EUROPEAN UNION

THE EUROPEAN PARLIAMENT | **THE COUNCIL**

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2009/43/EC and 2009/81/EC, as regards the simplification of intra-EU transfers of defence-related products and the simplification of security and defence procurement

DIRECTIVE (EU) 2026/ …
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of …

amending Directives 2009/43/EC and 2009/81/EC,
as regards the simplification of intra-EU transfers of defence-related products
and the simplification of security and defence procurement

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 53(1), Article 62, and Article 114 thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee[1],

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

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[1] OJ C, C/2026/30, 16.1.2026, ELI: http://data.europa.eu/eli/C/2026/30/oj.
[2] Position of the European Parliament of 16 September 2026 (not yet published in the Official Journal) and decision of the Council of …

Whereas:

(1) The Union is facing an acute and growing threat, as underscored in the Joint White Paper of the Commission and of the High Representative of the Union for Foreign Affairs and Security Policy of 19 March 2025 for European Defence Readiness 2030 (the 'Joint White Paper'), linked in particular to the return of full-scale conflict in Europe with Russia's war of aggression against Ukraine. In response to the escalating security challenges and to strengthen its strategic autonomy and resilience, it is imperative that the Union take decisive action to bolster its defence capabilities and remain steadfast in its support of Ukraine. A crucial aspect of this effort is the need to ramp up the Union's defence production capacity in the Union and improve its security of supply with the aim of achieving a genuine European market for defence-related products and services, enabling the Union and its Member States to respond effectively to emerging security demands. There is an urgent need to ramp up European defence readiness to ensure that the Union and its Member States have a strong and sufficient European defence posture by 2030.

(2) To achieve the goals of increasing the defence readiness of the Member States and the Union and of improving the functioning of the internal market, regulatory simplification and harmonisation, fostering the Union's strategic autonomy, transparency and accountability, are essential. By streamlining and aligning regulatory frameworks, the Union can create a more conducive environment for defence industries, including for small and medium-sized enterprises (SMEs) and mid-caps, to operate, scale, innovate and produce the necessary capabilities to ensure European security and defence readiness. The Joint White Paper outlined the objectives for this simplification of legislation impacting defence readiness.

(3) A well-functioning transfer system for defence-related products across Member States is a prerequisite of a Union-wide market for such products. It will foster intra-EU cooperation between economic entities, research organisations and innovators operating in the field of defence, enhancing the transfer of knowledge across entities from all over the Union, encouraging innovation, and strengthening the internal market. Removing unnecessary hurdles and barriers will advance the development of disruptive technologies and innovative industrial processes. In doing so, it will address critical readiness gaps, fostering a more dynamic, competitive and agile European defence sector.

(4) Transfers of defence-related products within the Union are subject to prior authorisation through general, global or individual transfer licences granted or published by the Member State from whose territory the supplier wishes to transfer defence-related products. Member States may exempt transfers of defence-related products from the obligation of prior authorisation in specific cases listed in Directive 2009/43/EC of the European Parliament and of the Council[3]. Taking into account the developments in the security situation and the introduction or continuation of European collaborative defence projects such as those in the framework of the Permanent Structured Cooperation (PESCO), which include the creation or revitalisation of regional defence-industry clusters, strengthening local industrial capacities, promoting the transfer of technology, synergies and industrial scaling, and reinforcing critical supply chains while extending benefits across Member States, projects funded under Union defence industrial programmes, European Defence Projects of Common Interest (EDPCIs) or cooperative armament programmes between Member States, including under Structures for European Armament Programmes (SEAPs), aimed in particular at reinforcing cooperation within the Union, it is appropriate to extend the list of cases in which Member States may exempt transfers from prior authorisation.

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[3] 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).

Exemptions can facilitate the timely availability of capabilities and predictable conditions for industry, including for SMEs and small mid-caps, across the internal market. In particular, it should be possible for Member States to exempt transfers necessary for the implementation of European collaborative defence projects, such as projects in the framework of PESCO, projects funded by Union defence industrial programmes, EDPCIs or cooperative armament programmes between Member States, including under SEAPs, transfers in the framework of structured intra-EU industrial partnerships, transfers to Union institutions and bodies and to the European Defence Agency, transfers between certified suppliers and certified recipients, transfers in the case of an urgency resulting from a crisis or transfers that aim at providing aid and assistance pursuant to Article 42(7) of the Treaty on European Union (TEU) and transfers linked to military and defence assistance resulting from Union actions under Article 28 TEU.

(5) Considering that structured intra-EU industrial partnerships play a crucial role in enhancing the competitiveness, innovation and resilience of the Union's defence industry by fostering cooperation across national borders within the Union, transfers of defence-related products within such partnerships should be facilitated. Such partnerships, characterised by their stability over time and shared objectives, contribute to the development of secure and interoperable Union defence capabilities, aligning with the Union's strategic interests. To facilitate their operational efficiency and ensure flexibility in supply chains, it is appropriate to introduce a general transfer licence for transfers in the framework of a structured intra-EU industrial partnership or enable Member States to exempt such transfers from the obligation of prior authorisation. Such exemptions should be applied on a case-by-case basis to specific instances of structured intra-EU industrial partnerships such as a particular consortium, joint venture, or corporate group and should not be used as a general exclusion applicable to all entities engaging in structured intra-EU industrial partnerships. This approach ensures that Member States retain visibility and oversight over which entities benefit from such an exemption, enabling them to verify compliance with the criteria set out in Directive 2009/43/EC as amended by this Directive.

(6) The quickly evolving security landscape requires additional flexibility allowing the Commission and Member States to react in a targeted and agile way. Furthermore, it is appropriate to empower the Commission, either upon request of a Member State or on its own initiative, to add new cases where Member States would be enabled to introduce exemptions from the obligation of prior authorisation, thereby allowing for increased flexibility and potential for simplified and accelerated intra-EU transfers of defence-related products.

(7) To ensure the effective and efficient functioning of the intra-EU transfer system for defence-related products, Member States should ensure that all suppliers wishing to transfer such products from their territory are able to use general transfer licences or apply for global or individual transfer licences. Any pre-conditions imposed by Member States should be based only on criteria of direct relevance to the suppliers' ability to respect the legislation in the field of transfer and export control. Criteria, such as the suppliers' legal form or status, should not prevent some categories of suppliers from using general transfer licences or from applying for global or individual transfer licences.

(8) It is appropriate to introduce a general transfer licence for transfers between certified suppliers and certified recipients. To further foster cooperation between, and the integration of, those undertakings, such a general transfer licence should cover more defence-related products than the existing general transfer licences for transfers to certified recipients. Certified undertakings have demonstrated strong capacity to comply with transfer and export control rules and have also supported important costs to achieve certification. They should be allowed to benefit from simplified and less burdensome possibilities to perform intra-EU transfers. As a consequence of the introduction of such a general transfer licence, Article 9 of Directive 2009/43/EC should be amended to take into account the certification of suppliers.

(9) As stipulated in Article 1(2) of Directive 2009/43/EC, that Directive does not affect the discretion of Member States as regards policy on the export of defence-related products.

