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SENSITIVE*

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on establishing the European Defence Industry Programme

(Text with EEA relevance)

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on establishing the European Defence Industry Programme

(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 173, 212 and 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 Committee¹, [where necessary]

Having regard to the opinion of the Committee of the Regions², [where necessary]

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The EU Heads of State or Government, meeting in Versailles on 11 March, committed to “bolster European defence capabilities” in light of the Russia’s unprovoked and unjustified war of aggression against Ukraine. They agreed to increase defence expenditures, step up cooperation through joint projects, and common procurement of defence capabilities, close shortfalls, boost innovation and strengthen and develop the EU defence industry.
- (2) Long-term deterioration of regional and global threat levels requires a step-change in the scale and speed with which Europe’s defence technological and industrial base (EDTIB) can develop and produce the full spectrum military capabilities. The return of high-intensity warfare and territorial conflict to Europe 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, in particular with a view to build up a credible deterrence posture by 20XX.
- (3) On 14 and 15 December 2023, the European Council, in its conclusions, having considered work carried out to implement the Versailles declaration and the Strategic Compass for Security and Defence, underlined that more needs to be done to fulfil the Union’s objectives of increasing defence readiness. To achieve such a readiness and defend the Union, a strong defence industry is a pre-requisite.
- (4) The Commission and the High Representative of the Union for Foreign Affairs and Security Policy presented a Joint Communication on the Defence Investment Gaps Analysis and Way Forward on 18 May 2022 highlighting the existence, within the

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

Union, of defence financial, industrial and capability gaps. On 19 July 2022 the Commission presented a proposal for a Regulation of the European Parliament and of the Council on establishing the European defence industry Reinforcement through common Procurement Act (EDIRPA), aimed at supporting collaboration between Member States in the procurement phase to fill the most urgent and critical gaps, especially those created by the response to Russia's war of aggression against Ukraine, in a collaborative way. On 3 May 2023 the Commission presented a proposal for a Regulation of the European Parliament and of the Council on establishing the Act in Support of Ammunition Production, aimed at urgently supporting the ramp-up of manufacturing capacities of the European defence industry, secure supply chains, facilitate efficient procurement procedures, address shortfalls in production capacities and promote investments.

- (5) The European Council of 23 June 2022 decided to grant the status of candidate country to Ukraine, which expressed a strong will to link reconstruction with reforms on its European path. In December 2023, EU leaders decided to open accession negotiations with Ukraine. Ongoing 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.
- (6) The damage from Russia's war of aggression to the Ukrainian economy, society and infrastructure, and in particular damages caused to the Ukraine defence industrial base require comprehensive support to rebuild the Ukraine defence industrial base and reinforce defence cooperation among European and Ukraine industry as well as public authorities within cooperation for common procurement.
- (7) In this regard actions supporting the reinforcement of the Ukrainian defence technological and industrial base should be eligible under the Instrument and should be financed through a dedicated budget line providing financial assistance and complementary to the support provided under the Ukraine Facility and under the Neighbourhood, Development and International Cooperation Instrument – Global Europe (NDICI) established under Regulation (EU) 2021/947 of the European Parliament and of the Council.
- (8) EDIRPA and ASAP were designed as emergency response and short term programmes, both expiring in the year 2025 (30 June 2025 for ASAP). EDIP should contribute to closing the funding gap until 2027, by providing financial support for the reinforcement of the European and of the Ukraine DTIB, in a predictable, continuous and timely manner on the basis of an integrated approach.

[INSTRUMENT]

- (9) In view of the need invest better and together into defence capabilities of the Member States, associated countries as well as to the recovery, reconstruction and modernisation of Ukraine defence industrial base, it should be possible for Member States, third countries, international organisations, international financial institutions or other sources to contribute to the implementation of the Instrument. Such contributions should be implemented in accordance with the same rules and conditions and should constitute external assigned revenue within the meaning of Article 21(2)(a)(ii), (d), and (e) of Regulation (EU, Euratom) 2018/1046.
- (10) As the instrument aims to enhance the competitiveness and efficiency of the Union's and Ukraine's defence industry, to benefit from the instrument, recipients of financial support should be legal entities which are established in the Union or in associated

countries and are not subject to control by non-associated third countries or by non-associated third-country entities. Ukraine should be considered a Member State for this purpose. Where Member States or associated countries are the recipients of the financial support, in particular for common procurement actions, these rules should apply mutatis mutandis for the contractors or subcontractors to the procurement contracts. In that context, control should be understood to be the ability to exercise a decisive influence on a legal entity directly, or indirectly through one or more intermediate legal entities. Additionally, in order to ensure the protection of essential security and defence interests of the Union and its Member States, the infrastructure, facilities, assets and resources of the entities involved in the actions which are used for the purposes of the common procurement shall be located on the territory of a Member State or of an associated third country.

- (11) In certain circumstances, it should be possible to derogate from the principle that legal entities involved in an action supported by the Instrument 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 third country and controlled by a non-associated third country or a non-associated third country entity may participate as recipient if strict conditions relating to the security and defence interests of the Union and its Member States, as established in the framework of the Common Foreign and Security Policy pursuant to Title V of the Treaty on European Union (TEU), including in terms of strengthening the European Defence Technological and Industrial Base, are fulfilled.
- (12) Furthermore, the defence products subject to actions supported by the Instrument should not be subject to control or restriction by a non-associated third country or a non-associated third country entity.
- (13) Given the specificities of the defence industry, where demand comes almost exclusively from Member States and associated countries, which also control all acquisition of defence-related products and technologies, including exports, the functioning of the defence industry sector does not follow the conventional rules and business models that govern more traditional markets. The industry does not therefore engage in substantial self-funded industrial investments but only does so as a consequence of firm orders. While firm orders from Member States are a precondition for any investment, the Commission can intervene by offsetting the complexity of cooperation for common procurement and de-risking industrial investments via grants and loans allowing a faster adaptation to ongoing structural market change. As a general rule, Union support should cover up to 100% of direct eligible costs, whereas Union support for industry reinforcement actions should cover up to 50 % of direct eligible costs in order to enable recipients to implement actions as soon as possible, to de-risk their investment and therefore to speed up the availability of relevant defence products.
- (14) The Instrument should provide financial support, via means provided for in the Financial Regulation, to actions contributing to the timely availability and supply of defence products such as cooperation for common procurement of public authorities, industrial coordination and networking activities including reservation and stockpiling of defence products, access to finance for undertakings involved in the manufacturing of relevant defence products, reservation of manufacturing capacities (ever warm facilities), industrial processes of reconditioning of expired products, expansion, optimisation, modernisation, upgrading or repurposing of existing, or the

establishment of new, production capacities in that field as well as the training of personnel.

- (15) Grants under the Instrument may take 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.
- (16) Where the Union grant takes the form of financing not linked to costs, the Commission should determine in the work programme the funding conditions for each action, in particular (a) a description of action involving cooperation for common procurement with a view to addressing the most urgent and critical capacity needs, (b) the milestones for the implementation of the action and (c) the maximum Union contribution available.
- (17) 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. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.
- (18) In accordance with Article 193(2) of the Financial Regulation, a grant may be awarded for an action which has already begun, provided that the applicant can demonstrate the need for starting the action prior to signature of the grant agreement. However, costs incurred prior to the date of submission of the grant application are not eligible, except in duly justified exceptional cases. In order to address the funding gap materializing already in 2024 for ASAP and 2025 for EDIRPA, in the financing decision it should be possible to provide for financial contributions in relation to actions that cover a period starting from 27 February 2024.
- (19) When assessing proposals submitted by applicants, the Commission should pay particular attention to their contribution to the objectives of the Instrument. The proposals should be assessed, in particular, against their contribution to the increase defence industrial readiness, in particular increasing production capacities, eliminating bottlenecks and increasing timely availability and supply. They should also be assessed against their contribution to fostering defence industrial cooperation through genuine armament cooperation among Member States and associated countries and the development and the operationalisation of cross-border cooperation of undertakings, in particular, to a significant extent, small and medium-sized enterprises (SMEs) and mid-cap companies (mid-caps) operating in the supply chains concerned.
- (20) When designing, awarding and implementing Union financial support, the Commission should pay particular attention to ensuring that such support does not adversely affect the conditions of competition in the internal market.
- (21) Regulation (EU, Euratom) No 2018/1046 (the 'Financial Regulation') applies to this Programme. It lays down rules on the implementation of the Union budget, including the rules on grants.
- (22) In accordance with the Financial Regulation, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council and Council Regulations (EC, Euratom) No 2988/95, (Euratom, EC) No 2185/96 and (EU) 2017/1939, the financial interests of the Union are to be protected by means of proportionate measures, including measures relating to the prevention, detection, correction and investigation of irregularities, including fraud, to the recovery of funds lost, wrongly paid or incorrectly used, and, where appropriate, to the imposition of administrative penalties.

In particular, in accordance with Regulations (Euratom, EC) No 2185/96 and (EU, Euratom) No 883/2013, the European Anti-Fraud Office (OLAF) has the power to carry out administrative investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. The European Public Prosecutor's Office (EPPO) is empowered, in accordance with Regulation (EU) 2017/1939, to investigate and prosecute criminal offences affecting the financial interests of the Union as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council. In accordance with the Financial Regulation, any person or entity receiving Union funds is to cooperate fully in the protection of the financial interests of the Union, to grant the necessary rights and access to the Commission, OLAF, the Court of Auditors and, in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, the EPPO, and to ensure that any third parties involved in the implementation of Union funds grant equivalent rights.

- (23) Members of the European Free Trade Association which are members of the European Economic Area (EEA) should be able to participate in the Instrument as associated countries in the framework of the cooperation established under the Agreement on the European Economic Area, which provides for the implementation of their participation in Union programmes on the basis of a decision adopted under that Agreement. This Regulation should require those third countries to grant the necessary rights and access required for the authorising officer responsible, OLAF and the Court of Auditors to comprehensively exercise their respective competences. Pursuant to Article 85 of Council Decision (EU) 2021/1764 (18), natural persons and bodies and institutions established in overseas countries and territories (OCTs) are eligible for funding subject to the rules and objectives of the Instrument and possible arrangements applicable to the Member State to which the relevant OCT is linked.

[EDC]

- (24) Cooperative armament programmes in Union face significant challenges, being mostly set up on ad hoc basis and being plagued by complexity, delays and cost overrun. To remediate the historical weakness of European cooperative programmes and ensure a continuous Member States' commitment throughout the whole life cycle of defence capabilities, a more structured approach is required at EU level. To make this happen, the Commission should support Member States' efforts by making available a new legal framework – the European Armament Programme – to underpin and strengthen defence cooperation.
- (25) Within this new legal framework, Member States should benefit from standardised procedures for initiating and managing cooperative defence programmes. A cooperation under this framework should also allow Member States, under conditions, to benefit from an increased funding rates, simplified and harmonised procurement procedures, and, where Member States jointly own the procured equipment, a VAT exemption. The international organisation status should also allow Member States, if they wish so, to issue bonds to ensure the long-term financing plan of armament programmes. While Commission would not be liable for debt issuance by Member States, EAP should be considered as a global initiative as referred to in Article 240 [new Financial Regulation] to which contributions might de-risk the bond issuance towards financial investors.

- (26) In order to permit an efficient procedure for the setting-up of an EDC, it is necessary for the entities willing to set up an EDC to submit an application to the Commission which should assess, whether the proposed armament programme is in conformity with this Regulation. Such an application should contain a declaration of the host Member State recognising the EDC as an international body or organisation for the purpose of the application of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, as of its setting up. The EDC should also benefit from certain exemptions as an international organisation for the purpose of applying Directive 2009/81/EC of the European Parliament and of the Council, in conformity with State aid rules.
- (27) For reasons of transparency, the decision setting-up an EDC should be published in the *Official Journal of the European Union*. For the same reasons, the essential elements of its Statutes should be annexed to such decisions.
- (28) In order to carry out its tasks in the most efficient way, an EDC should have legal personality and the most extensive legal capacity as from the day on which the decision setting it up takes effect. It should have a statutory seat, in order to determine the applicable law, within the territory of a member of that EDC which is a Member State or an associated country.
- (29) Membership of an EDC should comprise at least three Member States and may include associated countries and Ukraine.
- (30) For the implementation of this framework, more detailed provisions should be laid down in Statutes, on the basis of which the Commission should examine the compliance of an application with the framework established in this Regulation.
- (31) It is necessary to ensure that, on the one hand, an EDC 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 EDC statutes, are preserved through a necessary control at Union level. If an amendment concerns an essential element of the Statutes annexed to the decision setting up the EDC, such amendment should be approved, prior to taking effect, by a Commission decision taken following the same procedure as that for setting up the EDC. Any other amendment should be notified to the Commission, which should have an opportunity to object if it considers the amendment contrary to this Regulation.
- (32) XX: Organisation of the EDC
- (33) Procurement rules?
- (34) An EDC could qualify for funding in accordance with Title VI of the Financial Regulation. Funding under the Cohesion Policy could also be possible, in conformity with the relevant Community legislation.
- (35) In order to carry out its tasks in the most efficient way and as a logical consequence of its legal personality, an EDC should be liable for its debts. In order to allow the members to find appropriate solutions regarding their liability, the option should be given to provide in the Statutes for different liability regimes going above the liability limited to the contributions of the members.
- (36) Since an EDC is established under Union law, it should be governed by Union law, in addition to the law of the State where it has its statutory seat. However, the EDC could

have a place of operation in another State. The law of that latter State should apply in respect of specific matters defined by the Statutes of the EDC. Furthermore, an EDC should be governed by implementing rules complying with the Statutes.

