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NOTE

From: Presidency

To: Permanent Representatives Committee

No. Cion doc.: COM(2025) 122 final

Subject: Proposal for a COUNCIL REGULATION establishing the Security Action for Europe (SAFE) through the reinforcement of European defence industry instrument:
- Revised Presidency compromise proposal

Delegations will find attached a revised Presidency compromise proposal on the draft SAFE Regulation.

2025/0122 (NLE)

Proposal for a

COUNCIL REGULATION

establishing the Security Action for Europe (SAFE) through the reinforcement of European defence industry Instrument

(Text with EEA relevance)

[Recitals to be discussed at a later stage]

Article 1

Subject matter and scope

This Regulation establishes the Security Action For Europe (SAFE) through the Reinforcement of European Defence Industry Instrument (the ‘SAFE instrument’) providing financial assistance to Member States **allowing enabling** them to carry out urgent and major public investments in support of the European defence industry **in response to the current crisis situation.**

This Regulation sets out the conditions and procedures under which the financial assistance under the SAFE instrument shall be provided to and implemented by the Member States and lays down the rules on simplified and accelerated common procurement procedures for the acquisition of defence products and other products for defence purpose belonging to the following categories:

Category one: ammunition and missiles; artillery systems; **ground combat capabilities and their support systems;** small drones (NATO class 1) and related anti-drone systems; critical infrastructure protection; cyber; and military mobility **including counter-mobility.**

Category two: air and missile defence; **maritime surface and underwater capabilities;** drones other than small drones (NATO class 2 and 3) and related anti-drone systems; strategic enablers; space assets protection; artificial intelligence and electronic warfare.

Article 2

Definitions

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

- (1) ‘defence product’ means goods, services and works that fall within the scope of Directive 2009/81/EC, as set out in Article 2 thereof;

- (2) ‘other products for defence purposes’ means any good, service and work other than those falling within the scope of Directive 2009/81/EC, as set out in Article 2 thereof, which are necessary for or aimed at defence purposes;
- (3) ‘common procurement’ means the procurement procedure of defence products or other products for defence purpose and the resulting contracts, carried out by at least one Member State receiving financial assistance under this instrument and one additional Member State or one Member of the European Free Trade Association which are members of the European Economic Area (‘EEA EFTA States’) or Ukraine. In addition, the common procurement may include acceding countries, candidate countries and potential candidates, and other third countries with whom the Union has entered a Security and Defence Partnership (Non-Binding Instrument, NBI). **Common procurement may include existing procurement contracts which fulfill the same conditions.**

Article 3

Complementary nature of the SAFE instrument

The SAFE instrument shall complement the measures taken by the Union as well as by Member States to carry out urgent and major public investments to support the European defence industry.

Article 4

Conditions for using the SAFE instrument

1. A Member State may request financial assistance under the SAFE instrument (‘financial assistance’) for activities, expenditures and measures **aimed at addressing the crisis situation as referred to in Article 1. Those activities, expenditures and measures shall be** related to defence products or other products for defence purpose carried out through common procurements respecting the eligibility rules set out in Article 16 and **shall aim** at, in particular:
- (a) speeding up the adjustment of the defence industry to structural changes, including through the creation and ramp-up of its manufacturing capacities as well as related supporting activities;
 - (b) improving the timely availability of defence products, including through the reduction of their delivery lead time, reservation of manufacturing slots or stockpiling of defence products, intermediate products or raw materials; **or**
 - (c) ensuring interoperability and interchangeability across the Union.

2. A Member State may use financial assistance under the SAFE instrument in synergy with other Union programmes in accordance with the rules of those programmes. Financial assistance under the SAFE instrument may also be used to finance activities which have received a Union contribution under another Union programme.
3. By derogation to paragraph 1, procurements carried by one Member State may be eligible for support under the SAFE instrument **when a procurement contract was signed no later than** ~~during~~ 12 months after the entry into force of the Regulation. Where a Member State includes such a procurement in the plan referred to in Article 7(2), it shall actively take all necessary steps to extend the benefit of the contract concerned to at least one additional Member State or one EEA EFTA State or Ukraine, in addition to any interested acceding country, candidate country, potential candidate, or other third country with whom the Union has entered a Security and Defence Partnership. Eligibility conditions established in Article 16(2) to (12) shall apply *mutatis mutandis*.

