



Plenary sitting

A9-0161/2023

28.4.2023

*****I**

REPORT

on the proposal for a regulation of the European Parliament and of the Council
on establishing the European defence industry Reinforcement through common
Procurement Act
(COM(2022)0349 – C9-0287/2022 – 2022/0219(COD))

Committee on Foreign Affairs
Committee on Industry, Research and Energy

Rapporteurs: Michael Gahler, Zdzisław Krasnodębski

Rapporteur for the opinion of the associated committee pursuant to Rule 57 of
the Rules of Procedure:
Ivars Ijabs, Committee on the Internal Market and Consumer Protection

(Joint committee procedure – Rule 58 of the Rules of Procedure)

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ***■*** symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council on establishing the European defence industry Reinforcement through common Procurement Act
(COM(2022)0349 – C9-0287/2022 – 2022/0219(COD))**

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2022)0349),
 - having regard to Article 294(2) and Article 173(3) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0287/2022),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 21 September 2022¹,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the opinions of the Committee on the Internal Market and Consumer Protection, of the Committee on Budgets and of the Committee on Budgetary Control,
 - having regard to the report of the Committee on Foreign Affairs and the Committee on Industry, Research and Energy (A9-0161/2023),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

¹ OJ C 486 of 21.12.2022, p. 168.

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ***■***.

to the Commission proposal

2022/0219 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on establishing the European defence industry Reinforcement through common
Procurement Act**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular
Article 173(3) thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The *Member State* Heads of State or Government, meeting in Versailles on 11 March, committed to “bolster European defence capabilities” in light of the Russian military aggression against Ukraine, *pursuing a strategic course of action to increase the capacity of the Union to act autonomously in the field of defence, in complementarity with the North Atlantic Treaty Organisation (NATO)*. They agreed to increase defence expenditures, *to strengthen* cooperation through joint projects and common procurement of defence capabilities, *to address* shortfalls, *to* boost innovation, *and to* strengthen and *further* develop the *Union* defence industry, *including small and medium-sized enterprises (SMEs)*. *The Union defence industry is a crucial player that should positively contribute to the security of Member States by providing effective new capabilities in a timely manner in order to keep pace with the changing security environment.*
- (2) The unjustified invasion of Ukraine by the Russian Federation on 24 February 2022 and the ongoing armed conflict in Ukraine has made it clear that it is critical to act *urgently* to address the existing shortfalls. It has led to the return of high-intensity warfare and territorial conflict in Europe, *with a direct impact on all Member States and to the detriment of citizens in the Union. It requires* a significant increase in the capacity of

² OJ C , , p. .

Member States to fill the most urgent and critical gaps, especially those exacerbated by the transfer of defence products to Ukraine, *in particular in the Member States in its close neighbourhood*.

- (2a) *The Russian military aggression against Ukraine has placed some Member States in the direct neighbourhood of a war zone, with all the difficulties that that proximity implies, including accidental civilian casualties in the border area, a massive movement of people fleeing the war, the shipment of military and humanitarian aid, but also a pressing need to prepare those Member States militarily for a potential escalation of the armed conflict to their own territories.*
- (2b) *The Russian military aggression against Ukraine has dramatically underlined the need to adapt the European defence industrial and technological base (EDTIB) to structural changes, to enhance the Union's military research and development (R&D), to modernise military equipment, in particular obsolete military equipment solutions designed and/or produced in the Soviet Union or later military equipment solutions based on them, and to strengthen cooperation between Member States in the framework of procurement in the field of defence in order to make the Union a relevant global player.*
- (2c) *The security situation in Europe requires urgent reflection on how to prevent further fragmentation of the defence sector via stand-alone Union initiatives and how to strategically link existing and future instruments.*
- (3) The Commission and the High Representative presented a Joint Communication on "The Defence Investment Gaps Analysis and Way Forward" on 18 May 2022. The Communication highlighted the existence, within the EU, of defence financial, industrial and capability gaps *and, in particular, specified that the return of warfare to Europe has underlined the effects of years of defence underspending, which has led to an accumulation of gaps and shortfalls in the collective military inventories as well as reduced industrial production capacity and limited joint procurement and collaboration. In addition to correcting this situation, increased defence expenditure should also urgently address the short-term need to replenish and, if considered to be necessary in light of the changed security situation, to expand defence stocks to compensate for the military assistance to Ukraine, to replace obsolete military equipment solutions designed and/or produced in the Soviet Union or later military equipment solutions based on them, on the basis of the demand for reinforcing strategic capabilities.*
- (4) A dedicated short-term instrument, designed in a spirit of solidarity, was indicated as a tool to incentivise Member States, on a voluntary basis, to pursue common procurement to fill the most urgent and critical gaps, especially those created by the response to the current Russia's aggression, in a collaborative way.
- (5) Such a new instrument will contribute to reinforce common defence procurement, *especially with regard to Member States' ambition of achieving 35 % of total*

equipment spending for Union collaborative defence equipment procurement, which reached only 18 % in 2021, and, through the associated Union financing, to strengthen and improve the Union's defence industrial capabilities.

- (5a)** *Such a new instrument should be viewed as an important step towards a European Defence Union and a single market for defence products, which is also intended to contribute to drive transformational change in the EDTIB, by stimulating the uptake of new technologies and supporting the development of the EDTIB across the Union.*
- (5b)** *Such a new instrument should contribute to enhancing the Union's open strategic autonomy, to strengthening its ability to protect its citizens and to reinforcing the Union's global position in the context of increasing security threats at the international level. European unity and interoperability are key for the future of the European security architecture.*
- (6)** Reinforcing the **EDTIB throughout the Union through the proper functioning of the internal market** should therefore be at the core of those efforts. Indeed difficulties and gaps still exist and the European defence **capabilities remain** highly fragmented, **inefficient**, lacking sufficient collaborative action and inter-operability of products. **Such a new instrument is intended to increase the quantities produced and to mobilise the strong potential of Union undertakings by supporting joint procurements.**
- (6a)** *For the purpose of this Regulation, the list of defence products as defined in Directive 2009/81/EC should be interpreted in a broad way in the light of the evolving character of technology, procurement policies and military requirements.*
- (6b)** *National regulations and an increasing administrative burden in the defence sector of the Member States have contributed to hindering competition and reducing economies of scale in the EDTIB.*
- (6c)** *The lack of coordination and cooperation regarding procurement risks contributing to rising prices, which could have the effect that increasing national defence budgets would not lead to stronger military capabilities.*
- (7)** In the current defence market context, marked by an increased security threat and the realistic perspective of a high intensity conflict, Member States are rapidly increasing their defence budgets and aiming at similar purchases. **In fact, twenty-two Member States are committed to allocating 2 % of GDP to defence spending, while simultaneously having a collective benchmark of 20 % of their respective defence spending dedicated to equipment procurement.** This results in an amount of demand which exceeds **EDTIB** manufacturing capacities, currently tailored for peace time.
- (8)** As a result, strong price inflation can be anticipated, as well as longer delays in delivery time, potentially harming the security of the Union and its Member States. Defence industries need to secure the production capacity necessary to process orders, as well as critical raw materials and sub-components. In this context producers might privilege

major orders, potentially leaving exposed the most vulnerable countries, lacking the critical size and financial means to ensure large orders.

- (8a) *The current geopolitical situation in the Eastern neighbourhood countries has shown that, whereas the duplication of efforts should be avoided, a diversified defence market can contribute to the variety of products immediately available on the market and can therefore be beneficial to an adequate satisfaction of Member States' urgent needs.*
- (9) *Nevertheless, efforts should be made so that the increased spending results in a much stronger **EDTIB** throughout the Union. Closer cooperation, together with the increased national investments are likely to strengthen the the European defence capabilities as well as increase global competitiveness and efficiency of the defence industry across the Union.*
- (10) In the light of the above challenges and the related structural changes in the *Union's* defence industry, *and in accordance with Article 173 of the Treaty on the Functioning of the European Union (TFEU), where the Union and the Member States aim to ensure that the competitiveness of the Union's industry exist*, it appears necessary to speed up the adjustment of the **EDTIB**, enhance its competitiveness and efficiency, *encourage close cooperation and coordination*, and thereby contribute to strengthening and reforming Member States' defence industrial capabilities. Addressing industrial shortfalls *throughout the Union* should include promptly tackling the most urgent gaps, *while also thinking critically ahead about securing all necessary components needed in the Union defence supply chain with regard to the the importance of security of supply arrangements for the development of long-term planning and cooperation, and for the functioning of the European defence equipment market.*
- (11) Common investment and defence procurement should in particular be incentivised, as such collaborative actions would ensure that the necessary changes in the *Union's* industrial base takes place in a collaborative manner, *increasing interoperability.*
- (12) To that end a Short Term Instrument for increasing the collaboration of the Member States in the defence procurement phase (the 'Instrument') should be established. It will incentivise Member States to pursue collaborative actions and in particular, when they procure in order to fill these gaps, to do so jointly, increasing the level of interoperability, *including with NATO*, and strengthening and reforming their defence industrial capabilities. *The Instrument should be seen as an emergency mechanism necessary to deal with the current emergency situation, and its structure and eligibility conditions should be without prejudice to the upcoming European Defence Investment Programme (EDIP).*
- (12a) *The resources allocated to the Instrument should not jeopardise the funding already allocated to specific Union actions.*
- (12b) *Since the Instrument was not envisaged when the Multiannual Financial Framework (MFF) for 2021-2027 was established, to avoid any cuts to Union programmes, any*

additional amount of the dedicated financial resources should be taken into consideration in the mid-term review of the MFF, with a view to ensuring the stability, coherence and ambition for the financing of the Instrument.

- (13) The Short Term Instrument should offset the complexity and risks associated with such joint actions while allowing economies of scale in the actions undertaken by Member States to reinforce and modernise the **EDTIB**, increasing thereby the Union's capacity resilience and security of supply. Incentivizing common procurement would also result into diminished costs in terms of *administrative burden*, exploitation, maintenance and withdrawal of the systems. *The Instrument should be accompanied by efforts to preserve a level playing field for suppliers from all Member States and to create incentives for the expansion of the EDTIB to further Member States throughout the Union, with a particular focus on the involvement of SMEs, start-ups and middle-capitalisation enterprises (mid-caps) in the value chain.*
- (13a) *The instrument should be used to boost the replacement of obsolete military equipment solutions designed and/or produced in the Soviet Union or later military equipment solutions based on them, and to stimulate investment in cutting-edge technology in defence through support for joint R&D.*
- (13b) *The Instrument should be used to reduce dependencies on non-democratic countries for critical defence technologies and components.*
- (14) This Instrument will build on and take into account the work of the Defence Joint Procurement Task Force established by the Commission and the High Representative/Head of *the European Defence Agency*, in line with the Joint Communication 'Defence Investment Gaps Analysis and Way Forward', to coordinate very short-term defence procurement needs and engage with Member States and *Union* defence manufacturers to support joint procurement to replenish, *strengthen and increase* stocks *with urgently needed and rapidly deployable technologically sophisticated equipment*, notably in light of the support provided to Ukraine, *in particular by the Member States in its close neighbourhood.*
- (15) The Instrument *should ensure consistency* with existing collaborative *Union* defence-related initiatives such as ■ the European Defence Fund (**EDF**), ■ the Permanent Structured Cooperation (PESCO), *as well as other relevant initiatives launched in response to the Russian war of aggression against Ukraine, and which should generate* synergies with other *Union* programmes. *The instrument complements Directive 2009/81/EC of the European Parliament and of the Council*³. The Instrument is fully coherent with the ambition of the Strategic Compass *and the goals*

³ *Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76).*

and priorities of NATO, which remains the foundation of the collective defence of its members.

- (15a) *Since 22 Member States are also members of NATO, it is vital that both organisations significantly increase their efforts to harmonise their planning process as well as their standards in order to ensure compatibility, interoperability and interchangeability between the armed forces and their equipment.*
- (15b) *Since the Instrument seeks, inter alia, to increase competitiveness and efficiency of the EDTIB, as well as the effectiveness of public spending, it is vital to also increase efforts to finally fulfill the ambition to establish a real common market for defence products as envisaged by Directives 2009/43/EC and 2009/81/EC. To that end, Member States should improve their transposition, implementation and application of those directives, as well as demonstrate restraint in invoking derogations on the basis of Article 346 TFEU. In addition, the Commission should thoroughly assess Member States' reasons for invoking such derogations in order to facilitate the establishment of a single market for defence products with an adequate level playing field.*
- (16) As the instrument aims to enhance the competitiveness, efficiency *and the independence* of the Union's defence industry, to benefit from the instrument, *in accordance with the legal basis*, common procurement contracts will need to be placed *contractors and subcontractors* established in the Union or in associated countries and are not subject to control by non-associated third countries or by non-associated third-country entities. In that context, control should be understood *as* the ability to exercise a decisive influence on a *contractor or subcontractor* directly, or indirectly through one or more intermediate legal entities. Additionally, in order to ensure the protection of essential security and defence interests of the Union and its Member States, the infrastructure, facilities, assets and resources of the contractors and subcontractors involved in the common procurement which are used for the purposes of the common procurement shall be located on the territory of a Member State or of an associated third country.
- (17) In certain *exceptional* circumstances *and given the importance of maintaining the interoperability and consistency with NATO members*, it should be possible to derogate from the principle that contractors and subcontractors involved in a common procurement supported by the Instrument are not subject to control by non-associated third countries or non associated third-country entities. In that context, a *contractor or subcontractor* established in the Union or in an associated third country and controlled by a non-associated third country or a non-associated third country entity may participate as contractor *or* subcontractor involved in the common procurement if strict conditions relating to the security and defence interests of the Union and its Member States, as established in the framework of the Common Foreign and Security Policy

pursuant to Title V of the Treaty on European Union (TEU), including in terms of strengthening the **EDTIB**, are fulfilled.

- (18) Furthermore, the common procurement procedures and contracts shall also include a requirement for the defence product to not be subject to **any form of** control or restriction by a non-associated third country or a non-associated third country entity, **in particular any control or restriction that contravenes the security and defence interests of the Union and the Member States and that limits Member States' ability to use that defence product. In urgent cases, this requirement should not apply if the procured products concerned were in use prior to 24 February 2022 within the armed forces of at least one of the Member States participating in the common procurement. Where the derogation applies, countries participating in the common procurement should study the feasibility of replacing the components causing the restriction by restriction-free components from the Union or associated third countries and submit their findings to the Commission. The Commission should provide a non-confidential summary of all such findings in the report referred to in this Regulation to help identify technological gaps in the EDTIB. In order for the common procurement to strike a balance between replenishing stocks and reinforcing the EDTIB where the derogation is granted, the majority of components should come from the Union, and only a fraction of components should come from non-associated third countries that the share the Union's and Member States' security and defence objectives.**
- (18a) ***As this extraordinary short-term instrument is designed to fill the most urgent and critical gaps in response to the ongoing Russian war of aggression, the different conditions for eligible entities, in particular derogations foreseen as regards additional eligibility conditions linked to the third-country restriction clauses, subcontractors thresholds or proportion of the third countries components and award criteria are tailored to this purpose and without prejudice to any future long-term Union instruments for fostering common procurement among Member States in the area of defence, strengthening the EDTIB and fostering interoperability and modernising and enhancing Union-based manufacturing capacities. Such future instruments should however take into account the lessons and achievements from the Instrument.***
- (19) Grants under the Instrument **should** take the form of financing not linked to cost based on the achievement of results by reference to work packages, milestones or targets of the common procurement process, in order to create the necessary incentive effect.
- (20) Where the Union grant takes the form of financing not linked to costs, the Commission should determine in the **multiannual** work programme the funding conditions for each action **leading to common procurement of defence products as identified in the Joint Communication on the Defence Investment Gaps Analysis and Way Forward**, 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, (c) the order of magnitude expected from the common procurement and (d) the maximum Union contribution available. ***Furthermore, it should determine the procedure for evaluation and selection of the proposals, as well as for monitoring and disbursement process throughout the implementation of the action. The work programme should also set out the funding priorities which fulfil the requirements of high intensity and long-lasting combat operations and of the related training.***

- (20a) ***To foster the development of critical components in the Union, the Commission, working in cooperation with the European Defence Agency and benefitting from the expertise of the EU Observatory of Critical Technologies, should prepare a list of critical components of third-country origin for which no alternative exists in the Union. Based on that list, appropriate measures should be taken to support the development of such critical components in the Union.***
- (21) To generate the incentive effect, the level of Union contribution may be differentiated based on factors such as (a) the complexity of the common procurement, for which a proportion of the anticipated size of the procurement contract, based on experience gained in similar actions, may serve as an initial proxy, (b) the characteristics of the cooperation, such as joint usage, stockpiling, ownership or maintenance, ***as well as the replacement of stockpiles of obsolete military equipment solutions designed and/or produced in the Soviet Union or later military equipment solutions based on them with European solutions*** which are likely to induce stronger interoperability outcomes and long-term investment signals to industry, (c) the number of participating Member States or associated countries or the inclusion of additional Member States or associated countries to existing cooperations ***and (d) the contribution of the action to supporting the participation of SMEs and mid-caps in common procurement.***
- (21a) ***The brutal and unprovoked Russian war of aggression against Ukraine became a turning point for European security, and in particular for countries that are bordering Russia and Ukraine or have their territorial waters or exclusive economic zones adjacent to those of Russia and Ukraine. Those Member States have become the target of threatening rhetoric and hostile actions by Russia, supported by Belarus. Despite facing fundamental threats to their own security, they continue to support Ukraine in providing assistance, including military assistance. The Instrument should therefore provide for incentives for the participation of those of those Member States that significantly depleted their own stockpiles by granting higher Union contribution to actions where at least two such Member States participate. In addition, such a higher Union contribution should also apply for actions in which Member States decide to authorise the procurement agent to procure additional quantities of the respective defence product for Ukraine and Moldova. Given that those countries are partially occupied by Russia or its proxies, and are the targets of the Russian military aggression or are under threat of a direct Russian military intervention, further support for involvement of Ukraine and Moldova, which are Union candidate***

countries, into procurement of defence products together with Member States, would substantially contribute to European security, while strengthening the EDTIB and fostering cooperation in defence procurement.

