordance with Article 27(9) and (10) of Regulation (EU) 2021/947;

   (c) the right of the Commission to monitor activities under this Regulation carried out by the legal entities established in Ukraine, along the whole project cycle, including for cooperation for common procurement action, to take part in these as observer, as appropriate, and to make recommendations for the improvement of such activities and commitment by the Ukrainian authorities to make their best efforts to implement such recommendations of the Commission and to report on this implementation;

   (d) the obligations referred to in Article 64(2), including precise rules and timeframe on collection of data by Ukraine and access for the Commission and OLAF;

   (e) the preservation of security interests, including a level of protection of classified information and confidentiality equivalent to that set out in Articles 59 and 60;

   (f) provisions on protection of personal data.

4. Funding shall only be granted to Ukraine after the framework agreement has entered into force and that the actions needed to implement the requirements it establishes have been implemented by the parties.

Article 60

Application of the rules on classified information

1. The originatorship of classified foreground information generated in implementing eligible actions listed under Article 11, shall be under the responsibility of the participating Member States who will establish the applicable security framework under relevant national laws.

2. Such a security framework shall be without prejudice to the possibility for the Commission to have access to the necessary information for carrying out the action.

3. The Commission shall protect classified information received in accordance with the security rules set out in Decision (EU, Euratom) 2015/444 and Decision 2013/488/EU.

4. The applicable security framework for the action has to be put in place at the latest before the signature of the grant agreement or the contract. The relevant documents shall form integral part of the Grant Agreement.

5. The Commission shall make available approved and accredited existing systems to facilitate the exchange of classified information between the Commission, the High-Representative / Head of Agency, the Member States and associated countries and, where appropriate, with the applicants and the recipients.

Article 61

Confidentiality and processing of information

1. Information received as a result of the application of this Regulation shall be used only for the purpose for which it was requested.

2. Member States, the Commission and the High-Representative / Head of Agency shall ensure the protection of trade and business secrets and other sensitive and classified information acquired and generated in application of this Regulation in accordance with Union law and the respective national law.

3. Member States,the Commission and the High-Representative / Head of Agency shall ensure that classified information provided or exchanged under this Regulation is not downgraded or declassified without the prior written consent of the originator.

4. The Commission shall not share any information in a way that can lead to the identification of an entity when the sharing of the information results in potential commercial or reputational damage to that entity or in divulging any trade secrets.

5. The Commission shall handle information containing any data of an entity or any trade secrets in a way not less stringent than the handling of Sensitive non Classified Information, including the application of the "need to know principle" and the handling and sharing in appropriate encrypted environments.

Article 62

Personal data protection

1. This Regulation shall be without prejudice to the obligations of Member States relating to their processing of personal data under Regulation (EU) 2016/679 of the European Parliament and of the Council ([8]) and Directive 2002/58/EC of the European Parliament and of the Council ([9]), or the obligations of the Commission

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

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

and, where appropriate, other Union institutions, bodies, offices and agencies, relating to their processing of personal data under Regulation (EU) 2018/1725 of the European Parliament and of the Council ([10]), when fulfilling their responsibilities.

2. Personal data shall not be processed or communicated except in cases where this is strictly necessary for the purposes of this Regulation. In such cases Regulations (EU) 2016/679 and (EU) 2018/1725 shall apply as appropriate.

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

Article 63

Audits

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

Article 64

Protection of the financial interests of the Union

1. Where an associated country participates in the Programme by means of a decision adopted pursuant to the Agreement on the European Economic Area or on the basis of any other legal instrument, the associated country shall grant the necessary rights and access required for the authorising officer responsible, OLAF and the Court of Auditors to comprehensively exercise their respective competences. In the case of OLAF, such rights shall include the right to carry out investigations, including on-the-spot checks and inspections, as provided for in Regulation (EU, Euratom) No 883/2013.

