Council of the European Union

Brussels, 2 December 2024
(OR. en)

16467/24

LIMITE

JUR 679
INDEF 71
IND 546
COMPET 1182
COPS 655
POLMIL 416

OPINION OF THE LEGAL SERVICE[1]

From:	Legal Service
To:	Working Party on Defence Industry
Subject:	European Defence Industry Programme - legal basis and proportionality

DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (06.01.2025)

I. INTRODUCTION

1. On 6 March 2024, the Commission submitted a proposal for a Regulation of the European Parliament and of the Council establishing a European Defence Industry Programme and a framework of measures to ensure the timely availability and supply of defence products[2] ("EDIP") (the "Proposal"), which accompanies a Joint Communication of the Commission and the High Representative on a new European Defence Industrial Strategy[3] ("EDIS").

[1] This document contains legal advice protected under Article 4(2) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, and not released by the Council of the European Union to the public. The Council reserves all its rights in law as regards any unauthorised publication.

[2] ST 7340/24.

[3] ST 7339/24.

2. The Proposal is based on Articles 114(1), 173(3), 212(2) and 322(1) of the Treaty on the Functioning of the European Union ("TFEU") relating respectively to approximating measures in the internal market, specific measures in support of action taken in the Member States to ensure that the conditions necessary for the competitiveness of the Union's industry exist, economic, financial and technical cooperation measures with third countries, and financial rules.

3. The Defence Industry Working Party ("DIWP") requested the Council Legal Service ("CLS") to provide a legal opinion on the appropriateness of the legal bases proposed by the Commission in EDIP and on the compatibility of Chapter IV of the Proposal ("security of supply") with the proportionality principle.

4. This legal opinion responds to the request made by the DIWP and elaborates on the oral statements made by the representative of the CLS at various DIWP meetings. Where indicated, this opinion takes into account developments in the work within the DIWP.[4] However, given the nature of the questions raised, the conclusions may change as the text of the draft legal act evolves. This legal opinion does not address EDIS.

II. LEGAL ANALYSIS OF THE PROPOSED LEGAL BASES

5. According to well-established case law, the legal basis of a Union act does not depend on an institution's conviction as to the objective pursued but must be determined according to objective criteria amenable to judicial review, including in particular the aim and the content of the measure.[5]

[4] **DELETED**

[5] Judgment of 11 June 1991, *Commission v Council (Titanium dioxide),* C-300/89, EU:C:1991:244, paragraph 10.

6. It should also be noted that, according to the Court: "*If examination of a Community measure reveals that it pursues a twofold purpose or that it has a twofold component and if one of those is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, the act must be based on a single legal basis, namely that required by the main or predominant purpose or component […]. Exceptionally, if on the other hand it is established that the act simultaneously pursues a number of objectives or has several components that are indissociably linked, without one being secondary and indirect in relation to the other, such an act will have to be founded on the various corresponding legal bases […]"*[6] (Emphasis added). *"None the less, the Court has held also […] that recourse to a dual legal basis is not possible where the procedures laid down for each legal basis are incompatible with each other […]*".[7]

A. PRIMA FACIE ASSESSMENT OF THE AIM AND CONTENT OF THE PROPOSAL

7. As regards the **content of the Proposal**, Article 1 of the Proposal provides that "[the] *Regulation establishes a budget and lays down a set of measures aimed at supporting defence industry readiness of the Union and its Member States through the strengthening of the competitiveness, responsiveness and ability of the European Defence Technological and Industrial Base (EDTIB) to ensure the timely availability and supply of defence products and at contributing to the recovery, reconstruction and modernisation of the Ukraine Defence Technological and Industrial Base (Ukrainian DTIB), in particular by means of the following* [four main sets of measures]": a European Defence Industrial Programme ("Programme") (Chapter II, Section 2); a cooperation programme with Ukraine ("Ukraine Support Instrument" or "USI") (Chapter II, Section 3); a legal framework for Structures for European Armament Programme ("SEAP") (Chapter III); and measures aimed at ensuring security of supply (Chapter IV). The Proposal also includes a Chapter on "Governance, evaluation and control" (Chapter V) which inter alia establishes a Defence Industrial Readiness Board ("DIRB").

