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(pursuant to Article 322, TFEU)

**concerning the proposal
for a Regulation of the European
Parliament and of the Council
establishing the European Defence
Industry Programme
and a framework of measures
to ensure the timely availability
and supply of defence products
(EDIP)**

**[Interinstitutional File
2024/0061 (COD) of 5 March 2024]**

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Introduction

Context

01 Faced with the return of high-intensity warfare on the European continent with Russia's war of aggression against Ukraine in 2022, the EU has moved defence high up the agenda. Following the Versailles Declaration of 11 March 2022, in May 2022 the Commission and the High Representative of the Union for Foreign Affairs and Security Policy adopted the Joint Communication on defence investment gaps analysis and way forward¹.

02 Since then, several short-term measures have been tabled.

- o The [Defence Joint Procurement Task Force](#) was established to work with member states to support the coordination of their very short-term procurement needs.
- o The [European defence industrial reinforcement through common procurement act](#) (EDIRPA) designed to incentivise member states' cooperation on the procurement of the most urgent defence equipment through the provision of financial support. Adopted on 18 October 2023, the EDIRPA will end on 31 December 2025.
- o The [Regulation on supporting ammunition production](#)² (ASAP), to deliver and jointly procure ammunition for Ukraine. Adopted on 20 July 2023, it will end on 30 June 2025.

03 The Commission had previously already adopted the European Defence Industrial Development Programme (EDIDP) and the European Defence Fund (EDF) to foster research and development in the area of defence.

04 The [European Council's](#) conclusions of December 2023 underlined that more needed to be done to fulfil the EU's objectives of increasing its defence readiness. The European Council also emphasised the need to strengthen the European defence technological and industrial base (EDTIB).

¹ JOIN (2022) 24.

² Regulation (EU) 2023/1525.

05 On 5 March 2024, the Commission published its proposal “for establishing the European Defence Industry Programme and a framework of measures to ensure the timely availability and supply of defence products (EDIP)³”. This package is referred to below as the “proposal”. The purpose of the proposal is to provide more medium-term support, to reconcile urgent needs with a longer-term perspective, between now and the end of the current multiannual financial framework.

06 Article 1 of the proposal sets out the components of this set of measures, which are the establishment of the European Defence Industrial Programme (the “Programme”), the Ukraine Support Instrument, and the Structure for European Armament Programme, a legal framework designed to ensure security of supply and the establishment of a Defence Industrial Readiness Board.

07 In parallel to the proposal, the Commission published the European defence industrial strategy (EDIS)⁴. This strategy sets out the main policy initiatives to increase the EU’s ability to respond to security threats by strengthening the European defence industry and fostering the coordination of member states’ defence-related investments. The time horizon of the strategy goes beyond the current 2021-2027 multiannual financial framework and includes quantified targets to be achieved by 2030. The EDIP is the main instrument through which the Commission intends to implement the EDIS for the period from the adoption of the proposal until 2027.

Scope, timeline and limitations of this opinion

Scope

08 Our opinion covers the proposal, including its legislative financial statement and explanatory memorandum. We also refer to both the staff working document (SWD) on the EDIP⁵ and to the EDIS where we consider this to be appropriate.

³ COM (2024) 150.

⁴ JOIN (2024) 10.

⁵ C (2024) 4822.

09 We consulted the Commission’s Directorate-General for Defence Industry and Space and the European Defence Agency (the EDA). We also engaged with the Council Secretariat, the European Parliament’s Security and Defence sub-committee, industry representatives and think tanks. We complemented our review by analysing research papers from sources such as the European Parliament Research Service.

10 This opinion expresses our views on the proposal and contributes to the legislative procedure by making suggestions about how to clarify certain parts of the proposal that may have an impact on the financial management of EU funds.

Timeline

11 The Commission published the proposal on 5 March 2024. The proposal’s legal basis means that consultation with the European Court of Auditors (ECA) is mandatory⁶. The Council submitted a formal request for an ECA opinion on 19 April 2024, inviting the ECA to submit its opinion by 31 October 2024 at the latest. This opinion fulfils the consultation requirement.

Limitations

12 We stress that Article 34 of the Financial Regulation⁷ requires that an *ex ante* impact assessment be carried out prior to issuing a proposal with significant economic, environmental and social impacts. However, as highlighted in our previous opinions on the proposals establishing the Ukraine Facility⁸ and the Reform and Growth Facility for the Western Balkans⁹, we note that once again no such impact assessment was carried out. In the explanatory memorandum to the proposal, the Commission stated that this was due to “the urgent nature of the Proposal”¹⁰. We stress that the omission of an *ex ante* impact assessment should only occur under exceptional circumstances.

13 On 8 July 2024, the Commission issued an SWD to explain the need for EU action and provide information on the rationale behind the proposal. However, the SWD and

⁶ Treaty on the Functioning of the European Union, Article 322(1)(a).

⁷ Regulation (EU, Euratom) 2018/1046.

⁸ Opinion 03/2023.

⁹ Opinion 01/2024.

¹⁰ COM (2024) 150, p. 9.

the proposal's legislative financial statements provided limited insights relating to a number of elements (see paragraphs [16](#), [22](#) and [23](#), [40](#) and [60](#)). This limited information means that we are unable to issue a fully informed opinion.

General observations

14 We understand that the proposal is intended to be the first step in the implementation of the EDIS, which sets out the EU's means and objectives for 2030 to strengthen the resilience of the European defence industry. We note that consultation on the EDIS took place between October and December 2023, and was supported by five issue papers outlining the general background and the main issues identified by the Commission. However, the consultation documents did not set out the characteristics of the different policy instruments (such as the European military sales mechanism or the Ukraine Support Instrument) that were later included in the EDIP proposal. Formal consultation on the legislative proposal was carried out after the proposal had been issued. This implies that the Commission may not have received comprehensive feedback on all of the aspects of its proposal.

15 In our special report on the preparatory action on defence research¹¹, we recommended that the Commission design a long-term strategy for the European Defence Fund to increase the presence of developed technologies in the EU defence sector. In that regard, we welcome the proposal's objective to foster the industrialisation and commercialisation of defence products developed with the support of the EDF. We also welcome the option for the Commission to identify European defence projects of common interest with a view to developing European defence capabilities. However, our special report also highlighted that developing such capabilities occurs over the long term and requires a multiannual perspective to influence defence industry decisions. In that regard, we note that the time horizon for the implementation of the proposal is only 2 years (2026 and 2027). To reap the full benefits from the EU's budgetary support, **the Commission should consider** complementing the EDIS with a long-term funding strategy for the EDTIB as part of the next multiannual financial framework.

16 We also stressed that the implementation of the preparatory action on defence research required significant resources and expertise, resulting in operational challenges for the Commission in terms of carrying out the evaluation and award process within a reasonable timeframe. We note that, in the proposal's legislative financial statement, the Commission estimates the resources required for the implementation of the Programme. However, there is no analysis in terms of how those needs have been calculated, nor is there any information in either the legislative

¹¹ Special report 10/2023.

financial statement or the SWD on how those resources can be secured in a timely manner for the Programme's implementation.