2. The agreement referred to in Articles 59 shall provide for the obligations of Ukraine:

   (a) to take appropriate measures to prevent, detect and correct fraud, corruption, conflicts of interests and irregularities affecting the financial interests of the Union, to avoid double funding and to take legal actions to recover funds that have been misappropriated;

   (b) to regularly check that the financing provided has been used in accordance with the applicable rules, in particular regarding the prevention, detection and correction of fraud, corruption, conflicts of interests and irregularities;

   (c) to accompany a request for payment under the Programme by a declaration that the funds were used in accordance with the principle of sound financial management and for their intended purpose and managed appropriately in

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

particular in accordance with Ukrainian rules complemented by international standards, on prevention, detection and correction of irregularities, fraud, corruption and conflicts of interests;

(d) to expressly authorise the Commission, OLAF, the Court of Auditors and, where applicable, EPPO to exert their rights as provided for in Article 129(1) of the Financial Regulation, in application of the principle of proportionality.

Article 65

Information, communication and publicity

1. The recipients of Union funding shall acknowledge the origin of the funds and ensure the visibility of the Union funding, in particular when promoting the actions and their results, by providing coherent, effective and proportionate targeted information to multiple audiences, including the media and the public.

2. The Commission shall implement information and communication actions relating to the Programme, to actions taken pursuant to the Programme and to the results obtained.

3. Financial resources allocated to the Programme shall contribute to the corporate communication of the political priorities of the Union, insofar as those priorities are related to the objectives referred to in Article 4.

4. Financial resources allocated to the Programme may contribute to the organisation of dissemination activities, match-making events and awareness-raising activities, in particular aiming at opening up supply chains to foster the cross-border participation of SMEs.

Article 66

Evaluation

1. By 30 June 2027, the Commission shall draw up a report evaluating the implementation of the measures set out in this Regulation and their results, as well as the opportunity to extend their applicability and provide for their funding, particularly with regard to the evolution of the security context and any persistent risks in relation to the supply of defence products. The evaluation report shall build on consultations of the Member States and key stakeholders.

2. The Commission shall present the report to the European Parliament and the Council, accompanied, where appropriate, by relevant legislative proposals.

Article 67

Entry into force

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

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

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

1.2. Policy area(s) concerned

1.3. The proposal/initiative relates to:

1.4. Objective(s)

1.4.1. General objective(s)

1.4.2. Specific objective(s)

1.4.3. Expected result(s) and impact

1.4.4. Indicators of performance

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention, which is additional to the value that would have been otherwise created by Member States alone.

1.5.3. Lessons learned from similar experiences in the past

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

1.5.5. Assessment of the different available financing options, including scope for redeployment

1.6. Duration and financial impact of the proposal/initiative

1.7. Method(s) of budget implementation planned

2. MANAGEMENT MEASURES

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3.2.4. Compatibility with the current multiannual financial framework

3.2.5. Third-party contributions

3.3. Estimated impact on revenue

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

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')

1.2. Policy area(s) concerned

Union defence industrial policy

1.3. The proposal/initiative relates to:

☑ **a new action following a pilot project/preparatory action**[11]

☐ **the extension of an existing action**

☐ **a merger or redirection of one or more actions towards another/a new action**

1.4. Objective(s)

1.4.1. General objective(s)

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

(1) the establishment of the European Defence Industrial Programme (the 'Programme'), comprising measures for the strengthening of the competitiveness, responsiveness and ability of the EDTIB, which may include the establishment of a fund for the acceleration of defence supply chain transformation ('FAST');

(2) the establishment of a cooperation programme with Ukraine with a view to the recovery, reconstruction and modernisation of the Ukraine Defence Technological and Industrial Base (the 'Ukraine Support Instrument');

(3) a legal framework laying down the requirements and procedures for and the effects of setting-up the Structure for European Armament Programme ('SEAP') ;

(4) a legal framework aiming at ensuring security of supply, removing obstacles and bottlenecks and supporting the production of defence products;

(5) the establishment of a Defence Industrial Readiness Board.

[11] As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

1.4.2. Specific objective(s)

N/A

1.4.3. Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

Expected results: EDIP should contribute to closing the funding gap until 2027, by providing financial support for the reinforcement of the European and of the Ukraine DTIB, in a predictable, continuous and timely manner on the basis of an integrated approach.