Article 5

Form of the financial assistance

The financial assistance shall take the form of a loan granted by the Union to the Member State concerned.

Article 6

Maximum amount of financial assistance

The maximum amount of financial assistance in the form of loans provided under the SAFE instrument shall be EUR 150 000 000 000.

Article 7

Request for financial assistance and European defence industry investment plans

1. Within six months as of the entry into force of this Regulation a Member State wishing to receive financial assistance shall send a request to the Commission. The request shall be accompanied by a plan ('European defence industry investment plan').
2. The European defence industry investment plan shall be duly reasoned and substantiated. It shall set out the following elements:
 - (a) description of the defence product and other products for defence purposes needs **related referred to in Article 1.**

~~(1) Category one: ammunition and missiles; artillery systems; **ground combat capabilities and their support systems**; small drones (NATO class 1) and related anti-drone systems; critical infrastructure protection; cyber, and military mobility.~~

~~(2) Category two: air and missile defence; **maritime surface and underwater capabilities**; drones other than small drones (NATO class 2 and 3) and related anti-drone systems; strategic enablers; space assets protection; artificial intelligence and electronic warfare.~~

- (b) description of the planned activities, **estimated** expenditures and measures in accordance with Article 4;
- (c) where relevant, the description of the foreseen involvement of Ukraine in the planned activities, expenditures and measures, or of foreseen actions for the benefit of Ukraine;
- (d) description of the planned measures aimed at ensuring compliance with Article 16 and procurement rules, including a description of how their respect is to be ensured; ~~and~~
- ~~(e) any other relevant information.~~

~~3. Member States shall indicate, where appropriate, synergies with the European defence industry investment plans of other Member States, with activities carried out on the level of the Union.~~

4. Where relevant, Member States shall include a description of activities to strengthen security of supply and resilience, in particular by facilitating the access to the defence market for SMEs, mid-caps and new defence players.

5. When preparing their European defence industry investment plans, Member States may request the Commission to organise an exchange of good practices **and, where appropriate, seek synergies with defence industry investment plans of other Member States** in order to allow the requesting Member States to benefit from the experience of other Member States.

6. Member States may submit to the Commission an amended request for financial assistance accompanied by an amended European defence industry investment plan when duly justified by a change of the planned expenditure or measures and subject to the availability of loan amounts.

Article 8

Decision on the request for financial assistance

1. The Commission shall assess the European defence industry investment plan referred to in Article 7(1) and take a decision on that request without undue delay.
2. Where the Commission finds that the request fulfils the conditions laid down in this Regulation, in particular in Articles 4, 7(2) and 16, the Commission shall make available the financial assistance by means of an implementing decision. The Commission implementing decision shall contain:
 - (a) an assessment of the plan referred to in Article 7(1) including the elements of the plan referred to in Article 7(2);
 - (b) the amount of the loan and the amount of the loan support to be paid in form of pre-financing in accordance with Article 11;
3. The Commission shall in all cases communicate its assessment of the request to the Member State concerned, providing it with reasons for its assessment.
4. When adopting an implementing decision pursuant to paragraph 2, the Commission shall consider existing and expected financing needs of the requesting Member State, as well as requests for financial assistance pursuant to this Regulation already submitted or planned to be submitted by other Member States, while applying the principles of equal treatment, solidarity, proportionality and transparency.
5. Where following the adoption of the implementing decision referred to in paragraph 2, amounts remain available for the financial assistance under the SAFE instrument, the Commission may publish a new call for expression of interest by 31 December 2026. In such a case, the procedure set out in Article 7 and in paragraphs 1 to 4 shall apply *mutatis mutandis*.
6. An implementing decision pursuant to paragraph 2 may be adopted until 30 June 2027.
- 7. Before making a decision referred in paragraph. 2 the Commission shall provide the Council with all relevant information regarding the assessment of the plans as referred in Article 7(1).**

Article 9

Borrowing and lending operations

1. In order to finance support under the SAFE instrument in the form of loans, the Commission shall be empowered, on behalf of the Union, to borrow the necessary funds on the capital markets or from financial institutions in accordance with Article 224 of Regulation (EU, Euratom) 2024/2509.