(10) Directive 2009/43/EC provides that Member States are able to introduce general transfer licences other than those listed in Article 5(2) of that Directive. However, that possibility could be hampered by national rules limiting flexibility and the capacity of national competent authorities to take full advantage of the instruments introduced by Directive 2009/43/EC. For instance, additional types of general transfer licences could concern transfers necessary for the implementation of projects funded by Union defence industrial programmes, intra-group transfers or transfers in case of urgency resulting from a crisis. Through an increased use of general transfer licences, Member States would contribute to the proper functioning and further integration of the European defence market across the Union, including intra-EU cross-border access to defence supply chains, especially for SMEs and mid-caps. It is thus appropriate to require Member States to enable, in their national legislation, the introduction of general transfer licences other than those listed in Article 5(2) of Directive 2009/43/EC.

(11) The implementation of Union defence industrial programmes, such as the European Defence Fund (EDF), is often hindered by significant delays in the transfer of defence-related products, due to the lengthy and complex processes of obtaining transfer licences by Member States. SMEs in particular are disproportionately affected by those delays, which means that they suffer competitive disadvantages compared to larger market players. Those delays have a detrimental impact on the overall efficiency and effectiveness of those programmes and can undermine the ability of the Union and its Member States to develop and acquire the defence capabilities they need in a timely and cost-effective manner. It is therefore necessary to introduce general transfer licences for those programmes. The scope of those general transfer licences should apply to all transfers, whether tangible or non-tangible, that the supplier has to perform for the implementation of the project and as far as possible along the entire supply chain. Those general transfer licences should cover the defence-related products set out in the Annex to Directive 2009/43/EC and should apply only to the transfers necessary for the implementation of specific projects. Those general transfer licences should only cover intra-EU transfers of defence-related products. Where an entity established in a third country also participates in a project funded by a Union defence industrial programme, the control of exports to such a third country entity should not be influenced by the provisions of that Directive and should remain subject to Member States' policy on export control. Member States should, insofar as possible, also provide that such licences could apply to the entire life cycle of the product developed in a given project, including production, maintenance and upgrade phases. The introduction of such general transfer licences would reduce delays, increase efficiency and facilitate collaboration between undertakings participating in these projects, thereby supporting the development of a strong and competitive Union defence industry. The terminology used in that context should be understood to be identical with that of a model grant agreement for Union defence programmes.

(12) Additionally, taking account of the technological evolution, it is necessary to adapt the requirements on the information to be provided by suppliers of defence-related products, as the current provisions could prove burdensome in cases of non-tangible transfers of software and technology. It is appropriate to provide suppliers with the required flexibility while maintaining accountability, transparency and control, in order to facilitate the efficient and effective transfer of defence products within the Union. The need for the modification of those requirements for non-tangible transfers of software and technology requires a case-by-case assessment. Therefore, Member States should ensure that those requirements are not disproportionate for the suppliers. Those requirements should be proportionate to the control objectives of Member States and adapted as necessary to monitor transfer activity without imposing undue obligations on suppliers.

(13) In order to facilitate cooperation between undertakings within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission with a view to amending the list of transfers that can be exempted from the obligation of prior authorisation, in order to include cases where transfers are necessary for intra-EU cooperation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[4]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

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[4] OJ L 123, 12.5.2016, p. 1, ELI: http://data.europa.eu/eli/agree_interinstit/2016/512/oj.

(14) To the extent that this Directive amends Directive 2009/43/EC, the appropriate legal basis, in so far as those amendments are concerned, is Article 114 TFEU.

(15) To develop the necessary capabilities and military readiness to credibly deter armed aggression and strengthen the Union's security and strategic autonomy, a significant increase in European defence investment is needed. Based on projections of gradual take-up, defence investment could reach at least EUR 800 billion over the next four years, including the expenditure financed by the EUR 150 billion from the Security and Action for Europe (SAFE) instrument established by Council Regulation (EU) 2025/1106[5]. Those significant investments in defence by Member States involve substantial public procurement. In order to ensure that increased spending also leads to increased capabilities, it is appropriate to simplify certain provisions of Directive 2009/81/EC of the European Parliament and of the Council[6], which governs the procurement of defence and sensitive security works, goods and services, while maintaining a well-functioning Union-wide market for defence. Member States should be provided with both the flexibility to rapidly replenish their stocks and the ability to do so in a sustainable manner, which can best be achieved by fully exploiting the potential of the internal market. By streamlining the defence procurement rules in the Union, Member States should have the necessary agility to respond to emerging security needs, while also promoting a competitive and integrated European defence market to support their long-term defence capabilities.

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5 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).

6 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).

(16) To achieve the necessary agility to respond to emerging security needs, it is necessary to raise the threshold amounts for contracts covered by Directive 2009/81/EC. This adjustment would enable Member States to focus their resources on the most critical contracts and ease the administrative burden on the industry for smaller procurement procedures, which would help to reduce the regulatory complexity and costs associated with those contracts, while also fostering greater participation of those entering the market, in particular start-ups and scale-ups, in smaller and more accessible procurement opportunities. However, even where a contract does not reach the threshold amounts, the general principles of public procurement under Union law, including transparency, non-discrimination and equality of treatment, and proportionality remain applicable.

(17) Furthermore, Member States should be given the flexibility to benefit from all available tools related to public procurement. In order to increase the number of ways contracting authorities/entities can carry out public procurement, the possibility to use the open procedure and the dynamic purchasing system should be added. Those two procedures are based on the ones provided for in Directive 2014/24/EU of the European Parliament and of the Council[7]. It is important that contracting authorities/entities use more quality-price criteria whenever possible when utilising a dynamic purchasing system.

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[7] 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).

(18) There is an urgent need for the Union to mobilise its overall capacity for innovation and direct significant investments to regaining edge, in order to prevent being technologically dependent. Directive 2009/81/EC should also be adapted to better support the procurement of innovation, to ensure that the significant investments made by Member States to increase their defence readiness are future-proof and yield long-term benefits. By facilitating the procurement of innovative defence solutions, the Union could encourage the development of cutting-edge technologies and capabilities, ultimately transforming defence through disruptive innovation and enhancing the effectiveness and resilience of its defence systems. To better support the procurement of research and development and innovative solutions, a modified and more flexible innovation partnership procedure based on Directive 2014/24/EU should be introduced in Directive 2009/81/EC.

(19) Directive 2009/81/EC sets out specific rules applicable in cases of urgency resulting from a crisis, such as shortening periods for the receipt of tenders and the possibility to use the negotiated procedure without prior publication of a contract notice. In that context it is important to underline the dynamic nature of the term ‘crisis’, to clarify that it includes emergency situations arising from the evolution of prolonged crisis situations, including development of the geopolitical situation. The definition of a crisis under Article 1, point (10), of Directive 2009/81/EC acknowledges that a crisis can persist and evolve over time, beyond the harmful event that triggered it.

(20) There is a need for more and better collaborative investment, from research to development of complex systems, through commercialisation to procurement, with a view to increasing the Union's technological sovereignty. Common procurement by Member States is key to improving the efficiency, effectiveness and interoperability of defence capabilities, thereby contributing to a stronger and more cohesive European defence. Building on the 2019 Commission notice on guidance on cooperative procurement in the fields of defence and security[8], it is necessary to lay down provisions related to Member States joining cooperative programmes based on research and development after the end of the research and development phase for the later phases of the life cycle. In addition, and in order to support the later phases of the life cycle of Union-funded defence research and development programmes, it is necessary to clarify that Member States can benefit from the exclusion for cooperative programmes based on research and development under the same conditions also for projects funded under defence research and development programmes, such as the EDF. This would provide the necessary legal certainty and ensure that the flexibility enabled through the exclusion will support the continuation of EDF projects under a cooperative framework even after the completion of the research and development phase. It would also clarify that Member States joining after the research and development phase as genuine participants in the cooperative programme will also benefit from the exclusion.

