



Council of the European Union  
General Secretariat

Brussels, 09 December 2024

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**Interinstitutional files:  
2024/0061 (COD)**

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WK 13955/2024 REV 5

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## **WORKING DOCUMENT**

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From: Presidency  
To: Working Party on defence industry (DIWP)

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Subject: Proposal for a Regulation on establishing the European Defence Industry Programme (EDIP): Consolidated text

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Delegations will find attached, in 'clean', a Presidency compromise proposal for the revision of the whole draft EDIP Regulation, including recitals.

Red highlights mark elements which might require political guidance.

A document with track changes is distributed separately.

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')**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (-1) The return of high-intensity warfare that Russia's unprovoked and unjustified war of aggression against Ukraine brought about has a negative impact on the security of the Union and the Member States and requires a significant increase in the capacity of Member States to reinforce their defence capabilities. The long-term deterioration of regional and global security requires a step-change in the scale and speed with which Europe's defence technological and industrial base (EDTIB) can develop and produce the full spectrum of military capabilities.

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<sup>1</sup> OJ C , , p. .

- (1) The Heads of State or Government of the Union, meeting in Versailles on 11 March 2022, committed to “bolster European defence capabilities”. They agreed to increase their defence expenditures, step up cooperation through joint projects and common procurement of defence capabilities, close shortfalls, boost innovation and strengthen and develop the EU defence industry.
- (2) The Commission and the High Representative of the Union for Foreign Affairs and Security Policy presented a Joint Communication on the Defence Investment Gaps Analysis and Way Forward on 18 May 2022 highlighting the existence, within the Union, of defence financial, industrial and capability gaps.
- (3) 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. To achieve such a readiness and defend the Union, a strong defence industry is a pre-requisite, making the European defence industry more resilient, innovative and competitive.
- (4) On 20 July 2023 the European Parliament and the Council adopted Regulation (EU) 2023/1525 supporting ammunition production (ASAP)<sup>2</sup>, aimed at urgently supporting the ramp-up of manufacturing capacities of the European defence industry, secure supply chains, facilitate efficient procurement procedures, address shortfalls in production capacities and promote investments. On 18 October 2023 the European Parliament and the Council adopted Regulation (EU) 2023/2418<sup>3</sup> on establishing an instrument for the reinforcement of the European defence industry through common Procurement (EDIRPA), 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.

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<sup>2</sup> Regulation (EU) 2023/2418 of the European Parliament and of the Council of 18 October 2023 on establishing an instrument for the reinforcement of the European defence industry through common procurement (EDIRPA) (OJ L, 2023/2418, 26.10.2023, ELI: <http://data.europa.eu/eli/reg/2023/2418/oj>).

<sup>3</sup> 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) EDIRPA and ASAP were designed as emergency response and short-term programmes, both expiring in 2025 (30 June 2025 for ASAP and 31 December 2025 for EDIRPA).
- (5a) This Regulation should build on EDIRPA and ASAP and extend their logic until 2027 in a more long-term and structured perspective, by providing financial support for the reinforcement of the EDTIB, in a predictable, continuous and timely manner. In the light of the current security situation, it appears necessary to extend the Union support to incentivise collaboration between Member States in the procurement of a broader scope of defence equipment including consumables that play a decisive role in the war theatre in Ukraine.
- (5b) In June 2024, the European Council invited the Council, Member States, the Commission and the High Representative to take work forward on all strands, in line with their respective competences, in particular on critical capability gaps based on the Capability Development Plan and the proposal for a European Defence Industry Programme, with a view to its adoption by mid-2025.
- (6) On 23 June 2022, the European Council decided to grant the status of candidate country to Ukraine, which expressed a strong will to link reconstruction with reforms on its European path. On 15 December 2023, the European Council decided to open accession negotiations with Ukraine and declared that the Union and Member States remain committed to contributing, for the long term and together with partners, to security commitments to Ukraine, which will help Ukraine to defend itself, resist destabilization efforts and deter acts of aggression in the future. Strong support to Ukraine is a key priority for the Union and an appropriate response to the Union's strong political commitment to support Ukraine for as long as necessary.
- (7) The damage from Russia's war of aggression to the Ukrainian economy, society and infrastructure, and in particular damage caused to the Ukraine defence technological and industrial base (the 'Ukrainian DTIB'), require comprehensive support to rebuild the latter. This is essential in order to provide Ukraine with the capacity to maintain essential state functions, contributing to the fast recovery, reconstruction and modernisation of the country as well as the integration of the Ukrainian DTIB into the EDTIB. A strong Ukrainian DTIB is vital for Ukraine's long-term security as well as its reconstruction.
- (8) In this regard actions supporting the reinforcement of the Ukrainian defence technological and industrial base should be financially supported by the Union. This support is

complementary to that provided under the Ukraine Facility as well as military support provided to Ukraine under the European Peace Facility and through bilateral assistance by Member States.

- (9) Russia must be held fully accountable and pay for the massive damage caused by its war of aggression against Ukraine, which constitutes a blatant violation of the Charter of the United Nations. The Union and its Member States should, in close cooperation with other international partners, continue to work towards this goal, in accordance with Union and international law, taking into account Russia's serious breach of the prohibition on the use of force enshrined in Article 2(4) of the Charter of the United Nations and the principle of State responsibility for internationally wrongful acts, including the obligation to compensate for the financially assessable damage caused. In coordination with international partners, progress has been made on how extraordinary revenues held by private entities stemming directly from immobilised Russian assets could be directed to support Ukraine, including its defence technological and industrial base, in a manner that is consistent with applicable contractual obligations and in accordance with Union and international law. Additional support could be drawn from the transfer to the Union of extraordinary cash balances of central securities depositories arising from the unexpected and extraordinary revenues from Russia's immobilised sovereign assets.
- (9a) Following G7 leaders' strong commitment to helping Ukraine meet its urgent short term financing needs as well as supporting its long-term recovery and reconstruction priorities, on 28 October 2024, the European Parliament and the Council of the European Union adopted a Regulation (EU) 2024/2773 establishing the Ukraine Loan Cooperation Mechanism and providing exceptional macro-financial assistance to Ukraine. The ULCM Regulation provides that the MoU on policy conditions for the macro-financial assistance shall include a commitment to promote cooperation with the Union on the recovery, reconstruction and modernisation of the Ukrainian defence industry, in line with the objectives of Union programmes aiming at the recovery, reconstruction and modernisation of Ukrainian defence technological and industrial base and other relevant Union programmes.
- (10) [*Moved down as new 12a*]
- (11) To fund the actions that aim at strengthening the competitiveness and readiness of the EDTIB based on Article 173 of the Treaty on the Functioning of the European Union (TFEU) and the actions that aim at contributing to the recovery, reconstruction, and

modernisation of the Ukrainian DTIB, taking into account its possible future integration into the EDTIB, under Article 212 TFEU, this Regulation should establish a Programme setting out the conditions for Union financial support under Article 173 TFEU and an Ukraine Support Instrument setting out the specific conditions for Union financial support under Article 212 TFEU.

- (12) This Regulation should lay down a financial envelope for the period 2025 to 2027 which is to constitute the prime reference amount, within the meaning of point 18 of the Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, for the European Parliament and the Council during the annual budgetary procedure.
- (12a) An administrative arrangement should be concluded with Ukrainian competent authorities for the implementation of the actions set out in this Regulation which concern Ukraine or legal entities established in Ukraine receiving Union funding. Grant agreements or joint procurement should also be concluded with Ukrainian competent authorities and legal entities established in Ukraine to define conditions for releasing funds.
- (13) The possibilities provided for in Article 73(4) of Regulation (EU) 2021/1060 of the European Parliament and of the Council could be applied provided that the project complies with the rules set out in that Regulation and the scope of the European Regional Development Fund and the European Social Fund Plus as set out in Regulations (EU) 2021/1058 and (EU) 2021/1057 of the European Parliament and of the Council, respectively. This could, in particular, be the case where the production of relevant defence products faces specific market failures or suboptimal investment situations in the Member States' territories, notably in vulnerable and remote areas, and such resources contribute to the achievement of the objectives of the programme from which they are transferred. In line with Article 24 of Regulation (EU) 2021/1060, the Commission is to assess the amended programmes submitted by the Member State and make observations within two months of the submission of the amended programme.
- (14) In view of the need invest better and together in the competitiveness, responsiveness and ability of the EDTIB as well as in the recovery, reconstruction and modernisation of Ukraine's defence industrial base, it should be possible for Member States, third countries, international organisations, international financial institutions or other sources to contribute

to the implementation of the Programme and the Ukraine Support Instrument. Such contributions should be implemented in accordance with the same rules and conditions and should constitute external assigned revenue within the meaning of Article 21(2)(a)(ii), (d), and (e) of Regulation (EU, Euratom) No 2024/2509. In addition, Member States should be able to use the flexibility in the implementation of their shared management allocations offered by Regulation (EU) 2021/1060 of the European Parliament and the Council. It should therefore be possible to transfer certain levels of funding between shared management allocations and the Programme or the Ukraine Support Instrument, subject to the conditions set out in the relevant provisions of Regulation (EU) 2021/1060 of the European Parliament and the Council. Uncommitted resources at the latest in 2028 may be transferred back to one or more respective source programmes, at the request of the Member State, in accordance with the conditions set out in the relevant provisions of Regulation (EU) 2021/1060.

- (15) As this Regulation aims to enhance the competitiveness and efficiency of the Union's and Ukraine's defence industry, and in order to ensure the protection of essential security and defence interests of the Union and its Member States, to benefit from Union financial support under this Regulation, recipients of financial support should be legal entities which are established and have their executive management structures in the Union, in associated countries or in Ukraine and which use for the purposes of the action infrastructure, facilities, assets or resources located on the territory of a Member State, an associated country or Ukraine. In addition, recipients of financial support should not be subject to control by non-associated third countries, other than Ukraine or by, non-associated third-country entities. Where Member States, associated countries or Ukraine are the recipients of the financial support, in particular for common procurement actions, these rules should apply for the contractors or subcontractors to the procurement contracts. 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. (16) In certain circumstances, it should be possible to derogate from the principle that legal entities involved in an action supported by the Regulation use infrastructure, facilities, assets or resources located on the territory of a Member State or an associated country, and are not subject to control by non-associated third countries or non-associated third-country entities. In that context, a legal entity established in the Union or in an associated country using infrastructure, facilities, assets or resources located outside the territory of a Member State or an associated country, and/or controlled by a non-associated third country or a non-

associated third country entity may participate as recipient if strict conditions relating to the security and defence interests of the Union and its Member States, as established in the framework of the Common Foreign and Security Policy (CFSP) pursuant to Title V of the Treaty on European Union (TEU), including in terms of strengthening the European Defence Technological and Industrial Base, are fulfilled. Similar derogations should be provided for actions supported under the Ukraine Support Instrument, to allow for the use of infrastructure, facilities, assets or resources located outside the territory of a Member State or Ukraine, and for the participation of legal entities established in the Union and controlled by a third country or by a third country entity other than Ukraine

- (16a) Legal entities established in the Union or in an associated country and controlled by a non-associated third country or a non-associated third-country entity should be eligible to be a recipient if they have been subject to screening within the meaning of Regulation (EU) 2019/452 [recast] and, where necessary, to appropriate mitigation measures. Alternatively, they should be eligible for Union financial support under the Programme if guarantees approved in accordance with the national procedures of the Member State or associated country in which they are established are made available to the Commission. 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. The participation of entities controlled by non-associated countries or non-associated third country entities should not contravene the objectives of the Regulation. For the purposes of the Ukraine Support Instrument, the same should apply in the case of legal entities controlled by third countries or third country entities other than Ukraine.

- (17) Considering the need to safeguard the operational capacity of Member States' armed forces, the operational use of defence products, including technologies and services, related to actions supported by the Programme should not be subject to restrictions imposed by non-associated third countries, including restrictions which apply indirectly through a non-associated third country legal entity. While recognizing the need to gradually reduce strategic dependencies, defence products related to actions supported by the Programme subject to restrictions not affecting their operational use by Member States, including restrictions on the sale and transfer of defence products, should be allowed in the interest of ensuring Member States' ability to satisfy their product needs and of safeguarding the competitiveness of the EDTIB. The absence of restrictions affecting the operational use of a defence product or service should be assessed at the time of the award decision only.

- (17a) The Programme should provide financial support, via means provided for in the Regulation (EU, Euratom) No 2024/2509, to actions contributing to strengthening the competitiveness, responsiveness and ability of the EDTIB to ensure the timely availability and supply of defence products, such as cooperation for common procurement of public authorities, industrial coordination and networking activities including reservation of defence products, access to finance for undertakings involved in the manufacturing of relevant defence products, reservation of manufacturing capacities ('ever warm facilities'), industrial processes of reconditioning of expired products, expansion, optimisation, modernisation, upgrading or repurposing of existing, or the establishment of new, production capacities in that field as well as the training of personnel.
- (18) The functioning of the defence industry sector does not follow the conventional rules and business models that govern more traditional markets. Demand comes almost exclusively from States, which also control all acquisition of defence-related products and technologies, including exports. The industry does not therefore engage in substantial self-funded industrial investments but only does so as a consequence of firm orders. The Commission can intervene by offsetting the complexity of cooperation for common procurement and de-risking industrial investments via grants and loans allowing a faster adaptation to ongoing structural market change. Therefore, it appears justified that a substantial amount representing at least 30% of the financial envelope allocated to the Programme be reserved for industrial reinforcement actions and that the Union support for industrial reinforcement actions should cover up to 35 % of direct eligible costs in order to enable recipients to implement actions as soon as possible, to de-risk their investment and therefore to speed up the availability of relevant defence products. For the same reasons as outlined above, it also appears justified that the Union financial support under the Programme covers up to 100% of the eligible costs in the case of supporting actions.
- (18a) For actions under the Ukraine Support Instrument, Union support for industry reinforcement and supporting activities involving legal entities established in Ukraine, Union support should cover up to 100% of the direct eligible costs in order to accommodate for the increased complexity and environment for the Ukraine defence industry, including to meet NATO and other relevant standards, as well as the increased risks associated with the war of aggression, taking into account the need to rebuild and modernise industrial capacities in a resilient way.

- (20) Common procurement actions should be funded under this Regulation by way of grants taking the form of financing not linked to cost based on the achievement of results by reference to work packages, milestones or targets of the common procurement process, in order to create the necessary incentive effect.
- (21) The Union financial contribution under the Programme for common procurement actions, intended as an incentive for cooperation, should be capped at 15 % of the estimated value of the common procurement contract. Given the increased complexity that comes with common procurement with Ukraine, the Union financial contribution under the Instrument should be capped at 25% of the the estimated value of the common procurement contract.
- (21a) Upon fulfilment of specific conditions linked to the objectives of the Programme, the cap for the Union financial contribution to common procurement actions should be raised to 25 % of the estimated value of the common procurement contract in order to compensate for particular complexities relating to cooperation until the end of the lifecycle of a defence product and to enhanced cross-border cooperation within the Union. [Placeholder regarding a possible bonus for restrictions-free products]. In addition, given the particular security situation of Ukraine and Moldova in light of Russia's war of aggression against Ukraine, it is also appropriate to provide for such an increased funding rate in case the supported action results in the common procurement of additional quantities of defence products for those two countries. Furthermore, the geopolitical context, including Russia's war of aggression against Ukraine, has exposed the Union and its Member States to a high risk of materialisation of conventional military threats, thereby creating a need for increased defence investments. It is thus also justified to provide for an increased funding rate of up to 25% for common procurement actions in cases where the defence investment expenditure of the majority of Member States participating in the action concerned exceeds 30% of their respective defence spending. For industrial reinforcement actions, the cap may be raised to up to 50% of eligible costs where the action benefits SMEs or midcaps, demonstrates a contribution to the creation of new cross-border cooperation, involves the creation of new infrastructure, facilities or production lines, or the establishment of new or the ramping-up of existing manufacturing capacities of crisis-relevant products.
- (22) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission with respect to the adoption of work programmes to set out the funding priorities and the applicable funding conditions. The specificities of the defence sector, in particular the responsibility of Member States,

associated countries or Ukraine for the planning and acquisition process, should be taken into account. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

- (23) In accordance with Article 196(2) of the Regulation (EU, Euratom) No 2024/2509, a grant may be awarded for an action which has already begun, provided that the applicant can demonstrate the need for starting the action prior to signature of the grant agreement. However, costs incurred prior to the date of submission of the grant application are not eligible, except in duly justified exceptional cases. In order to enable continuity of funding perspective for actions that could have been supported by 2024 funding under ASAP and EDIRPA, in the financing decision it should be possible to provide for financial contributions in relation to actions that cover a period starting from 5 March 2024. In no circumstances should the same costs be financed twice by the Union budget.
- (24) When assessing proposals submitted by applicants, the Commission should pay particular attention to their contribution to the objectives of this Regulation. The proposals should be assessed, in particular, against their contribution to the increase in defence industrial readiness, in particular increasing production capacities. They should also be assessed against their contribution to fostering defence industrial resilience, by reference to considerations such as availability and security of supply throughout the Union in response to identified risks, including in particular to high exposure to the risk of materialisation of conventional military threats. Assessments should also refer to the contribution to cross-border defence industrial cooperation among Member States, associated countries and Ukraine and the development and the operationalisation of cross-border cooperation of undertakings, in particular, to a significant extent, small and medium-sized enterprises (SMEs) and middle capitalization companies (mid-caps) operating in the supply chains concerned.
- (26a) To strengthen the competitiveness, responsiveness and ability of the EDTIB and contribute to the recovery, modernisation and reconstruction of the Ukrainian DTIB, it is necessary to support the commercialisation of defence products. To mitigate any distortion of the market, profits generated by successful commercialisation supported by the Union budget should be recovered in accordance with the principle of proportionality. By derogation from Article 195(2) of Regulation (EU, Euratom) No 2024/2509, such recovery of profits should take fully into account all revenue generated, including revenues from Member

State, Ukraine and third-party support to the action, in addition to the Union support itself. The profits recovered should be re-used to benefit the objectives of this Regulation.

- (27) In accordance with the Regulation (EU, Euratom) No 2024/2509, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council and Council Regulations (EC, Euratom) No 2988/95, (Euratom, EC) No 2185/96 and (EU) 2017/1939, the financial interests of the Union are to be protected by means of proportionate measures, including measures relating to the prevention, detection, correction and investigation of irregularities, including fraud, to the recovery of funds lost, wrongly paid or incorrectly used, and, where appropriate, to the imposition of administrative penalties. In particular, in accordance with Regulations (Euratom, EC) No 2185/96 and (EU, Euratom) No 883/2013, the European Anti-Fraud Office (OLAF) has the power to carry out administrative investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. The European Public Prosecutor's Office (EPPO) is empowered, in accordance with Regulation (EU) 2017/1939, to investigate and prosecute criminal offences affecting the financial interests of the Union as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council. In accordance with the Regulation (EU, Euratom) No 2024/2509, any person or entity receiving Union funds is to fully cooperate in the protection of the financial interests of the Union, grant the necessary rights and access to the Commission, OLAF, the Court of Auditors and, in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, the EPPO, and ensure that any third parties involved in the implementation of Union funds grant equivalent rights.
- (27a) In view of the current geopolitical context, in particular Russia's war of aggression against Ukraine, the protection of EU's essential security interests requires the adoption of specific measures on the procurement of defence products aimed at fostering the competitiveness of the EDTIB and ensuring the timely availability and supply of defence products procured from the EDTIB, throughout the Union. The protection of EU's essential security interests also requires the involvement of Ukraine and EEA countries in these measures, not only because of their geographical position and the fact that Ukraine is directly faced with Russia's ongoing war of aggression, but also in view of their close procurement partnership with the EU, as notably reflected in the EU-UA association Agreement and in the EEA Agreement.

- (28) Third countries which are members of the European Economic Area (EEA) may participate in Union programmes in the framework of the cooperation established under the Agreement on the European Economic Area, which provides for the implementation of the programmes on the basis of a decision adopted under that Agreement. A specific provision should be introduced in this Regulation requiring those third countries to grant the necessary rights and access required for the authorising officer responsible, OLAF and the Court of Auditors to comprehensively exercise their respective competences. Pursuant to Article 85 of Council Decision (EU) 2021/1764 (18), natural persons and bodies and institutions established in overseas countries and territories (OCTs) are eligible for funding subject to the rules and objectives of the Programme and possible arrangements applicable to the Member State to which the relevant OCT is linked.
- (28a) The Union should identify European Defence Projects of Common Interest (EDPCI) on which to focus efforts and resources, which should consist of collaborative industrial projects contributing to the development of military capabilities and systems securing access to operational domains and contested spaces, and thereby to increasing defence readiness. Due to the sensitive nature of the decision to identify an EDPCI in light of its potential impact on national security interests, and the importance of ensuring the contribution of such projects to the defence readiness of all Member States, the power to adopt implementing acts to identify an EDPCI should be conferred on the Council. Before proposing such implementing acts, the Commission should take into account the views of Member States and of the EDA to ensure that EDPCIs are consistent with the capability priorities identified in the context of the CFSP, notably of the Capability Development Plan, and the objectives of the Strategic Compass for Security and Defence. Given the potentially significant impact of the EDPCIs for the competitiveness and the industrial readiness of the EDTIB, the Programme should support the consortia of participating Member States and associated countries in their deployment. It should, in particular, financially support actions undertaken by these consortia which are related to the common procurement of defence products, speeding up the adjustment to structural changes of the production capacity of defence products as well as related supporting activities, the industrial development of new defence products or the upgrading of existing ones, and the development and procurement of necessary infrastructure. Given the particular scale of these projects which requires an unprecedented level of cooperation and coordination among Member States and industry, and taking into account the financial risks for the participating Member States and associated countries, Union funding should be able to cover up to 100% of the eligible costs.

