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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

{SWD(2025) 820 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Russian invasion of Ukraine has underscored the need for a strengthened Union-wide market for defence products, capable of supporting the defence readiness of Member States in the face of emerging security threats. The ongoing conflict has exposed vulnerabilities in the European defence landscape, highlighting the importance of a cohesive and resilient defence industrial base. A well-functioning European defence market is essential to ensure that Member States have access to the necessary defence capabilities, technologies and products to respond effectively to current and future security challenges.

The impact of the changing geopolitical landscape on the European defence market has been significant, with disruptions to supply chains, increased demand for defence products, and a growing need for interoperable and innovative solutions. However, existing legislation impacting the European defence market is not fully adapted to the current challenges, hindering the ability of Member States to respond rapidly and effectively to emerging threats.

In response to these challenges, the European Union must take steps to strengthen the EU-wide market for defence products, promoting a more integrated and competitive defence industrial base. By creating a more robust and resilient European defence market, the Union can support the defence readiness of Member States, promote European strategic autonomy, and contribute to a more stable and secure European security environment.

As indicated in the Joint White Paper for European Defence Readiness 2030[1], "*rebuilding European defence requires, as a starting point, a massive investment over a sustained period. Together we must accelerate work on all strands to urgently ramp up European defence readiness to ensure that Europe has a strong and sufficient European defence posture by 2030 at the latest". Furthermore "based on projections of gradual take-up of the instruments proposed under the ReArm Europe Plan/Readiness 2030, defence investment could reach at least EUR 800bn over the next four years"*.

Rebuilding European defence will require massive investment over a sustained period, both public and private. Considering the above, and further to the Council call on the European Commission to accelerate the work on all strands to decisively ramp up Europe's defence readiness 2030, the present proposal aims to make the Union legislative framework conducive for defence readiness activities and overall ramp up to a level that can credibly deter any risk of armed aggression.

It aims to address the fact that there is an urgent need to cover the important defence investment gaps that were accumulated over past decades by better aligning the regulatory framework to the extraordinary efforts required in this field. More specifically, with the current proposal the Commission puts forward simplification proposals to remove regulatory barriers, facilitate and speed up defence procurement and intra-EU transfers of defence-related products and facilitate European defence readiness and industrial buildup.

[1] Joint White Paper for European Defence Readiness 2030: JOIN/2025/120 final, 19.03.2025.

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

The proposal aims to adapt the provisions governing the EU-wide defence market to the current security scenario, by introducing targeted adjustments that simplify administrative procedures, cut red tape, and provide more flexible solutions. By streamlining procedures and reducing bureaucratic obstacles, the proposal seeks to create a more agile and responsive European defence market, better equipped to support the defence readiness efforts of Member States and promote the development of a competitive and innovative European defence industry. The proposal follows the vision and objectives defined in the Joint White Paper for European Defence Readiness 2030 and aims at facilitating the implementation of the ReArm Europe Plan - Readiness 2030. It also includes provisions that specifically aim at better aligning EU defence procurement and transfers regulation to the needs of the implementation of EU defence industrial programmes, such as the European Defence Fund (EDF).

- **Consistency with other Union policies**

The proposed measures to strengthen the EU defence market are designed to build upon and complement existing policy provisions, with the aim of enhancing Europe's defence capabilities and supporting the defence readiness of Member States. The adjustments introduced by these measures are limited to what is necessary to ensure that Member States can achieve the required level of defence readiness in the near future, in response to the evolving security landscape and the need to deter emerging threats.

The proposal is part of a package of measures to extend to the defence sector and more specifically for defence readiness purposes including defence production and supply chain, the provisions that other areas currently benefit from. Its purpose is to deliver on the commitment of the Commission to; 1) enhance Europe's defence capabilities in response to concerns about Russian aggression and; 2) build up the EU's defence industry and call for massive long-term investments in defence capabilities to deter threats through a simplification process to tackle administrative burden and cut red tape.

Under the Regulatory Fitness and Performance Programme (REFIT), the Commission ensures that its legislation is fit for purpose, targeted to the needs of stakeholders, and minimizes burdens while achieving its objectives. This proposal is therefore part of the REFIT programme, reducing unnecessary burdens for the defence sector, by aligning them with the rules currently applicable to the different procedures and schemes.

The current proposal focuses on the defence readiness actual situation needs, making the achievement of the objectives of legislations more efficient and less burdensome for enterprises and public authorities.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal amends existing directives. Therefore, the legal basis for the proposal is the same as the legal basis of the amended directives, namely Article 53(2), Article 62, and Article 114(1) of the Treaty on the Functioning of the European Union (TFEU). Article 114 of the TFEU is a general legal basis with the objective of establishing or ensuring the functioning of the single market. To the extent that this Directive amends Directive

2009/43/EC[2], the appropriate legal basis, in so far as those amendments are concerned, is Article 114 TFEU. To the extent that this Directive amends Directive 2009/81/EC[3] the appropriate legal basis, in so far as those amendments are concerned, is Article 53(2), Article 62 and Article 114 TFEU.

