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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Antici Group (Simplification)
Subject:	Omnibus V (Defence) - Compilation of written comments

Delegations will find enclosed compilation of MS additional comments as received from BE, CZ, DE, **EE**, ES, FR, IT, CY, LV, LT, LU, NL, AT, PL, PT, RO, **SI**, FI and SE on the Omnibus V Defence proposal.

Member States comments
Omnibus V – Defence

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BELGIUM

Please find hereby the comments and questions from BE on Omnibus V: Fast-Track Permitting and the chemical acquis. Thank you in advance for the follow-up.

Fast-Track Permitting

- Could the Commission clarify how Member States are expected to reconcile the 60-day period for project evaluation with the need to uphold nationally legally required assessments necessary for a thorough evaluation?
- Could the Commission clarify whether a lack of sufficient time to conduct a proper assessment of the project —for example due to understaffing, a high volume of applications, or delays in receiving input from other competent authorities involved in the SPOC process—would be considered a valid ground for a Member State to issue a negative opinion on a project? If so, does the proposal provide sufficient legal certainty to ensure that such a justification would be upheld if challenged in court?
- Could the Commission explain how Member States should handle public consultation procedures, particularly in cases where neighbours and third parties may object to permit applications, and where the objection period may exceed the time limit for public authorities to assess the project?. One could think of an impact assessment of the social and environmental impact, negative health effects on the population
- Has the Commission conducted an analysis of the different types of Single Points of Contact (SPOCs) established under various instruments, including a comparison of the similarities and differences between the process currently in place under the NZIA and the one proposed in this initiative?
- The proposal states that if the SPOC does not inform the project promoter of the outcome within the set time limit, the permits shall be deemed granted. This appears to be a far-reaching provision, especially in light of the concerns raised above. Did the Commission consider alternative approaches, and if so, why were they not retained?
- Pending sufficient clarification on this procedure, we maintain a negative scrutiny reserve.

Chemical acquis

- Belgium has a positive scrutiny reserve regarding the proposal, provided that a high level of protection for the environment and public health is ensured, in line with the precautionary principle in order to rule out legal responsibility for negative effects of the exceptions granted. In this regard, we underline the importance of a clear and well-defined framework for any derogations.
- Belgium continues to reflect on the appropriate balance between harmonisation and national implementation of EU rules in the defence sector.
- Can the Commission explain more in detail when and where the preparatory stages take place during which EU defence readiness needs should be addressed? To what extent is this part of a legislative proposal?

GERMANY

German questions and comments on the Omnibus V – package

Germany is currently still reviewing the proposals of the package and **expressly reserves the right to make further comments**.

Proposal for a directive amending Directives 2009/43/EC and 2009/81/EC

1. Directive 2009/43/EC (EU-transfers)

Article 1 para 2 (a)

- Exemptions from authorization seems to be a far-reaching step considering the sensitivity of the goods.

- Would such exemptions be compatible with the Arms Trade Treaty which generally requires approval before transfer?

- It is important for Germany to retain national discretion at this point („may").

- What are considered "cross-border industrial partnerships"?

Article 1 para 2 (b)

- What is considered "cross-border cooperation"?

Article 1 para 2 (c)

- Question regarding the proposal on Art. 4 para. 4, second sentence („No preconditions…"):
  In our understanding, there is no right to ask for a global license or an individual license if there is general license that can be used in a specific case. If Member States provide procedural simplifications, we believe that these should also be used. This is the only way to make procedural simplifications effective. Or shall Art. 4 para. 4, second sentence, mean that the applicant may choose the type of license, i.e., that the applicant has the right to apply for an individual license even if a general license is applicable? We would not favour such a right to choose.

- What does "criteria that are not connected to their capacity to perform their obligations" mean? Does this exclude administrative pre-conditions, e.g. to register for the use of a general license, to report on transfers or to submit an Internal Compliance Program as a pre-condition to use a global transfer license?

  → Proposal: *"Member States shall ensure that suppliers intending to transfer defence-related products from their territory may use general transfer licences or apply for global or individual transfer licences in accordance with Articles 5, 6 and 7. ~~No pre-conditions shall be imposed, that would have the effect of preventing suppliers from using general transfer licences or applying for global or individual transfer licences, on the basis of criteria that are not connected to their capacity to perform their obligations in the fields of transfer and export control.'~~* ***In principle, the use of general transfer licences should be given primacy in application. This does not preclude Member States from subjecting the use of general transfer licences to certain requirements or conditions necessary for the administration of the general licenses."***

Article 1 para 2 (d)

- What is the goal of the reference to Art. 4 para. 5? Is it intended to give the Commission the power, by means of a delegated act, to decide on the type of license for certain cases?

- The assessment of sensitive / non-sensitive items is a matter of political discretion for the EU Member States and should therefore not be defined in a delegated act. The creation of such a list would involve time-consuming technical discussions. From a German perspective, it would be conceivable to develop joint EU recommendations. This would take into account the complexity of the matter and the national discretion of the Member States and still provide an impetus for a more harmonized approach.

Article 1 para 3 (a)

- Art. 9 would have to be amended accordingly, as it only refers to the certification procedure of the recipient.

Article 1 para 3 (b)

- Germany generally welcomes the initiative to harmonize the scope of application of general transfer licenses.

- In Germany most military items (with the exception of development and manufacturing technology, certain software and war weapons in accordance with the German War Weapons Control Act) can already be transferred within the EU customs territory by means of a general transfer license.

- Nevertheless, the particularities and individual security interests of the Member States must be taken into account. It is questionable whether a delegated act is the right instrument for this task. Further harmonization could also be promoted by means of EU recommendations supported by all member states. The existing recommendations could be used as a basis for these discussions and expanded accordingly.

- In particular, in our opinion, the transfer of manufacturing and development technology as well as certain software is particularly sensitive and should generally be excluded from the scope of general transfer licenses. A different approach may apply in the particularly privileged framework of the EDF, where transfers only take place within the narrow framework of EU projects and re-export restrictions apply (see Art. 5a).

Article 1 para4

- Germany generally welcomes the idea to introduce a general transfer license for EDF projects.

- In our view, however, at least the first half-sentence in Art. 5a para. 1 should be deleted. The reference to “all defense-related products” goes too far. At most, all Annex I goods could be covered by the Directive (see recital 10).

- Germany supports the inclusion of a re-export provision in the grant agreement. In our view, however, this reservation should not only refer to the technology / software, but also to the items produced within the scope of the project using the transferred technology / software (“derived goods”). Art. 5a para. 3 should therefore be supplemented as follows:

*„Member States shall not require any additional commitment, such as certificates related to end-use or limitations to the export of the defence-related products, if a funding agreement or contract concluded under a Union defence industrial programme contains a commitment that the defence-related products linked to the implementation of a given project **as well as the items produced** will not be shared without authorisation, beyond the participants to the funding agreement or parties to the contract in question, the funding or contracting authority, or where relevant, the Commission when it is not the funding or contracting authority and the Court of Auditors as referred to in paragraph 4."*

- Furthermore, such clause should be addressed to the licensing authorities of the Member States in order to ensure a legally binding declaration by the project participants vis-à-vis the licensing authorities.

- Germany suggests involving the Member States in advance when formulating such a clause in the Grant Agreement so that all MS can accept such a clause. In this context, Germany refers to the German proposal already submitted as part of the input to the Defence Omnibus.

Article 1 para 5

- Germany does not see the need for such a regulation. Who shall decide in which cases retention rules are disproportionate? What does "non-tangible" mean? Why is software not included?

- In Germany, there are already simplifications of notifications in the area of technology and software, so that the special aspects are already taken into account in practice.

- An opening clause in favor of the EU MS seems more favorable here, such as:

  „Member States may decide that the provisions of this Article, in particular Article 8(3), points (b) and (c), accordingly, shall apply to the transfer of technology and software only as far as their application does not result in disproportionate reporting obligations for the suppliers."

2. Directive 2009/81/EC (Public Procurement)

- The proposal is a **large step in the right direction**. However, **the Commission's communication** on the Directive suggests a greater degree of simplification than the actual proposed changes. Considering the deteriorating security and geopolitical situation in Europe and the goal of establishing **defense readiness of the Union by 2030**, we believe that **more ambitious and rapid adjustments to the existing procurement law framework** are necessary.

- Additionally, we should focus our current discussions on **major adjustments** and avoid getting bogged down in detailed discussions about other changes that should be addressed in the general revision of the Directive 2009/81/EC beginning in 2026.

In summary, the **most important points** for us are:

1) A further increase of **thresholds**, especially for **works**;

2) Fewer requirements for the **negotiated procedure without prior notice** involving several Member States; and

3) Simpler modifications to contracts and framework agreements, particularly through:

a) higher percentages for allowed amendments; and

b) The explicit inclusion of **additional partners** in the framework agreements.

- Timeline and Procedure
  In its omnibus communication, the Commission rightly points out that a comprehensive revision of Directive 2009/81/EC is planned for 2026. However, the Commission also states that the rules **should be simplified now**.
  Against this background, we would be grateful if the *→ @Commission* could **provide information on the planned timeline**, including the trilogue, until the simplifications enter into force and will be implemented in the Member States. How does this interact with the Directive's general amendment process planned for the end of 2026?
  In our view, the **simplifications should be made available** to the contracting authorities **as soon as possible**. While careful consultation in the ordinary legislative procedure is appropriate, **deviations from the current provisions of Directive 2009/81/EC** could take effect **more quickly through an amending regulation** rather than an amending directive, because there would be no implementation needed in the Member States. A directive would take effect at the earliest sometime in 2026. A regulation could be applied directly by contracting authorities **without a transition period**.
  We would therefore welcome an explanation from the *→ @Commission* **why it decided against a regulation, which would enable faster effectiveness**. It is our understanding a directive could also be amended by means of a regulation. We are also very interested in the other *→ Member States'* views on this issue.
- Threshold and general / specific derogations from Directive 2009/81/EC
  In the current geopolitical situation, the most important simplification is to **allow for broader derogations from Directive 2009/81/EC** – by raising thresholds and by introducing general derogations for certain procurement procedures.
  In this context, the Commission's proposal to **raise the Directive's thresholds** is a **step in the right direction**. We thank the Commission for this proposal. However, we advocate an even bolder approach. In our opinion, **doubling the threshold for goods and services in the security and defence sector to €900,000** is at the **lower end of the scale** in terms of achieving noticeable relief. Considering the **complexity of defence systems** and the typically high contract values for defence equipment, we suggest considering a threshold **equal to the general threshold for works** (currently **€5,538,000**) for goods and services in the defence sector, particularly for **complex defence systems**. This would better reflect the typical volume of defence-related contracts. We welcome proposals from other *→ @ Member States* on this issue. The value should be a round number, and, symbolically important, **€1,000,000** instead of €900,000.
  The Commission's proposal to raise the **threshold for works** in the security and defence sector from €5,538,000 to €7,000,000 (i.e., **around a quarter**) is even more cautious. It would not even offset the increases in construction costs in recent years. In our view, **doubling the threshold would be the minimum requirement** for noticeable relief in this area. Even €15 million would only reflect the raise in building

costs since the origin of the value from 1993. Why did the → *@Commission* apply a significantly lower multiplier for works than for goods and services? The aim is to facilitate important construction projects for troops and troop movements.
It is unclear why **Article 68** is to be deleted, thereby removing the adjustment of the thresholds. We ask the → *@Commission* to explain this decision.
In addition, we propose considering the introduction of **general or specific derogations** from the Directive, particularly for **urgently needed goods** or **goods necessary for establishing defence readiness**. These goods include those listed in category 1 of the SAFE Regulation: **ammunition** and **missiles**; **artillery systems**; small **drones** (NATO class 1); and related **anti**-drone systems. Other goods include those necessary for protecting critical **infrastructure**, cyber and military **mobility**. These could be included as exceptions in **Article 13** of the Directive. The current extensions to Article 13 (c) and (d) for joint research and development (R&D) projects and contracts for troops in third countries are **insufficient**. We would like to discuss initial proposals with the → *@Member States* and suggest appropriate wording. This could include cases now newly designated as negotiated procedures without prior notice as instead exceptions to the directive in Article 13 (instead of Article 28).

