EUROPEAN UNION

THE EUROPEAN PARLIAMENT **THE COUNCIL**

Brussels, 28 November 2025
(OR. en)

2024/0061(COD) **PE-CONS 52/25**

INDEF 121
COPS 517
POLMIL 316
IND 437
MAP 92
COMPET 1039
FISC 281
FIN 1222
CODEC 1575

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	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')

REGULATION (EU) 2025/…
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of …

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), Article 212(2) and Article 322(1) 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 Court of Auditors[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Having regard to the opinion of the Committee of the Regions[3],

Acting in accordance with the ordinary legislative procedure[4],

[1] OJ C, C/2025/805, 31.1.2025, ELI: http://data.europa.eu/eli/C/2025/805/oj.
[2] OJ C, C/2024/4662, 9.8.2024, ELI: http://data.europa.eu/eli/C/2024/4662/oj.
[3] OJ C, C/2025/1705, 26.3.2025, ELI: http://data.europa.eu/eli/C/2025/1705/oj.
[4] Position of the European Parliament of 25 November 2025 (not yet published in the Official Journal) and decision of the Council of …

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 at which the European Defence Technological and Industrial Base (EDTIB) is able to develop and produce the full spectrum of military capabilities.

(2) 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.

(3) 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.

(4) In its conclusions of 14 and 15 December 2023, the European Council, having considered work carried out to implement the Versailles declaration of 11 March 2022 and the Strategic Compass for Security and Defence approved by the Council on 21 March 2022, underlined that more needs to be done to fulfil the Union's objectives of increasing defence readiness. To achieve such readiness and defend the Union, a strong, resilient, innovative and competitive European defence industry is a pre-requisite.

(5) On 20 July 2023, the European Parliament and the Council adopted Regulation (EU) 2023/1525[5], 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[6], 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.

(6) 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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5 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).

6 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).

(7) This Regulation should build on Regulations (EU) 2023/1525 and (EU) 2023/2418 and 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 availability and supply of defence products in a predictable, continuous and timely manner. In light of the current security situation, it appears necessary to extend that Union support to incentivise collaboration between Member States in the procurement of a broader scope of defence equipment.

(8) 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.

(9) 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, to the integration of the Ukrainian DTIB into the EDTIB, and to the adaptation of the Ukrainian DTIB to meeting the standards of the North Atlantic Treaty Organisation (NATO) and other relevant standards. A strong Ukrainian DTIB is vital for Ukraine's long-term security as well as its reconstruction.

(10) Actions supporting the reinforcement of the Ukrainian DTIB should be financially supported by the Union. In particular, the Ukraine Support Instrument under this Regulation should incentivise Member States to cooperate with Ukraine and the Ukrainian DTIB with a view to ramping up the Ukrainian defence manufacturing capacities and to fostering the common procurement of defence products from the Ukrainian DTIB. That support is complementary to the support provided under the Ukraine Facility established by Regulation (EU) 2024/792 of the European Parliament and of the Council[7], and to military support provided to Ukraine under the European Peace Facility established by Council Decision (CFSP) 2021/509[8] and through bilateral assistance from Member States. It is also consistent with the Union's continued and unwavering support for Ukraine's independence, sovereignty and territorial integrity within its internationally recognised borders.

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7 Regulation (EU) 2024/792 of the European Parliament and of the Council of 29 February 2024 establishing the Ukraine Facility (OJ L, 2024/792, 29.2.2024, ELI: http://data.europa.eu/eli/reg/2024/792/oj).

8 Council Decision (CFSP) 2021/509 of 22 March 2021 establishing a European Peace Facility, and repealing Decision (CFSP) 2015/528 (OJ L 102, 24.3.2021, p. 14, ELI: http://data.europa.eu/eli/dec/2021/509/oj).

(11) 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.

(12) 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[9] which established the Ukraine Loan Cooperation Mechanism and provided exceptional macro-financial assistance to Ukraine. Regulation (EU) 2024/2773 provides that the Memorandum of Understanding on policy conditions for that macro-financial assistance is to 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 the Ukrainian DTIB and of other relevant Union programmes.

(13) A financing agreement within the meaning of Article 114(2) of Regulation (EU, Euratom) 2024/2509 of the European Parliament and the Council[10] (the 'Financial Regulation') should be concluded with Ukraine for the implementation of the actions set out in this Regulation which concern Ukraine or legal entities established in Ukraine receiving Union funding. The financing agreement with Ukraine, along with the contracts and agreements signed with legal entities established in Ukraine receiving Union funds, should ensure compliance with the obligations set out in Article 129 of the Financial Regulation.

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9 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 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).

(14) 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 European Defence Industry 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.

(15) 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 (PESCO) established by Council Decision (CFSP) 2017/2315[11], the European Defence Agency's (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 NATO and other partners where such activities serve the security and defence interests of the Union.

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

(16) 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[12], for the European Parliament and the Council during the annual budgetary procedure. It is appropriate to allow for additional financial resources to be made available to the Programme and the Ukraine Support Instrument, including through additional contributions provided by the Member States.

(17) 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 2021-2027, Union funding to sectoral programmes will be subject to the outcome of negotiations on the next MFF, applicable from 2028.

[12] OJ L 433 I, 22.12.2020, p. 28, ELI: http://data.europa.eu/eli/agree_interinstit/2020/1222/oj.

(18) The possibilities provided for in Article 73(4) of Regulation (EU) 2021/1060 of the European Parliament and of the Council[13] 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[14] and (EU) 2021/1057[15] 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.

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13 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 Instrument for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159, ELI: http://data.europa.eu/eli/reg/2021/1060/oj).

14 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, 30.6.2021, p. 60, ELI: http://data.europa.eu/eli/reg/2021/1058/oj).

15 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, 30.6.2021, p. 21, ELI: http://data.europa.eu/eli/reg/2021/1057/oj).

(19) 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 and other third parties to contribute to the implementation of the Programme and of 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) or (e), of the Financial Regulation and should be indicated in the annual budgetary procedure in accordance with the Financial Regulation. Member States should have the flexibility to decide how to allocate the amounts contributed to the Programme or to 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.

(20) 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 Regulation (EU) 2021/1060. It should be possible for resources that remain uncommitted 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.

(21) The objectives pursued under the Programme 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, including with a view to ensuring security of supply of defence products throughout the Union, can contribute to promoting the Union's economic, social and territorial cohesion as foreseen under Regulation (EU) 2021/241 of the European Parliament and of the Council[16]. Therefore, provision should be made to allow for Member States' contributions supported by the Recovery and Resilience Facility to be used for the purpose of supporting industrial reinforcement actions under this Regulation. That possibility should be used to the extent that it contributes to achieving the objectives set out in Article 4 of Regulation (EU) 2021/241. The application of the principle of 'do no significant harm' within the meaning of Article 17 of Regulation (EU) 2020/852 of the European Parliament and of the Council[17] is essential to ensure that the reforms and investments undertaken under the Recovery and Resilience Facility are implemented in a sustainable manner. All measures supported by the Recovery and Resilience Facility are to be undertaken in compliance with the applicable Union and national environmental *acquis*, in particular relating to environmental impact assessment and nature protection. At the same time, some defence end-products are, by their very nature, likely to directly or indirectly harm the environment.

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16 Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L 57, 18.2.2021, p. 17, ELI: http://data.europa.eu/eli/reg/2021/241/oj).

17 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13, ELI: http://data.europa.eu/eli/reg/2020/852/oj).

Therefore, the application of the principle of ‘do no significant harm’ to Member States’ contributions supporting industrial reinforcement actions which concern those products might not be feasible. In addition, it could be appropriate not to apply the principle of ‘do no significant harm’ where the supported industrial reinforcement action concerns defence products, or components or raw materials intended or used wholly for the production of defence products. Indeed, the Union is confronted with a stark deterioration of its security context which has increased the level of threat to the Union. This necessitates immediate and massive investments in and support to the resilience and scaling up of the EDTIB to strengthen its ability to prepare for future supply crises and ensure the timely availability and supply of defence products across the Union. This represents, in the present situation, an overriding objective of public security which takes precedence over other considerations. In this context, it is necessary to prevent any disruption along defence supply chains, in particular by allowing industrial reinforcement actions concerning defence products, components and raw materials to be supported, where appropriate, without restrictions related to the application of the principle of ‘do no significant harm’. Therefore, where Member States use their voluntary contribution supported by the Recovery and Resilience Facility in favour of industrial reinforcement actions under this Regulation, those actions should not be subject to the application of the principle of ‘do no significant harm’, provided that the Member State concerned justifies in the contribution agreement with the Commission that it is not feasible or appropriate to ensure that the type of activities intended to be supported under this Regulation comply with the principle of ‘do no significant harm’.

(22) Third countries which are members of the European Economic Area should be able to participate in the Programme as associated countries in the framework of the cooperation established under the Agreement on the European Economic Area[18], which provides for the implementation of the programmes on the basis of a decision adopted under that Agreement.

(23) As this Regulation aims to enhance the competitiveness and efficiency of the Union's and Ukraine's defence industries, 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 under 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 and 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, equivalent criteria should apply to the contractors and subcontractors for the procurement contracts, with a view to ensuring that the same conditions apply to them while reflecting the fact that those contractors and subcontractors are not recipients of Union funding.

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18 OJ L 1, 3.1.1994, p. 3, ELI: http://data.europa.eu/eli/agree_internation/1994/1/oj.

(24) Eligibility criteria should take into account existing supply chains and the industrial cooperation with non-associated third countries other than Ukraine and should allow capability requirements to be met. Therefore, common procurement involving one subcontractor that is allocated between 15 % and 35 % of the value of the contract, and that is not established or does not have its executive management structures in the Union, an associated country or, where relevant, Ukraine should, under a certain condition, be eligible for funding under the Programme and the Ukraine Support Instrument.

(25) 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 and 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 a recipient if strict conditions relating to the security and defence interests of the Union and its Member States, including the principle of good neighbourly relations, 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.

(26) Legal entities established in the Union or in an associated country and controlled by a non-associated third country or a non-associated third-country entity should be eligible to be a recipient if guarantees approved in accordance with the national procedures of the Member State or associated country in which they are established are made available to the Commission and assessed prior to a decision to award Union funding. Such guarantees should only be issued provided that strict conditions relating to the security and defence interests of the Union and its Member States, as established in the framework of the CFSP pursuant to Title V of the TEU, are fulfilled and maintained throughout the action. The Commission should inform Member States meeting as a committee about legal entities considered to be eligible following such assessment. Information relating to subsequent assessment of eligibility, due inter alia to a reported change of ownership in the course of implementation, will also be reported to Member States meeting as a committee in order to ensure transparency in the monitoring of ongoing compliance with the eligibility conditions. The participation of entities controlled by non-associated countries or non-associated third-country entities should not contravene the objectives of this Regulation. For the purposes of the Ukraine Support Instrument, such rules regarding eligibility should apply in the case of legal entities established in the Union and controlled by a non-associated third-country other than Ukraine or by another third-country entity.

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

(28) Considering the need to safeguard the operational capacity of Member States' armed forces and to ensure their ability to use the defence products covered by an action conducted under the Programme without limitations imposed by third countries, it is necessary to establish additional requirements relating to the ability to decide on the definition, adaptation and evolution of the design of such defence products. Therefore, recipients of Union funding or, where relevant, the contractor or the consortium of contractors should not be subject to legal or contractual limitations by non-associated third countries or by non-associated third-country entities affecting their ability to decide on the definition, adaptation and evolution of the design of the defence product, including on the substitution or removal of the components that are subject to restrictions imposed by non-associated third countries or by non-associated third-country entities. In light of the current geopolitical situation, a specific and targeted derogation to that requirement should exceptionally and temporarily be provided for the ramp-up of industrial capacities for the production of ammunition and missiles. Such derogation should consist of allowing the recipients of Union funding or the relevant governmental authorities of the Member States concerned to provide the Commission with a legally binding commitment from the non-associated third country or the non-associated third-country entity concerned that the recipients will obtain that ability to decide. The recipients should take all measures to ensure that that commitment is implemented. Where the recipients, despite their efforts, cannot obtain such ability to decide, corrective measures would be taken in accordance with the Financial Regulation, in particular Article 132.

(29) 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 nor under the Ukraine Support Instrument.

(30) The Programme and the 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 this Regulation, such as the training, reskilling or upskilling of personnel.

(31) In view of the current geopolitical context, and in particular Russia's war of aggression against Ukraine, the protection of the 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 the countries which are members of the European Economic Area 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[19] and in the Agreement on the European Economic Area.

(32) As it is important to mitigate any distortion of the market, the Commission should be able to recover profit generated by successful industrial reinforcement actions supported by the Union budget in accordance with the principle of proportionality. By derogation from Article 195(2) of the Financial Regulation, such recovery of profit 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 profit recovered should be re-used to help achieve the objectives of this Regulation.

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19 OJ L 161, 29.5.2014, p. 3, ELI: http://data.europa.eu/eli/agree_internation/2014/295/oj.

(33) 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 such investments. 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 the supporting actions would not be undertaken otherwise, it appears justified that, by derogation from Article 193(1) of the Financial Regulation, the Union financial support under the Programme cover up to 100 % of the eligible costs for the supporting actions.

(34) 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.

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

(36) 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.

(37) 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.

(38) Upon fulfilment of specific conditions linked to the objectives of the Programme, the cap for the Union financial contribution to common procurement actions should be raised to 25 % of the estimated value of the common procurement contract in order to compensate for particular complexities relating to enhanced cross-border cooperation within the Union and cooperation within the context of a Structure for European Armament Programme (SEAP). The need to gradually reduce strategic dependencies should also be taken into account, justifying an increased funding rate where the action supports the common procurement of restriction-free end products. In addition, given the particular security situation of Ukraine and Moldova in light of Russia's war of aggression against Ukraine, it is also appropriate to provide for such an increased funding rate in cases where the supported action results in the common procurement of additional quantities of defence products for those two countries. Furthermore, the geopolitical context, including Russia's war of aggression against Ukraine, has exposed the Union and its Member States to a high risk of materialisation of conventional military threats, thereby creating a need for increased defence investments. It is thus also justified to provide for an increased funding rate of up to 25 % for common procurement actions in cases where the defence investment expenditure of the majority of Member States participating in the action concerned exceeds 30 % of their respective defence spending.

For industrial reinforcement actions, it should be possible to raise the cap to up to 50 % of eligible costs where the majority of beneficiaries are small and medium-sized enterprises (SMEs) or middle-capitalisation companies (mid-caps) established in Member States or in associated countries or where the action is carried out by a SEAP, and where the action demonstrates a contribution to the creation of new cross-border cooperation, such as expanding the geographical scope of existing supply chains or by significantly increasing the trade, collaboration or joint projects between entities in different Member States or the expansion of existing cross-border networks in ways that enhance overall capacity and resilience of the EDTIB, where it involves building new infrastructure, facilities or production lines, or where it contributes to the establishment of new, or the ramping-up of existing, manufacturing capacities of crisis-relevant products. In addition, when Member States specifically decide to allocate funding to the Programme only to the benefit of the Member States concerned or to the additional benefit of other Member States, it should be possible, by way of derogation from Article 193(1) of the Financial Regulation, to increase flexibility and allow for a Union financial contribution to industrial reinforcement actions covering up to 100 % of the eligible costs. That possibility should also apply to cases where Member State contributions supported by the Recovery and Resilience Facility are used for the funding of such actions. This will maximise the impact and effectiveness of the action.

