



Council of the  
European Union

Brussels, 4 May 2023  
(OR. en)

8891/23

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**Interinstitutional File:**  
**2023/0140(COD)**

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**INDEF 10**  
**COPS 207**  
**POLMIL 97**  
**IND 205**  
**MAP 10**

#### COVER NOTE

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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	3 May 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 237 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on establishing the Act in Support of Ammunition Production

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Delegations will find attached document COM(2023) 237 final.

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Encl.: COM(2023) 237 final



Brussels, 3.5.2023  
COM(2023) 237 final

2023/0140 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on establishing the Act in Support of Ammunition Production**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • Reasons for and objectives of the proposal

Russia's military aggression against Ukraine has marked the dramatic return of territorial conflict and high-intensity warfare on European soil. European Union Member States' armed forces have been tailored during the last decades to perform expeditionary, peace-keeping and/or peace enforcement missions, and the planning and procurement of defence systems has been tailored according to this operational reality.

The production capacity of the European Defence Technological and Industrial Base (EDTIB) has been therefore tailored to respond primarily to limited Member States' needs, mostly along national dividing lines, due to decades of public underinvestment.

In such a scenario, defence companies often faced the need to reduce production rates in order to keep production lines afloat and maintain skilled personnel, while producing limited quantity of defence systems for national customers.

The return of a high intensity conflict scenario reverses the market context described above. As pointed out by the Joint Communication on Defence Investment Gaps analysis and way forward (JOIN/2022/24 final) underinvestment resulted into both capability and industrial gaps within the Union. In July 2022 the Commission presented the proposal of European Defence Industrial 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 the current Russia's aggression, in a collaborative way. EDIRPA will contribute to reinforce common defence procurement and, through the associated Union financing, to strengthen EU defence industrial capabilities and the adaptation of Union's defence industry to structural market changes resulting increased demand due to the return of high intensity warfare.

Capability gaps are various, but in light of the situation in Ukraine, there is a specific pressing need for ground-to-ground ammunition and artillery ammunition, as well as missiles as recognised by the Council who agreed on 20 March 2023 on a three-track approach. The Council agreed to urgently deliver ground-to-ground and artillery ammunition to Ukraine and, if requested, missiles and called on Member States to jointly procure ammunition and if requested missiles, to refill their stocks while enabling the continuation of support to Ukraine. As joint efforts to enable Member States to replenish their depleted stocks and to support Ukraine can only be effective if the EU supply side can deliver on time the required defence products, the Council tasked the Commission to present concrete proposals to urgently support 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, including, where appropriate, mobilising the Union budget.

The Defence Joint Procurement Task Force has initiated the mapping of the EU industry's manufacturing capacities, including in the area of ground-to-ground and artillery ammunition, as well as missiles ('relevant defence products'). However, production capacities within the Union's defence industry sector have been tailored for peace time while European defence companies face a surge in demand in the area of relevant defence products, requiring them to produce more and faster. This discrepancy between an urgent armed forces' need and existing

limited production capacity results into price inflation and a difficulty to serve customers, and risks generating a security of supply issue for Member States' Armed Forces and therefore, potentially harming the security of EU citizens. This does not only apply to prime contractors but also across the whole supply chain, which is, for relevant defence products, widely spread throughout the Union and composed of several SMEs and Mid-Caps.

While Member States need to ensure firm orders to the EDTIB, defence industrial ramp up is a process requiring time and efforts in several areas (human resources, machine tools, supply chain management, securisation of raw materials). While firm orders from Member States are a precondition for any investment by industry, the Commission can intervene by de-risking industrial investments via grants and loans allowing a faster adaptation to ongoing structural market change and removing existing bottlenecks, allowing industry to produce more and faster along the value chain.

On top of industrial reinforcement, additional measures are needed to ensure the correct functioning of the internal market in the relevant defence products areas, in line with provisions of article 114 TFEU. Firm orders by Member States authorities will face as an obstacle the existing limited manufacturing capacity, raw materials, skilled personnel. To ensure the increased volume and speed of production, the Commission may need the possibility, in agreement with the Member States concerned, to invite legal entities to accept and prioritise orders for the production or supply of the relevant defence products. This will ensure that limited existing production capacities are used for the benefit of political goals set by the Council. Along the same lines, regulatory simplification will allow to temporarily derogate from existing regulations and directive with the objective to speed up production. The Act foresees in particular a derogation from Directive 2009/81/EC of the European Parliament and the Council<sup>1</sup>, to allow the possibility to open up national framework contracts to other Member States without organising a new tender in view of the extreme urgency of the situation and where the flexibilities offered by Directive 2009/81/EC of the European Parliament and the Council are not sufficient to ensure the security interests of Member States willing to engage in common procurement. This derogation shall be accompanied by the possibility for any economic operator that meets the initial requirements of the framework agreements to join the framework agreement. The framework agreement shall remain subject to the principles of transparency and non-discrimination.

Similarly, and in order to speed up intra-EU transfers of ammunition and missiles, they shall be allowed to derogate from article 4(1) of Directive 2009/43/EC and not be subject to prior authorisation.

In order to be competitive, innovative and resilient, as well as to be able to ramp up its production capacities, the EDTIB needs to access both public and private financing. Facing important financial needs to increase production capacities, defence companies might need, on top of grants, debt solutions to bridge gaps between Ministries of defence orders and cash-flow need. However, restrictive lending policies towards the defence industry sector hampers access to finance for defence companies in the EU.

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<sup>1</sup> Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76–136).

Undertakings in the value chain of relevant defence products shall have access to debt financing, to speed-up investments needed to increase manufacturing capacities. The instrument will aim at facilitating access to finance for Union's companies in the ammunition and missile field. The Regulation should notably ensure that those legal entities are granted the same conditions offered to other legal entities, taking charge of any additional cost arising specifically for the defence. The Act foresees measures to facilitate access to finance, both with a specific eligible action, as well as under a Facility, the 'Ramp-up Fund' proposing solutions, to leverage, de-risk and speed-up investments needed to increase manufacturing capacities. The Ramp-up Fund shall be implemented in direct or indirect management in accordance with the Financial Regulation. The Commission will explore the possibility to establish a blending facility, including under InvestEU Fund established by Regulation (EU) 2021/523 of the European Parliament and Council, in close cooperation with its implementing partners. Administrative applications related to the planning, construction and operation of production facilities, intra-EU transfer of inputs as well as qualification and certification of end products should also be treated in the fastest legally possible way.

- **Consistency with existing policy provisions in the policy area**

The Council of the European Union, on 20 March 2023 agreed on a three-track approach to "speed up the delivery and joint procurement, aiming at one million rounds of artillery ammunition for Ukraine in a joint effort within the next twelve months". It also called "Member States to jointly procure 155mm ammunition and, if requested, missiles for Ukraine in the fastest way possible before 30 September 2023 from the European defence industry (and Norway) within the parameters defined in the context of an existing EDA project or through complementary joint acquisition projects led by a Member State". Finally, it invited the Commission to "present concrete proposals to urgently support 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, including, where appropriate, mobilising the Union budget.

The Council also stated that "regular meetings at the level of the National Armament Directors with the Defence Joint Procurement Task Force (Commission, EEAS, EDA) will also be organised, to assess the needs and the industrial capabilities as well as to ensure the necessary close coordination, especially regarding the provision from stocks, the reprioritisation of existing orders and the different joint acquisition projects, to ensure an adequate implementation of the three different tracks".

On 23 March 2023 the European Council reaffirmed that the "European Union stands firmly and fully with Ukraine and will continue to provide strong political, economic, military, financial and humanitarian support to Ukraine and its people for as long as it takes". The European Council welcomed the "agreement in the Council to urgently deliver ground-to-ground and artillery ammunition to Ukraine and, if requested, missiles, including through joint procurement and the mobilisation of appropriate funding including through the European Peace Facility, aiming at providing 1 million rounds of artillery ammunition in a joint effort within the next twelve months".

The Act in Support of Ammunition Production will also be complementary to the proposed European Defence Industry Reinforcement through common Procurement Act (EDIRPA) and will pave the way for the future European Defence Investment Programme (EDIP).

EDIRPA incentivises cooperation in the procurement phase, benefitting Member States commonly procuring the most urgent and critical defence items, offering therefore increased

visibility to defence manufacturers to help them adapt to structural changes. The current supply crisis in the field of ammunition requires additional action targeting the supply side for relevant defence products. The Act in Support of Ammunition Production will therefore accompany, incentivise, speed up and simplify the needed ramp up for relevant defence products.

- **Consistency with other Union policies**

The Instrument will complement existing collaborative EU defence initiatives. It will generate synergies with the implementation of the Strategic Compass for Security and Defence, and other EU programmes, such as the European Defence Fund. The Instrument will also be implemented in full consistency with the EU capability development plan (CDP) identifying the defence capability priorities at EU level, as well as with the EU coordinated annual review on defence (CARD), which inter alia identifies new opportunities for defence cooperation. In this context, account may also be taken of relevant activities carried out by the North Atlantic Treaty Organisation (NATO) and other partners where they serve the Union's security and defence interests and do not exclude any Member State from participating.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

This Regulation aims at strengthening the responsiveness and ability of the EDTIB to ensure the timely availability and supply of relevant defence products in the Union. To this end, the regulation lays down a framework for implementing a series of specific and targeted measures to speed up the industry adjustment to structural changes. This framework is based on 2 pillars, each corresponding to one of the legal bases of this Regulation.

- The first pillar is composed of measures to support the industrial reinforcement throughout the supply chains related to the production of relevant defence products in the EU and is based on Article 173(3) of the Treaty on the Functioning of the EU (TFEU).

The Union's defence industry involved in the production of relevant defence products is currently facing a sudden surge of demand and urgently needs to adapt to this new market situation. The EU financial support under this pillar will aim at reinforcing the competitiveness and resilience of the European Defence Technological and Industrial Base (EDTIB) in the field of relevant defence products, to allow its urgent adaptation to structural change in accordance with the first indent of Article 173(1) of the TFEU. Thereby, this pillar supports EU industry to increase its volume of production, reduce its delivery lead-time and address potential bottlenecks and/or factors that could delay or impede the supply and production of relevant defence products.

- In line with Article 173(3) of the TFEU, this pillar excludes any harmonisation of the laws and regulation of the Member States. The second pillar is composed of harmonisation measures to identify, map and continuously monitor the availability of the relevant defence products, their components and the corresponding inputs, and measures to establish requirements to secure the timely and lasting availability of the relevant defence products in the Union and is based on Article 114 TFEU.

