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NOTE

From: Presidency
To: Permanent Representatives Committee

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. Changes vis-à-vis the REV3 are highlighted in yellow.

Proposal for a

COUNCIL REGULATION

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

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 122 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Russia's war of aggression against Ukraine and its repercussions for European and global security constitute an existential challenge for the European Union.
- (2) In response to that challenge, in its conclusions of 6 March 2025, the European Council, recalling the Versailles Declaration of 11 March 2022¹ and the Strategic Compass for Security and Defence adopted on 21 March 2022², stressed that Europe must become more sovereign, more responsible for its own defence and better equipped to act and deal autonomously to cope with immediate and future challenges and threats. In that extraordinary European Council meeting, all Member States committed to reinforce their overall defence readiness, reduce strategic dependencies, address critical capability gaps and strengthen the European defence technological and industrial base accordingly across the Union so that it is in a position to better supply equipment in the quantities and at the accelerated pace needed.
- (3) On 18 May 2022, the Commission and the High Representative of the Union for Foreign Affairs and Security Policy presented a Joint Communication³ on the Defence Investment Gaps Analysis and Way Forward, highlighting the existence, within the Union, of defence financial, industrial and capability gaps.

¹ <https://www.consilium.europa.eu/media/54773/20220311-versailles-declaration-en.pdf>

² <https://data.consilium.europa.eu/doc/document/ST-7371-2022-INIT/en/pdf>

³ Joint Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on the Defence Investment Gaps Analysis and Way Forward, JOIN(2022) 24 final, 18 May 2022.

- (4) On 20 July 2023 the European Parliament and the Council adopted Regulation (EU) 2023/1525⁴ supporting ammunition production (ASAP), aimed at urgently supporting the ramp-up of manufacturing capacities of the European Union defence industry, secure supply chains, facilitate efficient procurement procedures, address shortfalls in production capacities and promote investments.
- (5) On 18 October 2023, the European Parliament and the Council adopted Regulation (EU) 2023/2418 on establishing an instrument for the reinforcement of the European defence industry through common Procurement (EDIRPA)⁵, aimed at supporting collaboration between Member States in the procurement phase to fill the most urgent and critical gaps, especially those created by the response to Russia's war of aggression against Ukraine, in a collaborative way.
- (6) On 14 and 15 December 2023, the European Council, in its conclusions, 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. In order to achieve such readiness and defend the Union, a strong defence industry was considered to be a pre-requisite, requiring the European defence industry to become more resilient, innovative and competitive.
- (7) On 5 March 2024, the European Commission adopted a 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') in order to build on the experience acquired in the context of EDIRPA and ASAP and extend their logic in a more long-term and structured perspective.

⁴ 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>).

⁵ 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*.

- (8) However, since the beginning of 2025, there has been a stark deterioration of the Union's security context, linked not only to Russia's persistent threat and its intensified shift to a war-time economy and to the evolution of the war in Ukraine, but also to uncertainties stemming from the advent of a geopolitical situation in which the Union has to markedly step up its efforts to ensure its defence autonomously. That recent deterioration increases the level of threat to the European Union and requires that Member States launch, as a matter of emergency, massive public expenditures to scale up the European Defence Technological and Industrial Base (EDTIB). As a consequence, it also increases the need to accelerate, in a spirit of solidarity, the making available of Union support to those Member States which are likely to be threatened by serious difficulties due to the massive public investments needed, which may have an impact on their economic situation. **Considering the threats to the EU's land, air and maritime borders and, as a consequence, the need to engage in massive public investments, such solidarity is especially essential for those Member States which are most exposed to military threats, in particular those posed by Russia and Belarus.** Due to the time needed to develop products and ensure the ramp-up of the corresponding industrial production capacity **throughout the Union**, it becomes vital for the Union to start as soon as possible the support to these Member States so that they can very rapidly place orders, increase predictability for the defence industrial sector, incentivising it to invest in the very short term for the purpose of strengthening production capacities.
- (9) The magnitude and the speed of the increase of expenditure in defence industrial capabilities required from the Member States is likely to have a major impact on their public finances at a moment where the budgets of several Member States continue to be strained.
- (10) This exceptional situation, not caused by the Member States and beyond their control, justifies that the Union takes urgent measures to make available to those of the Member States that want to invest in defence industrial production a temporary instrument that would provide them financial assistance in the form of the Security Action For Europe Instrument ('the SAFE instrument').
- (11) The SAFE instrument should enable urgent and major public investments in the European defence industry aiming at a rapid increase of its production capacity, improvement of the timely availability of defence products and speeding-up and adjustment to structural changes. As this Regulation is an exceptional and temporary response to an urgent and existential challenge, the financial assistance provided under it should only be made available for the purposes of addressing the adverse economic consequences of the deteriorating security situation and the immediate procurement needs of Member States contributing to increased defence industrial readiness of the EDTIB. This Instrument should be part of an overall effort at national and Union level to devote more resources for defence industrial investments to remedy the crisis situation arising from the current security threats. Other means of action should be engaged in parallel at Union and national level to accompany that effort, such as the activation of the existing flexibility within the framework of the Stability and Growth Pact.