(39) 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 is able to 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 the cases provided for in Article 196(2), second subparagraph, of the Financial Regulation. 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, by way of derogation from Article 196(2), second subparagraph, of the Financial Regulation, to provide for financial contributions under the Programme in relation to actions that cover a period starting from 5 March 2024 and have not been completed before the signature of the grant agreement. 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 account 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.

(40) When assessing proposals submitted by applicants, the Commission should pay particular attention to the contribution of those proposals 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.

(41) Developing defence manufacturing capacities throughout the Union, taking into account the risks associated with the increased deterioration of the Union's security context, is essential to ensure that all Member States contribute to and benefit from a robust EDTIB. As regards industrial reinforcement actions, particular attention should be paid to the contribution of the action concerned to industrial resilience, in particular to ensuring the availability and security of supply of defence products throughout the Union in response to identified risks, such as high exposure to the risk of materialisation of conventional military threats.

(42) In accordance with the Financial Regulation, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council[20] and Council Regulations (EC, Euratom) No 2988/95[21], (Euratom, EC) No 2185/96[22] and (EU) 2017/1939[23], 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.

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20 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, 18.9.2013, p. 1, ELI: http://data.europa.eu/eli/reg/2013/883/oj).

21 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, ELI: http://data.europa.eu/eli/reg/1995/2988/oj).

22 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, ELI: http://data.europa.eu/eli/reg/1996/2185/oj).

23 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, ELI: http://data.europa.eu/eli/reg/2017/1939/oj).

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[24]. 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.

(43) 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.

(44) Pursuant to Article 85 of Council Decision (EU) 2021/1764[25], 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.

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[24] 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, 28.7.2017, p. 29, ELI: http://data.europa.eu/eli/dir/2017/1371/oj).

[25] 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, 7.10.2021, p. 6, ELI: http://data.europa.eu/eli/dec/2021/1764/oj).

(45) The Union should identify European Defence Projects of Common Interest (EDPCIs) 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 critical for the security and defence interests of the Union, 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 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 where necessary. In that context, Member States may identify dual-use capabilities of common interest. In so far as those project proposals turn into EDPCIs, the dual-use capabilities identified by Member States could be developed for the Union, its institutions, bodies and agencies in the context of the EDPCIs concerned. In addition to being consistent with the capability priorities identified in the context of the CFSP, including the Capability Development Plan (CDP), the objectives of the Strategic Compass for Security and Defence and the collaborative opportunities identified in the context of the Coordinated Annual Review on Defence (CARD), EDPCIs should take into account the projects agreed in the context of PESCO, EDA initiatives and the relevant activities carried out by NATO, 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 those priorities and objectives. That input will complement the information provided by Member States regarding project proposals. The Council should be able to add or remove projects or make other amendments to the Commission proposal for an 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.

(46) In the context of Russia's war of aggression against Ukraine, Ukraine and the Ukrainian DTIB have developed specific expertise on defence industrial projects, including in cooperation with Member States and with the EDTIB. That expertise may be critical for and facilitate the development of EDPCIs, thereby contributing to reinforcing the competitiveness of the EDTIB while contributing to the development of Member States' military capabilities critical for the security and defence interests of the Union. It is therefore appropriate to allow, in such cases, for the participation of Ukraine in EDPCIs. The Commission should verify that all Member States, associated countries and Ukraine were informed of the emergence of a project and were given the opportunity to participate. As the Commission might have expertise appropriate to support the implementation of EDPCIs for the benefit of the competitiveness of the EDTIB throughout the Union, it is appropriate to allow its participation in EDPCIs to share such expertise, if so requested by the participating Member States.

(47) 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. Such financial support from the Programme should be limited to 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. That is without prejudice to the possibility of certain EDPCI activities 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 where there is no Union financial support. To facilitate the monitoring of 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, should be able to amend the implementing acts identifying EDPCIs, including by removing EDPCIs from the list. Member States participating in an EDPCI will be able, for the purposes of carrying out activities necessary to its implementation, to rely on the expertise and the administrative capacity of the EDA or international organisations such as the Organisation for Joint Armament Cooperation (OCCAR) and the NATO Support and Procurement Agency (NSPA).

(48) 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 European military sales mechanism, including measures to increase the speed to market of defence products from the EDTIB by facilitating procedures for the common procurement of defence products and leveraging the use of contracts awarded by a government to another government.

(49) Member States, associated countries and Ukraine, or a SEAP, 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, 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. Where such pools are established in the context of a SEAP, the Programme and the Ukraine Support Instrument should be able to support the common procurement of additional quantities of defence products through common procurement actions carried out by the SEAP, as well as the establishment and the functioning of the SEAP for the purpose of managing and maintaining those pools.

(50) To improve Member States' awareness of the availability of EDTIB and Ukrainian DTIB products, the Programme should be able to support the establishment, by the Commission, of a single, centralised and up-to-date catalogue of defence products developed by the EDTIB and the Ukrainian DTIB, based on voluntary contributions by Member States, Ukraine and economic operators (European Military Sales Catalogue). For that purpose, the products present in the catalogue should be manufactured by economic operators that are established and have their executive management structures in the Union, an associated country or Ukraine, and the infrastructure, facilities, assets and resources used for the purpose of manufacturing those products should be located in the Union, an associated country or Ukraine. When establishing that catalogue, the Commission should consult the EDA and take into account its expertise.

(51) 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 endeavour to set up a dedicated facility as part of the Programme to be referred to as the Fund Accelerating Defence Supply Chains Transformation (FAST). FAST should be implemented under indirect management. FAST will leverage, de-risk and speed-up investments needed to increase the defence manufacturing capacities on the territory of the Union of Union-based SMEs and small middle-capitalisation companies ('small mid-caps'), in the form of a blending operation offering support in the form of debt or equity. As the application for support in the form of debt under FAST might include information relating to the infrastructure, facilities, assets or resources used by the SME or the small mid-cap for the purpose of industrialising or manufacturing of defence products, it is appropriate to subject such support to rules requiring that such infrastructure, facilities, assets and resources are located on the territory of a Member State or of an associated country, with some targeted exceptions. 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[26], in close cooperation with its implementing partners.

[26] 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, ELI: http://data.europa.eu/eli/reg/2021/523/oj).

(52) FAST should achieve a satisfactory multiplier effect in line with the debt and equity mix and contribute to attracting both public and private-sector financing. In order to contribute to the overall objective of enhancing the EDTIB's competitiveness, FAST should also provide support to SMEs, including start-ups and scale-ups, and small mid-caps across the Union which are part of the Union's defence supply chains or have imminent plans to become part of it, in industrialising or manufacturing of defence products or having imminent plans to do so, facing difficulties in accessing finance. FAST should also 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.

(53) Increasing the number and magnitude of common procurement 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 are able to 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, because 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, because the Financial Regulation does not provide for the participation of third countries in such actions.

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, because such a possibility is not provided for in a bilateral or multilateral treaty with Ukraine. For the same reason, 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. To foster the aggregation of demand in the case of joint procurement, the Commission should ensure that such procurement procedure is open 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. The support by the Union budget 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. The budgetary allocation should be included in the work programmes of the Programme and of the Ukraine Support Instrument.

(54) 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 and by way of derogation from Article 175(1) of the Financial Regulation, it should be possible to allow the performance of the contract to begin before the contract is signed, where the need for such a measure is duly documented by the contracting authority.

(55) 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 remedy 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 SEAP, to underpin and strengthen their cooperation. To reach its objective of fostering the competitiveness of the EDTIB and, where relevant, of the Ukrainian DTIB, a SEAP should be able to conduct the common development, procurement, life-cycle management or dynamic availability 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 infrastructure directly related to defence products. Actions undertaken in the framework of a SEAP 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 and its Member States, including respect for the principle of good neighbourly relations.

(56) Within the SEAPs, Member States should benefit from standardised procedures that might be provided by the Commission for initiating and managing cooperative armament programmes, including guidelines on project management, procurement, financial management and reporting. Cooperation under the framework of a SEAP should also allow, under the conditions set out in Council Directives 2006/112/EC[27] and (EU) 2020/262[28], 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.

(57) 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 they have their 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.

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27 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, ELI: http://data.europa.eu/eli/dir/2006/112/oj).

28 Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (OJ L 58, 27.2.2020, p. 4, ELI: http://data.europa.eu/eli/dir/2020/262/oj).

(58) To achieve its objectives, a SEAP should be able to entrust, through a delegation agreement, one or more of the entities eligible for funding under common procurement actions under the Programme with one or more of its tasks. In particular, international organisations such as the OCCAR and NSPA, as well as the EDA 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.

(59) In order to allow for an efficient procedure for the establishment of a SEAP, it is necessary for the Member States, associated countries or Ukraine willing to establish 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 establishment. The Commission should assess the application without undue delay, ideally within two months of the receipt of the complete application. The Commission should be able, for this purpose, to invite the EDA to provide its expertise.

(60) For reasons of transparency, the implementing acts establishing SEAPs, and the notices of the decisions to wind up a SEAP and of their closure, as well as any notices in the event that a SEAP is unable to pay its debts, should be published in the *Official Journal of the European Union*.

(61) 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 implementing act establishing the SEAP 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.

(62) 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.

(63) 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 of this Regulation. It is important that the statutes clarify what administrative capacities are foreseen to ensure compliance with Union and national rules applicable to the handling of defence products. Without prejudice to existing Union and national rules on the export of defence products, SEAP members should be able to unanimously agree on an approach to such exports.

(64) 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.

(65) 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 those purposes, SEAPs should be considered as international organisations within the meaning of Article 12, point (c), of Directive 2009/81/EC of the European Parliament and of the Council[29]. Therefore, Directive 2009/81/EC should not apply to such procurement. 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 contract awarded by a government to another government 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 more entities, it should ensure that the procurement rules to be applied comply with those principles.

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29 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, 20.8.2009, p. 76, ELI: http://data.europa.eu/eli/dir/2009/81/oj).

(66) 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. That is without prejudice to the specific conditions that apply in the event a SEAP receives Union funding under a relevant programme.

(67) 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 of a SEAP to find appropriate solutions regarding their liability, the option should be given to provide in the statutes for different liability regimes going above the liability limited to the contributions of the members.

(68) 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 is acting 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 implementing act establishing the SEAP, thus triggering the winding-up of the SEAP. The Commission should provide the European Parliament and the Council with an aggregated annual report about the activities of all active SEAPs.

(69) Following Russia's unprovoked and unjustified war of aggression against Ukraine, security of supply has become an increasingly important factor in Member States' procurement decisions regarding 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 a Union-wide security of supply regime could therefore result in positive effects on the competitiveness of the EDTIB.

(70) 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 their Joint 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.

(71) Recent crises, such as the COVID-19 pandemic and the sharp increase in demand for certain defence products, in particular ammunition, have exposed vulnerabilities of the Union's supply chains. Those crises 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 accessing or acquiring the products, components and raw materials needed to manufacture the relevant products, with the concrete risk of thereby hampering entire production chains. It is crucial to prevent the emergence of obstacles to cross-border trade between Member States due to divergences in national law, as such divergences 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 supply chains. Those difficulties along the supply chains also revealed a lack of crisis management tools and coordination mechanisms, insufficient information sharing, and an insufficient overview of manufacturing capacities across the Union, in particular for defence products.

(72) 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 in relation to such products. It is likely that such heightened demand will intensify pressure on the Union's supply chains for defence products and, if no framework is adopted at Union level, that it will result in the emergence or resurgence of diverging national measures to tackle shortages, thereby 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 its Member States.

(73) Moreover, the rapidly evolving security environment could 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.

(74) 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 the growing complexity of Union-wide supply chains for defence products resulting 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.

(75) There is a concrete risk that security of supply measures adopted at national level are not sufficient to tackle effectively 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, in particular concerning the certification and 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.

(76) In light of those challenges, it appears necessary and appropriate to establish a 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 that context, it is essential to: provide for coordination measures and prepare for and respond to the impact of future supply crises on the internal market for defence products; ensure security of supply of defence products, components and raw materials thereof, and of 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 which must be guaranteed in order to respond to a supply crisis (‘crisis-relevant products’); and ensure the proper functioning of the internal market for defence products, including by preventing the emergence of obstacles to it. Those measures should be based on Article 114 TFEU.

(77) 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 achieve that aim, Directive 2009/81/EC caters, in particular, for addressing crisis situations, in particular 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 entry into force of this Regulation, this Regulation provides for the possibility to complement or derogate from the provisions of that Directive in cases of urgency resulting from a crisis, provided that the agreement of the undertaking which concluded the framework agreement is obtained.

(78) 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.

(79) Over recent years, Member States have increasingly engaged in defence cooperation, in particular with a view to making their military capabilities converge. Union processes such as CARD and PESCO 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, it might be necessary for a defence cooperation to 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 of 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 that product, provided that this is necessary for the implementation of the defence cooperation concerned.

(80) Given the security context and the existing and foreseeable tensions and bottlenecks in 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 Russia's 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.

(81) 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 crisis-relevant products. The results of such mapping will also provide relevant information for the development of Union measures aimed at strengthening the competitiveness of the EDTIB and for assessing the Union's position in global defence supply chains. 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.

(82) 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.

(83) 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.

(84) As part of the mapping, the Commission should also identify and develop a list of early-warning indicators aimed at identifying factors that might 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.

(85) 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 Commission to perform the tasks they have been entrusted with for the purpose of the mapping of supply chains of defence products.

(86) 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 ability of such suppliers to carry out their activities, in light of the early-warning indicators identified by the Commission. For that same purpose, the main suppliers of crisis-relevant products should also inform the Member State on whose territory they are established if they detect disruptions of supply which may significantly affect their activities related to the production of crisis-relevant products.

(87) As part of the crisis preparedness framework, the Commission should carry out and coordinate stress tests and simulations, building in particular on the advice of the Defence Security of Supply Board (the 'Board') concerning critically important topics for defence supply chains. In that context, the Commission could 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 and other relevant actors are invited to take part, on a voluntary basis, in those stress tests. In that context, the Commission could 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.

(88) 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, thereby 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 facilitating cross-certification of defence products and fostering the movement of such products in the internal market. For that purpose, the Commission should draw up and keep updated a list of national certification authorities.

(89) 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 application related to the planning, construction and operation of such facilities. For that reason, Member States authorities should ensure that the most rapid treatment legally possible is given to such applications.

(90) To enable the Union to mitigate the risk of a supply crisis breaking out, competent authorities of Member States should alert the 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 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.

(91) 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. Due to the need to provide for targeted measures depending on whether a severe negative impact on the functioning of the internal market, or an imminent risk thereof, concerns crisis-relevant products which are not defence products or crisis-relevant defence products, this Regulation should therefore provide for two different supply-crisis states.

(92) The supply-crisis state should be activated on the basis of concrete and reliable evidence in the event of 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 related to crisis-relevant products which are not defence products, leading to a severe negative impact on the proper functioning of the internal market, in particular obstacles to cross-border trade in such crisis-relevant products.

