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Regulation (EU) 2018/1092 of the European Parliament and of the Council of 18 July 2018 establishing the European Defence Industrial Development Programme aiming at supporting the competitiveness and innovation capacity of the Union's defence industry

REGULATION (EU) 2018/1092 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 18 July 2018

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 173 thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) In its Communication of 30 November 2016 on a European Defence Action Plan, the Commission committed itself to complementing, leveraging and consolidating collaborative efforts by Member States in developing defence capabilities to respond to security challenges, as well as to fostering a competitive, innovative and efficient defence industry throughout the Union. It proposed, in particular, to launch a European Defence Fund (the ‘Fund’) to support investment in joint research and in the joint development of defence equipment and technologies, thereby encouraging joint procurement and joint maintenance of defence equipment and technologies. The Fund would not replace national efforts in this regard and should act as an incentive for Member States to cooperate and invest more in defence. The Fund would support cooperation during the whole cycle of defence product and technology development, thereby fostering synergies and cost effectiveness. The objective would be to deliver capabilities, ensure a competitive and innovative basis for the defence industry across the Union, including by cross-border cooperation and participation of small and medium-sized enterprises (SMEs), and to contribute to greater European defence cooperation.

(2) In order to foster the competitiveness, efficiency and innovation capacity of the Union's defence industry, which contributes to the Union's strategic autonomy, a European Defence Industrial Development Programme (the ‘Programme’) should be established.

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The Programme should aim to enhance the competitiveness of the Union's defence industry, contributing to the improvement of defence capabilities, inter alia, in relation to cyber defence, by supporting cooperation between undertakings throughout the Union, including SMEs and middle capitalisation companies (mid-caps), research centres and universities, and collaboration between Member States, in the development phase of defence products and technologies, thus facilitating better exploitation of economies of scale in the defence industry and promoting the standardisation of defence systems while improving their interoperability. The development phase, which follows the research and technology phase, entails significant risks and costs that hamper the further exploitation of the results of research and adversely impact the competitiveness of the Union's defence industry. By supporting the development phase, the Programme would contribute to a better exploitation of the results of defence research and would help to cover the gap between research and production. It would also promote all forms of innovation, since the positive effects of such support can be expected to spill over into the civilian sector. The Programme complements activities carried out in accordance with Article 182 of the Treaty on the Functioning of the European Union and it does not cover the production or procurement of defence products or technologies.

(3) In order to achieve more innovative solutions and to foster an open internal market, the Programme should provide strong support to the cross-border participation of SMEs and help create new market opportunities.

(4) The Programme should cover a two-year period from 1 January 2019 to 31 December 2020. The financial amount for the implementation of the Programme should be determined for that period.

(5) This Regulation lays down a financial envelope for the entire duration of the Programme, which is to constitute the prime reference amount, within the meaning of point 17 of the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management[(3)], for the European Parliament and the Council during the annual budgetary procedure.

(6) When implementing the Programme, all funding instruments should be used in accordance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council[(4)], with a view to maximising the development of defence products and technologies. However, in view of the two-year duration of the Programme, the use of financial instruments could raise practical difficulties. Consequently, during that initial period, priority should be given to the use of grants and, in exceptional circumstances, to public procurement. Financial instruments could be an appropriate tool for use in the Fund after 2020.

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

(8) After agreeing on common defence capability priorities at Union-level, particularly through the Capability Development Plan, also taking into account the Coordinated Annual Review on Defence, and with a view to fulfilling the EU's Level of Ambition as agreed by the Council in its conclusions of 14 November 2016 and endorsed by

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the European Council on 15 December 2016, Member States identify and consolidate military requirements and set the technical specifications of the project.

(9) Member States should, where appropriate, also appoint a project manager, such as an international project management organisation, for example the Organisation for Joint Armament Cooperation, or an entity, such as the European Defence Agency, to lead the work related to the development of a collaborative action supported by the Programme. Where such an appointment is made, the Commission should consult the project manager on progress made with regard to the action prior to executing the payment to the beneficiary of the eligible action so that the project manager can ensure that the time-frames are respected by the beneficiaries.

(10) The Union financial support should not affect the transfer of defence-related products within the Union in accordance with Directive 2009/43/EC of the European Parliament and of the Council[(5)], or the export of defence products, equipment or technologies. Nor should it affect the discretion of Member States regarding policy on the transfer within the Union and the export of such products, including in line with the common rules governing control of exports of military technology and equipment laid down in Council Common Position 2008/944/CFSP[(6)].

(11) As the objective of the Programme is to support the competitiveness and efficiency of the Union defence industry by de-risking the development phase of cooperative projects, actions related to the development of a defence product or technology, namely feasibility studies and other accompanying measures, design (including the technical specifications on which the design is based), system prototyping, testing, qualification, certification and increasing efficiency over the life cycle of a defence product or technology, should be eligible for funding under the Programme. The upgrade of existing defence products and technologies, including the interoperability thereof, should also be eligible for funding under the Programme. Actions for the upgrade of existing defence products and technologies should be eligible only where pre-existing information needed to carry out the action is not subject to any restriction in a way that limits the ability to carry out the action.