- (12) The financial assistance under the SAFE instrument should be implemented by Member States in a manner that is consistent with the defence capability priorities commonly agreed by Member States within the framework of the Common Foreign and Security Policy (CFSP), the Member States' cooperation within the framework of the Permanent Structured Cooperation established by Council Decision (CFSP) 2017/2315⁶, the European Defence Agency's (EDA) initiatives and projects, and the Union's civil and military assistance to Ukraine. When implementing this Regulation, the Member States should duly take into account the relevant activities carried out by the North Atlantic Treaty Organisation (NATO), **in particular the NATO capability objectives**, and **by** other partners where such activities serve the Union's security and defence interests.
- (13) Member States should be able to use the financial assistance under the SAFE instrument in synergy with other existing and future Union programmes, in particular to co-finance specific actions. In parallel, Union programmes supporting cooperation in the field of defence procurement or aiming more generally at supporting the competitiveness of the EDTIB might specifically provide for an additional Union support to common procurement benefitting from the financial assistance under the SAFE instrument or to economic operators involved in such a procurement to stimulate corresponding industrial ramp-up and further reinforce the effects of the instrument on the EDTIB.
- (14) In order to reduce the administrative burden for Member States, it should be possible for the Commission to consider, in the framework of relevant programmes and notably those supporting the cooperation in the field of common procurement, the information provided in the framework of this Regulation, and notably for the purpose of the reporting of the implementation of the financial assistance, to simplify the conditions of the application for financial support.

⁶ Council Decision (CFSP) 2017/2315 of 11 December 2017 establishing permanent structured cooperation (PESCO) and determining the list of participating Member States (OJ L 331, 14.12.2017, p. 57, ELI: <http://data.europa.eu/eli/dec/2017/2315/oj>).

- (15) Lack of cooperation between Member States has led to inefficiencies and a multiplication of defence systems of the same kind within the Union, undermining the objective of protection of the Union territory pursued by the corresponding national investments while also resulting in fragmentation and sub-scale operations of significant parts of the EDTIB. To address that situation, beneficiary Member States should use the financial assistance provided under this Regulation to carry out common procurements. The eligible activities, expenditures and measures financed through defence common procurement should relate to the following **first list of** priority areas identified by the European Council, taking into account the lessons learned from the war in Ukraine, in accordance with the work already done in the framework of the European Defence Agency ('EDA') and in full coherence with NATO: air and missile defence **systems, maritime surface and underwater capabilities,** artillery systems, including deep precision strike capabilities, **ground combat capabilities and their support systems, including soldier equipment and infantry weapons;** missiles and ammunition, drones and anti-drone systems, ~~strategic enablers, including in relation to space and critical infrastructure protection, military mobility,~~ **including counter-mobility,** cyber, **space assets protection,** artificial intelligence, ~~and electronic warfare~~ **and strategic enablers such as but not limited to strategic airlift, air-to-air refuelling, C4ISTAR systems as well as space assets and services.** Those common procurements should aim at speeding up the adjustment to structural changes of the production capacity of defence products, incentivising cooperation in the procurement phase, supporting the increase of production capacity, as well as development and acquisition of the related infrastructure, equipment and logistic services.
- (16) In order to urgently reinforce the Union industrial base in an efficient and autonomous manner, in the light of the recent evolution of the geopolitical situation and the exceptional threat to the security of the Union and the Member States, and thus increase the efficiency and added value to the financial assistance granted under the SAFE instrument, this Regulation should establish eligibility conditions for the use of the financial assistance by Member States. Contractors and subcontractors involved in the common procurement under this instrument should therefore be established and have their executive management structures in the Union, in EFTA members of the EEA ('EEA EFTA States') or in Ukraine, and use for the purposes of the common procurement infrastructure, facilities, assets or resources located on the territory of a Member State, an EEA EFTA State or Ukraine. In order to ensure that contractors and subcontractors involved in the common procurement do not contravene the security and defence interests of the Union and its Member States they should not be controlled by third countries or third country entities. In that context, control should be understood to be the ability to exercise a decisive influence on a legal entity directly, or indirectly through one or more intermediate legal entities. **The Member States participating in the procurement supported by the SAFE instrument are responsible for ensuring that the eligibility conditions are fulfilled.**
- (17) In certain circumstances, it should be possible to derogate from the principle that **legal entities contractors and subcontractors** involved in a common procurement use infrastructure, facilities, assets or resources located on the territory of a Member State, an EEA EFTA State or Ukraine, and are not subject to control by third countries or third-country entities. In that context, a legal entity established in the Union, EEA EFTA State or in Ukraine using infrastructure, facilities, assets or resources located outside the territory of a Member State, EEA EFTA State or Ukraine, and/or controlled by a third country or a third country entity may participate if strict conditions are fulfilled relating to the security and defence interests of the Union and its Member States, as established in the framework of the Common Foreign and Security Policy (CFSP) pursuant to Title V of the Treaty on European Union (TEU).