1.4.4. Indicators of performance

Specify the indicators for monitoring progress and achievements.

Taking into consideration the short period of implementation, the results and impacts of the Programme will be assessed under retrospective evaluation at the end of the programme implementation. The Commission will ensure that the necessary indicators used for the monitoring of programme implementation will be put in place by the entity entrusted with the programme implementation. These will include: - increase of production capacity for defence products within the EU; - reduction of production lead time; - number of Member States participating in cooperation for common procurement; - number of economic operators receiving a facilitated access to finance; - number of new cross-border cooperations with undertakings established in another Member States or associated countries; - increase of support to Ukraine.

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

The Regulation will be implemented through direct management and indirect management, in particular for the implementation of blending operations. The Commission will need to be staffed with the appropriate experts in order to monitor effectively the implemention, including where implementation is entrusted to third parties based on a contribution agreement.

1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention, which is additional to the value that would have been otherwise created by Member States alone.

As highlighted by the Joint Communication on Defence Investment Gaps Analysis and Way Forward (JOIN/2022/24 final), decades of underinvestment generates gaps within defence capabilities available to EU Member States armed forces, as well as industrial gaps within the Union. Fragmentation of the demand also generated national industrial silos and a corresponding multitude of defence systems of the same kind, often not interoperable amongst each other. The current defence market

context is marked by an increased security threat, sees Member States rapidly increasing their defence budgets and aiming at similar equipment's purchases. This results into an amount of demand for defence products which overcome EDTIB manufacturing capacities for such products, currently tailored for peacetime. In this context, significant investments are needed for which defence companies, which do not normally engage substantial self-funded industrial investments, will need derisking, as well as regulatory support to remove existing bottlenecks such as access to skilled personnel, raw materials. The Union intervention by de-risking industrial investments via grants and incentivizing the cooperation for common procurement will allow a faster adaptation to ongoing structural market change. The proposed measures will also encourage the EDTIB's and Ukraine DTIB's resilience through cross-border industrial partnerships and collaboration of relevant companies in a joint industry effort to avoid worsening fragmentation of the supply chains.

1.5.3. Lessons learned from similar experiences in the past

N/A

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

The Programme will integrate two running EU instruments, the Instrument for the Reinforcement of the European Defence Industry through common Procurement (EDIRPA) and the Regulation supporting Ammunition Production (ASAP), and existing EU programmes such as the European Defence Fund. It will also take into account other EU defence initiatives such as the Permanent Structured Cooperation (PESCO) or the Strategic Compass for Security and Defence. It will generate synergies with other EU programmes.

1.5.5. Assessment of the different available financing options, including scope for redeployment

N/A

1.6. Duration and financial impact of the proposal/initiative

☑ **limited duration**

– ☑ in effect from 2025 to 31/12/2027

– ☑ Financial impact from 2025 to 2027 for commitment appropriations and from 2026 to 2033 for payment appropriations.

☐ **unlimited duration**

– Implementation with a start-up period from YYYY to YYYY,

– followed by full-scale operation.

1.7. Method(s) of budget implementation planned[12]

☑ **Direct management** by the Commission

– ☑ by its departments, including by its staff in the Union delegations;

– ☐ by the executive agencies

☐ **Shared management** with the Member States

☑ **Indirect management** by entrusting budget implementation tasks to:

– ☐ third countries or the bodies they have designated;

– ☑ international organisations and their agencies (to be specified);

– ☑ the EIB and the European Investment Fund;

– ☐ bodies referred to in Articles 70 and 71 of the Financial Regulation;

– ☑ public law bodies;

– ☐ bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees;

– ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;

– ☑ bodies or persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

– *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

The European Defence Industry Programme shall be implemented in direct management and indirect management in accordance with the Financial Regulation.