(21) To further support the common procurement and ensure legal certainty, it is necessary to amend Directive 2009/81/EC to lay down rules on procurement involving contracting authorities/entities from different Member States.

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[8] Commission notice on guidance on cooperative procurement in the fields of defence and security (Defence and Security Procurement Directive 2009/81/EC) (OJ C 157, 8.5.2019, p. 1).

(22) To be able to respond swiftly and in a coordinated manner to emerging security challenges, contracting authorities/entities are able to allow counterparts from other Member States to join an existing framework agreement during its term even if the framework agreement does not envisage such an option, as provided for in Regulation (EU) 2025/2643 of the European Parliament and of the Council[9]. This enhances efficiency, prevents duplication of procedures, and promotes cross-border cooperation, interoperability and economies of scale.

(23) To provide Member States with greater predictability and stability in their defence procurement planning, it is necessary to modify the rules governing framework agreements. To reflect the specificities of the defence sector, it is necessary to extend the maximum possible duration of framework agreements to 10 years, allowing Member States to establish longer-term partnerships with industry and plan their defence procurement needs with greater certainty, while also ensuring that the Union's defence procurement rules remain flexible and adapted to the specific needs of the defence sector.

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9 Regulation (EU) 2025/2643 of the European Parliament and of the Council of 16 December 2025 establishing the European Defence Industry Programme and a framework of measures to ensure the timely availability and supply of defence products ('EDIP Regulation') (OJ L, 2025/2643, 29.12.2025, ELI: http://data.europa.eu/eli/reg/2025/2643/oj).

(24) Directive 2009/81/EC should also reflect relevant case law of the Court of Justice of the European Union and align with the provisions of Directive 2014/24/EU regarding the modification of contracts. In particular, the rules on the modification of the framework agreement should be applied in the same way in Directive 2009/81/EC as in Directive 2014/24/EU.

(25) Where possible, contracting authorities/entities should structure framework agreements, dynamic purchasing systems and innovation partnerships in a manner that facilitates the participation of SMEs, including through the use of lots, proportionate selection criteria, and non-discriminatory technical specifications such as the access of dual-use technology providers and companies operating in both civilian and defence sectors, including local innovative companies and operators from smaller Member States with developing industries.

(26) To reduce the administrative burden on Member States, some statistical reporting obligations related to defence procurement should be temporarily suspended to allow national authorities to focus on the implementation of their defence policies and the efficient use of their resources, while not jeopardising transparency and accountability.

(27) To the extent that this Directive amends Directive 2009/81/EC the appropriate legal basis, in so far as those amendments are concerned, is Article 53(1), Article 62 and Article 114 TFEU.

(28) Since the objectives of this Directive, namely the simplification of the rules applicable to the intra-EU transfer of defence-related products and to the procurement of works, supply and service contracts in the fields of defence and security in order to ensure the proper functioning of the internal market, cannot be sufficiently achieved by the Member States in view of the cross-border nature of defence-related transfers and procurement, but can better be achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(29) Directives 2009/43/EC and 2009/81/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2009/43/EC

Directive 2009/43/EC is amended as follows:

(1) in Article 3, the following points are added:

‘8. “crisis” means crisis as defined in Article 1, point (10), of Directive 2009/81/EC of the European Parliament and of the Council[*];

9. “structured intra-EU industrial partnership” means a stable and lasting collaboration arrangement between two or more entities established in different Member States, where such entities form part of a common corporate group, consortium, joint venture, or other similarly structured entity, and are engaged in the joint design, development, production, assembly, supply, marketing or life cycle support of a defence-related product.

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[*] 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).’;

(2) in Article 4, paragraphs 2, 3 and 4 are replaced by the following:

‘2. Notwithstanding paragraph 1, Member States may exempt transfers of defence-related products from the obligation of prior authorisation set out in that paragraph in one or more of the following cases:

(a) the supplier or the recipient is a governmental body or part of the armed forces;

(aa) the recipient is a Union institution or body, or the European Defence Agency;

(b) supplies are made by the Union, NATO, IAEA or other intergovernmental organisations for the performance of their tasks;

(ba) the recipient and the supplier are undertakings certified in accordance with Article 9;

(c) the transfer is necessary for the implementation of a cooperative armament programme between Member States, including projects in the framework of the Permanent Structured Cooperation (PESCO), Structures for European Armament Programmes (SEAPs) and European Defence Projects of Common Interest (EDPCIs);

(ca) the transfer is necessary for the implementation of a project funded under a Union defence industrial programme;

(cb) the transfer takes place in the framework of a structured intra-EU industrial partnership;

(cc) the transfer takes place in an urgency resulting from a crisis;

(cd) the transfer aims to provide aid and assistance pursuant to Article 42(7) of the Treaty on European Union (TEU);

(d) the transfer is linked to humanitarian aid in the case of disaster or as a donation in an emergency;

(da) the transfer is linked to military and defence assistance resulting from Union actions pursuant to Article 28 TEU where the Council decides unanimously, pursuant to Article 41(2) TEU;

(e) the transfer is necessary for or after repair, maintenance, exhibition or demonstration.

3. The Commission is empowered to adopt delegated acts to supplement this Directive in accordance with Article 13a, at the request of a Member State or on its own initiative, amending paragraph 2 of this Article, in order to include any of the following additional cases:

(a) the transfer takes place under conditions which do not affect public policy or public security;

(b) the obligation of prior authorisation has become incompatible with international commitments of the Member States subsequent to the adoption of this Directive;

(c) the transfer is necessary for intergovernmental cooperation, as referred to in Article 1(4);

(d) the transfer is necessary for intra-EU cooperation.

4. Member States shall ensure that suppliers wishing to transfer defence-related products from their territory may use general transfer licences or apply for global or individual transfer licences in accordance with Articles 5, 6 and 7. Without prejudice to Article 8, no pre-conditions shall be imposed that would have the effect of preventing suppliers from using general transfer licences or applying for global or individual transfer licences, on the basis of criteria that are not connected to their capacity to perform their obligations in the fields of transfer and export control.';

(3) Article 5 is amended as follows:

(a) paragraph 2 is amended as follows:

(i) the following point is inserted:

'(ba) the recipient and the supplier are undertakings certified in accordance with Article 9;';

(ii) the following points are added:

'(e) the publication is required by Article 5a;

(f) the publication is required by Article 5b.';

(iii) the following subparagraph is added:

‘The general transfer licence referred to in point (ba) of the first subparagraph shall apply at least to the defence-related products covered under the general transfer licence referred to in point (b) of the first subparagraph.’;

(b) the following paragraph is inserted:

‘2a. Member States shall provide in their legislation the possibility to introduce general transfer licences other than those referred to in Article 5(2).’;

(c) paragraph 3 is replaced by the following:

‘3. Member States participating in an intergovernmental cooperation programme, such as PESCO projects, SEAPs, and EDPCIs, concerning the development, production and use of one or more defence-related products may publish a general transfer licence for such transfers to other Member States which participate in that programme as are necessary for the execution of that programme.’;

(4) the following Articles are inserted:

‘*Article 5a*

Licences for transfers necessary for the implementation of projects funded under Union defence industrial programmes

1. Member States shall publish general transfer licences covering all transfers necessary for the implementation of projects funded under a Union defence industrial programme. Those licences shall cover the defence-related products set out in the Annex and shall apply only to the transfers necessary for the implementation of specific projects.

