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NOTE

From:	Presidency
To:	Permanent Representatives Committee
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) 2015/1017, (EU) 2021/523, (EU) 2021/695 and (EU) 2021/1153 as regards increasing the efficiency of the EU guarantee under Regulation (EU) 2021/523 and simplifying reporting requirements – Analysis of the final compromise with a view to agreement

I. INTRODUCTION

1. On 5 March 2024, the Commission submitted to the European Parliament and the Council a proposal for a Regulation establishing the European Defence Industry Programme and a framework of measures to ensure the timely availability and supply of defence products (EDIP).[1]

[1] Document 7340/25.

2. The EDIP proposal is based on Article 114(1), Article 173(3), Article 212(2) and Article 322(1) TFEU. In line with the requirements set by the Treaties, the Council consulted the European Economic and Social Committee ('EESC') and the European Court of Auditors ('ECA') on the draft Regulation.

3. The EESC adopted its opinion[2] on 30 May 2024. The ECA adopted its opinion[3] on 24 September 2024.

II. NEGOTIATIONS WITH THE EUROPEAN PARLIAMENT

4. On 24 April 2025, the European Parliament's Committees on Industry, Research and Energy (ITRE) and on Security and Defence (SEDE) adopted their joint report on EDIP and decided to enter into interinstitutional negotiations. On 5 May 2025, the decision of the ITRE and SEDE committees was announced in plenary. There was no request to put the decision of the ITRE and SEDE committees to a vote.

5. On 23 June 2025, the Permanent Representatives Committee granted a mandate for negotiations with the European Parliament on the EDIP Regulation[4].

6. Inter-institutional negotiations on EDIP began on 30 June 2025, under the Polish Presidency, and continued with high intensity during the Danish Presidency. Between 3 July and 16 October 2025, two additional rounds of inter-institutional negotiations as well as 17 technical meetings took place.

7. On 16 October 2025, co-legislators reached a provisional agreement on the compromise text as set out in the annex to this note.

[2] Document 10907/24.
[3] Document 14163/24.
[4] Document 10204/25 REV1.

III. MAIN ELEMENTS OF THE FINAL COMPROMISE TEXT

8. The final compromise text creates separate chapters for the provisions on the "Ukraine Support Instrument" (new chapter IIa), "European Defence Projects of Common Interest" (new chapter IIb) and the "European Military Sales Mechanism" (new chapter IIc). In addition, several articles[5] are moved to a new location in the draft Regulation to better align the text with the respective legal bases.

9. Regarding the overall budget, EUR 300m out of the proposed EUR 1.5 billion are earmarked for the Ukraine Support Instrument. In addition, joint statements accompanying the draft Regulation invites the Commission to ensure that any flexibilities for a future top-up of EDIP be explored in the context of upcoming annual budgetary procedures, that any financial contributions by third countries under Art. 17 of the SAFE Regulation be channelled towards EDIP, and that new additional financial resources are allocated as a priority to FAST with the aim that the overall amount for FAST will reach at least EUR 150m. Moreover, the text clarifies that the costs of the purchase and of the maintenance of defence products for military or defence purposes must not be covered by Union funding under the Programme and the Ukraine Support Instrument.

10. The eligibility rules are closely aligned with the existing EU defence industrial *acquis,* including on the share of EU components and the use of guarantees. Additionally, relevant rules for sub-contractors, as well as the "design authority" requirement are closely aligned with the SAFE Regulation.

11. The final compromise text provides that European Defence Projects of Common Interest (EDPCI) are to be identified by means of Council implementing acts. EDPCI are open to Ukraine, even if Ukraine is not eligible for funding.

12. Structures for European Armament Programmes (SEAP) are given the possibility to entrust, by way of a delegation agreement, eligible entities with carrying out procurement actions. Furthermore, SEAP members may unanimously decide on a common approach to exports. They may also unanimously decide that the SEAP issues securities.

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[5] This refers notably to the "budget" article (moved to chapter I), the provisions on "procurement with support by the Commission", "advance purchase of defence products" and "facilitating off-take agreements", which are replicated in both chapters II and IIa, and the article on the "defence security of supply board" (moved to chapter IV).

13. The chapter on security of supply introduces new provisions that aim to facilitate cooperative defence procurement, including in the context of a genuine defence cooperation initiative. The rest of the chapter replicates the structure of the original Commission proposal in that it provides for two distinct supply-crisis states, addressing crisis-relevant non-defence and defence products separately. To comply with the requirements set by the legal basis (Art. 114 TFEU) and the principle of proportionality, the final compromise text contains a number of safeguards. For example, the triggering criteria for the activation of the supply-crisis states have been designed in a way to guarantee that the measures under the Security of Supply regime are focused on ensuring the proper functioning of the internal market and limitation periods for the imposition and the enforcement of penalties have been introduced. In addition, the role of Member States is strengthened throughout, especially with regard to information requests to economic operators and prioritisation measures (e.g. "priority-rated orders" for crisis-relevant non-defence products").

14. The text of the final compromise turns the "Defence Industrial Readiness Board" that the Commission proposed into a "Defence Security of Supply Board" which is exclusively responsible for providing advice and recommendations to the Commission for the implementation of the security of supply chapter. That Board is to be co-chaired by the rotating Presidency and the Commission, while EP Representatives will be invited to attend as observers.

15. Finally, the draft Regulation foresees the adoption of Commission implementing acts and Council implementing acts, the latter for the identification of EDPCIs and the activation of supply-crisis states. The award decision for the funding of actions for which Member States are not among the direct beneficiaries is to be adopted by means of a Commission implementing act in accordance with the examination procedure.

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IV. CONCLUSIONS

16. In light of the above, the Permanent Representatives Committee is invited to:

a) analyse the final compromise text as set out in annex 1, as well as the joint declarations set out in annexes 2 to 4, to this note with a view to reaching an agreement at first reading with the European Parliament;

b) authorise the Chair of the Permanent Representatives Committee to send a letter to inform the Chairs of the European Parliament's ITRE and SEDE Committees that, should the European Parliament adopt its position at first reading on the text of the proposal in the exact form as set out in annex 1, as well as the joint declarations set out in annexes 2 to 4, to this note, and subject to revision of that text by the lawyer-linguists of both institutions, the Council will approve the European Parliament's position and the act will be adopted in the wording which corresponds to the European Parliament's position.

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ANNEX 1

2024/0061 (COD)

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 *Regulation*')

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114(1), Article 173(3), Article 212(2) and Article 322(1) 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[6],

Having regard to the opinion of the European Court of Auditors[7],

Acting in accordance with the ordinary legislative procedure[8],

Whereas:

(-1) The return of high-intensity warfare brought about by Russia's unprovoked and unjustified war of aggression against Ukraine has a negative impact on the security of

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6 OJ C , , p. .

7 OJ C , , p. .

8 ***Position of the European Parliament of … [(OJ …)/(not yet published in the Official Journal)] and decision of the Council of ….".***

the Union and the Member States and requires a significant increase in the capacity of Member States to reinforce their defence capabilities. The long-term deterioration of regional and global security requires a step-change in the scale and speed with which the European defence technological and industrial base (EDTIB) can develop and produce the full spectrum of military capabilities.

(1) The Heads of State or Government of the Union, meeting in Versailles on 11 March 2022, committed to "bolster European defence capabilities" [redacted] . They agreed to increase ***their*** defence expenditures, step up cooperation through joint projects and common procurement of defence capabilities, close shortfalls, boost innovation and strengthen and develop the [redacted] European defence industry[redacted] .

(2) The ***Commission and the High Representative*** of the Union ***for Foreign Affairs and Security Policy (the 'High Representative') presented a Joint Communication on the*** Defence ***Investment Gaps Analysis and Way Forward on 18 May 2022 highlighting the existence, within the Union, of defence financial, industrial and capability gaps***.

(2a) Developing defence manufacturing capacities throughout the Union, taking into account the risks associated with the increased deterioration of the Union's security context, is essential to ensure that all Member States contribute to and benefit from a robust European Defence Technological and Industrial Base (EDTIB). For industrial reinforcement actions, particular attention should be paid to the contribution of the action to industrial resilience, in particular to ensuring the availability and security of supply of defence products throughout the Union in response to identified risks, such as high exposure to the risk of materialisation of conventional military threats.

(3) ***In its conclusions of*** 14 and 15 December 2023, the European Council, [redacted] , having considered work carried out to implement the Versailles declaration and the Strategic Compass for Security and Defence, underlined that more needs to be done to fulfil the Union's objectives of increasing defence readiness. To achieve such a readiness and defend the Union, a strong defence industry is a pre-requisite, making the European defence industry more resilient, innovative and competitive.

(4) ***On 20 July 2023 the European Parliament*** and the ***Council adopted Regulation (EU) 2023/1525[9], aimed at urgently supporting the ramp-up of manufacturing capacities*** of the ***European*** defence ***industry, securing supply chains, facilitating efficient procurement procedures, addressing shortfalls in production capacities and promoting investments***. On 18 October 2023 ▌ the European Parliament and the Council ▌ adopted ***Regulation (EU) 2023/2418[6]***, aimed at supporting collaboration between Member States in the procurement phase to fill the most urgent and critical gaps ***in a collaborative way***, especially those ***gaps*** created by the response to Russia's war of aggression against Ukraine***.***

(5) ***Regulations (EU) 2023/1525 and (EU) 2023/2418*** were designed as emergency response and short-term programmes, ▌ expiring ***on*** 30 June 2025 ▌ and 31 December 2025 ***respectively.***

(5a) This Regulation should build on Regulations (EU) 2023/1525 and (EU) 2023/2418 extend their logic in a more long-term and structured perspective, by providing financial support for the period 2025-2027 for the reinforcement of the competitiveness, responsiveness and ability of the EDTIB to ensure the timely availability and supply of defence products in a predictable, continuous and timely manner. In the light of the current security situation, it appears necessary to extend the Union support to incentivise collaboration between Member States in the procurement of a broader scope of defence equipment.

▌

(6) ***On 23 June 2022,*** the European Council ▌ decided to grant the status of candidate country to Ukraine, which expressed a strong will to link reconstruction with reforms on its European path. ***On 15*** December 2023, ***the European Council*** decided to open accession negotiations with Ukraine ***and*** declared that the Union and ***its*** Member States remain

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[9] ***Regulation (EU) 2023/1525 of the European Parliament and of the Council of 20 July 2023 on supporting ammunition production (ASAP) (OJ L 185, 24.7.2023, p. 7, ELI: http://data.europa.eu/eli/reg/2023/1525/oj).***

[6] ***Regulation (EU) 2023/2418 of the European Parliament and of the Council of 18 October 2023 on establishing an instrument for the reinforcement of the European defence industry through common procurement (EDIRPA) (OJ L, 2023/2418, 26.10.2023, ELI: http://data.europa.eu/eli/reg/2023/2418/oj).***

committed to contributing, for the ***long-term*** and together with partners, to security commitments to Ukraine ▌ which will help ***the latter*** to defend itself, resist ***destabilisation*** efforts and deter acts of aggression in the future. Strong support to Ukraine is a key priority for the Union and an appropriate response to the Union's strong political commitment to support Ukraine for as long as necessary.

(7) The damage ***caused by*** Russia's war of aggression to the Ukrainian economy, society and infrastructure, and in particular damage caused to the ***Ukrainian*** defence technological and industrial base (***the '***Ukrainian DTIB***'), means that*** comprehensive support ***is required*** to rebuild the ***Ukrainian DTIB. Such support*** is essential in order to provide ***Ukraine with*** the capacity to ▌ maintain ▌ essential ***state*** functions***, contributing to*** the fast recovery, reconstruction and modernisation of the country***, to the*** integration ***of the Ukrainian DTIB*** into the ***EDTIB, as well as to the adaptation of the Ukrainian DTIB to meeting NATO standards and other relevant standards***. A strong Ukrainian DTIB is vital for Ukraine's long-term security as well as its reconstruction.

(8) ▌ Actions supporting the reinforcement of the Ukrainian ***DTIB*** should be ***financially supported by the Union***. ***In particular, the Ukraine support instrument under this Regulation should incentivise Member States to cooperate with Ukraine and the Ukrainian DTIB with a view to ramping up the Ukrainian defence manufacturing capacities and to fostering the common procurement of defence products from the Ukrainian DTIB. That*** support is complementary to ***the support*** provided under the Ukraine Facility ***and to*** military support provided to Ukraine under the European Peace Facility and through bilateral assistance by Member States. ***It is also consistent with the Union's continued and unwavering support for Ukraine's independence, sovereignty, and territorial integrity within its internationally recognised borders.***

(9) Russia must be held fully accountable and pay for the massive damage caused by its war of aggression against Ukraine, which constitutes a blatant violation of the Charter of the United Nations. The Union and its Member States should, in close cooperation with other international partners, continue to work towards ***that*** goal, in accordance with Union and international law, taking into account Russia's serious breach of the prohibition on the use of force enshrined in Article 2(4) of the Charter of the United Nations and the principle of State responsibility for internationally wrongful acts, including the obligation to compensate for the financially assessable damage caused. ▌ In coordination with

international partners, ***progress has been made*** on how extraordinary revenues held by private entities stemming directly from ***the immobilisation of Russia's sovereign*** assets could be directed to support Ukraine, including ***the Ukrainian DTIB***, in a manner that is consistent with applicable contractual obligations and in accordance with Union and international law. ***Additional support could be drawn from the*** transfer to the Union ***of*** extraordinary cash balances of central securities depositories arising from the unexpected and extraordinary revenues ***stemming from the immobilisation of*** Russia's ▌ sovereign assets ***or any other relevant*** Union ***restrictive measures***.

(9a) Following the strong commitment of the G7 leaders to helping Ukraine meet its urgent short-term financing needs and to supporting its long-term recovery and reconstruction priorities, on 28 October 2024 the European Parliament and the Council adopted Regulation (EU) 2024/2773[7] establishing the Ukraine Loan Cooperation Mechanism and providing exceptional macro-financial assistance to Ukraine. Regulation (EU) 2024/2773 provides that the Memorandum of Understanding on policy conditions for the macro-financial assistance shall include a commitment to promote cooperation with the Union on the recovery, reconstruction and modernisation of the Ukrainian defence industry, in line with the objectives of Union programmes aimed at the recovery, reconstruction and modernisation of Ukrainian DTIB and other relevant Union programmes.

(10) A ***financing*** agreement ***within the meaning of Article 114(2) of the Financial Regulation*** should be concluded with Ukraine ***for the implementation*** of the ***actions set out in*** this Regulation ***which concern*** Ukraine ***or*** legal entities established in Ukraine ***receiving Union funding. The financing agreement with Ukraine, along with the contracts and agreements signed with legal entities established in Ukraine receiving Union*** funds***, should ensure compliance with the obligations set out in Article 129 of the Financial Regulation***.

(11) To fund the actions that aim ***to strengthen*** the competitiveness ***and readiness*** of the EDTIB based on Article 173 ***of the Treaty on the Functioning of the European Union***

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[7] ***Regulation (EU) 2024/2773 of the European Parliament and of the Council of 24 October 2024 establishing the Ukraine Loan Cooperation Mechanism and providing exceptional macro-financial assistance to Ukraine (OJ L, 2024/2773, 28.10.2024, ELI: http://data.europa.eu/eli/reg/2024/2773/oj).***

(TFEU) and the actions ***that aim to contribute to the recovery, reconstruction and modernisation*** of the Ukrainian DTIB***, taking into account its possible future integration into the EDTIB,*** under Article 212 TFEU, this Regulation should establish ▌ a Programme ***(the 'Programme')*** setting out the conditions for Union financial support under Article 173 TFEU and ***a*** Ukraine Support Instrument setting out the specific conditions for Union financial support under Article 212 TFEU.

(11a) The Programme should be consistent with the defence capability priorities commonly agreed by Member States within the framework of the common foreign and security Policy (CFSP), Member States' cooperation within the framework of the Permanent Structured Cooperation, the European Defence Agency (EDA) initiatives and projects, and the Union's civil and military assistance to Ukraine. The Programme should duly take into account the relevant activities carried out by the North Atlantic Treaty Organisation (NATO) and other partners where such activities serve the Union's security and defence interests.

(12) This Regulation ***should lay*** down a financial envelope for the ***period 2025 to 2027*** which is to constitute the prime reference amount, within the meaning of point 18 of the Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union 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 resources[6],*** for the European Parliament and the Council during the annual budgetary procedure. ***It is appropriate to allow for additional financial resources to be made available to the Programme and the Ukraine Support Instrument, including through additional contributions provided by the Member States.***

(12a) The European Council, in its conclusions of July 2020, stated that the duration of the Multiannual Financial Framework (MFF) sectoral programmes should, as a rule, be aligned with the time frame of the MFF 2021-2027. After the expiry of the MFF 2021-2027, Union funding to sectoral programmes will be subject to the outcome of negotiations on the next MFF from 2028.

PUBLIC

(13) The possibilities provided for in Article 73(4) of Regulation (EU) 2021/1060 of the European Parliament and of the Council[8] could be applied provided that the project complies with the rules set out in that Regulation and the scope of the European Regional Development Fund and the European Social Fund Plus as set out in Regulations (EU) 2021/1058[9] and (EU) 2021/1057[10] of the European Parliament and of the Council, respectively. This could, in particular, be the case where the production of relevant defence products faces specific market failures or suboptimal investment situations in the Member States' territories, ***in particular*** in vulnerable and remote areas, and such resources contribute to the achievement of the objectives of the programme from which they are transferred. In line with Article 24 of Regulation (EU) 2021/1060, the Commission is to assess the amended programmes submitted by the Member State and make observations within two months of the submission of the amended programme.

(14) In view of the need ***to*** invest better and together in ***the competitiveness, responsiveness and ability*** of the ***EDTIB to ensure the timely availability and supply of defence products*** as well as in the recovery, reconstruction and modernisation of ***the Ukrainian DTIB***, it should be possible for Member States***, Union institutions, bodies and agencies***, third countries, international organisations, international financial institutions or other ***third parties*** to contribute to the implementation of the Programme ***and the Ukraine Support Instrument***. Such contributions should be implemented in accordance with the same rules and conditions and should constitute external assigned revenue within the meaning of Article ***21(2), points (a)***, (d) ▌ and (e)***,*** of ▌ Regulation (EU, Euratom) ***No 2024/2509 of***

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8 ***Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Programme for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159).***

9 ***Regulation (EU) 2021/1058 of the European Parliament and of the Council of 24 June 2021 on the European Regional Development Fund and on the Cohesion Fund (OJ L 231, 30/06/2021, p. 60).***

10 ***Regulation (EU) 2021/1057 of the European Parliament and of the Council of 24 June 2021 establishing the European Social Fund Plus (ESF+) and repealing Regulation (EU) No 1296/2013 (OJ L 231, 30/06/2021, p. 21).***

the European Parliament and the Council*[11] *(the 'Financial Regulation') and should be indicated in the annual budgetary procedure in accordance with the Financial Regulation. In addition, Member States should be able to use the flexibility in the implementation of their shared management allocations offered by Regulation (EU) 2021/1060 ▌. It should therefore be possible to transfer certain levels of funding between shared management allocations and the Programme ***or the Ukraine Support Instrument,*** subject to the conditions set out in the relevant provisions of Regulation (EU) 2021/1060 of the European Parliament and the Council. ***It should be possible for resources that remain*** uncommitted ▌ at ***by the end of 2028 to*** be transferred back to one or more respective source programmes, at the request of the Member State ***concerned***, in accordance with the conditions set out in ▌ Regulation (EU) 2021/1060.

(14-a) The objectives pursued under the Programme to increase the competitiveness and readiness of the EDTIB by initiating and accelerating the adjustment of industry to structural changes imposed by the evolving security environment, including with a view to ensuring security of supply of defence products throughout the Union, may contribute to promote the Union's economic, social and territorial cohesion as foreseen under Regulation (EU) 2021/241. Therefore, provision should be made to allow for Member States contributions supported by the RRF to be used for the purpose of supporting industrial reinforcement actions under this Regulation. This possibility should be used to the extent that it contributes to achieving the objectives set out in Article 4 of Regulation (EU) 2021/241.

(14a) Member States should have the flexibility to decide how to allocate the amounts contributed to the Programme or the Ukraine Support Instrument. It should be possible for Member States to choose to make those funds available to all entities eligible for funding under this Regulation, to benefit only the Member States concerned, or to additionally benefit other Member States or, where relevant, Ukraine. That flexibility is essential to ensure the most efficient use of resources, enabling the allocation of funding where it is most needed.

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11 ***Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (OJ L, 2024/2509, 26.9.2024, ELI: http://data.europa.eu/eli/reg/2024/2509/oj).***

(14b) Third countries which are members of the European Economic Area (EEA) should be able participate in the Programme as associated countries in the framework of the cooperation established under the Agreement on the European Economic Area, which provides for the implementation of the programmes on the basis of a decision adopted under that Agreement.

(15) As ***this Regulation*** aims to enhance the competitiveness and efficiency of the Union's and Ukraine's defence industry, ***and in order to ensure the protection of essential security and defence interests of the Union and its Member States,*** to benefit from ***Union financial support under*** the Programme ***and the Ukraine Support Instrument***, recipients of ***such*** financial support should be legal entities which are established ***and have their executive management structures*** in the Union, in associated countries or in Ukraine and which ***use for the purposes of the action infrastructure, facilities, assets or resources located on the territory of a Member State, of an associated country or of Ukraine. In addition, recipients of such financial support should not be*** subject to control by ***a*** non-associated third ***country*** other than Ukraine or by ***another*** third-country ***entity***. In that context, control should be understood ***as*** the ability to exercise a decisive influence on a legal entity directly, or indirectly through one or more intermediate legal entities. ***Where*** Member States, ▌ associated ***countries or*** Ukraine ***are the recipients of such financial support, for the purpose of common procurement, those rules should apply to the contractors and subcontractors for the procurement contracts***.

(15a) Eligibility criteria should take into account existing supply chains and the industrial cooperation with non-associated third countries other than Ukraine as well as allow to meet the capability requirements. Therefore, common procurements involving one subcontractor that is allocated between 15 % and 35 % of the value of the contract, and that is not established or does not have its executive management structures in the Union, an associated country or, where relevant, Ukraine should, under a certain condition, be eligible for funding under the Programme and the Ukraine Support Instrument.

(16) In certain circumstances, it should be possible to derogate from the principle that legal entities involved in an action supported by the Programme ***use infrastructure, facilities, assets or resources located on the territory of a Member State or of an associated country, and*** are not subject to control by non-associated third countries or non-associated

third-country entities. In that context, a legal entity established in the Union or in an associated ▌ country ***using infrastructure, facilities, assets or resources located outside the territory of a Member State or of an associated country, or*** controlled by a non-associated third country or a non-associated ***third-country*** entity***, should be able to*** participate as recipient if strict conditions relating to the security and defence interests of the Union and its Member States, ***including the principle of good neighbourly relations,*** as established in the framework of the ***CFSP*** pursuant to Title V of the Treaty on European Union (TEU), including in terms of strengthening the ***EDTIB***, are fulfilled. ***Similar derogations should be provided for actions supported under the Ukraine Support Instrument, to allow for the use of infrastructure, facilities, assets or resources located outside the territory of a Member State or Ukraine, and for the participation of legal entities established in the Union and controlled by a third country other than Ukraine or by another third-country entity.***

(16a) Legal entities established in the Union or in an associated country and controlled by a non-associated third country or a non-associated third-country entity should be eligible to be a recipient if guarantees approved in accordance with the national procedures of the Member State or associated country in which they are established are made available to the Commission and assessed prior to a decision to award Union funding. Such guarantees should only be issued provided that strict conditions relating to 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, are fulfilled and maintained throughout the action. The Commission should inform Member States meeting as the Committee about legal entities considered to be eligible following such assessment. Information relating to subsequent assessment of eligibility, due - inter alia - to a reported change of ownership in the course of implementation will also be reported on to Member States meeting as the Committee in order to ensure transparency in the monitoring of ongoing compliance with the eligibility conditions. The participation of entities controlled by non-associated countries or non-associated third-country entities should not contravene the objectives of this regulation. For the purposes of the Ukraine Support Instrument, the same should apply in the case of legal entities established in the Union and controlled by a third country other than Ukraine or by a third-country entity other than a Ukrainian entity.

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(16aa) In order to increase the competitiveness of the EDTIB, foster the recovery, reconstruction and modernisation of the Ukrainian DTIB, and ensure the timely availability and supply of defence products from these defence technological and industrial bases, it is important to establish minimum requirements concerning the value generated within the Union and associated countries or, where relevant, Ukraine. This will enhance the efficiency of the Union support under the Programme and the Ukraine Support Instrument. Therefore, for actions supported by Union funding under the Programme or the Ukraine Support Instrument, the cost of the components originating outside the Union and associated countries or, where relevant, Ukraine should not be higher than 35 % of the estimated cost of the components of the end-product or of the product the increase in production capacity of which is supported by Union funding. Raw materials are not considered components. The objectives pursued under this Regulation will be achieved all the more effectively if the cost of these components is lower than the abovementioned 35% threshold. Recipients of Union funding are invited to aim at gradually lowering that percentage in new products.

(16c) Considering the need to safeguard the operational capacity of Member States' armed forces and to ensure their ability to use the defence products covered by an action conducted under the Programme without limitations imposed by third countries, it is necessary to establish additional requirements relating to the ability to decide on the definition, adaptation and evolution of the design of such defence products. Therefore, recipients of Union funding or, where relevant, the contractor or the consortium of contractors should not be subject to legal or contractual limitations by non-associated third countries or by non-associated third-country entities affecting their ability to decide on the definition, adaptation and evolution of the design of the defence product, including on the substitution or removal of the components that are subject to restrictions imposed by non-associated third countries or by non-associated third-country entities. In light of the current geopolitical situation, a specific and targeted derogation to the above mentioned requirement should exceptionally and temporarily be provided for the ramp-up of industrial capacities for the production of ammunition and missiles. Such derogation should consist in allowing the recipients of Union funding or the relevant governmental authorities from the Member States concerned to provide the Commission with the legally binding commitment from the non-associated third country or the non-associated third-country entity concerned that they will obtain the above mentioned ability to decide. The beneficiary should take all measures to ensure that this

commitment is implemented. Where the beneficiary, despite its efforts, cannot obtain such ability to decide, corrective measures would be taken in accordance with the Financial Regulation, in particular Article 132.

(16b) 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 the use, development or production of which is prohibited by applicable international law should not be eligible for funding under the Programme and the Ukraine Support Instrument.

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(17a) The Programme and Ukraine Support Instrument should provide financial support in accordance with the Financial Regulation, to actions contributing to strengthening the competitiveness, responsiveness and ability of the EDTIB or the recovery, reconstruction and modernisation of the Ukrainian DTIB to ensure the timely availability and supply of defence products, such as cooperation of legal entities in the common procurement of defence products and actions aimed at accelerating the adjustment to structural changes of the production capacity of defence products, components and corresponding raw materials. This could include industrial coordination on the reservation of defence products, access to finance for undertakings involved in the manufacturing of defence products, reservation of manufacturing capacities ('ever warm facilities') or industrial processes of reconditioning of expired products, expansion, optimisation, modernisation, upgrading or repurposing of existing, or the establishment of new, production capacities in that field. It could furthermore cover a number of additional supporting actions, in line with the objectives of the Financial Regulation, such as the training, reskilling or upskilling of personnel.

(17b) In view of the current geopolitical context, and in particular Russia's war of aggression against Ukraine, the protection of Union's essential security interests requires the adoption of specific measures on the procurement of defence products aimed at fostering the competitiveness of the EDTIB and ensuring the timely availability and supply of defence products procured from the EDTIB, throughout the Union. The protection of the Union's essential security interests also requires the involvement of Ukraine and of EEA countries in those measures, not only because of their geographical position and the fact that Ukraine is directly faced with Russia's ongoing war of aggression, but also

in view of their close procurement partnership with the Union, as reflected in particular in the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part[12] and in the Agreement on the European Economic Area[13].

(17c) As it is important to mitigate any distortion of the market, profits generated by successful industrial reinforcement actions supported by the Union budget should be recovered in accordance with the principle of proportionality. By derogation from Article 195(2) of the Financial Regulation, such recovery of profits should take fully into account all revenue generated, including revenues from Member State, Ukraine and third-party support to the action, in addition to the Union support itself. The profits recovered should be re-used to benefit the objectives of this Regulation.

(18) ***The functioning*** of the defence industry ***sector does not follow the conventional rules and business models that govern more traditional markets.*** Demand comes almost exclusively from States, which also control all acquisition of defence-related products and technologies, including exports***. Therefore,*** the defence industry ▌ does not ▌ engage in substantial self-funded industrial investments ***and*** only does so as a consequence of firm orders. ***Furthermore, the EDTIB faces persistent barriers in accessing finance, including co-financing, in particular private finance for*** investments***, due to the risks*** market ***actors associate with them. Leveraging public investment for*** the Union ***defence sector is vital given the compelling need to boost investment in that sector. This applies particularly to supporting actions, which benefit the EDTIB in a broader sense, for example by enabling and facilitating other*** actions ***set out in this Regulation, thus acting as multipliers with a potentially high leverage effect. As they would not be undertaken otherwise, by derogation from Article 193(1) of the Financial Regulation, it appears justified that the Union financial support under the Programme*** cover up to ***100 % of the*** eligible costs ***for the supporting*** actions***.***

(18-a) As the different types of actions are complementary and necessary for offsetting the complexity of cooperation and de-risking industrial investments via Union financial support allowing a faster adaptation of the defence industry to ongoing structural

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12 ***OJ L 161, 29.5.2014, p. 3.***
13 ***OJ L 1, 3.1.1994, p. 3.***

market change, it appears justified that a substantial amount representing at least 15 % of the financial envelope allocated to the Programme be reserved for actions referred to common procurement action and at least 30 % of that envelope be reserved for industrial reinforcement actions. The Union support for industrial reinforcement actions should cover up to 35 % of eligible costs in order to enable recipients to implement actions as soon as possible, to de-risk their investment and therefore to accelerate the availability of relevant defence products.

(18a) For actions under the Ukraine Support Instrument, Union support for industry reinforcement and supporting activities involving legal entities established in Ukraine, Union support should be able to cover up to 100 % of the eligible costs in order to accommodate for the increased complexity and environment for the Ukraine defence industry, including to meet NATO standards and other relevant standards, as well as the increased risks associated with the war of aggression, taking into account the need to rebuild and modernise industrial capacities in a resilient way.

▌

(20) ***Common procurement actions should be funded*** under ***this Regulation by way of grants taking*** the form of financing not linked to cost based on the achievement of results by reference to work packages, milestones or targets of the common procurement process, in order to create the necessary incentive effect.

(21) ▌The Union ***financial contribution under the*** Programme ***for common procurement actions, intended as an incentive for*** cooperation***, should not exceed 15 % of the estimated value of the common procurement contract. Given the increased complexity that comes with*** common procurement with ***Ukraine, the*** Union ***financial*** contribution ***under the Ukraine Support Instrument should not exceed 25 % of the estimated value of the common procurement contract***.

