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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION defining the statute, seat and operational rules of the
European Defence Agency (recast)

COUNCIL DECISION (CFSP) 2015/...

of ...

**defining the statute, seat and operational rules
of the European Defence Agency
(recast)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 42 and 45 thereof,

Whereas:

- (1) The European Defence Agency ('the Agency') was established by Council Joint Action 2004/551/CFSP¹ to support the Council and Member States in their effort to improve the Union's defence capabilities in the field of crisis management and to sustain the European Security and Defence Policy.
- (2) The European Security Strategy, endorsed by the European Council on 12 December 2003, identifies the establishment of a defence agency as an important element towards the development of more flexible and efficient European military resources.
- (3) The report on the implementation of the European Security Strategy of 11 December 2008 endorses the Agency's leading role in the process of developing key defence capabilities for the Common Security and Defence Policy (CSDP).
- (4) Article 45 of the Treaty on European Union (TEU) provides for the adoption, by the Council, of a decision defining the Agency's statute, seat and operational rules, which should take account of the level of effective participation of the Member States in the Agency's activities.
- (5) The Agency should contribute to the implementation of the Common Foreign and Security Policy (CFSP), in particular the CSDP.

¹ Council Joint Action 2004/551/CFSP of 12 July 2004 on the establishment of the European Defence Agency (OJ L 245, 17.7.2004, p. 17).

- (6) The structure of the Agency should enable it to respond to the operational requirements of the Union and its Member States for the CSDP and, where necessary to fulfil its functions, to cooperate with third countries, organisations and entities.
- (7) The Agency should develop close working relations with existing arrangements, groupings and organisations such as those established under the Letter of Intent Framework Agreement ('LoI Framework Agreement'), as well as the Organisation Conjointe de Coopération en matière d'Armement (OCCAR) and the European Space Agency (ESA).
- (8) For the purpose of fulfilling its mission, the Agency should be able to cooperate, and to conclude appropriate arrangements, with the Union's institutions, bodies, offices and agencies.
- (9) In accordance with Article 18(2) TEU, the High Representative of the Union for Foreign Affairs and Security Policy (HR) should have a leading role in the Agency's structure and provide the essential link between the Agency and the Council.
- (10) In the exercise of its role of political supervision and policy-making, the Council should issue guidelines or guidance to the Agency.
- (11) In view of their nature, the conclusion of administrative arrangements between the Agency and third countries, organisations and entities should be approved by the Council acting unanimously.

- (12) When adopting guidelines, guidance and decisions in relation to the work of the Agency, the Council should meet at the level of Defence Ministers. Any guidelines, guidance or decisions adopted by the Council in relation with the Agency's work should be prepared in accordance with Article 240 of the Treaty on the Functioning of the European Union (TFEU).
- (13) The competences of the Council's preparatory and advisory bodies, in particular those of the Committee of Permanent Representatives under Article 240 TFEU, the Political and Security Committee (PSC) under Article 38 TEU and the EU Military Committee (EUMC) should remain unaffected.
- (14) The National Armaments Directors (NAD), Capability Directors, Research & Technology (R&T) Directors and Defence Policy Directors should receive reports and contribute on issues within their competence in the preparation of Council decisions relating to the Agency.
- (15) The Agency should have the legal personality necessary to perform its functions and attain its objectives, while maintaining close links with the Council and fully respecting the responsibilities of the Union and its institutions.
- (16) It should be provided that the budgets administered by the Agency may, on a case-by-case basis, receive contributions from the general budget of the Union, in full respect of the rules, procedures and decision-making processes applicable to it, including Article 41(2) TEU.

- (17) The Agency, while being open to participation by all Member States, should also provide for the possibility of specific groups of Member States establishing ad hoc projects or programmes.
- (18) The fact that these ad hoc projects and programmes fall within the functions and tasks attributed to the Agency is underpinned by the efforts made to clarify the status of these activities as integral components of the Agency's budget. It should ensure that only activities where the role of the Agency in administering projects or programmes in support of Member States brings an added value can benefit from the exemption in Article 3 of Protocol No 7 on the privileges and immunities of the European Union ('Protocol No 7'), annexed to the TEU and the TFEU, and point (aa) of Article 151(1) of Council Directive 2006/112/EC¹. For such exemption to apply, the Agency has to have an added-value role. The exemption would therefore not extend to cases where that role merely entails goods or services being procured for the Member States.
- (19) Subject to a Council decision on the establishment of permanent structured cooperation, in accordance with Article 42(6) and Article 46 TEU and with Protocol No 10 on permanent structured cooperation established by Article 42 TEU ('Protocol No 10'), annexed to the TEU and the TFEU, the Agency should support the implementation of permanent structured cooperation.

¹ 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).

- (20) The Agency should have decision-making procedures allowing it to fulfil its tasks efficiently, while respecting the national security and defence policies of participating Member States.
- (21) The Agency should fulfil its mission in full respect of Article 40 TEU.
- (22) The Agency should act in full compliance with the Council's security standards and rules. The Agency should apply the relevant Union legislation concerning public access to documents, as set out in Regulation (EC) No 1049/2001 of the European Parliament and of the Council¹, and the protection of individuals with regard to the processing of personal data as set out in Regulation (EC) No 45/2001 of the European Parliament and of the Council².

