

- (22) Member States should appoint a procurement agent to conduct a common procurement on their behalf. The procurement agent should be a contracting authority established in a Member State or an associated third country, including Union bodies or international organisations, such as the Organisation Conjointe de Coopération en matière d'ARmement (OCCAR).
- (23) In accordance with Article 193(2) of the Financial Regulation, a grant may be awarded for an action which has already begun, provided that the applicant can demonstrate the need for starting the action prior to signature of the grant agreement. However, financial contribution should not cover a period prior to the date of submission of the grant application, except in duly justified exceptional cases. In order to avoid any disruption in Union support which could be prejudicial to the interests of the Union, it should be possible to provide in the financing decision for financial contributions to actions that cover a period from the 24 February 2022, even if they have started before the grant application was submitted.

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

- (25) This Regulation lays down a financial envelope for the Fund, which is to constitute the prime reference amount, within the meaning of point 18 of the Inter-institutional Agreement of 16 December 2020 between the European Parliament, the Council and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources² (Interinstitutional Agreement of 16 December 2020), for the European Parliament and for the Council during the annual budgetary procedure.
- (26) In accordance with the Financial Regulation, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council³, Council Regulation (Euratom, EC) No 2988/95⁴, Council Regulation (Euratom, EC) No 2185/96⁵ and Council Regulation (EU) 2017/1939⁶, the financial interests of the Union are to be protected through proportionate measures, including the prevention, detection, correction and investigation of irregularities and fraud, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, the imposition of administrative sanctions. In particular, in accordance with Regulation (EU, Euratom) No 883/2013 and Regulation (Euratom, EC) No 2185/96 the European Anti-Fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. In accordance with Regulation (EU) 2017/1939, the European Public Prosecutor's Office (EPPO) may investigate and

² OJ L 433I, 22.12.2020, p. 28.

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

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

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

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

prosecute fraud and other illegal activities affecting the financial interests of the Union as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council⁷. In accordance with the Financial Regulation, any person or entity receiving Union funds is to fully cooperate in the protection of the Union's financial interests, to grant the necessary rights and access to the Commission, OLAF, the EPPO and the European Court of Auditors (ECA) and to ensure that any third parties involved in the implementation of Union funds grant equivalent rights.

- (27) Pursuant to Article 94 of Council Decision 2013/755/EU⁸, persons and entities established in overseas countries and territories (OCTs) are eligible for funding subject to the rules and objectives of the Instrument and possible arrangements applicable to the Member State to which the relevant overseas country or territory is linked.
- (28) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

HAVE ADOPTED THIS REGULATION:

Article 1
Subject matter

This Regulation establishes the European Defence Industry Reinforcement through common Procurement Act (the 'Instrument').

Article 2
Definitions

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

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

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

⁸ 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).

common procurement on their behalf, including Union bodies or international organisations;

- (6) ‘**third country**’ means a country that is not member of the Union.

*Article 3
Objectives*

1. The Instrument has the following objectives:
 - (a) to foster the competitiveness and efficiency of the European Defence Technological and Industrial Base (EDTIB) for a more resilient Union, in particular by speeding up, in a collaborative manner, the adjustment of industry to structural changes, including ramp-up of its manufacturing capacities;
 - (b) to foster cooperation in defence procurement process between participating Member States contributing to solidarity, interoperability, prevention of crowding-out effects, avoiding fragmentation and increasing the effectiveness of public spending.
2. The objectives shall be pursued with an emphasis on strengthening and developing the Union defence industrial base to allow it to address in particular the most urgent and critical defence products needs, especially those revealed or exacerbated by the response to the Russian aggression against Ukraine, taking into account the work of the Defence Joint Procurement Task Force.

*Article 4
Budget*

1. The financial envelope for the implementation of the Instrument for the period from the entry into force of this Regulation to 31 December 2024 shall be EUR 500 million in current prices.
2. The amount referred to in paragraph 1 may be used for technical and administrative assistance for the implementation of the Instrument, such as preparatory, monitoring, control, audit and evaluation activities including corporate information technology systems.
3. Resources allocated to Member States under shared management may, at their request, be transferred to the Instrument subject to the conditions set out in the relevant provisions of the Common Provisions Regulation for 2021-2027. The Commission shall implement those resources directly in accordance with point (a) of the first subparagraph of Article 62(1) of Regulation (EU, Euratom) No 2018/1046 (the ‘the Financial Regulation’). Those resources shall be used for the benefit of the Member State concerned.
4. Budgetary commitments for activities extending over more than one financial year may be broken down over several years into annual instalments.

*Article 5
Third countries associated to the Instrument*

The Instrument shall be open to the participation of Member States and members of the European Free Trade Association which are members of the European Economic Area

(associated countries), in accordance with the conditions laid down in the Agreement on the European Economic Area.

Article 6

Implementation and forms of EU funding

1. The Instrument shall be implemented in direct management in accordance with the Financial Regulation.
2. The EU funding shall incentivize the cooperation between Member States to fulfil the objectives referred to in Article 3. The financial contribution shall be set up taking into consideration the collaborative nature of the common procurement plus an appropriate amount to create the incentive effect necessary to induce cooperation.
3. Where necessary for the implementation of an action, financial contributions may cover a period prior to the date of the request for financial contributions for that action, provided that the action has not started prior to the 24 February 2022.
4. Grants implemented under direct management shall be awarded and managed in accordance with Title VIII of the Financial Regulation.

