

# **Guidelines for the development and maintenance of defence industry competences and capabilities when acquiring defence equipment and defence services**

## **Introduction**

The sovereignty, autonomy and security of Denmark are ultimately the responsibility of the kingdom itself. At the same time Denmark is obliged as a NATO ally to maintain and develop its individual capacity to resist armed attack in accordance with the North Atlantic Treaty. This not only imposes demands on the capabilities of the Danish Armed Forces but also presupposes that Denmark has reliable access to required defence equipment in order to comprehend, assess and respond to perceived threats and hostile actions. In this context, the competences and capabilities of Danish companies play a crucial role in protecting Denmark's essential national security interests by contributing to the Danish Armed Forces' operations, maintaining the Danish Armed Forces' equipment and ensuring that Denmark can act as a credible ally and partner in the context of international peace and security cooperation. Danish companies also contribute to developing strategically crucial technologies, gaining technological insight from advanced civilian technology development and in developing the Danish Armed Forces in relation to prioritised areas of defence policy.

The majority of defence equipment acquired by the Danish Armed Forces is obtained on international markets. Therefore, a key element of Danish industry's contributions to the protection of Danish essential national security interests is based on the companies' access to these markets, including as subcontractors. Hence, Denmark will continue working in relevant international forums to ensure an open, competitive international market for defence equipment and defence services. Due to the structure of the international market for defence equipment and defence services and the dynamics at play, it may be necessary, in specific situations, to impose corrective market action through measures intended to maintain and develop a Danish defence industry base to support the protection of Denmark's essential national security interests.

The purpose of these guidelines for the development and maintenance of defence industry competences and capabilities in Denmark (hereinafter the "Guidelines") is to ensure that actions required to protect Denmark's essential national security interests in relation to the manufacture of or trading in arms, munitions and warfare materiel (hereinafter "defence equipment and defence services") align with Denmark's obligations pursuant to EU law, including in particular Article 346 of the Treaty on the Functioning of the European Union (hereinafter "TFEU").

## **1. Scope**

1.1. The Guidelines apply to Ministry of Defence's acquisitions of new defence equipment and defence services where the estimated value exceeds DKK 50 million, obtained from suppliers operating outside Denmark.

## **2. Definitions**

2.1. The definition of “defence equipment and defence services” conforms to the definitions given in Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009, as amended.

2.2. “Foreign supplier” is defined as a company that is registered and mainly operates outside Denmark.

2.3. “Danish company” is defined as a company that is registered in, and mainly operates in, Denmark.

2.4. “Defence industrial effect” is defined as the development and maintenance of specific defence industry competences and capabilities in Denmark deemed necessary to protect specific essential interests of national security.

2.5. “Critical function” is defined as a function, the absence of which would render it impossible for the Danish Armed Forces to deploy the defence equipment for the military purposes underlying the acquisition.

## **3. Assessment of the necessity for defence industry competences and capabilities**

3.1. For each individual acquisition of defence equipment and defence services, the Ministry of Defence must assess whether it is necessary to take action to ensure a defence industrial effect for the purpose of protecting Denmark’s essential national security interests.

3.2. The assessment comprises two stages:

- (1) The Ministry of Defence specifies the essential national security interests that necessitate the securing of a specific defence industrial effect. The specification will be made in accordance with the specific object of the acquisition.
- (2) The Ministry of Defence obtains information from the Ministry of Industry, Business and Financial Affairs on Denmark’s defence technology and defence industry base, including any other actions with a related defence industrial effect.

3.3. If the Ministry of Defence deems that essential national security interests do not necessitate actions to secure a defence industrial effect, no such decision will be made in this respect.

3.4. If the Ministry of Defence assesses that essential national security interests necessitate actions to secure a defence industrial effect, the Ministry of Defence will establish the domain for the required defence industrial effect. This requires the Ministry of Defence to determine the domain within which the specific defence industry competences and capabilities relating to the specific acquisition need to be developed and maintained in Denmark to protect the specific essential interests of national security.