2. Member States may provide that the licencing system referred to in paragraph 1 applies also to the later phases of the life cycle of the projects occurring after the stages funded under a Union defence industrial programme.

3. Member States shall not require any additional commitment, such as certificates related to end-use, or limitations on the export of the defence-related products, where a funding agreement or contract concluded under a Union defence industrial programme contains a commitment that the defence-related products linked to the implementation of or resulting from a given project will not be shared without authorisation, beyond the participants to the funding agreement or parties to the contract in question, the funding or contracting authority, or, where relevant, the Commission when it is not the funding or contracting authority and the Court of Auditors as referred to in paragraph 4.

4. The funding agreement or contract may define the arrangements under which the defence-related products linked to the implementation of a given project can be transferred to the Court of Auditors when the participants, the funding or contracting authorities, or, where relevant, the Commission when it is not the funding or contracting authority are legally required to do so.

Article 5b

Licences for transfers taking place in the framework of a structured intra-EU industrial partnership

1. Member States shall publish general transfer licences for transfers taking place in the framework of a structured intra-EU industrial partnership.

2. The licences referred to in paragraph 1 shall also apply to non-tangible transfers of software and technology.';

(5) in Article 8, the following paragraph is inserted:

'3a. Member States shall ensure proportionality in the application of the provisions of this Article concerning non-tangible transfers of software and technology, and shall, in particular regarding paragraph 3, points (b) and (c), avoid disproportionate reporting obligations for the suppliers.';

(6) Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Member States shall designate competent authorities to carry out the certification of undertakings established on their territory that receive or supply defence-related products under transfer licences published by Member States in accordance with Article 5(2), points (b) and (ba).’;

(b) paragraph 2 is amended as follows:

(i) the introductory part is replaced by the following:

‘The certification shall establish the reliability of the undertaking, in particular as regards its capacity to comply with Union and national transfer and export control legislation, especially in relation to due diligence measures assessing risks related to the export of the products and export limitations of defence-related products received under a transfer licence from another Member State. Reliability shall be assessed according to the following criteria:’;

(ii) points (a) and (b) are replaced by the following:

‘(a) proven experience in defence transfers and export activities, taking into account in particular the undertaking’s record of compliance with applicable transfer and export controls including export restrictions, any court decisions on this matter, any authorisation to produce or commercialise defence-related products and the employment of experienced management staff;

(b) relevant industrial activity in defence-related products within the Union;’;

(iii) point (f) is replaced by the following:

‘(f) a description, countersigned by the senior executive referred to in point (c), of the internal compliance programme or transfer and export management system implemented in the undertaking. This description shall provide details of:

(i) the organisational, human and technical resources allocated to the management of transfers and exports;

(ii) the chain of responsibility within the undertaking;

(iii) internal audit and reporting procedures and corrective measures;

(iv) awareness-raising and staff training;

(v) physical, technical and information security arrangements;

(vi) record-keeping and traceability of transfers and exports; and

(vii) transaction screening process and procedures';

(c) in paragraph 3, points (b) and (c) are replaced by the following:

'(b) the name and address of the undertaking;

(c) a statement of the conformity of the undertaking with the criteria referred to in paragraph 2; and';

(d) paragraph 5 is replaced by the following:

'5. Competent authorities shall monitor the compliance of the undertaking with the criteria referred to in paragraph 2 at least every three years, and with any condition attached to the certificates referred to in paragraph 4. Undertakings shall, without delay, notify the competent authorities of changes to their internal organisation or to their industrial or commercial activities in defence related products. In such cases, competent authorities may assess whether an undertaking still complies with the criteria referred to in paragraph 2.';

(e) paragraph 8 is replaced by the following:

'8. Member States shall publish and regularly update a list of certified suppliers and recipients and inform the Commission, the European Parliament and the other Member States thereof.

The Commission shall make publicly available on its website a central register of suppliers and recipients certified by Member States.';

(7) Article 17 is replaced by the following:

'*Article 17*
Review and reporting

By 1 January 2031, the Commission shall review the implementation of this Directive against the background of improving Europe's defence readiness by 2030, as requested by the European Parliament and the European Council in March 2025, and report thereon to the European Parliament and the Council. It shall evaluate, in particular, whether and to what extent the objectives of this Directive have been achieved, with regard, inter alia, to the functioning of the internal market and to the aim of improving Europe's defence readiness by 2030. In its report, the Commission shall review inter alia the application of Articles 5, 5a, 9 to 12 and Article 15, and shall evaluate how this Directive has strengthened the supply of European defence and security products, having regard, inter alia, to the success of the overall ramp up thereof and the situation of SMEs and mid-caps. Where appropriate, the report shall be accompanied by a legislative proposal.'.

Article 2

Amendments to Directive 2009/81/EC

Directive 2009/81/EC is amended as follows:

(1) Article 1 is amended as follows:

(a) points 15 and 16 are replaced by the following:

‘15. “Candidate” means an economic operator which has sought an invitation to take part or has been invited to take part in a restricted or negotiated procedure, competitive dialogue, or an innovation partnership;

16. “Tenderer” means an economic operator that has submitted a tender;’;

(b) the following points are inserted:

‘17a. “Centralised purchasing activities” means activities conducted in one of the following forms:

(a) the acquisition of supplies and/or services intended for contracting authorities/entities;

(b) the award of contracts or the conclusion of framework agreements for works, supplies or services intended for contracting authorities/entities;

17b. “Ancillary purchasing activities” means activities consisting in the provision of support to purchasing activities, in particular in the following forms:

(a) technical infrastructure enabling contracting authorities/entities to award contracts or to conclude framework agreements for works, supplies or services;

(b) advice on the conduct or design of public procurement procedures;

(c) preparation and management of procurement procedures on behalf and for the account of the contracting authority/entity concerned;’;

(c) point 18 is replaced by the following:

‘18. “Central purchasing body” means a contracting authority/entity or a European public body providing centralised purchasing activities and, possibly, ancillary purchasing activities;’;

(d) the following point is inserted:

‘18a. “Open procedure” means a procedure in which any interested economic operator may submit a tender in response to a call for competition;’;

(e) the following point is inserted:

‘21a. “Dynamic purchasing system” means a completely electronic process for making commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the contracting authority/entity;’;

(f) the following point is added:

’29. “maintenance” means all actions taken to ensure the readiness and operational capability of military or sensitive equipment, in particular to retain equipment in or to restore it to specified conditions until the end of its use, including mission readiness, longevity and upgrades, customisation and specialisation, inspection, overhaul, testing, servicing, modifications, classification as to serviceability, repair, recovery, rebuilding, reclamation, salvage and cannibalisation.’;

(2) Article 8 is amended as follows:

(a) in point (a), ‘EUR 432 000’ is replaced by ‘EUR 2 000 000’;

(b) in point (b), ‘EUR 5 404 000’ is replaced by ‘EUR 10 000 000’;

(3) Article 9 is amended as follows:

(a) the title is replaced by the following:

‘Methods for calculating the estimated value of procurement’;

(b) paragraph 5 is amended as follows:

(i) in point (a), ‘EUR 80 000’ is replaced by ‘EUR 360 000’ and ‘EUR 1 000 000’ is replaced by ‘EUR 1 800 000’;

(ii) in point (b), ‘EUR 80 000’ is replaced by ‘EUR 360 000’;

(c) paragraph 9 is replaced by the following:

‘9. With regard to framework agreements and dynamic purchasing systems, the estimated value to be taken into consideration shall be the maximum estimated value, net of VAT, of all the contracts envisaged for the total term of the framework agreement or the dynamic purchasing system.’;

(d) the following paragraph is added:

‘10. In the case of innovation partnerships, the value to be taken into consideration shall be the maximum estimated value, net of VAT, of the research and development activities to take place during all stages of the envisaged partnership as well as of the supplies, services or works to be developed and procured at the end of the envisaged partnership.’;

(4) Article 10 is replaced by the following:

‘*Article 10*

Contracts and framework agreements awarded by central purchasing bodies

1. Member States may provide that contracting authorities/entities may acquire works, supplies and/or services from or through a central purchasing body.

Member States may also provide that contracting authorities/entities may acquire works, supplies and services by using contracts awarded by a central purchasing body, by using dynamic purchasing systems operated by a central purchasing body or, to the extent set out in Article 29(2), second subparagraph, by using a framework agreement concluded by a central purchasing body offering the centralised purchasing activity. Where a dynamic purchasing system which is operated by a central purchasing body may be used by other contracting authorities/entities, this shall be mentioned in the call for competition setting up that dynamic purchasing system.

In relation to the first and second subparagraphs, Member States may provide that certain procurements are to be made by having recourse to central purchasing bodies or to one or more specific central purchasing bodies.

2. Contracting authorities/entities which acquire works, supplies and/or services from or through a central purchasing body shall be deemed to have complied with this Directive insofar as:

(a) the central purchasing body has complied with it, or,

(b) when the central purchasing body is not a contracting authority/entity, the contract award rules applied by it comply with this Directive and the contracts awarded can be subject to efficient remedies comparable to those provided for in Title IV.

Furthermore, a contracting authority/entity shall be deemed to have also fulfilled its obligations pursuant to this Directive where it acquires works, supplies or services by using contracts awarded by the central purchasing body, by using dynamic purchasing systems operated by the central purchasing body or, to the extent set out in Article 29(2), second subparagraph, by using a framework agreement concluded by the central purchasing body.

However, the contracting authority/entity concerned shall be responsible for fulfilling the obligations pursuant to this Directive in respect of the parts it conducts itself, in particular:

(a) awarding a contract under a dynamic purchasing system, which is operated by a central purchasing body;

(b) conducting a reopening of competition under a framework agreement that has been concluded by a central purchasing body;

(c) pursuant to Article 29(4), determining which of the economic operators, party to the framework agreement, shall perform a given task under a framework agreement that has been concluded by a central purchasing body.

3. Contracting authorities/entities may, without applying the procedures provided for in this Directive, award a service contract for the provision of centralised purchasing activities to a central purchasing body.

Such service contracts may also include the provision of ancillary purchasing activities.';

(5) the following Articles are inserted:

'*Article 10a*

Procurement involving contracting authorities/entities from different Member States

1. Contracting authorities/entities from different Member States may act jointly in the award of contracts in accordance with this Article.

Contracting authorities/entities shall not use the provisions of this Article for the purpose of avoiding the application of mandatory public law provisions in conformity with Union law to which they are subject in their Member State.

2. A Member State shall not prohibit its contracting authorities/entities from using centralised purchasing activities offered by central purchasing bodies located in another Member State or from offering centralised purchasing activities to contracting authorities/entities located in another Member State.

In respect of centralised purchasing activities offered by a central purchasing body located in another Member State than the contracting authority/entity, Member States may specify that their contracting authorities/entities may only use the centralised purchasing activities as defined in either point (a) or (b) of Article 1, point (17a).

3. The provision of centralised purchasing activities by a central purchasing body located in another Member State shall be conducted in accordance with the national provisions of the Member State where the central purchasing body is located. This does not apply to European public bodies.

The national provisions of the Member State where the central purchasing body is located shall also apply to:

(a) the award of a contract under a dynamic purchasing system;

(b) the conduct of a reopening of competition under a framework agreement; and

(c) the determination of which of the economic operators party to the framework agreement shall perform a given task in cases of a framework agreement with several economic operators without reopening of competition.

4. Several contracting authorities/entities from different Member States may jointly award a contract, conclude a framework agreement or operate a dynamic purchasing system. They may also, to the extent set out in Article 29(2), second subparagraph, award contracts based on the framework agreement or on the dynamic purchasing system.

Unless the necessary elements have been regulated by an international agreement concluded between the Member States concerned, the participating contracting authorities/entities shall conclude an agreement that determines:

(a) the responsibilities of the parties and the relevant applicable national provisions;

(b) the internal organisation of the procurement procedure, including the management of the procedure, the distribution of the works, supplies or services to be procured, and the conclusion of contracts.

A participating contracting authority/entity shall be deemed to have fulfilled its obligations pursuant to this Directive when it acquires works, supplies or services from a contracting authority/entity which is responsible for the procurement procedure. When determining responsibilities and the applicable national law as referred to in the second subparagraph, point (a), the participating contracting authorities/entities may allocate specific responsibilities among them and determine the applicable provisions of national law of any of their respective Member States. The allocation of responsibilities and the applicable national law shall be referred to in the procurement documents for jointly awarded contracts.

5. Where several contracting authorities/entities from different Member States have set up a joint entity established under Union law, the participating contracting authorities/entities shall, by a decision of the competent body of the joint entity, agree on the applicable national procurement rules of one of the following Member States:

(a) the national provisions of the Member State where the joint entity has its registered office;

(b) the national provisions of the Member State where the joint entity is carrying out its activities.

The agreement referred to in the first subparagraph may either apply for an undetermined period, when fixed in the constitutive act of the joint entity, or may be limited to a certain period of time, certain types of contracts or to one or more individual contract awards.

Article 10b
Occasional joint procurement

1. Two or more contracting authorities/entities may agree to perform certain specific procurements jointly.

2. Where the conduct of a procurement procedure in its entirety is carried out jointly in the name and on behalf of all the contracting authorities/entities concerned, they shall be jointly responsible for fulfilling their obligations pursuant to this Directive. This applies also in cases where one contracting authority/entity manages the procedure, acting on its own behalf and on the behalf of the other contracting authorities/entities concerned.

Where the conduct of a procurement procedure is not in its entirety carried out in the name and on behalf of the contracting authorities/entities concerned, they shall be jointly responsible only for those parts carried out jointly. Each contracting authority/entity shall have sole responsibility for fulfilling its obligations pursuant to this Directive in respect of the parts it conducts in its own name and on its own behalf.';

(6) in Article 13, points (c) and (d) are replaced by the following:

'(c) contracts awarded in the framework of a cooperative programme based on research and development, conducted jointly by at least two Member States for the development of a new product or an upgrade leading to substantial changes or substantial improvements of an existing product and, where applicable, the later phases of all or part of the life cycle of this product.