Article 7

Eligible actions

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

Article 8

Additional funding conditions

1. Member States or associated third countries shall appoint a procurement agent to act on their behalf for the purpose of the common procurement. The procurement agent shall carry out the procurement procedures and conclude the resulting agreements with contractors on behalf of the participating Member States.
2. The procurement procedures referred to in paragraph 1 shall be based on an agreement to be signed by the participating Member States with the procurement agent under the conditions set out in the work programme referred to in Article 11.

3. Common procurement procedures and contracts shall include participation requirements for contractors and subcontractors involved in the common procurement as referred to in paragraphs 4 to 10.
4. Contractors and subcontractors involved in the common procurement shall be established and have their executive management structures in the Union. They shall not be subject to control by a non-associated third country or by a non-associated third country entity.
5. By way of derogation from paragraph 4, a legal entity established in the Union or in an associated third country and controlled by a non-associated third country or a non-associated third country entity may participate as contractor and subcontractor involved in the common procurement only if it provides guarantees approved by the Member State or associated third country in which the contractor is established.
6. The participating Member States shall provide to the Commission a notification from the procurement agent on the guarantees provided by a contractor or subcontractor involved in the common procurement that is established in the Union or an associated third country and controlled by a non-associated third country or a non-associated third country entity. The guarantees and related provisions in the procurement contract shall be made available to the Commission upon request. The guarantees shall provide assurances that the involvement of the contractor or subcontractor involved in the common procurement does not contravene the security and defence interests of the Union and its Member States as established in the framework of the CFSP pursuant to Title V of the TEU, or the objectives set out in Article 3.
7. The guarantees shall in particular substantiate that, for the purposes of the common procurement, measures are in place to ensure that:
 - (a) control over the contractor or subcontractor involved in the common procurement is not exercised in a manner that restrains or restricts its ability to carry out the order and to deliver results and;
 - (b) access by a non-associated third country or by a non-associated third-country entity to sensitive information is prevented and the employees or other persons involved in the common procurement have national security clearance issued by a Member State.
8. The infrastructure, facilities, assets and resources of the contractors and subcontractors involved in the common procurement which are used for the purposes of the common procurement shall be located on the territory of a Member State or of an associated third country. Where no competitive substitutes are readily available in the Union or in an associated third country, contractors and subcontractors involved in the common procurement may use their assets, infrastructure, facilities and resources located or held outside the territory of the Member States or of the associated third countries provided that such use does not contravene the security and defence interests of the Union and its Member States and is consistent with the objectives set out in Article 3.
9. Common procurement procedures and contracts shall also include a requirement for the defence product to not be subject to a restriction by a non-associated third country or a non-associated third country entity.
10. For the purposes of this Article, ‘subcontractors involved in the common procurement’ means all of the following:

- (a) subcontractors with a direct contractual relationship to a contractor;
- (b) other subcontractors to which at least 10 % of the work share is allocated;
- (c) subcontractors which may require access to classified information in order to carry out the common procurement.

Article 9
Eligible entities

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

- (a) public contracting authorities or contracting entities as defined in Directives 2014/24/EU⁹ and 2014/25/EU¹⁰ of the European Parliament and of the Council;
- (b) public authorities of associated third countries.

Article 10
Award criteria

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

1. The contribution of the action to strengthening and developing the Union defence industrial base to allow it to address in particular the most urgent and critical defence products needs as referred to in Article 3, including with respect to procurement procedure and delivery lead times, replenishment of stocks, availability and supply;
2. the contribution of the action to competitiveness and adaptation of the EDTIB, including through the envisaged ramp-up of its manufacturing capacities, reservation of manufacturing capacities, its reskilling and upskilling, and overall modernization;
3. the contribution of the action to strengthening cooperation among Member States or associated countries and interoperability of products;
4. the number of Member States or associated countries participating in the common procurement;
5. the estimated size of the common procurement and any declaration by the participants that they will jointly use, stockpile, own or maintain the procured defence products;
6. catalytic effect of Union financial support through demonstration of how the Union contribution can overcome obstacles to common procurement;
7. quality and efficiency of the plans for carrying out of the action.

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

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

Article 11
Work programme

1. The Instrument shall be implemented through a work programme as referred to in Article 110 of the Financial Regulation.
2. The Commission shall, by means of an implementing act, adopt the work programme referred to in paragraph 1. The implementing act shall be adopted in accordance with the examination procedure referred to in Article 14 paragraph 3.
3. The work programme shall set out the minimum financial size of the joint procurement actions and determine the indicative amount of financial support for actions carried out by the minimum number of Member States as referred to in point c) of Article 7 paragraph 1 as well as incentives for procurement of higher value and inclusion of additional Member States or associated countries.
4. The work programme shall set out the funding priorities in line with the needs referred to in Article 3 paragraph 2.

Article 12
Monitoring and reporting

1. The Commission shall draw up an evaluation report for the Instrument not later than 31 December 2024 and submit it to the European Parliament and to the Council. The report shall evaluate the impact and effectiveness of the actions taken under the Instrument.
2. The report shall build on consultations of Member States and key stakeholders and shall, in particular, assess the progress made towards the achievement of the objectives set out in Article 3.

Article 13
Information, communication and publicity

1. The recipients of Union funding shall acknowledge the origin and ensure the visibility of the Union funding (in particular when promoting the actions and their results) by providing coherent, effective and proportionate targeted information to multiple audiences, including the media and the public.
2. The Commission shall implement information and communication actions relating to the Instrument, and its actions and results. Financial resources allocated to the Instrument shall also contribute to the corporate communication of the political priorities of the Union, as far as they are related to the objectives referred to in Article 3.

Article 14
Committee procedure

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