The domain shall be determined on the basis of the following two criteria:

- (a) identifying the specific critical functions relating to the acquisition that are necessary for developing and maintaining Denmark's defence industry competences and capabilities;
- (b) identifying which phases of the acquisition's life cycle pertain to the requisite defence industrial effect.

The scope of action will depend on the specification of the domain and the specific measure deemed appropriate for securing the defence industrial effect with minimum disruption.

#### **4. Assessment of proportionality**

4.1. If the Ministry of Defence deems that essential national security interests necessitate taking action to secure a defence industrial effect, the Ministry of Industry, Business and Financial Affairs and the Ministry of Defence will jointly assess which type of action can secure the defence industrial effect with minimum disruption.

4.2. The assessment justifies why this effect cannot be adequately secured by taking alternative, less disruptive measures and why the contemplated measure is suitable for achieving its purpose.

4.3. The assessment depends on the domain of the defence industrial effect, cf. para 3.4. Moreover, other relevant factors will be included, such as the conditions for competition on the international market for defence equipment and defence services, the need for certain highly specialised and specially adapted defence industry competences and capabilities in Denmark, already established secure and reliable supply chains and the acquisition's expected life cycle, etc.

4.4. The assessment of possible measures will be based on the least restrictive means identifiable within a collection of familiar measures in the area. The following types of measures can be taken, but the options are not limited to these:

- (a) guidelines and recommendations;
- (b) export campaigns, financial diplomacy and governmental advisory services;
- (c) initiatives targeting higher education programmes;
- (d) support for R&D costs funded via national allocations or by participating in international defence equipment development projects;
- (e) access to capital, including loans and equity capital;
- (f) contractual requirements for security of supply;
- (g) contractual requirements concerning subcontracting,
- (h) industrial cooperation;

- (i) state aid for Danish companies;
- (j) requisite development, manufacture or assembly of all or parts of the acquisition at or in cooperation with specific companies;
- (k) securing the performance of tasks by a national authority (insourcing);
- (l) securing the performance of tasks by a state undertaking and the possible creation of such an undertaking;
- (m) direct awarding of contract to a national supplier.

## **5. Assessing the competitive consequences of an action**

5.1. Once the Ministry of Defence has determined the domain of the defence industrial effect, cf. para 3.4, and the Ministry of Industry, Business and Financial Affairs and Ministry of Defence have jointly identified a suitable, proportionate action, cf. para 4, the Ministry of Industry, Business and Financial Affairs assesses whether the implementation of the contemplated action entails a disproportionately high risk of unintended consequences that could adversely affect the conditions for competition in the internal market regarding products not intended specifically for military purposes. The overarching methodological approach to assessing the competitive consequences is described in Annex 1.

5.2. If, with due regard to specific essential interests of national security, the Ministry of Industry, Business and Financial Affairs deems that implementation of the contemplated action entails a disproportionately high risk of adversely affecting the conditions for competition in the internal market regarding products not intended specifically for military purposes, the Ministry of Industry, Business and Financial Affairs will decide not to take this action.

5.3. If, with due regard to specific essential interests of national security, the Ministry of Industry, Business and Financial Affairs assesses that implementation of the contemplated action does not entail a disproportionately high risk of adversely affecting the conditions for competition in the internal market regarding products not intended specifically for military purposes, the Ministry of Industry, Business and Financial Affairs will decide that the action will be taken by the national authority authorised to do so pursuant to current EU law.

5.4. The Ministry of Industry, Business and Financial Affairs notifies the relevant national authorities of its decision under para 5.3 as soon as possible and no later than ten (10) working days after the date on which the decision was made.

## **6. Entry into force**

6.1. The Guidelines enter into effect on 9 September 2021.

## **7. Information**

7.1. The Ministry of Industry, Business and Financial Affairs informs the Danish Parliament of the status of defence industrial actions annually. The Ministry of Defence contributes to the progress report as requested by the Ministry of Industry, Business and Financial Affairs.