All the pieces of legislation affected by this proposal contain similar provisions that are intended to reduce the burden for Member States and industry or provide them with assistance to carry out the obligations imposed on them through the relevant acts, with the aim of making such legislation easier to apply and less burdensome. In view of extending this proportionality where administrative burden is concerned, it is considered necessary to extend the provisions to the EU-wide defence market to support the defence readiness of Member States and foster the development of a competitive and innovative European defence industry.

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

The proposal aims at amending EU legislation directly touching upon the EU-wide defence market. The same could not be accomplished at Member State level, in particular taking into account also the need for ensuring a harmonised approach across Member States, which is of critical importantce for effective simplification.

- **Proportionality**

In the context of the amendments to Directives 2009/81/EC and 2009/43/EC the proposal aims at simplifying the currently applicable regulatory framework and codifiying certain elements of procurement law established in the case-law of the Court of Justice of the European Union.

The measures do not go beyond what is necessary to achieve these goals.

- **Choice of the instrument**

All the Directives under this proposal are harmonised legislations under the EU rules. These pieces of legislation contain provisions that take into account the situation and the growing needs of the defence sector and ensure that requirements avoid imposing an unnecessary burden on the defence readiness, production and supply chain processes. This proposal aims at ultimately making such legislation easier to apply and less burdensome.

Therefore, in the interest of efficiency, a joint proposal for the various relevant provisions applicable to the defence sector in the form of the Defence Readiness Omnibus proposal, appears to be the most suitable solution. In particular, the choice of a Directive for this proposal is justified by the need to use the same legal instrument as the legal acts that are to be amended.

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2 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, ELI: http://data.europa.eu/eli/dir/2009/43/oj)

3 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, ELI: http://data.europa.eu/eli/dir/2009/81/oj).

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

• Ex-post evaluations/fitness checks of existing legislation

N/A

• Stakeholder consultations

The stakeholder consultation process was comprehensive, comprising a public survey that was open until 22 April 2025, as well as a series of targeted meetings with Member States, relevant business representatives from the Union, and other key stakeholders. Through this consultation process, combined with the Commission's experience in implementing the relevant legislation, key blockages and challenges within the EU regulatory environment were identified. Based on valuable input received and the Commission's expertise, the proposals outlined in this directive aim to address these key issues and improve the overall effectiveness of the EU regulatory framework.

• Collection and use of expertise

The proposed measures have been identified following a process of internal scrutiny of existing legislation and based on the experience from implementation of the related legislation. Since this is a step in the process of continuous assessment of the needs of defence readiness capabilities arising from Union legislation, the scrutiny of such burden and of its impact on stakeholders will continue.

Impact assessment

The European Council, in its Conclusions of 20 March 2025, called on the Commission to accelerate the "*work on all strands to decisively ramp up Europe's defence readiness within the next five years*" and called on the Commission to rapidly follow up with simplification on security and defence. Due to the urgent nature of the proposal, which is designed to support the rapid adaptation of the European defence industry to the new geopolitical environment and provide assistance to a country at war as of beginning of 2023, it was not possible to deliver an impact assessment in the timeframe available to table the Defence Readiness Omnibus. Within 3 months after the adoption of this proposal the Commission will present a Staff Working document to present the justification for this legislative action and explain its appropriateness to achieve the identified policy objectives in accordance with the relevant Better Regulations rules.

The proposal concerns limited and targeted changes of legislation. They are based on experience from implementing legislation. The changes do not have significant impact on the policy but only ensure a more efficient and effective implementation. Their targeted nature and the lack of relevant policy options make an impact assessment not necessary. However, the attached Communication looks at elements on the impact of such measures, including the analysis of results of an EU public survey undertaken in this context.

• Regulatory fitness and simplifications

This is a REFIT proposal, aiming to simplify legislation and cut burdens for stakeholders.

Fundamental rights

N/A

4. BUDGETARY IMPLICATIONS

N/A

5. OTHER ELEMENTS

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

N/A

- **Explanatory documents (for directives)**

N/A

- **Detailed explanation of the specific provisions of the proposal**

For Directive 2009/43/EC

- The cases where Member States may provide for exemptions from prior authorisation for transfers of defence-related products will be extended to include transfers necessary for the implementation of projects funded by EU defence industrial programmes, transfers in the framework of structured cross-border industrial partnerships, transfers to EU institutions and bodies and the European Defence Agency, and transfers in case of an emergency resulting from a crisis.

