

Ref. D(2025)12056

Ms Roberta METSOLA
President of the European Parliament
SPAAK 09B011
Brussels

D 303185 24.04.2025

Subject: *Verification of the legal basis, in application of Rule 138 of the Rules of Procedure, of the proposal for a Council Regulation establishing the Security Action for Europe (SAFE) through the reinforcement of the European defence industry Instrument (COM(2025)0122 - 2025/0122(NLE))*

Dear President,

On 19 March 2025, the Commission put forward a proposal for a Council Regulation establishing the Security Action for Europe (SAFE) through the reinforcement of European defence industry Instrument (“the proposed Regulation”). The Commission based the proposal on Article 122 of the Treaty on the Functioning of the European Union (TFEU), without making any distinction between paragraph 1 or 2 of that Article. The proposed Regulation was referred to the Committee on Legal Affairs for verification of the legal basis, in application of Rule 138(2) of the Rules of Procedure.

The Committee on Legal Affairs considered the use of Article 122 TFEU as the basis for the proposed Regulation under Rule 138(2) of the Rules of Procedure at its meetings on 9 and 23 April 2025.

At its meeting on 23 April 2025, the Committee unanimously decided¹ that Article 122 TFEU was not the appropriate legal basis for the proposed Regulation.

The Committee came to this conclusion after having considered the aim and content of the proposed Regulation and in the absence of a proper justification by the Commission of its choice of the legal basis. It should also be pointed out that Article 122 TFEU contains two paragraphs and

¹ Members present for the vote: Ilhan Kyuchyuk (Chair), Marion Walsmann (Vice-Chair), Mario Mantovani (Vice-Chair), Tobiasz Bocheński, José Cepeda, David Cormand, Andi Cristea (for Victor Negrescu pursuant to Rule 216(7)) Ton Diepeveen, Jorge Martín Frías (for Juan Carlos Girauta Vidal pursuant to Rule 216(7)), Esther Herranz García (for Maravillas Abadía Jover pursuant to Rule 216(7)), Dariusz Joński (for Michał Wawrykiewicz pursuant to Rule 216(7)), Mary Khan, Marit Maij (for Lara Wolters pursuant to Rule 216(7)), Lukas Mandl, Angelika Niebler, Pascale Piera, René Repasi, Arash Saedi, Krzysztof Śmiszek, Dominik Tarczyński, Jana Toom, Axel Voss, Adrián Vázquez Lázara, Dainius Žalimas.

each of those confers on the Council a distinct competence to adopt legal acts, subject to specific conditions respectively. However, the proposed Regulation is based on Article 122 TFEU in its entirety, hence on both paragraphs of that Article. The Commission fails to explain in the proposed Regulation why both paragraphs should be relied upon as the legal basis, despite the fact that the recourse to each of them is subject to different conditions. There is also no justification why other possible legal bases under TFEU were discarded, in particular in the context of Article 122(1) TFEU which can only apply “without prejudice to any other procedures provided for in the Treaties”.

At the same time, although the Committee discussed and analysed alternative legal bases which appear appropriate, such as Article 173(3) TFEU, it has decided at this stage not to pronounce itself conclusively on the legal basis that should be considered appropriate instead of Article 122 TFEU. Suffice it to say at this point that the Committee does consider that another legal basis under the Treaties could be used and therefore that the Union’s competence to act under a legal basis other than Article 122 TFEU does exist.

Last but not least, in case the act is adopted by the Council with Article 122 TFEU as the legal basis, as originally proposed by the Commission, the Committee on Legal Affairs will – once the final act is adopted – consider the question once again, this time in application of Rule 155, as provided for in Rule 138(2) of the Rules of Procedure.

Considering the conclusion reached by the Committee on Legal Affairs to dispute the appropriateness of the legal basis of the proposed Regulation as presented by the Commission, namely Article 122 TFEU, the Committee stands ready to report to Parliament its conclusions and considerations expressed in this letter also orally, if necessary, in application of Rule 138(2) of the Rules of Procedure.

Yours sincerely,



Ilhan KYUCHYUK
Chair of the Committee on Legal Affairs

cc: Mr Johan VAN OVERTVELDT, Chair of the BUDG Committee