(21a) Upon fulfilment of specific conditions linked to the objectives of the Programme, the cap for the Union financial contribution to common procurement actions should be raised to 25 % of the estimated value of the common procurement contract in order to compensate for particular complexities relating to enhanced cross-border cooperation within the Union and cooperation within the context of a SEAP. The need to gradually reduce strategic dependencies should also be taken into account, justifying an increased

funding rate where the action supports the common procurement of restriction-free end products. In addition, given the particular security situation of Ukraine and Moldova in light of Russia's war of aggression against Ukraine, it is also appropriate to provide for such an increased funding rate in cases where the supported action results in the common procurement of additional quantities of defence products for those two countries. Furthermore, the geopolitical context, including Russia's war of aggression against Ukraine, has exposed the Union and its Member States to a high risk of materialisation of conventional military threats, thereby creating a need for increased defence investments. It is thus also justified to provide for an increased funding rate of up to 25 % for common procurement actions in cases where the defence investment expenditure of the majority of Member States participating in the action concerned exceeds 30 % of their respective defence spending. For industrial reinforcement actions, the cap may be raised to up to 50 % of eligible costs where the majority of beneficiaries are SMEs or mid-caps established in Member States or in associated countries or where the action is carried out by a SEAP, and where the action demonstrates a contribution to the creation of new cross-border cooperation, such as expanding the geographical scope of existing supply chains or by significantly increasing the trade, collaboration, or joint projects between entities in different Member States or the expansion of existing cross-border networks in ways that enhance overall capacity and resilience of the EDTIB, where it involves building new infrastructure, facilities or production lines, or where it contributes to the establishment of new, or the ramping-up of existing, manufacturing capacities of crisis-relevant products. In addition, when Member States specifically decide to allocate funding to the Programme only to the benefit of the Member States concerned or to the additional benefit of other Member States, it should be possible, by way of derogation from Article 193(1) of the Financial Regulation, to increase flexibility and allow for a Union financial contribution to industrial reinforcement actions covering up to 100 % of the eligible costs. This possibility should also apply to cases where Member State contributions supported by the Recovery and Resilience Facility are used for the funding of such actions. This will maximise the impact and effectiveness of the action.

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(23) In accordance with Article ***196(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, costs incurred prior to the date of submission of the grant application are not eligible, except in duly justified exceptional cases. In order to enable continuity of funding perspective for actions that could have been supported by 2024 funding under ***Regulations (EU) 2023/1525 or (EU) 2023/2418***, in the financing decision it should be possible to provide for financial contributions ***under the Programme*** in relation to actions that cover a period starting from 5 March 2024. ***In view of the links between the Programme and the Ukraine Support Instrument as well as the need to urgently support the reconstruction, recovery and modernisation of the Ukrainian DTIB, taking into accounts its possible future integration into the EDTIB, the same derogation should apply to financial contributions under the Ukraine Support Instrument. In no circumstances should the same costs be financed twice by the Union budget.***

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(24) When assessing proposals submitted by applicants, the Commission should pay particular attention to their contribution to the objectives of ***this Regulation***. The proposals should be assessed, in particular, against their contribution to the increase in defence industrial readiness ***and resilience and*** their contribution to ***cross-border*** defence industrial ▌ cooperation among Member States, associated countries and Ukraine ▌ .

(24a) Developing defence manufacturing capacities throughout the Union, taking into account the risks associated with the increased deterioration of the Union's security context, is essential to ensure that all Member States contribute to and benefit from a robust European Defence Technological and Industrial Base (EDTIB). For industrial reinforcement actions, particular attention should be paid to the contribution of the action to industrial resilience, in particular to ensuring the availability and security of supply of defence products throughout the Union in response to identified risks, such as high exposure to the risk of materialisation of conventional military threats.

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(26a) To strengthen the competitiveness, responsiveness and ability of the EDTIB to ensure the timely availability and supply of defence products and contribute to the recovery, modernisation and reconstruction of the Ukrainian DTIB, taking into account its possible future integration into the EDTIB, it is necessary to support the

commercialisation of defence products. To mitigate any distortion of the market, profits generated by successful commercialisation supported by the Union budget should be recovered in accordance with the principle of proportionality. By derogation from Article 195(2) of the Financial Regulation, such recovery of profits should take fully into account all revenue generated, including revenues from Member State, Ukraine and third-party support to the action, in addition to the Union support itself. The profits recovered should be re-used to benefit the objectives of this Regulation.

(27) In accordance with the ***Financial*** Regulation ▌, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council[14] and Council Regulations (EC, Euratom) No 2988/95[15], (Euratom, EC) No 2185/96[16] and (EU) 2017/1939[17], the financial interests of the Union are to be protected by means of proportionate measures, including measures relating to the prevention, detection, correction and investigation of irregularities, including fraud, to the recovery of funds lost, wrongly paid or incorrectly used, and, where appropriate, to the imposition of administrative penalties. In particular, in accordance with Regulations (Euratom, EC) No 2185/96 and (EU, Euratom) No 883/2013, the European Anti-Fraud Office (OLAF) has the power to carry out administrative investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. The European Public Prosecutor's Office (EPPO) is empowered, in accordance with Regulation (EU) 2017/1939, to investigate and prosecute criminal offences affecting the financial interests of the Union as provided for in Directive (EU) 2017/1371 of the

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14 ***Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18/09/2013, p. 1).***

15 ***Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23/12/1995, p. 1).***

16 ***Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15/11/1996, p. 2).***

17 ***Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31/10/2017, p. 1).***

European Parliament and of the Council[18]. In accordance with the ***Financial*** Regulation ▌, any person or entity receiving Union funds is to fully cooperate in the protection of the financial interests of the Union, grant the necessary rights and access to the Commission, OLAF, the ***European*** Court of Auditors and, in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, the EPPO, and ***to*** ensure that any third parties involved in the implementation of Union funds grant equivalent rights.

(28) ▌ A specific provision should be introduced in this Regulation requiring ***the associated*** countries ***participating in the Programme*** to grant the necessary rights and access required for the authorising officer responsible, OLAF and the ***European*** Court of Auditors to comprehensively exercise their respective competences. ▌

(28-a) Pursuant to Article 85 of Council Decision (EU) 2021/1764[19], natural persons and bodies and institutions established in overseas countries and territories (OCTs) are eligible for funding subject to the rules and objectives of the Programme and possible arrangements applicable to the Member State to which the relevant OCT is linked.

(28b) The Union should identify European Defence Projects of Common Interest (EDPCI) on which to focus efforts and resources, which should consist of collaborative industrial projects aimed at reinforcing the competitiveness of the EDTIB throughout the Union while contributing to the development of Member States' military capabilities critical for the security and defence interests of the Union, including those securing access to all operational domains. Due to the sensitive nature of the decision to identify an EDPCI in light of its potential impact on national security interests, and the importance of ensuring the contribution of such projects to the defence readiness of all Member States, the power to adopt implementing acts to identify EDPCIs should be conferred on the Council, upon a proposal from the Commission. Before proposing such implementing

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18 ***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, 28/07/2017, p. 29).***

19 ***Council Decision (EU) 2021/1764 of 5 October 2021 on the association of the Overseas Countries and Territories with the European Union including relations between the European Union on the one hand, and Greenland and the Kingdom of Denmark on the other (Decision on the Overseas Association, including Greenland) (OJ L 355, 07/10/2021, p. 6).***

acts, the Commission should take into account the views of all Member States and the project proposals they have for possible EDPCIs. When preparing such project proposals, Member States should coordinate in an inclusive manner, using for that purpose the support of the EDA when necessary. In this context, Member States may identify dual-use capabilities of common interest. In so far as these project proposals turn into EDPCIs, the dual-use capabilities identified by Member States could be developed for the Union, its institutions, bodies and agencies in the context of the EDPCIs concerned. In addition to being consistent with the capability priorities identified in the context of the CFSP, including the CDP, the objectives of the Strategic Compass for Security and Defence and with the collaborative opportunities identified in the context of CARD, EDPCIs should take into account the projects agreed in the context of PESCO, EDA initiatives and the relevant activities carried out by NATO, such as the NATO Defence Planning Process. Before submitting a proposal for an implementing act, the Commission should invite the High Representative and the EDA, as necessary, to provide input with a view to ensuring consistency with the abovementioned priorities and objectives. This will complement the information provided by Member States regarding project proposals. In the context of Russia's war of aggression against Ukraine, Ukraine and the Ukrainian DTIB have developed specific expertise on defence industrial projects, including in cooperation with Member States and with the EDTIB. This expertise may be critical for and facilitate the development of EDPCIs, thereby contributing to reinforcing the competitiveness of the EDTIB while contributing to the development of Member States' military capabilities critical for the security and defence interests of the Union. It is therefore appropriate to allow, in such cases, for the participation of Ukraine in EDPCIs. The Commission should verify that all Member States, associated countries and Ukraine were informed of the emergence of a project and were given the opportunity to participate. As the Commission may have expertise appropriate to support the implementation of EDPCIs for the benefit of the competitiveness of the EDTIB throughout the Union, it is appropriate to allow its participation in EDPCIs to share such expertise, if so requested by the participating Member States. The Council should be able to add or remove projects or make other amendments to the Commission proposal for an implementing act. The maturity of a project, its foreseen contribution to defence readiness and the number of participating Member States should be taken into consideration by the Council when assessing a proposal for an implementing act.

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(28c) Given the potentially significant impact of the EDPCIs for the competitiveness and the industrial readiness of the EDTIB, the Programme should support the consortia of participating Member States and associated countries in their deployment. Such financial support from the Programme should be limited to activities undertaken by those consortia which are related to the common procurement of defence products, accelerating the adjustment to structural changes of the production capacity of defence products as well as related supporting activities, the industrial development of new defence products or the upgrading of existing ones, and the development and procurement of necessary infrastructure. Given the particular scale of those projects which requires an unprecedented level of cooperation and coordination among Member States and industry, and taking into account the financial risks for the participating Member States and associated countries, Union funding should be able to cover, by derogation from Article 193(1) of the Financial Regulation, up to 100 % of the eligible costs. This should be without prejudice to the possibility of certain activities under EDPCI to be financially supported under other actions, provided they meet the conditions set for those actions and have not received funding under other Union programmes, in line with the Financial Regulation. Participating Member States should ensure that EDPCI activities comply with the objectives of the Programme, including when there is no Union financial support. To facilitate the monitoring of the compliance with those objectives, Member States participating in an EDPCI should transmit to the Commission, on an annual basis, a joint report on the implementation of the EDPCI activities. The Council, upon a proposal from the Commission, may amend the implementing acts identifying EDPCIs, including by removing EDPCIs from the list. Member States participating in an EDPCI will be able, for carrying out activities necessary to its implementation, to rely on the expertise and the administrative capacity of the European Defence Agency or international organisations such as the Organisation for Joint Armament Cooperation (OCCAR) and the NATO Support and Procurement Agency (NSPA).

(28b) The ability of the EDTIB to ensure the availability of defence products in time and in volume is essential to its competitiveness, especially during periods of heightened security tensions. During such periods, the EDTIB might lack the production capacity necessary to meet Member States' urgent needs and its products might be less visible to Member States than products offered by third countries or third country entities. This Regulation should therefore provide a military sales mechanism, including measures to

increase the speed to market of defence products from the EDTIB by facilitating procedures for the common procurement of defence products and leveraging the use of government-to-government contracts.

(28c) Member States, associated countries and Ukraine, or a SEAP, should be able to establish, manage and maintain defence industrial readiness pools made up of defence products which Member States, associated countries and Ukraine could easily purchase or use, for the purpose of strengthening the competitiveness of the EDTIB and the reconstruction, recovery and modernisation of the Ukrainian DTIB. Such pools, consisting of stocks of defence products procured from the EDTIB or the Ukrainian DTIB, would attract demand and increase predictability for the defence sector. They would give positive signals to the Union and the Ukrainian industry, incentivising them to produce defence products and to invest for the purpose of strengthening industrial capacities in that sector. Furthermore, the defence industrial readiness pools would improve the security of supply of defence products for Member States by improving product availability and reducing delivery lead times, including in supply crisis situations. Where such pools are established in the context of a SEAP, the Programme and the Ukraine Support Instrument should be able to support the common procurement of additional quantities of defence products through common procurement actions carried out by the SEAP, as well as the establishment and the functioning of the SEAP for the purpose of managing and maintaining these pools.

(28d) To improve Member States' awareness of the availability of EDTIB and Ukrainian DTIB products, the Programme should also provide for the establishment, by the Commission, of a catalogue of defence products developed by the EDTIB as well as the Ukrainian DTIB, based on voluntary contributions by Member States, Ukraine and economic operators. For that purpose, the products present in the catalogue should be manufactured by economic operators that are established and have their executive management structures in the Union, an associated country or Ukraine, and the infrastructure, facilities, assets and resources used for the purpose of manufacturing these products should be located in the Union, an associated country or Ukraine. When setting up this catalogue, the Commission should consult the EDA and take into account its expertise.

(29) Building inter alia on the experience of the defence equity facility, established in the context of the European Defence Fund as an InvestEU blending operation, the Commission should endeavour to set up a dedicated facility as part of the Programme to be referred to as the 'Fund for the acceleration of defence supply chain transformation ('FAST')'. FAST should be implemented under indirect management. FAST will leverage, de-risk and speed-up investments needed to increase the defence manufacturing capacities of EU-based SMEs and small mid-caps, in the form of a blending operation offering support in the form of debt and/or equity. ***As the application for support in the form of debt under FAST may include information relating to the infrastructures, facilities, assets and resources used by the SME or the small-mid cap for the purpose of industrialisation or manufacturing of defence products, it is appropriate to subject such support to rules requiring that such infrastructures, facilities, assets and resources are located on the territory of a Member State or of an associated country, with some targeted exceptions.*** FAST should be established as a blending operation, including under the InvestEU Programme established by Regulation (EU) 2021/523 of the European Parliament and Council (20), in close cooperation with its implementing partners.

(30) FAST should achieve a satisfactory multiplier effect in line with the debt and equity mix and contribute to attracting both public and private-sector financing. In order to contribute to the overall objective of enhancing the EDTIB's competitiveness, FAST should also provide support to SMEs (including start-ups and scale-ups) and small mid-caps across the ***Union which are part of the Union's defence supply chains or have imminent plans to become part it***, ***in the stage of industrialisation or*** manufacturing ***of*** defence ▌ products ***or having imminent plans to do so***, facing difficulties in accessing finance. FAST should as well accelerate investment in the field of manufacturing defence technologies and products, and therefore strengthen the security of supply of the Union's defence industry value chains.

(30a) Increasing the number and magnitude of common procurements of defence products from the EDTIB and the Ukrainian DTIB is necessary to achieve the objectives of the Programme and of the Ukraine Support Instrument. In accordance with Article 168(2) and (3) of the Financial Regulation, Member States may request the Commission to engage in joint procurement with them, including through advance purchasing agreements, or as a central purchasing body. Associated countries should be able to request the Commission to engage in joint procurement, by way of derogation from

Article 168(2), second subparagraph, of the Financial Regulation, as such a possibility is not provided for in a bilateral or multilateral treaty with those countries. Together with at least one Member State, associated countries should also be able to request the Commission to act as central purchasing body, by way of derogation from Article 168(3) of the Financial Regulation, as the latter does not provide for the participation of third countries to such action. Similarly, for the purposes of the Ukraine Support Instrument, Ukraine should be able to participate in such actions. Together with at least one Member State, Ukraine should be able to request the Commission to engage in joint procurement, by way of derogation from Article 168(2), second subparagraph, of the Financial Regulation, as such a possibility is not provided for in a bilateral or multilateral treaty with Ukraine. Ukraine, together with at least one Member State, should also be able to request the Commission to act as a central purchasing body, by way of derogation from Article 168(3) of the Financial Regulation, for the same reason as stated above. To foster the aggregation of demand in the case of joint procurement, the Commission should ensure that such procurement procedure is open to all Member States and, where relevant, associated countries. With a view to fostering the industrial ramp-up of manufacturing capacities of the EDTIB and the Ukrainian DTIB, the Commission should furthermore facilitate the conclusion of off-take agreements in compliance with Union competition and procurement rules. For the purpose of joint procurement with support of the Commission, the use of the Union budget will be in line with the objectives and the applicable eligibility criteria of the Programme or the Ukraine Support Instrument and will be aimed at supporting the adaptation of the manufacturing capacity of defence industrial supply chains. It could, in particular, serve to de-risk the industrial investments such as the increase in manufacturing capacities or the acquisition of the requisite machine tools to ensure the performance of a contract and should, in any case, be strictly limited to cover the non-recurrent costs incurred in the context of the purchase or of the maintenance of defence products. It should be included in the Work Programmes of the Programme and the Ukraine Support Instrument.

(30b) In the cases covered by this Regulation, the immediate award and performance of a contract prior to its signature resulting from procurement procedures carried out with the support of the Commission for the purposes of this Regulation could be justified given the existing geopolitical situation, especially where the seriousness of the circumstances and of their implications for the security of the Union citizens require that the deliveries of the defence product concerned be effectively performed without any

delay. For that specific purpose, it is necessary to allow for a derogation from Article 175(1) of the Financial Regulation while duly documented by the contracting authority.

(31) Cooperative armament programmes in the Union face significant challenges, being mostly set up on ***an*** ad hoc basis and being plagued by complexity, delays and cost overruns. To remediate ***that*** situation and ensure ***the*** continuous ***commitment of*** Member States ***until the end of the life-cycle*** of defence ***products***, a more structured approach is required at ***Union*** level. To ***achieve such an approach,*** Member States' efforts ***should be supported*** by making available a new legal framework***, namely*** the Structure for European Armament ***Programmes (SEAP),*** to underpin and strengthen ***their*** cooperation***. To reach its objective of fostering the competitiveness of the EDTIB and, where relevant, of the Ukrainian DTIB, a SEAP should be able to conduct the common development, procurement, life-cycle management or dynamic availability management of defence products. SEAPs should be able to carry out additional activities necessary for the achievement of their objectives, such as activities related to infrastructures directly related to defence products***. Actions undertaken in this framework should be mutually reinforcing with those carried out under the ***CFSP***, in particular in the context of the ***CDP. Such actions should also not contravene the security and defence interests of the Union and its Member States, including the respect for the principle of good neighbourly relations.***

(32) Within ***the SEAPs***, Member States should benefit from standardised procedures for initiating and managing cooperative ***armament*** programmes***, including guidelines on project management, procurement, financial management, and reporting, that may be provided by the Commission.*** Cooperation under this framework should also allow ▌, under ***the*** conditions ***set out in Council Directives 2006/112/EC[20] and (EU) 2020/262[21], for a VAT or excise duty exemption***, where ***the SEAP owns*** the procured equipment***. Beyond contributions from the Programme and the Ukraine Support Instrument, SEAPs*** should also ***be able to receive contributions from other Union*** programmes***, provided that the*** contributions ***do not cover the same cost. The rules*** of the ***relevant*** Union ***programme should apply to the corresponding contribution to the action concerned***.

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[20] ***Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11/12/2006, p. 1).***

[21] ***Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (OJ L 58, 27/02/2020, p. 4).***

(32a) If their members unanimously wish to do so, SEAPs should be able to issue securities in accordance with the law of the Member State where it has its statutory seat to ensure the long-term financing plan of armament programmes and compliance with the economic governance framework. The Union should not be liable for securities issued by SEAPs. Union financial contributions might improve the conditions for financing by the Member States of the armament programmes.

(32b) To achieve its objectives, a SEAP should be able to entrust, through a delegation agreement, one or several of the entities eligible for funding under common procurement actions under the Programme with one or several of its tasks. In particular, international organisations such as the OCCAR and NSPA, as well as the European Defence Agency have resources, competences and skills in the management of defence cooperation which could offer added value to SEAPs. Where a SEAP entrusts another entity with the performance of its tasks, it should remain responsible for the compliance with its obligations under Union law, in particular this Regulation. It should therefore ensure that the delegation agreement includes such obligations and take any appropriate measure to ensure they are met.

(33) In order to ***allow for*** an efficient procedure for the setting-up of a SEAP, it is necessary for the Member States, associated countries or Ukraine willing to set up a SEAP to submit an application to the Commission which should assess, whether the proposed statutes of the ***SEAP*** are in conformity with this Regulation. Such an application should contain a declaration of the ▌ Member State ***where the SEAP is foreseen to have its statutory seat*** recognising the SEAP as an international body or organisation for the purpose of the application of ***Directives*** 2006/112/EC ***and*** (EU) 2020/262 ▌ as of its ***setting-up. The Commission should assess the application without undue delay, ideally within two months of the receipt of the complete application***. ***The Commission may, for this purpose, invite the EDA to provide its expertise.***

(34) For reasons of transparency, the ***decisions setting up, winding up and closing*** a SEAP ***as well as any notices relating to the possible event that a SEAP is unable to pay its debts*** should be published in the Official Journal of the European Union. ▌

(35) In order to carry out its tasks in the most efficient way, a SEAP should have legal personality ▌ as from the day on which the decision setting it up takes effect ***and should benefit from the most extensive legal capacity in each Member State. A SEAP should***

also benefit from the most extensive legal capacity in associated countries and Ukraine in cases where they are members of the SEAP. It should have a statutory seat ▌ within the territory of a Member ▌ State.

(36) ***Member States, associated countries and Ukraine may be members of a SEAP.*** Membership of a SEAP should comprise at least three ***countries, of which at least two should be*** Member States ▌ .

(37) For the implementation of the SEAP, more detailed provisions should be laid down in ***its*** statutes, on the basis of which the Commission should examine the compliance of an application with the rules established in this Regulation. ***It is important that the statutes clarify what administrative capacities are foreseen to ensure compliance with applicable Union rules and Member States' laws applicable to the handling of defence products. Without prejudice to existing Union and national rules on export of defence products, SEAP members should be able to unanimously agree on an approach to such exports.***

(38) It is necessary to ensure that, on the one hand, a SEAP has the necessary flexibility to amend its statutes and, on the other hand, that certain essential elements, in particular those which were necessary for the granting of the SEAP ***status***, are preserved through a necessary control at Union level. If an amendment concerns an essential element of the statutes▌ , such amendment should be approved ***by the Commission***, prior to taking effect, ▌ Any other amendment should be notified to the Commission***. With the exception of amendments relating to a possible approach to the export of defence products, the Commission*** should have an opportunity to object ***to such amendments*** if it considers ***them*** contrary to this Regulation.

(39) ▌ A SEAP should be able to procure defence products on its own behalf or ***in the name of, or*** on behalf of***,*** its members. ***For these purposes, SEAPs*** should be considered as ▌ international ***organisations*** within the meaning of Article ***12, point (c),*** of Directive 2009/81/EC[22]***. Therefore, Directive 2009/81/EC should not apply to such procurements***. Where ***a SEAP*** procures on behalf of its members ***which are*** Member States ***or, where***

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[22] ***Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20/08/2009, p. 76).***

relevant, associated countries, Directive 2009/81/EC should ***not apply in such cases when the*** procurement ***procedure complies with the objectives of the SEAP to foster the competitiveness of the EDTIB and where relevant of the Ukrainian DTIB. Directive 2009/81/EC should also not apply to the procurement procedures conducted by Member States when procuring on behalf of, or in the name of, a SEAP, as such contracts should be awarded in accordance with the procurement rules of the SEAP. Where Member States or, where applicable, associated countries procure defence products from a SEAP, the procurement should be considered as a government-to-government contract as referred to in Article 13, point (f), of*** Directive 2009/81/EC. ***SEAPs*** should ***define their own procurement rules, in*** compliance with ***Union*** primary law principles applicable to procurement, in particular those of ***equality of treatment,*** transparency, non-discrimination and ***proportionality, and with the rules set out in this Regulation***. ***Where a SEAP entrusts procurement tasks to one or several entities, it should ensure that the procurement rules to be applied comply with those principles.***

(39a) Member States participating in a SEAP should ensure that the procurement policy of the SEAP complies with the objectives of fostering the competitiveness of the EDTIB or of the Ukrainian DTIB, including when there is no Union financial support. This should be without prejudice to the specific conditions that apply in the event a SEAP receives Union funding under a relevant programme.

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(41) In order to carry out its tasks in the most efficient way and as a logical consequence of its legal personality, a SEAP should be liable for its debts. In order to allow the members to find appropriate solutions regarding their liability, the option should be given to provide in the statutes for different liability regimes going above the liability limited to the contributions of the members.

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(43) In order to ensure sufficient control of compliance with this Regulation, a SEAP should transmit to the Commission ▌ its annual report and any information about circumstances threatening to seriously jeopardise the achievement of its tasks. If the Commission obtains indications, through the annual report or otherwise, that the SEAP acts in serious breach of this Regulation or other applicable law, it should request explanations ***or*** actions from the

SEAP ***or*** its members. In extreme cases and if no remedial action is taken, the Commission ***should be able to*** repeal the decision setting up the SEAP, thus triggering the winding-up of the SEAP. ***The Commission should provide the European Parliament and the Council with an aggregated annual report about the activities of all active SEAPs.***

(43a) Following Russia' unprovoked and unjustified war of aggression against Ukraine, security of supply has become an increasingly important factor in Member States' procurement decisions of defence products. As a consequence, the ability of cross-border supply chains of the Union to ensure an undisturbed supply of defence products has become a determining factor for their competitiveness. The introduction of a Union-wide security of supply regime could then result in positive effects on the competitiveness of the EDTIB.

(44) Upon the adoption of ***Regulation (EU) 2023/1525***, the European Parliament and the Council called on the Commission to consider ▌ putting forward a legal framework aimed at ensuring the security of supply***, in their*** Joint Statement of 11 July 2023***. That*** Joint Statement▌ echoed the conclusions of the European Council in December 2013 calling for a comprehensive ***Union-wide*** security of supply regime and the ***recommendation of the*** European Parliament ▌ of 8 June 2022 urging the Commission to present, without delay, such a regime.

(45) ***Recent crises, such as the COVID-19 pandemic and the sharp increase in demand for certain*** defence products***, notably ammunition, have exposed vulnerabilities of Union's supply chains in that area. They have also revealed how disruptions*** in the ***supply of those products or of components or raw materials critical to their production can hinder*** the functioning of the internal market***. Those crises have highlighted the*** likely ***risk of emergence of diverging*** measures ***at national level, including for the preservation of*** stocks as a matter of national security ***and the certification of defence products, and the lack of coordination at Union level to address the shortages of products of critical importance for responding to the emerging crises, as well as of components and raw materials indispensable to their production, resulting in*** difficulties ***to*** access to the ***products, components and raw materials*** needed to manufacture or acquire the relevant ▌ products***, with the concrete risk to*** hamper ***thereby*** entire production chains. ***It is crucial to prevent the emergence of obstacles to cross-border trade between Member States due to such divergences in national law which would restrict the free movement of critical***

products and of the related components and raw materials in the internal market ***and disrupt the functioning of its supply chains. Those difficulties along the*** supply ***chains also revealed a lack of crisis management tools and coordination mechanisms, insufficient information sharing as well as insufficient overview of the manufacturing capacities across the Union, in particular for*** defence products. ▌

(45a) The constant degradation of the security context, characterised by rising long-term threats, acceleration in the development of defence technology and innovation, and the likely increase in defence spending, is likely to trigger surges in demand for defence products and to exacerbate future supply crises of such products. It is likely that this heightened demand intensifies pressure on the Union's supply chains for defence products and, if no framework is adopted at Union level, that it results in the emergence or resurgence of diverging national measures to tackle shortages leading to the emergence of obstacles to the proper functioning of the internal market, undermining as a result the defence and security interests of the Union and its Member States.

(45b) Moreover, the rapidly evolving security environment can contribute to other crises taking a variety of forms, such as cyber-attacks on defence industries or large-scale disruptions to critical infrastructure, which would require swift and decisive coordinated responses to prevent severe disruptions to the related defence supply chains. In anticipation of heightened demand in defence products and intensified pressure on the related supply chains, the reliable functioning of those supply chains is therefore essential to ensure the proper functioning of the internal market for defence products.

(45c) As illustrated by the lessons learned from the work of the Defence Joint Procurement Task Force on coordinating very short-term defence procurement needs and from the implementation of Regulation (EU) 2023/1525, the Union's defence supply chains often have a cross-border dimension, in particular in lower tiers. It is essential to avoid that the growing complexity of Union-wide supply chains for defence products results in the lack of visibility on overall production capacities and supply chains of the EDTIB and in the inability of Member States to make informed decisions, in particular to address shortages or to mitigate a risk thereof.

(45e) There is a concrete risk that security of supply measures adopted at national level are not sufficient to tackle effectively the abovementioned challenges in the future and that the cross-border effects on the Union-wide defence supply chains cannot sufficiently be

taken into account nor be appropriately addressed by individual Member States. In addition, uncoordinated approaches at national level, notably concerning the certification, intra-EU transfer of defence products and the prioritisation of orders with a military purpose, can have a severe negative impact on the functioning of the internal market for defence products, in particular by creating obstacles to cross-border trade, and exacerbate the overall shortages and disruptions in the supply chains.

(45f) In light of the abovementioned challenges, it appears necessary and appropriate to set up a Union-wide security of supply regime aimed at increasing the security of supply of defence products in order to ensure the proper functioning of the internal market and make it resilient to any shock. In this context, it is essential to provide for coordination measures and to prepare for and respond to the impact of future supply crises on the internal market for defence products; to ensure security of supply of defence product, components and raw materials thereof, and any products and services critical to their production, whose availability is indispensable to ensure the proper functioning of the internal market and its supply chains and must be guaranteed to respond to a supply crisis ('crisis-relevant products'); and to ensure the proper functioning of the internal market for defence products, including by preventing the emergence of obstacles to it. Those measures should be based on Article 114 TFEU.

(45h) Directive 2009/81/EC concerns, amongst other things, the establishment of an appropriate legislative framework, which is a prerequisite for the creation of a European defence equipment market, on the coordination of procurement procedures for the award of contracts to meet the security requirements of Member States and the obligations arising from the TFEU. To this aim, that Directive caters, in particular, for addressing crisis situations, notably by providing specific provisions applicable in cases of urgency resulting from a crisis, such as shortening periods for the receipt of tenders and the possibility to use the negotiated procedure without prior publication of a contract notice. However, in certain cases of urgency, those rules might be insufficient, especially where the urgency resulting from the crisis can be addressed only by having two or more Member States engaging in a common procurement. In those cases, often the only solution that ensures the security interests of those Member States is to open an existing framework agreement to contracting authorities of Member States that were not originally party to it, even though that possibility had not been provided for in the original framework agreement. As those possibilities are not foreseen in Directive

2009/81/EC at the moment of the entry into force of this Regulation, the latter provides for the possibility to complement or derogate from the provision of that Directive in cases of an urgency resulting from a crisis, provided that the agreement of the undertaking which concluded the framework agreement is obtained.

(45i) In accordance with the case law of the Court of Justice of the European Union, modifications to a public contract are to be strictly limited to what is absolutely necessary in the circumstances, while complying to the maximum extent possible with the principles of non-discrimination, transparency and proportionality. In that regard, it should be possible to derogate from Directive 2009/81/EC by increasing the quantities provided for in a framework agreement by up to 100 % of the value of that framework agreement when opening it to contracting authorities of other Member States, in so far as such increase is strictly necessary for the opening of the framework agreement to those contracting authorities. With respect to those additional quantities, those contracting authorities should enjoy the same conditions as the original contracting authority that concluded the original framework agreement. In addition, appropriate transparency measures should be taken to ensure that all potentially interested parties are informed.

(45j) Over the last years, Member States have increasingly engaged in defence cooperation, notably with a view to make their military capabilities converge. Union processes such as the Coordinated Annual Review on Defence and the Permanent Structured Cooperation have, in particular, the purpose of supporting the implementation of relevant priorities by identifying and taking up opportunities for enhanced defence cooperation with a view to fulfilling the Union's level of ambition in the area of security and defence. The constant deterioration of the geopolitical environment and the extreme volatility of the international environment make the development of operational cooperation even more necessary. To be effective, a defence cooperation may require that the armed forces of cooperating Member States use the exact same defence product or, at least, products so close that they are interchangeable. In such cases, a Member State participating in the establishment or joining such a cooperation initiative, which goes beyond a mere cooperative procurement of defence products, should be allowed to derogate from the principles of transparency and competition and to directly award a contract without prior competition or publication of a contract notice to the undertaking from the EDTIB

which produces this product, provided that this is necessary for the implementation of the defence cooperation concerned.