- (21b) *The major part of the Union contribution should foster the objectives of the Instrument. Where a derogation from this principle applies and where simultaneously it cannot be established that the estimated value of the common procurement contract does not comprise any value added tax, it should be possible to differentiate the level of Union contribution based on those factors in order to ensure that at least 70 % of the Union contribution will benefit the EDTIB.*
- (22) Member States should appoint a procurement agent to conduct a common procurement on their behalf. The procurement agent should be a contracting authority established in a Member State or an associated country, including Union *institutions*, bodies *and agencies* or international organisations . *The application of the Instrument should be without prejudice to the rules laid down in particular by Directive 2009/81/EC on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security. Additional eligibility requirements as set out in this Regulation should be part of the tender documents and should prevail over any conflicting national law in the Member State in which the procurement agent is established.*
- (23) *Regulation (EU, Euratom) No 2018/1046 of the European Parliament and of the Council⁴ (the ‘Financial Regulation’) applies to this Programme. It lays down rules on the implementation of the Union budget, including the rules on grants. In accordance with Article 193(2) of the Financial Regulation, a grant may be awarded for an action which has already begun, provided that the applicant can demonstrate the need for starting the action prior to signature of the grant agreement. However, financial contribution should not cover a period prior to the date of submission of the grant application, except in duly justified exceptional cases. In order to avoid any disruption in Union support which could be prejudicial to the interests of the Union, it should be possible to provide in the financing decision for financial contributions to actions , even if they have started before the grant application was submitted. By way of derogation from Article 193(2) of the Financial Regulation, cooperation between Member States established between 24 February 2022 and the entry into force of this Regulation, and addressing the most urgent and critical defence product needs, should be retroactively eligible for funding for as long as it can be demonstrated that the perspective of Union funding has provided an incentive for cooperation and that they contribute to the objectives of this Regulation and comply with its requirements.*

⁴ *Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).*

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- (25) This Regulation lays down a financial envelope for the Fund, which is to constitute the prime reference amount, within the meaning of point 18 of the Inter-institutional Agreement of 16 December 2020 between the European Parliament, the Council and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources⁵ (Interinstitutional Agreement of 16 December 2020), for the European Parliament and for the Council during the annual budgetary procedure.
- (25a) *In order to encourage Member States' participation in the Instrument, the Commission should endeavour to organise briefings and training programmes.***
- (26) In accordance with the Financial Regulation, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council⁶, Council Regulation (Euratom, EC) No 2988/95⁷, Council Regulation (Euratom, EC) No 2185/96⁸ and Council Regulation (EU) 2017/1939⁹, the financial interests of the Union are to be protected through proportionate measures, including the prevention, detection, correction and investigation of irregularities and fraud, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, the imposition of administrative sanctions. In particular, in accordance with Regulation (EU, Euratom) No 883/2013 and Regulation (Euratom, EC) No 2185/96 the European Anti-Fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. In accordance with Regulation (EU) 2017/1939, the European Public Prosecutor's Office (EPPO) may investigate and prosecute fraud and other illegal activities affecting the financial interests of the Union as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council¹⁰. In accordance with the Financial Regulation, any person or entity receiving Union funds is to fully cooperate in the protection of the Union's financial interests, to grant the necessary rights and access to the Commission, OLAF, the EPPO and the European

⁵ OJ L 433I, 22.12.2020, p. 28.

⁶ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, (OJ L 248, 18.9.2013, p. 1).

⁷ Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.95, p.1).

⁸ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.96, p.2).

⁹ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p.1).

¹⁰ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

Court of Auditors (ECA) and to ensure that any third parties involved in the implementation of Union funds grant equivalent rights.

- (27) Pursuant to Article 94 of Council Decision 2013/755/EU¹¹, persons and entities established in overseas countries and territories (OCTs) are eligible for funding subject to the rules and objectives of the Instrument and possible arrangements applicable to the Member State to which the relevant overseas country or territory is linked.
- (28) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

HAVE ADOPTED THIS REGULATION:

Article 1
Subject matter

This Regulation establishes **a short-term instrument for** European Defence Industry Reinforcement through common Procurement Act (the ‘Instrument’).

Article 2
Definitions

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

- (1) ‘common procurement’ means a cooperative procurement jointly conducted by at least three Member States;
- (2) ‘control by a non-associated third country or by a non-associated third country entity’ means the ability to exercise a decisive influence on a legal entity directly, or indirectly through one or more intermediate legal entities;
- (3) ‘executive management structure’ means a body of a legal entity, appointed in accordance with national law, and, where applicable, reporting to the chief executive officer, which is empowered to establish the legal entity’s strategy, objectives and overall direction, and which oversees and monitors management decision-making;
- (4) ‘non-associated third-country entity’ means a legal entity that is established in a non-associated third country or, where it is established in the Union or in an associated country, that has its executive management structures in a non-associated third country;
- (5) ‘procurement agent’ means a contracting authority **as defined in Article 2(1), point 1), of Directive 2014/24/EC* that is** established in a Member State or **in** an associated

¹¹ Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union (Overseas Association Decision) (OJ L 344, 19.12.2013, p. 1).

country, *the European Defence Agency or an international organisation*, designated by at least three Member States to conduct a common procurement on their behalf **■** ;

- (5a) *‘defence products’ mean products awarded in the fields of defence and security within the meaning of Article 2 of Directive 2009/81/EC, as well as combat medical equipment; defence products include equipment, services, works and supplies necessary to achieve the objective set out in Article 3 of this Regulation;*
- (6) *‘third country’ means a country that is not member of the Union;*
- (6a) *‘classified information’ means information or material, in any form, the unauthorised disclosure of which could cause varying degrees of harm to the interests of the Union, or to one or more of the Member States, and which bears an EU classification marking or a corresponding classification marking, as established in the Agreement of May 2011 between the Member States of the European Union, meeting within the Council, regarding the protection of classified information exchanged in the interests of the Union;*
- (6b) *‘sensitive information’ means information and data that is not classified and that is to be protected from unauthorised access or disclosure pursuant to Union or national law, where applicable, or in order to safeguard the privacy or security of a natural or legal person.*

Article 3 *Objectives*

1. The Instrument has the following objectives:
 - (a) to foster the competitiveness and efficiency of the **■** EDTIB, *including SMEs and mid-capitalisation companies (mid-caps)*, for a more resilient *and secure* Union, in particular by speeding up, in a collaborative manner, the adjustment of industry, *in a cost-efficient way*, to structural *and technological* changes, including *enhancing* its manufacturing capacities *through technological innovation and the opening of the supply chains with cross-border engagement throughout the Union, thereby enhancing the EDTIB’s capacity to provide the most critical and urgent defence products needed by Member States*;
 - (b) to foster cooperation in defence procurement process between **■** Member States *in order to contribute* to solidarity, interoperability, *and the* prevention of crowding-out effects, *as well as the reduction of* fragmentation and *the increase of* the effectiveness of public spending *and to foster a closer convergence of national standards and requirements in the field of the procurement of defence products, whilst preserving the competitiveness and diversity of products available to Member States and in the supply chain.*
2. The objectives *referred to in paragraph 1* shall be pursued with an emphasis on strengthening, **■** developing *and expanding EDTIB throughout* the Union **■** *in*

accordance with the legal basis of the Instrument to allow it to address in particular the most urgent and critical defence products needs, especially those revealed or exacerbated by the response to the Russian aggression against Ukraine, taking into account *the Joint Communication of the Commission and the High Representative of 18 May 2022 on the Defence Investment Gaps Analysis and Way Forward*, and the work of the Defence Joint Procurement Task Force. *This can be achieved through the replenishment of stockpiles which are depleted as a result of defence products transfers to Ukraine, including with the equipment available on the market, as well as through the replacement of obsolete equipment, in particular military equipment solutions designed and/or produced in the Soviet Union or later military equipment solutions based on them, and the reinforcement of overall defence capabilities.*

Article 4 *Budget*

1. The financial envelope for the implementation of the Instrument for the period from the entry into force of this Regulation to 31 December 2024 shall be EUR **1 billion** in current prices.
2. The amount referred to in paragraph 1 may be used for technical and administrative assistance for the implementation of the Instrument, such as preparatory, monitoring, control, audit and evaluation activities including corporate information technology systems.
3. Resources allocated to Member States under shared management may, at their request, be transferred to the Instrument subject to the conditions set out in the relevant provisions of the Common Provisions Regulation for 2021-2027. The Commission shall implement those resources directly in accordance with point (a) of the first subparagraph of Article 62(1) of Regulation (EU, Euratom) No 2018/1046 (the ‘the Financial Regulation’). Those resources shall be used for the benefit of the Member State concerned.
4. Budgetary commitments for activities extending over more than one financial year may be broken down over several years into annual instalments.

Article 5

Associated countries and additional arrangements applicable to other third countries

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

The agreement between the participating Member States and the procurement agent referred to in Article 8(2) may authorise the procurement agent, following unanimous approval of the agreement’s participating Member States, to invite and enter into an agreement for procuring

additional quantities of the defence product subject to the common procurement with those third countries which are candidates for accession to the Union and whose territory is in immediate proximity or affected by the war on Ukrainian territory and whose territory is occupied by forces supported by the Russian Federation, such as Ukraine and Moldova. Such additional procurement arrangements shall be without prejudice to the applicable provisions of Union law and any relevant international obligations of the participating Member States.

The Instrument shall not fund the procurement of additional quantities of defence products subject to common procurement under this paragraph. It shall be used only to fund the costs of cooperation in the context of common procurement of such additional quantities.

Article 6

Implementation and forms of EU funding

1. The Instrument shall be implemented in direct management in accordance with the Financial Regulation.
 2. The EU funding shall incentivize the cooperation between Member States to fulfil the objectives referred to in Article 3. The financial contribution shall be set up taking into consideration the collaborative nature of the common procurement **■** to create the incentive effect necessary to induce cooperation.
 3. ***By way of derogation to Article 193 of the Financial Regulation and, where necessary, for the implementation of an action, financial contributions may cover actions started prior to the date of the request for financial contributions for that action, provided that the action has not started prior to the 24 February 2022 and was not completed before the signature of the grant agreement.***
- (3a) The Union financial contribution to each action shall not exceed 15 % of the amount referred to in Article 4(1) and shall be capped at 20 % of the estimated value of the common procurement contract per consortium of Member States and associated countries.***

By way of derogation from the first subparagraph of this paragraph, the Union financial contribution to each action may exceed 15 %, but shall amount to no more than 20 % of the amount referred to in Article 4(1) and shall be capped at 25 % of the estimated value of the common procurements contract, where at least one of the following conditions is met:

- (a) at least two members of a consortium of Member States and associated countries have a common border with Russia or with countries aggressed by Russia, or have their territorial waters or exclusive economic zones adjacent to those of Russia or the countries aggressed by Russia;***
- (b) one of the third countries referred to in Article 5(1a) is a recipient of additional quantities in the procurement action in accordance with that paragraph;***
- (c) at least 15 % of the estimated value of the common procurement contract is***

allocated to SMEs and/or midcaps, as contractors or subcontractors.

4. Grants implemented under direct management shall be awarded and managed in accordance with Title VIII of the Financial Regulation.

Article 7
Eligible actions

1. Only actions fulfilling all of the following criteria shall be eligible for funding ***under the Instrument***:
 - (a) the actions shall involve cooperation ***between eligible entities as referred to in Article 9*** for common procurement ***addressing*** the most urgent and critical defence products ***needs while*** implementing the objectives referred to in Article 3;
 - (b) the actions shall involve new cooperation or an extension of existing cooperation to new Member States or associated countries;
 - (c) the actions shall be carried out by a consortium of at least three Member States;
 - (d) the actions shall fulfil the additional conditions as set out in Article 8.
2. The following actions shall not be eligible for funding:
 - (a) actions for common procurement of goods or services which are prohibited by applicable international law;
 - (b) actions for common procurement of lethal autonomous weapons without the possibility for meaningful human control over selection and engagement decisions when carrying out strikes against humans.

Article 8

Additional ***eligibility*** conditions

1. Member States or associated ■ countries shall appoint ***by consensus*** a procurement agent to act on their behalf for the purpose of the common procurement. The procurement agent shall carry out the procurement procedures and conclude the resulting ***contracts*** with contractors on behalf of the ***countries*** participating ***in the common procurement. 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 or entities in the fields of defence and security as laid down in particular in Directive 2009/81/EC.***
2. The procurement procedures referred to in paragraph 1 shall be based on an agreement to be signed by the participating ***countries*** with the procurement agent under the conditions set out in the work programme referred to in Article 11. ***The agreement***

shall specify, inter alia, the details of the procedure and the reason of its choice, the assessment of the tenders and the award of the contract.

