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'A' ITEM NOTE

From: General Secretariat of the Council
To: Council

No. prev. doc.: 13951/1/18 REV 1
No. Cion doc.: 10084/18 + ADD 1 + ADD 2

Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the European Defence Fund (First reading) - Partial general approach

1. On 13 June 2018, the Commission submitted to the European Parliament and the Council its proposal establishing the European Defence Fund¹.
2. On 14 June 2018, Coreper agreed the mandate for Friends of the Presidency Group on the European Defence Fund (EDF)², which started the examination of the proposal at its meeting of 10-11 July 2018.

¹ 10084/18 + ADD 1.

² 9972/18.

3. Following the examination of the proposal at several meetings, the Group reached a very large agreement on a draft text at its meeting of 7 November 2018.
4. Since the proposed Regulation is one of the package of proposals linked to the MFF, all provisions with budgetary implications or of horizontal nature have been set aside, and thus excluded from the partial general approach aimed for, pending further progress on the MFF. These provisions, which appear between square brackets in the text, concern the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States (Recital 37), the overall target of the EU budget expenditures supporting climate objectives (Recital 41), the overall financial envelope for the implementation of the Programme (Article 4(1)) and the indicative amounts allocated to research and development actions (Article 4(2)), provisions regarding the resources allocated to Member States under shared management (Article 4(5)), provisions related to third countries to be considered associated countries under the Fund (Article 5) and the reference to the InvestEU Regulation (Article 8(2a)).
5. On 14 November 2018, Coreper agreed the text as set out in Annex.
6. The Council is invited to reach a partial General Approach on the proposal.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing the European Defence Fund

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 173(3), Article 182(4), Article 183 and the second paragraph of Article 188 thereof,

Having regard to the proposal from the European Commission,

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

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In the European Defence Action Plan, adopted on 30 November 2016, the Commission committed to complement, leverage and consolidate collaborative efforts by Member States in developing defence technological and industrial capabilities to respond to security challenges, as well as to foster a globally competitive, innovative and efficient European defence industry throughout the Union. It proposed in particular to launch a European Defence Fund (the 'Fund') to support investments in joint research and the joint development of defence products and technologies, thus fostering synergies and cost-effectiveness, and to promote the Member States' joint purchase and maintenance of defence equipment. This Fund would complement national funding already used for this purpose and should act as an incentive for Member States to cooperate and invest more in defence. The Fund would support cooperation during the whole life cycle of defence products and technologies.
- (2) The Fund would contribute to the establishment of a strong, competitive and innovative European defence technological and industrial base and go hand in hand with the Union's initiatives towards a more integrated European Defence Market and in particular, the two Directives¹ on procurement and on EU transfers in the defence sector adopted in 2009.

¹ Directive 2009/43/EC of the European Parliament and of the Council, simplifying terms and conditions of transfers of defence-related products within the Community, OJ L 146, 10.6.2009, p. 1; Directive 2009/81/EC of the European Parliament and of the Council 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, OJ L 216, 20.8.2009, p. 76.

- (3) Following an integrated approach and in order to contribute to the enhancement of the competitiveness and innovation capacity of the Union's defence industry, a European Defence Fund should be established. The Fund should aim at enhancing the competitiveness, innovation, efficiency and autonomy of the Union's defence industry thereby contributing to the Union's strategic autonomy by supporting the cross border cooperation between Member States and cooperation between enterprises, research centres, national administrations, international organisations and universities, in the research phase and in the development phase of defence products and technologies. To achieve more innovative solutions and an open internal market, the Fund should support the cross-border participation of defence small- and medium-sized enterprises ('SMEs') and middle capitalisation companies ('mid-caps').
- (4) The research and technology phase is a crucial element as it conditions the capacity and the autonomy of the European industry to develop products and the independence of Member States as defence end-users. The research phase linked to the development of defence capabilities may include significant risks, in particular related to the low level of maturity and the disruption of technologies. The development phase, which usually follows the research and technology phase, also entails significant risks and costs that hamper the further exploitation of the results of research and adversely impact the competitiveness and innovation of the Union's defence industry.
- (5) The Fund should not support basic or blue sky research, which should instead be supported through other schemes, but may include defence-oriented fundamental research likely to form the basis of the solution to recognised or expected problems or possibilities.

- (6) The Fund could support actions pertaining to both new and the upgrade of existing products and technologies. Actions for the upgrade of existing defence products and technologies should be eligible only where pre-existing information needed to carry out the action is not subject to any restriction by non-associated third countries or non-associated third country entities in such a way that the action cannot be carried out. When applying for Union funding, legal entities should be required to provide the relevant information to establish the absence of restrictions. In the absence of such information, Union funding should not be possible.
- (7) In order to ensure that the Union's and its Member States' international obligations are respected in the implementation of this Regulation, actions relating to products or technologies the use, development or production of which are prohibited by international law should not be supported by the Fund. In this respect, the eligibility of actions related to new defence products or technologies, such as those that are specifically designed to carry out lethal strikes without any human control over the engagement decisions, should also be subject to developments in international law.
- (8) The difficulty to agree on consolidated defence capability requirements and common technical specifications or standards hampers cross-border collaboration between Member States and between legal entities based in different Member States. The absence of such requirements, specifications and standards has led to increased fragmentation of the defence sector, technical complexity, delays and inflated costs as well as decreased interoperability. The agreement on common technical specifications should be a prerequisite for actions involving a higher level of technological readiness. Activities leading to common defence capability requirements as well as activities aiming at supporting the creation of a common definition of technical specifications or standards should also be eligible for support by the Fund.

- (9) As the objective of the Fund is to support the competitiveness and innovation of the Union defence industry by leveraging and complementing collaborative defence research and technology activities and de-risking the development phase of cooperative projects, actions related to the research and development of a defence product or technology should be eligible to benefit from it. This will also apply to the upgrade, including the interoperability thereof, of existing defence products and technologies.
- (10) Given that the Fund aims particularly at enhancing cooperation between legal entities and Member States across Europe, an action should be eligible for funding if it is undertaken by a cooperation of at least three legal entities based in at least three different Member States and/or associated countries. At least three of these eligible entities established in at least two different Member States or associated countries should not be controlled, directly or indirectly, by the same entity or should not control each other. In this context, control should be understood as the ability to exercise a decisive influence on a legal entity directly or indirectly through one or more intermediate legal entities. Taking into account the specificities of disruptive technologies for defence, as well as of studies, these activities could be carried out by a single legal entity. In order to boost the cooperation between Member States, the Fund may also support joint pre-commercial procurement.
- (11) Pursuant to [reference to be updated as appropriate according to a new decision on OCTs: Article 94 of Council Decision 2013/755/EU²], entities established in Overseas Countries and Territories (OCTs) should be eligible for funding subject to the rules and objectives of the Fund and possible arrangements applicable to the Member State to which the OCTs is linked.

² 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).

- (12) As the Fund aims at enhancing the competitiveness and efficiency of the Union's defence industry, only entities established in the Union or in associated countries and not subject to control by non-associated third countries or non-associated third country entities should in principle be eligible for support. In this context, control should be understood as 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 used by the recipients and their subcontractors in actions supported by the Fund should not be located on the territory of non-associated third countries, and their executive management structures should be established in the Union or in an associated country. Accordingly, an entity which is established in a non-associated third country or an entity which is established in the Union or in an associated country but which has its executive management structures in a non-associated third country is not eligible to be a recipient or subcontractor involved in the action.
- (13) In certain circumstances, it should be possible to derogate from the principle that recipients and their subcontractors involved in an action supported by the Fund are not subject to control by non-associated third countries or non-associated third country entities. In that context, legal entities established in the Union or in an associated country that are controlled by a non-associated third country or a non-associated third country entity should be eligible as recipients or subcontractors involved in the action provided that, strict conditions relating to the security and defence interests of the Union and its Member States, are fulfilled. The participation of such legal entities should not contravene the objectives of the Fund. Applicants should provide all relevant information about the infrastructure, facilities, assets and resources to be used in the action. Member States' concerns regarding security of supply should also be taken into account.