[12] Details of budget implementation methods and references to the Financial Regulation may be found on the BUDGpedia site: https://myintracomm.ec.europa.eu/corp/budget/financial-rules/budget-implementation/Pages/implementation-methods.aspx

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

In accordance with article 63 of the Programme the Commission will draw up an evaluation report not later dan 30/06/2027 for the Programme and submit it to the EP and Council. The report shall evaluate the impact and effectiveness of the actions under the Programme. To this end, the Commission will put in place necessary monitoring arrangements to ensure that relevant data are collected reliably and smoothly.

2.2. Management and control system(s)

2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

The Commission would have overall responsibility for the implementation of the Programme. In particular, the Commission intends to implement the Programme mainly in direct management. The use of direct management mode clarifies the responsibilities (implementation by authorising officers), shortens the delivery chain (reducing Time To Grant and Time To Pay), avoids conflicts of interests and reduces the implementation costs (no management fees for an entrusted entity).

The Commission should define the funding priorities and conditions through one or several work programmes. The definition of priorities should be supported by the work of the Defence Industry Readiness Board. A Programme Committee of Member States should be established, to which the European Defence Agency should be invited to provide its views and expertise to the committee as an observer, and the European External Action Service, including its Military Staff, should be invited to assist in the committee. The Commission would adopt the work programmes following the opinion of the committee under the examination procedure.

The funding under the Programme will mainly take the form of grants covering up to 100% of the costs of the action, as well as loans. The Commission may use simplified cost options (e.g. financing not linked to costs) in its grants in order to reduce the administrative burden for the beneficiaries and focus the effort on the results of the actions, in particular where recipients of funding are Member States contracting authorities.

The payment scheme will be prepared taking into account the beneficiary's proposal (in order to allow the beneficiary to avoid any treasury issue) while ensuring the protection of the Union budget. The Commission, as granting authority, may – in case of lack of or inadequate implementation of the actions or delays – reduce, withhold or terminate its financial contribution.

The control strategy for the programme, including ex-ante and ex-post controls, will build around the experience acquired in the EDF, and its precursor programmes, EDIDP and PADR.

Special attention will be paid to actions benefitting Ukraine. The control mechanisms in place provide a framework to ensure that all the appropriate measures to protect the financial interests of the Union are in place. It will guarantee that the principle of proportionality is taken into account and the specific conditions under which the Programme will operate.

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

The Programme is meant to support the reinforcement of the European and Ukraine DTIB.

Risks associated are an insufficient budgetary volume compared to actual needs, difficulty to identify bottlenecks within production, urgency of needs by Union's armed forces compared with production processes. The instrument being complementary to other initiatives agreed by the Council to support EU Member States' Armed Forces and Ukraine, coordination of demand between Member States, is a precondition.

The Commission would therefore implement the Programme in direct management building on the expertise gained in implementing the European Defence Fund, ASAP and EDIRPA prepare and adopt work programmes in a timely manner, shorten the time to grant.

2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)

The budget of the programme will mainly be implemented under direct management. Based on the Commission experience on grant management, the overall control costs of the Programme by the Commission are estimated at less than 1% of the related funds managed.

In terms of expected error rate(s), the aim is to maintain the error rate below the threshold of 2%. The Commission considers that the implementation of the programme in direct management, with trained (experienced staff, possibly recruited from Member States Ministries of Defence) and well-staffed teams acting under delegated authorising officers, applying clear rules and making an appropriate use of output based instruments will maintain an error rate below the 2% materiality threshold.

Financial contribution may be provided in the form of financing not linked to cost referred to in point (a) of Article 125(1) of Regulation (EU, Euratom) No 2018/1046.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.