(45k) Given the security context and the existing and foreseeable tensions and bottlenecks on the internal market for defence products and its supply chains, arising in particular from the mismatch between limited manufacturing capacities in the Union and the surge in demand since the beginning of the Russian war of aggression against Ukraine, it is necessary to provide for a set of measures enabling the Union to anticipate, prepare for and mitigate risks of serious disruptions in the supply of defence products that would result or would likely result in the adoption of divergent national measures leading to a severe negative impact on the proper functioning of the internal market.

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(53) ***The ability of the Union to anticipate and address crises in the supply of defence products affecting the proper functioning of the internal market depends on the knowledge and surveillance, at Union level, of the structure, strengths and weaknesses of the Union's supply chains of such products.*** In light of the complexities of defence supply chains and ***of the existing tensions and*** risk of shortages ***along those supply chains, it is necessary to*** provide instruments for a ***continued*** coordinated approach to mapping and monitoring of the ***Union's*** supply chains of ***the crisis-relevant products. The results of the mapping also provide relevant information for the development of Union measures aimed at strengthening the competitiveness of the EDTIB and for assessing the Union's position in global*** defence ***supply chains. Mapping and monitoring should, in that perspective, focus on*** products ***whose serious disruption or imminent risk of such disruption would result or likely result in divergent national measures leading to a severe negative impact on the proper functioning of the internal*** market***, in particular obstacles to cross-border trade***.

(54) ***For the purposes of*** mapping ▌, the Commission should identify ***and regularly update a list of*** crisis-relevant products***, focusing on possible disruptions or bottlenecks affecting the security of supply of such products. The identification of those products by the Commission*** should be based on ***data provided by Member States and stemming from the identification of the relevant manufacturing capacities and supply chains. In order to ensure the exhaustiveness of aggregated data, the Commission should cross-check those***

data, using, for that purpose, available data ***as well as***, if necessary, ▌ data obtained through voluntary information requests of undertakings ▌ .

(54a) The Commission should provide for a framework and a methodology to identify crisis-relevant products. In order to ensure the efficiency of the mapping, that framework and that methodology should be defined in a way that avoid an unnecessary administrative burden on Member States. Hence, they should build upon existing national frameworks and methodologies that Member States would share with the Commission. That framework and that methodology should, in the first place, focus on existing bottlenecks along defence supply-chains and lead to the identification of the manufacturing capacities and supply chains thereof.

(54-a) As part of the mapping, the Commission should also identify and develop a list of early-warning indicators aimed at identifying factors that may disrupt, compromise or negatively affect the supply of such products. Such indicators could include atypical increases in lead time, the availability of raw materials, intermediate products and human capital needed for manufacturing crisis-relevant products or of appropriate manufacturing equipment; forecasted demand, price surges exceeding normal price fluctuation, accidents, attacks, natural disasters or other serious events, the effect of trade policies, tariffs, export restrictions, trade barriers and other trade-related measures, and the effect of business closures, offshoring or acquisitions of main suppliers of crisis-relevant products. Monitoring activities of the Commission should focus on those early-warning indicators, which may involve, if necessary, requests for voluntary information to relevant actors.

(54-b) In order to minimise the burden for undertakings responding to the monitoring and to ensure that the acquired information can be compiled in a meaningful way, the Commission should provide for standardised and secure means for any information collection. Those means should ensure that any collected information is treated confidentially, ensuring business secrecy and cybersecurity. Similarly, in order to limit the administrative burden for national administrations, Member States should be allowed to request the European Commission to perform the tasks they have been entrusted with for the purpose of the mapping of supply chains of defence products.

(54c) On the basis of the list of crisis-relevant products identified by the Commission, Member States should identify on their territory the main suppliers of such products. The list of

such suppliers should be transmitted to the Commission to ensure an efficient coordinated approach at Union level. In order to be able to identify and report on any event that may cause negative and lasting consequences on the timely availability and supply of those products, Member States should monitor the ability of such suppliers to carry out their activities, in light of the early-warning indicators identified by the Commission. For that same purpose, the main suppliers of crisis-relevant products should also inform the Member State in whose territory they are established if they detect disruptions of supply which may significantly affect their activities related to the production of crisis-relevant products.

(55) ***As part*** of the ***crisis preparedness framework***, the Commission should ***carry out and coordinate stress tests and simulations, building in particular on the advice of*** the Defence ***Security of Supply*** Board ***concerning critically important topics for defence supply chains. In this context, the Commission could*** develop ***scenarios and parameters that capture the particular risks associated with a crisis in the supply of*** crisis-relevant products***. In order to ensure the crisis preparedness of all relevant actors, it is necessary that all Member States and, where relevant, the High Representative, the EDA as well as*** other ***relevant*** actors***, are invited to take part, on a voluntary basis, in those stress tests. In this context,*** the Commission ***could facilitate and encourage the development of strategies for emergency preparedness, including strategies for crisis communication and exchanging information about applicable restrictions in challenging circumstances. Given the sensitivity of information related to supply-chains bottlenecks for the defence and security interests of the Union and its Member States, the results of those stress tests*** should ***constitute classified information***.

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(56) ***The lack of transparency on the identity of certification authorities and certification procedures of defence products within the Union results in a limited cross-certification of defence products, hence leading*** to the ***further fragmentation of the internal market for defence products, in particular in times of supply crises, as illustrated by the 2023 ammunition supply crisis. As part of the preparedness framework, it is therefore necessary to increase transparency on national certification processes and facilitate*** information ***sharing between certification authorities, with a view to easing cross-certification of defence products and fostering the movement of such products on the***

internal market. For that purpose, the Commission should ***draw and keep updated a list of national certification authorities***.

(57) ***In order to reduce the risk of shortages in the supply of*** crisis-relevant ***products, it is necessary to accelerate the ramp-up of production facilities related to the production of those*** products, ***in particular by ensuring an efficient and timely administrative treatment of any application related to the planning***, ***construction and operation of such facilities. For that reason, Member States authorities*** should ***ensure that the most rapid treatment legally*** possible ***is given to such applications.***

(57a) To enable the Union to mitigate the risk of a supply crisis break out, competent authorities of Member States should alert the Defence Security of Supply Board where they become aware of a risk of serious disruption in the supply of crisis-relevant products or have concrete and reliable information of any other relevant risk factor or event materialising. In order to ensure a coordinated approach for the purpose of mitigating such risk, the Commission should, when it becomes aware of such risk, carry out preventive actions, such as convening an extraordinary meeting of the Defence Security of Supply Board to discuss the severity of the possible disruptions as well as possible responses and, where relevant, consulting relevant third countries and international organisations with a view to seeking cooperative solutions to avoid or address disruptions in the supply chains, in compliance with international obligations.

(58) ***This Regulation should also provide for instruments to address, in an efficient and coordinated manner, a supply crisis that is imminent or that has arisen.*** Due to the ***need to provide for targeted measures depending on whether a severe negative impact on the functioning*** of the ***internal market, or an imminent risk thereof, concerns crisis-relevant products which are not defence products or crisis-relevant defence products, this Regulation should provide for two different*** supply-crisis ▌ states ***accordingly***.

(58a) To this end, the supply-crisis state should be activated on the basis of concrete and reliable evidence, where there are serious disruptions or an imminent risk of such disruptions in the provision of crisis-relevant products, and where such serious disruptions or the imminent risk thereof are resulting or are likely to result in the adoption of divergent national measures related to crisis-relevant products which are not defence products leading to a severe negative impact on the proper functioning of the

internal market, in particular obstacles to cross-border trade in such crisis-relevant products.

(58b) On the other hand, the security-related supply crisis state should be activated where there are serious disruptions or an imminent risk of such disruptions in the provision of crisis-relevant products, and where such serious disruptions or the imminent risk thereof are resulting or are likely to result in the adoption of divergent national measures related to crisis-relevant defence products leading to a severe negative impact on the proper functioning of the internal market, in particular obstacles to cross-border trade in such crisis-relevant defence products. When the Commission assesses whether the conditions for activating this supply-crisis state are fulfilled, it should take into account whether a crisis affecting the security and defence interests of the Union and its Member States has been identified within the area of CFSP, such as whether a Member State has activated the mutual assistance clause pursuant to Article 42(7) TEU. In that context, the Commission could take into account whether such crisis has also been identified in NATO.

(58c) Due to the sensitive nature of the decision to activate the supply-crisis state or the security-related supply-crisis state stemming in particular from the potential consequences of the measures that may be taken in response thereof, including the significant impact which such measures might have on private undertakings in the Union, the power to adopt an implementing act as regards activating, prolonging and terminating the supply-crisis states should be conferred on the Council. To ensure that the response at Union level is adapted to the nature of the supply crisis, the Council should also determine which of the measures provided for by this Regulation should be activated for the purpose of addressing the ongoing supply crisis, and should be able to identify for which crisis-relevant products these measures should be activated.

(59) ***In order to enable precise and near real time assessments of the nature and severity of the supply crisis and of whether the deployment of prioritisation measures would be necessary, the Commission should be able to address information requests to economic operators contributing to the production of the crisis-relevant products concerned,*** where ***the Council implementing act activates such measure under*** the supply-crisis state or the security-related ***supply crisis-state. Such requests should only be addressed where the available information is not sufficient and should be limited to information on the***

production capabilities, production capacities or possible primary disruptions. In view of the sensitive nature of the information that may be requested, the Commission ▌ should ▌ receive ***the prior*** agreement ***of*** the Member State in which ***their production site is located, and the requested*** information should ***be channelled through this Member State. Where the Member State concerned agrees to the launch of such request, it should be able to decide to address that request directly to the relevant economic operator and*** inform the Commission ***thereof. It is also important for the Commission to be aware of information requests from third countries related to activities of economic operators established in the Union on the*** supply of ***crisis-relevant*** products as ***such information requests may result in prioritisation measures from those third countries that may have a significant impact on the supply of such products in the Union and on the proper functioning of the internal market***. ***Hence, the economic operator concerned should inform in due time the Member State on whose territory its production site is located which should, in turn, inform the Commission, so as to enable the Member State concerned and the Commission to request similar information***

(60) ***In addition to other measures provided for by this Regulation for the purpose of addressing a security-related supply-crisis state, Member States*** should***, where the Council activates those measures, consider, on a case-by-case basis, using defence-related exemptions under national and applicable Union law for the purpose*** of the ***granting of permits relating to the planning, construction and operation of*** production ***facilities of crisis-relevant defence products, if they deem that the use of such exemptions would facilitate the*** security of supply of ***crisis-relevant*** defence products***. That could in particular apply to Union law concerning environmental***, ***health and safety issues, which is indispensable to improving the protection of human health and the environment, as well as to achieving a sustainable and safe development***.

(60a) In cases of severe and persistent shortages of or an exceptionally high demand for crisis-relevant products carrying an imminent risk of or materialising in a severe negative impact on the proper functioning of the internal market, prioritisation measures at Union level aiming to ensure the availability of crisis-relevant products could prove to be indispensable in ensuring the proper-functioning of the internal market for defence products and its supply chains. The Commission should be able to use in this respect, upon a request of a Member State, priority-rated requests for facilitating the supply of both defence and non-defence crisis-relevant products, and priority-rated orders for

ensuring the supply of non-defence crisis-relevant products. Those prioritisation measures should be activated by the Council.

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(62) ***Priority-rated requests should consist of requests by the Commission, upon an initiative of a Member State, to relevant economic operators established in the Union to accept or to prioritise orders of crisis-relevant products.*** As an instrument of last resort to ensure that ***defence supply chains*** can continue to operate in a time of ***supply*** crisis, and only when necessary and proportionate for that purpose, ***those priority-rated requests should be aimed at supporting a Member State which faces severe difficulties either in the placing of an order or in the execution of a contract for the supply*** of crisis-relevant products. ***Economic operators should have the possibility to refuse to be subject to*** a priority-rated ***request. When issuing a request***, ***the Commission*** should take into account the ***possible negative impact on competition in the internal market and the risk of exacerbating market distortions***. ***Furthermore, the choice of the recipients and beneficiaries of the requests should not be discriminatory.***

(62a) In light of the increased deterioration in the Union's security context, linked to Russia's persistent and intensified threat in the context of its war of aggression against Ukraine, it is crucial to address the difficulties that Member States may face in the placing of an order or in the execution of a contract related to the supply of defence products, in particular where such difficulties result from disruptions in the provision of crisis-relevant products which are not defence products. Indeed, where crisis-relevant products are dual-use or civilian products, defence supply chains can face the competition of non-defence supply-chains with a significantly stronger buying power when trying to access these crisis-relevant products. It is therefore necessary to provide for an additional instrument of last resort, in cases where the production or supply of such crisis-relevant non-defence products could not be achieved by any other measure, including a priority-rated request. Thus, priority-rated orders should enable the Commission to oblige economic operators established in the Union to produce or supply certain crisis-relevant non-defence products after receiving the prior agreement of the Member State on whose territory the production site of the economic operator concerned is located and of the Member State on whose territory the executive management structure of the economic operator is located. The Commission should not issue priority-rated orders where the

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economic operator is unable to fulfil the order even if prioritised, be it due to insufficient production capability or production capacity or on technical grounds, or because this would place an unreasonable economic burden and entail particular hardship on the economic operator, including substantial risk relating to business continuity. Where such reasons arise after the Commission has adopted an implementing act subjecting an economic operator to any priority-rated order or request, that economic operator should be able to request the Commission to modify the implementing act concerned.

(62b) A priority-rated order or a priority-rated request should be taken based on objective, factual, measurable and substantiated data. It should have regard for the legitimate interests of the undertakings and the cost and effort required for any change in production sequence. When accepted or imposed, the obligation to perform the priority-rated request or the priority-rated order should take precedence over performance obligations under private or public law. Where the object of a priority-rated request concerns a defence product, the request should specify the scope of contractual obligations over which it should have precedence. Each priority-rated request or order should be placed at a fair and reasonable price. It should be possible to carry out the calculation of such price on the basis of applicable prices over recent years, subject to reasons being given for any increase or decrease, for example taking into account inflation or input costs. In light of the importance of ensuring the supply of crisis-relevant products, which are indispensable to the correct functioning of the internal market and its supply chains, compliance with the obligation to perform a priority-rated request or order should not entail liability to third parties for damages that may result from any breach of contractual obligations governed by the law of a Member State, to the extent that the breach of contractual obligations was necessary for compliance with the mandated prioritisation. Economic operators potentially within the scope of a priority-rated request should be allowed to provide, in the conditions of their commercial contracts, for the possible consequences of a priority-rated request.

(62c) Where the economic operator has expressly accepted a priority-rated request and the Commission has adopted an implementing act following such an acceptance, or where the economic operator has been imposed a priority-rated order by an implementing act adopted by the Commission, the economic operator should comply with all the conditions of that implementing act. Non-compliance by the economic operator with the conditions laid down in the implementing act should result in a loss of the benefit of a

waiver of contractual liability. When the non-compliance is intentional or attributable to gross negligence, the Commission should be able to impose on the economic operator a fine or a periodic penalty payment, subject to the proportionality principle. The Commission should take into account any duly reasoned justification presented by the economic operator for the purpose of determining whether fines or periodic penalty payments are deemed necessary and proportionate.

(62d) Under the exceptional circumstance that an economic operator established in the Union is subject to a measure entailing a priority-rated order or a priority-rated request of a crisis-relevant product from a third country, it should notify the Commission, so as to inform an assessment of whether such measure may have a significant impact on the security of supply of crisis-relevant products and the proper functioning of the internal market, as well as of any appropriate step that may need to be taken in response to that measure.

(63) The ***request or*** obligation to prioritise the production ***or supply*** of certain products ***does*** not disproportionately affect the freedom to conduct a business and the freedom of contract laid down in Article 16 of the Charter of Fundamental Rights of the European Union (▌the **'**Charter') and the right to property laid down in Article 17 ***thereof***.▌ In accordance with Article 52(1) of the Charter, ***any limitation on the exercise of those rights must*** be provided for by law ***and*** respect the essence of those rights and freedoms, and ***be subject to*** the principle of proportionality.

(64) Where the security-related supply crisis state is activated▌ the measures available under the ***supply-crisis*** state should also be available ***if deemed appropriate by*** the Council ***and specified in the implementing act activating the security-related supply-crisis state***.

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(66a) Intra-EU transfers of defence products are regulated by Directive 2009/43/EC of the European Parliament and of the Council [23], which aims at simplifying those transfers in order to ensure the proper functioning of the internal market for defence products. As

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[23] Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community (OJ L 146, 10/06/2009, p. 1).

documented by past evaluations of that Directive, the granting of a priori global and individual transfer licences remains largely the norm for the movement of defence products within the internal market and the average time to process applications may vary sometimes significantly from one Member State to another. During a security-related supply crisis, and where the Council considers it necessary, it should be possible for the Council implementing act activating the security-related supply crisis state to determine a timeframe, which should be no longer than two weeks, within which the national authorities concerned should treat the applications once entirely received in order to further ease the movement of those products in the internal market. Additionally, this Regulation aims at facilitating the intra-EU transfers of crisis-relevant products in the context of a supply-crisis. Therefore, it should be clarified that a Member State which imposes export limitations to components which are crisis-relevant products and which it considers sensitive in the meaning of Directive 2009/43/EC should not require further authorisations for the intra-EU transfer of the components concerned where the recipient provides a declaration of use in which it declares that the components subject to that transfer licence are integrated or are to be integrated into a defence product and cannot be transferred or exported as such. Such measure should not affect existing Union and national rules governing the transfer and export of defence products.

(66ba) As the certification of defence products is key to ensure the proper functioning of the internal market for defence products, in particular during a security-related supply crisis, this Regulation should enable, in addition to the acceleration of existing national processes, the mandatory mutual recognition of a crisis-relevant defence product lawfully certified in a Member State.

(66bb) Compliance with the obligations imposed under this Regulation should be enforceable by means of fines and periodic penalty payments. To that end, appropriate levels of fines for non-compliance with information requests, the obligations stemming from a priority-rated request or a priority-rated order and the notification obligation applying where an economic operator established in the Union is subject to a prioritisation measure of a third country should be laid down, taking into account the different levels of gravity of the non-compliance between both obligations and with different ceilings for SMEs. Furthermore, periodic penalty payments should be laid down for non-compliance with the obligation to accept and perform priority-rated orders, which should be

proportionate, with different ceilings for SMEs. Limitation periods should apply for the impositions of fines and periodic penalty payments, in addition to limitation periods for the enforcement of penalties. In addition, the Commission should give the economic operators concerned the right to be heard.

(66c) One of the challenges identified during the COVID-19 crisis was the lack of a network for ensuring preparedness, as well as insufficient information sharing and coordination for response measures between the Member States, on the one hand, and between the Member States and the Commission, on the other hand. Therefore, the achievement of the objective pursued by this Regulation to prepare for and respond to the impact of future supply crises on the internal market for defence products should be supported by a governance mechanism. This Regulation should establish a Defence Security of Supply Board, to facilitate cooperation, exchange of information and the smooth, effective and harmonised implementation of the measures provided for therein aimed at ensuring the security of supply of defence products. The Defence Security of Supply Board should be composed of representatives of the Member States and the Commission. As ensuring the proper functioning of the internal market for defence products in times of supply crisis, or preparing for such supply crises, requires to take account of the ability of Member States to develop, acquire and manage their defence capabilities and to enhance their defence readiness, it is appropriate that the Commission and the Member State holding the rotating presidency of the Council co-chair the Board. In addition, given the contribution of the security of supply regime to the Union's ability to defend its security and defence interests, the High Representative and the EDA should also be members of the Defence Security of Supply Board. In particular, the EDA's ongoing work strands on security of supply of defence products could be useful for the implementation of this Regulation. The EDA facilitates the sharing of best practices and reinforces cooperation between Member States on defence-related security of supply. It also generates insights on bottlenecks affecting the supply chains of defence products. Hence, the EDA should be able to share its views and expertise inter alia in the Defence Security of Supply Board, which will contribute to preparing for and responding to the impact of supply crises on the internal market for defence products. Associated countries should have the right to become members, without voting rights, of the Defence Security of Supply Board in accordance with the conditions set out under the Agreement on the European Economic Area. Representatives of the European Parliament should be invited as observers to the

meetings of the Board. The Defence Security of Supply Board should facilitate coordination among Member States and provide recommendations to and assist the Commission in the implementation of the mechanisms established by this Regulation aimed at ensuring security of supply, in particular by anticipating, preparing, preventing and addressing crises in the supply of crisis-relevant products.

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(67a) Since the objective of this Regulation, namely to ensure the smooth and undisrupted functioning of the internal market by putting in place contingency, preventive and emergency measures across the internal market in order to facilitate the coordination of the response measures in the event of a crisis, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. 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 that objective.

(67b) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission with respect to the adoption of work programmes to set out the funding priorities and the applicable funding conditions, the award of funding for specific actions, the establishment and winding-up of SEAPs, the identification and update of crisis-relevant products, the establishment and maintenance of a list of national certification authorities, prioritisation measures, and the imposition of penalties. The specificities of the defence sector, in particular the responsibility of Member States, associated countries or Ukraine for the planning and acquisition process, should be taken into account. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[24].

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[24] *Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28/02/2011, p. 13).*

(68) This Regulation should apply without prejudice to Union competition rules, in particular Articles 101 to 109 TFEU and the legal acts that give effect to those Articles.

(69) ***Union funding under this Regulation cannot cover the costs*** arising from ▌ the ***Common Foreign and Security Policy. As a consequence,*** Union ***funding under the Programme and the Ukraine Support Instrument should not cover the costs of the purchase and of the maintenance of defence products for*** military or defence ***purposes, including in the context of establishing, managing and maintaining a defence industrial readiness pool***. ***It should be possible however for Union funding under the Programme and the Ukraine Support Instrument to cover the costs incurred in the context of the purchase or of the maintenance of such products which are necessary for the strengthening of the competitiveness of the EDTIB or the recovery, reconstruction and modernisation of the Ukrainian DTIB, in particular non-recurrent costs.***

(69b) In accordance with Article 241 TFEU, the Council may request the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals. The Commission will give prompt and detailed consideration to any such requests for proposals.

(70) This Regulation should apply without prejudice to the specific character of the security and defence policy of certain Member States***.***

(70a) This Regulation is without prejudice to existing Union and Member States' rules on the export of defence products and to the obligations provided for by Directive 2009/43/EC.

▌

(72) In order to allow for the implementation of this Regulation to start as soon as possible, with a view to reaching its objectives, it should enter into force as a matter of urgency,

HAVE ADOPTED THIS REGULATION:

Chapter I

General Provisions

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Article 1

***General objectives and* Subject Matter**

1. ***This Regulation aims to enhance the technological leadership, innovation, readiness, long-term competitiveness, resilience, integration and preparedness of the European Defence Technological and Industrial Base (EDTIB), ensuring the timely availability and supply of defence products and contributing to the recovery, reconstruction and modernisation of the Ukrainian Defence Technological and Industrial Base (Ukrainian DTIB).***

2. This Regulation establishes a budget ***for the period from 2025 to 2027*** and lays down the following:

(1) the establishment of the European Defence ***Industry*** Programme (the 'Programme'), comprising measures for the strengthening of the competitiveness, responsiveness and ability of the EDTIB ***as set out in Chapter II;***

(2) the establishment of a cooperation programme with Ukraine with a view to the recovery, reconstruction and modernisation of the ***Ukrainian DTIB*** (the 'Ukraine Support Instrument')***, taking into account its possible future integration into the EDTIB, as set out in Chapter IIa***;

(2a) the establishment of a framework for European Defence Projects of Common Interest, as set out in Chapter IIb;

(2b) the establishment of a European Military Sales Mechanism as set out in Chapter IIc;

(3) a legal framework laying down the requirements and procedures for***,*** and the effects of***, establishing Structures*** for European Armament ***Programmes (SEAPs***) as set out in Chapter III;

(4) a legal framework ▌ , ▌ as set out in Chapter IV***, to prepare for and respond to the impact of supply crises on the internal market, which is aimed at:***

(a) ensuring the security of supply of crisis-relevant products; and

(b) ensuring the proper functioning of the internal market of defence products, including by preventing the emergence of obstacles to it.

▌

2. This Regulation is without prejudice to each Member State having the sole responsibility for its national security, as provided for in Article 4(2) of the Treaty on the European Union (TEU), and the right of each Member State to protect its essential security interests in accordance with Article 346 of the Treaty on the Functioning of the European Union (TFEU).

Article 2

Definitions

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

(1) 'advance purchasing agreement' means a public contract with one or several ***economic operators*** which aims at supporting the swift development ***or*** production of a product***,*** and by virtue of which the right to ***purchase*** a specified number of products in a given timeframe and at a given price is subject to the prefinancing of part of the upfront costs faced by the ***economic operators*** concerned***;*** while an advance purchasing agreement is legally binding upon the participating contracting authorities and upon the contractor, it needs to be further implemented by means of the conclusion of contracts with the ▌ contractors ***concerned***;

(1a) 'another third country entity' means a legal entity that is established in a non-associated third country other than Ukraine, or a legal entity that is established in the Union, Ukraine or in an associated country but has its executive management structures in a non-associated third country other than Ukraine;

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(1b) ***'associated countries' means members of the European Free Trade Association which are members of the European Economic Area (EEA) which apply this Regulation in accordance with the EEA Agreement;***

(2) 'bottleneck' means a point of congestion in a production system that stops or severely slows the production;

(3) 'blending operation' means an action supported by the Union budget, including within a blending facility or platform as defined in Article 2, point (6)***,*** of Regulation (EU, Euratom) ***No 2024/2509 (the 'Financial Regulation')***, that combines non-repayable forms of support ***or*** financial instruments from the Union budget with repayable forms of support from development or other public finance institutions, or from commercial finance institutions and investors***;***

(3a) 'classified information' means information or material, in any form, the unauthorised disclosure of which could cause varying degrees of prejudice to the interests of the Union, or of one or more ▌ Member States, and which bears an EU classification marking or a corresponding classification marking, as established in the Agreement between the Member States of the European Union, meeting within the Council, regarding the protection of classified information exchanged in the interests of the European Union[27];

▌

(4a) ***'contracting authorities' means contracting authorities as defined in Article 2(1), point (1), of Directive 2014/24/EU[25] and in Article 3(1) of Directive 2014/25/EU[26] of the European Parliament and of the Council;***

(5) 'control' means the ability to exercise ▌ decisive influence ***over*** a legal entity directly, or indirectly through one or more intermediate legal entities;

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[27] ***OJ C 202, 8.7.2011, p. 13.***

[25] ***Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28/03/2014, p. 65).***

[26] ***Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28/03/2014, p. 243).***

(***5***a) ‘crisis-relevant products’ means defence products or ▌ components or raw materials thereof***,*** or any products or services critical to their production***, whose availability is indispensable to ensure the proper*** functioning of the internal market and its supply chains ***and must be guaranteed in order to respond to a supply crisis;***

(***5b***) ‘defence innovation action' means an action primarily consisting of activities directly aiming to produce plans and arrangements or designs for new, altered or improved defence products, processes or services, possibly including prototyping, testing, demonstrating, piloting, large-scale product validation and market replication;

(7) ‘defence products’ means any defence-related products as referred to in Article 2 of Directive 2009/43/EC***, as well as works, supplies and services directly related to those products for any and all elements of their life-cycle within the meaning of Article 2, point (c), of Directive 2009/81/EC***;

▌

(7a) ***‘dynamic availability management’ means the provision of defence products in time, at the agreed location and to the agreed levels of availability, as well as managing availability risks that could materialise in the form of outages of the defence product concerned; in this context, ‘availability’ means the ability of the defence product to function faultlessly under defined conditions and be ready to use, when required;***

(8) ‘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 ***the legal entity’s*** management decision-making;

(8a) ‘foreground information’ means data, knowhow or information generated within a given action under this Regulation, whatever its form or nature;

(***8b***) ‘lead time’ means the period of time between a purchase order being placed and the manufacturer completing the order;

(9) ‘legal entity’ means a legal person created and recognised as such under Union, national or international law, which has legal personality and the capacity to act in its own name, exercise rights and be subject to obligations, or an entity which does not have legal personality as referred to in Article ***200(2)***, point (c), of the ***Financial*** Regulation ▌ ;

(9a) 'life-cycle' means all the possible successive stages of a product, from research and development to de-commissioning and disposal;

(9b) 'maintenance' means all actions taken to ensure the readiness and operational capability of a defence product, in particular to retain equipment in or to restore it to specified conditions until the end of its use, including mission readiness, longevity and upgrades, customisation and specialisation, inspection, overhaul, testing, servicing, modifications, classification as to serviceability, repair, recovery, rebuilding, reclamation, salvage and cannibalisation;

(11) ***'***middle capitalisation company' or 'mid-cap' means an enterprise that is not ***an*** SME and that employs a maximum of 3 000 persons, where the headcount of staff is calculated in accordance with Articles 3 to 6 of the Annex to ***Commission*** Recommendation 2003/361/EC[28]***;***

(12) 'non-associated third-country entity' means a legal entity that is established in a non-associated third country***,*** or ▌ a legal entity that is established in the Union or in an associated country ▌ but has its executive management structures in a non-associated third country;

(12a) 'non-recurrent costs' means costs that occur on a one-time basis or at irregular intervals, in particular design, development and investment costs necessary for the production or maintenance of defence products or the reservation of manufacturing capacities;

(13) 'off-take agreement' means any contractual agreement between at least ▌ three ▌ Member States ***and, where relevant, associated countries or Ukraine on the one hand*** and at least one manufacturer of defence products ***on the other,*** containing either a commitment ***by*** the Member States ***and, where relevant, associated countries or Ukraine*** to procure a certain quantity of defence products over a certain period of time or a commitment ***by*** the

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[28] ***Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20/05/2003, p. 36).***

manufacturer of defence products to provide the Member States ***and, where relevant, associated countries or Ukraine*** with the option to ***make such a procurement;***

(13a) 'originator' means the Union institution, agency or body, Member State, or an entity set up under this Regulation under whose authority classified information has been created;

(14) 'procurement agent' means a contracting authority as defined in Article 2(1), point (1), of Directive 2014/24/EU and Article 3(1) of Directive 2014/25/EU established in a Member State or an associated country, ▌ a Structure for European Armament Programme ***(SEAP), the EDA*** or an international organisation that is designated by Member States, associated countries***,*** Ukraine ***or a SEAP*** to conduct a common procurement on their behalf;

(16) 'raw materials' means the ***raw*** materials ***as defined by Regulation (EU) 2024/1252***;

(16a) 'results' means any tangible or intangible effect of a given action, such as data, knowhow or information, whatever its form or nature and whether or not it can be protected, as well as any rights attached to it, including IPRs;

(***19***) 'Seal of Excellence' means a quality label which shows that a proposal submitted to a call for proposals under the ***Programme and the Ukraine Support*** Instrument has passed all of the evaluation thresholds set out in the work programme, but could not be funded due to a lack of budget available for that call for proposals in the work programme, and might receive support from other Union or national sources of funding;

▌

(***21***) 'sensitive information' means ***unclassified*** information and data ***that are*** to be protected from unauthorised access or disclosure because of obligations laid down in Union or national law***, where applicable,*** or in order to safeguard the privacy or security of a natural or legal person;

(***22***) 'small and medium-sized enterprises' ***(SMEs)*** means small and medium-sized enterprises as defined in Article 2 of the Annex to Commission Recommendation 2003/361/EC;

(22***a***) 'small middle capitalisation company' or 'small mid-cap' means an enterprise that is not a SME and whose number of employees does not exceed 499, calculated in accordance with Articles 3 to 6 of the Annex to ***Recommendation (EU) 2025/1099***, the annual turnover of

which does not exceed EUR 100 million or the annual balance sheet of which does not exceed EUR 86 million;

(*23*) ***'subcontractor***' means ***an economic operator that is proposed by a candidate or tenderer or contractor to perform specific tasks or services under the supervision of the main contractor, contributing to the design or manufacturing of a defence products, other than what is provided by suppliers to implement the contract, for*** which ***it*** is allocated at least ***15%*** of the value of the contract***, and that needs access to classified information for the performance of that contract; for the purposes of this definition, 'supplier' shall be understood as an economic operator that delivers components of its own design or production to the contractor***.