Ensuring the security of the territory of the Union constitutes an overriding public policy objective and this security depends also on the availability of defence goods and services in sufficient quantities. The current geopolitical context results into a

significant increase of the demand for relevant defence products in the Union. This situation affects the functioning of internal market for these products and of their components and threatens their security of supply. Member States have taken measures or are likely to take measures to preserve their own stocks of these products and of their components as a matter of national defence. However, divergent national legislation, in particular regarding the certification of defence products, intra-EU transfer of products and related components as well as divergent implementation of Union law have proven to become bottlenecks for European relevant defence products supply chains and obstacles to interoperability. As a result, it is necessary to adopt Union-harmonising legislation based on Article 114 of the TFEU to ensuring the functioning of the internal market, by avoiding shortages of relevant defence products in the Union. These measures should consist in the identification of ‘supply-critical defence products’, the mapping of related industrial capacities, priority rated orders, acceleration of grant-permitting procedures or facilitation of procurement procedures. The combination of these measures should have the result of making available an increased offer in relevant defence products and of their components in all Member States which are needed for the functioning of the internal market and should also converge to ensure the timely availability and supply of relevant defence products in the Union.

Other articles of the TFEU or each article on its own cannot justify both of the above objectives. The proposed elements are provided in one act, as all the measures constitute a coherent approach to address, in different ways, the need for strengthening of the Union’s defence ecosystem.

- **Subsidiarity (for non-exclusive competence)**

Providing a comprehensive response to the sudden increase of relevant defence products demand requires a rapid and coordinated action at European level as no single Member State is capable of achieving this alone. Member States individually cannot effectively address the risk of significant supply disruptions of such defence products which are due to a disequilibrium of the offer and the demand in the Internal market. Uncoordinated approaches would entail the risk of worsening the effect of the supply crisis by encouraging price-spiralling and crowding-out effects for these defence products. Moreover, considering the existing production capacities of relevant defence products in the Union, the consequences of the Union’s supply shortages are so far-reaching that intervention at the level of the Union is best placed to address such issues.

Therefore, Union action is needed in relation to the areas that this proposal addresses through its 2 pillars.

- With regard to the first pillar, the measures proposed aim at accelerating investments in relevant defence products manufacturing capacities in the Union, while encouraging the EDTIB’s resilience through cross-border industrial partnerships and collaboration of relevant companies in a joint industry effort to avoid worsening fragmentation of the supply chains. Financial support and incentives can only be adequately designed and implemented at Union level given the need to adjust the EDTIB to structural changes. It is important to underline that defence producers of relevant defence products are widely spread throughout the Union and composed by several SMEs and Mid-Caps.
- Regarding the second pillar, the measures foreseen under it, will serve the internal market, strengthen the resilience of the EDTIB, and guarantee security of supply.

The measures aimed at identifying, mapping and continuously monitoring the availability of the relevant defence products, their components and the corresponding inputs in the Union, will ensure the necessary intelligence gathering at Union Level and enable the Commission and Member States to anticipate shortages affecting the security of supply of such defence products. The measures aimed at establishing requirements to secure the timely and lasting availability of the relevant defence products, will enable Member States and Commission to address the shortages and bottlenecks in the supply chains in a more effective way than through a patchwork of national measures.

- **Proportionality**

In view of the unprecedented geopolitical situation and the significant threat for security of the Union, there is a clear need for a coordinated action at EU level. The proposed policy approach is proportionate to the scale and gravity of the problems that have been identified i.e., need to ensure the timely delivery of some of the defence products that are urgently needed by Member States. The measures set out in the proposal do not go beyond what is necessary to achieve their objectives, are proportionate to those objectives and respect the limits of possible Union intervention under the Treaties. They will need to be implemented in accordance with the principle of proportionality, including, in the context of limitation to fundamental rights in accordance with Article 52(1) of the Charter of fundamental rights.

- **Choice of the instrument**

The Commission proposes a Regulation of the European Parliament and of the Council. This is the most suitable legal instrument as only a Regulation, with its directly applicable legal provisions, can provide the necessary degree of uniformity needed for the establishment and operation of a Union Instrument aiming at promoting the reinforcement of an industrial sector across Europe and ensuring security of supply of specific products. A directly applicable Regulation also allows to ensure that the proposed measures can be implemented at short term to address the needs which are outlined in the proposal.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

There is no prior existing legislation covering or pertaining to this specific action. To date, there was no other Union legislative initiatives in the area of defence to support the ramp up of production capacities, reduce delivery lead times and tackle supply shortages. Therefore, there is no previous ex-post evaluation or fitness check of existing legislation that took place for this legislative initiative.

- **Stakeholder consultations**

Due to the politically sensitive nature of the proposal and urgency to prepare the proposal so that it can be adopted on time by the co-legislators, a stakeholder consultation could not be carried out.

- **Impact assessment**

Due to the urgency to increase production capacities of relevant defence products and ensure their security of supply, this proposal is not accompanied by a formal impact assessment. Such document could not have been delivered in the timeframe available prior to the adoption of the proposal. The proposal draws on the lessons learned from the Joint Communication on



the Defence investment gaps analysis and way forward of 18 May 2022 and builds on the work undertaken in the framework of the Defence Joint Procurement Task Force, established immediately after the publication of the above- mentioned Joint Communication. The Commission tables this proposal for a Regulation without including an impact assessment, in order to allow its swift implementation no later than 26 April 2023. The proposal is limited in time and contains a provision requiring the Commission to draw up a report on the implementation of this Regulation.

- **Regulatory fitness and simplification**

The Instrument is not expected to increase the administrative burden.

- **Fundamental rights**

Ensuring the security of EU citizens is an objective of general interest which can contribute to safeguarding their fundamental rights to life in accordance to Article 2 of the Charter of Fundamental Rights of the European Union ('the Charter') and to liberty and security in accordance with Article 6 of the Charter.

On the other hand, Article 16 of the Charter provides for the freedom to conduct a business and Article 17 of the Charter on the right of property.

Some measures under pillar 2 are needed to address serious disruptions affecting the relevant defence products supply in the Union and may temporarily limit the freedom to conduct a business and the freedom of contract, protected by Article 16 and the right to property, protected by Article 17 of the Charter. Any limitation of those rights in this proposal will, in accordance with Article 52(1) of the Charter, be provided for by law, respect the essence of those rights and freedoms, genuinely meet objective of public interest of security and will comply with the principle of proportionality.

The obligation to disclose specific information to the Commission, provided that certain conditions are met, respects the essence of and will not disproportionately affect the freedom to conduct a business (Article 16 of the Charter). Any information request serves the objective of general interest of the Union to enable the identification of potential mitigation measures to shortages affecting relevant defence products which are essential to ensure the security of the Union and its member States. These information requests are appropriate and effective to attain the objective by providing information necessary to assess the crisis at hand. The Commission in principle only requests the desired information from representative organisations and may issue requests to individual undertakings only if it is necessary in addition. Since information on the supply situation is not available otherwise, there is not any equally effective measure to attain the information necessary to enable European decision-makers to take mitigation action. In light of the serious geopolitical and security consequences of relevant defence products shortages and the respective importance of mitigation measures, information requests are proportionate to the desired aim. Furthermore, the limitation to the freedom to conduct a business and the right to property are offset by appropriate safeguards. Any request to information may only be launched for products necessary to the production of relevant defence products and specifically identified, by the Commission and through an implementing act, as affected by a supply crisis.

The obligation to accept and prioritise priority rated orders respects the essence of and will not disproportionately affect the freedom to conduct a business and the freedom of contract (Article 16 of the Charter) and the right to property (Article 17 of the Charter). This obligation

serves the objective of general interest of the Union of security by addressing the relevant defence products supply disruptions. The obligation is appropriate and effective to attain this objective by ensuring the available resources are preferentially utilised for production of such relevant defence products. There is no equally effective measure. When it comes to products identified as affected by a supply crisis which threatens the above-mentioned objectives of general interest and fundamental right, it is proportionate to oblige undertakings contracted in the context of a joint procurement of Member States or undertakings which are involved in the supply chain of the latter to accept and prioritise certain orders. Appropriate safeguards ensure that any negative impact of the prioritisation obligation on the freedom to conduct a business, the freedom of contract and the right to property does not amount to a violation of these rights. Any obligation to prioritise certain orders may only be launched for products identified by the Commission and through an implementing act as affected by a supply crisis. The undertaking concerned may request the Commission to review the priority rated order if it is unable to perform the order or performing the order would place unreasonable economic burden on them and entail particular hardship. Furthermore, the subject of the obligation is exempt from any liability for damages for the violation of contractual obligations resulting from compliance with the obligation. Finally, this Regulation will only be applicable for a limited period of time needed to re-establish the functioning of the internal market and the adjustment of industry to structural changes.

#### **4. BUDGETARY IMPLICATIONS**

The financial envelope for the implementation of the Regulation for the period from the date of its entry into force to 30 June 2025 shall be EUR 500 million in current prices.

The impact on the multi-annual financial framework period in terms of required budget and human resources is detailed in the legislative financial statement annexed to the proposal and will be met from the available resources of the Multiannual Financial Framework 2021-2027.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission should draw up an evaluation report for the Instrument and communicate it to the European Parliament and to the Council no later than 30/6/2024. This report will notably assess the progress made towards the achievement of the objectives set in the proposal. Also, taking into account the evaluation report, the Commission may submit proposals for any appropriate amendments to this Regulation, notably in view to continue addressing any persisting risks in relation to the supply of the relevant defence products.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on establishing the Act in Support of Ammunition Production**

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 Articles 114 and 173(3) thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Russian war of aggression against Ukraine has put the European defence industry and equipment market to the test and exposed a number of flaws. Those undermine their ability to satisfy in the requisite secure and timely manner the Member States urgent needs for defence products and systems such as ammunition and missiles, considering the high consumption rate of those products or systems during a high intensity conflict.
- (2) Since 24 February 2022 the Union and its Member States have been steadily stepping up their efforts to help meet Ukraine's pressing defence needs. Furthermore, in this context, confronted with growing instability, strategic competition and security threats, the Union Heads of State or Government, meeting in Versailles on 11 March 2022, decided to take more responsibility for the Union own security and take further decisive steps towards building European sovereignty. They committed to "bolster European defence capabilities", 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 Union defence industry. On 21 March 2022, the "Strategic Compass for a stronger Union security and defence in the next decade" was approved by the Council, and subsequently endorsed by the European Council on 24 March 2022. The Strategic Compass stresses the need to increase defence spending and invest more in capabilities, both at the Union and national levels.
- (3) The Commission and the High Representative presented a Joint Communication on "The Defence Investment Gaps Analysis and Way Forward" on 18 May 2022 highlighting the existence, within the Union, of defence financial, industrial and capability gaps. In July 2022 the Commission presented the European Defence Industrial Reinforcement through common Procurement Act (EDIRPA), aimed at supporting collaboration between Member States in the procurement phase to fill the

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<sup>2</sup> OJ C , , p. .

most urgent and critical gaps, especially those created by the response to the current Russia's aggression, in a collaborative way. EDIRPA will contribute to reinforce common defence procurement and, through the associated Union financing, to strengthen Union defence industrial capacities and the adaptation of Union's defence industry to structural market changes resulting from increased demand due to new challenges, such as the return of high intensity conflict.