7.2. The Ministry of Industry, Business and Financial Affairs provides information on the relevant website about the following:

- the National Defence Industrial Strategy;
- defence industrial initiatives;
- guidelines for industrial cooperation.

7.3. The administrative case-processing workflows will be established in a cooperation agreement between the Ministry of Industry, Business and Financial Affairs and the Ministry of Defence.

## Annex 1

# Assessing the consequences of measures for the conditions for competition

## 1. Assessing the consequences of a measure for conditions for competition

1.1. Once the Ministry of Defence has determined the domain and scope of a defence industrial effect, cf. para 3.4 of the Guidelines, and the Ministry of Industry, Business and Financial Affairs and the Ministry of Defence have jointly identified a suitable, proportionate measure, cf. para 4 of the Guidelines, the Ministry of Industry, Business and Financial Affairs assesses whether the implementation of the contemplated measure entails a disproportionately high risk of unintended consequences that could adversely affect the conditions for competition in the internal market regarding products not intended specifically for military purposes.

1.2. The assessment is based on the authorities' knowledge of Denmark's defence technological and industrial base in terms of relevance to the acquisition. On the basis of this, the Ministry of Industry, Business and Financial Affairs individually assesses the specific companies potentially capable of achieving competitive advantages from the measure taken and accordingly adversely affect the conditions for competition in the internal market regarding products not intended specifically for military purposes.

1.3. As part of the assessment, the competitive situation of every single identified company is analysed in relation to the respective sector of the internal market in which the given company operates, as well as the company's sector in relation to other sectors of the internal market. The analysis is dynamically carried out on the basis of continuously updated data so as to take account of the current competitive situation in the internal market on the date of the assessment. The assumptions underlying the calculation of parameters relating to the measure's fulfilment type must be continuously updated on the basis of existing data. Provided there is access to data of a sufficient volume and quality and with due regard to the equal treatment consideration, the Ministry of Industry, Business and Financial Affairs' analysis draws in other relevant parameters, such as the following:

- (a) type, domain and scope of the measure;
- (b) size and turnover of the company, in relation to an average company in its sector; and
- (c) size of the sector, labour costs, net corporate growth and exposure to international competition.

## Annex 2

### 1. Implementation of industrial cooperation obligations

1.1. If, pursuant to para 4 of the Guidelines, the contemplated measure concerns industrial cooperation, the Ministry of Industry, Business and Financial Affairs decides whether an industrial cooperation obligation will be imposed on the foreign supplier. The obligation is organised pursuant to the predetermined critical functions and phases of the acquisition's life cycle, to ensure the defence industrial effect to the extent specified by the Ministry of Defence, cf. para 3 of the Guidelines, without exceeding what is required to protect the specific essential interests of national security.

1.2. If the Ministry of Industry, Business and Financial Affairs makes a decision about a measure concerning an industrial cooperation obligation, cf. para 5.3 of the Guidelines, this obligation must be apparent in the Ministry of Defence's acquisition documents and relevant documents for the Danish Parliamentary Finance Committee as well as in Ministry of Defence procurement contracts with the foreign supplier.

1.3. If an industrial cooperation obligation is established, the supplier must contact the Ministry of Industry, Business and Financial Affairs for the purpose of concluding an industrial cooperation contract (ICC). The subsequent signing of an acquisition contract between the Ministry of Defence and the foreign supplier is contingent on the conclusion of an industrial cooperation contract. An industrial cooperation obligation cannot be made subject of negotiations.

1.4. In exceptional cases where it is not possible to sign an industrial cooperation contract prior to the signing of an acquisition contract, cf. para 5.3. of the Guidelines, the Ministry of Defence will require the foreign supplier in the acquisition contract to conclude an industrial cooperation contract with the Ministry of Industry, Business and Financial Affairs as soon as possible after the acquisition contract has been signed.

1.5. If the acquisition involves cooperation with other nations, the Ministry of Industry, Business and Financial Affairs may grant approval for any industrial cooperation obligations to be stipulated in an agreement jointly concluded with other nations.