Article 2a

Budget

1. The financial envelopes for the implementation of the Programme for the period from […] until 31 December 2027 shall be composed of:

(a) EUR 1 200 million in current prices as well as

(b) additional contributions in accordance with Article 6.

1-b. The financial envelopes for the implementation of the Ukraine Support Instrument for the period from […] until 31 December 2027 shall be composed of:

(a) EUR 300 million in current prices and

(b) the amount of the additional contributions in accordance with Article 19g to the extent earmarked.

1-a. Union funding under this Regulation shall only cover the costs necessary for pursuing the objectives of the Programme and the Ukraine Support Instrument. Therefore, Union funding under the Programme and the Ukraine Support Instrument shall not cover the costs of the purchase and of the maintenance of defence products for military or defence purposes, including in the context of establishing, managing and maintaining a defence industrial readiness pool as referred to in Article 13b. It may cover the costs incurred in the context of the purchase or of the maintenance of such products which are necessary

for the strengthening of the competitiveness of the EDTIB or for the recovery, reconstruction and modernisation of the Ukrainian DTIB, in particular non-recurrent costs.

1a. At least 15 % of the financial envelope referred to in paragraph 1, point (a), of this Article shall be allocated to actions referred to in Article 12. At least 30 % of the financial envelope referred to in paragraph 1, point (a), of this Article shall be allocated to actions referred to in Article 13. Up to 25 % of the financial envelope referred to in paragraph 1, point (a), of this Article may be allocated to actions referred to in Article 15.

2. In order to respond to unforeseen situations or to new developments and needs, the Commission may transfer the amounts referred to in paragraph 1 and 1-b of this Article between the Programme and the Ukraine Support Instrument in accordance with the Financial Regulation.

3. Up to 3.5 % of the amount referred to in paragraphs 1 and 1-b may be used for technical and administrative assistance for the implementation of the Programme and the Ukraine Support Instrument, such as preparatory, monitoring, control, audit and evaluation activities, including price investigations and corporate information technology systems and platforms, and all other technical and administrative assistance or staff-related expenses incurred by the Commission for the management of the Programme and the Ukraine Support Instrument.

7. Budgetary commitments for activities extending over more than one financial year may be broken down over several years into annual instalments.

8. If necessary to enable the management of actions not completed by 31 December 2027, appropriations may be entered in the Union budget until 2033 to cover the expenses necessary to fulfil the objectives set out in Article 4 for the Programme or, where relevant, Article 19e for the Ukraine Support Instrument, to enable the management of actions not completed by the end of the Programme or the Ukraine Support Instrument, and to cover the expenses related to critical operational activities and services.

Chapter II

The Programme

SECTION 1

GENERAL PROVISIONS APPLICABLE TO THE PROGRAMME

I

Article 4

Objectives

1. The Programme ***shall aim to increase the competitiveness, resilience and*** readiness of the EDTIB ***by initiating and accelerating the adjustment of industry to structural changes imposed by the evolving security environment.*** In particular***, the Programme shall aim to***:

(a) ***enhance*** cooperation ***in defence procurement by incentivising Member States to aggregate demand for defence products, harmonise defence capability requirements, and strengthen solidarity among themselves, ultimately leading to greater interoperability and interchangeability, and by improving predictability of demand for the EDTIB, corresponding with Member States' defence product needs***;

(b) improve and accelerate the capacity of adaptation of defence industrial supply chains, open up supply chains for cross-border cooperation, in particular for SMEs and mid-caps, increase manufacturing capacities, reduce lead production time for defence products and support the industrialisation and commercialisation of defence products supported by actions funded by the Union or other Union cooperative activities conducted with the support of Member States, with a view to ensuring the availability and supply of defence products throughout the Union, also taking into account the specific needs of Member States in the case of materialisation of conventional military threats;

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(c) improve the security of supply and resilience of the EDTIB by supporting the development and presence of the EDTIB throughout the Union.

▌

2. ***The Programme*** shall ***be implemented taking*** into account ***the objectives of the Strategic Compass for*** Security ***and Defence and shall be consistent with the defence capability priorities commonly agreed by Member States within the framework of the common foreign and security policy (CFSP), in particular within the context of the Capability Development Plan (CDP), and with the collaborative opportunities identified in the Coordinated Annual Review on Defence***.

3. The ***Programme*** shall be ***consistent with Member States' cooperation within the framework*** of the ***Permanent Structured Cooperation, EDA initiatives and projects, and*** the Union***'s civil and military assistance to Ukraine. The Programme shall duly take*** into account the ***relevant activities carried out by the North Atlantic Treaty Organisation (NATO) and other partners where such activities serve the Union's*** security and defence ***interests***.

▌

Article 6

Additional financial resources

1. Member States, ▌ Union institutions, bodies and agencies, third countries, international organisations, international financial institutions or other third parties, may provide additional financial contributions to the Programme, including to the Fund Accelerating the defence Supply Chains Transformation (FAST) referred to in Article 19 ***of this Regulation,*** in accordance with Article ***211(2)*** of the ***Financial*** Regulation ▌ . Such financial contributions shall constitute external assigned revenue within the meaning of Article 21(2), points (a) ▌ , (d) ▌ or (e)**,** or Article 21(5) of the ***Financial*** Regulation ▌ .

▌

1a. Provided that they contribute to the achievement of one or more of the objectives set out in Article 4 of Regulation (EU) 2021/241, Member State contributions supported by the Recovery and Resilience Facility shall be used for the benefit of the Member State

concerned and may, by derogation from Article 19c(6) of this Regulation and from Article 193(1) of the Financial Regulation, be used for the purpose of contributing to the funding of eligible actions under Article 13 of this Regulation up to 100 % of the eligible costs. By derogation from Article 5(2), Article 18(4), point (d), and Article 19(3), point (d) and Annex V, criterion 2.4 of Regulation (EU) 2021/241, the principle of "do no significant harm" shall not apply to Member State contributions supported by the Recovery and Resilience Facility, provided that the Member State concerned justifies in the contribution agreement with the Commission that it is not feasible nor appropriate to ensure that the type of activities intended to be supported under EDIP comply with the DNSH principle.

▌

2a. Any additional amounts received under international agreements concluded pursuant to Article 17 of the SAFE Regulation shall constitute external assigned revenue within the meaning of Article 21(5) of the Financial Regulation and shall be used for the Programme in accordance with the rules of this Regulation.

3. Resources allocated to Member States under shared management may, at ***the*** request ***of the Member States concerned***, be transferred to the Programme subject to the conditions set out in the relevant provisions of Regulation (EU) 2021/1060 ▌. The Commission shall implement those resources directly in accordance with Article 62(1), ▌ first subparagraph, ***point (a),*** of the ***Financial*** Regulation ▌ or indirectly in accordance with point (c) of that subparagraph ▌. Those resources shall be used for the benefit of the Member State concerned.

3a. As regards the amounts contributed in accordance with paragraph 1 of this Article, the Member States concerned may take decisions regarding the proportion of those amounts to be made available to all entities eligible for funding under this Regulation, to be made available only to the benefit of the Member States concerned, or to be made available to the additional benefit of other Member States. Where the amounts are made available to the benefit of the Member States concerned or to the additional benefit of other Member States, such amounts may, by derogation from Article 19c(6) of this Regulation and from Article 193(1) of the Financial Regulation, be used for the purpose of contributing to the funding of eligible actions under Article 13 of this Regulation up to 100 % of the eligible costs.

4. Where the Commission has not entered into a legal commitment under direct or indirect management for resources transferred in accordance with paragraph 3 and at the latest ***by 31 December*** 2028, the corresponding uncommitted resources may be transferred back to one or more respective source programmes, at the request of the Member State ***concerned***, in accordance with the conditions set out in the relevant provisions of Regulation (EU) 2021/1060**.**

▌

Article 7

Alternative, combined and cumulative funding

1. The Programme shall be implemented in synergy with other Union programmes. An action that has received a contribution from another Union programme may also receive a contribution under the Programme provided that the contribution does not cover the same costs. The rules of the relevant Union programme shall apply to the corresponding contribution or a single set of rules of any of the contributing Union programmes may be applied to all contributions and a single legal commitment may be concluded. The cumulative support from the Union budget shall not exceed the total eligible costs of the action and may be calculated on a pro-rata basis in accordance with the documents setting out the conditions for support.

2. In order to be awarded a Seal of Excellence under the Programme, actions shall ***meet*** all of the following conditions:

   (a) they have been assessed in a call for proposals under the Programme;

   (b) they comply with the minimum quality requirements of that call for proposals;

   (c) they are not financed under that call for proposals due to budgetary constraints.

3. In accordance with the relevant provisions of Regulation (EU) 2021/1060, the ***European Regional Development Fund (ERDF) or the European Social Fund Plus (ESF+)*** may support proposals submitted ***further*** to a call for proposals under the Programme ▌ which were awarded a Seal of Excellence ▌ .

Article 8

Implementation and forms of Union funding

1. The Programme shall be implemented under direct management in accordance with the ***Financial*** Regulation ***or under*** indirect management with bodies referred to in Article 62(1), point (c), of the ***Financial*** Regulation***.***

2. ***Without prejudice to Article 19c(3) of this Regulation,*** Union funding may be provided in any of the forms laid down in the ***Financial*** Regulation ▌, in particular grants, prizes, procurement, and financial instruments within blending operations under the InvestEU programme in accordance with Title X of the ***Financial*** Regulation ▌.

3. ***With respect to*** activities referred to in Article ***13(1) of this Regulation*** for which Union funding is provided in the form of a grant ▌ and ***a*** profit is made, the Commission ***shall be entitled to*** recover the percentage of the profit corresponding to the Union contribution to the eligible costs actually incurred by the beneficiary carrying out the action, up to the final amount of the Union contribution. ***By way of derogation from Article 195(2) of the Financial Regulation,*** the profit ***shall be*** calculated by a surplus of receipts over the eligible costs of the action, where receipts are limited to Union funding, Member State funding, including procurement, other revenue generated during the action and any revenue resulting from the action. The work programme may set out further details.

▌

4. By way of derogation from Article ***196(2) of the Financial*** Regulation ▌, financial contributions may, where relevant and necessary for the implementation of an action, cover actions started and costs incurred prior to the date of the submission of the proposal for those actions, provided that those actions did not start before 5 March 2024 and have not been completed before the signature of the grant agreement.

Article 9

Third countries associated to the Programme

The Programme shall be open to the participation of members of the European Free Trade Association which are members of the EEA, in accordance with the conditions laid down in the Agreement on the European Economic Area (associated countries).

Article 10

Eligible legal entities

-1. Recipients of Union funding shall be legal entities.

1. The eligibility criteria set out in paragraphs 2 to 7 ***of this Article*** shall apply in addition to the criteria set out in accordance with ***the Financial*** Regulation ▌ .

2. Recipients of Union funding shall be established in the Union or in an associated country ***and have their executive management structures in the Union or in an associated country***.

3. The infrastructure, facilities, assets and resources of the recipients ***of Union funding involved in an action*** which are used for the purposes of ***that*** action shall be located on the territory of a Member State or of an associated country ***for the entire duration*** of the ***action***.

3a. By way of derogation from paragraph 3 of this Article, where recipients of Union funding involved in an action have no readily available alternatives or relevant infrastructure, facilities, assets and resources in the Union or in an associated country, they may use their infrastructure, facilities, assets or resources which are located or held outside the territory of the Member States or of the associated countries, provided that such use does not contravene the security and defence interests of the Union or its Member States, including respect for the principle of good neighbourly relations, and is consistent with the objectives set out in Article 4. The costs related to activities using such infrastructure, facilities, assets or resources shall not be eligible for support from the Programme.

4. ***Recipients of Union funding under*** the Programme ▌ shall not be subject to control by a non-associated third country or by a non-associated third-country entity.

5. By ▌ derogation from paragraph ***2*** a legal entity established in the Union or in an associated country and controlled by a non-associated third country or a non-associated ***third country*** entity shall be eligible to be a recipient ***of Union funding*** if guarantees approved ***in accordance with the national procedures of a*** Member State or ▌ associated country in which it is established***, such as adequate measures pursuant to screenings, as***

set out in Article 2, point (3), of Regulation (EU) 2019/452, are made available to the Commission.

The guarantees ***referred to in the first subparagraph of this paragraph*** shall provide assurances that the involvement in an action of ▌ a legal entity ***as referred to in that subparagraph*** would 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, including respect for the principle of good neighbourly relations***, or the objectives set out in Article 4 ***of this Regulation. Those*** guarantees shall in particular substantiate that, for the purposes of an action, measures are in place to ensure that:

(a) control over the legal entity is not exercised in a manner that restrains or restricts its ability to carry out the action and to deliver results, that imposes restrictions concerning its infrastructure, facilities, assets, resources, intellectual property or ***know-how*** needed for the purposes of the action, or that undermines its capabilities and standards necessary to carry out the action;

(b) access by a non-associated third country or by a non-associated third-country entity to ***classified or*** sensitive information relating to the action is prevented and the employees or other persons involved in the action have national security clearance issued by a Member State or an associated country, where appropriate***, in accordance with national laws and regulations***;

(c) the ownership of intellectual property arising from actions referred to in Article 13(1), point (d), is not subject to restriction by a non-associated third country or a non-associated third-country entity nor transferred to entities established outside the territory of the Member States or of associated countries, without the approval of the Member State or the associated country in which the legal entity is established. Such approval shall not contravene the objectives set out in Article 4.

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

The Commission shall inform the committee referred to in Article ***58*** of any legal entity considered to be eligible ***to be a recipient of Union funding*** in accordance with this paragraph.

5a. The guarantees referred to in paragraph 5 may be based on a standardised template provided by the Commission, assisted by the committee referred to in Article 58, in order to ensure a harmonised approach throughout the Union.

6. When carrying out an eligible action, recipients may also cooperate with legal entities established outside the territory of the Member States or of associated countries, or controlled by a non-associated third country or by a non-associated third-country entity, including by using the assets, infrastructure, facilities and resources of such legal entities, provided that this does not contravene the security and defence interests of the Union ***or*** its Member States***, including respect for the principle of good neighbourly relations, or*** the objectives set out in Article 4 ▌ .

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

The costs related to ***cooperation with legal entities established outside the territory of the Member States or of associated countries, or controlled by a non-associated third country or by a non-associated third-country entity,*** shall not be eligible for support from the Programme.

7. Paragraphs ***4 to 5*** shall not apply to:

(a) contracting authorities of Member States and associated countries;

(b) international organisations;

(c) ***SEAPs***;

(d) the ***EDA.***

Section 2a

ELIGIBLE ACTIONS

Article 11

Eligible actions

1. Actions ***eligible for funding under the Programme shall implement*** the objectives set out in Article 4 ***and may take one*** of the ***following forms, or a combination thereof***:

(a) common procurement actions as referred to in Article 12, including for the establishment and maintenance of Defence Industrial Readiness Pools as referred to in Article 21g;

(b) industrial reinforcement actions as referred to in Article 13;

(c) supporting actions as referred to in Article 13a;

(d) deployment of European Defence Projects of Common Interest as referred to in Article 21da.

8. The following actions shall not be eligible for funding under the Programme:

(a) actions related to ***defence products*** which are prohibited by applicable international law;

(b) actions related to lethal autonomous ***systems that operate outside a responsible chain of*** human ***command and*** control ***or that cannot be used in compliance with international humanitarian law***;

(ba) actions related to cluster munitions;

(d) actions**,** or parts thereof, that are already fully financed from other public or private sources.

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8a. For procurements carried out pursuant to Articles 12, 13a and 15, which are supported by Union funding, the cost of components, originating outside the Union and associated countries shall not be higher than 35 % of the estimated cost of the components of the end product. No component shall be sourced from third countries that contravene the security and defence interests of the Union and its Member States.

8aa. For actions carried out pursuant to Article 13 and activities carried out pursuant to Article 15 other than procurement activities, the cost of components originating outside the Union and associated countries shall not be higher than 35 % of the estimated cost of the components of the product the increase in production capacity of which is supported by Union funding. No component of the product the increase in production capacity of which is supported by Union funding shall be sourced from third countries that contravene the security and defence interests of the Union and its Member States.

8b. Recipients of Union funding or, where relevant, contractors shall have the ability to decide, without restrictions imposed by non-associated third countries or by non-associated third country entities, on the definition, adaptation and evolution of the design of the defence products, including the legal authority to substitute or remove components that are subject to restrictions imposed by non-associated third countries or by non-associated third country entities.

9. Without prejudice to Article 5 of Directive 2009/43/EC, Member States may publish general transfer licences for transfer to other Member States of products related to actions supported by the Programme.

▌

Article 12

▌Common procurement actions

-1. Common procurement actions shall consist of activities related to the cooperation of legal entities in the procurement of defence products, at any point in the lifecycle of defence products, including for the purpose of establishing and maintaining a defence industrial readiness pool as referred to Article 13b.

1. Only the following legal entities shall be eligible for ***common procurement actions***:

(a) ▌ contracting authorities of Member States or associated countries;

(b) international organisations;

(c) ***SEAPs***;

(d) the ***EDA***.

1a. Common procurement actions shall be carried out by:

(a) a consortium of legal entities as referred to in paragraph 1, including at least three entities referred to in paragraph 1, point (a), of which at least two shall be contracting authorities of Member States; or

(b) a SEAP.

2. Member States and associated countries ***carrying out*** a common procurement ***action*** shall appoint, by unanimity, ***a*** procurement agent to act on their behalf for the purposes of that common procurement. The procurement agent shall carry out the procurement procedures and conclude the resulting contracts with contractors on behalf of the participating countries. The procurement agent may participate in the action as a beneficiary and ▌ act as the coordinator of the consortium ***of legal entities,*** therefore ***being*** able to manage and combine funds from the Programme and funds from the participating Member States and associated countries.

▌

4. The procurement procedures referred to in paragraph 2 shall be based on an agreement to be signed by the participating Member States and associated countries with the procurement agent under the conditions set out in the work programme. The agreement shall, in particular, determine the practical arrangements governing the common procurement and the decision-making process on the choice of the procedure, the assessment of the tenders and the award of the contract.

5. The procurement agent shall apply ***in its procurement procedures and contracts criteria*** equivalent to those set out in Article 10 ▌ to ***its*** procurement procedures and ▌ contracts

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with contractors***, and require in the call for tender that these criteria are applied to*** subcontractors ▌ .

5a. By way of derogation from paragraph 5, in order to take into account industrial cooperation with non-associated third countries, common procurements that involve a subcontractor which is allocated between 15 % and 35 % of the value of the contract, and that is not established or doesn't have its executive management structures in the Union or in an associated country, shall be eligible for support under the Programme providing that a direct contractual relationship related to the defence product has been established between the contractor and that subcontractor prior to the date of entry into force of this Regulation.

6. Procurement agents shall ***notify*** the Commission ***of the*** guarantees and mitigation measures referred to in Article ***10(5)***. Further information on ***those*** guarantees and mitigation measures shall be made available to the Commission upon request. The Commission shall inform the committee referred to in Article 58 of any notification provided in accordance with this paragraph.

▌

9. Before launching a common procurement procedure for a common procurement action under this Regulation, the procurement agent shall inform those Member States not participating in the planned procedure and give them the opportunity to submit within a reasonable timeframe a substantiated request for the procurement agent to purchase additional quantities of defence products for them. If such a request is submitted, the common procurement contract shall reserve the right of participating contracting authorities to purchase additional quantities of defence products for such Member States, without prejudice to applicable Union and Member State rules relating to the export of defence products.

9a. Before launching a common procurement procedure, the procurement agent shall, where/when possible, also inform associated countries and Ukraine of the planned procedure and provide them with the opportunity to submit a substantiated request to the procurement agent to purchase additional quantities of defence products for them. If such a request is submitted, the common procurement contract shall reserve the right of

participating contracting authorities to purchase additional quantities of defence products for associated countries and Ukraine.

Article 13

▌Industrial reinforcement actions

▌

1. ***Industrial reinforcement*** actions shall ***consist of activities*** related to ***accelerating the adjustment to structural changes of*** the production ***capacity*** of defence products, including their components and ***corresponding*** raw materials insofar as they are intended or used wholly for the production of defence products***, in particular:***

(a) the optimisation, expansion, modernisation***, including automation***, upgrading or repurposing of existing, or the establishment of new, production ***capacity*** of defence products, ***components and corresponding raw materials***, including on the basis of the procurement or acquisition of the requisite machine tools and any other necessary input;

(b) the establishment of cross-border industrial partnerships, including through public private partnerships or other forms of industrial cooperation ***including SMEs and small mid-caps***, in a joint industrial effort, including activities that aim to coordinate the sourcing or reservation and stockpiling of defence products, components and corresponding raw materials ▌, as well as to coordinate production capacities and production plans;

(c) the building-up and making available of reserved surge manufacturing capacities (*'*ever warm facilities*'*) of defence products, their components and corresponding raw materials, ▌ in accordance with ordered or planned production volumes;

(d) ***fostering industrialisation and commercialisation of defence products that have been developed in the framework of actions funded by the Union or other cooperative activities conducted with support by at least two Member States including through the establishment of cross-border industrial partnerships, public private partnerships or other forms of industrial cooperation, ramping-up of initial production as well as licensing production, where appropriate;***

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(e) the testing, including the necessary infrastructure, and, as appropriate, reconditioning certification of defence products with a view to addressing their obsolescence and making them useable by end users.

1b. For activities referred to in ▌ paragraph ***1***, point (d) ▌ , the action shall be carried out by legal entities cooperating within a consortium of at least three eligible legal entities ***of*** which ***at least two shall be*** established in ▌ different Member States ▌ . At least three of those eligible legal entities established in at least two different Member States ▌ shall not, during the entire period in which the action is carried out, be controlled, directly or indirectly, by the same legal entity and shall not control each other.

▌

1c. The activities referred to in paragraph 1 may be carried out by a SEAP.

▌

2a. For the production of ammunition and missiles, recipients of Union funding or relevant governmental authorities from the Member States concerned shall have the ability to decide, without restrictions imposed by non-associated third countries or by non-associated third country entities, on the definition, adaptation and evolution of the design of the defence product concerned, including the legal authority to substitute or remove components that are subject to restrictions imposed by non-associated third countries or by non-associated third country entities, or alternatively, by way of derogation from article 11(8b), shall have obtained a legally binding commitment from the non-associated third country or the non-associated third country entity concerned that they will obtain such ability to decide within a reasonable timeframe commensurate with the complexity of the action concerned and no later than 31 December 2033.

▌

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Article 13a

Supporting actions

1. Supporting ▌ actions ***shall consist of***:

(a) activities ▌ to increase interoperability and interchangeability, including the cross certification of defence products and activities leading to mutual recognition of certification or to facilitate the implementation of military standards***, in particular NATO standards and other relevant standards, thus reducing any excessive differentiation of defence products across the Union.***;

(b) activities to ***facilitate*** access to the defence market for SMEs, ▌ mid-caps and start-ups and support to obtain the necessary quality and production certifications;

(c) the ***capacity building,*** training, reskilling or upskilling of personnel in relation to the activities referred to in ▌ Article ***11(1)***;

(d) the procurement of physical and cyber protection systems in relation to the activities referred to in ***Article 13***;

(e) coordination and ▌ technical ▌ support actions, in particular addressing identified bottlenecks in production capacities and supply chains with a view to securing and accelerating the production of crisis-relevant products in order to ensure their effective supply and timely availability;

(ea) the establishment of a catalogue of defence products as referred to Chapter IIc;

(f) ▌ support ***for the establishment and functioning of*** Structures for European Armament Programme***, including*** for the purpose of managing and maintaining ▌ defence industrial readiness ***pools*** as referred to in Article ***13b***;

(g) ▌ activities ***with the aim of the rapid adaptation and modification of civilian products for*** defence ***applications;***

(g-a) defence innovation actions, including emergency defence innovation actions where the measure referred to in Article 52 is activated.

▌

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2. For activities referred to in paragraph 1, point (a), the action shall be carried out by legal entities cooperating within a consortium of at least three eligible legal entities, of which at least two shall be established in at least two different Member States. At least three of those eligible legal entities shall not, during the entire period in which the action is carried out, be controlled, directly or indirectly, by the same legal entity and shall not control each other.

2a. The activities referred to in paragraph 1 may be carried out by a SEAP.

▌

*Article **19a***

Award criteria

-1. Proposals for actions shall be assessed in the light of the objectives set for the relevant action, the expected results and the quality and efficiency of the implementation. In particular the evaluation shall include one or more of the following criteria: contribution to competitiveness; contribution to resilience and geographical distribution of manufacturing capacities; increase in production capacities; increase in interoperability; increase in interchangeability; and contribution to reducing strategic dependencies.

▌

1a. In addition to the criteria set out in paragraph 1 of this Article, proposals for common procurement actions referred to in Article 12 shall be evaluated based on the following criteria:

(a) the number of participating Member States or associated countries;

(b) the action's contribution to the adaptation, modernisation and development of the EDTIB throughout the Union; and

(c) the participation of SMEs and mid-caps;

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1b. ***In addition to the criteria set out in paragraph 1 of this Article, proposals for industrial reinforcement actions referred to in Article 13 shall be evaluated based on the following criteria:***

(a) ***the reduction of lead production time, and the increase in production capacity in the Union, in reserved capacity and in workforce skilled;***

(b) ***the contribution to ensuring availability and security of supply throughout the Union in response to identified risks, including in particular high exposure to the risk of materialisation of conventional military threats; and***

(c) ***the contribution to cross-border defence industrial cooperation throughout the Union, improving the inclusion of SMEs and mid-caps, or the link with orders stemming from the common procurement of defence products by at least three Member States or associated countries.***

4. The work programme shall lay down further details concerning the application of the criteria ***set out*** in paragraph 1, including any weighting to be applied. The work programme shall not set individual thresholds.

5. ***The evaluation committee may be assisted by independent external experts in accordance with Article 153(3) of the Financial Regulation. These experts may be required in the work programme to hold a valid personal security clearance.***

Article ***19c***

Union financial contribution

1. ***For actions referred to in Article 13a and Article 15 of this Regulation, and*** by way of derogation from Article ***193(1)*** of the ***Financial*** Regulation***, where the Union financial contribution takes the form of grants***, the Programme may finance up to 100 % of the eligible costs.

1a. ***Grants may take the form of financing not linked to costs, pursuant to Article 183(3) of the Financial Regulation.***

2. Where the Union grant takes the form of financing not linked to costs, the level of the Union contribution attributed to each action may be defined on the basis of factors such as:

(a) the degree of complexity of the common procurement, for which a proportion of the estimated value of the common procurement contract and the experience gained in similar actions may serve as an initial proxy;

(b) the contribution of the action to improving interoperability outcomes;

(c) the characteristics of the action which are likely to give rise to greater long-term investment signals to industry, in particular where the common procurement covers activities that would be eligible for funding from the Union budget, e.g. research and development, testing and certification, initial production or in-service support activities ;

(d) the number of participating Member States and associated countries or the inclusion of additional Member States or associated countries in existing cooperations;

(e) the contribution of the action to the ramp-up of necessary manufacturing capacities;

(ea) the contribution to the reduction of dependencies on non-associated countries;

(f) the contribution of the action to enhancing cooperation between Member States or associated countries for the purpose of establishing or maintaining a defence industrial readiness pool as referred in Article 13b.

(g) the contribution of the action to enhancing cooperation between Member States or associated countries resulting in the common procurement of additional quantities of defence products for Ukraine or Moldova.

(h) the complexity of the technological solutions necessary for the integration of the defence product procured within the armed forces of a participating Member State.

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3. Actions referred to in Article 12 shall be funded by way of grants in the form of financing not linked to costs, pursuant to Article 183(3) of the Financial Regulation.

4. The Union financial contribution to each action referred to in Article 12 shall not exceed 15 % of the estimated value of the common procurement contract concerned.

5. By way of derogation from paragraph 4, the Union financial contribution to each action referred to in Article 12 may be up to 25 % of the estimated value of the common procurement contract concerned, provided that at least one of the following conditions is met:

(a) the action is carried out by a Structure for European Armament Programme (SEAP), as referred to in Chapter III of this Regulation.

(b) the action supports the common procurement of restriction-free end products;

(c) the action results in the common procurement of additional quantities of defence products for Ukraine or Moldova;

(d) the action ensures a wide distribution of suppliers across Member States whereby more than 20 % of the total value of the end product is made by suppliers established in at least one Member State other than the Member State in which the prime contractor is established;

(e) the defence investment expenditure of the majority of Member States participating in the common procurement action concerned exceeded 30 % of their respective defence spending in the financial year preceding the application.

6. For actions referred to in Article 13, the Union financial contribution shall not exceed 35 % of the eligible costs.

7. By way of derogation from paragraph 6 of this Article, the Union financial contribution to each action referred to in Article 13 may be up to 50% of the eligible costs where the majority of beneficiaries are SMEs or mid-caps established in Member States or in associated countries or where the action is carried out by a SEAP, and where at least one of the following conditions is met:

▌

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(b) the beneficiary demonstrates a contribution to the creation of new cross-border cooperation between entities established in Member States or associated countries;

(ba) the action involves building new infrastructure, facilities or production lines from the ground up or on sites not previously used for such activities, contributing to the development of supply chains and technology transfer throughout the Union;

(c) the action contributes to the establishment of new, or the ramping-up of existing, manufacturing capacities of crisis-relevant products.

8. The work programme shall lay down further details ▌ .

▌

*Article **19d***

Work programmes

1. The Programme shall be implemented by work programmes as referred to in Article 110 of the ***Financial*** Regulation***. Work programmes may be multiannual, when appropriate***. Work programmes shall set out the actions and associated budget required to meet the objectives of the Programme and, where applicable, the overall amount reserved for blending operations.

▌

2. The Commission shall adopt work programmes by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(3).

▌

2d. The Commission shall take into account the coherence between different relevant instruments.

3. The work programmes shall include in particular:

(a) the overall amount of the Union contribution to each type of action referred to in Article 11(1) and a detailed description of each type of action;

(b) with respect to actions referred to in Articles 12 and 13, the minimum financial size of the actions;

(c) with respect to actions referred to in Article 13, the maximum number of legal entities forming part of the consortium, which shall not exceed 15 legal entities;

(d) the procedure for the evaluation and selection of proposals, including, where relevant, a description of the milestones, designed in such a way as to mark substantial progress in the implementation of actions, the results to be achieved and the associated amounts to be disbursed, as well as the arrangements for the verification of the milestones, the fulfilment of conditions and the achievement of results;

(da) the overall amount of the Union contribution to joint procurement with the support of the Commission as referred to in Articles 19-a(1)(a) and (1a), 19-b and 19-c; and

(e) the methods for determining and, where applicable, adjusting the funding.

9. The financial envelope referred to in Article 2a(1) may cover joint procurements as referred to in Article 19-a(1), point (a), which shall not exceed the parts of the contract on non-recurrent costs, including the reservation of manufacturing capacities.

Article 19

Fund to Accelerate defence Supply chains Transformation (FAST)

1. In order to leverage, de-risk and ***accelerate*** investments needed to increase the defence manufacturing capacities of SMEs and small mid-caps ***complying with criteria equivalent to those set out in Article 10(2) and, where relevant, (3) and (3a)***, a blending operation offering debt ***support,*** equity support ***or both*** may be established***, entitled '***Fund to Accelerate defence Supply-chains' Transformation***'*** (FAST). It shall be implemented in accordance with Title X of the ***Financial*** Regulation ▌ and ***with*** Regulation (EU) 2021/523 ▌ .