- (37) In order to ensure sufficient control of compliance with this Regulation, an EDC should transmit to the Commission and relevant public authorities 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 EDC acts in serious breach of this Regulation or other applicable law, it should request explanations and/or actions from the EDC and/or its members. In extreme cases and if no remedial action is taken, the Commission could repeal the decision setting up the EDC, thus triggering the winding-up of the EDC.

[SoS: Chips + Health]

- (38) Upon the adoption of ASAP the European Parliament and the Council called on the Commission to consider, putting forward a legal framework aimed at ensuring the security of supply (Joint Statement of 11 July 2023).
- (39) Furthermore, the crisis resulting from Russia's war of aggression against Ukraine has not only demonstrated deficiencies in the Union's and Ukraine's defence industrial sector, but has notably posed challenges to the functioning of the internal market for defence products. Indeed, the current geopolitical context entails a significant increase in the demand that affects the functioning of the internal market for the production and sale of relevant defence products and of their components in the Union. While certain Member States have taken or are likely to take measures to preserve their own stocks as a matter of national security, others are faced with difficulties of access to the goods needed to manufacture or acquire the relevant defence products. Sometimes, difficulties in accessing one raw material or a specific component hamper entire production chains. To ensure the functioning of the internal market, it is necessary to establish, in a coordinated way, harmonised rules for increasing the security of supply of relevant defence products. Those measures should include an acceleration of the permit-granting process and facilitation of procurement procedures. Those measures should be based on Article 114 TFEU.
- (40) In light of the importance of ensuring the security of supply of relevant defence products, Member States should ensure that administrative applications related to the planning, construction and operation of production facilities, transfer of inputs within the Union, as well as the qualification and certification of relevant end products are processed in an efficient and timely manner.
- (41) To pursue the general public policy objective of security, it is necessary that production facilities related to the production of relevant defence products are set up as quickly as possible, while keeping the administrative burden to a minimum. For that reason, Member States should treat applications related to the planning, construction and operation of plants and installations for the production of relevant defence products in the most rapid manner possible. Such applications should be given priority when balancing legal interests in the individual case.
- (42) In view of the objective of this Regulation, and of the emergency situation and the exceptional context of its adoption, Member States should consider using defence-related exemptions under national and applicable Union law, on a case-by-case basis, if they deem that the use of such exemptions would facilitate the achievement of that objective. That could in particular apply to Union law concerning environmental,

health and safety issues, which is indispensable to improving the protection of human health and the environment, as well as to achieving a sustainable and safe development. However, the implementation of that law could also produce regulatory barriers hampering the Union defence industry's potential to ramp up the production and deliveries of relevant defence products. It is a collective responsibility for the Union and its Member States to urgently look into any action they could take to mitigate possible obstacles. Any such action, whether at Union, regional, or national level, should not compromise the environment, health and safety.

- (43) Directive 2009/81/EC of the European Parliament and of the Council aims at harmonising procurement procedures for the award of public contracts in the field of defence and security thus enabling the security requirements of Member States and the obligations arising from the TFEU to be met. That Directive contains, in particular, specific provisions governing situations of urgency resulting from a crisis, in particular shortened periods for the receipt of tenders and the possibility to use the negotiated procedure without prior publication of a contract notice. However, in extreme urgency in particular during supply and security crisis these rules could be incompatible even with those provisions in cases where two or more Member States intend to engage in a common procurement. In some cases, the only solution that ensures the security interests of those Member States is to open an existing framework agreement to contracting authorities/entities of Member States that were not originally party to it, even though that possibility had not been provided for in the original framework agreement.
- (44) In accordance with the case law of the Court of Justice of the European Union, modifications to a public contract are to be strictly limited to what is absolutely necessary in the circumstances, while complying to the maximum extent possible with the principles of non-discrimination, transparency and proportionality. In that regard, it should be possible to derogate from Directive 2009/81/EC by increasing the quantities provided for in a framework agreement while opening it to contracting authorities/entities of other Member States. With respect to those additional quantities, those contracting authorities/entities should enjoy the same conditions as the original contracting authority/entity that concluded the original framework agreement. In such cases, the original contracting authority/entity should also allow any economic operator who fulfils the contracting authority's/entity's conditions initially laid down in the procurement procedure for the framework agreement, including requirements for qualitative selections as referred to in Articles 39 to 46 of Directive 2009/81/EC, to join that framework agreement. In addition, appropriate transparency measures should be taken to ensure that all potentially interested parties are informed. In order to limit the effects of those modifications on the smooth functioning of the internal market and to prevent disproportionate distortions of competition, it should only be possible to conclude such modifications of framework agreements until 31 December 2027.
- (45) Furthermore, the current crisis has not only demonstrated deficiencies in the EU defence industrial sector, but also posed challenges to the functioning of the internal market of defence products. Indeed, the current geopolitical context entails a significant increase of the demand that affects the functioning of internal market of production and sale of crisis relevant defence products and of their components in the Union. [This should be activated through a graduated crisis system] While certain Member States have taken or are likely to take measures to preserve their own stocks as a matter of national security, others are faced with difficulties of access to the goods needed to manufacture or acquire crisis-relevant defence products. Sometimes, the

difficulty to have access to one single raw material or to a specific component hampers the whole productions chains. To ensure the functioning of the internal market, it is necessary to adopt certain measures which will ensure, in a coordinated way, harmonised rules for facilitating the security of supply of defence products. These rules should include the mapping of the needs in goods and services in that internal market, the possibility to establish priority rated orders at the level of the Union when at least three Member States decide or intend of decide to procure commonly defence related products, where necessary to pursue an objective of general interest of security of the Union and of its Member States. These measures should be based on Article 114 TFEU.

- (46) In order to take the necessary and appropriate measures under this Regulation, the Commission should, on the basis of the cooperative work with the EEAS, EDA and Member States in the context of the Defence Industrial Readiness Board, set up and maintain a mapping of the undertakings established in the Union that operate along the supply chains of relevant defence products. The mapping should notably include the type and specifications of their products, their related production capacity, and their position in the supply chain of the relevant defence products. The Commission should regularly monitor the production capacity and the supply chains of the undertakings identified in the mapping, in close cooperation with them. The results of the mapping and the monitoring should be presented and discussed by the Defence Industrial Readiness Board.
- (47) On this basis, the Commission should draw up a list, identifying the crisis-relevant defence products, raw materials or components thereof, that are affected by disruptions or potential disruptions of the functioning of the Single Market and its supply chains leading to significant shortages. The Commission should regularly update this list, to focus only on possible disruptions or bottlenecks affecting the security of supply of relevant defence products, as well as raw materials and components thereof.
- (48) In crisis stage, the Commission should be able to request to receive necessary information to ensure the timely availability of supply-critical defence products from economic operators, dealing with these products, raw materials or components thereof, in agreement with the Member State in which they are established. Such information should inform the Commission's decision on appropriate measures under this regulation to address possible disruptions or bottlenecks affecting the security of supply of relevant defence products as well as relevant raw materials and components.
- (49) Such an identification, mapping and continuous monitoring mechanism should allow a near real time analysis of the production capacity in the Union, critical factors impacting security of supply of relevant defence products, stockpiles' status. It should also enable Commission to design emergency response measures to actual or anticipated shortages.
- (50) Avoiding shortages of relevant defence products is essential to preserve the objective of general interest of security of the Union and its Member States and justifies, where necessary, proportionate interferences with fundamental rights of the undertakings providing supply-critical defence products, such as the freedom to conduct a business in accordance with Article 16 of the Charter and the right to property in accordance with Article 17 of the Charter, in the respect of Article 52 of the Charter. Such interferences may be justified in particular where several Member States have undertaken specific efforts to consolidate demand through joint procurement, hence

contributing to the further integration and smooth functioning of the Internal Market for relevant defence products.

- (51) The obligation to prioritise the production of certain products should not disproportionately affect the freedom to conduct a business and the freedom of contract laid down in Article 16 of the Charter of Fundamental Rights of the European Union ('the Charter') and the right to property laid down in Article 17 of the Charter. Any limitation of those rights should, in accordance with Article 52(1) of the Charter, be provided for by law, respect the essence of those rights and freedoms, and comply with the principle of proportionality.

[GOVERNANCE]

- (52) In a joint effort responding to the immediate need to coordinate the very short term needs of Member States and engaging with Union defence manufacturers to support common procurement, the Commission and the HR/VP have set up the informal Defence Joint Procurement Task Force. To ensure the continuity of cooperation with EEAS, EDA and the Member States, a Defence Industrial Readiness Board should be set up.
- (53) Building on the work of the Defence Joint Procurement Task Force, the Defence Industry Readiness Board should provide a forum for Member States and EU institutions to discuss and identify refined priorities at EU level in relation with EU programmes supporting the competitiveness of the EDTIB - in terms of flagship projects, key defence products, industrial sectors to be ramped up, defence capacities to be industrialised, critical bottlenecks hindering security of supply. The Board should allow Member States to provide strategic guidance and advice with a view to actions in support of the EDTIB competitiveness, and ensure the timely co-funding of initiatives, without prejudice to their role in Programme committees. The Board should play a crucial role during crisis time to implement the new Security of Supply regime at EU level.

[CLOSING]

- (54) 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.
- (55) [In accordance with Article 41(2) TEU, operating expenditure arising from Chapter 2 of Title V TEU is to be charged to the Union budget, except for such expenditure arising from operations having military or defence implications.]
- (56) Pursuant to paragraphs 22 and 23 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making, this Regulation should be evaluated on the basis of information collected in accordance with specific monitoring requirements, while avoiding overregulation and administrative burdens, in particular on Member States. Where appropriate, such requirements should include measurable indicators as a basis for evaluating the effects of this Regulation on the ground. The Commission should carry out an evaluation of this Regulation no later than 30 June 2024, including with a view to submitting proposals for amendments to this Regulation, where appropriate.
- (57) This Regulation should apply without prejudice to the specific character of the security and defence policy of certain Member States

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject Matter

This Regulation establishes a set of measures and lays down a budget aimed at supporting defence readiness of the Union and its Member States through the strengthening of the competitiveness, responsiveness and ability of the European Defence Technological and Industrial Base (EDTIB) to ensure the timely availability and supply of defence products and at contributing to the recovery, reconstruction and modernisation of the Ukraine Defence Technological and Industrial Base (Ukrainian DTIB), in particular by means of the following:

1. an instrument financially supporting cooperation on common procurement and industrial reinforcement contributing to the ramp-up of production capacity and timely delivery of defence products, as set out in Chapter II;
2. the establishment of a Defence Readiness Investment Framework as set out to in Chapter III;
3. a legal framework laying down the requirements and procedures for and the effects of setting-up a European Defence Consortium as set out in Chapter IV;
4. setting up a legal framework aiming at ensuring security of supply, removing obstacles and bottlenecks and supporting the production of crisis-relevant products as set out in Chapter V;
5. the establishment of a Defence Industrial Readiness Board as set out in Chapter VI.

Article 2

Definitions

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

- (1) 'applicant' means a natural person or an entity with or without legal personality who has submitted an application in a grant award procedure;
- (2) 'bottleneck' means a point of congestion in a production system that stops or severely slows the production;
- (3) 'common procurement' means a procurement jointly conducted by at least three Member States;
- (4) 'control' means the ability to exercise a decisive influence on a legal entity directly, or indirectly through one or more intermediate legal entities;
- (5) 'classified information' means information or material, in any form, the unauthorised disclosure of which could cause varying degrees of prejudice to the interests of the

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

- (6) 'defence products' means any defence-related products as referred to in Article 2 of Directive 2009/43/EC;
- (7) 'executive management structure' means a body of a legal entity, appointed in accordance with national law, and, where applicable, reporting to the chief executive officer, which is empowered to establish the legal entity's strategy, objectives and overall direction, and which oversees and monitors management decision-making;
- (8) '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 point (c) of Article 197(2) of Regulation (EU, Euratom) 2018/1046;
- (9) 'innovation action' means an action primarily consisting of activities directly aiming to produce plans and arrangements or designs for new, altered or improved products, processes or services, possibly including prototyping, testing, demonstrating, piloting, large-scale product validation and market replication
- (10) 'non-associated third-country entity' means a legal entity that is established in a non-associated third country or, where it is established in the Union or in an associated country, that has its executive management structures in a non-associated third country;
- (11) 'procurement agent' means a contracting authority as defined in Article 2(1), point (1), of Directive 2014/24/EU and Article 3(1), of Directive 2014/25/EU that is established in a Member State or an associated country, the European Defence Agency or an international organisation and that is designated by Member States and associated countries to conduct a common procurement on their behalf;
- (12) 'lead time' means the period of time between a purchase order being placed and the manufacturer completing the order;
- (13) 'raw materials' means the materials required to produce defence products;
- (14) 'recipient' means an entity with which a funding or financing agreement has been signed, or to which a funding or financing decision has been notified;
- (15) 'security crisis' means any situation in a Member State or non-associated third country in which a harmful event has occurred which clearly exceeds the dimensions of harmful events in everyday life and which substantially endangers or restricts the life and health of people, or has a substantial impact on property values, or requires measures in order to supply the population with necessities; a crisis shall also be deemed to have arisen if the occurrence of such a harmful event is deemed to be impending; armed conflicts and wars shall be regarded as crises for the purposes of this Regulation;
- (16) 'sensitive information' means information and data, including classified information, that is to be protected from unauthorised access or disclosure because of obligations laid down in Union or national law or in order to safeguard the privacy or security of a natural or legal person;

- (17) 'small and medium-sized enterprises' or 'SMEs' means small and medium-sized enterprises as defined in Article 2 of the Annex to Commission Recommendation 2003/361/EC;
- (18) 'subcontractors in the common procurement' means any legal entity which provides critical inputs that possess unique attributes essential for the functioning of a product and which is allocated at least 15 % of the value of the contract.
- (19) 'middle capitalisation company' or 'mid-cap' means an enterprise that is not a SME and that employs a maximum of 3 000 persons, where the headcount of staff is calculated in accordance with Articles 3 to 6 of the Annex to Recommendation 2003/361/EC;
- (20) 'crisis-relevant products' means defence products or key components or raw materials thereof that have been identified as being seriously affected by disruption or potential disruption of the functioning of the Single Market and its supply chains resulting in actual or potential significant shortages.