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

² Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

- (23) In accordance with Article 5 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark does not participate in the elaboration and implementation of decisions and actions of the Union which have defence implications. Denmark will therefore not be bound by this Decision.
- (24) A number of amendments are to be made to Council Decision 2011/411/CFSP¹. In the interest of clarity, that Decision should be recast,

HAS ADOPTED THIS DECISION:

¹ Council Decision 2011/411/CFSP of 12 July 2011 defining the statute, seat and operational rules of the European Defence Agency and repealing Joint Action 2004/551/CFSP (OJ L 183, 13.7.2011, p.16).

CHAPTER I

ESTABLISHMENT, MISSION AND TASKS

OF THE AGENCY

Article 1

Establishment

1. An Agency in the field of defence capabilities development, research, acquisition and armaments ('European Defence Agency' or the 'Agency'), as originally established by Joint Action 2004/551/CFSP, shall hereby continue in accordance with the following provisions.
2. The Agency shall act under the Council's authority, in support of the CFSP and the CSDP, within the single institutional framework of the Union, and without prejudice to the responsibilities of the Union institutions and the Council bodies. The Agency's mission shall be without prejudice to other competences of the Union, in full respect of Article 40 TEU.
3. The Agency shall be open to participation by all Member States wishing to be part of it. Member States already participating in the Agency at the time of the adoption of this Decision shall continue as participating Member States.

4. Any Member State wishing to participate in the Agency after the entry into force of this Decision or wishing to withdraw from the Agency shall notify its intention to the Council and inform the HR. Any necessary technical and financial arrangements for such participation or withdrawal shall be determined by the Steering Board referred to in Article 8.
5. The Agency shall have its seat in Brussels.

Article 2

Mission

1. The mission of the Agency is to support the Council and the Member States in their effort to improve the Union's defence capabilities in the field of crisis management and to sustain the CSDP as it currently stands and as it develops in the future.
2. The Agency shall identify operational requirements, promote measures to satisfy those requirements, contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, participate in defining a European capabilities and armaments policy, and assist the Council in evaluating the improvement of military capabilities.
3. The Agency's mission shall be without prejudice to the competences of Member States in defence matters.

Article 3
Definitions

For the purpose of this Decision, the following definitions apply:

- (a) ‘participating Member State’ means a Member State which participates in the Agency;
- (b) ‘contributing Member States’ means the participating Member States which contribute to a particular project or programme of the Agency.

Article 4
Political supervision and reporting arrangements to the Council

1. The Agency shall operate under the authority and the political supervision of the Council, to which it shall provide reports and from which it shall receive guidelines or guidance in relation to the work of the Agency, notably with regard to its three-year Planning Framework.
2. The Agency shall report regularly to the Council on its activities, and shall in particular:
 - (a) submit to the Council in November each year a report on the Agency’s activities for that year;
 - (b) subject to a Council decision on the establishment of permanent structured cooperation, submit to the Council at least once a year information on the Agency’s contribution to the assessment activities in the context of permanent structured cooperation, referred to in point (f)(ii) of Article 5(3).

The Agency shall provide the Council in good time with information on important matters to be submitted to the Steering Board for decision.

3. The Council, acting by unanimity, and with advice of the PSC or other competent Council bodies as appropriate, shall issue guidelines or guidance in relation to the work of the Agency, notably with regard to its three-year Planning Framework.
4. The Agency may make recommendations to the Council and to the Commission, as necessary, for the implementation of its mission.

Article 5

Functions and tasks

1. In fulfilling its functions and tasks, the Agency shall respect other competences of the Union and those of the Union institutions.
2. The Agency's fulfilment of its functions and tasks shall be without prejudice to the competences of Member States in defence matters.

3. The Agency, subject to the authority of the Council, shall:
- (a) contribute to identifying the Member States' military capability objectives and evaluating observance of the capability commitments given by the Member States, in particular by:
 - (i) identifying, in association with the competent Council bodies, including the EUMC, and utilising inter alia the Capability Development Mechanism (CDM) and any successor, the Union's future defence capability requirements;
 - (ii) coordinating the implementation of the Capability Development Plan (CDP) and any successor thereto;
 - (iii) evaluating, against criteria to be agreed by the Member States, the capability commitments given by the Member States, inter alia, through the CDP process and the CDM and any successor thereto;
 - (b) promote the harmonisation of operational needs and the adoption of effective, compatible procurement methods, in particular by:
 - (i) promoting and coordinating harmonisation of military requirements;
 - (ii) promoting cost-effective and efficient procurement by identifying and disseminating best practice;
 - (iii) providing appraisals on financial priorities for capabilities development and acquisition;

- (c) propose multilateral projects to fulfil the objectives in terms of military capabilities, ensure coordination of the programmes implemented by the Member States and management of specific cooperation programmes, in particular by:
 - (i) promoting and proposing new multilateral cooperative projects;
 - (ii) identifying and proposing collaborative activities in the operational domain;
 - (iii) working for coordination of existing programmes implemented by Member States;
 - (iv) taking, at the request of Member States, responsibility for managing specific programmes;
 - (v) preparing, at the request of Member States, programmes to be managed by OCCAR or through other arrangements, as appropriate;

- (d) support defence technology research, and coordinate and plan joint research activities and the study of technical solutions meeting future operational needs, in particular by:
 - (i) promoting, in liaison with the Union's research activities where appropriate, research aimed at fulfilling future security and defence capability requirements and thereby strengthening Europe's industrial and technological potential in this domain;