- The Commission will be given the power to define certain non-essential elements of the transfer framework via the adoption of delegated acts.

- The general transfer licence will be extended to cover transfers by certified entities, in addition to transfer to certified European defence undertakings.

- Member States will be required to enable the possibility to introduce General Transfer Licences other than those listed in Article 5(2).

- General Transfer Licences will be introduced for EU defence industrial projects, such as the European Defence Fund (EDF), to cover all defence-related products and all transfers necessary for the implementation of the project.

- Modification of the provision on information to be provided by suppliers of defence-related products to provide them with the required flexibility, while maintaining transparency and control.

For Directive 2009/81/EC

- The thresholds of Directive 2009/81/EC will be raised to enable Member States to focus on critical contracts and reduce the administrative burden on the industry for smaller procurement procedures.

- The open procedure and dynamic purchasing system, based on Directive 2014/24 are introduced to enhance the range of tools at the disposal of the Member States.

- The innovation partnership procedure: a modified and more flexible innovation partnership procedure will be introduced, based on Directive 2014/24, to support the procurement of innovative solutions.

- Simplified procedure for procurement of results of competitive parallel research and development projects: a simplified procedure will be introduced for the direct procurement of innovative products or services that result from competitive parallel research and development projects.

- A temporary derogation will be introduced to allow Member States to use the negotiated procedure without prior publication for common procurements, including off-the-shelf procurement. This will be available for procurement of identical defence products or products subject only to minor modifications conducted by at least three Member States.

- The provisions related to Member States joining cooperative programmes based on R&D after the end of the R&D phase will be codified in Directive 2009/81/EC.

- The rules governing framework procurement agreements will be clarified, and the maximum duration of a framework agreement will be extended from 7 to 10 years.

- The statistical reporting obligations related to defence procurement will be reduced to ease the administrative burden for Member States.

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(2), Article 62, and Article 114 thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) The Union is facing an acute and growing threat, as underscored in the White Paper on European Defence Readiness 2030[4], linked in particular to the return of full-scale conflict in Europe. In response to the escalating security challenges, it is imperative that the Union takes decisive action to bolster its defence capabilities. A crucial aspect of this effort is the need to ramp up the Union's defence production capacity in the Union, enabling it to respond effectively to emerging security demands. There is urgency to ramp up European defence readiness to ensure that the Union has a strong and sufficient European defence posture by 2030 at the latest.

(2) To achieve the goal of increasing the defence readiness of the Member States and the Union, regulatory simplification and harmonisation are essential. By streamlining and aligning regulatory frameworks, the Union can create a more conducive environment for defence industries to operate, innovate, and produce the necessary capabilities to ensure European security and defence readiness. The Joint White Paper on European Defence Readiness 2030[5] outlined the objectives for this simplification of legislation impacting the defence readiness.

(3) Transfers of defence-related products within the Union are subject to prior authorisation through general, global or individual transfer licences granted or published by the Member State from whose territory the supplier wishes to transfer defence-related products. Member States may exempt transfers of defence-related products from the obligation of prior authorisation in specific cases listed in Directive 2009/43/EC of the European Parliament and of the Council[6]. Taking into account the developments in the security situation and the introduction of Union defence industrial

4 JOIN(2025) 120 final, 19 March 2025.

5 Joint White Paper for European Defence Readiness 2030: JOIN/2025/120 final, 19.03.2025.

6 Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community (OJ L 146, 10.6.2009, p. 1, ELI: http://data.europa.eu/eli/dir/2009/43/oj).

programmes, aimed in particular at reinforcing cross-border cooperation within the Union, it is appropriate to extend the list of cases in which Member States may exempt transfers from prior authorisation. In particular, such possibility should be provided in relation to transfers necessary for the implementation of projects funded by Union defence industrial programmes, transfers in the framework of structured cross-border industrial partnerships, transfers to Union institutions and bodies and to the European Defence Agency, transfers in case of an emergency resulting from a crisis and transfers linked to military and defence assistance resulting from Union actions under Article 28 of the Treaty on the European Union. .

(4) A well-functioning transfer system across Member States is a prerequisite of a Union-wide market for defence. The quickly evolving security landscape requires additional flexibility allowing the Commission and Member States to react in a targeted and agile way. Therefore, the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union to define certain non-essential elements of the transfer framework. Such delegated acts could define a harmonized approach for the implementation of Article 4(8), such as by defining 'sensitive' components or by introducing a *de minimis* rule. Furthermore, it is appropriate to empower the Commission, either upon request of a Member State or on its own initiative, to add new cases where Member States would be enabled to introduce exemptions from the obligation of prior authorisation, thereby allowing for increased flexibility and potential for simplified and accelerated intra-Union transfers of defence-related products.