1.6. If the Danish Ministry of Defence procures defence equipment and defence services directly from another nation, any industrial cooperation obligations are to be imposed on underlying foreign suppliers to the extent these suppliers can be identified.

1.7. If the Ministry of Defence acquires defence equipment and defence services through a company acting as an intermediary, agency, broker or similar and where underlying foreign suppliers are responsible for the performance of tasks, any industrial cooperation obligations are to be imposed on underlying foreign suppliers to the extent these suppliers can be identified.

1.8. If the Ministry of Defence acquires defence equipment and defence services through a company registered in Denmark which is responsible for a significant part of the performance

of tasks via foreign external suppliers, any industrial cooperation obligations are to be imposed on these underlying foreign suppliers, to the extent these suppliers can be identified. In this case, an agreement governing the duty of notification will be concluded between the Ministry of Industry, Business and Financial Affairs and the Danish company, stipulating that the Ministry of Industry, Business and Financial Affairs reserves the right to conclude an industrial cooperation contract with underlying foreign external suppliers. Conclusion of the contractual basis between the Ministry of Defence and the Danish supplier is contingent on the conclusion of an agreement governing the duty of notification between the parties, cf. para 1.3 of Annex 2.

## **2. Fulfilment of industrial cooperation obligations**

2.1. The fulfilment of industrial cooperation obligations can only be approved for activities that meet the following three conditions:

- (a) the activities must concern defence equipment and defence services;
- (b) the activities must take place within the domain determined by the Ministry of Defence, cf. para 3 of the Guidelines;
- (c) the activities may not entail a disproportionate risk of adversely affecting the conditions for competition in the internal market regarding products not intended specifically for military purposes.

The above conditions are apparent in the Ministry of Defence acquisition documents and in the Ministry of Industry, Business and Financial Affairs' industrial cooperation contract with the foreign supplier.

2.2. For the purpose of meeting the requirements defined by the Ministry of Defence, cf. para 1.1. of Annex 2, the fulfilment may comprise, but is not limited to, the following types of cooperation:

- (a) a foreign supplier's procurement of defence equipment and defence services from Danish companies within the domain determined by the Ministry of Defence under para 4.3 of the Guidelines;
- (b) a foreign supplier's participation in development projects with Danish companies, which develop and maintain competences and capabilities within the domain determined by the Ministry of Defence under para 4.3 of the Guidelines.

2.3. Fulfilment must be within the time frame established by the Ministry of Industry, Business and Financial Affairs. The time frame is determined according to the scope of the defence industrial effect and the life-cycle phases identified under para 3 of the Guidelines, the delivery date of the acquisition and its expected service life, as well as the consideration of ensuring the reliability of supply.



2.4. Fulfilment may start from the point in time when a foreign supplier has signed an acquisition contract with the Ministry of Defence.

### **3. Preliminary approval of industrial cooperation via development projects**

3.1. If the fulfilment of industrial cooperation obligations concerns development projects, cf. para 2.2 (b) of Annex 2, the foreign supplier must obtain preliminary approval from the Ministry of Industry, Business and Financial Affairs before the project can be included in the fulfilment. To apply for preliminary approval, the foreign supplier must fill in the Ministry of Industry, Business and Financial Affairs' application template for preliminary approval of projects and enclose written confirmation from the managing director of the Danish company concerned.

3.2. The Ministry of Industry, Business and Financial Affairs consults the Ministry of Defence concerning the individual development project's contribution to the defence industrial effect on which the industrial cooperation obligation is based, cf. para 1.1. of Annex 2.

3.3. As part of the Ministry of Industry, Business and Financial Affairs' processing of an application for preliminary approval of a development project, the Ministry of Industry, Business and Financial Affairs assesses, with due regard to specific essential interests of national security, whether the implementation of the individual development project will pose a disproportionately high risk of adversely affecting the conditions for competition in the internal market regarding products not intended specifically for military purposes.

The assessment of competitiveness must identify whether the implementation of the specific development project within the Danish company's defence industrial business area entails a disproportionately high risk of having a positive commercial, knock-on effect on any of the company's civil-sector business areas and thus adversely affect the conditions for competition in the internal market regarding products not intended specifically for military purposes.