- (ii) promoting more effectively targeted joint defence R&T;
 - (iii) catalysing defence R&T through studies and projects;
 - (iv) managing defence R&T contracts;
 - (v) working in liaison with the Commission to maximise complementarity and synergy between defence and civil or security-related research programmes;
- (e) contribute to identifying and, if necessary, implementing any useful measure for strengthening the industrial and technological base of the defence sector and for improving the effectiveness of military expenditure, in particular by:
- (i) contributing to the creation of an internationally competitive European defence equipment market, without prejudice to the internal market rules and the competences of the Commission in this field;
 - (ii) developing relevant policies and strategies in consultation with the Commission and, as appropriate, industry;
 - (iii) pursuing, in consultation with the Commission, EU-wide development and harmonisation of relevant procedures, within the tasks of the Agency;
- (f) subject to a Council decision on the establishment of permanent structured cooperation, support that cooperation in particular by:
- (i) facilitating major joint or European capability development initiatives;

- (ii) contributing to the regular assessment of participating Member States' contributions with regard to capabilities, in particular contributions made in accordance with the criteria to be established, inter alia, on the basis of Article 2 of Protocol No 10, and reporting thereon at least once a year;
- (g) pursue coherence with other Union policies insofar as they have implications for defence capabilities;
- (h) foster deeper defence cooperation between participating Member States, in line with the Policy Framework for systematic and long-term defence cooperation;
- (i) provide support to CSDP operations, taking into account EU crisis management procedures.

Article 6

Legal personality

The Agency shall have the legal personality necessary to perform its functions and attain its objectives. Member States shall ensure that the Agency enjoys the most extensive legal capacity accorded to legal persons under their laws. The Agency may, in particular, acquire or dispose of movable and immovable property and be a party to legal proceedings. The Agency shall have the capacity to conclude contracts with private or public entities or organisations.

CHAPTER II

ORGANS AND STAFF OF THE AGENCY

Article 7

Head of the Agency

1. The Head of the Agency shall be the High Representative of the Union for Foreign Affairs and Security Policy (HR).
2. The Head of the Agency shall be responsible for the Agency's overall organisation and functioning and shall ensure that the guidelines and guidance of the Council and the decisions of the Steering Board are implemented by the Chief Executive, who shall report to the Head of the Agency.
3. The Head of the Agency shall present the Agency's reports to the Council as referred to in Article 4(2).
4. The Head of the Agency shall be responsible for the negotiation of administrative arrangements with third countries and other organisations, groupings or entities in accordance with directives given by the Steering Board. Within such arrangements, as approved by the Steering Board, the Head of the Agency shall be responsible for establishing appropriate working relations with them.

Article 8
Steering Board

1. A Steering Board composed of one representative of each participating Member State, authorised to commit its government, and a representative of the Commission, shall be the decision-making body of the Agency. The Steering Board shall act within the framework of the guidelines and guidance of the Council.
2. The Steering Board shall meet at the level of Defence Ministers of the participating Member States or their representatives. The Steering Board shall, in principle, hold at least two meetings each year at the level of Defence Ministers.
3. The Head of the Agency shall convene and chair the Steering Board's meetings. If a participating Member State so requests, the Head of the Agency shall convene a meeting within one month.
4. The Head of the Agency may delegate the power to chair the Steering Board's meetings at the level of the representatives of the Ministers of Defence.
5. The Steering Board may meet in specific compositions (such as NADs, Capability Directors, R&T Directors or Defence Policy Directors).
6. The Steering Board meetings are attended by:
 - (a) the Chief Executive of the Agency referred to in Article 10, or his/her representative;

- (b) the Chairman of EUMC or his/her representative;
 - (c) representatives of the European External Action Service (EEAS).
7. The Steering Board may decide to invite, on matters of common interest:
- (a) the NATO Secretary-General or his/her nominated representative;
 - (b) the Heads/Chairs of other arrangements, groupings or organisations whose work is relevant to that of the Agency (such as those established under the LoI Framework Agreement, as well as OCCAR and ESA);
 - (c) as appropriate, representatives of other third parties.

Article 9

Tasks and powers of the Steering Board

1. Within the framework of the guidelines and guidance of the Council referred to in Article 4(1), the Steering Board:
- (a) shall approve the reports to be submitted to the Council;
 - (b) shall adopt, by unanimity, the Agency's general budget no later than 31 December of each year;

- (c) shall approve the Agency's three-year Planning Framework, which shall set out the Agency's priorities within the limits of the general budget, noting that the financial values ascribed to years two and three of the Planning Framework are for planning purposes only and do not constitute legally binding ceilings;
- (d) shall approve the establishment within the Agency of ad hoc projects or programmes in accordance with Article 19;
- (e) shall appoint the Chief Executive and the Deputy;
- (f) shall decide that the Agency may be entrusted by one or more Member States with the administrative and financial management of certain activities within its remit in accordance with Article 17;
- (g) shall approve any recommendations to the Council or the Commission;
- (h) shall adopt the rules of procedure of the Steering Board;
- (i) may amend the financial provisions for the implementation of the Agency's general budget;
- (j) may amend the rules and regulations applicable to temporary and contract staff and seconded national experts;
- (k) shall determine the technical and financial arrangements regarding Member States' participation or withdrawal referred to in Article 1(4);

- (l) shall adopt directives regarding the negotiation of administrative arrangements by the Head of the Agency;
- (m) shall approve the ad hoc arrangements referred to in Article 23(1);
- (n) shall conclude the administrative arrangements between the Agency and third parties as referred to in Article 26(1);
- (o) shall approve the annual accounts and balance sheet;
- (p) shall give its assent to decisions related to the organisational structure of the Agency;
- (q) shall approve the service level agreements or working arrangements referred to in Article 25, with the exclusion of those which are administrative in nature;
- (r) shall adopt all other relevant decisions related to the fulfilment of the Agency's mission.