Where a Member State becomes a full member of a cooperative programme after the completion of the research and development phase of that programme, for the later phases of the life cycle of the product, this Article shall apply to the joining Member State. A research and development project managed by Union institutions or bodies, implemented in accordance with Union rules and funded from the Union budget constitutes a cooperative programme conducted jointly by at least two Member States and can be continued for the phases after research and development phase, in which case contracts awarded in the framework of the follow-up programme may also be excluded under this Article;

(d) contracts awarded in a third country, including for civil purchases, carried out when forces are deployed or are in training outside the territory of the Union where operational needs require them to be concluded with economic operators located in the area of operations;';

(7) in Article 25, the second and third paragraphs are replaced by the following:

'Contracting authorities/entities may choose to award contracts by applying the open procedure, the restricted procedure or the negotiated procedure with publication of a contract notice.

Under the circumstances referred to in Article 27 or 27a, they may award contracts by means of a competitive dialogue or an innovation partnership.';

(8) in Article 27, paragraph 1 is replaced by the following:

‘1. In the case of particularly complex contracts, Member States may provide that where contracting authorities/entities consider that use of the open procedure, the restricted procedure or the negotiated procedure with publication of a contract notice will not allow the award of the contract, those contracting authorities/entities may make use of the competitive dialogue in accordance with this Article.

A contract shall be awarded on the sole basis of the award criterion for the most economically advantageous tender.’;

(9) the following Article is inserted:

‘*Article 27a*
Innovation partnership

1. Any economic operator may submit a request to participate in an innovation partnership following a contract notice by providing the information for qualitative selection that is requested by the contracting authority/entity.

In the procurement documents, the contracting authority/entity shall identify the need for an innovative product, service or works that cannot be met by purchasing products, services or works already available on the market. It shall indicate which elements of this description represent the minimum requirements to be met by all tenders. The information provided shall be sufficiently precise to enable economic operators to identify the nature and scope of the required solution and decide whether to request to participate in the procedure.

The contracting authority/entity may decide to set up the innovation partnership with one partner or with several partners conducting separate research and development activities.

The minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice is sent. The contracting authority/entity shall assess the information provided by the economic operators and shall invite the suitable candidates to participate in the procedure. Contracting authorities/entities may limit the number of suitable candidates to be invited to participate in the procedure. The contracts shall be awarded on the sole basis of the award criterion of the best price-quality ratio in accordance with Article 47.

2. The innovation partnership shall aim at the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works, provided that they correspond to the performance levels and maximum costs agreed between the contracting authorities/entities and the participants.

The innovation partnership shall be structured in successive phases following the sequence of steps in the research and innovation process, which may include the manufacturing of the products, the provision of the services or the completion of the works. The innovation partnership shall set intermediate targets to be attained by the partners and provide for payment of the remuneration in appropriate instalments.

Based on those targets, the contracting authority/entity may decide after each phase to terminate the innovation partnership or, in the case of an innovation partnership with several partners, to reduce the number of partners by terminating individual contracts, provided that the contracting authority/entity has indicated in the procurement documents those possibilities and the conditions for their use.

3. Unless otherwise provided for in this Article, contracting authorities/entities shall negotiate with tenderers the initial and all subsequent tenders submitted by them, except for the final tender, to improve the content thereof.

   The minimum requirements and award criteria shall not be subject to negotiations.

4. During the negotiations, contracting authorities/entities shall ensure the equal treatment of and fair competition amongst all tenderers. To that end, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. They shall inform all tenderers whose tenders have not been eliminated, pursuant to paragraph 5, in writing of any changes to the technical specifications or other procurement documents. Following those changes, contracting authorities/entities shall provide sufficient time for tenderers to modify and re-submit amended tenders, as appropriate.

In accordance with Article 6, contracting authorities/entities shall not reveal to the other participants confidential information communicated by a candidate or tenderer participating in the negotiations without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

5. Negotiations during innovation partnership procedures may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria specified in the contract notice, in the invitation to confirm interest or in the procurement documents. In the contract notice, the invitation to confirm interest or in the procurement documents, the contracting authority/entity shall indicate whether it will use that option. Before the end of an ongoing phase the contracting authority/entity may specify the award criteria and the maximum costs to be used to select the tenders participating in the following phase. Those award criteria and the maximum costs shall be proportionate to the expected results of the ongoing phase and to the objectives of the innovation partnership. Where a tenderer eliminated in a previous phase becomes eligible for the following phase as a result of those award criteria and the maximum costs such tenderer shall be invited to participate in the following phase.

6. In selecting candidates, contracting authorities/entities shall in particular apply criteria concerning the candidates' capacity in the field of research and development and of developing and implementing innovative solutions.

Only those economic operators invited by the contracting authority/entity following its assessment of the requested information may submit research and innovation projects aimed at meeting the needs identified by the contracting authority/entity that cannot be met by existing solutions.

In the procurement documents, the contracting authority/entity shall define the arrangements applicable to intellectual property rights. In the case of an innovation partnership with several partners, the contracting authority/entity shall not, in accordance with Article 6, reveal to the other partners solutions proposed or other confidential information communicated by a partner in the framework of the partnership without that partner's agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

7. The contracting authority/entity shall ensure that the structure of the partnership and, in particular, the duration and value of the different phases reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The estimated value of supplies, services or works shall not be disproportionate in relation to the investment required for their development.';

(10) Article 28 is amended as follows:

(a) point (1) is replaced by the following:

‘(1) for works contracts, supply contracts and service contracts:

(a) when no tenders or no suitable tenders or no applications have been submitted in response to an open procedure, a restricted procedure, a negotiated procedure with prior publication of a contract notice, a competitive dialogue or an innovation partnership, provided that the initial conditions of the contract are not substantially altered and on condition that a report is sent to the Commission, if it so requests;

(b) in the event of irregular tenders or the submission of tenders which are unacceptable under national provisions compatible with Articles 5, 19, 21 to 24 and Chapter VII of Title II, in response to an open procedure, a restricted procedure, a negotiated procedure with publication, a competitive dialogue or an innovation partnership, insofar as:

(i) the original terms of the contract are not substantially altered, and

(ii) they include in the negotiated procedure all of, and only, the tenderers which satisfy the criteria of Articles 39 to 46 and which, during the prior open procedure, restricted procedure, competitive dialogue or innovation partnership, had submitted tenders in accordance with the formal requirements of the tendering procedure;

(c) when the time-limits laid down for the open procedure, restricted procedure and negotiated procedure with publication of a contract notice, including the shortened time-limits referred to in Article 33(7), are incompatible with the urgency resulting from a crisis. This may apply for instance in the cases referred to in Article 23, second paragraph, point (d);

(d) insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting authorities/entities in question, the time-limits for the open procedure, the restricted procedure or the negotiated procedure with publication of a contract notice, including the shortened time-limits as referred to in Article 33(7), cannot be complied with. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority/entity;

(e) when, for technical reasons or reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular economic operator;';

(b) point (4)(b) is replaced by the following:

'(b) for new works or services consisting in the repetition of similar works or services entrusted to the economic operator to which the same contracting authorities/entities awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded according to the open procedure, the restricted procedure, the negotiated procedure with publication of a contract notice, a competitive dialogue, or an innovation partnership.

As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed, and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting authorities/entities when they apply Article 8.