2. The borrowing and lending operations under the SAFE instrument shall be carried out in euros.

Article 10

Loan agreement and operational arrangements

1. Upon adoption of the Commission implementing decision referred to in Article 8(2), the Commission shall enter into a loan agreement and operational arrangements with the Member State.
2. The loan agreement shall lay down the availability period and the detailed terms of the support under the SAFE instrument in the form of loans. The loan agreement shall have a maximum duration of 45 years. In addition to the elements laid down in Article 223(4) of Regulation (EU, Euratom) 2024/2509, the loan agreement shall contain the amount of pre-financing and rules on clearing of pre-financing.
3. The operational arrangements shall set out the relationship between the implementation of a European defence industry investment plan and the corresponding financial assistance, including a tentative schedule of disbursement of the loan instalments, with yearly ceiling as appropriate. In addition, these operational arrangements shall set out types of documentary evidence and control rules related to the fulfilment of the specific eligibility rules applied by the Member States in accordance with Article 16, and the detailed elements referred to in Article 14.

Article 11

Pre-financing

1. Member States may request, as part of their European defence industry investment plan, a pre-financing payment of an amount of up to 15 percent of the loan support.
2. The disbursement of pre-financing shall be subject to the entry into force of the loan agreement referred to in Article 10(2). The loan agreement may provide that payment of pre-financing is conditional upon conclusion of the operational arrangements referred to in Article 10(3).
3. The payments shall be made subject to the availability of funding. The pre-financing may be disbursed in one or more tranches.

Article 12

Rules on payments of instalments and suspension of loans

1. The period of availability of the loan which corresponds to the period during which payments to the Member State concerned under this Article may be approved, shall be until 31 December 2030. Payments shall be made in instalments, subject to the availability of funding. An instalment may be disbursed in one or more tranches.
2. ~~Upon submission of the progress report referred to in Article 14(2), t~~The Member State concerned may submit to the Commission a duly justified request for payment. Such request for payment may be submitted by the Member States to the Commission twice a year. **The Member State shall provide justification underpinning the payment request with evidence of progress in the fulfilment of the plan.**
3. The Commission shall assess without undue delay the completeness, correctness and coherence of the ~~progress report~~**request for payment** referred to in Article 14**2**(2). Where the Commission makes a positive assessment, it shall adopt without undue delay a decision authorising the disbursement of the loan instalment.
4. Where, as a result of the assessment referred to in paragraph 3, the Commission concludes that the ~~report~~ **request for payment** referred to in Article 14**2**(2) is unsatisfactory, the payment of all or part of the loan shall be suspended. The Member State concerned may present its observations within one month of the communication of the Commission's assessment.
5. **The Commission shall assess the observations without undue delay. It shall lift the suspension where the Member State concerned has demonstrated that it has taken the necessary measures to ensure a satisfactory fulfilment of the conditions set out in the Commission implementing decision referred to in Article 8(2).**
6. **The Commission shall regularly provide the Council with all relevant information regarding the disbursements of the funds under the SAFE instrument.**

Article 13

Prudential rules applicable to the portfolio of loans

The share of loans granted to the three Member States representing the largest share of the loans granted shall not exceed 60 percent of the maximum amount referred to in Article 6(1).

Article 14

Control and audits

1. The loan agreement shall contain the necessary provisions regarding controls and audits as required by Article 223(4) of Regulation (EU, Euratom) 2024/2509.
2. ~~Where a duly justified request for payment is submitted in accordance with Article 12, the beneficiary Member State shall also submit to the Commission the six monthly progress report duly justifying incurred and upcoming expenditure and other necessary elements.~~

Article 15
Reporting

1. The Commission shall provide the European Parliament and the Council with an annual report on the use of financial assistance.
2. Where appropriate, the report shall be accompanied by a proposal for the extension of the period of availability of the SAFE instrument.