2. Unless otherwise provided for in this Decision, the Steering Board shall take decisions by qualified majority. The votes of the participating Member States shall be weighted in accordance with Article 16(4) and (5) TEU. Only the representatives of the participating Member States shall take part in the vote.

3. If a representative of a participating Member State in the Steering Board declares that, for important and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. That representative may refer the matter, through the Head of the Agency, to the Council with a view to issuing guidelines to the Steering Board, as appropriate. Alternatively, the Steering Board, acting by qualified majority, may decide to refer the matter to the Council for decision. The Council shall act by unanimity.
4. The Steering Board, on a proposal from the Chief Executive or from a participating Member State, may decide to set up :
- (a) committees for the preparation of administrative and budgetary decisions of the Steering Board, composed of delegates of the participating Member States and a representative of the Commission;
 - (b) committees specialised in specific issues within the Agency's remit. These committees shall be composed of delegates of the participating Member States and, unless the Steering Board decides otherwise, a representative of the Commission.

The decision to establish such committees shall specify their mandate and duration.

Article 10
The Chief Executive

1. The Chief Executive, and the Deputy, shall be selected and appointed by the Steering Board on a recommendation from the Head of the Agency for three years. The Steering Board may grant a two-year extension. The Chief Executive and the Deputy shall act under the authority of the Head of the Agency and in accordance with the decisions of the Steering Board.

2. Participating Member States shall submit candidatures to the Head of the Agency, who shall inform the Steering Board thereof. The pre-selection process shall be organised under the responsibility of the Head of the Agency.

Subject to approval by the Steering Board, an Advisory Panel shall be set up, and its composition shall be such that a proper balance of representatives from the EEAS, the Agency and participating Member States is achieved.

On the basis of the pre-selection process, the Head of the Agency shall provide the Steering Board with a selection of at least two candidates indicating his/her recommended candidate.

3. The Chief Executive, assisted by the Deputy, shall take all necessary measures to ensure the efficiency and effectiveness of the Agency's work. The Chief Executive shall be responsible for the oversight and coordination of the functional units, in order to ensure the overall coherence of their work.

4. The Chief Executive is responsible for:
- (a) ensuring the implementation of the Agency's three-year Planning Framework;
 - (b) preparing the work of the Steering Board;
 - (c) preparing the draft annual general budget to be submitted to the Steering Board;
 - (d) preparing the three-year Planning Framework to be submitted to the Steering Board;
 - (e) ensuring close cooperation with, and providing information to, the Council preparatory bodies, notably the PSC and the EUMC;
 - (f) preparing the reports referred to in Article 4(2);
 - (g) preparing the statement of revenue and expenditure and implementing the Agency's general budget and the budgets of ad hoc projects or programmes entrusted to the Agency;
 - (h) the day-to-day administration of the Agency;
 - (i) all security aspects;
 - (j) all staff matters.

5. Within the terms of the general budget of the Agency and taking into account the agreed 3-year Planning Framework, the Chief Executive shall be empowered to enter into contracts and to recruit staff. The Chief Executive shall exercise the same power with regard to the other budgets defined in Article 12, in particular the budgets associated with the activities falling under Chapter IV and any budgets resulting from additional revenue referred to in Article 15.
6. The Chief Executive shall be accountable to the Steering Board.
7. The Chief Executive shall be the legal representative of the Agency.

Article 11

Staff

1. The staff of the Agency, including the Chief Executive, shall consist of temporary and contract staff members recruited from among candidates from all participating Member States on the broadest possible geographical basis, and from the Union institutions. The staff of the Agency shall be selected by the Chief Executive on the basis of relevant competence and expertise and through fair and transparent competition procedures. The Chief Executive shall publish in advance details of all available positions and the criteria relevant to the selection process. In all cases, recruitment shall be directed to securing for the Agency the services of staff of the highest standard of ability and efficiency.

2. The Head of the Agency, upon a proposal from the Chief Executive and following consultation with the Steering Board, shall appoint, and renew the contracts of, the staff of the Agency at senior management level.
3. The Agency staff shall consist of:
 - (a) personnel recruited directly by the Agency under fixed-term contracts, selected among nationals of participating Member States. The Council, acting by unanimity, has adopted the regulations applicable to such staff¹. The Steering Board shall review and amend as necessary those regulations where they empower it to do so.
 - (b) national experts seconded by participating Member States either to posts within the Agency organisational structure or for specific tasks and projects. The Council, acting by unanimity, has adopted the regulations applicable to such staff².
The Steering Board shall review and amend as necessary those regulations, where they empower it to do so.
 - (c) Union officials seconded to the Agency for a fixed period and/or for specific tasks or projects as required.

¹ Council Decision 2004/676/EC of 24 September 2004 concerning the Staff Regulations of the European Defence Agency (OJ L 310, 7.10.2004, p. 9).