(5) Furthermore, for the same reasons as those set out in recital 4, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to define harmonised conditions for the Member States to determine which type of transfer licence should be applied to specific defence-related products or categories of defence-related products.

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

(7) To foster the uptake of certification by recipients and to facilitate cross-border collaboration and openness of supply chains within the Union, it is appropriate to extend the general transfer licence for transfers to certified recipients so that it also covers transfers by certified entities. Such undertakings have demonstrated strong capacity to comply with transfer and export control rules and have also supported important costs to achieve certification. They should be allowed to benefit from simplified and less burdensome possibilities to perform intra-Union transfers.

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

(9) Directive 2009/43/EC provides that Member States may introduce general transfer licences other than those listed in Article 5(2) of that Directive. However, that

possibility may be hampered by national rules limiting flexibility and the capacity of national controlling authorities to take full advantage of the instruments introduced by Directive 2009/43/EC. For instance, additional types of general transfer licences could concern transfers necessary for the implementation of projects funded by Union defence industrial programmes, intra-group transfers or transfers in case of urgency resulting from a crisis. It is thus appropriate to require Member States to enable, in their national legislation, the introduction of general transfer licences other than those listed in Article 5(2) of Directive 2009/43/EC.

(10) The implementation of Union defence industrial programmes, such as the EDF, is often hindered by significant delays in the transfer of defence-related products, due to the lengthy and complex processes of obtaining transfer licences by Member States. Those delays can have a detrimental impact on the overall efficiency and effectiveness of these programmes and can undermine the ability of the Union and its Member States to develop and acquire the defence capabilities they need in a timely and cost-effective manner. To address this issue, it is necessary to introduce general transfer licences for these programmes. The scope of these general transfer licences should cover all defence-related products set out in the Annex to Directive 2009/43/EC and should also cover all the transfers, whether tangible or intangible, that the supplier has to perform for the implementation of the project. Member States could also provide that such licences could apply to the entire life cycle of the product developed in a given project, including production, maintenance and upgrade phases. The introduction of such general transfer licences would reduce delays, increase efficiency and facilitate collaboration between undertakings participating in these projects, thereby supporting the development of a strong and competitive Union defence industry. The terminology used in that context should be understood to be identical with that of a Model Grant Agreement[7] for Union defence programmes.

(11) Additionally, taking account of the technological evolution, it is necessary to adapt the rules on the information to be provided by suppliers of defence-related products, as the current provisions may prove burdensome in case of non-tangible technology transfers. It is appropriate to provide suppliers with the required flexibility while maintaining transparency and control, in order to facilitate the efficient and effective transfer of defence products within the Union. The need for the modification of the information requirement for non-tangible technology transfers requires a case-by-case assessment. Therefore, Member States should be given the possibility to apply such information requirements only as far as their application does not result in overly burdensome reporting obligations for the suppliers.

(12) It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[8]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

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7 The EDF Model Grant Agreement is available on the Commission website: https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/edf/agr-contr/mga_edf_v1.0-01052023_en.pdf

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

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

(14) To develop the necessary capabilities and military readiness to credibly deter armed aggression and secure the Union's future, a massive increase in European defence investment is needed. Based on projections of gradual take-up, defence investment could reach at least EUR 800bn over the next four years, including the expenditure financed by the EUR 150bn from the Security and Action for Europe (SAFE) instrument established by Council Regulation (EU) 2025/1106[9]. Those significant investments in defence by Member States involve substantial public procurement. It is therefore appropriate to simplify certain provisions of Directive 2009/81/EC of the European Parliament and of the Council[10], which governs the procurement of defence and sensitive security works, goods and services, while maintaining a well-functioning Union-wide market for defence. Member States should be provided with both the flexibility to rapidly replenish their stocks and the ability to do so in a sustainable manner, which can best be achieved by fully exploiting the potential of the internal market. By streamlining the defence procurement rules in the Union, Member States should have the necessary agility to respond to emerging security needs, while also promoting a competitive and integrated European defence market to support their long-term defence capabilities.

(15) To achieve that goal, it is necessary to raise the threshold amounts for contracts covered by Directive 2009/81/EC. This adjustment would enable Member States to focus their resources on the most critical contracts, allowing for more effective allocation of their procurement budgets. At the same time, it would ease the administrative burden on the industry for smaller procurement procedures, which will help to reduce the regulatory complexity and costs associated with those contracts.

(16) Furthermore, Member States should be given the flexibility to profit from all available tools related to public procurement. In order to increase the number of ways contracting authorities/entities can carry out public procurement, the possibility to use the open procedure and the dynamic purchasing system should be added. Those two procedures are based on the ones provided for in Directive 2014/24/EU of the European Parliament and of the Council[11].