Article 3

Third countries associated to the Programme

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

CHAPTER II

THE INSTRUMENT

Article 4

Objectives of the Instrument

1. The Instrument aims at increasing the defence industrial readiness of the EDTIB and of the Ukrainian DTIB in particular through:
 - (a) Initiating and speeding up the adjustment of industry to structural changes, including through the creation and ramp-up of its manufacturing capacities and the opening of the supply chains for cross-border cooperation throughout the Union, including for SMEs and mid-caps;
 - (a) incentivising cooperation in defence procurement in order to contribute to solidarity, prevent crowding-out effects, increase the effectiveness of public spending and reduce excessive fragmentation, ultimately leading to an increase in the standardisation of defence systems and greater interoperability;
 - (b) contributing to the recovery, reconstruction and modernisation of the Ukrainian DTIB and progressive integration into the EDTIB, thereby contributing to mutual stability, security, peace, prosperity and sustainability.
2. The objectives set out in point (a) of paragraph 1 shall be pursued with an emphasis on initiating and speeding up the adjustment of industry to the rapid structural changes imposed by the evolving security environment. This should include the improvement and acceleration of the capacity of adaptation of supply chains for

crisis-relevant products, the creation of manufacturing capacities or their ramp-up, and a reduction of their lead production time for defence products throughout the Union.

3. The objectives set out in point (b) of paragraph 1 shall be pursued with an emphasis on developing the EDTIB throughout the Union to allow it to address, in particular, Member States' defence product needs, in line with the defence capability priorities commonly agreed by Member States within the framework of the Common Foreign and Security Policy (CFSP), taking into account the objectives of the Strategic Compass for Security and Defence and the advices of the Defence Industrial Readiness Board.
4. The objectives set out in point (c) of 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 product needs of Ukraine, through creation of manufacturing capacities or their ramp-up in line with NATO standards, protection of assets, technical assistance and exchange of personnel, increased cooperation on common procurement of defence products for Ukraine, EU-UA strategic partnerships on raw materials, licensing production cooperation through public-private partnerships or other forms of cooperation, e.g. joint ventures, and access to finance in particular to guarantee EU outbound investments into the Ukrainian DTIB. Special attention shall be given to the objective to support Ukraine to progressively align with Union rules, standards, policies and practices ('acquis') with a view to future Union membership.

Article 5

Budget

1. The financial envelope for the implementation of the Instrument for the period from its entry into force until 31 December 2027 shall be set at [EUR XXX Million] in current prices.
2. Additional contributions for financing the support referred to in paragraph 1 may be provided in accordance with Article 6.
3. The distribution of the amount referred to in paragraph 1 shall be:
 - (a) EUR X for actions reinforcing the EDTIB;
 - (b) EUR Y for actions reinforcing the Ukrainian DTIB.

In order to respond to unforeseen situations or to new developments and needs, the Commission may reallocate the amount allocated to actions referred to in paragraph 3, by up to a maximum of 20 %. A single action may benefit from both budget lines. Actions implemented together with Ukraine and entities established in Ukraine shall be charged to budget line (b).

4. Within the financial envelope defined in paragraph 1 of this article, up to [EUR XYZ Million] may be used as a blending operation in the frame of the 'Defence Readiness Investment Framework' defined in article XYZ.
5. The amount referred to in paragraph 1 may also be used for technical and administrative assistance for the implementation of the Programme, such as preparatory, monitoring, control, audit and evaluation activities, including price investigations and corporate information technology systems and platforms.

6. By derogation to Article 12(4) of Regulation (EU, Euratom) 2018/1046, unused commitment and payment appropriations under the Instrument shall be automatically carried over and may be committed and used, respectively, up to 31 December of the following financial year. The amount carried over shall be used first in the following financial year. The Commission shall inform the European Parliament and the Council of commitment appropriations carried over in accordance with Article 12(6) of Regulation (EU, Euratom) 2018/1046.
7. By way of derogation from the first, second and fourth subparagraphs of Article 209(3) of Regulation (EU, Euratom) 2018/1046, any revenues and repayments from financial instruments established under this Regulation shall constitute internal assigned revenue within the meaning of Article 21(5) of Regulation (EU, Euratom) 2018/1046, to the Instrument or its successor programme.
8. Within the financial envelope referred to in paragraph 1 of this Article, up to EUR XX million may be used to finance the European Defence Readiness Investment Framework provided for in Article 19.
9. Budgetary commitments for activities extending over more than one financial year may be broken down over several years into annual instalments.

Article 6

Additional financial resources for the Instrument

1. Member States, third countries, international organisations, international financial institutions or other sources, may provide additional financial contributions to the Instrument. Such contributions shall constitute external assigned revenue within the meaning of Article 21(2), points (a)(ii), (d), and (c) of Regulation (EU, Euratom) 2018/1046.

Additional amounts received as external assigned revenue within the meaning of Article 21(5) of Regulation (EU, Euratom) 2018/1046 under the relevant Union legal acts in relation to restrictive measures in view of Russia's actions destabilising the situation in Ukraine shall be added to the resources referred to in point (b), paragraph 3 of Article 5.
2. Resources allocated to Member States under shared management may, at their request, be transferred to the Instrument subject to the conditions set out in the relevant provisions of the Regulation (EU) 2021/1060 of the European Parliament and the Council³. The Commission shall implement those resources directly in accordance with point (a) of the first subparagraph of Article 62(1) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and the Council⁴. Those resources shall be used for the benefit of the Member State concerned.

³ 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. 159–706).

⁴ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU)

3. The contributions referred to in paragraph 1 shall be implemented in accordance with the same rules and conditions as the amount referred to in Article 5(1).
4. The contributions to the financial instruments under Chapter XYZ shall be made in accordance with Article XYZ.

Article 7

Cumulative and alternative funding

1. The Instrument shall be implemented in synergy with other Union programmes. An action that has received a contribution from another Union programme may also receive a contribution under the Instrument, provided that the contributions do not cover the same costs. The rules of the relevant Union programme shall apply to the corresponding contribution to the action. The cumulative financing shall not exceed the total eligible costs of the action. The support from different Union programmes may be calculated on a pro-rata basis in accordance with the documents setting out the conditions for support.
2. In order to be awarded a Seal of Excellence under the Programme, actions shall comply with all of the following conditions:
 - (a) they have been assessed in a call for proposals under the Programme;
 - (b) they comply with the minimum quality requirements of that call for proposals;
 - (c) they are not financed under that call for proposals due to budgetary constraints.
3. In accordance with the relevant provisions of Regulation (EU) 2021/1060 of the European Parliament and the Council, the ERDF or ESF+ may support proposals submitted to a call for proposals under the Instrument, which were awarded a Seal of Excellence in accordance with the Programme.
4. Article 10 shall apply by analogy to actions funded in accordance with this Article.

Article 8

Implementation and forms of Union funding

1. The Instrument shall be implemented under direct management in accordance with Regulation (EU, Euratom) 2018/1046.
2. By way of derogation from paragraph 1 of this Article, specific actions may, in substantiated cases, be carried out under indirect management with any of the entities referred to in Article 62, first subparagraph, point (c) of Regulation (EU, Euratom) 2018/1046. This shall not include the selection and award procedure referred to in Article XY of this Regulation.
3. Union funding may be provided in any of the forms laid down in Regulation (EU, Euratom) 2018/1046, in particular grants, procurement, [non-financial donations], financial instruments, repayable grants, and blending operations.

No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1–222).

4. For activities referred to in point (d), paragraph 3 of Article 10, where Union funding is provided in the form of a grant, the Commission shall ensure conditions under which revenue generated through the action is recovered (repayable grant) and transferred back to one or more respective source programmes.
5. By way of derogation from Article 193(2) of the Financial Regulation, financial contributions may, where relevant and necessary for the implementation of an action, cover actions started prior to the date of the submission of the proposal for those actions, provided that those actions did not start before 27 February 2024 and have not been completed before the signature of the grant agreement.
6. The FAST provided for in Article 19 of this Regulation, shall be implemented under indirect management with bodies referred to in Article 62(1), point (c), of the Financial Regulation. The Instrument may provide funding in any of the forms laid down in the Financial Regulation, including financing in the form of financial instruments, through a blending facility under the InvestEU Fund established by Regulation (EU) 2021/523 of the European Parliament and Council, in close cooperation with the European Investment Bank Group and other implementing partners such as national promotional banks and institutions.

Article 9

Use of financing not linked to costs

1. Grants may take the form of financing not linked to costs, pursuant to Article 180(3) of the Financial Regulation.
2. The level of the Union contribution attributed to each action may be defined on the basis of factors such as:
 - (a) the complexity of the common procurement, for which a proportion of the estimated value of the common procurement contract and the experience gained in similar actions may serve as an initial proxy;
 - (b) the characteristics of the cooperation which are likely to give rise to greater interoperability outcomes and long-term investment signals to industry, in particular where the common procurement covers activities that would be eligible for funding from the Union budget, e.g. research and development, testing and certification, initial production or in-service support activities;
 - (c) the number of participating Member States and associated countries or the inclusion of additional Member States or associated countries in existing cooperations.
 - (d) non-recurrent costs linked to ramp-up of necessary manufacturing capacities;
 - (e) the procurement of additional quantities for other Member States (defence readiness pool);
3. Where the Union grant takes the form of financing not linked to costs for actions reinforcing the Ukrainian DTIB, the level of Union contribution may in addition be based on factors such as:
 - (a) the complexity of Ukraine accession process, including structural reforms and measures to promote convergence with the Union 'acquis';

- (b) the efforts of adapting the Ukrainian defence procurement processes and the environment for Ukrainian defence industry, including to meet NATO standards;
- (c) the efforts and risks associated with the ongoing war of aggression, taking into account the need to rebuild and modernise infrastructure damaged by the war in a resilient way, and, where relevant, by appropriate measures to avoid, prevent or reduce and, if possible, offset these effects.

Article 10

Eligible entities

1. Recipients and subcontractors involved in an action shall be established in the Union or in an associated country.
2. The infrastructure, facilities, assets and resources of the recipients and subcontractors involved in an action which are used for the purposes of the action shall be located on the territory of a Member State or of an associated country. Where recipients and subcontractors involved in the 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 and 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 the Member States and is consistent with the objectives set out in Article 4.
3. For the purposes of an action supported by the Instrument, the recipients and subcontractors involved in an action shall not be subject to control by a non-associated third country or by a non-associated third-country entity.
4. By way of derogation from paragraph 3, a legal entity established in the Union or in an associated country and controlled by a non-associated third country or a non-associated third-country entity shall be eligible to be a recipient or subcontractor involved in an action if it has been subject to screening within the meaning of Regulation (EU) 2019/452 of the European Parliament and of the Council and, where necessary, to mitigation measures, taking into account the objectives set out in Article 2 of this Regulation, or if guarantees approved by the Member State or the associated country in which it is established in accordance with its national procedures are made available to the Commission.

The guarantees shall provide assurances that the involvement in an action of such a legal entity would not contravene the security and defence interests of the Union and its Member States as established in the framework of the CFSP pursuant to Title V of the TEU, or the objectives set out in Article 4 of this Regulation. The guarantees shall also comply with [Articles XX] of this Regulation. The guarantees shall in particular substantiate that, for the purposes of an action, measures are in place to ensure that:

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

- (b) access by a non-associated third country or by a non-associated third-country entity to 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;

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 XX] of any legal entity considered to be eligible in accordance with this paragraph.