- (18) Legal entities established in the Union, EEA EFTA States or Ukraine and controlled by a third country which is not Ukraine nor an EEA EFTA State ('other third country') or another third-country entity, where allowed, should be eligible to participate in the common procurement if they have been subject to screening within the meaning of Regulation (EU) 2019/452 and, where necessary, to appropriate mitigation measures or if guarantees, **as set out in this Regulation**, approved in accordance with the national procedures of the Member State, EEA EFTA State or Ukraine in which they are established are made available to the Commission. **In order to reduce the administrative burden, the Commission should propose a simple standardised template for the guarantees.** 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.
- (19) In order to ensure the timely availability and supply of defence products from the EDTIB and to accelerate its adjustment to structural change and thus reinforce the efficiency of the financial assistance granted, it is important to set minimum conditions related to the value generated within the Union. Therefore, common procurement contracts should contain a requirement that the costs of the components originating **outside** the Union, EEA EFTA States ~~or~~ and Ukraine are not **higher** ~~lower~~ than **6535%** of the estimated costs **of the components** of the end-product. **For the purpose of calculating that percentage, the Commission could establish guidance.**
- (20) For certain defence products, whose underlying technologies are not widely available in the Union, and which may be difficult to substitute at a large scale, additional conditions should be required to ensure Member States' armed forces freedom related to these products without limitations imposed by third countries. **Therefore, ~~Where such products are subject to restrictions~~ for such defence products, the contractor or the consortium of contractors ~~at least the main~~ contractor should have the ability to decide, without any restrictions imposed by ~~from a third countries~~ or a 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 ~~to replace~~ those components that are subject to restrictions imposed by third countries or by third-country entities.**
- (21) Eligibility conditions of the instrument pursue the objective of immediately ramping up the manufacturing capacities of the Union defence industry, while allowing for the necessary flexibility taking into consideration the internationalisation of supply chains for relevant products and technologies. In addition to Ukraine and EFTA EEA States, the SAFE instrument should also provide for the possibility for acceding countries, candidate countries and potential candidates, as well as third countries with whom the Union has entered into a Security and Defence Partnership (Non-Binding Instrument, NBI), to participate in common procurements under the SAFE instrument.

(21a) Bilateral or multilateral agreements, **including on the economic, financial and technical cooperation aspects relevant for this Regulation** between the Union and one or more of those **like-minded third countries other than Ukraine and EFTA EEA States** should also enable the possible participation of contractors and subcontractors established in the respective countries in common procurements under the SAFE instrument, according to terms and conditions to be defined in those agreements. **Such agreements should not call into question the eligibility of products which fulfil the requirement that the costs of the components originating outside the Union, EEA EFTA States and Ukraine are not higher than 35% of the estimated costs of the components of the end-product.**

(21b) **A stronger and more capable European Union in the field of security and defence will contribute positively to global and transatlantic security and is complementary to NATO, which remains, for those States that are members of it, the foundation of their collective defence. The Union is committed to further strengthening and deepening transatlantic cooperation and engagement on security and defence, with a view to enhancing interoperability, continuing industrial cooperation, and ensuring reciprocal access to state-of-the-art technologies with trusted partners, also reinforcing the European defence technological and industrial base. This Regulation should contribute to these aims.**