17 In our review on European defence¹², we highlighted that the EU planning process for defence capabilities involves many stakeholders and relies on a complex governance structure. Within this structure, defence capability priorities are defined by intergovernmental arrangements under the framework of the Common Foreign and Security Policy (CFSP), whereas the EU budget is implemented by the European Commission, under the oversight of the European Parliament. Please refer to [Annex I](#) for an overview of the main CFSP-related institutional arrangements and paragraph [53](#) for considerations about the coordination between the Programme and the CFSP. While we acknowledge that institutional arrangements are beyond the scope of the proposal, **the Commission and the co-legislators should consider** the risk of overlaps and challenges in terms of conducting evaluations and audits arising from such a complex framework.

18 We note that in some instances, such as the fund to accelerate defence supply chains transformation (FAST)¹³ or the European military sales mechanism¹⁴, the proposal does not include any implementing provisions. These will only be set out at a later date through implementing acts, which do not include the possibility of scrutiny by the European Parliament. Please also refer to paragraphs [40](#) and [46](#).

19 In our special report on reducing grand corruption in Ukraine¹⁵, we concluded that grand corruption remained a pervasive issue which required an enhanced reporting and monitoring system and tighter conditions for EU budget support. In that regard, we note that the proposal does not set out specific provisions with regard to the implementation of the Ukraine Support Instrument. It applies provisions similar to those for member states *mutatis mutandis*, despite the instrument's different objectives, budgetary funding source, legal base and the heightened risk of corruption in Ukraine. Furthermore, we understand that the monitoring and reporting arrangements will be defined in a framework agreement negotiated with the Ukrainian authorities. Against this background, **the Commission and the co-legislators should consider** introducing specific accountability arrangements for the implementation of the Programme in Ukraine. These arrangements should reflect the heightened risk of

¹² [Review 09/2019](#).

¹³ Article 19 of the proposal.

¹⁴ Article 14 of the proposal.

¹⁵ [Special report 23/2021](#).

corruption and set out minimum safeguards with regard to controlling, monitoring and reporting activities as a basis for future negotiations with the Ukrainian authorities. Please also refer to paragraphs [47](#), [48](#), [54](#), [55](#) and [64](#).

20 We note that the proposal sets out ambitious objectives and includes a broad range of eligible actions with limited guidance on the criteria to be used when selecting projects eligible to receive EU financial support, in particular considering that implementation will span 2 years (2026 and 2027). In that regard, we highlight the risk that the financial envelope set out in Article 5 of the proposal and amounting to €1.5 billion may not be commensurate with the stated objectives in Article 4. Furthermore, there is a risk that the EU's limited resources could be scattered over a wide array of projects that may not have a measurable impact at EU level. Please refer to paragraphs [38](#) and [43](#) for more specific considerations.

Derogations from the Financial Regulation

21 The proposal contains six derogations from the [Financial Regulation](#) in Articles 5, 8, 17 and 35 of the proposal. Whereas the Financial Regulation provides that the recitals and the explanatory memorandum of the proposal should set out the reasons for a legislative proposal's derogations from its provisions (other than those set out in Title II of the Financial Regulation), we could not find a justification for the derogations foreseen in Articles 5(5), 8(3) and 35. This limited our ability to assess the purpose and the scope of such derogations. Please refer to paragraphs [34](#), [44](#) and [49](#), as well as [Annex II](#), for specific considerations about the different derogations from the Financial Regulation. As a matter of principle, we highlight the importance of keeping Financial Regulation derogations to a minimum and the need to explain the justification for their use.

Specific comments

Explanatory memorandum

Needs assessment

22 The explanatory memorandum states that the Commission proposed the EDIP with the aim of reconciling “the urgent with the long term”. It also “decided to quickly move from adopting punctual emergency responses in July (i.e. ASAP) and October (i.e. EDIRPA) 2023, to taking a more structural approach to address the long-term consequences faced by the EDTIB and continue to support Ukraine” (see also paragraph 02). However, while acknowledging the risk that the €1.5 billion financial envelope set out in the proposal is limited, the SWD does not assess the EU budgetary support which would be necessary to implement the proposed policy instruments.

23 The SWD highlights that this is to preserve the ability “to react to possible evolutions in the geopolitical situation and to the needs of EU Member States”. In the absence of any explanations in the SWD or the provision of any evidence behind the proposal and cost estimates, it was not possible for us to assess whether the financial envelope is commensurate with the ambitions of the Programme.

Chapter I of the proposal: General provisions

24 The general provisions describe the subject matter, which is composed of the following:

- the establishment of both the Programme, comprising measures for strengthening the EDTIB, the FAST, and the Ukraine Support Instrument (Chapter II);
- a legal framework laying down the requirement for and the procedures necessary to set up the Structure for European Armament Programme (Chapter III);
- a legal framework designed to ensure the security of supply of defence products (Chapter IV);
- the establishment of a Defence Industrial Readiness Board (Chapter V).

25 Article 2 comprises a list of definitions for the purpose of the proposed regulation. **The Commission and the co-legislators should** consider providing additional definitions (see paragraphs [39](#), [41](#), [43](#), [45](#) and [51](#)).

Chapter II of the proposal

Section 1: General provisions applicable to the Programme and to the Ukraine Support Instrument

Use of financing not linked to costs (Article 3 of the proposal)

26 The proposal (Article 3) highlights that the Programme may be implemented through financing not linked to costs (FNLTC), a form of funding introduced in the Financial Regulation in 2018 to simplify the implementation of policies and enhance performance monitoring. However, our past audits have highlighted shortcomings in the implementation of the FNLTC in various EU spending areas. For example, in our recent opinion on the Ukraine Facility we stated that the financing agreements for the EU's budgetary support to Ukraine had not always clearly defined the steps for measuring satisfactory progress¹⁶. We also reported that it was unclear how the Commission determined the amount of the Recovery and Resilience Facility payments to member states¹⁷. The method for calculating a suspension when milestones and targets have not been fully achieved requires many judgements to be made, and this could lead to different interpretations¹⁸. Finally, we also found that the Commission's FNLTC audit focused primarily on the fulfilment of milestones and targets and did not sufficiently address compliance with EU and national rules. We therefore called upon the Commission to address the EU-level assurance gap on compliance with EU and national rules¹⁹.

27 In that regard, we note that the proposal lacks any implementing provisions related to FNLTC. We understand that the Commission's work programmes will set out the latter to reflect the expected achievement of results by referring to work packages, milestones or targets under the common procurement process²⁰. Against this

¹⁶ [Opinion 03/2023](#), paragraph 33.

¹⁷ [2021 annual report](#), paragraph 10.28.

¹⁸ [2022 annual report](#), paragraph 11.19.

¹⁹ [Special report 07/2023](#), paragraph 93 and recommendation 3.

²⁰ Recitals 20 and 21 of the proposal.

background, in the work programmes, **the Commission should consider** clearly defining the actions funded through FNLTC, the milestones for the implementation of the action, and the financial consequences whenever a specific milestone or target is not met.

28 Further to this, we note that specific provisions in the proposal require implementing guidance in the context of FNLTC to secure consistent enforcement.

