

# DECISIONS

## COUNCIL DECISION 2011/411/CFSP

of 12 July 2011

### defining the statute, seat and operational rules of the European Defence Agency and repealing Joint Action 2004/551/CFSP

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 42 and 45 thereof,

Whereas:

- (1) The European Defence Agency (hereinafter 'the Agency') was established by Council Joint Action 2004/551/CFSP<sup>(1)</sup> (hereinafter 'Joint Action 2004/551/CFSP') to support the Council and Member States in their effort to improve the Union's defence capabilities in the field of crisis management and to sustain the European Security and Defence Policy.
- (2) The European Security Strategy, endorsed by the European Council on 12 December 2003, identifies the establishment of a defence agency as an important element towards the development of more flexible and efficient European military resources.
- (3) The report on the implementation of the European Security Strategy of 11 December 2008 endorses the Agency's leading role in the process of developing key defence capabilities for the Common Security and Defence Policy (CSDP).
- (4) Joint Action 2004/551/CFSP should be repealed and replaced in order to take into account the amendments to the Treaty on European Union (TEU) introduced by the Treaty of Lisbon.
- (5) Article 45 TEU provides for the adoption, by the Council, of a Decision defining the Agency's statute, seat and operational rules, which should take account of the level of effective participation of the Member States in the Agency's activities.
- (6) The Agency should contribute to the implementation of the Common Foreign and Security Policy (CFSP), in particular the CSDP.
- (7) The structure of the Agency should enable it to respond to the operational requirements of the Union and its Member States for the CSDP and, where necessary to fulfil its functions, to cooperate with third countries, organisations and entities.
- (8) The Agency should develop close working relations with existing arrangements, groupings and organisations, such as those established under the Letter of Intent Framework Agreement (hereinafter 'LoI Framework Agreement'), as well as the Organisation Conjointe de Coopération en matière d'Armement (OCCAR) and the European Space Agency (ESA).
- (9) The High Representative of the Union for Foreign Affairs and Security Policy (HR), in accordance with Article 18(2) TEU, should have a leading role in the Agency's structure and provide the essential link between the Agency and the Council.
- (10) In the exercise of its role of political supervision and policy-making, the Council should issue guidelines to the Agency.
- (11) In view of their nature, the adoption of the Financial Framework for the Agency, as referred to in Article 4(4), and the conclusion of administrative arrangements between the Agency and third countries, organisations and entities must be approved by the Council acting unanimously.
- (12) When adopting guidelines and decisions in relation to the work of the Agency, the Council should meet at the level of Defence Ministers.
- (13) Any guidelines or decisions adopted by the Council in relation with the Agency's work should be prepared in accordance with Article 240 TFEU.
- (14) The competences of the Council's preparatory and advisory bodies, in particular those of the Committee of Permanent Representatives under Article 240 TFEU, the Political and Security Committee (PSC) under Article 38 TEU and the EU Military Committee (EUMC) should remain unaffected.
- (15) The National Armaments Directors (NAD), Capability Directors, Research and Technology (R&T) Directors and Defence Policy Directors should receive reports and contribute on issues of their competence in preparation of Council decisions relating to the Agency.

<sup>(1)</sup> OJ L 245, 17.7.2004, p. 17.

- (16) The Agency should have the legal personality necessary to perform its functions and attain its objectives, while maintaining close links with the Council and fully respecting the responsibilities of the European Union and its institutions.
- (17) It should be provided that the budgets administered by the Agency may, on a case-by-case basis, receive contributions towards non-administrative costs, from the general budget of the European Union, in full respect of the rules, procedures and decision-making processes applicable to it, including Article 41(2) TEU.
- (18) The Agency, while being open to participation by all Member States, should also provide for the possibility of specific groups of Member States establishing ad hoc projects or programmes.
- (19) Subject to a Council decision on the establishment of permanent structured cooperation, in conformity with Articles 42(6) and 46 TEU and with Protocol (No 10) on permanent structured cooperation established by Article 42 TEU annexed to the TEU and to the TFEU, the Agency should support the implementation of permanent structured cooperation.
- (20) The Agency should have decision-making procedures allowing it to fulfil its tasks efficiently, while respecting the national security and defence policies of participating Member States.
- (21) The Agency should fulfil its mission in full respect of Article 40 TEU.
- (22) The Agency should act in full compliance with the Council's security standards and rules.
- (23) In accordance with Article 5 of Protocol (No 22) on the position of Denmark, annexed to the TEU and to the TFEU, Denmark does not participate in the elaboration and implementation of decisions and actions of the Union which have defence implications. Denmark will therefore not be bound by this Decision,

HAS ADOPTED THIS DECISION:

#### CHAPTER I

#### ESTABLISHMENT, MISSION AND TASKS OF THE AGENCY

##### Article 1

##### Establishment

1. An Agency in the field of defence capabilities development, research, acquisition and armaments (hereinafter the 'European Defence Agency' or the 'Agency'), as originally established by Joint Action 2004/551/CFSP, shall hereby continue in accordance with the following provisions.
2. The Agency shall act under the Council's authority, in support of the CFSP and the CSDP, within the single institutional framework of the European Union, and without prejudice to the responsibilities of the EU institutions and the Council bodies. The Agency's mission shall be without prejudice to other competences of the Union, in full respect of Article 40 TEU.