Article 16

Eligibility rules on common procurement supporting defence industry investments

1. Common procurements shall be eligible for support under the SAFE instrument only if they comply with the eligibility conditions set out in this Article.
2. Common procurement procedures and contracts of defence products shall include the participation requirements for contractors and subcontractors involved in the common procurement set out in paragraphs 3 to 11 and 13, without prejudice to conditions agreed in agreements referred to in Article 17.
3. Contractors and subcontractors involved in the common procurement shall be established and have their executive management structures in the Union, EEA EFTA State or Ukraine. They shall not be subject to control by a third country which is not Ukraine nor an EEA EFTA State or by another third-country entity which is not established in the Union, in Ukraine or in an EEA-EFTA State.
4. By way of derogation from paragraph 3, a legal entity established in the Union and controlled by another third country or by another third-country entity may participate in the common procurement if it has been subject to screening within the meaning of Regulation (EU) 2019/452 of the European Parliament and of the Council and, where necessary, to appropriate mitigation measures, or if it provides guarantees verified by the Member State in which the contractor or subcontractor involved in the common procurement is established. The guarantees shall provide assurances that the involvement of the contractor or subcontractor in the common procurement does not contravene the security and defence interests of the Union, and the Member States as established in the framework of the common foreign and security policy pursuant to Title V of the TEU.
5. The guarantees referred to in paragraph 4 may be based on a standardised template provided by the Commission and shall be part of the tender specifications, in order to ensure a harmonised approach throughout the Union. The guarantees shall, in particular, substantiate that, for the purposes of the common procurement, measures are in place to ensure that:

- (a) control over the contractor or subcontractor involved in the common procurement is not exercised in a manner that restrains or restricts its ability to fulfil the order and to deliver results; and
- (b) access by a third country or by a third-country entity to classified information relating to the common procurement is prevented and the employees or other persons involved in the common procurement have a national security clearance issued by a Member State in accordance with national laws and regulations.
6. The contracting authority conducting the common procurement shall provide the Commission with a notification on the mitigation measures applied within the meaning of Regulation (EU) 2019/452 or the guarantees referred to in paragraph 4. Further information on the mitigation measures applied or the guarantees shall be made available to the Commission upon request.
7. The infrastructure, facilities, assets and resources of the contractors and subcontractors involved in the common procurement which are used for the purposes of the common procurement shall be located in the territory of a Member State, an EEA EFTA State, or Ukraine. Where contractors or subcontractors involved in the common procurement have no readily available alternatives or relevant infrastructure, facilities, assets and resources on the territory of a Member State, an EEA EFTA State, or Ukraine, they may use their infrastructure, facilities, assets and resources which are located or held outside those territories, provided that such use does not contravene the security and defence interests of the Union and its Member States.
8. The cost of components originating in the Union, in EEA EFTA States or Ukraine shall not be lower than 65 % of the estimated cost of the **components of the** end product. No component shall be sourced from another third country that contravenes the security and defence interests of the Union or its Member States.
9. For defence products related to category two as referred to in point (a) (2) of Article 7(4), contractors shall have the ability to decide, without restrictions imposed by third countries or by third-country entities, on the definition, adaptation and evolution of the design of the defence product procured, including the legal authority to substitute or **remove** ~~disassemble~~ components that are subject to restrictions imposed by third countries or by third-country entities.
10. For the purposes of this Article, ‘subcontractors involved in the common procurement’ means any legal entity which provides critical inputs that possess unique attributes essential for the functioning of a product and which is allocated at least 15 % of the value of the contract.
11. Member States shall ensure that the procurement procedures and contracts for other products for defence purpose resulting from the common procurement receiving support under this Instrument contain appropriate eligibility conditions to protect the security and defence interests of the Union and the Member States.
12. Member States shall detail, in the plan referred to in Article 7, eligibility conditions in line with paragraphs 3 to 11 and 13, without prejudice to conditions agreed in agreements referred to in Article 17. Financial assistance shall be conditional upon presentation with the ~~progress report~~ **request for payment** of information indicated in the operational arrangements referred to in Article 10.

13. Member States may use the financial assistance provided under the SAFE instrument to finance their participation in procurement procedures carried out in accordance with Article 168(2) or (3) of Regulation (EU, Euratom) 2024/2509. In this case, by way of derogation from Article 168(2) and (3) of Regulation (EU, Euratom) 2024/2509, third countries participating in the common procurement may also participate in and benefit from any procurement mechanisms set out in Article 168(2) and (3) of Regulation (EU, Euratom) 2024/2509.