- (4) In light of the situation in Ukraine and of its pressing defence needs in particular for ammunition, the Council of 20 March 2023 agreed on a three-track approach, aiming at providing one million rounds of artillery ammunition for Ukraine in a joint effort within the next twelve months. It agreed to urgently deliver ground-to-ground and artillery ammunition to Ukraine and, if requested, missiles from existing stocks or the reprioritisation of existing orders. It further called on Member States to jointly procure ammunition and if requested missiles from the European defence industry (and Norway) in the context of an existing European Defence Agency (EDA) project or through complementary Member States-led acquisition projects, in order to refill their stocks while enabling the continuation of support to Ukraine. To support these efforts, the Council agreed to mobilise appropriate funding including through the European Peace Facility (EPF). The Council also tasked the Commission to present concrete proposals to urgently support 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, including, where appropriate, mobilising the Union budget. The latter is essential in order to ensure that the Union own security needs are adequately met at all times and the Union defence industry and internal market are up to the current changes. The three interlinked tracks need to be pursued in parallel and in a coordinated way. Regular meetings at the level of National Armament Directors with the Defence Joint Procurement Task Force (Commission, EEAS, EDA) will also be organised to assess the needs and industrial capabilities as well as ensure the necessary close coordination, to ensure an adequate implementation of the three tracks.
- (5) On 13 April 2023, the Council adopted an assistance measure under the EPF worth EUR 1 billion to support the Ukrainian Armed Forces, allowing for the reimbursement to Member States of ground-to-ground and artillery ammunition, and possibly missiles, donated to Ukraine from existing stocks or from the reprioritisation of existing orders during the period 9 February to 31 May 2023. On joint procurement, thus far 24 Member States plus Norway signed the EDA's Project Arrangement for the collaborative procurement of ammunition.
- (6) Joint efforts to enable Member States to replenish their depleted stocks and to support Ukraine can only be effective if the Union supply side can deliver on time the required defence products. But, with stocks rapidly dwindling, European production almost at maximum capacity from Member States or third countries' orders, and prices already spiralling, additional Union industrial policy measures are necessary to ensure a rapid ramp-up of manufacturing capabilities.
- (7) As highlighted by the work of the Defence Joint Procurement Task Force (Commission, EEAS, EDA) on coordinating very short-term defence procurement needs and engaging with Member States and Union defence manufacturers to support common procurement to replenish stocks, notably in light of the support provided to Ukraine, the Union industry has manufacturing capacities in the area of ground to ground and artillery ammunition, as well as missiles. However, production capacities within the Union's defence industry sector have been tailored for times different from

the current challenges posed to the Union. Supply flows have been adapted according to a more modest demand, with minimal level of stocks and diversified suppliers globally to reduce costs, exposing the Union's defence industry sector to dependencies. As a consequence, in this context, the current manufacturing capacity and the existing supply and value chains do not allow for a secure and timely delivery of defence products to meet the Member States' needs for their security requirement and for continuing supporting Ukrainian needs, creating tensions on the market of ground-to-ground and artillery ammunition as well as missiles, and a risk of crowding-out effect. An additional intervention at Union level is therefore necessary.

- (8) In accordance with Article 173(3) TFEU, the Union industrial policy pursues the objective of speeding up the adjustment of industry to structural changes. Therefore, it appears appropriate to support Union industry to increase its volume of production, reduce its delivery lead-time and address potential bottlenecks and/or factors that could delay or impede the supply and production of ground-to-ground and artillery ammunition as well as missiles which are considered as relevant defence products for the purpose of this Regulation.
- (9) The measures taken at Union level should aim at reinforcing the competitiveness and resilience of the European Defence Technological and Industrial Base (EDTIB) in the field of ammunition and missiles, to allow its urgent adaptation to structural change.
- (10) To that end, an instrument for financially supporting the industry reinforcement throughout the supply and value chains related to the production of these relevant defence products in the Union (the 'Instrument') should be established.
- (11) The Instrument will be coherent with existing collaborative EU defence-related initiatives such as in the European Defence Fund, the proposed European defence industry Reinforcement through common Procurement Act, as well as the EPF and generates synergies with other Union programmes. The Instrument is fully coherent with the ambition of the Strategic Compass.
- (12) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council should apply to this Instrument, unless otherwise specified.
- (13) In accordance with Article 193(2) of Regulation (EU, Euratom) 2018/1046, 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, a financial contribution should not cover a period prior to the date of submission of the grant application, except in duly justified exceptional cases. In order to address the call of the Council on 20 March 2023 to speed up the delivery of relevant defence products, it should be possible to provide in the financing decision for financial contributions to actions that cover a period from this date.
- (14) This Regulation lays down a financial envelope for the Instrument, which is to constitute the prime reference amount, within the meaning of point 18 of the Inter-institutional Agreement of 16 December 2020 between the European Parliament, the Council and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources<sup>3</sup> (Interinstitutional Agreement of 16 December 2020), for the European Parliament and for the Council during the annual budgetary procedure.

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<sup>3</sup> OJ L 433I, 22.12.2020, p. 28.

- (15) Member States may request transfers of resources allocated to them under shared management to the Instrument, subject to the conditions set out in the relevant provisions of the Regulation (EU) 2021/1060 of the European Parliament and of the Council. This could in particular be the case where the production of relevant defence products faces specific market failures or suboptimal investment situations in the Member States' territories, notably in vulnerable and remote areas, and such resources contribute to the achievement of the objectives of the programme from which they are transferred. The possibilities laid out in Article 73(4) of Regulation (EU) 2021/1060 may be applied provided that the project complies with the rules set out in that Regulation and the scope of the ERDF and ESF+ as set out in the fund-specific regulations. In line with Article 24 of Regulation (EU) 2021/1060, the Commission should assess the modified national programmes submitted by the Member State and make observations within two months. Given the urgency of the situation, the Commission should strive to conclude the assessment of the modified national programmes without undue delay.
- (16) When proposing amended or new Recovery and Resilience Plans, in accordance with Article 21 of Regulation (EU) 2021/241 of the European Parliament and of the Council<sup>4</sup>, Member States should be able to propose measures which also contribute to the objectives of this instrument. To this end, measures linked to proposals submitted to a call for proposals under the Instrument, which were awarded a Seal of Excellence in accordance with the Instrument, should particularly be considered by Member States.
- (17) In accordance with Regulation (EU, Euratom) 2018/1046, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council<sup>5</sup> and Council Regulations (EC, Euratom) No 2988/95<sup>6</sup>, (Euratom, EC) No 2185/96<sup>7</sup> and (EU) 2017/1939<sup>8</sup>, 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

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<sup>4</sup> Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L 57, 18.2.2021, p. 17–75).-

<sup>5</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

<sup>6</sup> Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).

<sup>7</sup> Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

<sup>8</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

Parliament and of the Council<sup>9</sup>. In accordance with Regulation (EU, Euratom) 2018/1046, any person or entity receiving Union funds is to fully cooperate in the protection of the financial interests of the Union, grant the necessary rights and access to the Commission, OLAF, the Court of Auditors and, in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, the EPPO, and ensure that any third parties involved in the implementation of Union funds grant equivalent rights.

- (18) Members of the European Free Trade Association which are members of the European Economic Area (EEA) may participate in this 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 to Union programmes on the basis of a decision adopted under that Agreement. A specific provision should be introduced in this Regulation requiring 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.
- (19) 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. Industry therefore does not 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 de-risking industrial investments via grants and loans allowing a faster adaptation to ongoing structural market change. In the current emergency context, Union support should cover up to 60% of direct eligible costs in order to enable beneficiaries to implement actions as soon as possible, de-risk their investment and therefore speed up the availability of relevant defence products.
- (20) Stakeholders in the defence industry sector face specific indirect costs, such as with regard to security. Therefore, it is appropriate to allow a flat rate of 7 % of the total direct eligible costs of the action.
- (21) The Instrument should provide financial support, via means defined by Regulation (EU, Euratom) 2018/1046, to actions contributing to the timely availability and supply of relevant defence products such as industrial coordination and networking activities, access to finance for undertakings involved in the manufacturing of relevant defence products, reservation of capacities, industrial process of reconditioning of expired products, expansion, optimisation, modernisation, upgrading or repurposing of existing, or the establishment of new, production capacities in this field as well as training of personnel.
- (22) As the Instrument aims to enhance the competitiveness and efficiency of the Union's defence industry, only legal entities, whether public or privately owned, which are established and have their executive management structures in the Union or in associated countries be eligible for support.

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<sup>9</sup> Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law ([OJ L 198, 28.7.2017, p. 29](#)).

- (23) Legal entities established in the Union or in an associated country that are controlled by a non-associated third country or a non-associated third-country entity should only be eligible to be recipients provided that strict conditions relating to the security and defence interests of the Union and its Member States, as established in the framework of the Common Foreign and Security Policy pursuant to Title V of the Treaty on European Union (TEU), including in terms of strengthening the EDTIB, are fulfilled. The participation of such legal entities should not contravene the objectives of the Instrument. 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. Applicants should provide all relevant information about the infrastructure, facilities, assets, and resources to be used in the action. Member States' concerns regarding security of supply should also be taken into account in that respect. In view of the urgency of the situation stemming from the existing ammunition supply crisis, the Instrument should take into account existing supply chains.
- (24) Infrastructure, facilities, assets, and resources of the recipients involved in an action supported by the Instrument should be located on the territory of a Member State or of an associated country for the entire duration of the action, and the recipients involved in an action should have their executive management structures in the Union or in an associated country. Accordingly, a legal entity which is established in a non-associated third country or a legal entity which is established in the Union or in an associated country, but which has its executive management structures in a non-associated third country should not be eligible to be a recipient involved in an action
- (25) Pursuant to Article 94 of Council Decision 2013/755/EU<sup>10</sup>, persons and entities 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 overseas country or territory is linked.
- (26) When assessing proposals, the Commission should pay particular attention to their contribution to the objectives of the Instrument. The proposal should notably be assessed against their contribution to the increase, ramp-up, reservation, modernisation of manufacturing capacities, as well as the reskilling and upskilling of the related workforce. They should also be assessed against their contribution to the reduction of the delivery lead-time of relevant defence products, including through order reprioritization mechanisms, to the identification and elimination of bottlenecks along their supply chains as well as to the development of the resilience of these supply chains through the development and the operationalisation of cross-border cooperation of undertakings, in particular, to a significant extent, SMEs and mid-caps operating in the concerned supply chains.
- (27) When designing, awarding and implementing EU financial support, the Commission should pay particular attention that such measures do not adversely affect the conditions of competition in the Internal Market.
- (28) 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

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<sup>10</sup> Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union (Overseas Association Decision) (OJ L 344, 19.12.2013, p. 1).



production and sale of ground-to-ground and artillery ammunition and missiles 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 ground-to-ground and artillery ammunition and missiles. 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, and an acceleration of grant-permitting procedures or facilitation of procurement procedures. These measures should be based on Article 114 TFEU.