- 5. When carrying out an eligible action, recipients and subcontractors involved in an action may also cooperate with legal entities established outside the territory of the Member States or of associated countries, or controlled by a non-associated third country or by a non-associated third-country entity, including by using the assets, infrastructure, facilities and resources of such legal entities, provided that this does not contravene the security and defence interests of the Union and its Member States. Such cooperation shall be consistent with the objectives set out in Article 4 and complies with [Articles XX].

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

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

- 6. Paragraphs 2 to 5 shall not apply to:
 - (a) Public contracting authorities of Member States and associated countries;
 - (b) International Organisations;
 - (c) European Defence Agency.
- 7. For actions reinforcing the Ukrainian DTIB, Ukraine and entities established in Ukraine shall be considered as a Member State or established in a Member States for the purpose of this article. Paragraph 4 shall not apply.

Article 11

Eligible actions

- 1. Only actions implementing the objectives referred to in Article 4 shall be eligible for funding. An eligible action may relate to one or more of the activities referred to in paragraphs 2, 3 and 4:
- 2. Activities related to cooperation of public authorities in defence procurement processes (common procurement actions):
 - (a) activities that aim 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;

- (b) the cooperation for common procurement of defence products, throughout the life cycle of defence products, including for the purpose of building a Defence Industrial Readiness Pool as referred to point (3) of Article 20.
3. Activities related to speeding up the adjustment to structural changes of the production capacity of defence products, including their components and corresponding raw materials insofar as they are intended or used wholly for the production of defence products (industry reinforcement actions):
- (a) the optimisation, expansion, modernisation, upgrading or repurposing of existing, or the establishment of new, production capacities insofar as those components and raw materials are used as direct input for the production of defence products, in particular with a view to increasing production capacity or reducing lead production times, 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, 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 insofar as those components and raw materials are used as direct input for the production of defence products, as well as to coordinate production capacities and production plans;
 - (c) the building-up and making available of reserved surge manufacturing capacities (ever warm facilities) of defence products, their components and corresponding raw materials, insofar as those components and raw materials are used as direct input for the production of defence products, in accordance with ordered or planned production volumes;
 - (d) the productualisation and commercialisation of defence products that have been developed in the framework of a cooperative programme conducted jointly by at least two Member States, including through the establishment of cross-border industrial partnerships, public private partnerships or other forms of industrial cooperation, ramping-up of initial production as well as licensing production, where appropriate;
 - (e) the testing, including the necessary infrastructure, and, as appropriate, reconditioning certification of defence products with a view to addressing their obsolescence and making them useable by end users.

[PLACE HOLDER for European Defence Projects of Common Interest]

4. Supporting activities (support actions):
- (a) activities to strengthen security of supply and resilience, in particular by facilitating the access to the defence market for SMEs and start-ups and support to obtain the necessary quality and production certifications;
 - (b) the training, reskilling or upskilling of personnel in relation to the activities referred to in this Article;
 - (c) the procurement of physical and cyber protection systems in relation to the activities referred to in paragraph 3, including effective engagement;
 - (d) 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;
- (e) Union support to global initiatives [new Article 240 FR], in particular in the framework of an European Defence Consortium;
 - (f) emergency innovation, where activated according to Article XY [security-crisis].
5. For activities referred to in paragraphs 2 and in point d of paragraph 3, the action shall be carried out by legal entities cooperating within a consortium of at least three eligible legal entities which are established in at least three different Member States or associated countries. At least three of those eligible legal entities established in at least two different Member States or associated countries 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.
6. Paragraph 5 shall not apply to actions developed in the framework of a European Defence Consortium as referred to in Article 19 and shall not apply where the supply crisis stage referred to in Article 39 or security-related supply crisis stage referred to in Article XYZ has been activated.
7. For actions relating to activities referred to in point (d) paragraph 3 Union funding shall be provided in the form of repayable grants referred to in paragraph 4 of Article 9 or repayable advances.
8. The following actions shall not be eligible for funding under the Instrument:
- (a) actions related to goods or services which are prohibited by applicable international law;
 - (b) actions related to lethal autonomous weapons without the possibility of meaningful human control over selection and engagement decisions when carrying out strikes against humans;
 - (c) actions related to goods or services which are subject to control or restriction by non-associated third countries or by non-associated third-country entities, directly, or indirectly through one or more intermediate legal entities, including in terms of technology transfer.
 - (d) actions or parts thereof, that are already fully financed from other public or private sources.

Article 12

Specific provisions applicable for common procurement actions [EDIRPA+]

1. Only entities as referred to in paragraph 6 of Article 10 shall be eligible as recipients.
2. Member States and associated countries participating in a common procurement 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 may act as the coordinator of the consortium and may therefore be able to manage and combine funds from the Instrument and funds from the participating Member States and associated countries.

This Regulation is without prejudice to the rules 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 laid down in Directive 2009/81/EC.

3. The procurement procedures referred to in paragraph 1 shall be based on an agreement to be signed by the participating Member States and associated countries with the procurement agent under the conditions set out in the work programme. The agreement shall, in particular, determine the practical arrangements governing the common procurement and the decision-making process on the choice of the procedure, the assessment of the tenders and the award of the contract.
4. Article 10 of this Regulation shall apply *mutatis mutandis* to the participation of contractors and subcontractors in the common procurement.
5. The common procurement contract or framework agreement shall include provisions governing the purchase of additional quantities for other Member States, associated countries or Ukraine.

Such rules shall be without prejudice to applicable Union law and be in line with Member States' national laws and regulations relating to the export of defence-related products.
6. Procurement agents shall provide the Commission with a notification on the mitigation measures applied within the meaning of Regulation (EU) 2019/452 referred to in paragraph 5 of Article 10 or the guarantees referred to in paragraph 6 of Article 10. Further information on the mitigation measures applied or the guarantees shall be made available to the Commission upon request. The Commission shall inform the committee referred to in Article XYZ of this Regulation of any notification provided in accordance with this paragraph.

Article 13

Specific provisions applicable for industrial reinforcement actions [ASAP+]

For activities referred to in point (a), (b) and (c) of paragraph 3 of Article 10, eligible actions shall be exclusively related to the production capacities of defence products, including their components and raw materials insofar as they are intended or used wholly for the production of defence products.

Article 13bis

Specific provisions applicable for activities contributing to a European Military Sales Mechanism

1. The EU MSM shall ensure the availability of EU defence products in time and in volume thereby fostering the competitiveness of the European defence technological and industrial base.
2. To reach this objective, the principal tasks of an EU MSM shall be:
 - (a) the establishment of a single, centralised, up to date catalogue of defence products developed by the EDTIB;

- (b) the creation of a defence industrial readiness pool, to increase availability and speed up delivery time of EU-made defence products, ensuring immediate and preferential purchase or use/lease option for Member States, associated countries and Ukraine;
 - (c) the facilitation and speeding up of procurement procedures in a spirit of solidarity;
 - (d) the support to administrative capacity building related to public procurement of defence products.
3. Without prejudice to paragraph 5 of Article 5, the Commission shall draw up the technical specifications for and procure the corporate IT platform required to establish the catalogue referred to in point (a) of paragraph 2 of Article 30bis based on consultations with the Defence Industrial Readiness Board.
 4. Where Member States jointly procure additional quantities or contribute through in-kind contributions to build up a defence industrial readiness pool as referred to in point (b) of paragraph 2 in context of a European Armament Programme, the Commission shall financially support the initiative through:
 - (a) Support to common procurement of additional quantities as referred to in point (b) of paragraph 2 of Article 10;
 - (b) Contribution to the direct and indirect costs of managing and maintaining the Defence Industrial Readiness Pool as referred to in point (e) of paragraph 4 of Article 11;
 - (c) Contribution to administrative capacity building as referred to in points (b) and (d) of paragraph 4 of Article 11.
 5. For the purpose of Member States, associated countries or Ukraine buying from the defence industrial readiness pool managed by an European Armament Programme, this procurement shall be considered as a government to government contract as referred to in point (f) of Article 13 of Directive 2009/81/EC.

Article 14

Specific provisions applicable for actions reinforcing the Ukrainian DTIB

1. A precondition for the support to Ukraine under the Instrument shall be that Ukraine continues to uphold and respect effective democratic mechanisms, including a multiparty parliamentary system, and the rule of law, and to guarantee respect for human rights, including the rights of persons belonging to minorities, thereby contributing to mutual stability, security, peace and prosperity.
2. The Commission shall base its assessment on the conditions set out in paragraph 1 on the findings referred to in Article 5 of [Ukraine Facility Regulation – Precondition for Union support] and the evaluation of the security context.

Article 15

Award criteria

1. Each proposal shall be assessed on the basis of the following criteria:

- (a) defence industrial readiness: contribution to competitiveness and resilience, increase production capacities, reduce lead times, eliminate bottlenecks and increase timely availability and supply thereby increasing interoperability and interchangeability, the non-dependency on non-associated third country sources and strengthening security of supply;
 - (b) defence industrial cooperation: fostering genuine armament cooperation among Member States and associated countries and development and operationalisation of cross-border cooperation between undertakings established in different Member States or associated countries, involving in particular, to a significant extent, SMEs or mid-caps as recipients, as subcontractors or as other undertakings in the supply chain;
 - (c) the quality of the implementation plan of the action, in particular measures to respect delivery lead times, including in terms of its processes and monitoring.
2. The work programme shall lay down further details concerning the application of the award criteria laid down in paragraph 1, including any weighting to be applied. The work programme shall not set individual thresholds.

Article 16

Union financial contribution

1. The Instrument shall finance up to 100 % of the eligible costs without prejudice to Article 190 of the Financial Regulation.
2. By way of derogation from paragraph 1 of this Article, for activities referred to in paragraph 3 of Article 10 the support from the Instrument shall not exceed 35 % of the eligible costs.
3. An action shall be eligible for an increased funding rate or may amount to an increased cap of 10 additional percentage points where it fulfils one of the following criteria:
 - (a) Where the action is developed in the context of a European Defence Consortium (EDC), as referred to in Chapter IV of this Regulation;
 - (b) where the beneficiary is an SME or mid-cap established in a Member State or in an associated country or where the majority of beneficiaries participating in a consortium are SMEs or mid-caps established in Member States or in associated countries.
4. The increased funding rate or increased cap referred to in paragraph 3 shall be fixed at 10 additional percentage points even in the event that more than one of the criteria set out in points (a) to (d) of that paragraph are met.
5. The consortium shall demonstrate that the costs of an action that are not covered by Union support are to be covered by other means of financing, such as by Member States' or associated countries' contributions or co-financing from legal entities.
6. Additional financial resources as referred to in paragraph 1 and 2 of Article 6 may be used to cover the remaining costs of the action.

Article 17

Work Programme

1. The Instrument shall be implemented by the work programmes referred to in Article 110 of the Financial Regulation. 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 XYZ [Comitology].

CHAPTER III

DEFENCE READINESS INVESTMENT FRAMEWORK

Article 18

Fund to Accelerate defence Supply chains Transformation (FAST)

1. In order to leverage, de-risk and speed-up investments needed to increase the defence manufacturing capacities of EU-based SMEs and mid-caps, a facility offering debts and/or equity solutions may be established (Fund to Accelerate Supply-chains' Transformation (FAST)).
2. The specific objectives pursued by this facility shall be the following:
 - (a) improving the leverage effect of the Union budget spending and achieving a higher multiplier effect in terms of attracting both public and private-sector financing;
 - (b) providing support to SMEs (including start-ups and scale ups) and midcaps across the EU, manufacturing defence technologies and products as well as companies actually or potentially part of the defence industry's supply chain, facing difficulties in accessing finance;
 - (c) accelerating investment in the field of manufacturing defence technologies and products, and therefore strengthening the security of supply of the Union's defence industry value chains.

CHAPTER IV

EUROPEAN ARMAMENT PROGRAMME (EAP)

Article 19

Specific objective and activities of EDC

1. An EDC shall foster the competitiveness of the European defence technological and industrial base by defragmenting the demand for one or several defence products throughout their lifecycle.
2. To reach this objective, the principal tasks of an EDC shall be:
 - (a) the joint procurement of defence products, technologies or services, including defence R&D, testing and certification, non-recurrent investments related to initial production or in-service support;
 - (b) the joint lifecycle management of defence products, including the procurement of spare parts, logistic services and, where appropriate, establishment of public private partnerships to ensure efficiency and high availability of defence products;
 - (c) the dynamic availability management for additional quantities, ensuring immediate and preferential purchase or use/lease option for Member States, associated countries and Ukraine (Defence Industrial Readiness Pool).

Article 20

Requirements relating to the establishment of a EDC

1. An EDC shall meet the following requirements:
 - (a) An EDC shall address one of the capability priorities commonly agreed by Member States within the framework of the Common Foreign and Security Policy (CFSP);
 - (b) An EDC shall be established by at least three Member States or associated countries;
 - (c) An EDC shall continue the lifecycle of the defence product or technology, until its decommissioning.
2. EDC shall use standardised procedures for initiating and managing cooperative defence programmes, including the use of partially standardised MoUs provided for by the Commission and clear guidelines on project management, funding, and reporting. They shall also apply a common system of remuneration and pensions and follow the rules of the Co-ordinated Organisations or use their recommendations as a benchmark.

