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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Antici Group (Simplification)
Subject:	Omnibus V – Compiled comments on intra-EU transfers and defence procurement

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

Member States comments
Omnibus V – Defence

PUBLIC

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BELGIUM

PUBLIC

Preliminary comments and questions from BE on Omnibus V: Defence procurement & intra-EU transfers. Thank you in advance for the follow-up.

Defence and Sensitive Security Procurement Directive

- Belgium maintains a preliminary positive study reserve regarding the proposal on the Defence and Sensitive Security Procurement Directive.
- As a general observation, Belgium agrees that this proposal should be the first step to a more complete review of this Directive in 2026.
- In Belgium's view, defence procurement needs to be done better, together and European.
- Regarding the current proposal, we encourage the Commission to provide more detailed information to Member States on the expected positive impact of this proposal on European defence forces—while acknowledging that the impact assessment is still ongoing.
- As far as framework agreements are concerned, the Omnibus proposal does not explicitly include the flexibilities introduced by EDIP and SAFE. We understand that the derogations to Directive 2009/81/EC introduced in EDIP and SAFE regarding the reopening of framework agreements are limited by the scope and rules of their respective regulations, and could therefore not as such be transferred into Directive 2009/81/EC. However, does the Commission intend to introduce similar derogations, mutatis mutandis, directly into Directive 2009/81/EC in the future? If not: could the Commission explain the reasoning behind?
- Point (10) (b) (ii) of the Omnibus proposal (page 22): could the phrase 'the products or services purchased are the result of one of the research and development contracts' be clarified? What would happen if it were preferable, from the point of view of security of supply or safety, to have several solutions developed commercially using this hypothesis?
- Point (10) (b) (iii) of the Omnibus proposal (page 22): is the factor 10 mentioned in the PNSP assumption to be added after 'parallel competing R&D' sufficient?

Intra-EU Transfers of Defence Products and Technologies

- Belgium holds a preliminary positive study reserve on the proposal concerning Intra-EU Transfers of Defence Products and Technologies.
- We stress the importance of creating the right conditions for the EU defence industry by developing a genuine EU Single Defence Market, free from national barriers. This is particularly important to put an effective level-playing field into place for SMEs and MidCaps.
- Belgium strongly supports the Commission's call for Member States to refrain from imposing restrictions on intra-EU transfers of components that are to be integrated into a final product in another Member State and cannot be re-exported separately.
- A key issue arising from the new Article 5a concerns the question of responsibility in export controls—specifically, in cases where components originating from one Member State are re-exported via another to an undesirable end-user. In such cases, who bears the ultimate legal responsibility for ensuring compliance?
- Belgium supports further harmonisation of procedures linked to General Transfer Licences and transfers in supply chains. Could the Commission indicate when discussions on this topic are expected to take place within the working group on intra-EU transfers? And how will these discussions be incorporated in the workflow of the Antici Group on Simplification?

- The 2nd GTL is currently designed for transfers of (sub)components to certified companies. The omnibus proposes to allow the use of this GTL for transfers by these certified entities. Article 9 of the Directive defines the certification framework. Question on several elements of para 2:
    - Does COM propose to keep the scope restricted to (sub)components? What about (sub)components integrated in subsystems to be integrated in larger systems?
    - Certified entities are currently described as recipients with the capacity for system/subsystem integration. Will this description be simply extended to suppliers of (sub)components or what is COM's view on this?
    - Para 2 also mentions that entities need proven industrial activity in defence-related products. Does that mean that companies dealing with DU goods, taking their first steps in the defence market would be excluded from certification?

PUBLIC

CZECHIA

Czech comments on the Commission's proposal to amend Directive 2009/81/EC, as regards the simplification of security and defence procurement (Omnibus V on Defence)

PUBLIC

The Czech Republic welcomes the European Commission's proposal to amend Directive 2009/81/EC (the "Defence Directive" and the "Proposal"). While the Proposal offers notable opportunities to simplify procurement procedures, the Czech Republic believes the revisions could have been even more ambitious, particularly in facilitating cooperative procurement among Member States without unnecessary impediments.

The Czech Republic supports the comments to the Proposal submitted by Germany.

In the view of the Czech Republic, the Proposal should primarily focus on simplifying the joint procurement involving at least two Member States, provided the acquired material is manufactured in the EU/Ukraine, and/or the supplier has its registered office in the EU/Ukraine. No further conditions shall apply.

For the sake of legal certainty, the definition of "European" material should be included directly in the Proposal, rather than referencing the definition in the SAFE regulation. While the definitions may be similar, it should suffice to state that non-European components must not exceed 35 % of the total contract value.