- (29) 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 and the EDA in the context of the Defence Joint Procurement Task Force, 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 Programme Committee.
- (30) On this basis, the Commission should draw up a list, identifying the 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 of supply-critical defence products, 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.
- (31) 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.
- (32) 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.
- (33) 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. At the request of at least three Member States cooperating for the procurement of relevant defence products or at least one Member State procuring for the purpose of transferring the acquired relevant defence products to Ukraine, which face severe difficulties either in placing or in the execution of a contract, the Commission may, with the agreement of the Member State establishment, require from undertakings to accept and prioritise orders of supply-critical relevant products. To preserve the fundamental rights of undertaking, these requests should be made only for products which have been identified by the Commission in an Implementing Decision. In addition, a step-by-step procedure should be established in order to give the undertakings the possibility to express their concerns as regards the contemplated action. In particular, the Commission should, in agreement with the Member State in which it is established, inform the undertakings concerned of its intention to ask it to accept and rank first a priority rated order and provide it all the elements needed to allow it to take an informed decision on whether it can accept that request. Where the undertaking refuses, the Commission can, in agreement with the Member State concerned, and having due regard to the nature of the objections raised by the undertaking, consider that security reasons justify imposing, by an Implementing Decision, a priority rated order. Such a decision should be taken in accordance with all applicable Union legal obligations, having regard to the circumstances of the case. The priority rated order should be placed at a fair and reasonable price. The priority rated order should take precedence over any performance obligation under private or public law while it should have regard for the legitimate aims of the undertakings and the cost and effort required for any change in production sequence. Undertakings may be subject to penalties if they fail to comply with the obligation for priority rated orders.

- (34) To preserve the fundamental rights of the undertakings, they should be given the right to ask to be released from their obligations in situations where the priority rated order is not possible to execute, even if prioritised, be it due to insufficient production capability or production capacity, or because this would place an unreasonable economic burden and entail particular hardship on the undertaking.
- (35) Under the exceptional circumstance that an undertaking operating along the supply chain of relevant defence products in the Union receives a priority rated order request from a third country, it should inform the Commission of this request.
- (36) In light of the importance to ensure the security of supply to specific defence sectors that perform vital functions for the security of Union citizens, compliance with the obligation to perform a priority rated order should not entail liability for damages towards third parties for any breach of contractual obligations that may result from the necessary temporary changes of the operational processes of the concerned manufacturer, limited to the extent the violation of contractual obligations was necessary for compliance with the mandated prioritisation. Undertakings potentially within scope of a priority rated order should anticipate this possibility in the conditions of their commercial contracts. Without prejudice to the applicability of other

provisions, the liability for defective products, as provided for by Council Directive 85/374/EEC<sup>11</sup>, should not be affected by this liability exemption.

- (37) 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.
- (38) In light of the importance to ensure 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, intra-EU transfer of inputs as well as qualification and certification of relevant end products are processed in an efficient and timely manner.
- (39) 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. They should be given priority when balancing legal interests in the individual case.
- (40) In view of the objective of this Regulation, and of the emergency situation and 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 such application would have an adverse effect on those purposes. This may in particular apply to Union law concerning environmental, health and safety issues,<sup>12</sup> which is indispensable to improve the protection of human health and environment, as well as achieve a sustainable and safe development. However, their implementation may 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 European Union and its Member States to urgently look into any action it may take to mitigate possible obstacles. Any such actions, whether at Union, regional, or national level, should not compromise environmental, health and safety concerns.
- (41) In order to optimize the use of existing supply chains, hence ensuring the continuity of production of relevant defence products, Member States should consider the possibility to recourse or to encourage concerned companies to recourse to derogations provided for by Directive 2003/88/EC of the European Parliament and of the Council<sup>13</sup>. Where a prior authorization from national authorities is required to use such derogations, applications should be processed in an efficient and timely manner.

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<sup>11</sup> Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ L 210, 7.8.1985, p. 29).

<sup>12</sup> For instance, the REACH, CLP regulation, the Seveso Directive, RoHS Directive, POPs Regulation, BPR, Ozone regulation and the F-gas regulation.

<sup>13</sup> Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003, p. 9).

- (42) Directive 2009/81/EC of the European Parliament and of the Council<sup>14</sup> aims at harmonising procurement procedures for the award of public contracts in the field of defence and security which enables to meet the security requirements of Member States and the obligations arising from the Treaty. That Directive notably provides for specific provisions ruling situations of urgency resulting from a crisis, notably shortened periods for the receipt of tenders and the possibility to use the negotiated procedure without prior publication of a contract notice. However, the extreme urgency caused by the current ammunition supply crisis may be incompatible even with those provisions in cases where more than two Member States intend to engage in a common procurement. In some cases, the only solution to ensure 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 initial framework agreement.
- (43) In accordance with the case-law of the Court of Justice of the European Union, modifications to a contract shall 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 this regard, it should be possible to derogate from Directive 2009/81/EC by increasing the quantities provided for in the Framework Agreement while opening it to contracting authorities/entities of other Member States. These contracting authorities/entities should enjoy the same conditions as the original contracting authority that concluded the original framework agreement for those additional quantities. In such cases, the contracting authority should also allow any economic operator who fulfils the conditions of the original framework agreement to become a contractor under that framework agreement. In addition, appropriate transparency measures should be taken to ensure that all potentially interested parties may be informed. In order to limit the effects of these modifications on the smooth functioning of the internal market and to prevent disproportionate distortions of competition, modifications of framework agreements should only be concluded until 30 June 2025.
- (44) Directive 2009/43/EC of the European Parliament and the Council<sup>15</sup> aims at simplifying the terms and conditions of intra-EU transfers of defence-related products, notably through General Transfer Licences which rely on ex post verification, cover a pre-determined range of products to specified recipients or for a specific purpose, and for which no prior request is needed. However, none of the mandatory General Transfer Licences provided for by Article 4 (1) of Directive 2009/43/EC or Commission recommendations on the harmonisation of the scope of and conditions for these licences are sufficient to ensure that transfers necessary for the production of relevant defence products.
- (45) In the current context which imposes to speed up the delivery lead times throughout the concerned supply and value chains, it appears necessary to exempt the transfer of

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<sup>14</sup> Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76–136).

<sup>15</sup> Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community (OJ L 146, 10.6.2009, p. 1–36).

relevant defence products from the obligation of prior authorisation within the Union. This exemption should not affect the discretion of Member States as regards policy on the export of defence-related products.

- (46) In order to be competitive, innovative and resilient, as well as to be able to ramp up its production capacities, the EDTIB needs to access both public and private financing. As provided in the “Commission contribution to European defence” of 15 February 2022, Union initiatives on sustainable finance are consistent with the Union efforts to facilitate the European defence industry’s sufficient access to finance and investment. In that context, the EU sustainable finance framework does not prevent investment in defence-related activities. The Union defence industry is a crucial contributor to the resilience, security of the Union, and therefore to peace and social sustainability. Within Union initiatives on sustainable finance policies, controversial weapons subject to international conventions prohibiting their development, production, stockpiling, use, transfer, and delivery, and signed by Union Member States, are deemed incompatible with social sustainability. The sector is subject to close regulatory scrutiny implemented by Member States for the transfer and export of military and dual-use items. In this perspective, a commitment of national and European financial actors - such as National Promotional Banks and Institutions - to support the European defence industry, would send a strong signal to the private sector. While pursuing in full its other economic development and public policy financing missions, including the twin transition and in line with article 309 TFEU as well as its statute, the European Investment Bank (EIB) should enhance its support to the European defence industry and joint procurement beyond its ongoing support to dual use, where such investments would clearly serve to implement the Strategic Compass priorities.
- (47) Undertakings in the value chain of relevant defence products should have access to debt financing, to speed-up investments needed to increase manufacturing capacities. The Instrument should facilitate access to finance for Union’s companies in the ammunition and missile field. The Regulation should notably ensure that those legal entities are granted the same conditions offered to other legal entities, taking charge of any additional cost arising specifically for the defence sector.
- (48) The Commission may set-up a dedicated facility as part of the investment facilitation activities described collectively as the ‘Ramp-up fund’. The Ramp-up Fund may be implemented in direct or indirect management. The Commission should explore in that regard the most appropriate way to leverage EU budget to unlock public and private investment in support of the rapid ramp up sought, for instance through the possibility of a blending facility, including under InvestEU Fund established by Regulation (EU) 2021/523 of the European Parliament and Council<sup>16</sup>, in close cooperation with its implementing partners. The ‘Ramp-up Fund’ activities should support the increase of manufacturing capacities in the ammunition and missiles area by providing opportunities for increased availability of funds to companies across the value chain.
- (49) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards the adoption of the Work Programme and of the list of supply-critical defence products, for issuing obligations for undertakings concerned by a request for a priority rated order to accept

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<sup>16</sup> Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU Programme and amending Regulation (EU) 2015/1017 (OJ L 107, 26.3.2021, p. 30–89).

or perform that order at a fair and reasonable price and for laying down the practical and operational arrangements for the functioning of priority rated orders. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>17</sup>. The Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to the adoption of the list of supply-critical defence products, for issuing obligations for undertakings concerned by a request for a priority rated order to accept or perform that order at a fair and reasonable price and for laying down the practical and operational arrangements for the functioning of priority rated orders, where imperative grounds of urgency so require.

- (50) Since the objective of this Regulation namely, to respond to the impact of security crisis, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the proposed action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (“TEU”). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective.s.
- (51) This Regulation should apply without prejudice to Union competition rules, in particular Articles 101 to 109 TFEU and their implementing regulations.
- (52) It is to be recalled that according to Article 41(2) TEU, operating expenditure arising from Chapter 2 of Title V shall be charged to the Union budget, except for such expenditure arising from operations having military or defence implications.
- (53) In view of the urgency to address the security crisis it is appropriate to provide for an exception to the eight-week period referred to in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the TEU, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community. Considering the imminent danger for the security of supply brought about by Russia’s war of aggression against Ukraine, this Regulation should enter into force the day after its publication in the Official Journal.
- (54) Pursuant to paragraphs 22 and 23 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>18</sup>, the Regulation should be evaluated on the basis of information collected in accordance with specific monitoring requirements, while avoiding an administrative burden, in particular on Member States, and overregulation. Those requirements, where appropriate, should include measurable indicators as a basis for evaluating the effects of the Regulation on the ground. The Commission should carry out an evaluation no later than 30 June 2024, including with a view to submitting proposals for any appropriate amendments to this Regulation.

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<sup>17</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

<sup>18</sup> OJ L 123, 12.5.2016, p. 1–14.