Article 21

Application for the establishment of an EDC

1. The Member States applying for the setting-up of an EDC (hereinafter referred to as applicants) shall submit an application to the Commission. The application shall be submitted in writing in one of the official languages of the institutions of the Union and shall contain the following:
 - (a) a request to the Commission to set up the EDC;
 - (b) the proposed Statutes of the EDC referred to in Article XYZ, signed and adopted in due form by all legal entities party to the proposed EDC;
 - (c) a description of the defence equipment, technology or service to be jointly procured and managed by the EDC, addressing in particular the requirement set out in Article XYZ;
 - (d) a declaration by the host Member State recognising the EDC as an international body in the sense of Articles 143(g) and 151(1)(b) of Directive 2006/112/EC and as international organisation in the sense of the second indent of Article 23(1) of Directive 92/12/EEC, as of its setting up. The limits and conditions of the exemptions provided for in these provisions shall be laid down in an agreement between the members of the EDC.
2. The Commission shall assess the application in line with the requirements laid down in this Regulation. The result of such assessment shall be communicated to the applicants who shall, if necessary, be invited to complete or amend the application.
3. The Commission shall, taking into account the results of the assessment referred to in paragraph 2 and in accordance with the procedure referred to in Article XYZ, adopt an implementing act:
 - (a) setting up the EDC after it has satisfied itself 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) (d).
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 decision setting up the EDC shall be published in the L series of the *Official Journal of the European Union*.

Article 22

Status and seat of a EDC

1. An EDC shall have legal personality as from the date on which the decision setting up the EDC takes effect.
2. An EDC shall have in each Member State the most extensive legal capacity accorded to legal entities under the law of that Member State. It may, in particular conclude contracts and be a party to legal proceedings. All Member State national funding agencies should consider it (and their national nodes) eligible for funding.

3. An EDC shall have a statutory seat, which shall be located on the territory of a member which shall be a Member State or an associated country.

Article 23

Requirements for membership

1. The following entities may become members of an EDC:
 - (a) Member States;
 - (b) Associated countries;
 - (c) Ukraine.
2. Member States or associated countries may join as members at any time on fair and reasonable terms specified in the Statutes and as observers without voting rights on conditions specified in the Statutes.
3. An EDC may also cooperate with third parties, including by using the assets, infrastructure, facilities and resources, provided that this does not contravene the security and defence interests of the Union and its Member States.

Article 24

Statutes

1. The Statutes of an EDC shall contain at least the following:
 - (a) a list of members and, where applicable, of entities representing members and the conditions of and the procedure for changes in membership and representation in compliance with Article 24;
 - (b) the specific objective, the tasks and activities of the EDC, in compliance with Article XYZ;
 - (c) the statutory seat in compliance with Article;
 - (d) the name of the EDC;
 - (e) the duration, and the procedure for the winding-up in compliance with Article XYZ;
 - (f) the liability regime, in compliance with Article XYZ;
 - (g) the rights and obligations of the members, including the obligation to make contributions to a balanced budget and voting rights;
 - (h) the bodies of the members, their roles and responsibilities and the manner in which they are constituted and in which they decide, including upon the amendment of the Statutes, in compliance with Articles XYZ,
 - (i) the identification of the working language(s);
 - (j) references to rules implementing the Statutes;
 - (k) the security policy for handling classified information.
2. In addition, where the Members of an EDC decide to use this possibility, the statutes shall include the rules governing the management of the additional quantities referred

to in point (3) of Article 20, including, where relevant, a common approach to export.

Article 25

Amendment of the statutes

1. Any amendment of the Statutes concerning the matters referred to in points (a) to (f) of Article ZZ+6 shall be submitted to the Commission by the EDC for approval. Such amendment shall not take effect before the decision granting approval has come into force. The Commission shall apply Articles ZZ+2(2), *mutatis mutandis*.
2. Any amendment of the Statutes other than that referred to in paragraph 1 shall be submitted to the Commission by the EDC within 10 days after its adoption.
3. The Commission may raise an objection to such amendment within 60 days from the submission giving reasons why the amendment does not meet the requirements of this Regulation.
4. The amendment shall not take effect before the period for objecting has expired or has been waived by the Commission or before an objection raised has been lifted.
5. The application for the amendment shall contain the following:
 - (a) the text of the amendment proposed or, where appropriate, as adopted, including the date on which it enters into force;
 - (b) the amended consolidated version of the Statutes.

Article 26

Specific conditions on procurement

1. An EDC may appoint a Procurement Agent which will act in its name.
When procuring for an EDC, the Procurement Agent shall be bound by the same rules than the concerned EDC.
2. Where it procures a defence product or service on its own behalf, an EDC shall be considered as an international organisation purchasing for its purposes within the meaning of Article 12(c) of Directive 2009/81/EC.
3. Where it procures a defence product or service on behalf of its members, by derogation to Article 10 of Directive 2009/81/EC, an EDC shall define its own rules respecting the principles of transparency, non-discrimination and competition.
In order to ensure consistency of procurement policies of EDC and hence simplify joint procurement in their context, the Commission shall be empowered to adopt a delegated act, in accordance with article XYZ [Exercise of the delegation] by [30 June 2026] to supplement this Regulation by laying down the conditions and procedures applicable to EDC procuring on behalf of its members.
4. Procurements of an EDC need to comply with the requirements set out in paragraphs 3 to 6 of Article 11 [EDIRPA+].

Article 27

Liability and insurance

1. An EDC shall be liable for its debts.
2. The financial liability of the members for the debts of the EDC shall be limited to their respective contributions provided to the EDC. The members may specify in the Statutes that they will assume a fixed liability above their respective contributions or unlimited liability.
3. If the financial liability of the members is not unlimited, the EDC shall take appropriate insurance to cover the risks specific to the establishment and management of the capability.
4. The Union shall not be liable for any debt of the EDC.

Article 28

Applicable law and jurisdiction

1. The setting-up and internal functioning of an EDC shall be governed by:
 - (a) by Union law, in particular this Regulation, and the decisions referred to in Article 22 (3) (a)
 - (b) by the law of the State where the EDC has its statutory seat in the case of matters not, or only partly, regulated by acts referred to in point (a);
 - (c) by the Statutes and their implementing rules.
2. The Court of Justice of the European Union shall have jurisdiction over litigation among the members in relation to the EDC, between the members and the EDC and over any litigation to which the European Union is a party.
3. European Union legislation on jurisdiction shall apply to disputes between an EDC and third parties. In cases not covered by European Union legislation, the law of the State where the EDC has its statutory seat shall determine the competent jurisdiction for the resolution of such disputes.

Article 29

Winding up and insolvency

1. The Statutes shall determine the procedure to be applied in the case of winding-up of the EDC following a decision of the assembly of members or in case the Commission repeals the decision establishing the EDC, as referred to in Article 22(6). Winding-up may include the transfer of activities to another legal entity.
2. Without undue delay after the adoption of a decision by the assembly of members to wind up, and in any event within 10 days after such adoption, the EDC shall notify the Commission thereof. The Commission shall publish an appropriate notice in the C series of the Official Journal of the European Union.
3. Without undue delay after the closure of the winding-up procedure, and in any event within 10 days after such closure, the EDC shall notify the Commission thereof. The

Commission shall publish an appropriate notice in the C series of the Official Journal of the European Union. The EDC shall cease to exist on the day of publication of the notice.

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

Article 30

Reporting and control

1. An EDC shall produce an annual activity report, containing a technical description and a financial report of its activities referred to in Article 20. It shall be transmitted to the Commission, within six months from the end of the corresponding financial year.
2. The Commission may provide recommendations regarding the matters covered in the annual activity report.
3. An EDC and the Member States concerned shall inform the Commission of any circumstances which threaten to seriously jeopardise the achievement of the task of the EDC or to hinder the EDC from fulfilling the requirements laid down in this Regulation.
4. Where the Commission obtains indications that an EDC is acting in serious breach of this Regulation, the decisions adopted on the basis thereof or other applicable law, it shall request explanations from the EDC and/or its members.
5. If the Commission concludes, after having given the EDC and/or its members a reasonable time to provide their observations, that the EDC is acting in serious breach of this Regulation, the decisions adopted on the basis thereof or other applicable law, it may propose remedial action to the EDC and its members.
6. If no remedial action is taken, the Commission may repeal the decision establishing the EDC in accordance with the procedure referred to in Article XYZ[Implementing Act]. Such decision shall be notified to the EDC and be published in the L series of the Official Journal of the European Union. This shall trigger the winding-up of the EDC.

CHAPTER V

SECURITY OF SUPPLY

Section 1

Preparedness

Article 31

Support to procurement from the EDTIB

1. In order to ensure the security interests of Member States in times of crisis, the Commission shall be empowered to adopt a delegated act, in accordance with article XYZ [exercise of delegation] to supplement this Regulation by laying down the rules and conditions governing the modification of public contracts, including framework agreements, falling within the scope of Directive 2009/81/EC, so that their provisions may apply to contracting authorities/entities which are not originally party to the public contract.
2. Where at least two Member States enter into an agreement to commonly procure defence products and where the extreme urgency deriving from the crisis resulting from Russia's war of aggression against Ukraine prevents the use of any of the procedures provided for by Directive 2009/81/EC for the conclusion of a framework agreement, the rules provided for in paragraphs 2 to 6 may be applied.
3. By way of derogation from Article 29(2), second subparagraph, of Directive 2009/81/EC, a contracting authority/entity may modify an existing framework agreement with an undertaking which complies with the provisions laid out in paragraphs 1 and 2 of Article 10 which has been concluded following one of the procedures provided for by Article 25 of that Directive so that its provisions may apply to contracting authorities/entities which are not originally party to the framework agreement.
4. By way of derogation from Article 29(2), third subparagraph, of Directive 2009/81/EC, a contracting authority/entity may make substantial amendments to the quantities laid down in an existing framework agreement with an undertaking[which complies with the provisions laid out in paragraphs 1 and 2 of Article 10 insofar as that is strictly necessary for the application of paragraph 2 of this Article. Where quantities laid down in an existing framework agreement are substantially modified pursuant to this paragraph, any economic operator that meets the contracting authority's/entity's conditions initially laid down in the public procurement procedure for the framework agreement, including requirements for qualitative selection as referred to in Articles 39 to 46 of Directive 2009/81/EC, and which complies with the provisions laid out in paragraphs 1 and 2 of Article 10 shall be given the opportunity to join that framework agreement. The contracting authority/entity shall open that possibility by means of an ad hoc notice published in the Official Journal of the European Union.
5. The principle of non-discrimination shall apply to contracts and framework agreements referred to in paragraphs 2 and 3 with regard to the additional quantities,

and particularly to the relationships between contracting authorities/entities of Member States referred to in paragraph 1.

6. Contracting authorities/entities which modified a contract in the cases referred to in paragraphs 2 and 3 of this Article shall publish a notice to that effect in the Official Journal of the European Union. Such notice shall be published in accordance with Article 32 of Directive 2009/81/EC.
7. Contracting authorities/entities may not use the possibility provided for in paragraph 3 and 4 improperly or in such a way as to prevent, restrict or distort competition.
8. Modifications introduced in the framework agreements pursuant to this Article shall be concluded by 31 December 2027.

Article 32

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

1. Member States shall ensure that administrative applications related to the planning, construction and operation of production facilities, transfer of inputs within the Union as well as qualification and certification of 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 relevant defence products are given priority when balancing legal interests in the individual case concerned.

Section 2

Supply chain surveillance and monitoring

Article 32

Mapping of defence supply-chains

1. The Commission shall carry out a mapping of the Union's defence supply-chains, in cooperation with the Defence Industrial Readiness Board.
2. The Defence Industrial Readiness Board shall draw up a list of defence products which are critical for the security and defence interests of the Union and of its Member States, in particular the reinforcement of Member States defence capabilities and the readiness of the EDTIB (key defence products). This list shall be updated on a regular basis, at least every year.
3. The Commission shall, after consulting the Defence Industrial Readiness Board, develop a framework and methodology for the identification of the products, components, raw materials necessary for the supply of the defence products identified in accordance with paragraph 1 (crisis-relevant products) as well as their related manufacturing capacities in the Union.
4. The Commission shall identify the crisis-relevant products, taking into account the advice and opinions of the Defence Industrial Readiness Board. This identification

shall provide an analysis of the Union's strengths and weaknesses of the supply chains of crisis-relevant products.

To do so, the Commission shall use, inter alia, publicly and commercially available data and relevant non-confidential information from undertakings, the result of similar analysis performed, including in the context of Union law on raw materials and renewable energy, as well as the evaluations carried out pursuant to Article XYZ. Where this is not enough to identify the crisis-relevant products, the Commission may issue voluntary information requests to relevant actors involved in the concerned value chains and based in the Union, after consulting the Defence Industrial Readiness Board.

5. The Commission shall, by means of implementing acts, draw up and regularly update a list of crisis-relevant products.
6. The Commission shall inform the Defence Industrial Readiness Board of the aggregate results of the activities carried out pursuant to paragraph 4 on a regular basis.
7. The Commission shall, on the basis of the outcome of the activities carried out pursuant to paragraph 4 and after consulting the Defence Industrial Readiness Board, develop a list of early warning indicators. The Commission, after consulting the Defence Industrial Readiness Board, shall review the list of early warning indicators on a regular basis, at least every two years.
8. Implementing acts referred to in paragraph 4 shall be adopted in accordance with the examination procedure referred to in Article XYZ.
9. Any information obtained pursuant to this Article shall be treated in compliance with the confidentiality obligations set out in Article XYZ.
10. This Article shall be without prejudice to the protection of Member States' essential security interests, as referred to in Article 346 TFEU (1) (a).