3.4. As part of this assessment, the Ministry of Industry, Business and Financial Affairs analyses whether the development project risks transferring technology from the defence industrial business area to the company's civil-sector business area. The analysis also identifies whether the project entails a risk of cross-subsidisation, where any profit from the development project in question is invested in the civil-sector production process, thereby heightening the risk of adversely affecting the conditions for competition in the internal market regarding products not intended specifically for military purposes. Provided there is access to data of sufficient volume and quality and with due regard to the equal treatment consideration, the Ministry of Industry, Business and Financial Affairs' analysis will draw in other relevant parameters, such as the following:

- (a) the percentage of military turnover out of the total turnover in the Danish company;
- (b) the expected profit from the development project in relation to its actual value and the expected project costs incurred by the Danish company;
- (c) the breadth of the Danish company's civil-sector product portfolio in relation to the average civil product portfolio in other Danish civil sectors in which Danish defence companies usually operate;

- (d) convergence between the development project domain and one or more civil-sector products of the Danish company;
- (e) any converging civil-sector products' percentage of turnover compared to other Danish civil sectors in which Danish defence companies usually operate.

3.5. The initiation of this assessment is contingent on the Ministry of Industry, Business and Financial Affairs receiving information on, but not necessarily limited to, the following factors:

- (a) the Danish company's total turnover, including information about the breakdown between civil-sector and military turnover;
- (b) the Danish company's expected costs arising from its participation in the development project;
- (c) the Danish company's expectations of the development project's possible use in any other civil-sector business area of the Danish company;
- (d) the Danish company's civil-sector product portfolio.

3.6. The processing of an application for preliminary approval of a development project is contingent on the Ministry of Industry, Business and Financial Affairs receiving the information specified in para 3.5 of Annex 2 from the Danish company. The Ministry of Industry, Business and Financial Affairs treats the information confidentially pursuant to current national legislation in this area.

3.7. As part of the preliminary approval of development projects, cf. para 2.2 (b) of Annex 2, the Ministry of Industry, Business and Financial Affairs can approve multipliers, if the Ministry of Industry, Business and Financial Affairs assesses that the development project supports the protection of the specific essential interests of national security, cf. para 4.1 of the Guidelines, by bringing about the defence industrial effect, cf. para 4.3 of the Guidelines, more efficiently and expediently than direct procurement.

The Ministry of Industry, Business and Financial Affairs may approve multipliers up to the following levels, depending on the transaction types' effectiveness in protecting essential national security interests:

- (a) Technology transfer: Multiplier of 7
- (b) Capital injection for development: Multiplier of 5
- (c) Advisory services: Multiplier of 5
- (d) Making facilities available, etc.: Multiplier of 3

The Ministry of Industry, Business and Financial Affairs uses the following definitions for determining development-project multipliers:

Technology transfer: The foreign supplier transfers its own technology to the Danish company that uses the technology in its defence industrial R&D activities pursuant to the specific development project. "Technology" is defined as the foreign supplier's own commercial knowledge and skill-sets being transferred to the Danish company for either ownership, right of use or on loan. The purpose of technology transfer must be to develop new or improved defence industrial products, processes or services within the domain determined by the Ministry of Defence under para 4.3 of the Guidelines. The Ministry of Industry, Business and Financial Affairs' valuation of technology is based on the Ministry of Industry, Business and Financial Affairs' calculation principles under para 3.8 of Annex 2.

Capital injection for development: The foreign supplier finances the Danish company's defence industrial R&D activities which helps enhance the competences and capabilities of the Danish company within the domain determined by the Ministry of Defence under para 4.3 of the Guidelines. The allocation of a multiplier for capital injection assumes that the Danish company is free to use the transferred funds for R&D activities pursuant to the specific development project without being under an obligation to deliver defence industrial products or defence services to the foreign supplier in return for the transferred funds. An injection of capital can fund the Danish company's defence industrial R&D activities, as well as the acquisition of specialised equipment and advisory services for use in the R&D activities in the specific development project.