- (28b) The ability of the EDTIB to ensure the availability of defence products in time and in volume is essential to its competitiveness, especially during periods of heightened security tensions. During such periods, the EDTIB might lack the production capacity necessary to meet Member States' urgent needs and its products might be less visible to Member States than products offered by third countries or third country entities. EDIP should therefore provide a Military Sales Mechanism (MSM), including measures to increase the speed to market of defence products from the EDTIB by leveraging the use of government-to-government contracts.
- (28c) With support from the Programme and the Instrument, Member States and Ukraine should be able to establish, manage and maintain defence industrial readiness pools (the 'pools') made up of defence products which Member States, associated countries, and Ukraine could easily purchase or use, for the purpose of strengthening the competitiveness of the EDTIB and the reconstruction, recovery and modernisation of the Ukrainian DTIB. Such pools, consisting of stocks of defence products procured from the EDTIB or the Ukrainian DTIB, would attract demand and increase predictability for the defence sector. They would give positive signals to the Union and the Ukrainian industry, incentivising them to produce defence products and to invest for the purpose of strengthening industrial capacities. Furthermore, the pools would improve the security of supply of defence products for Member States by improving product availability and reducing delivery lead times, including in supply crisis situations.
- (28d) To improve Member States' awareness of the availability of EDTIB products, the Programme should also provide for the establishment, by the Commission, of a catalogue of defence products developed by the EDTIB, based on voluntary contributions by Member States economic operators. When setting up this catalogue, the Commission should consult the EDA and take into accounts its views.
- (29) Building inter alia on the experience of the defence equity facility, established in the context of the European Defence Fund as an InvestEU blending operation, the Commission should examine all available options to set up a dedicated facility as part of the Programme to be referred to as the 'Fund for the acceleration of defence supply chain transformation ('FAST')'. FAST should be implemented under indirect management. FAST will leverage, de-risk and speed-up investments needed to increase the defence manufacturing capacities of EU-based SMEs and small mid-caps, in the form of a blending operation offering support in the form of debt and/or equity. FAST should be established as a blending

operation, including under the InvestEU Programme established by Regulation (EU) 2021/523 of the European Parliament and Council (20), in close cooperation with its implementing partners.

- (30) FAST should achieve a satisfactory multiplier effect in line with the debt and equity mix and contribute to attracting both public and private-sector financing. In order to contribute to the overall objective of enhancing the EDTIB's competitiveness, FAST should also provide support to SMEs (including start-ups and scale-ups) and small mid-caps across the EU, manufacturing defence technologies and products as well as companies actually or potentially part of the defence industry's supply chain, facing difficulties in accessing finance. FAST should as well accelerate investment in the field of manufacturing defence technologies and products, and therefore strengthen the security of supply of the Union's defence industry value chains.
- (30a) Increasing the number and magnitude of common procurements of defence products from the EDTIB and the Ukrainian DTIB is necessary to achieve the objectives of the Programme and of the Ukraine Support Instrument. By way of derogation from Article 168(2) and (3) of the Financial Regulation, requests to the Commission to conduct joint procurements or to act as a central purchasing body, including in the form of advance purchasing agreements, should come from at least three Member States in order to limit the risk of one single Member State using the combined weight of the Union for procurements of defence products and prevent any possible distorting effects in an area where demand comes almost exclusively from Member States. Associated countries should be able to join such requests by Member States to the Commission. Similarly, for the purposes of the Ukraine Support Instrument, at least two Member States next to Ukraine should participate in such actions. With a view to fostering the industrial ramp-up of manufacturing capacities of the EDTIB and the Ukrainian DTIB, the Commission should furthermore facilitate the conclusion of offtake agreements in compliance with Union competition and procurement rules.
- (30b) *[Placeholder for justification for derogation from Art. 175(1) Financial Regulation]*
- (31) Cooperative armament programmes in the Union face significant challenges, being mostly set up on an ad hoc basis and being plagued by complexity, delays and cost overruns. To remediate that situation and ensure the continuous commitment of Member States until the end of the life cycle of defence products, a more structured approach is required at Union level. To achieve such an approach, Member States' efforts should be supported by making

available a new legal framework, namely the Structure for European Armament Programmes (SEAP), to underpin and strengthen their cooperation. To reach its objective of fostering the competitiveness of the EDTIB and, where Ukraine is participating, of the Ukrainian DTIB, a SEAP should be able to conduct the common development, procurement and/or life-cycle management of defence products. SEAPs should be able to carry out additional activities necessary for the achievement of their objectives, such as activities related to infrastructures directly related to defence products. Actions undertaken in this framework should be mutually reinforcing with those carried out under the CFSP, in particular in the context of the Capability Development Plan (CDP).

- (32) Within the SEAPs, Member States should benefit from standardised procedures for initiating and managing cooperative armament programmes, including guidelines on project management, procurement, financial management, and reporting, to be provided by the Commission. Cooperation under this framework should also allow, under certain conditions, for a VAT exemption, where the SEAP owns the procured equipment. Beyond contributions from the Programme and the Ukraine Support Instrument, SEAPs should also be able to receive contributions from other Union programmes, provided that the contributions do not cover the same cost. The rules of the relevant Union programme should apply to the corresponding contribution to the action concerned.
- (32a) If their members unanimously wish to do so, SEAPs should be able to issue securities in accordance with the law of the Member State where it has its statutory seat to ensure the long-term financing plan of armament programmes **and compliance with the economic governance framework]. OR [In accordance with the applicable Union legal framework for national and regional accounts which serves as basis for the Union legislation relating to the economic governance framework, securities issued by SEAPs should be accounted for when determining the government debt to GDP ratio of the members of the respective SEAPs. The Union would not be liable for securities issued by SEAPs.]** Union financial contributions might improve the conditions for financing by the Member States of the armament programmes.
- (32b) To achieve its objectives, a SEAP should be able to entrust, through a delegation agreement, one or several of the entities eligible for funding under common procurement actions under the Programme with one or several of its tasks. In particular, international organisations such as the Organisation for Joint Armament Cooperation (OCCAR) and the NATO Support and Procurement Agency (NSPA), as well as the European Defence

Agency have resources, competences, and skills in the management of defence cooperation which could offer added value to SEAPs. Where a SEAP entrusts another entity with the performance of its tasks, it should remain responsible for the compliance with its obligations under this Regulation and other Union law. It should therefore ensure that the delegation agreement includes such obligations and take any appropriate measure to ensure they are met.

- (33) In order to allow for an efficient procedure for the setting-up of a SEAP, it is necessary for the Member States, associated countries or Ukraine willing to set up a SEAP to submit an application to the Commission which should assess, whether the proposed statutes of the armament programmes are in conformity with this Regulation. Such an application should contain a declaration of the host Member State recognising the SEAP as an international body or organisation for the purpose of the application of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty, as of its setting up.
- (34) For reasons of transparency, the decision setting-up a SEAP should be published in the *Official Journal of the European Union* and the essential elements of its Statutes should be annexed to such decisions.
- (35) In order to carry out its tasks in the most efficient way, a SEAP should have legal personality as from the day on which the decision setting it up takes effect and should benefit from the most extensive legal capacity in each Member State. A SEAP should also benefit from the most extensive legal capacity in associated countries and Ukraine in cases where they are members of the SEAP. It should have a statutory seat within the territory of a Member State.
- (36) Member States, associated countries, and Ukraine may be members of a SEAP. Membership of a SEAP should comprise at least three countries, of which at least two should be Member States.
- (37) For the implementation of the SEAP, more detailed provisions should be laid down in Statutes, on the basis of which the Commission should examine the compliance of an application with the rules established in this Regulation.
- (38) It is necessary to ensure that, on the one hand, a SEAP has the necessary flexibility to amend its Statutes and, on the other hand, that certain essential elements, in particular those

which were necessary for the granting of the SEAP status, are preserved through a necessary control at Union level. If an amendment concerns an essential element of the Statutes annexed to the decision setting up the SEAP, such amendment should be approved, prior to taking effect, by a Commission decision taken following the same procedure as that for setting up the SEAP. Any other amendment should be notified to the Commission, which should have an opportunity to object if it considers the amendment contrary to this Regulation.

- (39) A SEAP should be able to procure defence products on its own behalf or in the name or on behalf of its members. For these purposes, SEAPs should be considered as international organisations within the meaning of Article 12, point (c), of Directive 2009/81/EC. Therefore, Directive 2009/81/EC should not apply to such procurements. Where a SEAP procures on behalf of its members which are Member States or, where relevant, associated countries, Directive 2009/81/EC should not apply in such cases when the procurement procedure complies with the objectives of the SEAP to foster the competitiveness of the EDTIB and where relevant of the Ukrainian DTIB. Directive 2009/81/EC should also not apply to the procurement procedures conducted by Member States when procuring on behalf or in the name of a SEAP, as such contracts should be awarded in accordance with the procurement rules of the SEAP. SEAPs should define their own procurement rules, in compliance with Union primary law principles applicable to procurement, in particular those of equality of treatment, transparency, non-discrimination and proportionality and with the rules set out in this Regulation. Where a SEAP entrusts procurement tasks to one or several entities, it should ensure that the procurement rules to be applied comply with those principles.
- (40) [...]
- (41) In order to carry out its tasks in the most efficient way and as a logical consequence of its legal personality, a SEAP should be liable for its debts. In order to allow the members to find appropriate solutions regarding their liability, the option should be given to provide in the Statutes for different liability regimes going above the liability limited to the contributions of the members.
- (42) [...]
- (43) In order to ensure sufficient control of compliance with this Regulation, a SEAP should transmit to the Commission its annual report and any information about circumstances

threatening to seriously jeopardise the achievement of its tasks. If the Commission obtains indications, through the annual report or otherwise, that the SEAP acts in serious breach of this Regulation or other applicable law, it should request explanations and/or actions from the SEAP and/or its members. In extreme cases and if no remedial action is taken, the Commission could repeal the decision setting up the SEAP, thus triggering the winding-up of the SEAP.

- (44) Upon the adoption of ASAP, the European Parliament and the Council called on the Commission to consider, putting forward a legal framework aimed at ensuring the security of supply (Joint Statement of 11 July 2023). This joint statement by co-legislators echoed the conclusions of the European Council in December 2013 calling for a comprehensive EU-wide Security of Supply regime and the European Parliament's recommendation of 8 June 2022 urging the Commission to present, without delay, such a regime.
- (45) As a result from Russia's war of aggression against Ukraine, the recent supply crisis in certain ammunitions during the first semester of 2023, which was characterized by a sharp increase in demand for defence products, has exposed the vulnerabilities of Union's supply chains for defence products, and has underscored the importance of enhanced resilience, coordination between Member States, and adaptability in the face of unprecedented disruptions. That supply crisis also had a severe negative impact on the functioning of the internal market. Member States have indeed addressed shortages in an uncoordinated manner and have taken diverging measures regarding the supply of defence products which were of critical importance for responding to that crisis, as well as of components and raw materials indispensable to their production. Such uncoordinated measures, relating in particular to the preservation of stocks as a matter of national security, the certification and intra-EU transfer of defence products and the prioritisation of orders at national level, not only resulted in difficulties of access to the products, components and raw material needed to manufacture or acquire the relevant defence products, thereby hampering entire production chains. They also resulted in the creation of obstacles to cross-border trade between Member States, thereby restricting the free movement of defence products and of the related components and raw material in the internal market and disrupting the functioning of its supply chains.

That supply crisis also revealed a lack of crisis management tools and coordination mechanisms, insufficient information sharing as well as insufficient overview of the manufacturing capacities across the Union and of the vulnerabilities related to Union's

supply chains. In addition, the lack of effective coordination between Member States exacerbated the shortages of defence products and created more obstacles to their free movement in the internal market.

- (45a) The constant degradation of the security context, characterized by rising long-term threats, acceleration in the development of defence technology and innovation, and increase in defence spending by all actors/countries, is likely to trigger a surge in demand for defence products and to exacerbate any future supply crisis of such products, leading to recurring spikes in demand for specific defence products. This heightened demand will inevitably intensify pressure on supply chains on the internal market for defence products, and recurring spikes in demand for specific defence products will likely cause prices to increase sharply and result in the resurgence of diverging national measures to tackle shortages, leading to a crowding out effect of Member States with more limited purchasing power and to the emergence of obstacles to the proper functioning of the internal market, undermining as a result the defence and security interests of the EU and of its Member States.
- (45b) Moreover, the rapidly evolving security and threat environment can contribute to other crises taking a variety of forms, such as cyber-attacks on defence industries or large-scale disruptions to critical infrastructure, which would require swift and decisive coordinated responses to prevent severe disruptions to the related supply chains. In anticipation of heightened demand in defence products and intensified pressure on the related supply chains, the reliable functioning of these supply chains is therefore essential to ensure the proper functioning of the internal market for defence products.
- (45c) As illustrated by the lessons learned from the work of the Defence Joint Procurement Task Force on coordinating very short-term defence procurement needs and from the implementation of Regulation 2023/1525 supporting the Ammunition Production (ASAP), defence supply chains often have an EU cross-border dimension, in particular in lower tiers. The growing complexity of EU-wide supply chains for defence products results in the lack of visibility on overall production capacities and supply chains of the EDTIB and can result in the inability of Member States to make informed decisions.
- (45d) In this context, it is essential to establish measures to prepare for and respond to the impact of future supply crises of defence products on the internal market, with the aim to safeguard and facilitate the free movement of defence products ; ensure security of supply of defence products or components or raw materials thereof or any products or services critical to their production which are indispensable to ensure the proper functioning of the internal market

and its supply chains and that are considered essential to respond to a supply crisis ('crisis-relevant products'); and prevent the creation of obstacles to the proper functioning of the internal market. .

- (45e) Security of supply measures at national level are not sufficient to tackle effectively the abovementioned challenges as the cross-border effects on the EU-wide defence supply chains cannot sufficiently be taken into account nor be appropriately addressed by individual Member States. In addition, uncoordinated approaches at national level can have a severe negative impact on the functioning of the internal market for defence products, in particular by creating obstacles to cross-boarder trade, and further exacerbate the overall shortages and disruptions in the supply chains. This risks creating a vicious cycle of disruptions and shortages that can have far-reaching consequences for the functioning of the internal market and, ultimately, the ability of the Union and its Member States to defend their security and defence interests.
- (45f) Only an EU-wide security of supply regime providing for harmonised rules aimed at increasing the security of supply of defence products, can ensure the proper functioning of the internal market under any circumstances and make it resilient to any shock. Those measures should be based on Article 114 TFEU.
- (45g) Such an EU-wide regime will also result in positive effects on the competitiveness of the EDTIB. Indeed, following the Covid-19 pandemic outbreak and the beginning of Russia's unprovoked and unjustified war of aggression against Ukraine, security of supply has become an increasingly important factor in procurement of defence products. An EU-wide security of supply regime would hence ensure that defence supply chains which increasingly span across the internal market can match the EU Member States' needs and remain competitive at EU level.
- (46) To pursue the general public policy objective of security, it is necessary that production facilities related to the production of relevant defence products are set up as quickly as possible, while keeping the administrative burden to a minimum. For that reason, Member States should treat applications related to the planning, construction and operation of plants and installations for the production of relevant defence products in the most rapid manner possible. Such applications should be given priority when balancing legal interests in the individual case.

- (47) In view of the objective of this Regulation, and of the emergency situation and the exceptional context of its adoption, Member States should consider using defence-related exemptions under national and applicable Union law, on a case-by-case basis, if they deem that the use of such exemptions would facilitate the achievement of that objective. That could in particular apply to Union law concerning environmental, health and safety issues, which is indispensable to improving the protection of human health and the environment, as well as to achieving a sustainable and safe development. However, the implementation of that law could also produce regulatory barriers hampering the Union defence industry's potential to ramp up the production and deliveries of relevant defence products. It is a collective responsibility for the Union and its Member States to urgently look into any action they could take to mitigate possible obstacles. Any such action, whether at Union, regional, or national level, should not compromise the environment, health and safety.
- (48) Directive 2009/81/EC of the European Parliament and of the Council aims at harmonising procurement procedures for the award of public contracts in the field of defence and security thus enabling the security requirements of Member States and the obligations arising from the TFEU to be met. That Directive contains, in particular, specific provisions governing situations of urgency resulting from a crisis, in particular shortened periods for the receipt of tenders and the possibility to use the negotiated procedure without prior publication of a contract notice. However, in extreme urgency, in particular during supply and security crises, these rules could be incompatible even with those provisions in cases where two or more Member States intend to engage in a common procurement. In some cases, the only solution that ensures the security interests of those Member States is to open an existing framework agreement to contracting authorities of Member States that were not originally party to it, even though that possibility had not been provided for in the original framework agreement.
- (49) In accordance with the case law of the Court of Justice of the European Union, modifications to a public contract are to be strictly limited to what is absolutely necessary in the circumstances, while complying to the maximum extent possible with the principles of non-discrimination, transparency and proportionality. In that regard, it should be possible to derogate from Directive 2009/81/EC by increasing the quantities provided for in a framework agreement while opening it to contracting authorities of other Member States. With respect to those additional quantities, those contracting authorities should enjoy the same conditions as the original contracting authority/entity that concluded the original framework agreement. In such cases, the original contracting authority/entity should also

allow any economic operator who fulfils the contracting authority's/entity's conditions initially laid down in the procurement procedure for the framework agreement, including requirements for qualitative selections as referred to in Articles 39 to 46 of Directive 2009/81/EC, to join that framework agreement. In addition, appropriate transparency measures should be taken to ensure that all potentially interested parties are informed.

- (50) While the response of the EU and its Member States to the immediate challenge of the Russian war of aggression against Ukraine has been rapid and decisive, it is time for the EU to move from the emergency response to building the EU's long-term readiness. Resilience is a precondition of the EDTIB's readiness and competitiveness. The EU has already developed tools and frameworks to increase industrial readiness and resilience to tackle future crisis situations. However, such measures are not available to support the EDTIB.
- (51) It is therefore necessary to set up a modular and gradual EU Security of Supply regime to enhance solidarity and effectiveness in response to tensions along the supply chains or to security crises and allow for the timely identification of potential bottlenecks. Such a regime should enable the EU and its Member States to anticipate and address the consequences of supply crises, where shortages of civilian or dual-use components, or of raw materials, seriously threaten the timely availability and supply of defence products, and also the consequences of supply crises which are directly linked to the existence of a security crisis within the Union or its neighbourhood and which result in shortages of certain defence products.
- (52) To enable anticipation of potential shortages, national competent authorities should alert the Commission if they become aware of a risk of serious disruption in the supply of crisis relevant products or have concrete and reliable information of any other relevant risk factor or event materialising. In order to ensure a coordinated approach, the Commission should, where it learns of a risk of serious disruption in the supply of defence products or has concrete or reliable information of any other relevant risk factor or event materialising, convene an extraordinary meeting of the Defence Industrial Readiness Board to discuss the severity of the disruptions and possible initiating of the procedure for activating the supply crisis state, and whether it may be appropriate, necessary and proportionate for Member States to enter into dialogue with stakeholders, with a view to identifying, preparing and possibly coordinating such preventive measures. The Commission should, where relevant, consult and cooperate with relevant third countries with a view to jointly addressing

supply-chain disruptions, in compliance with international obligations and without prejudice to procedural requirements.

- (53) In light of the complexities of defence supply chains and the risk of shortages in a foreseeable future, this Regulation should provide instruments for a coordinated approach to mapping and monitoring of the supply chains of certain defence products and effectively tackling possible market disruptions in a proportionate manner.
- (54) The objective of a mapping of the Union's defence supply chains should be to provide an analysis of their strengths and weaknesses with a view to ensure security of supply and resilience. To that end, the Commission should identify products, components as well as raw materials that are deemed critical for the supply of defence products particularly important for the defence interests of the Union and its Member States (crisis-relevant products), based on the inputs and advice from the Defence Industrial Readiness Board. The mapping should be based on publicly and commercially available data and, if necessary, on data obtained through voluntary information requests of undertakings, in consultation with the Defence Industrial Readiness Board.
- (55) In order to forecast and prepare for future disruptions of the different stages of the Union's defence supply chains and of trade within the Union, the Commission should, assisted by the Defence Industrial Readiness Board and on the basis of the outcome of the mapping, identify and develop a list of early warning indicators. Such indicators could include atypical increases in lead time, the availability of raw materials, intermediate products and human capital needed for manufacturing crisis-relevant products, or appropriate manufacturing equipment, forecasted demand, price surges exceeding normal price fluctuation, the effect of security crises, accidents, attacks, natural disasters or other serious events, the effect of trade policies, tariffs, export restrictions, trade barriers and other trade-related measures, and the effect of business closures, offshoring or acquisitions of key market actors. Monitoring activities of the Commission should focus on these early warning indicators.
- (56) In order to minimise the burden for undertakings responding to the monitoring and to ensure that the acquired information can be compiled in a meaningful way, the Commission should provide for standardised and secure means for any information collection. These means should ensure that any collected information is treated confidentially, ensuring business secrecy and cybersecurity.

- (57) On this basis, the Commission should draw up a list, identifying the crisis-relevant defence products, raw materials or components thereof, that are affected by disruptions or potential disruptions of the functioning of the Single Market and its supply chains leading to significant shortages. The Commission should regularly update this list, to focus only on possible disruptions or bottlenecks affecting the security of supply of relevant defence products, as well as raw materials and components thereof.
- (58) Due to the sensitive nature of the decision to activate the supply-crisis state or the security-related supply-crisis state and of the potential measures that may be taken in response thereof, including the significant impact which such measures might have on private undertakings in the Union, the power to adopt an implementing act as regards activating, prolonging and terminating these states should be conferred on the Council.
- (59) Where the supply-crisis state or the security-related supply-crisis state is activated, the Commission, should be able to request to receive necessary information to ensure the timely availability of crisis relevant products from undertakings, dealing with these products, raw materials or components thereof, in agreement with the Member State in which they are established. Such information should inform the Commission's decision on appropriate measures under this regulation to address possible disruptions or bottlenecks affecting the security of supply of relevant defence products as well as relevant raw materials and components.
- (60) Such an identification, mapping and continuous monitoring mechanism should allow a near real time analysis of the production capacity in the Union, critical factors impacting security of supply of relevant defence products, and stockpiles' status. It should also enable Commission to design emergency response measures to actual or anticipated shortages.
- (61) Avoiding shortages of relevant defence products is essential to preserve the objective of general interest of security of the Union and its Member States and justifies, where necessary, proportionate interferences with fundamental rights of the undertakings providing crisis relevant products, such as the freedom to conduct a business in accordance with Article 16 of the Charter and the right to property in accordance with Article 17 of the Charter of Fundamental Rights of the European Union ('the Charter'), in the respect of Article 52 of the Charter. Such interferences may be justified in particular where several Member States have undertaken specific efforts to consolidate demand through joint procurement, hence contributing to the further integration and smooth functioning of the Internal Market for relevant defence products.