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 urgently strengthening the responsiveness and ability of the European Defence Technological and Industrial Base (EDTIB) to ensure the timely availability and supply of ground-to-ground and artillery ammunition as well as missiles ('relevant defence products'), in particular through the following:

- (a) an instrument financially supporting industrial reinforcement for the production of the relevant defence products in the Union, including through the supply of their components ('the 'Instrument');
- (b) the identification, mapping and continuous monitoring of the availability of the relevant defence products, their components and the corresponding inputs (raw materials);
- (c) the establishment of mechanisms, principles, and temporary rules to secure the timely and lasting availability of the relevant defence products to their acquirers in the Union.

Based on an evaluation, pursuant to Article 28 below, of the results achieved by the implementation of this Regulation by mid-2024, notably in regard of the evolution of the security context, the opportunity of the extension of the applicability of the set of measures and of the allocation of the corresponding additional budget will be considered.

#### *Article 2*

##### **Definitions**

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

- (1) 'raw materials' means the materials required to produce relevant defence products;
- (2) 'bottleneck' means a point of congestion in a production system that stops or severely slows the production;
- (3) '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;
- (4) 'applicant' means a natural person or an entity with or without legal personality who has submitted an application in a grant award procedure;
- (5) 'control' means the ability to exercise a decisive influence on a legal entity directly, or indirectly through one or more intermediate legal entities;
- (6) '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;

- (7) ‘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;
- (8) ‘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;
- (9) ‘sensitive information’ means information and data 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;
- (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) ‘lead production time’ means the period of time between a purchase order being placed and the manufacturer completing the order;
- (12) ‘relevant defence products’ means ground-to-ground and artillery ammunition as well as missiles.
- (13) ‘supply-critical defence products’ means relevant 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.
- (14) ‘blending operation’ means an action supported by the Union budget, including within a blending facility or platform as defined in point (6) of Article 2 of the Financial Regulation, that combines non-repayable forms of support or financial instruments from the Union budget with repayable forms of support from development or other public finance institutions as well as from commercial finance institutions and investors;
- (15) ‘Seal of Excellence’ means a quality label which shows that a proposal submitted to a call for proposals under the Instrument has passed all of the evaluation thresholds set out in the work programme, but could not be funded due to a lack of budget available for that call for proposals in the work programme, and might receive support from other Union or national sources of funding;

### *Article 3*

#### **Third countries associated to the Instrument**

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



## CHAPTER II

### THE INSTRUMENT

#### *Article 4*

#### **Objectives of the Instrument**

1. The objective of the Instrument is to foster the efficiency and competitiveness of the European Defence Technological and Industrial Base (EDTIB) to support the ramp up of the production capacity and timely delivery of relevant defence products through industrial reinforcement.
2. The industrial reinforcement shall in particular consist of initiating and speeding up the adjustment of industry to the rapid structural changes imposed by the supply crisis affecting the relevant defence products. This should include the improvement and acceleration of the capacity of adaptation of supply chains for relevant defence products, the creation of manufacturing capacities or their ramp-up, and a reduction of their lead production time for the relevant defence products throughout the Union notably thanks to the intensification and widening of cross-border cooperation between the relevant legal entities.

#### *Article 5*

#### **Budget**

1. The financial envelope for the implementation of the Instrument for the period from its entry into force until 30 June 2025 shall be set a EUR 500 Million in current prices.
2. Within the financial envelope defined in paragraph 1 of this article, up to EUR 50 Million may be used as a blending operation in the frame of the ‘Ramp-up Fund’ defined in article 21.
3. 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 Council<sup>19</sup>. 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 Council<sup>20</sup>. Those resources shall be used for the benefit of the Member State concerned.

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<sup>19</sup> 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).

<sup>20</sup> 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) 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).

Where the Commission has not entered into a legal commitment under direct management for resources transferred in accordance with this paragraph, the corresponding uncommitted resources may be transferred back to the Fund from which they have been initially transferred and allocated to one or more programmes in accordance with the conditions set out in the relevant provisions of Regulation (EU) 2021/1060.

4. The amount referred to in paragraph 1 may also be used for technical and administrative assistance for the implementation of the Instrument, such as preparatory, monitoring, control, audit and evaluation activities including corporate information technology systems.
5. Budgetary commitments for activities extending over more than one financial year may be broken down over several years into annual instalments.
6. The budget of the instrument can be reinforced, where the situation requires it or in case the Regulation is extended, in accordance with Article 1, last paragraph.

#### *Article 6*

##### **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 the 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 Instrument, actions shall comply with all of the following conditions:
  - (a) they have been assessed in a call for proposals under the Instrument;
  - (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. When proposing amended or new Recovery and Resilience Plans, in accordance with Regulation (EU) 2021/241 of the European Parliament and the Council, Member States shall be able to include measures which also contribute to the objectives of this instrument, notably measures linked to proposals submitted to a call for proposals under the Instrument which were awarded a Seal of Excellence.
4. Article 8(5) shall apply by analogy to actions funded in accordance with this Article.

#### *Article 7*

##### **Forms of Union funding**

1. The Instrument shall be implemented under direct management and as concerns the management of the Ramp-up Fund of Article 21 in indirect management with bodies referred to in Article 62(1)(c) Regulation (EU, Euratom) 2018/1046. The Instrument may provide funding in any of the forms laid down in the Financial Regulation,

including financing in the form of financial instruments within blending operations. Blending operations shall be carried out in accordance with Title X of Regulation (EU, Euratom) 2018/1046, Regulation (EU) 2021/523 and Article 21 of this Regulation.

2. By way of derogation from Article 193(2) from Regulation (EU, Euratom) 2018/1046, 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 20 March 2023.

#### *Article 8*

#### **Eligible actions**

1. Only actions implementing the objectives set out in Article 4 shall be eligible for funding.
2. The Instrument shall provide financial support for actions addressing identified bottlenecks in production capacities and supply chains with a view to secure and accelerate production to ensure the effective supply and timely availability of the relevant defence products.
3. Eligible actions shall relate to one or more of the following activities and be exclusively related to the production capacities of relevant-defence products, including their components and raw materials insofar as they are intended or used wholly for the production of relevant defence products:
  - (a) the optimisation, expansion, modernisation, upgrading or repurposing of existing, or the establishment of new, production capacities, in relation to the relevant defence products or their raw materials and components, insofar as the latter are used as direct input for the production of relevant defence products, notably 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-borders industrial partnerships, including through public private partnerships or other forms of industrial cooperation, in a joint industrial effort, including activities that aim at the coordination of the sourcing or reservation of raw materials and components insofar the latter are used as direct input for the production of relevant defence products, as well as production capacities and at the coordination of production plans;
  - (c) the building-up and making available of reserved surge manufacturing capacities of relevant-defence products, raw materials and components thereof, insofar the latter are used as direct input for the production of relevant defence products, in accordance with ordered or planned production volumes;
  - (d) the testing and, as appropriate, reconditioning certification, as appropriate, of relevant defence products with a view to addressing their obsolescence and making them useable by end users;
  - (e) the training, reskilling or upskilling of personnel in relation to the activities referred to in points (a) to (d) of this article;

- (f) the improvement of the access to finance by relevant economic operators active in the production of or making available the relevant defence products, by means of the offset of any additional cost arising specifically from the defence industry sector, for investments related to activities described in points (a) to (e) of this article.
4. The following actions shall not be eligible for funding under the Instrument:
    - (a) actions related to the production of goods or delivery of services which are prohibited by applicable international law;
    - (b) actions related to the production of lethal autonomous weapons without the possibility for meaningful human control over selection and engagement decisions when carrying out strikes against humans;
    - (c) actions or parts thereof, that are already fully financed from other public or private sources;
    - (d) actions entailing expenditures arising from operations having military or defence implications.
  5. The Commission shall ensure in concluding agreements with individual recipients that the instrument only finances activities which exclusively benefit production capacities of relevant defence products, or of their components and raw materials insofar as they are intended or used wholly for the production of relevant defence products.

#### *Article 9*

#### **Financing rate**

1. The Instrument shall finance up to 40% of the eligible costs of an eligible action.
2. By way of derogation from paragraph 1, an action shall be eligible for an increased funding rate of 10 additional percentage points for each of the following criteria:
  - (a) where applicants demonstrate a contribution to the creation of new cross-border cooperation between legal entities established in Member States or associated countries, as described in article 10(4);
  - (b) where applicants commit that they will prioritize for the duration of the action orders stemming from the common procurement of relevant defence products by at least three Member States or associated countries or from the procurement of relevant defence products from at least one Member State of relevant defence products which procure for the purpose of transferring acquired relevant defence products to Ukraine. This commitment shall apply to any procurement of any product directly or indirectly benefitting from support under this Instrument.

By way of derogation, support from the instrument may cover up to 100 % of the eligible costs of an activity referred to article 8(3), point (f).

3. The recipients shall demonstrate that the costs of an action that are not covered by Union support are to be covered by other means of financing.

## *Article 10*

### **Eligible entities**

1. Recipients involved in an action shall be legal entities, whether public or privately owned, established in the Union or in an associated country.
2. The infrastructure, facilities, assets, and resources of the recipients involved in an action which are used for the purposes of an action supported by the Instrument shall be located on the territory of a Member State or of an associated country for the entire duration of an action, and their executive management structures shall be established in the Union or in an associated country.
3. An undertaking 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 only be eligible to be a recipient involved in an action supported by the Instrument if guarantees approved by the Member State or the associated country in which the undertaking is established make available to the Commission guarantees in accordance with its national procedures, ensuring that the involvement in an action of such a undertaking 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 in particular substantiate that, for the purposes of an action, measures are in place to ensure that:
  - (a) the recipient is able to carry out the action and to deliver results without any 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) the products being produced by undertakings having benefitted from the Instrument financial support are not subject to a restriction by a non-associated third country or a non-associated third country entity; and
  - (c) access by a non-associated third country or by a non-associated third-country entity to sensitive or classified 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.
4. If considered to be appropriate by the Member State or the associated country in which the undertaking is established, additional guarantees may be provided.
5. The Commission shall inform the committee referred to in Article 22 of any undertaking considered to be eligible in accordance with paragraph 3.

## *Article 11*

### **Award criteria**

Each proposal shall be assessed on the basis of one or more of the following criteria measuring the contribution of the relevant actions to the industrial reinforcement sought to foster the efficiency and overall competitiveness of the EDTIB, in respect to the relevant defence products:

- (1) Increase in production capacity in the Union: the contribution of the action, in relation to the relevant defence products, to the increase, ramp-up, or reservation of

the manufacturing capacities, their modernisation or the reskilling and upskilling of the related workforce;

- (2) Reduction of delivery lead time: the contribution of the action to the timely satisfaction of the demand expressed through procurement in terms of reduced delivery lead times, including via order reprioritization mechanisms;
- (3) Elimination of sourcing and production bottlenecks: the contribution of the action to the swift identification and rapid and lasting elimination of any sourcing (raw material and any other input) or production (manufacturing ability) bottlenecks;
- (4) Resilience through cross-border cooperation: the contribution of the action to the 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, subcontractors or as other undertakings in the supply chain;
- (5) The demonstration by the applicants of the link between the action and newly placed orders stemming from the joint procurement of relevant defence products by at least three Member States or associated countries especially if done in a EU framework;
- (6) The quality of the implementation plan of the action, including in terms of its processes and monitoring.