Article 33

Monitoring

1. The Commission, in consultation with the Defence Industrial Readiness Board, shall carry out regular monitoring of the Union's manufacturing capacities necessary for the supply of crisis-relevant products, identified in accordance with paragraph 4 of Article 32, with a view to identifying factors that may disrupt, compromise or negatively affect the supply of the key defence products they contribute to provide. For the purposes of this Regulation, the monitoring shall consist of the following activities:
 - (a) monitoring of early warning indicators identified pursuant to Article XYZ (identification);
 - (b) monitoring by Member States of the integrity of activities carried out by the key market actors identified pursuant to Article XYZ and reporting by Member States on major events that may hinder the regular operations of such activities;
 - (c) identifying best practices for preventive risk mitigation and increased transparency of the Union's manufacturing capacities necessary for the supply of crisis-relevant products.

The Commission, after consulting the Defence Industrial Readiness Board, shall define the frequency of the monitoring.

2. The Commission shall pay particular attention to SMEs to minimise administrative burden resulting from the information collection.
3. The Commission may invite, after consulting the Defence Industrial Readiness Board, key market actors, 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 key market actors where necessary and proportionate.
5. For the purposes of paragraph 3 national competent authorities shall establish and maintain a list of contacts of all relevant undertakings contributing effectively or potentially to the supply of the key defence products, which are established in their territory. That list shall be transmitted to the Commission. The Commission shall provide for a standardised format for the list of contacts with a view to ensuring interoperability.
6. Without prejudice to their essential security interests and the protection of commercially confidential information resulting from agreements entered into by Member States, Member States shall, where appropriate, provide the Defence Industrial Readiness Board with any additional relevant information, in particular on the potential or future adoption at national level measures for the procurement, purchase or manufacturing of crisis-relevant products.
7. On the basis of the information collected through the activities under paragraph 1, the Commission shall provide a report of the aggregated findings to the Defence Industrial Readiness Board in the form of regular updates. The Defence Industrial Readiness Board shall meet to assess the results of the monitoring. Where relevant, the co-chairs of the Defence Industrial Readiness Board may invite national defence industrial associations, key market actors, and experts from academia and civil society to such meetings.
8. This article is without prejudice to the protection of Member States' essential security interests as referred to in Article 346 TFEU (1) (a).

Article 34

Key market actors

1. Member States shall, in cooperation with the Commission, identify key market actors involved in the supply of crisis-relevant products established in their territory, taking into account the following elements:
 - (a) the Union or global market share of the key market actor in the market for that product;
 - (a) the importance of a market actor in maintaining a sufficient level of supply of a product in the Union, taking into account the availability in the Union of alternative means for the provision of that product;

- (b) the impact a disruption of supply of the product provided by the market actor may have on the supply of crisis-relevant products.
- 2. Member States shall report on major events that may hinder the regular operations of the activities as referred to in paragraph 1.

Section 2

Supply crisis stage

Article 35

Alerts and preventive action

- 1. Where a national competent authority becomes aware of a risk of serious disruption of a crisis-relevant products or has concrete and reliable information of any other relevant risk factor or event materializing affecting the supply of a supply-critical defence product, it shall alert the Defence Industrial Readiness Board without undue delay.
- 2. Where the Defence Industrial Readiness Board or the Commission become aware of a risk of serious disruption of a supply-critical defence product or has concrete and reliable information of any other relevant risk factor or event materializing affecting the supply of a supply-critical defence 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) convening an extraordinary meeting of the Defence Industrial Readiness Board to coordinate the following actions:
 - (1) discuss the severity of the disruptions to the availability and supply of the concerned crisis-relevant products;
 - (2) recommend to the Commission to initiate action in accordance with Chapter II of this Regulation;
 - (3) discuss approaches of the national competent authorities, including to assess the state of preparedness of the key market actors;
 - (4) 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;
 - (5) propose the activation of measures referred to in Articles XYZ to XYZ where necessary and proportionate.
 - (b) on behalf of the Union, enter into consultations or cooperation with relevant third countries and international organisations with a view to seeking cooperative solutions to address supply-chain disruptions, in compliance with international obligations, which may involve, where appropriate, carrying out coordination in relevant international fora.

Activation of the supply crisis stage

1. A supply crisis shall be considered to occur where:
 - (a) there are serious disruptions in the provision of a crisis-relevant product, which are not defence products, or serious obstacles to trade in such products within the Union causing their significant shortages; and
 - (b) such significant shortages prevent the supply, repair or maintenance of defence products to the extent that it would have serious detrimental effect on the functioning of the Union's defence supply chains to their impact on society, economy and security of the Union.
2. Where the Commission or the Defence Industrial Readiness Board become aware of a potential supply crisis pursuant to Article XYZ [alerts and preventive actions], the Commission shall assess whether the conditions of paragraph 1 of this Article are met. That assessment shall take into account the potential positive and negative impacts and consequences of the supply crisis stage on the Union's defence supply chains. Where that assessment provides concrete and reliable evidence, the Commission may, after consulting the Defence Industrial Readiness Board, propose to the Council to activate the supply crisis stage.
3. The Council, acting by qualified majority, may activate the supply crisis stage by means of a Council implementing act. The duration of the crisis stage shall be specified in the implementing act and it shall not exceed 12 months.

The Commission shall report on a regular basis and in any event at least every three months to the Council and to the European Parliament on the state of the crisis.
4. Before the expiry of the duration for which the supply crisis stage was activated, the Commission shall assess whether it is appropriate to prolong the supply crisis stage. Where such assessment provides concrete and reliable evidence that the conditions for the activation of the supply crisis stage are still met, and after consulting the Defence Industrial Readiness Board, the Commission may propose to the Council to prolong the supply crisis stage.
5. The Council, acting by qualified majority, may prolong the supply crisis stage by means of a Council implementing act. The duration of the prolongation shall be limited and specified in the Council implementing act.
6. The Commission may propose prolonging the supply crisis stage once or more frequently where duly justified.
7. During the supply crisis stage, the Commission shall, after consulting the Defence Industrial Readiness Board, assess the appropriateness of an early termination of the crisis stage. If the assessment indicates so, the Commission may propose to the Council to terminate the crisis stage.
8. The Council may terminate the supply crisis stage by means of a Council implementing act.
9. During the crisis stage, the co-chairs of the Board shall, upon request from a Member State or on their own initiative, convene extraordinary meetings of the Defence Industrial Readiness Board where necessary. Member States shall work closely with the Commission, inform in a timely manner about and coordinate any national

measures taken with regard to the concerned defence supply chain within the Defence Industrial Readiness Board.

10. Upon expiry of the period for which the supply crisis stage is activated or in the event of its early termination pursuant to paragraph 5 of this Article, the measures taken in accordance with Articles XYZ, XYZ and XYZ shall cease to apply immediately.
11. The Commission shall update the mapping and the monitoring of the Union's critical defence supply chains pursuant to Articles XYZ and XYZ taking into account the experience from the crisis no later than six months after the expiry of the duration of the crisis stage.

Article 37

Supply-crisis emergency toolbox

1. Where the supply crisis stage is activated pursuant to Article XYZ and where necessary in order to address the supply crisis in the Union, the Commission may take the measure provided for in Article XYZ, XYZ or XYZ, under the conditions laid down therein.
These measures cannot concern defence products.
2. The Commission shall, after consulting the Defence Industrial Readiness Board, restrict the application of the measures provided for in Articles XYZ and XYZ to the crisis-relevant products disturbed or under threat of disturbance on account of the supply crisis. The use of the measures referred to in paragraph 1 of this Article shall be proportionate and restricted to what is necessary for addressing serious disruptions affecting the supply chains of the crisis-relevant products in the Union and must be in the best interest of the Union. The use of those measures shall avoid placing disproportionate administrative burden in particular on SMEs.
3. Where the supply crisis stage is activated pursuant to Article XYZ and where appropriate in order to address the supply crisis in the Union, the Defence Industrial Readiness Board may assess and advise on appropriate and effective emergency 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 decision.
5. The Commission may, after consulting the Defence Industrial Readiness Board, issue guidance on the implementation and the use of the emergency measures.

Article 38

Information gathering

1. Where the supply crisis stage is activated pursuant to Article XYZ, the Commission may request the relevant undertakings contributing to the production of crisis-relevant products, with the prior agreement of the Member State in which it is established, to provide information about their production capabilities, production capacities and current primary disruptions within a set time limit. The requested

information shall be limited to what is necessary to assess the nature of the supply crisis or to identify and assess potential mitigation or emergency measures at Union or national level. The information requests shall not entail the supply of information the disclosure of which would be contrary to the Member States' national security interests.

2. Before launching a request for information, the Commission may carry out a voluntary consultation of a representative number of relevant undertakings with a view to identifying the appropriate and proportionate content of such a request. The Commission shall develop the request for information in cooperation with the Defence Industrial Readiness Board.
3. The Commission shall use the secure means and handle any acquired information in accordance with Article XYZ to launch the request for information. For this purpose, national competent authorities shall transmit to the Commission the list of contacts established under Article XYZ.
4. The Commission shall without delay forward a copy of the request for information to the national competent authority of the Member State in whose territory the production site of the addressed undertaking is situated. If the national competent authority so requires, the Commission shall transmit the information acquired from the relevant undertaking in accordance with Union law.
5. The request for information shall state its legal basis, be limited to the minimum necessary and be proportionate in terms of the granularity and volume of the data and frequency of access to the data requested, have regard for the legitimate aims of the undertaking and the cost and effort required to make the data available, and set out the time limit within which the information is to be provided. It shall also state the penalties provided for in Article XYZ.
6. The owners of the undertakings or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution shall supply the information requested on behalf of the undertaking or the association of undertakings concerned.
7. If an undertaking established in the Union is subject to a request for information from a third country, related to its activities for a Union's critical defence supply chain, it shall inform the Commission, in due time, in such a manner as to enable the Commission to request similar information from the undertaking. The Commission shall inform the Defence Industrial Readiness Board of the existence of such request from a third country.
8. If an undertaking 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 XYZ, except where the undertaking has sufficient reasons for not supplying the requested information.

Article 39

Priority-rated orders

1. Where the crisis stage is activated pursuant to Article XYZ, a Member State, which faces or may face severe difficulties either in the placing of an order or in the

execution of a contract for the supply of defence products due to shortages or serious risks of shortages along a Union's critical defence supply chain, may request the Commission to require an undertaking to accept, or to prioritise an order of crisis-relevant products ('priority rated order').

2. Upon such request, the Commission may, after the consultation of the Member State of establishment of the concerned undertaking and with its agreement, notify the latter of its intent to impose a priority rated order.

The notification of the intent shall include information about its legal basis, specify the product, specifications and quantities concerned and the schedule and time-limit within which the order would have to be performed, and state the reasons justifying the use of the priority rated order.

From the notification of the intent, the undertaking shall reply to the Commission, within five working days and state whether it can accept or not the order. Where the urgency of the situation requires it, the Commission may, based on a justification of such urgency, reduce the deadline for the undertaking to reply.

Where the undertaking declines the order, it shall provide the Commission with a detailed explanation to the justification invoked to decline the intended order.

Where the undertaking accepts the order, the order shall be deemed accepted under the conditions described in the Commission's order in accordance with the meaning of paragraph 1 and the undertaking shall be legally bound.

3. Where the notified undertaking declines the order, the order shall be deemed refused. Having due regard to the justifications invoked by the undertaking, the Commission may, in agreement with the Member State of establishment of that undertaking:

- (a) abstain from pursuing the order;
- (b) adopt an Implementing Act obliging the concerned undertakings to accept or perform the priority rated order, at a fair and reasonable price.

4. The Commission shall take into account the objections raised by the undertaking under paragraph 2 and state the reasons why, in line with the proportionality principle and the fundamental rights of the undertaking under the Charter of Fundamental rights of the Union, it was necessary to adopt it in light of the circumstances described in paragraph 1.

The Commission shall state in the Implementing Act the legal basis of the priority rated order, fix the time-limit within which the order is to be performed, and set out the product, specifications, volume, and any other parameter to be complied. The Commission shall also state the penalties provided for in Article 15 for non-compliance with the obligation.