3. The Agency shall be open to participation by all EU Member States wishing to be part of it. Member States already participating in the Agency at the time of the adoption of this Decision shall continue as participating Member States.

4. Any Member State wishing to participate in the Agency after the entry into force of this Decision or wishing to withdraw from the Agency shall notify its intention to the Council and shall inform the HR. Any necessary technical and financial arrangements for such participation or withdrawal shall be determined by the Steering Board, referred to in Article 8.

5. The Agency shall have its seat in Brussels.

##### Article 2

##### Mission

1. The mission of the Agency is to support the Council and the Member States in their effort to improve the EU's defence capabilities in the field of crisis management and to sustain the CSDP as it stands now and develops in the future.

2. The Agency shall identify operational requirements, shall promote measures to satisfy those requirements, shall contribute to identifying and, where appropriate implementing any measure needed to strengthen the industrial and technological base of the defence sector, shall participate in defining a European capabilities and armaments policy, and shall assist the Council in evaluating the improvement of military capabilities.

3. The Agency's mission shall be without prejudice to the competences of Member States in defence matters.

##### Article 3

##### Definitions

For the purpose of this Decision, the following definitions shall apply:

- (a) 'participating Member States' means the Member States of the European Union which participate in the Agency;
- (b) 'contributing Member States' means the participating Member States of the European Union which contribute to a particular project or programme of the Agency.

##### Article 4

##### Political supervision and reporting arrangements to the Council

1. The Agency shall operate under the authority and the political supervision of the Council, to which it shall provide regular reports and from which it shall receive regular guidelines.

2. The Agency shall report regularly to the Council on its activities, and shall notably:

- (a) submit to the Council in November each year a report on the Agency's activities for that year and provide elements for the Agency's work programme and budgets for the following year;

(b) subject to a Council decision on the establishment of permanent structured cooperation, submit to the Council at least once a year information on the Agency's contribution to the assessment activities in the context of permanent structured cooperation, referred to in Article 5(3)(f)(ii).

The Agency shall provide the Council in good time with information on important matters to be submitted to the Steering Board for decision.

3. The Council, acting by unanimity, and with advice from the PSC or other competent Council bodies as appropriate, shall issue guidelines annually in relation to the work of the Agency, notably with regard to its work programme. The Agency's work programme shall be established within the framework of these guidelines.

4. Every year, the Council, acting by unanimity, shall approve a Financial Framework for the Agency for the following 3 years. That Financial Framework shall set out agreed priorities associated with the Agency's 3-year Work Plan and shall constitute a legally binding ceiling for the first year and planning figures for the second and third year. The Agency shall provide, no later than 31 March each year, a draft of the Financial Framework and its associated Work Plan to the Steering Board for consideration.

5. The Agency may make recommendations to the Council and to the Commission as necessary for the implementation of its mission.

#### Article 5

##### Functions and tasks

1. In fulfilling its functions and tasks, the Agency shall respect other competences of the Union and those of the EU institutions.

2. The Agency's fulfilment of its functions and tasks shall be without prejudice to the competences of Member States in defence matters.

3. The Agency, subject to the authority of the Council, shall have as its task to:

(a) contribute to identifying the Member States' military capability objectives and evaluating observance of the capability commitments given by the Member States, in particular by:

(i) identifying, in association with the competent Council bodies, including the EUMC, and utilising, inter alia, the Capability Development Mechanism (CDM) and any successor, the EU's future defence capability requirements;

(ii) coordinating the implementation of the Capability Development Plan (CDP) and any successor thereto;

(iii) evaluating, against criteria to be agreed by the Member States, the capability commitments given by the Member States, inter alia, through the CDP process and the CDM and any successor thereto;

(b) promote the harmonisation of operational needs and the adoption of effective, compatible procurement methods, in particular by:

(i) promoting and coordinating harmonisation of military requirements;

(ii) promoting cost-effective and efficient procurement by identifying and disseminating best practices;

(iii) providing appraisals on financial priorities for capabilities development and acquisition;

(c) propose multilateral projects to fulfil the objectives in terms of military capabilities, ensure coordination of the programmes implemented by the Member States and management of specific cooperation programmes, in particular by:

(i) promoting and proposing new multilateral cooperative projects;

(ii) identifying and proposing collaborative activities in the operational domain;

(iii) working for coordination of existing programmes implemented by Member States;

(iv) taking, at the request of Member States, responsibility for managing specific programmes;

(v) preparing, at the request of Member States, programmes to be managed by OCCAR or through other arrangements, as appropriate;

(d) support defence technology research, and coordinate and plan joint research activities and the study of technical solutions meeting future operational needs, in particular by:

(i) promoting, in liaison with the Union's research activities where appropriate, research aimed at fulfilling future security and defence capability requirements and thereby strengthening Europe's industrial and technological potential in this domain;

(ii) promoting more effectively targeted joint defence R&T;

(iii) catalysing defence R&T through studies and projects;

(iv) managing defence R&T contracts;

(v) working in liaison with the Commission to maximise complementarity and synergy between defence and civil or security-related research programmes;

(e) contribute to identifying and, if necessary, implementing any useful measure for strengthening the industrial and technological base of the defence sector and for improving the effectiveness of military expenditure, in particular by:

(i) contributing to the creation of an internationally competitive European defence equipment market, without prejudice to the internal market rules and the competences of the Commission in this field;

- (ii) developing relevant policies and strategies in consultation with the Commission and, as appropriate, industry;
  - (iii) pursuing, in consultation with the Commission, EU-wide development and harmonisation of relevant procedures, within the tasks of the Agency;
- (f) subject to a Council decision on the establishment of permanent structured cooperation, support this cooperation in particular by:
- (i) facilitating major joint or European capability development initiatives;
  - (ii) contributing to the regular assessment of participating Member States' contributions with regard to capabilities, in particular contributions made in accordance with the criteria to be established, inter alia, on the basis of Article 2 of Protocol (No 10) on permanent structured cooperation annexed to the TEU and the TFEU and reporting thereon at least once a year.

#### Article 6

##### Legal personality

The Agency shall have legal personality in order to perform its functions and attain its objectives. Member States shall ensure that the Agency enjoys the most extensive legal capacity accorded to legal persons under their laws. The Agency may, in particular, acquire or dispose of movable and immovable property and be a party to legal proceedings. The Agency shall have the capacity to conclude contracts with private or public entities or organisations.

#### CHAPTER II

##### ORGANS AND STAFF OF THE AGENCY

#### Article 7

##### Head of the Agency

1. The Head of the Agency shall be the High Representative of the Union for Foreign Affairs and Security Policy (HR).
2. The Head of the Agency shall be responsible for the Agency's overall organisation and functioning and shall ensure that the guidelines issued by the Council and the decisions of the Steering Board are implemented by the Chief Executive, who shall report to the Head of the Agency.
3. The Head of the Agency shall present the Agency's reports to the Council as referred to in Article 4(2).
4. The Head of the Agency shall be responsible for the negotiation of administrative arrangements with third countries and other organisations, groupings or entities in accordance with directives given by the Steering Board. Within such arrangements, as approved by the Steering Board, the Head of the Agency shall be responsible for establishing appropriate working relations with them.

#### Article 8

##### Steering Board

1. A Steering Board composed of one representative of each participating Member State, authorised to commit its government, and a representative of the Commission, shall be the decision-making body of the Agency. The Steering Board shall act within the framework of the guidelines issued by the Council.
2. The Steering Board shall meet at the level of Defence Ministers of the participating Member States or their representatives. The Steering Board shall, in principle, hold at least two meetings each year at the level of Defence Ministers.
3. The Head of the Agency shall convene and chair the Steering Board's meetings. If a participating Member State so requests, the Head of the Agency shall convene a meeting within 1 month.
4. The Head of the Agency may delegate the power to chair the Steering Board's meetings at the level of the representatives of the Ministers of Defence.
5. The Steering Board may meet in specific compositions (such as NADs, Capability Directors, R&T Directors or Defence Policy Directors).
6. The Steering Board meetings are attended by:
  - (a) the Chief Executive of the Agency, referred to in Article 10, or his/her representative;
  - (b) the Chairman of EUMC or his/her representative;
  - (c) representatives of the European External Action Service (EEAS).
7. The Steering Board may decide to invite, on matters of common interest:
  - (a) the NATO Secretary-General or his/her nominated representative;
  - (b) the Heads/Chairs of other arrangements, groupings or organisations whose work is relevant to that of the Agency (such as those established under the LoI Framework Agreement, as well as OCCAR and ESA);
  - (c) as appropriate, representatives of other third parties.