- Additional cases for the negotiated procedure without prior notice
  We welcome the Commission's approach to provide for **additional cases** or clarify cases **for the negotiated procedure without prior notice** in Article 28. However, it must be ensured that such provisions involve **few, clearly defined, and easily applicable conditions** in order to lead to actual simplification and flexibility.
  The Commission's proposal provides for **only two additional cases**: First, **specific contracts** for "***innovative products***" following competitive **R&D projects** (Article 28 (2) (c)), and second, **specific joint procurement by at least three Member States** (Article 28 (3) (d)). Each of these provisions requires the **cumulative fulfillment of seven complex conditions**. Given these **complicated structures**, it is doubtful that these provisions will lead to any noticeable simplification for contracting authorities in practice. We expect that we need discussions with the → *@Member States to come to a good, practical solution.*
  For instance, the proposal for Article 28 (3) **(d) (vii)** does not clarify **how** the contracting authority should **calculate** the cost share of components from non-EU countries before submitting a tender to justify the conditions for an exception to competitive tendering in a legally certain manner. If it comes out during the tender examination that the value of components from non-EU countries exceeds 35% of the total contract value, the award procedure would need to be canceled and re-launched with a competitive tender. This would be the opposite of acceleration.
  Also, the additional requirement of **eligibility for funding** under SAFE, EDIDP, EDF, or ASAP should be **removed**, as incidental assessment of funding eligibility is not feasible for contracting authorities. Moreover, removing this requirement would allow cases that do not meet these strict eligibility requirements to be included. Not every nation depends on such funding, and those who do may pursue it voluntarily. Germany therefore believes that **these rules should be considerably simplified**. To this end, the **requirements should be minimized**.
  In particular, the proposed provision on the negotiated procedure without prior notice for **joint procurement by several contracting authorities** could be simplified. The central and likely the **only requirement** should be that **at least two** contracting authorities **procure jointly**. Additional restrictions do not appear appropriate in view of the objective of simplification. To prevent circumvention, the exception for joint procurement could be linked to the requirement that the maintenance of procured defence equipment be jointly maintained and that contractors be established in a Member State, an associated country, or Ukraine.

The provision on negotiated procedures without prior notice for the procurement of **innovative** products should also be made more **practical and flexible** by reducing the requirements. For instance, the requirement for prior tendering of the research and development project in a negotiated procedure with prior notice, a restricted procedure, or an open procedure should be **removed**. Against the background that R&D contracts are generally excluded from the scope of the Directive (art. 13 f) j)), it appears sufficient and appropriate to emphasise the idea of competition in the award of R&D projects through, for example, the obligation to obtain an least three tenders. The same applies to the condition that the contract value may not exceed ten times the value of the development effort. The latter is often exceeded in serial procurements of pre-developed products.
Furthermore, Article 28 should clearly state that the **urgency resulting from the current geopolitical context** as a **prolonged crisis situation** justifies the award of contracts by the use of **negotiated procedure without prior notice**. Therefore, the definition of "crisis" in Article 19 of the SAFE Regulation should be incorporated. In addition, Article 28 (d) should provide for **simplification in cases of extreme urgency**. The last sentence in Article 28(1)(d) could be deleted.

- Opening up framework agreements and contracts to additional contracting authorities
  Furthermore, the proposal should include a provision allowing **framework agreements and contracts** in the defence sector **to be opened to additional member states or partner countries to join** without requiring a new procurement procedure.
  This should be possible for both **existing and future contracts and framework agreements**. Such cooperation should not fail due to formal obstacles.
  This effective possibility for cooperation should **apply generally**, not being limited to specific instruments, such as SAFE or EDIP.
  Article 49a of the proposal regarding the **modification of contracts and framework agreements** is **too narrow** in its adoption of the provisions of the general public procurement directives. Why has the Commission not adopted more far-reaching provisions, even though these adjustments are currently being discussed and implemented widely? We should be bold enough to go beyond the exact wording of **very old ECJ** case law: The *Pressetext* case dates from 2008 – over 15 years ago (!). Permitted changes to contracts, such as percentage changes, must be **significantly higher and simpler** than general provisions. It is unclear why the **de minimis exception** in the general directive (below the EU threshold and 10% of the contract value) was not included by the → *@Commission*.
  The **only change** regarding **framework agreements** in the proposal is to increase their maximum duration from seven to ten years in Article 29(2), which is **too cautious**. More could have been done here, instead of continuing to require justification for deviations. Above all, the important question of **subsequent accession of additional partners** remains unresolved. Therefore, at least **Article 18** of the SAFE Regulation should be fully incorporated into the proposed directive, particularly with regard to **the inclusion of new contracting authorities** in paragraph 2 and the permissible value in paragraph 3.
  We would expect, that *→ other Member States* would ask for these adjustments as well.
- Other amendments
  We **reject** any amendment to the provisions on **central purchasing bodies** that incorporates the provision from the general directive. In particular, it must remain possible in the current situation to establish central purchasing bodies **ad hoc** rather than permanently. We therefore reject the changes to Article 10. Now is not the time to change the rules for central purchasing bodies amid numerous joint procurements.

If at all, a change should be discussed in the general debate in 2026. → *@Commission*: Why was the definition changed?
We still need to take a closer look at incorporating the **innovation partnership** from the civil directive into Article 27a. → *@Commission*: Have further simplifications been considered, in addition to the new possibility of adjusting the award criteria mentioned in point 5? The same question → *@Commission* applies to the **dynamic purchasing system** in Article 29a.
We expressly reserve the right to make **further comments** on individual proposals.

Proposal for a regulation on the acceleration of permit-granting for defence readiness projects (2025/0172 (COD))

Article 1 – Definition of projects

- The German government is of the opinion that the term "defence readiness project" should be defined in such a way as to allow Member States sufficient scope for national implementation and interpretation.

- In addition, the German government recommends adding a legal definition of the term "days" to make it clear that this refers to working days. Alternatively, the word "days" could be replaced by "working days" throughout the text (with the exception of the date of entry into force) to prevent ambiguity in interpretation and to provide legal clarity. This would help ensure uniform application of the rules in all Member States.

Article 2 – Single point of contact

- The German government generally welcomes the establishment of single points of contact, as this can streamline administrative processes for project promoters. The addition of paragraph 6, which ensures that the competent authorities have enough qualified staff and sufficient financial, technical and technological resources, is seen as particularly positive.

- However, the specific tasks of the single point of contact still need to be clarified. In particular, it must be defined whether the single point of contact should have the authority to take substantive decisions and to what extent it should be formally involved in the permit-granting procedure under air quality control law. It must also be clarified whether the single point of contact has the authority to issue permits itself or merely acts as a communication channel. It is also necessary to define the "relevant administrative level". Given that the proposal also includes extensive requirements to ensure the accessibility of information on the permit-granting process online, it must be clarified how sensitive and confidential information will be protected.

- The German government also has open questions about the establishment of a central coordination office responsible for permits, which could be difficult to implement in a federal system. The German government also emphasises that the "concentration effect" applies under German air quality control law, meaning that all necessary permit-granting procedures are combined and carried out in a uniform procedure, which already speeds up the process. The involvement of another office could therefore increase the administrative burden. To enable the Member States to implement the regulation efficiently, they must have sufficient scope to interpret Article 2.

Article 5 – Duration of the permit-granting process

- The German government reserves the right to **comment on Art. 5 at a later stage**.

Other comments

- The German government proposes replacing the phrasing in recital 10 "Complying with Union law, including for instance in relation to water, waste management, air, ecosystems, habitats, archaeological, and biodiversity and birds' protection" with "Complying with Union law, including for instance in relation to water, waste

management, air, archaeological, and biodiversity protection". The term "biodiversity" covers many of the other terms.

- The German government welcomes the period of validity of the Regulation envisaged by the Commission and asks that it be included in Article 9.

Proposal for a Regulation as regards defence readiness and facilitating defence investments and conditions for defence industry (2025 (0176 (COD))

Article 1: Amendments to Article 2(3) Regulation EC 1907/2006 (REACH)

- The German government is of the opinion that deleting the term “specific cases” is acceptable as long as it is ensured that any exemptions always refer to specifically identified substances on their own, in mixtures or in articles so that a sufficient degree of legal certainty is always guaranteed. It should also continue to be possible to differentiate between different uses. It is the German government’s understanding that the phrase “where necessary” takes this concern into account in the proposed wording. We would ask the Commission to confirm that our understanding is correct.

- With regard to the Code of Conduct (CoC), the German government shares the view that, as a non-binding instrument, it does not enable any binding regulation of exemptions in practice; still, the content is quite helpful. This applies in particular to the following statement under “common understanding”: “*when granting exemptions from obligations deriving from REACH in the interests of defence, do so on the basis of a national procedure that provides, as far as possible, for the highest safety and traceability standards, mirroring those imposed by REACH*”. Against this background, we would ask the Commission whether it continues to share and support the content of the CoC, particularly with regard to the underlying protection goals.

- Finally, we would like to know whether the Commission is of the opinion that articles used by the police and customs, in particular by special units, fall under national defence. Can an exemption under Article 2(3) REACH also be granted for substances, mixtures, etc. in articles when used by the above entities? We would like clarification on this issue to ensure that the rules are applied correctly.

Article 2: Amendments to Article 1(4) Regulation (EC) 1272/2008 (CLP)

- The German government is of the opinion that deleting the term “specific cases” is acceptable as long as it is ensured that any exemptions always refer to specifically identified substances, mixtures or articles so that a sufficient degree of legal certainty is always guaranteed. It should also continue to be possible to differentiate between different uses. It is the German government’s understanding that the phrase “where necessary” takes this concern into account in the proposed wording. We would ask the Commission to confirm that our understanding is correct.

- The German government welcomes the proposed addition of „articles referred to in section 2.1 of Annex I“. In the proposed wording, this amendment could, at first glance, be understood as a restriction. The wording should therefore be clarified as follows:
  “‘4. Member States may allow for exemptions from this Regulation for substances and mixtures, as well as articles referred to in section 2.1 of Annex I, where necessary in the interests of defence.’”

Article 3: Amendments to Article 2(8) Regulation (EU) 528/2012 (Biocidal Products Regulation)

- The proposed wording raises the question (as with the amendment to the REACH Regulation) of whether the exemption always relates to specific biocidal products or

treated articles and whether it is possible to differentiate between different uses. The German government can accept the wording if both interpretations apply.

Article 4: Amendments to Regulation (EU) 2019/1021

- The German government supports the amendments to Article 2(14) and Article 3(4a).

- The German government does not generally object to the option proposed in Article 13(1) of excluding sensitive information from the monitoring report. However, the term "national interests" seems quite broad. This term should not be interpreted too broadly nor should it include economic interests. We would like the term to be changed to "national security [interests]". It is clear from the "detailed explanation of the specific provisions" that security interests are meant.

- We kindly request a review and statement on whether, in the future, the use of Article 22(3)(b) of the Stockholm Convention is intended when overriding imperative defence interests require non-recognition of a restriction. Such an application should, of course, only occur in exceptional individual cases. Or should the proposed provisions be understood in such a way that the general rule is to take exceptions into account already when listing the substances, thereby generally avoiding non-recognition?

Article 5: Amendments to Regulation (EU) 2021/697 (EDF)

- Article 5(3): [Article 8(2)]
  - Is the option "indirect management" considered within the selection and award procedure (Article 11 applies for indirect management) regarding the deletion of Article 8(2)?

  - Will project proposals, including indirect management, handed in by industry for evaluation, be considered with higher marks? How, technically, will the provision of planned indirect management be testified during the project proposals submission procedure?

  - Do Member States need to provide a letter of intent or confirmation to support industry consortia, if indirect management is planned?

- Article 5(9): [Article 17 (2) point b]
  - What are the conditions of those "specific cases"? Who defines "specific cases"?