- (13a) Union funding should be granted following competitive calls for proposals issued in accordance with the Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (the ‘Financial Regulation’)³. However, in certain duly justified and exceptional circumstances, Union funding may also be granted in accordance with Article 195(e) of the Financial Regulation. As the award of funding in accordance with Article 195(e) of the Financial Regulation constitutes a derogation from the general rule of following competitive calls for proposals, those exceptional circumstances should be interpreted strictly. In this context, for a grant to be awarded without a call for proposals, the degree to which the proposed action corresponds to the objectives of the Fund with respect to cross-border industrial collaboration and competition throughout the supply chain should be assessed by the Commission assisted by the committee of Member States (the ‘committee’).
- (14) If a consortium wishes to participate in an eligible action and the financial assistance of the Union is to take the form of a grant, the consortium should appoint one of its members as a coordinator who will be the principal point of contact.
- (15) In case an action supported by the Fund is managed by a project manager appointed by Member States or associated countries, the Commission should consult the project manager prior to executing the payment to the recipients, so that the project manager can ensure that the time-frames are respected by the recipients. Under certain circumstances, the project manager could provide the Commission with observations on the progress of the action so that the Commission can validate whether the conditions to proceed to the payment are fulfilled.

³ 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.

- (15a) When a project manager has been appointed by Member States cofinancing an action, the budget implementation tasks could be entrusted for this specific project to the project manager in the case of indirect management of this specific project.
- (16) In order to ensure that the funded actions are financially viable, it is necessary that the applicants demonstrate that the costs of the action not covered by the Union's funding are covered by other means of financing.
- (17) Different types of financial arrangements should be at the disposal of Member States for the joint development and acquisition of defence capabilities. The Commission could provide different types of arrangements that Member States could use on a voluntary basis to address challenges for collaborative development and procurement from a financing perspective. The use of such financial arrangements could further foster the launch of collaborative defence projects and increase the efficiency of defence spending, including for projects supported by the Fund.
- (18) Given the specificities of the defence industry, where demand comes almost exclusively from Member States and associated countries, which also control all acquisition of defence-related products and technologies, including exports, the functioning of the defence sector is unique and does not follow the conventional rules and business models that govern more traditional markets. Industry therefore cannot undertake substantial self-funded defence Research and Development (R&D) projects and Member States and associated countries often fully fund all R&D costs. To achieve the objectives of the Fund, notably to incentivise cooperation between legal entities from different Member States and associated countries, and taking into account the specificities of the defence sector, up to the totality of the eligible costs should be covered for actions that take place ahead of the development of prototype phase.

- (19) The prototype phase is a crucial phase where Member States or associated countries usually decide on their consolidated investment and start the acquisition process of their future defence products or technologies. This is the reason why, at this specific stage, Member States and associated countries agree on the necessary commitments including cost-sharing and ownership of the project. To ensure the credibility of their commitment, the financial assistance of the Union under the Fund should normally not exceed 20 % of the eligible costs.
- (20) For actions beyond the prototype phase, funding up to 80 % should be foreseen. These actions which are closer to product and technology finalisation may still involve substantial costs.
- (21) Stakeholders in the defence sector are facing specific indirect costs, such as costs for security. Furthermore, stakeholders are working in a specific market where they – without any demand on the buyers' side – cannot recover the research and development costs like in the civilian sector. Therefore, it is justified to allow a flat rate of 25 % as well as the possibility, on a case by case basis, to charge indirect costs calculated in accordance with the usual accounting practices of the recipients if these practices are accepted by their national authorities for comparable activities in the defence domain, which have been communicated to the Commission. The authorising officer responsible should justify the decision to accept indirect eligible costs of up to 80 % of the total direct eligible costs in the work programme or in the call for proposals.
- (22) In order to ensure that the funded actions will contribute to the competitiveness and efficiency of the European defence industry, it is important that Member States intend to jointly procure the final product or use the technology, notably through joint cross-border procurement, where Member States jointly organise their procurement procedures in particular with the use of a central purchasing body.

- (23) The promotion of innovation and technological development in the Union defence industry should take place in a manner coherent with the security and defence interests of the Union. Accordingly, the actions' contributions to those interests and to the defence research and capability priorities commonly agreed by Member States should serve as an award criterion. Within the Union, common defence capability shortfalls are identified in the Common Security and Defence Policy framework notably through the Capability Development Plan, while the Overarching Strategic Research Agenda also identifies common defence research objectives. Other Union processes such as the Coordinated Annual Review on Defence and Permanent Structured Cooperation will support the implementation of relevant priorities through identifying and taking forward opportunities for enhanced cooperation with a view to fulfilling the EU level of ambition on security and defence. Where appropriate, regional and international priorities, including those in the North Atlantic Treaty Organisation context, may also be taken into account if they are in line with Union priorities and do not prevent any Member State or an associated country from participating, while also taking into account that unnecessary duplication should be avoided.
- (24) Eligible actions developed in the context of Permanent Structured Cooperation in the institutional framework of the Union should ensure enhanced cooperation between legal entities in the different Member States on a continuous basis and thus directly contribute to the aims of the Fund. If selected, such projects should thus be eligible for an increased funding rate.
- (25) The Commission will take into account other activities financed under the Horizon Europe Framework programme in order to avoid unnecessary duplication and ensure cross-fertilisation between civil and defence research.

- (26) Cybersecurity and cyber defence are increasingly important challenges and the Commission and the High Representative of the Union for Foreign Affairs and Security Policy recognised the need to establish synergies between cyber defence actions within the scope of the Fund and Union initiatives in the field of cybersecurity, such as those announced in the Joint Communication on cybersecurity. [In particular, the European Cybersecurity Industrial, Technology and Research Competence Centre to be set up should seek synergies between the civilian and defence dimensions of cybersecurity. It could actively support Member States and other relevant actors by providing advice, sharing expertise and facilitating collaboration with regard to projects and actions as well as when requested by Member States acting as a project manager in relation to the Fund.]
- (27) An integrated approach should be ensured by bringing together activities covered by the Preparatory Action on Defence Research launched by the Commission within the meaning of Article 58(2)(b) the Financial Regulation and the European Defence Industrial Development Programme established by Regulation (EU) 2018/1092 of the European Parliament and of the Council, and to harmonise the conditions for participation, to create a more coherent set of instruments, and to increase the innovative, collaborative and economic impact, while avoiding unnecessary duplication and fragmentation. With this integrated approach, the Fund would also contribute to a better exploitation of the results of defence research, covering the gap between research and development taking into account the specificities of the defence sector, and promoting all forms of innovation, including disruptive innovation.