(93) The security-related supply-crisis state should be activated in the event of serious disruptions or an imminent risk of such disruptions in the provision of defence 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 related to crisis-relevant defence products, leading to a severe negative impact on the proper functioning of the internal market, in particular obstacles to cross-border trade in such crisis-relevant defence products. When the Commission assesses whether the conditions for activating the security-related supply-crisis state are fulfilled, it should take into account whether a crisis affecting the security and defence interests of the Union and its Member States has been identified within the area of the CFSP, such as whether a Member State has activated the mutual assistance clause pursuant to Article 42(7) TEU. In that context, the Commission could take into account whether such crisis has also been identified in NATO.

(94) Due to the sensitive nature of the decision to activate the supply-crisis state or the security-related supply-crisis state, stemming in particular from the potential consequences of the measures that might be taken in response thereto, 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 states 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 those measures should be activated.

(95) 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 is necessary, the Commission should be able, where a Council implementing act so provides under the supply-crisis state or the security-related supply-crisis state, to address information requests to economic operators contributing to the production of the crisis-relevant products concerned. Such information requests should only be addressed where the available information is not sufficient and should be limited to information on production capabilities, production capacities or possible primary disruptions. In view of the sensitive nature of the information that might be requested, the Commission should receive the prior agreement of the Member State in which the production site of the relevant economic operator is located, and the requested information should be channelled through that Member State. Where the Member State concerned agrees to the launch of such information request, it should be able to decide to address that request directly to the relevant economic operator and inform the Commission thereof. 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 could result in prioritisation measures from those third countries that might 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 in due time the Member State on whose territory its production site is located which should, in turn, inform the Commission, so as to enable the Member State concerned and the Commission to request the economic operator concerned to provide information similar to that requested by the third country.

(96) 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 that aim 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 crisis-relevant defence products and crisis-relevant products which are not defence products, and priority-rated orders for ensuring the supply of crisis-relevant products which are not defence products. Those prioritisation measures should be activated by the Council.

(97) 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 to be used 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 priority-rated 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 priority-rated requests should not be discriminatory.

(98) In light of the increased deterioration in the Union's security context, linked to Russia's persistent and intensified threat in the context of its war of aggression against Ukraine, it is crucial to address the difficulties that Member States might face in the placing of an order or in the execution of a contract related to the supply of defence products, in particular where such difficulties result from disruptions in the provision of crisis-relevant products which are not defence products. Indeed, where crisis-relevant products are dual-use or civilian products, defence supply chains can face competition from non-defence supply chains with a significantly stronger buying power when trying to access those 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 products which are not defence products cannot be achieved by any other measure, including a priority-rated request. Therefore, priority-rated orders should enable the Commission to oblige economic operators established in the Union to produce or supply certain crisis-relevant products which are not defence products after receiving the prior agreement of the Member State on whose territory the production site of the economic operator concerned is located and of the Member State on whose territory the executive management structure of the economic operator is located. The Commission should not issue priority-rated orders where the economic operator is unable to fulfil the order even if prioritised, be it due to insufficient production capability or production capacity or on technical grounds, or because it would place an unreasonable economic burden on and entail particular hardship for the economic operator, including substantial risk relating to business continuity. Where such reasons arise after the Commission has adopted an implementing act subjecting an economic operator to any priority-rated order or request, that economic operator should be able to request the Commission to modify the implementing act concerned.

(99) 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 might 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.

(100) 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 a priority-rated order has been imposed on the economic operator 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. Where 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. The Commission should 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.

(101) 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 will 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 might need to be taken in response to that measure.

(102) 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, which are protected by 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 and freedoms must be provided for by law and respect the essence of those rights and freedoms, and be subject to the principle of proportionality.

(103) Where the security-related supply-crisis state is activated, the measures available under the supply-crisis state should also be available if deemed appropriate by the Council and specified in the implementing act activating the security-related supply-crisis state.

(104) Intra-EU transfers of defence products are regulated by Directive 2009/43/EC of the European Parliament and of the Council[30], which aims to simplify 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 varies, sometimes significantly, from one Member State to another. During a security-related supply crisis, and where the Council considers it necessary, it should be possible for the Council to adopt an implementing act activating the security-related supply-crisis state to determine a timeframe, which should be no longer than two weeks, within which the national authorities concerned should treat the applications once entirely received in order to further facilitate the movement of those products in the internal market. Additionally, this Regulation aims to facilitate 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.

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30 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, 10.6.2009, p. 1, ELI: http://data.europa.eu/eli/dir/2009/43/oj).

(105) As the certification of defence products is key to ensuring the proper functioning of the internal market for defence products, in particular during a security-related 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.

(106) In addition to other measures provided for by this Regulation for the purpose of addressing a security-related supply-crisis state, Member States should, where the Council activates those measures, consider, on a case-by-case basis, using defence-related exemptions or derogations under national and applicable Union law for the purpose of the granting of permits relating to the planning, construction and operation of production facilities of crisis-relevant defence products or with a view to ensuring the continuity of production of such products, if they deem that the use of such exemptions or derogations would facilitate the security of supply of crisis-relevant defence 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 sustainable and safe development. Since a security-related supply crisis is characterised by obstacles to the movement of crisis-relevant defence products on the internal market, it is appropriate to allow, in such circumstances, for the financial support under the Programme of innovation actions, thus enabling a particularly rapid availability of defence products on the market. Support to such actions would indeed contribute to addressing the obstacles concerned, in particular by enabling a significant shortening of the delivery lead time of defence products or a mass production of such products. It should therefore be possible for the Council, when it activates the security-related supply crisis state, to make such innovation actions eligible under the Programme.

(107) 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 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, and 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.

(108) 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 Board, to facilitate cooperation, exchange of information and the smooth, effective and harmonised implementation of the measures provided for in this Regulation aimed at ensuring the security of supply of defence products. The Board should be composed of representatives of the Member States and the Commission. As ensuring the proper functioning of the internal market for defence products in times of supply crisis, or preparing for such supply crises, requires taking account of the ability of Member States to develop, acquire and manage their defence capabilities and to enhance their defence readiness, it is appropriate that the Commission and the Member State holding the rotating presidency of the Council co-chair the Board. 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 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 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 Board in accordance with the conditions set out under the Agreement on the European Economic Area. Representatives of the European Parliament should be invited as observers to the meetings of the Board. The 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.

(109) 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 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[31].

(110) It should be possible to invite representatives of Ukraine to meetings of the committee where their input is necessary in connection with implementing measures which concern Ukraine, such as the implementing acts relating to the Ukraine Support Instrument. That would allow such representatives to share their views and respond to questions from Member States. However, they should not be allowed to be present during deliberations, nor to participate in votes of the committee.

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31 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, 28.2.2011, p. 13, ELI: http://data.europa.eu/eli/reg/2011/182/oj).

(111) 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.

(112) Union funding under this Regulation should only cover the costs necessary for pursuing the objectives of the Programme and the Ukraine Support Instrument and it cannot cover the costs arising from the CFSP. 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 defence industrial readiness pools. It should be possible however for Union funding under the Programme and the Ukraine Support Instrument to cover the costs incurred in the context of the purchase or of the maintenance of such products where those costs are necessary for strengthening the competitiveness of the EDTIB or the recovery, reconstruction and modernisation of the Ukrainian DTIB, in particular non-recurrent costs.

(113) In accordance with Article 241 TFEU, the Council is able to 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.

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

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

(116) Since the objectives of this Regulation, namely to enhance the technological leadership, innovation, readiness, long-term competitiveness, resilience, integration and preparedness of the EDTIB, ensuring the timely availability and supply of defence products and contributing to the recovery, reconstruction and modernisation of the Ukrainian DTIB, 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 TEU. 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 those objectives.

(117) 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

General objectives and subject matter

1. This Regulation aims to enhance the technological leadership, innovation, readiness, long-term competitiveness, resilience, integration and preparedness of the European Defence Technological and Industrial Base (EDTIB), ensuring the timely availability and supply of defence products and contributing to the recovery, reconstruction and modernisation of the Ukrainian Defence Technological and Industrial Base (the 'Ukrainian DTIB').

2. This Regulation establishes a budget for the period from 2025 to 2027 and the following:

   (1) the European Defence Industry Programme (the 'Programme'), comprising measures for strengthening the competitiveness, responsiveness and ability of the EDTIB, as set out in Chapter II;

   (2) the Ukraine Support Instrument, a cooperation programme with Ukraine with a view to the recovery, reconstruction and modernisation of the Ukrainian DTIB, taking into account the possible future integration of the Ukrainian DTIB into the EDTIB, as set out in Chapter III;

(3) a legal framework for European Defence Projects of Common Interest (EDPCIs), as set out in Chapter IV;

(4) a European Military Sales Mechanism, as set out in Chapter V;

(5) a legal framework for Structures for European Armament Programmes (SEAPs), as set out in Chapter VI;

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

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

(b) the proper functioning of the internal market for defence products, including by preventing the emergence of obstacles to it.

3. 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 European Union (TEU), and to the right of each Member State to protect the essential interests of its security, 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 more 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;

(2) ‘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, in Ukraine or in an associated country but which has its executive management structures in a non-associated third country other than Ukraine;

(3) ‘associated countries’ means members of the European Free Trade Association which are members of the European Economic Area that apply this Regulation in accordance with the Agreement on the European Economic Area;

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

(5) ‘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 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;

(6) ‘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[32];

(7) ‘contracting authorities’ means contracting authorities as defined in Article 2(1), point (1), of Directive 2014/24/EU of the European Parliament and of the Council[33] and in Article 3(1) of Directive 2014/25/EU of the European Parliament and of the Council[34];

(8) ‘control’ means the ability to exercise decisive influence over a legal entity directly, or indirectly through one or more intermediate legal entities;

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32 OJ C 202, 8.7.2011, p. 13.

33 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, 28.3.2014, p. 65, ELI: http://data.europa.eu/eli/dir/2014/24/oj).

34 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, 28.3.2014, p. 243, ELI: http://data.europa.eu/eli/dir/2014/25/oj).

(9) ‘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;

(10) ‘defence innovation action’ means an action primarily consisting of activities directly aiming to produce plans and arrangements or designs for new, altered or improved defence products, processes or services, possibly including prototyping, testing, demonstrating, piloting, large-scale product validation and market replication;

(11) ‘defence products’ means any defence-related products as referred to in the Annex to Directive 2009/43/EC, as well as works, supplies and services directly related to those products for any and all elements of their life cycle within the meaning of Article 2, point (c), of Directive 2009/81/EC;

(12) ‘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 shortages of the defence product concerned; in this context, ‘availability’ means the ability of the defence product to function faultlessly under defined conditions and to be ready to use when required;

(13) ‘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;

(14) ‘foreground information’ means data, knowhow or information generated within a given action under this Regulation, whatever its form or nature;

(15) ‘lead time’ means the period of time between a purchase order being placed and the manufacturer completing the order;

(16) ‘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;

(17) ‘life cycle’ means all the possible successive stages of a product, from research and development to de-commissioning and disposal;

(18) ‘maintenance’ means all actions taken to ensure the readiness and operational capability of a defence product, in particular to retain equipment in, or 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;

(19) ‘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[35];

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35 Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36, ELI: http://data.europa.eu/eli/reco/2003/361/oj).

(20) ‘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 which has its executive management structures in a non-associated third country;

(21) ‘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 for the reservation of manufacturing capacities;

(22) ‘off-take agreement’ means any contractual agreement between, on the one hand, at least three Member States and, where relevant, associated countries or Ukraine and, on the other hand, at least one manufacturer of defence products, containing either a commitment by the Member States and, where relevant, associated countries or Ukraine to procure a certain quantity of defence products over a certain period of time, or a commitment by the manufacturer of defence products to provide the Member States and, where relevant, associated countries or Ukraine with the option to make such a procurement;

(23) ‘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;

(24) ‘procurement agent’ means a contracting authority established in a Member State or an associated country, a Structure for European Armament Programme (SEAP), the European Defence Agency (EDA) or an international organisation that is designated by Member States, associated countries, Ukraine or a SEAP to conduct a common procurement on their behalf;

(25) ‘raw material’ means raw material as defined in Article 2, point (1), of Regulation (EU) 2024/1252 of the European Parliament and of the Council[36];

(26) ‘results’ means any tangible or intangible effect of a given action, such as data, knowhow or information, whatever its form or nature and whether or not it can be protected, as well as any rights attached to it, including intellectual property rights;

(27) ‘Seal of Excellence’ means a quality label which shows that a proposal submitted to a call for proposals under the Programme or 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;

(28) ‘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;

(29) ‘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;

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36 Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020 (OJ L, 2024/1252, 3.5.2024, ELI: http://data.europa.eu/eli/reg/2024/1252/oj).

(30) ‘small middle-capitalisation company’ or ‘small mid-cap’ has the meaning as assigned to it in the Annex to Commission Recommendation (EU) 2025/1099[37];

(31) ‘subcontractor’ means an economic operator that is proposed by a candidate, tenderer or contractor to perform specific tasks or services under the supervision of the main contractor, contributing to the design or manufacturing of a defence product, other than what is provided by suppliers to implement the contract, for which it is allocated at least 15 % of the value of the contract, and that needs access to classified information for the performance of that contract; for the purposes of this definition, ‘supplier’ shall be understood as an economic operator that delivers components of its own design or production to the contractor.

Article 3

Budget

1. The financial envelopes for the implementation of the Programme for the period from … [date of entry into force of this Regulation] to 31 December 2027 shall be composed of:

(a) EUR 1 200 000 000 in current prices; and

(b) additional contributions in accordance with Article 5.

[37] Commission Recommendation (EU) 2025/1099 of 21 May 2025 on the definition of small mid-cap enterprises (OJ L, 2025/1099, 28.5.2025, ELI: http://data.europa.eu/eli/reco/2025/1099/oj).

2. The financial envelopes for the implementation of the Ukraine Support Instrument for the period from … [date of entry into force of this Regulation] to 31 December 2027 shall be composed of:

(a) EUR 300 000 000 in current prices; and

(b) additional contributions in accordance with Article 23, to the extent earmarked.

3. Union funding under this Regulation shall only cover the costs necessary for pursuing the objectives of the Programme and the Ukraine Support Instrument. Therefore, Union funding under the Programme and the Ukraine Support Instrument shall not cover the costs of the purchase and the maintenance of defence products for military or defence purposes, including in the context of establishing, managing and maintaining defence industrial readiness pools as referred to in Article 38 (‘defence industrial readiness pools’). Union funding under this Regulation may cover costs incurred in the context of the purchase or maintenance of such products where those costs are necessary for strengthening the competitiveness of the EDTIB or for the recovery, reconstruction and modernisation of the Ukrainian DTIB, in particular non-recurrent costs.

4. 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 11, and at least 30 % of that financial envelope shall be allocated to actions referred to in Article 12. Up to 25 % of that financial envelope may be allocated to actions referred to in Article 35.

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

6. Up to 3,5 % of the amount referred to in paragraphs 1 and 2 of this Article may be used for technical and administrative assistance for the implementation of the Programme and the Ukraine Support Instrument, such as preparatory, monitoring, control, audit and evaluation activities, including price investigations and corporate information technology systems and platforms, and all other technical and administrative assistance or staff-related expenses incurred by the Commission for the management of the Programme and the Ukraine Support Instrument.