- Article 5(11) (a) para 3: [Article 23 (3)]
  - Will national export control regulations for intra EU transfer concerning EDF projects be suspended? There is a distinct hint in Article 5 (11) (a) para 3, named "…Member States shall endeavor to use general transfer licences…". How is that to be understood?

  - How are associated states (e.g. NOR) recognized considering the adaptions of export control regulations for intra EU transfer?

ESTONIA

Defence Omnibus
EE questions and initial comments

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the acceleration of permit-granting for defence readiness projects

1) *"All defence readiness projects will benefit from Member States designating a national competent authority acting as a single point of contact, in charge of coordination and facilitation of permitting, guiding economic operators, ensuring that information is publicly accessible and that all documents can be digitally submitted."* Can different permits still be issued and do they not have to be issued as a so-called joint permit?

2) Does the draft regulation mean skipping the stages of disclosure in order to speed up the procedure in order to speed up the procedure?

3) We would like to have some clarity on the so-called 'slicing' of projects in permit procedures – what does this essentially mean and how does it apply?

4) We would like clarity on the relationship between the regulation and the EIA Directive and the Espoo Convention (and whether and how these should be taken into account in the deadlines for permit procedures).

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EC) No 1907/2006, (EC) No 1272/2008, (EU) No 528/2012, (EU) 2019/1021 and (EU) 2021/697 as regards defence readiness and facilitating defence investments and conditions for defence industry

We support the changes to the EU POPs regulation as they add legal clarity, ensuring a uniform interpretation in all Member States regarding the transmission of sensitive information in the field of defence.

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EC) No 1907/2006, (EC) No 1272/2008, (EU) No 528/2012, (EU) 2019/1021 and (EU) 2021/697 as regards defence readiness and facilitating defence investments and conditions for defence industry

1) We note that there are elements that have been transferred from the classical directive (2014/24/EL), albeit with changes. For example, article 10a prohibits Member States from preventing their contracting authorities from using the services of a central purchasing body located in another country OR from offering centralised purchasing activities to contracting authorities/entities located in another Member State. The second part of the sentence (offering services to contracting authorities/entities located in another Member State) is missing from Article 12 of the classic directive.

In point 4 of the same article, the end of the draft sentence is more general: "...provisions of any of their respective Member States". In the classic directive, the clarification is added: "...provisions of the national laws of any of their respective Member States".

In a similar vein, in article 27a, the second subparagraph of its paragraph 1 reads "...represent indicative minimum requirements that all tenders should meet.", but in the classic directive: "...define the minimum requirements to be met by all tenders." **We would like to know if these differences are intentional.** We **caution that different terminology might impede effective implementation**, as contracting authorities must take into account that the same phenomena are denoted by different words or, conversely, the same term may mean different things in different situations.

2) We would also **prefer using the same definition of "tenderer" as in Directive 2014/24/EU:** 'tenderer' means an economic operator that has submitted a tender". This wording is more universal and is not related to the names of the procedures, which may change in the future. The definition in the new draft regulation reads: "Tenderer means an economic operator which has submitted a tender under an open procedure, a restricted or negotiated procedure, competitive dialogue, or an innovation partnership".

3) We **support raising the thresholds**, as the administrative burden on contracting authorities is reduced, but high-value public procurements are still carried out according to stricter rules.

4) We support the adoption of procedures from the classic directive. This harmonises procurement practice.

5) In Article 27a(1), if it is desired to exclude the lowest price, the wording: "The contracts shall be awarded on the sole basis of the award criterion of the best price-quality ratio in accordance with Article 47." should be replaced by "the most economically advantageous tender".

6) Article 27a point 5. **We would like to know the following procedure is implemented:**

„Before the end of an ongoing phase the contracting authority/entity may specify the award criteria and the maximum costs to be used to select the tenders participating in the following phase. Those award criteria and the maximum costs shall be proportionate to the expected results of the ongoing phase and to the objectives of the innovation partnership. In case a tenderer eliminated in a previous phase becomes eligible for the following phase as a result of those award criteria and the

maximum costs such tenderer shall be invited to participate in the following phase.“ We are a little confused.

7) Article 29 point 2 "(b) the minimum time limit for receipt of tenders shall be at least 10 days from the date on which the invitation to tender is sent." **Here, there should be a possibility to set a shorter deadlines than 10 days.**

8) Article 34: “in case of an innovation partnership, to submit a request to participate” This should not include the submission of requests to participate, because the request is submitted in response to a contract notice, here the applicants who submit tenders have already been selected;

9) Article 36 could be amended in a similar way to Article 35 to provide for clearer regulation of electronic communication;

10) Article 39 could be supplemented with grounds for exclusion concerning infringements of previous procurement contracts;

11) Article 49a could include a similar ground for contract modification as in Article 72(2) of Directive 2014/24/EU – the so-called de minimis rule.

12) We support the repeal of Articles 65 and 66 to remove the reporting obligation for Member States. **But why delete Article 68, which provides the basis for changing the thresholds?**

SPAIN

SPAINS QUESTIONS ON THE NON DEFENCE PART OF THE OMNIBUS V

1. The single point of contact, as indicated, is only a channel that facilitates, coordinates and provides the response as a one-stop shop and does not necessarily have to be the specific Ministry with greater competences in the matter. In this sense

a. Could it be an inter-ministerial body? What would be the main functions and attribution of responsibilities assigned to it?

b. It is stated that there will be financial support to establish the single point of contact. What type of financial support? How will it be articulated?

c. It is also stated that it must have an on-line management tool to ensure its proper functioning. Will it have any specific characteristics?

2. In order to narrow down and define the preparadness concept, it would be useful to have a list of activities and sub-sectors to be taken into account. It could also be useful to design a priori an exhaustive matrix of the most common permits and formalities in the EU, to be reviewed/expanded by the Member States. This would provide a common basis that could minimally homogenize the starting point and could, a posteriori, be used to engineer procedures (permits and formalities) at a later stage by each Member State. If, in addition, approximate average times were included in the EEMMs, it would be possible to estimate with more knowledge the timeframes that are reasonable to propose.

FRANCE

NOTE DES AUTORITÉS FRANÇAISES

Objet : Questionnaire sur l'Omnibus V défense

A) Proposition de règlement relatif à l'accélération des procédures d'octroi des autorisations pour les projets en matière de préparation de la défense

Les autorités françaises souhaitent formuler plusieurs questions liées à la définition des projets de préparation à la défense et à la mise en place d'une procédure simplifiée d'autorisation pour ce type de projets et sa compatibilité avec d'autres réglementations européennes.

1/ sur la notion de projet de préparation à la défense (article 1(1))

- La Commission peut-elle apporter une définition des « projet de préparation à la défense » (« *defense readiness project* ») ? Quel est le champ exact de ces projets (taille, conditions, critères de détermination etc ?).
- Dans la communication de la Commission (COM(2025) 820), il est fait référence aux « projets essentiels à des fins de défense » (« *projects essential for purposes of defence* »), alors que la proposition de règlement évoque « les projets ayant la défense comme seul objectif (« *having defence as their sole purpose* »). La Commission peut-elle préciser l'articulation entre ces deux notions ?
- Quelle devrait être, pour la Commission, l'autorité en charge de reconnaître le caractère ou le label de « projet en matière de préparation de la défense » ?
- Compte tenu du fait que, lorsqu'un projet industriel ou d'infrastructure important nécessite non seulement un permis de construire, mais d'autres autorisations sectorielles (déclaration d'utilité publique, autorisations environnementales), la procédure envisagée s'appliquerait-elle également à ces autres autorisations ?
- Les candidats à un appel à projet devront-ils fournir des éléments spécifiques en vue de la reconnaissance de « projets de préparation à la défense » ? Une voie éventuelle de recours gracieux est-elle envisagée en cas de non reconnaissance du bénéfice de ce régime ?

2/ Sur la compatibilité entre la procédure d'autorisation ad hoc de 60 jours pour les projets de préparation à la défense et les autres réglementations européennes (articles 5 et 7)

- Quelles sont les domaines visés par le processus d'autorisation *ad hoc* envisagé ?
- La Commission partage-t-elle l'analyse des autorités françaises sur le fait que ce processus couvre les autorisations relevant des directives Seveso, IED (émissions industrielles) et EIA (*Environmental Impact Assessment*) pour les sites relevant de la réglementation « installations classées pour la protection de l'environnement (ICPE)) ».

- Si c'est bien le cas, comment s'articule les dispositions de l'article 5 (paragraphes 2 et 8) avec ces directives qui demandent une évaluation globale (étude de danger ou d'impact par exemple) et ne permettent pas d'accorder implicitement les autorisations qu'elles requièrent.
- La procédure d'autorisation *ad hoc* simplifiée de 60 jours pour les projets liés aux préparatifs de défense aux articles 5 et 7 est-elle compatible avec les autres réglementations européennes précitées ?
- La possibilité de « découper » les projets conduisant à l'octroi de plusieurs autorisations n'irait-elle pas à l'encontre de la notion de projet définie par la directive EIA ?

3/ Sur la création d'un point de contact unique (article 2)

- Concernant le point de contact unique, s'agit-il d'une disposition analogue à celles prévues dans le règlement pour une industrie « zéro net » (NZI Act) et celui sur les matières premières critiques (CRM Act) ? Les autorités françaises considèrent que ce type de dispositif n'a pas démontré de réel intérêt opérationnel : la Commission peut-elle expliquer l'intérêt de mettre en place un tel dispositif pour la procédure d'octroi des autorisations ?
- Par ailleurs, quels seraient le rôle et les responsabilités du point de contact unique ? Ce point de contact unique doit-il nécessairement s'entendre au niveau national ou peut-il être envisagé au niveau déconcentré ou décentralisée ?

4/ Sur les délais et procédure (article 5)

- Les délais proposés par le projet de texte ne permettant pas de prendre en compte les réglementations spécifiques tenant à la protection de l'environnement, à la salubrité et à la sécurité publique et aux risques, est-il envisagé de prévoir d'autres cas de prolongation du délai de 2 mois en complément des alinéas 3 et 4 de l'article 5 et/ou d'étendre les délais de prolongation prévus par ces alinéas ?
- Pourquoi limiter la possibilité du demandeur de compléter son dossier à deux occurrences ?
- Pourquoi prévoir un délai restreint de 15 jours pour examiner la complétude du dossier ? Pour les dossiers à forte complexité que sont notamment ceux qui concernent de nombreux sites industriels, ce délai apparaît susceptible d'empêcher les services responsables à se prononcer sur un dossier complet dans le cadre de l'instruction ?
- Comment garantir la sécurité juridique des refus, si les services consultés n'ont pas eu le temps de formaliser et motiver leur avis concernant le projet, compte tenu des délais prévus par le texte ?
- En complément de l'objectif d'accélération, la Commission énonce un objectif de priorisation des procédures d'autorisations nationales. Pourquoi cet objectif n'est pas traduit à l'article 5, dans la mesure où cette priorisation devrait contribuer à mettre en œuvre un octroi accéléré des permis ?
- Enfin, la Commission peut-elle préciser la capacité des services instructeurs à instruire les demandes d'autorisation pour les projets en matière de préparation de la défense dans les délais (60 jours en principe) prévus à l'article 5, eu égard aux caractéristiques particulières que peuvent revêtir les projets en matière de préparation de la défense (complexité, éventuels risques pour la santé humaine et la biodiversité, etc.) ?

5/ Sur la planification

- La Commission peut-elle apporter des précisions sur l'interprétation à retenir de la notion de « dispositions relatives au développement d'activités et de projets en matière de préparation de la défense » (objectifs chiffrés de développement, orientations générales, etc.) mentionnés à l'article 6 du projet, ainsi que sur le champ des « plans » concernés (nature et niveaux de planification concernés) ?
- Par ailleurs, quel est l'intérêt de la Commission de prévoir un calendrier contraignant d'intégration des dispositions précitées dans les différents documents de planification concernés ?