Member States should also be permitted to joint existing framework agreements signed by another Member State without any further obligations or conditions. Additional restrictions would be inconsistent with the stated objective of simplification. Such cases should fall under the scope of Art. 28 of the Defence Directive (i.e., use of the negotiated procedure without publication).

In addition to the German comments, the Czech Republic suggests the following amendments to the Proposal:

A) Procedure: Simplifications should be made available to contracting authorities as soon as possible. Given that an amended Defence Directive would take effect no earlier than 2026 – followed by a national transposition period – the proposed simplification might only become applicable in late 2026 (or even 2027). Given the discrepancies with the civil procurement legislation, the simplification of defence procurement could be achieved through an ad hoc tool to make sure that the simplification will take effect as soon as possible.

The Proposal uses Directive 2014/24/EU (the "Classical Directive") as a reference for simplifying defence procurement, yet this directive itself is currently under revision with the aim of further simplification. <u>If the intention of the Proposal is not to create merely an ad hoc simplification tool</u>, it

would be appropriate to reconsider whether to explicitly draw inspiration from an existing directive whose detailed and casuistic provisions have not always proven effective in practice.

Proposed solution: Introduce a measure that would permit immediate application of the proposed changes of the Defence Directive (Article 3 on p. 30 of the proposal).

B) Extended timeframe for application of the negotiated procedure without publication (Art. 28): Considering current delivery times for defence systems, Member States should be allowed to award additional contracts using the negotiated procedure without prior publication over an extended period. This timeframe should proportionately correspond to the proposed maximal duration for framework agreements (i.e., from 7 to 10 years).

*Proposed solution: Permit use of the negotiated procedure without prior publication during the **seven** years following the conclusion of the original contract, instead of the current five year limit (paragraph 10 letter /d/ on p. 21-22 of the proposal).*

B) Modification of contracts during their term (Art. 49a): If the core objective of the simplification is to enable effective joint procurement, then the scope for contract modifications should be significantly expanded – particularly regarding permissible increases in value of the contract. Member States should be allowed to substantially increase the maximum contract ceiling when additional Member States join the framework agreement/contract. Otherwise, there would be limited incentive to open framework agreements to other partners.

*Proposed solution: Broaden the conditions under which contracts may be modified during their term, due to additional Member States joining an existing framework agreement/purchase contract. Permit the **monetary value of the contract to be increased by up to 100 % of its original value**, without imposing further conditions (paragraph 18 on p. 28-29 of the proposal).*

C) Fine-tuning of the wording or explanation of the discrepancies with the Classical Procurement Directive: If the Commission chooses to draw inspiration from the Classical Directive, it is essential to explain whether any differences in wording are intentional. If the differences are indeed intentional, they need to be highlighted, clearly justified and explained, as such variations will have significant implications during the transposition into national law, e.g.:

- The Proposal appears to apply solely to contracting authorities. Is this intentional, or should it also cover contracting entities?
- The definition of the open procedure in the proposed Article 1, point 18a, differs from the definition in the Classical Directive, as it does not explicitly refer to a "response to a call for competition." Is this structural difference intentional? Is the open procedure for defence procurement intended to differ from the standard open procedure for civil procurement?
- The proposal works with the concept of an invitation to confirm interest (e.g., in the proposed Articles 29a or 46a), even though this instrument is not recognized in the Defence Directive. If it is to remain as such, the Commission must draft a text on a prior notice.
- Regarding the proposed Article 1, point 17a, it should be clarified whether the provision is also intended to cover purchases made directly by the Commission. More generally, we are

concerned that the Proposal does not sufficiently facilitate joint and centralised procurement, but rather imposes unnecessary and overly detailed conditions that may undermine the objective of simplification.

- Dynamic purchasing systems: are the discrepancies in wording compared to the Classical Directive intentional? If so, it would require specific national transposition, i.e.,
    - Why is the use of DPS time-limited in the Proposal? We believe it may be a redundant element carried over from earlier provisions that have not been applicable for years.
    - Shall it only cover other business models than purchase (see „*purchase*“ proposed Art 10/2 compared to „*acquire*“ in Classical Directive)?
- Regarding the proposed Article 9(9), the draft does not appear to take into account the specific features of aggregated procurement, as clarified by the CJEU in Case C-23/20. We would appreciate clarification as to whether this omission is intentional or an oversight.
- With regard to the rules on contract modifications - the Proposal does not appear to include the possibility of de minimis modification. Is this omission intentional or an oversight?
- Proposed Art 10a/2/2: incorrect link
- The Proposal does not include any provision equivalent to Article 22 of the Classical Directive regarding electronic communication and its associated safeguards and guarantees. As a result, there is no scope to establish specific rules or exemptions tailored to the particular needs of defence procurement in this area.

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."***

PUBLIC

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.

PUBLIC

- 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.