#### *Article 12*

#### **Work Programme**

1. The Instrument shall be implemented through a single work programme as referred to in Article 110 of Regulation (EU, Euratom) 2018/1046. Work programmes shall set out, where applicable, the overall amount reserved for blending operations.
2. The Commission shall, by means of an implementing act, adopt the work programme referred to in paragraph 1. The implementing act shall be adopted in accordance with the examination procedure referred to in Article 22(3).
3. The work programme shall set out the funding priorities in line with the mapping referred to in Article 13(1) and taking into account the work of the Defence Joint Procurement Task Force.

### **CHAPTER III**

#### **IDENTIFICATION AND MAPPING**

#### *Article 13*

#### **Identification of needs, mapping and monitoring of capacities**

1. The Commission, based on the cooperative work with the EEAS and the EDA in the context of the Defence Joint Procurement Task Force, shall set up and maintain a mapping of relevant undertakings established in the Union that operate along the supply chains of the relevant defence products, including for instance, the type and specifications of the relevant defence products produced, their related production capacity and their position in the supply chain.

Based on this mapping, the Commission shall, in close cooperation with the identified undertakings, continuously monitor their production capacity and their supply chains and assess their overall ability to respond to the expected evolution of the market demand.

2. The Commission shall present to, and regularly discuss with, the Committee as referred to in Article 22, the results of the mapping or its update, of the monitoring of the supply chains, and its assessment of the overall ability of the identified undertakings to respond to the expected evolution of the market demand. In doing so, the Commission will take into account the work carried out in the context of the regular meetings of the National Armaments Directors with the Defence Joint Procurement Task Force.
3. Based on information gathered pursuant to paragraph 1 and taking due account of the discussion held under paragraph 2, the Commission shall by means of implementing acts, draw up and regularly update a list of supply-critical defence products. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22(3). On duly justified imperative grounds of urgency in relation with the supply crisis, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 22(4).
4. In agreement with the Member State where they are established, the Commission may request from the undertakings that provide supply-critical defence products and in relation to those, to receive, within five working days, detailed information on:
  - (a) the total production capacity in the relevant supply-critical defence products;
  - (b) the existing and expected variations in stocks of such products;
  - (c) any existing schedule of the expected production output for the following three months for each production facility located in the union or elsewhere;
  - (d) any additional information relevant to ensure the timely availability of supply-critical defence products.
5. Without prejudice to national security interests, Member States shall, where appropriate, provide the Commission with additional information needed to achieve the objectives of this Regulation.
6. Without prejudice to national security interests and the protection of commercially confidential information resulting from agreements entered into by Member States, where a Member State intends to adopt at national level measures for the procurement, purchase or manufacturing of supply-critical defence products from the list referred in paragraph 3, it shall inform the Commission in a timely manner.

## **CHAPTER IV**

### **SECURITY OF SUPPLY**

#### *Article 14*

#### **Priority Rated Orders**

1. Where at least three Member States, which have entered or are considering entering into an agreement to commonly procure relevant defence products or where a Member State which has procured or is considering to procure for the purpose of

transferring acquired relevant defence products to Ukraine, face severe difficulties either in the placing of the order or in the execution of the contract due to shortages or serious risks of shortages of supply-critical defence products and these difficulties may undermine the security of the Union and of its Member States, those may ask the Commission to require an undertaking to accept, or to prioritise an order of supply-critical defence products ('priority rated order'), as defined in paragraph 3 of Article 13.

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 request. 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 request, it shall provide the Commission with a detailed explanation to the justification invoked to decline the intended request.

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

3. Where the notified undertaking declines the request, 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 request;
- (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 request 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;
- (b) take precedence over any performance obligation under private or public law;



6. Where the undertaking has agreed to the request 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 concerned, amend its implementing Act to release, partially or in totality the undertaking concerned from its obligations under paragraph 2.

7. For the purpose of this Regulation, transfers of supply-critical defence products subject to the priority rated order may not be considered as sensitive in the meaning of Article 4 (8) of Directive 2009/43/EC.
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 orders. The liability shall be excluded only to the extent the violation of contractual obligations was necessary for compliance with the mandated prioritisation.
10. The Commission shall adopt an implementing act laying down the practical and operational arrangements for the functioning of priority rated orders.
11. 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). On duly justified imperative grounds of urgency in relation with the supply crisis, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 22 (4)

#### *Article 15*

#### **Penalties**

1. Where an undertaking, intentionally or through gross negligence, does not comply with an obligation to prioritise priority rated orders pursuant to Article 14, the Commission may, by decision, where deemed necessary and proportionate, impose periodic penalty payments.
2. Periodic penalty payments shall not exceed 1.5 % of the average daily turnover in the preceding business year for each working day of non-compliance with the obligation calculated from the date established in the decision.

3. In fixing the amount of the periodic penalty payment, regard shall be had to the nature, gravity and duration of the infringement, taking due account of the principles of proportionality and appropriateness.
4. Where the undertaking has satisfied the obligation 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.
5. The Court of Justice of the European Union 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.
6. Time shall begin to run on the day on which the infringement is committed. However, in the case of continuing or repeated infringements, time shall begin to run on the day on which the infringement ceases. Any action taken by the Commission or the competent authorities of the Member States for the purposes of ensuring compliance with the provisions of this Regulation shall interrupt the limitation period. Each interruption shall start the time running afresh. However, the limitation period shall expire at the latest on the day in which a period equal to twice the limitation period has elapsed without the Commission having imposed a periodic penalty payment. That period shall be extended by the time during which the limitation period is suspended because the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Union.
7. The power of the Commission to enforce decisions taken pursuant to this Article shall be subject to a limitation period of three years. Time shall begin to run on the day on which the decision becomes final. The limitation period for the enforcement of periodic penalties payments shall be interrupted: (a) by notification of a decision varying the original amount periodic penalty payment or refusing an application for variation; (b) by any action of the Commission or of a Member State, acting at the request of the Commission, designed to enforce payment of the fine or periodic penalty payment. Each interruption shall start time running afresh. The limitation period for the enforcement of periodic penalty payments shall be suspended for so long as: (a) time to pay is allowed; (b) enforcement of payment is suspended pursuant to a decision of the Court of Justice.

#### *Article 16*

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

1. Before adopting a decision pursuant to Article 15, 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.
2. 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.
3. The Commission shall base its decisions only on objections on which undertakings concerned have been able to comment.

4. 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.

#### *Article 17*

### **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, intra-EU transfer of inputs 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 these 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.

#### *Article 18*

### **Continuity of production of relevant defence products**

1. Member States may decide to use or to encourage companies working in the field of relevant defence products to use derogations provided for in Article 17(3) of Directive 2003/88/EC in order to allow expansion of working shifts hence facilitating continuity of production in the field of relevant defence products, if they deem it necessary to achieve the objectives of this regulation.
2. To that end and where prior authorisation is required, all national authorities concerned shall ensure that the most rapid treatment legally possible is given to applications from companies working in the field of relevant defence products to use such derogations.

#### *Article 19*

### **Facilitation of common procurement during the current ammunition supply crisis**

1. Where at least three Member States enter into an agreement to commonly procure relevant defence products and where the extreme urgency deriving from the current crisis resulting from the Russian aggression of Ukraine prevents to use any of the procedures provided for by Directive 2009/81/EC for the award of a framework agreement, the following rules may be applied.
2. By way of derogation from Article 29(2) second subparagraph of Directive 2009/81/EC, a contracting authority may modify an existing framework agreement which has been awarded through one of the procedures provided for by Article 21 of

Directive 2009/81/EC so that its provisions may apply to contracting authorities/entities which are not originally party to the framework agreement.

3. By way of derogation from Article 29(2) third sub-paragraph of Directive 2009/81/EC, a contracting authority may make substantial amendments to the quantities laid down in an existing framework agreement insofar as it is strictly necessary for the application of paragraph 2. Where quantities laid down in an existing framework agreement are substantially modified pursuant to this paragraph, the contracting authority shall open the possibility, by means of an *ad hoc* notice published in the Official Journal of the European Union, to any economic operator that meets the conditions initially laid down in the framework agreement, to join that framework agreement.
4. The principle of non-discrimination shall apply to framework agreements referred to in paragraph 2 and 3 with regard to the additional quantities, and notably between contracting authorities of Member States referred to in paragraph 1.
5. Contracting authorities having modified a contract in the cases set out under 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.
6. Contracting authorities/entities may not use this Article improperly or in such a way as to prevent, restrict or distort competition.
7. Modifications introduced in the framework agreements referred to in this article shall not be concluded after 30 June 2025.

#### *Article 20*

##### **Facilitation of intra-EU transfers of defence-related products**

1. By way of derogation from Article 4(1) of Directive 2009/43/EC, the transfer of the following defence-related products between Member States shall not be subject to prior authorisation:
  - (a) ammunition and fuze setting devices, and specially designed components therefor, as listed in the third category of the Annex of the Directive 2009/43/EC (third category of the EU Military List – ML3);
  - (b) missiles and related equipment and accessories, and specially designed components therefor, as listed in the fourth category of the Annex of the Directive 2009/43/EC (fourth category of the EU Military List – ML4).
2. Any transfer in accordance with the derogation set out in paragraph 1 shall be notified, for information, to the Member State of origin.
3. This article does not affect the discretion of Member States as regards policy on the export of the defence-related products covered by paragraph 1.

## **CHAPTER V**

### **SPECIFIC PROVISIONS APPLICABLE TO ACCESS TO FINANCE**

#### *Article 21*

##### **Ramp-up Fund**

1. A blending facility may be established, to be described as the ‘Ramp-up Fund’ proposing debt solutions, to leverage, de-risk and speed-up investments needed to increase manufacturing capacities.
2. The specific objectives pursued by the Ramp-up Fund are set out as follows:
  - (a) improving the leverage effect of the Union budget spending and achieving a higher multiplier effect in terms of attracting private-sector financing;
  - (b) providing support to companies facing difficulties in accessing finance, and addressing the need to underpin the resilience of the Union’s defence industry;
  - (c) accelerating investment in the field of manufacturing relevant defence products and to leveraging funding from both the public and the private sectors, while increasing the security of supply for the whole Union’s defence industry value chain;
  - (d) enhancing access to finance for investments related to activities described in points (a) to (e) of article 8(3).