5. Where the undertaking has accepted the order of the Commission under paragraph 2 or where the Commission has adopted an Implementing Act under paragraph 3, the priority rated order 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 orders vis-à-vis existing contractual obligations;

- (b) take precedence over any performance obligation under private or public law with the exception of these directly related to Member States' military orders or orders for export.
6. Where the undertaking has agreed to the order of the Commission under paragraph 2 or where the Commission has adopted an Implementing Act under paragraph 3, the undertaking may request the Commission to review the priority rated order where it considers it to be duly justified based on one of the following grounds:
- (a) if the undertaking is unable to perform the priority rated order on account of insufficient production capability or production capacity, even under preferential treatment of the order;
- (b) if acceptance of the order would place an unreasonable economic burden and entail particular hardship for the undertaking.
- The undertaking shall provide all relevant and substantiated information to allow the Commission to assess the merits of the objections raised.
- Based on the examination of the reasons and evidence provided by the undertaking, the Commission may, after consulting the Member State of establishment, amend its implementing Act to release, partially or in totality the undertaking concerned from its obligations under paragraph 2.
7. This article is without prejudice to the use of national mechanisms or initiatives delivering an equivalent effect.
8. When an undertaking established in the Union is subject to a measure of a third country which entails a priority rated order, it shall notify the Commission thereof. The Commission shall then inform the Committee of the existence of such measures.
9. Where an undertaking accepts or is obliged to accept and prioritise a priority rated order in accordance with paragraphs 2 or 3 it shall be shielded from any contractual or extra-contractual liability in relation to comply with the priority rated requests. The liability shall be excluded only to the extent the violation of contractual obligations was necessary for compliance with the mandated prioritisation.
10. Where an economic operator, after having expressly accepted or been obliged to accept 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 XYZ, except where the undertaking has sufficient reasons for not complying with the obligation to prioritise those orders.
11. The Commission shall adopt an implementing act laying down the practical and operational arrangements for the functioning of priority rated requests.
12. The implementing acts referred to in paragraphs 3 and 10 shall be adopted in accordance with the examination procedure referred to in Article 22 (3).

Article 40

Joint purchasing

1. Where the crisis stage is activated pursuant to Article XYZ, the Commission may, upon the request of two or more Member States, act as a central purchasing body on behalf of all Member States willing to participate (participating Member State) for

their public procurement of crisis-relevant products (common purchasing). Participation in the common purchasing shall be without prejudice to other procurement procedures. The request for common purchasing shall set out reasons on which it is based and shall be used exclusively to address disruptions along one of the Union's critical defence supply-chain leading to the crisis.

2. The Commission shall assess the utility, necessity and proportionality of the request, taking into account the views of the Defence Industrial Readiness Board. Where the Commission intends not to follow the request, it shall inform the Member States concerned and the Defence Industrial Readiness Board and give reasons for its refusal.
3. The Commission shall draw up a proposal for an agreement to be signed by the participating Member States. Such an agreement shall organise in detail the common purchasing referred to in paragraph 1, including reasons for the use of the common purchasing mechanism and liabilities to be assumed, and establish the mandate for the Commission to act on behalf of the participating Member States.
4. Procurement under this Regulation shall be carried out by the Commission in accordance with the rules set out in Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council for its own procurement, and in particular according to paragraph 3 of Article 169 thereof. The Commission may have the ability and responsibility, on behalf of all participating Member States, to enter into contracts with economic operators, including individual producers of crisis-relevant products, concerning the purchase of such products or concerning the financing of the production or the development of such products in exchange for a priority right to the result.
5. Where the procurement of crisis-relevant product includes financing from the Union budget, specific conditions may be set out in specific agreements with economic operators.
6. The Commission shall carry out the procurement procedures and conclude the contracts with economic operators on behalf of the participating Member States. The Commission shall invite the participating Member States to appoint representatives to take part in the preparation of the procurement procedures. The deployment, use or resale of the purchased products shall remain the responsibility of the participating Member States, in accordance with the agreement referred to in paragraph 3.
7. The deployment of common purchasing pursuant to this Article shall be without prejudice to other instruments provided for in the Financial Regulation.

Section 3

Security-related supply crisis stage

Article 41

Activation of the security-related supply crisis stage

1. A security-related supply crisis shall be considered to occur where:
 - (a) A security crisis has arisen or is deemed to have arisen;

- (b) there are serious disruptions in the provision of a crisis-relevant products or serious obstacles to trade in defence products within the Union causing significant shortages of key defence products or related intermediate products or raw or processed materials.
2. Where a security-related supply crisis occurs or where the Commission or the Defence Industrial Readiness Board becomes aware of a potential security-related supply crisis pursuant to Article XYZ [alerts and preventive actions], the Commission shall assess, with the support of the High-Representative, whether the conditions of paragraph 1 of this Article are met. That assessment shall take into account the potential positive and negative impacts and consequences of the security-related supply crisis stage on the Union's defence supply chains. Where that assessment provides concrete and reliable evidence, the Commission may, after consulting the Defence Industrial Readiness Board, propose to the Council to activate the security-related supply crisis stage.
 3. The Council, upon the proposal of the Commission, may adopt a Regulation activating the security-related supply crisis stage where that is appropriate to the economic situation, taking into account the need to ensure a high level of security of the Union, Member States and European citizens.
 4. The Council shall set out in the regulation activating the emergency framework which of the measures set out in Articles XYZ to XYZ are appropriate to the economic situation, taking into account the need to ensure a high level of security of the Union, Member States and European citizens, and which measures are therefore to be activated
 5. The security-related supply crisis stage shall be activated for a maximum period of twelve months. No later than three weeks before the expiry of the period for which the emergency framework was activated, the Commission with the support of the High-Representative shall submit to the Council a report, drawn up in consultation with the Defence Industrial Readiness Board, assessing whether that period should be prolonged. The report shall in particular analyse the security situation and the economic consequences of the security crisis in the Union as a whole and in Member States, as well as the impact of the measures previously activated under this Regulation.
 6. The Commission may propose prolongation to the Council, specifying which of the measures are appropriate for prolongation, when the assessment referred to in paragraph 4 concludes that it is appropriate that the period for which the security-related supply crisis stage is activated be prolonged. The prolongation shall be for up to six months. The Council may repeatedly decide to prolong the period for which the security-related supply crisis stage is activated where that is appropriate in view of the economic situation, taking into account the need to ensure a high level of security of the Union, Member States and European citizens.
 7. The Commission, after consulting the Defence Industrial Readiness Board, may propose to the Council to adopt a regulation activating additional measures or deactivating any activated measures set out in Articles XYZ to XYZ, in addition to those measures that it had already activated, where that is appropriate in view of the economic situation, taking into account the need to ensure a high level of security of the Union, Member States and European citizens.

8. Upon expiry of the period for which the security-related supply crisis stage is activated, the measures taken in accordance with Articles XYZ to XYZ shall cease to apply.
9. Where the Council activates one or several measures set out in Articles XYZ to XYZ in accordance with this Article, the Defence Industrial Readiness Board shall ensure coordination of action by the Council, the Commission, the relevant Union bodies, offices and agencies and Member States to ensure the supply of and access to crisis-relevant products.
10. The Defence Industrial Readiness Board shall assist and provide guidance to the Commission in the preparation and implementation of measures to be taken pursuant to Articles XYZ to XYZ.
11. In the course of the preparation and implementation of the measures set out in Articles XYZ to XYZ, the Commission shall act in close coordination with the Defence Industrial Readiness Board. In particular, the Commission shall consult the Defence Industrial Readiness Board in a timely manner, whenever possible before taking action, and shall take the utmost account of the result of deliberations within the Defence Industrial Readiness Board. The Commission shall report back to the Defence Industrial Readiness Board on the action taken.
12. The Defence Industrial Readiness Board shall meet whenever the situation requires, upon request from the Commission or a Member State.
13. Where the security-related supply crisis stage is activated, the Commission may take the measure provided for in Article XYZ, XYZ or XYZ, under the conditions laid down therein and in Article XYZ [Emergency toolbox].
14. For the purpose of the application of Article XYZ [Joint Purchasing] where the security-related supply crisis stage is activated, the Commission may also procure defence products, insofar they do not constitute *per se* weapons, the following simplifications of procurement procedures may be used when duly justified by the extreme urgency of the security crisis or when strictly necessary in order to adapt to unforeseen circumstances in the evolution of the security-related supply crisis:
 - (c) by way of derogation from Article 137 of Regulation (EU, Euratom) 2018/1046, possibility to provide, after the signature of the contract, proof or evidence on exclusion and selection criteria, provided that a declaration on honour has been submitted in that regard before the award;
 - (d) by way of derogation from Article 172(2) of Regulation (EU, Euratom) 2018/1046, the Commission may modify the contract as necessary to adapt it to the evolution of the security-related supply crisis;
 - (e) by way of derogation from Article 165 of Regulation (EU, Euratom) 2018/1046, possibility to add, after the signature of the contract, contracting authorities that are not identified in procurement documents;
 - (f) by way of derogation from Article 172(1) of Regulation (EU, Euratom) 2018/1046, the contracting authorities shall be entitled to request the delivery of goods or services from the date on which the draft contracts resulting from the procurement carried out for the purposes of this Regulation are sent, which shall be no later than 24 hours as from the award.

Article 42

Information gathering

Where this measure is activated, the Commission may take the measure provided for in Article XYZ [Information gathering] in relation to defence products in accordance with the conditions defined therein.

Article 43

Prioritisation of defence products (Priority Rated Requests)

1. Where this measure is activated, a Member State, which faces or may face severe difficulties either in the placing of an order or in the execution of a contract for the supply of defence products due to shortages or serious risks of shortages of crisis-relevant products and these difficulties may undermine the security of the Union and of its Member States, may ask the Commission to require an undertaking to accept, or to prioritise certain requests for the production of crisis-relevant products ('priority rated requests'). These requests may only concern defence products.
2. Upon such request, the Commission may, after the consultation of the Member State of establishment of the concerned undertaking and with its prior agreement, require the latter to accept, or to prioritise the priority rated requests. The Commission's request shall explicitly indicate that the economic operator remains free to refuse the request.
3. Where the undertaking to which the request referred to in paragraph 1 is addressed has expressly accepted the request to prioritise the requests, the Commission shall, after the consultation of the Member State of establishment of the concerned undertaking and with its prior agreement, adopt an implementing act providing for:
 - (a) the legal basis of the priority rated requests which has to be complied with by the undertaking;
 - (b) the crisis-relevant products subject to the priority rated request and quantity in which they are to be supplied;
 - (c) the time limits within which the priority rated request is to be completed;
 - (d) the beneficiaries of the priority rated request, and
 - (e) the waiver of contractual liability under the conditions laid down in paragraph 5.
4. The priority rated requests shall be placed at a fair and reasonable price adequately taking into account the economic operator's opportunity costs when fulfilling the priority rated requests vis-à-vis existing contractual obligations. The priority rated requests shall take precedence over any prior private or public contractual obligation related to the products subject to the priority rated request under private or public law.
5. The economic operator subject to that priority-rated request shall not be liable for any breach of contractual obligation that is governed by the law of a Member State, only to the extent that:
 - (a) the breach of contractual obligations is strictly necessary for compliance with the required prioritization,

- (b) the implementing act referred to in paragraph 3 has been complied with and
 - (c) the acceptance of the priority rated request was not solely made with a view to unduly avoiding a prior performance obligation.
6. Where an economic operator, after having expressly accepted to prioritise the orders requested by the 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 XYZ, except where the undertaking has sufficient reasons for not complying with the obligation to prioritise those orders.
7. This article is without prejudice to the use of national mechanisms or initiatives delivering an equivalent effect.
8. The implementing act referred to in paragraph 3 shall be adopted in accordance with the examination procedure referred to in Article XYZ.

Article 44

Intra-EU transfers of defence products

1. Where this measure is activated and without prejudice to Directive 2009/43/EC and Member States prerogatives under this 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 treatment of an application does not exceed [5 working days].
2. Transfers of crisis-relevant products cannot be considered as sensitive within the meaning of article 4, paragraph 8 of Directive 2009/43/EC.
3. Member States shall refrain from imposing restrictions to the transfer of defence-related products as defined in Article 2 of Directive 2009/43/EC within the Union. Where Member States impose such restrictions on grounds of security or defence, it should be done only if those restrictions are:
- (a) Transparent, i.e. enshrined in public statements/documents;
 - (b) Duly motivated, i.e. they need to spell out the reasons and the link to security or defence;
 - (c) Proportionate, i.e. not going beyond what is strictly necessary;
 - (d) Relevant and specific, i.e. a restriction needs to be specific to a defence-related product or a category of defence-related products;
 - (e) Non-discriminatory.

Article 45

Emergency funding

Where this measure is activated and the requirements laid down in Regulation (EU) 2016/369 are met, emergency support under that Regulation shall be activated to finance expenditure necessary to address the security-related supply crisis.

Article 46

Support to emergency innovation actions

Where this measure is activated, innovation actions related to one of the following activities shall be deemed eligible under the Instrument, provided for in Chapter II:

- (a) activities that aim at very significantly shortening the delivery lead time of defence products.
- (b) activities that aim at significantly simplifying the technical specifications of defence products in order to enable their mass production.

Article 47

Mutual recognition of certification

Where this measure is activated, defence products lawfully produced and certified in a Member State shall be deemed certified in another Member State without being subject to additional controls.

This measure is without prejudice to Member States' essential security interests.