- (28) Where appropriate in view of the specificities of the action, the objectives of the Fund should be also addressed through financial instruments and budgetary guarantees.
- (29) Financial support should be used to address market failures or sub-optimal investment situations in a proportionate manner and actions should not duplicate or crowd out private financing or distort competition in the internal market. Actions should have a clear added value for the Union.
- (30) The types of financing and the methods of implementation of the 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. This should include consideration of the use of lump sums, flat rates and unit costs, as well as financing not linked to costs as referred to in Article 125(1) of the Financial Regulation.
- (31) The Commission should establish annual or multiannual work programmes in line with the objectives of the Fund. The Commission should be assisted in the establishment of the work programme by the committee. The Commission should endeavour to find solutions which command the widest possible support within the committee. In that context, the committee may meet in the configuration of national defence and security experts to provide specific assistance to the Commission, including to provide advice with regard to the protection of classified information in the framework of the actions. It is for the Member States to designate their respective representatives on that committee. Committee members should be given early and effective opportunities to examine the draft implementing acts and express their views.
- (31a) The categories of the work programmes should contain functional requirements in order to clarify for industry what functionalities and tasks have to be carried out by the capabilities which will be developed. Such requirements should give a clear indication of the expected performances but should not be directed to specific solutions or specific entities and should not prevent competition at the level of the calls for proposals.

- (31b) During the elaboration of the work programmes, the Commission should also ensure, through appropriate consultations with the committee, that the proposed research or development actions avoid unnecessary duplication.
- (31c) In order to benefit from its expertise in the defence sector, the European Defence Agency will be given the status of an observer in the committee. Given the specificities of the defence area, the European External Action Service should also assist in the committee.
- (32) In order to ensure uniform conditions for the implementation of this Regulation implementing powers should be conferred on the Commission as regards the adoption of the work programme and for awarding the funding to selected development actions. In particular, while implementing development actions, the specificities of the defence sector, notably the responsibility of Member States and/or associated countries for the planning and acquisition process, should be taken into account. These implementing powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁴.

⁴ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (32a) After evaluation of the proposals with the help of independent experts, whose security credentials should be validated by the relevant Member States, the Commission should select the actions to be supported by the Fund. The Commission should establish a database of independent experts. The database should not be made public. The independent experts should be appointed on the basis of their skills, experience and knowledge, taking account of the tasks to be assigned to them. As far as possible, when appointing the independent experts, the Commission should take appropriate measures to seek a balanced composition within the expert groups and evaluation panels in terms of variety of skills, experience, knowledge, geographical diversity and gender, taking into account the situation in the field of the action. An appropriate rotation of experts and appropriate private-public sector balance should also be sought. Member States should be informed of the evaluation results with the ranking list of selected actions and of the progress of the funded actions. In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards the adoption and the implementation of the work programme, as well as for the adoption of the award decisions. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.
- (32b) Independent experts should not evaluate, advise or assist on matters with regard to which they have a conflict of interests, in particular as regards their current position. In particular, they should not be in a position where they could use the information received to the detriment of the consortium they evaluate.
- (33) In order to support an open internal market, the participation of cross-border SMEs and mid-caps, either as members of consortia or as subcontractors, should be encouraged.
- (34) The Commission should endeavour to maintain a dialogue with Member States and industry to ensure the success of the Fund.

- (35) This Regulation lays down a financial envelope for the European Defence Fund which is to constitute the prime reference amount, within the meaning of [the new inter-institutional agreement] between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management⁵, for the European Parliament and the Council during the annual budgetary procedure.
- (36) The Financial Regulation applies to the Fund, unless otherwise specified. It lays down rules on the implementation of the Union budget, including the rules on grants, prizes, procurement, financial assistance, financial instruments and budgetary guarantees.
- (37) Horizontal financial rules adopted by the European Parliament and the Council on the basis of Article 322 of the Treaty on the Functioning of the European Union (TFEU) apply to this Regulation. These rules are laid down in the Financial Regulation and determine in particular the procedure for establishing and implementing the budget through grants, procurement, prizes, indirect implementation, and provide for checks on the responsibility of financial actors. [Rules adopted on the basis of Article 322 TFEU also concern the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, as the respect for the rule of law is an essential precondition for sound financial management and effective EU funding.]

⁵ Reference to be updated: OJ C 373, 20.12.2013, p. 1. The agreement is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2013.373.01.0001.01.ENG&toc=OJ:C:2013:373:TOC

(38) 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 administrative investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. In accordance with Regulation (EU) 2017/1939, the European Public Prosecutor's Office (EPPO) may investigate and prosecute fraud and other criminal offences 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 in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939 and the European Court of Auditors (ECA) and to ensure that any third parties involved in the implementation of Union funds grant equivalent rights.

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).

- (39) [Third countries which are members of the European Economic Area (EEA) may participate in Union programmes in the framework of the cooperation established under the EEA agreement, which provides for the implementation of the programmes by a decision under that agreement.] A specific provision should be introduced in this Regulation to grant the necessary rights for and access to the authorising officer responsible, the European Anti-Fraud Office (OLAF) as well as the European Court of Auditors to comprehensively exert their respective competences.
- (40) Pursuant to paragraph 22 and 23 of the Inter-institutional agreement for Better Law-Making of 13 April 2016, there is a need to evaluate this regulation on the basis of information collected through specific monitoring requirements, while avoiding overregulation and administrative burdens, in particular on Member States. These requirements, where appropriate, can include measurable indicators, as a basis for evaluating the effects of the regulation on the ground. The Commission should carry out an interim evaluation no later than four years after the start of the Fund implementation, including with a view to submitting proposals for any appropriate amendments to the present Regulation, and a final evaluation at the end of the implementation period of the Fund, examining the financial activities in terms of financial implementation results and to the extent possible at that point in time, results and impact. In this context, the final evaluation report should also help identify where the Union is dependent on third countries for the development of defence products and technologies. This final report should also analyse the cross-border participation of SMEs and mid-caps in projects supported by the Fund as well as the participation of SMEs and mid-caps to the global value chain, and the contribution of the Fund to addressing the shortfalls identified in the Capability Development Plan, and should include information on the origin of the recipients and the distribution of the generated intellectual property rights. The Commission may also propose amendments to this Regulation to react on possible developments during the implementation of the Fund.

- (40a) The Commission should regularly monitor the implementation of the Fund and annually report on the progress made, including the implementation of lessons identified and lessons learned from the European Defence Industrial Development Programme ('EDIDP') and the Preparatory Action on Defence Research ('PADR'). To this end, the Commission should put in place necessary monitoring arrangements.
- (41) Reflecting the importance of tackling climate change in line with the Union's commitments to implement the Paris Agreement and the United Nations Sustainable Development Goals, this Fund will contribute to mainstream climate action in the Union's policies and to the achievement of an overall target of [25 %] of the EU budget expenditures supporting climate objectives. Relevant actions will be identified during the Fund's preparation and implementation, and reassessed in the context of its mid-term evaluation.
- (42) As the Fund supports only the research and development phases of defence products and technologies, in principle the Union should not have ownership or intellectual property rights (IPRs) over the products or technologies resulting from the funded actions unless the Union assistance is provided through public procurement.
- (43) The Union financial support should not affect the transfer of defence-related products within the Union in accordance with Directive 2009/43/EC of the European Parliament and the Council¹¹, nor the export of products, equipment or technologies.

¹¹ Directive 2009/43/EC of the European Parliament and the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community (OJ L 146, 10.6.2009, p. 1).

- (44) The use of sensitive background information, including data, know how or information, generated before or outside the performance of the Fund, or access by unauthorised individuals to results generated in connection to actions supported by the Fund may have an adverse impact on the interests of the Union or of one or more of the Member States. Thus handling of sensitive and classified information should be governed by relevant Union and national law.
- (44a) The minimum standards on industrial security should be complied with when signing classified funding and financing agreements. For that purpose, the Commission should communicate the Programme Security Instructions including the Security Classification Guide for advice to the experts designated by Member States.
- (45) In order to be able to supplement or amend the impact pathway indicators, where considered necessary, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (46) The Commission should manage the Fund having due regard to the requirements of confidentiality and security, in particular classified information and sensitive information.

