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WORKING DOCUMENT

From:	Presidency
To:	Working Party on defence industry (DIWP)
Subject:	Regulation establishing the European Defence Industry Programme (EDIP): Mandate for negotiations with the European Parliament (cleaned)

Delegations will find attached a cleaned version of ST 10204/25, highlighting in yellow the latest amendments proposed by the Presidency vis- à-vis the text contained in WK 13955/24 REV 7 and ST 9841/25.

2024/0061 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing the European Defence Industry Programme and a framework of measures to ensure the timely availability and supply of defence products ('EDIP Regulation')

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

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

Whereas:

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

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1 OJ C , , p. .

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

(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 European defence industry.

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

(3) In its conclusions of 14 and 15 December 2023, the European Council, , 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[3], aimed at urgently supporting the ramp-up of manufacturing capacities of the European defence industry, securing supply chains, facilitating efficient procurement procedures, addressing shortfalls in production capacities and promoting investments. On 18 October 2023 the European Parliament and the Council adopted Regulation (EU) 2023/2418[4], aimed at supporting collaboration between Member States in the procurement phase to fill the most urgent and critical gaps in a collaborative way, especially those gaps created by the response to Russia's war of aggression against Ukraine.

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

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[3] 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).

[4] 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).

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

(5b) In June 2024, the European Council invited the Council, the 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 (CDP) and on 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 its Member States remain committed to contributing, for the long-term and together with partners, to security commitments to Ukraine which will help the latter to defend itself, resist destabilisation efforts and deter acts of aggression in the future. Strong support to Ukraine is a key priority for the Union and an appropriate response to the Union's strong political commitment to support Ukraine for as long as necessary.

(7) The damage caused by Russia's war of aggression to the Ukrainian economy, society and infrastructure, and in particular damage caused to the Ukrainian defence technological and industrial base (the 'Ukrainian DTIB'), means that comprehensive support is required to rebuild the Ukrainian DTIB. Such support is essential in order to provide Ukraine with the capacity to maintain essential state functions, contributing to the fast recovery, reconstruction and modernisation of the country as well as to 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) Actions supporting the reinforcement of the Ukrainian DTIB should be financially supported by the Union. That support is complementary to the support provided under the

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

(9) Russia must be held fully accountable and pay for the massive damage caused by its war of aggression against Ukraine, which constitutes a blatant violation of the Charter of the United Nations. The Union and its Member States should, in close cooperation with other international partners, continue to work towards that goal, in accordance with Union and international law, taking into account Russia's serious breach of the prohibition on the use of force enshrined in Article 2(4) of the Charter of the United Nations and the principle of State responsibility for internationally wrongful acts, including the obligation to compensate for the financially assessable damage caused. In coordination with international partners, progress has been made on how extraordinary revenues held by private entities stemming directly from the immobilisation of Russia's sovereign assets could be directed to support Ukraine, including the Ukrainian DTIB, in a manner that is consistent with applicable contractual obligations and in accordance with Union and international law. Additional support could be drawn from the transfer to the Union of extraordinary cash balances of central securities depositories arising from the unexpected and extraordinary revenues stemming from the immobilisation of Russia's sovereign assets or any other relevant Union restrictive measures.

(9a) Following the strong commitment of the G7 leaders to helping Ukraine meet its urgent short-term financing needs and to supporting its long-term recovery and reconstruction priorities, on 28 October 2024 the European Parliament and the Council adopted Regulation (EU) 2024/2773[5] establishing the Ukraine Loan Cooperation Mechanism and providing exceptional macro-financial assistance to Ukraine. Regulation (EU) 2024/2773 provides that the Memorandum of Understanding on policy conditions for the macro-financial assistance shall include a commitment to promote cooperation with the Union on the recovery, reconstruction and modernisation of the Ukrainian defence industry, in line with the objectives of Union programmes aimed at the recovery, reconstruction and modernisation of Ukrainian DTIB and other relevant Union programmes.

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

(10) 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.

(11) To fund the actions that aim to strengthen the competitiveness and readiness of the EDTIB based on Article 173 of the Treaty on the Functioning of the European Union (TFEU) and the actions that aim to contribute to the recovery, reconstruction and modernisation of the Ukrainian DTIB, taking into account its possible future integration into the EDTIB, under Article 212 TFEU, this Regulation should establish a Programme (the 'Programme') setting out the conditions for Union financial support under Article 173 TFEU and a Ukraine Support Instrument setting out the specific conditions for Union financial support under Article 212 TFEU.

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

(12) This Regulation should lay down a financial envelope for the period 2025 to 2027 which is to constitute the prime reference amount, within the meaning of point 18 of the Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources[6], for the European Parliament and the Council during the annual budgetary procedure.

(12a) The European Council, in its conclusions of July 2020, stated that the duration of the Multiannual Financial Framework (MFF) sectoral programmes should, as a rule, be aligned with the time frame of the MFF 2021-2027. After the expiry of the MFF 2021-

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6 OJ L 433I, 22.12.2020, p. 28.

2027, Union funding to sectoral programmes will be subject to the outcome of negotiations on the next MFF from 2028.

(13) The possibilities provided for in Article 73(4) of Regulation (EU) 2021/1060 of the European Parliament and of the Council[7] 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[8] and (EU) 2021/1057[9] of the European Parliament and of the Council, respectively. This could, in particular, be the case where the production of relevant defence products faces specific market failures or suboptimal investment situations in the Member States' territories, in particular in vulnerable and remote areas, and such resources contribute to the achievement of the objectives of the programme from which they are transferred. In line with Article 24 of Regulation (EU) 2021/1060, the Commission is to assess the amended programmes submitted by the Member State and make observations within two months of the submission of the amended programme.

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

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7 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).

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

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

Parliament and the Council[10] (the 'Financial Regulation'). In addition, Member States should be able to use the flexibility in the implementation of their shared management allocations offered by Regulation (EU) 2021/1060. It should therefore be possible to transfer certain levels of funding between shared management allocations and the Programme or the Ukraine Support Instrument, subject to the conditions set out in the relevant provisions of Regulation (EU) 2021/1060 of the European Parliament and the Council. It should be possible for resources that remain uncommitted at by the end of 2028 to be transferred back to one or more respective source programmes, at the request of the Member State concerned, in accordance with the conditions set out in Regulation (EU) 2021/1060.

(14-a) [redacted]

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

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

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

implementation of the programmes on the basis of a decision adopted under that Agreement.

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

(15a) [redacted]

(16) In certain circumstances, it should be possible to derogate from the principle that legal entities involved in an action supported by the Programme use infrastructure, facilities, assets or resources located on the territory of a Member State or of an associated country, and are not subject to control by non-associated third countries or non-associated third-country entities. In that context, a legal entity established in the Union or in an associated country using infrastructure, facilities, assets or resources located outside the territory of a Member State or of an associated country, or controlled by a non-associated third country or a non-associated third-country entity, should be able to participate as recipient if strict conditions relating to the security and defence interests of the Union and its Member

States, as established in the framework of the CFSP pursuant to Title V of the Treaty on European Union (TEU), including in terms of strengthening the EDTIB, are fulfilled. Similar derogations should be provided for actions supported under the Ukraine Support Instrument, to allow for the use of infrastructure, facilities, assets or resources located outside the territory of a Member State or Ukraine, and for the participation of legal entities established in the Union and controlled by a third country other than Ukraine or by another third-country entity.

(16a) [redacted]

(16aa) In order to increase the competitiveness of the EDTIB, foster the recovery, reconstruction and modernisation of the Ukrainian DTIB, and ensure the timely availability and supply of defence products from these defence technological and industrial bases, it is important to establish minimum requirements concerning the value generated within the Union and associated countries or, where relevant, Ukraine. This will enhance the efficiency of the Union support under the Programme and the Ukraine Support Instrument. Therefore, for actions supported by Union funding under the Programme or the Ukraine Support Instrument, the cost of the components originating outside the Union and associated countries or, where relevant, Ukraine should not be higher than 35 % of the estimated cost of the components of the end-product or of the product the increase in production capacity

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11 OJ L 79I, 21.3.2019, p. 1–14

of which is supported by Union funding. Raw materials are not considered components. The objectives pursued under this Regulation will be achieved all the more effectively if the cost of these components is lower than the abovementioned 35% threshold. Recipients of Union funding are invited to aim at gradually lowering that percentage in new products.

(16ab) [redacted]

(16b) In order to ensure that, in the implementation of this Regulation, the international obligations of the Union and its Member States are respected, actions relating to products or technologies the use, development or production of which is prohibited by applicable international law should not be eligible for funding under the Programme and the Ukraine Support Instrument.

(17a) The Programme and Ukraine Support Instrument should provide financial support in accordance with the Financial Regulation, to actions contributing to strengthening the competitiveness, responsiveness and ability of the EDTIB or the recovery, reconstruction and modernisation of the Ukrainian DTIB to ensure the timely availability and supply of defence products, such as cooperation of legal entities in the common procurement of defence products and actions aimed at accelerating the adjustment to structural changes of the production capacity of defence products, components and corresponding raw materials. This could include industrial coordination on the reservation of defence products, access to finance for undertakings involved in the manufacturing of defence products, reservation of

manufacturing capacities ('ever warm facilities') or industrial processes of reconditioning of expired products, expansion, optimisation, modernisation, upgrading or repurposing of existing, or the establishment of new, production capacities in that field. It could furthermore cover a number of additional supporting actions, in line with the objectives of the Financial Regulation, such as the training, reskilling or upskilling of personnel.

(17b) In view of the current geopolitical context, and in particular Russia's war of aggression against Ukraine, the protection of Union's essential security interests requires the adoption of specific measures on the procurement of defence products aimed at fostering the competitiveness of the EDTIB and ensuring the timely availability and supply of defence products procured from the EDTIB, throughout the Union. The protection of the Union's essential security interests also requires the involvement of Ukraine and of EEA countries in those measures, not only because of their geographical position and the fact that Ukraine is directly faced with Russia's ongoing war of aggression, but also in view of their close procurement partnership with the Union, as reflected in particular in the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part[12] and in the Agreement on the European Economic Area[13].

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

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

Union financial support under the Programme cover up to 100 % of the eligible costs for the supporting actions.

(18-a) As the different types of actions are complementary and necessary for offsetting the complexity of cooperation and de-risking industrial investments via Union financial support allowing a faster adaptation of the defence industry to ongoing structural market change, it appears justified that a substantial amount representing at least 15 % of the financial envelope allocated to the Programme be reserved for actions referred to common procurement action and at least 30 % of that envelope be reserved for industrial reinforcement actions. The Union support for industrial reinforcement actions should cover up to 35 % of eligible costs in order to enable recipients to implement actions as soon as possible, to de-risk their investment and therefore to accelerate the availability of relevant defence products.

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

(20) Common procurement actions should be funded under this Regulation by way of grants taking the form of financing not linked to cost based on the achievement of results by reference to work packages, milestones or targets of the common procurement process, in order to create the necessary incentive effect. The Commission should strive to award funding under the Programme to those proposals submitted to a call for proposals that meet the applicable eligibility criteria and that exceed all the relevant evaluation thresholds set out in the work programme.