(17) There is urgency for the Union to mobilise its overall innovation capacity and direct significant investments to regaining edge and prevent being technologically dependent. Directive 2009/81/EC should also be adapted to better support the procurement of innovation, to ensure that the significant investments made by Member States to increase their defence readiness is future-proof and yields long-term benefits. By facilitating the procurement of innovative defence solutions, the Union could encourage the development of cutting-edge technologies and capabilities, ultimately

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

10 Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76, ELI: http://data.europa.eu/eli/dir/2009/81/oj).

11 Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65–242, ELI: http://data.europa.eu/eli/dir/2014/24/oj).

transforming defence through disruptive innovation and enhancing the effectiveness and resilience of its defence systems. To better support the procurement of research and development and innovative solutions a modified and more flexible innovation partnership procedure based on Directive 2014/24/EU, should be introduced in Directive 2009/81/EC. A simplified procedure for direct procurement of innovative products and services resulting from competitive parallel research and development projects should also be added. That would allow Member States to stay at the forefront of defence technology, while also promoting collaboration and competition among indFustry partners. The benefits of this approach include faster access to innovative solutions, reduced development risks and increased cost-effectiveness, ultimately leading to enhanced defence capabilities and a more competitive European Defence Technological and Industrial Base (EDTIB).

(18) To provide Member States with the necessary flexibility in responding to emerging security challenges, it is essential to introduce a limited in time possibility to use the negotiated procedure without prior publication for common procurements, including off-the-shelf procurement. That temporary derogation would enable Member States to quickly acquire the defence capabilities they need, while also allowing for a degree of flexibility in procurement procedures, thereby supporting the rapid replenishment of their stocks and the enhancement of their defence readiness. Furthermore, allowing Member States to procure identical defence products or products subject only to minor modifications, including common maintenance, contributes to deepening the interoperability and interchangeability of Member States' armed forces' equipment, further strengthening the Union's defence readiness and enhancing the security of supply.

(19) There is a need for more and better collaborative investment, from research to development of complex systems, through commercialisation to procurement, with a view to increasing the Union's technological sovereignty. Common procurement by Member States is key to improve efficiency, effectiveness and interoperability of defence capabilities, thereby contributing to a stronger and more cohesive European defence. Building on the 2019 Commission notice on guidance on cooperative procurement in the fields of defence and security[12], it is necessary to lay down provisions related to Member States joining cooperative programmes based on research and development after the end of the research and development phase for the later phases of the life cycle. In addition, and in order to support the later phases of the life cycle of Union-funded defence research and development programmes, it is necessary to clarify that Member States can benefit from the exclusion for cooperative programmes based on research and development under the same conditions also for projects funded under defence research and development programmes, such as the EDF. This would provide the necessary legal certainty and ensure that the flexibility enabled through the exclusion will support the continuation of EDF projects under a cooperative framework even after the completion of the research and development phase. It would also clarify that Member States joining after the research and development phase as genuine participants in the cooperative programme will also benefit from the exclusion.

[12] Commission notice on guidance on cooperative procurement in the fields of defence and security (OJ C 157, 8.5.2019, p. 1–9).

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

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

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

(23) To reduce the administrative burden on Member States, the statistical reporting obligations related to defence procurement should be decreased, allowing national authorities to focus on the implementation of their defence policies and the efficient use of their resources. To the extent that this Directive amends Directive 2009/81/EC the appropriate legal basis, in so far as those amendments are concerned, is Article 53(2), Article 62 and Article 114 of the Treaty.

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

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Amendments to Directive 2009/43/EC

Directive 2009/43/EC is amended as follows:

(1) in Article 3, the following point 8 is added:

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

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*Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76, ELI: http://data.europa.eu/eli/dir/2009/81/oj).’;

(2) Article 4 is amended as follows

(a) paragraph 2 is replaced by the following:

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

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

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

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

(c) the transfer is necessary for the implementation of a collaborative armament programme between Member States;

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

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

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

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

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

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

(b) paragraph 3 is replaced by the following:

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

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

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

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

(d) the transfer is necessary for cross-border cooperation;'

(c) paragraph 4 is replaced by the following:

'4. Member States shall ensure that suppliers wishing to transfer defence-related products from their territory may use general transfer licences or apply for global or individual transfer licences in accordance with Articles 5, 6 and 7. No pre-conditions shall be imposed, that would have the effect of preventing suppliers from using general transfer licences or applying for global or individual transfer licences, on the basis of criteria that are not connected to their capacity to perform their obligations in the fields of transfer and export control.'

(d) the following paragraph 8a is inserted:

'8a. The Commission is empowered to adopt delegated acts in accordance with Article 13a, at the request of a Member State or on its own initiative, in order to determine harmonised conditions for the application of paragraphs 5 and 8 of this Article'.