(22) Members States wishing to obtain financial assistance under the SAFE instrument should submit a request to the Commission accompanied by a European defence industry investment plan. To facilitate the preparation of plans, the Commission and Member States should engage in exchanges with a view of identifying tentative allocations of the loan amounts. The Commission should assess all requests submitted by the Member States. When assessing national plans, the Commission should call upon the expertise of EDA or the EU Military Staff, where appropriate. The Commission should allocate the loan amounts to the Member States concerned by applying the principles of equal treatment, solidarity, proportionality and transparency, in particular if the sum of requested loan amounts exceeds the total maximum amount of financial assistance available under the SAFE instrument. Loans should be allocated among the Member States which apply in accordance with the principles of equal treatment, solidarity, proportionality and transparency. The European defence industry investment plans should describe measures to strengthen the resilience of the European defence industrial sector, notably by facilitating the access to the defence market for SMEs, mid-caps and new defence players.

(22b) **In view of the importance of the financial effects of supporting the Member States under this Regulation and of the need to ensure the consistence between the different areas of Union external action and its economic policy, considering the specific role that the Council is called on to perform in these fields, implementing powers should be conferred on the Council in the cases identified by this Regulation.**

(23) In order to facilitate the implementation of the European defence industry investment plan the Commission and each Member State concerned should enter into an operational arrangement with details concerning the disbursement of the financial assistance, including a tentative schedule of disbursement, and sign a loan agreement with the detailed terms of the loan support under the SAFE instrument. Pre-financing of 15 percent should be provided to allow a rapid start of the implementation of the activities, expenditure and measures under the SAFE instrument.

- (24) It is appropriate to organise the financial assistance under the diversified funding strategy provided for in Article 224 of the Financial Regulation (Regulation (EU, Euratom) 2024/2509) and established single funding method, which is expected to enhance the liquidity of Union bonds and the attractiveness and cost-effectiveness of Union issuances. **The loans should be provided with a sufficiently long duration of maximum of 45 years, whereby principal repayments might benefit from a grace period, in principle of 10 years.** For prudential reasons related to the management of the loan portfolio, the share of loans granted to the three Member States representing the largest share of the loans granted should not exceed 60 per cent of the maximum amount of financial assistance under the Instrument.
- (24b) In order to optimise the use of available financial assistance, in cases where amounts remain available following the adoption of an implementing decision, it is appropriate that the Commission publish a new call for expression of interest. In such a case, the procedures set out for the request for financial assistance should apply subject to necessary adaptations, in particular in respect of the related deadlines and the fact that an amendment of the plan should be presented.**
- (25) Common procurements should involve at least two participating countries that are Member States, EEA EFTA States or Ukraine, out of which at least one should be a Member State benefiting from loan support under the SAFE instrument. In addition, acceding countries, other candidate countries and potential candidates, and other third countries with whom the Union has entered a Security and Defence Partnership (NBI) should be allowed to participate in common procurements made with a Member State supported with the financial assistance under the SAFE instrument. **Common procurement may include existing procurement contracts which fulfill the same conditions. Procurements carried out by one Member State should also be eligible for support when a contract has been signed no later than 12 months after the entry of force of this Regulation, provided that this Member State takes all necessary steps to extend the benefit of that contract by actively reaching out to other Member States, EEA EFTA states and Ukraine as well as acceding countries, candidate countries, potential candidates, or other third countries with whom the Union has entered into a Security and Defence Partnership.**

The inclusion of EEA EFTA States and Ukraine among the countries that may make up the minimum required number for a common procurement is justified respectively by those countries' close partnership with the Union in industrial defence production and by the fact that Ukraine is directly faced with Russia's ongoing war of aggression. Member States are also encouraged to further support Ukraine with the equipment procured with the financial assistance of the SAFE instrument. The participation of these third countries to common procurements awarded to the EDTIB or the Defence and Technology Industrial Base of Ukraine or of EEA EFTA States should increase the level of aggregation of demand necessary to obtain a scale-up of industrial capacity and provide support to the interoperability of systems and products deployed by the Union's closest partners in this area while potentially allowing the Member States which participate in these those procurements to obtain better prices.