B) Proposition de règlement concernant la préparation de la défense et facilitant les investissements dans le domaine de la défense et les conditions pour l'industrie de la défenseles substances chimiques :

1/ Sur le règlement CLP (règlement n° 1272/2008 relatif à la classification, à l'étiquetage et à l'emballage des substances et des mélanges)

• La Commission peut-elle apporter des précisions sur l'applicabilité de l'exemption à des substances, mélanges et articles non explosibles ?

2/ Sur la mise en œuvre des règlementations chimie

- S'agissant de la mise en œuvre des règlementations chimie, est-il possible de mieux prendre en compte les enjeux de défense dans l'élaboration de nouveaux actes législatifs ou des textes d'application de ces actes, par exemple en matière d'interdictions de substances chimiques en prévoyant de systématiser les études d'impact préalables ?
- Quelle est l'articulation entre le texte proposé et la révision du règlement REACH ?
- La Commission peut-elle confirmer que la révision des exemptions défense ne porte pas atteintes aux dérogations (dans le cadre de restrictions) et aux autorisations déjà admises par les textes précédemment adoptés en matière de législation chimie ?

3/ Sur le règlement POP (Polluants Organiques Persistants)

• La Commission peut-elle expliquer l'absence de notion de « sécurité nationale » conformément à l'article 4, §2 TUE dans la clause d'exemption proposée ? Dans sa version actuelle, l'exemption mentionne uniquement la protection des intérêts nationaux et de défense.

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ITALY

IT comments on Omnibus V – Defence, both on Defence and Non-Defence

Directive 81/2009 – Defence related

For what concerns the proposals to amend the Directive n. 81/2009 we welcome the acceptance of the proposals put forward by Italy regarding:

- the modification of Article 13 lett c) for what regards the possibility for a Member State to finalize projects arising from R&D, provided that the results yield positive outcomes, regardless to the genuine participation in the programme from the beginning and the strengthening of the application scope of the exemption;
- the introduction of the partnership for innovation borrowed from the civil Directive (Article 31 of Directive 24/2014) This tool could be particularly useful in the defense sector, characterized by high technological complexity and a strong need to adapt to changing scenarios, often requiring human, economic, and technical resources that are frequently only possessed by private stakeholders.

We aim the modification too of:

- Article 12, Letter c): Contracts awarded to international organizations: The provision in question allows for derogation from the Directive for contracts governed by "specific procedural rules of an international organization that procures for its own purposes or for contracts that must be awarded by a Member State in accordance with such rules." The phrase "for its own purposes" has been subject to a restrictive interpretation by the Court of Justice, which holds that the exclusion can only apply in cases where an international organization is entrusted with the implementation of a cooperation program involving the participation of two or more Member States. Consequently, the applicability of this derogation has been weakened, as a single State might decide to utilize international organizations, benefiting from their proven expertise in the field and high levels of technological innovation, as well as to ensure the procurement of materials compliant with the required international standards, thereby citing objective and significant reasons beyond the development of a cooperation program. Therefore, this provision should be invoked whenever a "clear and direct" link can be demonstrated between the subject of the procurement and the purpose/mission of the Organization, regardless of the existence of a cooperation program among multiple States.

- Letter f): GtoG Procedures: The exclusion of the application of Directive 81/2009 for "government to government" procurement procedures represents an important factor in reducing the existing capability gaps between Member States and fostering collaborative initiatives aimed at strengthening the EDITB. This instrument should be emphasized and not weakened by the European Institutions' enforcement and interpretatives acts. In this context, the Commission's Communication regarding the "Guidelines for the Award of Contracts from Government to Government in the Defense and Security Sectors, government should therefore be preceded by an appropriate analysis that clearly establishes that awarding a specific contract to another government is the only or best option to meet the procurement needs identified by the purchasing government. This analysis should, in particular, determine whether competition is nonexistent or impractical". This significantly undermines the innovative scope of this instrument, imposing a heavy motivational burden on the Member State regarding the determination of the requirement of "nonexistent or impractical competition".

- And the introduction of an article about Contractor selection procedure in cases of urgency/emergency: The Directive, albeit implicitly, admits the need for the "award of certain contracts with execution speed incompatible with the usual deadlines imposed by the procurement procedures set forth in this directive" at the time of the initiation or during an intervention by the armed forces of Member States in crisis situations abroad (for example, in the context of peacekeeping operations). A procurement procedure for the defense and security sector could be envisioned—activated in case of urgency—similar to that adopted within the UN. In particular, in the international context, "to meet procurement needs, UN system organizations, in addition to publishing tender announcements on their websites and on the UN Global Marketplace, may also use 'Shortlists,' which include suppliers from previous procurements, suppliers registered in the UN Global Marketplace, or suppliers who have submitted an Expression of Interest. Suppliers can also be identified through information from other UN Agencies and from Institutes and Chambers of Commerce, as well as through searches conducted on the World Wide Web, but they must be registered in the supplier database before participating in a tender. Many organizations have their own supplier list, which one can apply to join if certain requirements are met (including legal capacity to enter contracts, technical-professional competence, financial stability, and adequate facilities and personnel). Pre-qualification: The pre-qualification procedure is used to determine which registered suppliers are most suitable for a particular project or contract. Only suppliers who have obtained pre-qualification will be able to participate in the tender".

Some reflections regarding the introduction of the fast track on defense projects.

- In line with the principle of proportionality and with respect for the criterion of division of competencies this kind of fast procedure should be applied only in case of urgency and necessity.
- It could draw inspiration from the NZIA, but with greater caution, due to the particular sensitivity of the defense and security sector regarding green tech strategic projects, respecting the sovereignty of countries in choosing and identifying strategic projects as well as continuously mapping the vulnerabilities of supply chains in the defense sector as well as the industrial response capacity. For these reasons, the most suitable regulatory tool for introducing this procedure should be the directive and not the regulation, not immediately applicable, binding only in purpose, leaving to the Member States the possibility to adopt internal regulatory acts and to define the contents and the recurrence of the required criteria.
- Considering the possibility of involving more administrations with vested interests in the defense authorization processes, there should be a provision for extending deadlines in cases where coordination between multiple public actors is necessary.

Reg. REACH and CLP – Non-defence part

The amendments to Article 2.3 of REACH and Article 1.4 of CLP appear to be in line with the objectives communicated.

Comments/Observations:

- In Italy, exemptions are regulated only for REACH (DECREE of the Ministry of Defense of March 25, 2015, Official Gazette No. 106 of May 9, 2015. Applications for exemptions must be sent to the General Secretariat of Defense and the National Armaments Directorate and, if requested, by the said Secretariat, the Ministry of Health (as the REACH competent authority) and the Ministry of the Environment shall evaluate the dossiers for the authorization of the exemption.

- The proposed timetable for granting exemptions appears challenging, and it is easy to foresee extensive use of the silence/consent procedure. In this regard, it is asked whether the regulation could provide for the possibility that, in non-emergency geopolitical situations such as the one we are currently experiencing, Member States may or must review exemptions already granted under the 'silence/consent' procedure.

- It should be avoided that the exemption procedure, which is the aim of the legislative proposal, is used by supply chains other than those involved in defense interests. In fact, if the supply chain is involved in supplies that are not related to defense interests, in order to avoid the health and environmental protection requirements of REACH and CLP being disregarded, the legislative proposal should include a provision stating that suppliers who have obtained exemptions for substances/mixtures/articles should clearly differentiate between those that are not intended for defense purposes.

Additional IT comments

OGGETTO: Proposta legislativa Omnibus V-Defence readiness

Il 26 giugno u.s. la Commissione europea ha presentato, nell'ambito del gruppo di lavoro del Consiglio europeo Antici, il pacchetto legislativo Omnibus V- Defence readiness, relativa alla semplificazione dell'acquis dell'Unione in materia di sostanze chimiche. La proposta ha un duplice scopo: la semplificazione delle procedure autorizzative per gli investimenti nel settore della difesa e l'introduzione di deroghe ed esenzioni alle norme che regolano l'uso di sostanze chimiche.
In relazione alla proposta normativa in oggetto, si riportano le considerazioni della scrivente Direzione relativamente alle tematiche di competenza.

Regolamento 1907/2006 (REACH) e 1272/2008 (CLP):

Nella proposta Omnibus V per il Regolamento 1907/2006 (REACH), è riportata una modifica dell'art. 2 paragrafo 3.
In particolare, tale articolo nella versione attuale prevede che gli Stati membri possono prevedere esenzioni dal regolamento REACH in casi specifici per determinate sostanze, in quanto tali, in quanto componenti di un preparato o di un articolo, ove necessario nell'interesse della difesa; nella nuova versione presentata nel pacchetto omnibus V la modifica dell'articolo 3 prevede l'eliminazione delle parole "casi specifici" e "determinate", ampliando di fatto il campo di applicazione dell'articolo.
Si fa presente che in Italia la procedura per richiedere l'esenzione ai sensi dell'art. 2 par. 3 del regolamento REACH (quando necessario nell'interesse della difesa) è regolato dal decreto interministeriale del 25 marzo 2015 - *Procedura per l'esenzione, nell'interesse della difesa, del reg. (CE) n. 1907/2006 (REACH) per alcune sostanze in quanto tali o in quanto componenti di miscele o articoli, ai sensi dell'art. 2, par. 3 (REACH)*.
Per il regolamento CLP è riportata una proposta di modifica dell'art. 1.4, secondo il quale, nella proposta attuale, gli Stati membri possono prevedere esenzioni dal presente regolamento per determinate sostanze o miscele, ove necessario nell'interesse della difesa; nella nuova versione presentata nel pacchetto Omnibus V viene prevista l'eliminazione di "determinate" e vengono aggiunti gli articoli nell'elenco delle esenzioni.
Relativamente a tali modifiche si esprimono le seguenti considerazioni:

- Si accoglie positivamente la possibilità di includere nella prossima revisione del Regolamento 1907/2006 (REACH), così come indicato nella comunicazione della Commissione Omnibus sulla prontezza alla difesa del 17.06.2025, alcune misure di semplificazione specifiche per il settore della difesa, che possano tener conto delle esigenze di prontezza operativa e delle problematiche legate alle catene di approvvigionamento industriale per questo settore strategico.
- Relativamente alle modifiche presentate nel pacchetto omnibus V, si condividono le perplessità riscontrate dalla delegazione italiana durante la prima riunione. La discrezionalità nazionale con la

quale verrebbero applicate le esenzioni potrebbe portare ad una frammentazione normativa tra gli Stati membri dell'Unione, portando anche a concrete difficoltà nella libera circolazione delle merci nel mercato dell'UE.

Regolamento 2019/1021 (Regolamento POP):

Il Regolamento UE 2019/1021 sugli inquinanti organici persistenti (Regolamento POP) attua la Convenzione di Stoccolma, la quale stabilisce che non possono essere concesse esenzioni alle Parti dopo l'adozione di una decisione della COP che inserisce una nuova sostanza negli allegati della Convenzione. In questo contesto si supporta la proposta di inserimento del nuovo articolo 3(4a) in quanto è essenziale tenere conto delle esigenze del settore della difesa nelle fasi preparatorie per l'inclusione di nuove sostanze nella Convenzione, in particolare nella fase di valutazione della gestione del rischio. Si condivide inoltre la necessità di prevedere delle esenzioni per la condivisione delle informazioni sensibili relative al settore della difesa al fine di tutelare gli interessi nazionali.

Inoltre, si fa presente, come anche sostenuto da altri Stati membri, che i tempi procedurali proposti per l'autorizzazione alle deroghe (15 giorni per la valutazione e 60 giorni – prorogabili di altri 30/60 giorni – per la decisione) potrebbero essere insufficienti per una corretta valutazione di tutti gli aspetti di cui occorre tenere conto .

below courtesy translation

Regulations 1907/2006 (REACH) and 1272/2008 (CLP)

The Omnibus V proposal for Regulation 1907/2006 (REACH) includes an amendment to Article 2(3).

In particular, the current version of this article provides that Member States may grant exemptions from the REACH Regulation in specific cases for certain substances, as such, as constituents of a preparation or an article, where necessary in the interests of defence; in the new version presented in the Omnibus V package, the amendment to Article 3 provides for the deletion of the words "specific cases" and "certain", effectively broadening the scope of the article.