HAVE ADOPTED THIS REGULATION:

TITLE I
COMMON PROVISIONS
APPLICABLE FOR RESEARCH AND DEVELOPMENT

Article 1

Subject matter

This Regulation establishes the European Defence Fund ('the Fund'), [as set out in Article 1(3)(b) of Regulation .../.../EU].

It lays down the objectives of the Fund, the budget for the period 2021-2027, the forms of Union funding and the rules for providing such funding.

Article 2

Definitions

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

- (0) **'applicant'** means a legal entity submitting an application for support by the Fund after a call for proposals or in accordance with Article 195(e) of the Financial Regulation;
- (1) **'blending operations'** means actions supported by the EU budget, including within blending facilities pursuant to Article 2(6) of the Financial Regulation, combining non-repayable forms of support or financial instruments from the EU budget with repayable forms of support from development or other public finance institutions, as well as from commercial finance institutions and investors;
- (1a) **'certification'** means the process by which a national authority certifies that the defence product, tangible or intangible component or technology complies with the applicable regulations;

- (1b) **'classified information'** means any information or material, in any form, the unauthorised disclosure of which could cause varying degrees of prejudice to the interests of the European Union, or of one or more of the Member States, and which bears an EU classification marking or a corresponding classification marking, in line with the agreement between the Member States of the European Union, meeting within the Council, regarding the protection of classified information exchanged in the interests of the European Union (2011/C 202/05);
- (1c) **'consortium'** means a collaborative grouping of applicants or recipients bound by a consortium agreement and constituted to carry out an action under the Fund;
- (1d) **'coordinator'** means a legal entity which is a member of a consortium and has been appointed by all the members of the consortium to be the principal point of contact in relations with the Commission;
- (2) **'control'** means the ability to exercise a decisive influence on an legal entity directly or indirectly through one or more intermediate legal entities;
- (3) **'development action'** means any action consisting of defence-oriented activities primarily in the development phase, covering new products or technologies or the upgrading of existing ones, excluding the production or use of weapons;
- (4) **'disruptive technology for defence'** means a technology inducing radical change, including an enhanced or completely new technology, inducing a paradigm shift in the concept and conduct of defence affairs including by replacing existing defence technologies or rendering them obsolete;
- (5) **'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;

- (5a) **'foreground information'** means data, know-how or information generated in the performance of the Fund, whatever its form or nature;
- (6) **'legal entity'** means any legal person created and recognised as such under national law, Union law or international law, which has legal personality and which may, acting in its own name, exercise rights and be subject to obligations, or an entity without a legal personality in accordance with Article 197(2)(c) of the Financial Regulation;
- (7) **'middle capitalisation company'** or **'mid-cap'** means an enterprise that is not a SME and that has up to 3 000 employees, where the staff headcount is calculated in accordance with Articles 3 to 6 of the Annex to [Commission Recommendation 2003/361/EC](#)¹²;
- (8) **'pre-commercial procurement'** means the procurement of research and development services involving risk-benefit sharing under market conditions, competitive development in phases, where there is a clear separation of the research and development services procured from the deployment of commercial volumes of end-products;
- (9) **'project manager'** means any contracting authority established in a Member State or an associated country, tasked by a Member State or an associated country or a group of Member States or associated countries to manage multinational armament projects permanently or on an ad-hoc basis;
- (9a) **'qualification'** means the entire process of demonstrating that the design of a defence product, tangible or intangible component or technology meets the specified requirements, providing objective evidence by which particular requirements of a design are demonstrated to have been met;
- (10) **'recipient'** means any legal entity with which a funding or financing agreement has been signed or to which a funding or financing decision has been notified;

¹² [Commission Recommendation 2003/361/EC](#) of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

- (11) **'research action'** means any action consisting primarily of research activities, notably applied research and where necessary fundamental research, with the aim of acquiring new knowledge and with an exclusive focus on defence applications;
- (12) **'results'** means any tangible or intangible effect of the action, such as data, know-how or information, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including intellectual property rights;
- (12a) **'sensitive information'** means information and data, including classified information, that must be protected from unauthorised access or disclosure because of obligations laid down in national or Union law or in order to safeguard the privacy or security of an individual or organisation;
- (12b) **'small and medium-sized enterprises'** or **'SMEs'** means small and medium-sized enterprises as defined in [Commission Recommendation 2003/361/EC](#);
- (13) **'special report'** means a specific deliverable of a research action summarising its results, providing extensive information on the basic principles, the aims, the actual outcomes, the basic properties, the performed tests, the potential benefits, the potential defence applications and the expected exploitation path of the research towards development, including information on the ownership of IPRs but not requiring the inclusion of IPR information;
- (14) **'system prototype'** means a model of a product or technology that can demonstrate performance in an operational environment;
- (15) **'third country'** means a country that is not a member of the Union;
- (16) **'non-associated third country'** means a third country that is not an associated country in accordance with Article 5;

- (17) **'non-associated third country entity'** means a legal entity established in a non-associated third country or, where it is established in the Union or in an associated country, having its executive management structures in a non-associated third country.

Article 3

Objectives of the Fund

1. The general objective of the Fund is to foster the global competitiveness, efficiency and innovation capacity of the European defence technological and industrial base throughout the Union, by supporting collaborative actions and cross-border cooperation between legal entities throughout the Union, in particular SMEs and mid-caps, as well as fostering the better exploitation of the industrial potential of innovation, research and technological development, at each stage of the industrial life cycle of defence products and technologies, thus contributing to the Union strategic autonomy and its freedom of action.
2. The Fund shall have the following specific objectives:
 - (a) support collaborative research that could significantly boost the performance of future capabilities throughout the Union, aiming at maximising innovation and introducing new defence products and technologies, including disruptive ones;
 - (b) support collaborative development of defence products and technologies consistent with defence capability and technology priorities commonly agreed by Member States within the framework of the Common Foreign and Security Policy and particularly in the context of the Capability Development Plan, thus contributing to greater efficiency of defence spending within the Union, achieving greater economies of scale, reducing the risk of unnecessary duplication and as such reducing the fragmentation of defence products and technologies throughout the Union. Ultimately, the Fund will lead to greater interoperability between Member States' capabilities.

3. Regional and international priorities, when they serve the Union's security and defence interests as determined under the Common Foreign and Security Policy, and taking into account the need to avoid unnecessary duplication, may also be taken into account, where appropriate, wherever they do not exclude the possibility of participation of any Member State or associated country.

Article 4

Budget

1. [In accordance with Article 9(1) of Regulation .../.../EU], the financial envelope for the implementation of the European Defence Fund for the period 2021 – 2027 shall be [EUR 13 000 000 000] in current prices.
2. The indicative distribution of the amount referred to in paragraph 1 shall be:
 - (a) [EUR 4 100 000 000] for research actions;
 - (b) [EUR 8 900 000 000] for development actions.
3. The amount referred to in paragraph 1 may be used for technical and administrative assistance for the implementation of the Fund, such as preparatory, monitoring, control, audit and evaluation activities including corporate information technology systems.
4. Up to 5 % of the financial envelope referred to in paragraph 1 shall be devoted to supporting disruptive technologies for defence.
5. [Resources allocated to Member States under shared management may, at their request, be transferred to the Fund. The Commission shall implement those resources directly in accordance with Article 62(1)(a) of the Financial Regulation. Where possible those resources shall be used for the benefit of the Member State concerned.]