- (62) As an instrument of last resort to ensure that critical sectors can continue to operate in a time of crisis and only when necessary and proportionate for that purpose, relevant undertakings could be required by the Commission to accept and prioritise orders of crisis-relevant products. The decision on a priority-rated order should be taken in accordance with all applicable Union legal obligations, having regard to the circumstances of the case. The priority rating obligation should take precedence over any performance obligation under private or public law except those directly related to military orders while it should have regard for the legitimate aims of the undertakings and the cost and effort required for any change in production sequence. Each priority-rated order should be placed at a fair and reasonable price which should take into account the undertaking's opportunity costs vis-à-vis existing contracts.
- (63) The obligation to prioritise the production of certain products should not disproportionately affect the freedom to conduct a business and the freedom of contract laid down in Article 16 of the Charter and the right to property laid down in Article 17 of the Charter. Any limitation of those rights should, in accordance with Article 52(1) of the Charter, be provided for by law, respect the essence of those rights and freedoms, and comply with the principle of proportionality.
- (64) Where the security-related supply crisis state is activated, based on the assessment of the Commission with the support of the High-Representative, the measures available under the supply crisis state should also be available. In addition to the latter, the Council should activate the measures it considers appropriate to the crisis. To do so, the Council should pay particular to the need to ensure a high level of security of the Union, Member States and European citizens.
- (65) Where the security-related supply crisis state is activated and in order to address cases where a Member State faces or may face severe difficulties either in the placing of an order or in the execution of a contract for the supply of defence products due to shortages or serious risks of shortages of crisis-relevant products, the Council should be able to activate measures at Union level aimed to ensure the availability of crisis-relevant goods, such as priority rated requests to ensure the proper functioning of the internal market and its defence supply chains.
- (66) As an instrument of last resort, priority-rated requests should aim at addressing situations where the production or supply of crisis relevant products which are defence products could not be achieved by other measures. The priority-rated request should be taken based on

objective, factual, measurable, and substantiated data. It should have regard for the legitimate interests of the undertakings and the cost and effort required for any change in production sequence. When accepted, the obligation to perform the priority-rated request should take precedence over any performance obligation under private or public law. Each priority rated request should be placed at a fair and reasonable price.

- (66a) This Regulation should not affect the obligations provided for by the directive 2009/43/EC regarding transfers of defence-related products within the Union. It should not affect the international obligations and commitments of the Member States nor their discretion as regards their policy on the export of defence-related products. The decision to authorize, refuse, or subject a transfer and export to conditions and restrictions falls within the prerogatives of each Member State. Thus, it is important to preserve, on the one hand, the application of existing provisions to transfers within the Union, and on the other hand, the prerogatives of Member States in the international context of exports.
- (67) With a view to support the Commission in implementing this Regulation, a European Defence Industrial Readiness Board should be established, composed of the Commission, the High Representative/Head of the Agency and Member States. In addition, outside the framework of the current Regulation, the High Representative/Head of Agency and the Commission will at their initiative convene and co-chair meetings of the members in the context of the Board to exercise the joint programming and procurement function and provide strategic guidance and advice with a view to increase defence industrial readiness of the EDTIB, in line with the European Defence Industrial Strategy.
- (68) This Regulation should apply without prejudice to Union competition rules, in particular Articles 101 to 109 TFEU and the legal acts that give effect to those Articles.
- (69) Union funding under this Regulation cannot cover the costs arising from the Common Foreign and Security Policy. As a consequence, Union funding under the Programme and the Ukraine Support Instrument should not cover the costs of the purchase and of the maintenance of defence products for military or defence purposes, including in the context of establishing, managing and maintaining a Defence Industrial Readiness Pool. Union funding under the Programme and the USI may however cover the non-recurrent costs incurred in the context of the purchase or of the maintenance of such products.
- (70) This Regulation should apply without prejudice to the specific character of the security and defence policy of certain Member States.

HAVE ADOPTED THIS REGULATION:

## **Chapter I**

### **General Provisions**

#### *Article 1*

#### **Subject matter**

1. This Regulation establishes a budget, for the period from 2025 to 2027, and lays down a set of measures aimed at supporting defence industrial readiness of the Union and its Member States through the strengthening of the competitiveness, responsiveness and ability of the European Defence Technological and Industrial Base (EDTIB) to ensure the timely availability and supply of defence products and at contributing to the recovery, reconstruction and modernisation of the Ukraine Defence Technological and Industrial Base (Ukrainian DTIB), taking into account its possible future integration into the EDTIB, in particular by means of the following:
  - (1) the establishment of the European Defence Industrial Programme (the ‘Programme’), comprising measures for the strengthening of the competitiveness, responsiveness and ability of the EDTIB as set out in Chapter II;
  - (2) the establishment of a cooperation programme with Ukraine with a view to the recovery, reconstruction and modernisation of the Ukraine Defence Technological and Industrial Base (the ‘Ukraine Support Instrument’), taking into account its possible future integration into the EDTIB, as set out in Chapter IIa;
  - (3) a legal framework laying down the requirements and procedures for and the effects of setting-up Structures for European Armament Programmes (SEAP) as set out in Chapter III;
  - (4) a legal framework, as set out in Chapter IV, to prepare for and respond to the impact of supply crises on the internal market and aiming at:
    - (i) safeguarding and facilitating the free movement of defence products;
    - (ii) ensuring security of supply of crisis-relevant products; and
    - (iii) preventing the creation of obstacles to the proper functioning of the internal market.

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

## *Article 2*

### **Definitions**

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

- (1) 'advance purchasing agreement' means a public contract with one or several economic operators which aims at supporting the swift development and/or production of a product and by virtue of which the right to purchase a specified number of products in a given timeframe and at a given price is subject to the prefinancing of part of the upfront costs faced by the economic operators concerned. While an advance purchasing agreement is legally binding upon the participating contracting authorities and upon the contractor, it needs to be further implemented by means of the conclusion of contracts with the contractors concerned;
- (1a) 'associated countries' means members of the European Free Trade Association which are members of the European Economic Area (EEA) which apply this Regulation in accordance with the EEA agreement;
- (2) 'bottleneck' means a point of congestion in a production system that stops or severely slows the production;
- (3) 'blending operation' means an action supported by the Union budget, including within a blending facility or platform as defined in Article 2, point (6) of Regulation (EU, Euratom) No 2024/2509 (the 'Financial Regulation'), that combines non-repayable forms of support and/or financial instruments from the Union budget with repayable forms of support from development or other public finance institutions, or from commercial finance institutions and investors
- (4) 'classified information' means information or material, in any form, the unauthorised disclosure of which could cause varying degrees of prejudice to the interests of the Union, or of one or more of the Member States, and which bears an EU classification marking or a corresponding classification marking, as established in the Agreement between the Member

States of the European Union, meeting within the Council, regarding the protection of classified information exchanged in the interests of the European Union;

- (5) ‘contracting authorities’ means contracting authorities as defined in Article 2(1), point (1), of Directive 2014/24/EU and in Article 3(1) of Directive 2014/25/EU.
- (6) ‘control’ means the ability to exercise decisive influence over a legal entity directly, or indirectly through one or more intermediate legal entities;
- (7) ‘crisis-relevant products’ means defence products or components or raw materials thereof or any products or services critical to their production which are indispensable to ensure the proper functioning of the internal market and its supply chains and that are considered essential to respond to a supply crisis ;
- (7a) ‘defence innovation action’ means an action primarily consisting of activities directly aiming to produce plans and arrangements or designs for new, altered or improved defence products, processes or services, possibly including prototyping, testing, demonstrating, piloting, large-scale product validation and market replication;(8) ‘defence products’ means any defence-related products as referred to in Article 2 of Directive 2009/43/EC as well as works, supplies and services directly related to those products for any and all elements of their life cycle within the meaning of Article 2, point (c) of Directive 2009/81/EC;
- (8a) ‘dynamic availability management’ means the provision of defence products in time, at the agreed location and to the agreed levels of availability, as well as managing availability risks that could materialise in the form of outages of the defence product. In that context, ‘availability’ means the ability of the defence product to function faultlessly under defined conditions and be ready to use, when required;
- (9) ‘executive management structure’ means a body of a legal entity, appointed in accordance with national law, and, where applicable, reporting to the chief executive officer, which is empowered to establish the legal entity’s strategy, objectives and overall direction, and which oversees and monitors management decision-making;
- (10) [*moved up as new point 7a*]
- (12) ‘lead time’ means the period of time between a purchase order being placed and the manufacturer completing the order;

- (12a) ‘life-cycle’ means all the possible successive stages of a product, from research and development to de-commissioning and disposal;
- (12b) ‘maintenance’: means all actions taken to ensure the readiness and operational capability of the defence product, in particular to retain equipment in or to restore it to specified conditions until the end of its use, including mission readiness, longevity and upgrades, customization and specialisation, inspection, testing, servicing, modification(s), classification as to serviceability, repair, recovery, rebuilding, reclamation, salvage and cannibalization;
- (12c) ‘Non-recurrent costs’ means costs that occur on a one-time basis or at irregular intervals, in particular design, development and investment costs necessary for the production or maintenance of defence products or the reservation of manufacturing capacities;
- (13) ‘off-take agreement’ means any contractual agreement between at least three Member States and at least one manufacturer of defence products containing either a commitment on the Member States to procure a certain quantity of defence products over a certain period of time or a commitment on the manufacturer of defence products to provide the Member States with the option to do so.
- (14) ‘middle capitalisation company’ or ‘mid-cap’ means an enterprise that is not a SME and that employs a maximum of 3 000 persons, where the headcount of staff is calculated in accordance with Articles 3 to 6 of the Annex to Commission Recommendation 2003/361/EC;
- (15) ‘non-associated third-country entity’ means a legal entity that is established in a non-associated third country or a legal entity that is established in the Union or in an associated country, but has its executive management structures in a non-associated third country;
- (17) ‘procurement agent’ means a contracting authority as defined in Article 2(1), point (1), of Directive 2014/24/EU and Article 3(1) of Directive 2014/25/EU established in a Member State or an associated country, a Structure for European Armament Programme, the European Defence Agency (EDA), or an international organisation that is designated by Member States, associated countries, Ukraine, or a SEAP to conduct a common procurement on their behalf;

- (18) ‘raw materials’ means a substance in a processed or unprocessed state, used as an input for the manufacturing of intermediate or final products, excluding substances predominantly used as food, feed or combustion fuel;
- (19) ‘seal of excellence’ means a quality label which shows that a proposal submitted to a call for proposals under the Programme and the Ukraine Support Instrument has passed all of the evaluation thresholds set out in the work programme, but could not be funded due to a lack of budget available for that call for proposals in the work programme, and might receive support from other Union or national sources of funding;
- (20) [...]
- (21) ‘sensitive information’ means unclassified information and data that are to be protected from unauthorised access or disclosure because of obligations laid down in Union or national law, where applicable, or in order to safeguard the privacy or security of a natural or legal person;
- (22) ‘small and medium-sized enterprises’ or ‘SMEs’ means small and medium-sized enterprises as defined in Article 2 of the Annex to Commission Recommendation 2003/361/EC;
- (24) [...]

## Chapter II

### The Programme

#### SECTION 1

#### GENERAL PROVISIONS APPLICABLE TO THE PROGRAMME

##### *Article 3*

[...]

##### *Article 4*

#### **Objectives**

1. The Programme shall aim to increase the competitiveness and readiness of the EDTIB by initiating and speeding up the adjustment of industry to structural changes imposed by the evolving security environment. In particular, the Programme shall aim to:
  - (a) enhance cooperation in defence procurement by incentivising Member States to aggregate demand for defence products, harmonise defence capability requirements, strengthen solidarity among them, as well as by improving predictability of demand for the EDTIB, corresponding with Member States' defence product needs;
  - (b) improve and accelerate the capacity of adaptation of defence industrial supply chains, open up supply chains for cross-border cooperation, in particular for SMEs and mid-caps, increase manufacturing capacities, reduce lead production time for defence products, and support the industrialisation and commercialisation of defence products supported by actions funded by the Union or other EU cooperative activities conducted with the support of Member States with a view to ensuring the availability and supply of defence products, throughout the Union.
2. The Programme shall be implemented taking into account the objectives of the Strategic Compass for Security and Defence and shall be consistent with the defence capability priorities commonly agreed by Member States within the framework of the Common Foreign and Security Policy (CFSP), in particular within the context of the Capability

Development Plan, and with the collaborative opportunities identified in the Coordinated Annual Review on Defence.

3. The Programme shall be consistent with Member States' cooperation within the framework of the Permanent Structured Cooperation, EDA initiatives and projects, and the Union's civil and military assistance to Ukraine. The Programme shall duly take into account the relevant activities carried out by the North Atlantic Treaty Organisation (NATO) and other partners where such activities serve the Union's security and defence interests.
4. [...]
5. [...]

#### *Article 5*

#### **Budget**

1. The financial envelopes for the implementation of the Programme shall be composed of
  - (a) EUR 1 500 millions in current prices for the period from [...] - insert a specific date] until 31 December 2027 as well as
  - (b) additional contributions in accordance with Article 6.
- 1a. At least 30% of the financial envelope referred to in paragraph 1, point (a), of this Article shall be allocated to actions referred to in Article 13. Up to 25% of the financial envelope referred to in paragraph 1 may be allocated to actions referred to in Article 15.
2. In order to respond to unforeseen situations or to new developments and needs, the Commission may reallocate the amount referred to in paragraph 1 of this Article, by a maximum of 20 %, to actions under the Ukraine Support Instrument, in accordance with the procedure set out in Article 31(4) and (6) to (8) of the Financial Regulation.
3. Up to 2% of the amount referred to in paragraph 1 and 5 of this Article and the amounts of additional contributions referred to in Article 6 may also be used for technical and administrative assistance for the implementation of the Programme, such as preparatory, monitoring, control, audit and evaluation activities, including price investigations and corporate information technology systems and platforms, and all other technical and administrative assistance or staff-related expenses incurred by the Commission for the management of the Programme.

4. [...]
5. [...]
6. [...]
7. Budgetary commitments for activities extending over more than one financial year may be broken down over several years into annual instalments.
8. If necessary to enable the management of actions not completed by 31 December 2027, appropriations may be entered in the Union budget until 2033 to cover the expenses necessary to fulfil the objectives set out in Article 4, to enable the management of actions not completed by the end of the Programme, as well as expenses covering critical operational activities and services.

#### *Article 6*

#### **Additional financial resources**

1. Member States, European Union institutions, bodies and agencies, third countries, international organisations, international financial institutions or other third parties, may provide additional financial contributions to the Programme, including to the Fund Accelerating the defence Supply Chains Transformation (FAST) referred to in Article 19 in accordance with Article 208(2) of the Financial Regulation. Such financial contributions shall constitute external assigned revenue within the meaning of Article 21(2), points (a)(ii), (d), or (e) or Article 21(5) of the Financial Regulation.
2. [...]
3. Resources allocated to Member States under shared management may, at their request, be transferred to the Programme subject to the conditions set out in the relevant provisions of Regulation (EU) 2021/1060 of the European Parliament and the Council<sup>4</sup>. The Commission shall implement those resources directly in accordance with Article 62(1), first

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<sup>4</sup> Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Programme for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159–706).

subparagraph, point (a), of the Financial Regulation or indirectly in accordance with point (c) of that subparagraph. They shall be added to the resources referred to in Article 5(1). Those resources shall be used for the benefit of the Member State concerned.

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

[...]

#### *Article 7*

#### **Alternative, combined and cumulative funding**

1. The Programme shall be implemented in synergy with other Union programmes. An action that has received a contribution from another Union programme may also receive a contribution under the Programme provided that the contribution does not cover the same costs. The rules of the relevant Union programme shall apply to the corresponding contribution or a single set of rules of any of the contributing Union programmes may be applied to all contributions and a single legal commitment may be concluded. The cumulative support from the Union budget shall not exceed the total eligible costs of the action and may be calculated on a pro-rata basis in accordance with the documents setting out the conditions for support.
2. In order to be awarded a Seal of Excellence under the Programme, actions shall comply with all of the following conditions:
  - (a) they have been assessed in a call for proposals under the Programme;
  - (b) they comply with the minimum quality requirements of that call for proposals;
  - (c) they are not financed under that call for proposals due to budgetary constraints.
3. In accordance with the relevant provisions of Regulation (EU) 2021/1060, the ERDF or ESF+ may support proposals submitted to a call for proposals under the Programme, which were awarded a Seal of Excellence.

## *Article 8*

### **Implementation and forms of Union funding**

1. The Programme shall be implemented under direct management in accordance with the Financial Regulation or under indirect management with bodies referred to in Article 62(1), point (c), of the Financial Regulation.
2. Without prejudice to Article 19c(3) of this Regulation, Union funding may be provided in any of the forms laid down in the Financial Regulation, in particular grants, prizes, procurement, and financial instruments within blending operations under the InvestEU programme in accordance with Title X of the Financial Regulation.
3. With respect to activities referred to in Article 13(1), point (d), of this Regulation for which Union funding is provided in the form of a grant, and profit is made, the Commission may recover the percentage of the profit corresponding to the Union contribution to the eligible costs actually incurred by the beneficiary carrying out the action, up to the final amount of the Union contribution. By way of derogation from Article 195(2) of the Financial Regulation, the profit is calculated by a surplus of receipts over the eligible costs of the action, where receipts are limited to Union funding, Member State funding, including procurement, other revenue generated during the action and any revenue resulting from the action. The work programme may set out further details.
4. Financial contributions may, where relevant and necessary for the implementation of an action, cover actions started and costs incurred prior to the date of the submission of the proposal for those actions, provided that those actions did not start before 5 March 2024 and have not been completed before the signature of the grant agreement. Such financial contributions shall be awarded on the condition that they comply with the criteria set out in Article 196(2) of the Financial Regulation.

## *Article 9*

### **Third countries associated to the Programme**

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

*Article 10*

**Eligible legal entities**

- 1. Recipients of Union funding shall be legal entities.
1. The eligibility criteria set out in paragraphs 2 to 7 shall apply in addition to the criteria set out in accordance with the Financial Regulation.
2. Recipients of Union funding shall be established in the Union or in an associated country and their executive management structures shall be in the Union or in an associated country.
3. The infrastructure, facilities, assets and resources of the recipients involved in an action which are used for the purposes of the action shall be located on the territory of a Member State or of an associated country for the entire duration of the action.
- 3a. By way of derogation from paragraph 3 of this Article, where recipients involved in an action have no readily available alternatives or relevant infrastructure, facilities, assets and resources in the Union or in an associated country, they may use their infrastructure, facilities, assets or resources which are located or held outside the territory of the Member States or of the associated countries, provided that such use does not contravene the security and defence interests of the Union or its Member States, including respect for the principle of good neighbourly relations, and is consistent with the objectives set out in Article 4. The costs related to activities using such infrastructure, facilities, assets or resources shall not be eligible for support from the Programme.
4. Recipients of Union funding under the Programme shall not be subject to control by a non-associated third country or by a non-associated third-country entity.
5. By way of derogation from paragraph 4 of this Article, a legal entity established in the Union or in an associated country and controlled by a non-associated third country or a non-associated third-country entity shall be eligible to be a recipient if it has been subject to screening within the meaning of Regulation (EU) 2019/452 [recast] of the European Parliament and of the Council and, where necessary, to appropriate mitigation measures, taking into account the objectives set out in Article 3 of this Regulation, or if guarantees approved in accordance with the national procedures of the Member State or associated country in which it is established are made available to the Commission.

The guarantees shall provide assurances that the involvement in an action of such a legal entity would not contravene the security and defence interests of the Union and its Member States as established in the framework of the CFSP pursuant to Title V TEU, including respect for the principle of good neighbourly relations, or the objectives set out in Article 4. The guarantees shall in particular substantiate that, for the purposes of an action, measures are in place to ensure that:

- (a) control over the legal entity is not exercised in a manner that restrains or restricts its ability to carry out the action and to deliver results, that imposes restrictions concerning its infrastructure, facilities, assets, resources, intellectual property or knowhow needed for the purposes of the action, or that undermines its capabilities and standards necessary to carry out the action;
- (b) access by a non-associated third country or by a non-associated third-country entity to classified or sensitive information relating to the action is prevented and the employees or other persons involved in the action have national security clearance issued by a Member State or an associated country, where appropriate, in accordance with national laws and regulations;
- [(c) the ownership of intellectual property arising from actions referred to in Article 13(1), point (d), is not subject to restriction by a non-associated third country or a non-associated third-country entity nor transferred to entities established outside the territory of the Member States or of associated countries, without the approval of the Member State or the associated country in which the legal entity is established. Such approval shall not contravene the objectives set out in Article 4.]**

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

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

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

Member States, including respect for the principle of good neighbourly relations, or the objectives set out in Article 4.

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

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

7. Paragraphs 4 to 5 shall not apply to:
  - (a) contracting authorities of Member States and associated countries;
  - (b) International Organisations;
  - (c) Structures for European Armament Programmes;
  - (d) the European Defence Agency.