▌

2. The specific objectives pursued by the FAST shall be the following:

(a) ***to*** achieve a satisfactory multiplier effect ***that is*** in line with the debt and equity mix and ***which contributes*** to attracting both public and private-sector financing;

(b) provide support to SMEs (including start-ups and scale-ups) and small midcaps across the Union, which are facing difficulties in accessing finance and which:

(i) ***are in the stage of industrialisation or manufacturing of*** defence products or ***which*** have imminent plans to ***do*** so; or

(ii) are part of the ***Union's*** defence ▌ supply chain or have imminent plans to become part it.

(c) ***to*** accelerate investment in the ***fields*** of manufacturing defence ***products and developing defence*** technologies ▌ , and therefore strengthen the security of supply of the Union's defence industry value chains.

SECTION 2B

PROCUREMENT

Article 19-a

Procurement with support by the Commission

1. In accordance with Article 168 of the Financial Regulation, Member States may request the Commission:

(a) to engage in a joint procurement with them as referred to in Article 168(2) of the Financial Regulation whereby Member States may acquire, rent or lease fully the defence products jointly procured;

(b) to act as a central purchasing body to procure on behalf of, or in the name of, the interested Member States defence products, as referred to in Article 168(3) of the Financial Regulation.

1-a. When requesting the Commission to act in accordance with paragraph 1 of this Article, Member States' contracting authorities shall be deemed to have complied with the requirements laid down in Directive 2009/81/EC.

1a. By derogation from Article 168(2), second subparagraph, of the Financial Regulation, an associated country may request the Commission to engage in joint procurement as referred to in paragraph 1, point (a), of this Article. The other conditions set out in Article 168(2) of the Financial Regulation shall apply to such joint procurements.

1aa. By derogation from Article 168(3) of the Financial Regulation, an associated country together with at least one Member State may also request the Commission to act as central purchasing body as referred to in paragraph 1, point (b). Conditions equivalent to those set out in Article 168(3) of the Financial Regulation shall apply where the Commission acts as a central purchasing body.

2. In addition to the conditions set out in the Financial Regulation, the procurement procedure referred to in paragraphs 1, 1a and 1aa of this Article shall comply with the following conditions:

(a) participation in the procurement procedure is open to all Member States and, by way of derogation from Article 168(2) and (3) of the Financial Regulation, may be open to associated countries;

(b) the Commission invites at least one expert with experience relevant to the negotiations from each participating country to form a joint negotiation team;

(c) participating countries explicitly state whether they decide to run parallel negotiation processes for the product concerned, with that decision being subject to unanimous approval by participating countries.

3. Where the Commission acts as a central purchasing body pursuant to paragraph 1, point (b), and paragraph 1aa, it may procure, on behalf of, or in the name of, Member States or associated countries, components and raw materials necessary for the supply of defence products for the purpose of building strategic reserves by participating countries, including stockpiling.

3a. Where duly justified by the extreme urgency of the situation, the Commission may, by way of derogation from Article 175(1) of the Financial Regulation, request the delivery of products from the date on which the draft contracts resulting from the procurement carried out for the purposes of this Regulation are sent.

4. In order to enter into purchase agreements with economic operators, representatives of the Commission, or experts nominated by the Commission, may carry out on-site visits in cooperation with relevant national authorities at the locations of production facilities of relevant defence products.

5. This Article shall be without prejudice to existing Union and national rules governing the ownership, export and transfer of defence products.

6. The Commission shall ensure that participating countries are treated equally when carrying out the procurement procedures and when implementing the resulting agreements.

8. In addition to the conditions set out in the Financial Regulation, criteria equivalent to those laid down in Article 10(2), (3) and (3a) of this Regulation shall apply to tenderers, contractors and subcontractors in contracts resulting from procurement conducted pursuant to this Article.

9. For procurements conducted pursuant to paragraphs 1(a) and 1a, the rules as set out in Article 11(8a) and 11(8b) shall apply.

Article 19-b

Advance purchase of defence products

1. Joint procurement referred to in Article 19-a(1)(a) may take the form of advance purchasing agreements of defence products, negotiated and concluded in the name or on behalf of participating countries. Such agreements may include a prepayment mechanism for the production of such products in exchange for the right to the result, which shall not exceed the parts of the contract on non-recurrent costs, including the reservation of manufacturing capacities.

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2. Where the agreements referred to in paragraph 1 of this Article include a prepayment mechanism, the up-front payment to the contractor may be covered by the financial envelope referred to in Article 2a(1). Contributions of participating countries as referred to in Article 6 shall be taken into account in equal terms per item ordered by the participating countries.

3. In cases where the negotiated amounts exceed demand, the Commission, at the request of the participating countries concerned, shall establish a mechanism for reallocation to national stockpiles or building up the defence industrial readiness pool as referred to in Article 13b(1).

Article 19-c

Facilitating off-take agreements

1. The Commission shall set up a system to facilitate the conclusion of off-take agreements related to the industrial ramp-up of the EDTIB's manufacturing capacities, between Member States and, where relevant, associated countries on the one hand, and economic operators of the EDITB on the other, in compliance with the Union's competition and procurement rules. The Commission shall ensure that access by a non-associated third country or by a non-associated third-country entity to classified or sensitive information relating to the action is prevented and that the employees or other persons involved in the action have national security clearance issued by a Member State or an associated country.

2. The system referred to in paragraph 1 shall allow interested Member States and associated countries to make bids indicating:

(a) the volume and quality of defence products they intend to purchase;

(b) the intended price or price range;

(c) the intended duration of the off-take agreement.

3. The system referred to in paragraph 1 of this Article shall allow manufacturers of defence products which comply with criteria equivalent to those laid out in Article 10(2), (3) and (3a) to make offers indicating:

(a) the volume and quality of defence products for which they are seeking to conclude off-take agreements;

(b) the intended price or price range at which they are willing to sell;

(ba) the estimated delivery lead time of defence products within the framework of the off-take agreement;

(c) the intended duration of the off-take agreement.

4. Based on the bids and offers received pursuant to paragraphs 2 and 3, the Commission shall put relevant manufacturers of defence products in contact with interested Member States and associated countries.

5. Further to the contact referred to in paragraph 4, interested countries may request the Commission to engage in a joint procurement procedure or in a procurement procedure in their name, or on their behalf, pursuant to Article 19-a.

6. The financial envelope referred to in Article 2a(1) may cover the parts of the contract on non-recurrent costs, including the reservation of manufacturing capacities.

SECTION 2C

AWARD CRITERIA AND WORK PROGRAMMES

Article 19b

Selection and award procedure

Except for actions referred to in Article 12, Article 13a(1), point (f), and Article 15, the Commission shall award the funding under this Chapter by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(3).

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Chapter IIa

The Ukraine Support Instrument

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SECTION *1*

GENERAL PROVISIONS APPLICABLE TO THE UKRAINE SUPPORT INSTRUMENT

Article 19e

Objectives

1. The Ukraine Support Instrument shall contribute to the recovery, reconstruction and modernisation of the Ukrainian DTIB with a view to increasing its defence industrial readiness, taking into account its possible future integration into the EDTIB, through cooperation between the Union and Ukraine, thereby enhancing mutual stability, security, peace, prosperity, resilience and sustainability.

2. The objective set out in paragraph 1 shall be pursued with an emphasis on enhancing cross-border cooperation between the EDTIB and the Ukrainian DTIB, taking into account the defence industrial reinforcement and defence procurement needs of Ukraine, through the creation of manufacturing capacities or their ramp-up in line with NATO standards and other relevant standards, protection of assets, technical assistance and exchange of personnel, and increased cooperation on common procurement of defence products involving Ukraine and the Ukrainian DTIB, including their maintenance, and licensing production cooperation through public-private partnerships or other forms of cooperation, such as joint ventures. Special attention shall be given to the objective of supporting Ukraine to progressively align with Union rules, standards, policies and practices with a view to future Union membership.

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Article 19g

Additional financial resources

1. Member States, Union institutions, bodies and agencies, third countries, international organisations, international financial institutions or other third parties may provide additional financial contributions to the Ukraine Support Instrument in accordance with Article 208(2) of the Financial Regulation. Such financial contributions shall constitute external assigned revenue within the meaning of Article 21(2), points (a), (d), or (e), or Article 21(5) of the Financial Regulation.

1a. Any additional amounts received under international agreements concluded pursuant to Article 17 of the SAFE Regulation shall constitute external assigned revenue within the meaning of Article 21(5) of the Financial Regulation and shall be used for the Ukraine Support Instrument in accordance with the rules of this Regulation.

2. Any additional amounts received under relevant Union restrictive measures shall be external assigned revenue within the meaning of Article 21(5) of the Financial Regulation and shall be used for actions reinforcing the Ukrainian DTIB.

3. Resources allocated to Member States under shared management may, at the request of the Member State concerned, be transferred to the Ukraine Support Instrument subject to the conditions set out in Regulation (EU) 2021/1060. The Commission shall implement those resources directly in accordance with Article 62(1), first subparagraph, point (a), of the Financial Regulation or indirectly in accordance with point (c) of that subparagraph. Those resources shall be used for the benefit of the Member State concerned.

3a. As regards the amounts contributed in accordance with paragraph 1 of this Article, the Member States concerned may take decisions regarding the proportion of those amounts to be made available to all entities eligible for funding under this Regulation, to be made available only to the benefit of the Member States concerned, or to be made available to the additional benefit of other Member States or Ukraine.

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4. Where the Commission has not entered into a legal commitment under direct or indirect management for resources transferred in accordance with paragraph 3 and at the latest by 31 December 2028, the corresponding uncommitted resources may be transferred back to one or more respective source programmes, at the request of the Member State concerned, in accordance with the conditions set out in Regulation (EU) 2021/1060.

Article 19h

Alternative, combined and cumulative funding

1. The Ukraine Support Instrument shall be implemented in synergy with other Union programmes. An action that has received a contribution from another Union programme may also receive a contribution under the Ukraine Support Instrument, provided that the contribution does not cover the same costs. The rules of the relevant Union programme shall apply to the corresponding contribution, or a single set of rules of any of the contributing Union programmes may be applied to all contributions and a single legal commitment may be concluded. The cumulative support from the Union budget shall not exceed the total eligible costs of the action and may be calculated on a pro-rata basis in accordance with the documents setting out the conditions for support.

2. In order to be awarded a Seal of Excellence under the Ukraine Support Instrument, actions shall meet all of the following conditions:

(a) have been assessed in a call for proposals under the Ukraine Support Instrument;

(b) they comply with the minimum quality requirements of that call for proposals under the Ukraine Support Instrument;

(c) they are not financed under that call for proposals due to budgetary constraints.

3. In accordance with the relevant provisions of Regulation (EU) 2021/1060, the ERDF or ESF+ may support proposals submitted further to a call for proposals under the Ukraine Support Instrument which were awarded a Seal of Excellence.

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*Article **19i***

Implementation and forms of Union funding

1. ▌The Ukraine Support Instrument ***shall be implemented under direct management in accordance with the Financial Regulation or under indirect management with bodies referred to in*** Article ***62(1), point (c), of the Financial Regulation***.

2. ***Without prejudice to*** Article ***21d(3) of this Regulation, Union funding may be provided in any*** of the ***forms laid down in the Financial Regulation in accordance with its Title X, with the exception of blending operations under the InvestEU programme.”***

3. ***With respect to activities referred to in Article 13(1), point (d), of this Regulation for which Union funding is provided in the form of a grant under the Ukraine Support Instrument and a profit is made, the Commission may recover the percentage of the profit corresponding to the Union contribution to the eligible costs actually incurred by the beneficiary carrying out the action, up to the final amount of the Union contribution. By way of derogation from Article 195(2) of the Financial Regulation, the profit is calculated by a surplus of receipts over the eligible costs of the action, where receipts are limited to Union funding, Member State funding, including procurement, other revenue generated during the action and any revenue resulting from the action. The work programme may set out further details.***

4. ***Financial contributions may, where relevant and necessary for the implementation of an action, cover actions started and costs incurred prior to the date of the submission of the proposal for those actions, provided that those actions did not start before 5 March 2024 and have not been completed before the signature of the grant agreement. Such financial contributions*** shall ***be awarded on the condition that they comply with the criteria set out in Article 196(2) of the Financial Regulation***.

Article 21

Eligible legal entities

-1. Recipients of Union funding shall be legal entities.

1. The eligibility criteria set out in paragraphs 2 to 7 ***of this Article*** shall apply in addition to the criteria set out in accordance with ***the Financial*** Regulation ▌.

2. Recipients of Union funding shall be established ***and have their executive management structures*** in the Union or ▌ Ukraine. ***Legal entities established in the non-government controlled areas of Ukraine shall not be eligible for support under this Regulation.***

3. The infrastructure, facilities, assets ***or*** resources of the recipients ***of Union funding involved in an*** action shall be located on the territory of a Member State or of Ukraine ***for the entire duration*** of the ***action***.

3a. By way of derogation from paragraph 3 of this Article, where recipients of Union funding involved in an action have no readily available alternatives or relevant infrastructure, facilities, assets and resources in the Union or in Ukraine, they may use their infrastructure, facilities, assets and resources which are located or held outside the territory of the Member States or in a third country other than Ukraine, provided that such use does not contravene the security and defence interests of the Union or its Member States, including respect for the principle of good neighbourly relations, and is consistent with the objectives set out in Article 19e. The costs related to activities using such infrastructures, facilities, assets or resources shall not be eligible for support from the Ukraine Support Instrument.

4. For the purposes of an action supported by the Ukraine Support Instrument, the recipients ***of Union funding*** shall not be subject to control by a ***non-associated*** third country ***other than Ukraine*** or by ***another*** third-country entity.

5. By ▌ derogation from paragraph 4 ***of this Article***, a legal entity established in the Union and controlled by a ***non-associated*** third country ***other than Ukraine or by another third country*** entity shall be eligible to be a recipient ***of Union funding*** if guarantees approved ***in accordance with the national procedures of a*** Member State in which it is established***, such as adequate measures pursuant to screenings, as set out in Article 2, point (3), of Regulation (EU) 2019/452,*** are made available to the Commission.

The guarantees ***referred to in the first subparagraph of this paragraph*** shall provide assurances that the involvement in an action of ▌ a legal entity ***as referred to in that subparagraph*** would 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, including respect for the principle of good neighbourly relations***, or the objectives

set out in Article ***19e of this Regulation. Those*** guarantees shall in particular substantiate that, for the purposes of an action, measures are in place to ensure that:

(a) control over the legal entity is not exercised in a manner that restrains or restricts its ability to carry out the action and to deliver results, that imposes restrictions concerning its infrastructure, facilities, assets, resources, intellectual property or ***know-how*** needed for the purposes of the action, or that undermines its capabilities and standards necessary to carry out the action;

(b) access by a ***non-associated*** third country ***other than Ukraine*** or by ***another*** third-country entity to ***classified or*** sensitive information relating to the action is prevented and the employees or other persons involved in the action have national security clearance issued by a Member State, ***an associated country or Ukraine,*** where appropriate***, in accordance with national laws and regulations***;

(c) the ownership of intellectual property arising from actions referred to in Article 21a(1), point (b), relating to industrial reinforcement actions fostering industrialisation and commercialisation of defence products that have been developed in the framework of actions funded by the Union or other cooperative activities conducted with support of Member States, is not subject to restriction by a non-associated third country other than Ukraine or a non-associated by another third-country entity other than Ukraine nor transferred to entities established outside the territory of the Member States, or of associated countries or Ukraine, without the approval of the Member State or the, associated country or Ukraine in which the legal entity is established. Such approval shall not contravene the objectives set out in Article 19e.

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

The Commission shall inform the committee referred to in Article ***58*** of any legal entity considered to be eligible ***to be a recipient of Union funding*** in accordance with this paragraph.

The guarantees referred to in paragraph 5 may be based on a standardised template provided by the Commission, assisted by the committee referred to in Article 58, in order to ensure a harmonised approach throughout the Union.

6. When carrying out an eligible action, recipients may also cooperate with legal entities established outside the territory of the Member States or of Ukraine, or controlled by a ***non-associated*** third country ***other than Ukraine*** or by ***another*** third-country entity, including by using the assets, infrastructure, facilities and resources of such legal entities, provided that this does not contravene the security and defence interests of the Union ***or*** its Member States***, including respect for the principle of good neighbourly relations, or*** the objectives set out in Article ***19e***.

There shall be no unauthorised access by a ***non-associated*** third country [redacted] other ***than Ukraine or another*** third-country entity to classified information relating to the ***carrying-out*** of the action***,*** and potential negative effects ***on*** security of supply of inputs critical to the action shall be avoided.

The costs related to those activities shall not be eligible for support from the ***Ukraine Support Instrument***.

7. Paragraphs ***4 to 5*** shall not apply to:

(a) contracting authorities of Member States and Ukraine;

(b) international organisations;

(c) ***SEAPs***;

(d) the ***EDA***.

SECTION 2
ELIGIBLE ACTIONS

Article 21a
Eligible actions

1. Actions eligible for funding under the Ukraine Support Instrument shall implement the objectives set out in Article 19e and may take one of the following forms, or a combination thereof:

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(a) common procurement actions as referred to in Article 12, including for the establishment and maintenance of defence industrial readiness pools as referred to in Article 13b;

(b) industrial reinforcement actions referred to in Article 13;

(c) supporting actions as referred to in Article 13a.

2. The following actions shall not be eligible for funding under the Ukraine Support Instrument:

(a) actions related to defence products which are prohibited by applicable international law;

(b) actions related to lethal autonomous systems that operate outside a responsible chain of human command and control or that cannot be used in compliance with international humanitarian law;

(ba) actions related to cluster munitions;

[redacted]

(f) actions or parts thereof, that are already fully financed from other public or private sources.

[redacted]

2a. For procurements carried out pursuant to Article 21a(1)(a) and (c) which are supported by Union funding, the cost of components originating outside the Union and Ukraine shall not be higher than 35 % of the estimated cost of the components of the end product. No component shall be sourced from third countries that contravene the security and defence interests of the Union and its Member States.

2aa. For actions carried out pursuant to Article 21a(1)(b), the cost of components originating outside the Union and Ukraine shall not be higher than 35 % of the estimated cost of the components of the product the increase in production capacity of which is supported by Union funding. No component of the product the increase in production capacity of which is supported by Union funding shall be sourced from third countries that contravene the security and defence interests of the Union and its Member States.

2b. Recipients of Union funding or, where relevant, contractors shall have the ability to decide, without restrictions imposed by non-associated third countries other than Ukraine or by another third country entities, on the definition, adaptation and evolution of the design of the defence products, including the legal authority to substitute or remove components that are subject to restrictions imposed by non-associated third countries other than Ukraine or by another third country entities.

3. Without prejudice to Article 5 of Directive 2009/43/EC, Member States may publish general transfer licences for transfer to other Member States of products related to actions supported by the Ukraine Support Instrument.

4. Actions eligible for funding under the Ukraine Support Instrument shall be carried out by, or with the involvement of, at a minimum, Ukraine or one legal entity established and having its executive management structure in Ukraine.

5. For the purposes of this Chapter, references to Member States in Articles 12, 13, 13a and 13b shall be understood to include Ukraine. References to associated countries in Articles 12, 13, 13a and 13b shall not apply to this Chapter. For the purposes of this Chapter, references to Article 10 contained in Article 12 shall be understood to refer to Article 21 and references to Article 11(8b) contained in Article 13 shall be understood to refer to Article 21a(2b).

SECTION 3

PROCUREMENT

Article 21aa

Procurement with support by the Commission

1. By derogation from Article 168(2), second subparagraph, of the Financial Regulation, Ukraine may request, together with at least one Member State, the Commission to engage in joint procurement as referred to in Article 168(2) of the Financial Regulation. The other conditions set out in Article 168(2) of the Financial Regulation shall apply to such joint procurement.

1-a. By derogation from Article 168(3) of the Financial Regulation, Ukraine may also request, together with at least one Member State, Ukraine may also request the Commission to act as a central purchasing body as referred to in Article 168(3) of the Financial Regulation. Conditions equivalent to those set out in Article 168(3) of the Financial Regulation shall apply wherever the Commission acts as a central purchasing body.

1a. When requesting the Commission to act in accordance with paragraph 1 of this Article, Member States' contracting authorities shall be deemed to have complied with the requirements laid down in Directive 2009/81/EC.

2. In addition to the conditions set out in the Financial Regulation, the procurement procedure referred to in paragraphs 1 and 1-a of this Article shall comply with the following conditions:

(a) participation in the procurement procedure is open to all Member States;

(b) the Commission invites at least one expert with experience relevant to the negotiations from each participating country to form a joint negotiation team;

(c) participating countries explicitly state whether they decide to run parallel negotiation processes for the product concerned, with that decision to run parallel negotiation processes for that product shall being subject to unanimous approval by participating countries.

3. Where the Commission acts as a central purchasing body pursuant to paragraph 1-a, it may, as part of the procurement, procure components and raw materials necessary for the supply of defence products for the purpose of building strategic reserves by participating countries, including stockpiling.

3a. Where duly justified by the extreme urgency of the situation, the Commission may, by way of derogation from Article 175(1) of the Financial Regulation, request the delivery of products from the date on which the draft contracts resulting from the procurement carried out for the purposes of this Regulation are sent.

4. In order to enter into purchase agreements with economic operators, representatives of the Commission, or experts nominated by the Commission, may carry out on-site visits in

cooperation with relevant national authorities at the locations of production facilities of relevant defence products.

5. This Article shall be without prejudice to existing Union and national rules governing the ownership, export and transfer of defence products.

6. The Commission shall ensure that participating countries are treated equally when carrying out the procurement procedures and when implementing the resulting agreements.

7. In addition to the conditions set out in the Financial Regulation, criteria equivalent to those laid down in Article 21(2), (3) and (3a) of this Regulation shall apply to tenderers, contractors and subcontractors in contracts resulting from the procurement conducted pursuant to this Article.

8. For procurements conducted pursuant to paragraph (1), the rules as set out in Article 21a(2a) and (2b) shall apply.

Article 21ab

Advance purchase of defence products

1. Joint procurement referred to in Article 21aa may take the form of advance purchasing agreements of defence products, negotiated and concluded in the name of, or on behalf of, participating countries. Such agreements may include a prepayment mechanism for the production of such products in exchange for the right to the result, which shall not exceed the parts of the contract on non-recurrent costs, including the reservation of manufacturing capacities.

2. Where the agreements referred to in paragraph 1 of this Article include a prepayment mechanism, the up-front payment to the contractor may be covered by the financial envelope referred to in Article 2a(1-b). Contributions of participating countries as referred to in Article 19g shall be taken into account in equal terms per item ordered by the participating countries.

PUBLIC

3. In cases where the negotiated amounts exceed demand, the Commission, at the request of the participating countries concerned, shall establish a mechanism for reallocation to national stockpiles or building up the defence industrial readiness pool as referred to in Article 13b.

Article 21ac

Facilitating off-take agreements

1. The Commission shall set up a system to facilitate the conclusion of off-take agreements related to the industrial ramp-up of the Ukrainian DTIB's manufacturing capacities, between Member States and Ukraine on the one hand and economic operators of the Ukrainian DITB on the other, in compliance with the Union's competition and procurement rules. The Commission shall ensure that access by a non-associated third country other than Ukraine or by another third-country entity to classified or sensitive information relating to the action is prevented and that the employees or other persons involved in the action have national security clearance issued by a Member State, an associated country or Ukraine.

2. The system referred to in paragraph 1 shall allow interested Member States and Ukraine to make bids indicating:

(a) the volume and quality of defence products they intend to purchase;

(b) the intended price or price range;

(c) the intended duration of the off-take agreement.

3. The system referred to in paragraph 1 of this Article shall allow manufacturers of defence products which comply with criteria equivalent to those laid out in Article 21(2), (3) and (3a) to make offers indicating:

(a) the volume and quality of defence products for which they are seeking to conclude off-take agreements;

(b) the intended price or price range at which they are willing to sell;

(ba) the estimated delivery lead time of defence products within the framework of the off-take agreement;

(d) the intended duration of the off-take agreement.

4. Based on the bids and offers received pursuant to paragraphs 2 and 3, the Commission shall put relevant manufacturers of defence products in contact with interested Member States and Ukraine.

5. Further to the contact referred to in paragraph 4 of this Article, Ukraine and interested Member States may request the Commission to engage in a joint procurement procedure or in a procurement procedure in their name, or on their behalf, pursuant to Article 21aa.

6. The financial envelope referred to in Article 2a(1-b) may cover the parts of the contract on non-recurrent costs, including the reservation of manufacturing capacities.

SECTION 4

AWARD CRITERIA AND WORK PROGRAMMES

Article 21e

Award criteria

1. Proposals for actions shall be assessed in the light of the objectives set for the relevant actions, as referred to in Article 19e, the expected results and the quality and efficiency of the implementation.

2. In addition to the criteria set out in paragraph 1 of this Article, proposals for common procurement actions referred to in Article 12 may be evaluated based on one or more of the following criteria:

(a) the estimated value of the common procurement;

(b) the action's contribution to recovery, reconstruction and modernisation of the Ukrainian DTIB;

(c) the action's contribution to the acceleration of the procurement and the reduction of the production and delivery lead times of defence products.

3. In addition to the criteria set out in paragraph 1 of this Article, proposals for industrial reinforcement actions referred to in Article 13 may be evaluated based on one or more of the following criteria:

(a) the reduction of production lead time and the increase in production capacity in Ukraine;

(b) the contribution to ensuring timely availability and supply of defence products throughout Ukraine;

(c) the contribution to cross-border defence industrial cooperation between Ukraine and the Union.

▌

5. The work programme shall lay down further details concerning the application of the award criteria, including any weighting to be applied. The work programme shall not set individual thresholds.

6. The evaluation committee may be assisted by independent external experts in accordance with Article 153(3) of the Financial Regulation. These experts may be required in the work programme to hold a valid personal security clearance.

Article 21c

Selection and award procedure

Except for actions referred to in Articles 12 and Article 13a(1), point (f), the Commission shall award the funding under this Chapter by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(3).

Article 21d

Union financial contribution

1. Where the Union contribution takes the form of grants, pursuant to Article 193(3) of the Financial Regulation, the Ukraine Support Instrument may finance up to 100 % of the eligible costs for actions referred to in Article 21a(1), points (b) and (c), of this Regulation.

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2. Where the Union grant takes the form of financing not linked to costs, the level of Union contribution to each action may be based on factors such as:

(a) the degree of complexity of the common procurement, for which a proportion of the estimated value of the action and the experience gained in similar actions may serve as an initial proxy;

(b) the contribution of the action to improving interoperability outcomes;

(ba) the characteristics of the action which are likely to give rise to greater long-term investment signals to industry;

(d) the contribution of the action to the ramp-up of necessary manufacturing capacities in Ukraine;

(e) the degree of complexity for Ukraine to progress with the process towards accession to the Union, including structural reforms and measures to promote convergence with Union rules, standards, policies and practices;

(f) the degree of complexity for Ukraine to adapt its defence procurement processes and the environment of the Ukrainian defence industry, including to meet NATO standards and other relevant standards;

(h) the hardship and risks associated with Russia´s war of aggression against Ukraine, taking into account the need to rebuild and modernise infrastructure damaged by that war in a resilient way and the need to avoid, prevent or reduce and, if possible, offset such damages.

3. Actions referred to in Article 21a(1), point (a), of this Regulation shall be funded by way of grants taking the form of financing not linked to costs, pursuant to Article 183(3) of the Financial Regulation.

5. For actions referred to in Article 21a(1), point (a), the support from the Ukraine Support Instrument shall not exceed 25 % of the estimated value of the common procurement contract concerned.

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Article 21e

Work programmes

1. The Ukraine Support Instrument shall be implemented by work programmes as referred to in Article 110 of the Financial Regulation. Work programmes may be multiannual, when appropriate. Work programmes shall set out the actions and associated budget required to meet the objectives of the Ukraine Support Instrument.

[redacted]

3. The Commission shall adopt work programmes by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(3).

4. The work programmes shall include in particular:

(a) the overall amount of the Union contribution to each type of action referred to in Article 21a(1) and a detailed description of each type of action;

(b) with respect to actions referred to in Article 21a(1), points (a) and (b), the minimum financial size of the actions;

(c) with respect to actions referred to in Article 21a(1), point (b), the maximum number of legal entities forming part of the consortium, which shall not exceed 15 legal entities.

(d) the procedure for the evaluation and selection of proposals, including, where relevant, a description of the milestones, designed to mark substantial progress in the implementation of actions, the results to be achieved and the associated amounts to be disbursed, as well as the arrangements for the verification of the milestones, the fulfilment of conditions and the achievement of results;

(da) the overall amount of the Union contribution to joint procurement with the support of the Commission as referred to in Articles 21aa(1), 21ab and 21ac; and

(e) the methods for determining and, where applicable, adjusting the funding.

5. The Commission shall take into account the coherence between different relevant instruments.

Chapter IIb

European Defence Projects of Common Interest

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Article 21i

European Defence Projects of Common Interest

1. European Defence Projects of Common Interest (EDPCIs) shall consist of collaborative industrial projects aimed at reinforcing the competitiveness of the EDTIB throughout the Union while contributing to the development of Member States' military capabilities critical for the security and defence interests of the Union, and including those securing access to all operational domains, namely land, maritime, air, space and cyber.

2. EDPCIs Interest shall meet all the following criteria:

(a) they significantly strengthen the competitiveness, efficiency and innovation capacity of the EDTIB, in particular by contributing to the establishment of new or the broadening of existing cross-border cooperation, including with SMEs and mid-caps, by creating positive spill-over effects on the internal market, by significantly contributing to market integration and reduction of market fragmentation, by improving the interoperability and interchangeability of defence products, and by aiming to reduce strategic dependencies, including by means of supply diversification, and scaling up capacities;

(b) they contribute to the development of defence capabilities critical for the security and defence interests of the Union and are consistent with the objectives of the Strategic Compass for Security and Defence, with the defence capability priorities commonly agreed by Member States within the framework of the CFSP, in particular in the context of the CDP, and with the collaborative opportunities identified in the context of the Coordinated Annual Review on Defence; they take into account Member States' cooperation in the framework of the Permanent Structured Cooperation and EDA initiatives and projects; they take into account

the relevant activities carried out by NATO, such as the NATO Defence Planning Process, where such activities serve the Union's security and defence interests;

(c) they involve at least four Member States and all Member States and associated countries, as well as Ukraine, are given a genuine opportunity to participate in a project;

(d) their benefits extend to a wider part of the Union;

(e) they are particularly significant in size or scope, or aim to mitigate a considerable level of technological or financial risk, or both;

(f) their potential overall benefits outweigh their costs, including in the longer term.

4. The Council, acting upon a proposal of the Commission, may adopt implementing acts identifying EDPCIs.

5. Member States shall coordinate to prepare project proposals for possible EDPCIs in an inclusive way, with the support of EDA when necessary.

6. Before proposing the implementing acts as referred to in paragraph 4, the Commission shall verify the compliance of the project proposals referred to in paragraph 4 with all the criteria listed in paragraph 2 and:

(a) consult Member States in an inclusive manner and take into account their views and project proposals for possible EDPCIs;

(b) invite the High Representative and the EDA to provide their expertise with a view to ensuring consistency with the priorities and objectives referred to in paragraph 2(b), in particular the defence capability priorities commonly agreed by Member States within the framework of CFSP, notably as jointly expressed in the context of the CDP, to complement the information provided by Member States regarding project proposals; and

(c) verify that all Member States and associated countries, as well as where relevant Ukraine, were informed of the emergence of a project and were given the opportunity to participate.