3. Common procurement procedures and contracts shall include participation requirements for contractors and subcontractors involved in the common procurement as referred to in paragraphs 4 to 10.
4. Contractors and subcontractors involved in the common procurement shall be established and have their executive management structures in the Union ***or associated country***. They shall not be subject to control by a non-associated third country or by a non-associated third country entity. ***Alternatively they shall have been subject to screening within the meaning of Regulation (EU) 2019/452 and, where necessary, mitigation measures, taking into account the objectives referred to in Article 3 of this Regulation.***
5. By way of derogation from paragraph 4 ***of this Article***, 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 may participate ***in the common procurement if it provides guarantees verified by the Member State or associated country in which the contractor or subcontractor involved in the common procurement is established. The guarantees shall provide assurances that the involvement of the contractor or subcontractor in the common procurement does not contravene the security and defence interests of the Union and its Member States as established in the framework of Common Foreign and Security Policy (CFSP) pursuant to Title V of the TEU, or the objectives set out in Article 3 of this Regulation.***
6. The participating Member States shall provide to the Commission a notification from the procurement agent on the guarantees provided by a contractor or subcontractor involved in the common procurement ***referred to in paragraph 5 of this Article***. The guarantees and related provisions in the procurement contract shall be made available to the Commission upon request. The guarantees shall provide assurances that the involvement of the contractor or subcontractor involved in the common procurement does not contravene the security and defence interests of the Union and its Member States as established in the framework of the CFSP pursuant to Title V of the TEU, or the objectives set out in Article 3 ***of this Regulation***.
7. ***The guarantees referred to in paragraph 6 shall be based on a standardised template adopted by the Commission by means of implementing acts by ... [1 month after the date of entry into force of this Regulation]. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(3). The guarantees and the template shall be part of the tender specification.*** The guarantees shall in particular substantiate that, for the purposes of the common procurement, measures are in place to ensure that:

- (a) control over the contractor or subcontractor involved in the common procurement is not exercised in a manner that restrains or restricts its ability to carry out the order and to deliver results and;
 - (b) access by a non-associated third country or by a non-associated third-country entity to sensitive information is prevented and the employees or other persons involved in the common procurement have national security clearance issued by a Member State.
8. The infrastructure, facilities, assets and resources of the contractors and subcontractors involved in the common procurement which are used for the purposes of the common procurement shall be located on the territory of a Member State or of an associated country. Where *there are no* readily available *alternatives or relevant infrastructure, facilities, assets and resources* in the Union or in an associated country, contractors and subcontractors involved in the common procurement may use their assets, infrastructure, facilities and resources located or held outside the territory of the Member States or of the associated countries provided that such use does not contravene the security and defence interests of the Union and its Member States and is consistent with the objectives set out in Article 3.
9. Common procurement procedures and contracts shall also include a requirement for the defence product to not be subject to a restriction by a non-associated third country or a non-associated third country entity *that limits Member States' ability to use that defence product*.
- 9a. *By way of derogation from paragraph 9, the requirement for the defence product referred to in that paragraph shall not apply where all of the following conditions are met:*
- (a) *common procurement procedures and contracts refer to urgent and critical defence products needs that are needed to replenish stocks that have been reduced as a result of the response to the Russian military aggression against Ukraine;*
 - (b) *the capacity of the EDTIB to fill the most urgent and critical gaps in the stocks of the Member States is not sufficient or is not able to provide the defence products in an adequate timeframe;*
 - (c) *Member States or associated countries participating in the common procurement have carefully assessed the feasibility of replacing the components that cause the restriction by an alternative restriction-free component of Union origin;*
 - (d) *the procured products were in use prior to 24 February 2022 within the armed forces of at least two Member States participating in the common procurement.*

10. For the purposes of this Article, ‘subcontractors involved in the common procurement’ means all of the following:

■

- (b) **entities** to which at least **20 %** of the **contract value** is allocated;
- (c) subcontractors which may require access to classified information in order to carry out the common procurement.

10a. The proportion of the components originating from non-associated third countries shall not exceed 40 % of the estimated value of the procurement contract. No components shall be sourced from non-associated third countries that contravene the security and defence interests of the Union and its Member States, including respect for the principle of good neighbourly relations.

Article 9 Eligible entities

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

- (a) **the** public contracting authorities **of Member States**;
- (b) public authorities of associated ■ countries;
- (ba) procurement agents as referred to in Article 2(5).**

Article 10 Award criteria

The Commission shall evaluate the proposals submitted on the basis of the following award criteria:

- 1. The contribution of the action to **strengthen the competitiveness, adaptation and further development and modernising of the EDTIB** to allow it to address in particular the most urgent and critical defence products needs as referred to in Article 3, including with respect to ■ delivery lead times■, availability and supply;
- 1a. The contribution of the action to the replenishment of stocks that have been depleted due to unprovoked and unjustified military aggression against Ukraine, taking into account the rate of depletion of participating Members States stockpiles of the category of procured defence products since 24 February 2022;**
-
- 3. the contribution of the action to strengthening cooperation among Member States or associated countries and interoperability of products;
- 4. the number of Member States or associated countries participating in the common procurement;
- 5. the estimated **value** of the common procurement■ ;

6. *the action's contribution to overcoming obstacles to common procurement and to the creation of new supply chains throughout the Union;*
7. *the quality and efficiency of the plans for carrying out of the action.*
- 7a. *the participation of Union SMEs and mid-caps as contractors and subcontractors or in the manufacturing process of procured products, as well the contribution of the action to diversifying the supply chain.*

Article 11
Work programme

1. The Instrument shall be implemented through a **multiannual** work programme as referred to in Article 110 of the Financial Regulation.
2. **By ... [three months after the entry into force of this Regulation], the Commission shall, by means of a delegated act, in accordance with Article 13a, supplement this Regulation by adopting the work programme referred to in paragraph 1. ■**
3. The work programme shall set out:
 - (a) the minimum financial size of the joint procurement actions; ■
 - (b) the indicative amount of financial support for actions carried out by the minimum number of Member States as referred to in point c) of Article 7 paragraph 1; ■
 - (c) incentives for procurement of higher value and inclusion of additional Member States or associated countries **or countries referred to in Article 5(2);**
 - (d) **the overall amount of the Union contribution to each funding priority;**
 - (e) **a description of actions involving cooperation for common procurement;**
 - (f) **the estimated value of the common procurement;**
 - (g) **the procedure for evaluation and selection of the proposals;**
 - (h) **the description of the monitoring and disbursement process throughout the implementation of the relevant action.**
4. The work programme shall set out the funding priorities in line with the needs referred to in Article 3 paragraph 2, **which fulfil the requirements of high intensity and long-lasting combat operations and of the related training, and which aim to ensure availability of sufficient quantities of, in particular:**
 - (a) **all types of ammunition for ground combat, including specific missiles;**
 - (b) **mid-range and long-range air-to-ground ammunitions, in particular precision guided munitions and cruise missiles;**
 - (c) **air defence-specific effectors, in particular short range air defence and ground-based air defence;**

- (d) *logistic supplies and logistic support, transport enablers, military engineering, petrol, oil and lubricants supply;*
- (e) *combat medical equipment, in the context of which the agreement referred to in Article 8(2) shall contain provisions for close cooperation between the procurement agent and the European medical command;*
- (f) *protected combat and combat support equipment;*
- (g) *force protection equipment adapted to the operational context;*
- (h) *multi-domain command and control capabilities as well as interoperable communications and information systems;*
- (i) *training support equipment and training facilities with regard to points (a) to (h).*

Article 11a

Application of the rules on classified and sensitive information

1. *Within the scope of this Regulation :*
 - (a) *each Member State shall ensure that it offers a degree of protection of EU classified information equivalent to that provided by the security rules of the Council set out in Council Decision 2013/488/EU¹²;*
 - (b) *the Commission shall protect classified information in accordance with the security rules laid down in Commission Decision (EU, Euratom) 2015/444¹³;*
2. *The use and disclosure of sensitive information shall be governed by relevant Union and national law and subjected to authorisation of the Member States.*
3. *The Commission shall use a secured exchange system in order to facilitate the exchange of sensitive and classified information between the Commission and the Member States and associated countries and, where appropriate, with the applicants and the recipients. That system shall take into account the Member States' national security regulations.*

Article 12

Monitoring and reporting

1. *By 31 December 2024, the Commission, in cooperation with the European Defence Agency, shall draw up an evaluation report for the Instrument ■ and submit it to the European Parliament and to the Council. The report shall evaluate the impact and effectiveness of the actions taken under the Instrument.*

¹² Council Decision of 23 September 2013 on the security rules for protecting EU classified information (2013/488/EU) (OJ L 274, 15.10.2013, p. 1).

¹³ Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

2. The report shall build on consultations of Member States and key stakeholders and shall ■ assess the progress made towards the achievement of the objectives set out in Article 3. *It shall, in particular, evaluate the contribution of the Instrument to the:*
- (a) creation of new cross-border cooperation between Member States, associated countries or countries referred to in Article 5(2);*
 - (b) participation of SMEs and mid-caps in the action, as contractors or subcontractors in the supply chain;*
 - (c) strengthening of the EDTIB throughout the Union and ensuring a level-playing field for suppliers from the Member States;*
 - (d) replenishment of stockpiles that have been depleted due to transfers of defence products to Ukraine;*
 - (e) replacement of obsolete military equipment solutions designed and/or produced in the Soviet Union or later military equipment solutions based on them with Union solutions.*

The report shall identify the involvement of each Member State and evaluate the potential bottlenecks in the functioning of the Instrument.

In addition, the report shall identify, based on considerations of the Union's essential defence capability needs, areas of critical dependencies and shortfalls with regard to raw materials, components and production capacities of third-country origin, including an assessment of the possibilities for the development of alternatives within the Union.

- 2a. *For each grant, the Commission, after consulting the consortium of Member States and associated countries concerned, shall appoint an officer from the procurement agent as a monitoring officer. That officer shall monitor the implementation of the common procurement, provide a progress report to the Commission every three months until the end of the disbursement period of the Instrument and shall contribute to the report referred to in paragraph 1.*
- 2b. *The monitoring officer shall be involved in briefing the European Parliament. Upon the request of the European Parliament, such briefings shall be held at the level of EU Restricted.*

Article 12a

Development of critical components in the Union

Within 12 months of the publication of the evaluation report referred to in Article 12, and on the basis of the findings of that report, the Commission, in cooperation with the European Defence Agency, shall prepare a list of critical components of third-country origin for which no alternative exists in the Union and shall take appropriate measures to foster their development in the Union, including through R&D, and in particular, through the European Defence Fund.

Article 13
Information, communication and publicity

1. The recipients of Union funding shall acknowledge the origin and ensure the visibility of the Union funding (in particular when promoting the actions and their results) by providing coherent, effective and proportionate targeted information to multiple audiences, including the media and the public. ***In order to facilitate the participation of the SMEs and mid-caps, they shall receive the necessary information for their participation in the common procurement process under this Instrument.***
2. The Commission shall implement information and communication actions relating to the Instrument, and its actions and results. Financial resources allocated to the Instrument shall also contribute to the corporate communication of the political priorities of the Union, as far as they are related to the objectives referred to in Article 3.

Article 13a
Exercise of the delegation

1. ***The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.***
2. ***The power to adopt delegated acts referred to in Article 11 shall be conferred on the Commission from [...] years from ... [the date of entry into force of this Regulation].***
3. ***The delegation of power referred to in Article 11 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.***
4. ***Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.***
5. ***As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.***
6. ***A delegated act adopted pursuant to Article 11 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of the notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.***

Article 14
Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. The European Defence Agency shall be invited to provide its views and expertise to the committee as an observer. The European External Action Service shall also be invited to assist in the committee.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 15
Entry into force

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

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

**ANNEX: LIST OF ENTITIES OR PERSONS
FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT**

The following list is drawn up on a purely voluntary basis under the exclusive responsibility of the rapporteur. The rapporteur has received input from the following entities or persons in the preparation of the report, until the adoption thereof in committee:

Entity and/or person
MBDA
ASD
GE Aerospace
C&V Consulting
AmChamEU
PGZ

29.3.2023

OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION

for the Committee on Foreign Affairs and the Committee on Industry, Research and Energy

on the proposal for a regulation of the European Parliament and of the Council of the European Parliament and of the Council on establishing the European defence industry reinforcement through common procurement act
(COM(2022)0349 – C9-0287/2022 – 2022/0219(COD))

Rapporteur for opinion: Ivars Ijabs

(*) Associated committee – Rule 57 of the Rules of Procedure

SHORT JUSTIFICATION

The rapporteur welcomes the proposal from the Commission to establish the European Defence Industry Reinforcement through Common Procurement Act and the overall aim of improving competitiveness in the European industrial defence base. The instrument will promote cooperation and interoperability in a critical time where the Union's defence response needs to be strengthened. Cooperation through common procurement is a fitting tool for Member States with similar or identical needs to lower their individual costs, reduce individual risks and use the funds most efficiently by pooling them.

The rapporteur believes the main achievement of the instrument should be to replenish the stocks with defence products. In a spirit of solidarity, Member States have shared and transferred their defence products with the Ukraine, following Russia's illegal invasion and as a result, they have an urgent need to rebuild their national defence capacity. Due to the limited timeframe and budget of the instrument, the rapporteur therefore suggests broadening the scope, allowing contractors and subcontractors in non-associated third countries and transatlantic partnership countries to be involved in the public procurement. This will provide the Member States with increased options and flexibility to procure defence products effectively.

Small- and medium sized enterprises as well as mid-capitalisation companies are key actors in Europe's defence industry and the instrument should create opportunities for them to contribute to and benefit from the creation of this financial instrument. The rapporteur proposes to enhance SME and mid-caps involvement in the development of the European industrial defence base by diversifying the supply chain and making their contribution an award criterion.

Finally, the rapporteur acknowledges the urgency and high priority of this proposal and the need for it to enter into force without undue delay. The instrument's funds addresses urgent needs and in consequence needs urgent response. He has adopted an ambitious timeline and commits to completing his opinion within the timeline to see the effects of the proposal as soon as possible.

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Industry, Research and Energy, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) A dedicated short-term instrument, designed in a spirit of solidarity, was indicated as a tool to incentivise Member States, on a voluntary basis, to pursue common procurement to fill the most urgent and critical gaps, especially those created by the response to the current Russia's aggression, in a collaborative way.

Amendment

(4) A dedicated short-term instrument, designed in a spirit of solidarity, was indicated as a tool to incentivise Member States, on a voluntary basis, to pursue common procurement to fill the most urgent and critical gaps, especially those created by the response to the current Russia's aggression, in a collaborative way, ***and to allow and encourage further military assistance to Ukraine.***

Amendment 2

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) Such a new instrument will contribute to reinforce common defence procurement and, through the associated Union financing, to strengthen *EU* defence industrial capabilities.

Amendment

(5) Such a new instrument will contribute to reinforce common defence procurement, ***in particular, achieving the 35 % aim of total defence equipment spending for procurement in cooperation with other Member States*** and, through the associated Union financing, to strengthen ***Member States*** defence industrial capabilities ***in a cost-efficient manner that utilises economies of scale.***

Amendment 3

Proposal for a regulation
Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) The Instrument should be accompanied by efforts to strengthen and harmonise the European defence and security markets, services and systems in order to create a level-playing field for suppliers from all Member States, specially SMEs and mid-capitalisation companies.

Amendment 4

Proposal for a regulation
Recital 14

Text proposed by the Commission

Amendment

(14) This Instrument will build on and take into account the work of the Defence Joint Procurement Task Force established by the Commission and the High Representative/Head of Agency, in line with the Joint Communication ‘Defence Investment Gaps Analysis and Way Forward’, to coordinate very short-term defence procurement needs and engage with Member States and EU defence manufacturers to support joint procurement to replenish stocks, notably in light of the support provided to Ukraine.

(14) This Instrument will build on and take into account the work of **the Member States and** the Defence Joint Procurement Task Force established by the Commission and the High Representative/Head of Agency, in line with the Joint Communication ‘Defence Investment Gaps Analysis and Way Forward’, to coordinate very short-term defence procurement needs and engage with Member States and EU defence manufacturers to support joint procurement to replenish stocks, notably in light of the support provided to Ukraine.

Amendment 5

Proposal for a regulation
Recital 16

Text proposed by the Commission

Amendment

(16) As the instrument aims to enhance the competitiveness **and** efficiency of the Union’s defence industry, to benefit from

(16) As the instrument aims to enhance the competitiveness, efficiency **and the independence** of the Union’s defence

the instrument, common procurement contracts will need to be placed ***with legal entities which are*** established in the Union or in associated countries and are not subject to control by non-associated third countries or by non-associated third-country entities. In that context, control 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 contractors and subcontractors involved in the common procurement which are used for the purposes of the common procurement shall be located on the territory of a Member State or of an associated third country.

industry, to benefit from the instrument, ***in accordance with the legal basis***, common procurement contracts will need to be placed ***contractors and subcontractors*** established in the Union or in associated countries and are not subject to control by non-associated third countries or by non-associated third-country entities. In that context, control should be understood ***as*** the ability to exercise a decisive influence on a ***contractor or subcontractor*** directly, or indirectly through one or more intermediate legal entities. Additionally, in order to ensure the protection of essential security and defence interests of the Union and its Member States, the infrastructure, facilities, assets and resources of the contractors and subcontractors involved in the common procurement which are used for the purposes of the common procurement shall be located on the territory of a Member State or of an associated third country.