(3) Article 5 is amended as follows:

(a) paragraph 2 is amended as follows:

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

‘(b) the recipient or the supplier is an undertaking certified in accordance with Article 9;’;

(ii) the following point (e) is inserted:

‘(e) the publication is required by Article 5a.’;

(b) the following paragraphs 2a and 2b are inserted:

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

2b. The Commission is empowered to adopt delegated acts to supplement this Directive in accordance with the procedure laid down at Article 13a, in order to harmonise the minimum scope of the general transfer licences referred to in Article 5(2).’;

(4) the following Article 5a is inserted:

‘Article 5a

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

1. Member States shall publish general transfer licences for transfers necessary for the implementation of projects funded under a Union defence industrial programme. Those licences shall apply to all defence-related products and shall cover all transfers necessary for the implementation of the project.
2. Member States may provide that the licencing system referred to in paragraph 1 applies also to the later phases of the life cycle of the projects occurring after the stages funded under a Union defence industrial programme.
3. Member States shall not require any additional commitment, such as certificates related to end-use or limitations to the export of the defence-related products, if a funding agreement or contract concluded under a Union defence industrial programme contains a commitment that the defence-related products linked to the implementation of a given project will not be shared without authorisation, beyond the participants to the funding agreement or parties to the contract in question, the funding or contracting authority, or where relevant, the Commission when it is not the funding or contracting authority and the Court of Auditors as referred to in paragraph 4.
4. The funding agreement or contract may define the modalities under which the defence-related products linked to the implementation of a given project can be transferred to the Court of Auditors when the participants, the funding or contracting authorities, or where relevant, the Commission when it is not the funding or contracting authority are legally required to do so.’;

(5) in Article 8, the following paragraph 3a is inserted:

‘3a. The provisions of this Article, in particular Article 8(3), points (b) and (c), accordingly, shall apply to non-tangible technology transfers only as far as their application does not result in disproportionate reporting obligations for the suppliers.’;

(6) Article 13a is amended as follows:

(a) the following paragraph 2a is inserted:

‘2a. The power to adopt delegated acts referred to in Article 4(8a) shall be conferred on the Commission for a period of five years from [date of the

adoption of the amending directive]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.';

(b) paragraph 3 is replaced by the following:

'3. The delegation of power referred to in Article 4(3), Article 4(8a) or Article 13 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.';

(c) paragraph 6 is replaced by the following:

'6. A delegated act adopted pursuant to Article 4(3), Article 4(8a) or Article 13 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.'.

Article 2
Amendments to Directive 2009/81/EC

Directive 2009/81/EC is amended as follows:

(1) Article 1 is amended as follows:

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

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

16. 'Tenderer' means an economic operator which has submitted a tender under an open procedure, a restricted or negotiated procedure, competitive dialogue, or an innovation partnership;';

(b) the following points 17a and 17b are inserted:

'17a. 'Centralised purchasing activities' means activities conducted on a permanent basis, in one of the following forms:

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

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

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

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

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

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

(c) point 18 is replaced by the following:

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

(d) the following point 18 a is inserted:

’18a. ‘Open procedure’ means a procedure in which any interested economic operator may submit a tender;’;

(e) the following point 21a is inserted:

‘21a. ‘Dynamic purchasing system’ means a completely electronic process for making commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the contracting authority, which is limited in duration and open throughout its validity to any economic operator which satisfies the selection criteria and has submitted an indicative tender that complies with the specification.’;

(f) the following point 29 is added:

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

(2) Article 8 is amended as follows:

(a) in point (a), ‘EUR 443 000’ is replaced by ‘EUR 900 000’;

(b) in point (b), ‘EUR 5 538 000’ is replaced by ‘EUR 7 000 000’;

(3) Article 9 is amended as follows:

(a) paragraph 9 is replaced by the following:

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

(b) the following paragraph 10 is added:

’10. In the case of innovation partnerships, the value to be taken into consideration shall be the maximum estimated value net of VAT of the research and development activities to take place during all stages of the

envisaged partnership as well as of the supplies, services or works to be developed and procured at the end of the envisaged partnership.';

(4) Article 10 is replaced by the following:

'Article 10

Contracts and framework agreements awarded by central purchasing bodies

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) the following Article 10a is inserted:

'Article 10a

Procurement involving contracting authorities/entities from different Member States

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

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

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

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

3. The provision of centralised purchasing activities by a central purchasing body located in another Member State shall be conducted in accordance with the national provisions of the Member State where the central purchasing body is located.

The national provisions of the Member State where the central purchasing body is located shall also apply to the award of a contract under a dynamic purchasing system and the conduct of a reopening of competition under a framework agreement.