## **SECTION 2A**

### **ELIGIBLE ACTIONS**

#### *Article 11*

#### **Eligible actions**

1. Actions eligible for funding under the Programme shall implement the objectives set out in Article 4 and may take one of the following forms, or a combination thereof:
  - (a) common procurement actions as referred to in Article 12, including for the establishment and maintenance of defence industrial readiness pools as referred to in Article 13b;
  - (b) industrial reinforcement actions as referred to in Article 13;
  - (c) supporting actions as referred to in Article 13a;

(d) the deployment of European Defence Projects of Common Interest as referred to in Article 15.

2. [...]

3. [...]

4. [...]

5. [...]

6. [...]

7. [...]

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

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

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

**(c) actions related to defence products which are subject to restriction by non-associated third countries or by non-associated third-country entities, directly, or indirectly through one or more intermediate legal entities, which limits the ability of a Member State to use those products;**

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

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

9a. Suppliers of non-defence products which receive Union financial support under the Programme shall accept, in the financing agreement to be concluded with the Commission, the possibility to be subject to priority rated orders as referred to in Article 49a.

## Article 12

### Common procurement actions

- 1. Common procurement actions shall consist of activities related to cooperation of legal entities in the procurement of defence products, at any point in the lifecycle of defence products, including for the purpose of building and maintaining a defence industrial readiness pool as referred to Article 13b.
1. Only the following legal entities shall be eligible for common procurement actions:
  - (a) contracting authorities of Member States or associated countries;
  - (b) International Organisations;
  - (c) Structures for European Armament Programme;
  - (d) the European Defence Agency.
- 1a. Common procurement actions shall be carried out by:
  - (a) a consortium of legal entities referred to in paragraph 1, including at least three entities referred to in paragraph 1, point (a), of which at least two shall be contracting authorities of Member States; or
  - (b) a SEAP.
2. Member States and associated countries carrying out a common procurement action shall appoint, by unanimity, an eligible legal entity as procurement agent to act on their behalf for the purposes of that common procurement. The procurement agent shall carry out the procurement procedures and conclude the resulting contracts with contractors on behalf of the participating countries. The procurement agent may participate in the action as a beneficiary and may act as the coordinator of the consortium and may therefore be able to manage and combine funds from the Programme and funds from the participating Member States and associated countries.
4. The procurement procedures referred to in paragraph 2 shall be based on an agreement to be signed by the participating Member States and associated countries with the procurement agent under the conditions set out in the work programme. The agreement shall, in particular, determine the practical arrangements governing the common

procurement and the decision-making process on the choice of the procedure, the assessment of the tenders and the award of the contract.

5. The procurement agent shall apply the conditions set out in Article 10 to its procurement procedures and contracts with contractors, and require in the call for tender that the conditions are applied to subcontractors of the successful tenderer in the common procurement.
6. Procurement agents shall provide the Commission with notification on the guarantees and mitigation measures referred to in Article 10(5). Further information on the guarantees and mitigation measures shall be made available to the Commission upon request. The Commission shall inform the committee referred to in Article 58 of any notification provided in accordance with this paragraph.
7. [...]
8. [...]
9. Before launching a common procurement procedure, the procurement agent shall inform those Member States which do not participate in the planned procedure and give them the opportunity to submit a substantiated request for the contracting authority to purchase additional quantities of defence products for them. If such a request is submitted, the common procurement contract shall reserve the right of participating contracting authorities to purchase additional quantities of defence products for such Member States, without prejudice to applicable Union law and Member States' laws and regulations relating to the export of defence products.
- 9a. Before launching a common procurement procedure, the procurement agent may also inform associated countries and Ukraine of the planned procedure and provide them with the opportunity to submit a substantiated request to the procurement agent to purchase additional quantities of defence products for it. If such a request is submitted, the common procurement contract shall reserve the right of participating contracting authorities to purchase additional quantities of defence products for associated countries and Ukraine.

**[10. By way of derogation from Article 11(2), point (c), and in light of the geopolitical situation and the urgent need to procure defence products with the support of the Programme, the requirement referred to in that paragraph shall not apply to urgent and critical defence products, provided that both of the following conditions are met:**

(a) legal entities participating in the common procurement commit to studying the feasibility of replacing the components that cause the restriction with an alternative, restriction-free, component originating in the Union;

(b) the procured defence products were in use prior to [insert the date of the entry into force of this Regulation] by a majority of the Member States participating in the common procurement.

11. The cost of components originating in the Union or associated countries shall not be lower than 65 % of the estimated value of the end product. No components shall be sourced from non-associated third countries that contravene the security and defence interests of the Union or its Member States, including respect for the principle of good neighbourly relations.]

### *Article 13*

#### **Industrial reinforcement actions**

1. Industrial reinforcement actions shall consist of activities related to speeding up the adjustment to structural changes of the production capacity of defence products, including their components and corresponding raw materials insofar as they are intended or used wholly for the production of defence products, in particular:
  - (a) the optimisation, expansion, modernisation, upgrading or repurposing of existing, or the establishment of new, production capacity of defence products, components and corresponding raw materials, including on the basis of the procurement or acquisition of the requisite machine tools and any other necessary input;
  - (b) the establishment of cross-border industrial partnerships, including through public private partnerships or other forms of industrial cooperation including SMEs and mid-caps, in a joint industrial effort, including activities that aim to coordinate the sourcing or reservation of defence products, components and corresponding raw materials, as well as to coordinate production capacities and production plans;
  - (c) the building-up and making available of reserved surge manufacturing capacities (ever warm facilities) of defence products, their components and corresponding raw materials, in accordance with ordered or planned production volumes;

- (d) fostering industrialisation and commercialisation of defence products that have been developed in the framework of actions funded by the Union or other cooperative activities conducted with support of Member States including through the establishment of cross-border industrial partnerships, public private partnerships or other forms of industrial cooperation, ramping-up of initial production as well as licensing production, where appropriate;
  - (e) the testing, including the necessary infrastructure, and, as appropriate, reconditioning certification of defence products with a view to addressing their obsolescence and making them useable by end users.
- 1b. For activities referred to in paragraph 1, point (d), the action shall be carried out by legal entities cooperating within a consortium of at least three eligible legal entities of which at least two are established in different Member States. At least three of those eligible legal entities established in at least two different Member States shall not, during the entire period in which the action is carried out, be controlled, directly or indirectly, by the same legal entity and shall not control each other.
- 1c. The activities referred to in paragraph 1 may also be carried out by a SEAP.
2. [...]

#### *Article 13a*

#### **Supporting actions**

1. Supporting actions shall consist of:
- (a) activities to increase interoperability and interchangeability, including the cross certification of defence products and activities leading to mutual recognition of certification or to facilitate the implementation of NATO and other relevant standards;
  - (b) activities to facilitate access to the defence market for SMEs, mid-caps and start-ups and support to obtain the necessary quality and production certifications;
  - (c) the capacity building, training, reskilling or upskilling of personnel in relation to the activities referred to in Article 11(1);

- (d) the procurement of physical and cyber protection systems in relation to the activities referred to in Article 13;
  - (e) coordination and technical support actions, in particular addressing identified bottlenecks in production capacities and supply chains with a view to securing and accelerating the production of crisis-relevant products in order to ensure their effective supply and timely availability;
  - (ea) the establishment of a catalogue of defence products as referred to in Article 13b;
  - (f) support to the establishment and functioning of Structures for European Armament Programme, including for the purpose of managing and maintaining Defence Industrial Readiness Pools as referred to in Article 13b;
  - (g) emergency defence innovation actions where the measure referred to in Article 47b;
  - (h) up-front payments to a contractor in the case of advance purchase of defence products referred to in Article 19db;
  - (i) non-recurrent costs and/or reservation of manufacturing capacities in the case of off-take agreements referred to in Article 19dc.
2. For activities referred to in paragraph 1, point (a), the action shall be carried out by legal entities cooperating within a consortium of at least three eligible legal entities, of which at least two shall be established in at least two different Member States. At least three of those eligible legal entities shall not, during the entire period in which the action is carried out, be controlled, directly or indirectly, by the same legal entity and shall not control each other. The activities referred to in paragraph 1, point (a), may also be carried out by a SEAP.
3. [...]

#### *Article 13b*

#### **Military sales mechanism**

1. The Programme shall support the establishment, management and maintenance, through common procurement actions as referred to in Article 12, and supporting action as referred to in Article 13a(1)(f) of defence industrial readiness pools by a consortium of at least three Member States or associated countries, of which at least two shall be Member States, or by a SEAP.

2. Member States, associated countries and SEAPs that establish a defence industrial readiness pool shall grant all Member States and may grant associated countries and Ukraine a preferential purchase or use/lease option for defence products that are part of the defence industrial pool.
3. Where Member States, or, where applicable, associated countries purchase from the defence industrial readiness pool managed by a SEAP, the procurement shall be considered as a government-to-government contract as referred to in Article 13, point (f) of Directive 2009/81/EC.
4. The Commission, upon consultation of the EDA, shall establish a single, centralised, catalogue of defence products developed by the EDTIB. The Commission shall consult the EDA and take into account its views in drawing up the technical specifications for and, where appropriate, procure the corporate IT platform required to establish the catalogue. Member States and economic operators shall be invited to populate such a catalogue on a voluntary basis.

*Article 14*

[...]

*Article 15*

**European Defence Project of Common Interest (EDPCI)**

- 1. European Defence Projects of Common Interests shall consist of collaborative industrial projects contributing to the development of military capabilities and systems of common interest and use, including those securing access to all operational domains (i.e. land, maritime, air, space, cyber).
1. [...]
2. EDPCIs shall meet all the following criteria:
  - (-b) they shall significantly strengthen the competitiveness, efficiency and innovation capacity of the European defence technological and industrial base (EDTIB), for instance by contributing to the establishment of new cross-border cooperations including with SMEs and mid-caps, and by creating positive spill-over effects on the

internal market, also aiming at reducing strategic dependencies and scaling up capacities;

(-a) they shall be consistent with defence capability priorities commonly agreed by Member States within the framework of the Common Foreign and Security Policy (CFSP), notably in the context of the CDP, and with the objectives of the Strategic Compass for security and defence and other relevant documents. They shall, where appropriate, also pursue coherence of output with respective NATO processes such as the NDPP;

(a) [...]

(b) [...]

(c) they shall involve at least four Member States and all Member States and associated countries must be given a genuine opportunity to participate in a project;

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

(e) they shall be particularly significant in size or scope or aim at mitigating a considerable level of technological or financial risk, or both.

2a. Participating Member States may unanimously decide to involve representatives of the European Commission the High Representative and EDA as an observer.

3. The Council, upon a proposal of the Commission, may adopt implementing acts identifying European Defence Projects of Common Interest. Before proposing such implementing acts, the Commission shall consult and take into account the views of Member States in relation to the criteria set out in paragraph 2. The Commission shall also consult and take into account the views of the EDA.

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

(a) set out the objectives and characteristics of the project EDPCI in relation to the criteria laid down in paragraphs 1 and 2; and

(b) [...]

(c) estimate the financing needs.

- 3b. The Council shall adopt the implementing acts referred to in paragraph 3, acting by qualified majority. The Council may amend the proposals referred to in paragraph 3 acting by qualified majority.
- 3c. Actions supporting the European Defence Projects of Common Interest shall consist of activities related to:
- (a) the common procurement of defence products;
  - (b) speeding up the adjustment to structural changes of the production capacity of defence products as well as related supporting activities;
  - (c) the industrial development of new defence products or the upgrading of existing ones, without prejudice to Article 10 of Regulation (EU) 2021/697; and
  - (d) the development and procurement of necessary infrastructure.
- 3ca. Member States participating in EDPCI actions shall ensure in the contracts that the conditions set out in Article 10 are applied to the legal entities involved in the deployment of EDPCI.
- 3caa. Member States participating in EDPCI shall conclude a legal arrangement regarding ownership, access and user rights.
- 3cb. EDPCI actions may be established in the framework of a SEAP.
- 3d. Only Member States, associated countries, and SEAPs consisting of Member States and/or associated countries shall be eligible for funding under EDPCI actions.
4. [...]
5. [...]
6. Member States may, without prejudice to Articles 107 and 108 TFEU, apply support schemes and provide for administrative support to EDPCIs.
- 6a. The planning, construction and operation of production facilities related to an EDPCI may be considered an imperative reason of overriding public interest within the meaning of Article 6(4) and Article 16(1), point (c), of Directive 92/43/EEC and Article 4(7) of Directive 2000/60, in the interest of defence within the meaning of Article 2(3) of Regulation 1907/2006, and in the interests of public health and safety within the meaning

of Article 9(1), point (a) of Directive 2009/147/EC, provided that the remaining other conditions set out in these provisions are fulfilled.

7. [...]

8. [...]

*Article 16*

[...]

*Article 17*

[...]

*Article 18*

[...]

*Article 19*

**Fund to Accelerate defence Supply chains Transformation (FAST)**

1. In order to leverage, de-risk and speed-up investments needed to increase the defence manufacturing capacities of SMEs and mid-caps, a blending operation offering debt and/or equity support may be established (Fund to Accelerate defence Supply-chains' Transformation (FAST). It shall be implemented in accordance with Title X of the Financial Regulation and Regulation (EU) 2021/523.<sup>5</sup>
2. The specific objectives pursued by the FAST shall be the following:
  - (a) achieve a satisfactory multiplier effect in line with the debt and equity mix and contributing to attracting both public and private-sector financing;
  - (b) provide support to SMEs (including start-ups and scale-ups) and mid-caps across the Union, which are facing difficulties in accessing finance and which:

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<sup>5</sup> Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU Programme and amending Regulation (EU) 2015/1017 (OJ L 107, 26.3.2021, p. 30–89, ELI: <http://data.europa.eu/eli/reg/2021/523/oj>).

- (i) are necessary for the industrialisation and/or manufacture defence products or imminent plans to so; or
  - (ii) are part of the defence industry's supply chain or have imminent plans to become part it;
- (c) accelerate investment in the field of manufacturing defence products, and development of defence technologies, and therefore strengthen the security of supply of the Union's defence industry value chains.

## **SECTION 2b**

### **AWARD CRITERIA AND WORK PROGRAMMES**

#### *Article 19a*

#### **Award criteria**

1. Proposals for actions shall be assessed in the light of the objectives and priorities set for them, the expected results and the quality and efficiency of the implementation. In particular, the evaluation shall include one or more of the following criteria: contribution to competitiveness, increase in production capacities, increase in interoperability, and increase in interchangeability.
2. In addition to the criteria set out in paragraph 1, proposals for common procurement actions referred to in Article 12 shall be evaluated based on the following criteria:
  - (a) the number of participating Member States or associated countries; and
  - (b) the action's contribution to the adaptation, modernisation and development of the EDTIB; and/or
  - (c) the action's contribution to the replenishment of defence products in short supply, including by taking into account the response to Russia's war of aggression against Ukraine.
3. In addition to the criteria set out in paragraph 1, proposals for industrial reinforcement actions referred to in Article 13 shall be evaluated based on one or more of the following criteria:

- (a) reduction of lead production time and increase in production capacity in the Union, reserved capacity, and workforce skilled;
  - (b) contribution to ensuring availability and security of supply throughout the Union in response to identified risks, including in particular high exposure to the risk of materialisation of conventional military threats;
  - (c) contribution to cross-border defence industrial cooperation throughout the Union, improving the inclusion of SMEs and mid-caps, or link with orders stemming from the common procurement of defence products by at least three Member States or associated countries.
4. The work programme shall lay down further details concerning the application of the criteria laid down in paragraph 1, including any weighting to be applied. The work programme shall not set individual thresholds.

*Article 19b*

**Selection and award procedure**

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

*Article 19c*

**Union financial contribution**

1. Grants may take the form of financing not linked to costs, pursuant to Article 180(3) of the Financial Regulation.
2. Where the Union grant takes the form of financing not linked to costs, the level of the Union contribution attributed to each action may be defined on the basis of factors such as:
  - (a) the complexity of the common procurement, for which a proportion of the estimated value of the common procurement contract and the experience gained in similar actions may serve as an initial proxy;
  - (b) the contribution of the action to improving interoperability outcomes;

- (c) the characteristics of the action which are likely to give rise to greater long-term investment signals to industry;
  - (d) the number of participating Member States and associated countries or the inclusion of additional Member States or associated countries in existing cooperations;
  - (e) the contribution of the action to the ramp-up of necessary manufacturing capacities;
  - (f) the contribution of the action to enhancing cooperation between Member States or associated countries for the purpose of establishing or maintaining a defence industrial readiness pool.
3. Actions referred to in Article 12 shall be funded by way of grants in the form of financing not linked to costs, pursuant to Article 180(3) of the Financial Regulation.
4. The Union financial contribution to each action referred to in Article 12 shall not exceed 15% of the estimated value of the common procurement contract.
5. By way of derogation from paragraph 4, the Union financial contribution to each action referred to in Article 12 may amount to up to 25% of the estimated value of the common procurement contract provided that at least one of the following conditions is met:
- (a) the action is part of a demonstrated continued cooperation until the end of the lifecycle of a defence product;
  - (b) the action supports the common procurement of restriction-free end products;**
  - (c) the action results in the common procurement of additional quantities of defence products for Ukraine or Moldova;
  - (d) the action ensures a wide distribution of suppliers across Member States whereby more than 20 % of the total value of the end product is made by suppliers established in at least one Member State other than the Member State in which the prime contractor is established;
  - (e) the defence investment expenditure of the majority of Member States participating in the common procurement action exceeded 30 % of their respective defence spending in the financial year preceding the application.

6. For actions referred to in Article 13, the Union financial contribution shall not exceed 35% of the eligible costs.
7. By way of derogation from paragraph 6 of this Article, the Union financial contribution to each action referred to in Article 13 may amount to up to 50% of the eligible costs provided that at least one of the following conditions is met:
  - (a) the beneficiary of the action is an SME, a mid-cap or a consortium of SMEs or mid-caps;
  - (b) the beneficiary demonstrates a contribution to the creation of new cross-border cooperation between entities established in Member States or associated countries
  - (ba) the action involves building new infrastructure, facilities or production lines from the ground up or on sites not previously used for such activities, contributing to the development of supply chains and technology transfer throughout the Union;
  - (c) the action contributes to the establishment of new or the ramping-up of existing manufacturing capacities of crisis-relevant products.
8. For actions referred to in Article 13a and Article 15, and, by way of derogation from Article 190(1) of the Financial Regulation, where the Union financial contribution takes the form of grants, the Programme may finance up to 100 % of the eligible costs.
9. Union funding under the Programme shall not cover the costs of the purchase and of the maintenance of defence products for military or defence purposes, including in the context of establishing, managing and maintaining a Defence Industrial Readiness Pool. Union funding under the Programme may however cover the non-recurrent costs incurred in the context of the purchase or of the maintenance of such products.
10. The work programme shall lay down further details.

#### *Article 19d*

#### **Work programmes**

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

2. The Commission shall adopt work programmes by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(3).
3. The work programme shall include:
  - (a) the overall amount of the Union contribution to each type of action referred to in Article 11(1) and a detailed description of each type of action;
  - (b) with respect to actions referred to in Articles 12 and 13, the minimum financial size of the actions;
  - (c) with respect to actions referred to in Article 13, the maximum number of legal entities forming part of the consortium, which shall not exceed 15 legal entities;
  - (d) the procedure for the evaluation and selection of proposals, including, where relevant, a description of the milestones, designed in such a way as to mark substantial progress in the implementation of actions, the results to be achieved and the associated amounts to be disbursed, as well as the arrangements for the verification of the milestones, the fulfilment of conditions and the achievement of results;
  - (e) the methods for determining and, where applicable, adjusting the funding.

## **SECTION 2C**

### **PROCUREMENT**

#### *Article 19da*

#### **Procurement with support of the Commission**

1. By derogation from Article 168 of the Financial Regulation and the requirements laid down therein, at least three Member States, may request the Commission:
  - (a) to engage in a joint procurement with them as referred to in [Article 168(2) of the Financial Regulation recast] whereby Member States may acquire, rent or lease fully the defence products jointly procured;
  - (b) to act as a central purchasing body to procure on behalf or in the name of the interested Member States defence products, as referred to in Article 168(3) of the Financial Regulation.

- 1a. By derogation from Article 168 of the Financial Regulation, associated countries may request the Commission to engage in joint procurement, as referred to in paragraph 1(a). The conditions set out in Article 168(2) of the Financial Regulation shall apply to such joint procurements. Together with at least one Member State, associated countries may also request the Commission to act as central purchasing body, as referred to in paragraph 1(b). The conditions set out in Article 168(3) of the Financial Regulation shall apply where the Commission acts as a central purchasing body.
2. In addition to the conditions set out in the Financial Regulation, the procurement procedure referred to in paragraphs 1 and 1a, shall comply with the following conditions:
  - (a) participation in the procurement procedure shall be open to all Member States, and, by way of derogation from Article 168(2) and (3) of the Financial Regulation, may be open to associated countries;
  - (b) the Commission invites at least one expert with relevant experience for the negotiations from each participating country to form a joint negotiation team;
  - (c) participating countries explicitly state whether they decide to run parallel negotiation processes for that product. The decision to run parallel negotiation processes for that product shall be subject to unanimous approval by participating countries.
3. As part of the procurement referred to in paragraph 1(b), the Commission may procure components and raw materials necessary for the supply of defence products for the purpose of building strategic reserves by participating countries, including stockpiling.

When duly justified by the extreme urgency of the situation the Commission may, by way of derogation from Article 175(1) of Regulation (EU, Euratom) 2024/2509, request the delivery of products from the date on which the draft contracts resulting from the procurement carried out for the purposes of this Regulation are sent.
4. In order to enter into purchase agreements with economic operators, representatives of the Commission, or experts nominated by the Commission, may carry out on-site visits in cooperation with relevant national authorities at the locations of production facilities of relevant defence products.
5. This Article shall be without prejudice to the existing Union and national rules governing the ownership, export and transfer of defence products purchased under this Article.