---

6 Judgment of 8 September 2009, *Commission v Parliament and Council*, C-411/06, EU:C:2009:518, paragraphs 46 and 47.

7 Judgment of 19 July 2012, *Parliament v. Council,* C-130/10, EU:C:2012:472, paragraph 45 and case-law cited.

8. These four main parts can be summarised as follows. **First**, the Programme, which is open to the participation of "associated countries",[8] comprises measures for the strengthening of the competitiveness, responsiveness and ability of the European Defence Technological and Industrial Base ("EDTIB"), notably through financial support to legal entities established in the Union and cooperating in the common procurement of defence products or carrying out actions related to speeding up the adjustment to structural changes of the production capacity of defence products. More precisely, the Programme provides for four categories of eligible actions for funding : common procurement actions, including for the purpose of building a Defence Industrial Readiness Pool ("DIRP") (Article 11(2)); industrial reinforcement actions (Article 11(3)); activities aiming at supporting the deployment of a European Defence Project of Common Interest ("EDPCI") (Article 11(4)); and support actions (Article 11(5)) (Chapter II, Section 2). **Second**, the USI mirrors to a large extent the measures under the Programme while adding legal entities established in Ukraine as being eligible for funding, with a view to the recovery, reconstruction and modernisation of the Ukrainian Defence Technological and Industrial Base ("Ukrainian DTIB") (Chapter II, Section 3). **Third**, the Proposal allows for the setting-up of SEAPs foreseen as *sui generis* legal entities aimed at fostering the competitiveness of the EDTIB and of the Ukrainian DTIB by aggregating the demand for defence products throughout their lifecycle, and entrusted with the principal tasks of common procurement, joint life-cycle management and dynamic availability management of defence products (Chapter III). **Fourth**, the Proposal provides for measures aimed at ensuring the functioning of the internal market for defence products under any circumstances, through the establishment of harmonised rules for increasing the security of supply of such products, including information requests to economic operators and prioritisation measures (Chapter IV).

[8] See Article 9 of the Proposal.

9. As regards the **aim of the Proposal**, it follows from Articles 1 and 4 that it pursues the following three objectives: (1) supporting defence industry readiness of the Union and its Member States through the strengthening of the competitiveness, responsiveness and ability of the EDTIB; (2) contributing to the recovery, reconstruction and modernisation of the Ukrainian DTIB; and (3) ensuring security of supply, removing obstacles and bottlenecks and supporting the production of defence products. The aim of the different parts of the Proposal are specified further as set out below in paragraphs 11 to 15.

10. However, the overall aim of the Proposal and the specific objectives of its constituent parts should be considered in the light of the commitment of the Union to support Ukraine, confronted by a war of aggression, as well as of the Union's own defence and security needs. Those elements are reflected throughout the recitals as the general context explaining the reasons for the proposed measures.[9]

11. The **objectives pursued by the Programme** are set out in the recitals (in particular recitals 3, 5, 29 and 30) and in Article 1(1) according to which the general purpose of the Programme consists of the "*strengthening of the competitiveness, responsiveness and ability of the EDTIB […]"*, as well as in Article 4(1) which enumerates its specific objectives which consist of *"increasing the defence industrial readiness of the EDTIB […]"* through certain specific measures linked to the (a) adjustment of industry to structural changes and (b) *"cooperation in defence procurement in order to contribute to solidarity, prevent crowding-out effects, increase the effectiveness of public spending and reduce excessive fragmentation, ultimately leading to an increase in the standardisation of defence systems and greater interoperability."*

[9] The Explanatory Memorandum accompanying the Proposal notes that the unlawful war of aggression by Russia against Ukraine not only raised urgent challenges for the EU and its Member States, but also that its continuation over time aggravates structural issues affecting the competitiveness of the European Defence Technological and Industrial Base and calls into question its ability to ensure a sufficient level of security of supply to Member States (ST 7340/24, page 2).

12. The **aim of the USI** is reflected in recital 7 and in Article 1(1) of the Proposal, which provides for "the establishment of a cooperation programme with Ukraine with a view to the recovery, reconstruction and modernisation of the Ukrainian [DTIB]" (Article 1(1)). More precisely, the specific objectives of the USI have been interlinked, in the Proposal, with the objectives of the Programme as set out in Article 4(1). In the case of the USI, the latter objectives must be read as covering the Ukrainian DTIB, with an emphasis put on certain specific elements such as the possible future integration of the Ukrainian DTIB into the EDTIB (Article 4(2)) and enhancement of cross-border cooperation between the EDTIB and the Ukrainian DTIB (Article 4(5)). **DELETED** [10]

13. **DELETED**

14. As regards the **objective of the SEAPs**, Article 22(1) of the Proposal provides that they "*shall foster the competitiveness of the EDTIB and of the Ukrainian DTIB by aggregating the demand for defence products throughout their lifecycle*" (emphasis added).