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

(21a) [redacted]

(23) In accordance with Article 196(2) of the Financial Regulation, a grant may be awarded for an action which has already begun, provided that the applicant can demonstrate the need for starting the action prior to signature of the grant agreement. However, costs incurred

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

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

(26a) To strengthen the competitiveness, responsiveness and ability of the EDTIB to ensure the timely availability and supply of defence products and contribute to the recovery, modernisation and reconstruction of the Ukrainian DTIB, taking into account its possible future integration into the EDTIB, it is necessary to support the commercialisation of defence products. To mitigate any distortion of the market, profits generated by successful commercialisation supported by the Union budget should be recovered in accordance with the principle of proportionality. By derogation from Article 195(2) of the Financial Regulation, such recovery of profits should take fully into account all revenue generated, including revenues from Member State, Ukraine and third-party support to the action, in addition to the Union support itself. The profits recovered should be re-used to benefit the objectives of this Regulation.

(27) In accordance with the Financial Regulation, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council[14] and Council Regulations (EC, Euratom) No

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

2988/95[15], (Euratom, EC) No 2185/96[16] and (EU) 2017/1939[17], the financial interests of the Union are to be protected by means of proportionate measures, including measures relating to the prevention, detection, correction and investigation of irregularities, including fraud, to the recovery of funds lost, wrongly paid or incorrectly used, and, where appropriate, to the imposition of administrative penalties. In particular, in accordance with Regulations (Euratom, EC) No 2185/96 and (EU, Euratom) No 883/2013, the European Anti-Fraud Office (OLAF) has the power to carry out administrative investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. The European Public Prosecutor's Office (EPPO) is empowered, in accordance with Regulation (EU) 2017/1939, to investigate and prosecute criminal offences affecting the financial interests of the Union as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council[18]. In accordance with the Financial Regulation, any person or entity receiving Union funds is to fully cooperate in the protection of the financial interests of the Union, grant the necessary rights and access to the Commission, OLAF, the European Court of Auditors and, in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, the EPPO, and to ensure that any third parties involved in the implementation of Union funds grant equivalent rights.

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

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

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

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

18 Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28/07/2017, p. 29).

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

(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 aimed at reinforcing the competitiveness of the EDTIB throughout the Union while contributing to the development of Member States' military capabilities and systems of common interest or use, including those securing access to all operational domains. Due to the sensitive nature of the decision to identify an EDPCI in light of its potential impact on national security interests, and the importance of ensuring the contribution of such projects to the defence readiness of all Member States, the power to adopt implementing acts to identify a list of EDPCIs should be conferred on the Council, upon a proposal from the Commission. Before proposing such implementing acts, the Commission should take into account the views of all Member States and the project proposals they have for possible EDPCIs. When preparing such project proposals, Member States should coordinate in an inclusive manner, using for that purpose the support of the EDA when necessary. In addition to being consistent with the capability priorities identified in the context of the CFSP, including the CDP, and with the objectives of the Strategic Compass for Security and Defence, EDPCIs should, where appropriate, also pursue coherence of output with respective NATO processes such as the NATO Defence Planning Process. Before submitting a proposal for an implementing act, the Commission should invite the High Representative and the EDA, as necessary, to provide input with a view to ensuring consistency with the above mentioned priorities identified in the context of CFSP and, where appropriate, the collaborative opportunities identified in the context of CARD as well as the projects agreed in the context of PESCO. This will complement the information provided by Member States regarding project proposals. The Commission should also verify that all Member States and associated countries were informed of the emergence of a project and were given the opportunity to participate. The Council should be able to add or remove projects or make other amendments to the Commission proposal for an

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

implementing act. The maturity of a project, its foreseen contribution to defence readiness and the number of participating Member States should be taken into consideration by the Council when assessing a proposal for an implementing act.

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

(28b) The ability of the EDTIB to ensure the availability of defence products in time and in volume is essential to its competitiveness, especially during periods of heightened security tensions. During such periods, the EDTIB might lack the production capacity necessary to meet Member States' urgent needs and its products might be less visible to Member States

than products offered by third countries or third country entities. This Regulation should therefore provide a military sales mechanism, including measures to increase the speed to market of defence products from the EDTIB by leveraging the use of government-to-government contracts.

(28c) With support from the Programme and the Ukraine Support Instrument, Member States, associated countries and Ukraine should be able to establish, manage and maintain defence industrial readiness pools made up of defence products which Member States, associated countries and Ukraine could easily purchase or use, for the purpose of strengthening the competitiveness of the EDTIB and the reconstruction, recovery and modernisation of the Ukrainian DTIB. Such pools, consisting of stocks of defence products procured from the EDTIB or the Ukrainian DTIB, would attract demand and increase predictability for the defence sector. They would give positive signals to the Union and the Ukrainian industry, incentivising them to produce defence products and to invest for the purpose of strengthening industrial capacities in that sector. Furthermore, the defence industrial readiness pools would improve the security of supply of defence products for Member States by improving product availability and reducing delivery lead times, including in supply crisis situations.

(28d) To improve Member States' awareness of the availability of EDTIB and Ukrainian DTIB products, the Programme should also provide for the establishment, by the Commission, of a catalogue of defence products developed by the EDTIB as well as the Ukrainian DTIB, based on voluntary contributions by Member States' and Ukrainian economic operators. When setting up this catalogue, the Commission should consult the EDA and take into account its expertise.

(29) Building inter alia on the experience of the Defence Equity Facility, established in the context of the European Defence Fund as an InvestEU blending operation, the Commission should 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 should leverage, de-risk and accelerate investments needed to increase the defence manufacturing capacities of -Union based SMEs and mid-caps, in the form of a blending operation offering support in the form of debt 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 mid-caps across the Union, in the stage of industrialisation or manufacturing of defence products or having imminent plans to do so, facing difficulties in accessing finance. FAST should as well accelerate investment in the field of manufacturing defence technologies and products, and therefore strengthen the security of supply of the Union's defence industry value chains.

(30a) Increasing the number and magnitude of common procurements of defence products from the EDTIB and the Ukrainian DTIB is necessary to achieve the objectives of the Programme and of the Ukraine Support Instrument. In accordance with Article 168(2) and (3) of the Financial Regulation, Member States may request the Commission to engage in joint procurement with them, including through advance purchasing agreements, or as a central purchasing body. Associated countries should be able to request the Commission to engage in joint procurement, by way of derogation from Article 168(2), second subparagraph, of the Financial Regulation, as such a possibility is not provided for in a bilateral or multilateral treaty with those countries. Together with at least one Member State, associated countries should also be able to request the Commission to act as central purchasing body, by way of derogation from Article 168(3) of the Financial Regulation, as the latter does not provide for the participation of third countries to such action. Similarly, for the purposes of the Ukraine Support Instrument, Ukraine should be able to participate in such actions. Together with at least one Member State, Ukraine should be able to request the Commission to engage in joint procurement, by way of derogation from Article 168(2), second subparagraph, of the Financial Regulation, as such a possibility is not provided for in a bilateral or multilateral treaty with Ukraine. Ukraine, together with at least one Member State, should also be able to request the Commission to act as a central purchasing body, by way of derogation from Article 168(3) of the Financial Regulation, for the same reason as stated above. To foster the aggregation of demand in the case of joint procurement, the Commission should ensure that such procurement procedure is open

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[20] 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).

to all Member States and, where relevant, associated countries. With a view to fostering the industrial ramp-up of manufacturing capacities of the EDTIB and the Ukrainian DTIB, the Commission should furthermore facilitate the conclusion of off-take agreements in compliance with Union competition and procurement rules. For the purpose of joint procurement with support of the Commission, the use of the Union budget will be in line with the objectives and the applicable eligibility criteria of the Programme or the Ukraine Support Instrument and will be aimed at supporting the adaptation of the manufacturing capacity of defence industrial supply chains. It could, in particular, serve to de-risk the industrial investments such as the increase in manufacturing capacities or the acquisition of the requisite machine tools to ensure the performance of a contract and should, in any case, be strictly limited to cover the non-recurrent costs incurred in the context of the purchase or of the maintenance of defence products. It should be included in the Work Programmes of the Programme and the Ukraine Support Instrument.

(30b) In the cases covered by this Regulation, the immediate award and performance of a contract prior to its signature resulting from procurement procedures carried out with the support of the Commission for the purposes of this Regulation could be justified given the existing geopolitical situation, especially where the seriousness of the circumstances and of their implications for the security of the Union citizens require that the deliveries of the defence product concerned be effectively performed without any delay. For that specific purpose, it is necessary to allow for a derogation from Article 175(1) of the Financial Regulation while duly documented by the contracting authority.

(31) Cooperative armament programmes in the Union face significant challenges, being mostly set up on an ad hoc basis and being plagued by complexity, delays and cost overruns. To remediate that situation and ensure the continuous commitment of Member States until the end of the life-cycle of defence products, a more structured approach is required at Union level. To achieve such an approach, Member States' efforts should be supported by making available a new legal framework, namely the Structure for European Armament Programmes (SEAP), to underpin and strengthen their cooperation. To reach its objective of fostering the competitiveness of the EDTIB and, where Ukraine is participating, of the Ukrainian DTIB, a SEAP should be able to conduct the common development, procurement 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 CDP. Such actions should also not contravene the security and defence interests of the Union or its Member States, including the respect for the principle of good neighbourly relations.

(32) Within the SEAPs, Member States should benefit from standardised procedures for initiating and managing cooperative armament programmes, including guidelines on project management, procurement, financial management, and reporting, that may be provided by the Commission. Cooperation under this framework should also allow, under the conditions set out in Council Directives 2006/112/EC[21] and (EU) 2020/262[22], for a VAT or excise duty exemption, where the SEAP owns the procured equipment. Beyond contributions from the Programme and the Ukraine Support Instrument, SEAPs should also be able to receive contributions from other Union programmes, provided that the contributions do not cover the same cost. The rules of the relevant Union programme should apply to the corresponding contribution to the action concerned.

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

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

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

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

(33) In order to allow for an efficient procedure for the setting-up of a SEAP, it is necessary for the Member States, associated countries or Ukraine willing to set up a SEAP to submit an application to the Commission which should assess, whether the proposed statutes of the SEAP are in conformity with this Regulation. Such an application should contain a declaration of the Member State where the SEAP is foreseen to have its statutory seat recognising the SEAP as an international body or organisation for the purpose of the application of Directives 2006/112/EC and (EU) 2020/262, as of its setting-up.

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

(35) In order to carry out its tasks in the most efficient way, a SEAP should have legal personality as from the day on which the decision setting it up takes effect and should benefit from the most extensive legal capacity in each Member State. A SEAP should also benefit from the most extensive legal capacity in associated countries and Ukraine in cases where they are members of the SEAP. It should have a statutory seat within the territory of a Member State.

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

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

(38) It is necessary to ensure that, on the one hand, a SEAP has the necessary flexibility to amend its statutes and, on the other hand, that certain essential elements, in particular those which were necessary for the granting of the SEAP status, are preserved through a necessary control at Union level. If an amendment concerns an essential element of the statutes, such amendment should be approved by the Commission, prior to taking effect,Any other amendment should be notified to the Commission. With the exception of

amendments relating to a possible approach to the export of defence products, the Commission should have an opportunity to object to such amendments if it considers them contrary to this Regulation.