6. The Commission shall ensure that participating countries are treated equally when carrying out the procurement procedures and when implementing the resulting agreements.
7. [...]
8. In addition to the conditions set out in the Financial Regulation, eligibility criteria equivalent to those laid down in Article 10 of this Regulation shall apply to tenderers, contractors and subcontractors in contracts resulting from the procurement conducted pursuant to this Article.

#### *Article 19db*

#### **Advance Purchase of defence products**

1. Joint purchasing referred to in Article 19da may take the form of advanced purchasing agreements of defence products negotiated and concluded in the name or on behalf of participating countries. Those agreements may include a prepayment mechanism for the production of such products in exchange for the right to the result, which shall not exceed the parts of the contract on non-recurrent costs and/or the reservation of manufacturing capacities.
2. Where the agreements referred to in paragraph 1 of this Article include a prepayment mechanism, the up-front payment to the contractor shall be eligible for funding under the Programme as set out in Article 13(a)(h). Contributions of participating countries as referred to in Article 6 shall be taken into account in equal terms per item ordered by the participating countries.
3. In cases where the negotiated amounts exceed demand, the Commission, at the request of the participating countries concerned, shall elaborate a mechanism for reallocation to national stockpiles or building up of the defence industrial readiness pool as referred to in Article 13b(1), point (b).

#### *Article 19dc*

#### **Facilitating off-take agreements**

1. The Commission shall set up a system to facilitate the conclusion of off-take agreements related to the industrial ramp-up of the EDTIB's manufacturing capacities, between Member States or associated countries on the one hand and economic operators of the EDTIB on the other, in compliance with the Union's competition and procurement rules.

The Commission in particular shall ensure that access by a non-associated third country or by a non-associated third-country entity to classified or sensitive information relating to the action is prevented and the employees or other persons involved in the action have national security clearance issued by a Member State or an associated country,

2. The system referred to in paragraph 1 shall allow interested Member States and associated countries to make bids indicating:
  - (a) the volume and quality of defence products they intend to purchase;
  - (b) the intended price or price range;
  - (c) the intended duration of the off-take agreement.
3. The system referred to in paragraph 1 shall allow manufacturers of defence products which comply with conditions laid out in Article 10 to make offers indicating:
  - (a) the volume and quality of defence products for which they are seeking to conclude off-take agreements;
  - (b) the intended price or price range at which they are willing to sell;
  - (ba) the estimated delivery lead time of defence products within the framework of the off-take agreement;
  - (c) the intended duration of the off-take agreement.
4. Based on the bids and offers received pursuant to paragraphs 2 and 3, the Commission shall bring relevant manufacturers of defence products in contact with interested Member States and associated countries.
5. Taking into account the contact referred to in paragraph 4, countries interested may request the Commission to engage in a joint procurement procedure or in a procurement procedure in their name and/or on their behalf pursuant to Article 19da.
6. The financial envelope referred to in Article 5(1) may cover the parts of the contract on non-recurrent costs and/or the reservation of manufacturing capacities.

## **Chapter IIa**

### **The Ukraine Support Instrument**

#### **Section 1**

#### **General provisions applicable to the Instrument**

##### *Article 19e*

##### **Objectives**

1. The Ukraine Support Instrument shall contribute to the recovery, reconstruction, and modernisation of the Ukrainian DTIB with a view to increasing its defence industrial readiness, taking into account its possible future integration into the EDTIB, through cooperation between the Union and Ukraine, thereby enhancing mutual stability, security, peace, prosperity, resilience and sustainability.
2. The objective set out in paragraph 1 shall be pursued with an emphasis on enhancing cross-border cooperation between the EDTIB and the Ukrainian DTIB, taking into account the defence industrial reinforcement and defence procurement needs of Ukraine, through the creation of manufacturing capacities or their ramp-up in line with NATO and other relevant standards, protection of assets, technical assistance and exchange of personnel, and increased cooperation on common procurement, as well as maintenance, repair, overhaul, modification and upgrade of defence products for Ukraine, and licensing production cooperation through public-private partnerships or other forms of cooperation, such as joint ventures. Special attention shall be given to the objective of supporting Ukraine to progressively align with Union rules, standards, policies and practices with a view to future Union membership.

##### *Article 19f*

##### **Budget**

1. The budget for the implementation of the Ukraine Support Instrument shall be composed of:
  - (a) the amount of the additional contributions in accordance with Article 19g to the extent earmarked, subject to the conclusion of the agreement referred to in Article 59; and

- (b) amounts which the Commission has decided to reallocate from the Programme in response to unforeseen situations or new developments in accordance with Article 5(2).
2. Up to 2% of the budget referred to in paragraph 1 of this Article and the amounts of additional financial contributions referred to in Article 24 may also be used for technical and administrative assistance for the implementation of the Ukraine Support Instrument, such as preparatory, monitoring, control, audit and evaluation activities, including price investigations and corporate information technology systems and platforms, and all other technical and administrative assistance or staff-related expenses incurred by the Commission for the management of the Ukraine Support Instrument.
  3. Budgetary commitments for activities extending over more than one financial year may be broken down over several years into annual instalments.
  4. If necessary to enable the management of actions not completed by 31 December 2027, appropriations may be entered in the Union budget until 2033 to cover the expenses necessary to fulfil the objectives set out in Article 19e, to enable the management of actions not completed by the end of the Ukraine Support Instrument, as well as expenses covering critical operational activities and services.

#### *Article 19g*

#### **Additional financial resources**

1. Member States, Union institutions, bodies and agencies, third countries, international organisations, international financial institutions or other third parties may provide additional financial contributions to the Ukraine Support Instrument in accordance with Article 208(2) of the Financial Regulation. Such financial contributions shall constitute external assigned revenue within the meaning of Article 21(2), points (a)(ii), (d), or (e), or Article 21(5) of the Financial Regulation.
2. Any additional amounts received under relevant Union restrictive measures shall be external assigned revenue within the meaning of Article 21(5) of the Financial Regulation and shall be used for actions reinforcing the Ukrainian DTIB.
3. Resources allocated to Member States under shared management may, at their request, be transferred to the Ukraine Support Instrument subject to the conditions set out in the relevant

provisions of Regulation (EU) 2021/1060 of the European Parliament and the Council<sup>[1][2]</sup>. The Commission shall implement those resources directly in accordance with Article 62(1), first subparagraph, point (a), of the Financial Regulation or indirectly in accordance with point (c) of that subparagraph. They shall be added to the resources referred to in Article 5(1). Those resources shall be used for the benefit of the Member State concerned.

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

#### *Article 19h*

#### **Alternative, combined and cumulative funding**

1. The Instrument shall be implemented in synergy with other Union programmes. An action that has received a contribution from another Union programme may also receive a contribution under the Instrument, provided that the contribution does not cover the same costs. The rules of the relevant Union programme shall apply to the corresponding contribution, or a single set of rules of any of the contributing Union programmes may be applied to all contributions and a single legal commitment may be concluded. The cumulative support from the Union budget shall not exceed the total eligible costs of the action and may be calculated on a pro-rata basis in accordance with the documents setting out the conditions for support.
2. In order to be awarded a Seal of Excellence under the Instrument, actions shall comply with all of the following conditions:
  - (a) they have been assessed in a call for proposals under the Instrument;

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<sup>[1]</sup> Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Programme for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159–706).

<sup>[2]</sup> *idem.*

- (b) they comply with the minimum quality requirements of that call for proposals;
  - (c) they are not financed under that call for proposals due to budgetary constraints.
3. In accordance with the relevant provisions of Regulation (EU) 2021/1060, the ERDF or ESF+ may support proposals submitted to a call for proposals under the Instrument which were awarded a Seal of Excellence.

#### *Article 19i*

### **Implementation and forms of Union funding**

1. The Ukraine Support Instrument shall be implemented under direct management in accordance with the Financial Regulation or under indirect management with bodies referred to in Article 62(1), point (c), of the Financial Regulation.
2. Without prejudice to Article 21d, paragraph 3, Union funding may be provided in any of the forms laid down in the Financial Regulation except for blending operations under the InvestEU programme in accordance with Title X of the Financial Regulation.
3. With respect to activities referred to in Article 13(1), point (d), for which Union funding is provided in the form of a grant under the Ukraine Support Instrument pursuant to Article 19i(1) and profit is made, the Commission may recover the percentage of the profit corresponding to the Union contribution to the eligible costs actually incurred by the beneficiary carrying out the action, up to the final amount of the Union contribution. By way of derogation from Article 192(2) of the Financial Regulation, the profit is calculated by a surplus of receipts over the eligible costs of the action, where receipts are limited to Union funding, Member State funding, including procurement, other revenue generated during the action and any revenue resulting from the action. The work programme may set out further details.
4. Financial contributions may, where relevant and necessary for the implementation of an action, cover actions started and costs incurred prior to the date of the submission of the proposal for those actions, provided that those actions did not start before 5 March 2024 and have not been completed before the signature of the grant agreement. Such financial contributions shall be awarded on the condition that they comply with the criteria set out in Article 193(2) of the Financial Regulation.

*Article 20*

[...]

*Article 21*

**Eligible legal entities**

- 1. Recipients of Union funding shall be legal entities as defined in paragraph 9 of Article 2.
1. The eligibility criteria set out in paragraphs 2 to 7 shall apply in addition to the criteria set out in accordance with the Financial Regulation.
2. Recipients of Union funding shall be established and have their executive management structures in the Union or Ukraine. Legal entities established in the non-government controlled areas of Ukraine shall not be eligible for support under this Regulation.
3. The infrastructure, facilities, assets or resources of the recipients involved in an action shall be located on the territory of a Member State or of Ukraine for the entire duration of the action.
- 3a. By way of derogation from paragraph 3 of this Article, where recipients involved in an action have no readily available alternatives or relevant infrastructure, facilities, assets and resources in the Union or in Ukraine, they may use their infrastructure, facilities, assets and resources which are located or held outside the territory of the Member States or in a third country other than Ukraine, provided that such use does not contravene the security and defence interests of the Union or its Member States, including respect for the principle of good neighbourly relations, and is consistent with the objectives set out in Article 19e. The costs related to activities using such infrastructures, facilities, assets or resources shall not be eligible for support from the USI.
4. For the purposes of an action supported by the Ukraine Support Instrument, the recipients shall not be subject to control by a third country or by a third-country entity other than Ukraine.
5. By way of derogation from paragraph 4 of this Article, a legal entity established in the Union and controlled by a third country or by a third-country entity other than Ukraine shall be eligible to be a recipient if it has been subject to screening within the meaning of Regulation (EU) 2019/452 [recast] of the European Parliament and of the Council and, where necessary, to appropriate mitigation measures, taking into account the objectives set

out in Article 19e of this Regulation, or if guarantees approved by the Member State in which it is established in accordance with its national procedures are made available to the Commission.

The guarantees shall provide assurances that the involvement in an action of such a legal entity would not contravene the security and defence interests of the Union and its Member States as established in the framework of the CFSP pursuant to Title V TEU, including respect for the principle of good neighbourly relations, or the objectives set out in Article 19e. The guarantees shall in particular substantiate that, for the purposes of an action, measures are in place to ensure that:

- (a) control over the legal entity is not exercised in a manner that restrains or restricts its ability to carry out the action and to deliver results, that imposes restrictions concerning its infrastructure, facilities, assets, resources, intellectual property or knowhow needed for the purposes of the action, or that undermines its capabilities and standards necessary to carry out the action;
- (b) access by a third country or by a third-country entity other than Ukraine to classified or sensitive information relating to the action is prevented and the employees or other persons involved in the action have national security clearance issued by a Member State, where appropriate, in accordance with national laws and regulations;

**[(c) the ownership of intellectual property arising from actions referred to in Article 28(1), point (c), relating to industrial reinforcement actions fostering industrialisation and commercialisation of defence products that have been developed in the framework of actions funded by the Union or other cooperative activities conducted with support of Member States, is not subject to restriction by a non-associated third country or a non-associated third-country entity other than Ukraine nor transferred to entities established outside the territory of the Member States or of associated countries, without the approval of the Member State or the associated country in which the legal entity is established. Such approval shall not contravene the objectives set out in Article 19e.]**

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

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

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

There shall be no unauthorised access by a third country or an entity established in a third country other than Ukraine to classified information relating to the carrying out of the action and potential negative effects over security of supply of inputs critical to the action shall be avoided.

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

7. Paragraphs 4 to 5 shall not apply to:
- (a) contracting authorities of Member States and Ukraine;
  - (b) International Organisations;
  - (c) Structures for European Armament Programmes;
  - (d) the European Defence Agency.

## **SECTION 2**

### **ELIGIBLE ACTIONS**

#### *Article 21a*

#### **Eligible actions**

1. Actions eligible for funding under the Ukraine Support Instrument shall implement the objectives set out in Article 19e and may take one of the following forms, or a combination thereof:
- (a) common procurement actions referred to in Article 12, including for the establishment and maintenance of defence industrial readiness pools referred to in Article 13b;

- (b) industrial reinforcement actions referred to in Article 13;
- (c) supporting actions referred to in Article 13a(1), points (a) to (f) and (h) to (i).
2. The following actions shall not be eligible for funding under the Ukraine Support Instrument:
- (a) actions related to defence products which are prohibited by applicable international law;
- (b) actions related to lethal autonomous weapons without the possibility of meaningful human control over selection and engagement decisions when carrying out strikes against humans;
- [(c) actions related to defence products which are subject to restriction by third countries or entities established in third-countries other than Ukraine, directly, or indirectly through one or more intermediate legal entities, which limits the ability of a Member State to use those products or services;]**
- (d) actions or parts thereof, that are already fully financed from other public or private sources.
3. Without prejudice to Article 5 of Directive 2009/43/EC, Member States may publish general transfer licences for transfer to other Member States of products related to actions supported by the Instrument.
4. Actions eligible for funding under the Ukraine Support Instrument shall always include Ukraine or legal entities established and having their executive management structures in Ukraine.
5. References to Member States in Articles 12, 13 and 13a shall be understood to include Ukraine for the purpose of this section. References to associated countries in Articles 12, 13 and 13a shall not apply to this section. For the purposes of this chapter, references to Article 10 contained in Article 12 shall be understood to refer to Article 21.

## SECTION 3

### AWARD CRITERIA AND WORK PROGRAMMES

#### *Article 21b*

#### **Award criteria**

1. Proposals shall be assessed in the light of the objectives and priorities set for the action, as referred to in Article 19e, the expected results and the quality and efficiency of the implementation.
2. Proposals for common procurement actions referred to in Article 12 may additionally be evaluated based on one or more of the following criteria:
  - (a) the estimated value of the common procurement;
  - (b) contribution to recovery, reconstruction and modernisation of the Ukraine DTIB;
  - (c) contribution to the acceleration of the procurement and the reduction of the production and delivery lead times of defence products.
3. Proposals for industrial reinforcement actions referred to in Article 13 may additionally be evaluated based on one or more of the following criteria:
  - (a) reduction of production lead time and increase in production capacity in Ukraine;
  - (b) contribution to ensuring timely availability and supply of defence products throughout Ukraine;
  - (c) contribution to cross-border defence industrial cooperation between Ukraine and the Union.
4. [...]
5. The work programme shall lay down further details concerning the application of the award criteria, including any weighting to be applied. The work programme shall not set individual thresholds.

*Article 21c*

**Selection and award procedure**

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

*Article 21d*

**Union financial contribution**

1. Whenever the Union contribution takes the form of grants, pursuant to Article 190(3) of the Financial Regulation, the Ukraine Support Instrument may finance up to 100 % of the eligible costs for actions referred to in Article 28(1), points (b) and (c).
2. Where the Union grant takes the form of financing not linked to costs, the level of Union contribution to each action may be based on factors such as:
  - (a) the degree of complexity of the common procurement, for which a proportion of the estimated value of the action and the experience gained in similar actions may serve as an initial proxy;
  - (b) the contribution of the action to improving interoperability outcomes;
  - (ba) the characteristics of the action which are likely to give rise to greater long-term investment signals to industry;
  - (c) the number of participating Member States;
  - (d) the contribution of the action to the ramp-up of necessary manufacturing capacities;
  - (e) the degree of complexity for Ukraine to progress with the accession process, including structural reforms and measures to promote convergence with Union rules, standards, policies and practices;
  - (f) the degree of complexity for Ukraine to adapt its defence procurement processes and the environment of the Ukrainian defence industry, including to meet NATO and relevant standards;
  - (h) the degree of risk associated with Russia's war of aggression against Ukraine, taking into account the need to rebuild and modernise infrastructure damaged by that war in

a resilient way, and, where relevant, by appropriate measures to avoid, prevent or reduce and, if possible, offset those effects.

3. Actions referred to in Article 28(1), point (a) shall be funded by way of grants taking the form of financing not linked to costs, pursuant to Article 180(3) of the Financial Regulation.
4. [...]
5. For actions referred to in Article 28(1), point (a), the support from the Instrument shall not exceed 25% of the estimated value of the common procurement contract.
6. Union funding under the Instrument shall not cover the costs of the purchase and of the maintenance of defence products for military or defence purposes, including in the context of establishing, managing and maintaining a Defence Industrial Readiness Pool. Union funding under the Instrument may however cover the non-recurrent costs incurred in the context of the purchase or of the maintenance of such products.

#### *Article 21e*

#### **Work programmes**

1. The Ukraine Support Instrument shall be implemented by work programmes as referred to in Article 110 of the Financial Regulation. The work programmes shall set out the actions and associated budget required to meet the objectives of the Ukraine Support Instrument.
2. The Commission shall adopt work programmes by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(3).
3. The work programme shall include:
  - (a) the overall amount of the Union contribution to each type of action referred to in Article 21a(1) and a detailed description of each type of action;
  - (b) with respect to actions referred to in Article 28(1), points (a) and (b), the minimum financial size of the actions;
  - (c) with respect to actions referred to in Article 28(1), point (b), the maximum number of legal entities forming part of the consortium, which shall not exceed 15 legal entities.

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

## **SECTION 2C**

### **PROCUREMENT**

#### *Article 21f*

#### **Procurement**

1. By derogation from Article 168 of the Financial Regulation, together with at least ~~one~~ two Member States, Ukraine, may request the Commission to engage in joint procurement, as referred to in Article 168(2) of the Financial Regulation. The conditions set out in that article shall apply to such joint procurements. Together with at least two Member States, Ukraine may also request the Commission to act as central purchasing body, as referred to in Article 168(3) of the Financial Regulation. The conditions set out in that article shall apply whenever the Commission acts as a central purchasing body.
2. In addition to the conditions set out in the Financial Regulation, the procurement procedure referred to in paragraph 1, shall comply with the following conditions:
  - (a) participation in the procurement procedure shall be open to all Member States;
  - (b) the Commission invites at least one expert with relevant experience for the negotiations from each participating country to form a joint negotiation team;
  - (c) participating countries explicitly state whether they decide to run parallel negotiation processes for that product. The decision to run parallel negotiation processes for that product shall be subject to unanimous approval by participating countries.
3. As part of the procurement referred to in paragraph 1(b), the Commission may procure components and raw materials necessary for the supply of defence products for the purpose of building strategic reserves by participating countries, including stockpiling.

When duly justified by the extreme urgency of the situation the Commission may, by way of derogation from Article 175(1) of Regulation (EU, Euratom) 2024/2509, request the delivery of products from the date on which the draft contracts resulting from the procurement carried out for the purposes of this Regulation are sent.

4. In order to enter into purchase agreements with economic operators, representatives of the Commission, or experts nominated by the Commission, may carry out on-site visits in cooperation with relevant national authorities at the locations of production facilities of relevant defence products.
5. This Article shall be without prejudice to the existing Union and national rules governing the ownership, export and transfer of defence products purchased under this Article.
6. The Commission shall ensure that participating countries are treated equally when carrying out the procurement procedures and when implementing the resulting agreements.
7. [...]
8. In addition to the conditions set out in the Financial Regulation, eligibility criteria equivalent to those laid down in Article 21 of this Regulation shall apply to tenderers, contractors and subcontractors in contracts resulting from the procurement conducted pursuant to this Article.

#### *Article 21g*

#### **Advance Purchase of defence products**

1. Joint purchasing referred to in Article 21f may take the form of advanced purchasing agreements of defence products negotiated and concluded in the name or on behalf of participating countries. Those agreements may include a prepayment mechanism for the production of such products in exchange for the right to the result, which shall not exceed the parts of the contract on non-recurrent costs and/or the reservation of manufacturing capacities.
2. Where the agreements referred to in paragraph 1 of this Article include a prepayment mechanism, the up-front payment to the contractor shall be eligible for funding under the Instrument as set out in Article 21a(1)(c). Contributions of participating countries as referred to in Article 6 shall be taken into account in equal terms per item ordered by the participating countries.

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

*Article 21h*

**Facilitating off-take agreements**

1. The Commission shall set up a system to facilitate the conclusion of off-take agreements related to the industrial ramp-up of the Ukrainian DTIB's manufacturing capacities, between Member States and Ukraine on the one hand and economic operators of the Ukrainian DITB on the other, in compliance with the Union's competition and procurement rules. The Commission in particular shall ensure that access by a third country or by a third-country entity other than Ukraine to classified or sensitive information relating to the action is prevented and the employees or other persons involved in the action have national security clearance issued by a Member State or Ukraine.
2. The system referred to in paragraph 1 shall allow interested Member States and Ukraine to make bids indicating:
  - (a) the volume and quality of defence products they intend to purchase;
  - (b) the intended price or price range;
  - (c) the intended duration of the off-take agreement.
3. The system referred to in paragraph 1 shall allow manufacturers of defence products which comply with conditions laid out in Article 21 to make offers indicating:
  - (a) the volume and quality of defence products for which they are seeking to conclude off-take agreements;
  - (b) the intended price or price range at which they are willing to sell;
  - (ba) the estimated delivery lead time of defence products win the framework of the off-take agreement;
  - (c) the intended duration of the off-take agreement.