15. With regard to **Chapter IV of the Proposal on the security of supply,** Article 1 makes clear that the legal framework established in that Chapter is "*aiming at ensuring security of supply, removing obstacles and bottlenecks and supporting the production of defence products"*. In addition, recital 45 comments specifically on the aim of this legal framework and links it to a specific legal basis of the TFEU, by providing that "[t]*o ensure the functioning of the internal market under any circumstances and to make it resilient to any shock, it is necessary to establish, in a coordinated way, harmonised rules for increasing the security of supply of defence products. Those measures should be based on Article 114 TFEU"* (emphasis added). **DELETED**

[10] **DELETED**

16. **DELETED** [11]

17. **DELETED**

[11] **DELETED**

B. **DELETED**

18. **DELETED**[12]

19. **DELETED**[13]

20. Moreover, pursuant to the second sub-paragraph of Article 21(3) TEU, "*The Union shall ensure* consistency *between the different areas of its external action and between these and its other policies."*

21. However, measures adopted under the TFEU must not affect the procedures and exercise of competences under the CFSP, as stipulated in Article 40 TEU:

"*The implementation of the common foreign and security policy shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences referred to in Articles 3 to 6 of the Treaty on the Functioning of the European Union.*

Similarly, the implementation of the policies listed in those Articles shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences under this Chapter." (Emphasis added)

12 **DELETED**
13 **DELETED**

22. **DELETED**[14] [15]

23. **DELETED**[16]

24. **DELETED**[17]

25. **DELETED**

[14] **DELETED**
[15] **DELETED**
[16] **DELETED**
[17] **DELETED**

26. **DELETED**

27. **DELETED**

28. **DELETED**

29. **DELETED**

30. **DELETED**

31. **DELETED**[18] [19]

32. **DELETED**

[18] **DELETED**

[19] **DELETED**

33. **DELETED** [20] [21]

34. **DELETED** [22]

35. **DELETED** [23]

[20] **DELETED**
[21] **DELETED**
[22] **DELETED**
[23] **DELETED**

36. **DELETED**[24]

37. **DELETED**

38. **DELETED**

[24] **DELETED**

39. **DELETED**

40. **DELETED** [25] [26]

[25] **DELETED**

[26] **DELETED**

41. **DELETED**[27] [28] [29]

C. DELETED

42. **DELETED**

[27] **DELETED**
[28] **DELETED**
[29] **DELETED**

43. Under Article 173(1) TFEU, the Union and the Member States are to ensure that the conditions necessary for the competitiveness of the Union's industry exist. For that purpose, the Union's and Member States's actions are to be aimed at (i) speeding up the adjustment of industry to structural changes, (ii) encouraging an environment favourable to initiative and to the development of undertakings throughout the Union, particularly small and medium-sized undertakings, (iii) encouraging an environment favourable to cooperation between undertakings, and (iv) fostering better exploitation of the industrial potential of policies of innovation, research and technological development.

44. Article 173(3) TFEU allows the European Parliament and the Council to decide, acting under the ordinary legislative procedure, on specific measures in support of action taken in the Member States to achieve the objectives set out in paragraph 1, excluding any harmonisation of the laws and regulations of the Member States.

45. Under Article 212(1) TFEU, the Union is to carry out economic, financial and technical cooperation measures, including assistance, in particular financial assistance, with third countries other than developing countries, without prejudice to the other provisions of the Treaties, and in particular Articles 208 to 211 TFEU on development cooperation. Article 212(2) TFEU allows the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, to adopt the measures necessary for the implementation of paragraph 1.

46. **DELETED**

47. **DELETED**

48. **DELETED** [30]

49. **DELETED**

[30] **DELETED**

50. **DELETED**

51. **DELETED**[31]

52. **DELETED**

[31] **DELETED**

53. **DELETED**

54. **DELETED** [32] [33]

55. **DELETED**

[32] **DELETED**

[33] **DELETED**

56. **DELETED**

57. **DELETED**

58. **DELETED**

59. **DELETED**[34]

60. **DELETED**

61. **DELETED**

[34] **DELETED**

62. **DELETED**[35]

63. **DELETED**[36]

64. **DELETED**

[35] **DELETED**

[36] **DELETED**

65. **DELETED**[37]

D. DELETED

66. **DELETED**[38]

a) Relevant case law on Article 114 TFEU

67. As the CLS has recalled in the past,[39] Article 114 TFEU allows the European Parliament and the Council to adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.