## **CHAPTER VI**

### **FINAL PROVISIONS**

#### *Article 22*

##### **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 European Defence Agency shall be invited to provide its views and expertise to the committee as an observer. The European External Action Service shall also be invited to assist in the committee.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
4. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

## Article 23

### Security of Information

1. The Commission shall protect classified information received in relation to the implementation of this regulation in accordance with the security rules set out in Commission Decision (EU, Euratom) 2015/444<sup>21</sup>.
2. The Commission shall make use of existing or set up secured exchange systems in order to facilitate the exchange of sensitive and classified information between the Commission, the High Representative, the European Defence Agency, and the Member States and, where appropriate, with the legal entities subject to measures set out in this Regulation. That system shall take into account the Member States' national security regulations.

## Article 24

### Confidentiality and processing of the 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, including recommendations and measures to be taken, in accordance with Union 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 individual operator when the sharing of the information results in potential commercial or reputational damage to this operator or in divulging any trade secrets.

## Article 25

### 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<sup>22</sup> and Directive 2002/58/EC of the European Parliament and of the Council<sup>23</sup>, or the obligations of the Commission and, where appropriate, other Union institutions and bodies, relating to their processing of

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<sup>21</sup> Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53–88).

<sup>22</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1–88).

<sup>23</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37–47).

personal data under Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>24</sup>, when fulfilling their responsibilities.

2. Personal data shall not be processed or communicated except in cases where this is strictly necessary to the purposes of this Regulation. In such cases, the conditions of Regulation (EU) 2016/679 and Regulation (EU) 2018/1725 shall apply as appropriate.
3. Where 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 26*

##### **Audits**

Audits on the use of the Union contribution carried out by persons or entities, including by 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 27*

##### **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 28*

##### **Information, communication and publicity**

1. The recipients of Union funding shall acknowledge the origin of those 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.
2. The Commission shall implement information and communication actions relating to the Instrument, to actions taken pursuant to the Instrument and to the results obtained.
3. Financial resources allocated to the Fund shall also 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.

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<sup>24</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39–98).

4. Financial resources allocated to the Fund may also 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 29*

**Evaluation**

1. No later than 30 June 2024, 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, notably in regard of 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.
2. Taking into account the evaluation report, the Commission may submit proposals for any appropriate amendments to this Regulation, notably in view to continue addressing any persisting risks in relation to the supply of the relevant defence products.

*Article 30*

**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 apply until 30 June 2025. This shall not affect the continuation or modification of actions initiated pursuant to this Regulation, all actions necessary to protect the financial interests of the European Union and the powers conferred on the Commission to impose penalties in accordance with Article 15.

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

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*



# LEGISLATIVE FINANCIAL STATEMENT

## **1. FRAMEWORK OF THE PROPOSAL/INITIATIVE**

### **1.1. Title of the proposal/initiative**

### **1.2. Policy area(s) concerned**

### **1.3. The proposal/initiative relates to:**

### **1.4. Objective(s)**

*1.4.1. General objective(s)*

*1.4.2. Specific objective(s)*

*1.4.3. Expected result(s) and impact*

*1.4.4. Indicators of performance*

### **1.5. Grounds for the proposal/initiative**

*1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative*

*1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention, which is additional to the value that would have been otherwise created by Member States alone.*

*1.5.3. Lessons learned from similar experiences in the past*

*1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments*

*1.5.5. Assessment of the different available financing options, including scope for redeployment*

### **1.6. Duration and financial impact of the proposal/initiative**

### **1.7. Method(s) of budget implementation planned**

## **2. MANAGEMENT MEASURES**

### **2.1. Monitoring and reporting rules**

### **2.2. Management and control system(s)**

*2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

*2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them*

*2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

### **2.3. Measures to prevent fraud and irregularities**

## **3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE**

### **3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected**

**3.2. Estimated financial impact of the proposal on appropriations**

3.2.1. *Summary of estimated impact on operational appropriations*

3.2.2. *Estimated output funded with operational appropriations*

3.2.3. *Summary of estimated impact on administrative appropriations*

3.2.3.1. *Estimated requirements of human resources*

3.2.4. *Compatibility with the current multiannual financial framework*

3.2.5. *Third-party contributions*

**3.3. Estimated impact on revenue**

# 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

## 1.1. Title of the proposal/initiative

Proposal for a Regulation of the European Parliament and of the Council establishing the Act in Support of Ammunition Production

## 1.2. Policy area(s) concerned

Union defence industrial policy

## 1.3. The proposal/initiative relates to:

- a new action
- a new action following a pilot project/preparatory action<sup>25</sup>
- the extension of an existing action
- a merger or redirection of one or more actions towards another/a new action

## 1.4. Objective(s)

### 1.4.1. General objective(s)

The Act establishes a set of measures aimed at urgently strengthening the responsiveness and ability of the European Defence Technological and Industrial Base (EDTIB) to ensure the timely availability and supply of ground-to-ground and artillery ammunition as well as missiles (hereafter “relevant defence products”), in particular through:

- An instrument to support financially defence companies producing relevant defence products through the value chain.
- A mapping and continuous monitoring of relevant defence products, their components and critical inputs, in order to identify supply-critical defence products.
- Mechanisms, principles and temporary rules to facilitate the availability of relevant defence products for Member States.

### 1.4.2. Specific objective(s)

N/A

### 1.4.3. Expected result(s) and impact

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

Expected results: The Instrument will help to reinforce the European Defence Technological and Industrial Base (EDTIB), facilitate its adaptation to ongoing structural market changes, and thereby contribute to a timely availability and supply of ground-to-ground artillery ammunition as well as missiles (relevant defence products). Manufacturing capacities in the area of ground to ground and artillery ammunition, as well as missiles exist in the Union. However, production capacities have been tailored for peace time, with a modest demand, resulting into minimal level of stocks and diversified suppliers globally to reduce costs, exposing the Union’s defence sector to dependencies. As a consequence, the current

<sup>25</sup> As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

manufacturing capacity and the existing supply and value chains do not allow for a secure and timely delivery of defence products to meet Member States' needs both for their own security requirement and for continuing supporting Ukrainian needs. The financial contribution of the EU should contribute to unlock a number of actions which urgently need to take place in order to ensure the timely availability and supply of relevant defence products to Member States. The European production is already booked at almost at maximum capacity from Member States or third countries' orders, resulting in prices spiralling. Additional EU industrial policy measures, in line with Article 173 (3), are therefore needed to support EU industry to increase its production, reduce its delivery lead-time and address potential bottlenecks that could delay or impede the supply and production of relevant defence products.

Expected impact:

A Union contribution of EUR 500 million would allow for an appropriate incentive for economic operators involved in the relevant defence products manufacturing to start taking measures to ramp-up their production capacities and/or to facilitate investment throughout the supply chain. It will contribute to reducing lead time for the production of the relevant defence products while facilitating investment to allow the industry to produce more and faster. It will also support industrial cooperation and coordination of the sourcing of raw materials.

As a consequence, the instrument will foster the competitiveness of the European defence industry involved in the production of these products. On a medium to longer term, it is expected that additional investments in the EDTIB bring benefits as regards jobs creations and skills and enhance security of supply.

1.4.4. *Indicators of performance*

*Specify the indicators for monitoring progress and achievements.*

Taking into consideration the short period of implementation, the results and impacts of the Instrument will be assessed under retrospective evaluation at the end of the programme implementation.

The Commission will ensure that the necessary indicators used for the monitoring of programme implementation will be put in place by the entity entrusted with the programme implementation. These will include:

- increase of production capacity for relevant defence products within the EU
- reduction of production lead time
- number of economic operators receiving a facilitated access to finance
- number of new cross-border cooperations with undertakings established in another Member States or associated countries

**1.5. Grounds for the proposal/initiative**

1.5.1. *Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative*

The Regulation will be implemented through direct management. The Commission will need to be staffed with the appropriate experts in order to monitor effectively the implementation.

- 1.5.2. *Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.*

As highlighted by the Joint Communication on Defence Investment gaps and way forward (JOIN/2022/24 final), decades of underinvestment generates gaps within defence capabilities available to EU Member States armed forces, as well as industrial gaps within the Union. Fragmentation of the demand also generated national industrial silos and a corresponding multitude of defence systems of the same kind, often not interoperable amongst each other. The current defence market context is marked by an increased security threat, sees Member States rapidly increasing their defence budgets and aiming at similar equipment's purchases. This results into an amount of demand for ground-to-ground artillery and ammunition, as well as missiles which overcomes EDTIB manufacturing capacities for such products, currently tailored for peacetime. In this context, significant investments are needed for which defence companies, which do not normally engage substantial self-funded industrial investments, will need de-risking, as well as regulatory support to remove existing bottlenecks such as access to skilled personnel, raw materials. The Union intervention by de-risking industrial investments via grants will allow a faster adaptation to ongoing structural market change. The proposed measures will also encourage the EDTIB's resilience through cross-border industrial partnerships and collaboration of relevant companies in a joint industry effort to avoid worsening fragmentation of the supply chains.

- 1.5.3. *Lessons learned from similar experiences in the past*

N/A

- 1.5.4. *Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments*

The Instrument will complement planned EU instruments such as the European Defence Industry Reinforcement through common Procurement Act, and existing EU programmes such as the European Defence Fund as well as EU defence initiatives such as the Permanent Structured Cooperation (PESCO) or the Strategic Compass for Security and Defence. It will also generate synergies with other EU programmes.

- 1.5.5. *Assessment of the different available financing options, including scope for redeployment*

N/A

## 1.6. Duration and financial impact of the proposal/initiative

### limited duration

- in effect from 2023 to 30/06/2025
- Financial impact from 2023 to 2024 for commitment appropriations and from 2023 to 2028 for payment appropriations.

### unlimited duration

- Implementation with a start-up period from YYYY to YYYY,
- followed by full-scale operation.

## 1.7. Management mode(s) planned<sup>26</sup>

### Direct management by the Commission

- by its departments, including by its staff in the Union delegations;
- by the executive agencies

### Shared management with the Member States

### Indirect management by entrusting budget implementation tasks to:

- third countries or the bodies they have designated;
- international organisations and their agencies (to be specified);
- the EIB and the European Investment Fund;
- bodies referred to in Articles 70 and 71 of the Financial Regulation;
- public law bodies;
- bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
- bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
- persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

### Comments

The instrument shall be implemented in direct management in accordance with the Financial Regulation, and as concerns the management of the Ramp-up Fund of Article 21, implementation may be undertaken in indirect management with bodies referred to in Article 61(1)(c) Regulation (EU, Euratom) 2018/1046.

<sup>26</sup> Details of management modes and references to the Financial Regulation may be found on the BudgWeb site:  
<https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx>

## MANAGEMENT MEASURES

### 2.1. Monitoring and reporting rules

*Specify frequency and conditions.*

In accordance with article 29 of the Instrument the Commission will draw up an evaluation report not later than 30/06/2024 for the instrument and submit it to the EP and Council. The report shall evaluate the impact and effectiveness of the actions under the Instrument. To this end, the Commission will put in place necessary monitoring arrangements to ensure that relevant data are collected reliably and smoothly.