PUBLIC

SPAIN

Spain's comments on Proposal for Directive of the European Parliament and of the Council amending Directives 2009/43/EC and 2009/81/EC, as regards the simplification of intra-EU transfers of defence-related products and the simplification of security and defence procurement

PUBLIC

Spain wishes to express its gratitude to the Commission for the work carried out and support the common objective of simplifying procedures between Member States.

FIRST – DELEGATED ACTS

About the proposed text, Spain considers it imperative to maintain full compliance with Article 346 of the Treaty on the Functioning of the European Union. This provision allows any Member State to adopt the measures as it deems necessary to safeguard the essential interests of its security, particularly concerning the production or trade of arms, munitions, and war material. The inclusion of delegated acts in several articles of the proposal encroaches upon the competences of Member States and modifies essential elements of this Article, thus contravening a fundamental principle.

Consequently, Spain proposes the deletion of the following articles of the proposal: Article 4.8.a, Article 5.2.b, Article 13 bis 2.a, as well as the amendments made to Articles 13 bis 3 and 13 bis 6.

This proposal to remove the delegated acts is justified by the fact that, as indicate above, they relate to matters that fall within the sovereignty competence of Member States and affect national sovereignty in the control of these transfers, as well as international commitments arising from participation in various international fora. Member States have already established mechanisms to facilitate encroaches upon the competences the simplification of procedures through instruments such as the LoI and the Trilateral Agreement, among others.

SECOND – EXEMPTION FROM PRIOR AUTHORISATION

Article 4.2 introduces additional grounds for exemption from prior reporting and prior authorisation for the transfer of defence-related products.

Spain’s national legislation already contemplates the foundations of the Directive and, in relation to the proposed amendments, includes exemptions related to transfers necessary for the implementation of programmes financed by the European Defence Fund.

Nonetheless, Spain wishes to emphasise that the scope for exemption from prior authorisation for transfers of defence-related product must continue to fully respect Article 346 TFEU, as mentioned above. Therefore,

the possibility of exemption should remain a common minimum standard and should not limit Member States' ability to impose additional exceptions at national level, as currently provided for the Directive.

Regarding the individual proposals:

1. In the new subparagraph (aa), it should be unequivocally clarified that the Union institutions or bodies referred to must be related to defence activities.
   Furthermore, Spain considers that the scope should not be restricted solely to the European Defence Agency but should extend to other bodies or agencies established by Member States, such as NETMA, OCCAR, NH Industries, among others. These entities, of significant strategic importance, would not otherwise be included.

   Spain proposes the following amendment:

   (aa) the recipient is a Defence Union institution or Defence Union body.

   (aaa) the supplier or the recipient is the European Defence Agency, as well as any other entity, which may take multiple forms, such as, but not limited to, an agency or consortium, for the development and production of defence programs.

2. Spain proposes the deletion of the new assumption in subparagraph (cb), since a transnational industrial partner may pose a very high risk, particularly in the context of technology transfer.

3. Spain proposes limiting the assumption in subparagraph (cc) exclusively to NATO Allied countries. Extending this beyond NATO is unjustified and could, among other risks, facilitate the emergence of a secondary arms market, which constitutes a significant risk.

THIRD – CROSS-BORDER COOPERATION

Spain has already indicated, in relation to Article 4.2.cb, that transnational industrial partners may represent a very high risk.

Article 4.3 again references cross-border transfer when necessary for cooperation purposes.

Spain would appreciate it if the Commission could clarify the objectives of cross-border transfers, given that the overall objective of the amendment is to simplify procedures and improve cooperation between Member States.

PUBLIC

FOURTH – CERTIFIED SUPPLIER

Article 5 amends paragraph 2.b) to include the certified supplier, as defined in Article 9. However, Article 9 refers exclusively to the certification of recipients and not to suppliers.

Spain requests clarification on the justification for including suppliers in this provision. Is the Commission considering extending certification requirements to suppliers?

During the meeting, it was noted that certified companies have already undergone a rigorous and burdensome process to demonstrate responsibility and reliability in management of these dual-use items. Therefore, Spain does not understand the inclusion of suppliers in this article.

FIFTH – Licences for transfers necessary for the implementation of projects funded under Union defence industrial programmes

Spain expresses a reservation pending further examination, although it is potentially open to accepting this element.

Spain attaches the text with the proposed changes.

PUBLIC

FRANCE

Les autorités françaises souhaitent formuler leurs interrogations dans le cadre des propositions de modifications apportées à la directive 2009/43 (page 2) et 2009/81 (page 7).

PUBLIC

Questions relatives à la directive 2009/43 relative aux transferts intracommunautaires de produits de défense (TIC)

I. Contexte de la proposition

- La Commission pourrait-elle préciser la définition du « marché de défense », son périmètre, les principes de son fonctionnement et les acteurs pouvant légiférer et participer à ce marché ?