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 22 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, resilience and readiness of the EDTIB by initiating and accelerating the adjustment of the 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, ultimately leading to greater interoperability and interchangeability, and by improving predictability of demand for the EDTIB, corresponding with Member States' defence product needs;

(b) improve and accelerate the capacity for 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 production lead time for defence products and support the industrialisation and commercialisation of defence products supported by actions funded by the Union or by 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, and taking into account the specific needs of Member States in the case of materialisation of conventional military threats;

(c) improve the security of supply and resilience of the EDTIB by supporting the development and presence of the EDTIB 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 (CARD).

3. The Programme shall be consistent with Member States' cooperation within the framework of permanent structured cooperation (PESCO), 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 security and defence interests of the Union.

Article 5

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 Programme, including to the Fund Accelerating Defence Supply Chains Transformation (FAST) referred to in Article 14 of this Regulation, in accordance with Article 211(2) of the Financial Regulation. Such financial contributions shall constitute external assigned revenue within the meaning of Article 21(2), point (a), (d) or (e), or Article 21(5) of the Financial Regulation.

2. Provided that they contribute to the achievement of one or more of the objectives set out in Article 4 of Regulation (EU) 2021/241, Member State contributions supported by the Recovery and Resilience Facility shall be used for the benefit of the Member State concerned and may, by way of derogation from Article 20(6) of this Regulation and from Article 193(1) of the Financial Regulation, be used for the purpose of contributing to the funding of eligible actions under Article 12 of this Regulation, up to 100 % of the eligible costs.

By way of derogation from Article 5(2), Article 18(4), point (d), and Article 19(3), point (d), and Annex V, criterion 2.4, of Regulation (EU) 2021/241, the principle of 'do no significant harm' shall not apply to Member State contributions supported by the Recovery and Resilience Facility, provided that the Member State concerned justifies in the relevant contribution agreement with the Commission that it is not feasible or appropriate to ensure that the type of activities intended to be supported under this Regulation comply with the principle of 'do no significant harm'.

3. Any additional amounts received under bilateral or multilateral agreements concluded pursuant to Article 17 of Council Regulation (EU) 2025/1106[38] shall constitute external assigned revenue within the meaning of Article 21(5) of the Financial Regulation and shall be used for the Programme in accordance with this Regulation.

4. Resources allocated to Member States under shared management may, at the request of the Member State concerned, be transferred to the Programme 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. Those resources shall be used for the benefit of the Member State concerned.

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[38] Council Regulation (EU) 2025/1106 of 27 May 2025 establishing the Security Action for Europe (SAFE) through the Reinforcement of the European Defence Industry Instrument (OJ L, 2025/1106, 28.5.2025, ELI: http://data.europa.eu/eli/reg/2025/1106/oj).

5. As regards the amounts contributed in accordance with paragraph 1 of this Article, the Member State concerned may take decisions regarding the proportion of those amounts to be made available to all entities eligible for funding under this Regulation, to be made available only to the benefit of the Member State concerned or to be made available to the additional benefit of other Member States. Where the amounts are made available to the benefit of the Member State concerned or to the additional benefit of other Member States, such amounts may, by derogation from Article 20(6) of this Regulation and from Article 193(1) of the Financial Regulation, be used for the purpose of contributing to the funding of eligible actions under Article 12 of this Regulation, up to 100 % of the eligible costs.

6. Where the Commission has not entered into a legal commitment under direct or indirect management for resources transferred in accordance with paragraph 4 of this Article 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 6

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 those contributions do 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) have been assessed in a call for proposals under the Programme;

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

   (c) not be financed under that 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 7

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 entities referred to in Article 62(1), point (c), of the Financial Regulation.

2. Without prejudice to Article 20(3) of this Regulation, Union funding may be provided in any of the forms laid down in the Financial Regulation, in particular in the form of 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 actions referred to in Article 12(1) of this Regulation for which Union funding is provided in the form of a grant and a profit is made, the Commission shall be entitled to 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 programmes referred to in Article 21 may set out further details.

4. By way of derogation from Article 196(2) of the Financial Regulation, 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.

Article 8

Third countries associated with the Programme

The Programme shall be open to the participation of associated countries, in accordance with the conditions laid down in the Agreement on the European Economic Area.

Article 9

Eligible legal entities

1. Only legal entities established in the Union or in an associated country and having their executive management structures in the Union or in an associated country shall be eligible to be recipients of Union funding under this Regulation.

2. The eligibility criteria set out in paragraphs 3 to 9 of this Article shall apply in addition to the criteria set out in accordance with the Financial Regulation.

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.

4. 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 and 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.

5. 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.

6. By way of derogation from paragraph 5 of this Article, a legal entity established in the Union or in an associated country and controlled by a non-associated third country or by a non-associated third-country entity shall be eligible to be a recipient of Union funding if guarantees approved in accordance with the national procedures of a Member State or associated country in which it is established, such as adequate measures pursuant to screening, as defined in Article 2, point (3), of Regulation (EU) 2019/452 of the European Parliament and of the Council[39], are made available to the Commission.

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[39] Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L 79 I, 21.3.2019, p. 1, ELI: http://data.europa.eu/eli/reg/2019/452/oj).

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 12(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 77 of any legal entity considered to be eligible to be a recipient of Union funding in accordance with this paragraph.

7. The guarantees referred to in paragraph 6 of this Article may be based on a standardised template provided by the Commission, assisted by the committee referred to in Article 77, in order to ensure a harmonised approach throughout the Union.

8. 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 such use does not contravene the security and defence interests of the Union and 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 by a non-associated third-country entity to classified information relating to the carrying-out of the action, and potential negative effects on the 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.

9. Paragraphs 5 and 6 shall not apply to:

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

(b) international organisations;

(c) SEAPs;

(d) the EDA.

SECTION 2

ELIGIBLE ACTIONS

Article 10

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 11, including for the purpose of establishing, managing or maintaining defence industrial readiness pools;

(b) industrial reinforcement actions as referred to in Article 12;

(c) supporting actions as referred to in Article 13;

(d) deployment of EDPCIs as referred to in Article 35.

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

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

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

(c) actions related to cluster munitions;

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

3. For procurement carried out pursuant to Articles 11, 13 and 35 which is 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.

4. For actions carried out pursuant to Article 12 and activities carried out pursuant to Article 35 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.

5. 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 concerned, 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.

6. 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.

Article 11

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 such defence products, including for the purpose of establishing, managing and maintaining defence industrial readiness pools.

2. 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.

3. Common procurement actions shall be carried out by:

(a) a consortium of legal entities as referred to in paragraph 2, including at least three entities referred to in paragraph 2, point (a), from at least three Member States or associated countries of which at least two shall be contracting authorities of two Member States; or

(b) a SEAP.

4. 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.

5. The procurement procedures referred to in paragraph 4 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 as regards the choice of the procedure, the assessment of the tenders and the award of the contract.

6. The procurement agent shall apply criteria equivalent to those set out in Article 9 to its procurement procedures and contracts with contractors and require that those criteria are applied to subcontractors.

7. By way of derogation from paragraph 6, in order to take into account industrial cooperation with non-associated third countries, common procurement that involves a subcontractor that is allocated between 15 % and 35 % of the value of the contract, and that is not established or does not have its executive management structures in the Union or in an associated country, shall be eligible for support under the Programme provided that a direct contractual relationship related to the defence product has been established between the contractor and that subcontractor prior to the date of entry into force of this Regulation.

8. Procurement agents shall notify the Commission of the guarantees referred to in Article 9(6). Further information on those guarantees shall be made available to the Commission upon request. The Commission shall inform the committee referred to in Article 77 of any notification provided in accordance with this paragraph.

9. Before launching a procurement procedure for a common procurement action under this Regulation, the procurement agent shall inform Member States not participating in the planned procedure and give them the opportunity to submit, within a reasonable timeframe, 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 such Member States, without prejudice to applicable Union and national rules relating to the export of defence products.

10. Before launching a procurement procedure for a common procurement action under this Regulation, the procurement agent shall, where possible, also inform associated countries and Ukraine of the planned procedure and give them 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 12

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, including automation, 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 small mid-caps, in a joint industrial effort, including activities that aim to coordinate the sourcing or reservation and stockpiling of defence products, components and corresponding raw materials and to coordinate production capacities and production plans;

   (c) the building-up and making available of reserved surge manufacturing capacities of defence products, their components and corresponding raw materials, in accordance with ordered or planned production volumes;

(d) fostering the industrialisation and commercialisation of defence products developed in the framework of actions funded by the Union or of other cooperative activities conducted with support by at least two Member States, including through the establishment of cross-border industrial partnerships, public-private partnerships or other forms of industrial cooperation and through the ramping-up of initial production and of 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.

2. 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.

3. Notwithstanding paragraph 2, the activities referred to in paragraph 1 may be carried out by a SEAP.

4. For the production of ammunition and missiles, recipients of Union funding or relevant governmental authorities of the Member States concerned 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 product concerned, 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, or alternatively, by way of derogation from Article 10(5), shall have obtained a legally binding commitment from the non-associated third country or the non-associated third-country entity concerned that they will obtain such ability to decide within a reasonable timeframe commensurate with the complexity of the action concerned, and in any event no later than 31 December 2033.

Article 13

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 military standards, in particular NATO standards and other relevant standards, thus reducing any excessive differentiation of defence products across the Union;

(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 10(1);

(d) the procurement of physical and cyber protection systems in relation to the activities referred to in Article 12;

(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;

(f) the establishment of a European Military Sales Catalogue as referred to in Chapter V;

(g) support for the establishment and functioning of SEAPs, including for the purpose of establishing, managing and maintaining defence industrial readiness pools;

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

(i) defence innovation actions, including emergency defence innovation actions where the measure referred to in Article 68 is activated.

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.

3. Notwithstanding paragraph 2, the activities referred to in paragraph 1 may be carried out by a SEAP.

SECTION 3

FUND ACCELERATING DEFENCE SUPPLY CHAINS TRANSFORMATION (FAST)

Article 14

Fund Accelerating 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 small mid-caps complying with criteria equivalent to those set out in Article 9(1) and, where relevant, Article 9(3) and (4), a blending operation offering debt support, equity support or both may be established, entitled 'Fund Accelerating 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 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 small midcaps across the Union, which are facing difficulties in accessing finance and which are:

(i) industrialising or manufacturing defence products or have imminent plans to do so; or

(ii) part of the Union's defence supply chain or have imminent plans to become part of it;

(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 4

PROCUREMENT

Article 15

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 with them in a joint procurement 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 as referred to in Article 168(3) of the Financial Regulation to procure defence products on behalf of, or in the name of, the interested Member States.

2. 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.

3. By way of 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 procurement.

4. By way of derogation from Article 168(3) of the Financial Regulation, an associated country together with at least one Member State may request the Commission to act as a central purchasing body as referred to in paragraph 1, point (b), of this Article. 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.

5. In addition to the conditions set out in the Financial Regulation, the procurement procedure referred to in paragraphs 1, 3 and 4 of this Article shall also comply with the following conditions:

(a) participation in the procurement procedure is open to all Member States and, by way of derogation from Article 168(2) and (3) of the Financial Regulation, may be open to associated countries;

(b) the Commission invites at least one expert with experience relevant to the negotiations from each participating country to form a joint negotiation team;

(c) participating countries explicitly state whether they decide to run parallel negotiation processes for the product concerned, with that decision being subject to unanimous approval by participating countries.

6. Where the Commission acts as a central purchasing body pursuant to paragraph 1, point (b), and paragraph 4, it may procure, on behalf of or in the name of Member States or associated countries, components and raw materials necessary for the supply of defence products for the purpose of building strategic reserves by participating countries, including stockpiling.

7. 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 defence products from the date on which the draft contracts resulting from the procurement carried out for the purposes of this Regulation are sent.

8. 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.

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

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

11. In addition to the conditions set out in the Financial Regulation, criteria equivalent to those laid down in Article 9(1), (3) and (4) of this Regulation shall also apply to tenderers, contractors and subcontractors in contracts resulting from procurement conducted pursuant to this Article.

12. For procurement conducted pursuant to paragraph 1, point (a), and paragraph 3 of this Article, the rules set out in Article 10(3) and (5) shall apply.

Article 16

Advance purchase of defence products

1. Joint procurement as referred to in Article 15(1), point (a), 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 3(1). Contributions of participating countries as referred to in Article 5 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 for establishing defence industrial readiness pools.

Article 17

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 EDTIB 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 for defence products indicating:

   (a) the volume and quality;

   (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 that comply with criteria equivalent to those laid out in Article 9(1), (3) and (4) 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;

(c) 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 associated countries.

5. Further to the contact referred to in paragraph 4 of this Article, 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 15.

6. The financial envelope referred to in Article 3(1) may cover the parts of the contract on non-recurrent costs, including the reservation of manufacturing capacities.

SECTION 5

AWARD CRITERIA AND WORK PROGRAMMES

Article 18

Award criteria

1. Proposals for actions shall be evaluated in the light of the objectives set for the relevant action, the expected results of the relevant action, and the quality and efficiency of its implementation. In particular, that evaluation shall include one or more of the following criteria:

(a) contribution to competitiveness;

(b) contribution to resilience and geographical distribution of manufacturing capacities;

(c) increase in production capacities;

(d) increase in interoperability;

(e) increase in interchangeability; and

(f) contribution to reducing strategic dependencies.

2. In addition to the criteria set out in paragraph 1 of this Article, proposals for common procurement actions referred to in Article 11 shall be evaluated based on the following criteria:

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

(b) the action's contribution to the adaptation, modernisation and development of the EDTIB throughout the Union; and

(c) the participation of SMEs and mid-caps.

3. In addition to the criteria set out in paragraph 1 of this Article, proposals for industrial reinforcement actions as referred to in Article 12 shall be evaluated based on the following criteria:

(a) the reduction of production lead 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; and

(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 programmes referred to in Article 21 shall lay down further details concerning the application of the criteria set out in paragraph 1 of this Article, including any weighting to be applied. The work programmes shall not set individual thresholds.

5. The evaluation committee may be assisted by independent external experts in accordance with Article 153(3) of the Financial Regulation. The work programmes may specify that those experts are required to hold a valid personal security clearance.

Article 19

Selection and award procedure

Except for actions referred to in Article 11, Article 13(1), point (g), and Article 10(1), point (d), 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 77(4).

Article 20

Union financial contribution

1. For actions referred to in Articles 13 and 35 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.

2. Where the Union grant takes the form of financing not linked to costs, pursuant to Article 183(3) of the Financial Regulation, the level of the Union contribution attributed 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 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, in particular where the common procurement covers activities that would be eligible for funding from the Union budget, such as research and development, testing and certification, initial production or in-service support activities;

(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 the reduction of dependencies on non-associated countries;

(g) the contribution of the action to enhancing cooperation between Member States or associated countries for the purpose of establishing, managing or maintaining defence industrial readiness pools;

(h) the contribution of the action to enhancing cooperation between Member States or associated countries resulting in the common procurement of additional quantities of defence products for Ukraine or Moldova;

(i) the complexity of the technological solutions necessary for the integration of the defence product procured within the armed forces of a participating Member State.

3. Actions referred to in Article 11 of this Regulation 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 11 shall not exceed 15 % of the estimated value of the common procurement contract concerned.

5. By way of derogation from paragraph 4 of this Article, the Union financial contribution to each action referred to in Article 11 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 carried out by a SEAP;

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

6. For actions referred to in Article 12, 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 12 may be up to 50 % of the eligible costs where the majority of beneficiaries are SMEs or mid-caps established in Member States or in associated countries or where the action is carried out by a SEAP, and where at least one of the following conditions is met:

(a) the beneficiary demonstrates a contribution to the creation of new cross-border cooperation between entities established in Member States or associated countries;

(b) 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. The work programmes referred to in Article 21 shall lay down further details.