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

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

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

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

A participating contracting authority/entity shall be deemed to have fulfilled its obligations pursuant to this Directive when it purchases works, supplies or services from a contracting authority/entity which is responsible for the procurement procedure. When determining responsibilities and the applicable national law as referred to in the second subparagraph, point (a), the participating contracting authorities/entities may allocate

specific responsibilities among them and determine the applicable national provisions of any of their respective Member States. The allocation of responsibilities and the applicable national law shall be referred to in the procurement documents for jointly awarded public contracts.

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

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

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

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

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

'(c) contracts awarded in the framework of a cooperative programme based on research and development, conducted jointly by at least two Member States for the development of a new product or an upgrade leading to substantial changes or substantial improvements of an existing product and, where applicable, the later phases of all or part of the life-cycle of this product. Where a Member State becomes a full member of a cooperative programme after the completion of the research and development phase of that programme, for the later phases of the life-cycle of the product, this Article shall apply to the joining Member State. A research and development project managed by Union institutions or bodies and, implemented in accordance with Union rules and funded from the Union budget, constitutes a cooperative programme conducted jointly by at least two Member States and can be continued for the phases after research and development phase, in which case contracts awarded in the framework of the follow-up programme may also be excluded under this Article;

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

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

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

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

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

'1. In the case of particularly complex contracts, Member States may provide that where contracting authorities/entities consider that use of the open procedure, the restricted procedure or the negotiated procedure with publication of a contract notice

will not allow the award of the contract, those contracting authorities/entities may make use of the competitive dialogue in accordance with this Article.

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

(9) the following Article 27a is inserted:

'Article 27a
Innovation partnership

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) Article 28 is amended as follows:

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

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

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

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

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

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

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

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

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

(b) in point (2), the following point (c) is added:

'(c) concluded after parallel competing research and development projects with several economic operators procured by a contracting authority/entity provided that all of the following conditions are fulfilled:

(i) the parallel competing research and development contracts have been awarded by the contracting authority/entity procuring the products or services after a negotiated procedure with prior publication of a contract notice, a restricted procedure or an open procedure;

(ii) the products or services procured are the result of one of the research and development contracts;

(iii) the value of the products or services does not exceed 10 times the value of the research and development contract from which it results;

(iv) the contractors and their subcontractors are established, have their principal place of business, and perform the research and development contract and the supply contract using resources located in a Member State or in a an EEA EFTA state;

(v) the executive management structures of the contractors and their subcontractors are established in the Union, in an EEA EFTA State, or in Ukraine;

(vi) the contractors and the subcontractors are not subject to control by a third country which is not an EEA EFTA State or Ukraine or by a third-country entity which is not established in an EEA EFTA State;

(vii) the products have been designed in the Union, an EEA EFTA State, or Ukraine and are not subject to control or restriction by a third country which is not an EEA EFTA State or Ukraine or by a third-country entity which is not established in an EEA EFTA State or in Ukraine;';

(c) in point (3) the following point (d) is added.

'(d) for the common procurement of military equipment concluded prior to 1 January 2031 by contracting authorities/entities from at least three Member States, provided that all of the following conditions are fulfilled:

(i) the contracting authorities/entities from the Member States concerned procure identical defence products or products subject only to minor modifications;

(ii) the contract covers at least joint maintenance for the procured defence products in addition to the procurement of the defence products. The requirement for the contract covering joint maintenance may be waived in case the procured defence product typically does not require maintenance;

(iii) the contractors involved in the common procurement shall be established and have their executive management structures in the Union, in an EEA EFTA State or in Ukraine. They shall not be subject to control by a third country which is not an EEA EFTA State or Ukraine or by another third-country entity which is not established in the Union, in an EEA EFTA State or in Ukraine;

(iv) Article 16(5), (6) and (9) of Regulation (EU) 2025/1106 of the Council* apply insofar as they refer to contractors;

(v) the contractors involved in the common procurement may be considered to fulfil the eligibility conditions referred to in point (ii) and (iii) where they have fulfilled equivalent conditions under Regulations (EU) 2018/1092**, (EU) 2021/697***, (EU) 2023/1525**** or (EU) 2023/2418***** of the European Parliament and of the Council and provided that no subsequent changes call into question the fulfilment of those conditions;

(vi) the infrastructure, facilities, assets and resources of the contractors and subcontractors involved in the common procurement which are used for the purposes of the common procurement shall be located in the territory of a Member State or an EEA EFTA State. Where contractors or subcontractors involved in the common procurement have no readily available alternatives or relevant infrastructure, facilities, assets and resources on the territory of a Member State or an EEA EFTA State, they may use their infrastructure, facilities, assets and resources which are located or held outside those

territories, provided that such use does not contravene the security and defence interests of the Union and its Member States;

(vii) the cost of components originating outside the Union or an EEA EFTA States shall not be higher than 35 % of the estimated cost of the components of the end product;';

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

** Regulation (EU) 2018/1092 of the European Parliament and of the Council of 18 July 2018 establishing the European Defence Industrial Development Programme aiming at supporting the competitiveness and innovation capacity of the Union's defence industry (OJ L 200, 7.8.2018, p. 30–43, ELI: http://data.europa.eu/eli/reg/2018/1092/oj).