I.1) Consultation des parties intéressées

- Quelles sont les évolutions nécessaires de la directive 2009/43 (TIC) résultant de l'évaluation de l'enquête publique réalisée ? Comment sont-elles justifiées ?
- Quelles sont les difficultés mentionnées et par quelles parties prenantes qui ne pourraient trouver une solution par l'application de la directive actuelle ?
- Comment la Commission évalue-t-elle la transposition de cette directive dans les Etats membres et dans quelle mesure des différences de transpositions peuvent-elles se traduire par des difficultés d'application ?

I.3) Recours à des actes délégués (considérant 8)

- La possibilité de recourir à des actes délégués harmonisant le contenu, les critères d'octroi ou l'utilisation des licences respecte-t-elle la « liberté de décision des Etats membres » ?

II. Définition de crise (article 3)

Comment s'articule la nouvelle définition de crise avec le nouvel article 4, 2, (cc) et les autres hypothèses d'exemptions prévues au point d (existant) et au nouveau point (da) qui semblent être couvertes par cette large définition ? A quel autre type de situations, la définition de crise proposée se rapporte ?

III. Dispositions générales (article 4)

III.1) Modification de l'article 4.2 avec l'extension des cas d'exemption

- Existe-t-il des données sur l'utilisation des exemptions existantes ? En l'absence d'obligation pour les Etats membres d'utiliser les exemptions, l'extension des cas d'exemption n'emporte-t-il pas un risque de renforcer les disparités en la matière, au risque d'affecter la confiance mutuelle ?
- Exemption dans les cas où le destinataire du transfert est une institution de l'UE et ses organes, l'AED (aa) : Si les institutions de l'UE et leurs organes deviennent les destinataires des produits liés à la défense, ne devrait-on par assortir cette nouvelle exemption de dispositions responsabilisant de tels acteurs qui deviennent destinataires/receveurs et également fournisseurs des matériels de guerre et assimilés notamment compte tenu de leurs obligations au titre du règlement financier fixant les exigences de comptes rendus et de transparence?

- Exemption pour les projets subventionnés par les programmes européens (ca) : Pourquoi prévoir à la fois une exemption pour les projets européens, et un article traitant spécifiquement d'une licence générale de transfert (LGT) pour les projets européens ? Cette approche ne conduit-elle pas à fausser l'attractivité des projets pour obtenir la subvention ?
- Exemption pour la coopération industrielle transfrontière (cb) : Comment faut-il comprendre la coopération transfrontière industrielle ? En quoi les transferts « transfrontières » seraient-il différents des transferts intracommunautaires ? Si une différence est faite entre le transfert intracommunautaire et le transfert transfrontière, est-ce que l'exemption sur le périmètre transfrontalier n'est pas de nature à fausser le fonctionnement du marché intérieur en introduisant un biais de compétitivité ? Quelles sont les raisons de privilégier une exemption par rapport aux autorisations actuelles pour ce type de coopération ? Est-ce que ce régime particulier ne conduira pas à dupliquer inutilement des compétences industrielles existantes au sein de l'UE ?
- Exemption en cas d'assistance militaire et de défense d'un pays de l'UE (da) : Quels sont les cas d'emploi d'une telle exemption par rapport aux situations déjà survenues en lien avec l'article 28 et 41.2 TUE pour apprécier les risques de dissémination éventuelle ?

III.2) Modification de l'article 4.3 permettant à la Commission d'étendre, par voie d'actes délégués, la liste des cas d'exemption en lien avec un transfert nécessaire pour la coopération transfrontière (d)

- La notion de coopération transfrontière pourrait-elle être précisée ?
- Les coopérations sont-elles limitées aux seuls Etats membres de l'UE et leur industrie ou bien incluent-elles également les candidats à l'adhésion ou les pays du voisinage (Moldavie, Ukraine) ?
- Comment s'articule cette disposition avec l'exemption existante tenant à ce que le transfert a lieu dans le cadre d'un partenariat transfrontière structuré (cb) ?

III.3) Modification du paragraphe 4 visant à restreindre la possibilité pour les Etats membres d'exiger des conditions d'accès aux licences non liées au domaine du transfert et du contrôle export

- La portée de la notion de « critères qui ne sont pas liés à leur capacité à remplir leurs obligations dans les domaines du contrôle des transferts et des exportations », outre l'exemple du statut juridique de l'entreprise, pourrait-elle être précisée ? La condition tenant à l'enregistrement des sociétés avec vérification de leur statut juridique, de leur « honorabilité », de leur capacité à fabriquer, détenir, commercer en toute sécurité des matériels de guerre (AFCI) serait-elle admise dans le contexte des LGT ?
- Comment cet article s'articule-t'il avec l'article 5.4 qui autorise les Etats membres à définir les conditions d'enregistrement avant la première utilisation de la licence générale ?