Article 21

Work programmes

1. The Programme shall be implemented by work programmes as referred to in Article 110 of the Financial Regulation. Work programmes may be multiannual, when appropriate. 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 77(4).

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 10(1) and a detailed description of each type of action;

(b) with respect to actions referred to in Articles 11 and 12, the minimum financial size of the actions;

(c) with respect to actions referred to in Article 12, the maximum number of legal entities forming part of the consortium, which shall not exceed 15 legal entities;

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

(e) the overall amount of the Union contribution to joint procurement with the support of the Commission as referred to in Article 15(1), point (a), Article 15(3), Article 16 and Article 17; and

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

4. When adopting work programmes, the Commission shall take into account the need for coherence with other relevant Union programmes and instruments.

5. The financial envelope referred to in Article 3(1) may cover joint procurement as referred to in Article 15(1), point (a), which shall not exceed the parts of the contract on non-recurrent costs, including the reservation of manufacturing capacities.

Chapter III

The Ukraine Support Instrument

SECTION 1

GENERAL PROVISIONS APPLICABLE TO THE UKRAINE SUPPORT INSTRUMENT

Article 22

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, the protection of assets, technical assistance and exchange of personnel, increased cooperation on common procurement of defence products involving Ukraine and the Ukrainian DTIB, 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 23

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 bilateral or multilateral agreements concluded pursuant to Article 17 of Regulation (EU) 2025/1106 shall constitute external assigned revenue within the meaning of Article 21(5) of the Financial Regulation and shall be used for the Ukraine Support Instrument in accordance with this Regulation.

3. 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.

4. 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. Those resources shall be used for the benefit of the Member State concerned.

5. As regards the amounts contributed in accordance with paragraph 1 of this Article, the Member States concerned may take decisions regarding the proportion of those amounts to be made available to all entities eligible for funding under this Regulation, to be made available only to the benefit of the Member States concerned or to be made available to the additional benefit of other Member States or Ukraine.

6. Where the Commission has not entered into a legal commitment under direct or indirect management for resources transferred in accordance with paragraph 4 of this Article 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 24

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 those contributions do 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 call for proposals;

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

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

Article 25

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 entities referred to in Article 62(1), point (c), of the Financial Regulation.

2. Without prejudice to Article 33(3) of this Regulation, Union funding may be provided in any of the forms laid down in the Financial Regulation in accordance with its Title X, with the exception of blending operations under the InvestEU programme.

3. With respect to activities referred to in Article 12(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 shall be entitled to 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 programmes referred to in Article 34 may set out further details.

4. By way of derogation from Article 196(2) of the Financial Regulation, 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.

Article 26

Eligible legal entities

1. Only legal entities established in the Union or in Ukraine and having their executive management structures in the Union or in Ukraine shall be eligible to be recipients of Union funding under this Regulation.

   Legal entities established in the non-government controlled areas of Ukraine shall not be eligible for funding under this Regulation.

2. The eligibility criteria set out in paragraphs 3 to 9 of this Article shall apply in addition to the criteria set out in accordance with the Financial Regulation.

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 Ukraine for the entire duration of the action.

4. 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 or 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 and its Member States, including respect for the principle of good neighbourly relations, and is consistent with the objectives set out in Article 22. The costs related to activities using such infrastructure, facilities, assets or resources shall not be eligible for support from the Ukraine Support Instrument.

5. 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.

6. By way of derogation from paragraph 5 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 guarantees approved in accordance with the national procedures of a Member State in which it is established, such as adequate measures pursuant to screening, as defined in Article 2, point (3), of Regulation (EU) 2019/452, 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 22 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 27(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 by another third-country entity nor transferred to entities established outside the territory of the Member States, of associated countries or of Ukraine, without the approval of the Member State or the associated country in which the legal entity is established or, where the legal entity is established in Ukraine, the approval of Ukraine. Such approval shall not contravene the objectives set out in Article 22.

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 77 of any legal entity considered to be eligible to be a recipient of Union funding in accordance with this paragraph.

7. The guarantees referred to in paragraph 6 of this Article may be based on a standardised template provided by the Commission, assisted by the committee referred to in Article 77, in order to ensure a harmonised approach throughout the Union.

8. 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 such use does not contravene the security and defence interests of the Union and its Member States, including respect for the principle of good neighbourly relations, or the objectives set out in Article 22.

There shall be no unauthorised access by a non-associated third country other than Ukraine or by another third-country entity to classified information relating to the carrying-out of the action, and potential negative effects on the 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 Ukraine, or controlled by a non-associated third country other than Ukraine or by another third-country entity, shall not be eligible for support from the Ukraine Support Instrument.

9. Paragraphs 5 and 6 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 27

Eligible actions

1. Actions eligible for funding under the Ukraine Support Instrument shall implement the objectives set out in Article 22 and may take one of the following forms, or a combination thereof:

(a) common procurement actions as referred to in Article 11, including for the purpose of establishing, managing or maintaining defence industrial readiness pools;

(b) industrial reinforcement actions as referred to in Article 12;

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

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

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

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

(c) actions related to cluster munitions;

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

3. For procurement carried out pursuant to paragraph 1, points (a) and (c), which is 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.

4. For actions carried out pursuant to paragraph 1, point (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.

5. 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 concerned, 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.

6. 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.

7. 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.

8. For the purposes of this Chapter, references to Member States in Articles 11, 12, 13 and 38 shall be understood to include Ukraine. References to associated countries in Articles 11, 12, 13 and 38 shall not apply to this Chapter. For the purposes of this Chapter, references to Article 9 contained in Article 11 shall be understood to refer to Article 26 and references to Article 10(5) contained in Article 12 shall be understood to refer to paragraph 5 of this Article.

SECTION 3

PROCUREMENT

Article 28

Procurement with support by the Commission

1. By way of 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, whereby Member States and Ukraine may acquire, rent or lease fully the defence products jointly procured. The other conditions set out in Article 168(2) of the Financial Regulation shall apply to such joint procurement.

2. By way of derogation from Article 168(3) of the Financial Regulation, Ukraine may request, together with at least one Member State, the Commission to act as a central purchasing body as referred to in Article 168(3) of the Financial Regulation to procure defence products on their behalf or in their name. 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.

3. 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.

4. In addition to the conditions set out in the Financial Regulation, the procurement procedure referred to in paragraphs 1 and 2 of this Article shall also comply with the following conditions:

(a) participation in the procurement procedure is open to all Member States;

(b) the Commission invites at least one expert with experience relevant to the negotiations from each participating country to form a joint negotiation team;

(c) participating countries explicitly state whether they decide to run parallel negotiation processes for the product concerned, with that decision being subject to unanimous approval by participating countries.

5. Where the Commission acts as a central purchasing body pursuant to paragraph 2, it may, as part of the procurement, procure components and raw materials necessary for the supply of defence products for the purpose of building strategic reserves by participating countries, including stockpiling.

6. 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.

7. 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.

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

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

10. In addition to the conditions set out in the Financial Regulation, criteria equivalent to those laid down in Article 26(1), (3) and (4) of this Regulation shall also apply to tenderers, contractors and subcontractors in contracts resulting from the procurement conducted pursuant to this Article.

11. For procurement conducted pursuant to paragraph 1 of this Article, the rules set out in Article 27(3) and (5) shall apply.

Article 29

Advance purchase of defence products

1. Joint procurement as referred to in Article 28 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 3(2). Contributions of participating countries as referred to in Article 23 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 for establishing defence industrial readiness pools.

Article 30

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 DTIB 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 for defence products indicating:

   (a) the volume and quality;

   (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 that comply with criteria equivalent to those laid out in Article 26(1), (3) and (4) 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;

(c) 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 28.

6. The financial envelope referred to in Article 3(2) 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 31

Award criteria

1. Proposals for actions shall be evaluated in the light of the objectives set for the relevant action, as referred to in Article 22, the expected results of the relevant action, and the quality and efficiency of its implementation.

2. In addition to the criteria set out in paragraph 1 of this Article, proposals for common procurement actions as referred to in Article 11 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 the recovery, reconstruction and modernisation of the Ukrainian DTIB;

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

3. In addition to the criteria set out in paragraph 1 of this Article, proposals for industrial reinforcement actions as referred to in Article 12 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.

4. The work programmes referred to in Article 34 shall lay down further details concerning the application of the award criteria, including any weighting to be applied. The work programmes shall not set individual thresholds.

5. The evaluation committee may be assisted by independent external experts in accordance with Article 153(3) of the Financial Regulation. The work programmes may specify that those experts are required to hold a valid personal security clearance.

Article 32

Selection and award procedure

Except for actions referred to in Article 11 and Article 13(1), point (g), 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 77(4).

Article 33

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 27(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 the 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;

   (c) 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;

(g) the hardship and risks 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 avoid, prevent, reduce and, if possible, offset such damages.

3. Actions referred to in Article 27(1), point (a), of this Regulation 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. For actions referred to in Article 27(1), point (a), the support from the Ukraine Support Instrument shall not exceed 25 % of the estimated value of the common procurement contract concerned.

5. The work programmes referred to in Article 34 shall lay down further details.

Article 34

Work programmes

1. The Ukraine Support Instrument shall be implemented by work programmes as referred to in Article 110 of the Financial Regulation. Work programmes may be multiannual, when appropriate. 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 77(4).

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 27(1) and a detailed description of each type of action;

   (b) with respect to actions referred to in Article 27(1), points (a) and (b), the minimum financial size of the actions;

   (c) with respect to actions referred to in Article 27(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 in such a way as to mark substantial progress in the implementation of actions, the results to be achieved and the associated amounts to be disbursed, as well as the arrangements for the verification of the milestones, the fulfilment of conditions and the achievement of results;

(e) the overall amount of the Union contribution to joint procurement with the support of the Commission as referred to in Article 28(1), Article 29 and Article 30; and

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

4. When adopting work programmes, the Commission shall take into account the need for coherence with other relevant Union programmes and instruments.

Chapter IV

European Defence Projects of Common Interest

Article 35

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 critical for the security and defence interests of the Union, and including those capabilities securing access to all operational domains, namely land, maritime, air, space and cyber.

2. EDPCIs shall meet all the following criteria:

(a) they significantly strengthen the competitiveness, efficiency and innovation capacity of the EDTIB, in particular by:

(i) contributing to the establishment of new or the broadening of existing cross-border cooperation, including with SMEs and mid-caps;

(ii) creating positive spill-over effects in the internal market;

(iii) significantly contributing to market integration and reduction of market fragmentation;

(iv) improving the interoperability and interchangeability of defence products; and

(v) aiming to reduce strategic dependencies, including by means of supply diversification and scaling up capacities;

(b) they contribute to the development of Member States' military capabilities critical for the security and defence interests of the Union and are consistent with the objectives of the Strategic Compass for Security and Defence, with the 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 collaborative opportunities identified in the context of CARD;

(c) they take into account Member States' cooperation in the framework of PESCO and EDA initiatives and projects;

(d) they take into account the relevant activities carried out by NATO, such as the NATO Defence Planning Process, where such activities serve the security and defence interests of the Union;

(e) they involve at least four Member States, and all Member States and associated countries, as well as Ukraine, are given a genuine opportunity to participate in the EDPCI;

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

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

(h) their potential overall benefits outweigh their costs, including in the longer term.

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

4. Member States shall coordinate to prepare project proposals for possible EDPCIs in an inclusive way, with the support of the EDA where necessary.

5. Before proposing the implementing acts as referred to in paragraph 3, the Commission shall verify the compliance of the project proposals referred to in paragraph 4 with all the criteria listed in paragraph 2 and:

(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 of the Union for Foreign Affairs and Security Policy (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, points (b), (c) and (d), in particular the defence capability priorities commonly agreed by Member States within the framework of CFSP, in particular 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, and, where relevant, Ukraine, were informed of the emergence of a project and were given the opportunity to participate.

6. 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 countries participating in the EDPCI at the date of the adoption of the implementing act; and

(c) estimate the overall financial size of the EDPCI.

7. The Council shall adopt the implementing acts referred to in paragraph 3 acting by qualified majority. The Council may amend the project proposals referred to in paragraph 4 acting by qualified majority.

8. The deployment of an EDPCI which is eligible for Union funding as referred to in Article 10(1), point (d), shall consist only of 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.

9. The participating Member States shall ensure that criteria equivalent to those set out in Article 9 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 11(6) shall also apply.

10. 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 and do not affect compliance of the EDPCI with the criteria set out in paragraph 2 of this Article.

11. An EDPCI may address the development of dual-use capabilities for the Union.

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

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

14. The Commission shall be able, where relevant, to participate in the project. Participating Member States may decide to involve the High Representative and the EDA as observers to an EDPCI.

15. Member States may, without prejudice to Articles 107 and 108 TFEU, apply support schemes and provide for administrative support to EDPCIs.

16. 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[40] and Article 4(7) of Directive 2000/60/EC of the European Parliament and of the Council[41], in the interests of defence within the meaning of Article 2(3) of Regulation (EC) No 1907/2006 of the European Parliament and of the Council[42] 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[43], provided that the other conditions set out in those provisions are fulfilled.

17. 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 requirements set out in paragraph 10 of this Article.

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40 Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7, ELI: http://data.europa.eu/eli/dir/1992/43/oj).

41 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, ELI: http://data.europa.eu/eli/dir/2000/60/oj).

42 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, ELI: http://data.europa.eu/eli/reg/2006/1907/oj).

43 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, 26.1.2010, p. 7, ELI: http://data.europa.eu/eli/dir/2009/147/oj).

18. Upon a proposal from the Commission, the Council, acting by qualified majority, may amend the implementing acts adopted pursuant to paragraph 3, including by removing a project as an EDPCI or by reflecting changes to the elements set out in paragraph 6.

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

Chapter V

European Military Sales Mechanism

Article 36

European Military Sales Mechanism

1. To strengthen the competitiveness of the EDTIB as well as, where relevant, of the Ukrainian DTIB, in particular by increasing the ability of the EDTIB to ensure the availability of defence products in time and in volume, a European Military Sales Mechanism is hereby established.

2. The European Military Sales Mechanism shall consist of the following:

(a) establishing a European Military Sales Catalogue;

(b) the possibility of establishing, managing and maintaining defence industrial readiness pools; and

(c) measures contributing to the facilitation of procedures for the common procurement of defence products.

Article 37

European Military Sales Catalogue

1. The Commission, having consulted 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 ‘catalogue’). The Commission shall consult the EDA and take into account its views in drawing up the technical specifications for the catalogue and, where appropriate, procure the corporate IT platform required to establish it. Member States, Ukraine and economic operators shall be invited to populate the catalogue on a voluntary basis.

2. The defence products present in the catalogue shall be manufactured by economic operators respecting the eligibility criteria set out in Article 9(1), (3) and (4) or Article 26(1), (3) and (4). In addition, the catalogue shall indicate whether the economic operator has 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 product, 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. The support received under the Programme, the Ukraine Support Instrument or Regulation (EU) 2018/1092 of the European Parliament and of the Council[44], Regulation (EU) 2021/697 of the European Parliament and of the Council[45] or Regulation (EU) 2023/1525 or (EU) 2023/2418 may also be indicated in the catalogue.