#### Article 9

##### Tasks and powers of the Steering Board

1. Within the framework of the guidelines of the Council referred to in Article 4(1), the Steering Board:
  - (a) shall approve the reports to be submitted to the Council;
  - (b) shall approve, on the basis of a draft submitted by the Head of the Agency, and no later than 31 December of each year, the Agency's annual work programme for the following year;
  - (c) shall adopt the Agency's general budget no later than 31 December of each year within the limits set in the Agency's Financial Framework as decided by the Council;

- (d) shall approve the establishment within the Agency of ad hoc projects or programmes in accordance with Article 19;
- (e) shall appoint the Chief Executive and up to two deputies;
- (f) shall decide that the Agency may be entrusted by one or more Member States with the administrative and financial management of certain activities within its remit in accordance with Article 17;
- (g) shall approve any recommendation to the Council or the Commission;
- (h) shall adopt the Agency's rules of procedure;
- (i) may amend the financial provisions for the implementation of the Agency's general budget;
- (j) may amend the rules and regulations applicable to contractual staff and seconded national experts;
- (k) shall determine the technical and financial arrangements regarding Member States' participation or withdrawal referred to in Article 1(4);
- (l) shall adopt directives regarding the negotiation of administrative arrangements by the Head of the Agency;
- (m) shall approve the ad hoc arrangements referred to in Article 22(1);
- (n) shall conclude the administrative arrangement between the Agency and third parties referred to in Article 24(1);
- (o) shall approve the annual accounts and balance sheet;
- (p) shall adopt all other relevant decisions relating to the fulfilment of the Agency's mission.

2. Unless otherwise provided for in this Decision, the Steering Board shall take decisions by qualified majority. The votes of the participating Member States shall be weighted in accordance with paragraphs 4 and 5 of Article 16 TEU. Only the representatives of the participating Member States shall take part in the vote.

3. If a representative of a participating Member State in the Steering Board declares that, for important and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. That representative may refer the matter, through the Head of the Agency, to the Council with a view to issuing guidelines to the Steering Board, as appropriate. Alternatively, the Steering Board, acting by qualified majority, may decide to refer the matter to the Council for decision. The Council shall act by unanimity.

4. The Steering Board, on a proposal from the Chief Executive or from a participating Member State, may decide to set up:

- (a) committees for the preparation of administrative and budgetary decisions of the Steering Board, composed of delegates of the participating Member States and a representative of the Commission;
- (b) committees specialised in specific issues within the Agency's remit. These committees shall be composed of delegates of

the participating Member States and, unless the Steering Board decides otherwise, a representative of the Commission.

The decision to establish such committees shall specify their mandate and duration.

#### Article 10

#### The Chief Executive

1. The Chief Executive, and his/her Deputy(ies), shall be appointed by the Steering Board on a proposal from the Head of the Agency for 3 years. The Steering Board may grant a 2-year extension. The Chief Executive and up to two Deputies shall act under the authority of the Head of the Agency and in accordance with the decisions of the Steering Board.

2. The Chief Executive, assisted by his/her Deputy(ies), shall take all necessary measures to ensure the efficiency and effectiveness of the Agency's work. The Chief Executive shall be responsible for the oversight and coordination of the functional units, in order to ensure the overall coherence of their work. The Chief Executive shall be the head of the Agency's staff.

3. The Chief Executive is responsible for:

- (a) ensuring the implementation of the Agency's annual work programme;
- (b) preparing the work of the Steering Board, in particular the draft annual work programme of the Agency;
- (c) preparing the draft annual general budget to be submitted to the Steering Board;
- (d) preparing the 3-year Work Plan to be submitted to the Steering Board;
- (e) preparing the 3-year Financial Framework to be submitted to the Council;
- (f) ensuring close cooperation with, and providing information to, the Council preparatory bodies, notably the PSC and the EUMC;
- (g) preparing the reports referred to in Article 4(2);
- (h) preparing the statement of revenue and expenditure and implementing the Agency's general budget and the budgets of ad hoc projects or programmes entrusted to the Agency;
- (i) the day-to-day administration of the Agency;
- (j) all security aspects;
- (k) all staff matters.

4. Within the work programme and the general budget of the Agency, the Chief Executive shall be empowered to enter into contracts and to recruit staff. The Chief Executive shall be the authorising officer responsible for the implementation of the budgets administered by the Agency.

5. The Chief Executive shall be accountable to the Steering Board.

6. The Chief Executive shall be the legal representative of the Agency.

#### Article 11

##### Staff

1. The staff of the Agency, including the Chief Executive, shall consist of contract and statutory staff members recruited from among candidates from all participating Member States on the broadest possible geographical basis, and from the EU institutions. The staff of the Agency shall be selected by the Chief Executive on the basis of relevant competence and expertise and through fair and transparent competition procedures. The Chief Executive shall publish in advance details of all available positions and the criteria relevant to the selection process. In all cases, recruitment shall be directed to securing for the Agency the services of staff of the highest standard of ability and efficiency.