(39) A SEAP should be able to procure defence products on its own behalf or in the name of, or on behalf of, its members. For these purposes, SEAPs should be considered as international organisations within the meaning of Article 12, point (c), of Directive 2009/81/EC[23]. 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 of, or in the name of, a SEAP, as such contracts should be awarded in accordance with the procurement rules of the SEAP. Where Member States or, where applicable, associated countries procure defence products from a SEAP, the procurement should be considered as a government-to-government contract as referred to in Article 13, point (f), of Directive 2009/81/EC. SEAPs should define their own procurement rules, in compliance with Union primary law principles applicable to procurement, in particular those of equality of treatment, transparency, non-discrimination and proportionality, and with the rules set out in this Regulation. Where a SEAP entrusts procurement tasks to one or several entities, it should ensure that the procurement rules to be applied comply with those principles.

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

(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

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

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.

(43) In order to ensure sufficient control of compliance with this Regulation, a SEAP should transmit to the Commission its annual report and any information about circumstances threatening to seriously jeopardise the achievement of its tasks. If the Commission obtains indications, through the annual report or otherwise, that the SEAP acts in serious breach of this Regulation or other applicable law, it should request explanations or actions from the SEAP or its members. In extreme cases and if no remedial action is taken, the Commission should be able to repeal the decision setting up the SEAP, thus triggering the winding-up of the SEAP.

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

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

(45) Recent crises, such as the COVID-19 pandemic and the sharp increase in demand for certain defence products, notably ammunition, have exposed vulnerabilities of Union's supply chains in that area. They have also revealed how disruptions in the supply of those products or of components or raw materials critical to their production can hinder the functioning of the internal market. Those crises have highlighted the likely risk of emergence of diverging measures at national level, including for the preservation of stocks as a matter of national security and the certification of defence products, and the lack of coordination at Union level to address the shortages of products of critical importance for responding to the emerging crises, as well as of components and raw materials

indispensable to their production, resulting in difficulties to access to the products, components and raw materials needed to manufacture or acquire the relevant products, with the concrete risk to hamper thereby entire production chains. It is crucial to prevent the emergence of obstacles to cross-border trade between Member States due to such divergences in national law which would restrict the free movement of critical products and of the related components and raw materials in the internal market and disrupt the functioning of its supply chains. Those difficulties along the supply chains also revealed a lack of crisis management tools and coordination mechanisms, insufficient information sharing as well as insufficient overview of the manufacturing capacities across the Union, in particular for defence products.

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

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

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

inability of Member States to make informed decisions, in particular to address shortages or to mitigate a risk thereof.

(45e) There is a concrete risk that security of supply measures adopted at national level are not sufficient to tackle effectively the abovementioned challenges in the future and that the cross-border effects on the Union-wide defence supply chains cannot sufficiently be taken into account nor be appropriately addressed by individual Member States. In addition, uncoordinated approaches at national level, notably concerning the certification, intra-EU transfer of defence products and the prioritisation of orders with a military purpose, can have a severe negative impact on the functioning of the internal market for defence products, in particular by creating obstacles to cross-border trade, and exacerbate the overall shortages and disruptions in the supply chains.

(45f) In light of the abovementioned challenges, it appears necessary and appropriate to set up an Union-wide security of supply regime aimed at increasing the security of supply of defence products in order to ensure the proper functioning of the internal market and make it resilient to any shock.

In this context, it is essential to provide for coordination measures and to prepare for and respond to the impact of future supply crises on the internal market for defence products; to ensure security of supply of defence product, components and raw materials thereof, and any products and services critical to their production, whose availability is indispensable to ensure the proper functioning of the internal market and its supply chains and must be guaranteed to respond to a supply crisis ('crisis-relevant products'); and to prevent the creation of obstacles to, and ensure the proper functioning of, the internal market for defence products. Those measures should be based on Article 114 TFEU.

(45h) Directive 2009/81/EC concerns, amongst other things, the establishment of an appropriate legislative framework, which is a prerequisite for the creation of a European defence equipment market, on the coordination of procurement procedures for the award of contracts to meet the security requirements of Member States and the obligations arising from the TFEU. To this aim, that Directive caters, in particular, for addressing crisis situations, notably by providing specific provisions applicable in cases of urgency resulting from a crisis, such as shortening periods for the receipt of tenders and the possibility to use the negotiated procedure without prior publication of a contract notice. However, in certain cases of urgency, those rules might be insufficient, especially where the urgency resulting from the crisis can be addressed only by having two or more Member States engaging in a

common procurement. In those cases, often the only solution that ensures the security interests of those Member States is to open an existing framework agreement to contracting authorities of Member States that were not originally party to it, even though that possibility had not been provided for in the original framework agreement. As those possibilities are not foreseen in Directive 2009/81/EC at the moment of the entry into force of this Regulation, the latter provides for the possibility to complement or derogate from the provision of that Directive in cases of an urgency resulting from a crisis, provided that the agreement of the undertaking which concluded the framework agreement is obtained.

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

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

contract notice to the undertaking from the EDTIB which produces this product, provided that this is necessary for the implementation of the defence cooperation concerned.

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

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

(54) For the purposes of mapping, the Commission should identify and regularly update a list of crisis-relevant products, focusing on possible disruptions or bottlenecks affecting the security of supply of such products. The identification of those products by the Commission should be based on data provided by Member States and stemming from the identification of the relevant manufacturing capacities and supply chains. In order to ensure the exhaustiveness of aggregated data, the Commission should cross-check those data, using, for that purpose, available data as well as, if necessary, data obtained through voluntary information requests of undertakings.

(54a) The Commission should provide for a framework and a methodology to identify crisis-relevant products. In order to ensure the efficiency of the mapping, that framework and that methodology should be defined in a way that avoid an unnecessary administrative burden on Member States. Hence, they should build upon existing national frameworks and

methodologies that Member States would share with the Commission. That framework and that methodology should, in the first place, focus on existing bottlenecks along defence supply-chains and lead to the identification of the manufacturing capacities and supply chains thereof.

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

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

(54c) On the basis of the list of crisis-relevant products identified by the Commission, Member States should identify on their territory the main suppliers of such products. The list of such suppliers should be transmitted to the Commission to ensure an efficient coordinated approach at Union level. In order to be able to identify and report on any event that may cause negative and lasting consequences on the timely availability and supply of those products, Member States should monitor the integrity of the activity of such suppliers in light of the early-warning indicators identified by the Commission.

(55) As part of the crisis preparedness framework, this Regulation should also enable to carry out stress tests and simulations, building in particular on the advice of the Defence Security of Supply Board concerning critically important topics for defence supply chains. In this

context, the Commission should develop scenarios and parameters that capture the particular risks associated with a crisis in the supply of crisis-relevant products. In order to ensure the crisis preparedness of all relevant actors, it is necessary that all Member States and, where relevant, the High Representative, the EDA as well as other relevant actors, are invited to take part in those stress tests. In this context, the Commission should facilitate and encourage the development of strategies for emergency preparedness, including strategies for crisis communication and exchanging information about applicable restrictions in challenging circumstances. Given the sensitivity of information related to supply-chains bottlenecks for the defence and security interests of the Union and its Member States, the results of those stress tests should constitute classified information.

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

(57) In order to reduce the risk of shortages in the supply of crisis-relevant products, it is necessary to accelerate the ramp-up of production facilities related to the production of those products, in particular by ensuring an efficient and timely administrative treatment of any related application. For that reason, Member States should allocate the highest possible significance status, where such a status exists in national law, to the construction and operation of plants and installations for the production of crisis-relevant products.

(57a) To enable the Union to mitigate the risk of a supply crisis break out, competent authorities of Member States should alert the Defence Security of Supply Board where they become aware of a risk of serious disruption in the supply of crisis-relevant products or have concrete and reliable information of any other relevant risk factor or event materialising. In order to ensure a coordinated approach for the purpose of mitigating such risk, the Commission should, when it becomes aware of such risk, carry out preventive actions, such as convening an extraordinary meeting of the Defence Security of Supply Board to

discuss the severity of the possible disruptions as well as possible responses and, where relevant, consulting relevant third countries and international organisations with a view to seeking cooperative solutions to avoid or address disruptions in the supply chains, in compliance with international obligations.

(58) This Regulation should also provide for instruments to address, in an efficient and coordinated manner, a supply crisis that is imminent or that has arisen. To this end, the supply-crisis state should be activated on the basis of concrete and reliable evidence, where there are serious disruptions or an imminent risk of such disruptions in the provision of crisis-relevant products, and where such serious disruptions or the imminent risk thereof are resulting or are likely to result in the adoption of divergent national measures leading to a severe negative impact on the proper functioning of the internal market, in particular obstacles to cross-border trade. Due to the sensitive nature of the decision to activate the supply-crisis state stemming in particular from the potential consequences of the measures that may be taken in response thereof, including the significant impact which such measures might have on private undertakings in the Union, the power to adopt an implementing act as regards activating, prolonging and terminating the supply-crisis state should be conferred on the Council. To ensure that the response at Union level is adapted to the nature of the supply crisis, the Council should also determine which of the measures provided for by this Regulation should be activated for the purpose of addressing the ongoing supply crisis, and should be able to identify for which crisis-relevant products these measures should be activated.

(59) In order to enable precise and near real time assessments of the nature and severity of the supply crisis and of whether the deployment of prioritisation measures would be necessary, the Commission should be able to address information requests to economic operators contributing to the production of crisis-relevant products, where the Council implementing act activates such measure under the supply crisis state. Such requests should only be addressed where the available information is not sufficient and should be limited to information on the production capabilities, production capacities or possible primary disruptions. In view of the sensitive nature of the information that may be requested, the Commission should receive the prior agreement of the Member State in which their production site is located, and the requested information should be channelled through this Member State. It is also important for the Commission to be aware of information requests from third countries related to activities of economic operators established in the Union on the supply of crisis-relevant products as such information requests may result in

prioritisation measures from those third countries that may have a significant impact on the supply of such products in the Union and on the proper functioning of the internal market. Hence, the economic operator concerned should inform the Commission in due time so as to enable the Commission to request similar information.

(60) In addition to other measures provided for by this Regulation for the purpose of addressing a supply-crisis state, Member States should, where the Council activates that measure, 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 security of supply of crisis-relevant products. That could in particular apply to Union law concerning environmental, health and safety issues, which is indispensable to improving the protection of human health and the environment, as well as to achieving a sustainable and safe development.

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

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

(62a) In addition, where crisis-relevant products are dual-use or civilian products, defence supply chains can face the competition of non-defence supply-chains with a significantly stronger buying power when trying to access to these crisis-relevant products. It is therefore necessary to provide for an additional instrument of last resort, in cases where the production or supply of such crisis-relevant non-defence products could not be achieved by any other measure, including a priority-rated request. Thus, priority-rated orders should enable the Commission to oblige economic operators established in the Union and which benefit from Union funding under the Programme to produce or supply certain crisis-relevant non-defence products. Such possibility should be restricted to economic operators which have accepted in advance the possibility to be subject to such a priority-rated order. It is therefore necessary to ensure that any supplier of non-defence products which receives Union financial support under the Programme accepts, in the financing agreement to be concluded with the Commission, the possibility to be subject to priority-rated orders.