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[44] Regulation (EU) 2018/1092 of the European Parliament and of the Council of 18 July 2018 establishing the European Defence Industrial Development Programme aiming at supporting the competitiveness and innovation capacity of the Union's defence industry (OJ L 200, 7.8.2018, p. 30, ELI: http://data.europa.eu/eli/reg/2018/1092/oj).

[45] Regulation (EU) 2021/697 of the European Parliament and of the Council of 29 April 2021 establishing the European Defence Fund and repealing Regulation (EU) 2018/1092 (OJ L 170, 12.5.2021, p. 149, ELI: http://data.europa.eu/eli/reg/2021/697/oj).

Article 38

Defence industrial readiness pools

1. A consortium of Member States, associated countries or Ukraine or a SEAP may establish, manage and maintain defence industrial readiness pools, and may, for that purpose, invite the EDA to provide its expertise.

   For the purposes of the first subparagraph, a consortium of Member States, associated countries or Ukraine shall consist of at least three of those countries, of which at least two shall be Member States.

2. Member States that establish a defence industrial readiness pool shall ensure that the establishment, management and maintenance of that pool comply with the objectives set out in Article 36(1), as well as with the objectives set out in Article 4 and, where relevant, Article 22.

3. Member States, associated countries, Ukraine and SEAPs that establish a defence industrial readiness pool shall grant all Member States, associated countries and Ukraine an immediate and preferential purchase, use or lease option for defence products that are part of that defence industrial readiness pool.

4. Where a defence industrial readiness pool is established in the context of a SEAP, the Programme or the Ukraine Support Instrument may financially support the following:

   (a) the common procurement of additional quantities of defence products through common procurement actions carried out by the SEAP in accordance with Article 11;

(b) the establishment and the functioning of the SEAP for the purpose of managing and maintaining a defence industrial readiness pool in accordance with Article 13(1), point (g).

5. For the purpose of Member States or, where applicable, associated countries buying from the defence industrial readiness pool established, managed and maintained by a SEAP, the procurement shall be considered as a contract awarded by a government to another government as referred to in Article 13, point (f), of Directive 2009/81/EC.

Article 39

Facilitation of procedures for the common procurement of defence products

Where Member States enter into an agreement to commonly procure defence products, they may apply the rules and procedures provided for in Article 11(9) and (10), Article 52 and Article 53, subject to the conditions set out therein.

Chapter VI

Structure for European Armament Programme

Article 40

Specific objective and activities of a Structure for European Armament Programme

1. A Structure for European Armament Programme (SEAP) shall foster the competitiveness of the EDTIB and, where relevant, of the Ukrainian DTIB. That 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 at least one of the following:

   (a) the common development of defence products and technologies, including defence research and development, 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 and technologies, including for the purpose of establishing, managing or maintaining defence industrial readiness pools;

(c) the common life-cycle management of defence products, including the procurement of spare parts, logistic or maintenance services and, where appropriate, the establishment of public-private partnerships to ensure efficiency and high availability of defence products; or

(d) the dynamic availability management of additional quantities, ensuring an immediate and preferential purchase, use or lease option for Member States, associated countries or Ukraine in the context of defence industrial readiness pools.

3. A SEAP may entrust, by way of a delegation agreement, one or more of the eligible entities referred to in Article 11(2) 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 41

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

(b) 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;

(c) take into account the relevant activities carried out by NATO, such as the NATO Defence Planning Process, where such activities serve the security and defence interests of the Union; and

(d) have at least three members, of which at least two are Member States.

2. A SEAP shall use standardised procedures for initiating and managing cooperative armament programmes. The Commission, taking into account the views expressed by Member States, may establish guidance or templates for those procedures, including guidelines on project management, procurement, financial management and reporting.

Article 42

Applications 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 establish the SEAP;

(b) the proposed statutes of the SEAP referred to in Article 45, 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 41(1), points (a) and (b);

(d) a declaration by the Member State on the territory of which the SEAP is foreseen to have its statutory seat, recognising the SEAP as an international body within the meaning of Article 143(1), point (g), and Article 151(1), point (b), of Directive 2006/112/EC and as an international organisation within the meaning of Article 11(1) of Directive (EU) 2020/262, as of its establishment;

(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 44(2).

For the purposes of point (d) of the first subparagraph of this paragraph, the limits and conditions of the exemptions provided for in Article 143(1), point (g), and Article 151(1), point (b), of Directive 2006/112/EC and in Article 11(2) of Directive (EU) 2020/262 shall be laid down in an agreement between the members of the SEAP.

2. The Commission shall, without undue delay after receipt of the complete application as referred to in paragraph 1, assess that application in accordance with the requirements laid down in this Regulation and may, for that purpose, invite the EDA to provide its expertise. 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, by means of an implementing act taking into account the results of the assessment referred to in paragraph 2 of this Article, shall:

(a) establish 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), of this Article, after providing an opportunity to the applicants to complete or amend the application.

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

5. The implementing act establishing the SEAP referred to in paragraph 3, point (a), of this Article shall be adopted in accordance with the examination procedure referred to in Article 77(4) and shall be published in the *Official Journal of the European Union*.

Article 43

Status and seat of a SEAP

1. A SEAP shall have legal personality as from the date on which the implementing act establishing it 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 44

Requirements for membership of a SEAP

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

   (a) Member States;

   (b) associated countries;

   (c) Ukraine.

2. 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.

3. Member States, associated countries or Ukraine may join as members of a SEAP at any time after that SEAP's establishment, on fair and reasonable terms specified in the statutes referred to in Article 45, or as observers without voting rights on conditions specified in those statutes.

4. 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 the respect of the principle of good neighbourly relations.

Article 45

Statutes of a SEAP

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

(a) a list of members of the SEAP, 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 44;

(b) the specific objectives, tasks and activities of the SEAP, in compliance with Articles 40 and 41, 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 which are eligible for an exemption from VAT or excise duties;

(d) the statutory seat of the SEAP in compliance with Article 43(3);

(e) the identification of the national law of the Member State that determines the competent jurisdiction for the resolution of disputes among SEAP members in relation to the SEAP, between SEAP members and the SEAP, and between a SEAP and third parties, in compliance with Article 49(2);

(f) the name of the SEAP;

(g) the duration and the procedure for the winding-up of the SEAP in compliance with Article 50;

(h) a description of the main criteria that the SEAP is to apply when procuring defence products to ensure compliance with the objective set out in Article 40(1);

(i) the liability regime, including the possibility to issue securities, if so decided, in compliance with Article 48;

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

(k) 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 the applicable voting rules, in particular on the amendment of the statutes in compliance with Article 46;

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

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

(n) rules on the protection of classified information;

(o) the identification of the Union and national rules applicable to the handling of the defence products to be developed, procured or managed by the SEAP, and the administrative capacities foreseen to ensure compliance with those rules.

For the purposes of point (k) of the first subparagraph of this paragraph, the voting rules applicable to amendments relating to the approach to the export of defence products, if included in the statutes, and to the financial liability regime shall comply with paragraph 4 of this Article and Article 48(5) respectively;

2. Where the members of a SEAP decide to establish a defence industrial readiness pool, the statutes shall include the rules governing the management of that defence industrial readiness pool.

3. The statutes, signed and adopted unanimously by all the members of a SEAP in accordance with Article 42(1), point (b), may contain an approach to the export of defence products.

4. Any change to the approach to the export of defence products referred to in paragraph 3 shall be decided unanimously by the members of a SEAP.

Article 46

Amendment of the statutes of a SEAP

1. Any amendment of the statutes of a SEAP concerning the matters referred to in Article 45(1), points (a) to (k), shall be adopted in accordance with the voting rules specified in the statutes in compliance with Article 45(1), point (k), and be submitted to the Commission by the SEAP for approval.

2. Any amendment of the statutes concerning the matters referred to in Article 45(3) shall be adopted in accordance with the voting rules specified in the statutes in compliance with Article 45(1), point (k), and be notified to the Commission by the SEAP within 10 days of the date of its adoption.

3. Any amendment of the statutes other than that referred to in paragraphs 1 and 2 shall be adopted in accordance with the voting rules specified in the statutes in compliance with Article 45(1), point (k), and shall be submitted to the Commission by the SEAP within 10 days of the date of its adoption.

4. The Commission may raise an objection to an amendment of the statutes as referred to in paragraph 3 within 30 days of the date of its submission, giving reasons why the amendment does not meet the requirements of this Regulation.

5. An amendment of the statutes as referred to in paragraph 3 shall not take effect before the period for raising an objection referred to in paragraph 4 has expired or been waived by the Commission or before an objection raised has been withdrawn.

6. An application for the amendment of the statutes as referred to in paragraphs 1, 2 and 3 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 47

Specific conditions on procurement

1. In accordance with Article 40(3), a SEAP may entrust an eligible entity referred to in Article 11(2) with carrying out procurement actions. Such an entity shall act in the name of, or on behalf of, that SEAP.

2. For the purposes of procurement of defence products, SEAPs shall be considered as international organisations within the meaning of Article 12, point (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 40(1). A SEAP shall actively seek to include multiple legal entities from various Member States in the supply chains of defence products.

4. Where a delegation agreement as referred to in Article 40(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.

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

Article 48

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 will assume 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 of the SEAP.

4. If decided unanimously by its members, a SEAP may issue securities in accordance with the law of the Member State on the territory of which 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 49

Applicable law and jurisdiction

1. The establishment 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 42(3), point (a);

   (b) by its statutes and their implementing rules;

(c) by the law of the Member State on the territory of which the SEAP has its statutory seat in relation to matters not, or only partly, regulated by the acts referred to in point (a) and (b).

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 on the territory of which the SEAP has its statutory seat shall determine the competent jurisdiction for the resolution of disputes among SEAP members in relation to the SEAP, between SEAP members and the SEAP, and between a SEAP and third parties.

3. Delegation agreements as referred to in Article 40(3) shall determine which Member State jurisdiction is competent for the resolution of disputes related to the delegation agreement concerned. Delegation agreements 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 50

Winding up and insolvency

1. The statutes of a SEAP shall determine the procedure to be applied in the event of winding-up of the SEAP following a decision of the assembly of its members or, in the event that the Commission repeals the implementing act establishing the SEAP, as referred to in Article 51(7). Winding-up may include the transfer of activities and of the ownership of defence products to another legal entity.

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

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

4. Without undue delay after the closure of the winding-up procedure, and in any event within 10 days of 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 that notice.

5. 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 51

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 40. It shall be transmitted to the Commission within six months of the end of the financial year. The Commission shall distribute the report to all Member States.

2. The Commission shall provide the European Parliament and the Council with an aggregated annual report on the activities of all active SEAPs.

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

4. 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.

5. 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 shall request explanations from the SEAP or its members.

6. 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.

7. Where no remedial action as referred to in paragraph 6 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 repealing act shall trigger the winding-up of the SEAP as referred to in Article 50.

Chapter VII

Security of supply

SECTION 1

COOPERATIVE DEFENCE PROCUREMENT

Article 52

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 as defined in Article 1(10) of Directive 2009/81/EC, the rules provided for in paragraphs 2 to 6 of this Article may be applied to framework agreements that do not include rules governing the possibility to substantially amend the agreement. When applying the rules in paragraphs 2 and 3 of this Article, the contracting authority that 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 was concluded with an undertaking complying with criteria equivalent to those laid down in Article 9(1), (3) and (4) of this Regulation, in order to add new contracting authorities as party to that 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.

3. 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 that Directive, 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 was concluded with an undertaking complying with criteria equivalent to those laid down in Article 9(1), (3) and (4) of this Regulation and in so far as the modification is strictly necessary for the application of paragraph 2 of this Article.

4. For the purpose of the calculation of the value mentioned in paragraph 3 where the contract includes an indexation clause, the updated value shall be the reference point.

5. In the cases referred to in paragraphs 2 and 3, 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.

6. A contracting authority which has modified a framework agreement in the cases referred to in paragraph 2 or 3 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.

Article 53

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

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), point (e), of Directive 2009/81/EC, provided that all of the following conditions are met:

(a) the undertaking concerned complies with criteria equivalent to those laid down in Article 9(1), (3) and (4);

(b) the defence cooperation initiative referred to in the introductory sentence 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 referred to in the introductory sentence of this Article has already awarded a contract to, or concluded a framework agreement on a defence product with, that 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 2

PREPAREDNESS

Article 54

Acceleration of the permit-granting process for the timely availability and supply of crisis-relevant products

1. Member States shall ensure that administrative applications related to the planning, construction and operation of production facilities, transfer of inputs within the Union and qualification and certification of end products are processed in an efficient and timely manner. To that end, all national authorities concerned shall ensure that the most rapid treatment legally possible is given to such applications.

2. Member States shall ensure that, in the planning and permit-granting process, the construction and operation of plants and installations for the production of crisis-relevant products are given priority when balancing legal interests in the individual case concerned.

Article 55

Facilitation of the 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 up and keep updated, by means of implementing acts, an official list of national certification authorities for defence purposes as identified by Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 77(4).

3. A certification authority of 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.

4. The national certification authorities referred to in paragraph 1 shall cooperate with each other in the performance of their tasks under this Regulation and shall give the authorities of other Member States all necessary support to that end. The Commission, inviting, where relevant, the EDA to provide its expertise, shall support such cooperation in order to facilitate an efficient and effective movement of defence products in the internal market.

Article 56

Mapping of defence supply chains

1. The mapping of the Union's defence supply chains shall aim to analyse the strengths and weaknesses of such supply chains, with an emphasis on bottlenecks. It shall inform, where relevant, the development of the work programmes of the Programme and of the Ukraine Support Instrument as referred to in Articles 21 and 34.

2. The mapping of the Union's defence supply chains 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 5;

   (b) identification of crisis-relevant products and their related manufacturing capacities, pursuant to paragraph 9;

   (c) aggregation, cross-check and assessment of data gathered pursuant to paragraphs 6, 7 and 8;

   (d) identification of early-warning indicators, pursuant to paragraph 11; and

   (e) identification of the main suppliers of crisis-relevant products and their production capacities, pursuant to paragraphs 12 and 13.

3. The Commission, in cooperation with the Defence Security of Supply Board (the 'Board'), shall carry out the activities referred to in paragraph 2, points (b), (c) and (d). The Member States shall carry out the activities referred to in paragraph 2, points (a) and (e). Each Member State may request the Commission to carry out, on its behalf, the activities referred to in paragraph 2, points (a) and (e).

4. The Commission shall, after consulting the 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 exist within Member States. For that purpose, the Board may issue recommendations on the type of information appropriate for the mapping of supply chains of crisis-relevant products, on the technical specifications and formats for communicating that information and on the periodicity of such communication.

5. On the basis of the framework and methodology developed pursuant to paragraph 4, Member States shall identify on their territory the relevant manufacturing capacities and supply chains of defence products and shall provide the outcome of that identification to the Commission.

6. The Commission shall aggregate the data provided by Member States pursuant to paragraph 5 and perform a cross-check, with a view to identifying a list of crisis-relevant products and their related manufacturing capacities and to assessing the strengths and weaknesses of the Union's supply chains of such products.

