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**NOTE**

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. Cion doc.:	10589/17 + COR 1 + ADD 1
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the European Defence Industrial Development Programme aiming at supporting the competitiveness and innovation capacity of the Union's defence industry - Confirmation of the final compromise text with a view to agreement [First Reading]

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1. On 7 June 2017, the Commission submitted to the European Parliament and the Council its proposal establishing the European Defence Industrial Development Programme (EDIDP) aiming at supporting the competitiveness and innovative capacity of the EU defence industry<sup>1</sup>.

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<sup>1</sup> 10589/17

2. At its meeting on 12 December 2017, the Council reached its General Approach<sup>2</sup> on the proposal.
3. The European Parliament adopted its report<sup>3</sup> at committee level on 26 February 2017 and the decision to enter into negotiations was confirmed by the plenary on 13 March 2018.
4. The European Economic and Social Committee adopted its opinion<sup>4</sup> on 7 December 2017.
5. Following four trilogues held on 15 March, 10 April, 3 May and 22 May 2018, the Presidency reached a provisional agreement with the representatives of the European Parliament.
6. On 23 May 2018, the Presidency presented this provisional agreement to delegations in the Friends of the Presidency Group on the European Defence Industrial Development Programme. The Presidency explained that the result was balanced on substance and preserved the main priorities identified by Member States. Delegations expressed broad support for the overall compromise reached by the Presidency, subject to scrutiny reservation.
7. In light of the above, the Permanent Representatives Committee is invited to:
  - approve the final compromise text, as set out in annex to this note<sup>5</sup>; and
  - authorise the Presidency to send a letter to the Chair of the European Parliament's Committee on Industry, Research and Energy (ITRE) confirming that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form agreed at the informal trilogue held between the three institutions on 22 May 2018, the Council would, in accordance with Article 294 paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in that wording subject, if necessary, to revision by the legal linguists of both institutions.

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<sup>2</sup> 15536/17

<sup>3</sup> A8-0037/2018, the responsible committee: the Committee on Industry, Research and Energy (ITRE), rapporteur Mme Grossetête; Mr Mircea Pașcu (AFET) and Mr González Pons (BUDG) as co-rapporteurs.

<sup>4</sup> CCMI/154

<sup>5</sup> Changes to the original Commission proposal, including markers for deleted text, highlighted for information.

**REGULATION (EU) 2018/... OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL**

**of ...**

**establishing the European Defence Industrial Development Programme aiming at supporting  
the competitiveness and *innovation* capacity of the *Union's* defence industry**

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 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<sup>6</sup>,

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Acting in accordance with the ordinary legislative procedure,

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<sup>6</sup> OJ C 129, 11.04.2018, p. 51.

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 capabilities to respond to security challenges, as well as to foster a competitive, innovative **and efficient** defence industry **throughout the Union**. It proposed in particular to launch a European Defence Fund to support investment in joint research and the joint development of defence equipment and technologies, **thereby incentivising joint procurement and maintenance of defence equipment and technologies**.

***This Fund would not replace national efforts in this regard and should act as an incentive for Member States to cooperate and invest more in defence.*** The Fund would support cooperation during the whole cycle of defence product and technology development, ***thereby fostering synergies and cost effectiveness. The objective is to deliver capabilities, ensure a competitive and innovative basis for Europe's defence industry across the Union, including by cross-border cooperation and participation of small and medium-sized enterprises (SMEs), and to contribute to greater European defence cooperation.***

(2) In order to *foster* the competitiveness, *efficiency* and innovation capacity of the Union's defence industry, *which contributes to the Union's strategic autonomy*, a European Defence Industrial Development Programme (hereinafter **the Programme**) should be established. The Programme should aim at enhancing the competitiveness of the Union's defence industry, *which will contribute to improving defence capabilities*, inter alia *in relation to* cyber defence, by supporting **cooperation** between undertakings *throughout the Union, including SMEs and Mid-caps, research centres and universities, and collaboration between Member States*, in the development phase of defence products and technologies. *This will make it possible to better exploit economies of scale in the defence industry and to promote the standardisation of defence systems while improving their interoperability.*

The development phase, which follows the research and technology phase, entails significant risks and costs that hamper the further exploitation of the results of research and adversely impact the competitiveness of the Union's defence industry. By supporting the development phase, the Programme would contribute to a better exploitation of the results of defence research and it would help to cover the gap between research and production as well as to promote all forms of innovation, *as, beyond the results in the defence sector, positive effects can also be expected in the civilian sector.* The Programme should complement activities carried out in accordance with Article 182 TFEU and it does not cover the production *or procurement* of defence products and technologies.