[Article 5

Associated countries

The Fund shall be open to the European Free Trade Association (EFTA) members which are members of the European Economic Area (EEA), in accordance with the conditions laid down in the EEA agreement.]

Article 6

Support to disruptive technologies for defence

1. The Commission shall award funding following open and public consultations on technologies with potential to disrupt defence affairs in the areas of intervention defined in the work programmes.
2. The work programmes shall lay down the most appropriate forms of funding to finance these disruptive technological solutions.

Article 7

Ethics

1. The implementation of actions carried out under the Fund shall comply with ethical principles in relevant national, Union and international law.
2. Proposals shall be systematically screened to identify those raising serious ethical issues with regard to their implementation and submit them to an ethics assessment. Ethics screenings shall be carried out by the Commission with the support of independent experts on defence ethics. The Commission shall ensure the transparency of the ethics procedures as much as possible.

3. Entities participating in the action shall obtain all relevant approvals or other mandatory documents required by national or local ethics committees or other bodies such as data protection authorities before the start of the relevant activities. Those documents shall be kept on file and provided to the Commission.

Article 8

Implementation and forms of EU funding

1. The Fund shall be implemented directly or indirectly by entrusting budget implementation tasks to the entities listed in point (c) of Article 62(1) of the Financial Regulation.
2. The Fund may provide funding in accordance with the Financial Regulation, through grants, prizes and procurement, and where appropriate in view of the specificities of the action, financial instruments within blending operations.
 - 2a. Blending operations shall be implemented in accordance with Title X of the Financial Regulation [and the InvestEU Regulation].
 - 2b. Financial instruments shall be strictly directed to the recipients only.

Article 9

Cumulative, complementary and combined funding

1. An action that has received a contribution from another Union programme may also receive a contribution under the Fund, provided that the contributions do not cover the same costs. The rules of each contributing Union programme/Fund shall apply to its respective contribution to the action. The cumulative funding shall not exceed the total eligible costs of the action and the support from the different Union programmes may be calculated on a pro-rata basis in accordance with the documents setting out the conditions for support.

2. Actions awarded a Seal of Excellence certification, or which comply with the following cumulative, comparative, conditions:

- (a) they have been assessed in a call for proposals under the Fund;
- (b) they comply with the minimum quality requirements of that call for proposals;
- (c) they may not be financed under that call for proposals due to budgetary constraints,

may receive support from the [Space Programme], the European Regional Development Fund, the Cohesion Fund, the European Social Fund, or the European Agricultural Fund for Rural Development, in accordance with paragraph 5 of Article [65] of Regulation (EU) XX [Common Provisions Regulation] and Article [8] of Regulation (EU) XX [Financing, management and monitoring of the Common Agricultural Policy], provided that such actions are consistent with the objectives of the programme concerned. The rules of the Fund providing support shall apply.

Article 10

Eligible entities

- 1. Recipients and subcontractors involved in an action supported by the Fund shall be established in the Union or in an associated country.
 - 1a. The infrastructure, facilities, assets and resources of the recipients and subcontractors involved in an action which are used for the purposes of the actions supported by the Fund shall be located on the territory of a Member State or of an associated country for the entire duration of an action, and their executive management structures shall be established in the Union or in an associated country.
 - 1b. For the purpose of an action supported by the Fund, the recipients and subcontractors involved in an action shall not be subject to control by a non-associated third country or by a non-associated third country entity.

2. By derogation from paragraph 1b 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 shall be eligible as a recipient or subcontractor involved in an action only if guarantees approved by the Member State or the associated country in which it is established, in accordance with its national procedures, are made available to the Commission. Those guarantees may refer to the legal entity's executive management structure established in the Union or in an associated country. If deemed to be appropriate by the Member State or associated country in which the legal entity is established, those guarantees may also refer to specific governmental rights in the control over the legal entity.

The guarantees shall provide assurances that the involvement in an action of such a legal entity would not contravene the security and defence interests of the Union and its Member States as established in the framework of the Common Foreign and Security Policy pursuant to Title V of the TEU, or the objectives set out in Article 3. The guarantees shall also comply with the provisions of Articles 22 and 25. The guarantees shall in particular substantiate that, for the purpose of the action, measures are in place to ensure that:

- (a) control over the legal entity is not exercised in a manner that restrains or restricts its ability to carry out the action and to deliver results, that imposes restrictions concerning its infrastructure, facilities, assets, resources, intellectual property or know-how needed for the purpose of the action, or that undermines its capabilities and standards necessary to carry out the action;
- (b) access by a non-associated third country or by a non-associated third country entity to sensitive information relating to the action is prevented and the employees or other persons involved in the action have a national security clearance issued by a Member State or an associated country, where appropriate;

- (c) ownership of the intellectual property arising from, and the results of, the action remain within the recipient during and after completion of the action, are not subject to control or restriction by a non-associated third country or by a non-associated third country entity, and are not exported outside the Union or outside associated countries, nor is access to them from outside the Union or outside associated countries granted without the approval of the Member State or the associated country in which the legal entity is established and in accordance with the objectives set out in Article 3.

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

The Commission shall inform the committee referred to in Article 28 of any legal entity deemed to be eligible in accordance with this paragraph.

- 4. Where no competitive substitutes are readily available in the Union or in an associated country, recipients and subcontractors involved in the action may use their assets, infrastructure, facilities and resources located or held outside the territory of the Union's Member States or associated countries provided that that usage does not contravene the security and defence interests of the Union and its Member States, is consistent with the objectives set out in Article 3 and is fully in line with Articles 22 and 25.

The costs related to those activities shall not be eligible for support by the Fund.

- 4a. When carrying out an eligible action, recipients and subcontractors involved in the action may also cooperate with legal entities established outside the territory of the Member States or of associated countries, or controlled by a non-associated third country or by a non-associated third country entity, including by using the assets, infrastructure, facilities and resources of such legal entities, provided that this does not contravene the security and defence interests of the Union and its Member States. Such cooperation shall be consistent with the objectives set out in Article 3 and shall be fully in line with Articles 22 and 25.

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

The costs related to those activities shall not be eligible for support by the Fund.

6. Applicants shall provide all relevant information necessary for the assessment of the eligibility criteria. In the event of a change during the carrying out of an action which might put into question the fulfilment of the eligibility criteria, the relevant legal entity shall inform the Commission, which shall assess whether these eligibility criteria and conditions continue to be met and shall address the potential impact on the funding of the action.
9. For the purpose of this Article, subcontractors involved in an action supported by the Fund refers to subcontractors with a direct contractual relationship to a recipient, other subcontractors to which at least 10 % of the total eligible cost of the action is allocated, and subcontractors which may require access to EU classified information in order to carry out the action, and which are not members of the consortium.

Article 11

Eligible actions

1. Only actions implementing the objectives referred to in Article 3 shall be eligible for funding.
2. The Fund shall provide support for actions covering new defence products and technologies and the upgrade of existing products and technologies provided that the use of pre-existing information needed to carry out the action for the upgrade is not subject to a restriction by a non-associated third country or a non-associated third country entity, directly, or indirectly through one or more intermediary legal entities, in such a way that the action cannot be carried out.