2. The Head of the Agency, upon a proposal from the Chief Executive and following consultation with the Steering Board, shall appoint, and renew the contracts of, the staff of the Agency at senior management level.

3. The Agency staff shall consist of:

- (a) personnel recruited directly by the Agency under fixed-term contracts, selected among nationals of participating Member States. The Council, acting by unanimity, has approved the regulations applicable to such staff <sup>(1)</sup>. The Steering Board shall review and amend as necessary those regulations where they empower it to do so;
- (b) national experts seconded by participating Member States either to posts within the Agency organisational structure or for specific tasks and projects. The Council, acting by unanimity, has approved the regulations applicable to such staff <sup>(2)</sup>. The Steering Board shall review and amend as necessary those regulations, where they empower it to do so;
- (c) Union officials seconded to the Agency for a fixed period and/or for specific tasks or projects as required.

4. The Court of Justice of the European Union shall have jurisdiction over any dispute between the Agency and any person to whom the regulations applicable to the staff of the Agency may apply.

#### CHAPTER III

#### BUDGET AND FINANCIAL RULES

#### Article 12

##### Budgetary principles

1. Budgets, drawn up in euro, are the acts which for each financial year lay down and authorise all the revenue and expenditure administered by the Agency.

<sup>(1)</sup> Council Decision 2004/676/EC of 24 September 2004 concerning the Staff Regulations of the European Defence Agency (OJ L 310, 7.10.2004, p. 9).

<sup>(2)</sup> Council Decision 2004/677/EC of 24 September 2004 concerning the Rules applicable to national experts and military staff on secondment to the European Defence Agency (OJ L 310, 7.10.2004, p. 64).

2. The appropriations entered in a budget are authorised for the duration of a financial year which begins on 1 January and ends on 31 December of the same year.

3. For each budget, revenue and expenditure must be balanced. All revenue and expenditure shall be entered in full in the relevant budget without any adjustment against each other.

4. The budget shall contain differentiated appropriations, which shall consist of commitment appropriations and payment appropriations and non-differentiated appropriations.

5. Commitment appropriations shall cover the total cost of the legal commitments entered into during the current financial year. However, commitments may be made globally or in annual instalments. Commitments shall be entered into the accounts on the basis of the legal commitments entered into up to 31 December.

6. Payment appropriations shall cover payments made to honour the legal commitments entered into the current financial year and/or earlier financial years. Payments shall be entered in the accounts on the basis of the budget commitments up to 31 December.

7. The revenue of a financial year shall be entered in the accounts for the financial year on the basis of the amounts collected during that financial year.

8. Neither revenue nor expenditure may be implemented other than by allocation to a heading in the budget and within the limit of the appropriations entered therein.

9. Appropriations shall be used in accordance with the principles of sound financial management, namely in accordance with the principles of economy, efficiency and effectiveness.

#### Article 13

##### The general budget

1. The Head of the Agency shall provide the Steering Board, by 31 March each year, with an overall estimate of the draft general budget for the following year, with respect to the planning figures set down in the Financial Framework.

2. The Head of the Agency shall propose the draft general budget to the Steering Board by 30 June each year. The draft shall include:

(a) the appropriations deemed necessary:

- (i) to cover the Agency's running, staffing and meeting costs;

(ii) for procuring external advice, notably operational analysis, essential for the Agency to discharge its tasks, and for specific research and technology activities for the common benefit of all participating Member States, notably technical case-studies and pre-feasibility studies;

(b) a forecast of the revenue needed to cover expenditure.

3. The Steering Board shall aim to ensure that the appropriations referred to in paragraph 2(a)(ii) represent a significant share of the total appropriations referred to in paragraph 2. These appropriations shall reflect actual needs and shall allow for an operational role for the Agency.

4. The draft general budget shall be accompanied by a detailed staff establishment plan and detailed justifications.

5. The Steering Board, acting by unanimity, may decide that the draft general budget shall, furthermore, cover a particular project or programme where this is clearly for the common benefit of all participating Member States.

6. The appropriations shall be classified in titles and chapters grouping expenditure by type or purpose, subdivided as necessary into articles.

7. Each title may include a chapter entitled 'provisional appropriations'. These appropriations shall be entered where there is uncertainty, based on serious grounds, about the amount of appropriations needed or the scope for implementing the appropriations entered.

8. Revenue shall consist of:

(a) contributions payable by the Member States participating in the Agency based on the gross national income (GNI) scale;

(b) other revenue.

The draft general budget shall carry lines to accommodate earmarked revenue and, wherever possible, shall indicate the amount foreseen.