4. Based on the bids and offers received pursuant to paragraphs 2 and 3, the Commission shall bring relevant manufacturers of defence products in contact with interested Member States and Ukraine.
5. Taking into account the contact referred to in paragraph 4, Ukraine and interested Member States may request the Commission to engage in a joint procurement procedure or in a procurement procedure in their name and/or on their behalf pursuant Article 21f.
6. The financial envelope referred to in Article 19f(1) may cover the parts of the contract on non-recurrent costs and/or the reservation of manufacturing capacities.

## **Chapter III**

### **Structures for European Armament Programmes**

#### *Article 22*

##### **Specific objective and activities of SEAP**

1. A Structure for European Armament Programmes (SEAP) shall foster the competitiveness of the EDTIB and, where Ukraine is a member of the SEAP, of the Ukrainian DTIB. This shall be achieved by aggregating the demand for, and ensuring the timely availability and supply of, defence products throughout their lifecycle as well as by stimulating cross-border industrial cooperation.
2. To reach the objective referred to in paragraph 1, the principal tasks of a SEAP shall be:
  - (a) the common development of defence products, including defence R&D, testing, and certification; industrial capacity-building, including through industrialisation and commercialisation; and support to non-recurrent investments related to initial production or in-service support, in particular where the defence products are being or have been developed in the framework of actions funded by the Union under the corresponding Union Programme; and/or
  - (b) the common procurement of defence products, including for the purpose of building a defence industrial readiness pool as referred to in Article 13b; and/or
  - (c) the common life-cycle management of defence products, including the procurement of spare parts, logistic services, dynamic availability management, and, where appropriate, establishment of public private partnerships to ensure efficiency and high

availability of defence products, including for the purposes of a defence industrial readiness pool as referred to in Article 13b.

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

#### *Article 23*

##### **Requirements relating to the establishment of a SEAP**

1. With a view to strengthening the competitiveness of the EDTIB or the Ukraine DTIB, a SEAP shall meet all of the following requirements:
  - (a) a SEAP shall support cooperation until the end of the lifecycle of a defence product or until its winding-up;
  - (b) a SEAP shall support the common development, procurement or in-service support of defence products, consistent with the capability priorities commonly agreed by Member States within the framework of the CFSP, in particular in the context of the Capability Development Plan. A SEAP shall also pursue coherence of output with respective NATO processes such as the NATO Defence Planning Process (NDPP) where requirements overlap and where such pursuit serves the Union's security and defence interests; and
  - (c) a SEAP shall have at least three members, of which at least two shall be Member States.
2. A SEAP may use standardised procedures for initiating and managing cooperative armament programmes. The Commission may, taking into account the views expressed by Member States, establish guidance or templates to that end, including guidelines on project management, procurement, financial management and reporting.

#### *Article 24*

##### **Application for the establishment of a SEAP**

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

- (a) a request to the Commission to set up the SEAP;
- (b) the proposed statutes of the SEAP referred to in Article 27, signed and adopted in due form by all to the members of the proposed SEAP;
- (c) an outline description of the defence products to be developed, procured or managed by the SEAP, addressing in particular the requirements set out in Article 23(1), points (a) and (b);
- (d) a declaration by the host Member State recognising the SEAP as an international body within the meaning of Articles 143(1)(g) and 151(1)(b) of Directive 2006/112/EC and as international organisation within the meaning of Article 11(1) of Directive (EU) 2020/262, as of its setting up. The limits and conditions of the exemptions provided for in these provisions shall be laid down in an agreement between the members of the SEAP;
- (e) where an associated country or Ukraine is to be a member of the SEAP, a declaration of the recognition of the most extensive legal capacity of the SEAP in accordance with Article 25(2a).
2. The Commission shall, within two months, assess the application in line with the requirements laid down in this Regulation. The result of such assessment shall be communicated to the applicants who shall, if necessary, be invited to complete or amend the application.
3. The Commission shall, taking into account the results of the assessment referred to in paragraph 2 of this Article and in accordance with the procedure referred to in Article 58(3), adopt an implementing act:
- (a) setting up the SEAP after it has concluded that the requirements laid down in this Regulation are met; or
- (b) reject the application if it concludes that the requirements laid down in this Regulation are not met, including in the absence of the declaration referred to in paragraph (1), point (d), after providing an opportunity to the applicants for correcting the application.
4. The decision on the application shall be notified to the applicants. In the case of a rejection, the decision shall be explained in clear and precise terms to the applicants.

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

*Article 25*

**Status and seat of a SEAP**

1. A SEAP shall have legal personality as from the date on which the implementing act establishing a SEAP takes effect.
2. A SEAP shall have in each Member State the most extensive legal capacity accorded to legal entities under the law of that Member State, in particular the capacity to acquire, own and dispose of movable property, immovable property and intellectual property, conclude contracts and be a party to legal proceedings. All Member State national funding agencies shall consider a SEAP an eligible recipient of national financial contributions.
3. A SEAP shall have a statutory seat, which shall be located on the territory of a Member State.

*Article 26*

**Requirements for membership**

1. The following countries may be members of a SEAP:
  - (a) Member States;
  - (b) associated countries;
  - (c) Ukraine.
- 1a. Associated countries or Ukraine may be members of a SEAP subject to their recognition, for the benefit of the SEAP, of the most extensive legal capacity accorded to legal entities under the law of that country, including for the purposes of concluding contracts and being a party to legal proceedings.
2. Member States, associated countries or Ukraine, may join as members at any time after the establishment of the SEAP on fair and reasonable terms specified in the Statutes referred to in Article 27 or as observers without voting rights on conditions specified in the Statutes.

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

*Article 27*

**Statutes**

1. The Statutes of a SEAP shall contain at least the following:
- (a) a list of members, observers and, where applicable, of legal entities representing members and the conditions of and the procedure for changes in membership and representation in compliance with Article 26;
  - (b) the specific objectives, the tasks and activities of the SEAP, in compliance with Articles 22 and 23;
  - (c) a list of the defence products which are to be owned by the SEAP, if any, and eligible for an exemption from VAT and/or Excise Duties;
  - (d) the statutory seat of the SEAP in compliance with Article 25;
  - (f) the duration and the procedure for the winding-up of the SEAP in compliance with Article 32;
  - (g) the liability regime, including the possibility to issue securities, if so decided, in compliance with Article 30;
  - (h) the rights and obligations of the members, including the obligation to make contributions to a balanced budget and voting rights;
  - (i) the governing bodies of the SEAP, their roles and responsibilities and the manner in which they are constituted and the decision-making process within the SEAP including on the amendment of the Statutes, in compliance with Article 28;
  - (j) the identification of the working language(s) of the SEAP;
  - (k) references to rules implementing the Statutes;

- (l) the security rules for handling classified information;
  - (la) the name of the SEAP.
2. In addition, where the members of a SEAP decide to establish a Defence Industrial Readiness Pool referred to in Article 13b, the statutes shall include the rules governing the management of a Defence Industrial Readiness Pool referred to in Article 13b.

*Article 28*

**Amendment of the Statutes**

1. Any amendment of the Statutes concerning the matters referred to in Article 27(1), points (a) to (i), shall be agreed unanimously by the SEAP members and be submitted to the Commission by the SEAP for approval. The Commission shall, within two months, assess the amendment request in line with the requirements laid down in this Regulation. The result of such an assessment shall be communicated to the applicants who shall, if necessary, be invited to complete or modify the amendment request.
2. Any amendment of the Statutes other than that referred to in paragraph 1 shall be agreed unanimously by the SEAP members and shall be submitted to the Commission by the SEAP within 10 days after its adoption.
3. The Commission may raise an objection to the amendments referred to in paragraph 2 within 20 days from the submission giving reasons why the amendment does not meet the requirements of this Regulation.
4. The amendment referred to in paragraph 2 shall not take effect before the period for objecting has expired or has been waived by the Commission or before an objection raised has been lifted.
5. The application for the amendment shall contain the following:
  - (a) the text of the amendment proposed or, where appropriate, the text of the amendment as adopted;
  - (b) the amended consolidated version of the Statutes.

## *Article 29*

### **Specific conditions on procurement**

1. In accordance with Article 22(3), a SEAP may entrust an eligible entity referred to in Article 12(2) with carrying out procurement actions. Such an entity shall act in the name of or on behalf of that SEAP.
2. For the purposes of procurement of defence products, SEAPs shall be considered as international organisations within the meaning of Article 12(c) of Directive 2009/81/EC. SEAPs shall define their own procurement rules in compliance with the principles governing public procurement, in particular those of non discrimination, equal treatment, proportionality and transparency.
3. A SEAP shall only procure defence products from eligible entities as defined in Article 10 and Article 27 and shall actively seek to include multiple legal entities from various Member States in the supply chains of defence products.
- 3a. Where a delegation agreement as referred to in Article 22(3) is concluded, the parties to that agreement may decide that the procurement rules of the entity carrying out the procurement apply, provided that those rules comply with the principles referred to in paragraph 2 of this article, in particular those of non discrimination, equal treatment, proportionality and transparency.
- 3b. Where Member States or, where applicable, associated countries purchase defence products from a SEAP, including from a defence industrial readiness pool as referred to in Article 13b, the procurement shall be considered as a government-to-government contract as referred to in Article 13, point (f) of Directive 2009/81/EC.
4. [...]

## *Article 30*

### **Liability and insurance**

1. A SEAP shall be liable for its debts.
2. The financial liability of the members for the debts of the SEAP shall be limited to their respective contributions provided to the SEAP. The members may specify in the Statutes that they will assume a fixed liability above their respective contributions or unlimited liability.

3. If the financial liability of the members is limited, the SEAP shall take appropriate insurance to cover the risks specific to the establishment and management of the capability.
4. If decided unanimously by the members, a SEAP may issue securities in accordance with the law of the Member State where it has its statutory seat. The SEAP shall be liable for such securities.
5. Any change to the liability regime or any measure affecting the financial liability of SEAP members shall be decided unanimously by the members.
6. The Union shall not be liable for any debt of the SEAP.

#### *Article 31*

#### **Applicable law and jurisdiction**

1. The setting-up and internal functioning of a SEAP shall be governed:
  - (a) by Union law, in particular this Regulation and the implementing acts referred to in Article 24(3)(a);
  - (aa) by the Statutes and their implementing rules;
  - (b) by the law of the State where the SEAP has its statutory seat in the case of matters not, or only partly, regulated by acts referred to in point (a).
  - (c) [...]
2. Without prejudice to cases in which the Court of Justice of the European Union has jurisdiction under the Treaties, the national law of the Member State where the SEAP has its statutory seat shall determine the competent jurisdiction for the resolution of disputes among the members in relation to the SEAP, between the members and the SEAP, and between a SEAP and third parties.
3. Any delegation agreement as referred to in Article 22(3) shall determine which Member State jurisdiction shall be competent for the resolution of disputes related to the delegation agreement. This shall be without prejudice to cases in which the Court of Justice of the European Union has jurisdiction under the Treaties.

## *Article 32*

### **Winding up and insolvency**

1. The Statutes shall determine the procedure to be applied in the case of winding-up of the SEAP following a decision of the assembly of members or in case the Commission repeals the implementing act establishing the SEAP, as referred to in Article 33(6). Winding-up may include the transfer of activities to another legal entity.
2. Without undue delay after the adoption of a decision by the assembly of members to wind up the SEAP, and in any event within 10 days after such adoption, the SEAP shall notify the Commission thereof and designate a representative for the winding up. The Commission shall publish an appropriate notice of the decision to wind-up in the Official Journal of the European Union.
3. Without undue delay after the closure of the winding-up procedure, and in any event within 10 days after such closure, the SEAP representative shall notify the Commission thereof. The Commission shall publish an appropriate notice of the closure in the Official Journal of the European Union. The SEAP shall cease to exist on the day of publication of the notice.
4. At any time, in the event that the SEAP is unable to pay its debts, it shall immediately notify the Commission thereof. The Commission shall publish an appropriate notice hereof in the Official Journal of the European Union.

## *Article 33*

### **Reporting and control**

1. A SEAP shall produce an annual activity report, containing a technical description and a financial report of its activities referred to in Article 22. It shall be transmitted to the Commission within six months from the end of the financial year.
2. The Commission may provide recommendations to the SEAP regarding the matters covered in the annual activity report.
3. A SEAP and the Member States concerned shall inform the Commission of any circumstances which threaten to seriously jeopardise the achievement of the task of the SEAP or to hinder the SEAP from fulfilling the requirements laid down in this Regulation.

4. Where the Commission obtains indications that a SEAP is acting in serious breach of this Regulation, the implementing act establishing it, its statutes or other applicable law, it may request explanations from the SEAP and/or its members.
5. Where the Commission concludes, after having given the SEAP and/or its members a reasonable time of at least two months to provide their observations, that the SEAP is acting in serious breach of this Regulation, the implementing act establishing it, its statutes or other applicable law, it may propose remedial action to the SEAP and its members.
6. Where no remedial action is taken, the Commission may repeal the implementing act establishing the SEAP. The repealing act shall be published in the Official Journal of the European Union. The publication of the act shall trigger the winding-up of the SEAP.

## **Chapter IV**

### **Security of supply**

#### **SECTION -1**

#### **MODIFICATION OF FRAMEWORK CONTRACTS**

##### *Article 34*

#### **Conditions to open framework agreements to other Member States**

1. Where at least two Member States enter into an agreement to commonly procure defence products and where the extreme urgency of the situation justifies it, the rules provided for in paragraphs 2 to 6 may be applied to framework agreements that do not include rules governing the possibility to substantially amend it so that its provisions may apply to contracting authorities/entities which are not originally party to the framework agreement.
2. By way of derogation from Article 29(2), second subparagraph, of Directive 2009/81/EC, a contracting authority/entity may modify an existing framework agreement with an undertaking complying with the provisions laid out in Article 10, paragraphs 1 and 2, which has been concluded following one of the procedures provided for by Article 25 of that Directive so that its provisions may apply to contracting authorities/entities which are 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/entity may make substantial amendments to the quantities laid down

in an existing framework agreement with an undertaking complying with the provisions laid out in Article 10, paragraphs 1 and 2, insofar as that is strictly necessary for the application of paragraph 2 of this Article. Where quantities laid down in an existing framework agreement are substantially modified pursuant to this paragraph, any economic operator that meets the contracting authority's/entity's conditions initially laid down in the public procurement procedure for the framework agreement, including requirements for qualitative selection as referred to in Articles 39 to 46 of Directive 2009/81/EC, and which complies with the provisions laid out in Article 10, paragraphs 1 and 2, shall be given the opportunity to join that framework agreement. The contracting authority/entity shall open that possibility by means of an ad hoc notice published in the Official Journal of the European Union.

4. The principle of non-discrimination shall apply to contracts and framework agreements referred to in paragraphs 2 and 3 with regard to the additional quantities, and particularly to the relationships between contracting authorities/entities of Member States referred to in paragraph 1.
5. Contracting authorities which modified a contract in the cases referred to in paragraphs 2 and 3 of this Article shall publish a notice to that effect in the Official Journal of the European Union. Such notice shall be published in accordance with Article 32 of Directive 2009/81/EC.
- 5a. For the purpose of this article, the Member State to which the benefit of the contract or framework agreement has been extended may, pursuant to Article 28(1)(c) of Directive 2009/81/EC, award contracts by a negotiated procedure without prior publication of a contract notice.
6. Contracting authorities/entities shall not use the possibility provided for in paragraph 2 and 3 improperly or in such a way as to prevent, restrict or distort competition.

#### *Article 34a*

#### **Modification of defence contracts and framework agreements**

1. Contracts and framework agreements falling into the scope of Article 2 of Directive 2009/81/EC may be modified without a new procurement procedure in accordance with this Directive in any of the following cases:

- (a) where the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses, or options. Such clauses shall state the scope and nature of possible modifications or options as well as the conditions under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the contract or the framework agreement;
- (b) for additional works, services or supplies by the original contractor that have become necessary and that were not included in the initial procurement where a change of contractor:
  - (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement; and
  - (ii) would cause significant inconvenience or substantial duplication of costs for the contracting authority.

However, any increase in price shall not exceed [50 %] of the value of the original contract. Where several successive modifications are made, that limitation shall apply to the value of each modification. Such consecutive modifications shall not be aimed at circumventing this Directive;

- (c) where all of the following conditions are fulfilled:
  - (i) the need for modification has been brought about by circumstances which a diligent contracting authority could not foresee;
  - (ii) the modification does not alter the overall nature of the contract;
  - (iii) any increase in price is not higher than 50 % of the value of the original contract or framework agreement. Where several successive modifications are made, that limitation shall apply to the value of each modification. Such consecutive modifications shall not be aimed at circumventing this Directive;
- (d) where a new contractor replaces the one to which the contracting authority had initially awarded the contract as a consequence of either:
  - (i) an unequivocal review clause or option in conformity with point (a);

- (ii) universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Directive; or

Contracting authorities having modified a contract in the cases set out under points (b) and (c) of this paragraph shall publish a notice to that effect in the Official Journal of the European Union. Such notice shall contain information comparable to the one set out for contract notices in Annex IV of Directive 2009/81/EC and shall be published in accordance with Article 32 of Directive 2009/81/EC.

2. For the purpose of the calculation of the price mentioned in points (b) and (c) of paragraph 1, the updated price shall be the reference value when the contract includes an indexation clause.

## **SECTION 1**

### **PREPAREDNESS**

#### **SUB-SECTION 2**

### **CONTINGENCY PLANNING**

#### *Article 38*

#### **Acceleration of the permit-granting process for the timely availability and supply of defence products**

1. Member States shall ensure that administrative applications related to the planning, construction and operation of production facilities, transfer of inputs within the Union as well as qualification and certification of defence products are processed in an efficient and timely manner. To that end, all national authorities concerned shall ensure that the most rapid treatment legally possible is given to such applications.
2. Where such a status exists in national law, the construction and operation of plants and installations for the production of defence products shall be allocated the status of the highest national significance possible and be treated as such in permit-granting processes.

*Article 39*

**Easing cross-certification process**

1. Member States shall adopt a list of national certification authorities for defence purposes and notify it to the Commission, which shall make it available to Member States.
2. The Commission, taking into account the views of the EDA, shall, by the means of implementing acts, draw and keep updated an official list of national certification authorities for defence purposes as identified by Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(3).
3. A certification authority from one Member State may request from the certification authority of another Member State information about the scope of the certification of a certain defence product.

*Article 39a*

**Stress tests**

- 1. The Defence Security of Supply Board shall identify relevant topics to be addressed for stress tests.
1. The Commission, taking into consideration the relevant topics identified by the Defence Security of Supply Board in line with paragraph -1, may conduct and coordinate stress tests, including simulations that aim to anticipate and prepare for a supply crisis as referred to in Article 44. The participation of Member States in stress tests shall be voluntary.
2. In particular, the Commission may:
  - (a) develop scenarios and parameters that capture the particular risks associated with a supply crisis, in order to assess the potential impact on the provision and the free movement of crisis relevant products;
  - (b) facilitate and encourage the development of strategies for emergency preparedness;
  - (c) identify, in cooperation with the Defence Security of Supply Board, risk mitigation measures after the completion of the stress tests.

The Commission shall invite representatives of all Member States to participate in simulations.

Upon consultation of the Defence Security of Supply Board, the Commission may also invite representatives of the High Representative and of the EDA or other relevant actors.

4. Upon request by two or more Member States, the Commission may conduct stress tests in specific geographical areas or border regions in those Member States.
5. Upon prior approval by the participating Member States, the Commission shall communicate the results of the stress tests, conducted pursuant to this Article, and share a report thereon with the Defence Security of Supply Board and Member States, within two months of completion of the stress tests. Those results and that report shall constitute classified information.

### **SUBSECTION 3**

#### **SUPPLY CHAIN SURVEILLANCE AND MONITORING**

##### *Article 40*

##### **Mapping of defence supply chains**

1. The mapping of the Union's supply chains of crisis relevant products shall consist of drawing up and regularly updating:
  - (a) a list of crisis relevant products, identified pursuant to paragraph 3a;
  - (b) a list of early warning indicators, identified pursuant to paragraph 8; and
  - (c) a list of main suppliers of crisis-relevant products, identified pursuant to paragraph 8a.

The Commission, in cooperation with the Defence Security of Supply Board, shall carry out the mapping regarding points (a) and (b). The Member States shall carry out the mapping regarding point (c).

3. The Commission shall, after consulting the Defence Security of Supply Board, develop a framework and methodology for identifying crisis-relevant products, with an emphasis on existing bottlenecks, as well as their related manufacturing capacities in the Union and mapping the supply chains of these products. This methodology shall complement any frameworks or methodologies that may exist within Member States.
- 3a. The Commission shall, by means of an implementing act, draw up and regularly update the list of crisis-relevant products. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 58(3).

4. The mapping shall provide an analysis of the strengths and weaknesses of the Union's supply chains of crisis-relevant products and, inform, where relevant, the development of the Work Programme as referred to in Articles 19d and 21e. That analysis shall constitute classified information.
5. To perform the mapping, the Commission shall use publicly and commercially available data and relevant non-sensitive information from economic operators, as well as the result of similar analysis performed, including in the context of Union law on raw materials and semiconductors and of the relevant activities of the European Defence Agency, the results of the stress tests conducted pursuant to Article 39a and the evaluations carried out pursuant to Article 66(1). Where this is not enough to identify the crisis-relevant products, the Commission may issue voluntary information requests to relevant actors involved in the supply chains concerned and based in the Union, after consulting the Defence Security of Supply Board. The Commission's request shall explicitly indicate that the economic operator remains free to refuse such a request. Where the economic operator concerned decides to provide such information to the Commission, it shall transmit a copy of the information provided to the Member State of its establishment as well.<sup>7</sup> The Commission shall inform the Defence Security of Supply Board of the aggregate results of the mapping on an annual basis or at the request of one of the members of the Board as identified in Article 57(7) and (7a). Those results shall constitute classified information.
8. The Commission shall, on the basis of the outcome of the activities carried out pursuant to paragraph 4 and 5 and after consulting the Defence Security of Supply Board, develop a list of early warning indicators aimed at identifying factors that may disrupt, compromise or negatively affect the supply of crisis relevant products. The Commission, after consulting the Defence Security of Supply Board, shall review the list of early warning indicators on a regular basis, at least every two years.
- 8a. Member States shall, in cooperation with the Commission, identify the main suppliers of crisis-relevant products established in their territory within two months of the adoption of the implementing act referred to in paragraph 3a taking into account the following elements:
  - (a) the market share of the supplier in the market for that crisis relevant product;

- (b) the importance of the supplier in maintaining a sufficient level of supply of a crisis relevant product in the Union, taking into account the availability in the Union of alternative means for the provision of that product;
  - (c) the impact that a disruption of supply of the crisis relevant product provided by the supplier could have on the functioning of the internal market.
9. Any information obtained pursuant to this Article shall be treated in compliance with the confidentiality obligations set out in Article 61.
10. This Article shall be without prejudice to the right of each Member State to protect its essential security interests, as referred to in Article 346(1), point (a), TFEU.