The European Anti-Fraud Office (OLAF) is competent to carry out investigations on operations supported under this initiative. Agreements resulting from this Regulation, including agreements concluded with international organisations, shall provide for supervision and financial control by the Commission, or any representative authorised by it, and audits by the European Court of Auditors, the European Public Prosecutor's Office (EPPO) or OLAF, if necessary on-the spot. Commission's officials who have the required security clearance, can also make on site visits.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.[13]	from EFTA countries[14]	from candidate countries and potential candidates[15]	fromother third countries	other assigned revenue
	[XX.YY.YY.YY]	Diff./Non-diff.	YES/NO	YES/NO	YES/NO	YES/NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.	from EFTA countries	from candidate countries and potential candidates	from other third countries	other assigned revenue
5	13.0106 - Support expenditure for the EDIP Programme	Non-diff.	YES	pm	YES	YES
5	13.0801 - EDIP Programme	Diff.	YES	pm	YES	YES
6	14.01xx – Support expenditure for the Ukraine Support Instrument	Non-diff.	NO	pm	YES	YES
6	14.0901 – Ukraine Support Instrument	Diff.	NO	pm	YES	YES

[13] Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.
[14] EFTA: European Free Trade Association.
[15] Candidate countries and, where applicable, potential candidates from the Western Balkans.

3.2. Estimated financial impact of the proposal on appropriations

3.2.1. Source of financing of appropriations under the new European Defence Industry Programme

Contribution from European Defence Fund	2021	2022	2023	2024	2025	2026	2027	Total
Capability development						411.200	585.248	1.000.000
Defence research					3.552	208.600	287.848	500.000
Total EDF					3.552	619.800	876.648	1.500.000

3.2.2. Summary of estimated impact on operational appropriations

– ☐ The proposal/initiative does not require the use of operational appropriations

– ☑ The proposal/initiative requires the use of operational appropriations, as explained below:

EUR million (to three decimal places)

Heading of multiannual financial framework	5	Security and Defence – Cluster 13 Defence

			2021	**2022**	**2023**	**2024**	**2025**	**2026**	**2027**	***Post 2027***	TOTAL
13.0801 Operational appropriations EDIP -	Commitments	(1)						615.248	872.096		**1.487.344**

Programme											
	Payments	(2)						310.000	440.000	737.344	**1.487.344**
13.0106 – Support expenditure EDIP - Programme	Commitments = Payments	(3)					3.552	4.552	4.552		**12.656**
TOTAL appropriations for the envelop of the programme under heading 5	Commitments	=1+ 3					**3.552**	**619.800**	**876.648**		**1.500.000**
	Payments	=2+ 3					**3.552**	**314.552**	**440.552**	**737.344**	**1.500.000**

Heading of multiannual financial framework	06	NEIGHBOURHOOD AND THE WORLD – Cluster 14 – External Action

			2021	2022	2023	2024	2025	2026	2027	*Post 2027*	TOTAL
14.0901 – Ukraine Support Instrument	Commitments	(1)					pm	pm	pm		
	Payments	(2)					pm	pm	pm		
14.01xx – Support expenditure Ukraine Support Instrument	Commitments = Payments	(3)					pm	pm	pm		pm
TOTAL appropriations for the envelop of the programme under heading 6	Commitments	=1					**pm**	**pm**	**pm**		**pm**
	Payments	=2					**pm**	**pm**	**pm**		**pm**

TOTAL operational appropriations (all operational headings)	Commitments	(4)						615.248	872.096		**1.487.344**
	Payments	(5)						310.000	440.000	737.344	**1.487.344**
TOTAL appropriations of an administrative nature financed from the envelope for specific programmes (all operational headings)	Commitments = Payments	(6)					3.552	4.552	4.552		**12.656**

TOTAL appropriations under HEADINGS 1 to 6 of the multiannual financial framework	Commitments	=4+6					**3.552**	**619.800**	**876.648**		**1.500.000**
	Payments	=5+6					**3.552**	**314.552**	**440.552**	**737.344**	**1.500.000**

Heading of multiannual financial framework	**7**	'Administrative expenditure'

This section should be filled in using the 'budget data of an administrative nature' to be firstly introduced in the Annex to the Legislative Financial Statement (Annex 5 to the Commission decision on the internal rules for the implementation of the Commission section of the general budget of the European Union), which is uploaded to DECIDE for interservice consultation purposes.