9. The Steering Board shall adopt the draft general budget by 31 December of each year within the Agency's Financial Framework. When doing so, the Steering Board shall be chaired by the Head of the Agency, or by a representative appointed by the Head of the Agency, or by a member of the Steering Board invited to do so by the Head of the Agency. The Chief Executive shall declare that the budget has been adopted and shall notify the participating Member States.

10. If, at the beginning of a financial year, the draft general budget has not been adopted, a sum equivalent to not more than one twelfth of the budget appropriations for the preceding financial year may be spent each month in respect of any chapter or other subdivision of the budget. This arrangement shall not, however, have the effect of placing at the disposal of the Agency appropriations in excess of one twelfth of those provided for in the draft general budget in course of preparation. The Steering Board, acting by qualified majority on a

proposal from the Chief Executive, may authorise expenditure in excess of one twelfth, provided that the overall budget appropriations for that financial year do not exceed those of the previous financial year. The Chief Executive may call for the contributions necessary to cover the appropriations authorised under this provision, which shall be payable within 30 days from dispatch of the call for contributions.

#### Article 14

##### Amending budgets

1. In the case of unavoidable, exceptional or unforeseen circumstances, the Chief Executive may propose a draft amending budget, within the limits set out in the Financial Framework.

2. The draft amending budget shall be drawn up, proposed, and adopted and notification given in accordance with the same procedure as the general budget, within the limits set out in the Financial Framework. The Steering Board shall act with due account to the urgency.

3. In the situation where the limits set down in the Financial Framework would be considered insufficient due to exceptional and unforeseen circumstances, taking also in full account rules set out in Article 13(2) and (3), the Steering Board will submit the amending budget for adoption by the Council, acting by unanimity.

#### Article 15

##### Earmarked revenue

1. The Agency may receive in its general budget as earmarked revenue for a specific purpose financial contributions to cover costs other than those referred to under Article 13(2)(a)(i):

(a) from the general budget of the European Union on a case-by-case basis, in full respect of the rules, procedures and decision-making processes applicable to it;

(b) from Member States, third countries or other third parties.

2. Earmarked revenue may only be used for the specific purpose to which it is assigned.

#### Article 16

##### Contributions and reimbursements

1. Determination of contributions where the GNI scale is applicable:

(a) Where the GNI scale is applicable, the breakdown of contributions between the Member States from which a contribution is required shall be determined in accordance with the gross national product scale as specified in Article 41(2) TEU and in accordance with Council Decision 2007/436/EC, Euratom of 7 June 2007 on the system of the European Communities' own resources<sup>(1)</sup>, or any other Council Decision which may replace it.

<sup>(1)</sup> OJ L 163, 23.6.2007, p. 17.

(b) The data for the calculation of each contribution shall be those set out in the 'GNI own resources' column in the 'Summary of financing of the general budget by type of own resource and by Member State' table appended to the latest budget of the European Union. The contribution of each Member State from which a contribution is due shall be proportional to the share of that Member State's GNI in the total GNI aggregate of the Member States from which a contribution is due.

2. Schedule for payment of contributions:

- (a) The contributions intended to finance the Agency's general budget shall be paid by the participating Member States in three equal instalments, by 15 February, 15 June and 15 October of the financial year concerned.
- (b) When an amending budget is adopted, the necessary contributions shall be paid by the Member States concerned within 60 days of dispatch of the call for contributions.
- (c) Each Member State shall pay the bank charges relating to the payment of its own contributions.
- (d) If the annual budget is not approved by the end of November, the Agency may issue upon request of a Member State an individual provisional call for contributions from that Member State.

#### Article 17

### Management by the Agency of expenditure on behalf of Member States

1. The Steering Board, on a proposal from the Chief Executive or a Member State, may decide that the Agency may be entrusted by Member States with the administrative and financial management of certain activities within its remit.
2. The Steering Board, in its decision, may authorise the Agency to enter into contracts on behalf of certain Member States. It may authorise the Agency to collect the necessary funds from these Member States in advance to honour the contracts entered into.

#### Article 18

### Implementation of the budget

1. The financial provisions applicable to the Agency's general budget have been adopted by the Council, by unanimity<sup>(1)</sup>. The Steering Board, acting by unanimity, shall review and amend these provisions, as necessary.
2. The Steering Board, acting on a proposal from the Chief Executive, shall as necessary adopt the implementing rules regarding the implementation and control of the general budget, notably as regards public procurement, without prejudice to relevant EU rules. The Steering Board shall ensure, in particular, that security of supply and protection both of defence secret and intellectual property rights requirements are duly taken into account.

<sup>(1)</sup> Council Decision 2007/643/CFSP of 18 September 2007 on the financial rules of the European Defence Agency and on the procurement rules and rules on financial contributions from the operational budget of the European Defence Agency (OJ L 269, 12.10.2007, p. 1).