It should be noted that in Italy, the procedure for requesting an exemption under Article 2(3) of the REACH Regulation (where necessary in the interests of defence) is governed by the Interministerial Decree of 25 March 2015 - *Procedure for exemption, in the interests of defence, from Regulation (EC) No 1907/2006 (REACH) for certain substances on their own, in mixtures or in articles, pursuant to Article 2(3) (REACH)*.

For the CLP Regulation, a proposal to amend Article 1.4 is presented, according to which, in the current proposal, Member States may provide for exemptions from this Regulation for certain substances or mixtures, where necessary in the interests of defence; in the new version presented in

the Omnibus V package, the word “certain” is deleted and articles are added to the list of exemptions.

The following comments are made on these amendments:

- The possibility of including in the next revision of Regulation 1907/2006 (REACH), as indicated in the Commission's Omnibus Communication on defence readiness of 17 June 2025, which may take into account the operational readiness requirements and industrial supply chain issues for this strategic sector.
- With regard to the amendments presented in the Omnibus V package, we share the concerns raised by the Italian delegation during the first meeting. The national discretion with which the exemptions would be applied could lead to regulatory fragmentation among EU Member States, also leading to concrete difficulties in the free movement of goods in the EU market.

Regulation 2019/1021 (POP Regulation):

EU Regulation 2019/1021 on persistent organic pollutants (POP Regulation) implements the Stockholm Convention, which stipulates that no exemptions may be granted to Parties after a COP decision has been adopted to include a new substance in the Annexes to the Convention. In this context, the proposal to insert a new Article 3(4a) is supported, as it is essential to take into account the needs of the defence sector in the preparatory stages for the inclusion of new substances in the Convention, in particular in the risk management assessment phase. The need to provide for exemptions for the sharing of sensitive information relating to the defence sector in order to protect national interests is also shared.

Furthermore, as also pointed out by other Member States, the procedural deadlines proposed for the authorisation of derogations (15 days for assessment and 60 days – extendable by a further 30/60 days – for the decision) could be insufficient for a proper assessment of all the aspects to be taken into account.

Additional comments on 07.07.2025

block 1 - Accelerated authorization procedures (fast track)

Italy would like to receive from the Commission **further clarifications on the possible effects on the system of environmental assessments of the proposed accelerated authorization regime and of the mechanism of tacit consent.**

LATVIA

With reference to your previous e-mail regarding Omnibus V (Defence). Ministry of Defence, Republic of Latvia, would like to inform you that Latvia's contributions and comments to this subject matter are as follows:

1) The Ministry of Defence, Republic of Latvia comments regarding European Defence Fund Simplification:

Ministry of Defence, Rebublic of Latvia view simplified application of legal conditions as laid in the Commission Regulation (EU) No 651/2014 (the Regulation) for the state aid involved in the co-funding of EDF projects - allowing co-financing provided by the Ministries of Defence and other state institutions of the Member States for EDF projects to be automatically recognised as compatible with the internal market within the meaning of Article 107(3) of the Treaty on the Functioning of the European Union (Treaty), exempting it from the notification requirement laid down in Article 108(3) of the Treaty.

Within the frame of Commission Regulation (EU) 2023/2831, to increase the ceiling of de minimis aid that a single undertaking may receive per Member State over any period of 3 years of 500 000 EUR for funding the defence R&D activities, including the costs for preparation of defence R&D projects.

The Ministry of Defence, Republic of Latvia has submitted the proposal to the Commission on 3rd December 2024 (letter of the State Secretary to DG DEFIS, No MV-N/3079) (please find attached to this email), for simplified application of legal conditions as laid in the Commission Regulation (EU) No 651/2014 (the Regulation) for the state aid involved in the co-funding of EDF projects.

The Commission was requested to address the excessive requirement to prove an incentive effect for EDF projects in duplicative manner at the EU and at the national level. In order to avoid unnecessary bureaucracy and restrictions for application of state aid in the frame of the Regulation.

The Ministry of Defence, Republic of Latvia has stressed that for SMEs it is enormous effort required to compete over engagement in EDF project, to bid for national co-funding and for the Commission’s support. The Commission was called to look into all possible ways to make it easier for industry to cooperate and create sustainable European partnerships.

The Ministry of Defence, Republic of Latvia appreciates assurance provided in response letter from 21st January 2025 by the Director-General of the DG Competition (letter of European Commision, No COMP/ME/comp.a.3(2025)1056961) to take The Ministry of Defence, Republic of Latvia proposal into consideration in the future revisions of the Regulation.

In addition, we suggest further simplification of state aid regulation to minimise bureaucratic burden, allowing co-financing provided by the Ministries of Defence and other state institutions of the Member States for EDF projects to be automatically recognised as compatible with the internal market within the meaning of Article 107(3) of the Treaty on the Functioning of the European Union (Treaty), exempting it from the notification requirement laid down in Article 108(3) of the Treaty.

As the entities participating in the EDF are screened by the Commission before endorsement of each new EDF project, The Ministry of Defence, Republic of Latvia views it unnecessary to

exercise screening of these projects and entities concerned at national level within the current meaning of the Regulation.

We should take into account that each year relatively limited number of EDF new projects with relatively limited national co-financing requirement are selected with general objective to foster the competitiveness, efficiency and innovation capacity of the European defence technological and industrial base (EDTIB) throughout the Union.

We propose to apply respective amendments to the Article 25e and Article 6.5(j) of the Regulation (EU) No 651/2014, including the deletion of the part 4 of Article 25e as too restrictive for industry (consequently adjusting other parts of this Regulation, taking into account these amendments):

Article 25e Aid involved in the co-funding of projects supported by the European Defence Fund or the European Defence Industrial Development Programme:

1. Aid provided to co-fund a research and development project funded by the European Defence Fund or the European Defence Industrial Development Programme and which is evaluated, ranked and selected in line with the European Defence Fund or the European Defence Industrial Development Programme rules, shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. The eligible costs of the aided project shall be those defined as eligible under the European Defence Fund or the European Defence Industrial Development Programme rules.

3. The total public funding provided can reach up to 100 % of the eligible costs of the project, meaning that the costs of the project not covered by Union funding can be covered by State aid.

4. In case the aid intensity received by the beneficiary exceeds the maximum aid intensity the beneficiary could have received under Article 25(5), (6) and (7), the beneficiary must pay a market price to the granting authority to use for non-defence applications the intellectual property rights or prototypes resulting from the project. In any event, the maximum amount to be paid to the granting authority for this use shall not exceed the difference between the aid received by the beneficiary and the maximum amount of aid the beneficiary could have received applying the maximum aid intensity allowed for that beneficiary under Article 25(5), (6) and (7).

5. By way of derogation from paragraphs 2, 3 and 4, the following categories of aid are not required to have or shall be deemed to have an incentive effect:

(j) aid for research and development projects awarded a Seal of Excellence quality label, Marie Skłodowska-Curie actions and ERC Proof of Concept actions awarded a Seal of Excellence quality label, aid involved in co-funded projects and in co-funded Teaming actions or projects supported by the European Defence Fund, if the relevant conditions laid down in Article 25a, Article 25b, Article 25c or Article 25d, or Article 25e are fulfilled.

We would appreciate more concrete indications from the Commission on when and how the work on envisaged revision of the Regulation will be organised.

We regard that the current ceiling of de minimis aid that a single undertaking may receive per Member State over any period of 3 years, as set by the Commission Regulation (EU) 2023/2831 in the amount of 300 000 EUR is too restrictive for state aid in defence field. We propose to apply

respective amendment to the Article 3 of the Regulation (EU) No 2023/2831, adding new Article 3.2.[1]:

2.[1] By way of derogation from Article 3.2 of this Regulation, the total amount of de minimis aid granted per Member State to a single undertaking shall not exceed 500 000 EUR over any period of 3 years in case of aid granted to defence R&D, including also the costs for preparation of defence R&D projects, above the ceiling set in Article 3. 2 of this Regulation.

2) Regarding Facilitating public and private investments in defence sector (COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Defence Readiness Omnibus, page - 9):

Regarding the point that refers to State aid: Signalling to the MS that substantial public investments accompanying industry ramp up can be in line with State aid rules: In order to increase the production capacity of dual-use items, we invite you to initiate a discussion on the increase of State aid intensity for the production of dual-use items under Regulation No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty and of Regulation (EU) 2023/2831 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid.

3) Regarding Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH (document - COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Defence Readiness Omnibus, page - 8):

The Ministry of Defence, Republic of Latvia supports planned clarifications, as the wording provides for "may", which gives sufficient flexibility to the Member states, while it is not sufficiently clear from the document at the moment what exactly the incentives for defence projects are envisaged in the field of chemistry.

4) The Ministry of Defence, Republic of Latvia comments regarding permitting in the document Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the acceleration of permit-granting for defence readiness projects:

Document COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Defence Readiness Omnibus states that the proposals relate, inter alia, to the scope of environmental impact assessment and environmental protection requirements in general.

Article 5 of the Proposal on what actions need to be taken and what amendments to laws and regulations would be necessary for the fulfilment of the above mentioned requirement, it is currently not clear what kind of projects they will be?

It is also not clear from the regulation proposal what is included in the permitting procedure in this case? Taking into account that certain processes in Latvia fit within the deadline mentioned in the proposal (issuance of technical regulations of the State Environmental Service of the Republic of Latvia, initial impact assessment), however, a full Environmental impact assessment process cannot in any way or form fit into 60 days and if it is still necessary to obtain a permit for a polluting activity in succession, then the deadline will be even longer.

5) The Ministry of Defence, Republic of Latvia comments regarding proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2009/43/EC and 2009/81/EC, as regards to the simplification of intra-EU transfers of defence-

related products and the simplification of security and defence procurement:

The proposal adds Article 49a to Directive 2009/81/EC:
• Article 49a(1) the last sentence of the last subparagraph "Such notice shall contain mutatis mutandis the information required in a contract award notice" notification forms are established in accordance with Regulation 2019/1780 and such form is not provided for the amendment of the contract under Directive 2009/81/EC, accordingly, we would like to understand whether it is planned to supplement regulation with this form of notice?
• At the same time, the wording in question provides that, in the case of amendments to the contract, a statement of results is published, which, in essence, requires the publication of all the same information as in the statement of results in the case of amendments to the contract. The existing forms for contract amendments under the other EU Public Procurement Directives 2014/23/EU, 2014/24/EU and 2014/25/EU do not contain as extensive information as the Statement of Results envisages. Consequently, amendments to the contract pursuant to Directive 2009/81/EC should also provide a similar notification of contract amendments, rather than the publication of a result.
• It is not clear why Article 49a, does not regulate the permissible amendments to a de minimis contract. In particular, the possibility of amending up to 10% of the initial contract price for goods and services and up to 15% for works without assessing the significance of the amendments is not provided for in Article 72(2) of the Classic Directive 2014/24/EU. Given that the proposal aims to provide greater flexibility, the provision of such a possibility would nevertheless be appreciated.
• We encorage to assess Article 49a(1)(e) that makes an incorrect reference to Article 49a(1)(e) (rather Article 3). Similarly, there is a potentially incorrect reference in Article 49a(3) to "without prejudice to paragraphs 1 and 2" (rather a reference to paragraph 1).
• Please provide an explanation about Article 28(3)(d) why does it contain conditions that the participation of exactly three countries is required as a minimum?

Amendments provided for in Article 1:
• Why the definition of "Central purchasing body" in Article 1(18) of the proposal is no longer covering the EU institutions?
• We encorage to assess whether the definition of "Open procedure" in Article 1(18a) of the proposal should not be supplemented with the text “in response to a call for competition” from Directive 2014/24/EU at the end of the sentence.
• We also encorage to assess if the text "and has submitted an indicative tender that complies with the specification" at the end of the definition of "Dynamic purchasing system" in Article 1(21a) of the proposal is not superfluous also taking into account the regulation proposed further in Article 29a of the proposal.