(12) Given that the aim of the Programme is, in particular, to enhance cooperation between undertakings across Member States, an action should be eligible for funding under the Programme only if it is to be carried out by a consortium of at least three undertakings based in at least three different Member States.

(13) Cross-border collaboration between undertakings in the development of defence products and technologies has often been hampered by the difficulty to agree on common technical specifications or standards. The absence or paucity of common technical specifications or standards has led to increased complexity, delays and inflated costs in the development phase. For actions involving a higher level of technological readiness, an agreement on common technical specifications should be a primary condition to be eligible for funding under the Programme. Feasibility studies and actions which aim to support the establishment of common technical specifications or standards should also be eligible for funding under the Programme.

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(14) In order to ensure that, in the implementation of this Regulation, the international obligations of the Union and its Member States are respected, actions relating to products or technologies of which the use, development or production are prohibited by international law should not be eligible for funding under the Programme. In that respect, the eligibility of actions for the development of new defence products or technologies, such as those that are specifically designed to carry out lethal strikes without any human control over the engagement decisions, should also be subject to developments in international law.

(15) As the Programme aims to enhance the competitiveness and efficiency of the Union's defence industry, only entities which are established in the Union and are not subject to control by a third country or by a third-country entity should, in principle, be eligible for funding. Additionally, in order to ensure the protection of essential security and defence interests of the Union and its Member States, the infrastructure, facilities, assets and resources used by the beneficiaries and subcontractors in an action funded under the Programme, should not be located on the territory of a third country.

(16) In certain circumstances, it should be possible to derogate from the principle that beneficiaries and subcontractors involved in an action are not subject to control by a third country or by a third-country entity. In that context, undertakings established in the Union that are controlled by a third country or by a third-country entity should be able to be eligible for funding provided that relevant, strict conditions relating to the security and defence interests of the Union and its Member States, as established in the framework of the Common Foreign and Security Policy pursuant to Title V of the Treaty on European Union (TEU), including in terms of strengthening the European Defence Technological and Industrial Base, are fulfilled. The participation of such undertakings should not contravene the objectives of the Programme. Beneficiaries should provide all relevant information about the infrastructure, facilities, assets and resources to be used in the action. Member States' concerns regarding security of supply should also be taken into account.

(17) Cooperation between beneficiaries and subcontractors involved in the action and undertakings which are established in a third country or which are controlled by a third country or by a third-country entity should also be subject to relevant conditions relating to the security and defence interests of the Union and its Member States. In that context, there should be no unauthorised access by a third country or a third-country entity to classified information relating to the execution of the action. Access to classified information is authorised in accordance with the relevant security rules applicable to European Union classified information and to information classified according to national security classifications.

(18) Eligible actions developed in the context of Permanent Structured Cooperation in the institutional framework of the Union would ensure enhanced cooperation between undertakings in the different Member States on a continuous basis and would thus directly contribute to the objectives of the Programme. Such actions should therefore be eligible for an increased funding rate. Eligible actions developed with an appropriate level of participation of mid-caps and SMEs, and in particular cross-border SMEs,

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support the opening up of the supply chains and contribute to the objectives of the Programme. Such actions should therefore be eligible for an increased funding rate, including to compensate for the increased risk and the increased administrative burden.

(19) If a consortium wishes to participate in an eligible action under the Programme and financial assistance of the Union is to take the form of a grant, the consortium should appoint one of its members as a coordinator. The coordinator should be the principal point of contact with the Commission.

(20) The promotion of innovation and technological development in the Union defence industry should enable the skills and know-how in the Union's defence industry to be maintained and developed and should contribute to strengthening its technological and industrial autonomy. In that context, the Programme could also help identify where the Union is dependent on third countries for the development of defence products and technologies. Such promotion of innovation and technological development should also take place in a manner consistent with the security and defence interests of the Union. Accordingly, an action's contribution to those interests and to the defence capability priorities agreed by Member States within the framework of the Common Foreign and Security Policy should serve as an award criterion. Within the Union, common defence capability priorities are identified in particular through the Capability Development Plan. Other Union processes such as the Coordinated Annual Review on Defence and the Permanent Structured Cooperation support the implementation of relevant priorities through enhanced cooperation. Where appropriate, regional and international priorities, including those in the NATO context, may also be taken into account, on condition that they serve the Union's security and defence interests and do not prevent any Member State from participating, while also taking account of the need to avoid unnecessary duplication.

(21) The Member States work individually and jointly on the development, production and operational use of unmanned aircraft, vehicles and vessels. Operational use in this context comprises carrying out strikes on military targets. The research and development associated with the development of such systems, including both military and civilian systems, have been supported by Union funds. It is planned that this will continue, possibly also under the Programme. Nothing in this Regulation should hinder the legitimate use of such defence products or technologies developed under the Programme.

(22) In order to ensure that the funded actions are viable, Member States' commitment to effectively contribute to the financing of the action should be established in writing for example by a letter of intent by the Member States concerned.

(23) In order to ensure that the funded actions contribute to the competitiveness and efficiency of the European defence industry, they should be market-oriented, demand driven and commercially viable in the medium to long term, including for dual-use technologies. The eligibility criteria should therefore take into account the fact that Member States intend to procure the final defence product, or use the technology, in a coordinated way, while the award criteria should take into account the fact that Member