Article 17

Conditions for the participation of other third countries entities and products

1. The Union may conclude bilateral or multilateral agreements with like-minded countries, namely acceding countries, candidate countries other than Ukraine and potential candidates, and other third countries with whom the Union has entered a Security and Defence Partnership (NBI) in order to open the eligibility conditions referred to in Article 16 to the possibility to fulfil the criterion of location, origin or place of establishment to those countries and their territories, in accordance with paragraphs 2 and 3, whenever these countries participate in a common procurement under the SAFE instrument.
2. The bilateral or multilateral agreement referred to in paragraph 1 shall specify which of the eligibility conditions referred to in Article 16 are opened to being fulfilled through location, origin or place of establishment in the third country or third countries that are parties to the Agreement, and their territories, and under which conditions. It shall lay down, in particular and where appropriate:
 - (a) the conditions and modalities of participation of contractors and subcontractors established in the third country in the common procurement under the SAFE instrument;

- (b) the rules related to the location of the infrastructure, facilities, assets and resources of the contractors or subcontractors involved in the common procurement which are used for production of defence products or other products for defence purposes supplied under the contracts resulting from common procurements under the SAFE instrument;
 - (c) the rules related to the costs of components originating in the third country;
 - (d) the rules related to restrictions imposed by third countries or by third country entities, on the definition, adaptation and evolution of the design of the defence product procured with the support of the SAFE instrument.
3. The bilateral or multilateral agreement shall:
- (a) ensure a fair balance as regards the contributions and benefits of the third country;
 - (b) lay down the conditions of any financial contribution to be provided by the third country to the Union;
 - (c) lay down any other appropriate measures governing the security of supply of the procured product;
 - (d) contribute to an increase in the standardisation of defence systems and a greater interoperability between Member States' and these other third countries' capabilities.
4. The contributions referred to in point (b) of paragraph 3 shall constitute external assigned revenues in accordance with Article 21(5) of the Financial Regulation and shall be used for programmes supporting the Union defence industry, the Ukrainian defence industry and Ukraine in accordance with the rules of those programmes.

Article 18

Modification of framework agreements or contracts

1. Where a common procurement is supported by the SAFE instrument, the rules provided for in paragraphs 2 to 4 shall apply to an existing framework agreement or contract that has as its object the purchase of defence products, is financed at least by one of the participating Member States in full or in part with the loan awarded under the SAFE instrument, and do not include rules governing the possibility to substantially amend it. When applying paragraphs 2 and 3, the contracting authority that concluded the framework agreement or contract shall obtain the prior agreement of the undertaking with which it has concluded the framework agreement or contract.

2. A contracting authority of a Member State may modify an existing framework agreement or contract for defence products, where that framework agreement has been concluded with an undertaking complying with criteria equivalent to those laid down in Article 16(3) to (11), in order to add new contracting authorities from countries participating in the common procurement as parties to that framework agreement or contract. Article 29(2), first subparagraph, of Directive 2009/81/EC, shall not apply to the contracting authorities not originally party to the framework agreement.
3. By way of derogation from Article 29(2), third subparagraph, of Directive 2009/81/EC, a contracting authority of a Member State may make substantial amendments to the quantities set out in a framework agreement or contract, with an estimated value above the thresholds laid down in Article 8 of Directive 2009/81/EC, where that the framework agreement or contract has been concluded with an undertaking complying with criteria equivalent to those laid down in Article 16(3) to (11) of this Regulation, and insofar as the modification is strictly necessary for the application of paragraph 2.
4. For the purpose of the calculation of the value referred to in paragraph 3, the updated value shall be the reference point when the contract includes an indexation clause.
5. A contracting authority which has modified a framework agreement or contract in the cases referred to in paragraph 2 or 3 shall publish a notice to that effect in the Official Journal of the European Union in accordance with Article 32 of Directive 2009/81/EC.
6. In the cases referred to in paragraphs 2 and 3, the principle of equal rights and obligations shall apply between the contracting authorities which are party to the framework agreement or contract, in particular regarding the cost of additional quantities procured.

Article 19

Cases justifying use of the negotiated procedure without publication of a contract notice in the context of a common procurement supported by the SAFE instrument

Common procurements involving at least one Member State receiving financial assistance under the SAFE instrument shall be deemed to satisfy the condition of urgency resulting from a crisis for the purposes of Article 28(1), point (c) of Directive 2009/81/EC.