37 **DELETED**
38 **DELETED**
39 CLS Opinion, ST 7515/23, paragraphs 10 et seq.

68. The Court has made it clear that Article 114 TFEU does not confer upon the Union legislature a general power to regulate the internal market.[40] According to settled case-law of the Court, in order to rely upon Article 114 TFEU as a legal basis, a Union measure must *"genuinely have as its object the improvement of the conditions for the establishment and functioning of the internal market"*.[41] The Court has also held that Article 114 TFEU may be *"used as a legal basis only where it is actually and objectively apparent from the legal act that its purpose is to improve the conditions for the establishment and functioning of the internal market"*[42] and for measures actually contributing to the elimination of obstacles to the free movement of goods or to the freedom to provide services, or to the removal of distortions of competition.[43]

69. Concerning the measures for the approximation of national provisions referred to in Article 114 TFEU, the Court has confirmed that recourse to Article 114 TFEU as a legal basis is possible if the aim is to prevent the emergence of future obstacles to trade as a result of divergences in national laws. However, the emergence of such obstacles must be likely and the measure in question must be designed to prevent them.[44] In this regard, the Court in the *Vodafone* case held that *"*[…] *a mere finding of disparities between national rules and the abstract risk of infringements of fundamental freedoms or distortion of competition is not sufficient to justify the choice of Article* [114 TFEU] *as a legal basis*"[45] (emphasis added).

---

40 Judgment of 5 October 2000, G*ermany v Parliament and Council (Tobacco advertisement)*, C-376/98, EU:C:2000:544, paragraph 83.

41 *Ibid.*, paragraph 84. See also judgment of 8 June 2010, *Vodafone and others*, C-58/08, EU:C:2010:321, paragraph 32 and case-law cited.

42 Judgment of 2 May 2006, *UK v Parliament and Council (ENISA)*, C-217/04, EU:C:2006:279, paragraph 42.

43 Judgment of 10 December 2022, *British American Tobacco,* C-491/01, EU:C:2002:741, paragraph 60.

44 See in particular Judgment of 4 May 2016, *Poland v Parliament and Council*, C-358/14, EU:C:2016:323, paragraph 33 and case-law cited.

45 Judgment of 8 June 2010, *Vodafone and others,* C-58/08, EU:C:2010:321, paragraph 32.

70. The Court has found that when there are obstacles to trade, or it is likely that such obstacles will emerge in the future, because the Member States have taken, or are about to take, divergent measures with respect to a product or a class of products that are such as to bring about different levels of protection and thereby to prevent the product or products concerned from moving freely within the Union, Article 114 TFEU authorises the EU legislature to intervene by adopting appropriate measures, in compliance with Article 114(3) TFEU and with the legal principles mentioned in the TFEU or identified in the case-law, in particular the principle of proportionality.[46] It is important to note in this context that when the Court refers to the elimination of obstacles to the free movement of goods, it refers to national rules that products must satisfy.[47] The Court also held that, in certain fields, the approximation of laws of general application alone may not be sufficient to ensure the unity of the market. Consequently, the concept of '*measures for the approximation*' of legislation must be interpreted as encompassing the EU legislature's power to lay down measures relating to a specific product or class of products as well as, if necessary, individual measures concerning those products.[48]

71. However, the Court has clarified that even where a provision of Union law already guarantees the removal of all obstacles to trade in the area it harmonises, that fact cannot make it impossible for the legislature to adapt that provision in line with other considerations.[49]

---

46 See in particular judgment of 4 May 2016, *Poland v Parliament and Council*, C 358/14, EU:C:2016:323, paragraph 36 and case-law cited.

47 Judgment of 10 December 2002, *British American Tobacco,* C-491/01*,* EU:C:2002:741, paragraph 65; judgment of 4 May 2016, *Pillbox 38*, C-477/14, EU:C:2016:324, paragraph 58.