Advisory services: The foreign supplier advises and supports the Danish company's defence industrial R&D activities pursuant to the specific development project within the domain determined by the Ministry of Defence under para 4.3 of the Guidelines. The advisory services are provided via the foreign supplier's own staff resources. The Ministry of Industry, Business and Financial Affairs' valuation of the advisory services is based on the number of work hours and the relevant internal hourly cost of staff resources provided by the foreign supplier.

Making facilities available, etc.: The foreign supplier places its own manufacturing and testing facilities at the disposal of the Danish company free of charge as part of the Danish company's defence industrial R&D activities pursuant to the specific development project which is within the domain determined by the Ministry of Defence under para 4.3 of the Guidelines. The Ministry of Industry, Business and Financial Affairs' valuation of the facility lending is based on a market price, if such a price can be estimated. Alternatively, the Ministry of Industry, Business and Financial Affairs' valuation can be based on the foreign supplier's internal pricing of the value of the use of the facilities.

3.8. As regards development projects that include the transfer of technology, the Ministry of Industry, Business and Financial Affairs uses a fixed procedure for assessing the value of the technology. The valuation is based on the relief-from-royalty method, whereby the value of the technology is considered on the basis of the present value of the amount from which the company is relieved from paying on market terms for a licence to use an asset which the company does not own.

#### **4. Approval of fulfilment of industrial cooperation through procurement**

4.1. The foreign supplier must send a progress report to the Ministry of Industry, Business and Financial Affairs once a year, and no later than 15 March, concerning the fulfilment of the industrial cooperation obligations through procurement of defence equipment and defence services, cf. para 2.2 (a) of Annex 2. The report must be submitted electronically using a template provided by the Ministry of Industry, Business and Financial Affairs. The foreign supplier's progress report for the Ministry of Industry, Business and Financial Affairs specifies the purchases invoiced in the previous calendar year.

4.2. The Ministry of Industry, Business and Financial Affairs can approve activities as fulfilling industrial cooperation obligations, pursuant to para 2.1 of Annex 2. The foreign supplier itemises the relationship of each individual line on the invoice to the domain determined by the Ministry of Defence.

4.3. With due regard to specific essential interests of national security, the Ministry of Industry, Business and Financial Affairs subsequently assesses whether the completed procurements of defence equipment and defence services generally entail a disproportionately high risk of adversely affecting the internal market regarding products not intended specifically for military purposes.

4.4. As part of this assessment, the Ministry of Industry, Business and Financial Affairs analyses the risk of profit from direct counterpurchases being reinvested in the civil-sector business area. In this context, due account is taken of the observed rate of profit in the company concerned by using publicly available data on turnover, profit, etc. The profit from the direct counterpurchase is assessed pursuant to average reinvestments in the internal market. Based on this, the Ministry of Industry, Business and Financial Affairs assesses whether any reinvestment in the civil-sector risks giving rise to anti-competitive behaviour in the internal market regarding products not intended specifically for military purposes.

4.5. As part of the reporting procedure, the Ministry of Industry, Business and Financial Affairs may make its approval of fulfilment contingent on receiving written confirmation from the managing director of the Danish company concerning the reported procurements of defence equipment and defence services.

4.6. The Ministry of Industry, Business and Financial Affairs may only approve the fulfilment of industrial cooperation through procurements of defence equipment and defence services if a significant part of the industrial cooperation develops and maintains defence industry competences and capabilities in Denmark. If this is not the case, the Ministry of Industry, Business and Financial Affairs may only approve the specific part of the industrial cooperation that relates to defence industry competences and capabilities in Denmark. In this context, information is to be obtained from the Danish company concerned.