This procedure may be used only during the seven years following the conclusion of the original contract, except in exceptional circumstances determined by taking into account the expected service life of any delivered items, installations or systems, and the technical difficulties which a change of supplier may cause;';

(c) point (5) is replaced by the following:

‘(5) for contracts related to the provision of air and maritime transport services for the armed forces or security forces of a Member State deployed or to be deployed abroad, when the contracting authority/entity has to procure such services from economic operators that guarantee the validity of their tenders only for such short periods that the time-limits for the open procedure, the restricted procedure or the negotiated procedure with publication of a contract notice, including the shortened time-limits as referred to in Article 33(7), cannot be complied with.’;

(11) in Article 29(2), the fourth subparagraph is replaced by the following:

‘The term of a framework agreement may not exceed 10 years, except in exceptional circumstances determined by taking into account the expected service life of any delivered items, installations or systems, and the technical difficulties which a change of supplier may cause.’;

(12) the following Article is inserted in Title II, Chapter V:

‘*Article 29a*

Dynamic purchasing system

1. For commonly used purchases the characteristics of which, as generally available on the market, meet the requirements of the contracting authorities/entities, contracting authorities/entities may use a dynamic purchasing system. The dynamic purchasing system shall be operated as a completely electronic process and shall be open throughout the period of validity of the purchasing system to any economic operator that satisfies the selection criteria. It may be divided into categories of products, works or services that are objectively defined on the basis of characteristics of the procurement to be undertaken under the category concerned. Such characteristics may include reference to the maximum allowable size of the subsequent specific contracts or to a specific geographic area in which subsequent specific contracts will be performed.

2. In order to procure under a dynamic purchasing system, contracting authorities/entities shall follow the rules of the restricted procedure. All candidates satisfying the selection criteria shall be admitted to the system, and the number of candidates to be admitted to the system shall not be limited in accordance with Article 38(3). Where contracting authorities/entities have divided the system into categories of products, works or services in accordance with paragraph 1 of this Article, they shall specify the applicable selection criteria for each category.

Notwithstanding Article 33, the following time limits shall apply:

(a) the minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice is sent. No further time limits for receipt of requests to participate shall apply once the invitation to tender for the first specific procurement under the dynamic purchasing system has been sent;

(b) the minimum time limit for receipt of tenders shall be at least 10 days from the date on which the invitation to tender is sent.

3. All communications in the context of a dynamic purchasing system shall only be made by electronic means.

4. For the purposes of awarding contracts under a dynamic purchasing system, contracting authorities/entities shall:

(a) publish a call for competition making it clear that a dynamic purchasing system is involved;

(b) indicate in the procurement documents at least the nature and estimated quantity of the purchases envisaged, as well as all the necessary information concerning the dynamic purchasing system, including how the dynamic purchasing system operates, the electronic equipment used and the technical connection arrangements and specifications;

(c) indicate any division into categories of products, works or services and the characteristics defining them;

(d) offer unrestricted and full direct access, as long as the system is valid, to the procurement documents.

5. Contracting authorities/entities shall give any economic operator, throughout the entire period of validity of the dynamic purchasing system, the possibility of requesting to participate in the system under the conditions provided for in paragraph 2. Contracting authorities/entities shall finalise their assessment of such requests in accordance with the selection criteria within 10 working days following their receipt. That deadline may be prolonged to 15 working days in individual cases where justified, in particular because of the need to examine additional documentation or to otherwise verify whether the selection criteria are met.

Notwithstanding the first subparagraph, as long as the invitation to tender for the first specific procurement under the dynamic purchasing system has not been sent, contracting authorities/entities may extend the evaluation period provided that no invitation to tender is issued during the extended evaluation period. Contracting authorities/entities shall indicate in the procurement documents the length of the extended period that they intend to apply.

Contracting authorities/entities shall inform the economic operator concerned at the earliest possible opportunity of whether or not it has been admitted to the dynamic purchasing system and the reasons why upon request.

6. Contracting authorities/entities shall invite all admitted participants to submit a tender for each specific procurement under the dynamic purchasing system, in accordance with Article 34. Where the dynamic purchasing system has been divided into categories of works, products or services, contracting authorities/entities shall invite all participants having been admitted to the category corresponding to the specific procurement concerned to submit a tender.

   They shall award the contract to the tenderer that submitted the best tender on the basis of the award criteria set out in the contract notice for the dynamic purchasing system in accordance with Article 47. Those criteria shall, where appropriate, be formulated more precisely in the invitation to tender.

7. Contracting authorities/entities shall indicate the period of validity of the dynamic purchasing system in the call for competition. They shall notify the Commission of any change in the period of validity, using the following standard forms:

   (a) where the period of validity is changed without terminating the system, the form used initially for the call for competition for the dynamic purchasing system;

   (b) where the system is terminated, a contract award notice referred to in Article 30(3).

8. Contracting authorities/entities may, at any time during the period of validity of the dynamic purchasing system, require admitted participants to submit sufficient proof related to the criteria for qualitative selection.

9. No charges may be billed prior to or during the period of validity of the dynamic purchasing system to the economic operators interested in or party to the dynamic purchasing system.';

(13) Article 30 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. Contracting authorities/entities which intend to award a contract or a framework agreement by open procedure, restricted procedure, negotiated procedure with the publication of a contract notice, competitive dialogue or innovation partnership shall make known their intention by means of a contract notice.';

(b) the following paragraph is inserted:

'2a. Contracting authorities/entities shall send a contract award notice within 30 days after the award of each contract based on a dynamic purchasing system. They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within 30 days of the end of each quarter.';

(14) Article 33 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. In restricted procedures, negotiated procedures with the publication of a contract notice, use of a competitive dialogue and use of innovation partnership the minimum time-limit for receipt of requests to participate shall be 37 days from the date on which the contract notice is sent.

In the case of restricted procedures, the minimum time-limit for the receipt of tenders shall be 40 days from the date on which the invitation is sent and in the case of open procedures, the minimum time-limit for receipt of tenders shall be 35 days from the date on which the contract notice is sent.’;

(b) paragraph 7 is replaced by the following:

‘7. In the case of open procedures, restricted procedures and negotiated procedures with publication of a contract notice, where urgency renders impracticable the minimum time-limits laid down in this Article, contracting authorities/entities may fix:

(a) a time-limit for receipt of requests to participate which shall not be less than 15 days from the date on which the contract notice is dispatched, or less than 10 days if the notice was sent by electronic means, in accordance with the format and procedure for sending notices set out in point 3 of Annex VI;

(b) in the case of restricted procedures, a time-limit for receipt of tenders which shall not be less than 10 days from the date of the invitation to tender; and

(c) in the case of open procedures, a time-limit for receipt of tenders which shall not be less than 15 days from the date on which the contract notice was sent, or less than 10 days if the notice was sent by electronic means, in accordance with the format and procedure for sending notices set out in point 3 of Annex VI.';

(15) in Article 34, paragraph 1 is replaced by the following:

'1. In restricted procedures, negotiated procedures with the publication of a contract notice, competitive dialogues and innovation partnerships, the contracting authorities/entities shall simultaneously and in writing invite the selected candidates to submit their tenders or to negotiate, or, in the case of a competitive dialogue, to take part in the dialogue, or, in the case of an innovation partnership, to participate.';