#### *Article 41*

#### **Monitoring**

1. Member States and the Commission, in consultation with the Defence Security of Supply Board, shall carry out regular monitoring of the Union's manufacturing capacities necessary for the supply of crisis-relevant products, identified in accordance with Article 40, paragraph (3) in order to identify possible risks to the supply of these products. The monitoring shall consist of the following activities:
- (a) the Commission shall monitor early warning indicators identified pursuant to Article 40(4), including by aggregating any input received from Member States];
  - (b) Member States shall monitor the ability of the main suppliers of crisis-relevant products referred to in Article 40 paragraph 9 to carry out their activities and report to the Board on any event that may have negative and lasting consequences on the timely availability and supply of these products;
  - (c) the Commission, in consultation with the Defence Security of Supply Board, shall identify best practices for preventive risk mitigation and increased transparency of the Union's manufacturing capacities necessary for the supply of crisis-relevant products.

The Commission, after consulting the Defence Security of Supply Board, shall establish the frequency of the monitoring.

2. The Commission and Member States shall pay particular attention to SMEs to minimise administrative burden resulting from the information collection.

3. The Commission may invite, after consulting the Defence Security of Supply Board, main suppliers of crisis-relevant products referred to in Article 40 paragraph 9, Member States, national defence industry associations and other relevant stakeholders to provide information, on a voluntary basis, for the purpose of carrying out monitoring activities in accordance with paragraph 1, first subparagraph, points (a).
4. For the purposes of paragraph 1, first subparagraph, point (b), Member States may request information, on a voluntary basis, from main suppliers of crisis-relevant products referred to in Article 40 paragraph 9 where necessary and proportionate.
5. For the purposes of paragraph 3, competent authorities of Member States shall establish and maintain a list of contacts of the main suppliers of the crisis-relevant products, which are established in their territory. That list shall be transmitted to the Commission. The Commission shall provide for a standardised format for the list of contacts.
6. Member States shall provide the Defence Security of Supply Board with any additional relevant information, in particular the identification of issues related to the supply of crisis relevant products throughout the Union or any potential or future national level measures for the procurement, purchase or manufacturing of crisis-relevant products.
7. On the basis of the information collected through monitoring activities, the Commission shall provide a report of the aggregated findings to the Defence Security of Supply Board in the form of regular updates. This report shall constitute classified information. The Defence Security of Supply Board shall meet to assess the results of the monitoring and identify, where appropriate, potential issues of common interest. Where relevant, the Commission, after consulting the Defence Security of Supply Board may invite national defence industrial associations, suppliers of crisis-relevant products referred to in Article 40 paragraph 9, and experts from academia and civil society to such meetings.
8. This Article shall be without prejudice to the right of each Member States to protect its essential security interests in accordance with Article 346 TFEU (1) (a).

## **SUB-SECTION 4**

### **PREVENTION OF A SUPPLY CRISIS**

*Article 42*

[...]

*Article 43*

#### **Alerts and preventive action**

1. Where a competent authority of a Member States becomes aware of a risk of serious disruption in the supply of a crisis-relevant products or has concrete and reliable information of any other relevant risk factor or event materialising affecting the supply of a crisis relevant product, it shall alert the Defence Security of Supply Board without undue delay.
  - 1a. In order to determine whether a risk of serious disruption should trigger an alert as referred to in paragraph 1, Member States shall take into account the following:
    - (a) the market position of economic operators that could be affected by the disruption;
    - (b) the anticipated duration of the potential disruption;
    - (c) the geographical area and the proportion of the internal market affected by the potential disruption and its possible cross-border effects, as well as its possible impact on particularly vulnerable or exposed geographical areas; and
    - (d) the impact of this potential disruption on the supply of crisis-relevant products.
2. Where the Defence Security of Supply Board or the Commission become aware of a risk of serious disruption of the supply of a crisis relevant product or has concrete and reliable information of any other relevant risk factor or event materializing affecting the supply of a crisis relevant product, including on the basis of early warning indicators, upon an alert pursuant to paragraph 1 or from international partners, the Commission shall, without undue delay, carry out the following preventive actions:
  - (a) convene an extraordinary meeting of the Defence Security of Supply Board to coordinate the following actions:

- (i) discuss the severity of the potential disruptions to the availability and supply of the concerned crisis-relevant products;
  - (ii) ensure synergies with relevant Union programmes;
  - (iii) discuss approaches of the competent authorities of Member States, including to assess the state of preparedness of the suppliers of crisis-relevant products;
  - (iv) ask Member States to enter into dialogue with stakeholders of the Union's manufacturing capacities necessary for the supply of crisis-relevant products with a view to identifying, preparing and possibly coordinating preventive measures;
  - (v) discuss whether the activation of the supply crisis state referred to in Article 44 would be necessary and proportionate.
- (b) on behalf of the Union, enter into consultations with relevant third countries and international organisations with a view to seeking cooperative solutions to address supply chain disruptions, in compliance with international obligations, which may involve, where appropriate, carrying out coordination in relevant international fora.
3. This Article shall be without prejudice to the right of each Member States to protect its essential security interests in accordance with Article 346(1)(a) TFEU.

## **SECTION 2A**

### **MITIGATION OF A SUPPLY CRISIS**

#### **SUB-SECTION 1**

#### **ACTIVATION OF THE SUPPLY CRISIS STATE**

##### *Article 44*

#### **Activation of the supply crisis state**

1. A supply crisis shall be considered to occur where:
- (a) there are serious disruptions in the provision of crisis-relevant products; and

- (b) such serious disruptions are resulting or are likely to result in the adoption of divergent national measures leading to a severe negative impact on the proper functioning of the internal market, in particular obstacles to cross-border trade
2. Where the Commission or the Defence Security of Supply Board become aware of a potential supply crisis pursuant to Article 43, the Commission, taking into account the advice of the Board, shall assess whether the conditions set out in paragraph 1 of this Article are met. That assessment shall take into account the potential impacts and consequences of the supply crisis state on the supply chains of crisis-relevant products within the Union, stress tests conducted pursuant to Article 39a as well as assessments performed in other relevant Union crisis management frameworks. Where that assessment provides concrete and reliable evidence, the Commission may, after consulting the Defence Security of Supply Board, propose to the Council to activate the supply crisis state.
  3. The Council, acting by qualified majority on a proposal from the Commission, may activate the supply crisis state by means of a Council implementing act. The duration of the supply crisis state shall be specified in the implementing act and shall initially not exceed 12 months. The implementing act shall also specify which of the measures set out in Articles 46 to 53 are activated.
  - 3b. The Council may amend the proposal referred to in paragraph 3 acting by qualified majority.
  4. The Commission shall report on a regular basis and at least every three months to the Council and to the European Parliament on the state of the crisis.
  5. Before the expiry of the duration of the supply crisis state, the Commission, taking into account the advice of the Board, shall assess whether it is justified to prolong it. Where such assessment provides concrete and reliable evidence that the conditions for the activation of the supply crisis state are still met, the Commission may, after consulting the Defence Security of Supply Board, propose to the Council to prolong the supply crisis state.
  6. The Council, acting by qualified majority upon a proposal from the Commission, may prolong the supply crisis state by means of a Council implementing act. The duration of the prolongation shall be limited to a maximum of 12 months and specified in the Council implementing act.
  7. [...]

8. During the supply crisis state, the Commission shall, after consulting the Defence Security of Supply Board, assess the appropriateness of an early termination of the crisis state. If the assessment indicates so, the Commission may propose to the Council to terminate the crisis state.
9. The Council may, by means of implementing act adopted by qualified majority upon a proposal from the Commission, terminate the supply crisis state before the expiry date specified in the implementing act referred to in paragraph 3 or in paragraph 6.
10. During the supply crisis state, the Commission shall, upon request from a Member State or on its own initiative, convene extraordinary meetings of the Defence Security of Supply Board where necessary. In line with Article 57(10), the Board shall invite high level industrial representatives to meet in special configuration in order to discuss issues related to crisis-relevant products. Member States shall work closely with the Commission within the Defence Security of Supply Board in order to ensure the coordination of any Union and national measures taken with regard to the concerned defence supply chain.
11. Upon expiry of the period for which the supply crisis state is activated or in the event of its early termination pursuant to paragraph 9 of this Article, the measures taken in accordance with Articles 46 to 53 shall cease to apply immediately. By derogation, implementing acts that have been adopted in accordance with Article 49a (3) and Article 50 (3) shall continue to apply until the priority-rated orders or requests concerned have been completed.
12. The Commission and Member States shall update the mapping and the monitoring of the Union's defence supply chains pursuant to Articles 40 and 41 taking into account the experience from the supply crisis no later than six months after the expiry of the supply crisis state.

#### *Article 45*

#### **Supply-crisis toolbox**

1. Where the supply crisis state is activated pursuant to Article 44 and where necessary in order to address the supply crisis in the Union, the Commission may take the measures provided for in Article 46, 49a and 50 and which have been activated in the Council implementing act referred to in Article 44(3), under the conditions laid down therein.

2. The Commission shall, after consulting the Defence Security of Supply Board, restrict the application of the measures referred to in paragraph 1 to the crisis-relevant products subject to serious disruption on account of the supply crisis. The application of the measures referred to in paragraph 1 of this Article shall be proportionate and restricted to what is necessary for addressing serious disruptions affecting the supply chains of the crisis-relevant products in the Union and must be in the best interest of the Union. The application of those measures shall avoid placing disproportionate administrative burden in particular on SMEs.
3. Where the supply crisis state is activated pursuant to Article 44 and where appropriate in order to address the supply crisis in the Union, the Defence Security of Supply Board shall assess and advise on appropriate and effective measures.
4. The Commission shall regularly inform the European Parliament and the Council of any measures taken in accordance with paragraph 1 and explain the reasons for its action.
5. The Commission shall, taking into consideration the advice of the Defence Security of Supply Board, issue guidance on the implementation and the use of the measures provided for in Article 46 to 53.

## **SUB-SECTION 2**

### **MEASURES TO ADDRESS THE SUPPLY-CRISIS**

#### *Article 46*

##### **Information requests**

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

2. Before launching a request for information, the Commission may carry out a voluntary consultation of a representative number of relevant economic operators with a view to identifying the appropriate and proportionate content of such a request. The Commission shall prepare the request for information in cooperation with the Defence Security of Supply Board.
3. The Commission and the Member State concerned shall use secure means to launch the request for information and/or handle any acquired information in accordance with Article 61. For this purpose, national competent authorities shall transmit to the Commission the list of contacts established under Article 41(5).
4. The Commission shall without undue delay forward a copy of the request for information to the national competent authority of the Member State in whose territory the production site of the addressed economic operator is located.
5. The request for information shall state its legal basis, be limited to the minimum necessary and be proportionate in terms of the granularity and volume of the data and frequency of access to the data requested, have regard for the legitimate interests of the economic operator and the cost and effort required to make the data available, include the contact information of the national competent authorities from the Member State in whose territory the production site of the addressed economic operator is located to which the reply shall be sent, and set out the time limit within which the information is to be provided. It shall also state the penalties provided for in Article 55.
6. Each economic operator concerned, or anyone duly authorised to represent that economic operator, shall supply the information requested on an individual basis.
  - 6a. Member States shall ensure that the requested information is made available without undue delay to the Commission.
7. If an economic operator established in the Union is subject to a request for information from a third country, related to its activities for the supply of crisis relevant products, it shall inform the Commission and the Member State in whose territory its production site is located, in due time, in such a manner as to enable the Commission to request similar information from the economic operator. The Commission shall inform the Defence Security of Supply Board of the existence of such a request from a third country.

8. If an economic operator knowingly supplies incorrect, incomplete or misleading information in response to a request made pursuant to this Article, or does not supply the information within the prescribed time limit, it shall be subject to fines set in accordance with Article 55, except where the economic operator has sufficient reasons for not supplying the requested information or not supplying it within the prescribed time limit, in particular when the processing of the information request by an economic operator has the potential to significantly disrupt its operations.

The economic operator shall not be deemed responsible for not sharing information that is considered as classified for national use only.

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

*Article 47*

[...]

*Article 47a*

[...]

*Article 47b*

### **Support to emergency defence innovation actions**

Where the Council activates this measure in accordance with Article 44(3a), innovation actions related to one of the following activities shall be deemed eligible under the Programme, provided for in Chapter II:

- (a) activities that aim at rapid adaptation and modification of civilian products for defence applications;
- (b) activities that aim at very significantly shortening the delivery lead time of defence products;
- (c) activities that aim at significantly simplifying the technical specifications of defence products in order to enable their mass production;

- (d) activities that aim at significantly simplifying the production process of defence products to enable their mass production.

*Article 47c*

**National fast-tracking of permit granting procedures**

1. Where the Council activates this measure in accordance with Article 44(3a) and where such status exists in national law the planning, construction and operation of production facilities of crisis-relevant products shall be allocated the status of the highest national significance possible and be treated as such in permit granting processes, including those relating to environmental assessments and if national law so provides, in spatial planning.
2. The security of supply of crisis relevant products may be considered an imperative reason of overriding public interest within the meaning of Article 6(4) and Article 16(1)(c) of Directive 92/43/EEC and of overriding public interest within the meaning of Article 4(7) of Directive 2000/60. Therefore, the planning, construction and operation of related production facilities may be considered of overriding public interest, provided that the remaining other conditions set out in these provisions are fulfilled.

*Article 48*

[...]

*Article 49a*

**Prioritisation of non-defence products**

1. Where the Council activates this measure in accordance with Article 44(3a), a Member State which faces severe difficulties either in the placing of an order or in the execution of a contract for the supply of crisis-relevant products which is not a defence product may submit a request to the Commission to request an economic operator to accept, or to prioritise a certain order of such products.
2. Upon a request referred to in paragraph 1, the Commission may, where the production or supply of such products could not be achieved by other measures provided for in this Regulation and after consulting the Member State of establishment of the economic operator concerned and with its agreement, address a request to the economic operator concerned.

- 2a. The Commission shall demonstrate that the choice of the recipients and beneficiaries of the requests referred to in paragraph 2 is non-discriminatory and complies with Union competition rules.
- 2b. The Commission shall base its requests referred to in paragraph 2 on objective, factual, measurable and substantiated data, showing that such prioritisation is indispensable in order to ensure the proper functioning of the internal market, as well as having regard to the legitimate interests of the economic operator and the cost and effort required for any change in the production sequence of the supply chain. The Commission shall also explain in the request the reasons why such a prioritisation measure is more appropriate at Union level than at national level.
3. Where the economic operator to which the request referred to in paragraph 1 is addressed has expressly accepted it, the Commission shall adopt, by means of an implementing act, a priority-rated request providing for
  - (a) the legal basis of the priority-rated request which has to be complied with by the economic operator;
  - (b) the list of crisis-relevant products subject to the priority-rated request, their specifications and the quantities in which they are to be supplied;
  - (c) the time-limits within which the priority-rated order is to be completed;
  - (d) the beneficiaries of the priority-rated request;
  - (e) the waiver of contractual liability under conditions laid down in paragraphs 7; and
  - (f) the penalties provided for in Article 55 for non-compliance with the obligations stemming from this implementing act.
4. Where the economic operator declines the priority rated request, it shall provide the Commission with a detailed justification hereof.
  - 4a. Where this economic operator is a has signed a financing agreement with the Commission in accordance with Article 11(9a), the Commission, having due regard to the justifications provided by the economic operator, may adopt, by means of an implementing act, a priority-rated order imposing on the notified economic operator

an obligation to perform the order. Any such implementing act shall provide the information referred to in paragraph 3, points (a) to (f).

5. The Commission shall take into account the objections raised by the economic operator under paragraph 4 and state the reasons why, in line with the proportionality principle and the fundamental rights of the economic operator under the Charter of Fundamental rights of the Union, it was necessary to adopt the implementing act referred to in paragraph 4a, in light of the circumstances described in paragraph 1.
6. The priority rated requests referred to in paragraph 3 and the priority rated orders referred to in paragraph 4a shall:
  - (a) be placed at a fair and reasonable price, adequately taking into account the economic operator's opportunity costs when fulfilling the priority rated requests or the priority rated orders as compared to existing contractual obligations;
  - (b) take precedence over any performance obligation under private or public law, related to the crisis relevant products subject to the priority-rated request or to the priority rated order, with the exception of obligations directly related to orders with a military purpose.
7. The economic operator subject to a priority-rated request pursuant to paragraph 3 or to a priority rated order pursuant to paragraph 4a shall not be liable for any breach of contractual obligation that is governed by the law of a Member State, provided that:
  - (a) the breach of contractual obligation is necessary for compliance with the required prioritisation;
  - (b) the implementing act referred to in paragraph 3 or in paragraph 4a has been complied with; and
  - (c) where relevant, the acceptance of the priority-rated request did not have the sole purpose of unduly avoiding a prior contractual obligation.
8. Any conflict between a priority rated request or to a priority-rated order and a measure under any other prioritisation mechanism of the Union shall be resolved by the Commission, based on the weighing of the public interest.

9. The economic operator subject to a priority-rated request pursuant to paragraph 3 or to a priority-rated order pursuant to paragraph 4 may request the Commission to modify the implementing act referred to in paragraph 3 or in paragraph 4 where it considers it to be duly justified based on one of the following grounds:
- (a) the economic operator is unable to perform the priority rated request or the priority rated order on account of insufficient production capability or production capacity, even under preferential treatment of the request or order;
  - (b) completion of the request or the order would place an unreasonable economic burden and entail particular hardship for the economic operator.
10. The economic operator shall provide all relevant and substantiated information to allow the Commission to assess the merits of the request for modification.
11. Based on the examination of the reasons and evidence provided by the economic operator, the Commission may, after consulting the Member State of establishment, amend its implementing Act to release, partially or in totality the economic operator concerned from its obligations under this Article.
12. When an economic operator established in the Union is subject to a measure of a third country which entails a priority rated order of a crisis-relevant product which is not a defence product, it shall notify the Commission thereof. The Commission shall then inform the Defence Security of Supply Board of the existence of such measures. Where relevant, the Commission may take advice from the Defence Security of Supply Board on any appropriate step to be taken in response to this measure.
13. Where an economic operator, subject to a priority rated request pursuant to paragraph 3 or a priority-rated order pursuant to paragraph 4, intentionally or through gross negligence, does not comply with that request or order, the Commission may, by means of a decision, where deemed necessary and proportionate, impose a fine on the economic operator concerned in accordance with Article 54, except where:
- (a) the economic operator is unable to perform the priority rated request or the priority-rated order on account of insufficient production capability or production capacity, or on technical grounds; or

- (b) performance/completion of the order would place an unreasonable economic burden and entail particular hardship for the economic operator, including substantial risks relating to business continuity
14. The Commission shall adopt an implementing act laying down the practical and operational arrangements for the functioning of priority rated requests and priority rated orders.
15. The implementing acts referred to in this Article shall be adopted in accordance with the examination procedure referred to in Article 58 (3).
16. This Article shall be without prejudice to the necessary protection of the essential interests of the security of Member States as referred to in Article 346 (1) (b) TFEU.

#### *Article 50*

#### **Prioritisation of defence products**

1. Where the Council activates this measure in accordance with Article 44(3a), a Member State may submit a request to the Commission to request an economic operator whose production site is located on its territory to accept, or to prioritise certain orders of crisis-relevant products which are defence products ('priority rated requests') in order to address the severe difficulties this Member State or another Member State faces either in the placing of an order or in the execution of a contract for the supply of such products.
2. Upon a request referred to in paragraph 1, the Commission may, where the production or the supply of such products could not be achieved by any other measure provided for in this chapter and after the consultation of the Member State of establishment of the concerned economic operator and with its prior agreement, request the latter to accept the priority rated requests. The Commission's request shall explicitly indicate that the economic operator remains free to refuse the request.
- 2a. The Commission shall demonstrate that the choice of the recipients and beneficiaries of the priority-rated requests referred to in this Article is non-discriminatory and complies with Union competition rules.
- 2b. The Commission shall base the priority-rated requests referred to in this Article on objective, factual, measurable and substantiated data, showing that such prioritisation is indispensable in order to ensure the proper functioning of the internal market, as well as having regard to the legitimate interests of the economic operator and the cost and effort required for any

change in the production sequence of the supply chain. The Commission shall also explain in the request the reasons why such a prioritisation measure is more appropriate at Union level than at national level.