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

(62c) Where the economic operator has expressly accepted a priority-rated request and the Commission has adopted an implementing act following such an acceptance, or where the

economic operator has been imposed a priority-rated order by an implementing act adopted by the Commission, the economic operator should comply with all the conditions of that implementing act. Non-compliance by the economic operator with the conditions laid down in the implementing act should result in a loss of the benefit of a waiver of contractual liability. When the non-compliance is intentional or attributable to gross negligence, the Commission should be able to impose on the economic operator a fine or a periodic penalty payment, subject to the proportionality principle.

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

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

(66a) Intra-EU transfers of defence products are regulated by Directive 2009/43/EC of the European Parliament and of the Council [24], which aims at simplifying those transfers in order to ensure the proper functioning of the internal market for defence products. As documented by past evaluations of that Directive, the granting of *a priori* global and individual transfer licences remains largely the norm for the movement of defence products within the internal market and the average time to process applications may vary sometimes significantly from one Member State to another. During a supply crisis, and where the Council considers it necessary, it should be possible for the Council implementing act activating the supply crisis state to determine a timeframe within which the national authorities concerned should treat the applications once entirely received in

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

order to further ease the movement of those products in the internal market. Additionally, this Regulation aims at facilitating the intra-EU transfers of crisis-relevant products in the context of a supply-crisis. Therefore, it should be clarified that a Member State which imposes export limitations to components which are crisis-relevant products and which it considers sensitive in the meaning of Directive 2009/43/EC should not require further authorisations for the intra-EU transfer of the components concerned where the recipient provides a declaration of use in which it declares that the components subject to that transfer licence are integrated or are to be integrated into a defence product and cannot be transferred or exported as such. Such measure should not affect existing Union and national rules governing the transfer and export of defence products.

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

(66bb) Compliance with the obligations imposed under this Regulation should be enforceable by means of fines and periodic penalty payments. To that end, appropriate levels of fines for non-compliance with information requests, the obligations stemming from a previously and explicitly accepted priority-rated request and the notification obligation applying where an economic operator established in the Union is subject to a prioritisation measure of a third country should be laid down, taking into account the different levels of gravity of the non-compliance between both obligations and with different ceilings for SMEs. Furthermore, periodic penalty payments should be laid down for non-compliance with the obligation to accept and perform priority-rated orders, which should be proportionate, with different ceilings for SMEs. Limitation periods should apply for the impositions of fines and periodic penalty payments, in addition to limitation periods for the enforcement of penalties. In addition, the Commission should give the economic operators concerned the right to be heard.

(66c) One of the challenges identified during the COVID-19 crisis was the lack of a network for ensuring preparedness, as well as insufficient information sharing and coordination for response measures between the Member States, on the one hand, and between the Member States and the Commission, on the other hand. Therefore, the achievement of the objective pursued by this Regulation to prepare for and respond to the impact of future supply crises

on the internal market for defence products should be supported by a governance mechanism. This Regulation should establish a Defence Security of Supply Board, to facilitate cooperation, exchange of information and the smooth, effective and harmonised implementation of the measures provided for therein aimed at ensuring the security of supply of defence products. The Defence Security of Supply Board should be composed of and co-chaired by representatives of the Member States and the Commission. In addition, given the contribution of the security of supply regime to the Union's ability to defend its security and defence interests, the High Representative and the EDA should also be members of the Defence Security of Supply Board. In particular, the EDA's ongoing work strands on security of supply of defence products could be useful for the implementation of this Regulation. The EDA facilitates the sharing of best practices and reinforces cooperation between Member States on defence-related security of supply. It also generates insights on bottlenecks affecting the supply chains of defence products. Hence, the EDA should be able to share its views and expertise inter alia in the Defence Security of Supply Board, which will contribute to preparing for and responding to the impact of supply crises on the internal market for defence products. Associated countries should have the right to become members, without voting rights, of the Defence Security of Supply Board in accordance with the conditions set out under the Agreement on the European Economic Area. The Defence Security of Supply Board should facilitate coordination among Member States and provide recommendations to and assist the Commission in the implementation of the mechanisms established by this Regulation aimed at ensuring security of supply, in particular by anticipating, preparing, preventing and addressing crises in the supply of crisis-relevant products.

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

(67b) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission with respect to the adoption

of work programmes to set out the funding priorities and the applicable funding conditions, the award of funding for specific actions, the establishment and winding-up of SEAPs, the identification and update of crisis-relevant products, the establishment and maintenance of a list of national certification authorities, prioritisation measures, and the imposition of penalties. The specificities of the defence sector, in particular the responsibility of Member States, associated countries or Ukraine for the planning and acquisition process, should be taken into account. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[25].

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

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

(69a) 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.

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

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

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

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

(71) The European Court of Auditors delivered an opinion on this Regulation on 3 October 2024[26].

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

HAVE ADOPTED THIS REGULATION:

Chapter I
General Provisions

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 (the '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 Ukrainian DTIB (the 'Ukraine

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26 Document 14163/24.

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, establishing Structures for European Armament Programmes (SEAPs) as set out in Chapter III;

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

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

(ii) preventing the creation of obstacles to, and ensuring the proper functioning of, the internal market for defence products.

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

Article 2

Definitions

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

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

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

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

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

(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 Member States, and which bears an EU classification marking or a corresponding classification marking, as established in the Agreement between the Member States of the European Union, meeting within the Council, regarding the protection of classified information exchanged in the interests of the European Union[27];

(5) ‘contracting authorities’ means contracting authorities as defined in Article 2(1), point (1), of Directive 2014/24/EU[28] and in Article 3(1) of Directive 2014/25/EU[29] of the European Parliament and of the Council;

(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, whose availability is indispensable to ensure the proper functioning of the internal market and its supply chains and must be guaranteed in order to respond to a supply crisis;

(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

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27 OJ C 202, 8.7.2011, p. 13.

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

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

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 concerned; in this context, 'availability' means the ability of the defence product to function faultlessly under defined conditions and be ready to use, when required;

(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 the legal entity's management decision-making;

(9a) 'foreground information' means any tangible or intangible result which is generated within a given action under this Regulation, including information and knowledge such as intellectual property rights (for example, copyrights, industrial designs, patents, plant variety rights), similar forms of protection (for example, rights for databases) and unprotected know-how (for example, confidential material);

(12) 'lead time' means the period of time between a purchase order being placed and the manufacturer completing the order;

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

(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 a defence product, in particular to retain equipment in or to restore it to specified conditions until the end of its use, including mission readiness, longevity and upgrades, customisation and specialisation, inspection, overhaul, testing, servicing, modifications, classification as to serviceability, repair, recovery, rebuilding, reclamation, salvage and cannibalisation;

(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) 

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

(14) 'middle capitalisation company' or 'mid-cap' means an enterprise that is not an SME and that employs a maximum of 3 000 persons, where the headcount of staff is calculated in accordance with Articles 3 to 6 of the Annex to Commission Recommendation 2003/361/EC[30];

(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;

(15a) 'another third country entity' means a legal entity that is established in a non-associated third country other than Ukraine, or a legal entity that is established in the Union, Ukraine or in an associated country but has its executive management structures in a non-associated third country other than Ukraine;

(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 (SEAP), the EDA or an international organisation that is designated by Member States, associated countries, Ukraine or a SEAP to conduct a common procurement on their behalf;

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

(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;

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

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

(23) [redacted]

Article 2a

Budget

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

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

(b) additional contributions in accordance with Article 6.

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

(a) EUR 300 million in current prices and

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

1-a. Union funding under the Programme and the Ukraine Support Instrument shall not cover the costs of the purchase and of the maintenance of defence products for military or defence purposes, including in the context of establishing, managing and maintaining a defence industrial readiness pool as referred to in Article 13b. Union funding under the Programme and the Ukraine Support Instrument may cover the non-recurrent costs incurred in the context of the purchase or of the maintenance of such products.

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

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

3. [redacted]

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

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

Chapter II

The Programme

SECTION 1

GENERAL PROVISIONS APPLICABLE TO THE PROGRAMME

Article 4

Objectives

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

(a) enhance cooperation in defence procurement by incentivising Member States to aggregate demand for defence products, harmonise defence capability requirements and strengthen solidarity among themselves, 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 Union cooperative activities conducted with the support of Member States with a view to ensuring the availability and supply of defence products, throughout the Union.

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

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

Article 6

Additional financial resources

1. [redacted]

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

3a. [redacted]

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

Article 7

Alternative, combined and cumulative funding

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

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

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

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

(c) be not financed under the relevant call for proposals due to budgetary constraints.

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

Article 8

Implementation and forms of Union funding

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

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

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

4. 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 of this Article shall apply in addition to the criteria set out in accordance with the Financial Regulation.

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

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

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

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

5. By 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 of Union funding if it has been subject to screening within the meaning of Regulation (EU) 2019/452 and, where necessary, to appropriate mitigation measures, taking into account the objectives set out in Article 4 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 referred to in the first subparagraph of this paragraph shall provide assurances that the involvement in an action of a legal entity as referred to in that subparagraph would not contravene the security and defence interests of the Union and its Member States as established in the framework of the CFSP pursuant to Title V of the TEU, including respect for the principle of good neighbourly relations, or the objectives set out in Article 4 of this Regulation. Those guarantees shall in particular substantiate that, for the purposes of an action, measures are in place to ensure that:

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

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

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

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

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

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

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

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

7. Paragraphs 4 to 5 shall not apply to:

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

(b) international organisations;

(c) SEAPs;

(d) the EDA.

SECTION 2A

ELIGIBLE ACTIONS

Article 11

Eligible actions

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

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

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;

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

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

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

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

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

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 the cooperation of legal entities in the procurement of defence products, at any point in the lifecycle of defence products, including for the purpose of establishing and maintaining a defence industrial readiness pool as referred to Article 13b.

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

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

(b) international organisations;

(c) SEAPs;

(d) the EDA.

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

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

(b) a SEAP.

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

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

5. The procurement agent shall apply in its procurement procedures and contracts criteria equivalent to those set out in Article 10 to its procurement procedures and contracts with contractors, and require in the call for tender that these criteria are applied to subcontractors.

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

established between the contractor and that subcontractor prior to the date of entry into force of this Regulation.

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

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

9a. Before launching a common procurement procedure, the procurement agent 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 them. If such a request is submitted, the common procurement contract shall reserve the right of participating contracting authorities to purchase additional quantities of defence products for associated countries and Ukraine.

Article 13

Industrial reinforcement actions

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

(a) the optimisation, expansion, modernisation, 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 shall be established in different Member States. At least three of those eligible legal entities established in at least two different Member States shall not, during the entire period in which the action is carried out, be controlled, directly or indirectly, by the same legal entity and shall not control each other.

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

2a. By way of derogation from the criteria set out in Article 11(8b), the Programme may fund activities referred to in paragraph 1 where these criteria are not complied with provided that the following conditions are met:

(a) [redacted]

(b) The restriction by a non-associated third country or a non-associated third country entity does not preclude a future transfer of technology to the recipients of Union funding;

(c) Recipients of Union funding commit to obtaining the essential technology enabling them to comply with the criteria set out in Article 11(8b) as soon as conditions allow.

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 standards 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 for the establishment and functioning of Structures for European Armament Programme, including for the purpose of managing and maintaining defence industrial readiness pools as referred to in Article 13b;

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

(ga) activities with the aim of very significantly shortening the delivery lead time of defence products;

(gb) activities with the aim of significantly simplifying the technical specifications of defence products in order to enable their mass production;

(gc) activities with the aim of significantly simplifying the production process of defence products to enable their mass production.