- Article 7 highlights that a beneficiary may receive funding support from several EU instruments, but states that the cumulative EU support should not exceed the total eligible costs, and that the EU contribution from different instruments should not cover the same cost.
- Article 8 provides that the Commission may recover an amount if the beneficiary makes a profit, which will be computed as the difference between the receipts and the eligible costs of the action.
- Article 17 sets out the maximum EU financial contribution for eligible activities as a percentage of eligible costs.

In the context of eligible actions funded through FNLTC, and to circumvent the risk of over-compensation, **the Commission should consider** clarifying:

- the minimum control requirements to demonstrate that the amounts received in grants do not exceed the total amount of eligible costs and do not cover the same costs as required by Article 7;
- the cost basis that must be used to estimate the surplus foreseen in Article 8;
- the cost basis that must be used to determine the maximum EU funding as provided in Article 17;
- control measures to ensure that compliance with EU and national rules is verified and confirmed.

29 In turn, section 2.2.1 of the legislative financial statement makes reference to simplified cost options when describing the funding mechanism. It states that the Commission may use simplified cost options with a view to reducing the administrative burden for the beneficiaries and focusing the effort on the results of the actions. Whereas we generally consider that simplified cost options are less prone to error, it is very important that a solid methodology be established, as mentioned in our report on

new options for financing rural development projects²¹. We understand that a methodology is already in place to support the implementation of the EDIRPA regarding procurement-related budgetary support. However, as highlighted in paragraph 58 no *ex post* evaluation of the EDIRPA has yet been carried out. If the Commission were to decide to use that financing option beyond procurement-related cooperation activities, we highlight that there would be a need to swiftly develop a robust methodology, taking into account the limited time horizon of the Programme. **The Commission should consider** clarifying the scope of eligible activities that may benefit from FNLTC. **It should also consider** clarifying the principles underpinning the cost estimates used to assess the appropriateness of the EU's budgetary support in the form of FNLTC and simplified cost options.

Financial envelope (Articles 5 and 6 of the proposal)

30 Article 5 of the proposal sets out two separate budget lines. One is to reinforce the EDTIB and the other is to reinforce the Ukrainian DTIB. We note the Programme's allocation of €1.5 billion. In terms of strengthening the Ukrainian DTIB (see also paragraphs 47 and 48), we note that there is no fixed financial envelope for the Ukraine Support Instrument. There is an agreement from member states²² to use the profits generated by investing frozen Russian assets to support Ukraine, its recovery and reconstruction, and its self-defence in the face of Russia's war of aggression. Under this agreement, 90 % of the profits from frozen Russian assets was allocated to the European Peace Facility and 10 % was allocated to the Ukraine Facility. The first transfer of €1.5 billion was made available on 26 July 2024. The allocation is to be reviewed on an annual basis and a percentage of such revenue could, in the future, be provided to the Ukraine Support Instrument, as envisaged as an option in Article 6.2 and also mentioned in recital 9. We would like to highlight that there is a risk surrounding predictability in terms of the amount and the timespan of such a source of funding. This may pose an operational challenge for the Commission when implementing the Ukraine Support Instrument.

Section 2: The Programme

Synergies across the EU with the ERDF and the ESF+ (Article 7 of the proposal)

31 Article 7 of the proposal recommends implementing the Programme in synergy with other EU programmes. We highlight that using other funds to complement

²¹ [Special report 11/2018](#).

²² Council Decision [CFSP 2024/1470](#) and Council Regulation (EU) [2024/1469](#), of 21 May 2024.

actions funded under the Programme would require a thorough assessment. This is necessary to avoid the risk of using funding that had initially been allocated to contribute to objectives other than those under the Programme.

32 Additionally, we note that implementing the proposal may lead to attributing [Seals of Excellence](#) to undertakings under the DTIB. A Seal of Excellence is a label attributed to projects eligible for EU funding that met the requirements set out in a particular EU instrument, but did not benefit from EU financial support because of the instrument's budgetary limits. The general objective of the label is to make it possible for applicants to benefit from other EU or member state support programmes and to foster companies' participation in EU programmes. In this context, we refer to our report on the synergies between Horizon 2020 and the European Structural and Investment Funds²³, where we found that a similar tool was only used to a limited extent due to administrative barriers and a lack of project information. We consider that the proposal itself does not guarantee the use of Seals of Excellence. Substantial efforts would be needed in the course of implementation to ensure Seal of Excellence take-up.

Indirect management (Article 8 of the proposal)

33 Article 8 of the proposal states that the Programme may be implemented under direct or indirect management. In our special report on the preparatory action for defence research²⁴, we recommended that the Commission assess the broader use of indirect management as an option for EDF projects, to mitigate the risk arising from the scarcity of human resources within the Commission. We therefore support this flexibility to secure the timely implementation of the Programme. However, delegation agreements may not always be explicit with regard to accountability arrangements. Therefore, in order to improve accountability when opting for indirect management of EU funds in the area of defence, the **Commission and the co-legislators should consider** introducing an explicit requirement that delegation agreements signed by the Commission uphold the ECA's audit rights.

Retroactivity of budgetary support (Article 8 of the proposal)

34 Furthermore, Article 8 of the proposal introduces a derogation for Article 193(2) of the Financial Regulation whereby EU grants may cover "actions started and costs incurred prior to the date of the submission of the proposal for those actions provided

²³ [Special report 23/2022](#).

²⁴ [Special report 10/2023](#).

that those actions did not start before 5 March 2024 and have not been completed before the signature of the grant agreement". We understand from recital 23 that the purpose of this exemption is to enable the continuity of funding possibilities for actions that could have been supported by 2024 funding under the ASAP and the EDIRPA. However, we note that the scope of eligible actions put forward in the proposal is broader than in the ASAP and the EDIRPA. Furthermore, we note that the timespan between 5 March 2024 and the final adoption of the proposal may well exceed 1 year. This could entail the risk of funding activities that would have been carried out even without EU support. Furthermore, it could affect the availability of documents to support the eligibility of claimed costs and therefore our ability to carry out our audits. **The Commission and the co-legislators should therefore consider** two elements: firstly, whether the scope of the exemption in Article 8 is appropriate to achieve the intended objective, and secondly whether it is adequate, considering the timetable for adopting the proposal.

Recovery of profits made by beneficiaries (Article 8)

35 Article 8 of the proposal highlights that the Commission may recover the percentage of the profits from the EU contributions. The profits will be computed as the difference between the receipts and the eligible costs of the action, where receipts include EU funding, funding from member states and any revenue resulting from the action. In this context, we note that the Programme may subsidise actions such as an increase in production capacity or the industrialisation and commercialisation of defence products, which may generate revenues over the long term. Whenever the underlying defence products are profitable, this could lead to significant recoverable amounts. In order to secure legal certainty for the beneficiaries and prevent overcompensation, **the Commission should consider** outlining the methodology it expects to use to determine such profits. Alternatively, with a view to limiting the administrative burden and fostering participation from industry, the Commission could consider introducing a simple and clear mechanism (such as flat-rate percentages, which would reduce eligible costs and EU funding to a level that would mitigate the risk of overcompensation).