Section 4

Penalties

Article 48

Penalties

- 4. The Commission may, where it deems it to be necessary and proportionate, adopt a decision to:
 - (a) impose fines, where an undertaking, intentionally or through gross negligence, supplies incorrect, incomplete or misleading information in response to a request made pursuant to Article XYZ and XYZ, or does not supply the information within the prescribed time limit;
 - (b) impose fines, where an undertaking, intentionally or through gross negligence, does not comply with the obligation to inform the Commission of a third-country obligation pursuant to Article XYZ and XYZ;
 - (c) impose periodic penalty payments, where an undertaking, intentionally or through gross negligence, does not comply with an obligation to prioritise the production of crisis-relevant products pursuant to Article XYZ [Priority Rated Orders];
 - (d) Impose fines, where an undertaking, intentionally or through gross negligence, does not comply with the obligation to prioritise the production of crisis-relevant products pursuant to Article XYZ [Priority Rated Requests].
- 5. Before taking a decision pursuant to paragraph 1 of this Article, the Commission shall provide an opportunity for undertakings to be heard in accordance with Article XYZ. It shall take into account any duly reasoned justification presented by

such undertakings for the purpose of determining whether fines or periodic penalty payments are deemed necessary and proportionate.

6. Fines imposed in the cases referred to in paragraph 1, points (a) and (d), shall not exceed [EUR 300 000].

Fines imposed in the cases referred to in paragraph 1, point (b), shall not exceed [EUR 150 000].

Where the undertaking concerned is an SME, the fines imposed shall not exceed [EUR 50 000].

7. Periodic penalty payments imposed in the case referred to in paragraph 1, point (c), shall not exceed [1,5 %] of the current daily turnover for each working day of non-compliance with the obligation pursuant to Article XYZ calculated from the date established in the decision in which the priority-rated order was issued.

Where the undertaking concerned is an SME, the periodic penalty payments imposed shall not exceed [0,5 %] of the current daily turnover.

8. In fixing the amount of the fine or periodic penalty payment, the Commission shall take into consideration the nature, gravity and duration of the infringement, including in cases of non-compliance with the obligation to accept and prioritise a priority-rated order set out in Article XYZ, and whether the undertaking has partially complied with the priority-rated order, taking due account of the principles of proportionality and appropriateness.

9. Where the undertaking has fulfilled the requirements which the periodic penalty payment was intended to enforce, the Commission may fix the definitive amount of the periodic penalty payment at a figure lower than that which would arise under the original decision.

10. The Court of Justice shall have unlimited jurisdiction to review decisions whereby the Commission has fixed a fine or a periodic penalty payment. It may cancel, reduce or increase the fine or periodic penalty payment imposed.

Article 49

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

11. Before adopting a decision pursuant to Article XYZ [penalties], the Commission shall give the undertaking concerned the opportunity of being heard on: (a) preliminary findings of the Commission, including any matter to which the Commission has taken objections; (b) measures that the Commission may intend to take in view of the preliminary findings pursuant to point (a) of this paragraph.
12. Undertakings concerned may submit their observations to the Commission's preliminary findings within a time limit which shall be fixed by the Commission in its preliminary findings, and which may not be less than 14 working days.
13. The Commission shall base its decisions only on objections on which undertakings concerned have been able to comment.
14. The rights of defence of the undertaking concerned shall be fully respected in any proceedings. The undertaking shall be entitled to have access to the Commission's file under the terms of a negotiated disclosure, subject to the legitimate interest of undertakings in the protection of their business secrets. The right of access to the file

shall not extend to confidential information and internal documents of the Commission or the authorities of the Member States. In particular, the right of access shall not extend to correspondence between the Commission and the authorities of the Member States. Nothing in this paragraph shall prevent the Commission from disclosing and using information necessary to prove an infringement.

CHAPTER VI

GOVERNANCE, EVALUATION AND CONTROL

Article 50

Defence Industrial Readiness Board

1. The Defence Industrial Readiness Board is hereby established. It shall identify areas in which Member States and associated countries strengthen cooperation on investing in defence capabilities, including through sharing of procurement plans or opportunities for one-stop-shop procurement.

The Defence Industrial Readiness Board shall assist and provide strategic guidance to the Commission in the preparation and implementation of measures to be taken pursuant to Chapter II [Instrument] and V [Security of Supply].
2. To that effect, the Commission shall maintain a constant supply of information to the Defence Industrial Readiness Board on any planned measures or measures that have been taken. The Commission shall provide the necessary information through a secured IT system.
3. The Defence Industrial Readiness Board shall ensure coordination of action by the Council, the Commission, the HR/VP head of the agency, the relevant Union bodies, offices and agencies, Member States and associated countries to ensure the timely availability and supply of the key defence products.
4. The Defence Industrial Readiness Board shall be composed of the Commission, the High-Representative and Head of the European Defence Agency, Member States and associated countries. Each Member State or associated country shall nominate one representative and one alternate representative. The secretariat of the Defence Production Board shall be ensured by the Commission.
5. For the purposes of the supply-crisis stage as referred to in Article XYZ, the Defence Industrial Readiness Board shall assist the Commission in the following tasks:
 - (a) analysing crisis-relevant information gathered by Member States or the Commission;
 - (b) establishing whether the criteria for activation or deactivation of the supply-crisis stage have been fulfilled;
 - (c) providing guidance on the implementation of the measures chosen to respond to supply crisis at Union level;
 - (d) performing a review of national crisis measures;
 - (e) facilitating exchanges and sharing of information, including with other crisis-relevant bodies at Union level, as well as, as appropriate, third countries, with

particular attention paid to developing countries, and international organisations.

6. For the purposes of the security-related supply-crisis stage as referred to in Article XYZ, the Defence Industrial Readiness Board shall:
 - (a) enabling coordinated action by the Commission and the Member States;
 - (b) adopting opinions and guidance, including specific response measures, for the Member States for ensuring the timely availability and supply of crisis-relevant products;
 - (c) Assisting and providing guidance on the activation of measures as referred to in Articles XYZ to XYZ;
 - (d) coordinating actions of Council, Commission, Union's relevant bodies in reply to the ongoing crisis.
7. The Defence Industrial Readiness Board shall meet whenever the situation requires, upon request from the Commission or a Member State or an associated country. It shall adopt its rules of procedure on the basis of a proposal submitted by the Commission.
8. The Defence Industrial Readiness Board may issue opinions, upon the request of the Commission or on its own initiative. Where the Commission does not follow the opinion of the Defence Industrial Readiness Board, it shall explain the reasons for its action to the Defence Industrial Readiness Board, without prejudice to the Commission's right of initiative.
9. As far as possible, the Defence Industrial Readiness Board shall adopt its guidance and opinions by consensus. In the event of a vote, the outcome of the vote shall be decided by a simple majority of the members. The members that have voted against or abstained shall have the right to have a document summarising the reasons for their position annexed to the guidance or opinions. Only Member States and associated countries have voting rights.
10. Where the security-related supply crisis is activated, the Defence Industrial Readiness Board shall deliberate by a majority of two thirds of the Member State representatives. The Defence Industrial Readiness Board shall be co-chaired by the Commission and the Member State holding the rotating presidency of the Council.
11. The co-chairs of the Defence Industrial Readiness Board may invite a representative from the European Parliament, a representative of the European Union Military Staff, and, where relevant, in line with its rules of procedure, a representative of regional security organisations, to attend meetings as observers.
12. The co-chairs of the Defence Industrial Readiness Board shall invite, at least [once] a year, representatives from National Defence Industrial Associations and selected industrial representatives (structured dialogue with defence industry). Where the supply crisis stage referred to in Article XY has been activated, the co-chairs of the board shall invite high-level industrial representatives to meet in special configuration in order to discuss issues linked to crisis-relevant products.
13. The co-chairs of the Defence Industrial Readiness Board shall invite, where relevant and notably with a view to actions reinforcing the Ukrainian DTIB, 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.

14. The Commission shall ensure transparency and provide all Member State and associated countries representatives with equal access to information, in order to ensure that the decision-making process reflects the situation and the needs of all Member States.
15. The Commission may, on its own initiative or on the proposal of the Defence Industrial Readiness Board, set up working groups on an *ad hoc* basis to support the Defence Industrial Readiness 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 the working groups.
16. The Commission shall set up a working group on legal, regulatory and administrative hurdles. The objectives of this working group are:
 - (a) to identify existing or potential legal, regulatory and administrative obstacles at international, EU and national levels to the achievement of the objectives listed in Article 4;
 - (b) to identify potential solutions and/or mitigations measures to identified obstacles.

The Commission, as chair of the working group, may invite experts with specific expertise to take part, as observers, in the work of the working group. Such experts may include: representatives of Union bodies, offices and agencies; representatives of national authorities, representatives of defence industry.

Article 51

Committee Procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. The EDA shall be invited to provide its views and expertise to the committee as an observer. The EEAS shall also be invited to assist in the work of the committee.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
4. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and Article 5(4), third subparagraph, of Regulation (EU) No 182/2011 shall apply.
5. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

Article 52

Exercise of the delegation

6. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
7. The power to adopt delegated acts referred to in Articles XYZ [EDC procurement] and XYZ [Support to procurement from the EDTIB] shall be conferred on the

Commission for a period of 24 months from [ADOPTION DATE]. The Commission shall draw up a report in respect of the delegation of power not later than 6 months before the end of the 24 month period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

8. The delegation of powers referred to in Articles XYZ [EDC procurement] and XYZ [Support to procurement from the EDTIB] may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
9. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
10. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
11. A delegated act adopted pursuant to Articles [X] shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months on the initiative of the European Parliament or of the Council.

Article 53

Application of the rules on classified information and sensitive information

1. Within the scope of this Regulation:
 - (a) Member States and associated countries participating in a common procurement shall determine, among themselves, the arrangements applicable to the protection of classified information for the purposes of that common procurement, in accordance with national laws and regulations.
 - (b) each Member State shall ensure that it offers a degree of protection of EU classified information equivalent to that provided by the security rules of the Council set out in Decision 2013/488/EU;
 - (c) the Commission shall protect EU classified information received in relation to the Instrument in accordance with the security rules set out in Decision (EU, Euratom) 2015/444.
2. The Commission shall set up a secured exchange system in order to facilitate the exchange of classified information and sensitive information between the Commission and the Member States and associated countries and, where appropriate, with the applicants and the recipients. That system shall take into account Member States' national security regulations.

Article 54

Confidentiality and processing of information

1. Information received as a result of the application of this Regulation shall be used only for the purpose for which it was requested.
2. Member States and the Commission shall ensure the protection of trade and business secrets and other sensitive and classified information acquired and generated in application of this Regulation in accordance with Union law and the respective national law.
3. Member States and the Commission shall ensure that classified information provided or exchanged under this Regulation is not downgraded or declassified without the prior written consent of the originator.
4. The Commission shall not share any information in a way that can lead to the identification of an entity when the sharing of the information results in potential commercial or reputational damage to that entity or in divulging any trade secrets.

Article 55

Personal data protection

1. This Regulation shall be without prejudice to the obligations of Member States relating to their processing of personal data under Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽²⁵⁾ and Directive 2002/58/EC of the European Parliament and of the Council ⁽²⁶⁾, or the obligations of the Commission and, where appropriate, other Union institutions, bodies, offices and agencies, relating to their processing of personal data under Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁽²⁷⁾, when fulfilling their responsibilities.
2. Personal data shall not be processed or communicated except in cases where this is strictly necessary for the purposes of this Regulation. In such cases Regulations (EU) 2016/679 and (EU) 2018/1725 shall apply as appropriate.
3. Where the processing of personal data is not strictly necessary to the fulfilment of the mechanisms established in this Regulation, personal data shall be rendered anonymous in such a manner that the data subject is not identifiable.

Article 56

Audits

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

Article 57

Protection of the financial interests of the Union

Where an associated country participates in the Instrument by means of a decision adopted pursuant to the Agreement on the European Economic Area, the associated country shall grant the necessary rights and access required for the authorising officer responsible, OLAF and the

Court of Auditors to comprehensively exercise their respective competences. In the case of OLAF, such rights shall include the right to carry out investigations, including on-the-spot checks and inspections, as provided for in Regulation (EU, Euratom) No 883/2013.

Article 58

Information, communication and publicity

4. The recipients of Union funding shall acknowledge the origin of the funds and ensure the visibility of the Union funding, in particular when promoting the actions and their results, by providing coherent, effective and proportionate targeted information to multiple audiences, including the media and the public.
5. The Commission shall implement information and communication actions relating to the Instrument, to actions taken pursuant to the Instrument and to the results obtained.
6. Financial resources allocated to the Instrument shall contribute to the corporate communication of the political priorities of the Union, insofar as those priorities are related to the objectives referred to in Article 4.
7. Financial resources allocated to the Instrument may contribute to the organisation of dissemination activities, match-making events and awareness-raising activities, in particular aiming at opening up supply chains to foster the cross-border participation of SMEs.

Article 59

Evaluation

8. By 30 June 2027, the Commission shall draw up a report evaluating the implementation of the measures set out in this Regulation and their results, as well as the opportunity to extend their applicability and provide for their funding, particularly with regard to the evolution of the security context. The evaluation report shall build on consultations of the Member States and key stakeholders and be communicated to the European Parliament and to the Council.
9. Taking into account the evaluation report, the Commission may submit proposals for any appropriate amendments to this Regulation, particularly with a view to continuing to address any persistent risks in relation to the supply of defence products.

Article 60

Entry into force and application

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

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

Done at Brussels,

Done at Brussels,

The President

The President

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