Amendment 6

Proposal for a regulation Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) The Russian war of aggression has depleted stockpiles not only in the Union. Therefore, it is appropriate to help the third countries that are candidates for accession to the Union to replenish their stocks that were depleted as a result of Russia's war of aggression against Ukraine by inviting them to procure defence products together, provided that this would not contravene to the security and defence interests of the Union and its Member States, and is unanimously agreed between the participating Member States. Candidate-accession countries should only be able to procure additional quantities of the defence product, while no transfer of funds between Member

States and candidates countries, granting of decision rights or a boost to industries outside the Union beyond the possibilities provided for in this regulation should take place. This would allow Member States to achieve higher economies of scale, while increasing the boost given to the European Defence Technological and Industrial Base.

Amendment 7

Proposal for a regulation Recital 17

Text proposed by the Commission

(17) In certain circumstances, it should be possible to derogate from the principle that contractors and subcontractors involved in a common procurement supported by the Instrument are not subject to control by non-associated third countries or non associated third-country entities. In that context, a **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 contractor **and** subcontractor involved in the common procurement if strict conditions relating to the security and defence interests of the Union and its Member States, as established in the framework of the Common Foreign and Security Policy pursuant to Title V of the Treaty on European Union (TEU), including in terms of strengthening the European Defence Technological and Industrial Base, are fulfilled.

Amendment

(17) In certain **exceptional** circumstances **and given the importance of maintaining the interoperability and consistency with NATO members**, it should be possible to derogate from the principle that contractors and subcontractors involved in a common procurement supported by the Instrument are not subject to control by non-associated third countries or non associated third-country entities. In that context, a **contractor or subcontractor** established in the Union or in an associated third country and controlled by a non-associated third country or a non-associated third country entity may participate as contractor **or** subcontractor involved in the common procurement if strict conditions relating to the security and defence interests of the Union and its Member States, as established in the framework of the Common Foreign and Security Policy pursuant to Title V of the Treaty on European Union (TEU), including in terms of strengthening the European Defence Technological and Industrial Base, are fulfilled.

Amendment 8

Proposal for a regulation
Recital 18

Text proposed by the Commission

(18) Furthermore, the common procurement procedures and contracts shall also include a requirement for the defence product to not be subject to control or restriction by a non-associated third country or a non-associated third country entity.

Amendment

(18) Furthermore, the common procurement procedures and contracts shall also include a requirement for the defence product to not be subject to ***any form of*** control or restriction by a non-associated third country or a non-associated third country entity, ***in particular that contravene the security and defence interests of the Union and its Member States and limit Member States' ability to use it. In urgent cases, this requirement should not apply if the procured products were in use prior to 24 February 2022 within the armed forces of at least one of the Member States participating in the common procurement. Where the derogation applies, countries participating in the common procurement should study the feasibility of replacing the components causing the restriction by restriction-free components from the Union or associated third countries and submit their findings to the Commission. The Commission should provide a non-confidential summary of all such findings in the report referred to in this Regulation to help identify technological gaps in the European Defence Technological and Industrial Base. In order for the common procurement to strike a balance between replenishing stocks and reinforcing the European defence technological and industrial base where the derogation is granted, the majority of components should come from the Union, and only a fraction of components should come from non-associated third countries that the share the Union's and its member states security and defence objectives.***

Amendment 9

Proposal for a regulation
Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) As this extra-ordinary short-term instrument is designed to fill the most urgent and critical gaps in response to the ongoing Russian aggression, the different conditions for eligible entities, in particular derogations foreseen as regards additional eligibility conditions linked to the third country restriction clauses, subcontractors thresholds or proportion of the third countries components and award criteria are tailored to this purpose and without prejudice to any future long-term Union instruments for fostering common procurement among Member States in the area of defence, strengthening the European Defence Technological and Industrial Base (EDTIB) and fostering interoperability and modernizing and ramping up Union-based manufacturing capacities. Such future instruments should however take into account the lessons and achievements from this Instrument.

Amendment 10

Proposal for a regulation
Recital 21

Text proposed by the Commission

Amendment

(21) To generate the incentive effect, the level of Union contribution may be differentiated based on factors such as (a) the complexity of the common procurement, for which a proportion of the anticipated size of the procurement contract, based on experience gained in similar actions, may serve as an initial proxy, (b) the ***characteristics of the cooperation, such as joint usage, stockpiling, ownership or maintenance, which are likely to induce stronger***

(21) To generate the incentive effect, the level of Union contribution may be differentiated based on factors such as (a) the complexity of the common procurement, for which a proportion of the anticipated size of the procurement contract, based on experience gained in similar actions, may serve as an initial proxy, (b) the number of participating Member States or associated countries or the inclusion of additional Member States or associated countries to existing

interoperability outcomes and long-term investment signals to industry, and (c) the number of participating Member States or associated countries or the inclusion of additional Member States or associated countries to existing cooperations.

cooperations.

Amendment 11

Proposal for a regulation Recital 22

Text proposed by the Commission

(22) Member States should appoint a procurement agent to conduct a common procurement on their behalf. The procurement agent should be a contracting authority established in a Member State or an associated *third* country, including Union bodies or international organisations, *such as the Organisation Conjointe de Coopération en matière d'ARMement (OCCAR)*.

Amendment

(22) Member States should appoint a procurement agent to conduct a common procurement on their behalf. The procurement agent should be a contracting authority established in a Member State or an associated country, including Union *institutions*, bodies *and agencies* or international organisations. *The Instrument should be without prejudice to the rules laid down in particular by the Directive 2009/81/EC on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security. Additional eligibility requirements as set out in this Regulation should be part of the tender documents and prevail over conflicting laws of the Member State in which the procurement agent is established.*

Amendment 12

Proposal for a regulation Article 7 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Amendment 13

Proposal for a regulation

Article 7 – paragraph 1 – point a

Text proposed by the Commission

(a) the actions shall involve cooperation for common procurement *of* the most urgent and critical defence products ***between eligible entities*** implementing the objectives referred to in Article 3;

Amendment

(a) the actions shall involve cooperation ***between eligible entities as referred to in Article 9***, for common procurement ***addressing*** the most urgent and critical defence products ***needs while*** implementing the objectives referred to in Article 3;

Amendment 14

Proposal for a regulation

Article 7 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Third countries that are candidates for accession to the European Union may also be invited to procure defence products being subject of the eligible actions under paragraph 1, provided that the Member States participating in the common procurement unanimously agree to it and this does not contravene to the security and defence interests of the Union and its Member States.

Amendment 15

Proposal for a regulation

Article 8 – title

Text proposed by the Commission

Additional ***funding*** conditions

Amendment

Additional ***eligibility*** conditions

Amendment 16

Proposal for a regulation Article 8 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Member States or associated countries shall appoint **by consensus** a procurement agent to act on their behalf for the purpose of the common procurement. The procurement agent shall carry out the procurement procedures and conclude the resulting **contracts** with contractors on behalf of the **countries** participating **in the common procurement. 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 or entities in the fields of defence and security laid down in particular by Directive 2009/81/EC.**

Amendment 17

Proposal for a regulation Article 8 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The procurement procedures referred to in paragraph 1 shall be based on an agreement to be signed by the participating **countries** with the procurement agent under the conditions set out in the work programme referred to in Article 11. **The agreement shall specify, inter alia, the details of the procedure and the reason of its choice, the assessment of the tenders and the award of the contract. The countries participating in the agreement may unanimously authorise the procurement agent to invite and enter into an agreement with third countries that are candidates for accession to the Union to procure additional quantities of**

the procured product.

Amendment 18

Proposal for a regulation

Article 8 – paragraph 4

Text proposed by the Commission

4. Contractors and subcontractors involved in the common procurement shall be established and have their executive management structures in the Union. They shall not be subject to control by a non-associated third country or by a non-associated third country entity.

Amendment

4. Contractors and subcontractors involved in the common procurement shall be established and have their executive management structures in the Union ***or associated country***. They shall not be subject to control by a non-associated third country or by a non-associated third country entity ***or, alternatively, shall have been subject to screening within the meaning of Regulation (EU) 2019/452 and, where necessary, mitigation measures, taking into account the objectives referred to in Article 3 of this Regulation.***

Amendment 19

Proposal for a regulation

Article 8 – paragraph 5

Text proposed by the Commission

5. By way of derogation from paragraph 4, 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 contractor ***and*** subcontractor involved in the common procurement ***only if it provides*** guarantees ***approved by the Member State or associated third country in which*** the contractor is established.

Amendment

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 may participate ***in the common procurement if it provides guarantees verified by the Member State or associated country in which the*** contractor or subcontractor involved in the common procurement is established. ***The*** guarantees ***shall provide assurances that the involvement of*** the contractor ***or subcontractor in the common procurement does not contravene the***

security and defence interests of the Union and its Member States as established in the framework of CFSP pursuant to Title V of the TEU, or the objectives set out in Article 3 of this Regulation.

Amendment 20

Proposal for a regulation Article 8 – paragraph 6

Text proposed by the Commission

6. The participating Member States shall provide to the Commission a notification from the procurement agent on the guarantees provided by a contractor or subcontractor involved in the common procurement *that is established in the Union or an associated third country and controlled by a non-associated third country or a non-associated third country entity*. The guarantees and related provisions in the procurement contract shall be made available to the Commission upon request. *The guarantees shall provide assurances that the involvement of the contractor or subcontractor involved in the common procurement does not contravene the security and defence interests of the Union and its Member States as established in the framework of the CFSP pursuant to Title V of the TEU, or the objectives set out in Article 3.*

Amendment

6. The participating Member States shall provide to the Commission a notification from the procurement agent on the guarantees provided by a contractor or subcontractor involved in the common procurement *referred to in paragraph 4a or 5*. The guarantees and related provisions in the procurement contract shall be made available to the Commission upon request.

Amendment 21

Proposal for a regulation Article 8 – paragraph 7 – introductory part

Text proposed by the Commission

7. The guarantees shall in particular substantiate that, for the purposes of the common procurement, measures are in

Amendment

7. *The guarantees shall be based on a standardised template adopted by the Commission by means of an*

place to ensure that:

implementing act in accordance with Article 14 by ... [1 month after the date of entry into force of this Regulation]. The guarantees and the template shall be part of the tender specification. The guarantees shall in particular substantiate that, for the purposes of the common procurement, measures are in place to ensure that:

Amendment 22

Proposal for a regulation Article 8 – paragraph 8

Text proposed by the Commission

8. The infrastructure, facilities, assets and resources of the contractors and subcontractors involved in the common procurement which are used for the purposes of the common procurement shall be located on the territory of a Member State or of an associated ***third*** country. Where ***no competitive substitutes are*** readily available in the Union or in an associated ***third*** country, contractors and subcontractors involved in the common procurement may use their assets, infrastructure, facilities and resources located or held outside the territory of the Member States or of the associated ***third*** countries provided that such use does not contravene the security and defence interests of the Union and its Member States and is consistent with the objectives set out in Article 3.

Amendment

8. The infrastructure, facilities, assets and resources of the contractors and subcontractors involved in the common procurement which are used for the purposes of the common procurement shall be located on the territory of a Member State or of an associated country. Where ***there are no*** readily available ***alternatives or relevant infrastructure, facilities, assets and resources*** in the Union or in an associated country, contractors and subcontractors involved in the common procurement may use their assets, infrastructure, facilities and resources located or held outside the territory of the Member States or of the associated countries provided that such use does not contravene the security and defence interests of the Union and its Member States and is consistent with the objectives set out in Article 3.

Amendment 23

Proposal for a regulation Article 8 – paragraph 9

Text proposed by the Commission

9. Common procurement procedures

Amendment

9. Common procurement procedures

and contracts shall also include a requirement for the defence product to not be subject to a restriction by a non-associated third country or a non-associated third country entity.

and contracts shall also include a requirement for the defence product to not be subject to a restriction by a non-associated third country or a non-associated third country entity ***that limits Member States' ability to use the defence product.***

Amendment 24

Proposal for a regulation

Article 8 – paragraph 9 a (new)

Text proposed by the Commission

Amendment

9a. By way of derogation from paragraph 9, the requirement for the defence product referred to in that paragraph does not apply where all of the following conditions are met:

(a) common procurement procedures and contracts refer to urgent and critical defence products needs that are needed to replenish stocks that have been reduced as a result of the response to the Russian military aggression against Ukraine;

(b) the capacity of the EDTIB to fill the most urgent and critical gaps in the stocks of the Member States is not sufficient or is not able to provide the defence products in an adequate timeframe;

(c) Member States or associated countries participating in the common procurement have carefully assessed the feasibility of replacing the components that cause the restriction by an alternative restriction-free component of Union origin;

(d) the procured products were in use prior to 24 February 2022 within the armed forces of at least two Member States participating in the common procurement.

Amendment 25

Proposal for a regulation

Article 8 – paragraph 10 – point a

Text proposed by the Commission

Amendment

(a) *subcontractors with a direct contractual relationship to a contractor;*

deleted

Amendment 26

Proposal for a regulation

Article 8 – paragraph 10 – point b

Text proposed by the Commission

Amendment

(b) *other subcontractors* to which at least **10** % of the *work share* is allocated;

(b) *entities* to which at least **20** % of the *contract value* is allocated;

Amendment 27

Proposal for a regulation

Article 8 – paragraph 10 a (new)

Text proposed by the Commission

Amendment

10a. The proportion of the components originating from non-associated third countries shall not exceed 40 % of the estimated value of the procurement contract. No components shall be sourced from non-associated third countries that contravene the security and defence interests of the Union and its Member States, including respect for the principle of good neighbourly relations.

Amendment 28

Proposal for a regulation

Article 9 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) public contracting authorities ***or contracting entities as defined in Directives 2014/24/EU⁹ and 2014/25/EU¹⁰ of the European Parliament and of the Council;***

(a) ***the*** public contracting authorities ***of Member States;***

⁹ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

¹⁰ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

Amendment 29

Proposal for a regulation Article 9 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) public authorities of associated ***third*** countries.

(b) public authorities of associated countries;

Amendment 30

Proposal for a regulation Article 9 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) procurement agents referred to in Article 2(5).