Use of facilities located in third countries (Articles 10 and 21 of the proposal)

36 For the sake of consistency with the proposal's objective to increase the EDTIB's defence readiness, recital 15 highlights that the infrastructures, assets and resources of the Programme's recipients should be located on the territory of a member state or of an associated country. However, the proposal includes a derogation from this principle when recipients have no readily available alternatives or relevant infrastructures, facilities, assets or resources within the European Economic Area. We

note that the term “readily available” might be interpreted in a broad sense, which could lead to widespread use of this exception. The **Commission and the co-legislators should consider** whether the scope of this exception is appropriate and consistent with recital 15 of the proposal.

Definition and prioritisation of eligible activities (Articles 11, 12 and 13 of the proposal)

37 Article 11 of the proposal outlines the activities eligible for funding under the Programme and provides that budgetary support may be attributed, for example, to activities related to:

- public authorities’ cooperation in defence procurement processes (paragraph 2);
- establishing cross-border industrial partnerships including activities designed to coordinate the sourcing or reservation and stockpiling of defence product components (paragraph 3(b));
- building up and making available, in reserve, surge manufacturing capacities for defence products (i.e. manufacturing capacities which might be needed in an emergency and are otherwise known as “ever-warm facilities”) (paragraph 3(c));
- activities to strengthen security of supply and resilience (paragraph 5(b)).

Considering that the Programme may be implemented through grants on the basis of incurred costs, **the Commission and the co-legislators should consider** clarifying which costs may be eligible under the Programme and whether the funding may be used to cover the purchase of raw materials and intermediate products for stockpiling purposes, thus financing the EDTIB’s working capital requirements.

38 We further note that Article 11 includes 14 examples of eligible actions that may receive EU financial support, but Article 4 broadly defines the objective of “initiating and speeding up the adjustment of industry to structural changes”. In this context and as highlighted in paragraph **20** of this opinion, **the Commission and the co-legislators should consider** setting out clear priorities for allocating EU funds to individual projects to circumvent the risk of scattering the EU’s financial resources.

39 In Articles 12 and 13, **the Commission and the co-legislators should consider** defining more explicitly the terms “common procurement actions” and “industrial reinforcement actions” since the latter is not used in Article 11 and is not defined in Article 2 of the proposal. **They should also consider** making the distinction between common procurement and joint procurement more explicit in the text.

European military sales mechanism (Article 14 of the proposal)

40 Article 14.2 of the proposal requires the Commission to draw up the technical specifications and procure the required corporate IT platform, and establish a single, centralised, up-to-date catalogue of defence products developed by the EDTIB. Based on the EDIS²⁵, we understand that this catalogue is meant to be the first stage of a pilot project to develop a fully-fledged European military sales mechanism from 2028 onwards, and that the Commission intends to build the platform upon existing solutions such as the EDA's Euclid database. Considering the difference in timeframe between the EDIS and the EDIP, we suggest that the proposal set out intermediate objectives for the 2025-2027 period. **The Commission and the co-legislators should further consider:**

- clarifying whether the platform should also include the features described in Article 37 of the proposal relating to facilitating off-take agreements;
- spelling out the targeted scope of products and undertakings to be covered by the platform;
- providing implementation provisions about the governance and administration of the IT platform.

Finally, we note that, depending on the scope and features of the platform, the development and maintenance costs may be significant. Furthermore, we note that the platform's operational success will depend on the extent of its use by member states' procurement authorities and industry's willingness to provide the requested information on a voluntary basis. In this context, we note that the SWD does not assess the expected value for money of the IT platform supporting the European catalogue of defence products which is foreseen as part of the European military sales mechanism.

41 Article 14.1(b) of the proposal states that "the Commission shall support [...] the creation of a defence industrial readiness pool to increase availability and speed up delivery time of EU-made defence products, ensuring an immediate and preferential purchase or use/lease option for Member States, associated countries and Ukraine". Furthermore, Article 14.3 highlights that the Commission will financially support member states in building defence readiness pools. However, beyond their stated objectives, we did not identify a definition of defence readiness pools in the proposal.

²⁵ JOIN(2024) 10, Section 2.3 Investing European.

The **Commission and the co-legislators should consider introducing** the definition and main features of defence readiness pools in the legislative text.

European defence projects of common interest (Article 15 of the proposal)

42 The proposal confers on the Commission the power to identify European defence projects of common interest (EDPCIs). This provision is designed to support large-scale projects to develop capabilities that no single member state could develop or procure alone. However, we note that the time horizon for carrying out such projects is likely to exceed the EDIP's 2-year implementation period. Consequently, securing long-term financing will be instrumental in completing the selected projects and reaping their expected benefits. **The Commission and the co-legislators should therefore consider** introducing a requirement to secure long-term financial support as a prerequisite for the selection of EDPCIs.

Award criteria (Article 16 of the proposal)

43 The proposal sets out four award criteria that will be used to assess proposals received in response to the annual work programmes. These award criteria include "defence industrial readiness", "defence industrial resilience" and "defence industrial cooperation". However, the terms "defence industrial resilience" and "defence industrial cooperation" are not explicitly defined in the proposal and are not mentioned in Article 4, which sets out the proposal's overarching objectives. Moreover, we consider these criteria to be merely guidelines and insufficient to either provide for a transparent selection procedure or for targeting financing to the best value-for-money projects. We note that the Commission intends to provide further details on the application of these criteria in the work programmes. **The Commission and the co-legislators should consider** aligning the terminology used in Articles 4 and 16 of the proposal to achieve consistency between the proposal's objectives and the award criteria.

EU financial contribution (Article 17 of the proposal)

44 The proposal states that "by way of derogation from Article 190 of the Regulation (EU, Euratom) No 2018/1046, the Programme may finance up to 100 % of the eligible costs". Recital 18 highlights that this derogation would apply to cover the costs arising from the "complexity of cooperation for common procurement". However, we note that the scope of the exemption in Article 17 would imply that activities such as strengthening security of supply and resilience, training and upskilling of personnel, or procuring physical and cyber protection systems would also be affected by the derogation from the Financial Regulation. **The Commission and the co-legislators**

should consider whether the scope of the derogation in Article 17 is commensurate with the stated objective in recital 18.

45 Furthermore, Article 17 provides that eligible activities related to speeding up the adjustment to the structural changes of the production capacities of defence products may receive EU budget support beyond the proposal's 35 % cap if "Member States agree on a common approach to exports for defence products". This could result in the member states and the Commission having different interpretations of what would constitute the fulfilment of this condition, with a subsequent risk of inconsistent assessment. In order to secure consistency in the implementation of the Programme, **the Commission and the co-legislators should consider** defining the term "common approach to exports" in Article 2 of the proposal.

Fund to accelerate defence supply chains transformation (Article 19 of the proposal)

46 The proposal provides that the Commission may establish a blending operation (i.e. combining non-repayable forms of support and financial instruments) known as FAST. Its aim is to leverage, de-risk and speed-up investments in order to increase SME and small mid-caps' defence manufacturing capacities by providing equity and debt financing. The FAST will be implemented in accordance with the provisions of the InvestEU programme. However, in the proposal, beyond the objectives and intended beneficiaries, we did not find any implementing provisions setting out:

- the financial envelope for the FAST;
- the criteria used to select investees and types of financial instrument;
- the relationships, if any, with the actions funded under the Programme;
- the beneficiaries' obligations;
- the principles for sharing financial risks between the FAST and private investors;
- the monitoring arrangements to ensure that the objectives are achieved;
- the ECA's right of access to documents and information, in accordance with Article 287(3) of the Treaty on the Functioning of the European Union.