- (3) *In order to achieve more innovative solutions and to foster an open internal market, the Programme should **strongly** support the **cross-border participation of SMEs and help create new market opportunities.***
- (4) The Programme should cover a two year period from 1 January 2019 to 31 December 2020 whereas the amount for the implementation of the Programme should be determined for this period.
- (5) *This Regulation lays down a financial envelope for the entire duration of the Programme, which is to constitute the prime reference amount, within the meaning of point 17 of the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management<sup>7</sup>, for the European Parliament and the Council during the annual budgetary procedure.*

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<sup>7</sup> *OJ C 373, 20.12.2013, p. 1.*

(6) *When implementing this Programme, all instruments should be used in accordance with the provisions of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council<sup>8</sup>, with a view to maximising the development of products and technologies. However, in view of the two-year duration of the Programme, the use of financial instruments could raise practical difficulties.*

*Consequently, during this initial period, priority should be given to the use of grants and, in exceptional circumstances, to public procurement. Financial instruments could be an appropriate-tool for use in the European Defence Fund after 2020.*

(7) The Commission may entrust part of the implementation of the programme to entities referred to in Article 58(1) (c) of Regulation (EU, Euratom) **No 966/2012**.

(8) *After agreeing on common defence capability priorities at Union-level particularly through the Capability Development Plan, also taking into account the Coordinated Annual Review on Defence, and with a view to fulfilling the EU's Level of Ambition as agreed by the Council in its conclusions of 14 November 2016 and endorsed by the European Council on 15 December 2016, Member States identify and consolidate military requirements and set the technical specifications of the project.*

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<sup>8</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

- (9) *Member States should, where appropriate, also appoint a project manager, such as an international project management organisation such as the Organisation for Joint Armament Cooperation or an entity such as the European Defence Agency, to lead the work related to the development of a collaborative ~~+~~ action supported by the Programme. Where such an appointment is made, the Commission should consult the project manager on progress made on the action prior to executing the payment to the beneficiary of the eligible action so that the project manager can ensure that the time-frames are respected by the beneficiaries.*
- (10) *The Union financial support should not affect the transfer of defence-related products within the Union in accordance with Directive 2009/43/CE of the European Parliament and of the Council<sup>9</sup>, or the export of products, equipment or technologies. Nor should it not affect the discretion of Member States regarding policy on the transfer within the Union and the export of such products, including in line with the common rules governing control of exports of military technology and equipment defined in Council Common Position 944/2008/CFSP<sup>10</sup>.*

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<sup>9</sup> *Directive 2009/43/EC of the European Parliament and of 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).*

<sup>10</sup> *Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment (OJ L 335, 13.12.2008, p. 99).*



- (11) As the objective of the Programme is to support the competitiveness **and efficiency** of the Union defence industry by de-risking the development phase of cooperative projects, actions related to the development of a defence product or technology, namely **feasibility studies and other accompanying measures, design including the** technical specifications **it is based on, system** prototyping, testing, qualification, certification, **as well as increasing efficiency over the life cycle of a product or technology**, should be eligible to benefit from it. This will also apply to the upgrade of existing defence products and technologies, **including the interoperability thereof. Actions for the upgrade of existing products and technologies should be eligible only where pre-existing information needed to perform the action is not subject to restriction in a way that restricts or restrains the ability to perform and complete the action.**
- (12) Given that the Programme aims particularly at enhancing cooperation between undertakings across Member States, an action should be eligible for funding under the Programme only if it is undertaken by a **consortium** of at least three undertakings based in at least **three** different Member States.

- (13) Cross-border collaboration *between undertakings* in the development of defence products and technologies has often been hampered by the difficulty to agree on common technical specifications *or standards*. The absence or limited level of common technical specifications *or standards* have led to increased complexity, delays and inflated costs in the development phase. The agreement on common technical specifications should be a *primary* condition in order to benefit from the Union's support under this Programme *for actions involving a higher level of technological readiness. Feasibility studies and actions* aiming at supporting the creation of a common definition of technical specifications *or standards* should also be eligible for support under the Programme.
- (14) *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 of which the use, development or production are prohibited by international law should not receive funding under the Programme.*

*In this respect, the eligibility of actions for the development of 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.*

(15) As the Programme aims at enhancing the competitiveness *and efficiency* of the Union's defence industry, only entities established in the Union and *not subject to control by third countries or third country entities* should *in principle* be eligible for support.

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 beneficiaries and subcontractors in actions funded under the Programme, *should* not be located on the territory of *third countries*.