Amendment 31

Proposal for a regulation

Article 10 – paragraph 1 – point 1

Text proposed by the Commission

1. The contribution of the action to ***strengthening and developing the Union defence industrial base*** to allow it to address in particular the most urgent and critical defence products needs as referred to in Article 3, including with respect to ***procurement procedure and delivery lead times, replenishment of stocks***, availability and supply;

Amendment

1. The contribution of the action to ***strengthen the competitiveness, adaptation and further development and modernising of the EDTIB*** to allow it to address in particular the most urgent and critical defence products needs as referred to in Article 3, including with respect to delivery lead times, availability and supply;

Amendment 32

Proposal for a regulation

Article 10 – paragraph 1 – point 1 a (new)

Text proposed by the Commission

Amendment

1a. The contribution of the action to the replenishment of stocks that have been depleted due to unprovoked and unjustified military aggression against Ukraine, taking into account the rate of depletion of participating Members States stockpiles of the category of procured defence products since 24 February 2022;

Amendment 33

Proposal for a regulation

Article 10 – paragraph 1 – point 2

Text proposed by the Commission

Amendment

2. ***the contribution of the action to competitiveness and adaptation of the EDTIB, including through the envisaged ramp-up of its manufacturing capacities, reservation of manufacturing capacities, its reskilling and upskilling, and overall modernization;***

deleted

Amendment 34

Proposal for a regulation

Article 10 – paragraph 1 – point 4

Text proposed by the Commission

4. the number of Member States or associated countries participating in the common procurement;

Amendment

4. the number of Member States or associated countries participating in the common procurement ***or third countries that are candidates for accession to the Union invited to procure defence products being subject of the in the common procurement in accordance with Article 7(1 a);***

Amendment 35

Proposal for a regulation

Article 10 – paragraph 1 – point 5

Text proposed by the Commission

5. the estimated ***size*** of the common procurement ***and any declaration by the participants that they will jointly use, stockpile, own or maintain the procured defence products;***

Amendment

5. the estimated ***value*** of the common procurement;

Amendment 36

Proposal for a regulation

Article 10 – paragraph 1 – point 6

Text proposed by the Commission

6. ***catalytic effect of Union financial support through demonstration of how the Union contribution can overcome*** obstacles to common procurement;

Amendment

6. ***the action's contribution to overcoming*** obstacles to common procurement ***and to the creation of new supply chains throughout the Union;***

Amendment 37

Proposal for a regulation

Article 10 – paragraph 1 – point 7 a (new)

Text proposed by the Commission

Amendment

7a. the participation of Union SMEs and mid-capitalisation companies as contractors and subcontractors or in the manufacturing process of procured products, as well the contribution of the action to diversifying the supply chain.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Establishing the European defence industry reinforcement through common procurement act	
References	COM(2022)0349 – C9-0287/2022 – 2022/0219(COD)	
Committees responsible Date announced in plenary	AFET 12.9.2022	ITRE 12.9.2022
Opinion by Date announced in plenary	IMCO 12.9.2022	
Associated committees - date announced in plenary	15.12.2022	
Rapporteur for the opinion Date appointed	Ivars Ijabs 29.11.2022	
Rule 58 – Joint committee procedure Date announced in plenary	19.1.2023	
Discussed in committee	24.1.2023	1.3.2023
Date adopted	28.3.2023	
Result of final vote	+: 37 -: 4 0: 3	
Members present for the final vote	Andrus Ansip, Pablo Arias Echeverría, Brando Benifei, Adam Bielan, Biljana Borzan, Markus Buchheit, Anna Cavazzini, Dita Charanzová, Lara Comi, David Cormand, Alexandra Geese, Sandro Gozi, Maria Grapini, Krzysztof Hetman, Virginie Joron, Eugen Jurzyca, Arba Kokalari, Kateřina Konečná, Andrey Kovatchev, Jean-Lin Lacapelle, Maria-Manuel Leitão-Marques, Antonius Manders, Beata Mazurek, Leszek Miller, Anne-Sophie Pelletier, Miroslav Radačovský, René Repasi, Christel Schaldemose, Andreas Schwab, Tomislav Sokol, Róza Thun und Hohenstein, Tom Vandenkendelaere, Kim Van Sparrentak, Marion Walsmann	
Substitutes present for the final vote	Marc Angel, Vlad-Marius Botoș, Malte Gallée, Ivars Ijabs, Tsvetelina Penkova, Isabella Tovaglieri, Kosma Złotowski	
Substitutes under Rule 209(7) present for the final vote	Miriam Lexmann, Jan-Christoph Oetjen, Romana Tomc	

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

37	+
ECR	Adam Bielan, Eugen Jurzyca, Beata Mazurek, Kosma Zlotowski
ID	Isabella Tovaglieri
PPE	Pablo Arias Echeverría, Lara Comi, Krzysztof Hetman, Arba Kokalari, Andrey Kovatchev, Miriam Lexmann, Antonius Manders, Andreas Schwab, Tomislav Sokol, Romana Tomc, Tom Vandenkendelaere, Marion Walsmann
Renew	Andrus Ansip, Vlad-Marius Botoș, Dita Charanzová, Ivars Ijabs, Jan-Christoph Oetjen, Róza Thun und Hohenstein
S&D	Marc Angel, Brando Benifei, Biljana Borzan, Maria Grapini, Maria-Manuel Leitão-Marques, Leszek Miller, Tsvetelina Penkova, René Repasi, Christel Schaldemose
Verts/ALE	Anna Cavazzini, David Cormand, Malte Gallée, Alexandra Geese, Kim Van Sparrentak

4	-
ID	Markus Buchheit
NI	Miroslav Radačovský
The Left	Kateřina Konečná, Anne-Sophie Pelletier

3	0
ID	Virginie Joron, Jean-Lin Lacapelle
Renew	Sandro Gozi

Key to symbols:

+ : in favour

- : against

0 : abstention

OPINION OF THE COMMITTEE ON BUDGETS

for the Committee on Foreign Affairs and the Committee on Industry, Research and Energy

on the proposal for a regulation of the European Parliament and of the Council on establishing the European defence industry

Reinforcement through common procurement act
(COM(2022)0349 – C9-0287/2022 – 2022/0219(COD))

Rapporteur for opinion: Karlo Ressler

SHORT JUSTIFICATION

Russia's invasion of Ukraine has altered the geopolitical situation in Europe dramatically. Following the return of war to European soil, EU Member States have announced significant increases in their defence budgets.

Given the need to support in a timely and targeted manner the Member States for reinforcing their defence capacities in this emergency context, the European Commission proposed to incentivise common procurement via the EU budget through a dedicated Short Term Instrument establishing the European Defence industry Reinforcement through Common Procurement Act (the 'Instrument'). The EU financial support brought through the Instrument should stimulate cooperative defence procurement process from Member States and benefit the European Defence Technology and Industrial Base (EDTIB) while ensuring EU Member States' armed forces' ability to act, security of supply and increased interoperability.

The Rapporteur welcomes the central aims of the proposal as he considers that Member States cooperation in the field of Defence can enhance EU's defensive capabilities and resilience to sudden shocks. The fact of incentivising Member States through the EU budget can contribute to developing a coherent approach in Defence policy and ensure the involvement of Parliament.

This draft opinion focuses on those areas where the Committee on Budgets can add value, therefore in particular on the financial provisions, and provisions relating to budgetary effectiveness in the implementation of the Instrument.

Implications for the EU budget

The financial envelope for the implementation of the Instrument for the period from 2022 to 2024 is proposed to be **EUR 500 million**. The Commission is proposing to use the entire unallocated margin from Heading 5 (Security and Defence), and to mobilise the Flexibility Instrument for the remaining amount. As the legal act could not be adopted before the end of 2022, the commitment appropriations initially foreseen in 2022 will be shifted to 2024¹ in order to uphold the full amount

¹ This change concerns the amount of EUR 82 972 301 and will be reflected in the Technical Update of Financial Programming to be issued by the Commission in February 2023

of EUR 500 million.

The Rapporteur welcomes the fact that this additional Instrument is financed from fresh resources, without undermining existing programmes. The Rapporteur acknowledges that the amount is limited in comparison to the defence budgets in various Member States, but he considers it to be a good starting point towards a more integrated EU Defence policy.

The Rapporteur regrets the lack of flexibility of the ceiling under the 2021-2027 MFF, as the adoption of the current proposal would leave no capacity of reaction to emerging needs in the area of EU Defence in 2023 and 2024².

Further impact on the 2021-2027 MFF

The return of territorial conflict and high-intensity warfare on European soil requires Member States to rethink their defence plans and capacities for the long-term. In this context, following the creation of the above Instrument, the Commission will propose a European Defence Investment Programme (EDIP) regulation³. The EDIP regulation could serve as the anchor for future joint development and procurement projects of high common interest to the security of the Member States and the Union, and by extension of the logic of the short-term instrument, for possible associated Union financial intervention for the reinforcement of the European defence industrial base, in particular for projects which no single Member State could develop or procure alone.

The Rapporteur considers this an opportunity to achieve a greater effectiveness by pulling Member States resources and using the corresponding appropriations at the European level; this would result in the demonstration of European added value and would allow to limit the overall burden of public expenditure in the EU. The Rapporteur reiterates his support for the creation of a European Defence Union, with the objective of complementing the European Defence Fund by an industrial development programme in which Member States invest jointly, in order to eliminate duplication and increase the strategic autonomy and efficiency of the European defence industry.

The Rapporteur recalls however that the Union can be stronger and more ambitious only if additional resources are made available. In light of the current limitations in the 2021-2027 MFF ceilings, and in particular Heading 5, there is no flexibility to provide for the necessary spending to enhance defence cooperation and investment.

The Rapporteur therefore recalls the Parliament's position⁴ calling for an increase in the ceiling of Heading 5 and for a swift revision of the MFF to increase EU defence instruments such as the European Defence Fund, military mobility and future joint procurement mechanisms for EU defence, provided that they reinforce the EU's Defence Technological and Industrial Base and ensure European added value. In particular, EDIP should be taken into consideration in the mid-term revision of the MFF, with a view of ensuring the stability, coherence, ambition and long-term financing of EU defence policy.

AMENDMENTS

The Committee on Budgets calls on the Committee on Foreign Affairs and the Committee on Industry, Research and Energy as the committees responsible, to take into account the

² Following the adoption of the Commission's proposal, the margin under Heading 5 would be fully depleted until 2025 and would remain limited until the end of the current MFF.

³ EDIP is listed as a possible item for the College agenda of 21 June 2023

⁴ 2022/2046 (INI): Upscaling the 2021-2027 Multiannual Financial Framework: a resilient EU budget fit for new challenges

following amendments:

Amendment 1

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) Such a new instrument will contribute to **reinforce** common defence procurement and, through the associated Union financing, to **strengthen** EU defence industrial capabilities.

Amendment

(5) Such a new instrument will contribute to **reinforcing** common defence procurement and, through the associated Union financing, to **strengthening** EU defence industrial capabilities, **cooperation in procurement operations and to achieving the Union's objectives for strategic autonomy. In order to ensure coherence of the Instrument with other aspects of the European defence policy, such as the European Defence Fund, the financial envelope of the Instrument should be drawn from the unallocated margins under the MFF ceilings as well as mobilised through the non-thematic MFF special instruments, thereby avoiding any cuts to other Union programmes.**

Amendment 2

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) In the current defence market context, marked by an increased security threat and the realistic perspective of a high intensity conflict, Member States are rapidly increasing their defence budgets and aiming at similar purchases. This results in an amount of demand which exceeds European Defence Technological and Industrial Base manufacturing capacities, currently tailored for peace time.

Amendment

(7) In the current defence market context, marked by an increased security threat and the realistic perspective of a high intensity conflict, Member States are rapidly increasing their defence budgets and aiming at similar purchases. This results in an amount of demand which exceeds European Defence Technological and Industrial Base manufacturing capacities, currently tailored for peace time. **The lack of coordination and**

cooperation regarding procurement could contribute to price increases, which could have the effect that increasing national defence budgets would not lead to stronger military capabilities.

Amendment 3

Proposal for a regulation Recital 9

Text proposed by the Commission

(9) Furthermore, efforts should be made so that the increased spending results in a much stronger European Defence Technological and Industrial Base. Indeed, without coordination and cooperation, the increased national investments are likely to deepen the fragmentation of the European defence industry.

Amendment

(9) Furthermore, efforts should be made so that the increased spending results in a much stronger, ***coordinated and interoperable*** European Defence Technological and Industrial Base. Indeed, without coordination and cooperation, the increased national investments are likely to deepen the fragmentation of the European defence industry ***exposing the Union further to external dependencies.***

Amendment 4

Proposal for a regulation Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) Moreover, common investments should be focused on enhancing common defence production capacities, thereby consolidating the EU industrial base, addressing the most critical needs, ensuring interoperability, providing a long-term perspective for the Union industry's competitiveness. This should result in strengthening EU defence capacities, including in Member States in the direct neighbourhood of a war zone, and benefiting the security of the Union citizens.

Amendment 5

Proposal for a regulation Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) In view of the rapidly evolving security dynamics in the context of the war in Ukraine, the Instrument should allow for the participation of EU candidate countries, for example the Moldova, in common defence procurement, as their participation would strengthen defence capacities and ultimately contribute to European defence preparedness.

Amendment 6

Proposal for a regulation Recital 17

Text proposed by the Commission

Amendment

(17) In certain circumstances, it should be possible to derogate from the principle that contractors and subcontractors involved in a common procurement supported by the Instrument are not subject to control by non-associated third countries or non associated third-country entities. In that context, a 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 contractor and subcontractor involved in the common procurement if strict conditions relating to the security and defence interests of the Union and its Member States, as established in the framework of the Common Foreign and Security Policy pursuant to Title V of the Treaty on European Union (TEU), ***including in terms*** of strengthening the European Defence Technological and Industrial Base, ***are fulfilled***.

(17) In certain circumstances, it should be possible to derogate from the principle that contractors and subcontractors involved in a common procurement supported by the Instrument are not subject to control by non-associated third countries or non associated third-country entities. In that context, a 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 contractor and subcontractor involved in the common procurement if strict conditions relating to the security and defence interests of the Union and its Member States, as established in the framework of the Common Foreign and Security Policy pursuant to Title V of the Treaty on European Union (TEU). ***The principle*** of strengthening the European Defence Technological and Industrial Base ***should be considered as a priority in the***

procurement procedures.

Amendment 7

Proposal for a regulation

Recital 18

Text proposed by the Commission

(18) Furthermore, the common procurement procedures and contracts shall also include a requirement for the defence product to not be subject to control or restriction by a non-associated third country or a non-associated third country entity.

Amendment

(18) Furthermore, the common procurement procedures and contracts shall also include a requirement for the defence product to not be subject to control or restriction by a non-associated third country or a non-associated third country entity ***in order to hinder any kind of interference through the defence product.***

Amendment 8

Proposal for a regulation

Recital 19

Text proposed by the Commission

(19) Grants under the Instrument 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.

Amendment

(19) Grants under the Instrument 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 ***provided that the Union does not co-finance the defence product itself which would be non-compliant with the Instrument's legal base and primary law.***

Amendment 9

Proposal for a regulation

Recital 23

Text proposed by the Commission

(23) In accordance with Article 193(2) of the Financial Regulation, a grant may be

Amendment

(23) In accordance with Article 193(2) of the Financial Regulation, a grant may be

awarded for an action which has already begun, provided that the applicant can demonstrate the need for starting the action prior to signature of the grant agreement. However, financial contribution should not cover a period prior to the date of submission of the grant application, except in duly justified exceptional cases. In order to avoid any disruption in Union support which could be prejudicial to the interests of the Union, it should be possible to provide in the financing decision for financial contributions to actions that cover a period from the 24 February 2022, even if they have started before the grant application was submitted.

awarded for an action which has already begun, provided that the applicant can demonstrate the need for starting the action prior to signature of the grant agreement. However, financial contribution should not cover a period prior to the date of submission of the grant application, except in duly justified exceptional cases. In order to avoid any disruption in Union support which could be prejudicial to the interests of the Union, it should be possible to provide in the financing decision for financial contributions to actions that cover a period from the 24 February 2022, even if they have started before the grant application was submitted ***and as long as it can be demonstrated that the prospect of the Union funding incentivised cooperation between the Member States concerned. Such retroactivity is an exceptional measure justified by Russia's war of aggression against Ukraine and should not be extended to other programmes.***

Amendment 10

Proposal for a regulation Recital 24

Text proposed by the Commission

(24) Regulation (EU, Euratom) No 2018/1046 (the ‘Financial Regulation’) applies to this Programme. It lays down rules on the implementation of the Union budget, including the rules on grants.

Amendment

(24) Regulation (EU, Euratom) No 2018/1046 (the ‘Financial Regulation’) applies to this Programme. It lays down ***clearly defined*** rules on the implementation of the Union budget, including the rules on grants.

Amendment 11

Proposal for a regulation Recital 25 a (new)

Text proposed by the Commission

Amendment

(25a) In the current context of Russia's war of aggression against Ukraine, any consideration to further reinforce budgetary appropriations of this Instrument and extend its duration, based on documented reporting of its implementation rate, should be envisaged in the context of the 2021-2027 MFF revision.

Amendment 12

Proposal for a regulation Recital 27 a (new)

Text proposed by the Commission

Amendment

(27a) Deepening cooperation among Member States at the Union level in defence-related areas should go hand-in-hand with the strengthening of parliamentary oversight and control by both the European Parliament and national parliaments.