The Commission and the co-legislators should therefore consider providing general criteria for the selection of the Fund's beneficiaries and explaining how the Fund will contribute to achieving the Programme's overarching objectives. In addition, the **Commission should consider** setting out specific monitoring arrangements for FAST and for risk sharing with private investors.

Section 3: The Ukraine Support Instrument

47 The proposal envisages establishing a separate financial envelope, funded through voluntary contributions and “relevant Union restrictive measures”, designed to support actions to reinforce the Ukrainian DTIB. **The Commission and the co-legislators should consider including** more detailed provisions about the EU’s relevant restrictive measures to allow the amount of external assigned revenue earmarked for Ukraine to be accurately determined. Please also refer to paragraph **30** for considerations about the extraordinary revenues held by private entities stemming from immobilised Russian assets.

48 Article 4 of the proposal highlights that the Ukraine Support Instrument is designed to contribute to the recovery, reconstruction and modernisation of Ukraine’s defence, technological and industrial basis, enhancing cross-border cooperation and supporting Ukraine to progressively align with the EU’s *acquis*. We note that the objectives are very broad, which may create challenges when determining operational criteria to allocate EU budgetary support. Furthermore, Article 20 provides that the Commission should manage the Ukraine Support Instrument according to rules similar to those of the Programme with regard to the form of EU funding, eligible entities and award criteria. We therefore note that the proposal does not set out specific provisions relating to the implementation of the Ukraine Support Instrument and applies provisions similar to those for member states. This application is despite the Instrument’s different objectives, budgetary funding source, legal base and the heightened risk of corruption in Ukraine. Against this backdrop, as highlighted in paragraph **19**, **the Commission and the co-legislators should consider introducing** specific provisions with regard to the implementation of the Ukraine Support Instrument. For instance, they could consider:

- narrowing down the scope of eligible actions to those that are necessary to achieve the Instrument’s objectives;
- developing specific award criteria;
- addressing the risks of implementing the Programme through financing that is not linked to costs in the Ukrainian context (see paragraphs **26-29**).

Furthermore, we note that the broadly defined objectives and the leeway in terms of the implementation of the Ukraine Support Instrument may raise challenges in assessing its performance *ex post* and identifying the implementing bodies’ responsibilities. Please refer to paragraph **54** for considerations relevant to the Ukraine framework agreement.

Chapter IV of the proposal: Security of supply

Section 1: Preparedness (Articles 34 to 39 of the proposal)

49 Article 35 of the proposal introduces a derogation from Article 172 of the Financial Regulation, allowing the Commission, in situations of extreme urgency, to request the delivery of goods or services before the final contracts have been signed. Considering the heightened litigation risk arising from performing a contract before finalising the legal terms, **the Commission and the co-legislators should consider** narrowing the scope of the exemption. For example, they could make the derogation contingent on activating the supply crisis state or the security-related supply crisis state.

Section 2: Supply chain surveillance and monitoring (Articles 40 and 41 of the proposal)

50 The proposal provides that the Commission will map the EU's defence supply chain and provide an analysis of the EU's strengths and weaknesses in terms of the supply chain of crisis-relevant products. To do so, the Commission will use publicly available information and may also issue voluntary requests for information. Similarly, Article 41 states that the Commission and member states may make voluntary information requests to monitor the defence supply chain. Finally, recital 56 of the proposal highlights that the Commission should provide standardised and secure means for any information collection, minimising the burden for undertakings responding to this monitoring and ensuring that the acquired information can be compiled in a meaningful way. To reinforce the completeness of the information received, **the Commission should consider** incorporating a requirement to respond to such data requests in the grant agreements concluded with the Programme's beneficiaries.

51 Article 42 of the proposal requires member states to report on any major events that may hinder the regular operations carried out as part of the identification of key market actors. In order to foster consistent implementation, **the Commission and the co-legislators should consider** providing a clearer definition of "major events", clarifying the scope of the activities that member states must undertake, and spelling out the information that is expected to be reported.

Sections 3 and 4: Supply crisis state and security-related supply crisis state (Articles 43 to 56 of the proposal)

52 Upon the European Council's activation of the state of either the supply crisis foreseen in Article 44 or the security-related supply crisis outlined in Article 48, the proposal empowers the Commission to issue requests for information to relevant undertakings and to notify priority-rated orders and priority-rated requests. The proposal confers on the Commission the power to impose fines, for example, in cases of gross negligence or non-compliance with regard to these requests, or for providing incomplete or misleading information (Article 55). However, such powers are subject to conditions that may impede their effective and timely implementation.

- According to Articles 46 and 49, issuing a request for information requires the prior approval of the member state in which the undertaking is established and the undertaking may decide not to respond to the request if it has “sufficient reasons” not to do so.
- According to Article 47, the notification of a priority-rated order requires a request from a member state and the *ex ante* approval of the member state in which the undertaking is established. Furthermore, the undertaking may decline the order if it provides “a detailed justification”.
- Similarly, in Article 50, the decision to issue a priority-rated request requires a formal request from a member state and the *ex ante* approval of the member state in which the undertaking is established. Moreover, the undertaking may decide not to comply with the request if it has “sufficient reasons” not to do so.

We therefore stress that the effective functioning of this mechanism will depend on member states' willingness to cooperate. We further highlight the Commission's operational challenge in exercising these proposed powers and the risk of legal challenges from undertakings that might be subject to penalties. **The Commission and the co-legislators should therefore consider** clarifying which “reasons” and “detailed justifications” may allow an undertaking to decline to comply with requests for information, priority-rated orders and priority-rated requests.

Chapter V of the proposal: Governance, evaluation and control

The Defence Industrial Readiness Board and committee procedure (Articles 57 and 58 of the proposal)

53 The proposal establishes the Defence Industrial Readiness Board bringing together the Commission, the member states and the High Representative and Head of the EDA to advise the Commission in the implementation of the Programme, including identifying the priority funding areas and activating the crisis management regimes. Furthermore, as part of the EDIS, the Board will perform the function of EU defence joint programming and procurement. In the context of implementing the EDIP, the Board will be chaired by the Commission, whereas within the context of the EDIS, the Board will be jointly chaired by the Commission and the High Representative (who is also the Head of the EDA). Moreover, the proposal establishes a committee to oversee the adoption of the working programmes set out by the Commission, which will be composed of the Commission and member states, with the EDA and the European External Action Service as observers. We acknowledge the need for such coordination forums to ensure consistency between CFSP decisions and the defence industrial policy and we understand the legal limitations that apply to the proposal. We note however, that the Board may not contribute to simplifying the complex governance framework highlighted in paragraph 17.