² Council Decision 2004/677/EC of 24 September 2004 concerning the Rules applicable to national experts and military staff on secondment to the European Defence Agency (OJ L 310, 7.10.2004, p. 64).

4. The Agency may also have recourse to:
- (a) personnel of third countries, organisations and entities, who shall be paid by them and with which the Agency has concluded administrative arrangements pursuant to Article 26(1), seconded or posted to the Agency with the agreement of the Steering Board, in accordance with the conditions to be laid down in those arrangements;
 - (b) contract agents and seconded experts, for the purpose of contributing to the implementation of one or more ad hoc projects or programmes of the Agency referred to in Chapter IV. In such cases, the budgets associated with those ad hoc projects or programmes may cover the basic salaries of the contract agents and the allowances and expenses of the seconded experts concerned.
5. Incorporating all positions held, the total number of years that staff shall be able to serve at the Agency shall be less than 10 years.
6. The Court of Justice of the European Union shall have jurisdiction over any dispute between the Agency and any person to whom the regulations applicable to the staff of the Agency apply.

CHAPTER III

BUDGET AND FINANCIAL RULES

Article 12

The Agency's budget

The Agency's budget shall include the general budget, the budgets associated with the activities falling under Chapter IV and any budgets resulting from additional revenue referred to in Article 15.

The Agency's budget shall be established consistently with the European Union budgetary principles¹.

Article 13

The general budget

1. By 31 March each year, the Head of the Agency shall provide the Steering Board with a preliminary estimate of the draft general budget for the following year.

¹ Principles of unity, budgetary accuracy, annuality, equilibrium, unit of account, universality, specification, sound financial management, referred to in Article 6 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union (OJ L 298, 26.10.2012, p. 1).

2. By 30 June each year, the Head of the Agency shall propose a revised preliminary estimate of the draft general budget for the following year, together with the draft three-year Planning Framework to the Steering Board.
3. By 30 September each year, the Head of the Agency shall propose the draft general budget together with the draft three-year Planning Framework to the Steering Board. The draft shall include:
 - (a) the appropriations deemed necessary:
 - (i) to cover the Agency's running, staffing and meeting costs;
 - (ii) for procuring external advice, notably operational analysis, essential for the Agency to discharge its tasks, and for specific activities for the common benefit of all participating Member States, as provided in Article 5;
 - (b) a forecast of the revenue needed to cover expenditure.
4. The Steering Board shall aim to ensure that the appropriations referred to in point (a)(ii) of paragraph 2 represent a significant share of the total appropriations referred to in that paragraph. Those appropriations shall reflect actual needs and shall allow for an operational role for the Agency.
5. The draft general budget shall be supported by detailed justifications and a staff establishment plan.

6. The Steering Board, acting by unanimity, may decide that the draft general budget shall, furthermore, cover a particular project or programme where this is clearly for the common benefit of all participating Member States.
7. The appropriations shall be classified in titles and chapters grouping expenditure by type or purpose, subdivided as necessary into articles.
8. Each title may include a chapter entitled ‘provisional appropriations’. These appropriations shall be entered where there is uncertainty, based on serious grounds, about the amount of appropriations needed or the scope for implementing the appropriations entered.
9. Revenue shall consist of:
 - (a) contributions payable by the participating Member States based on the gross national income (GNI) scale;
 - (b) other revenue.

The draft general budget shall carry lines to accommodate earmarked revenue and, wherever possible, shall indicate the amount foreseen.

10. The Steering Board, acting by unanimity, shall adopt the draft general budget by 31 December of each year. When doing so, the Steering Board shall be chaired by the Head of the Agency, or by a representative appointed by the Head of the Agency, or by a member of the Steering Board invited to do so by the Head of the Agency. The Chief Executive shall declare that the budget has been adopted and notify the participating Member States.

11. If, at the beginning of a financial year, the draft general budget has not been adopted, a sum equivalent to not more than one twelfth of the budget appropriations for the preceding financial year may be spent each month in respect of any chapter or other subdivision of the budget. That arrangement shall not, however, have the effect of placing at the disposal of the Agency appropriations in excess of one twelfth of those provided for in the draft general budget in course of preparation. The Steering Board, acting by a qualified majority on a proposal from the Chief Executive, may authorise expenditure in excess of one twelfth, provided that the overall budget appropriations for that financial year do not exceed those of the previous financial year. The Chief Executive may call for the contributions necessary to cover the appropriations authorised under this provision, which shall be payable within 30 days from dispatch of the call for contributions.

Article 14
Amending budget

1. In the case of unavoidable, exceptional or unforeseen circumstances, the Chief Executive may propose a draft amending budget to the Steering Board.
2. The draft amending budget shall be drawn up, proposed, and adopted and notification given in accordance with the same procedure as the general budget. The Steering Board shall act with due account to the urgency.

Article 15
Additional revenue

1. Within the framework of its mission in accordance with Article 2, the Agency may receive additional revenue for a specific purpose:
 - (a) from the general budget of the Union on a case-by-case basis, in full respect of the rules, procedures and decision-making processes applicable to it;
 - (b) from Member States, third countries or other third parties, unless the Steering Board decides otherwise within one month of receiving such information from the Agency.
2. The revenue referred to in paragraph (1) may only be used for the specific purpose to which it is assigned.