Amendment 13

Proposal for a regulation Article 3 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) to foster the competitiveness and efficiency of the European Defence Technological and Industrial Base (EDTIB) for a more resilient Union, in particular by speeding up, in a collaborative manner, the adjustment of industry to structural changes, including ramp-up of its manufacturing capacities;

(a) to foster the competitiveness and efficiency of the European Defence Technological and Industrial Base (EDTIB) for a more resilient Union, in particular by speeding up, in a collaborative manner, the adjustment of industry to structural changes, including ramp-up of its manufacturing capacities ***and the opening of the supply chains throughout the Union;***

Amendment 14

Proposal for a regulation

Article 3 – paragraph 1 – point b

Text proposed by the Commission

(b) to foster cooperation in defence procurement process between participating Member States contributing to solidarity, interoperability, prevention of crowding-out effects, avoiding fragmentation and increasing the effectiveness of public spending.

Amendment

(b) to foster cooperation in defence procurement process between participating Member States contributing to solidarity, interoperability, prevention of crowding-out effects, avoiding fragmentation and increasing the effectiveness of public spending ***in the Union and its Member States.***

Amendment 15

Proposal for a regulation Article 4 – paragraph 1

Text proposed by the Commission

1. The financial envelope for the implementation of the Instrument for the period from the entry into force of this Regulation to 31 December 2024 shall be EUR 500 million in current prices.

Amendment

1. The financial envelope for the implementation of the Instrument for the period from the entry into force of this Regulation to 31 December 2024 shall be EUR 500 million in current prices, ***drawn from the unallocated margins under the MFF ceilings and mobilised through the non-thematic MFF special instruments, without cuts from ongoing programmes.***

Amendment 16

Proposal for a regulation Article 4 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The amount referred to in paragraph 1 shall not be used to co-finance the defence product.

Amendment 17

Proposal for a regulation Article 4 – paragraph 3

Text proposed by the Commission

3. Resources allocated to Member States under shared management may, at their request, be transferred to the Instrument subject to the conditions set out in the relevant provisions of the Common Provisions Regulation for 2021-2027. The Commission shall implement those resources directly in accordance with point (a) of the first subparagraph of Article 62(1) of Regulation (EU, Euratom) No 2018/1046 (the ‘the Financial Regulation’). Those resources shall be used for the benefit of the Member State concerned.

Amendment

3. Resources allocated to Member States under shared management may, at their request, be transferred to the Instrument subject to the conditions set out in the relevant provisions of the Common Provisions Regulation for 2021-2027. The Commission shall implement those resources directly in accordance with point (a) of the first subparagraph of Article 62(1) of Regulation (EU, Euratom) No 2018/1046 (the ‘the Financial Regulation’). Those resources shall be used for the benefit of the Member State concerned.
Those resources shall be counted over and above the amount referred to in paragraph 1.

Amendment 18

Proposal for a regulation Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5a

Additional procurement arrangements for EU candidate countries

The Instrument shall also be open to EU candidate countries, such as Moldova, to participate in common defence procurement, in cooperation with a Member State, and in accordance with the provisions of this Regulation.

Amendment 19

Proposal for a regulation Article 6 – paragraph 2

Text proposed by the Commission

2. The EU funding shall incentivize the cooperation between Member States to fulfil the objectives referred to in Article 3. The financial contribution shall be set up taking into consideration the collaborative nature of the common procurement plus an appropriate amount to create the incentive effect necessary to induce cooperation.

Amendment

2. The EU funding shall incentivize the cooperation between Member States ***and between Member States and third countries mentioned at Article 5 herein*** to fulfil the objectives referred to in Article 3 ***and shall contribute to the modernization of the European defence industry***. The financial contribution shall be set up taking into consideration the collaborative nature of the common procurement plus an appropriate amount to create the incentive effect necessary to induce cooperation. ***In order to guarantee budgetary effectiveness, the Union financial contribution from this Instrument to each action shall not exceed 20 % of the estimated value of the procurement contract.***

Amendment 20

**Proposal for a regulation
Article 6 – paragraph 4**

Text proposed by the Commission

4. Grants implemented under direct management shall be awarded and managed in accordance with Title VIII of the Financial Regulation.

Amendment

4. Grants implemented under direct management shall be awarded and ***thoroughly*** managed in accordance with Title VIII of the Financial Regulation.

Amendment 21

**Proposal for a regulation
Article 11 – paragraph 2**

Text proposed by the Commission

2. The Commission shall, by means of ***an implementing*** act, adopt the work programme referred to in paragraph 1. ***The implementing act shall be adopted in accordance with the examination procedure referred to in Article 14 paragraph 3.***

Amendment

2. The Commission shall, by means of ***a delegated*** act, adopt ***a delegated act in accordance with Article 13a in order to supplement this Regulation by establishing*** the work programme referred to in paragraph 1.

Amendment 22

Proposal for a regulation Article 11 – paragraph 3

Text proposed by the Commission

3. The work programme shall set out the minimum financial size of the joint procurement actions ***and determine*** the indicative amount of financial support for actions carried out by the minimum number of Member States as referred to in point c) of Article 7 paragraph 1 ***as well as*** incentives for procurement of higher value and inclusion of additional Member States or associated countries.

Amendment

3. The work programme shall set out:

- (a) the minimum financial size of the joint procurement actions;
- (b) the indicative amount of financial support for actions carried out by the minimum number of Member States as referred to in point c) of Article 7 paragraph 1;
- (c) incentives for procurement of higher value and inclusion of additional Member States or associated countries;
- (d) ***the funding priorities in line with the needs referred to in Article 3 paragraph 2;***
- (e) ***a description of actions involving cooperation for common procurement;***
- (f) ***the estimated value of the common procurement;***
- (g) ***the procedure for evaluation and selection of the proposals;***
- (h) ***a precise description of milestones needed to measure progress in implementing the respective action or results as well as associated amounts for disbursement;***
- (i) ***the arrangements for the verification of milestones and***

disbursement process throughout the implementation of the respective action.

Amendment 23

Proposal for a regulation Article 12 – paragraph 2

Text proposed by the Commission

2. The report shall build on consultations of Member States and key stakeholders and shall, in particular, assess the progress made towards the achievement of the objectives set out in Article 3.

Amendment

2. The report shall build on consultations of Member States and key stakeholders and shall, in particular, assess the progress made towards the achievement of the objectives set out in Article 3 ***and be based on a set of key performance indicators. By ... [3 months after the entry into force of this Regulation] the Commission shall adopt a delegated act in accordance with Article 13a, in order to supplement this Regulation by laying down a set of key performance indicators.***

Amendment 24

Proposal for a regulation Article 13 a (new)

Text proposed by the Commission

Amendment

Article 13a

Exercise of delegation

1. ***The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.***
2. ***The power to adopt delegated acts referred to in Articles 11 and 12 shall be conferred on the Commission for a period of two years from ... [date of entry into force].***
3. ***The delegation of power referred to in Articles 11 and 12 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power***

specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article(s) ... shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of [two months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Establishing the European defence industry reinforcement through common procurement act	
References	COM(2022)0349 – C9-0287/2022 – 2022/0219(COD)	
Committees responsible Date announced in plenary	AFET 12.9.2022	ITRE 12.9.2022
Opinion by Date announced in plenary	BUDG 12.9.2022	
Rapporteur for the opinion Date appointed	Karlo Ressler 13.9.2022	
Rule 58 – Joint committee procedure Date announced in plenary	19.1.2023	
Discussed in committee	9.2.2023	
Date adopted	28.3.2023	
Result of final vote	+: 33 –: 1 0: 1	
Members present for the final vote	Rasmus Andresen, Pietro Bartolo, Olivier Chastel, Andor Deli, Pascal Durand, José Manuel Fernandes, Eider Gardiazabal Rubial, Vlad Gheorghe, Valérie Hayer, Niclas Herbst, Adam Jarubas, Joachim Kuhs, Zbigniew Kuźmiuk, Pierre Larroustou, Camilla Laureti, Janusz Lewandowski, Margarida Marques, Siegfried Mureşan, Victor Negrescu, Andrey Novakov, Dimitrios Papadimoulis, Karlo Ressler, Bogdan Rzońca, Eleni Stavrou, Nils Torvalds, Nils Ušakovs, Angelika Winzig	
Substitutes present for the final vote	Francisco Guerreiro, Fabienne Keller, Monika Vana	
Substitutes under Rule 209(7) present for the final vote	Karolin Braunsberger-Reinhold, Daniel Caspary, Daniel Freund, Isabel García Muñoz, Andreas Glück	

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

33	+
ECR	Zbigniew Kuźmiuk, Bogdan Rzońca
NI	Andor Deli
PPE	Karolin Braunsberger-Reinhold, Daniel Caspary, José Manuel Fernandes, Niclas Herbst, Adam Jarubas, Janusz Lewandowski, Siegfried Mureşan, Andrey Novakov, Karlo Ressler, Eleni Stavrou, Angelika Winzig
Renew	Olivier Chastel, Vlad Gheorghe, Andreas Glück, Valérie Hayer, Fabienne Keller, Nils Torvalds
S&D	Pietro Bartolo, Pascal Durand, Isabel García Muñoz, Eider Gardiazabal Rubial, Pierre Larroustou, Camilla Laureti, Margarida Marques, Victor Negrescu, Nils Ušakovs
Verts/ALE	Rasmus Andresen, Daniel Freund, Francisco Guerreiro, Monika Vana

1	-
ID	Joachim Kuhs

1	0
The Left	Dimitrios Papadimoulis

Key to symbols:

+ : in favour

- : against

0 : abstention

22.3.2023

OPINION OF THE COMMITTEE ON BUDGETARY CONTROL

for the Committee on Foreign Affairs and the Committee on Industry, Research and Energy

on the proposal for a regulation of the European Parliament and of the Council on establishing the European defence industry reinforcement through common procurement act (COM(2022)0349 – C9-0287/2022 – 2022/0219(COD))

Rapporteur for opinion: Monika Hohlmeier

SHORT JUSTIFICATION

The rapporteur welcomes the Commission's proposal for a Regulation establishing the European defence industry Reinforcement through common Procurement Act. The unjustified invasion of Ukraine by the Russian Federation and the ongoing armed conflict in Ukraine has made it clear that it is critical to act now to address the existing shortfalls. The rapporteur concurs that without coordination and cooperation, increased Member State investments into defence risk to deepen the fragmentation of the European defence sector, to limit the potential for cooperation throughout the life cycle of the equipment, to intensify external dependencies and to hamper interoperability.

This draft opinion focuses on those areas where the Committee on Budgetary Control can add value, and in particular, the control of the implementation of the budget of the Union and the monitoring of the cost-effectiveness of the various forms of Union financing in the implementation of the Union's policies.

In this line, the proposal of the rapporteur focuses on three main areas: the types of financing and the choice on its implementation methods, key elements of the definition of the Work Programme and the award criteria, and the protection of the financial interests of the Union, including enhancing the role of the Court of Auditors, OLAF and the EPPO.

Concerning the implementation and forms of EU funding, the rapporteur notes with concern the preponderance given in the Commission proposal to financing not linked to costs. The rapporteur recalls that this is not the only available option in the Financial Regulation, and highlights that similar instruments under financing not linked to costs principles such as under the Recovery and Resilience Facility are facing criticism due to deficiencies in its implementation, with issues such as unclear milestones or the lack of a methodology to quantify the impact of unachieved milestones. In this scenario, the rapporteur proposes to not limit the application of this instrument to these funding methods, and calls on the Commission to explore other possibilities such as the reimbursement of eligible costs actually incurred.

The rapporteur suggests further improvements for cases where financing not linked to cost is eventually considered appropriate, in particular in what refers to the refinement of the definition of the milestones, the verification procedures, and eventual corrections in case of

unsatisfactory fulfilment. The rapporteur also proposes the establishment of minimum sizes of joint procurements in order to ensure a real and measurable impact.

Finally, the rapporteur suggests further amendments aiming at ensuring the adequate protection of the financial interests of the Union, detailing the role of the Court of Auditors, the European Anti-Fraud office (OLAF), and the European Public Prosecutor's office (EPPO), as well as introducing specific provisions aimed at guaranteeing their rights and access in third countries participating in the Instrument.

As a final note, the rapporteur deeply regrets that Commission chose to table this proposal for a regulation establishing the instrument without including an impact assessment, and reminds the Commission of its commitments under their own better regulation agenda.

AMENDMENTS

The Committee on Budgetary Control calls on the Committee on Industry, Research and Energy and the Subcommittee on Security and Defence, as the committees responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

(1) The EU Heads of State or Government, meeting in Versailles on 11 March, committed to “bolster European defence capabilities” in light of the Russian military aggression against Ukraine. They agreed to increase defence expenditures, step up cooperation through joint projects, and common procurement of defence capabilities, close shortfalls, boost innovation and strengthen and develop the EU defence industry.

Amendment

(1) The EU Heads of State or Government, meeting in Versailles on 11 March, committed to “bolster European defence capabilities” in light of the Russian military aggression against Ukraine. They agreed to increase defence expenditures, step up cooperation through joint projects, and common procurement of defence capabilities, close shortfalls, boost innovation and strengthen and develop the EU defence industry, ***including small and medium-sized enterprises (SMEs).***

Amendment 2

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) A dedicated short-term instrument, designed in a spirit of solidarity, was indicated as a tool to incentivise Member States, on a voluntary basis, to pursue common procurement to fill the most urgent and critical gaps, especially those created by the response to the current Russia's aggression, in a collaborative way.

Amendment

(4) A dedicated short-term instrument, designed in a spirit of solidarity, was indicated as a tool to incentivise Member States, on a voluntary basis, to pursue common procurement to fill the most urgent and critical gaps, especially those created by the response to the current Russia's aggression, in a collaborative way. ***Such critical and urgent acquisitions are directed at increasing the quantity of defence material already in possession, which might restrict joint procurement opportunities made under the instrument.***

Amendment 3

**Proposal for a regulation
Recital 6**

Text proposed by the Commission

(6) Reinforcing the European Defence Technological and Industrial Base should therefore be at the core of those efforts. Indeed difficulties and gaps still exist and the European defence industrial base remains highly fragmented, lacking sufficient collaborative action and interoperability of products.

Amendment

(6) Reinforcing the European Defence Technological and Industrial Base should therefore be at the core of those efforts. Indeed difficulties and gaps still exist and the European defence industrial base remains highly fragmented, lacking sufficient collaborative action and interoperability of products. ***In view of the current situation in Europe arising from the threat to its security, it is essential to earmark European funding for the relaunching of defence contractors in all Member States in order to sustain and increase Union's defence capability, while ensuring that the allocated funding is spent efficiently and effectively.***

Amendment 4

**Proposal for a regulation
Recital 6 a (new)**

Text proposed by the Commission

Amendment

(6a) In addition, given that the European Defence Technological and Industrial Base requires favourable long-term conditions, it is of utmost importance that access to finance for defence companies is assured, as laid out in the Strategic Compass for Security and Defence. Lacking an explicit classification of being sustainable within the Union's taxonomy, Union defence companies are faced with substantial difficulties to secure financing and thus to increase their production capacity rendering relocation of production outside of the internal market more attractive to defence companies. Furthermore, the Member States should take a first step in that regard and send a positive signal to European defence companies and the financial sector by adapting the statute of the European Investment Bank in order to allow for financing of defence investments.

Amendment 5

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) In the current defence market context, marked by an increased security threat and the realistic perspective of a high intensity conflict, Member States are rapidly increasing their defence budgets and aiming at similar purchases. This results in an amount of demand which exceeds European Defence Technological and Industrial Base manufacturing capacities, currently tailored for peace time.

Amendment

(7) In the current defence market context, marked by an increased security threat and the realistic perspective of a high intensity conflict, Member States are rapidly increasing their defence budgets and aiming at similar purchases. This results in an amount of demand which exceeds European Defence Technological and Industrial Base manufacturing capacities, currently tailored for peace time, ***necessitating the use of cutting-edge technologies to produce high-performance military and security capacity designed to place the Union as far ahead as possible in strategic terms. It should also be noted that some Member States have already increased their***

defence material procurement budget and already launched national procurement processes. The instrument would mean increasing commitments to some Member States in the period 2022-2024 when compared to a situation where funding would not be mobilised.