Ukraine framework agreement (Article 59 of the proposal)

54 With regard to the Ukraine Support Instrument, Article 59 of the proposal requires the Commission to conclude a framework agreement with Ukraine, including providing detailed enacting provisions to safeguard sound financial management and transparency. However, as highlighted in paragraph 19, the co-legislators may consider including minimum control, monitoring and reporting requirements in the proposal as a baseline for future negotiations between the Commission and the Ukrainian authorities. Furthermore, **the Commission and the co-legislators should consider** strengthening the content of the framework agreement with Ukraine to include detailed enacting provisions including:

- the specific objectives and needs pursued by the Ukrainian authorities;
- the identification of the Ukrainian authorities involved in implementing the Programme and their responsibilities;
- the applicable sanctions and recovery regime in case of any infringements of the agreement and any downstream agreements;

- o the monitoring arrangements including performance indicators and sources of information used to quantify outputs from the instrument;
- o the relevant legislative, regulatory and administrative measures necessary to enforce the rights of the ECA to access documents and information from Ukrainian beneficiaries for the purpose of its audits.

55 Furthermore, we note that the proposal does not set out a deadline for concluding the Ukraine framework agreement. Considering the short timespan of the instrument and the role of the framework agreement in upholding the ECA's rights to access documents and information from Ukrainian beneficiaries for the purpose of its audits, **the Commission and the co-legislators should consider** introducing such a deadline to ensure that all payments are covered by robust monitoring and audit arrangements.

Evaluation of the Programme (Article 66 of the proposal)

56 The proposal requires the Commission to carry out an evaluation by 30 June 2027, assessing the implementation and results of the Programme and building upon consultations with the member states and key stakeholders. We welcome this requirement, but we note that the deadline for the evaluation is ambitious considering the timeframe of the ordinary legislative procedure and the time needed to implement the programme and assess its impacts. In that regard, we note that the evaluation of the ASAP, issued by the Commission in July 2024, occurred too soon after the adoption of the award decision on 15 March 2024. This timeframe did not allow the Commission to assess the measures' results and the evaluation could only cover the implementation period until the final selection of the beneficiaries.

57 Despite this limitation, we note that the ASAP evaluation highlighted the challenge for the ASAP programme committee in terms of agreeing on the definition of eligible activities and the allocation of the available budget. In this context, the recommendations to draw clear links between the policy objectives and the eligible activities resulting from the evaluation may also be relevant for the implementation of the EDIP as highlighted in paragraphs [37](#), [38](#) and [43](#). Furthermore, the evaluation stresses that an important success factor in the ASAP implementation was the upstream outreach activities carried out by the Commission to identify the main bottlenecks in the ammunition supply chain. In that regard, we note that the EDIP will cover a broader scope of defence products than the ASAP within a limited implementation period of 2 years. It may therefore be challenging for the Commission to identify priority actions for the allocation of funding within the planned timeframe.

58 Further to this, we note that the other EU programmes supporting the EDTIB (the EDIRPA, the EDF, the EDIDP) have not yet been evaluated *ex post*, as they have not been implemented for a sufficiently long period of time (with the exception of the EDIDP). The interim evaluation of the EDF was ongoing at the time of drafting this opinion, whereas the evaluation of the EDIRPA was expected by the end of 2026 and no deadline to issue the evaluation was set out in the EDIDP Regulation. Considering the relevance of such evaluations to enhance policy making and the timeframe for preparing the next multiannual financial framework, **the Commission and the co-legislators should consider** carrying out one single *ex post* evaluation of the above-mentioned defence-related programmes, to help steer any further actions or investments beyond 2027, and postponing the final evaluation of the EDIP to reflect the time lag between the publication of the proposal and its final adoption.

Performance monitoring framework

59 We support the setting-up of a robust framework for performance assessment. In that regard, section 1.4.4 of the legislative financial statement accompanying the proposal provides for meaningful performance indicators such as the increase in production capacity for defence products within the EU or reducing production lead times. Other proposed indicators are more output indicators (such as the number of member states participating in cooperation for common procurement). Since the full list of indicators used for monitoring will only be put in place by the entity entrusted with Programme implementation, **the Commission should consider** providing them with a list of key indicators to be used, which would include both output and result indicators, and provide – where necessary – baselines and target values.

60 According to the SWD the Commission expects to collect the information necessary to monitor the implementation of the Programme and the Ukraine Support Instrument mainly by requesting information from beneficiaries. We note however, that measuring the overall increase in production capacities for defence products within the EU and reducing production lead times may require information from undertakings that have not necessarily benefited from the Programme's financing. We further note that the SWD²⁶ highlights a shortage of available data relating to the DTIB due to national security considerations. This limits our ability to assess the robustness of the monitoring arrangements contained in the proposal.

²⁶ Commission staff working document, Section 7, What are the impacts of the preferred policy options?, C(2024) 4822.

61 Moreover, we did not identify performance indicators to specifically reflect the objectives of fostering interoperability and standardising defence systems across the EU. **The Commission should consider** introducing performance indicators to reflect the achievement of these specific policy objectives.

62 We note that the Joint Communication on EDIS²⁷ includes three main targets:

- member states should procure at least 40 % of their defence equipment in a collaborative manner by 2030;
- the value of intra-EU defence trade should represent at least 35 % of the value of the EU's defence market by 2030;
- member states should procure at least 50 % of their defence investments from within the EU by 2030 and 60 % by 2035.

However, these indicators are not included in the proposal. We note that the financial support under the EDIP only covers the period until 2027, which is the timeframe of the current multiannual financial framework. We also note that achieving the targets will depend, to a large extent, on member states' initiatives. However, to monitor progress in the implementation of the EDIS, **the Commission should consider** including these indicators in the EDIP's monitoring activities and setting intermediate targets for 2027. While acknowledging that these indicators may not only reflect the outcome of the Programme, we consider that they are nonetheless relevant in terms of assessing its performance.

63 Moreover, considering that the achievements of the EDIS targets rely on member states' procurement decisions, **the Commission should also consider** publishing a detailed breakdown of the performance indicators by member states as part of the Programme's final evaluation.

64 With regard to the Ukraine Support Instrument, **the Commission and the co-legislators should consider** adding complementary indicators to assess the benefits reaped from the Ukraine Support Instrument. This is because the proposed indicator ("increase of support to Ukraine") may not allow the Commission to measure the extent to which the instrument contributes to the modernisation of the Ukraine DTIB.

²⁷ Commission communication, "A new European Defence Industrial Strategy: Achieving EU readiness through a responsive and resilient European Defence Industry", [JOIN \(2024\) 10](#).

Concluding remarks

65 Faced with the return of high-intensity warfare on the European continent, the EU has moved defence high up the agenda. In this context the Commission put forward a proposal establishing the European Defence Industry Programme (EDIP) to:

- (a) support the EU's defence industry readiness by strengthening the EDTIB to ensure the timely availability and supply of defence products, and
- (b) contribute to the recovery, reconstruction and modernisation of the Ukraine DTIB.

To this end, the proposal establishes the European Defence Industrial Programme (the "Programme") and the Ukraine Support Instrument, together with other measures.