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7. In the implementing acts referred to in paragraph 3, the Council shall:

(a) set out the objectives and characteristics of the EDPCI in relation to the criteria set out in paragraph 2;

(b) establish the list of countries participating in the EDPCI at the date of the adoption of the implementing act;

(c) estimate the overall financial size of the EDPCI.

[redacted]

8. The Council shall adopt the implementing acts referred to in paragraph 3 acting by qualified majority. The Council may amend the proposals referred to in paragraph 3 acting by qualified majority.

9. To be eligible for Union funding, the deployment of an EDPCI shall cover one or more activities related to:

(a) the common procurement of defence products;

(b) accelerating the adjustment to structural changes of the production capacity of defence products as well as related supporting activities;

(c) the industrial development of new defence products or the upgrading of existing ones;

(d) the development and procurement of necessary infrastructure.

10. The participating Member States shall ensure that criteria equivalent to those set out in Article 10 are applied in the contracts relating to the EDPCI activities supported by Union funding. For the common procurement of defence products supported by Union funding under EDPCIs, Article 12(5) shall also apply.

11. Member States participating in an EDPCI shall ensure that the EDPCI activities, including those not supported by Union funding, comply with the objectives set out in Article 4 and in paragraph 1 of this Article and do not affect compliance of the EDPCI with the criteria set out in paragraph 2 of this Article.

12. A European Defence Project of Common Interest may address the development of dual-use capabilities for the European Union.

13. An EDPCI, as well as its specific activities, may be established in the framework of a SEAP.

14. Only Member States, associated countries, as well as SEAPs consisting of Member States or Member States and associated countries shall be eligible for funding under EDPCI activities.

15. The Commission shall be able, where relevant, to participate in the project. Participating Member States may decide to involve the High Representative and the EDA as observers to an EDPCI.

16. Member States may, without prejudice to Articles 107 and 108 TFEU, apply support schemes and provide for administrative support to EDPCIs.

17. The planning, construction and operation of production facilities related to an EDPCI may be considered an imperative reason of overriding public interest within the meaning of Article 6(4) and Article 16(1), point (c), of Council Directive 92/43/EEC[31] and Article 4(7) of Directive 2000/60 of the European Parliament and of the Council[32], in the interests of defence within the meaning of Article 2(3) of Regulation (EC) 1907/2006 of the European Parliament and of the Council[33], and in the interests of public health and safety within the meaning of Article 9(1), point (a), of Directive 2009/147/EC of the European Parliament and of the Council[34], provided that the remaining other conditions set out in those provisions are fulfilled.

18. Member States participating in an EDPCI shall submit to the Commission, on an annual basis, a joint report on the implementation of the EDPCI activities, including on compliance with the objectives set out in Article 4 and in paragraph 1 of this article as well as the criteria set out in paragraph 2 of this Article.

19. Upon a proposal from the Commission, the Council, acting by qualified majority, may amend the implementing acts adopted pursuant to paragraph 3, including by removing a project as an EDPCI or by reflecting changes of the elements set out in paragraph 3a.

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20. All Member States and associated countries, as well as Ukraine, shall have the opportunity to join an EDPCI after its establishment, subject to the approval of all Member States participating in the EDPCI.

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Chapter IIc
European Military Sales Mechanism

Article 21e
European Military Sales Mechanism

1. To strengthen the competitiveness of the EDTIB as well as, where relevant, of the Ukrainian DTIB, in particular by increasing the ability of the EDTIB to ensure the availability of defence products in time and in volume, a Military Sales Mechanism (MSM), consisting of the following set of measures is hereby established:

(a) the establishment of a single, centralised, up to date catalogue of defence products developed by the EDTIB and the Ukrainian DTIB;

(b) the establishment, management and maintenance of defence industrial readiness pools;

(c) measures contributing to the facilitation of procedures for the common procurement of defence products;

▌

Article 21f
European Military Sales Catalogue

1. The Commission, upon consultation of European Defence Agency, shall establish and keep up-to-date a single, centralised catalogue of defence products developed by the EDTIB and the Ukrainian DTIB ('catalogue'). The Commission shall consult the European Defence Agency and take into account its views in drawing up the technical

specifications for and, where appropriate, procure the corporate IT platform required to establish the catalogue. Member States, Ukraine and economic operator shall be invited to populate such a catalogue on a voluntary basis.

2. The products present in this catalogue shall be manufactured by economic operators respecting the eligibility criteria set out in Article 10(2), (3), (3a) or Article 21 (2), (3), (3a). In addition, the catalogue shall indicate whether the economic operator has the ability to decide, without restrictions imposed by non-associated third countries or by non-associated third country entities, on the definition, adaptation and evolution of the design of the defence product, including the legal authority to substitute or remove components that are subject to restrictions imposed by non-associated third countries or by non-associated third country entities. The support received under the Programme, the Instrument or Regulations (EU) 2018/1092 [EDIDP], (EU) 2021/697 [EDF], (EU) 2023/2418 [EDIRPA] and (EU) 2023/1525 [ASAP] may also be indicated in this catalogue.

Article 21g

Defence Industrial Readiness Pools

1. A consortium of at least three Member States, associated countries or Ukraine, of which at least two shall be Member States, or a SEAP may establish, manage and maintain defence industrial readiness pools, and may, for this purpose, invite the EDA to provide its expertise.

1a. Member States that establish a defence industrial readiness pool shall ensure that the establishment, management and maintenance of that pool comply with the objectives set out in Article 21e(1) as well as with the objectives set out in Article 4 and, where relevant, in Article 19e.

2. Member States, associated countries, Ukraine and SEAPs that establish a defence industrial readiness pool shall grant all Member States, associated countries and Ukraine an immediate and preferential purchase or use/lease option for defence products that are part of the defence industrial readiness pool.

3. Where a defence industrial readiness pool, is established in the context of a Structure for European Armament Programme (SEAP), the Programme and the Ukraine Support Instrument may financially support the following:

(a) the common procurement of additional quantities of defence products through common procurement actions carried out by the SEAP in accordance with Article 12;

(b) the establishment and the functioning of the SEAP for the purpose of managing and maintaining the Defence Industrial Readiness Pool in accordance with Article 13a(1), point (f);

▌

4. For the purpose of Member States or, where applicable, associated countries buying from the defence industrial readiness pool managed by a Structure for European Armament Programme, the procurement shall be considered as a government-to-government contract as referred to in Article 13, point (f) of Directive 2009/81/EC.

Article 21m

Facilitation of procedures for the common procurement of defence products

Where Member States enter into an agreement to commonly procure defence products, they may apply the rules and procedures provided for in Article 12(9) and (9a), Article 34 and Article 34a, subject to the conditions set out therein.

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Chapter III

Structure for European Armament *Programmes*

Article 22

Specific objective and activities of *a* SEAP

1. A Structure for European Armament Programme (SEAP) shall foster the competitiveness of the EDTIB and***, where relevant,*** of the Ukrainian DTIB***. This shall be achieved*** by aggregating the demand for***, and ensuring the timely availability and supply of,*** defence products throughout their lifecycle ***as well as by stimulating cross-border industrial cooperation***.

2. To reach the objective referred to in paragraph 1, the principal tasks of a SEAP shall be:

   (a) the common ***development*** of defence products ***and*** technologies ▌, including defence R&D, testing and certification***; industrial capacity-building***, ***including through industrialisation and commercialisation; and support to*** non-recurrent investments related to initial production or in-service support***, in particular where the defence products are being or have been developed in the framework of actions funded by the Union under the corresponding Union Programme***;

   (b) the common procurement of defence products and technologies, including for the purpose of establishing a defence industrial readiness pool as referred to in Chapter IIc; or

   (c) the ***common*** life-cycle management of defence products, including the procurement of spare parts, logistic ***or maintenance*** services and, where appropriate, ***the*** establishment of public private partnerships to ensure efficiency and high availability of defence products ▌

   (c) the dynamic availability management for additional quantities, ensuring an immediate and preferential purchase or use/lease option for Member States,

associated countries or Ukraine ***in the context of*** Defence Industrial Readiness ***Pools, as referred to in Chapter IIc***.

2a. A SEAP may entrust, by way of a delegation agreements, one or several of the eligible entities referred to in Article 12(1) with carrying out one or several of the tasks referred to in paragraph 2 of this Article. The SEAP shall be responsible for ensuring that its obligations under Union law, and in particular under this Regulation, are met.

Article 23

Requirements relating to the establishment of a SEAP

1. ***With a view to strengthening the competitiveness of the EDTIB or the Ukrainian DTIB,*** a SEAP shall meet ***all of*** the following requirements:

(a) to support cooperation until the end of the lifecycle of a defence product or until the winding-up of the SEAP;

(b) ***to*** support the ***common*** development***,*** procurement ***or in-service support*** of defence products***, consistent*** with the ***defence*** capability priorities commonly agreed by Member States within the framework of the CFSP, ***in particular*** in the context of the ***CDP. A SEAP shall also take into account the relevant activities carried out by NATO, such as the NATO Defence Planning Process, where such activities serve the Union's security and defence interests***; ***and***

▌

(c) a SEAP shall have ***at least three*** members***, of which*** at least two ***shall be*** Member States***.***

▌

2. A SEAP shall use standardised procedures for initiating and managing cooperative ***armament*** programmes***. The Commission may, taking into account the views expressed by Member States, establish*** guidance or templates ***to that end***, including guidelines on project management, ***procurement, financial management***, and reporting.

Article 24

Application for the establishment of a SEAP

1. ***Applications*** for the ***establishment*** of a SEAP ▌ shall ***be submitted*** to the Commission. The application shall contain the following:

   (a) a request to the Commission to set up the SEAP;

   (b) the proposed statutes of the SEAP referred to in Article 27, signed and adopted in due form by all ***the members of*** the proposed SEAP;

   (c) ***an outline*** description of the defence ***products*** to be ***developed,*** procured ***or*** managed by the SEAP, addressing in particular the requirements set out in Article 23(1), ***points*** (a) and ***(b)***;

   (d) a declaration by the ▌ Member State ***where the SEAP is foreseen to have its statutory seat,*** recognising the SEAP as an international body within the meaning of Articles 143(1)(g) and 151(1)(b) of Directive 2006/112/EC and as international organisation within the meaning of Article 11(1) of Directive (EU) 2020/262, as of its ***setting-up;*** the limits and conditions of the exemptions provided for in ***those*** provisions shall be laid down in an agreement between the members of the SEAP***;***

   (e) where an associated country or Ukraine is to be a member of the SEAP, a declaration of the recognition of the most extensive legal capacity of the SEAP in accordance with Article 26(1a).

2. The Commission shall***, without undue delay after receipt of the complete application,*** assess the application in ***accordance*** with the requirements laid down in this Regulation ***and may, for this purpose, invite the EDA to provide its expertise***. The result of ***that*** assessment shall be communicated to the applicants who shall, if necessary, be invited to complete or amend the application.

3. The Commission ▌ , taking into account the results of the assessment referred to in paragraph 2 ***of this*** Article***, shall, by means of*** an implementing act:

   (a) ***set*** up the SEAP after it has ***concluded*** that the requirements laid down in this Regulation are met; or

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(b) reject the application if it concludes that the requirements laid down in this Regulation are not met, including in the absence of the declaration referred to in paragraph ***1, point (d), after providing an opportunity to the applicants for correcting the application***.

The implementing act shall be adopted in accordance with the examination procedure referred to in Article 58(3).

4. The decision on the application shall be notified to the applicants. In the case of a rejection, the decision shall be explained in clear and precise terms to the applicants.

5. The ***implementing act establishing*** the SEAP shall be published in ▌ the Official Journal of the European Union.

Article 25

Status and seat of a SEAP

1. A SEAP shall have legal personality as from the date on which the ***implementing act establishing a*** SEAP takes effect.

2. A SEAP shall have in each Member State the most extensive legal capacity accorded to legal entities under the law of that Member State ▌ , in particular ***the capacity to acquire, own and dispose of movable property, immovable property and intellectual property,*** conclude contracts and be a party to legal proceedings. All Member State national funding agencies shall consider ***a SEAP*** an eligible recipient of national financial contributions.

3. A SEAP shall have a statutory seat, which shall be located on the territory of a Member State.

Article 26

Requirements for membership *of a SEAP*

1. The following ***countries may be*** members of a SEAP:

(a) Member States;

(b) associated countries;

(c) Ukraine.

▌

1a. Associated countries or Ukraine may be members of a SEAP subject to their recognition, for the benefit of the SEAP, of the most extensive legal capacity accorded to legal entities under the law of that country, including for the purposes of concluding contracts and being a party to legal proceedings.

2. Member States, associated countries or Ukraine may join as members ***of a SEAP*** at any time after ***its*** establishment ▌ on fair and reasonable terms specified in the statutes referred to in Article 27 ***or*** as observers without voting rights on conditions specified in ***those*** statutes.

3. A SEAP may also cooperate with ***a*** non-associated third country ***other than Ukraine or another third country entity***, including by using the assets, infrastructure, facilities and resources ***of such legal entities***, provided that ***such cooperation*** does not contravene the security and defence interests of the Union and its Member States***, including respect of the principle of good neighbourly relations***.

Article 27

Statutes *of a SEAP*

1. The statutes of a SEAP shall contain at least the following:

(a) a list of members, observers and, where applicable, ▌ legal entities representing members***,*** and the conditions of***,*** and the procedure for changes in***,*** membership and representation in compliance with Article 26;

(b) the specific ***objectives***, ▌ tasks and activities of the SEAP, in compliance with ***Articles 22 and 23, including an outline description of the defence products to be developed, procured or managed by the SEAP***;

(c) a list of the ▌ defence ***products*** which are to be ▌ owned ***by the SEAP***, if any, and eligible for an exemption from VAT ***or*** excise duties;

(d) the statutory seat of the SEAP in compliance with Article ***25(3)***;

(da) the identification of the national law of the Member State which will determine the competent jurisdiction for the resolution of disputes among its members in relation to the SEAP, between its members and the SEAP, and between a SEAP and third parties in compliance with Article 31(2);

(e) the name of the SEAP;

(f) the duration ▌ and the procedure for the winding-up of the SEAP in compliance with Article 32;

(fa) a description of the main criteria that the SEAP will apply when procuring defence products to ensure compliance with the objective set out in Article 22(1).

(g) the liability regime***, including the possibility to issue securities, if so decided***, in compliance with Article 30;

(h) the rights and obligations of the members, including the obligation to make contributions to a balanced budget and voting rights;

(i) the ***governing*** bodies of the ***SEAP***, their roles and responsibilities and the manner in which they are constituted and ***the decision-making process within the SEAP***, including ***the applicable voting rules, in particular on*** the amendment of the statutes▌ in compliance with ***Article 28. The voting rules applicable to amendments relating to the approach to the export of defence products***, ***if so included in the statutes, and the liability regime, shall comply with Article 27(3a) and Article 30(5) respectively;***

(j) the identification of the working language ***or languages*** of the SEAP;

(k) references to rules implementing the statutes ***of the SEAP***;

(l) ***rules on the protection of*** classified information***;***

(n) the identification of the Union rules and Member States' laws applicable to the handling of the defence products to be developed, procured or managed by the SEAP as well as the administrative capacities foreseen to ensure compliance with them.

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2. In addition, where the members of a SEAP decide to ***establish*** a defence industrial readiness pool ***as*** referred to in Article ***13b***, the statutes shall include the rules governing the management of ***that*** defence industrial readiness pool.

2a. The Statutes, signed and adopted unanimously by all the members of a SEAP in accordance with Article 24(1), point (b), may contain an approach to the export of defence products.

2b. Any change to the approach to the export of defence products shall be decided unanimously by the members of the SEAP.

Article 28

Amendment of the statutes *of a SEAP*

1. Any amendment of the statutes ***of a SEAP*** concerning the matters referred to in Article 27(1), points (a) to ***(i)***, shall ***be adopted in accordance with the voting rule specified in the Statutes in compliance with Article 27(1)(i), and*** be submitted to the Commission by the SEAP for approval.

1a. Any amendment of the statutes concerning the matters referred to in Article 27(3) shall be adopted in accordance with the voting rules specified in the Statutes in compliance with Article 27(1)(i), and be notified to the Commission by the SEAP within 10 days after its adoption.

2. Any amendment of the statutes other than that referred to in paragraph 1 ***and 1a shall be adopted in accordance with the voting procedure specified in the Statutes in compliance with Article 27(1)(i), and*** shall be submitted to the Commission by the SEAP within 10 days after its adoption.

3. The Commission may raise an objection to ***the*** amendments ***of the statutes*** referred to in paragraph ***2*** within ***30*** days from ***their*** submission giving reasons why the amendment does not meet the requirements of this Regulation.

4. The ***amendments of the statutes referred to in paragraph 2*** shall not take effect before the period for objecting ***referred to in paragraph 3*** has expired or has been waived by the Commission or before an objection raised has been lifted.

5. The application for the amendment ***of the statutes referred to in paragraphs 1, 1a and 2*** shall contain the following:

(a) the text of the amendment proposed or, where ***applicable***, the text of the amendment as adopted***; and***

(b) the amended consolidated version of the statutes.

Article 29

Specific conditions on procurement

1. In accordance with Article 22(3), a SEAP may entrust an eligible entity referred to in Article 12(1) with carrying out procurement actions. Such an entity shall act in the name of, or on behalf of, that SEAP.

2. For the purposes of procurement of defence products, SEAPs shall be considered as international organisations within the meaning of Article 12(c) of Directive 2009/81/EC. SEAPs shall define their own procurement rules in compliance with the principles governing public procurement, in particular those of non-discrimination, equal treatment, proportionality and transparency.

3. When procuring defence products, a SEAP shall apply to its procurement procedures and contracts criteria ensuring that its procurement policy complies with the objectives referred to in Article 22(1). A SEAP shall actively seek to include multiple legal entities from various Member States in the supply chains of defence products.

3a. Where a delegation agreement as referred to in Article 22(3) is concluded, the parties to that agreement may decide that the procurement rules of the entity carrying out the procurement apply, provided that those rules comply with the principles referred to in paragraph 2 of this Article, in particular those of non-discrimination, equal treatment, proportionality and transparency.

3b. Where Member States or, where applicable, associated countries purchase defence products from a SEAP, including from a defence industrial readiness pool as referred to in Article 13b, the procurement shall be considered as a government-to-government contract as referred to in Article 13, point (f), of Directive 2009/81/EC.

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Article 30

Liability and insurance

1. A SEAP shall be liable for its debts.

2. The financial liability of the members ***of a SEAP*** for the debts of the SEAP shall be limited to their respective contributions ▌ to the SEAP. The members may specify in the statutes ***of a SEAP*** that they will assume a fixed liability above their respective contributions or unlimited liability.

3. If the financial liability of ***its*** members is limited, the SEAP shall take appropriate insurance to cover the risks specific to the establishment and management of the capability.

4. ***If decided unanimously by its members, a SEAP may issue securities in accordance with the law of the Member State where it has its statutory seat. The SEAP*** shall ▌ be liable ***for such securities***.

5. Any change to the liability regime or any measure affecting the financial liability of the members of a SEAP shall be decided unanimously by those members.

6. The Union shall not be liable for any debt of a SEAP.

Article 31

Applicable law and jurisdiction

1. The setting-up and internal functioning of a SEAP shall be governed:

   (a) by Union law, in particular this Regulation ▌ and the implementing ***act*** referred to in Article 24(3)(a);

   (b) by the law of the ***Member*** State where the SEAP has its statutory seat in the case of matters not, or only partly, regulated by acts referred to in ***points (a) and (aa).***

   (aa) by ***its*** statutes and their implementing rules***;***

2. ***Without prejudice to cases in which*** the Court of Justice of the European Union ***has*** jurisdiction ***under the Treaties, the national law of the Member State where the SEAP has its statutory seat shall determine the competent jurisdiction for the resolution of disputes*** among ***its*** members in relation to the SEAP, between ***its*** members and the SEAP***, and between a SEAP and third parties***.

3. ***Any delegation agreement as referred to in Article 22(3) shall determine which Member State*** jurisdiction shall ***be*** competent ▌ for the resolution of ▌ disputes ***related to the delegation agreement***. ***The delegation agreement may also provide for amicable dispute settlement mechanisms. This shall be without prejudice to cases in which the Court of Justice of the European Union has jurisdiction under the Treaties.***

Article 32

Winding up and insolvency

1. The statutes ***of a SEAP*** shall determine the procedure to be applied in the case of winding-up of the SEAP following a decision of the assembly of members or***, in the event that*** the Commission repeals the implementing act establishing the SEAP, as referred to in Article 33(6). Winding-up may include the transfer of activities ***as well as the ownership of defence products*** to another legal entity.

2. Without undue delay after the adoption of a decision by the assembly of members to wind up the SEAP, and in any event within 10 days after such adoption, the SEAP shall notify the Commission thereof ***and designate a representative for the winding-up***. The Commission shall publish an appropriate notice of the decision to ***wind up in*** the Official Journal of the European Union.

2a. The winding up procedure shall not be closed before the completion of the transfer of ownership of defence products owned by the SEAP.

3. Without undue delay after the closure of the winding-up procedure, and in any event within 10 days after such closure, the SEAP ***representative*** shall notify the Commission thereof. The Commission shall publish an appropriate notice of the closure in the ▌ Official Journal of the European Union. The SEAP shall cease to exist on the ***date*** of publication of the notice.

4. At any time, in the event that the SEAP is unable to pay its debts, it shall immediately notify the Commission thereof. The Commission shall publish an appropriate notice ***in*** the Official Journal of the European Union.

Article 33

Reporting and control

1. A SEAP shall produce an annual activity report, containing a technical description and a financial report of its activities referred to in Article 22. It shall be transmitted to the Commission within six months from the end of the financial year. ***The Commission shall distribute the report to all Member States.***

1a. The Commission shall provide the European Parliament and the Council with an aggregated annual report about the activities of all active SEAPs.

2. The Commission may provide recommendations to the SEAP regarding the matters covered in the annual activity report ***referred to in paragraph 1***.

3. A SEAP and the Member States concerned shall inform the Commission of any circumstances which threaten to seriously jeopardise the achievement of the task of the SEAP or to hinder the SEAP from fulfilling the requirements laid down in this Regulation.

4. Where the Commission obtains indications that a SEAP is acting in serious breach of this Regulation, the implementing act establishing it, its statutes or other applicable law, it shall request explanations from the SEAP ***or*** its members.

5. Where the Commission concludes, after having given the SEAP ***or*** its members ***at least two months*** to provide their observations, that the SEAP is acting in serious breach of this Regulation, the implementing act establishing it, its statutes or other applicable law, it may propose remedial action to the SEAP and its members.

6. Where no remedial action ***as referred to in paragraph 5 of this Article*** is taken, the Commission may repeal the implementing act establishing the SEAP. The repealing act shall be published in the ▌ Official Journal of the European Union. The publication of the act shall trigger the winding-up of the SEAP ***as referred to in Article 32***.

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Chapter IV

Security of supply

SECTION -1

COOPERATIVE DEFENCE PROCUREMENT

Article 34

Modification of* framework agreements *in the context of a crisis under Directive 2009/81/EC

1. Where at least two Member States enter into an agreement to commonly procure defence products ***for themselves or for Ukraine*** and where ***justified by an*** urgency ***resulting from a crisis within the meaning of Article 1(10) of Directive 2009/81/EC***, the rules provided for in paragraphs 2 to ***4 of this Article*** may be applied to framework agreements that do not include rules governing the possibility to substantially amend it***. When applying the rules in accordance with paragraphs 2 and 2a of this Article, the*** contracting ***authority having concluded the framework agreement shall obtain the agreement of the undertaking with*** which ***it concluded*** the framework agreement.

2. ▌A contracting ***authority of a Member State*** may modify an existing framework agreement ***for defence products, where that framework agreement has been concluded*** with an undertaking complying with ***criteria equivalent to those laid down*** in Article ***10(2), (3) and (3a), in order to add new contracting authorities as party to the framework agreement*** so that its provisions ▌ apply to contracting ***authorities*** which ***were*** not originally party to the framework agreement. ***Article 29(2), first subparagraph, of Directive 2009/81/EC, shall not apply to the contracting authorities not originally party to the framework agreement.***

2a. By way of derogation from Article 29(2), third subparagraph, of Directive 2009/81/EC, when awarding contracts based on a framework agreement with an estimated value above the threshold set out in Article 8 of Directive 2009/81/EC, a contracting authority of a Member State may make substantial amendments to the quantities laid down in that framework agreement of up to 100 % of the value of the framework agreement, where that framework agreement has been concluded with an undertaking complying with criteria equivalent to those laid down in Article 10, paragraphs 2 to 3a, of this

Regulation and insofar as the modification is strictly necessary for the application of paragraph 2 of this Article.

2b. For the purpose of the calculation of the value mentioned in paragraph 2a, the updated value shall be the reference point where the contract includes an indexation clause.

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4. ***In the cases*** referred to in paragraphs 2 and ***2a, the principle of equal rights and obligations shall apply*** to the relationships between ***the*** contracting ***authorities which are party to the framework agreement, in particular regarding the cost of additional quantities procured***.

5. ***A*** contracting ***authority*** which ***has*** modified a ***framework agreement*** in the cases referred to in ***paragraph 2 or 2a*** of this Article shall publish a notice to that effect in the Official Journal of the European Union. Such ***a*** notice shall be published in accordance with Article 32 of Directive 2009/81/EC.

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Article 34a

Cases justifying use of the negotiated procedure without publication of a contract notice in the context of a defence cooperation initiative

1. A contracting authority of a Member State, where it establishes a new or joins an existing genuine defence cooperation initiative established by an international agreement or arrangement between Member States and, where relevant, one or more associated countries or Ukraine, with the aim of the convergence of military capabilities, may award a contract to, or conclude a framework agreement on a defence product with, an undertaking, in accordance with Article 28(1)(e) of Directive 2009/81/EC, where all of the following conditions are cumulatively met:

(a) the undertaking concerned complies with criteria equivalent to those laid down in Article 10(2), (3) and (3a);

(b) the defence cooperation initiative referred to in paragraph 1 of this Article was initiated prior to the commencement of the procurement procedure by the contracting authority of the Member State concerned;

(c) one of the other Member States participating in the defence cooperation initiative has already awarded a contract to, or concluded a framework agreement on a defence product with, the same undertaking;

(d) the defence product to be procured is identical to the one referred to in point (c) or is subject to minor modifications only;

(e) the award of the contract or the conclusion of the framework agreement is necessary for the implementation of the defence cooperation initiative referred to in point (b).

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Section 1
PREPAREDNESS

Article 38

Acceleration of the permit-granting process for the timely availability and supply of *crisis-relevant* products

1. Member States shall ensure that administrative applications related to the planning, construction and operation of production facilities, transfer of inputs within the Union as well as qualification and certification of end products are processed in an efficient and timely manner. To that end, all national authorities concerned shall ensure that the most rapid treatment legally possible is given to such applications.

2. Member States shall ensure that in the planning and permit-granting process, the construction and operation of plants and installations for the production of ***crisis-relevant*** products are given priority when balancing legal interests in the individual case concerned.

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Article 39

Easing cross-certification process

1. Member States shall adopt a list of national certification authorities for defence purposes and notify it to the Commission, which shall make it available to Member States.

2. The Commission***, taking into account the views of the EDA,*** shall ▌ draw and keep updated an official list of national certification authorities for defence purposes as identified by Member States***, by means of implementing acts***. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(3).

3. A certification authority from one Member State may request from the certification authority of another Member State ▌ information about the scope of the certification of a certain defence product.

3a. National certification authorities referred to in paragraph 1 shall cooperate with each other in the performance of their tasks under this Regulation and shall give the authorities of other Member States all the necessary support to this end. The Commission, inviting, where relevant, the European Defence Agency to provide its expertise, shall support such a cooperation in order to facilitate an efficient and effective movement of defence products in the internal market.

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Article 40

Mapping of defence *supply chains*

1. The ▌ mapping of the Union's defence supply-chains ***shall have the aim of analysing the strengths and weaknesses of such supply chains, with an emphasis on bottlenecks. It shall inform, where relevant, the development of the work programmes of the Programme and the USI as referred to in Articles 19d and 21e***.

2. The mapping shall consist of the following activities, to be performed on a regular basis:

(-a) identification of the relevant manufacturing capacities and supply chains of defence products pursuant to paragraph 3-a;

(a) identification of crisis-relevant products and their related manufacturing capacities, pursuant to paragraph 6a;

(aa) aggregation, cross-check and assessment of data gathered pursuant to paragraphs 3a, 5 and 6;

(b) identification of early-warning indicators, pursuant to paragraph 8; and

(c) identification of the main suppliers of crisis-relevant products and their production capacities, pursuant to paragraphs 8a and 8b.

2a. The Commission, in cooperation with the Board, shall carry out the activities regarding points (a), (aa) and (b). The Member States shall carry out the activities regarding points (-a) and (c). Each Member State may request the Commission to carry out, on its behalf, the activities regarding points (-a) and (c).

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3. The Commission shall, after consulting the Defence ***Security of Supply*** Board, develop a framework and methodology for ***identifying*** crisis-relevant products, with an emphasis on ***existing*** bottlenecks, as well as their related manufacturing capacities in the Union ***and for the mapping of supply chains of those products***. ***That methodology shall build upon any frameworks or methodologies that may exist within Member States. For that purpose, the Defence Security of Supply Board may issue recommendations on the type of information appropriate for the mapping of supply chains of crisis-relevant products, on the technical specifications and formats for communicating the information, as well as on the periodicity of such communication.***

3-a. On the basis of the framework and methodology developed pursuant to paragraph 3, Member States shall identify on their territory the relevant manufacturing capacities and supply chains of defence products and shall provide the outcome of this identification to the Commission.

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3a. The Commission shall aggregate the data provided by Member States pursuant to paragraph 3-a and perform a cross-check with a view to identifying the list of crisis-relevant products and their related manufacturing capacities as well as to assessing the strengths and weaknesses of the Union's supply chains of such products.

5. To ***complement the data provided by Member States***, the Commission shall use publicly and commercially available data and relevant non-confidential information from ***economic operators***, ***as well as the results*** of similar ***analyses*** performed, including in the context of Union law on raw materials and ***semiconductors and*** renewable energy, ***the results of the relevant activities of the EDA, and the results of the stress tests conducted pursuant to Article 41a and of the evaluation*** carried out pursuant to Article 66(1).

6. Where this data is not enough to perform its tasks pursuant to paragraphs 3a, the Commission may request relevant actors involved in the supply chains concerned and based in the Union to provide, on a voluntary basis, information to the Member State in whose territory the production site of the addressed economic operator is located. The Commission's request shall explicitly indicate that the economic operator remains free to refuse such a request. The request for information shall include the contact information of the national competent authorities from the Member State in whose territory the production site of the addressed economic operator is located to which the reply shall be sent. Where the economic operator concerned decides to provide the requested information to the Member State concerned, the latter shall, in turn, make the requested information available to the Commission.

6a. The Commission shall, by means of ***an*** implementing act, draw up and regularly update ***the*** list of crisis-relevant products. ***That*** implementing ***act*** shall be adopted in accordance with the examination procedure referred to in Article 58(3).

7. The Commission shall inform the Defence ***Security of Supply*** Board of the aggregate results of the ***mapping on an annual*** basis ***or at the request of one of the members of the Defence Security of Supply Board as identified in Article 57(7)***. ***Those results shall constitute classified information.***

8. The Commission shall, on the basis of the outcome of the activities carried out pursuant to ***paragraphs 3, 3a and 5*** and after consulting the ▌ Board, develop a list of ***early-warning*** indicators ***aimed at identifying factors that may disrupt, compromise or negatively affect the supply of crisis-relevant products***. The Commission, after consulting the Defence ***Security of Supply*** Board, shall review the list of ***early-warning*** indicators on a regular basis, at least every two years.