(16) *In certain circumstances, it should be possible to derogate from the principle that beneficiaries and their subcontractors should not be subject to control by third countries or third country entities. In that light, undertakings established in the Union that are controlled by a third country or a third country entity can be eligible if relevant, strict conditions relating to the security and defence interests of the Union and its Member States, as established in the framework of the Common Foreign and Security Policy in accordance with Title V of the Treaty on European Union, including in terms of strengthening the European Defence Technological and Industrial Base, are fulfilled. The participation of such undertakings should not contravene the objectives of the Programme. Beneficiaries 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.*

- (17) *Cooperation between beneficiaries and their subcontractors and undertakings established outside the Union, controlled by third countries or controlled by third country entities should also be subject to relevant conditions relating to the security and defence interests of the Union and its Member States. In this context, there should be no unauthorised access by third countries or other third country entities to classified information relating to the execution of the action. Access to classified information is authorised in accordance with the relevant security rules applicable to EU classified information and to information classified according to national security classification.*
- (18) Eligible actions developed in the context of Permanent Structured Cooperation in the institutional framework of the Union would ensure enhanced cooperation between undertakings in the different Member States on a continuous basis and thus directly contribute to the aims of the Programme. Such projects should thus be eligible for an increased funding rate.

*Eligible actions developed with an appropriate level of participation of middle capitalisation companies (Mid-caps) and SMEs, and in particular cross-border SMEs, support the opening up of the supply chains and contribute to the aims of the programme. Such projects should therefore be eligible for an increased funding rate, including to compensate for increased risk and administrative burden.*

- (19) If a consortium wishes to participate in an eligible action under the Programme and 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 with the Commission.
- (20) The promotion of innovation and technological development in the Union defence industry should *allow the maintenance and development of the skills and know-how of the Union's defence industry and contribute to strengthening its technological and industrial autonomy. In this context, this Programme could also help identify where the Union is dependent on third countries in the development of defence products and technologies. The above-mentioned promotion should also take place in a manner consistent* with the security *and defence* interests of the Union. Accordingly, *an* action's contribution to those interests and to the defence capability priorities agreed by Member States *within the framework of the Common Foreign and Security Policy* should serve as an award criterion.

Within the Union, common defence capability priorities are identified notably through the Capability Development Plan. Other Union processes such as the Coordinated Annual Review on Defence (CARD) and the Permanent Structured Cooperation (*PESCO*) will support the implementation of relevant priorities through enhanced cooperation. Where appropriate, regional *and* international *priorities, including those* in the NATO context, may also be taken into account, *on condition that they serve the Union's security and defence interests and do not prevent any Member State from participating, while also taking into account that unnecessary duplication should be avoided.*

- (21) *The Member States work individually and jointly on the development, production and operational use of unmanned aircraft, vehicles and vessels. The operational use comprises carrying out strikes on military targets. The research and development associated with the development of such systems, military and civilian, have been supported with Union funds, and it is planned that this will continue in the future, possibly also under this Programme. Nothing in this Regulation stands in the way of the legitimate use of the technologies or products developed hereunder.*
- (22) In order to ensure that the funded actions are viable, **■** Member States' commitment to effectively contribute to the financing of the action should be *established in writing e.g. by a letter of intent by the Member States concerned.*
- (23) In order to ensure that the funded actions will contribute to the competitiveness *and efficiency* of the European defence industry, they should be market-oriented **■**, demand driven *and commercially viable in the medium to long term, including for dual-use technologies*. Therefore, the fact that Member States *intend* to jointly **■** procure the final product or *use the* technology, possibly in a coordinated way, should be taken into account in the *eligibility criteria, and the fact that Member States commit through a political or legal commitment to jointly use, own or maintain the final product or technology in a coordinated way should be taken into account in the* award criteria.

- (24) *All award criteria should be taken into account when evaluating actions proposed for funding under the Programme. Bearing in mind that award criteria are not eliminatory, any proposed actions that fail to satisfy one or several of these award criteria should not be automatically excluded.*
- (25) The financial assistance of the Union under the Programme should not exceed 20% of the eligible cost of the action *where* it relates to *system* prototyping, which is often the most costly action in the development phase. The totality of the eligible costs *could* however be covered for other actions in the development phase. *In both instances, eligible costs should be understood within the meaning of Article 126 of Regulation (EU, Euratom) No 966/2012.*
- (26) *As the Programme should complement research activities, notably in the defence area, and for the sake of consistency and administrative simplification, the same rules should be applied as far as possible to the Programme as in the Preparatory Action on Defence Research and the Horizon 2020 Framework Programme for Research and Innovation (2014-2020). It is therefore appropriate to allow for the reimbursement of indirect costs at a flat rate of 25% as under the Horizon 2020 programme and the Preparatory Action on Defence Research.*