48 Judgment of 9 August 1994, *Germany* v *Council*, C-359/92, EU:C:1994:306, paragraph 37.

49 Judgment of 10 December 2002, *British American Tobacco,* C-491/01*,* EU:C:2002:741, paragraph 78.

72. **DELETED** [50] [51]

73. **DELETED** [52]

[50] **DELETED**
[51] **DELETED**
[52] **DELETED**

DELETED

74. **DELETED**

75. **DELETED**

76. **DELETED**

77. **DELETED** [53]

78. **DELETED**

[53] **DELETED**

79. **DELETED** [54]

80. **DELETED** [55]

DELETED

81. **DELETED**

[54] **DELETED**

[55] **DELETED**

Preparedness (Chapter IV – Section 1)

82. Under Chapter IV – Section 1, the Proposal provides, **first**, for derogations from Directive 2009/81/EC (on defence procurement)[56] in cases where the "extreme urgency" of the situation justifies opening an existing framework agreement to contracting authorities/entities of Member States that were not originally party to it, even though that possibility had not been provided for in the original framework agreement (recitals 48 and 49, and Article 34). **Second**, the Proposal foresees the possibility for the Commission (i) to engage in a joint procurement with Member States, associated countries and Ukraine or (ii) to act as a central purchasing body to procure on behalf of the interested Member States or in their name defence products (Article 35), being understood that this provision focuses on procurement from the Union's industry,[57] and that the joint purchasing under Article 35 may take the form of advance purchasing agreements of defence products (Article 36).[58] **Third**, Article 37 of the Proposal provides that the Commission must set up a system to facilitate the conclusion of off-take agreements *"related to the industrial ramp-up of the EDTIB's manufacturing capacities as well as those of the Ukrainian DTIB".* **Fourth,** Articles 38 and 39 of the Proposal impose obligations upon Member States to ensure that administrative procedures for permit-granting[59] are handled in an efficient and timely manner (Article 38) and to ease the exchange of information between certification authorities of Member States (Article 39).

83. **DELETED**

---

56 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.*

57 Article 35(8) requires the application of eligibility criteria equivalent to those laid down in Article 10 to tenderers, contractors and subcontractors in contracts resulting from the procurement conducted pursuant to Article 35.

58 See definition thereof in Article 2(1) of the Proposal.

59 Related to the planning, construction and operation of production facilities, transfer of inputs within the Union, qualification and certification of end products.

84. **DELETED** [60]

85. **DELETED** [61]

86. **DELETED**

[60] **DELETED**

[61] **DELETED**

Supply chain surveillance and monitoring (Chapter IV – Section 2)

87. Under Section 2, the Proposal provides for a mapping of the Union's defence supply chains, aimed at providing an analysis of the Union's strengths and weaknesses as regards the supply chains of crisis-relevant products (recitals 53 to 57, and Article 40), which are defined as *"defence products or key components or raw materials thereof or any products or services critical to their production* that *have been identified as being seriously affected by a disruption or potential disruption of the functioning of the internal market and its supply chains resulting in actual or potential significant shortages"* (Article 2(23)). The Proposal also provides for a monitoring of the Union's manufacturing capacities necessary for the supply of crisis-relevant products, to be undertaken by the Commission in cooperation with the Defence Industrial Readiness Board (Article 41) and in connection with the identification by Member States of "key market actors" involved in the supply of key defence products established in their territory (Article 42).

88. For the purpose of **mapping**, the DIRB is to draw up and regularly update a list of defence products *"which are critical for the security and defence interests of the Union and of its Member States, in particular the reinforcement of Member States' defence capabilities and the readiness of the EDTIB ('key defence products')"* (Article 40(2)). Additionally, the Commission is entrusted to draw up and regularly update, by means of implementing act, a list of crisis-relevant products on the basis of a methodology which must put an emphasis on identifying bottlenecks (Article 40(6)), and to develop and regularly review a list of "early warning indicators" (Article 40(8)).

89. The **monitoring** process (Article 41), to be carried out regularly, is aimed at identifying factors that may disrupt, compromise or negatively affect the supply of the key defence products that the crisis-relevant products contribute to providing.

90. **DELETED**

DELETED [62]

91. **DELETED**

[62] **DELETED**

92. **DELETED** [63]

Supply crisis – Prevention and mitigation (Chapter IV – Section 3) and Security-Related supply crisis state (Chapter IV – Section 4)

93. Finally, the Proposal foresees the possibility of activating **two distinct crisis stages**: **First,** the **supply crisis state** (Article 44) which occurs if (a) there are serious disruptions in the provision of **non-**defence **products**, or serious obstacles to trade in such products within the Union causing their significant shortage; and (b) such significant shortages prevent the supply, repair or maintenance of defence products to the extent that it would have a serious detrimental effect on the functioning of the Union's defence supply chains impacting the society, economy and security of the Union. The supply crisis state is intended to be preceded by preventive actions where the DIRB or the Commission become aware of a risk of serious disruption of a crisis-relevant product or of any other relevant risk factor or event materializing affecting the supply of a crisis-relevant product (Article 43). **Second,** the **security-related supply crisis state** which can be activated if serious disruptions in the provision of defence products or serious obstacles to trade in **defence products** occur within the Union simultaneously to a **security crisis,**[64] causing significant shortages (Article 48).