Please provide additional information regarding Clarification on prohibited weapons under Sustainable Finance Framework (presentation on Defence Readiness Omnibus 20.06.2025., slide 8) What does it include, what is planned with it?

We would highly appreciate it if the comments made by Latvia were reviewed and taken into account to the extent possible.

Letter from the Ministry of Defence, Republic of Latvia

Dear Director-General Pesonen,

I am writing you, on behalf of the Ministry of Defence of the Republic of Latvia (MOD), with regard to state aid involved in the co-funding of projects supported by the European Defence Fund (EDF).

Latvian MOD highly appreciates the initiative of Directorate General for Defence Industry and Space (DG DEFIS) to collect feedback both from industry and Member States on challenges and lessons learned with regard to co-funding in awarded EDF projects, as discussed at the EDF Programme Committee on 7 November.

In view of the on-going discussion, we would like to raise for your attention that the European Commission could be in a position to make best use of its legal powers, to enable a much more simplified application of legal conditions as laid out in the Commission Regulation (EU) No 651/2014 [1] (the Regulation) for the state aid involved in the co-funding of EDF projects.

After informally consulting with the DG DEFIS experts, we find that such state aid[2] falls under the categories of aid not required to have or shall be deemed to have an incentive effect, due to the fact that the Commission's vetting, ranking and selection process results in awarding of a Seal of Excellence quality label to the supported EDF project, in the same way as applicable to other Commission's supported projects referred to in the paragraph 5(j) of Article 6 of the Regulation. While EDF projects are not specifically referred to in this paragraph 5(j), we call for the Commission to issue a guidance with legal clarification of the Regulation that would allow Member States to avoid unnecessary bureaucracy and restrictions for application of the respective state aid, and, thus, would address the excessive requirement to prove an incentive effect for EDF projects in a duplicative manner — both at the EU level and at the national level.

Given such Commission's clarification, it would significantly improve the uniform application of the Regulation across the Union and flexibility of Member States' national procedures to optimize:

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[1] COMMISSION REGULATION (EU) No 651 2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty.
2Applied in the frame of Article 25e of Commission Regulation (EU) No 651/2014.

- decision-making on declarations of national support before the submission ofEDF projects to the Commission calls; - the scope of screening requirements and administrative burden both to industry and national institutions, in order to qualify applicants for the state aid; - time and administrative resource before the calls to better organize intergovernmental dialogue and G2G agreements on the substance of the projects rather than administrative procedures around them; - faster decision-making on national co-funding after the Commission's awarding decisions so that they can be optimally processed and declared to the Commission as legally binding before the grant agreement signature process between the applicant and the Commission; - delays in intergovernmental negotiations on the respective MOUs and other intergovernmental arrangements for the consortia, as, predominantly, they are not yet agreed before the grant agreement signature process; - legal adjustments of state aid appropriations for ongoing projects under unforeseen circumstances (for instance, increase or reduction of work share of entity, adjustments of actual costs); - flexibility for Member States to receive applications and grant state aid to entities in the frame of the Regulation even after the start of the works on EDF project's implementation (after signature of grant agreement by the entities concerned).

We strongly believe that EDF is a great driver for strengthening of the European defence industrial and technological base, and, it is for the purpose of the EDF establishment, to build on contributions from European industries of all sizes, as well as SMEs and MIDCAPs, in particular. As for the latter, it is an enormous effort required to penetrate wider European supply chains and compete over engagement with consortia, to bid for national co-funding and for the Commission's support. Therefore, from the national perspective, we call the Commission to look into all possible ways how to make it easier for the industry to cooperate and create sustainable European partnerships.

I would appreciate your support to address this matter within the European Commission, and look forward for a constructive dialogue with the respective DGs, if deemed necessary. The Point of Contact for further coordination for MOD side - Mr Märtil$ Nilsons, Defence Counsellor for EDF and PESCO (martins.nilsons@mod.gov.lv).

LITHUANIA

- Is the Member State expected to ensure the control over (oversight of) implementation of “defence readiness project “?
- If so, who would serve as the controlling authority – that single POC for permits?
- What are the consequences if a defence readiness project is not fully executed?
- Are Member States expected to amend their national legislation or procedures in light of this new regulation?

LUXEMBOURG

OMNIBUS V – Defence Readiness
Comments and Questions from the Luxembourg delegation on the non-Defence legislation

Luxembourg aligns with the overarching objectives of the Omnibus V initiative, particularly in its focus on enhancing defence readiness. We appreciate the efforts made to simplify procedures and improve the efficiency of operational frameworks.

At the same time, we believe that the current text raises a number of questions and observations that we are pleased to share in a constructive manner. For the simplification efforts to be truly effective—making procedures faster and smoother—legal certainty is essential. Without it, the intended goals of the Omnibus V could be compromised.

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

> *"The Commission hereby clarifies that Member States can use existing derogations in various Union legislations (12) provided for "overriding public interest", "public safety" or "crisis" to include defence readiness in their scope, encompassing industrial and governmental defence investments and defence readiness activities. When compensatory or mitigation measures are applied, those measures should ensure the objectives of the legislation and be proportionate regarding defence readiness considerations, so that the defence readiness 2030 objective can be timely achieved."*

The assessment of overriding public interest (herafter "IROPI") is only a small part of the overall procedure and occurs at the final stage. Our understanding is that defense projects have benefited—and can continue to benefit—from this derogation, but only after other, much more time-consuming steps have been completed, such as the appropriate assessment and the examination of alternatives.

Once it has been established that there are no alternatives less harmful to the site and that IROPI is justified, all compensatory measures to ensure the protection of the overall coherence of the Natura 2000 network must be taken. Similar rules apply in the field of species protection, provided that any derogation does not adversely affect the maintenance of the species' populations at a favorable conservation status within their natural range. Case-law but also Commission guidance documents demand that compensatory and or mitigation measures are fully operational and effective before the damage on the site occurs.

- Does the Commission have knowledge of any defense projects that were refused on the grounds that they did not meet the IROPI criteria?
- Could the Commission clarify its interpretation of the sentence: *"When compensatory or mitigation measures are applied, those measures should ensure the objectives of the legislation and be proportionate regarding defence readiness considerations,"* particularly in the context of the Water Framework Directive, the Habitats Directive, and the Birds Directive?

  "The Directive on Environmental Impact Assessment (13) includes an exemption for projects essential for purposes of defence, which can also be used for defence readiness projects and activities."

The derogations provided in Article 1(3) of the EIA Directive and Article 2(8) of the SEA Directive allow exemptions for plans and projects whose **sole** purpose is defence. However, the definition of "*defence readiness*" extends beyond these exemptions, potentially creating legal uncertainty and hindering the consistent application of environmental legislation.

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the acceleration of permit-granting for defence readiness projects

Scope

The definition of "defence readiness projects"—and consequently the scope of the proposal—remains broad, which could lead to uncertainty in its application.

According to the explanations given by the Commission during the meeting on 25th June, infrastructure such as highways, airports, and ports ("defence mobility") that could potentially be used for military purposes may fall under the priority regime. The definitions and scope of such projects need to be more delineated to ensure consistent application by Member States.

Deadline

The 15-day deadline set out in Article 5(6) for notifying applicants whether their application is complete is too short. By comparison, the NZIA allows for a 45-day period. Similarly, the 60-day deadline for granting the relevant permit appears unrealistic, particularly in cases where an Environmental Impact Assessment (EIA) under Article 6 of the EIA Directive and/or public consultations under Article 8 of the proposal are required.

Even with possible extensions up to 120 days, these timeframes may not always be feasible for Member States to comply with, given the complexity of such procedures and the need to respect existing environmental legislation.

Luxembourg believes that the proposal should, following the example of the NZIA, explicitly allow for the **suspension** of permitting deadlines during the EIA process and public consultation.

Short deadlines risk producing the opposite of their intended effect: instead of accelerating permit approvals, they may lead Member States to issue refusals faster simply to avoid tacit permits.

Tacit permit

NZIA does not provide for tacit permits, and we are of the opinion that the same approach should be adopted in this proposal.

Tacit permits undermine public participation (art. 8 proposal).

Tacit permits conflict with the precautionary principle, which requires that environmental risks be thoroughly assessed before authorisation is granted.

Finally, the absence of a formal administrative decision creates legal uncertainty. A tacit permit does not clearly trigger the start of appeal deadlines, leaving the concerned public unaware that a permit has been granted and potentially limiting access to justice. This legal ambiguity weakens procedural safeguards and undermines the rule of law.

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EC) No 1907/2006, (EC) No 1272/2008, (EU) No 528/2012, (EU) 2019/1021 and (EU) 2021/697 as regards defence readiness and facilitating defence investments and conditions for defence industry

The proposal seems acceptable as presented, and no significant issues have been identified. Luxembourg expresses a positive scrutiny reserve regarding the proposal.

NETHERLANDS

Written Questions/cp, from the Netherlands

General remark

In addition to the specific questions below, the Netherlands would be curious to hear the Commissions thoughts on those aspects which appear in the non-paper by the Netherlands, but which did not fully make their way into the Defence Omnibus package. Namely:

1) The application of recognizing defence (readiness) as an 'overriding public interest', which the Netherlands welcomes. In the Dutch non-paper however, NL pleaded for an exemption on the compensation obligation arising from the Nature Restoration Act, as well as the Habitats Directive, for MoD activities. Why was this not taken on board? Secondly, when it comes to compensatory or mitigation measures, the proposal states measures should be proportionate towards the industry and readiness goals. What does proportionate mean in this context?

2) The simplification of the existing exemption in the Waste Framework Directive, and adding specific provisions to the Regulation on the coordination of social security systems as well as the Regulation on medical devices. Why was this not taken on board?

Regarding: Omnibus V – non-defence parts

The acceleration of permit-granting for defence readiness projects

1. How does the Regulation work for companies that combine defence readiness projects with other projects? For example, companies that process metal for defence purposes (defence industry, e.g. bullets) but also for civilian purposes? Do the procedural deadlines from the Regulation apply? In short, how do we distinguish between companies that fall under this Regulation and those that do not? Do they need to be registered somewhere (similar to CRMA and NZIA, and if yes, what are the requirements to be listed as such?
2. Must the contact point referred to in Article 2 actually issue the permit as the competent authority, or is a facilitating role—such as coordinating and publishing decisions—also in line with the Regulation? Currently, multiple authorities in the Netherlands can be competent for activities in the physical environment. Think of the competent authority for environmentally harmful activities and for water-related activities. These activities can also be applied for separately. And must the single point of contact actually have staff available for verbal communication, or is a website such as the *Omgevingsloket*, where all relevant information is available, sufficient?
3. Do the deadlines in Article 5 also apply if an Environmental Impact Assessment (EIA) must be carried out for permit issuance? Should this obligation not be excluded for defence readiness projects (similar to RED III)? How does this align with the proposed "tacit approval" mechanism (Article 5(8))? We foresee that the 60-day period is short if an EIA also has to be completed within this time frame.
4. Does the Regulation indeed distinguish between permitting (Article 5) and the amendment of the planning regime (Article 6), which would be the *Omgevingsplan* (Spatial Plan) in the Netherlands? The Regulation does not set a procedural deadline in relation to spatial plans.

Amending our national spatial plans takes longer (26 weeks or more in the Netherlands). This means that combining permit issuance with amending the plan in a single procedure and decision by one competent authority, for instance through a project decision, becomes impossible. However, the requirement for separate procedures may in turn cause delays in obtaining all necessary authorisations for a defence readiness project. We are wondering how the Commission sees this.