Article 16
Contributions and reimbursements

1. Determination of contributions where the GNI scale is applicable:
 - (a) Where the GNI scale is applicable, the breakdown of contributions between the Member States from which a contribution is required shall be determined in accordance with the gross national product scale as specified in Article 41(2) TEU and in accordance with Council Decision [2007/436/EC](#), Euratom¹ or any other decision which may replace it.
 - (b) The data for the calculation of each contribution shall be those set out in the ‘GNI own resources’ column in the ‘Summary of financing of the general budget by type of own resource and by Member State’ table appended to the latest budget of the Union. The contribution of each Member State from whom a contribution is due shall be proportional to the share of that Member State’s GNI in the total GNI aggregate of the Member States from whom a contribution is due.

2. Schedule for payment of contributions:
 - (a) The contributions intended to finance the Agency’s general budget shall be paid by the participating Member States in three equal instalments, by 15 March, 15 June and 15 October of the financial year concerned.

¹ Council Decision [2007/436/EC](#), Euratom of 7 June 2007 on the system of the European Communities’ own resources (OJ L 163, 23.6.2007, p. 17).

- (b) When an amending budget is adopted, the necessary contributions shall be paid by the Member States concerned within 60 days of dispatch of the call for contributions.
- (c) Each Member State shall pay the bank charges relating to the payment of its own contributions.
- (d) If the annual budget is not approved by 30 November, the Agency may issue, at the request of a Member State, an individual provisional call for contributions for that Member State.

Article 17

Management by the Agency of budgets associated with ad hoc activities

1. The Steering Board, following a proposal from the Chief Executive or a Member State, may decide that the Agency may be entrusted by Member States with the administrative and financial management of certain activities within its remit in accordance with Articles 19 and 20.
2. The Steering Board, in the context of Agency ad hoc projects and programmes, may authorise the Agency, under the conditions set out in the arrangements governing the activities in question, to enter into contracts and grant agreements, and collect the necessary contributions from these Member States in advance to honour such contracts and grant agreements.

Article 18
Implementation of the budget

1. The financial provisions applicable to the Agency's general budget are set out in Council Decision 2007/643/CFSP¹. The Steering Board, acting by unanimity, shall review and amend these provisions, as necessary.
2. The Steering Board, acting on a proposal from the Chief Executive, shall as necessary adopt the implementing rules regarding the implementation and control of the general budget, notably as regards public procurement, without prejudice to relevant Union rules. The Steering Board shall ensure, in particular, that security of supply and protection both of defence secret and intellectual property rights requirements are duly taken into account.
3. The College of Auditors shall examine the accounts of all revenue and expenditure of the Agency.

¹ Council Decision 2007/643/CFSP of 18 September 2007 on the financial rules of the European Defence Agency and on the procurement rules and rules on financial contributions from the operational budget of the European Defence Agency (OJ L 269, 12.10.2007, p. 1).

CHAPTER IV
AGENCY MANAGEMENT
OF AD HOC PROJECTS OR PROGRAMMES
AND ASSOCIATED BUDGETS

Article 19

*Category A (opt out) ad hoc projects or programmes
and ad hoc budgets associated therewith*

1. One or more participating Member States or the Chief Executive may submit to the Steering Board an ad hoc project or programme within the Agency's remit, which shall presume general participation by the participating Member States, indicating also the expected added value brought by the Agency. The Steering Board shall be informed of the ad hoc budget, if any, to be associated with the proposed project or programme, as well as of potential contributions by third parties.
2. All participating Member States shall in principle contribute. They shall inform the Chief Executive of their intentions in this regard.
3. The Steering Board shall approve the establishment of the ad hoc project or programme.

4. The Steering Board, on a proposal from the Chief Executive or from a participating Member State, may decide to set up a committee to supervise the management and implementation of the ad hoc project or programme. The committee shall be composed of delegates from each of the contributing Member States and, when the Union contributes to the project or programme, a representative of the Commission. The decision of the Steering Board shall specify the committee's mandate and duration.
5. For the ad hoc project or programme, the contributing Member States, meeting within the Steering Board, shall approve:
 - (a) the rules governing the management of the project or programme;
 - (b) where appropriate, the ad hoc budget associated with the project or programme, the key for contributions and the necessary implementing rules;
 - (c) participation of third parties in the committee referred to in paragraph 4. Their participation shall be without prejudice to the Union's decision-making autonomy.
6. Where the Union contributes to an ad hoc project or programme, the Commission shall participate in the decisions referred to in paragraph 5, in full compliance with the decision-making procedures applicable to the general budget of the Union.

Article 20

*Category B (opt in) ad hoc projects or programmes
and ad hoc budgets associated therewith*

1. One or more participating Member States may inform the Steering Board that they intend to establish an ad hoc project or programme within the Agency's remit, and where appropriate the ad hoc budget associated with it, indicating also the expected added value brought by the Agency. The Steering Board shall be informed of the ad hoc budget, if any, to be associated with the proposed project or programme and details, if relevant, on human resources for such project or programme, as well as of potential contributions by third parties.
2. In the interest of maximising opportunities for cooperation, all participating Member States shall be informed of the ad hoc project or programme, including the basis upon which participation might be expanded, in a timely manner so that any participating Member State may express an interest in joining. Moreover, the initiator(s) of the project or programme will endeavour to make their membership as wide as possible. Participation will be established on a case-by-case basis by the initiators.
3. The ad hoc project or programme shall then be regarded as an Agency project or programme, unless the Steering Board decides otherwise within one month of receiving the information referred to in paragraph 1.