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

**** Regulation (EU) 2023/1525 of the European Parliament and of the Council of 20 July 2023 on supporting ammunition production (ASAP) (OJ L 185, 24.7.2023, p. 7, ELI: http://data.europa.eu/eli/reg/2023/1525/oj).

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

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

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

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

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

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

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

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

(12) the following Article 29a is inserted in Title II, Chapter V:

'Article 29a
Dynamic purchasing system

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

2. In order to procure under a dynamic purchasing system, contracting authorities/entities shall follow the rules of the restricted procedure. All candidates satisfying the selection criteria shall be admitted to the system. Where contracting authorities/entities have divided the system into categories of products, works or services in accordance with paragraph 1 of this Article, they shall specify the applicable selection criteria for each category.

Notwithstanding Article 33, the following time limits shall apply:

(a) the minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent. No further time limits for receipt of requests to participate shall apply once the invitation to tender for the first specific procurement under the dynamic purchasing system has been sent;

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

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

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

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

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

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

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

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

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

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

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

They shall award the contract to the tenderer that submitted the best tender on the basis of the award criteria set out in the contract notice for the dynamic purchasing system or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest. Those criteria may, where appropriate, be formulated more precisely in the invitation to tender.

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

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

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

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

(13) Article 30 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. Contracting authorities/entities which intend to award a contract or a framework agreement by open procedure, restricted procedure, negotiated

procedure with the publication of a contract notice, competitive dialogue or innovation partnership shall make known their intention by means of a contract notice.';

(b) the following paragraph 2a is inserted:

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

(14) in Article 33, paragraph 2 is replaced by the following:

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

In the case of restricted procedures, the minimum time-limit for the receipt of tenders shall be 40 days from the date on which the invitation is sent.';

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

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

(16) Article 35 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

(b) paragraph 3 is replaced by the following:

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

(17) the following articles 46a and 46b are inserted in Title II, Chapter VII, Section 2:

'Article 46a

Reduction of the number of otherwise qualified candidates to be invited to participate

1. In restricted procedures, negotiated procedures with publication of a contract notice, competitive dialogue procedures and innovation partnerships, contracting authorities/entities may limit the number of candidates meeting the selection criteria that they will invite to tender or to conduct a dialogue, provided the minimum number, in accordance with paragraph 2, of qualified candidates is available.

2. The contracting authorities/entities shall indicate, in the contract notice or in the invitation to confirm interest, the objective and non-discriminatory criteria or rules they intend to apply, the minimum number of candidates they intend to invite and, where appropriate, the maximum number.

   In the restricted procedure the minimum number of candidates shall be five. In the negotiated procedure with publication of a contract notice, in the competitive dialogue procedure and in the innovation partnership the minimum number of candidates shall be three. In any event the number of candidates invited shall be sufficient to ensure genuine competition.

   The contracting authorities/entities shall invite a number of candidates at least equal to the minimum number. However, where the number of candidates meeting the selection criteria and the minimum levels of ability as referred to in Article 38(3) is below the minimum number, the contracting authority/entity may continue the procedure by inviting the candidates with the required capabilities. In the context of the same procedure, the contracting authority/entity shall not include economic operators that did not request to participate, or candidates that do not have the required capabilities.

Article 46b

Reduction of the number of tenders and solutions

Where contracting authorities/entities exercise the option of reducing the number of tenders to be negotiated as provided for in Article 26(3) or of solutions to be discussed as provided for in Article 27(4), they shall do so by applying the award criteria stated in the procurement documents. In the final stage, the number arrived at shall make for genuine competition in so far as there are enough tenders, solutions or qualified candidates.';

(18) the following Article 49a is inserted in Title II, Chapter VII, Section 3:

'Article 49a

Modification of contracts during their term

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) where the modifications, irrespective of their value, are not substantial within the meaning of paragraph 2.

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

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

3. A modification of a contract or a framework agreement during its term shall be considered to be substantial within the meaning of paragraph 1, point (e), where it renders the contract or the framework agreement materially different in character from

the one initially concluded. In any event, without prejudice to paragraphs 1 and 2, a modification shall be considered to be substantial where one or more of the following conditions is met:

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

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

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

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

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

(19) Articles 65, 66 and 68 are deleted.

Article 3

1. Member States shall adopt and publish, by […]at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from […].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

Article 4

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

Article 5

This Directive is addressed to the Member States.

Done at Strasbourg,

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