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

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

Article 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 actions as referred to in Article 13a(1), point (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 readiness pool.

4. The Commission, upon consultation of the EDA, shall establish and keep up-to-date a single, centralised, catalogue of defence products developed by the EDTIB and the Ukrainian DTIB. The Commission shall consult the EDA and take into account its views in drawing up the technical specifications for that catalogue and, where appropriate, shall procure the corporate IT platform required to establish it. Member States, Ukraine and economic operators shall be invited to populate that catalogue on a voluntary basis.

Article 15

European Defence Projects of Common Interest

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

2. EDPCIs shall meet all the following criteria:

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

(-a) they are consistent with defence capability priorities commonly agreed by Member States within the framework of the CFSP, in particular in the context of the CDP, and with the objectives of the Strategic Compass for security and defence and other relevant documents identifying Union priorities in the area of CFSP; where appropriate, they also are consistent with the collaborative opportunities identified in the context of the Coordinated Annual Review on Defence and the projects agreed in the framework of the Permanent Structured Cooperation, and pursue coherence of output with respective NATO processes such as the NATO Defence Planning Process where such pursuit serves the Union's security and defence interests;

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

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

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

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

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

3aa. Before proposing the implementing acts as referred to in paragraph 3, the Commission shall:

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

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

(c) verify that all Member States and associated countries were informed of the emergence of a project and were given the opportunity to participate.

3-b. Participating Member States may unanimously decide to involve representatives of the Commission, the High Representative and the EDA as observers to an EDPCI.

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

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

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

(c) estimate the overall financing needs of the EDPCI.

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

(a) the common procurement of defence products;

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

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

(d) the development and procurement of necessary infrastructure.

3ca. The participating Member States shall ensure that criteria equivalent to those set out in Article 10 are applied in the contracts relating to the EDPCI activities supported by Union funding. For the common procurement of defence products supported by Union funding under EDPCIs, Article 12(5) shall also apply.

3cb. Member States participating in an EDPCI shall ensure that the EDPCI activities, including those not supported by Union funding, comply with the objectives set out in Article 4 and in paragraph -1 of this Article.

3cc. An EDPCI, as well as its specific activities, may be established in the framework of a SEAP.

3d. Only Member States, associated countries, and SEAPs consisting of Member States or Member States and associated countries shall be eligible for funding under EDPCI activities.

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 Council Directive 92/43/EEC[31] and Article 4(7) of Directive 2000/60 of the European Parliament and of the Council[32], in the interests of defence within the meaning of Article 2(3) of Regulation (EC) 1907/2006 of the European Parliament and of the Council[33], and in the interests of public health and safety within the meaning of Article 9(1), point (a), of Directive 2009/147/EC of the European Parliament and of the Council[34], provided that the remaining other conditions set out in those provisions are fulfilled.

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

10. Upon a proposal from the Commission, the Council, acting by qualified majority, may amend the implementing acts referred to in paragraph 3, including by removing EDPCIs from the list or by reflecting changes of the elements set out in paragraph 3a.

10a. All Member States and associated countries shall have the opportunity to join an EDPCI after its establishment, subject to the approval of all Member States participating in the EDPCI.

Article 19

Fund to Accelerate defence Supply chains Transformation (FAST)

1. In order to leverage, de-risk and accelerate investments needed to increase the defence manufacturing capacities of SMEs and mid-caps complying with criteria equivalent to those set out in Article 10(2), (3) and (3a), a blending operation offering debt support,

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31 Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22/07/1992, p. 7).

32 Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22/12/2000, p. 1).

33 Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30/12/2006, p. 1).

34 Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26/01/2010, p. 7).

equity support or both may be established, entitled 'Fund to Accelerate defence Supply-chains' Transformation' (FAST). It shall be implemented in accordance with Title X of the Financial Regulation and with Regulation (EU) 2021/523.

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

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

(b) to provide support to SMEs (including start-ups and scale-ups) and mid-caps across the Union that are facing difficulties in accessing finance and which are in the stage of industrialisation or manufacturing of defence products or which have imminent plans to do so; and

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

SECTION 2B

PROCUREMENT

Article 19-a

Procurement with support by the Commission

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

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

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

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

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

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

2. [redacted]

3. [redacted]

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

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

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

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

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

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

Article 19-b

Advance purchase of defence products

1. [redacted]

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

3. In cases where the negotiated amounts exceed demand, the Commission, at the request of the participating countries concerned, shall establish a mechanism for reallocation to

national stockpiles or building up the defence industrial readiness pool as referred to in Article 13b(1).

Article 19-c

Facilitating off-take agreements

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

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

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

   (b) the intended price or price range;

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

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

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

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

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

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

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

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

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

SECTION 2C

AWARD CRITERIA AND WORK PROGRAMMES

Article 19a

Award criteria

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

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

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

   (b) the action's contribution to the adaptation, modernisation and development of the EDTIB throughout the Union; 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 of this Article, proposals for industrial reinforcement actions referred to in Article 13 shall be evaluated based on at least two of the following criteria:

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

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

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

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

Article 19b

Selection and award procedure

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

Article 19c

Union financial contribution

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

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

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

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

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

(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 as referred in Article 13b.

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

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

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

(a) the action is 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 concerned exceeded 30 % of their respective defence spending in the financial year preceding the application.

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

7. By way of derogation from paragraph 6 of this Article, the Union financial contribution to each action referred to in Article 13 may be up to 50 % of the eligible costs, 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 of this Regulation, and by way of derogation from Article 193(1) of the Financial Regulation, where the Union financial contribution takes the form of grants, the Programme may finance up to 100 % of the eligible costs.

9. 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 programmes shall include in particular:

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

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

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

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

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

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

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

Chapter IIa

The Ukraine Support Instrument

Section 1

General provisions applicable to the Ukraine Support Instrument

Article 19e

Objectives

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

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

Article 19g

Additional financial resources

1. Member States, Union institutions, bodies and agencies, third countries, international organisations, international financial institutions or other third parties may provide additional financial contributions to the Ukraine Support Instrument in accordance with Article 208(2) of the Financial Regulation. Such financial contributions shall constitute

external assigned revenue within the meaning of Article 21(2), points (a), (d), or (e), or Article 21(5) of the Financial Regulation.

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

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

3a. As regards the amounts contributed or transferred, respectively, in accordance with paragraphs 1 and 3, the Member States concerned may decide the proportion of those amounts to be made available to all entities eligible for funding under this Regulation, only to the benefit of the Member States concerned, or to the additional benefit of other Member States or Ukraine.

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

Article 19h

Alternative, combined and cumulative funding

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

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

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

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

(c) be not financed under that relevant call for proposals due to budgetary constraints.

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

Article 19i

Implementation and forms of Union funding

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

2. Without prejudice to Article 21d(3) of this Regulation, Union funding may be provided in any of the forms laid down in the Financial Regulation, except 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 under the Ukraine Support Instrument and a profit is made, the Commission may recover the percentage of the profit corresponding to the Union contribution to the eligible costs actually incurred by the beneficiary carrying out the action, up to the final amount of the Union contribution. By way of derogation from Article 195(2) of the Financial Regulation, the profit is calculated by a surplus of receipts over the eligible costs of the action, where receipts are limited to Union funding, Member State funding, including procurement, other revenue generated during the action and any revenue resulting from the action. The work programme may set out further details.

4. Financial contributions may, where relevant and necessary for the implementation of an action, cover actions started and costs incurred prior to the date of the submission of the proposal for those actions, provided that those actions did not start before 5 March 2024

and have not been completed before the signature of the grant agreement. Such financial contributions shall be awarded on the condition that they comply with the criteria set out in Article 196(2) of the Financial Regulation.

Article 21

Eligible legal entities

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

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

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

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

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

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

5. By way of derogation from paragraph 4 of this Article, a legal entity established in the Union and controlled by a non-associated third country other than Ukraine or by another third-country entity shall be eligible to be a recipient of Union funding if it has been subject to screening within the meaning of Regulation (EU) 2019/452 and, where

necessary, to appropriate mitigation measures, taking into account the objectives set out in Article 19e of this Regulation, or if guarantees approved in accordance with the national procedures of the Member State in which it is established are made available to the Commission.

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

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

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

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

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

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

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

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

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

7. Paragraphs 4 to 5 shall not apply to:

(a) contracting authorities of Member States and Ukraine;

(b) international organisations;

(c) SEAPs;

(d) the EDA.

SECTION 2

ELIGIBLE ACTIONS

Article 21a

Eligible actions

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

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

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

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

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

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

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

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

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

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

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

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

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

5. [redacted]

SECTION 3

PROCUREMENT

Article 21aa

Procurement with support by the Commission

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

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

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

2. [redacted]

3. [redacted]

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

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

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

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

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

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

Article 21ab

Advance purchase of defence products

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

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

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

Article 21ac

Facilitating off-take agreements

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

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

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

   (b) the intended price or price range;

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

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

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

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

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

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

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

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

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

SECTION 4

AWARD CRITERIA AND WORK PROGRAMMES

Article 21b

Award criteria

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

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

(a) the estimated value of the common procurement;

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

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

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

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

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

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

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

Article 21c

Selection and award procedure

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

Article 21d

Union financial contribution

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

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

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

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

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

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

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

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

(h) the 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 the need to prevent, reduce and, if possible, offset such damage.

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

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

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 programmes shall include in particular:

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

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

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

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

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

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

Chapter III

Structure for European Armament Programme

Article 22

Specific objective and activities of a Structure for European Armament Programmes

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;

(b) the common procurement of defence products, including for the purpose of establishing a defence industrial readiness pool as referred to in Article 13b; 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(1) with carrying out one or more of the tasks referred to in paragraph 2 of this Article. The SEAP shall be responsible for ensuring that its obligations under Union law, and in particular under this Regulation, are met.

Article 23

Requirements relating to the establishment of a SEAP

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

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

(b) to support the common development, procurement or in-service support of defence products, consistent with the defence capability priorities commonly agreed by Member States within the framework of the CFSP, in particular in the context of the

CDP. A SEAP shall also pursue coherence of output with respective NATO processes such as the NATO Defence Planning Process 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 the members of the proposed SEAP;

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

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

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

2. The Commission shall, within two months of the receipt of the application, assess the application in accordance with the requirements laid down in this Regulation. The result of that assessment shall be communicated to the applicants who shall, if necessary, be invited to complete or amend the application.

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

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

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

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

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

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

Article 25

Status and seat of a SEAP

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

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

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

Article 26

Requirements for membership of a SEAP

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

   (a) Member States;

   (b) associated countries;

   (c) Ukraine.

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

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

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

Article 27

Statutes of a SEAP

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

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

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

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

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

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

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

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

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

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

(i) the governing bodies of the SEAP, their roles and responsibilities and the manner in which they are constituted and the decision-making process within the SEAP, including on the amendment of the statutes in compliance with Article 28;

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

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

(l) rules on the protection of classified information;

(m) the name of the SEAP;

(n) information related to the administrative capacities foreseen to ensure compliance with applicable Union and national rules for the handling of defence products.

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

3. Members of a SEAP may unanimously agree, in the statutes, on an approach to the export of defence products.

Article 28

Amendment of the statutes of a SEAP

1. Any amendment of the statutes of a SEAP concerning the matters referred to in Article 27(1), points (a) to (i), shall be agreed unanimously by the SEAP members and be submitted to the Commission by the SEAP for approval. The Commission shall, within two months of receipt of that submission, 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.