EUR million (to three decimal places)

		2021	**2022**	**2023**	**2024**	**2025**	**2026**	**2027**	***Post 2027***	TOTAL
Human resources						3.712	3.712	3.712		**11.136**
Other administrative expenditure						0.258	0.258	0.131		**0.647**
TOTAL appropriations under HEADING 7 of the multiannual financial framework	(Total commitments = Total payments)					**3.970**	**3.970**	**3.843**		**11.783**

EUR million (to three decimal places)

		2021	2022	2023	2024	2025	2026	2027	*Post 2027*	TOTAL
TOTAL appropriations **across** HEADINGS of the multiannual financial framework	Commitments					7.522	623.770	880.491		**1.511.783**
	Payments					7.522	318.522	448.395	737.344	**1.511.783**

3.2.3. *Summary of estimated impact on administrative appropriations*

– ☐ The proposal/initiative does not require the use of appropriations of an administrative nature

– ☑ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

Years	2021	2022	2023	2024	2025	2026	2027	TOTAL
HEADING 7 of the multiannual financial framework								
Human resources					3.712	3.712	3.712	11.136
Other administrative expenditure					0.258	0.258	0.131	0.647
Subtotal HEADING 7 of the multiannual financial framework					3.970	3.970	3.843	11.783
Outside HEADING 7 of the multiannual financial framework								
Human resources					3.552	3.552	3.552	10.656
Other expenditure of an administrative nature (former BA lines)								
Subtotal outside HEADING 7 of the multiannual financial framework					3.552	3.552	3.552	10.656
TOTAL					**7.522**	**7.522**	**7.395**	**22.439**

The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

3.2.3.1. Estimated requirements of human resources

– ☐ The proposal/initiative does not require the use of human resources.

– ☑ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full time equivalent units

		Year **2025**	Year **2026**	Year **2027**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
O Establishment plan posts (officials and temporary staff)								
20 01 02 01 (Headquarters and Commission's Representation Offices)		19	19	19				
20 01 02 03 (Delegations)		1	1	1				
01 01 01 01 (Indirect research)								
01 01 01 11 (Direct research)								
Other budget lines (specify)								
O External staff (in Full Time Equivalent unit: FTE)[16]								
20 02 01 (AC, END, INT from the 'global envelope')								
20 02 03 (AC, AL, END, INT and JPD in the delegations)								
13 01 Support expenditure for the European Defence Industry Programme [17]	- at Headquarters	31	31	31				
	- in Delegations	2	2	2				
01 01 01 02 (AC, END, INT - Indirect research)								
01 01 01 12 (AC, END, INT - Direct research)								
Other budget lines (specify)								
TOTAL		**53**	**53**	**53**				

13 is the policy area or budget title concerned.

The establishment plan posts required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	The FTEs sought will work on the policy development, legal issues, with particular focus on grant and procurement matters, financial management, contract management, audit and evaluation.
External staff	The FTEs sought will work on the policy development, legal issues, with particular focus on grant and procurement matters, financial management, contract management, audit and evaluation.

16 AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JPD= Junior Professionals in Delegations.

17 Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

3.2.4. *Compatibility with the current multiannual financial framework*

The proposal/initiative:

– ☑ can be fully financed through redeployment within the relevant heading of the Multiannual Financial Framework (MFF).

Heading 5. See details in section 3.2.

– ☐ requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation.

Explain what is required, specifying the headings and budget lines concerned, the corresponding amounts, and the instruments proposed to be used.

– ☐ requires a revision of the MFF.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. *Third-party contributions*

The proposal/initiative:

– ☐ does not provide for co-financing by third parties

– ☑ provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

	2025	2026	2027					Total
as specified in Article 6	pm	pm	pm					pm
TOTAL appropriations co-financed	pm	pm	pm					pm

3.3. Estimated impact on revenue

– ☑ The proposal/initiative has no financial impact on revenue.

– ☐ The proposal/initiative has the following financial impact:

  – ☐ on own resources

  – ☐ on other revenue

  – please indicate, if the revenue is assigned to expenditure lines ☐

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative[18]						
		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article ……								

For assigned revenue, specify the budget expenditure line(s) affected.

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

[18] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.