#### **5. Approval of fulfilment of industrial cooperation through development projects**

5.1. The foreign supplier regularly sends progress reports to the Ministry of Industry, Business and Financial Affairs concerning the fulfilment of industrial cooperation obligations through

development projects, cf. para 2.2 (b) of Annex 2. The reporting procedure adheres to the conditions and time schedule set out in the preliminary approval of the individual development project. The Ministry of Industry, Business and Financial Affairs may only approve activities that have been carried out pursuant to the Ministry of Industry, Business and Financial Affairs' preliminary approval and which are within the domain determined by the Ministry of Defence, cf. para 4.3 of the Guidelines.

5.2. As part of the reporting procedure, the Ministry of Industry, Business and Financial Affairs may make approval of fulfilment contingent on receiving written confirmation from the managing director of the Danish company concerning implementation of the activities described in the preliminary approval.

5.3. In conjunction with the transfer of funds to a Danish company, the Ministry of Industry, Business and Financial Affairs requests the Danish company to have an authorised Danish accountant confirm the financial transfer and confirm that the funds have been used in accordance with the preliminary approval of the Ministry of Industry, Business and Financial Affairs.

5.4. The Ministry of Industry, Business and Financial Affairs' approval of the fulfilment of industrial cooperation via a development project is contingent on whether a substantial part of the industrial cooperation develops and maintains defence industry competences and capabilities in Denmark. If it does not, the Ministry of Industry, Business and Financial Affairs may only approve the specific part of the industrial cooperation relating to defence industry competences and capabilities in Denmark. A determination of this is based on information obtained from the Danish company in question.

5.5. For the purpose of ensuring that the individual development project maintains and develops the specific competences and capabilities concerning defence equipment and defence services in the domain determined by the Ministry of Defence under para 4.3 of the Guidelines and that the implementation of the individual development project, with due regard to specific essential interests of national security, does not give rise to a disproportionately high risk of adversely affecting the conditions for competition in the internal market regarding products not intended specifically for military purposes, cf. para 3.3 of Annex 2, the Ministry of Industry, Business and Financial Affairs may pay a follow-up visit to the Danish company involved.

## **6. Non-fulfilment of industrial cooperation obligations**

6.1. The industrial cooperation contract entered into between the foreign supplier and the Ministry of Industry, Business and Financial Affairs specifies milestones for 50 per cent and 100 per cent fulfilment of the industrial cooperation obligation.

6.2. At the conclusion of the industrial cooperation contract with the Ministry of Industry, Business and Financial Affairs, foreign suppliers acknowledge that insufficient fulfilment of the industrial cooperation obligation will trigger a penalty. The penalty is to be paid to the Ministry of Industry, Business and Financial Affairs. The penalty accrues to the Danish Treasury and is recognised as income in Section 08.21.25 of the Finance Act.

6.2.1. Non-fulfilment will trigger a penalty of 15 per cent of the amount outstanding at the 50 per cent and 100 per cent fulfilment milestones, cf. para 6.1. of Annex 2.

6.2.2. In connection with framework contracts, non-fulfilment will trigger a penalty of 50 per cent of the amount outstanding three (3) years after the termination of the framework contract.

6.3. If a foreign supplier pays a penalty, the value of the payment will solely settle the part of the obligation equivalent to the penalty's value. The remaining obligation, after deducting the value of the penalty, will continue to constitute an active industrial cooperation obligation, which the supplier is under an obligation to fulfil. Subsequently, the Ministry of Industry, Business and Financial Affairs has the discretion to set a new deadline for the relevant milestone.

6.4. After consulting with the Ministry of Defence, the Ministry of Industry, Business and Financial Affairs may exclude a foreign supplier from securing new contracts with the Danish Armed Forces for a specified period of time, if, despite repeated written warnings, the foreign supplier commits a fundamental breach of its industrial cooperation obligation or fails to enter into the required industrial cooperation contract.

## **7. Contracts concluded under previous industrial cooperation guidelines**

7.1. Industrial cooperation contracts entered into between the Ministry of Industry, Business and Financial Affairs and foreign suppliers, before the entering into force of these Guidelines, remain in force. The Ministry of Industry, Business and Financial Affairs and the Ministry of Defence will administer any points, the conditions of which are not explicitly governed by current industrial cooperation contracts, pursuant to the Guideline contents.