66 We highlight the risk that the proposed budget of €1.5 billion for strengthening the EDTIB along with the planned 2-year implementation period may not be commensurate with the proposal's objectives. We therefore highlight the importance of defining relevant performance indicators accompanied with milestones and targets to reflect the achievements that can realistically be expected by the end of 2027. Moreover, we note the importance of devising a long-term funding strategy as part of the next multiannual financial framework.

67 We consider that certain accountability arrangements in the proposal should be clarified or strengthened, including the provisions related to the ECA's audit rights. This is relevant in the context of complex governance arrangements in the area of defence. In particular, this is the case where the programme is implemented through indirect management, in the context of the FAST, and where execution is entrusted to the Ukrainian authorities.

68 We suggest that complementary implementing provisions may be required for the Programme, to provide a robust basis for its implementation and the targeted allocation of funds. Throughout our opinion, we have raised the main risks identified and have made suggestions on how to address them. This includes the need to clarify the methodology specific to FNLTC, the requirements concerning the eligibility of actions and costs, and the selection criteria for awarding funding to individual projects.

69 Finally, we note that the proposal introduces provisions conferring new responsibilities and rights on the Commission to ensure the security of defence product supply in the EU. We emphasise however that member states' interest and

their willingness to cooperate will be key to ensuring the effective security of defence product supply.

Summary of suggestions

Number	Suggestion	Reference in the opinion (paragraph)
General observations		
1	The Commission should consider complementing the EDIS with a long-term funding strategy for the EDTIB as part of the next multiannual financial framework.	15
2	The Commission and the co-legislators should consider the risk of overlaps and challenges in conducting evaluations and audits arising from such a complex framework.	17
3	The Commission and the co-legislators should consider introducing specific accountability arrangements for the implementation of the Programme in Ukraine.	19, 48
Chapter I: General provisions		
4	The Commission and the co-legislators should consider providing additional definitions in Article 2 of the proposal in order to ensure consistent implementation.	39, 41, 43, 45, 51
Chapter II		
Section 1: General provisions applicable to the Programme and to the Ukraine Support Instrument		
5	The Commission should consider clearly defining in the work programmes the actions funded through FNLTC, the milestones for the implementation of the action and the financial consequences whenever a specific milestone or target is not met.	27
6	<p>In the context of eligible actions funded through FNLTC, the Commission should consider clarifying:</p> <ul style="list-style-type: none"> ○ the minimum control requirements to demonstrate that the amounts received in grants do not exceed the total amount of eligible costs and do not cover the same costs as required by Article 7; ○ the cost basis that must be used to estimate the surplus foreseen in Article 8; 	28

Number	Suggestion	Reference in the opinion (paragraph)
	<ul style="list-style-type: none"> ○ the cost basis that must be used to determine the maximum EU funding as provided in Article 17; ○ control measures to ensure that compliance with EU and national rules is verified and confirmed. <p>(Articles 3, 7, 8, 17).</p>	
7	<p>The Commission should consider clarifying the scope of eligible activities that may benefit from FNLTC. It should also consider clarifying the principles underpinning the cost estimates used to assess the appropriateness of the EU's budgetary support in the form of FNLTC and simplified cost options.</p> <p>(Article 3 and legislative financial statement).</p>	29
Section 2: The programme		
8	<p>The Commission and the co-legislators should consider introducing an explicit requirement that delegation agreements signed by the Commission uphold the ECA's audit rights.</p> <p>(Article 8)</p>	33
9	<p>The Commission and the co-legislators should consider two elements: firstly, whether the scope of the exemption in Article 8 to the principle of non-retroactivity is appropriate to achieve the intended objective, and secondly whether it is adequate, considering the timetable for the adoption of the proposal.</p>	34
10	<p>The Commission should consider outlining the methodology it expects to use to determine the recoverable amount arising from profits made by beneficiaries from eligible actions to support the production or commercialisation of profitable defence products.</p> <p>(Article 8)</p>	35
11	<p>The Commission and the co-legislators should consider whether the scope of the exception set out in Article 10 (3) about the use of facilities located in third countries is appropriate and consistent with recital 15 of the proposal.</p>	36

Number	Suggestion	Reference in the opinion (paragraph)
12	For a subset of eligible activities defined in Article 11 of the proposal, the Commission and the co-legislators should consider clarifying which costs may be eligible under the Programme and whether the funding may be used to cover the purchase of raw materials and intermediate products for stockpiling purposes.	37
13	The Commission and the co-legislators should consider setting out clear priorities for allocating EU funds to individual projects	38
14	The Commission and the co-legislators should consider introducing additional implementing provisions with regard to the European military sales mechanism, clarifying the expected features of the platform, the targeted scope of products and undertakings and the administration of the platform. (Article 14)	40
15	The Commission and the co-legislators should consider introducing a requirement to secure long-term financial support as a prerequisite for the selection of European defence projects of common interest. (Article 15)	42
16	The Commission and the co-legislators should consider whether the scope of the derogation in Article 17 (principle of co-funding) is commensurate with the stated objective in recital 18.	44
17	The Commission and the co-legislators should consider providing general criteria for the selection of FAST beneficiaries and explaining how the fund will contribute to achieving the Programme's overarching objectives. (Article 19)	46
18	The Commission should consider setting out specific monitoring arrangements for FAST and for risk sharing with private investors. (Article 19)	46

Number	Suggestion	Reference in the opinion (paragraph)
Section 3: The Ukraine Support Instrument		
19	<p>The Commission and the co-legislators should consider including more detailed provisions about the relevant EU restrictive measures feeding into the Ukraine Support Instrument to allow the amount of external assigned revenue earmarked for Ukraine to be accurately determined.</p> <p>(Article 6)</p>	47
Chapter IV: Security of supply		
20	<p>The Commission and the co-legislators should consider narrowing the scope of the exemption allowing the delivery of goods and services ahead of the contract's finalisation.</p> <p>(Article 35)</p>	49
21	<p>The Commission should consider incorporating a requirement to respond to data requests issued as part of its monitoring of the EDTIB in the grant agreements concluded with the Programme's beneficiaries.</p> <p>(Articles 40 and 41)</p>	50
22	<p>The Commission and the co-legislators should consider providing a clearer definition of "major events", clarifying the scope of the activities that member states must undertake, and spelling out the information that is expected to be reported.</p> <p>(Article 42)</p>	51
23	<p>The Commission and the co-legislators should consider clarifying which "reasons" and "detailed justification" may allow an undertaking to decline to comply with requests for information, priority-rated orders and priority-rated requests.</p> <p>(Articles 46, 47 and 50)</p>	52
Chapter V: Governance, evaluation and control		
24	<p>The Commission and the co-legislators should consider strengthening the content of the framework agreement with Ukraine to include detailed enacting provisions.</p>	54

Number	Suggestion	Reference in the opinion (paragraph)
	(Article 59)	
25	The Commission and the co-legislators should consider introducing a deadline for finalising the Ukraine Framework Agreement. (Article 59)	55
26	The Commission and the co-legislators should consider carrying out one single <i>ex post</i> evaluation of the defence-related programmes to help steer any further actions or investments beyond 2027 and postponing the final evaluation of the EDIP to reflect the time lag between the publication of the proposal and its final adoption. (Article 66)	58
Performance monitoring framework		
27	The Commission should consider providing the entities entrusted with the programme's implementation of EU funding with a list of key indicators to be used, which would include both output and result indicators, and providing – where necessary – baselines and target values.	59
28	The Commission should consider introducing performance indicators to reflect the achievement of the policy objectives of fostering interoperability and standardising defence systems across the EU.	61
29	In monitoring the Programme, the Commission should consider using the EDIS core performance indicators, setting intermediate targets for 2027 and publishing a detailed breakdown of the performance indicators by member state as part of the final programme evaluation.	62, 63
30	The Commission and the co-legislators should consider adding complementary indicators to assess the benefits reaped from the Ukraine Support Instrument.	64

Drafting suggestions

70 Further to the suggestions made above, we propose some specific changes to the text of the proposal. The information is detailed in *Figure 1* below.