8a. Member States shall, in cooperation with the Commission and the European Defence Agency, where relevant, identify the main suppliers of crisis-relevant products established on their territory, without unnecessary delay, after the adoption of the implementing act referred to in paragraph 6a. Each Member State shall notify the main suppliers of crisis-relevant products established on its territory that they have been identified pursuant to paragraph 8a and inform them about the obligation to report on disruptions in the supply of crisis-relevant products as set out in Article 41(1)(c) of this Regulation. That notification shall also include the relevant contact information of the national competent authorities to which that report shall be sent.

8b. The identification of main suppliers as referred to in paragraph 8a may take into account the following elements:

(a) the market share of the supplier in the market for that crisis-relevant product;

(b) the importance of the supplier in maintaining a sufficient level of supply of a crisis-relevant product in the Union, taking into account the availability in the Union of alternative means for the provision of that product;

(c) the impact that a disruption of supply of the crisis-relevant product provided by the supplier could have on the functioning of the internal market.

9. ***Without prejudice to paragraph 7 of this Article,*** any information obtained pursuant to this Article shall be treated in compliance with the confidentiality obligations set out in Article 61.

10. This Article ***is*** without prejudice to the ***right of each*** Member ***State to protect its*** essential security interests ***in accordance with*** in Article ***346(1), point (a), TFEU***.

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Article 41

Monitoring

1. ***Member States and*** the Commission, in ***cooperation*** with the ▌ Board, shall carry out regular monitoring of the Union's manufacturing capacities necessary for the supply of crisis-relevant products, identified in accordance with Article 40, paragraph ***(6a),*** with a view to identifying ***possible risks to*** the supply of ***crisis-relevant*** products ▌ . The monitoring shall consist of the following activities:

   (a) ***the Commission, in cooperation with the Defence Security of Supply Board, shall monitor early-warning*** indicators identified pursuant to Article 40(8)***, including by aggregating any input received from Member States on the basis of information collected at national level***;

   (b) ▌ Member States ***shall monitor, in light*** of the ***early-warning indicators, the ability of the main suppliers of crisis-relevant products*** referred to in Article ***40(8a) to carry out their activities and report to the Defence Security of Supply Board on any*** events that may ***have negative and lasting consequences on the timely availability and supply of those products***;

   Where main suppliers of crisis-relevant products detect disruptions of supply which may significantly affect their activities related to the production of crisis relevant products, they shall report on such disruptions to the Member State in whose territory they are established. The Member State concerned shall, in turn, communicate that information to the Commission without undue delay;

   (c) ***the Commission, after consulting the Board, shall identify*** best practices for preventive risk mitigation and increased transparency of the Union's manufacturing capacities necessary for the supply of crisis-relevant products.

   The Commission, after consulting the ▌ Board, shall establish the frequency of the monitoring.

2. The Commission ***and the Member States*** shall pay particular attention to SMEs ***in order*** to minimise ***the*** administrative burden resulting from the ***monitoring referred to in paragraph and may, where necessary, provided dedicated assistance***.

3. The Commission may invite, after consulting the ▌ Board, ***the main suppliers of crisis-relevant products*** referred to in Article ***40(8a)***, Member States, national defence industry associations and other relevant stakeholders to provide information, on a voluntary basis, for the purpose of carrying out monitoring activities in accordance with paragraph 1, first subparagraph, point (a).

4. For the purposes of paragraph 1, first subparagraph, point (b), Member States may request information, on a voluntary basis, from ***the main suppliers of crisis-relevant products*** referred to in Article ***40(8a)*** where necessary and proportionate.

5. For the purposes of paragraph 3, ▌ competent authorities ***of Member States*** shall establish and maintain a list of contacts of ***the main suppliers of crisis-relevant*** products ▌ which are established ***on*** their territory. That list shall be transmitted to the Commission. ***Within the Board,*** the Commission shall provide for a standardised format for the list of contacts ▌ .

6. Without prejudice to ▌ the protection of commercially confidential information ▌ , Member States shall ▌ provide the ▌ Board with ▌ additional relevant information, in particular ***the identification of issues related to the supply of crisis-relevant products throughout the Union or relevant*** future ▌ national level measures for the procurement, purchase or manufacturing of crisis-relevant products.

7. On the basis of the information collected through the ***monitoring*** activities ***conducted*** under ***this Article***, the Commission shall provide a report of the aggregated findings to the ▌ Board in the form of regular updates. ***That report shall constitute classified information.*** The ▌ Board shall meet to assess the results of the ***report and to identify, where appropriate, potential solutions to the issues of common interest***. Where relevant, the ***Commission, after consulting the*** Board***,*** may invite national defence industrial associations, ***main suppliers of crisis-relevant products referred to in Article 40(8a)***, and experts from academia and civil society to such meetings.

8. This Article ***is*** without prejudice to the ***right of each*** Member ***State to protect its*** essential security interests ▌ in ***accordance with*** Article ***346(1)(a) TFEU***.

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Article 41a

Stress tests

-1. The Commission, upon consultation of the Defence Security of Supply Board, shall identify relevant topics for the conduct of stress tests.

1. The Commission, taking into consideration the relevant topics identified in line with paragraph -1, shall conduct and coordinate stress tests, including simulations that aim to anticipate and prepare for a supply crisis as referred to in Article 44.

2. In particular, the Commission may:

(a) develop scenarios and parameters that capture the particular risks associated with a supply crisis, in order to assess the potential impact on the provision of crisis-relevant products and the proper functioning of the internal market;

(b) facilitate and encourage the development of strategies for emergency preparedness;

(c) identify, in cooperation with the Board, risk mitigation measures after the completion of the stress tests.

2a. The Commission may conduct stress tests referred to in paragraph 1 on a regular basis. The Defence Security of Supply Board shall provide recommendations regarding the frequency for the conduct of stress tests.

3. The Commission shall invite representatives of all Member States to participate in stress tests. Upon consultation of the Defence Security of Supply Board, the Commission may also invite representatives of the High Representative, the European Defence Agency or other relevant actors to participate in the tests referred to in paragraph 2.

4. Upon a request by two or more Member States, the Commission may conduct stress tests in specific geographical areas or border regions in those Member States.

7. Upon completion of the stress tests conducted pursuant to this Article, the Commission shall communicate the results to the participating Member States. The Commission shall

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share with the Defence Security of Supply Board a report with recommendations based on the results of the stress tests without undue delay. Those results and the report shall constitute classified information.

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Article 43

Alerts and preventive action

1. Where a ▌ competent authority ***of a Member State*** becomes aware of a risk of serious disruption ***in the supply*** of a crisis-relevant ***product*** or has concrete and reliable information of any other relevant risk factor or event ***materially*** affecting the supply of a ***crisis-relevant*** product, it shall alert the Defence ***Security of Supply*** Board without undue delay.

1a. In order to determine whether a risk of serious disruption should trigger an alert as referred to in paragraph 1, Member States shall take into account the following:

(a) the market position of economic operators that could be affected by the disruption;

(b) the anticipated duration of the potential disruption;

(c) the geographical area and the proportion of the internal market affected by the potential disruption and its possible cross-border effects, as well as its possible impact on particularly vulnerable or exposed geographical areas; and

(d) the impact of the potential disruption on the supply of crisis-relevant products.

2. Where the Defence ***Security of Supply*** Board or the Commission become aware of a risk of serious disruption ***in the supply of a crisis-relevant*** product or has concrete and reliable information of any other relevant risk factor or event ***materially*** affecting the supply of a ***crisis-relevant*** product, including on the basis of ***early-warning*** indicators, upon an alert pursuant to paragraph 1 or from international partners, the Commission shall, without undue delay, carry out the following preventive actions:

(a) convene an extraordinary meeting of the Defence ***Security of Supply*** Board to coordinate the following actions:

(i) discuss the severity of the ***potential*** disruptions to the availability and supply of the ▌ crisis-relevant products ***concerned***;

(ii) recommend to the Commission to initiate action in accordance with Chapter II ***and IIa*** of this Regulation;

(iii) discuss approaches ***and exchange best practices*** of the ▌ competent authorities ***of Member States***, including to assess the state of preparedness of the ***main suppliers of crisis-relevant products***;

(iv) ***invite Member States to*** enter into dialogue with stakeholders of the Union's manufacturing capacities necessary for the supply of crisis-relevant products with a view to identifying, preparing and possibly coordinating preventive measures;

(v) discuss ***whether*** the activation of the ***supply-crisis*** state referred to in Article 44 ***would be*** necessary and proportionate.

(b) on behalf of the Union***, after consulting the Defence Security of Supply Board***, enter into consultations or cooperation with relevant third countries and international organisations with a view to seeking cooperative solutions to ***avoid or*** address ***supply chain*** disruptions, in compliance with international obligations, which may involve, where appropriate, carrying out coordination in relevant international fora***;***

(d) ensure synergies with relevant Union programmes and legislation.

3. This Article is without prejudice to the right of each Member State to protect its essential security interests in accordance with Article 346(1)(a) TFEU.

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SECTION 2

MITIGATION OF A SUPPLY CRISIS

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Article 44

Activation of the supply crisis state

1. A supply crisis shall be considered to occur where:

   (a) there are serious ***disruptions or an imminent risk of such*** disruptions in the provision of ***crisis-relevant*** products ▌ ; and

   (b) such ***serious disruptions or the imminent risk thereof are resulting or are likely to result in the adoption of divergent national measures related to crisis-relevant products which are not*** defence products ***leading to a severe negative impact on the proper functioning of the internal market, in particular obstacles to cross-border trade in such crisis-relevant products and*** on the functioning of the Union's defence supply chains ▌ .

2. Where**,** pursuant to Article 43, the Commission ***or the Defence Security of Supply Board become aware of a risk of serious disruption in the supply of crisis-relevant products or has concrete and reliable information of any other relevant risk factor or event materially affecting the supply of such products, the Commission, after consulting that Board,*** shall assess whether the conditions set out in paragraph 1 of this Article are met. That assessment shall take into account the potential ▌ impacts and consequences of the ***supply-crisis*** state on the ▌ supply chains ***of the concerned crisis-relevant products within the Union, the results of stress tests conducted pursuant to Article 41a, and*** assessments performed in other relevant Union crisis management frameworks. Where that assessment provides concrete and reliable evidence, the Commission may, after consulting the Defence ***Security of Supply*** Board, propose to the Council to activate the ***supply-crisis*** state. ***When proposing to activate the supply crisis-state to the Council, the Commission shall inform the Parliament thereof.***

3. The Council, acting by qualified majority ***upon a proposal from the Commission***, may activate the ***supply-crisis*** state by means of a Council implementing act. The duration of the ***supply-crisis*** state shall be specified in the implementing act and shall ***initially*** not exceed 12 months. ***The implementing act shall also specify which of the measures set out in Articles 46 and 47 are activated. In addition, the implementing act may identify for which crisis-relevant products which are not defence products, those measures shall be activated.***

3a. The Council may amend the proposal referred to in paragraph 3 acting by qualified majority.

4. The Commission shall report on a regular basis and at least every three months to the Council and to the European Parliament on the state of the ***supply-crisis***.

5. Before the expiry of the duration of the ***supply-crisis state***, the Commission***, taking into consideration the recommendation of the Defence Security of Supply Board,*** shall assess whether it is ***justified*** to prolong ***it***. Where such assessment provides concrete and reliable evidence that the conditions for the activation of the supply crisis state are still met, the Commission may, after consulting the Defence ***Security of Supply*** Board, propose to the Council to prolong the ***supply-crisis*** state.

6. The Council, acting by qualified majority ***upon a proposal from the Commission***, may prolong the ***supply-crisis*** state by means of a Council implementing act. The duration of the prolongation shall be limited ***to a maximum of 12 months*** and specified in the Council implementing act.

▌

8. During the ***supply-crisis*** state, the Commission shall, after consulting the Defence ***Security of Supply*** Board, assess the appropriateness of an early termination of the ***supply-crisis*** state. If the assessment ***so*** indicates ▌ , the Commission may propose to the Council to terminate the crisis state.

9. The Council may***,*** by means of ***an*** implementing act ***adopted by qualified majority upon a proposal from the Commission, terminate the supply-crisis state before the expiry date specified in the implementing act referred to in paragraph 3 or 6***.

10. During the ***supply-crisis*** state, the Commission shall, upon request from a Member State or on ***its*** own initiative, convene extraordinary meetings of the Defence ***Security of Supply*** Board where necessary***. In line with Article 57(10), the Defence Security of Supply Board shall invite, where relevant, high-level industrial representatives to meet in special configuration in order to discuss issues related to crisis-relevant products***. Member States shall work closely with the Commission ***within the Defence Security of Supply Board in order to ensure the coordination of any Union and*** national measures taken with regard to the ***supply chains of the*** concerned ***crisis-relevant products which are not*** defence ***products***.

11. Upon expiry of the period for which the ***supply-crisis*** state is activated or ***upon*** its early termination pursuant to paragraph ***9*** of this Article, the measures taken in accordance with Articles 46 and 47 shall ***immediately*** cease to apply***. By derogation, implementing acts that have been adopted in accordance with Article 47(3) and (4a) shall continue to apply until the priority-rated orders concerned have been completed***.

12. The Commission ***and Member States*** shall update the mapping and the monitoring of the Union's defence supply chains pursuant to Articles 40 and 41***,*** taking into account the experience from the ***supply*** crisis***,*** no later than six months after the expiry ***or early termination*** of the ***supply-crisis*** state.

Article 45

Supply-crisis ▌ toolbox

1. Where the ***supply-crisis*** state is activated pursuant to Article 44 and where necessary in order to address the supply crisis in the Union, the Commission may take the measures provided for in ***Articles 46 and 47 in accordance with the implementing act adopted pursuant to*** Article ***44(3)***.

2. The Commission shall, after consulting the Defence ***Security of Supply*** Board, restrict the application of the measures ***referred to in paragraph 1*** to the crisis-relevant products ***which are not defence products that are subject to serious disruption or at imminent risk of such disruptions*** on account of the supply crisis. The ***application*** of the measures referred to in paragraph 1 ▌ shall be proportionate and restricted to what is necessary for addressing serious disruptions ***or mitigating an imminent risk of such disruptions*** affecting the supply chains of the ***concerned*** crisis-relevant products in the Union and

shall be in the best interest of the Union. The ***application*** of those measures shall avoid placing ***a*** disproportionate administrative burden***,*** in particular on SMEs.

3. Where the ***supply-crisis*** state is activated pursuant to Article 44 and where appropriate in order to address the ***supply-crisis*** in the Union, the Defence ***Security of Supply*** Board ***shall*** assess and advise on appropriate and effective ▌ measures.

4. The Commission shall regularly inform the European Parliament and the Council of any measures taken in accordance with paragraph 1 and explain the reasons for its action.

5. The Commission ***shall, taking into consideration the recommendation of*** the Defence ***Security of Supply*** Board, issue guidance on the implementation and the use of the ▌ measures ***provided for in Articles 46 and 47***.

▌

Article 46

Information *requests*

1. Where the ***Council activates this measure in accordance with*** Article ***44(3)***, the Commission may***, where the available information is not sufficient,*** request the ***economic operator*** contributing to the production of crisis-relevant products ▌ which are not defence products ▌ with the prior agreement of the Member State in ***whose terrority the production site of the adressed economic operator is located***, to provide information ***to that Member State within a set time limit*** about their production capabilities, production capacities and current primary disruptions***. The Member State concerned shall, in turn, make the requested information available to the Commission***. The requested information shall be limited to what is necessary to assess the nature of the supply crisis or to identify and assess potential mitigation ▌ measures***.***

2. Before launching a request for information***, with the prior agreement of the Member State on whose territory the production site of the economic operator concerned is located***, the Commission may carry out a voluntary consultation of a representative number of relevant ***economic operators*** with a view to identifying the appropriate and proportionate content of such a request. The Commission shall prepare the request for information in cooperation with the ▌ Board.

3. The Commission ***and the Member State concerned*** shall use secure means to launch the request for information and ***to*** handle any ▌ information ***acquired*** in accordance with Article 61. ▌

4. The Commission shall without undue delay forward a copy of the request for information to the national competent authority of the Member State in whose territory the production site of the addressed ***economic operator is located.***

5. The request for information shall state its legal basis, be limited to the minimum necessary and be proportionate in terms of the granularity and volume of the data ***requested and of the*** frequency of access to the data requested, have regard for the legitimate ***interests*** of the ***economic operator*** and the cost and effort required to make the data available***, include the contact information of the national competent authorities from the Member State in whose territory the production site of the addressed economic operator is located to which the reply shall be sent***, and set out the time limit within which the information is to be provided ***to the Member State concerned***. It shall also state the penalties provided for in Article 55.

5a. Where the concerned Member State agrees to the launch of a request for information pursuant to paragraph 1 of this Article, it may decide to address that request, as prepared by the Commission pursuant to paragraph 2 and 5 of this Article, directly to the relevant economic operator.

6. ***Each economic operator concerned, or anyone duly*** authorised to represent ***to represent that economic operator,*** shall supply the information requested on ***an individual basis to the Member State*** concerned.

6a. The Member State concerned shall ensure that the requested information is made available without undue delay to the Commission.

7. If an ***economic operator*** established in the Union is subject to a request for information from a third country, related to its activities for ***the supply of crisis-relevant products which are not*** defence ***products***, it shall inform the ***Member State on whose territory its production site is located, in a timely manner, which shall, in turn, inform the*** Commission ▌, in such a manner as to enable ***the Member State concerned and*** the Commission to request similar information from the ***economic operator***. The Commission shall inform the ▌ Board of the existence of such ***a*** request from a third country.

8. If an ***economic operator*** supplies incorrect, incomplete or misleading information in response to a request made pursuant to this Article, or does not supply the information within the prescribed time limit, it shall be subject to fines set in accordance with Article 55, except where the ***economic operator*** has sufficient reasons for not supplying the requested information ***or not supplying it within the prescribed time limit, in particular where the processing of the information request by an economic operator has the potential to significantly disrupt its operations, where the information is classified and marked as for national use only or where the disclosure of that information could significantly harm the economic operator's business activity***.

8a. This Article is without prejudice to the right of each Member State to protect its essential security interests, in accordance with paragraph 1(a) of Article 346 TFEU.

Article 47

Prioritisation of non-defence products

1. Where the ***Council activates this measure in accordance with*** Article 44, a Member State which faces ▌ severe difficulties either in the placing of an order or in the execution of a contract ***related to*** the supply of ***crisis-relevant*** products ▌ may ***submit a*** request ***to*** the Commission to ***request an economic operator*** to accept, or to prioritise***, a certain*** order of crisis-relevant products ▌ which are not defence products***.***

2. Upon a request referred to in paragraph 1, the Commission may, ***where the production or supply of such products could not be achieved by other measures provided for in this chapter, address a request to the economic operator after:***

(a) consultation and receiving prior agreement of the Member State on whose territory the production site of the economic operator concerned is located; and

(b) consultation of the Member State on whose territory the executive management structure of the economic operator is located.

3. The request referred to in paragraph 2 shall include information about the legal basis for the request, specify the product, specifications and quantities concerned as well as the schedule and time-limit within which the order would have to be performed, and state the reasons justifying the use of the priority rated request.

4. The Commission shall demonstrate that the choice of the recipients and beneficiaries of the request referred to in paragraph 2 is non-discriminatory and complies with Union competition rules.

5. The Commission shall base its request referred to in paragraph 2 on objective, factual, measurable and substantiated data, showing that such prioritisation is indispensable in order to ensure the proper functioning of the internal market, as well as having regard to the legitimate interests of the economic operator and the cost and effort required for any change in the production sequence of the supply chain.

5a. The economic operator concerned shall reply to the Commission within five working days upon receipt of the request referred to in paragraph 2 and state whether it accepts or refuses the request. Where the urgency of the situation requires it, the Commission may, based on a justification of such urgency, request the economic operator to reply within a shorter deadline.

6. Where the economic operator to which the request referred to in paragraph 1 is addressed has expressly accepted it, the Commission shall adopt, by means of an implementing act, a priority-rated request providing for:

(a) the legal basis of the priority-rated request which has to be complied with by the economic operator;

(b) the list of crisis-relevant products subject to the priority-rated request, their specifications, price and the quantities in which they are to be supplied;

(c) the time limits within which the priority-rated request is to be completed;

(d) the beneficiaries of the priority-rated request;

(e) the waiver of contractual liability under the conditions laid down in paragraph 11 of this Article; and

(f) the penalties provided for in Article 55 for non-compliance with the obligations stemming from that implementing act.

▌

PUBLIC

7. Where the ***economic operator*** declines the ***request referred to in paragraph 2***, it shall provide the Commission with a detailed justification ***for that refusal***.

8. Having due regard to the justifications provided by the economic operator under paragraph 7 of this Article, and after consulting and receiving prior agreement of the Member State on whose territory the production site of the economic operator concerned is located and the Member State on whose territory the executive management structure of the economic operator is located, the Commission may adopt, by means of an implementing act, a priority-rated order imposing on the notified economic operator an obligation to perform the order. The Commission shall state the reasons why, in line with the proportionality principle and the fundamental rights of the economic operator under the Charter of Fundamental Rights of the European Union, it was necessary to adopt the implementing act in light of the circumstances described in paragraph 1. Any such implementing act shall provide the information referred to in paragraph 6 points (a) to (f).

9. The Commission shall not issue the priority-rated order when:

(a) the economic operator is unable to perform the priority-rated order on account of insufficient production capability or production capacity, or on technical grounds, even under preferential treatment of the order, or;

(b) performance of the order would place an unreasonable economic burden and entail particular hardship for the economic operator, including substantial risks relating to business continuity.

10. ***The priority-rated requests referred to in paragraph 6 or the priority-rated orders referred to in*** paragraph ***8*** shall***:***

(a) be placed at a fair and reasonable price, adequately taking into account the economic operator's opportunity costs when fulfilling the priority-rated requests or the priority-rated orders as compared to existing contractual obligations;

(b) take precedence over any performance obligation under private or public law, related to the products subject to the priority-rated request or to the priority-rated order, with the exception of obligations directly related to orders with a military purpose.

11. ***The economic operator subject to a priority-rated request pursuant to paragraph 6 or to a priority-rated*** order ***pursuant to paragraph 8*** shall ***not be liable for any breach of contractual obligation that is governed*** by the ***law of a Member State, provided that***:

(a) ***the breach of contractual obligation is necessary for compliance with the required prioritisation***;

(b) ***the*** implementing ***act referred to in paragraph 6 or in paragraph 8 has been complied with; and***

(c) where applicable, the acceptance of the priority-rated request did not have the sole purpose of unduly avoiding a prior contractual obligation.

12. ***Any conflict between a priority-rated request or a priority-rated order and a measure under any other prioritisation mechanism of the Union shall be discussed within the Security of Supply Board and resolved by*** the Commission***, based on the weighing*** of the ***public interest.***

13. ***The economic operator subject to a priority-rated request pursuant to paragraph 6 or to a priority-rated order pursuant to paragraph 8 may request*** the Commission ***to modify*** the implementing act referred to in paragraph ***6 or in paragraph 8 where it considers it to be duly justified based on one*** of the ***following grounds:***

(a) the economic operator is unable to perform the priority-rated request or the priority-rated order on account of insufficient production capability or production capacity, even under preferential treatment of the request or order;

(b) completion of the request or the order would place an unreasonable economic burden and entail particular hardship for the economic operator.

14. ***The economic operator shall provide all relevant and substantiated information to allow*** the Commission ***to assess the merits of the request for modification referred to in*** paragraph ***13.***

PUBLIC

15. ***Based on the examination*** of the ***reasons and evidence provided by the economic operator,*** the Commission ***may, after consulting the Member State on whose territory the executive management structure*** of the ***economic operator is located and the Member State where the production site is located, amend its implementing act to release, partially or in totality, the economic operator concerned from its obligations under this Article***.

16. Where ***an economic operator established in the Union is subject to a measure of a third country which entails a priority-rated*** order ***or a priority-rated*** request ***of a crisis-relevant product which is not a defence product, it shall notify*** the Commission ***thereof. The Commission shall then inform the Security of Supply Board*** of the ***existence of such measures.***

▌

17. ***Where an economic operator subject to a priority-rated request pursuant to paragraph 6 or a priority-rated order pursuant to paragraph 8 intentionally, or through gross negligence, does not comply with that request or order,*** the Commission ***may, by means of a decision, where deemed necessary and proportionate, impose a fine on the economic operator concerned in accordance with Article 55, except where:***

(a) the economic operator is unable to perform the priority-rated request or the priority-rated order on account of insufficient production capability or production capacity, or on technical grounds; or

(b) performance or completion of the order would place an unreasonable economic burden and entail particular hardship for the economic operator, including substantial risks relating to business continuity.

18. ▌The Commission ***shall adopt an*** implementing act ***laying down the practical and operational arrangements for the functioning of priority-rated requests and priority-rated orders, including a methodology for the determination of the price of crisis-relevant products subject to priority-rated orders***.

19. ***The implementing acts referred to in*** this Article shall be ***adopted in accordance with the examination procedure referred to in Article 58(3).***

20. ***This Article is without prejudice to the right of each Member State to protect its essential security interests in accordance with Article 346(1)(b) TFEU.*** ▌

▌

PUBLIC

SECTION 4

SECURITY-RELATED *SUPPLY-CRISIS* STATE

Article 48

Activation of the security-related *supply-crisis* state

1. A security-related ***supply-crisis*** shall be considered to occur where:

   (a) ***there are serious disruptions or an imminent risk of such disruptions in the provision of defence products, such as disruptions due to the impact of events related to the*** security ***of the Union; and***

   (b) ***such*** disruptions ***or the risk thereof are resulting or are likely to result*** in the ***adoption of divergent national measures related to crisis-relevant defence*** products ***leading to a severe negative impact on the proper functioning of the internal market, in particular*** obstacles to ***cross-border*** trade in ***such crisis-relevant*** defence products within the Union causing significant shortages of defence products ▌ .

2. Where**,** pursuant to Article 43, the Commission ***or the Security of Supply Board become aware of risk of serious disruption in the supply of crisis-relevant defence products or has concrete and reliable information of any other relevant risk factor materially affecting the supply of such products, the Commission, after consulting the Board,*** shall assess ▌ whether the conditions of paragraph 1 of this Article are met. That assessment shall take into account the potential ▌ impacts and consequences of the security-related ***supply-crisis*** state on the ▌ defence ***supply-chains within the Union, the results of stress tests conducted pursuant to Article 41a, and assessments performed in other relevant Union crisis management frameworks***. Where that assessment provides concrete and reliable evidence, the Commission may***, after consulting the Security of Supply Board,*** propose to the Council to activate the security-related ***supply-crisis*** state. ***When proposing to activate the security-related supply crisis-state to the Council, the Commission shall inform the Parliament thereof.***

2a. ***When assessing if the conditions of paragraph 1 of this Article are met pursuant to Article 2, the Commission shall, in particular, take into account whether a crisis affecting the security and defence interests of the Union and its Member States has been identified within the area of CFSP, such as whether the crisis has triggered the activation of the mutual assistance clause pursuant to Article 42(7) TEU.***

3. The Council, ***acting by qualified majority and*** upon the proposal of the Commission***, may activate the security-related supply-crisis state by means of a Council*** implementing act***.*** ***The duration of*** the security-related ***supply-crisis*** state ***shall be specified in the implementing act and shall initially not exceed 12 months. The implementing act shall specify which*** of the ***measures set out in Articles 49 to 54a are activated. In addition, the implementing act may identify for which crisis-relevant defence products those measures shall be activated***.

3a. The Council ***may amend the proposal referred to in paragraph 3 acting by qualified majority***.

4. ***The Commission shall report on a regular basis and at least every three months to the Council and to the European Parliament on the state of the security-related supply-crisis.***

5. ▌ No later than three weeks before the expiry of the ***duration of*** the security-related ***supply-crisis*** state ▌ , the Commission***, taking into consideration the recommendation*** of the ***Security of Supply Board,*** shall submit to the Council a report, assessing whether that period should be prolonged. The report shall in particular analyse the ▌ impact of the measures previously activated under this Regulation. ***Where such assessment provides concrete and reliable evidence that the conditions for the activation of the security-related supply-crisis state are still met, the Commission may, after consulting the Security of Supply Board, propose to the Council to prolong the security-related supply-crisis state.***

6. ***The Council, acting by qualified majority upon a proposal from the Commission, may prolong the security-related supply-crisis state by means of a Council implementing act. The duration of the prolongation shall be limited to a maximum of 6 months and specified in the Council implementing act. The implementing act shall also specify which of the measure set out in Article 49-54a continue to be applied, or, where relevant,***

are activated. The Council, acting by qualified majority, may repeatedly decide to prolong the period for which the security-related supply-crisis state is activated where that is justified to address the crisis.

6a. The Commission may propose ▌ to the Council ▌ to prolong the ***supply-crisis*** state ***as many times as considered necessary*** to address the ***supply*** crisis, ***subject to the conditions set out in paragraph 5 of this Article. Upon such proposal from the Commission, paragraph 6a of this Article shall apply***.

7. ***During the security-related supply-crisis state,*** the Commission ***shall***, after consulting the ***Security of Supply*** Board, ***assess the appropriateness of an early termination of the security-related supply-crisis state. If the assessment so indicates, the Commission shall*** propose to the Council to ***terminate the crisis state. The Council may, by means of*** an implementing act ***adopted by qualified majority upon a proposal from the Commission, terminate the security-related supply-crisis state before the expiry date specified in the implementing act referred to in paragraph 3 or 6a***.

8. Upon expiry of the period for which the security-related ***supply-crisis*** state is activated ***or upon its termination pursuant to paragraph 7a***, the measures taken in accordance with Articles 49 to ***54a*** shall ***immediately*** cease to apply. ***By derogation, implementing acts that have been adopted in accordance with Article 50(3) shall continue to apply until the priority-rated requests concerned have been completed.***

In the course of the preparation and implementation of the measures set out in Articles 49 to ***54a***, the Commission shall, whenever possible, act in close coordination with the ***Security of Supply*** Board, which shall provide advice in a timely manner. The Commission shall inform the ***Security of Supply*** Board on the action taken. ***During the supply-crisis state, the Commission shall, upon request from a Member State or on its own initiative, convene extraordinary meetings of the Defence Security of Supply Board where necessary. In line with Article 57(10), the Defence Security of Supply Board shall invite, where relevant, high-level industrial representatives to meet in special configuration in order to discuss issues related to the defence products. Member States shall work closely with the Commission within the Defence Security of Supply Board in order to ensure the coordination of any Union and national measures taken with regard to the defence supply chains related to the concerned crisis-relevant defence product.***

PUBLIC

9. Where the security-related ***supply-crisis*** state is activated, the Commission may ***propose to the Council to activate the measures*** provided for in Articles 46 and 47, under the conditions laid down therein and in ***Articles 44 and*** 45.

Article 49

Information gathering

Where the Council activates this measure in accordance with Article 48(4), the Commission may take the measure provided for in Article 46 in relation to ***crisis-relevant*** defence products, in accordance with the conditions defined therein.

Article 50

Prioritisation of defence products ▌

1. Where the Council activates this measure in accordance with Article ***48(3)***, a Member State ***may submit a request to the Commission to request an economic operator whose production site is located on its territory to accept***, ***or to prioritise, certain orders of crisis-relevant products*** which ***are defence products in order to address the*** severe difficulties ***that Member State or another Member State faces*** either in the placing of an order or in the execution of a contract for the supply of ***such*** products.

2. Upon a request referred to in paragraph 1, the Commission may, ***where the production or the supply of such products could not be achieved by any other measure provided for in this chapter, address a*** request ***to*** the economic operator ***concerned after:***

   (a) consultation, and receiving prior agreement, of the Member State on whose territory the production site of the economic operator concerned is located; and

   (b) consultation, and receiving prior agreement, of the Member State on whose territory the executive management structure of the economic operator is located.