3. An eligible action shall relate to one or more of the following activities:
- (a) activities aiming to create, underpin and improve new knowledge and technologies which can achieve significant effects in the area of defence;
 - (b) activities aiming to increase interoperability and resilience, including secured production and exchange of data, to master critical defence technologies, to strengthen the security of supply or to enable the effective exploitation of results for defence products and technologies;
 - (c) studies, such as feasibility studies to explore the feasibility of new or improved technologies, products, processes, services and solutions;
 - (d) the design of a defence product, tangible or intangible component or technology as well as the definition of the technical specifications on which such design has been developed which may include partial tests for risk reduction in an industrial or representative environment;
 - (e) the development of a model of a defence product, tangible or intangible component or technology, which can demonstrate the element's performance in an operational environment (system prototype);
 - (f) the testing of a defence product, tangible or intangible component or technology;
 - (g) the qualification of a defence product, tangible or intangible component or technology;
 - (h) the certification of a defence product, tangible or intangible component or technology;
 - (i) the development of technologies or assets increasing efficiency across the life cycle of defence products and technologies;
 - (j) dissemination activities, networking events and awareness-raising activities.

4. The action shall be undertaken in a cooperation of at least three eligible entities which are established in at least three different Member States and/or associated countries. At least three of these eligible entities established in at least two Member States and/or associated countries shall not, during the whole implementation of the action, be controlled, directly or indirectly, by the same entity, and shall not control each other.
5. Paragraph 4 shall not apply to actions relating to disruptive technologies for defence or to actions referred to in point (c) of paragraph 3.
6. Actions for the development of products and technologies the use, development or production of which is prohibited by applicable international law shall not be eligible.

Article 12

Selection and award procedure

1. Union funding shall be granted following competitive calls for proposals issued in accordance with the Financial Regulation. In certain duly justified and exceptional circumstances, Union funding may also be granted in accordance with Article 195(e) of the Financial Regulation.
- 2a. For the award of funding, the Commission shall act by means of implementing acts adopted in accordance with the procedure referred to in Article 28 paragraph 2.

Article 13
Award criteria

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

- (a) contribution to excellence or potential of disruption in the defence domain in particular by showing that the expected results of the proposed action present significant advantages over existing defence products or technologies;
- (b) contribution to the innovation and technological development of the European defence industry, in particular by showing that the proposed action includes ground-breaking or novel concepts and approaches, new promising future technological improvements or the application of technologies or concepts previously not applied in defence sector, while avoiding unnecessary duplication;
- (c) contribution to the competitiveness of the European defence industry by showing that the proposed action is a demonstrably positive balance of cost efficiency and effectiveness, thus creating new market opportunities across the Union and globally and accelerating the growth of companies throughout the Union;
- (d) contribution to the autonomy of the European defence technological and industrial base, including by increasing the non-dependency on non-EU sources and strengthening security of supply, and to the security and defence interests of the Union in line with the priorities referred to in Article 3;

- (e) contribution to the creation of new cross-border cooperation between legal entities established in Member States or associated countries, in particular for SMEs with a substantial participation in the action, as recipients, subcontractors or as other entities in the supply chain, and which are established in Member States or associated countries other than those where the entities in the consortium which are not SMEs are established;
- (f) quality and efficiency of the implementation of the action.

Article 14

Co-financing rate

1. The Fund may finance up to 100 % of the eligible costs of an activity, listed in Article 11(3), without prejudice to Article 190 of the Financial Regulation.
2. By derogation from paragraph 1:
 - (a) for activities defined in Article 11(3) (e) the financial assistance of the Fund shall not exceed 20 % of the eligible costs thereof;
 - (b) for activities defined in Article 11(3) (f) to (h) the financial assistance of the Fund shall not exceed 80 % of the eligible costs thereof.
3. The funding rates shall be increased in the following cases:
 - (a) an activity developed in the context of Permanent Structured Cooperation as established by Council Decision (CFSP) 2017/2315 of 11 December 2017 may benefit from a funding rate increased by an additional 10 percentage points;
 - (b) an activity may benefit from an increased funding rate, as referred to in the second and third subparagraphs of this paragraph, where at least 10 % of the total eligible costs of the activity are allocated to SMEs established in a Member State or in an associated country and which participate in the activity as recipients or as entities in the supply chain.

The funding rate may be increased by percentage points equivalent to the percentage of the total eligible costs of the activity allocated to SMEs established in Member States or in associated countries in which recipients that are not SMEs are established and which participate in the activity as recipients or as entities in the supply chain, up to an additional 5 percentage points.

The funding rate may be increased by percentage points equivalent to twice the percentage of the total eligible costs of the activity allocated to SMEs established in Member States or in associated countries other than those in which recipients that are not SMEs are established and which participate in the activity as recipients or as entities in the supply chain;

- (c) an activity may benefit from a funding rate increased by an additional 10 percentage points where at least 15 % of the total eligible costs of the activity are allocated to mid-caps established in the Union or in an associated country;
- (d) the overall increase in the funding rate of an activity shall not exceed 35 percentage points.

Article 15

Financial capacity

By derogation from Article 198 of the Financial Regulation:

- (a) the financial capacity shall be verified only for the coordinator and only if the requested funding from the Union is equal to or greater than EUR 500 000. However, if there are grounds to doubt the financial capacity, the Commission shall verify also the financial capacity of other applicants or of coordinators below the threshold referred to in the first sentence;

- (b) the financial capacity shall not be verified in respect of legal entities whose viability is guaranteed by a Member State;
- (c) if the financial capacity is structurally guaranteed by another legal entity, the financial capacity of the latter shall be verified.

Article 16

Indirect costs

1. By derogation from Article 181(6) of the Financial Regulation, indirect eligible costs shall be determined by applying a flat rate of 25 % of the total direct eligible costs, excluding direct eligible costs of subcontracting and financial support to third parties and any unit costs or lump sums which include indirect costs.
2. As an alternative, indirect eligible costs of up to 80 % of the total direct eligible costs may be determined in accordance with the recipient's usual cost accounting practices on the basis of actual indirect costs provided that these cost accounting practices are accepted by national authorities for comparable activities in the defence domain, in accordance with Article 185 of the Financial Regulation, and communicated to the Commission.

Article 17

Use of single lump sum or contribution not linked to costs

1. Where the Union grant co-finances less than 50 % of the total costs of the action, the Commission may use:
 - (a) a contribution not linked to costs referred to in Article 180(3) of the Financial Regulation and based on the achievement of results measured by reference to previous set milestones or through performance indicators; or

(b) a single lump sum referred to in Article 182 of the Financial Regulation and based on the provisional budget of the action already endorsed by the national authorities of the co-financing Member States and associated countries.

2. Indirect costs shall be included in the lump sum.

Article 18

Pre-commercial procurement

1. The Union may support pre-commercial procurement through awarding a grant to contracting authorities or contracting entities as defined in Directives 2014/24/EU¹³, 2014/25/EU¹⁴ and 2009/81/EC¹⁵ of the European Parliament and of the Council, which are jointly procuring defence research and development services or coordinating their procurement procedures.

2. The procurement procedures:

(a) shall be in line with the provisions of this Regulation;

(b) may authorise the award of multiple contracts within the same procedure (multiple sourcing);

(c) shall provide for the award of the contracts to the tender(s) offering best value for money while ensuring absence of conflict of interest.

¹³ 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, 28.03.2014, p. 65).

¹⁴ 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, 28.03.2014, p. 243).

¹⁵ 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, 20.08.2009, p.76).

Article 19
Guarantee Fund

Contributions to a mutual insurance mechanism may cover the risk associated with the recovery of funds due by recipients and shall be considered a sufficient guarantee under the Financial Regulation. The provisions laid down in [Article X of Regulation XXX (successor of the Regulation on the Guarantee Fund)] shall apply.