Amendment 6

Proposal for a regulation

Recital 8

Text proposed by the Commission

(8) As a result, strong price inflation can be anticipated, as well as longer delays in delivery time, potentially harming the security of the Union and its Member States. Defence industries need to secure the production capacity necessary to process orders, as well as critical raw materials and sub-components. In this context producers might privilege major orders, potentially leaving exposed the most vulnerable countries, lacking the critical size and financial means to ensure large orders.

Amendment

(8) As a result, strong price inflation can be anticipated, as well as longer delays in delivery time, potentially harming the security of the Union and its Member States. Defence industries need to secure the production capacity necessary to process orders, as well as critical raw materials and sub-components. In this context producers might privilege major orders, potentially leaving exposed the most vulnerable countries lacking the critical size and financial means to ensure large orders. ***It is therefore necessary to establish clear criteria for the allocation of Union funding as effectively as possible.***

Amendment 7

Proposal for a regulation

Recital 9

Text proposed by the Commission

(9) Furthermore, efforts should be made so that the increased spending results in a much stronger European Defence Technological and Industrial Base. Indeed, without coordination and cooperation, the increased national investments are likely to deepen the fragmentation of the European

Amendment

(9) Furthermore, efforts should be made so that the increased spending results in a much stronger European Defence Technological and Industrial Base, ***which is essential for Europe in order to be able to guarantee the safety of its citizens.*** Indeed, without coordination and cooperation, the increased national

defence industry.

investments are likely to deepen the fragmentation of the European defence industry.

Amendment 8

Proposal for a regulation

Recital 10

Text proposed by the Commission

(10) In the light of the above challenges and the related structural changes in the EU Defence industry, it appears necessary to speed up the adjustment of the European Defence Technological and Industrial Base, enhance its competitiveness and efficiency, and thereby contribute to strengthening and reforming Member States' defence industrial capabilities. Addressing industrial shortfalls should include promptly tackling the most urgent gaps.

Amendment

(10) In the light of the above challenges and the related structural changes in the EU Defence industry, ***and in accordance with Article 173 of the Treaty on the Functioning of the European Union (TFEU)***, it appears necessary to speed up the adjustment of the European Defence Technological and Industrial Base, enhance its competitiveness and efficiency, and thereby contribute to strengthening and reforming Member States' defence industrial capabilities. Addressing industrial shortfalls should include promptly tackling the most urgent gaps.

Amendment 9

Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) Common investment and defence procurement should in particular be incentivised, as such collaborative actions would ensure that the necessary changes in the EU industrial base takes place in a collaborative manner, avoiding further fragmentation of the industry.

Amendment

(11) Common investment and defence procurement should in particular be incentivised, as such collaborative actions would ensure that the necessary changes in the EU industrial base takes place in a collaborative manner, avoiding further fragmentation of the industry. ***Due to the differences between Member States, potential joint acquisitions often increase the volume of individual contracts to such an extent that potentially only the largest European defence industry companies have the opportunity to participate in competitive tendering and procurement.***

This is a challenge, in particular for SMEs, since in certain Member States the majority of the defence equipment industry companies are SMEs.

Amendment 10

Proposal for a regulation Recital 13

Text proposed by the Commission

(13) The Short Term Instrument should offset the complexity and risks associated with such joint actions while allowing economies of scale in the actions undertaken by Member States to reinforce and modernise the European Technological and Industrial Base, increasing thereby the Union's capacity resilience and security of supply. Incentivizing common procurement would also result into diminished costs in terms of exploitation, maintenance and withdrawal of the systems.

Amendment

(13) The Short Term Instrument should offset the complexity and risks associated with such joint actions while allowing economies of scale in the actions undertaken by Member States to reinforce and modernise the European Technological and Industrial Base, increasing thereby the Union's capacity resilience and security of supply. Incentivizing common procurement would also result into diminished costs in terms of exploitation, maintenance and withdrawal of the systems. *It is intended to encourage cooperation between Member States, leading to increased solidarity, greater interoperability and more efficient public spending.*

Amendment 11

Proposal for a regulation Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) The Instrument should enable the European defence technological and industrial base to adapt and increase its manufacturing capacities to produce the necessary defence products, increasing the non-dependency on non-Union or non-NATO sources, and ensuring that the defence supply chains remain linked to Union and NATO partners, contributing therefore to the strengthening of the

security of supply and the security and defence interests of the Union.

Amendment 12

Proposal for a regulation Recital 13 b (new)

Text proposed by the Commission

Amendment

(13b) The objectives of the Instrument are intended to include increasing the manufacturing capacity of defence material, but according to the instrument, funding would be granted for joint procurement and for Member States, not for the industry. Thus, there would be a discrepancy between the objectives of the instrument and the actions to be financed and the criteria for granting the aid.

Amendment 13

Proposal for a regulation Recital 16

Text proposed by the Commission

Amendment

(16) As the instrument aims to enhance the competitiveness and efficiency of the Union's defence industry, to benefit from the instrument, common procurement contracts will need to be placed with legal entities which are established in the Union or in associated countries and are not subject to control by non-associated third countries or by non-associated third-country entities. In that context, control 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

(16) As the instrument aims to enhance the competitiveness and efficiency of the Union's defence industry, to benefit from the instrument, common procurement contracts will need to be placed with legal entities which are established in the Union or in associated countries and are not subject to control by non-associated third countries or by non-associated third-country entities. In that context, control 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 contractors and subcontractors involved in the common procurement which are used for the purposes of the common procurement shall be located on the territory of a Member State or of an associated third country.

and resources of the contractors and subcontractors involved in the common procurement which are used for the purposes of the common procurement ***should*** be located on the territory of a Member State or of an associated third country. ***European defence policy should accordingly be designated for optimising the capabilities of all Member States and promoting research and technological cooperation to ensure coordinated development.***

Amendment 14

Proposal for a regulation Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) Considering the very nature of the Instrument and its legal basis, which aims at strengthening the European defence industry, any possible derogation under this Regulation should be kept to a strict minimum.

Amendment 15

Proposal for a regulation Recital 19

Text proposed by the Commission

Amendment

(19) Grants under the Instrument ***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.

(19) The forms of Union funding and the methods of implementation of the European Defence Fund should be chosen on the basis of their ability to achieve the specific objectives of the actions and to deliver results, taking into account, in particular, the costs of controls, the administrative burden and the expected risk of non-compliance. That choice should include the consideration of the use of lump sums, flat-rate financing

and unit costs, as well as financing not linked to costs as referred to in Article 125(1) of the Financial Regulation.

Where grants under the Instrument take the form of financing not linked to cost, ***the key criteria should be*** 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.

Justification

Financing not linked to costs is not the only existing type of grant. The Financial Regulation allow for a wider range of choice of instruments adapted to different needs which may be better suited for this Regulation, as highlighted in this amendment.

Amendment 16

Proposal for a regulation Recital 20

Text proposed by the Commission

(20) 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, (c) the rough order of magnitude expected from the common procurement **and** (d) the maximum Union contribution available.

Amendment

(20) 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, (c) the rough order of magnitude expected from the common procurement, (d) the maximum Union contribution available **and (e) the justification of the suitability of that specific form of financing.**

Justification

As indicated in the previous amendment, financing not linked to cost may not be the most adequate financing option depending on the specific actions to be financed under this instrument, and may present more challenges in the adequate protection of the EU and the sound financial management of these funds. Therefore, it would be desirable that the Commission justify those cases where it is considered that financing not linked to costs is the

best option, when compared to other possibilities.

Amendment 17

Proposal for a regulation

Recital 21

Text proposed by the Commission

(21) To generate the incentive effect, the level of Union contribution may be differentiated based on factors such as (a) the complexity of the common procurement, for which a proportion of the anticipated size of the procurement contract, based on experience gained in similar actions, may serve as an initial proxy, (b) the characteristics of the cooperation, such as joint usage, stockpiling, ownership or maintenance, which are likely to induce stronger interoperability outcomes and long-term investment signals to industry, and (c) the number of participating Member States or associated countries or the inclusion of additional Member States or associated countries to existing cooperations.

Amendment

(21) To generate the incentive effect, the level of Union contribution may be differentiated based on factors such as (a) the complexity of the common procurement, for which a proportion of the anticipated size of the procurement contract, based on experience gained in similar actions, may serve as an initial proxy, (b) the characteristics of the cooperation, such as joint usage, stockpiling, ownership or maintenance, which are likely to induce stronger interoperability outcomes and long-term investment signals to industry, ***as well as the size of the joint procurement, in order so ensure real and measurable impact,*** and (c) the number of participating Member States or associated countries or the inclusion of additional Member States or associated countries to existing cooperations.

Justification

The Union contribution should be addressed to projects above a minimum size, in order to ensure a real and measurable impact.

Amendment 18

Proposal for a regulation

Recital 22

Text proposed by the Commission

(22) Member States should appoint a procurement agent to conduct a common procurement on their behalf. The

Amendment

(22) Member States should appoint a procurement agent to conduct a common procurement on their behalf. The

procurement agent should be a contracting authority established in a Member State or an associated third country, including Union bodies or international organisations, *such as the Organisation Conjointe de Coopération en matière d'ARmement (OCCAR)*.

procurement agent should be a contracting authority established in a Member State or an associated third country, including Union bodies or international organisations. *The Commission should consult the procurement agent on progress made with regard to the action prior to executing the payment to the recipients, so that the procurement agent can ensure that the timeframes are respected by the recipients. The procurement agent should provide the Commission with observations on progress made with regard to the action so that the Commission can determine whether the conditions for proceeding with the payment have been fulfilled.*

Justification

Procurement agents, appointed by Member States or associated third countries, act on their behalf for the purpose of common procurement. It is therefore reasonable that the Commission consults with them on progress made before the payment is executed.

Amendment 19

Proposal for a regulation Recital 22 a (new)

Text proposed by the Commission

Amendment

(22a) The clauses, guarantees and general amounts in the procurement act should be as transparent as possible so as to avoid harm to the Union's financial interests, loss of credibility in the Union institutions on the part of Union citizens and the dissipation of valuable resources in the context of the war in Ukraine.

Amendment 20

Proposal for a regulation Recital 23

Text proposed by the Commission

(23) In accordance with Article 193(2) of the Financial Regulation, a grant may be awarded for an action which has already begun, provided that the applicant can demonstrate the need for starting the action prior to signature of the grant agreement. However, financial contribution should not cover a period prior to the date of submission of the grant application, except in duly justified exceptional cases. ***In order to avoid any disruption in Union support which could be prejudicial to the interests of the Union, it should be possible to provide in the financing decision for financial contributions to actions that cover a period from the 24 February 2022, even if they have started before the grant application was submitted.***

Amendment

(23) In accordance with Article 193(2) of the Financial Regulation, a grant may be awarded for an action which has already begun, provided that the applicant can demonstrate the need for starting the action prior to signature of the grant agreement. However, financial contribution should not cover a period prior to the date of submission of the grant application, except in duly justified exceptional cases.

Justification

The Financial Regulation establishes the general principle that grants shall not be awarded retroactively. The main objectives of this instrument, as defined in Article 3, are to foster competitiveness, efficiency and cooperation. Actions that are already being implemented by the time of entry into force of this Instrument would have not needed the incentives offered by it, and therefore the limited resources available would be better used to incentivise future and unrealised collaborative actions between Member States.

Amendment 21

**Proposal for a regulation
Recital 25 a (new)**

Text proposed by the Commission

Amendment

(25a) Horizontal financial rules adopted by the European Parliament and by the Council on the basis of Article 322 TFEU apply to this Regulation. Those rules are laid down in the Financial Regulation and determine in particular the procedure for establishing and implementing the budget, and provide for checks on the responsibility of financial actors. Rules

*adopted on the basis of Article 322 TFEU
also include a general regime of
conditionality for the protection of the
Union budget.*

Amendment 22

Proposal for a regulation Recital 26

Text proposed by the Commission

(26) In accordance with the Financial Regulation, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council³, Council Regulation (Euratom, EC) No 2988/95⁴, Council Regulation (Euratom, EC) No 2185/96⁵ and Council Regulation (EU) 2017/1939⁶, the financial interests of the Union are to be protected through proportionate measures, including the prevention, detection, correction and investigation of irregularities and fraud, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, the imposition of administrative sanctions. In particular, in accordance with Regulation (EU, Euratom) No 883/2013 and Regulation (Euratom, EC) No 2185/96 the European Anti-Fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. In accordance with Regulation (EU) 2017/1939, the European Public Prosecutor's Office (EPPO) may investigate and prosecute fraud and other illegal activities affecting the financial interests of the Union as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council⁷. In accordance with the Financial Regulation, any person or entity receiving Union funds is to fully cooperate in the protection of the Union's financial interests, to grant the

Amendment

(26) In accordance with the Financial Regulation, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council³, Council Regulation (Euratom, EC) No 2988/95⁴, Council Regulation (Euratom, EC) No 2185/96⁵ and Council Regulation (EU) 2017/1939⁶, the financial interests of the Union are to be protected through proportionate measures, including the prevention, detection, correction and investigation of irregularities and fraud, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, the imposition of administrative sanctions. In particular, in accordance with Regulation (EU, Euratom) No 883/2013 and Regulation (Euratom, EC) No 2185/96 the European Anti-Fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. ***It is of the essence to counteract corruption and uphold the rule of law.*** In accordance with Regulation (EU) 2017/1939, the European Public Prosecutor's Office (EPPO) may investigate and prosecute fraud and other illegal activities affecting the financial interests of the Union as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council⁷. In accordance with the Financial Regulation, any person or entity receiving Union funds

necessary rights and access to the Commission, OLAF, the EPPO and the European Court of Auditors (ECA) and to ensure that any third parties involved in the implementation of Union funds grant equivalent rights.

³ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, (OJ L248, 18.9.2013, p. 1.

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

⁵ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L292, 15.11.96, , p.2).

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

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

is to fully cooperate in the protection of the Union's financial interests, to grant the necessary rights and access to the Commission, OLAF, the EPPO and the European Court of Auditors (ECA) and to ensure that any third parties involved in the implementation of Union funds grant equivalent rights.

³ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, (OJ L248, 18.9.2013, p. 1.

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

⁵ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L292, 15.11.96, , p.2).

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

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

Amendment 23

Proposal for a regulation Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) Third countries which are members of the European Economic Area (EEA) may participate in the 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. Such third countries should be required to grant the necessary rights and access required for the authorising officer responsible, OLAF, the EPPO and the Court of Auditors to comprehensively exercise their respective competences.

Amendment 24

Proposal for a regulation

Article 3 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) to foster the competitiveness and efficiency of the European Defence Technological and Industrial Base (EDTIB) for a more resilient Union, in particular by speeding up, in a collaborative manner, the adjustment of industry to structural changes, including ramp-up of its manufacturing capacities;

(a) to foster the competitiveness and efficiency of the European Defence Technological and Industrial Base (EDTIB) for a more resilient Union, in particular by speeding up, in a collaborative manner, the adjustment of industry to structural changes, including ramp-up of its manufacturing capacities, ***while safeguarding cost efficiency;***

Amendment 25

Proposal for a regulation

Article 3 – paragraph 2

Text proposed by the Commission

Amendment

2. The objectives shall be pursued with an emphasis on strengthening and developing the Union defence industrial base to allow it to address in particular the

2. The objectives shall be pursued with an emphasis on strengthening and developing the Union defence industrial base ***in accordance with the legal basis of***

most urgent and critical defence products needs, especially those revealed or exacerbated by the response to the Russian aggression against Ukraine, taking into account the work of the Defence Joint Procurement Task Force.

the Instrument in order to allow it to address in particular the most urgent and critical defence products needs, especially those revealed or exacerbated by the response to the Russian aggression against Ukraine, taking into account the work of the Defence Joint Procurement Task Force.

Amendment 26

Proposal for a regulation

Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. In pursuing the objectives referred to in paragraph 2, the focus shall be on making common defence procurement more efficient.

Amendment 27

Proposal for a regulation

Article 4 – paragraph 2

Text proposed by the Commission

Amendment

2. The amount referred to in paragraph 1 may be used for technical and administrative assistance for the implementation of the Instrument, such as preparatory, monitoring, control, audit and evaluation activities including corporate information technology systems.