7. To complement the data provided by Member States, the Commission shall use publicly and commercially available data and relevant non-confidential information from economic operators, as well as the results of similar analyses performed, including in the context of Union law on raw materials, semiconductors and renewable energy, the results of the relevant activities of the EDA, the results of the stress tests conducted pursuant to Article 58 and the results of the evaluation carried out pursuant to Article 85(2).

8. Where the data referred to in paragraphs 6 and 7 are not sufficient for the performance of its tasks pursuant to paragraph 6, the Commission may request the relevant actors involved in the supply chains concerned and based in the Union to provide, on a voluntary basis, information to the Member State on the territory of which the production site of the addressed economic operator is located. The Commission's request shall explicitly indicate that the economic operator is free to refuse such a request. The request for information shall include the contact information of the national competent authorities of the Member State on the territory of which the production site of the addressed economic operator is located to which the reply is to be sent. Where the economic operator decides to provide the requested information to the Member State concerned, the Member State concerned shall make that information available to the Commission.

9. The Commission, by means of an implementing act, shall 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 77(4).

10. The Commission shall inform the Board of the aggregate results of the mapping on an annual basis or at the request of one of the members of the Board as referred to in Article 76(5). Those results shall constitute classified information.

11. The Commission shall, on the basis of the outcome of the activities carried out pursuant to paragraphs 4, 6 and 7 and after consulting the Board, develop a list of early-warning indicators aimed at identifying factors that could disrupt, compromise or negatively affect the supply of crisis-relevant products. The Commission, after consulting the Board, shall review the list of early-warning indicators on a regular basis, and at least every two years.

12. Member States shall, in cooperation with the Commission and the EDA, 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 9 of this Article. Each Member State shall notify the main suppliers of crisis-relevant products established on its territory that they have been identified pursuant to this paragraph and inform them about the obligation to report on disruptions in the supply of crisis-relevant products as set out in Article 57(1), point (c). That notification shall also include the relevant contact information of the national competent authorities to which that report is to be sent.

13. The identification of main suppliers as referred to in paragraph 12 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; or

(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.

14. Without prejudice to paragraph 10 of this Article, any information obtained pursuant to this Article shall be treated in compliance with the confidentiality obligations set out in Article 80.

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

Article 57

Monitoring

1. Member States and the Commission, in cooperation with the 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 56(9), with a view to identifying possible risks to the supply of those products. In carrying out that monitoring:

   (a) the Commission, in cooperation with the Board, shall monitor early-warning indicators identified pursuant to Article 56(11), including by aggregating any input received from Member States on the basis of information collected at national level;

   (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 56(12) to carry out their activities and report to the Board on any events that could have negative and lasting consequences on the timely availability and supply of those products;

(c) where main suppliers of crisis-relevant products detect disruptions of supply which could significantly affect their activities related to the production of those products, they shall report on such disruptions to the Member State on the territory of which they are established, and the Member State concerned shall communicate that information to the Commission without undue delay;

(d) the Commission, after consulting the 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 Board, shall establish the frequency of the monitoring referred to in the first subparagraph.

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 and may, where necessary, provide dedicated assistance.

3. The Commission may invite, after consulting the Board, the main suppliers of crisis-relevant products referred to in Article 56(12), 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 56(12) 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 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 Board with additional relevant information, in particular information on the identification of issues related to the supply of crisis-relevant products throughout the Union and on 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 pursuant to this Article, the Commission shall regularly provide a report of the aggregated findings to the Board. That report shall constitute classified information. The Board shall meet to assess the results of that report and to identify, where appropriate, potential solutions to issues of common interest. Where relevant, the Commission, after consulting the Board, may invite national defence industry associations, main suppliers of crisis-relevant products referred to in Article 56(12), 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 the essential interests of its security in accordance with Article 346(1), point (a), TFEU.

Article 58

Stress tests

1. The Commission, upon consultation of the Board, shall identify relevant topics for the conduct of stress tests.

2. The Commission, taking into consideration the relevant topics identified pursuant to paragraph 1 of this Article, shall conduct and coordinate stress tests, including simulations that aim to anticipate and prepare for a supply crisis as referred to in Article 60, and in particular 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 Board, risk mitigation measures following the completion of the stress tests.

3. The Commission may conduct stress tests as referred to in paragraph 2 on a regular basis. The Board shall provide recommendations regarding the frequency for the conduct of such stress tests.

4. The Commission shall invite representatives of all Member States to participate in stress tests as referred to in paragraph 2. Upon consultation of the Board, the Commission may also invite representatives of the High Representative, the EDA or other relevant actors to participate in those stress tests.

5. 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.

6. Upon completion of the stress tests conducted pursuant to this Article, the Commission shall communicate the results to the participating Member States. The Commission shall share with the Board a report with recommendations based on the results of those stress tests without undue delay. Those results and that report shall constitute classified information.

Article 59

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 product 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 Board without undue delay.

2. In order to determine whether a risk of serious disruption in the supply of a crisis-relevant product 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.

3. Where the 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 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;

(ii) recommend to the Commission to initiate action in accordance with Chapters II and III;

(iii) discuss approaches and exchange best practices of the competent authorities of Member States, including to assess the state of preparedness of the main suppliers of crisis-relevant products;

(iv) invite 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 60 would be necessary and proportionate.

(b) on behalf of the Union, after consulting the Board, enter into consultations or cooperation 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;

(c) ensure synergies with relevant Union programmes and legal acts.

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

SECTION 3

MITIGATION OF A SUPPLY CRISIS

Article 60

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 related to crisis-relevant products which are not defence products, leading to a severe negative impact on the proper functioning of the internal market, in particular obstacles to cross-border trade in such crisis-relevant products, and on the functioning of the Union's defence supply chains.

2. Where, pursuant to Article 59, the Commission or the Board becomes aware of a risk of serious disruption in the supply of crisis-relevant products or has concrete and reliable information on any other relevant risk factor or event materially affecting the supply of such products, the Commission, after consulting the Board, shall assess whether the conditions set out in paragraph 1 of this Article are met. That assessment shall take into account the potential impact and consequences of the supply-crisis state on the supply chains of the crisis-relevant products concerned within the Union, the results of stress tests conducted pursuant to Article 58, and assessments performed in other relevant Union crisis management frameworks. Where that assessment provides concrete and reliable evidence, the Commission may, after consulting the Board, propose to the Council to activate the supply-crisis state. Where it proposes to the Council to activate the supply crisis-state, the Commission shall inform the Parliament thereof.

3. The Council, by means of an implementing act adopted by qualified majority upon a proposal from the Commission, may activate the supply-crisis state. The duration of the supply-crisis state shall be specified in the implementing act and initially shall not exceed 12 months. That implementing act shall also specify which of the measures set out in Articles 62 and 63 are activated. In addition, the implementing act may identify for which crisis-relevant products which are not defence products those measures are activated.

4. The Council, acting by qualified majority, may amend the proposal referred to in paragraph 3.

5. 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.

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

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

8. During the supply-crisis state, the Commission shall, after consulting the 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 supply-crisis state.

9. The Council, by means of an implementing act adopted by qualified majority upon a proposal from the Commission, may terminate the supply-crisis state before the expiry date specified in the implementing act referred to in paragraph 3 or 7.

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 Board where necessary. In line with Article 76(10), the 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 Board in order to ensure the coordination of any Union and national measures taken with regard to the supply chains of the concerned crisis-relevant products which are not defence products.

11. Upon expiry of the period for which the supply-crisis state is activated or prolonged, or upon its early termination, the measures taken in accordance with Articles 62 and 63 shall immediately cease to apply. Implementing acts that have been adopted in accordance with Article 63(7) and (9) shall nevertheless continue to apply until the priority-rated requests or priority-rated orders 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 56 and 57, 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 61

Supply-crisis toolbox

1. Where the supply-crisis state is activated pursuant to Article 60 and where necessary in order to address the supply crisis in the Union, the Commission may take the measures provided for in Articles 62 and 63, as specified in the implementing act adopted by the Council in accordance with Article 60(3).

2. The Commission shall, after consulting the Board, restrict the application of the measures referred to in paragraph 1 to the crisis-relevant products which are not defence products that are 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 concerned 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 60 and where appropriate in order to address the supply crisis in the Union, the 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 Board, issue guidance on the implementation and the use of the measures provided for in Articles 62 and 63.

Article 62

Information requests

1. Where the Council activates the measure under this Article in accordance with Article 60(3), the Commission may, where the available information is not sufficient, request an economic operator contributing to the production of crisis-relevant products which are not defence products, with the prior agreement of the Member State on whose territory the production site of that economic operator is located, to provide information to that Member State within a set time limit about its production capabilities, production capacities and current primary disruptions. The Member State concerned shall 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 pursuant to paragraph 1, and with the prior agreement of the Member State on the territory of which the production site of the economic operator concerned is located, the Commission may carry out a voluntary consultation of a representative number of relevant economic operators with a view to identifying the appropriate and proportionate content of such a request. The Commission shall prepare the request for information in cooperation with the Board.

3. The Commission shall without undue delay forward a copy of the request for information to the national competent authority of the Member State on the territory of which the production site of the economic operator concerned is located.

4. The request for information shall:

(a) state its legal basis;

(b) 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;

(c) have regard for the legitimate interests of the economic operator and to the cost and effort required to make the data available;

(d) include the contact information of the national competent authorities of the Member State on the territory of which the production site of the economic operator concerned is located to which the reply is to be sent;

(e) and set out the time limit within which the information is to be provided to the Member State concerned; and

(f) state the penalties provided for in Article 72.

5. Where the Member State concerned agrees to the launch of a request for information pursuant to paragraph 1, it may decide to address that request, as prepared by the Commission pursuant to paragraphs 2 and 4, directly to the economic operator concerned.

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

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

8. 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 which are not defence products, it shall inform the Member State on the territory of which its production site is located, in a timely manner. That Member State 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 Board of the existence of such a request from a third country.

9. 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 72, 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.

10. 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 80.

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

Article 63

Prioritisation of products which are not defence products

1. Where the Council activates the measure under this Article in accordance with Article 60(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 may submit a request to the Commission to request an economic operator to accept, or to prioritise, a certain order of crisis-relevant products which are not defence products.

2. Upon a request as referred to in paragraph 1, the Commission may, where the production or supply of crisis-relevant products which are not defence products cannot be achieved by any other measures provided for in this Chapter, address a request to the economic operator concerned after:

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

   (b) consulting the Member State on the territory of which the executive management structure of the economic operator concerned is located.

3. The request referred to in paragraph 2 shall include information about the legal basis for the request, specify the products, their specifications and quantities, specify the schedule and time-limit for performing and completing the order, and state the reasons justifying the use of the priority-rated request.

4. 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.

5. The Commission shall base the 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, and having regard to the legitimate interests of the economic operator concerned and to the cost and effort required for any change in the production sequence of the supply chain.

6. The economic operator concerned shall reply to the Commission within five working days upon receipt of the request referred to in paragraph 2 and state whether it accepts or refuses the request. Where the urgency of the situation so requires, the Commission may, based on a justification of such urgency, request the economic operator to reply within a shorter deadline.

7. Where the economic operator to which the request referred to in paragraph 2 is addressed has expressly accepted that request, the Commission, by means of an implementing act, shall adopt a priority-rated request setting out:

   (a) the legal basis of the priority-rated request 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 12 of this Article; and

(f) the penalties provided for in Article 72 for non-compliance with the obligations stemming from that implementing act.

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

9. Having due regard to the justifications provided by the economic operator under paragraph 8 of this Article, and after consulting and receiving prior agreement of the Member State on the territory of which the production site of the economic operator concerned is located and the Member State on the territory of which the executive management structure of the economic operator is located, the Commission, by means of an implementing act, may adopt a priority-rated order imposing on the economic operator concerned an obligation to perform that order. The Commission shall 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 and in light of the circumstances described in paragraph 1, it was necessary for it to adopt that implementing act. Any such implementing act shall provide the information referred to in paragraph 7.

10. The Commission shall not issue the priority-rated order in any of the following cases:

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

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

11. Priority-rated requests referred to in paragraph 7 and priority-rated orders referred to in paragraph 9 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 request or the priority-rated order 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.

12. Economic operators subject to a priority-rated request pursuant to paragraph 7 or to a priority-rated order pursuant to paragraph 9 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 7 or 9 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.

13. 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 discussed within the Board and resolved by the Commission, based on the weighing of the public interest.

14. The economic operator subject to a priority-rated request pursuant to paragraph 7 or to a priority-rated order pursuant to paragraph 9 may request the Commission to modify the implementing act referred to in paragraph 7 or 9 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 on, and entail particular hardship for, the economic operator.

15. The economic operator shall provide all relevant and substantiated information to allow the Commission to assess the merits of the request for modification referred to in paragraph 14.

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

17. 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 Board of the existence of such measure.

18. Where an economic operator subject to a priority-rated request pursuant to paragraph 7 or a priority-rated order pursuant to paragraph 9 intentionally, or through gross negligence, does not comply with that request or order, it shall be subject to fines set in accordance with Article 72, 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 on, and entail particular hardship for, the economic operator, including substantial risks relating to business continuity.

19. 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.

20. The implementing acts referred to in this Article shall be adopted in accordance with the examination procedure referred to in Article 77(4).

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

SECTION 4

SECURITY-RELATED SUPPLY-CRISIS STATE

Article 64

Activation of the security-related supply-crisis state

1. A security-related supply-crisis shall be considered to occur where:

(a) there are serious disruptions or an imminent risk of such disruptions in the provision of defence products, such as disruptions due to the impact of events related to the security of the Union; and

(b) such serious disruptions or the imminent risk thereof are resulting or are likely to result in the adoption of divergent national measures related to crisis-relevant defence products leading to a severe negative impact on the proper functioning of the internal market, in particular obstacles to cross-border trade in such crisis-relevant defence products within the Union causing significant shortages of defence products.

2. Where, pursuant to Article 59, the Commission or the Board becomes aware of a risk of serious disruption in the supply of crisis-relevant defence products or has concrete and reliable information of any other relevant risk factor or event materially affecting the supply of such products, the Commission, after consulting the Board, shall assess whether the conditions set out in paragraph 1 of this Article are met. That assessment shall take into account the potential impact and consequences of the security-related supply-crisis state on the defence supply-chains within the Union, the results of stress tests conducted pursuant to Article 58, and assessments performed in other relevant Union crisis management frameworks. Where that assessment provides concrete and reliable evidence, the Commission may, after consulting the Board, propose to the Council to activate the security-related supply-crisis state. Where it proposes to the Council to activate the security-related supply crisis-state, the Commission shall inform the Parliament thereof.

3. When assessing if the conditions set out in paragraph 1 of this Article are met pursuant to paragraph 2, the Commission shall, in particular, take into account whether a crisis affecting the security and defence interests of the Union and its Member States has been identified within the area of CFSP, such as whether that crisis has triggered the activation of the mutual assistance clause pursuant to Article 42(7) TEU.

4. The Council, by means of an implementing act adopted by qualified majority upon a proposal from the Commission, may activate the security-related supply-crisis state. The duration of the security-related supply-crisis state shall be specified in the implementing act and initially shall not exceed 12 months. That implementing act shall also specify which of the measures set out in Articles 65 to 71 are activated. In addition, the implementing act may identify for which crisis-relevant defence products those measures are activated.

5. The Council, acting by qualified majority, may amend the proposal referred to in paragraph 4.

6. 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 security-related supply crisis.