5. Does Article 7 only relate to appeal and objection procedures, which must be handled with urgency if such procedures exist under national law, and not to the permit procedure? This is therefore different from the CRMA, where these projects were given the "highest possible national status" and the fastest national procedure (if available) had to be used. How does the Commission approach this?
6. The proposal introduces short deadlines and tacit approval in the permitting process. Could the Commission clarify how, in such cases, compliance with other applicable directives and regulations (such as the Habitats Directive, Water Framework Directive, Industrial Emissions Directive, Nature Restoration Regulation) is ensured, especially if no appeal is lodged but the permit appears to be in conflict with those obligations? Would it be possible or necessary to modify or revoke such permits afterwards to ensure compliance?
7. The proposal suggests that projects could be divided into smaller parts to obtain permits more quickly. Does the Commission consider project splitting to be an administratively efficient solution? And how does this approach relate to the objectives of administrative simplification and coherent decision-making, considering that dividing projects could also lead to more parallel procedures, each requiring, for example, a separate public consultation?
8. Could the European Commission provide insights into the practical implementation of the proposed fast- track system with regards to permit-granting?
9. A lot of complexity in the permitting process, leading to long processes stems from the material conditions from nature and environmental legislation. Has the Commission considered proposing simplifications and exemptions for defense readiness in those directives?

<u>Sustainable Finance</u>

10. The Netherlands has not found limitation for defence investments in the ESG regulations. Did the Commission find any limitations in the Sustainable Finance Framework? Or where do you expect to find those?
11. If no limitation to defense investments stemming from the SFF is found, is it possible to state this explicitly and unequivocally in the next guidelines or considerations to provide clarity on this matter for the compliance community?
12. Why does the Communication refer to non-EU instruments (benchmarking) in this regard and what does that statement mean specifically?

May 2025

The Netherlands non-paper on the upcoming Defence Omnibus Simplification proposal

Introduction

Russia's military aggression against Ukraine has marked the dramatic return of territorial conflict and high-intensity warfare on European soil. This structural change in the geopolitical situation has led Member States to rethink their defence plans and capacities. The armed forces of Member States must be able to develop, train and use capabilities for deterrence and deployment. The EU and Member States' security is reliant on the ability of the Member States to execute their exclusive territorial defence tasks, which they exercise collectively in the context of NATO[1]. While national defence and territorial defence are exclusively the responsibility of the Member States, the Treaty[2] does recognise the special position of national security and territorial integrity as essential state functions of the Member States that the Union respects.

The EU Court has considered on this provision that, although not entirely excluded from its application, EU law cannot be interpreted so as to prevent the armed forces from fulfilling their tasks and adversely affect the essential functions of the State, namely the preservation of its territorial integrity and the safeguarding of national security.[3] At the moment, some EU legislation does indeed impede the performance of the tasks of the armed forces. Failure to obtain a (nature) permit for the increased or renewed use, for example, for an existing military airport is a direct impediment to the readiness of the armed forces. Exercises and flying are a necessary part of operational readiness and deterrence, for which there are no alternatives. There are many (ongoing) procedures that significantly delay and thus impede the necessary activities required to achieve operational readiness of the armed forces of the Member States.

The Netherlands would like to thank the Commission for announcing a Defence Omnibus Simplification, to be presented in June. In addition to addressing **legal obstacles to the defence *industry*** in the Omnibus, we strongly advocate for the Commission's legal analysis and proposals for solutions to also address the **legal obstacles for *operational readiness*** of our armed forces and defence organisations. We would like to propose the following way forward.

1. Recognition of the situation we are currently in: a moment of severe and increasing geopolitical tension which threatens the security of the Member States/and or the Union, short of armed conflict. Acknowledge the need for armed forces to prepare in advance for

[1] In the case of Member States which are also NATO allies.

[2] Article 4(2) TEU

[3] *Ministrstvo za obrambo* arrest d.d. 28 januari 2021 r.o. 43

crises or possible armed conflict in the future. This recognition will help guide the interpretation of EU legislation by national authorities and courts.

2. Provide guidance in specific areas where useful and necessary, in order to further aid Member States in the correct interpretation of certain EU acts.
3. Introduce, where necessary, amendments to existing EU legislation which severely hamper the operational readiness of the armed forces of the Member States.

1. Recognition of the current phase of the crisis (leading up to a possible crisis or armed conflict) Many EU legal acts provide for an exemption in times of crisis or war. However, this does not provide enough legal certainty with regard to the interpretation of legislation in the phase leading up to armed conflict and proper deterrence in order to prevent conflict. As the Dutch minister of Defence says: *we are not at war, but there is no peace either*. In this phase, *a moment of severe geopolitical tension which threatens the security of the Member States and/or the Union, short of armed conflict*, the armed forces must be able to prepare accordingly. Becoming operationally ready realistically takes years. Therefore, existing legislation should be, as much as possible, interpreted in a way that allows the armed forces to act on a threat possibly years before the actual crisis strikes. We see this is currently not the case, and e.g. courts do not make exemptions for security and defence. A statement from the European Commission confirming we are currently in a situation between war and peace, confirmed in EUCO or Council conclusions, can help guide the legal interpretation of legislation.

2. Provide guidance in specific areas

The Commission could provide guidance on the interpretation of EU legislation in specific areas which Member States identify as forming practical hindrances to the armed forces' readiness. Taking into account the phase we are in as mentioned under title 1, this could help Member States to interpret EU legislation correctly and more appropriately, fitting to the current time. Uncertainty or hesitation when interpreting EU legislation delays readiness actions while we in fact should accelerate.

3. Introduce amendments to existing EU legislation

Some legal acts provide for an exemption or derogation, but as these were written in times of peace, these come with strict conditions which are often time consuming and effectively halt activities. The current geopolitical situation does not leave sufficient time for the armed forces (often with limited personal capacity) to comply, as they must focus all their efforts on becoming operationally ready. In other cases, exemptions or derogations were formulated in a stringent way which practically does not have the desired effect, because the legislators could not possibly cover all unforeseen effects of the legislation. Another category entails legal acts which, unintendedly, regardless of providing an

exemption or derogation, form a practical hindrance to operational readiness of armed forces. Therefore, some legal acts need defence specific adaptations, for example:

- The Habitats Directive (1992): Our MoD feels a strong responsibility to protect nature and the handling of defence locations has contributed more to nature conservation and restoration than its disruption. We commit to a positive net balance. However, it is very difficult for the MoD to fulfil all administrative and compensation requirements of the Habitats Directive. The current applicable law does not provide for a tailored approach for MoD's, which is urgently needed. As a consequence, we risk having to suspend many of our activities for becoming operationally ready. This is not only in breach of our responsibilities and the essential tasks for territorial integrity, but by extension damages the security of the EU and its Member States. An optional way forward would be to explicitly recognise national defence as Overriding Public Interest, accommodating defense along the lines of the Nature Restoration Regulation. Notwithstanding the fact that where reasonably possible, the MoD will comply with the Directive. In addition, we plead for an exemption on the compensation obligation arising from the Nature Restoration Act, as well as the Habitats Directive, for MoD activities, so other public interests, such as housing and agriculture, will not be harmed.
- The Council Directive on the conservation of wild birds (1979) confronts the MoD with the same challenges as the Habitats Directive. In many cases, the need to compensate or derogate on a case by case basis makes activities very challenging for the MoD.
- The Defence Procurement Directive (2009) needs a few adaptations to be more in service of the MoD's and armed forces of the EU.
  First, the crisis concept in the Directive is unfit for the current situation. As mentioned above, we must prepare (and therefore procure) products now in the *run up to* a possible crisis or armed conflict. That is why we should broaden the scope of the definition of crisis, for example by lowering the threshold to a crisis that is *impending*. *Second*, we need the possibility to bypass the synchronicity requirement for common procurement. This is one of the factors that in practice often hampers common procurement. Member States' weapons systems' life-cycles are often not exactly aligned in time. In cases where a Member State needs replacement of a weapons system and buys new products, a Member State who needs similar equipment but in e.g. two years' time, should be able to make use of that Member State's framework agreement. This would significantly improve interoperability between armed forces by ramping up aggregated demand and speed up procurement processes.
  Third, a similar argument can be made for more flexibility in proving that unforeseen circumstances have had an impact on reaching the maximum value/quantity of a contract than

the current legal framework offers. This would benefit both parties to the contract and the readiness of the armed forces.

Fourth, the Directive is intended to tailor to the specific needs of procurement by armed forces, but does not include civil equipment which is frequently used during operations of the armed forces. The scope of the Directive should be broadened to equipment which the armed forces use regularly, instead of only military equipment. *Fifth*, the Directive does not provide for an exemption which enables exclusion of economic operators due to national security concerns because they (will) make use of subcontractors or products from third countries. Adding this exemption would increase security standards for products of armed forces and will lead to a higher level of readiness.

- The Waste Framework Directive (2008) has a partial exemption for the armed forces which states that decommissioned explosives are excluded from the directive. The revised Waste Shipment Regulation (2024) refers for the definition of waste to this Waste Framework Directive, but does not share this exclusion of decommissioned explosives. We propose to enter a more simple and effective exemption in both the Waste Framework Directive and the Waste Shipment Regulation by referring to Class 1 Explosives, referring to the UN Globally Harmonised System of Classification and Labelling of Chemicals[4], hereby harmonising definitions and preventing varying interpretations by Member States. Confusion or misinterpretation can form a practical hindrance to operational readiness when (decommissioned) Class 1 Explosives are designated as waste.
- The Regulation on the coordination of social security systems (2004) aims to determine which country's social security legislation applies to a person who moves within the EU. Under the current rules on applicable legislation, inactive family members of civil servants — including defence personnel — may face a change in applicable legislation when their country of residence changes. As a result, these family members may become socially insured in a different country than the civil servant, which could lead to unnecessary changes in coverage. Therefore, it is recommended to explore the feasibility of introducing a specific provision for the inactive family members of defence personnel. This issue makes it more difficult to recruit personnel for military postings which are essential for the readiness of our armed forces and effective military cooperation between Member States.
- The Regulation on medical devices (2017). Under the current rules it is not possible to make an urgent 'defence specific' request for an exemption or derogation from the conformity assessment procedure for a military essential medical device from outside the EU, on behalf of the MoD. Therefore, we propose to expand article 59 MDR with the condition such as 'national security and defence purposes'. This would allow exemptions for defence-specific cases.

[4] The UN recommended system of nine classes for identifying dangerous goods. Class 1 identifies explosives. *United Nations Globally Harmonized System of Classification and Labelling of Chemicals (GHS)*. ST/SG/AC.10/30/Rev.6 Geneva. United Nations. 2015.

AUSTRIA

Omnibus V

AT comments, 4 July 2025

Comments concerning the Proposal for a Regulation on the acceleration of permit-granting for defence readiness projects (ST 10518/25)

Comment on the lack of an impact assessment:

- In view of the significant interference with and far-reaching impact on permit-granting processes, the fact that no impact assessment was carried out prior to the submission of the proposed Regulation appears problematic.

Comments/questions concerning the scope and definition of "defence readiness project":

- The definition of "defence readiness project" appears too vague and general. In practice, this would lead to problematic questions of interpretation.
- We request clarification as to whether – and if so, under what conditions – permit-granting-processes relating to the adaptation or expansion of transport infrastructure, which are regularly subject to complex and lengthy examination procedures, could fall within the scope of the Regulation. Could, for example, the construction or expansion of a railway line that is planned for civilian purposes but indirectly relevant for military mobility fall within the scope of the Regulation – with the consequence that procedures that necessarily take several months or years would theoretically have to be completed within 60 days? From Austria's point of view, this would seem unrealistic and also counterproductive in terms of high-quality transport infrastructure. Could the Commission give specific examples of military-related transport infrastructure projects that would typically fall under the scope of the Regulation?
- It is also unclear under what conditions dual-use projects in the transport sector would fall within the scope of the Regulation, especially if these projects primarily serve a civilian purpose. Could the Commission give specific examples of dual-use projects in the transport sector that would typically fall under the scope of the Regulation?

Comment on the legal basis:

- If certain permit-granting processes relating to the adaptation or expansion of transport infrastructure do indeed fall within the scope of the Regulation, the admissibility of the legal basis of the Regulation (Article 114 TFEU) would have to be examined in more detail.