- (26) Directive 2009/81/EC of the European Parliament and of the Council sets out a legislative framework on the coordination of procurement procedures for the award of contracts in the fields of defence and security, taking into account the security requirements of Member States and the obligations arising from the Treaty. That Directive sets out specific rules 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. In order to reinforce the efficiency of the SAFE instrument to address, in a spirit of solidarity, the situation of emergency arising from the evolution of the geopolitical situation, it is necessary that massive investments in the EDTIB are launched as soon as possible.
- (27) For that purpose, the award of the contracts based on ~~common~~ procurements involving at least one Member State supported by the financial assistance under the SAFE instrument should be facilitated. **The periods laid down in Directive 2009/81/EC, including the shortened periods set out in Article 33(7) of that Directive, do not provide sufficient flexibility to address the urgency of the current crisis situation.** Therefore, Member States carrying out ~~common~~ procurements using the assistance provided under the SAFE instrument should be deemed to be in a situation of urgency resulting from a crisis, which justifies the use of a negotiated procedure without publication of a contract notice as provided for in Directive 2009/81/EC. Moreover, **in view of the urgency resulting from the current crisis situation which requires immediate and massive investments in the EDTIB, and** in order to safeguard the security interests of the Member States which participate in ~~common~~ procurements supported by the SAFE instrument, it is also necessary to provide for the possibility of opening an existing framework agreement or contract to contracting authorities of Member States that were not originally parties to that **framework agreement or contract**, even though the latter had not initially provided for such a possibility, on condition that the prior consent of the undertaking which concluded the framework agreement **or contract** is obtained.
- (28) This instrument aims at contributing to an overriding interest of public security which consists in accompanying the financial efforts of the Member States to ensure, via a scale-up of the EDTIB, a timely availability and supply of defence products that will allow the Member States to be prepared for any kind of aggression. Through the use of eligibility conditions, it aims to support the competitiveness and the industrial readiness of the EDTIB which are necessary to improve the capacity of the Member States to defend the territory of the Union and of its Member States in an efficient and autonomous manner. It also pursues an ancillary objective of increasing, through the use of common procurements, the level of interoperability of defence products. To accompany these efforts, it is appropriate, in a spirit of solidarity and in order to ensure the financial sustainability of the effort that is necessary to address the severe difficulties in the availability of defence products, to take measures to avoid having to finance taxes on these expenditures upfront. Defence products acquired under ~~common~~ procurements ~~involving the contribution of~~ **supported by** this instrument should therefore be exempted from the value added tax (VAT), by the introduction of an ~~temporary~~ exemption from VAT **applicable** under Directive 2006/112/CEC. This exemption should **be targeted** ~~limited in time~~ and only apply for the ~~duration~~ **supplies made for the purposes** of the contracts resulting from ~~common~~ procurements under the SAFE instrument.
- (29) The Union remains fully committed to international solidarity. Any measures deemed necessary taken under this Regulation, including those necessary to prevent or relieve critical shortages, should be implemented in a manner that is targeted, transparent, proportionate, temporary and consistent with WTO obligations.

(29a) SAFE should be implemented in accordance with the relevant rules adopted pursuant to Article 322 TFEU, in particular the Financial Regulation (Regulation (EU, Euratom) 2024/2509) and the Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council on a general regime of conditionality for the protection of the Union budget.

(29b) This Regulation is without prejudice to applicable international law prohibiting the use, development or production of certain defence products and technologies.

(30) It should be possible for the Commission and Member States to engage in communication activities to ensure the visibility of Union funding and, as appropriate, to ensure that support under the SAFE instrument is communicated and acknowledged through a funding statement.

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

(31a) This Regulation should apply without prejudice to the specific character of the security and defence policy of certain Member States.

(32) 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,

HAS ADOPTED THIS REGULATION:

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:

(a) Category one: ammunition and missiles; artillery systems, **including deep precision strike capabilities; ground combat capabilities and their support systems, including soldier equipment and infantry weapons;** small drones (NATO class 1) and related anti-drone systems; critical infrastructure protection; cyber; and military mobility **including counter-mobility.**

(b) Category two: air and missile defence **systems; maritime surface and underwater capabilities;** drones other than small drones (NATO class 2 and 3) and related anti-drone systems; strategic enablers **such as but not limited to strategic airlift, air-to-air refuelling, C4ISTAR systems as well as space assets and services;** 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 **into** 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; **or**
 - (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 **request for financial assistance accompanied by 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 **submit a proposal for a Council implementing decision** ~~making~~ available the financial assistance **available** ~~by means of an implementing decision.~~
- 2b.** The ~~Commission~~ **Council** implementing decision **referred to in paragraph 2** shall contain:
- (a) ~~an assessment of the plan~~ **a confirmation that the request** referred to in Article 7(1) ~~including the elements of the plan referred to in Article 7(2)~~ **complies with the conditions laid down in this Regulation; and**
 - (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 submitting the proposal to the Council in accordance with ~~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.
- 4a. The Council shall adopt the implementing decision referred to in paragraph 2, as a rule, within four weeks of the adoption of the Commission's proposal.**
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.