4. Any participating Member State which, at a later stage, wishes to participate in the ad hoc project or programme shall notify the contributing Member States of its intentions. The contributing Member States, within two months of receipt of that notification, shall decide among themselves, having due regard to the basis set out when participating Member States are informed of the project or programme, on the participation of the Member State concerned.
5. The contributing Member States shall take the decisions necessary for the establishment and implementation of the ad hoc project or programme and, where appropriate, the budget associated with it. Where the Union contributes to such a project or programme, the Commission shall participate in the decisions referred to in this paragraph in full compliance with the decision-making procedures applicable to the general budget of the Union. The contributing Member States shall keep the Steering Board informed, as appropriate, of developments relating to such project or programme.

Article 21

*Scope of Agency ad hoc projects and programmes
and ad hoc budgets associated therewith*

1. Within the scope of the Agency's mission, functions and tasks, as defined in Articles 2 and 5 respectively, and subject to the approval of the ad hoc projects and programmes in accordance with Articles 19 and 20, the Agency's activities may cover, inter alia:
 - (a) acquisition by means of public contracts, awarded in compliance with the relevant Union rules governing the award of public contracts;

- (b) grants, awarded in compliance with the financial provisions and rules referred to in Article 18.
2. Ad hoc budgets associated with Agency projects and programmes and managed pursuant to Article 17 shall, where relevant, contain appropriations designed to cover:
- (a) costs related to the legal commitments referred to in paragraph 1;
 - (b) costs referred to under point (a)(i) of Article 13(3), insofar as such costs are directly incurred as a result of the management of the ad hoc projects and programmes concerned.

Article 22

*Contributions from the general budget of the Union
to ad hoc budgets*

Contributions from the general budget of the Union may be made to the ad hoc budgets established for ad hoc projects or programmes referred to in Articles 19 and 20.

Article 23

Participation of third parties

1. Third parties may contribute, as contributing members, to a particular ad hoc project or programme, established in accordance with Article 19 or 20, and to the budget associated with it. The Steering Board shall, acting by qualified majority, approve as necessary ad hoc arrangements between the Agency and third parties for each particular project or programme.
2. For ad hoc projects or programmes established under Article 19, the contributing Member States meeting within the Steering Board shall approve any necessary modalities with the relevant third parties relating to their contribution.
3. For ad hoc projects or programmes established under Article 20, the contributing Member States shall decide all necessary arrangements with the relevant third parties relating to their contribution.

CHAPTER V

RELATIONS WITH THE UNION'S INSTITUTIONS, BODIES, OFFICES AND AGENCIES

Article 24

Relations with the Commission

1. The Commission is a member of the Steering Board without voting rights and shall be fully associated with the work of the Agency, in a spirit of co-operation and mutual benefit.
2. The Agency shall pursue working relations with the Commission, in particular with a view to exchanging expertise and advice in those areas where the activities of the Union have a bearing on the Agency's mission and where the activities of the Agency are relevant to those of the Union.
3. Necessary arrangements to cover a contribution, on a case-by-case basis, from the general budget of the Union under Articles 15 and 22, shall be established between the Agency and the Commission by mutual agreement, or between the contributing Member States and the Commission by mutual agreement.
4. The Commission may participate in projects and programmes of the Agency. In such case, it shall participate in the decisions referred to in Article 23(2) and (3), without prejudice to Member States' sovereign competence over defence capability development.

Article 25

Relations with the Union's institutions, bodies, offices and agencies

1. In so far as it is relevant to the performance of its tasks, the Agency may establish and maintain cooperative relations with the institutions, bodies, office and agencies set up by, or on the basis of, the TEU or the TFEU.

Where necessary, the Agency shall conclude service level agreements or working arrangements with such entities. Such working arrangements may concern the exchange of operational, strategic or technical information, including personal data and classified information, in accordance with relevant security rules.

2. The entities referred to in paragraph 1 may participate in projects and programmes of the Agency and to the budget associated with it.

CHAPTER VI

RELATIONS WITH THIRD COUNTRIES, ORGANISATIONS AND ENTITIES

Article 26

Administrative arrangements and other matters

1. For the purpose of fulfilling its mission, the Agency may enter into administrative arrangements with third countries, organisations and entities. Such arrangements shall notably cover:

- (a) the principle of a relationship between the Agency and the third party;
- (b) provisions for consultation on subjects related to the Agency's work;
- (c) security matters.

In so doing, it shall respect the single institutional framework and the decision-making autonomy of the Union. Each such arrangement shall be concluded by the Steering Board upon approval by the Council acting by unanimity.

2. The Agency shall pursue close working relations with the relevant elements of OCCAR and with those established under the LoI Framework Agreement, with a view to incorporating those elements or assimilating their principles and practices in due course, as appropriate and by mutual agreement.