(16) Article 35 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. The contracting authorities/entities shall, at the earliest opportunity, inform candidates and tenderers of decisions reached concerning the award of a contract, the conclusion of a framework agreement or admittance to a dynamic purchasing system, including the grounds for any decision not to award a contract, not to conclude a framework agreement for which there has been competitive tendering or to recommence the procedure or not to implement a dynamic purchasing system; that information shall be given in writing upon request to the contracting authorities/entities.’;

(b) paragraph 3 is replaced by the following:

‘3. Contracting authorities/entities may decide to withhold certain information on the contract award, the conclusion of the framework agreements or admittance to a dynamic purchasing system referred to in paragraph 1 where release of such information would impede law enforcement or otherwise be contrary to the public interest, in particular defence and/or security interests, would prejudice the legitimate commercial interests of economic operators, whether public or private, or might prejudice fair competition between them.’;

(17) Article 38 is amended as follows:

(a) in paragraph 3, the introductory part is replaced by the following:

‘3. In restricted procedures, negotiated procedures with publication of a contract notice, competitive dialogues and innovation partnerships, contracting authorities/entities may limit the number of suitable candidates they will invite to tender or with which they will conduct a dialogue, or, in the case of an innovation partnership, they will invite to participate. In this case:’;

(b) paragraph 5 is replaced by the following:

‘5. Where the contracting authorities/entities exercise the option of reducing the number of solutions to be discussed or of tenders to be negotiated, as provided for in Article 26(3), Article 27(4) and Article 27a(2) and (5), they shall do so by applying the award criteria stated in the contract notice or the contract documents. In the final stage, the number arrived at shall make for genuine competition insofar as there are enough solutions or suitable candidates.’;

(18) in Article 42, the following paragraph is added:

‘7. In the case of works contracts, service contracts and siting or installation operations in the context of a supply contract, contracting authorities/entities may require that certain critical tasks be performed directly by the tenderer itself or, where the tender is submitted by a group of economic operators as referred to in Article 5(2), by a participant in that group.’;

(19) the following Article is inserted in Title II, Chapter VII, Section 3:

‘*Article 49a*

Modification of contracts during their term

1. Contracts and framework agreements may be modified without a new procurement procedure in accordance with this Directive in any of the following cases:

   (a) where the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses, or options. Such clauses shall state the scope and nature of possible modifications or options as well as the conditions under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the contract or the framework agreement;

   (b) for additional works, services or supplies by the original contractor that have become necessary and that were not included in the initial procurement where a change of contractor:

      (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement; and

      (ii) would cause significant inconvenience or substantial duplication of costs for the contracting authority/entity;

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

(c) where all of the following conditions are fulfilled:

(i) the need for modification has been brought about by circumstances which a diligent contracting authority/entity could not foresee;

(ii) the modification does not alter the overall nature of the contract; and

(iii) any increase in price is not higher than 50 % of the value of the original contract or framework agreement. Where several successive modifications are made, that limitation shall apply to the value of each modification. Such consecutive modifications shall not be aimed at circumventing this Directive;

(d) where a new contractor replaces the one to which the contracting authority/entity had initially awarded the contract as a consequence of either:

(i) an unequivocal review clause or option in conformity with point (a);

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

(iii) in the event that the contracting authority/entity itself assumes the main contractor's obligations towards its subcontractors where this possibility is provided for under national legislation pursuant to Article 21;

(e) where the modifications, irrespective of their value, are not substantial within the meaning of paragraph 4.

Contracting authorities/entities having modified a contract in the cases referred to in point (b) and (c) of this paragraph shall publish a notice to that effect in the *Official Journal of the European Union*. Such notice shall contain *mutatis mutandis* the information required in a contract award notice.

2. Furthermore, and without any need to verify whether the conditions set out under paragraph 4, points (a) to (d), are met, contracts may equally be modified without a new procurement procedure in accordance with this Directive being necessary where the value of the modification is below both of the following values:

(a) the thresholds set out in Article 8; and

(b) 10 % of the initial contract value for service and supply contracts and below 15 % of the initial contract value for works contracts.

However, the modification may not alter the overall nature of the contract or framework agreement. Where several successive modifications are made, the value shall be assessed on the basis of the net cumulative value of the successive modifications.

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

4. A modification of a contract or a framework agreement during its term shall be considered to be substantial within the meaning of paragraph 1, point (e), where it renders the contract or the framework agreement materially different in character from the one initially concluded. In any event, without prejudice to paragraphs 1 and 2, a modification shall be considered to be substantial where one or more of the following conditions is met:

(a) the modification introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of other candidates than those initially selected or for the acceptance of a tender other than that originally accepted or would have attracted additional participants in the procurement procedure;

(b) the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;

(c) the modification extends the scope of the contract or framework agreement considerably;

(d) where a new contractor replaces the one to which the contracting authority/entity had initially awarded the contract in other cases than those referred to in paragraph 1, point (d).

5. A new procurement procedure in accordance with this Directive shall be required for other modifications of the provisions of a contract or a framework agreement during its term than those provided for under paragraphs 1 and 2.';

(20) in Article 52(6), third subparagraph, 'seven years' is replaced by '10 years';

(21) in Article 55, paragraph 1 is replaced by the following:

'1. The review procedures provided for in this Title apply to the contracts referred to in Article 2, including framework agreements and dynamic purchasing systems, subject to the exceptions provided for in Articles 12 and 13.';

(22) in Article 58, point (c), the first sentence is replaced by the following:

‘in the case of a contract based on a framework agreement as provided for in Article 29 and in the case of a contract based on a dynamic purchasing system as provided for in Article 29a.’;

(23) in Article 60(1), point (c) is replaced by the following:

‘(c) in the cases referred to in the second subparagraph of Article 58, point (c), where Member States have invoked the derogation from the standstill period for contracts based on a framework agreement or a dynamic purchasing system.’;

(24) Article 65 is replaced by the following:

‘*Article 65*
Statistical obligations

1. In order to permit assessment of the results of applying this Directive, Member States shall forward to the Commission a statistical report, prepared in accordance with Article 66, addressing supply, services and works contracts awarded by contracting authorities/entities during the preceding year, by no later than 31 October of each year.

2. By way of derogation from paragraph 1, the obligation set out therein shall be temporarily suspended until 31 December 2030, corresponding to the Union’s defence readiness planning horizon.’;

(25) Article 68 is deleted;

(26) Article 73 is replaced by the following:

‘*Article 73*
Review and reporting

By 1 January 2031, the Commission shall review the implementation of this Directive against the background of improving Europe’s defence readiness by 2030 and report thereon to the European Parliament and the Council. It shall evaluate, in particular, whether and to what extent the objectives of this Directive have been achieved, with regard, inter alia, to the functioning of the internal market and to the aim of improving Europe’s defence readiness by 2030. In its report, the Commission shall review especially the application of Article 8 and Article 28(2). Where appropriate, the report shall be accompanied by a legislative proposal.’.

Article 3
Transposition

1. Member States shall adopt and publish, by … [12 months after the date of entry into force of this Directive], the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof.

They shall apply those measures by … [15 months after the date of entry into force of this Directive].

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

Article 4

Entry into force

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

Article 5

Addressees

This Directive is addressed to the Member States.

Done at …, …

For the European Parliament / *For the Council*

The President / *The President*

A statement has been made with regard to this act and can be found in OJ C, …, ELI: …[+].

[+] OJ: Please insert the OJ reference of the statement, including the ELI.