Article 20

Temporary VAT exemption on importation and supply of defence products

1. For the purpose of this Regulation, the supplies, ~~including importation and intra-Union supplies~~ **intra-Community acquisitions and importations** of defence products or other products for defence purposes which are ~~supplied~~ **made** under contracts resulting from common procurements **as set out in Article 4(1) and procurement as set out in Article 4(3)** under the SAFE Instrument shall be ~~temporarily~~ exempted from the value added tax ~~by derogation to Article 2(1) of the~~ **applicable under Council Directive 2006/112/EC. The exemption shall be with deductibility of the VAT paid at the preceding stage.**
2. **The VAT exemption certificate set out in the Annex to this Regulation shall serve to confirm that the transaction qualifies for the exemption under this Regulation. This certificate shall be stamped by the competent authorities of the Member State of the entity acquiring the defence products or other products for defence purposes under contracts resulting from common procurements as set out in Article 4(1) and procurement as set out in Article 4(3) under the SAFE Instrument and held by the supplier of these products as part of their records.**

Article 21

Application of the rules on classified information and sensitive information

1. The Commission shall use a secured exchange system in order to facilitate the exchange of classified information and sensitive information between the Commission and the Member States and, where appropriate, with the contractors or other final recipients.
2. The Commission shall have access to information, including classified information, strictly necessary for the purpose of verifying conditions for disbursement of payments and carrying out the checks, reviews, audits, investigations, as well as the controls, audits and reports, as referred to in Article 14.

Article 22

Information, communication and publicity

1. The Commission and the Member States may engage in communication activities to ensure the visibility of the Union for the financial assistance envisaged in the relevant European defence investment plans, including through joint communication activities with the national authorities concerned, while duly taking into account security requirements. The Commission may, as appropriate, ensure that support under this Instrument is communicated and acknowledged through a funding statement.
2. The Member States benefitting from the financial assistance under the SAFE instrument shall ensure the visibility of the Union financial assistance, while duly taking into account security requirements, including, where applicable, by displaying the emblem of the Union and an appropriate funding statement that reads ‘supported by the European Union – SAFE’, in particular when promoting the common procurements and their results, by providing coherent, effective and proportionate targeted information to multiple audiences, including the media and the public.

3. The Commission shall implement information and communication actions relating to the Instrument, to actions taken pursuant to the Instrument and to the results obtained. The Commission shall, where appropriate, inform the representation offices of the European Parliament of its actions and involve them in those actions.

Article 23
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 Council
The President

ANNEX

SAFE

VAT EXEMPTION CERTIFICATE

| |
|--|
| Serial No (optional): ■ |
| 1. ELIGIBLE ENTITY ■ Designation/name ■ Street and number ■ Postcode, place ■ |

Member State of the entity

2. COMPETENT AUTHORITY RESPONSIBLE FOR STAMPING (name, address and telephone number)

■

3. DECLARATION BY THE ELIGIBLE ENTITY

The eligible body or individual⁽¹⁾ hereby declares that the products set out in box 4 are financed under the SAFE instrument.

■

(designation of the institution) (see box 4)

The eligible entity hereby undertakes to pay to the Member State in which the place of supply of the defence products or other products for defence purposes acquired is located the VAT which would be due should these products did not comply with the conditions of exemption.

■

■

Place, date

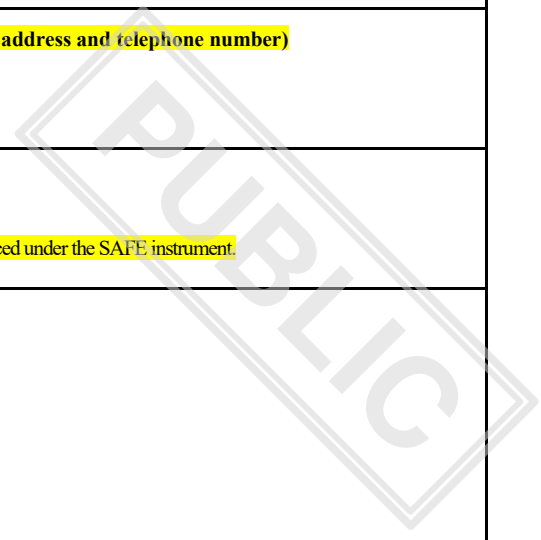
Name and status of signatory

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Signature

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