1a. Any amendment of the statutes concerning the matters referred to in Article 27(3) shall be agreed unanimously by the SEAP members and be notified to the Commission by the SEAP within 10 days after its adoption.

2. Any amendment of the statutes other than that referred to in paragraph 1 and 1a shall be 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 of the statutes referred to in paragraph 2 within 20 days from their submission giving reasons why the amendment does not meet the requirements of this Regulation.

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

5. The application for the amendment of the statutes referred to in paragraph 2 shall contain the following:

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

(b) the amended consolidated version of the statutes.

Article 29

Specific conditions on procurement

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

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

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

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

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

Article 30

Liability and insurance

1. A SEAP shall be liable for its debts.

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

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

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

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

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

Article 31

Applicable law and jurisdiction

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

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

   (aa) by its statutes and their implementing rules;

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

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

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

Article 32

Winding-up and insolvency

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

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

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

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

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

Article 33

Reporting and control

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

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

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

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

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

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

Chapter IV

Security of supply

SECTION -1

COOPERATIVE DEFENCE PROCUREMENT

Article 34

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

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

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

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

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

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

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

Article 34a

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

1. A contracting authority of a Member State, where it establishes a new or joins an existing genuine defence cooperation initiative established by an international agreement or arrangement between Member States and, where relevant, one or more associated countries

or Ukraine, with the aim of the convergence of military capabilities, may award a contract to, or conclude a framework agreement on a defence product with, an undertaking, in accordance with Article 28(1)(e) of Directive 2009/81/EC, where all of the following conditions are cumulatively met:

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

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

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

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

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

SECTION 1

PREPAREDNESS

Article 39

Easing cross-certification process

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

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

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

SUB-SECTION 1

SUPPLY CHAIN MAPPING AND MONITORING

Article 40

Mapping of defence supply chains

1. The mapping of the Union's supply chains of crisis-relevant products shall have the aim of analysing the strengths and weaknesses of such supply chains, with an emphasis on bottlenecks, and shall consist of the following activities, to be performed on a regular basis:

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

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

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

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

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

The mapping shall inform, where relevant, the development of the work programme as referred to in Articles 19d and 21e.

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

3. The Commission shall, after consulting the Defence Security of Supply Board, develop a framework and methodology for identifying crisis-relevant products, with an emphasis on existing bottlenecks, as well as their related manufacturing capacities in the Union and for the mapping of supply chains of those products. That methodology shall build upon any frameworks or methodologies that may exist within Member States.

3-a. On the basis of the framework and methodology developed pursuant to paragraph 3, Member States shall identify on their territory the relevant manufacturing capacities and supply chains of defence products and shall, without unnecessary delay, provide the outcome of this identification to the Commission.

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

5. For that purpose, the Commission shall use publicly and commercially available data and relevant non-sensitive information from economic operators, as well as the results of similar analyses performed, including in the context of Union law on raw materials and semiconductors and of the relevant activities of the EDA, and the results of the stress tests conducted pursuant to Article 41a and of the evaluation carried out pursuant to Article 66(1).

6. Where this data is not enough to perform its tasks pursuant to paragraphs 3a, the Commission may 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 also transmit a copy of the information provided to the Member State or Member States on whose territory the production site of that economic operator is located.

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

7. The Commission shall inform the Defence Security of Supply Board of the analysis of the strengths and weaknesses of the Union's supply chains of crisis-relevant products and 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). That analysis and results shall constitute classified information.

8. The Commission shall, on the basis of the outcome of the activities carried out pursuant to paragraphs 3, 3a and 5 and after consulting the 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 where relevant, identify the main suppliers of crisis-relevant products established on their territory, without unnecessary delay, after the adoption of the implementing act referred to in paragraph 3a.

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

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

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

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

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

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

Article 41

Monitoring of defence supply chains

1. Member States and the Commission, in cooperation 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(6a), in order to identify possible risks to the supply of those products. The monitoring shall consist of the following activities:

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

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

(c) the Commission, after consulting 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 the Member States shall pay particular attention to SMEs in order to minimise the administrative burden resulting from the monitoring referred to in paragraph 1.

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

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

5. For the purposes of paragraph 3, competent authorities of Member States shall establish and maintain a list of contacts of the main suppliers of crisis-relevant products which are

established on their territory. That list shall be transmitted to the Commission. Within the Defence Security of Supply Board, the Commission shall provide for a standardised format for that list of contacts.

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

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

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

Article 41a

Stress tests

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

1. The Commission, taking into consideration the recommendation of the Defence Security of Supply Board regarding relevant topics identified 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.

2. In particular, the Commission may:

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

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

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

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

3. The Commission shall invite representatives of all Member States to participate in stress tests. The participation of Member States in stress tests shall be voluntary. After consulting the Defence Security of Supply Board, the Commission may also invite representatives of the High Representative, the EDA or other relevant actors.

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

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.

SUB-SECTION 2

PREVENTION OF A SUPPLY CRISIS

Article 43

Alerts and preventive action

1. Where a competent authority of a Member State becomes aware of a risk of serious disruption in the supply of a crisis-relevant products or has concrete and reliable information of any other relevant risk factor or event materially affecting the supply of a

crisis-relevant product, it shall alert the Defence Security of Supply Board without undue delay.

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

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

(b) the anticipated duration of the potential disruption;

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

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

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

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

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

(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.

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

(d) ensure synergies with relevant Union programmes.

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

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 or an imminent risk of such disruptions in the provision of crisis-relevant products; and

(b) such serious disruptions or the imminent risk thereof are resulting or are likely to result in the adoption of divergent national measures 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, after consulting that Board, shall assess whether the conditions set out in paragraph 1 of this Article are met. That assessment shall take into account the potential impacts and consequences of the supply-crisis state on the supply chains of crisis-relevant products within the Union, the results of stress tests conducted pursuant to Article 41a, and assessments performed in other relevant

Union crisis management frameworks. Where that assessment provides concrete and reliable evidence, the Commission may, after consulting the Defence Security of Supply Board, propose to the Council to activate the supply-crisis state.

3. The Council, acting by qualified majority upon a proposal from the Commission, may activate the supply-crisis state by means of a Council implementing act. The duration of the supply-crisis state shall be specified in the implementing act and shall initially not exceed 12 months. The implementing act shall also specify which of the measures set out in Articles 46 to 53 are activated. In addition, the implementing act may identify for which crisis-relevant product those measures shall be 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 supply crisis.

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

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

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

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

10. During the supply-crisis state, the Commission shall, upon request from a Member State or on its own initiative, convene extraordinary meetings of the Defence Security of Supply Board where necessary. In line with Article 57(10), the Defence Security of Supply Board shall invite, where relevant, high-level industrial representatives to meet in special configuration in order to discuss issues related to crisis-relevant products. Member States shall work closely with the Commission within the Defence Security of Supply Board in order to ensure the coordination of any Union and national measures taken with regard to the defence supply chain concerned.

11. Upon expiry of the period for which the supply-crisis state is activated or upon its early termination pursuant to paragraph 9 of this Article, the measures taken in accordance with Articles 46 to 53 shall immediately cease to apply. By derogation, implementing acts that have been adopted in accordance with Article 49a(3) and (4a) 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 or early termination of the supply-crisis state.

Article 45

Supply-crisis toolbox

1. Where the supply crisis-state is activated pursuant to Article 44 and where necessary in order to address the supply crisis in the Union, the Commission may take the measures provided for in Articles 46, 49a and 50.

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 or at imminent risk of such disruptions on account of the supply crisis. The application of the measures referred to in paragraph 1 shall be proportionate and restricted to what is necessary for addressing serious disruptions or mitigating an imminent risk of such disruptions affecting the supply chains of the crisis-relevant products in the Union and shall be in the best interest of the Union. The application of those measures shall avoid placing a disproportionate administrative burden, in particular on SMEs.

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

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

5. The Commission shall, taking into consideration the recommendation of the Defence Security of Supply Board, issue guidance on the implementation and the use of the measures provided for in Articles 46 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(3), the Commission may, where the available information is not sufficient, request an economic operator 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 that Member State within a set time limit, about their production capabilities, production capacities and current primary disruptions. The Member State concerned shall, in turn, make the requested information available to the Commission. The requested information shall be limited to what is necessary to assess the nature of the supply crisis or to identify and assess potential mitigation measures.

2. Before launching a request for information, the Commission may, with the prior agreement of the Member State on whose territory the production site of the economic operator concerned is located, 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 to handle any information acquired in accordance with Article 61.

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

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

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

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

7. If an economic operator established in the Union is subject to a request for information from a third country, related to its activities for the supply of crisis-relevant products, it shall inform the Member State on whose territory its production site is located, in a timely manner, which shall, in turn, inform the Commission, in such a manner as to enable the Member State concerned and the Commission to request similar information from the economic operator. The Commission shall inform the Defence Security of Supply Board of the existence of such a request from a third country.

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

national use only or where the disclosure of that information could significantly harm the economic operator's business activity.

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

Article 47c

National fast-tracking of permit-granting procedures

1. Where the Council activates this measure in accordance with Article 44(3) of this Regulation, the security of supply of crisis-relevant products may be considered an imperative reason for overriding public interest within the meaning of Article 6(4) and Article 16(1)(c) of Directive 92/43/EEC and of Article 4(7) of Directive 2000/60. Therefore, the planning, construction and operation of related production facilities may be considered of overriding public interest, provided that the remaining other conditions set out in those provisions are fulfilled.

Article 49a

Prioritisation of non-defence products

1. Where the Council activates this measure in accordance with Article 44(3), a Member State which faces severe difficulties either in the placing of an order or in the execution of a contract related to the supply of crisis-relevant products which is not a defence product may submit a request to the Commission to request an economic operator to accept, or to prioritise, certain orders 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 chapter, address a request to the economic operator concerned after:

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

   (b) consultation of the Member State on whose territory the executive management structure of the economic operator is located.

2a. The Commission shall demonstrate that the choice of the recipients and beneficiaries of the request referred to in paragraph 2 is non-discriminatory and complies with Union competition rules.

2b. The Commission shall base its request referred to in paragraph 2 on objective, factual, measurable and substantiated data, showing that such prioritisation is indispensable in order to ensure the proper functioning of the internal market, as well as having regard to the legitimate interests of the economic operator and the cost and effort required for any change in the production sequence of the supply chain.

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, price and the quantities in which they are to be supplied;

(c) the time limits within which the priority-rated request is to be completed;

(d) the beneficiaries of the priority-rated request;

(e) the waiver of contractual liability under the conditions laid down in paragraph 7 of this Article; and

(f) the penalties provided for in Article 55 for non-compliance with the obligations stemming from that implementing act.

4. Where the economic operator declines the request referred to in paragraph 2, it shall provide the Commission with a detailed justification for that refusal.

4a. Where the economic operator 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 under paragraph 4 of this Article, 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 European 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 applicable, 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 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 4a may request the Commission to modify the implementing act referred to in paragraph 3 or in paragraph 4a 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 on whose territory the executive management structure of the economic operator is located and the Member State where the production site is located, amend its implementing act to release, partially or in totality, the economic operator concerned from its obligations under this Article.