III.4) L'ajout d'un nouveau paragraphe 8a à l'article 4 établissant des pouvoirs délégués de la Commission

- Pouvez-vous confirmer que les actes délégués ne s'appliquent pas aux cas suivants :
  - Définition des conditions associées à l'octroi des licences générales de transfert
  - Définition de la liste des composants « sensibles » ou des composants « non sensibles »
  - Obligation de fournir un certificat de non retransfert (CNR) ou un accord de non divulgation (NDA)
- S'agissant de l'article 4.5 (conditions de détermination du type de licence accordée) : Pourquoi renoncer à la pratique des recommandations alors que celles-ci pourraient être très utiles si la Commission les accompagnait de réunions régulières des experts TIC ? Les conditions de détermination du type de licence accordée ne relèvent-elles pas d'éléments essentiels de la directive au sens de l'article 290 TFUE ? Cette disposition respecte-t-elle les

principes de subsidiarité et de proportionnalité ? A-t-il été envisagé, au regard de la sensibilité de la matière, de recourir à des actes d'exécution, en lieu et place des actes délégués ?

- S'agissant de l'article 4.8 relatif aux cas où les Etats membres doivent s'abstenir d'imposer des restrictions à l'exportation : Pourquoi renoncer à la pratique des recommandations alors que celles-ci pourraient être très utiles si la Commission les accompagnait de réunions régulières des experts TIC ? Cette disposition respecte-t-elle les principes de subsidiarité et de proportionnalité ? A-t-il été envisagé, au regard de la sensibilité de la matière, de recourir à des actes d'exécution en lieu et place des actes délégués ? Quel est le périmètre de ces actes délégués et pourront-ils s'appliquer aussi aux composant sensibles ? L'articulation entre les propositions OMNIBUS et les dispositifs en cours d'adoption dans le cadre du règlement EDIP (art.51.2) a-t-elle été étudiée ?

IV. Licences générales de transferts (article 5)

IV.1) Modification de l'art. 5.2 paragraphe b) visant à étendre les cas de publication de licences générales de transfert

- En quoi la certification de la société d'expédition participe à l'objectif de s'assurer que les conditions de détention des matériels de guerre chez le destinataire sont conformes aux règles nationales et européennes de non-prolifération et de contrôle des flux de matériel de guerre ?

IV.2) Ajout de l'art. 5.2 paragraphe e) visant à étendre les cas de publication de licences générales de transfert

- Sur quoi doit porter la publication des licences générales s'appliquant aux projets européens ? Faut-il comprendre « ces licences s'appliquent à tous les produits liés à la défense » comme interdisant aux Etats membres de circonscrire le champ de la licence à certains matériels de guerre, au risque d'une circulation incontrôlée d'armes au sein du marché intérieur ?
- Comment la Commission apprécie-t-elle la cohérence de cette disposition avec les obligations contractées par les Etats membres au sein des différents régimes de contrôle et d'interdiction ?

IV.3) Ajout du paragraphe 5.2 bis sur l'obligation à la charge des Etats membres de permettre l'introduction de licences générales de transfert autres que celles visées au paragraphe 2 (liste minimale)

- Cette modification aura-t-elle un impact sur l'application de l'article 5.3 qui permet aux Etats membres de publier des licences générales de transfert pour les transferts vers d'autres Etats membres participants aux programmes de coopération ?
- Le périmètre de ces nouvelles LGT fera-t-il aussi l'objet d'une harmonisation via les actes délégués (art. 5.2b) comme cela serait le cas des LGT énumérés dans l'art. 5.2 a), b), c), d) ?

IV.4) Ajout du paragraphe 5.2b habilitant la Commission, par voie d'acte délégué à harmoniser le champ d'application minimale des LGT

- Qu'entend-on par « harmonisation du champ d'application minimal des LGT » ? Quel pourrait être le contenu des actes délégués ?
- Cette disposition respecte-t-elle les principes de subsidiarité et de proportionnalité ?
- Pouvez-vous justifier en quoi cette possibilité d'acte délégué ne touche pas une partie « essentielle de la Directive » qui doit pourtant être exclue du champ de la modification ?

V. Licences pour les transferts nécessaires à la mise en œuvre de projets financés dans le cadre des programmes industriels de défense de l'Union (article 5a)

- Comment cet article, qui impose aux Etats membres de publier des licences générales de transfert pour les projets subventionnés par l'UE s'articule-t-il avec l'exemption prévue à l'art.4.2 (ca) dans le même domaine ? N'y-a-t-il pas un risque d'application de la directive à « deux vitesses », préjudiciable à la confiance mutuelle entre les Etats ?