- (27) As the Union support aims at enhancing the competitiveness of the sector and concerns only the specific development phase, the *Union* should not have ownership or intellectual property rights over the products or technologies resulting from the funded actions. The applicable intellectual property rights regime will be defined contractually by the beneficiaries. *Interested Member States should also have the possibility to participate in follow-up cooperative procurement. Furthermore, the results of actions funded under the Programme should not be subject to restriction by third countries or third-country entities.*
- (28) The Commission should establish a *two-year* work programme in line with the objectives of the Programme. *The work programme should set out in detail the categories of projects to be funded under the Programme, including products and technologies such as remotely piloted systems, satellite communications, positioning, navigation and timing, autonomous access to space and permanent earth observation, energy sustainability, and cyber and maritime security, as well as high-end military capabilities in the air, land, maritime and joint domain systems, including enhanced situational awareness, protection, mobility, logistics and medical support and strategic enablers.*



- (29) *The Commission should be assisted in the establishment of the work programme by a committee of Member States (hereinafter "**committee**"). **The Commission should endeavour to find solutions which command the widest possible support within the committee. In this context, the committee may meet in the format of national defence experts to provide specific assistance to the Commission. It is for the Member States to designate their representatives to this committee. Committee members should be given early and effective opportunities to examine the draft implementing acts and express their views.***
- (30) In light of the Union policy on ~~■SMEs■~~ as key to ensuring economic growth, innovation, job creation, and social integration in the Union and the fact that the supported actions will typically require trans-national collaboration, it is of importance that the work programme will reflect and enable *open and transparent* cross-border *access and* participation of SMEs, and that therefore *at least 10%* of the overall budget will benefit such *actions, which will allow SMEs to be included in the value chains of the actions. A category of projects should be specifically dedicated to SMEs.*
- (31) *To ensure the success of the Programme, the Commission should endeavour to maintain dialogue with a broad spectrum of Europe's industry, including SMEs and non-traditional suppliers to the defence sector.*

- (32) In order to benefit from its expertise in the defence sector, ***and in accordance with the competences attributed to it by the Treaty on European Union***, the European Defence Agency ***should be invited as*** observer in the committee of Member States. The European External Action Service should also ***be invited to*** assist~~+~~.
- (33) ***As a general rule, for*** the selection of actions to be funded by the Programme, the Commission or the entities referred to in Article 58(1) (c) of Regulation N° 966/2012 should organise competitive calls as provided for by ***in that Regulation, and ensure that the administrative procedures are kept as simple as possible and incur a minimum amount of additional expenses. However, in certain duly justified and exceptional circumstances, Union funding may also be granted in accordance with Article 190 of Commission Delegated Regulation (EU) No 1268/12***<sup>11</sup>.

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<sup>11</sup> ***Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).***

(34) After evaluation of the received proposals with the help of independent experts, *whose security credentials should be validated by Member States*, the Commission will select the actions to be funded under the Programme.

*The Commission should establish a database of independent experts, which should not be made public. These 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.*

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 awarding the funding to selected actions. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>12</sup>. *Member States should be informed of the evaluation results and progress in the funded actions.*

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<sup>12</sup> 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 the Member States of the Commission's exercise of implementing powers (*OJ L 55, 28.2.2011, p. 13*).

- (35) The examination procedure should be used for the adoption of *those* implementing acts taking into account their substantial implications for the implementation of *this Regulation*.
- (36) The Commission should draw up an implementation report at the end of the Programme, examining the financial activities in terms of financial implementation results and where possible, impact. This report should also analyse the cross -border participation of SMEs *and Mid-caps* in projects under the Programme as well as the participation of SMEs *and Mid-caps* to the global value chain. *This report should also include information on the origin of beneficiaries and distribution of the generated intellectual property rights.*
- (37) *The Commission and the Member States should ensure the widest possible promotion of the Programme in order to increase its effectiveness and thus to improve the competitiveness of the defence industry and defence capabilities of the Member States,*

HAVE ADOPTED THIS REGULATION:

## *Article 1*

### *Subject matter*

A European Defence Industrial Development Programme (hereinafter **the Programme**) for Union action covering the period from 1 January 2019 to 31 December 2020 is hereby established.