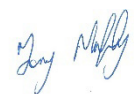
Figure 1 – Suggested changes with comments

Text of the proposal	Suggested change	Comments
Article 2	We suggest listing the terms in alphabetical order.	
Article 10(5) The Commission shall inform the committee referred to in Article 57 of any legal entity considered to be eligible in accordance with this paragraph.	The Commission shall inform the committee referred to in Article 58 of any legal entity considered to be eligible in accordance with this paragraph.	Incorrect reference.
Article 11(6) For activities referred to in paragraphs 2, in paragraph 3, point (d), and in paragraph 55, point (a).	For activities referred to in paragraphs 2, 3, point (d), and paragraph 5 , point (a).	Incorrect reference.
Article 14(3) Where Member States jointly procure additional quantities or contribute through in-kind contributions to build up a defence industrial readiness pool as referred to in paragraph 2, point (b).	Where Member States jointly procure additional quantities or contribute through in-kind contributions to build up a defence industrial readiness pool as referred to in paragraph 1 , point (b).	Incorrect reference.
Article 17(3) The work programme shall lay down further details, including, where relevant, the increased	3. The work programme shall lay down further details, including, where relevant, the increased funding rates referred to	To make the reference unequivocal.

Text of the proposal	Suggested change	Comments
funding rates referred to in paragraph 3.	in paragraph 2 .	
<p>Article 47(5)</p> <p>Where the undertaking declines the priority rated order, it shall provide the Commission with a detailed justification hereor.</p>		Unclear term “hereor”.
<p>Articles 59, 63 and 64</p> <p>Make reference to articles in the Financial Regulation that will be modified with the Financial Regulation recast.</p>	In order to be coherent with the references made in other articles to the Financial Regulation recast, we suggest the references in these articles be updated.	References need to be updated.

This opinion was adopted by Chamber III headed by Ms Bettina Jakobsen, Member of the Court of Auditors, in Luxembourg at its meeting of 24 September 2024.

For the Court of Auditors



Tony Murphy
President

Annexes

Annex I – Overview of the European defence-related institutional arrangements

EU body	Membership	Mission	Governance	Audit mandate
European External Action Services <i>EEAS</i>	All EU member states	<ul style="list-style-type: none"> ○ Conduct the CFSP. ○ Coordinate EU external actions. ○ Provide the role of secretariat jointly with the EDA for permanent structured cooperation. 	High Representative of the Union for Foreign Affairs and Security Policy	ECA
European Defence Agency <i>EDA</i>	All EU member states	<ul style="list-style-type: none"> ○ Identify operational requirements. ○ Identify and implement measures to strengthen the industrial and technological base of the defence sector. ○ Participate in defining a European capabilities and armaments policy. 	<p>European Council</p> <p>High representative of the Union for Foreign Affairs and Security Policy</p>	College of auditors

EU body	Membership	Mission	Governance	Audit mandate
		<ul style="list-style-type: none"> ○ Provide the role of secretariat jointly with the EEAS for permanent structured cooperation with the EEAS. 		
DG Defence Industry and Space <i>DG DEFIS</i>	All EU member states	<ul style="list-style-type: none"> ○ Implement the EU's Space Programme. ○ Ensure an innovative and competitive defence industry. 	European Commission	ECA
Permanent structured cooperation <i>PESCO</i>	All EU member states except Malta	<ul style="list-style-type: none"> ○ Develop defence capabilities. ○ Provide an operational capacity drawing on civilian and military assets. 	European Council High representative of the Union for Foreign Affairs and Security Policy	Member states audit arrangements
European Peace Facility	All EU member states	<ul style="list-style-type: none"> ○ Finance action under the Common Foreign and Security Policy. 	European Council	College of auditors

Annex II – Derogations from the Financial Regulation

Derogations from Regulation (EU, Euratom) 2018/1046 (Financial Regulation)

Proposal for a “Regulation on establishing the European defence industry programme and a framework of measures to ensure the timely availability and supply of defence products”		“Financial Regulation” Title of Article
Article where derogation is used	Purpose of the derogation	
5(5)	Revenues and repayments from financial instruments established under the regulation will constitute assigned revenue to the Programme.	Article 209 Principles and conditions applicable to financial instruments and budgetary guarantees
8(3)	For eligible activities designed to foster industrialisation and commercialisation of defence products, where a beneficiary of a grant makes a profit, the Commission may take into account member states’ funding to determine the recoverable amount of the grant.	Article 192 No-profit principle
8(4) Recital 23	Financial contributions from the EU Budget may cover actions started and costs incurred prior to the date of the submission of the proposals in response to the annual work programme provided that the actions started after 5 March 2024 and have not been completed before the signature of the grant agreement.	Article 193 Principle of non-retroactivity
17 Recital 18	The Programme may finance up to 100 % of the eligible costs except for activities related to speeding up the adjustment to the structural changes of the production capacity of defence products.	Article 190 Co-financing

Proposal for a “Regulation on establishing the European defence industry programme and a framework of measures to ensure the timely availability and supply of defence products”		“Financial Regulation” Title of Article
Article where derogation is used	Purpose of the derogation	
35(3)	In the case of extreme urgency, the European Commission may request the delivery of goods or services from the date on which the draft contracts resulting from the procurement procedure are sent.	Article 172 Performance and modifications of the contract

Derogations from the proposal for a recast of Regulation (EU, Euratom) 2018/1046

Proposal for a “Regulation on establishing the European Defence Industry Programme and a framework of measures to ensure the timely availability and supply of defence products”		“Financial Regulation (recast)” Title of Article
Article where derogation is used	Purpose of the derogation	
35(1)	Ukraine may request the European Commission to engage in joint-procurement or to act as a central purchasing body on behalf of interested member states.	Article 168 Procurement procedures

Abbreviations

ASAP: Act in support of ammunition production

CFSP: Common Foreign and Security Policy

DTIB: Defence technological and industrial base

EDA: European Defence Agency

EDF: European Defence Fund

EDIDP: European defence industrial development programme

EDIP: European defence industry programme

EDIRPA: European defence industry reinforcement through common procurement act

EDIS: European defence industrial strategy

EDTIB: European defence technological and industrial base

FAST: Fund to accelerate defence supply chains transformation

FNLTC: Financing not linked to costs

SWD: Staff working document

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