V.1) Paragraphe 1

- Le mode opératoire des licences générales visées pourrait-il être précisé ? Faudra-t-il mettre en place une licence générale adaptée à chaque projet en matière de défense ?
- La nature des matériels de guerre et assimilés (ML) concernée par cette disposition pourrait-elle être précisée ? Concerne-t-elle également les catégories ML1, ML2, ML19, ML20 (cf. annexe de la directive) et donc autorise le transfert des armes, notamment armes à feu au sein de l'Union avec le contrôle allégé des destinataires et des flux ? Une étude d'impact a-t-elle été réalisée ? Cet article, associé à l'article 4.4, n'autorise-t-il pas toute société à détenir, fabriquer et à commercer des armes en Europe sans aucune autorisation préalable ni contrôle ?

V.2) Paragraphe 2

- L'harmonisation du périmètre des licences générales telle que proposée par 5.2b porterait-elle sur les licences générales (art. 5) autres que les licences générales pour les projets subventionnés par l'UE (art. 5a) ?

V.3) Paragraphe 3

- L'engagement s'applique-t-il bien aux matériels et à la documentation classés échangés au sein du consortium et les livrables classés retransmis aux institutions européennes ?
- Peut-on préciser le terme « parties au contrat », à savoir s'il s'agit de tous les signataires du contrat (bénéficiaires de la subvention, organisés dans le consortium et autorité contractante qui signe le contrat avec le consortium) ? Est-ce que d'autres entités devront se plier à l'exigence du CNR ou de restriction à l'exportation, si de telles mesures sont requises (les sous-traitants qui ne font pas partie de consortium, les institutions ou Etats qui veulent accéder aux résultats ou aux livrables) ?
- Quelles sont les mesures que vous suggérez pour assurer le contrôle de la bonne application de cet article et des engagements associés ?
- Comment le financeur du contrat (et non l'autorité contractante, donc non signataire de l'accord de subvention) peut engager sa responsabilité pour ce qu'il reçoit, par l'intermédiaire de l'autorité contractante ?
- Quelles sont les raisons pour lesquelles la Commission devrait accéder aux livrables alors qu'elle n'est pas leur financeur, ni l'autorité contractante ?
- Pour quelles raisons les livrables qui n'ont pas été financés par le biais d'une subvention européenne devraient faire l'objet de vérifications par la Cour des comptes ?

V.4) Paragraphe 4

- Est-il envisageable de remplacer « *may* » par « *shall* » afin de traduire le fait que les engagements et responsabilités de non retransfert ou de non réexportation des résultats des travaux subventionnés ou des matériels de guerre détenus demeurent tant que les fournitures et matériels sont détenus ?
- Dans quels cas la Commission pourrait-elle demander des informations, livrables au consortium alors même qu'elle n'a contractualisé ni financé le projet ?
- Y a-t-il d'autres entités de l'UE couvertes par cet article ? Si oui, lesquelles ?

VI. <u>Informations par les fournisseurs (article 8)</u>

- Quels sont les enjeux de cet allégement qui conduisent de facto à retirer certains livrables et matériels de guerre (intangibles) du champ contrôlable ?
- Comment concilier cette absence d'information avec les obligations pour les Etats de suivre les flux de matériels de guerre transférés et exportés, cela conformément aux accords de non-prolifération qu'ils ont signés ?

VII. Restrictions à l'exportation (Article 10)

- Comment appliquez-vous les obligations de cet article dès lors que par acte délégué la Commission peut suspendre l'établissement des conditions associées au licences (art 4.5), dont les CNRs ?

VIII. Ancien article 14

- Ne serait-il pas souhaitable de réintroduire l'ancien article 14.1 pour maintenir le groupe de travail TIC comme interlocuteur compétent de la Commission européenne pour étudier et éventuellement proposer des actes délégués ? Cet article pourrait avantageusement préciser le mode de gouvernance de la directive ainsi que le rôle du groupe TIC pour proposer au Conseil des actes délégués établis dans le cadre de cette directive.

PUBLIC

Questions relatives à la directive 2009/81 relative aux marchés publics de sécurité et de défense (MPDS)

- D'une manière générale, quels sont les éléments de calendrier afférents au processus de révision générale du texte, annoncé dans le Livre blanc de préparation de la défense européenne à l'horizon 2030 ? Comment est conçue l'articulation avec la réforme des directives relatives aux marchés « civils » ?