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~~ **Council** 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). Where the Commission makes a positive assessment **of the fulfilment of the conditions laid down in this Regulation**, 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) 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 this Regulation the Commission Council 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.
- 7a. The contractors and subcontractors involved in the common procurement may be considered to fulfil the eligibility conditions referred to in paragraphs 3 to 6 where they have fulfilled equivalent conditions under Regulation (EU) 2018/1092, Regulation (EU) 2021/697, ASAP or EDIRPA and provided that no subsequent changes put into question the fulfilment of those conditions.**

8. The cost of components originating **outside in** the Union, ~~in~~ EEA EFTA States **and** ~~or~~ Ukraine shall not be **higher lower** than **6535** % 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)~~**1(b)**, 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, **as defined in the contract**, that possess unique attributes essential for the functioning of a product, ~~and~~ which is allocated at least 15% of the value of the contract, **and which needs access to classified information for the performance 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, potential candidate and countries, candidate countries other than Ukraine and potential candidates,~~ and other third countries with whom the Union has entered **into** 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~~ **how** the eligibility conditions referred to in Article 16 are **to be applied** ~~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, **including the conditions on the location of the executive management structures and on control by third countries or third country entities**;
 - (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, **including a minimum share of components originating either in the Union, an EEA EFTA country or Ukraine and a maximum share of components originating neither in the Union, an EEA EFTA country or Ukraine or third-country party to the agreement**.
 - (d) the rules related to restrictions imposed by third countries **that are not parties to the agreement** or by ~~third country~~ entities **established on their territory**, 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 **or contract** 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 **or contract**.
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 p~~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 supported by** 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 supported by 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 **industry** 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

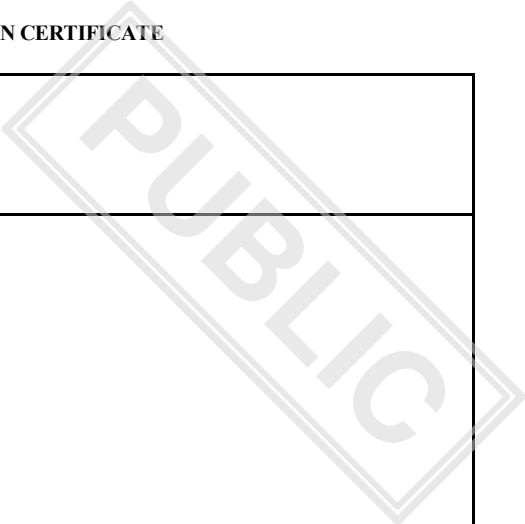
This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President

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 <u>entity</u> body or individual ⁽⁴⁾ 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.

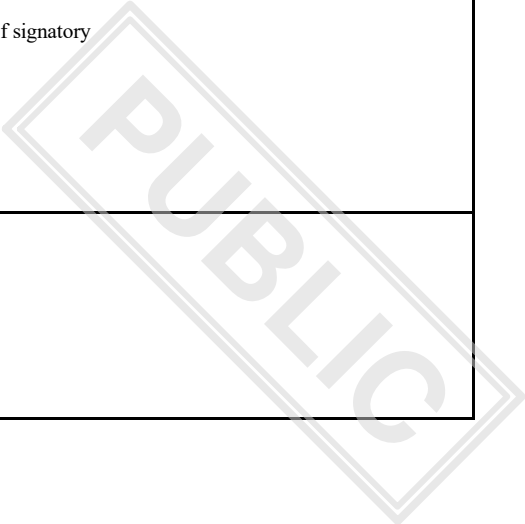


Place, date

Name and status of signatory

Signature

Set



4. DESCRIPTION OF THE PRODUCTS FOR WHICH THE EXEMPTION FROM VAT IS REQUESTED

A. Information concerning the supplier

(1) name and address

(2) Member State

(3) VAT number or tax reference number

B. Information concerning the products:

No	Detailed description of the products ²³ (or reference to the attached order form)	Quantity or number	Value excluding VAT		Currency
			Value per unit	Total value	
Total amount					

5. CERTIFICATION BY THE COMPETENT AUTHORITIES OF THE MEMBER STATE OF AQUISITION

The consignment/supply of products described in box 4 meets the conditions for exemption from VAT.

Name and status of signatory

Place, date

Stamp

Signature



PUBLIC