### 2.2. Management and control system(s)

#### 2.2.1. *Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

The Commission would have overall responsibility for the implementation of the Instrument. In particular, the Commission intends to implement the Instrument in direct management (except for the Ramp-up Fund which could be implemented in indirect management). The use of direct management mode clarifies the responsibilities (implementation by authorising officers), shortens the delivery chain (reducing Time To Grant and Time To Pay), avoids conflicts of interests and reduces the implementation costs (no management fees for an entrusted entity).

The Commission should define the funding priorities and conditions through one multi-annual work programme. The definition of priorities should be supported by the work of the Defence Joint Procurement Task Force. A Programme Committee of Member States should be established, to which the European Defence Agency should be invited to provide its views and expertise to the committee as an observer, and the European External Action Service, including its Military Staff, should be invited to assist in the committee. The Commission would adopt the multi-annual work programme following the opinion of the committee under the examination procedure.

The funding under the Instrument will take the form of grants covering up to 100% of the costs of the action, as well as loans. The Commission may use simplified cost options (e.g. lump sums) in its grants in order to reduce the administrative burden for the beneficiaries and focus the effort on the results of the actions.

The payment scheme will be prepared taking into account the beneficiary's proposal (in order to allow the beneficiary to avoid any treasury issue) while ensuring the protection of the Union budget. The Commission, as granting authority, may – in case of lack of or inadequate implementation of the actions or delays – reduce, withhold or terminate its financial contribution.

The control strategy for the programme, including ex-ante and ex-post controls, will build around the experience acquired in the EDF, and its precursor programmes, EDIDP and PADR.

#### 2.2.2. *Information concerning the risks identified and the internal control system(s) set up to mitigate them*

The Instrument is meant to support the ramp up of manufacturing capacity.



Risks associated are an insufficient budgetary volume compared to actual needs, difficulty to identify bottlenecks within production, urgency of needs by Union's armed forces compared with production processes. The instrument being complementary to other initiatives agreed by the Council to support EU Armed Forces and Ukraine, coordination of demand between Member States, is a precondition.

The Commission would therefore implement the Instrument in direct management building on the expertise gained in implementing the European Defence Fund, prepare and adopt only one multi-annual work programme, shorten the time to grant.

- 2.2.3. *Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

The budget of the programme will be implemented under direct management. Based on the Commission experience on grant management, the overall control costs of the Instrument by the Commission are estimated at less than 1% of the related funds managed.

In terms of expected error rate(s), the aim is to maintain the error rate below the threshold of 2%. The Commission considers that the implementation of the programme in direct management, with trained (experienced staff, possibly recruited from Member States Ministries of Defence) and well-staffed teams acting under delegated authorising officers, applying clear rules and making an appropriate use of output-based instruments will maintain an error rate below the 2% materiality threshold.

### **2.3. Measures to prevent fraud and irregularities**

*Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.*

The European Anti-Fraud Office (OLAF) is competent to carry out investigations on operations supported under this initiative. Agreements resulting from this Regulation, including agreements concluded with international organisations, shall provide for supervision and financial control by the Commission, or any representative authorised by it, and audits by the European Court of Auditors, the European Public Prosecutor's Office (EPPO) or OLAF, if necessary on-the spot. Commission's officials who have the required security clearance, can also make on site visits.



## ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

### 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

*In order of multiannual financial framework headings and budget lines.*

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff. <sup>27</sup>	from EFTA countries <sup>28</sup>	from candidate countries and potential candidates <sup>29</sup>	from other third countries	other assigned revenue
		Diff./Non-diff.	YES/NO	YES/NO	YES/NO	YES/NO

- New budget lines requested

*In order of multiannual financial framework headings and budget lines.*

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.	from EFTA countries	from candidate countries and potential candidates	from other third countries	other assigned revenue
5	13.0105	No Diff	YES	NO	NO	NO
5	13.0602	Diff	YES	NO	NO	NO

<sup>27</sup> Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

<sup>28</sup> EFTA: European Free Trade Association.

<sup>29</sup> Candidate countries and, where applicable, potential candidates from the Western Balkans.

### 3.2. Sources of financing and estimated financial impact of the Act in Support of Ammunition Production

#### 3.2.1. Source of financing of appropriations under the Act in Support of Ammunition Production

EUR million (to three decimal places)

	2023	2024	2025	2026	2027	Total
EDIRPA	157.000	83.000				240.000
EDF Capability		174.000				174.000
EDF Research		86.000				86.000
Total	157.000	343.000				500.000

If unexpected budgetary margins would materialise for the years 2023 and 2024, the Commission would propose to the budgetary authority to allocate it to the European Defence Fund up to €100 million.

#### 3.2.2. Summary of estimated impact on operational appropriations

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as explained below:

EUR million (to three decimal places)

<b>Heading of multiannual financial framework</b>	5	Security and Defence – Cluster 13 Defence
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		2023	2024	2025	2026	2027	Post 2027	TOTAL
Operational appropriations								
13.0602 Defence Industrial Reinforcement Instrument	Commitments (1)	156.000	343.000					<b>500.000</b>
	Payments (2)		78.500	171.500	54.950	120.050	75.000	<b>500.000</b>
Appropriations of an administrative nature financed from the								

envelope of specific programmes <sup>30</sup>									
13.0105 Support expenditure to the Defence Industrial Reinforcement Instrument	Commitments = Payments	(3)	1.000	p.m.					
<b>TOTAL appropriations under HEADING 5</b> of the multiannual financial framework	Commitments	=1+3	157.000	343.000					<b>500.000</b>
	Payments	=2+3	1.000	78.500	171.500	54.950	120.050	74.000	<b>500.000</b>

<b>Heading of multiannual financial framework</b>	<b>7</b>	‘Administrative expenditure’
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EUR million (to three decimal places)

		2023	2024	2025	2026	2027	Post 2027	TOTAL
Human resources		1.554	2.500	2.500	2.158	2.158	1.801	<b>12.671</b>
Other administrative expenditure		0.233	0.288	0.067	0.067	0.057	0.052	<b>0.764</b>
<b>TOTAL appropriations under HEADING 7</b> of the multiannual financial framework	(Total commitments = Total payments)	<b>1.787</b>	<b>2.788</b>	<b>2.567</b>	<b>2.225</b>	<b>2.215</b>	<b>1.853</b>	<b>13.435</b>

<sup>30</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former ‘BA’ lines), indirect research, direct research.

		2023	2024	2025	2026	2027	Post 2027	TOTAL
<b>TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework</b>	Commitments	158.787	345.788	2.567	2.225	2.215	1.853	<b>513.435</b>
	Payments	2.787	81.288	174.067	57.175	122.265	75.853	<b>513.435</b>

### 3.2.3. Summary of estimated impact on administrative appropriations

- The proposal/initiative does not require the use of appropriations of an administrative nature
- The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	2023	2024	2025	2026	2027	Post 2027	TOTAL
--	------	------	------	------	------	-----------	-------

<b>HEADING 7 of the multiannual financial framework</b>							
Human resources	1.554	2.500	2.500	2.158	2.158	1.801	<b>12.671</b>
Other administrative expenditure	0.233	0.288	0.067	0.067	0.057	0.052	<b>0.764</b>
<b>Subtotal HEADING 7 of the multiannual financial framework</b>	<b>1.787</b>	<b>2.788</b>	<b>2.567</b>	<b>2.225</b>	<b>2.215</b>	<b>1.853</b>	<b>13.435</b>

<b>Outside HEADING 7<sup>31</sup> of the multiannual financial framework</b>							
Human resources							
Other expenditure of an administrative nature							
<b>Subtotal outside HEADING 7 of the multiannual financial framework</b>							

<b>TOTAL</b>	<b>1.787</b>	<b>2.788</b>	<b>2.567</b>	<b>2.225</b>	<b>2.215</b>	<b>1.853</b>	<b>13.435</b>
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The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

<sup>31</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

### 3.2.3.1. Estimated requirements of human resources

- The proposal/initiative does not require the use of human resources.
- The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full time equivalent units*

	2023	2024	2025	2026	2027	Post 2027
<b>○ Establishment plan posts (officials and temporary staff)</b>						
20 01 02 01 (Headquarters and Commission's Representation Offices)	8	13	13	11	11	10
20 01 02 03 (Delegations)						
<b>○ External staff (in Full Time Equivalent unit: FTE)<sup>32</sup></b>						
20 02 01 (AC, END, INT from the 'global envelope')	2	3	3	3	3	1
20 02 03 (AC, AL, END, INT and JPD in the delegations)						
<b>XX 01 xx yy zz</b> <sup>33</sup>	- at Headquarters					
	- in Delegations					
01 01 01 02 (AC, END, INT - Indirect research)						
01 01 01 12 (AC, END, INT - Direct research)						
Other budget lines (specify)						
<b>TOTAL</b>	<b>10</b>	<b>16</b>	<b>16</b>	<b>14</b>	<b>14</b>	<b>11</b>

**XX** is the policy area or budget title concerned.

The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG. together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	8 FTEs (8 AD) will be required to set up the Instrument in 2023 and to start up the first activities, including the mapping of economic actors in the supply chains of relevant defence products and the preparation of the work programme; 13 FTEs (10AD and 3 AST) to implement the activities and gradually reducing to 10 (8 AD and 2 AST) in 2028 to ensure the operational, financial and legal monitoring of the implementation of the projects (including closure).
External staff	2 FTEs to start the activities (2 SNE), increasing to 3 (1 AC and 2 SNE) and then reduced to 1 in 2028 (1 AC) to ensure the operational, financial and legal monitoring of the implementation of the projects (including closure).

<sup>32</sup> AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JPD= Junior Professionals in Delegations.

<sup>33</sup> Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).



### 3.2.4. *Compatibility with the current multiannual financial framework*

The proposal/initiative:

- can be fully financed through redeployment within the relevant heading of the Multiannual Financial Framework (MFF).

Redeployment of appropriations from EDF and EDIRPA, both under Heading 5. Further details of the concerned lines and annual redeployment in Section 3.2.1

- requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation.
- requires a revision of the MFF.

### 3.2.5. *Third-party contributions*

The proposal/initiative:

- does not provide for co-financing by third parties
- provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

	Year N <sup>34</sup>	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

<sup>34</sup> Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

### 3.3. Estimated impact on revenue

- The proposal/initiative has no financial impact on revenue.
- The proposal/initiative has the following financial impact:
  - on own resources
  - on other revenue
  - please indicate, if the revenue is assigned to expenditure lines

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative <sup>35</sup>						
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article .....								

For assigned revenue, specify the budget expenditure line(s) affected.

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

<sup>35</sup> As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.