TITLE II
SPECIFIC PROVISIONS
APPLICABLE FOR RESEARCH ACTIONS

Article 22

Ownership of results of research actions

1. The results of research actions supported by the Fund shall be owned by the recipients generating them. Where legal entities jointly generate results, and where their respective contribution cannot be ascertained, or where it is not possible to separate such joint results, the legal entities shall have joint ownership of the results.
2. By derogation from paragraph 1, if Union support is provided in the form of public procurement, results of research actions supported by the Fund shall be owned by the Union. Member States and associated countries shall enjoy access rights to the results, free of charge, upon their written request.
3. The results of research actions supported by the Fund shall not be subject to any control or restriction by a non-associated third country or by a non-associated third country entity, directly, or indirectly through one or more intermediate legal entities, including in terms of technology transfer.
4. The grant agreement shall, if justified, lay down the right of the Commission to be notified of and object to the transfer of ownership regarding results of research actions supported by the Fund to a non-associated third country or a non-associated third country entity. Such transfer of ownership shall not contravene the security and defence interests of the Union and its Member States or the objectives set out in Article 3.

5. The national authorities of Member States and associated countries shall enjoy access rights to the special report of a project that has received Union funding. Such access rights shall be granted on a royalty-free basis and transferred by the Commission to the Member States and associated countries after ensuring that appropriate confidentiality obligations are in place.
6. The national authorities of Member States and associated countries shall use the special report solely for purposes related to the use by or for their armed forces, or security or intelligence forces, including within the framework of their cooperative programmes. Such usage shall include, but not be limited to, the study, evaluation, assessment, research, design, and product acceptance and certification, operation, training and disposal, as well as the assessment and drafting of technical requirements for procurement.
7. The recipients shall grant access rights to the results of research activities supported by the Fund on a royalty-free basis to the Union institutions, bodies or agencies, for the duly justified purpose of developing, implementing and monitoring existing Union policies or programmes in the fields of its competence. Such access rights shall be limited to non-commercial and non-competitive use.
- 8a. The provisions laid down in this Regulation shall not affect the export of products, equipment or technologies integrating results of research activities supported by the Fund, and shall not affect the discretion of Member States as regards policy on the export of defence-related products.

8b. Any two or more Member States or associated countries that, multilaterally or within the framework of the Union, have jointly concluded one or several contracts with one or more recipients to further develop together results of research activities supported by the Fund, shall enjoy access rights to those results owned by such recipients and are necessary for the execution of the contract or contracts. Such access rights shall be granted on a royalty-free basis and under specific conditions aimed at ensuring that those rights will be used only for the purpose of the contract or contracts and that appropriate confidentiality obligations will be in place.

TITLE III
SPECIFIC PROVISIONS
APPLICABLE FOR DEVELOPMENT ACTIONS

Article 23

Additional eligibility criteria

1. The consortium shall demonstrate that the costs of an activity that are not covered by Union support will be covered by other means of financing such as by Member States' or associated countries' contributions or co-financing from legal entities.
2. Activities as referred to in point (d) of Article 11 paragraph 3 shall be based on harmonised capability requirements jointly agreed by at least two Member States or associated countries.
3. With regard to activities referred to in points (e) to (h) of Article 11 paragraph 3, the consortium shall demonstrate by means of documents issued by national authorities that:
 - (a) at least two Member States or associated countries intend to procure the final product or use the technology in a coordinated way, including through joint procurement where applicable;
 - (b) the activity is based on common technical specifications jointly agreed by the Member States or associated countries that are to co-finance the action or that intend to jointly procure the final product or to jointly use the technology.

Article 24
Additional award criteria

In addition to the award criteria referred to in Article 13, the work programme shall also take into consideration:

- (a) the contribution to increasing efficiency across the life cycle of defence products and technologies, including cost-effectiveness and the potential for synergies in the procurement and maintenance process and disposal processes;
- (b) the contribution to the further integration of the European defence industry through the demonstration by the recipients that Member States have committed to jointly use, own or maintain the final product or technology in a coordinated way.

Article 25
Ownership of results of development actions

- 1. The Union shall not own the products or technologies resulting from actions supported by the Fund, nor shall it have any intellectual property rights regarding the results of those actions.
- 2. The results of actions supported by the Fund shall not be subject to any control or restriction by non-associated third countries or by non-associated third country entities, directly, or indirectly through one or more intermediate legal entities, including in terms of technology transfer.
- 2a. This Regulation shall not affect the discretion of Member States as regards policy on the export of defence-related products.

3. With regard to results generated by recipients through actions supported by the Fund and without prejudice to paragraph 2a of this Article, the Commission shall be notified of any transfer of ownership to a non-associated third country or to a non-associated third country entity. If such transfer of ownership contravenes the security and defence interests of the Union and its Member States or the objectives set out in Article 3, the funding provided under the Fund shall be reimbursed.
4. If Union assistance is provided in the form of public procurement of a study, Member States or associated countries shall have the right, free of charge, to a non-exclusive licence for the use of the study upon their written request.

TITLE IV
GOVERNANCE, MONITORING,
EVALUATION AND CONTROL

Article 27

Work programmes

1. The Fund shall be implemented by annual or multi annual work programmes established in accordance with Article 110 of the Financial Regulation. Work programmes shall set out, where applicable, the overall amount reserved for blending operations. Work programmes shall set out the overall budget benefiting the cross-border participation of SMEs.
2. The Commission shall adopt the work programmes by means of implementing acts in accordance with the procedure referred to in Article 28 paragraph 2.
3. The work programmes shall set out in detail the categories of actions to be supported by the Fund. Those categories shall be in line with the defence priorities referred to in Article 3.

The work programmes shall contain, where appropriate, functional specifications and specify the form of EU funding in accordance with Article 8, while not preventing competition at the level of calls for proposals.

The transition of results of research actions demonstrating added value already supported by the Fund into the development phase may also be taken into consideration in the work programmes.

Article 28

Committee

1. The Commission shall be assisted by a committee within the meaning of Regulation (EU) No 182/2011. The European Defence Agency shall be invited as an observer to provide its views and expertise. The European External Action Service shall also be invited to assist.

The committee shall also meet in special configurations, including in order to discuss defence and security aspects, relating to actions under the Fund.

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

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

Article 28a

Consultation of the project manager

In case a project manager is appointed by a Member State or associated country, the Commission shall consult the project manager before the payment is executed.

Article 29

Independent experts

1. The Commission shall appoint independent experts to assist in the ethics scrutiny of Article 7 and in the evaluation of proposals pursuant to Article 237 of the Financial Regulation.

2. Independent experts shall be Union's citizens from as broad a range of Member States as possible and be selected on the basis of calls for expressions of interest addressed to Ministries of Defence and subordinated agencies, other relevant governmental bodies, research institutes, universities, business associations or enterprises of the defence sector with a view to establishing a list of experts. By derogation from Article 237 of the Financial Regulation, this list shall not be made public.
3. The security credentials of appointed independent experts shall be validated by the respective Member State.
4. The committee referred to in Article 28 shall be informed annually on the list of experts, to be transparent as to the security credentials of the experts. The Commission shall also ensure that experts do not evaluate, advise or assist on matters with regard to which they have a conflict of interests.
5. Independent experts shall be chosen on the basis of their skills, experience and knowledge appropriate to carry out the tasks assigned to them.