Comments on the single point of contact:

- Under Article 2, Member States must establish a single point of contact (PoC) within three months after the date of entry into force of the Regulation. This PoC would be the sole point of contact for the project promoter in the permit-granting process and, where several authorisations are required, it would coordinate the individual permit-granting procedures. This would mean that, in cases where authorities other than the designated PoC are responsible for authorisations, there would be no direct exchange between the project promoter and the authorising authorities; instead, the PoC would always have to act as an intermediary. The PoC would ultimately also be responsible for notifying the final decision to the project promoter. In addition to fundamental legal issues, the proposed procedure is also problematic in view of the

extremely short deadlines set out in Article 5, as it introduces an additional intermediate level that will automatically lead to delays in the individual permit-granting procedures.

- Article 5(6) of the Regulation stipulates that the single point of contact shall decide within 15 days of the application whether a specific project falls within the scope of the Regulation. This raises the question of what legal effect this decision has and on what criteria such a classification is based. In view of the significant implications of this decision, further clarification would be necessary.

Comment on deadlines:

- The definition of "permit-granting process" in Article 1, point (6), is broad and covers all relevant permits and all the necessary administrative steps from the acknowledgement that the application is complete to the notification of the final decision on that application by the single point of contact concerned. With regard to the deadlines in Article 5, this means that the entire process must be completed within the specified deadlines. According to Article 5(1), the permit-granting process must be completed within 60 days (from confirmation of completeness by the PoC). In exceptional cases (e.g. due to the complexity of the project), the Member State may extend the deadline once (!) by a maximum of 30 days. For projects which, in the opinion of the Member State, raise exceptional risks for the health and safety of workers or of the general population, the deadline may be extended by 60 days. It is highly doubtful that complex procedures, for example in connection with complex infrastructure projects, can be completed within the specified time limits without seriously compromising the overall quality of the procedure (e.g. with regard to safeguarding the rights of parties involved in the procedure or assessing the potential impact of the project on people and the environment). The proposed provision would ultimately result in projects that have a significant impact on employees or even the entire population or the environment being (implicitly) approved simply because the competent authority is unable to complete the procedure on time (or even if the procedure is completed on time but the applicant is not informed of this by the PoC in time).

Comment on the tacit approval of projects:

- According to Article 5(8), if the procedure is not completed within the time limit specified in Article 5 and the PoC does not inform the project promoter of the outcome of the permit-granting process within this time limit, the permits covered by the application shall be deemed to be granted (tacit approval). While comparable provisions in other EU legal acts, e.g. Art. 16a(6) and recital 35 of Directive (EU) 2023/2413 (RED III), provided for an exception in cases where the principle of administrative tacit approval does not exist in the national legal system of the Member State concerned, such an exception is absent in Article 5(8) and should be added.

Comments concerning the proposed changes to Regulation (EU) 2019/1021

The current draft text in Art. 13(1) reads: „Where necessary, Member States may make exemptions from this article on grounds of protection of national and defence interests".

Recital (6), on the other hand, defines this exception somewhat more broadly and, in our view, more precisely: "….make exemptions from the reporting requirements provided for in article 13(1) of Regulation (EU) 2019/1021 on grounds of protection of national or Union defence and security interests".

We would therefore suggest aligning the text in the article with the text of the recital.

PORTUGAL

PT questions on the Defence Readiness Omnibus

04.07.2025

1) Could the Commission clarify how projects with a dual-use nature – i.e, those not exclusively focused on defence – will be treated? In such cases, which regulatory regime will apply: the now proposed "fast-track" or the standard process? Or will only projects that are strictly defence-related be eligible for the fast-track procedure?

2) Could the Commission clarify whether the maximum duration of the permitgranting process is 60 **business** days?

3) Could the Commission clarify if there is any "contingency plan" to mitigate the risk of problems arising from bottlenecks and the accumulation of cases, which could trigger a high number of automatic approvals? In such situations, would Member States have any legal basis to suspend the application of the automatic presumption, even if only temporarily?

4) Could the Commission clarify how it can be ensured that deadlines for mandatory steps (such as environmental declarations or assessments) do not compromise the 60-day timeframe for the permit-granting process? We are not certain whether Article 7 (*Priority status of defence readiness projects*) addresses this concern.

5) Could the Commission clarify what will be the relationship between the proposed new regulatory regime for defence readiness projects and other existing frameworks that also provide for simplified or streamlined permitting procedures and single points of contact, such as the Net-Zero Industry Act, particularly where investments may involve dual-use technologies or products? How will coherence between these different legislative acts – and their underlying procedures – be ensured?
6) We would like to explore whether the Commission considered including a specific framework for regulatory sandboxes in this Omnibus proposal, as these mechanisms are valuable tools for experimentation, allowing innovative technologies and products to be tested in real-world environments.

SLOVENIA

The comments from the Slovenian team can be found below.

Currently, the procedures for obtaining the relevant opinions and permits to build new production capacity are too long and too burdensome/complex and time-consuming for producers.
We believe that by shortening and simplifying the permitting procedures, some potential manufacturers in the Republic of Slovenia may decide to expand production or invest in defence industry infrastructure sooner.

However, we have concerns about regulating the acceleration of prermit granting for defence readiness projects in the way defined by the draft regulation.
The reason is that the draft regulation is not clear enough:
- in defining the subjects it wishes to regulate.
- In defining the time limits for the issuing of licences. The proposal for does not allow to conclude which administrative procedures provided for by national law would apply or how many (sometimes consecutive) specific administrative decisions should be concluded within the proposed time limit.
- As regards the definition of "authorisation procedures": an EU regulation which, by defining time limits, affects areas which are subject to national law, must make it unambiguously clear which procedures it actually regulates, since it affects areas which are subject to national law.

Additional new comments received on 15/7

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulations (EC) No 1907/2006, (EC) No 1272/2008, (EU) No 528/2012, (EU) 2019/1021 and (EU) 2021/697 as regards defence readiness and facilitating defence investments and conditions for defence industry

Our reluctance to approve the proposed exemptions is not primarily due to the existing restriction to "specific cases and specific substances", but stems from the expectation that the exemptions granted must also ensure a certain level of protection of human health and the environment - which cannot normally be guaranteed by deviating from the established rules and standards otherwise laid down by REACH and CLP.

Furthermore, the proposal does not interfere with the existing discretionary power of Member States to grant "defensive exemptions" ("may"). In order to achieve the purpose pursued by the proponent, it would be appropriate to consider replacing "may" by "shall", which would more clearly reflect the obligation of Member States to act in accordance with the objectives of the proposal.

Last but not least, we believe that it would be useful to define more precisely the criteria and methodology by which Member States should grant exemptions for defence purposes and to harmonise them at EU level. Further, it would be useful to introduce the possibility of mutual recognition of exemptions between Member States, or to consider setting up a centralised procedure under the responsibility of the relevant EU agency.

We ask for further clarification on the amendment of Article 17 (paragraph 2) point (b) as it seems to us that the wording proposed (in relation to the current Regulation) leaves too many open questions. Here we ask for clarification on what is meant by "may in specific cases" and what those specific cases are.

We also believe that appropriate definitions should be included in the proposal, as the concept of "interest of defence", under which Member States are supposed to grant derogations, is too open-ended and leaves room for different interpretations. The proposal does not contain a definition of the term 'defence', but recital (1) suggests that it rather refers to 'defence readiness', which is linked to the definition of 'crisis' in Regulation 2009/81/EC, which defines crisis very broadly. We note that such a broad interpretation of 'defence interests' or 'defence preparedness' allows for almost unlimited derogations, and it would therefore make sense to limit such derogations to crises that may be the direct result of armed conflicts.

FINLAND

FI WRITTEN COMMENTS

General Comments

- We would echo questions of the other Member States and understand in more detail how to proposed 60 day time limit would work practice under the conditions that “the proposal is consistent with the EU policies in the fields of safety, health, environment as it does not lower standards”.

Directive on transfers of defence-related products within the EU (2009/43/EC).

Finland has a preliminary positive view of the Commission's proposal to amend the Directive on transfers of defence-related products within the EU (2009/43/EC).

Finland considers it important that the proposal harmonises and simplifies licensing practices in the Member States, reduces the administrative burden on companies and removes obstacles to cross-border defence industrial cooperation.

Finland would like to make the following comments on the proposal of the directive:

- Regarding the new article 5a, It should be noted that the grant agreement for EDF projects does not currently contain conditions for the re-export of military equipment. In order for end-user certificates to be replaced by a grant agreement, a re-export clause must be added to it.
- Changing the General Transfer License for certified companies so that they would be consignors instead of consignors will not automatically have positive effects. This is because the general transfer license is limited to components and the companies that have received a certification are, as a rule, Prime operators, whose customers are authorities and can carry out the transfer to the armed forces with an already existing general transfer license.
- Proposals for the Comission´s competent to issue delegated acts still need to be specified.

Finland welcomes and addresses the importance of non-legislative means to harmonize the implementation of the Directive.

Regulation of the european parliament and of the council on the acceleration of permit-granting for defence readiness projects

- The “quiet acceptance” in Article 5, paragraph 8 is very problematic for FI. The proposal should also take into account, the requirements of the Seveso Directive concerning, for example, appropriate consultation procedures.
- Strategic planning often takes place before project planning starts. Is it so, that the possible time limit obligation does not apply to situations where it is unclear whether the plan will be applied to defence readiness projects referred to in the proposed regulation?
- FI considers that land use planning is nationally regulated activity with plenty of national characteristics and needs, which is why the proposal should allow sufficient flexibility in its application in the Member States.
- Do the time limits referred to in Article 6 also apply to situations where there are no combined assessments, but only an assessment under the Strategic Environmental Assessment Directive (2001/42/EC) or under the Habitats Directive (92/43/EEC) is required for the plan?
- Question: Does the proposed regulation also apply to Natura assessment under the Habitats Directive?
- The relationship between the proposal and the EIA procedure should be clarified

Environmental Impact Ass.

- Finland would like to know what is the relationship between the proposed regulation and the procedure required by the Environmental Impact Assessment Directive (2011/92/EU).
- This is a relevant issue, as environmental impact assessment concerns projects that have likely significant environmental impacts and the scope of the proposed regulation seems broad.
- In Finland, the possible EIA procedure has in many situations already been carried out before the developer applies for a permit, and nationally the EIA procedure is not included in the permit procedure.
- What is the time limit referred to in the last sentence of Article 6(2) when planning is not a permit procedure?

Industrial Emissions Directive (IED, 2010/75/EU)

- We would like to understand why the proposal does not mention the Industrial Emissions Directive (IED, 2010/75/EU), even if the production

of explosives (Annex I point 4.6.) requires a permit under the IED. All previous permitting streamlining proposals have mentioned the IED, if activities in the scope of the IED have been included in streamlining.

SWEDEN

Regarding the Proposal for a regulation on the acceleration of permit-granting for defence readiness projects

SE see similarities in the proposal to the permitting provisions in the CRMA and NZIA. EU regulation regarding permitting in different sectoral legislation should be possible to align to make it possible to have one national system. Could the Commission confirm that the proposal does not limit or change examination of permit applications by the national examination authorities? Could the Commission clarify which permits could be covered by this regulation? A project could require several permits which raises the issue of the set timelines for permitting procedures since it is not clear when an application then is deemed to be complete.

Has an analysis been conducted on how the proposed time limits for procedures can be met while still ensuring compliance with the applicable substantive requirements? Furthermore, what assessments have been carried out regarding the proposals' impact on administrative burden and the safeguarding of high environmental standards?

Could the Commission provide further clarification on how the proposal aligns with the Union's international obligations, particularly under the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention), and the Convention on Environmental Impact Assessment in a Transboundary Context (the Espoo Convention)?

Regarding Regulation (EU) No 2019/1021 on Persistent Organic Pollutants

We note that the reference in recital 6 ""… *protection of national or Union defence and security interests*…" differs from the formulation in Article 13 (1), which reads:
".. protection of national and defence interests ...]" and have two questions related to this.

Firstly, what is the origin of the formulation "**national or Union defence and security interests"** in the recital (i.e. Treaty base), and

Secondly, in Article 13 (1), shouldn't it read *".. protection of national and defence interests.."*?

The latter is an important matter which I would be happy to discuss more with you, Jeppe. Either before the meeting on Wednesday or in the margins of it.