2. The amount referred to in paragraph 1 may be used for technical and administrative assistance for the implementation of the Instrument, such as preparatory, monitoring, control, audit and evaluation activities including corporate information technology systems. ***Specific criteria shall be established for the amount to be allocated to each of the implementing activities.***

Amendment 28

Proposal for a regulation

Article 6 – paragraph 3

Text proposed by the Commission

Amendment

3. Where necessary for the implementation of an action, financial contributions may cover a period prior to the date of the request for financial contributions for that action, provided that the action has not started prior to the 24 February 2022.

deleted

Amendment 29

Proposal for a regulation

Article 6 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The Union’s financial support shall be provided through the types of financing envisaged in the Financial Regulation, in particular grants. The types of financing and the methods of implementation shall be chosen on the basis of their ability to achieve the specific objectives of the actions and to deliver results, taking into account, in particular, the costs of controls, the administrative burden and the risk of conflict of interests. Priority shall be given to financing through reimbursement of eligible costs actually incurred, and deviations from this method justified.

Amendment 30

Proposal for a regulation

Article 6 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The Union’s financial contribution to each action shall be capped at 20% of the estimated value of the common procurement contract per consortium of Member States and

associated countries.

Amendment 31

Proposal for a regulation

Article 8 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Member States or associated third countries shall appoint a procurement agent to act on their behalf for the purpose of the common procurement. The procurement agent shall carry out the procurement procedures and conclude the resulting agreements with contractors on behalf of the participating Member States ***as specified. The Commission shall consult the procurement agent on progress made with regard to the action before the payment is executed.***

Amendment 32

Proposal for a regulation

Article 8 – paragraph 6

Text proposed by the Commission

6. The participating Member States shall provide to the Commission a notification from the procurement agent on the guarantees provided by a contractor or subcontractor involved in the common procurement that is established in the Union or an associated third country and controlled by a non-associated third country or a non-associated third country entity. The guarantees and related provisions in the procurement contract shall be made available to the Commission upon request. The guarantees shall provide assurances that the involvement of the contractor or subcontractor involved in the common procurement does not contravene the security and defence interests of the Union and its Member States as established

Amendment

6. The participating Member States shall provide to the Commission a notification from the procurement agent on the guarantees provided by a contractor or subcontractor involved in the common procurement that is established in the Union or an associated third country and controlled by a non-associated third country or a non-associated third country entity. The guarantees, ***general amounts in the procurement act*** and related provisions in the procurement contract shall be made available to the Commission upon request ***and to all the Union institutions responsible for monitoring the budget and safeguarding the financial interests of the Union.*** The guarantees shall provide assurances that the involvement of the

in the framework of the CFSP pursuant to Title V of the TEU, or the objectives set out in Article 3.

contractor or subcontractor involved in the common procurement does not contravene the security and defence interests of the Union and its Member States as established in the framework of the CFSP pursuant to Title V of the TEU, or the objectives set out in Article 3.

Amendment 33

Proposal for a regulation Article 8 – paragraph 9

Text proposed by the Commission

9. Common procurement procedures and contracts shall also include a requirement **for** the defence product **to not** be subject to a restriction by a non-associated third country or a non-associated third country entity.

Amendment

9. Common procurement procedures and contracts shall also include a requirement **specifying that** the defence product **cannot** be subject to a restriction by a non-associated third country or a non-associated third country entity.

Amendment 34

Proposal for a regulation Article 10 – paragraph 1 – point 5

Text proposed by the Commission

5. the estimated size of the common procurement and any declaration by the participants that they will jointly use, stockpile, own or maintain the procured defence products;

Amendment

5. the estimated size of the common procurement, **for which a minimum amount ensuring a real and measurable impact shall be set**, and any declaration by the participants that they will jointly use, stockpile, own or maintain the procured defence products;

Amendment 35

Proposal for a regulation Article 11 – paragraph 4

Text proposed by the Commission

4. The work programme shall set out the funding priorities in line with the needs

Amendment

4. The work programme shall set out the funding priorities in line with the needs

referred to in Article 3 paragraph 2.

referred to in Article 3 paragraph 2,
providing justification for the release of funds.

Amendment 36

Proposal for a regulation

Article 11 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The work programme shall set out the procedure for evaluation and selection of the proposals and the description of the monitoring and disbursement process throughout the implementation of the relevant action.

Amendment 37

Proposal for a regulation

Article 11 – paragraph 4 b (new)

Text proposed by the Commission

Amendment

4b. The work programme shall specify the form of Union funding under Article 8.

Where needed, the work programme shall set out a precise description of the milestones and targets allowing for the determination of the progress towards its achievement, the verification procedures, and the methods for correction in case of unsatisfactory fulfillment.

Justification

Adequate level of detail of the milestones and targets, verification procedures and correction mechanisms are needed in order to ensure sound financial management, following the experience in other instruments such as the Recovery and Resilience Facility (RRF).

Amendment 38

Proposal for a regulation Article 12 – paragraph 2

Text proposed by the Commission

2. The report shall build on consultations of Member States and key stakeholders and shall, in particular, assess the progress made towards the achievement of the objectives set out in Article 3.

Amendment

2. The report shall build on consultations of Member States and key stakeholders and shall, in particular, assess the progress made towards the achievement of the objectives set out in Article 3. ***It shall also analyse cross-border participation, including of SMEs and mid-caps, in actions carried out under the Instrument as well as the integration of SMEs and mid-caps in the global value chain.***

Amendment 39

Proposal for a regulation Article 12 a (new)

Text proposed by the Commission

Amendment

Article 12a

Protection of the financial interests of the Union

- 1. The Commission shall take appropriate measures to ensure that, when actions financed under this Regulation are implemented, the financial interests of the Union are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the recovery of the amounts wrongly paid and, where appropriate, by effective, proportionate and dissuasive administrative and financial penalties.***
- 2. The Commission or its representatives and the Court of Auditors shall have the power of audit on the basis of documents and on the spot, over all grant beneficiaries, contractors and***

subcontractors who have received Union funds under the Instrument.

3. OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council and Council Regulation (Euratom, EC) No 2185/96, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement or grant decision or a contract funded under the Instrument.

4. In accordance with Regulation (EU) 2017/1939, the EPPO may investigate and prosecute fraud and other illegal activities affecting the financial interests of the Union as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council.

5. Without prejudice to paragraphs 1, 2, 3 and 4, where a third country or a legal entity established in a third country participates in the Instrument, it shall grant the necessary rights and access required for the authorising officer responsible, OLAF, the EPPO and the Court of Auditors to comprehensively exercise their respective competences.

Justification

The roles of the Commission, the Court of Auditors, the European Anti-Fraud Office and the European Public Prosecutor's Office can be detailed as to ensure an adequate protection of the financial interest of the Union. Furthermore, this role would need to be reinforced in the context of third countries or legal entities established in third countries.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Establishing the European defence industry reinforcement through common procurement act	
References	COM(2022)0349 – C9-0287/2022 – 2022/0219(COD)	
Committees responsible Date announced in plenary	AFET 12.9.2022	ITRE 12.9.2022
Opinion by Date announced in plenary	CONT 12.9.2022	
Rapporteur for the opinion Date appointed	Monika Hohlmeier 11.10.2022	
Rule 58 – Joint committee procedure Date announced in plenary	19.1.2023	
Discussed in committee	28.2.2023	
Date adopted	22.3.2023	
Result of final vote	+: 21 –: 3 0: 1	
Members present for the final vote	Gilles Boyer, Olivier Chastel, Caterina Chinnici, Ilana Cicurel, Corina Crețu, José Manuel Fernandes, Luke Ming Flanagan, Daniel Freund, Isabel García Muñoz, Monika Hohlmeier, Jean-François Jalkh, Joachim Kuhs, Claudiu Manda, Markus Pieper, Michèle Rivasi, Petri Sarvamaa, Eleni Stavrou, Angelika Winzig, Lara Wolters, Tomáš Zdechovský	
Substitutes present for the final vote	Maria Grapini, Jeroen Lenaers, Viola von Cramon-Taubadel	
Substitutes under Rule 209(7) present for the final vote	Anne-Sophie Pelletier, Bert-Jan Ruissen	

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

21	+
ECR	Bert-Jan Ruissen
PPE	José Manuel Fernandes, Monika Hohlmeier, Jeroen Lenaers, Markus Pieper, Petri Sarvamaa, Eleni Stavrou, Angelika Winzig, Tomáš Zdechovský
Renew	Gilles Boyer, Olivier Chastel, Ilana Cicurel
S&D	Caterina Chinnici, Corina Crețu, Isabel García Muñoz, Maria Grapini, Claudiu Manda, Lara Wolters
Verts/ALE	Daniel Freund, Michèle Rivasi, Viola von Cramon-Taubadel

3	-
ID	Jean-François Jalkh
The Left	Luke Ming Flanagan, Anne-Sophie Pelletier

1	0
ID	Joachim Kuhs

Key to symbols:

+ : in favour

- : against

0 : abstention

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Establishing the European defence industry reinforcement through common procurement act		
References	COM(2022)0349 – C9-0287/2022 – 2022/0219(COD)		
Date submitted to Parliament	19.7.2022		
Committees responsible Date announced in plenary	AFET 12.9.2022	ITRE 12.9.2022	
Committees asked for opinions Date announced in plenary	BUDG 12.9.2022	CONT 12.9.2022	IMCO 12.9.2022
Associated committees Date announced in plenary	IMCO 15.12.2022		
Rapporteurs Date appointed	Michael Gahler 8.12.2022	Zdzisław Krasnodębski 8.12.2022	
Rule 58 – Joint committee procedure Date announced in plenary	19.1.2023		
Discussed in committee	6.2.2023	20.3.2023	
Date adopted	25.4.2023		
Result of final vote	+: –: 0:	87 8 25	
Members present for the final vote	Alviina Alametsä, Alexander Alexandrov Yordanov, Petras Auštrevičius, Traian Băsescu, Hildegard Bentele, Tom Berendsen, Vasile Blaga, Anna Bonfrisco, Paolo Borchia, Markus Buchheit, Cristian-Silviu Bușoi, Reinhard Bütikofer, Maria da Graça Carvalho, Susanna Ceccardi, Włodzimierz Cimoszewicz, Ignazio Corrao, Beatrice Covassi, Ciarán Cuffe, Josianne Cutajar, Nicola Danti, Marie Dauchy, Pilar del Castillo Vera, Christian Ehler, Valter Flego, Anna Fotyga, Michael Gahler, Kinga Gál, Lina Gálvez Muñoz, Claudia Gamon, Sunčana Glavak, Raphaël Glucksmann, Nicolás González Casares, Bernard Guetta, Henrike Hahn, Ivars Ijabs, Seán Kelly, Izabela-Helena Kloc, Łukasz Kohut, Dietmar Köster, Andrius Kubilius, Miapetra Kumpula-Natri, Jean-Lin Lacapelle, Miriam Lexmann, Nathalie Loiseau, Leopoldo López Gil, Antonio López-Istúriz White, Eva Maydell, Georg Mayer, Vangelis Meimarakis, Marina Measure, Iskra Mihaylova, Sven Mikser, Francisco José Millán Mon, Dan Nica, Angelika Niebler, Niklas Nienaß, Ville Niinistö, Johan Nissinen, Urmas Paet, Mauri Pekkarinen, Mikuláš Peksa, Tsvetelina Penkova, Morten Petersen, Tonino Picula, Markus Pieper, Clara Ponsatí Obiols, Thijs Reuten, Manuela Ripa, Robert Roos, Isabel Santos, Mounir Satouri, Andreas Schieder, Sara Skyttedal, Maria Spyrali, Dominik Tarczyński, Riho Terras, Grzegorz Tobiszowski, Patrizia Toia, Dragoș Tudorache, Henna Virkkunen, Anders Vistisen, Thomas Waitz, Witold Jan Waszczykowski, Charlie Weimers, Pernille Weiss, Salima Yenbou, Bernhard Zimniok, Carlos Zorrinho		
Substitutes present for the final vote	Attila Ara-Kovács, Pascal Arimont, Anna-Michelle Asimakopoulou,		

	Nicola Beer, Erik Bergkvist, Adam Bielan, Vladimír Bilčík, Marc Botenga, Engin Eroglu, Andreas Glück, Klemen Grošelj, Christophe Grudler, Robert Hajšel, Ladislav Ilčić, Rasa Juknevičienė, Andrey Kovatchev, Zdzisław Krasnodębski, Georgios Kyrtos, Katrin Langensiepen, Javi López, Dace Melbārde, Alessandra Moretti, Juozas Olekas, Jutta Paulus, Dominique Riquet, Christian Sagartz, Tom Vandenkendelaere, Isabel Wiseler-Lima, Elena Yoncheva
Substitutes under Rule 209(7) present for the final vote	Corina Crețu, Carlo Fidanza, Caroline Roose
Date tabled	28.4.2023

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

87	+
ECR	Adam Bielan, Carlo Fidanza, Anna Fotyga, Ladislav Ilčić, Izabela-Helena Kloc, Zdzisław Krasnodębski, Dominik Tarczyński, Grzegorz Tobiszowski, Witold Jan Waszczykowski
ID	Anna Bonfrisco, Paolo Borchia, Susanna Ceccardi
PPE	Alexander Alexandrov Yordanov, Pascal Arimont, Anna-Michelle Asimakopoulou, Traian Băsescu, Hildegard Bentele, Tom Berendsen, Vladimír Bilčík, Vasile Blaga, Cristian-Silviu Buşoi, Maria da Graça Carvalho, Pilar del Castillo Vera, Christian Ehler, Michael Gahler, Sunčana Glavak, Rasa Juknevičienė, Seán Kelly, Andrey Kovatchev, Andrius Kubilius, Miriam Lexmann, Leopoldo López Gil, Antonio López-Istúriz White, Eva Maydell, Vangelis Meimarakis, Dace Melbārde, Francisco José Millán Mon, Angelika Niebler, Markus Pieper, Christian Sagartz, Sara Skytvedal, Maria Spyrali, Riho Terras, Tom Vandenkendelaere, Henna Virkkunen, Pernille Weiss, Isabel Wiseler-Lima
Renew	Petras Auštrevičius, Nicola Beer, Nicola Danti, Engin Eroglu, Valter Flego, Claudia Gamon, Andreas Glück, Klemen Grošelj, Ivars Ijabs, Georgios Kyrtos, Iskra Mihaylova, Urmas Paet, Mauri Pekkarinen, Morten Petersen, Dragoş Tudorache
S&D	Attila Ara-Kovács, Erik Bergkvist, Włodzimierz Cimoszewicz, Beatrice Covassi, Corina Creţu, Lina Gálvez Muñoz, Nicolás González Casares, Robert Hajšel, Łukasz Kohut, Dietmar Köster, Miapetra Kumpula-Natri, Javi López, Sven Mikser, Alessandra Moretti, Dan Nica, Juozas Olekas, Tsvetelina Penkova, Tonino Picula, Thijs Reuten, Isabel Santos, Andreas Schieder, Patrizia Toia, Elena Yoncheva, Carlos Zorrinho
Verts/ALE	Reinhard Bütikofer

8	-
ID	Markus Buchheit, Marie Dauchy, Jean-Lin Lacapelle, Georg Mayer, Anders Vistisen, Bernhard Zimniok
The Left	Marc Botenga, Marina Mesure

25	0
ECR	Johan Nissinen, Robert Roos, Charlie Weimers
NI	Kinga Gál, Clara Ponsatí Obiols
Renew	Christophe Grudler, Bernard Guetta, Nathalie Loiseau, Dominique Riquet, Salima Yenbou
S&D	Josianne Cutajar, Raphaël Glucksmann
Verts/ALE	Alviina Alametsä, Ignazio Corrao, Ciarán Cuffe, Henrike Hahn, Katrin Langensiepen, Niklas Nienaa, Ville Niinistö, Jutta Paulus, Mikuláš Peksa, Manuela Ripa, Caroline Roose, Mounir Satouri, Thomas Waitz

Key to symbols:

+ : in favour

- : against

0 : abstention