## *Article 2*

### *Definitions*

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

- 1) 'system prototype' means a model of a product or technology that can demonstrate performance in an operational environment;*
- 2) '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 achieved;*
- 3) 'certification' means the process according to which a national authority certifies that the defence product, tangible or intangible component or technology complies with the applicable regulations;*

- 4) *'undertaking' means an entity engaged in an economic activity regardless of its legal status and the way in which it is financed. An undertaking is established in the Member State in which it is incorporated, in accordance with the national law of that Member State;*
- 5) *'executive management structures' means any undertaking's body or bodies, appointed in accordance with national law and reporting to the CEO where applicable, which are empowered to set the undertaking's strategy, objectives and overall direction, and which oversee and monitor management decision-making;*
- 6) *'third country entity' means a legal entity established outside the Union or established inside the Union and having its executive management structures outside the Union;*
- 7) *'control' means the ability to exercise a decisive influence on an undertaking directly or indirectly through one or more intermediate undertakings;*

- 8) *'SMEs' means small and medium-sized enterprises as defined in Article 2 of Title I of the Annex to Commission Recommendation 2003/361/EC;*
- 9) *'Mid-caps' means enterprises that have up to 3 000 employees, where the staff headcount is calculated in accordance with Articles 3, 4, 5 and 6 of Title I of the Annex to the Commission Recommendation 2003/361/EC and which are not SMEs;*
- 10) *'consortium' means a collaborative grouping of undertakings constituted to undertake an action under this Programme.*

*Article 3*  
*Objectives*

The Programme shall have the following objectives:

- (a) to foster the competitiveness, *efficiency* and innovation capacity of the ~~the~~ defence industry *throughout the Union, which contributes to the Union's strategic autonomy*, by supporting actions in their development phase;
- (b) to support and leverage ~~the~~ cooperation, *including across borders*, between undertakings, including *SMEs and Mid-caps, throughout the Union and collaboration between Member States* in the development of *defence* technologies or products, *while strengthening and improving the agility of both defence supply and value chains and fostering the standardisation of defence systems and their interoperability*.

*This cooperation shall be* in line with defence capability priorities ~~the~~ agreed by Member States within the *framework of the Common Foreign and Security Policy and particularly in the context of the Capability Development Plan*.



*In this context, 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 where appropriate be taken into account whenever they do not exclude the possibility of participation of any Member State;*

- (c) *to foster better exploitation of the results of defence research and contribute to development after the research phase, thereby supporting the competitiveness of the European defence industry on the internal market and the global marketplace, including by consolidation where appropriate.*

*Article 4*

*Budget*

The *financial envelope* for the implementation of the Programme for the period *from 1 January 2019 to 31 December 2020 shall be* EUR 500 million in current prices.

*Article 5*

*General financing provisions*

1. The Union's financial assistance may be provided through the types of financing envisaged by Regulation (EU, Euratom) No 966/2012, **+**in particular *grants and, in exceptional circumstances*, public procurement.

2. The types of financing referred to in paragraph 1~~+~~ and the methods of implementation, shall be chosen on the basis of their ability to achieve the specific objectives of the actions and to deliver results, taking into account, in particular, the costs of controls, the administrative burden, and the risk of conflict of interests.
3. The Union's financial assistance shall be implemented by the Commission as provided for by Regulation (EU, Euratom) No 966/2012 directly or indirectly by entrusting budget implementation tasks to the entities listed in Article 58(1) (c) of that Regulation.
4. *Member States shall, where appropriate, appoint a project manager. The Commission shall consult the project manager on the progress achieved in connection with the action before executing* the payment to the eligible beneficiaries~~+~~.

~~+~~

*Article 6*  
*Eligible actions*

1. The Programme shall provide support for actions by beneficiaries in the development phase covering both new *products and technologies* and the upgrade of existing products and technologies-*provided that the use of pre-existing information needed to perform the action for the upgrade is not subject to restriction by third countries or third country entities, directly or indirectly through one or more intermediary undertakings. An eligible action shall relate to one or more of the following items:*
- (a) studies such as feasibility studies and other accompanying measures;*
  - (b) the design of a defence product, tangible or intangible component or technology as well as the technical specifications on which such design has been developed **which may include partial tests for risk reduction in an industrial or representative environment;***
  - (c) the **system** prototyping of a defence product, tangible or intangible component or technology-**;***
  - (d) the testing of a defence product, tangible or intangible component or technology;*
  - +**
  - (e) the **qualification of a defence product, tangible or intangible component or technology;***

- (f) *the certification of a defence product, **tangible or intangible component** or technology*;
- (g) *the development of technologies or assets increasing efficiency across the life cycle of defence products and technologies.*

2. The action shall be undertaken in a cooperation of *undertakings within a consortium* of at least three *eligible entities which are established in at least three different Member States. At least three of these eligible entities* established in at least two different Member States shall not *be* effectively controlled, directly or indirectly, by the same entity or shall not control each other.
3. *Consortia shall offer proof of viability by demonstrating that the costs of the action that are not covered by Union support will be covered by other means of financing such as Member States' contributions.*
4. *For actions referred to in points (c) to (g) of paragraph 1, consortia shall prove their contribution to the competitiveness of the European defence industry by demonstrating that at least two Member States intend to procure the final product or to use the technology in a coordinated way, including through joint procurement where applicable.*