3. Reciprocal transparency and coherent developments in the field of capabilities shall be ensured by the application of CDM procedures. Other working relations between the Agency and relevant NATO bodies shall be defined through an administrative arrangement referred to in paragraph 1, in full compliance with the established framework of cooperation and consultation between the Union and NATO.
4. Within the framework of arrangements referred to in paragraph 1, the Agency shall be entitled to establish working relations with organisations and entities other than those mentioned in paragraphs 2 and 3, with a view to facilitating their possible participation in projects and programmes.
5. Within the framework of arrangements referred to in paragraph 1, the Agency shall be entitled to establish working relations with third countries, with a view to facilitating their possible participation in specific projects and programmes.
6. Where the Agency intends to establish new working relations with organisations, entities or third countries as described in paragraphs 4 and 5 of this Article and in accordance with Article 7(4), it shall seek prior approval from the Steering Board.

The Agency shall also report to the Steering Board on the developments of established relations.

In the event participating Member States so request, the Agency shall convene an ad hoc meeting with participating Member States and the organisation, entity or third country, with which the Agency has entered into administrative arrangements, for the purposes of consultations and information exchange, in accordance with the relevant security rules, on the possible participation of that organisation, entity or third country in specific projects and programmes.

CHAPTER VII

MISCELLANEOUS PROVISIONS

Article 27

Privileges and immunities

1. The privileges and immunities of the Chief Executive and the Agency's staff are provided for in the Decision of the Representatives of the Governments of the Member States, meeting within the Council, on the privileges and immunities granted to the European Defence Agency and to its staff members, of 10 November 2004.

Pending the entry into force of that Decision, the host State may grant to the Chief Executive and the Agency's staff the privileges and immunities provided therein.

2. The privileges and immunities of the Agency are those provided for in Protocol No 7.

3. In particular, the second paragraph of Article 3 of Protocol No 7 applies to activities where the role of the Agency in administering projects or programmes in support of Member States brings an added value, and not to cases where that role merely entails goods or services being procured for the Member States.

Article 28

Review clause

Within five years of entry into force of this Decision, the Head of the Agency shall present a report to the Steering Board on the implementation of this Decision, with a view to its possible review by the Council.

Article 29

Legal liability

1. The contractual liability of the Agency shall be governed by the law applicable to the contract concerned.
2. The Court of Justice of the European Union shall have jurisdiction pursuant to any arbitration clause contained in a contract concluded by the Agency.
3. The personal liability of staff towards the Agency shall be governed by the relevant rules applying to the Agency.

Article 30

Access to documents

The rules laid down in Regulation (EC) No 1049/2001 shall apply to documents held by the Agency.

Article 31

Data protection

The rules laid down in Regulation (EC) No 45/2001 shall apply to the processing of personal data by the Agency.

The Steering Board, upon a proposal by the Head of the Agency, shall adopt implementing rules as necessary.

Article 32

Security

1. The Agency shall apply the Council's security regulations as set out in Council Decision 2013/488/EU¹.
2. The Agency shall ensure appropriate security in its external communications.

¹ Council Decision 2013/488/EU of 23 September 2013 on the security rules for protecting EU classified information (OJ L 274, 15.10.2013, p.1).

Article 33
Language Regime

The language regime of the Agency shall be established by the Council, acting by unanimity.

Article 34
Repeal

Decision 2011/411/CFSP is repealed.

References to the repealed Decision shall be construed as references to this Decision and shall be read in accordance with the correlation table in Annex II.

Article 35
Entry into force

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

Done at ...,

For the Council
The President

ANNEX I

Repealed acts and successive amendments

Council Joint Action 2004/551/CFSP OJ L 245, 17.7.2004, p. 17.

Council Joint Action 2008/299/CFSP OJ L 102, 12.4.2008, p. 34.

Council Decision 2011/411/CFSP OJ L 183, 13.7.2011, p. 16.

ANNEX II

Correlation table

Decision 2011/411/CFSP	This Decision
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
–	Article 3(c)
Article 4(3) to (4)	–
Article 4(5)	Article 4(3)
Article 5	Article 5
–	Article 5(3)(g)
Article 6	Article 6
Article 7	Article 7
Article 8	Article 8
Article 9	Article 9
Article 9(1)(b)	–
Article 9(1)(c)	Article 9(1)(b)
–	Article 9(1)(c)
Article 10	Article 10

Decision 2011/411/CFSP	This Decision
Article 11	Article 11
Article 11 (1), first sentence	Article 11 (3)
–	Article 11 (1)
–	Article 11 (2)
Article 11 (2)	Article 11 (5)
Article 11(3)(a)	–
Article 11(3)(b) and (c)	Article 11 (4)
Article 11 (1), second, third and fourth sentences	Article 11 (6)
–	Article 11 (8)
Article 11 (4)	Article 11 (9)
Article 12	–
–	Article 12
Article 13	Article 13
Article 13(2)(a)(ii)	–
–	Article 13(2)(a)(ii)
Article 14	Article 14
Article 14(3)	–
Article 15	Article 15
Article 16	Article 16
Article 17	Article 17
Article 18	Article 18
Article 19	Article 19

Decision 2011/411/CFSP	This Decision
Article 20	Article 20
–	Article 21
Article 21	Article 22
Article 22	Article 23
Article 22(4)	Article 24(4), second sentence
Article 23	Article 24
Article 23(2)	Article 24(4), first sentence
–	Article 25
Article 24	Article 26
Article 24(6) to (8)	–
–	Article 24(6)
Article 25	Article 27
Article 25, first paragraph	–
Article 26	Article 28
Article 27	Article 29
Article 28	Article 30
–	Article 31
Article 29	Article 32
Article 30	Article 33
Article 31	Article 34
Article 32	Article 35