3. Where the economic operator to which the request referred to in paragraph 1 is addressed has expressly accepted the request to prioritise the requests, the Commission shall, after the consultation of the Member State of establishment of the concerned economic operator and with its prior agreement, adopt an implementing act providing for:
  - (a) the legal basis of the priority rated requests which has to be complied with by the economic operator;
  - (b) the list of crisis-relevant products subject to the priority rated request, their specifications and the quantity in which they are to be supplied;
  - (c) the time limits within which the priority rated request is to be completed;
  - (d) the beneficiaries of the priority rated request;
  - (da) the scope of contractual obligations over which the priority-rated request shall have precedence;
  - (e) the waiver of contractual liability under the conditions laid down in paragraph 5; and
  - (f) the penalties provided for in Article 55 for non-compliance with the obligations stemming from this implementing act.
4. The priority rated requests shall be placed at a fair and reasonable price adequately taking into account the economic operator's opportunity costs when fulfilling the priority rated requests vis-à-vis existing contractual obligations. The priority rated requests shall take precedence over any prior private or public contractual obligation related to the products subject to the priority rated request under private or public law, under the conditions laid down in the implementing act referred to in paragraph 3.
5. The economic operator subject to that priority-rated request shall not be liable for any breach of contractual obligation that is governed by the law of a Member State, where:
  - (a) the breach of contractual obligations is strictly necessary for compliance with the required prioritization,
  - (b) the implementing act referred to in paragraph 3 has been complied with and

- (c) the acceptance of the priority rated request was not solely made with a view to unduly avoiding a prior performance obligation.
6. Where an economic operator, after having expressly accepted to prioritise the orders requested by the Commission, intentionally or through gross negligence, does not comply with the obligation to prioritise those orders, it shall be subject to fines set in accordance with Article 55, except where:
- (a) the economic operator is unable to perform the priority-rated request on account of insufficient production capability or production capacity, or on technical grounds; or
- (b) performance/completion of the request would place an unreasonable economic burden and entail particular hardship for the economic operator, including substantial risks relating to business continuity
8. When an economic operator established in the Union is subject to a measure of a third country which entails a priority rated request of a crisis-relevant product which is a defence product, it shall notify the Commission thereof. The Commission shall then inform the Defence Security of Supply Board of the existence of such measures. Where relevant, the Commission may take advice from the Defence Security of Supply Board on any appropriate step to be taken in response to this measure.
9. The implementing act referred to in paragraph 3 shall be adopted in accordance with the examination procedure referred to in Article 58(3).
10. This Article shall be without prejudice to the right of each Member State to protect its essential security interests, in accordance with Article 346(1)(b) TFEU.

#### *Article 51*

#### **Intra-EU transfers of crisis relevant defence products**

1. Where the Council activates this measure in accordance with Article 44(3a) and without prejudice to Directive 2009/43/EC and Member States' prerogatives under that Directive, Member States shall ensure that applications related to intra-EU transfers of crisis-relevant defence products are processed in an efficient and timely manner. The Council implementing act referred to in Article 44(3a) shall specify the timeframe within which national authorities concerned shall treat the applications once entirely received.

2. Transfers of components which are crisis-relevant defence products shall not be considered as sensitive within the meaning of Article 4(8) of Directive 2009/43/EC.
3. Member States shall refrain from imposing restrictions to the transfer of crisis relevant defence products within the Union. Where Member States impose such restrictions on grounds of security or defence, it shall be done only if those restrictions are:
  - (a) transparent, i.e. enshrined in public statements/documents;
  - (b) duly motivated, i.e. they need to spell out the reasons and the link to security or defence;
  - (c) proportionate, i.e. not going beyond what is strictly necessary;
  - (d) relevant and specific, i.e. a restriction needs to be specific to a crisis relevant defence product ;
  - (e) non-discriminatory.

*Article 52*

[...]

*Article 53*

**Certification in a supply crisis state**

1. Where the Council activates this measure in accordance with Article 44(3a), Member States shall ensure that administrative procedures related to the certification of crisis-relevant defence products and where necessary technical adaptations are processed in the most rapid possible way, according to their applicable national laws and regulations.
2. Where such status exists in national law, certification of crisis-relevant defence products shall be allocated the status of the highest national significance possible.
3. Where this measure is activated, crisis relevant defence products certified in a Member State shall be deemed certified in another Member State without being subject to additional controls.
4. The implementing act of the Council referred to in Article 44(3a) may lay down more precise provisions on the scope of this measure.

5. This measure shall be without prejudice to the protection of Member States' essential security interests as referred to in paragraph 1(a) of Article 346 TFEU.

*Article 54*

[...]

## **SECTION 2B**

### **PENALTIES**

*Article 55*

#### **Penalties**

1. The Commission may, by way of implementing act, impose on the economic operators being the addressees of information gathering measures referred to in Articles 46, and 49, or of any of the obligations to inform the Commission of a third-country obligation pursuant to Articles 47(16) and 50(8) or to prioritise the production of crisis-relevant products pursuant to Articles 47 or 49, where it deems it to be necessary and proportionate:
- (a) fines not exceeding EUR 100 000 where it, intentionally or through gross negligence, supplies incorrect, incomplete or misleading information in response to a request made pursuant to Article 46 , or does not supply the information within the prescribed time limit;
  - (b) fines not exceeding EUR 50 000 where it, intentionally or through gross negligence, does not comply with the obligation to inform the Commission of a third-country obligation pursuant to Article 47(16) and 50(8);
  - (c) periodic penalty payments not exceeding 1,5 % of the average daily turnover in the preceding business year for each working day of non-compliance from the date established in the decision in which the priority-rated order was issued, where it, intentionally or through gross negligence, does not comply with an obligation to prioritise the production of crisis-relevant products pursuant to Article 47. Where the economic operator concerned is an SME, the periodic penalty payments imposed shall not exceed 0,5 % of its average daily turnover in the preceding business year;

- (d) fines not exceeding EUR 100 000 where it, intentionally or through gross negligence, does not comply with the obligation to prioritise the production of crisis-relevant products pursuant to Article 49.
2. Before taking a decision pursuant to paragraph 1 of this Article, the Commission shall provide an opportunity for the concerned economic operators to be heard in accordance with Article 56. It shall take into account any duly reasoned justification presented by them for the purpose of determining whether fines or periodic penalty payments are deemed necessary and proportionate.
  3. Implementing acts referred to in this Article shall be adopted in accordance with the examination procedure referred to in Article 58(3).
  4. In fixing the amount of the fine or periodic penalty payment, the Commission shall take into consideration the nature, gravity and duration of the infringement, including in cases of non-compliance with the obligation to accept or prioritise a priority-rated order set out in Article 47, whether the economic operators have partially complied with the priority-rated order.
  5. The fines shall constitute external assigned revenue within the meaning of Article 21(5) of the Financial Regulation and shall be directed to the Programme and of the Ukraine Support Instrument.
  6. The economic operator shall not be deemed responsible for not sharing information that is considered as classified for national use only.

*Article 55a*

**Limitation period for the imposition of penalties**

1. The powers conferred on the Commission by Article 55 shall be subject to the following limitation periods:
  - (a) two years in the case of infringements of provisions concerning requests of information pursuant to Article 46;
  - (b) two years in the case of infringements of provisions concerning information obligation pursuant to Article 47(13) and Article 50(8);

- (c) three years in the case of infringements of provisions concerning the obligation related to the prioritisation of the production of crisis-relevant products pursuant to Articles 47 and 50.
2. The limitation periods referred to in paragraph 1 shall begin to run on the day on which the infringement is committed. Where there are continuous or repeated infringements, the limitation periods shall begin to run on the day on which the last infringement was committed.
  3. Any action taken by the Commission or the competent authorities of the Member States for the purpose of ensuring compliance with this Regulation shall interrupt the limitation period.
  4. The interruption of the limitation period shall apply for all the parties which are held responsible for the participation in the infringement.
  5. Each interruption shall start the time running afresh. However, the limitation period shall expire at the latest on the day on which a period equal to twice the limitation period has elapsed without the Commission having imposed a fine or a periodic penalty payment. That period shall be extended by the time during which the limitation period is suspended because the decision of the Commission is the subject of proceedings pending before the Court of Justice.

*Article 55b*

**Limitation period for the enforcement of penalties**

1. The power of the Commission to enforce decisions taken pursuant to Article 55 shall be subject to a limitation period of three years.
2. Time shall begin to run on the day on which the decision becomes final.
3. The limitation period for the enforcement of fines and periodic penalty payments shall be interrupted:
  - (a) by notification of a decision varying the original amount of the fine or periodic penalty payment or refusing an application for variation;
  - (b) by any action of the Commission or of a Member State, acting at the request of the Commission, designed to enforce payment of the fine or periodic penalty payment.

4. Each interruption shall start time running afresh.
5. The limitation period for the enforcement of fines and periodic penalty payments shall be suspended for as long as:
  - (a) time to pay is allowed;
  - (b) enforcement of payment is suspended pursuant to a decision of the Court of Justice.

*Article 56*

**Right to be heard for the imposition of fines or periodic penalty payments**

1. Before adopting a decision pursuant to Article 55, the Commission shall ensure that the economic operators concerned have been given the opportunity to submit observations on:
  - (a) the preliminary findings of the Commission, including any matter to which the Commission has taken objections;
  - (b) the measures that the Commission may intend to take in view of the preliminary findings pursuant to point (a) of this paragraph.
2. The economic operators concerned may submit their observations to the Commission's preliminary findings within a time limit which shall be fixed by the Commission in its preliminary findings, and which may not be less than 14 working days.
3. The Commission shall base its imposition of fines or periodic penalty payments only on objections on which the economic operators concerned have been able to comment.
4. Where the Commission has informed the economic operators concerned of its preliminary findings as referred to in paragraph (1), it shall give access, if so requested, to the Commission's file under the terms of a negotiated disclosure, subject to the legitimate interest of economic operators in the protection of their business secrets, or in order to preserve business secrets or other confidential information of any person. The right of access to the file shall not extend to confidential information and internal documents of the Commission or the authorities of the Member States. In particular, the right of access shall not extend to correspondence between the Commission and the authorities of the Member States. Nothing in this paragraph shall prevent the Commission from disclosing and using information necessary to prove an infringement.

## **Section 2c**

### **Governance**

#### *Article 57*

#### **Defence Security of Supply Board**

1. The Defence Security of Supply Board is hereby established.
2. The general task of the Board is to assist and provide advice and recommendations to the Commission pursuant to this Chapter.
3. [...]
4. The Commission shall maintain a regular flow of information to the Defence Security of Supply Board on any planned measures or measures that have been taken following the activation of the supply crisis state. The Commission shall provide the necessary information through a secured IT system.
5. For the purposes of preparing and addressing the supply-crisis state as referred to in Article 44, the Defence Security of Supply Board shall assist the Commission and shall be entrusted with the following tasks:
  - (a) analysing crisis-relevant information gathered by Member States or the Commission;
  - (aa) providing guidance and advice on possible preparedness measures;
  - (b) assessing whether the criteria for activation or deactivation of the supply-crisis state have been fulfilled;
  - (ba) facilitating coordinated action by the Commission and the Member States;
  - (c) providing guidance on the implementation of the measures chosen to respond to supply crisis at Union level, including on the activation of the measures as referred to in Article 49 to 53;
  - (da) providing opinions and guidance, including specific response measures, for the Member States for ensuring the timely availability and supply of crisis-relevant products;

- (e) facilitating exchanges and sharing of information, including with other crisis-relevant bodies at Union level, as well as, as appropriate, third countries and international organisations.
6. [...]
7. The Defence Security of Supply Board shall be composed of the representatives from all the Member States, the Commission, the High Representative, and the European Defence Agency. Each Member State shall nominate one representative and one alternate representative. The Board shall be co-chaired by a representative of the Commission and of the Member State holding the rotating presidency of the Council. The secretariat of the Defence Security of Supply Board shall be ensured by the Commission. Only Member States shall have voting rights.
- 7a. Associated countries shall have the right to become members, without voting rights, of the Board in accordance with the conditions set out under the Agreement on the European Economic Area.
8. The Defence Security of Supply Board shall meet whenever the situation requires, upon request from the Commission or a Member State or an associated country. It shall adopt its rules of procedure on the basis of a proposal submitted by the Commission.
9. The Defence Security of Supply Board may issue opinions, upon the request of the Commission or on its own initiative. The Defence Security of Supply Board shall endeavour to find solutions which command the widest possible support.
10. The Defence Security of Supply Board shall invite, at least once a year, representatives from National Defence Industrial Associations and selected industrial representatives, to take part, as observers, in the work of the Board, taking into account the necessity to ensure a balanced geographical representation. Where the supply crisis state referred to in Article 44 has been activated, the Defence Security of Supply Board shall invite high-level industrial representatives to take part, as observers, in the work of the Board meeting in a special configuration in order to discuss issues linked to crisis-relevant products.
11. The Defence Security of Supply Board shall invite the representatives of other crisis-relevant bodies at Union level as observers to the relevant meetings of the Board.

12. The Defence Security of Supply Board shall invite, where relevant, in line with its rules of procedure and with due respect to the security and defence interests of the Union and its Member States, a representative from Ukraine to attend meetings as an observer.
13. The Commission shall ensure transparency and provide Member States with equal access to information in order to ensure that the decision-making process reflects the situation and the needs of all Member States.
14. The Commission may, on its own initiative or on the proposal of the Defence Security of Supply Board, set up, on an ad hoc basis, working groups consisting of experts appointed by Member States to support the Defence Security of Supply Board in its work for the purpose of examining specific questions on the basis of the tasks referred to in paragraph 1. The EDA may be invited to meetings of the working groups.
15. The Commission shall set up a working group consisting of experts appointed by Member States on legal, regulatory and administrative hurdles. The objectives of this working group are:
  - (a) to identify existing or potential legal, regulatory and administrative obstacles at international, EU and national levels to the achievement of the objectives listed in Article 4;
  - (b) to identify potential solutions and/or mitigation measures to identified obstacles.

## **Chapter V**

### **Evaluation and control**

#### *Article 58*

#### **Committee Procedure**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. The EDA shall be invited to provide its views and expertise to the committee as an observer. The EEAS shall also be invited to assist in the work of the committee.

- 2a. The Commission may, on its own initiative or upon request by one or several Member States, invite, where relevant, representatives of Ukraine to attend meetings of the Committee where specific draft implementing acts relating to the Ukraine Support Instrument are discussed, with a view to allowing them to share views and respond to questions from Member States. Representatives of Ukraine shall not be present during deliberations, nor participate in voting of the Committee.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
4. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and Article 5(4), third subparagraph, of Regulation (EU) No 182/2011 shall apply.

#### *Article 59*

#### **Administrative arrangement**

1. The Commission shall conclude an administrative arrangement with Ukrainian competent authorities for the implementation of the actions set out in this Regulation which concern Ukraine or legal entities established in Ukraine receiving Union funds.
2. The administrative arrangement concluded with Ukrainian competent authorities, taken as a whole, and contracts and agreements signed with legal entities established in Ukraine receiving Union funds, shall ensure that the obligations set out in Article 129 of the Financial Regulation can be fulfilled.
3. The administrative arrangement shall lay down the obligations of the Ukrainian authorities and bodies entrusted with budget implementation tasks to take all the necessary measures including legislative, regulatory and administrative measures to respect the principles of sound financial management, transparency and non-discrimination, to ensure the visibility of Union action when managing the Union funds, to fulfil the appropriate control and audit obligations and assume the resulting responsibilities, and to protect the financial interests of the Union, by, in particular, detailed enacting provisions concerning:
  - (a) the activities related to control, supervision, monitoring, evaluation, reporting and audit of Union funding under the Ukraine Support Instrument, as well as investigations, anti-fraud measures and cooperation;

- (b) rules on taxes, duties and charges in accordance with Article 27(9) and (10) of Regulation (EU) 2021/947;
  - (c) the right of the Commission to monitor activities under this Regulation carried out by the legal entities established in Ukraine, along the whole project cycle, including for cooperation for common procurement action, to take part in these as observer, as appropriate, and to make recommendations for the improvement of such activities and commitment by the Ukrainian authorities to make their best efforts to implement such recommendations of the Commission and to report on this implementation;
  - (d) the obligations referred to in Article 64(2), including precise rules and timeframe on collection of data by Ukraine and access for the Commission and OLAF;
  - (e) the preservation of security interests, including a level of protection of classified information and confidentiality equivalent to that set out in Articles 59 and 60;
  - (f) provisions on protection of personal data.
4. Funding shall only be granted to Ukraine after the administrative arrangement has entered into force and that the actions needed to implement the requirements it establishes have been implemented by the parties.
5. The Commission shall ensure that, from its side, all necessary steps are taken for the administrative arrangement to become effective no later than 6 months after entry into force of this Regulation.

#### *Article 60*

##### **Application of the rules on classified information**

1. The originatorship of classified foreground information generated in implementing eligible actions listed under Article 11, shall be under the responsibility of the participating Member States who will establish the applicable security framework under relevant national laws.
2. Such a security framework shall be without prejudice to the possibility for the Commission to have access to the necessary information for carrying out the action.
3. The Commission shall protect classified information received in accordance with the security rules set out in Decision (EU, Euratom) 2015/444 and Decision 2013/488/EU.

4. The applicable security framework for the action has to be put in place at the latest before the signature of the grant agreement or the contract. The relevant documents shall form integral part of the Grant Agreement.
5. The Commission shall make available approved and accredited existing systems to facilitate the exchange of classified information between the Commission, the EEAS, the EDA, the Member States and associated countries and, where appropriate, with Ukraine, the applicants and the recipients.

#### *Article 61*

### **Confidentiality and processing of information**

1. Information received as a result of the application of this Regulation shall be used only for the purpose for which it was requested.
2. Member States, the Commission and the EEAS and the EDA shall ensure the protection of trade and business secrets and other sensitive and classified information acquired and generated in application of this Regulation in accordance with Union law and respective national law.
3. Member States, the Commission, the EEAs and the EDA shall ensure that classified information provided or exchanged under this Regulation is not downgraded or declassified without the prior written consent of the originator.
4. The Commission shall not share any information in a way that can lead to the identification of an entity when the sharing of the information results in potential commercial or reputational damage to that entity or in divulging any trade secrets.
5. The Commission shall handle information containing any data of an entity or any trade secrets in a way not less stringent than the handling of sensitive non-classified Information, including the application of the “need to know principle” and the handling and sharing in appropriate encrypted environments.

#### *Article 62*

### **Personal data protection**

1. This Regulation shall be without prejudice to the obligations of Member States relating to their processing of personal data under Regulation (EU) 2016/679 of the European

Parliament and of the Council <sup>(6)</sup> and Directive 2002/58/EC of the European Parliament and of the Council <sup>(7)</sup>, or the obligations of the Commission and, where appropriate, other Union institutions, bodies, offices and agencies, relating to their processing of personal data under Regulation (EU) 2018/1725 of the European Parliament and of the Council <sup>(8)</sup>, when fulfilling their responsibilities.

2. Personal data shall not be processed or communicated except in cases where this is strictly necessary for the purposes of this Regulation. In such cases Regulations (EU) 2016/679 and (EU) 2018/1725 shall apply as appropriate.
3. Where the processing of personal data is not strictly necessary to the fulfilment of the mechanisms established in this Regulation, personal data shall be rendered anonymous in such a manner that the data subject is not identifiable.

### *Article 63*

#### **Audits**

Audits on the use of the Union contribution carried out by persons or entities, including by persons or entities other than those mandated by the Union institutions, bodies, offices or agencies, shall form the basis of the overall assurance pursuant to Article 127 of the Financial Regulation. The Court of Auditors shall examine the accounts of all revenue and expenditure of the Union in accordance with Article 287 TFEU.

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<sup>6</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>7</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

<sup>8</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

## *Article 64*

### **Protection of the financial interests of the Union**

1. Where an associated country participates in the Programme by means of a decision adopted pursuant to the Agreement on the European Economic Area or on the basis of any other legal instrument, the associated country shall grant the necessary rights and access required for the authorising officer responsible, OLAF and the Court of Auditors to comprehensively exercise their respective competences. In the case of OLAF, such rights shall include the right to carry out investigations, including on-the-spot checks and inspections, as provided for in Regulation (EU, Euratom) No 883/2013.
2. The agreement referred to in Article 59 shall provide for the obligations of Ukraine:
  - (a) to take appropriate measures to prevent, detect and correct fraud, corruption, conflicts of interests and irregularities affecting the financial interests of the Union, to avoid double funding and to take legal actions to recover funds that have been misappropriated;
  - (b) to regularly check that the financing provided has been used in accordance with the applicable rules, in particular regarding the prevention, detection and correction of fraud, corruption, conflicts of interests and irregularities;
  - (c) to accompany a request for payment under the Ukraine Support Instrument by a declaration that the funds were used in accordance with the principle of sound financial management and for their intended purpose and managed appropriately in particular in accordance with Ukrainian rules complemented by international standards, on prevention, detection and correction of irregularities, fraud, corruption and conflicts of interests;
  - (d) to expressly authorise the Commission, OLAF, the Court of Auditors and, where applicable, EPPO to exert their rights as provided for in Article 129(1) of the Financial Regulation, in application of the principle of proportionality.

## *Article 65*

### **Information, communication and publicity**

1. The recipients of Union funding shall acknowledge the origin of the funds and ensure the visibility of the Union funding, in particular when promoting the actions and their results,

by providing coherent, effective and proportionate targeted information to multiple audiences, including the media and the public.

2. The Commission shall implement information and communication actions relating to this Regulation, to actions taken pursuant to this Regulation and to the results obtained.
3. Financial resources allocated to the Programme shall contribute to the corporate communication of the political priorities of the Union, insofar as those priorities are related to the objectives referred to in Article 4.
4. Financial resources allocated to the Programme may contribute to the organisation of dissemination activities, match-making events and awareness-raising activities, in particular aiming at opening up supply chains to foster the cross-border participation of SMEs.

#### *Article 66*

#### **Evaluation and review**

1. By 30 June 2027, the Commission shall draw up a report evaluating the implementation of the measures set out in this Regulation and their results, focusing in particular on chapters III and IV. The report shall also assess the possibility of extending the applicability of the measures set out in this Regulation and provide for their funding, particularly with regard to the evolution of the security context and any persistent risks in relation to the supply of defence products. The evaluation report shall build on consultations of the Member States and key stakeholders.
2. The Commission shall present the report to the European Parliament and the Council, accompanied, where appropriate, by relevant legislative proposals.

#### *Article 67*

#### **Entry into force**

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

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

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*