5. *An action as referred to in point (b) of paragraph 1 shall be based on common requirements jointly agreed by at least two Member States. Actions as referred to in points (c) to (g) of paragraph 1 shall be based on common technical specifications jointly agreed by the Member States that will co-finance or intend to jointly procure the final product or use the technology, as referred to in paragraphs 3 and 4, thereby strengthening the standardisation and interoperability of systems.*
6. *Actions for the development of products and technologies the use, development or production of which is prohibited by international law shall not be eligible to receive funding under this Programme.*

#### Article 7

##### Eligible *entities*

1. Beneficiaries *and their subcontractors involved in the action* shall be *public or private* undertakings established in the Union~~+~~.
2. *The beneficiaries' and their subcontractors' infrastructure, facilities, assets and resources used for the purposes of the actions funded under the Programme shall be located on the territory of the Union during the entire duration of the action, and their executive management structures shall be established in the Union.*

3. *For the purposes of the actions funded under the Programme, the beneficiaries and subcontractors involved in the action shall not be subject to control by third countries or by third country entities.*
4. *By derogation from paragraph 3, an undertaking established in the Union and controlled by third countries or by third country entities is eligible as a beneficiary or subcontractor, in accordance with Article 15(2), if guarantees approved by the Member State it is established in, in accordance with its national procedures, are made available to the Commission. These guarantees may refer to the undertaking's executive management structure established in the Union. If deemed appropriate by the Member State in which the undertaking is established, they may also refer to specific governmental rights in the control over the undertaking.*

*These guarantees shall provide the assurances that this would contravene neither the security and defence interests of the Union and its Member States as established in the framework of the Common Foreign and Security Policy in accordance with Title V of the Treaty on European Union, nor the objectives of this Programme as set out in Article 3. These guarantees shall also be in line with the provisions as laid down in Article 12. These guarantees shall in particular substantiate that measures are in place, for the purpose of the action, to ensure that:*

- (a) *the control over the undertaking will not be exercised in a manner that restrains or restricts its ability to perform the action and to deliver, imposes restrictions concerning its infrastructure, facilities, assets, resources, intellectual property or know-how needed for the purpose of the action, or undermines its capabilities and standards necessary for the execution of the action;*

- (b) the access by third countries or by third country entities to sensitive information relating to the action will be prevented and the employees or other people involved in the action will have national security clearances where appropriate;*
- (c) the ownership of the intellectual property arising from, and the results of the action will remain within the beneficiary during and after the completion of the action, will not be subject to control or restriction by third countries or by third country entities, and cannot be exported or given access outside the Union without the approval of the Member State the undertaking is established in and in accordance with Article 3 of this Regulation.*

*If deemed appropriate by the Member State the undertaking is established in, additional guarantees can be provided.*

*The Commission shall inform the committee of any undertaking deemed eligible in accordance with this paragraph.*

- 5. If there are no competitive substitutes readily available in the Union, and if this usage would not contravene the security and defence interests of the Union and its Member States, beneficiaries and subcontractors involved in the action referred to in paragraph 1f may use their assets, infrastructure, facilities and resources located or held outside the territory of Member States.*

*This shall be consistent with the objectives of the Programme and be fully in line with the provisions as laid down in Article 12. The costs related to these activities shall not be eligible for funding under the Programme.*

6. *When performing an eligible action, beneficiaries and their subcontractors involved in the action may also cooperate with undertakings established outside the territory of Member States or controlled by third countries or third country entities, including by using their assets, infrastructure, facilities and resources, if this would not contravene the security and defence interests of the Union and its Member States. This cooperation shall be consistent with the objectives of the Programme and be fully in line with the provisions as laid down in Article 12.*

*There shall be no unauthorised access by third countries or other third country entities to classified information relating to the execution of the action and potential negative effects over security of supply of inputs critical to the action shall be avoided.*

*The costs related to these activities shall not be eligible for funding under the Programme.*

7. *Beneficiaries shall provide all relevant information necessary for the assessment of the eligibility criteria. In the event of a change during the implementation of the action which might question the fulfilment of the eligibility criteria, the undertaking shall inform the Commission, which shall assess whether the eligibility criteria are still met and address the potential impact on the funding of the action.*



8. *For the purposes of this article, subcontractors involved in the action refers to subcontractors with a direct contractual relationship to a beneficiary, other subcontractors to which at least 10% of the total eligible cost of the action is allocated, as well as subcontractors involved in the action which may require access to classified information in order to carry out the contract.*

*Article 8*

*Declaration by undertakings*

Each *undertaking in a consortium wishing to participate in an action* shall declare, by written statement, that it is fully aware of and compliant with applicable national and Union legislation and regulations relating to activities in the domain of defence.