94. Both stages are to be activated (and possibly prolonged or terminated) by means of a Council implementing act, justified in recital 58, on the basis of a proposal from the Commission (Article 44(2), (5) and (7) and Article 48(2), (3) and (6)), and both provide for **two similar sets of measures directed at economic operators**: on the one hand, **information gathering**, consisting of information requests by the Commission to economic operators contributing to the production of crisis-relevant products (non-defence products under the supply crisis state;

---

63 **DELETED**

64 Defined in Article 2(18) of the Proposal.

defence products under the security-related supply crisis state) (Articles 46 and 49) ; on the other hand, **prioritisation measures** consisting of **"priority-rated orders"** related to non-defence products under the supply crisis state (Article 47) and **"priority rated requests"** related to defence products under the security-related supply crisis state (Article 50).

95. Finally, the Council may activate under the security-related supply crisis state **additional measures**, mainly consisting of facilitating intra-EU transfers of defence products (Article 51); triggering the eligibility of a list of "innovation actions" under the Programme (Article 52); facilitating the certification of defence products (Article 53); and requiring Member States, where possible under national law, to fast-track permit granting processes (Article 54).

96. **DELETED** [65]

[65] **DELETED**

97. **DELETED** [66] [67] [68]

98. **DELETED**

99. **DELETED** [69] [70] [71]

[66] **DELETED**
[67] **DELETED**
[68] **DELETED**
[69] **DELETED**
[70] **DELETED**
[71] **DELETED**

100. **DELETED**

101. **DELETED**

102. **DELETED**

103. **DELETED**

DELETED

104. **DELETED**.[72]

105. **DELETED**[73] [74]

106. **DELETED**

[72] **DELETED**
[73] **DELETED**
[74] **DELETED**

DELETED

107. **DELETED** [75]

108. **DELETED** [76]

109. **DELETED** [77]

[75] **DELETED**
[76] **DELETED**
[77] **DELETED**

110. **DELETED** [78]

III. THE PROPORTIONALITY PRINCIPLE IN RELATION TO THE SECURITY OF SUPPLY REGIME (CHAPTER IV OF THE PROPOSAL)

111. According to the settled case-law of the Court of Justice, the principle of proportionality, enshrined in Article 5(4) TEU and constituting a general principle of EU law, requires that *"acts of the EU institutions be appropriate for attaining the legitimate objectives pursued by the legislation at issue and do not exceed the limits of what is necessary in order to achieve those objectives; when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued."*[79] Furthermore, the Court has consistently held that, with regard to judicial review of compliance with this principle, the EU legislature must be allowed a "*broad discretion in areas in which its action involves political, economic and social choices and in which it is called upon to undertake complex assessments and evaluations*."[80]

---

78 **DELETED**

79 See, for example, judgment of 4 May 2016, *Philip Morris*, C-547/14, EU:C:2016:325, paragraph 165.

80 See, for example, judgment of 8 June 2010, *Vodafone*, C-58/08, EU:C:2010:321, paragraph 52 and the case-law cited.

112. **DELETED** [81] [82] [83]

113. **DELETED** [84]

[81] **DELETED**

[82] **DELETED**

[83] **DELETED**

[84] **DELETED**

114. **DELETED** [85]

115. **DELETED** [86]

116. **DELETED**

117. **DELETED**

[85] **DELETED**

[86] **DELETED**

118. **DELETED** [87]

119. **DELETED** [88]

120. **DELETED** [89]

[87] **DELETED**
[88] **DELETED**
[89] **DELETED**

121. **DELETED** [90] [91]

122. **DELETED**

123. **DELETED**

124. **DELETED**

[90] **DELETED**

[91] **DELETED**

125. **DELETED** [92] [93]

126. **DELETED**

[92] **DELETED**

[93] **DELETED**

DELETED [94]

IV. DELETED

127. **DELETED**

128. **DELETED**

129. **DELETED**

[94] **DELETED**

130. **DELETED**

131. **DELETED**