I. Article 9

- Peut-on considérer deux propositions modifications supplémentaires pour simplifier la passation de marché publics de sécurité et de défense, à relier aux relèvements des seuils :
  - Passage du montant maximum des petits lots de 80 000€HT à 300 000€HT, tout en maintenant la limite du total des montants des petits lots inférieurs à 20% du montant du marché principal. Ce seuil de 80 000€ existe dans la directive 2004/18/CE, associé à un seuil européen de 135 000€HT. Aujourd'hui il n'existe quasiment aucune prestation dans des marchés d'armement inférieure à 80 000€HT. La disposition n'est donc pas utilisée.
  - Prévoir que les achats auxiliaires (« *ancillary procurement* ») des centrales d'achats puissent être passés sans mise en concurrence, dans la limite de 1% ou 2% du montant du marché principal. Il s'agirait là de petits achats annexes à de gros marchés passés au nom et pour le compte d'un autre Etat membre, nécessaires au fonctionnement de la centrale d'achats (par exemple des prestations d'essais de réception, d'assistances diverses pour la préparation et l'exécution du marché principal) ?

II. Marchés auxquels participent des pouvoirs adjudicateurs ou des entités adjudicatrices de différents Etats membres (article 10a)

- Est-ce possible de préciser le sens du second paragraphe du point 2 : « En ce qui concerne les activités d'achat centralisées proposées par une centrale d'achat située dans un autre État membre que celui du pouvoir adjudicateur ou de l'entité adjudicatrice, les États membres peuvent préciser que leurs pouvoirs adjudicateurs ou entités adjudicatrices ne peuvent recourir qu'aux activités d'achat centralisées définies à l'article 1er, paragraphe 17 ter, points a) ou b).

III. Article 25

- N’y-a-t-il pas un risque tenant à l’ouverture des marchés de défense ou de sécurité à la procédure ouverte, alors que les marchés de défense et de sécurité peuvent par nature concerner des informations classifiées au titre de la protection du secret, et que la procédure ouverte pourrait engendrer des fuites d’informations portant préjudice à la sécurité nationale des Etats membres ?

IV. Article 28

- Peut-on considérer l’opportunité de maintenir la nécessité d’avoir trois Etats Membres mais d’ajouter que deux Etats Membres peuvent déjà mettre en œuvre un achat conjoint passé sans mise en concurrence, sous réserve de prendre toute disposition pour accueillir un ou plusieurs autres Etats membres qui le souhaiteraient ?

V. Article 29a

- L'utilisation d'un système d'acquisition dynamique dans le cadre des MPDS doit-il impliquer la publication d'un avis de pré-information faisant office d'appel à la concurrence ? Les autorités françaises s’interrogent sur cet aspect dans la mesure où l'avis visé à l'article 48 de la directive 2014/24/UE n'est utilisable que pour certains marchés spécifiques passés par des pouvoirs adjudicateurs dits « sous-centraux ».
- La Commission pourrait-elle clarifier son intention concernant le recours à l’avis de « pré-information servant d’appel à la concurrence » dans le cadre des marchés publics de sécurité et de défense ? Comment celui-ci sera-t-il adapté aux spécificités de ces marchés, notamment en ce qui concerne les informations dont la divulgation violerait un secret protégé par la loi ou porterait atteinte à la sureté de l’Etat ou à la sécurité publique ?
- A des fins de simplification notamment s’agissant du nombre de formulaires utilisables, la référence à l’avis litigieux pourrait-elle être supprimée ?

VI. Article 49a

- Pour quelle raison les modifications de faible montant, autorisées par le paragraphe 2 de l’article 72 de la directive 2014/24/UE relatif aux modifications de marchés en cours, ne sont pas prévues par cette nouvelle disposition ?

PUBLIC

CYPRUS

Please find hereby the comments/questions/suggestions from CY on Omnibus V package (suggested changes in red).

Proposal for a directive amending Directives 2009/43/EC and 2009/81/EC
Article 2 Amendments to Directive 2009/81/EC – Defence procurements
para (6) in Article 13, points (a), (c) and (d) are replaced by the following:
(a) contracts for which the application of the rules of this Directive would oblige a Member State to supply information the disclosure of which it considers contrary to the essential interests of its security, including in cases involving a substantiated military threat from a neighboring third country;

para (10), (b)
(iii) the value of the products or services does not exceed 10 times the value of the research and development contract from which it results;
Comment: We consider x10 a relatively small amount. Would suggest it should be a significant increase in the range of x30 to x50.
para (10), (c)
in point (3) the following point (d) is added.
'(d) for the common procurement of military equipment ~~concluded prior~~ for which the procurement procedure has already started prior to 1 January 2031 by contracting authorities/entities from at least three Member States, provided that all of the following conditions are fulfilled:
Comment: We suggest reducing the minimum number of participating MS to two.
para 17, point 2
… In the restricted procedure the minimum number of candidates shall be five. In the negotiated procedure with publication of a contract notice, in the competitive dialogue procedure and in the innovation partnership the minimum number of candidates shall be ~~three~~ two. In any event the number of candidates invited shall be sufficient to ensure genuine competition…

2025/0176 (COD)
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

PUBLIC

LATVIA

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.