*Article 9*  
*Consortium*

1. Where the Union's financial assistance is provided through a grant, the members of any consortium wishing to participate in an action shall appoint one of them to act as coordinator, which shall be identified in the grant agreement. The coordinator shall be the principal point of contact between the members of the consortium in relations with the Commission or the relevant funding body, unless specified otherwise in the grant agreement or in the event of non-compliance with its obligations under the grant agreement.
  
2. The members of a consortium participating in an action shall conclude an internal agreement establishing their rights and obligations with respect to the implementation of the action (in compliance with the grant agreement), except in duly justified cases provided for in the work programme or call for proposals. ***This internal agreement shall also include the issue of the intellectual property rights relating to the products and technologies developed.***

*Article 10*  
*Award criteria*

Actions proposed for funding under the Programme shall be evaluated on the basis of *each of* the following ~~+~~ criteria:

- (a) *contribution to excellence in particular by showing that the proposed action presents significant advantages over existing products or technologies;*
- (b) *contribution to innovation 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;*
- (c) *contribution to the competitiveness and growth of defence undertakings throughout the Union, in particular by creating new market opportunities;*
- (d) *contribution to the industrial autonomy of the European defence industry and ~~+~~ to the security and defence interests of the Union by enhancing defence technologies or products in line with defence capability priorities ~~+~~ agreed by Member States within the framework of the Common Foreign and Security Policy, particularly in the context of the Capability Development Plan, and, where appropriate, regional and international priorities provided that they serve the Union's security and defence interests and do not exclude the participation of any Member State;*

~~+~~

- (e) *the proportion of the overall budget of the action to be allocated to the participation of SMEs established in the Union bringing industrial or technological added value, as members of the consortium, as subcontractors or as other undertakings in the supply chain, and in particular the proportion of the overall budget of the action to be allocated to SMEs which are established in Member States other than those where the undertakings in the consortium which are not SMEs are established;*
- (f) for actions *referred to* in points (e) to (f) of Article 6(1), ~~the~~ contribution to the *further integration* of the European defence industry through the demonstration by the beneficiaries that Member States have committed to jointly *use, own or maintain* the final product or technology in a coordinated way~~ing~~.

*Under points (a) to (c) of this Article, where relevant, 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, shall be taken into consideration.*

*Article 11*  
*Funding rates*

1. The financial assistance of the Union provided under the Programme *shall* not exceed 20% of the total *eligible* cost of the action *referred to Article 6(1) (c)*. In all the other cases, the assistance may cover up to the total *eligible* cost of the action.
2. An action, *as* referred to in Article 6(1), *that is developed in the context of Permanent Structured Cooperation* may benefit from a funding rate increased by an additional 10 percentage points.
3. *An action, as referred to in Article 6(1), may benefit from an increased funding rate, as referred to in subparagraphs 2 and 3, where at least 10% of the total eligible cost of the action is allocated to SMEs established in the Union.*

*The funding rate may be increased by percentage points equivalent to the percentage of the total eligible cost of the action allocated to SMEs established in Member States in which the undertakings in the consortium that are not SMEs are established, 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 cost of the action allocated to SMEs established in Member States other than those referred to in the second subparagraph.*

4. *An action, as referred to in Article 6(1), may benefit from a funding rate increased by an additional 10 percentage points where at least 15% of the total eligible cost of the action is allocated to Mid-caps established in the Union.*
5. *Indirect eligible costs shall be determined by applying a flat rate of 25% of the total direct eligible costs, excluding direct eligible costs for subcontracting.*
6. *The overall increase in the funding rate of an action following the application of paragraphs 2, 2a and 2b shall not exceed 35 percentage points.*
7. *The financial assistance of the Union provided under the Programme, including increased funding rates, shall not cover more than 100% of the eligible cost of the action.*

Article 12

*Ownership and Intellectual Property **Rights***

1. The **Union** shall not own the products or technologies resulting from the action nor shall it have any *intellectual property rights* claim pertaining to the action.
2. *The results of actions which receive funding under the Programme shall not be subject to control or restriction by third countries or by third country entities, directly or indirectly through one or more intermediate undertakings, including in terms of technology transfer.*
3. *This Regulation shall not affect the discretion of Member States as regards policy on the export of defence-related products.*
4. *With regard to the results generated by beneficiaries that have received funding under the Programme, the Commission shall be notified of any transfer of ownership or grant of a licence to third countries or third country entities. Such transfer of ownership or granting of a licence shall not contravene the objectives of this Regulation as set out in Article 3, otherwise it will necessitate reimbursement of the funding provided under the Programme.*
5. *If Union assistance is provided in the form of public procurement of a study, all Member States shall have the right, free of charge, to a non-exclusive license for the use of the study upon their written request.*

### *Article 13*

#### *Committee procedure*

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

*The committee shall meet also in special configurations, including to discuss defence aspects.*

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 subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.*

### *Article 14*

#### *Work programme*

1. The Commission, by means of an implementing act, shall adopt ~~■~~ a *two-year* work programme ~~■~~. This implementing act shall be adopted in accordance with the examination procedure referred to in Article 13(2). This work programme shall be in line with the objectives set out in Article 3.



