



2022/0219(COD)

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

PA_Legam

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 defence industry.

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 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

Amendment

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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.

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

Amendment

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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.

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

(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.

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 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

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, and (c) the number of participating Member States or associated countries or the inclusion of additional Member States or associated countries to existing cooperations.

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 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 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

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***

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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.

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

Amendment

(26) In accordance with the Financial Regulation, Regulation (EU, Euratom) No 883/2013 of the European Parliament and

(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 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

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 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).

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

(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;

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, ***while safeguarding cost efficiency***;

Amendment 25

Proposal for a regulation

Article 3 – paragraph 2

Text proposed by the Commission

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 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

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 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

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.

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. ***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

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.***

Amendment

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

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

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.

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 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 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 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

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 **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 referred to in Article 3 paragraph 2.

Amendment

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

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.

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