3. The financial provisions and rules referred to in this Article are not applicable to ad hoc projects and programmes as referred to in Articles 19 and 20.

#### CHAPTER IV

### AD HOC PROJECTS OR PROGRAMMES AND ASSOCIATED BUDGETS

#### Article 19

### Approval of Category A (opt out) ad hoc projects or programmes and ad hoc budgets associated thereto

1. One or more participating Member States or the Chief Executive may submit to the Steering Board an ad hoc project or programme within the Agency's remit, which shall presume general participation by the participating Member States. The Steering Board shall be informed of the ad hoc budget, if any, to be associated with the proposed project or programme, as well as of potential contributions by third parties.
2. All participating Member States shall in principle contribute. They shall inform the Chief Executive of their intentions in this regard.
3. The Steering Board shall approve the establishment of the ad hoc project or programme.
4. The Steering Board, on a proposal from the Chief Executive or from a participating Member State, may decide to set up a committee to supervise the management and implementation of the ad hoc project or programme. The committee shall be composed of delegates from each of the contributing Member States and, when the Union contributes to the project or programme, a representative of the Commission. The decision of the Steering Board shall specify the committee's mandate and duration.
5. For the ad hoc project or programme, the contributing Member States, meeting within the Steering Board, shall approve:
  - (a) the rules governing the management of the project or programme;
  - (b) where appropriate, the ad hoc budget associated with the project or programme, the key for contributions and the necessary implementing rules;
  - (c) participation of third parties in the committee referred to in paragraph 4. Their participation shall be without prejudice to the Union's decision-making autonomy.
6. Where the Union contributes to an ad hoc project or programme, the Commission shall participate in the decisions referred to in paragraph 5, in full compliance with the decision-making procedures applicable to the general budget of the European Union.

*Article 20***Approval of Category B (opt in) ad hoc projects, or programmes and ad hoc budgets associated thereto**

1. One or more participating Member States may inform the Steering Board that they intend to establish an ad hoc project or programme within the Agency's remit, and where appropriate the ad hoc budget associated with it. The Steering Board shall be informed of the ad hoc budget, if any, to be associated with the proposed project or programme and details, if relevant, on human resources for such project or programme, as well as of potential contributions by third parties.

2. In the interest of maximising opportunities for cooperation, all participating Member States shall be informed of the ad hoc project or programme, including the basis upon which participation might be expanded, in a timely manner so that any participating Member State may express an interest in joining. Moreover, the initiator(s) of the project or programme will endeavour to make their membership as wide as possible. Participation will be established on a case-by-case basis by the initiators.

3. The ad hoc project or programme shall then be regarded as an Agency project or programme, unless the Steering Board decides otherwise within 1 month of receiving the information referred to in paragraph 1.

4. Any participating Member State which, at a later stage, wishes to participate in the ad hoc project or programme shall notify the contributing Member States of its intentions. The contributing Member States, within 2 months of receipt of that notification, shall decide among themselves, having due regard to the basis set out when participating Member States are informed of the project or programme, on the participation of the Member State concerned.

5. The contributing Member States shall take the decisions necessary for the establishment and implementation of the ad hoc project or programme and, where appropriate, the budget associated with it. Where the Union contributes to such a project or programme, the Commission shall participate in the decisions referred to in this paragraph in full compliance with the decision-making procedures applicable to the general budget of the European Union. The contributing Member States shall keep the Steering Board informed, as appropriate, of developments relating to such project or programme.

*Article 21***Contributions from the general budget of the European Union to ad hoc budgets**

Contributions from the general budget of the European Union may be made to the ad hoc budgets established for ad hoc projects or programmes referred to in Articles 19 and 20.

*Article 22***Participation of third parties**

1. Third parties may contribute to a particular ad hoc project or programme, established in accordance with Articles 19 or

20, and to the budget associated with it. The Steering Board shall, acting by qualified majority, approve as necessary the ad hoc arrangements between the Agency and third parties for each particular project or programme.

2. For projects established under Article 19, the contributing Member States meeting within the Steering Board shall approve all necessary modalities with the relevant third parties relating to their contribution.

3. For projects established under Article 20, the contributing Member States shall decide all necessary arrangements with the relevant third parties relating to their contribution.

4. Where the Union contributes to an ad hoc project or programme, the Commission shall participate in the decisions referred to in paragraphs 2 and 3.

## CHAPTER V

**RELATIONS WITH THE COMMISSION***Article 23***Association with the Agency's work**

1. The Commission is a member of the Steering Board without voting rights and shall be fully associated with the work of the Agency.

2. The Commission may also participate in projects and programmes of the Agency.

3. The Agency shall establish the necessary administrative arrangements and working relations with the Commission, in particular with a view to exchanging expertise and advice in those areas where the activities of the Union have a bearing on the Agency's mission and where the activities of the Agency are relevant to those of the Union.