7. No later than three weeks before the expiry of the duration of the security-related supply-crisis state, the Commission, taking into consideration the recommendation of the Board, shall submit to the Council a report, assessing whether that duration should be prolonged. The report shall in particular analyse the impact of the measures previously activated under this Chapter. Where such assessment provides concrete and reliable evidence that the conditions for the activation of the security-related supply-crisis state are still met, the Commission may, after consulting the Board, propose to the Council to prolong the security-related supply-crisis state.

8. The Council, by means of an implementing act adopted by qualified majority upon a proposal from the Commission, may prolong the security-related supply-crisis state. The duration of the prolongation shall be limited to a maximum of 6 months and specified in the implementing act. That implementing act shall also specify which of the measures set out in Articles 65 to 71 continue to be applied or, where relevant, are activated. The Council, acting by qualified majority, may repeatedly decide to prolong the period for which the security-related supply-crisis state is activated where so justified to address the security-related supply crisis.

9. The Commission may propose to the Council to prolong the security-related supply-crisis state as many times as considered necessary to address the security-related supply crisis, subject to the conditions set out in paragraph 7. Upon such proposal from the Commission, paragraph 8 shall apply.

10. During the security-related supply-crisis state, the Commission shall, after consulting the Board, assess the appropriateness of an early termination of the security-related supply-crisis state. If the assessment so indicates, the Commission shall propose to the Council to terminate the security-related supply-crisis state.

11. The Council, by means of an implementing act adopted by qualified majority upon a proposal from the Commission, may terminate the security-related supply-crisis state before the expiry date specified in the implementing act referred to in paragraph 4 or 8.

12. Upon expiry of the period for which the security-related supply-crisis state is activated or prolonged or upon its early termination, the measures taken in accordance with Articles 65 to 71 shall immediately cease to apply. Implementing acts that have been adopted in accordance with Article 66(6) shall nevertheless continue to apply until the priority-rated requests concerned have been completed.

In the course of the preparation and implementation of the measures set out in Articles 65 to 71, the Commission shall, whenever possible, act in close coordination with the Board, which shall provide advice in a timely manner. The Commission shall inform the Board on the action taken. During the security-related supply-crisis state, the Commission shall, upon request from a Member State or on its own initiative, convene extraordinary meetings of the Board where necessary. In line with Article 76(10), the Board shall invite, where relevant, high-level industrial representatives to meet in special configuration in order to discuss issues related to the defence products concerned. Member States shall work closely with the Commission within the Board in order to ensure the coordination of any Union and national measures taken with regard to the defence supply chains related to the crisis-relevant defence products concerned.

13. Where the security-related supply-crisis state is activated, the Commission may propose to the Council to activate the measures provided for in Articles 62 and 63, under the conditions laid down therein and in Articles 60 and 61.

Article 65

Information requests

Where the Council activates the measure under this Article in accordance with Article 64(4), the Commission may take the measures provided for in Article 62 in relation to crisis-relevant defence products, in accordance with the conditions defined therein.

Article 66

Prioritisation of defence products

1. Where the Council activates the measure under this Article in accordance with Article 64(4), 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, a certain order of crisis-relevant 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 as referred to in paragraph 1, the Commission may, where the production or the supply of crisis-relevant defence products cannot be achieved by any other measure provided for in this Chapter, address a request to the economic operator concerned after:

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

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

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

3. The request referred to in paragraph 2 shall include information about the legal basis for the request, specify the products, their specifications and quantities, specify the schedule and time-limit for performing and completing the order, and state the reasons justifying the use of the priority-rated request.

4. 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.

5. The Commission shall base the 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, and having regard to the legitimate interests of the economic operator concerned and to the cost and effort required for any change in the production sequence of the supply chain.

6. Where the economic operator to which the request referred to in paragraph 2 is addressed has expressly accepted that request, the Commission, by means of an implementing act and after the consultation and prior agreement of the Member State on the territory of which the production site of the economic operator concerned is located and of the Member State on the territory of which the executive management structure of the economic operator concerned is located, shall adopt a priority-rated request setting out:

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

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

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

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

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

(f) the waiver of contractual liability under the conditions laid down in paragraph 8 of this Article; and

(g) the penalties provided for in Article 72 for non-compliance with the obligations stemming from that implementing act.

The implementing act referred to in the first subparagraph of this paragraph shall be adopted in accordance with the examination procedure referred to in Article 77(4).

7. The priority-rated requests referred to in paragraph 6 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 request as compared to existing contractual obligations; and

(b) take precedence over any 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 6.

8. The economic operator subject to a priority-rated request pursuant to paragraph 6 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 6 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.

9. The economic operator subject to a priority-rated request may request the Commission to modify the implementing act referred to in paragraph 6 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 on, 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 referred to in paragraph 9.

11. 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 the territory of which the relevant production site of the economic operator concerned is located and the Member State on the territory of which 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.

12. 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 72, 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 on, and entail particular hardship for, the economic operator, including substantial risks relating to business continuity.

13. 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 defence product, it shall notify the Commission thereof. The Commission shall inform the Board of the existence of such measures. Where relevant, the Commission may consult with the Board on any appropriate step to be taken in response to that measure.

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

Article 67

Intra-EU transfers of crisis-relevant defence products

1. Where the Council activates the measure under this Article in accordance with Article 64(4) 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 are processed in an efficient and timely manner. To that end, all national authorities concerned shall ensure that the most rapid treatment legally possible is given to such applications. The Council implementing act referred to in Article 64(4) 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. That timeframe shall not be longer than two weeks.

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 68

Support to emergency defence innovation actions

Where the Council activates the measure under this Article in accordance with Article 64(4), innovation actions related to one of the following activities shall be deemed eligible under the Programme:

(a) activities aimed at very significantly shortening the delivery lead time of defence products;

(b) activities aimed at significantly simplifying the technical specifications of defence products in order to enable their mass production;

(c) activities aimed at significantly simplifying the production process of defence products to enable their mass production; or

(d) activities aimed at replacing components with alternatives that are available in the Union or that are easily adaptable or can be developed in a timely manner by economic operators established in the Union.

Article 69

Certification

1. Where the Council activates the measure under this Article in accordance with Article 64(4), 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 control.

4. The implementing act referred to in Article 64(4) may lay down more precise provisions on the scope of this measure.

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

Article 70

National fast-tracking of permit-granting procedures

Where the Council activates the measure under this Article in accordance with Article 64(4) of this Regulation, the security of supply of crisis-relevant defence products may be considered an imperative reason of overriding public interest within the meaning of Article 6(4) and Article 16(1), point (c), of Directive 92/43/EEC and of Article 4(7) of Directive 2000/60/EC. Therefore, the planning, construction and operation of related production facilities may be considered of overriding public interest, provided that the other conditions set out in those provisions are fulfilled.

Article 71

Continuity of production of crisis-relevant defence products

1. Where the Council activates the measure under this Article in accordance with Article 64(4) of this Regulation and where Directive 2003/88/EC of the European Parliament and of the Council[46] applies to the relevant production activities, Member States may decide to use, or to encourage economic operators whose production sites are located on their territory and which produce the crisis-relevant defence products concerned to make use of, derogations provided for in Article 17(3) of Directive 2003/88/EC in order to allow for the expansion of working shifts thereby facilitating continuity of production of the crisis-relevant defence products concerned, if they deem it necessary to achieve the objectives of this Regulation.

2. Where prior authorisation is required, all national authorities concerned shall ensure that the most rapid treatment legally possible is given to applications from economic operators producing crisis-relevant defence product to use the derogations referred to in paragraph 1.

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[46] Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects **of** the organisation of working time (OJ L 299, 18.11.2003, p. 9, ELI: http://data.europa.eu/eli/dir/2003/88/oj).

SECTION 5

PENALTIES

Article 72

Penalties

1. Where it deems it to be necessary and proportionate, the Commission may, by way of implementing acts, impose on the economic operators that are addressees of information requests pursuant to Article 62 or that are subject to any of the obligations to inform the Commission of a third-country obligation pursuant to Article 63(17) and Article 66(13) or to prioritise the production of crisis-relevant products pursuant to Articles 63 and 66, the following fines or penalties:

   (a) fines not exceeding EUR 300 000 where the economic operator, intentionally or through gross negligence, supplies incorrect, incomplete or misleading information in response to a request made pursuant to Article 62(1), or does not supply the information within the prescribed time limit in accordance with Article 62(9);

   (b) fines not exceeding EUR 150 000 where the economic operator, intentionally or through gross negligence, does not comply with the obligation to inform the Commission of a third-country obligation pursuant to Article 63(17) and Article 66(13);

(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 63(9), in accordance with Article 63(18), and, where the economic operator on whom a periodic penalty payment is imposed under this point is an SME, not exceeding 0,5 % of its average daily turnover in the preceding business year;

(d) fines not exceeding EUR 300 000 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 63(8) and Article 66(6), in accordance with Article 63(18) and Article 66(12), respectively.

The implementing acts referred to in the first subparagraph of this paragraph shall be adopted in accordance with the examination procedure referred to in Article 77(4).

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 75. 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.

3. 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 63(9) or a priority-rated request set out in Article 63(7) or Article 66(6), whether the economic operator has partially complied with the priority-rated order or the priority-rated request.

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

Article 73

Limitation period for the imposition of penalties

1. The powers conferred on the Commission by Article 72 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 62(1);

   (b) two years in the case of infringements of provisions concerning information obligations pursuant to Article 63(17) and Article 66(13);

   (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 63 and 66.

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 of the limitation period shall start that limitation period 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 74

Limitation period for the enforcement of penalties

1. The power of the Commission to enforce decisions taken pursuant to Article 72 shall be subject to a limitation period of three years.

2. The limitation period 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 the limitation period 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 75

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

1. Before adopting a decision pursuant to Article 72, 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 6

DEFENCE SECURITY OF SUPPLY BOARD

Article 76

Defence Security of Supply Board

1. The Defence Security of Supply Board (the 'Board') is hereby established.

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

3. The Commission shall maintain a regular flow of information to the Board on any planned measures and on measures that have been taken following the activation of the supply-crisis states pursuant to Article 60 or 64. The Commission shall provide the necessary information through a secured IT system.

4. For the purposes of preparing for and addressing a supply-crisis state referred to in Article 60 or 64, the Board shall assist the Commission in:

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

   (b) assessing possible preparedness measures;

   (c) assessing whether the criteria for activation or deactivation of the supply-crisis states referred to in Article 60 or 64 have been fulfilled;

   (d) facilitating coordinated action with Member States;

(e) providing guidance on the implementation of the measures chosen to respond to the supply-crises at Union level referred to in Article 60 or 64, including on the activation of the measures referred to in Articles 62 and 63 and 65 to 71;

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

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

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

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

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

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

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

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

5. The 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 Board shall be ensured by the Commission. Only Member States shall have voting rights.

6. The co-chairs shall invite representatives of the European Parliament to attend, as observers, the meetings of the Board.

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

8. The Board shall meet whenever the situation requires, upon request from the Commission, a Member State or an associated country which has become a member of the Board. The Board shall adopt its rules of procedure on the basis of a proposal submitted by the Commission. Those rules of procedure shall provide mechanisms to ensure the good functioning of the Board in carrying out its tasks, including by foreseeing dispute resolution procedures related to potential disputes between the co-chairs.

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

10. The Board shall invite, at least once a year, representatives from national defence Industry 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 a supply-crisis state referred to in Article 60 or 64 has been activated, the 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 or, where a security-related supply-crisis state under Article 64 has been activated, the defence products concerned.

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

12. The 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 members of the Board with equal access to information in order to ensure that the decision-making process of the Board reflects the situation and the needs of all Member States. The Board shall take the necessary measures to ensure the safe handling and processing of classified and sensitive information in accordance with Articles 79 and 80.

14. The Commission may, on its own initiative or acting on a proposal from the Board, set up working groups on an ad hoc basis 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. Member States shall nominate experts for those working groups. The EDA may be invited to meetings of such working groups.

15. The Commission shall set up a working group within the meaning of paragraph 14 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(2), point (6);

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

Chapter VIII

Governance, evaluation and control

Article 77

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.

3. The Commission may, on its own initiative or upon request from one or more Member States, invite, where relevant, representatives of Ukraine to attend meetings of the committee. Representatives of Ukraine shall not be present during deliberations or participate in voting of the committee.

4. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

5. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and Article 5(4), third subparagraph, of Regulation (EU) No 182/2011 shall apply.

Article 78

Financing agreement with Ukraine

1. The Commission shall conclude with Ukraine a financing agreement within the meaning of Article 114(2) of the Financial Regulation 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 financing agreement concluded with Ukraine 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 financing agreement 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 activities related to 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 of the European Parliament and of the Council[47];

(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 that implementation;

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47 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, 14.6.2021, p. 1, ELI: http://data.europa.eu/eli/reg/2021/947/oj).

(d) the obligations referred to in Article 83(2), including precise rules and a 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 financing agreement 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 financing arrangement to become effective no later than … [six months from the date of entry into force of this Regulation].

Article 79

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[48] 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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[48] Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53, ELI: http://data.europa.eu/eli/dec/2015/444/oj).

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 10.

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 10.

4. In the context of a SEAP, the rules on the protection of classified information referred to in Article 45(1), point (n), shall comply with paragraph 1 of this Article.

5. 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.

6. 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.

7. 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, and, where appropriate, with the applicants and the recipients.

Article 80

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.

3. 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 81

Personal data protection

This Regulation shall be without prejudice to Directive 2002/58/EC of the European Parliament and of the Council[49] and Regulations (EU) 2016/679[50] and (EU) 2018/1725[51] of the European Parliament and of the Council.

Article 82

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.

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49 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, ELI: http://data.europa.eu/eli/dir/2002/58/oj).

50 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, ELI: http://data.europa.eu/eli/reg/2016/679/oj).

51 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, ELI: http://data.europa.eu/eli/reg/2018/1725/oj).

Article 83

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 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 78 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 with 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 84

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 to the Ukraine Support Instrument shall contribute to the corporate communication of the political priorities of the Union, in so far as those priorities are related to the objectives referred to in Articles 4 and 22.

4. Financial resources allocated to the Programme and to 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 85

Monitoring, evaluation and review

1. The Commission shall monitor the implementation of the Programme and of the Ukraine Support Instrument on a regular basis and report annually on progress made, including on the level of involvement of SMEs and small mid-caps and on the overall expenditure of the Programme and the Ukraine Support Instrument broken down by type of actions and by form of Union contribution, to the European Parliament and to the Council.

The Commission shall put in place necessary monitoring arrangements ensuring that data for monitoring the implementation and the results of the Programme and of the Ukraine Support Instrument are collected efficiently, effectively and in a timely manner. To that end, proportionate reporting requirements may be imposed on recipients of Union funds and, where appropriate, on Member States.

2. 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. The evaluation report shall build on consultations of the Member States and key stakeholders and shall evaluate the contribution of this Regulation to the progress made towards increasing the value of defence equipment procured in the Union in a collaborative manner, the value of intra-EU defence trade and the value of Member States' defence investment procured in the Union.

3. The Commission shall present the report to the European Parliament and the Council, accompanied, where appropriate, by relevant legislative proposals.

Article 86

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 …,

For the European Parliament	*For the Council*
The President	*The President*

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Three statements have been made with regard to this Regulation and can be found in OJ C … [OJ: please insert the OJ reference of these three statements].