Article 30

Application of the rules on classified information

1. Within the scope of this Regulation:
 - (c) each Member State shall ensure that it offers a degree of protection of European Union classified information equivalent to that provided by the security rules of the Council set out in the Annexes to Decision 2013/488/EU¹⁶;
 - (a1) the Commission shall protect classified information in accordance with the rules on security as set out in Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information;
 - (c) natural persons resident in and legal persons established in third countries may deal with EU classified information regarding the Fund only where they are subject, in those countries, to security regulations ensuring a degree of protection at least equivalent to that provided by the Commission's rules on security set out in Commission Decision (EU, Euratom) 2015/444 and by the security rules of the Council set out in Decision 2013/488/EU;
 - (c1) the equivalence of the security regulations applied in a third country or international organisation shall be defined in a security of information agreement, including industrial security matters if relevant, concluded between the Union and that third country or international organisation in accordance with the procedure provided for in Article 218 TFEU and taking into account Article 13 of Decision 2013/488/EU;

¹⁶ OJ L 274, 15.10.2013, p. 1–50.

- (d) without prejudice to Article 13 of Decision 2013/488/EU and to the rules governing the field of industrial security as set out in Commission Decision (EU, Euratom) 2015/444, a natural person or legal person, third country or international organisation may be given access to European Union classified information where deemed necessary on a case-by-case basis, according to the nature and content of such information, the recipient's need-to-know and the degree of advantage to the Union.
2. When actions involve, require or contain classified information, the relevant funding body shall specify in the call for proposals/tenders documents the measures and requirements necessary to ensure the security of such information at the requisite level.
 3. The Commission shall set up a secured exchange system in order to facilitate 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. The system shall take into account the Member States' national security regulations.
 4. The originatorship of classified foreground information generated in the performance of a research or a development action shall not affect the use or export of defence-related products by the Member States on whose territory the recipients are established.

Article 31

Monitoring and reporting

1. Indicators to monitor implementation and progress of the Fund towards the achievement of the general and specific objectives set out in Article 3 are set out in Annex.

2. To ensure effective assessment of progress of the Fund towards the achievement of its objectives, the Commission is empowered to adopt delegated acts in accordance with Article 36 to amend the Annex to review or complement the indicators where considered necessary and to supplement this Regulation with provisions on the establishment of a monitoring and evaluation framework.
3. The Commission shall regularly monitor the implementation of the Fund and annually report on the progress made, including the implementation of lessons identified and lessons learned from the EDIDP and PADR. To this end, the Commission shall put in place necessary monitoring arrangements.
4. The performance reporting system shall ensure that data for monitoring the Fund implementation and results are collected efficiently, effectively and in a timely fashion. To that end, proportionate reporting requirements shall be imposed on recipients of Union funds.

Article 32

Evaluation of the Fund

1. Evaluations shall be carried out in a timely manner to feed into the decision-making process.
2. The interim evaluation of the Fund shall be performed once there is sufficient information available about its implementation, but no later than four years after the start of its implementation. The interim evaluation report will notably include an assessment of the governance of the Fund including independent experts, implementation rates, project award results including the level of involvement of SMEs and mid-caps and the degree of their cross-border participation, rates of reimbursement of indirect costs as defined in Article 16, and funding granted in accordance with Article 195 of the Financial Regulation, as well as information on the countries of origin of the recipients and, where possible, the distribution of the generated IPRs, by 31 July 2024. The Commission may submit proposals for any appropriate amendments to the present Regulation.

3. At the end of the implementation period but no later than four years after 31 December 2027, a final evaluation of the Fund implementation shall be carried out by the Commission. The final evaluation report shall include the results of the implementation and to the extent possible given timing the impact of the Fund. The report, building on relevant consultations of Member States and associated countries and key stakeholders, shall notably assess the progress made towards the achievement of the objectives set out in Article 3. It shall also help identify where the Union is dependent on third countries for the development of defence products and technologies. It shall also analyse cross-border participation, including of SMEs and mid-caps, in projects implemented under the Fund as well as the integration of SMEs and mid-caps in the global value chain and the contribution of the Fund to addressing the shortfalls identified in the Capability Development Plan. The evaluation shall also contain information on the countries of origin of the recipients and, where possible, the distribution of the generated intellectual property rights.
4. The Commission shall communicate the conclusions of the evaluations accompanied by its observations, to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.

Article 33

Audits

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

Article 34

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 or, in the case of international organisations, the power of verification in accordance with agreements reached with them, on the basis of documents and on the spot, over all grant beneficiaries, contractors and subcontractors who have received Union funds under this Regulation.
3. The European Anti-Fraud Office (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 Council¹⁷ and Council Regulation (Euratom, EC) No 2185/96¹⁸, 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 Union funding or a budgetary guarantee under this Regulation.

¹⁷ 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).

¹⁸ 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, 15.11.1996, p. 2).

4. Without prejudice to paragraphs 1, 2 and 3, cooperation agreements with third countries and with international organisations, contracts, grant agreements and grant decisions, resulting from the implementation of this Regulation shall contain provisions expressly empowering the Commission, the Court of Auditors and OLAF to conduct such audits and investigations, in accordance with their respective competences. This shall include provisions to ensure that any third party involved in the implementation of Union funds or of a financing operation supported, in whole or in part, by a budgetary guarantee grant equivalent rights.

Article 35

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. The possibility to publish academic papers based on the results of research actions shall be regulated in the funding or financing agreement.
2. The Commission shall implement information and communication actions, relating to the Fund, and its actions and results. Financial resources allocated to the Fund 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.

TITLE V
DELEGATED ACTS, TRANSITIONAL AND FINAL PROVISIONS

Article 36

Delegated acts

1. The power to adopt delegated acts referred to in Article 31 shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.
2. The delegation of power referred to in Article 31 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.
3. 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 on Better Law-Making of 13 April 2016.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 31 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.

Article 37

Repeal

Regulation (EU) 2018/1092 (European Defence Industrial Development Programme) is repealed with effect from 1 January 2021.

Article 38

Transitional provisions

1. This Regulation shall not affect the continuation or modification of the actions concerned, until their closure, under Regulation (EU) 2018/1092 as well as the Preparatory Action for Defence Research, which shall continue to apply to the actions concerned until their closure, as well as to their results.
2. The financial envelope of the Fund may also cover technical and administrative assistance expenses necessary to ensure the transition between the Fund and the measures adopted under its predecessors, the European Defence Industrial Development Programme as well as the Preparatory Action for Defence Research.
3. If necessary, appropriations may be entered in the budget beyond 2027 to cover the expenses provided for in Article 4 paragraph 4, to enable the management of actions not completed by 31 December 2027.

Article 39

Entry into force

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*. It shall be applicable as from 1st January 2021.

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

Done at Brussels,

For the European Parliament

For the Council

The President

The President

ANNEX

INDICATORS TO REPORT ON PROGRESS OF THE FUND TOWARDS THE ACHIEVEMENT OF ITS SPECIFIC OBJECTIVES

Specific objective set out in Article 3(2)(a):

Indicator 1 Participants

Measured by: Number of legal entities involved (sub-divided by size, type and nationality)

Indicator 2 Collaborative research

Measured by:

2.1 Number and value of funded projects

2.2 Cross-border collaboration: share of contracts awarded to SMEs and mid-caps, with value of contracts to cross-border collaboration

2.3 Share of recipients that did not carry out research activities with defence applications before the entry into force of the Fund

Indicator 3 Innovation products

Measured by:

3.1 Number of new patents deriving from projects supported by the Fund

3.2 Aggregated distribution of patents amongst mid-caps, SMEs and legal entities that are neither mid-caps nor SMEs

3.3 Aggregated distribution of patents per Member States

Specific objective set out in Article 3(2)(b):

Indicator 4 Collaborative capability development

Measured by: Number and value of funded actions that address the capability shortfalls identified in the Capability Development Plan

Indicator 4a Continuous support over the full R&D cycle

Measured by: The presence in the background of IPRs or results generated in previously supported actions

Indicator 5 Job creation/support

Measured by: Number of supported defence R&D employees per Member State