   The Commission's request shall explicitly indicate that the economic operator remains free to refuse the request.

2a. The Commission shall demonstrate that the choice of the recipients and beneficiaries of the requests referred to in this Article is non-discriminatory and complies with Union competition rules.

2b. The Commission shall base the requests referred to in this Article on objective, factual, measurable and substantiated data, showing that such prioritisation is indispensable in order to ensure the proper functioning of the internal market, as well as having regard to the legitimate interests of the economic operator and the cost and effort required for any change in the production sequence of the supply chain.

3. Where the ***economic operator*** to which the request referred to in paragraph 1 is addressed has expressly accepted the request ▌, the Commission shall, after the consultation ***and prior agreement*** of the Member State ***on whose territory the production site*** concerned ***of the economic operator is located and the Member State on whose territory the executive management structure of that economic operator concerned is located***, adopt ***by means of*** an implementing act ***a priority-rated request*** providing for:

(a) the legal basis of the ***priority-rated request*** which has to be complied with by the ***economic operator***;

(b) the ***list of*** crisis-relevant products subject to the ***priority-rated*** request***, their specifications and the*** quantity in which they are to be supplied;

(c) the time limits within which the ***priority-rated*** request is to be completed;

(d) the beneficiaries of the ***priority-rated*** request***;***

(da) the scope of contractual obligations over which the priority-rated request shall have precedence;

(e) the waiver of contractual liability under the conditions laid down in paragraph 5 ***of this Article; and***

(f) the penalties provided for in Article 55 for non-compliance with the obligations stemming from that implementing act.

The implementing act shall be adopted in accordance with the examination procedure referred to in Article 58(3).

4. The ***priority-rated*** requests shall be placed at a fair and reasonable price adequately taking into account the economic operator's opportunity costs when fulfilling the ***priority-rated*** requests vis-à-vis existing contractual obligations. The ***priority-rated*** requests shall take

precedence over ▌ contractual ***obligations*** related to the ***crisis-relevant*** products subject to the ***priority-rated*** request under private or public law***, under the conditions laid down in the implementing act referred to in paragraph 3***.

5. The economic operator subject to ***a*** priority-rated request ***pursuant to paragraph 3*** shall not be liable for any breach of contractual obligation that is governed by the law of a Member State, ***provided that***:

(a) the breach of contractual ***obligation*** is strictly necessary for compliance with the required ***prioritisation;***

(b) the implementing act referred to in paragraph 3 has been complied with; and

(c) the acceptance of the ***priority-rated*** request ***did not have the sole purpose of*** unduly avoiding a prior performance obligation.

5a. The economic operator subject to a priority-rated request may request the Commission to modify the implementing act referred to in paragraph 3 where it considers it to be duly justified based on one of the following grounds:

(a) the economic operator is unable to perform the priority-rated request on account of insufficient production capability or production capacity, even under preferential treatment of the request;

(b) completion of the request would place an unreasonable economic burden and entail particular hardship for the economic operator.

5b. The economic operator shall provide all relevant and substantiated information to allow the Commission to assess the merits of the request for modification.

5c. Based on the examination of the reasons and evidence provided by the economic operator, the Commission may, after consultation and prior agreement of the Member State on whose territory the relevant production site of the economic operator is located and the Member State on whose territory the executive management structure of that economic operator concerned is located, amend its implementing act to release, partially or in totality, the economic operator concerned from its obligations under this Article.

PUBLIC

6. Where an economic operator, after having expressly accepted to prioritise the orders requested by the Commission, intentionally or through gross negligence ▌ does not comply with the obligation to prioritise those orders, it shall be subject to fines set in accordance with Article 55, except where***:***

(a) the economic operator is unable to perform the priority-rated request on account of insufficient production capability or production capacity, or on technical grounds; or

(b) performance or completion of the request would place an unreasonable economic burden and entail particular hardship for the economic operator, including substantial risks relating to business continuity.

▌

8. When an ***economic operator*** established in the Union is subject to a measure of a third country which entails a ***priority-rated*** request ***of a crisis-relevant product which is a defence product***, it shall notify the Commission thereof. The Commission shall then inform the ***Defence Security of Supply Board*** of the existence of such measures. ***Where relevant, the Commission may consult with the Defence Security of Supply Board on any appropriate step that may need to be taken in response to that measure.***

9. ***This Article is without prejudice to the right of each Member State to protect its essential security interests,*** in accordance with ▌ Article ***346(1)(b) TFEU***.

Article 51

Intra-EU transfers of *crisis-relevant* defence products

1. Where the Council activates this measure in accordance with Article ***48(3),*** and without prejudice to Directive 2009/43/EC and Member States' prerogatives under that Directive, Member States shall ensure that applications related to intra-EU transfers are processed in an efficient and timely manner. To that end, all national authorities concerned shall ensure that the ***most rapid*** treatment ***legally possible is given to such applications. The Council implementing act referred to in Article 48(3) shall specify the timeframe within which national authorities concerned shall treat the applications once they have received all necessary information from the applicant. This timeframe shall not be longer than two weeks***.

2. ***Where a Member State imposes, in accordance with Article 4(8) of Directive 2009/43/EC, export limitations on components which are*** crisis-relevant products***, that Member State shall not require further authorisations for the intra-EU transfer of the components concerned where the recipient provides a declaration of use in which it declares that the components subject to that transfer licence are integrated or are to be integrated into a defence product and*** cannot be ***transferred or exported as such. This shall be without prejudice to the obligations of recipients laid down in*** Article ***10*** of Directive 2009/43/EC.

[redacted]

Article 52

Support to emergency defence innovation actions

1. Where the Council activates this measure in accordance with Article ***48(3)***, innovation actions related to one of the following activities shall be deemed eligible under the Programme, provided for in Chapter II:

[redacted]

(b) activities that aim at very significantly shortening the delivery lead time of defence products;

(c) activities that aim at significantly simplifying the technical specifications of defence products in order to enable their mass production;

(d) activities that aim at significantly simplifying the production process of defence products to enable their mass production***;***

(da) activities that aim to replace components by alternatives that are available in the EU or are easily adaptable or can be developed in a timely manner by economic entities inside EU.

PUBLIC

Article 53

Certification ▌

1. Where the Council activates this measure in accordance with Article ***48(3)***, Member States shall ensure that administrative procedures related to the certification ***of crisis relevant defence products and,*** where necessary***,*** technical adaptations ***of such products*** are processed in the most rapid ***way*** possible***, in accordance with*** their applicable national laws and regulations.

2. Where such ***a*** status exists in national law, certification of crisis-relevant defence products shall be allocated the status of the highest ***possible*** significance ▌ .

3. Where this measure is activated, ***crisis-relevant*** defence products certified in a Member State shall be deemed certified in another Member State without being subject to additional controls.

4. The Implementing Act of the Council referred to ***in*** Article 48(3) may lay down more precise provisions on the scope of this measure.

5. This measure ***is*** without prejudice to ***the right of each*** Member ***State to protect its*** essential security interests ***in accordance with Article 346(1), point (b), TFEU***.

Article 54

National fast-tracking of *permit-granting* procedures

1. Where the Council activates this measure in accordance with Article ***48(3), the security of supply of crisis-relevant defence products may be considered an imperative reason of overriding public interest within the meaning of Article 6(4) and Article 16(1) (c) of Directive 92/43/EEC and of Article 4(7) of Directive 2000/60. Therefore,*** the planning, construction and operation of ***related*** production facilities ***may be considered of overriding public interest, provided that the remaining other conditions set out in these provisions are fulfilled***.

▌

PUBLIC

Article 54a

Continuity of production of crisis-relevant defence products

1. Where the Council activates this measure in accordance with Article 48(3) and where Directive 2003/88/EC applies to the relevant production activities, Member States may decide to use or to encourage economic operators whose production site is located on their territory and which produce the crisis-relevant defence products concerned to make use of derogations provided for in Article 17(3) of Directive 2003/88/EC in order to allow for the expansion of working shifts hence facilitating continuity of production of the crisis-relevant defence products concerned, if they deem it necessary to achieve the objectives of this Regulation.

2. To that end and where prior authorisation is required, all national authorities concerned shall ensure that the most rapid treatment legally possible is given to applications from economic operators producing crisis-relevant defence product to use such derogations.

SECTION 5

PENALTIES

Article 55

Penalties

1. The Commission may, by way of implementing ***acts***, impose on the ***economic operators that are*** addressees of information ***requests pursuant to Article 46 or that are subject to*** any of the obligations to inform the Commission of a third-country obligation pursuant to Articles 47(16) and 50(8) or to prioritise the production of crisis-relevant products pursuant to Articles 47 ***and 50***, where it deems it to be necessary and proportionate:

   (a) fines not exceeding EUR 300 000 ▌ where ***the economic operator***, intentionally or through gross negligence, supplies incorrect, incomplete or misleading information in response to a request made pursuant to Article ***46(1)***, or does not supply the information within the prescribed time limit***, in accordance with Article 46(8)***;

(b) fines not exceeding EUR 150 000 ▌ where ***the economic operators***, intentionally or through gross negligence, does not comply with the obligation to inform the Commission of a third-country obligation pursuant to Article ***49a***(***12***) and ***Article*** 50(8);

(c) periodic penalty payments not exceeding 1,5 % of the average daily turnover in the preceding business year for each working day of non-compliance from the date established in the decision in which the priority-rated order was issued, where ***the economic operator***, intentionally or through gross negligence, does not comply with an obligation to prioritise the production of crisis-relevant products pursuant to Article ***49a(4a), in accordance with Article 49a(13);*** where the ***economic operator*** concerned is an SME, the periodic penalty payments imposed shall not exceed 0,5 % of its average daily turnover in the preceding business year;

(d) fines not exceeding EUR 300 000 ▌ where ***the economic operator***, intentionally or through gross negligence, does not comply with the obligation to prioritise the production of crisis-relevant products pursuant to Article ***49a(4) and Article 50(3), in accordance with Article 49a(13) and Article 50(6), respectively***. ***The implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(3).***

▌

2. Before taking a decision pursuant to paragraph 1 of this Article, the Commission shall provide an opportunity for the ***economic operator*** concerned ▌ to be heard in accordance with Article 56. ***The Commission*** shall take into account any duly reasoned justification presented by ***the economic operator*** for the purpose of determining whether fines or periodic penalty payments are deemed necessary and proportionate.

3. Implementing acts referred to in this Article shall be adopted in accordance with the examination procedure referred to in Article 58(3).

4. In fixing the amount of the fine or periodic penalty payment, the Commission shall take into consideration the nature, gravity and duration of the infringement, including in ***relation to*** cases of non-compliance with the obligation to accept ***or*** prioritise a priority-rated order set out in Article ***47(8) or a priority-rated request set out in Article 47(6) or***

Article 50(3), whether the ***economic operator has*** partially complied with the priority-rated order ***or the priority-rated requested***.

5. The fines shall constitute external assigned revenue within the meaning of Article 21(5) of the Financial Regulation ***and shall be directed to*** the Ukraine Support Instrument.

Article 55a

Limitation period for the imposition of penalties

1. The powers conferred on the Commission by Article 55 shall be subject to the following limitation periods:

(a) two years in the case of infringements of provisions concerning requests for information pursuant to Article 46(1);

(b) two years in the case of infringements of provisions concerning information obligations pursuant to Article 49a(12) and Article 50(8);

(c) three years in the case of infringements of provisions concerning the obligation related to the prioritisation of the production of crisis-relevant products pursuant to Articles 49a and 50.

2. The limitation periods referred to in paragraph 1 shall begin to run on the day on which the infringement is committed. Where there are continuous or repeated infringements, the limitation periods shall begin to run on the day on which the last infringement was committed.

3. Any action taken by the Commission or the competent authorities of the Member States for the purpose of ensuring compliance with this Regulation shall interrupt the limitation period.

4. The interruption of the limitation period shall apply for all the parties which are held responsible for participation in the infringement.

5. Each interruption shall start the time running afresh. However, the limitation period shall expire at the latest on the day on which a period equal to twice the limitation period has elapsed without the Commission having imposed a fine or a periodic penalty payment. That period shall be extended by the time during which the limitation period is

suspended because the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Union.

Article 55b

Limitation period for the enforcement of penalties

1. The power of the Commission to enforce decisions taken pursuant to Article 55 shall be subject to a limitation period of three years.

2. Time shall begin to run on the day on which the decision becomes final.

3. The limitation period for the enforcement of fines and periodic penalty payments shall be interrupted by:

(a) a notification of a decision varying the original amount of the fine or periodic penalty payment or refusing an application for variation;

(b) any action of the Commission or of a Member State, acting at the request of the Commission, designed to enforce payment of the fine or periodic penalty payment.

4. Each interruption as referred to in paragraph 3 shall start time running afresh.

5. The limitation period for the enforcement of fines and periodic penalty payments shall be suspended for as long as:

(a) time to pay is allowed;

(b) enforcement of payment is suspended pursuant to a decision of the Court of Justice of the European Union.

Article 56

Right to be heard for the imposition of fines or periodic penalty payments

1. Before adopting a decision pursuant to Article 55, the Commission shall ensure that the ***economic operators*** concerned ▌ have been given the opportunity to submit observations on:

PUBLIC

(a) the preliminary findings of the Commission, including any matter ***in relation*** to which the Commission has ***raised*** objections;

(b) the measures that the Commission may intend to take in view of the preliminary findings pursuant to point (a) of this paragraph.

2. The ***economic operators*** concerned ▌ may submit ***to the Commission*** their observations ***on*** the Commission's preliminary findings within a time limit which shall be fixed by the Commission in its preliminary findings, and which may not be less than 14 working days.

3. The Commission shall base its imposition of fines or periodic penalty payments only on objections on which the ***economic operators*** concerned ▌ have been able to comment.

4. Where the Commission has informed the ***economic operators*** concerned ▌ of its preliminary findings as referred to in paragraph ***1***, it shall give access, if so requested, to the Commission's file under the terms of a negotiated disclosure, subject to the legitimate interest of ***economic operators*** in the protection of their business secrets, or in order to preserve business secrets or other confidential information of any person. The right of access to the file shall not extend to confidential information and internal documents of the Commission or the authorities of the Member States***;*** in particular ▌ to correspondence between the Commission and the authorities of the Member States. Nothing in this paragraph shall prevent the Commission from disclosing and using information necessary to prove an infringement.

Section 2c

Governance ▌

▌

Article 57

Defence *Security of Supply* Board

1. The Defence ***Security of Supply*** Board is hereby established.

2. The general task of the ***Defence Security of Supply*** Board is to assist and provide ▌ recommendations to the Commission pursuant to this ▌ Chapter ▌ .

▌

4. The Commission shall maintain a regular flow of information to the Defence ***Security of Supply*** Board on any planned measures ***and on*** measures that have been taken ***following*** the activation of the ▌ crisis ***states pursuant to Articles 44 and 48***. The Commission shall provide the necessary information through a secured IT system.

5. For the purposes of ***preparing for and addressing a crisis*** state ***pursuant to*** Article 44 ***or Article 48***, the Defence ***Security of Supply*** Board shall assist the Commission in ▌ :

(a) analysing crisis-relevant information gathered by Member States or the Commission;

(aa) assessing possible preparedness measures;

(b) assessing whether the criteria for activation or deactivation of the ***crisis states pursuant to Articles 44 and 48*** have been fulfilled;

(ba) facilitating coordinated action with Member States;

(c) providing guidance on the implementation of the measures chosen to respond to ***the crises*** at Union level***, including on the activation of the measures referred to in Articles 46 to 47 and 49 to 54a***;

▌

(da) identifying specific response measures for the Member States for ensuring the timely availability and supply of crisis-relevant products;

(e) facilitating exchanges and sharing of information, including with other crisis-relevant bodies at Union level, as well as, as appropriate, ***with*** third countries ▌ and international organisations***, representatives of industry, civil society and academia;***

(f) identifying relevant topics for the conduct of stress tests;

(g) the development of a framework and methodology for identifying crisis-relevant products and the list of early-warning indicators;

(h) carrying out the mapping regarding crisis-relevant products and early warning indicators;

(i) assessing whether a prolongation of the crisis state is necessary and proportionate and whether a termination is appropriate;

(j) assessing the results of the monitoring and identifying, where appropriate, potential solutions to issues of common interest; and

(k) identifying an appropriate frequency for the conduct of stress tests.

▌

7. The Defence ***Security of Supply*** Board shall be composed of ▌ representatives ***from all Member States,*** the Commission, the ***High*** Representative and ***the EDA. It shall be co-chaired by a*** representative ***of*** the Commission ***and*** of the ***Member State holding the rotating presidency of the Council***. The secretariat of the Defence ***Security of Supply*** Board shall be ensured by the Commission. ***Only Member States shall have voting rights. The Chairs shall invite representatives of the European Parliament to attend, as observers, the meetings of the Board.***

7a. Associated countries shall have the right to become members, without voting rights, of the Defence Security of Supply Board in accordance with the conditions set out under the Agreement on the European Economic Area.

8. The Defence ***Security of Supply*** Board shall meet whenever the situation requires, upon request from the Commission***,*** a Member State or an associated country ***which has become a member thereof***. It shall adopt its rules of procedure on the basis of a proposal submitted by the Commission. ***These rules of procedure shall provide mechanisms to ensure the good functioning of the Board in carrying out its tasks, including by foreseeing dispute settlement procedures related to potential disputes between the co-chairs.***

9. The Defence ***Security of Supply*** Board may issue ***recommendations***, upon the request of the Commission or on its own initiative. The Defence ***Security of Supply*** Board shall endeavour to find solutions which command the widest possible support.

PUBLIC

10. The Defence ***Security of Supply*** Board shall invite, at least once a year, representatives from National Defence Industrial Associations and selected industrial representatives ***to take part, as observers, in its work***, taking into account the necessity to ensure a balanced geographical representation ▌. Where ***a*** crisis state referred to in ***either Articles*** 44 or ▌ 48 has been activated, the Defence ***Security of Supply*** Board shall invite***, where relevant,*** high-level industrial representatives to ***take part, as observers, in its work, meeting in a*** special configuration in order to discuss issues linked to crisis-relevant products.

11. The Defence ***Security of Supply*** Board shall invite the representatives of other crisis-relevant bodies at Union level as observers to ***its*** relevant meetings ▌.

12. The Defence ***Security of Supply*** Board shall invite, where relevant ▌, in line with its rules of procedure and with due respect to the security and defence interests of the Union and its Member States, a representative from Ukraine to attend meetings as an observer.

13. The Commission shall ensure ***inclusiveness*** and provide members of the Board with equal access to information ▌ in order to ensure that the decision-making process ***of the Defence Security of Supply Board*** reflects the situation and the needs of all Member States. ***The Board shall take the necessary measures to ensure the safe handling and processing of classified and sensitive information in accordance with articles 60 and 61.***

14. The Commission may, on its own initiative or on the proposal of the Defence ***Security of Supply*** Board, set up working groups on an ***ad hoc*** basis to support the Defence ***Security of Supply*** Board in its work for the purpose of examining specific questions on the basis of the tasks referred to in paragraph 1. Member States shall nominate experts for the working groups. ***The EDA may be invited to meetings of such working groups.***

15. The Commission shall set up a working group ***within the meaning of paragraph 14*** on legal, regulatory and administrative hurdles. The objectives of this working group ***shall be***:

    (a) to identify existing or potential legal, regulatory and administrative obstacles at international, ***Union*** and national levels to the achievement of the objectives listed in Article ***1(4)***;

    (b) to identify potential solutions ***and*** mitigation measures to identified obstacles.

Chapter V

Governance, evaluation and control

Article 58

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 EDA 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 work of the committee.

2a. The Commission may, on its own initiative or upon request from one or several Member States, invite, where relevant, representatives of Ukraine to attend meetings of the committee. Representatives of Ukraine shall not be present during deliberations, nor participate in voting of the committee.

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

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

▌

Article 59

Financing* agreement *with Ukraine

1. The Commission shall conclude ▌ with Ukraine ***a financing agreement within the meaning of Article 114(2) of the Financial Regulation*** for the implementation of the actions set out in this Regulation which concern Ukraine or legal entities established in Ukraine receiving Union funds.

PUBLIC

2. The ***financing*** agreement concluded with Ukraine, taken as a whole, and contracts and agreements signed with legal entities established in Ukraine receiving Union funds, shall ensure that the obligations set out in Article 129 of the Financial Regulation can be fulfilled.

3. The ***financing*** agreement shall lay down the obligations of the Ukrainian authorities and bodies entrusted ***with*** budget implementation tasks to take all ▌ necessary measures***,*** including legislative, regulatory and administrative measures***,*** to respect the principles of sound financial management, transparency and non-discrimination, to ensure the visibility of Union action when managing the Union funds, to fulfil the appropriate control and audit obligations and assume the resulting responsibilities, and to protect the financial interests of the Union, by, in particular, detailed enacting provisions concerning:

   (a) the activities related to control, supervision, monitoring, evaluation, reporting and audit of Union funding under the ***Ukraine Support Instrument***, as well as investigations, anti-fraud measures and cooperation;

   (b) rules on taxes, duties and charges in accordance with Article 27(9) and (10) of Regulation (EU) 2021/947[31];

   (c) the right of the Commission to monitor activities under this Regulation carried out by the legal entities established in Ukraine, along the whole project cycle, including for cooperation for common procurement action, to take part in ***those activities*** as observer, as appropriate, and to make recommendations for the improvement of such activities***, and a*** commitment by the Ukrainian authorities to make their best efforts to implement such recommendations of the Commission and to report on this implementation;

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[31] ***Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, amending and repealing Decision No 466/2014/EU of the European Parliament and of the Council and repealing Regulation (EU) 2017/1601 of the European Parliament and of the Council and Council Regulation (EC, Euratom) No 480/2009 (OJ L 209, 14/06/2021, p. 1).***

(d) the obligations referred to in Article 64(2), including precise rules and timeframe ***regarding the*** collection of data by Ukraine and access ***to such data by*** the Commission and ***the European Anti-Fraud Office (OLAF)***;

(e) the ▌ protection ***and handling*** of classified information ***in accordance with applicable rules***;

(f) provisions on protection of personal data.

4. Funding shall only be granted to Ukraine after the ***financing*** agreement has entered into force and ▌ the actions needed to implement the requirements it establishes have been implemented by the parties.

5. The Commission shall ensure that, from its side, all necessary steps are taken for the financing arrangement to become effective no later than six months after the entry into force of this Regulation.

Article 60

Protection of **classified information**

1. ▌ Classified▌ information ***that is created, handled, stored, exchanged or shared*** under ***this Regulation*** shall be ***protected in accordance with the security rules set out in Commission Decision (EU, Euratom) 2015/444[32] or the Agreement between the*** Member States ***of the European Union, meeting within the Council, regarding the protection of classified information exchanged in the interests of the European Union, as appropriate***.

2. ***The participating Member States*** shall ***decide who is the originator of classified foreground*** information ***generated in the implementation of eligible actions listed under Article 11***.

3. The Commission shall ***have access to the*** classified information ***necessary for carrying out the tasks assigned to it under this Regulation concerning the eligible actions listed under Article 11***.

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[32] ***Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17/03/2015, p. 53).***

4. ***In the context of a SEAP, the rules on the protection of classified information referred to in Article 27(1), point (l),*** shall ***comply with paragraph 1 of this Article***.

4a. Where a SEAP includes associated countries or Ukraine among its members or observers, such SEAP shall ensure a level of protection equivalent to that afforded by the Agreement between the Member States of the European Union, meeting within the Council, regarding the protection of classified information exchanged in the interests of the European Union.

5. The ***applicable security framework for an action*** shall ***be put in place by participating*** Member States ***at the latest before the signature of the grant agreement or the contract***. ***The relevant documents shall form an integral part of the grant agreement or the contract.***

6. The Commission shall set up a system that is security accredited in accordance with Decision (EU, Euratom) 2015/444 in order to facilitate the exchange of classified information between the Commission and the Member States and associated countries, where appropriate, with the applicants and the recipients.

Article 61

Confidentiality ▌ of information

1. Information received as a result of the application of this Regulation shall be used only for the purpose for which it was requested.

2. Member States, the Commission***, the European External Action Service*** and the ***EDA*** shall ensure the protection of trade and business secrets and other sensitive ▌ information acquired and generated in application of this Regulation in accordance with Union law and ▌ respective national law.

▌

5. The Commission shall handle information containing any data of an entity or any trade secrets in a way not less stringent than the handling of sensitive ▌ information, including the application of the "***need-to-know-principle***" and the ***use of*** appropriate encrypted environments ***for the handling and sharing of such information***.

Article 62

Personal data protection

1. This Regulation shall be without prejudice to ▌ Directive 2002/58/EC of the European Parliament and of the Council ***and Regulations (EU) 2016/679***[34] ***and*** (EU) 2018/1725[35] of the European Parliament and of the Council ▌ .

▌

Article 63

Audits

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

Article 64

Protection of the financial interests of the Union

1. Where an associated country participates in the Programme by means of a decision adopted pursuant to the Agreement on the European Economic Area or on the basis of any other legal instrument, the associated country shall grant the necessary rights and access required for the authorising officer responsible, OLAF and the ***European*** Court of Auditors to comprehensively exercise their respective competences. In the case of OLAF,

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[34] ***Regulation (EU) 2016/679*** of the European Parliament and of the Council of ***27 April 2016 on the protection of natural persons with regard to*** the processing of personal data and ***on the free movement of such data, and repealing Directive 95/46/EC (General Data*** Protection ***Regulation***) (OJ L ***119, 4.5.2016, p. 1)***.

[35] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

such rights shall include the right to carry out investigations, including on-the-spot checks and inspections, as provided for in Regulation (EU, Euratom) No 883/2013.

2. The agreement referred to in ***Article*** 59 shall provide for the obligations of Ukraine:

(a) to take appropriate measures to prevent, detect and correct ***irregularities,*** fraud, corruption ***and*** conflicts of ***interest*** affecting the financial interests of the Union, to ***detect and*** avoid double funding and to take legal ***action*** to recover funds that have been misappropriated;

(b) to regularly check that the financing provided has been used in accordance with the applicable rules, in particular regarding the prevention, detection and correction of ***irregularities,*** fraud, corruption ***and*** conflicts of ***interest***;

(c) to accompany a request for payment under the ***Ukraine Support Instrument*** by a declaration that the funds were used in accordance with the principle of sound financial management and for their intended purpose and managed appropriately***,*** in particular in accordance with Ukrainian rules complemented by international standards ▌ on prevention, detection and correction of irregularities, fraud, corruption and conflicts of ***interest***;

(d) to expressly authorise the Commission, OLAF, the ***European*** Court of Auditors and, where applicable, ***the European Public Prosecutor's Office*** to exert their rights as provided for in Article 129(1) of the Financial Regulation, in application of the principle of proportionality.

Article 65

Information, communication and publicity

1. The recipients of Union funding shall acknowledge the origin of the funds and ensure the visibility of ***that*** 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 ***this Regulation*** to actions taken pursuant to ***this Regulation*** and to the results obtained.

PUBLIC

3. Financial resources allocated to the Programme ***and the Ukraine Support Instrument*** shall contribute to the corporate communication of the political priorities of the Union, insofar as those priorities are related to the objectives referred to in Article 4 ***and Article 19e***.

4. Financial resources allocated to the Programme ***and the Ukraine Support Instrument*** may contribute to the organisation of dissemination activities, match-making events and awareness-raising activities, in particular aiming ***to open*** up supply chains to foster the cross-border participation of SMEs.

Article 66

Monitoring,* evaluation *and review

-1. The Commission shall monitor the implementation of the Programme and of the Ukraine Support Instrument on a regular basis and report annually on progress made, including on the level of involvement of SMEs and small mid-caps and on the overall expenditure of the Programme and USI broken down by type of actions and by form of Union contribution, to the European Parliament and to the Council.

The Commission shall put in place necessary monitoring arrangements ensuring that data for monitoring the implementation and the results of the Programme and of the Ukraine Support Instrument are collected efficiently, effectively and in a timely manner. To that end, proportionate reporting requirements may be imposed on recipients of Union funds and, where appropriate, on Member States.

1. By 30 June 2027, the Commission shall draw up a report***, based on indicators where appropriate,*** evaluating the implementation of the measures set out in this Regulation and their results ***and assessing the need for a possible revision of this Regulation***. The evaluation report shall build on consultations of the Member States and key stakeholders ***and shall evaluate the contribution of EDIP to the progress made towards increasing: the value of defence equipment procured in the Union in a collaborative manner; the value of intra-EU defence trade; and the value of Member States defence investment that is procured within the Union***.

PUBLIC

2. The Commission shall present the report to the European Parliament and the Council, accompanied, where appropriate, by relevant legislative proposals.

Article 67

Entry into force

This Regulation shall enter into force on the day following that of its publication in the ***Official Journal of the European Union***.

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

Done at Brussels,

For the European Parliament *The President*

The President *For the Council*

Three statements have been made with regard to this Regulation and can be found in OJ C, [OJ: please insert].

PUBLIC

Joint declaration by the European Parliament and the Council on the financing of the European Defence Industry Programme (EDIP) and the Ukraine Support Instrument under the EDIP Regulation

The European Parliament and the Council acknowledge the imperative need to support the European Defence Technological and Industrial Base and the Ukrainian Defence Technological and Industrial Base to increase their competitiveness by accelerating the adjustment of industry to structural changes, including through the ramp up of production capacities and the increase of cooperation in the procurement of defence products, in particular in light of the challenges created by Russia's illegal, unprovoked and unjustified war of aggression against Ukraine.

Without prejudice to the prerogatives of the budgetary authority in the framework of future annual budgetary procedures, the European Parliament and the Council invite the Commission to explore as a matter of priority, while taking into account prior political commitments of the budgetary authority, including to cover the EURI interest cost, options to reinforce the budget for the European Defence Industry Programme and the Ukraine Support Instrument in line with point 18 of the IIA on budgetary discipline without reducing similar EU programmes and funds.

PUBLIC

ANNEX 3

Joint declaration by the European Parliament, the Council and the Commission on the financial contributions from third countries for their participation in the SAFE Instrument as additional financial resources to the European Defence Industry Programme (EDIP) and the Ukraine Support Instrument (USI)

The European Parliament, the Council and the Commission acknowledge the imperative need to support the European Defence Technological and Industrial Base and the Ukrainian Defence Technological and Industrial Base to increase their competitiveness by accelerating the adjustment of industry to structural changes, including through the ramp up of production capacities and the increase of cooperation in the procurement of defence products, in particular in light of the challenges created by Russia's illegal, unprovoked and unjustified war of aggression against Ukraine.

In accordance with Article 17(4) of the SAFE Regulation, the financial contributions to be provided by third countries for their participation in the SAFE instrument shall be used for programmes supporting the Union defence industry, the Ukrainian defence industry and Ukraine in accordance with the rules of those programmes. The European Parliament, the Council and the Commission agree that such contributions should be used to reinforce EDIP, including USI.

PUBLIC

Joint declaration of the European Parliament, the Council and the Commission relating to additional financial resources for the EDIP Regulation

The European Parliament, the Council and the Commission share the view that the EDIP Regulation should be equipped with additional financial resources.

To this end, the EDIP Regulation specifically foresees the possibility of additional financial contributions from Member States, Union institutions, bodies and agencies, third countries, international organisations, international financial institutions or other third parties and expressly refers to the Fund Accelerating the defence Supply Chains Transformation (FAST) in this regard.

In view of this and taking into account the pivotal role of FAST in enhancing the defence manufacturing capacities of SMEs and small mid-caps which are in particular need of investments, such additional contributions should be allocated as a priority to FAST and complement the amounts allocated from the envelope of €1.200 million referred to in Article 5(1), with the aim that the overall indicative amount for that particular fund under the Programme will reach at least EUR 150 million, respecting the prerogatives of the budgetary authority.

PUBLIC