12. Where an economic operator established in the Union is subject to a measure of a third country which entails a priority-rated order or a priority-rated request of a crisis-relevant product which is not a defence product, it shall notify the Commission thereof. The Commission shall then inform the Defence Security of Supply Board of the existence of such measures. Where relevant, the Commission may consult with the Defence Security of Supply Board on any appropriate step that may need to be taken in response to that measure.

13. Where an economic operator subject to a priority-rated request pursuant to paragraph 3 or a priority-rated order pursuant to paragraph 4a intentionally, or through gross negligence, does not comply with that request or order, the Commission may, by means of a decision, where deemed necessary and proportionate, impose a fine on the economic operator concerned in accordance with Article 55, except where:

(a) the economic operator is unable to perform the priority-rated request or the priority-rated order on account of insufficient production capability or production capacity, or on technical grounds; or

(b) performance or completion of the order would place an unreasonable economic burden and entail particular hardship for the economic operator, including substantial risks relating to business continuity.

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, including a methodology for the determination of the price of crisis-relevant products subject to 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 is without prejudice to the right of each Member State to protect its essential security interests in accordance with Article 346(1)(b) TFEU.

Article 50

Prioritisation of defence products

1. Where the Council activates this measure in accordance with Article 44(3), a Member State may submit a request to the Commission to request an economic operator whose production site is located on its territory to accept, or to prioritise, certain orders of crisis-relevant products which are defence products in order to address the severe difficulties that Member State or another Member State faces either in the placing of an order or in the execution of a contract for the supply of such products.

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

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

   (b) consultation, and receiving prior agreement, of the Member State on whose territory the executive management structure of the economic operator is located.

   The Commission's request shall explicitly indicate that the economic operator remains free to refuse the request.

2a. The Commission shall demonstrate that the choice of the recipients and beneficiaries of the requests referred to in this Article is non-discriminatory and complies with Union competition rules.

2b. The Commission shall base the requests referred to in this Article on objective, factual, measurable and substantiated data, showing that such prioritisation is indispensable in order to ensure the proper functioning of the internal market, as well as having regard to the legitimate interests of the economic operator and the cost and effort required for any change in the production sequence of the supply chain.

3. Where the economic operator to which the request referred to in paragraph 1 is addressed has expressly accepted the request, the Commission shall, after the consultation and prior agreement of the Member State on whose territory the production site concerned of the economic operator is located and the Member State on whose territory the executive management structure of that economic operator concerned is located, adopt by means of an implementing act a priority-rated request providing for:

(a) the legal basis of the priority-rated request which has to be complied with by the economic operator;

(b) the list of crisis-relevant products subject to the priority-rated request, their specifications and the quantity in which they are to be supplied;

(c) the time limits within which the priority-rated request is to be completed;

(d) the beneficiaries of the priority-rated request;

(da) the scope of contractual obligations over which the priority-rated request shall have precedence;

(e) the waiver of contractual liability under the conditions laid down in paragraph 5 of this Article; and

(f) the penalties provided for in Article 55 for non-compliance with the obligations stemming from that implementing act.

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

4. The priority-rated requests shall be placed at a fair and reasonable price adequately taking into account the economic operator's opportunity costs when fulfilling the priority-rated requests vis-à-vis existing contractual obligations. The priority-rated requests shall take precedence over contractual obligations related to the crisis-relevant products subject to the

priority-rated request under private or public law, under the conditions laid down in the implementing act referred to in paragraph 3.

5. The economic operator subject to a priority-rated request pursuant to paragraph 3 shall not be liable for any breach of contractual obligation that is governed by the law of a Member State, provided that:

(a) the breach of contractual obligation is strictly necessary for compliance with the required prioritisation;

(b) the implementing act referred to in paragraph 3 has been complied with; and

(c) the acceptance of the priority-rated request did not have the sole purpose of unduly avoiding a prior performance obligation.

5a. The economic operator subject to a priority-rated request may request the Commission to modify the implementing act referred to in paragraph 3 where it considers it to be duly justified based on one of the following grounds:

(a) the economic operator is unable to perform the priority-rated request on account of insufficient production capability or production capacity, even under preferential treatment of the request;

(b) completion of the request would place an unreasonable economic burden and entail particular hardship for the economic operator.

5b. The economic operator shall provide all relevant and substantiated information to allow the Commission to assess the merits of the request for modification.

5c. Based on the examination of the reasons and evidence provided by the economic operator, the Commission may, after consultation and prior agreement of the Member State on whose territory the relevant production site of the economic operator is located and the Member State on whose territory the executive management structure of that economic operator concerned is located, amend its implementing act to release, partially or in totality, the economic operator concerned from its obligations under this Article.

6. Where an economic operator, after having expressly accepted to prioritise the orders requested by the Commission, intentionally or through gross negligence does not comply

with the obligation to prioritise those orders, it shall be subject to fines set in accordance with Article 55, except where:

(a) the economic operator is unable to perform the priority-rated request on account of insufficient production capability or production capacity, or on technical grounds; or

(b) performance or completion of the request would place an unreasonable economic burden and entail particular hardship for the economic operator, including substantial risks relating to business continuity.

8. When an economic operator established in the Union is subject to a measure of a third country which entails a priority-rated request of a crisis-relevant product which is a defence product, it shall notify the Commission thereof. The Commission shall then inform the Defence Security of Supply Board of the existence of such measures. Where relevant, the Commission may consult with the Defence Security of Supply Board on any appropriate step that may need to be taken in response to that measure.

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

Article 51

Intra-EU transfers of crisis-relevant defence products

1. Where the Council activates this measure in accordance with Article 44(3) of this Regulation, 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 products are processed in an efficient and timely manner. The Council implementing act referred to in Article 44(3) of this Regulation shall specify the timeframe within which national authorities concerned shall treat the applications once they have received all necessary information from the applicant.

2. Where a Member State imposes, in accordance with Article 4(8) of Directive 2009/43/EC, export limitations on components which are crisis-relevant products, that Member State shall not require further authorisations for the intra-EU transfer of the components concerned where the recipient provides a declaration of use in which it declares that the components subject to that transfer licence are integrated or are to be integrated into a

defence product and cannot be transferred or exported as such. This shall be without prejudice to the obligations of recipients laid down in Article 10 of Directive 2009/43/EC.

Article 53

Certification in a supply-crisis state

1. Where the Council activates this measure in accordance with Article 44(3), Member States shall ensure that administrative procedures related to the certification of crisis-relevant defence products and, where necessary, technical adaptations of such products are processed in the most rapid way possible, in accordance with their applicable national laws and regulations.

2. Where such a status exists in national law, certification of crisis-relevant defence products shall be allocated the status of the highest possible significance.

3. Where this measure is activated, crisis-relevant defence products certified in a Member State shall be deemed certified in another Member State without being subject to additional controls.

4. The implementing act of the Council referred to in Article 44(3) may lay down more precise provisions on the scope of this measure.

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

SECTION 2B

PENALTIES

Article 55

Penalties

1. The Commission may, by way of implementing acts, impose on the economic operators that are addressees of information requests pursuant to Article 46(1) or that are subject to any of the obligations to inform the Commission of a third-country obligation pursuant to Articles 49a(12) and 50(8) or to prioritise the production of crisis-relevant products pursuant to Articles 49a and 50, where it deems it to be necessary and proportionate:

(a) fines not exceeding EUR 100 000 where the economic operator, intentionally or through gross negligence, supplies incorrect, incomplete or misleading information in response to a request made pursuant to Article 46(1), or does not supply the information within the prescribed time limit, in accordance with Article 46(8);

(b) fines not exceeding EUR 50 000 where the economic operators, intentionally or through gross negligence, does not comply with the obligation to inform the Commission of a third-country obligation pursuant to Article 49a(12) and Article 50(8);

(c) periodic penalty payments not exceeding 1,5 % of the average daily turnover in the preceding business year for each working day of non-compliance from the date established in the decision in which the priority-rated order was issued, where the economic operator, intentionally or through gross negligence, does not comply with an obligation to prioritise the production of crisis-relevant products pursuant to Article 49a(4a), in accordance with Article 49a(13); where the economic operator concerned is an SME, the periodic penalty payments imposed shall not exceed 0,5 % of its average daily turnover in the preceding business year;

(d) fines not exceeding EUR 100 000 where the economic operator, intentionally or through gross negligence, does not comply with the obligation to prioritise the production of crisis-relevant products pursuant to Article 49a(4) and Article 50(3), in accordance with Article 49a(13) and Article 50(6), respectively. The implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(3).

2. Before taking a decision pursuant to paragraph 1 of this Article, the Commission shall provide an opportunity for the economic operator concerned to be heard in accordance with Article 56. The Commission shall take into account any duly reasoned justification presented by the economic operator for the purpose of determining whether fines or periodic penalty payments are deemed necessary and proportionate.

4. In fixing the amount of the fine or periodic penalty payment, the Commission shall take into consideration the nature, gravity and duration of the infringement, including in relation to cases of non-compliance with the obligation to accept or prioritise a priority-rated order set out in Article 49a(4a) or a priority-rated request set out in Article 49a(3) or Article

50(3), whether the economic operator has partially complied with the priority-rated order or the priority-rated requested.

5. The fines shall constitute external assigned revenue within the meaning of Article 21(5) of the Financial Regulation and shall be directed to the Programme and the Ukraine Support Instrument.

Article 55a

Limitation period for the imposition of penalties

1. The powers conferred on the Commission by Article 55 shall be subject to the following limitation periods:

   (a) two years in the case of infringements of provisions concerning requests for information pursuant to Article 46(1);

   (b) two years in the case of infringements of provisions concerning information obligations pursuant to Article 49a(12) and Article 50(8);

   (c) three years in the case of infringements of provisions concerning the obligation related to the prioritisation of the production of crisis-relevant products pursuant to Articles 49a and 50.

2. The limitation periods referred to in paragraph 1 shall begin to run on the day on which the infringement is committed. Where there are continuous or repeated infringements, the limitation periods shall begin to run on the day on which the last infringement was committed.

3. Any action taken by the Commission or the competent authorities of the Member States for the purpose of ensuring compliance with this Regulation shall interrupt the limitation period.

4. The interruption of the limitation period shall apply for all the parties which are held responsible for participation in the infringement.

5. Each interruption shall start the time running afresh. However, the limitation period shall expire at the latest on the day on which a period equal to twice the limitation period has elapsed without the Commission having imposed a fine or a periodic penalty payment. That period shall be extended by the time during which the limitation period is suspended

because the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Union.

Article 55b

Limitation period for the enforcement of penalties

1. The power of the Commission to enforce decisions taken pursuant to Article 55 shall be subject to a limitation period of three years.

2. Time shall begin to run on the day on which the decision becomes final.

3. The limitation period for the enforcement of fines and periodic penalty payments shall be interrupted by:

   (a) a notification of a decision varying the original amount of the fine or periodic penalty payment or refusing an application for variation;

   (b) any action of the Commission or of a Member State, acting at the request of the Commission, designed to enforce payment of the fine or periodic penalty payment.

4. Each interruption as referred to in paragraph 3 shall start time running afresh.

5. The limitation period for the enforcement of fines and periodic penalty payments shall be suspended for as long as:

   (a) time to pay is allowed;

   (b) enforcement of payment is suspended pursuant to a decision of the Court of Justice of the European Union.