2. The work programme shall set out in detail the categories of projects to be funded under the Programme. *Those categories shall be in line with the defence capability priorities referred to in Article 3(b).*

*These categories shall cover capabilities regarding innovative products and technologies in the fields of:*

- *preparation, protection, deployment and sustainability;*
- *information management and superiority and command, control, communication, computers, intelligence, surveillance and reconnaissance (C4ISR), cyberdefence and cybersecurity; and*
- *engagement and effectors.*

*The work programme shall also include a category of projects specifically dedicated to SMEs.*

3. The work programme shall ensure that *at least 10%* of the overall budget will benefit ~~the~~ the cross-border participation of SMEs.

*Article 15*

*Evaluation and award procedure*

1. In the implementation of the Programme, Union funding shall be granted following competitive calls issued in accordance with Regulation (EU, Euratom) No 966/2012 and Commission Delegated Regulation (EU) No 1268/2012<sup>1</sup>. ***Under certain duly justified and exceptional circumstances, Union funding may also be granted in accordance with Article 190 of Commission Delegated Regulation (EU) No 1268/2012.***

2. The proposals submitted following the call for proposals shall be evaluated by the Commission ~~1~~ on the basis of the ***eligibility and*** award criteria ***set out in Articles 6, 7, 8 and 10.***

***The Commission shall be assisted, in the context of the award procedure, by independent experts, whose security credentials shall be validated by Member States. These experts shall be EU nationals from as broad a range of Member States as possible and be selected on the basis of calls for applications with a view to establishing a database of candidates.***

***The committee referred to in Article 13 shall be informed annually on the list of experts registered in the database to be transparent as to the credentials of the experts. The Commission shall also ensure that an expert faced with a conflict of interest in relation to a matter on which the expert is required to provide an opinion does not evaluate, advise or assist on the specific matter in question.***

3. The Commission shall, ***by means of an implementing act, award the funding for selected actions after each call or after application of Article 190 of Commission Delegated Regulation (EU) No 1268/2012.*** Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13(2).

*Article 16*  
*Annual instalments*

The Commission may divide budgetary commitments into annual instalments.

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*Article 17*  
*Monitoring and reporting*

1. The Commission shall regularly monitor the implementation of the programme and annually report on the progress made in accordance with Article 38(3) (e) of Regulation **(EU, Euratom) No 966/2012**. To this end, the Commission shall put in place necessary monitoring arrangements.
  
2. To support greater efficiency and effectiveness of future Union policy actions, the Commission shall draw up a retrospective evaluation report and send it to the European Parliament and to the Council. The report - building on relevant consultations of Member States and key stakeholders - shall notably assess the progress made towards the achievement of objectives set out in Article 3. It shall also analyse cross border participation, ***including*** of SMEs ***and Mid-caps***, in projects implemented under the ***Programme*** as well as the ***integration*** of SMEs ***and Mid-caps in*** the global value chain. ***The report shall also contain information on the countries of origin of the beneficiaries and, where possible, the distribution of the generated intellectual property rights.***

*Article 18*

*Protection of Union financial interests*

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 *the Programme*.

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 Council<sup>13</sup> and Council Regulation (Euratom, EC) No 2185/96<sup>14</sup>, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement or grant decision or a contract funded under this Regulation.

*Article 19*

*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.

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

Done at Brussels,

*For the European Parliament*

*For the Council*

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<sup>13</sup> 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).

<sup>14</sup> 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).

**JOINT STATEMENT ON FINANCING OF THE EUROPEAN DEFENCE INDUSTRIAL  
DEVELOPMENT PROGRAMME**

**The European Parliament and the Council** agree, without prejudice to the prerogatives of the budgetary authority in the framework of the annual budgetary procedure, that the financing of the European Defence Industrial Development Programmes will be covered in the years 2019-2020 as follows:

- EUR 200 million from the unallocated margin;
- EUR 116,1 million from CEF;
- EUR 3,9 million from Egnos;
- EUR 104,1 million from Galileo;
- EUR 12 million from Copernicus;
- EUR 63,9 million from ITER.