4. Necessary arrangements to cover a contribution, on a case-by-case basis, from the general budget of the European Union under Articles 15 and 21, shall be established between the Agency and the Commission by mutual agreement, or between the contributing Member States and the Commission by mutual agreement.

## CHAPTER VI

**RELATIONS WITH THIRD COUNTRIES, ORGANISATIONS AND ENTITIES***Article 24***Administrative arrangements and other matters**

1. For the purpose of fulfilling its mission, the Agency may enter into administrative arrangements with third countries, organisations and entities. Such arrangements shall notably cover:

(a) the principle of a relationship between the Agency and the third party;

(b) provisions for consultation on subjects related to the Agency's work;

(c) security matters.

In so doing, the Agency shall respect the single institutional framework and the decision-making autonomy of the EU. Each such arrangement shall be concluded by the Steering Board upon approval by the Council acting by unanimity.

2. The Agency shall develop close working relations with the relevant elements of OCCAR and with those established under the LoI Framework Agreement, with a view to incorporating those elements or assimilating their principles and practices in due course, as appropriate and by mutual agreement.

3. Reciprocal transparency and coherent developments in the field of capabilities shall be ensured by the application of CDM procedures. Other working relations between the Agency and relevant NATO bodies shall be defined through an administrative arrangement referred to in paragraph 1, in full compliance with the established framework of cooperation and consultation between the EU and NATO.

4. Within the framework of arrangements referred to in paragraph 1, the Agency shall be entitled to establish working relations with organisations and entities other than those referred to in paragraphs 2 and 3, with a view to facilitating their possible participation in projects and programmes.

5. Within the framework of arrangements referred to in paragraph 1, the Agency shall be entitled to establish working relations with third countries, with a view to facilitating their possible participation in specific projects and programmes.

6. The former non-EU members of the Western European Armaments Group shall be provided with the fullest possible transparency regarding the Agency's specific projects and programmes with a view to their participation therein as appropriate. A consultative committee shall be set up for this purpose, and in order to provide a forum for exchanging views and information on matters of common interest falling within the scope of the Agency's mission. It shall be chaired by the Chief Executive or his/her representative. It shall include a representative of each participating Member State and a representative of the Commission, and representatives of the former non-EU WEAG members in accordance with arrangements to be agreed with them.

7. Upon request, other non-EU European NATO members may also participate in the Consultative Committee referred to in paragraph 6, in accordance with arrangements to be agreed with them.

8. The Consultative Committee referred to in paragraph 6 may also serve as a forum for dialogue with other third parties on specific matters of mutual interest within the Agency's remit, and may serve to ensure that they are kept fully informed of developments in matters of common interest and of opportunities for future cooperation.

## CHAPTER VII

### MISCELLANEOUS PROVISIONS

#### Article 25

#### **Privileges and immunities**

Privileges and immunities of the Chief Executive and the Agency's staff are provided for in the Decision of the representatives of the Governments of the Member States, meeting within the Council, on the privileges and immunities granted to the European Defence Agency and to its staff members, dated 10 November 2004.

Privileges and immunities of the Agency are provided for in Protocol (No 7) on the privileges and immunities of the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union.

#### Article 26

#### **Review clause**

No later than 14 July 2014, the Head of the Agency shall present a report to the Steering Board on the implementation of this Decision, with a view to its possible review by the Council.

#### Article 27

#### **Legal liability**

1. The contractual liability of the Agency shall be governed by the law applicable to the contract concerned.

2. The Court of Justice of the European Union shall have jurisdiction pursuant to any arbitration clause contained in a contract concluded by the Agency.

3. The personal liability of staff towards the Agency shall be governed by the relevant rules applying to the Agency.

#### Article 28

#### **Access to documents**

The rules laid down in Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding access to European Parliament, Council and Commission documents<sup>(1)</sup> shall apply to documents held by the Agency.

#### Article 29

#### **Security**

1. The Agency shall apply the Council's security regulations as adopted by Council Decision 2001/264/EC<sup>(2)</sup>.

2. The Agency shall ensure appropriate security in its external communications.

<sup>(1)</sup> OJ L 145, 31.5.2001, p. 43.

<sup>(2)</sup> OJ L 101, 11.4.2001, p. 1.

*Article 30***Language Regime**

The language regime of the Agency shall be established by the Council, acting by unanimity.

*Article 31***Repeal of Joint Action 2004/551/CFSP**

This Decision repeals and replaces Joint Action 2004/551/CFSP on the establishment of the European Defence Agency.

*Article 32***Entry into force**

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 12 July 2011.

*For the Council*

*The President*

J. VINCENT-ROSTOWSKI

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