Article 56

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

1. Before adopting a decision pursuant to Article 55, the Commission shall ensure that the economic operators concerned have been given the opportunity to submit observations on:

   (a) the preliminary findings of the Commission, including any matter in relation to which the Commission has raised objections;

(b) the measures that the Commission may intend to take in view of the preliminary findings pursuant to point (a) of this paragraph.

2. The economic operators concerned may submit to the Commission their observations on the Commission's preliminary findings within a time limit which shall be fixed by the Commission in its preliminary findings, and which may not be less than 14 working days.

3. The Commission shall base its imposition of fines or periodic penalty payments only on objections on which the economic operators concerned have been able to comment.

4. Where the Commission has informed the economic operators concerned of its preliminary findings as referred to in paragraph 1, it shall give access, if so requested, to the Commission's file under the terms of a negotiated disclosure, subject to the legitimate interest of economic operators in the protection of their business secrets, or in order to preserve business secrets or other confidential information of any person. The right of access to the file shall not extend to confidential information and internal documents of the Commission or the authorities of the Member States; in particular to correspondence between the Commission and the authorities of the Member States. Nothing in this paragraph shall prevent the Commission from disclosing and using information necessary to prove an infringement.

Section 2c

Governance

Article 57

Defence Security of Supply Board

1. The Defence Security of Supply Board is hereby established.

2. The general task of the Defence Security of Supply Board is to assist and provide recommendations to the Commission pursuant to this Chapter.

4. The Commission shall maintain a regular flow of information to the Defence Security of Supply Board on any planned measures and on measures that have been taken following the activation of the supply-crisis state. The Commission shall provide the necessary information through a secured IT system.

5. For the purposes of preparing for and addressing a supply-crisis as referred to in Article 44(1), the Defence Security of Supply Board shall assist the Commission in:

(a) analysing crisis-relevant information gathered by Member States or the Commission;

(aa) assessing possible preparedness measures;

(b) assessing whether the criteria for activation or deactivation of the supply-crisis state have been fulfilled;

(ba) facilitating coordinated action with Member States;

(c) the implementation of the measures chosen to respond to supply crisis at Union level, including on the activation of the measures referred to in Article 46 to 53;

(da) identifying specific response measures for the Member States for ensuring the timely availability and supply of crisis-relevant products;

(e) facilitating exchanges and sharing of information, including with other crisis-relevant bodies at Union level, as well as, as appropriate, with third countries and international organisations, representatives of industry, civil society and academia;

(f) identifying relevant topics for the conduct of stress tests;

(g) the development of a framework and methodology for identifying crisis-relevant products and the list of early-warning indicators;

(h) carrying out the mapping regarding crisis-relevant products and early warning indicators;

(i) assessing whether a prolongation of the supply-crisis state is necessary and proportionate and whether a termination is appropriate;

(j) assessing the results of the monitoring and identifying, where appropriate, potential solutions to issues of common interest; and

(k) identifying an appropriate frequency for the conduct of stress tests.

7. The Defence Security of Supply Board shall be composed of representatives from all Member States, the Commission, the High Representative and the EDA. It shall be co-chaired by a representative of the Commission and of the Member State holding the

rotating presidency of the Council. The secretariat of the Defence Security of Supply Board shall be ensured by the Commission. Only Member States shall have voting rights.

7a. Associated countries shall have the right to become members, without voting rights, of the Defence Security of Supply Board in accordance with the conditions set out under the Agreement on the European Economic Area.

8. The Defence Security of Supply Board shall meet whenever the situation requires, upon request from the Commission, a Member State or an associated country which has become a member thereof. It shall adopt its rules of procedure on the basis of a proposal submitted by the Commission.

9. The Defence Security of Supply Board may issue recommendations, upon the request of the Commission or on its own initiative. The Defence Security of Supply Board shall endeavour to find solutions which command the widest possible support.

10. The Defence Security of Supply Board shall invite, at least once a year, representatives from National Defence Industrial Associations and selected industrial representatives to take part, as observers, in its work, taking into account the necessity to ensure a balanced geographical representation. Where the supply-crisis state referred to in Article 44(3) has been activated, the Defence Security of Supply Board shall invite, where relevant, high-level industrial representatives to take part, as observers, in its work, meeting in a special configuration in order to discuss issues linked to crisis-relevant products.

11. The Defence Security of Supply Board shall invite the representatives of other crisis-relevant bodies at Union level as observers to its relevant meetings.

12. The Defence Security of Supply Board shall invite, where relevant, in line with its rules of procedure and with due respect to the security and defence interests of the Union and its Member States, a representative from Ukraine to attend meetings as an observer.

13. The Commission shall ensure inclusiveness and provide Member States with equal access to information in order to ensure that the decision-making process of the Defence Security of Supply Board reflects the situation and the needs of all Member States.

14. The Defence Security of Supply Board may, on its own initiative or on the proposal of the Commission, set up, on an ad hoc basis, working groups consisting of experts appointed by Member States to support the 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 such working groups.

15. The Defence Security of Supply Board shall set up a working group consisting of experts appointed by Member States on legal, regulatory and administrative hurdles. The objectives of that working group shall be:

(a) to identify existing or potential legal, regulatory and administrative obstacles at international, Union and national levels to the achievement of the objectives listed in Article 1(4);

(b) to identify potential solutions and mitigation measures to identified obstacles.

Chapter V

Evaluation and control

Article 58

Committee Procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. The EDA shall be invited to provide its views and expertise to the committee as an observer. The European External Action Service shall also be invited to assist in the work of the committee.

2a. The Commission may, on its own initiative or upon request from one or several Member States, invite, where relevant, representatives of Ukraine to attend meetings of the committee 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 2a(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 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[35];

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35 Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, amending and repealing Decision No 466/2014/EU of the European Parliament and of the Council and repealing Regulation (EU) 2017/1601 of the European Parliament and of the Council and Council Regulation (EC, Euratom) No 480/2009 (OJ L 209, 14/06/2021, p. 1).

(c) the right of the Commission to monitor activities under this Regulation carried out by the legal entities established in Ukraine, along the whole project cycle, including for cooperation for common procurement action, to take part in those activities as observer, as appropriate, and to make recommendations for the improvement of such activities, and a commitment by the Ukrainian authorities to make their best efforts to implement such recommendations of the Commission and to report on this implementation;

(d) the obligations referred to in Article 64(2), including precise rules and timeframe regarding the collection of data by Ukraine and access to such data by the Commission and the European Anti-Fraud Office (OLAF);

(e) the protection and handling of classified information in accordance with applicable rules;

(f) provisions on protection of personal data.

4. Funding shall only be granted to Ukraine after the administrative arrangement has entered into force and the actions needed to implement the requirements it establishes have been implemented by the parties.

5. The Commission shall ensure that, from its side, all necessary steps are taken for the administrative arrangement to become effective no later than six months after the entry into force of this Regulation.

Article 60

Protection of classified information

1. Classified information that is created, handled, stored, exchanged or shared under this Regulation shall be protected in accordance with the security rules set out in Commission Decision (EU, Euratom) 2015/444[36] or the Agreement between the Member States of the European Union, meeting within the Council, regarding the protection of classified information exchanged in the interests of the European Union, as appropriate.

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[36] Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17/03/2015, p. 53).

2. The participating Member States shall decide who is the originator of classified foreground information generated in the implementation of eligible actions listed under Article 11.

3. The Commission shall have access to the classified information necessary for carrying out the tasks assigned to it under this Regulation concerning the eligible actions listed under Article 11.

4. In the context of a SEAP, the rules on the protection of classified information referred to in Article 27(1), point (l), shall comply with paragraph 1 of this Article.

4a. Where a SEAP includes associated countries or Ukraine among its members or observers, such SEAP shall ensure a level of protection equivalent to that afforded by the Agreement between the Member States of the European Union, meeting within the Council, regarding the protection of classified information exchanged in the interests of the European Union.

5. The applicable security framework for an action shall be put in place by participating Member States at the latest before the signature of the grant agreement or the contract. The relevant documents shall form an integral part of the grant agreement or the contract.

6. The Commission shall set up a system that is security accredited in accordance with Decision (EU, Euratom) 2015/444 in order to facilitate the exchange of classified information between the Commission and the Member States and associated countries, where appropriate, with the applicants and the recipients.

Article 61

Confidentiality of information

1. Information received as a result of the application of this Regulation shall be used only for the purpose for which it was requested.

2. Member States, the Commission, the European External Action Service and the EDA shall ensure the protection of trade and business secrets and other sensitive information acquired and generated in application of this Regulation in accordance with Union law and respective national law.

5. The Commission shall handle information containing any data of an entity or any trade secrets in a way not less stringent than the handling of sensitive information, including the

application of the "need-to-know-principle" and the use of appropriate encrypted environments for the handling and sharing of such information.

Article 62

Personal data protection

1. This Regulation shall be without prejudice to Directive 2002/58/EC of the European Parliament and of the Council[37] and Regulations (EU) 2016/679[38] and (EU) 2018/1725[39] of the European Parliament and of the Council.

Article 63

Audits

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

Article 64

Protection of the financial interests of the Union

1. Where an associated country participates in the Programme by means of a decision adopted pursuant to the Agreement on the European Economic Area or on the basis of any other legal instrument, the associated country shall grant the necessary rights and access required for the authorising officer responsible, OLAF and the European Court of Auditors

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37 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).

38 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).

39 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).

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 irregularities, fraud, corruption and conflicts of interest affecting the financial interests of the Union, to detect and avoid double funding and to take legal action to recover funds that have been misappropriated;

(b) to regularly check that the financing provided has been used in accordance with the applicable rules, in particular regarding the prevention, detection and correction of irregularities, fraud, corruption and conflicts of interest;

(c) to accompany a request for payment under the Ukraine Support Instrument by a declaration that the funds were used in accordance with the principle of sound financial management and for their intended purpose and managed appropriately, in particular in accordance with Ukrainian rules complemented by international standards on prevention, detection and correction of irregularities, fraud, corruption and conflicts of interest;

(d) to expressly authorise the Commission, OLAF, the European Court of Auditors and, where applicable, the European Public Prosecutor's Office to exert their rights as provided for in Article 129(1) of the Financial Regulation, in application of the principle of proportionality.

Article 65

Information, communication and publicity

1. The recipients of Union funding shall acknowledge the origin of the funds and ensure the visibility of that funding, in particular when promoting the actions and their results, by providing coherent, effective and proportionate targeted information to multiple audiences, including the media and the public.

2. The Commission shall implement information and communication actions relating to this Regulation to actions taken pursuant to this Regulation and to the results obtained.

3. Financial resources allocated to the Programme and the Ukraine Support Instrument shall contribute to the corporate communication of the political priorities of the Union, insofar as those priorities are related to the objectives referred to in Article 4 and Article 19e.

4. Financial resources allocated to the Programme and the Ukraine Support Instrument may contribute to the organisation of dissemination activities, match-making events and awareness-raising activities, in particular aiming to open up supply chains to foster the cross-border participation of SMEs.

Article 66

Evaluation and review

1. By 30 June 2027, the Commission shall draw up a report, based on indicators where appropriate, evaluating the implementation of the measures set out in this Regulation and their results and assessing the need for a possible revision of this Regulation. That 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