LITHUANIA

Lithuanian comments on the COM proposal to amend Directive 2009/81/EC, as regards the simplification of security and defence procurement (Defence Readiness Omnibus)

In general, Lithuania welcomes the proposed amendments to the Directive 2009/81/EC. We believe that the proposed changes to the rules on procurement in the fields of defence and security bring more responsiveness and adaptability in the changing geopolitical context and provide for more tools to handle emerging defence policy priorities. We support the reduction of administrative burden for the economic operators and contracting authorities, efficiency, flexibility and speed of the defence and security procurement procedures, promoting innovative solutions, effectively addressing national security issues, more legal certainty on joint procurement, contract modifications, supply chain risks management, etc.

We would like to suggest the following improvements to the text of COM proposal on Directive 2009/81/EC:

Article 2(1)(e) inserting point 21a
We support the possibility of using a dynamic purchasing system that ensures efficiency of procurement and the speed of procedures. Only, we propose to streamline the concept of a 'dynamic purchasing system' eliminating requirement to "submit an indicative tender that complies with the specification". It should be noted that analogous solution was adopted in the Directive 2014/24/EU, which preamble 63 stated, that "The systems need to be simplified; in particular they should be operated in the form of a restricted procedure, hence eliminating the need for indicative tenders, which have been identified as one of the major burdens associated with dynamic purchasing systems."

Article 2(2) amending Article 8 on the thresholds
The EU thresholds for defence and security procurement could be increased even more than suggested to take into account of inflation and economic operators' potential cross-border interest in tendering, to enable Member States to focus on critical contracts and reduce the administrative burden on the industry for smaller procurement procedures.

Central purchasing bodies
We would propose postponing considerations on centralized procurement provisions until the overall amendments to the Directive 2009/81/EC, as the impact and the intended objective are unclear, given that the system is currently functioning perfectly well.

Article 2(12) inserting Article 29a in Title II, Chapter V
We agree with the insertion of a list of conditions allowing for the modification of a contract without a new public procurement procedure. The proposed conditions repeat those laid down in Directive 2014/24/EU Article 72. However, we would propose to add a missing de minimis contract modification condition analogous to Directive 2014/24/EU Article 72(2), which allows for the modification of a contract where the value of the modification is below both of the following values: (i) the thresholds set out in Article 4; and (ii) 10 % of the initial contract value for service and supply contracts and below 15 % of the initial contract value for works contracts.

Article 2(10)(b) and (c) amended Article 28

We support an extension of a list of negotiated procedures without prior publication of a contract notice in cases when contract is "(c) concluded after parallel competing research and development projects with several economic operators procured by a contracting authority/entity " or in case of "(d) the common procurement of military equipment concluded prior to 1 January 2031 by contracting authorities/entities from at least three Member States." These provisions enable Member States to acquire the necessary military equipment, but the conditions laid down (seven in each case) will make it very difficult to apply them in practice. For example, it seems questionable the need for a restriction of "10 times the value" in case of parallel competing R&D projects. Also, we assume that at least 2 MS (instead of 3 MS) would be sufficient in the case of common procurement of military equipment.

New Article
We also propose to include provisions allowing for the use of the European Single Procurement Document (ESPD), as currently provided for in Directive 2014/24/EU Article 59. As practice has shown, this document effectively reduces the administrative burden associated with the participation of economic operators in public procurement procedures and enables contracting authorities to speed up and streamline evaluation of tenderers.

Regulation vs Directive
What deadline (date) is foreseen for the transposition by MS of the amended Directive 2009/81/EC? We are concerned that it could take too long to achieve expected simplification effects. So, we would support the discussion on possibility to adopt regulation (which application deadline would be considerably shorter) instead of directive.

PUBLIC

HUNGARY

PUBLIC

HU comments on Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2009/43/EC and 2009/81/EC, as regards the simplification of intra-EU transfers of defence-related products and the simplification of security and defence procurement.

Article 1. Amendments to Directive 2009/43/EC

Our position regarding paragraph (6) of the legislative proposal's preamble and paragraph (2), subparagraph c) of Article 1 of the main text is that we have no objection to the proposed amendment, provided that member states may in their national legislation continue to exclude natural persons from the scope of persons/entities legally engaged in the foreign trade of defence-related products within (or outside) the Union.

Article 2. Amendments to Directive 2009/81/EC

Amendment of Article 1. (paragraph (1) subparagraph (e) of the legislative proposal)

The new point 21a. of Article 1. defines dynamic purchasing systems. In our opinion, the last phrase of the definition *("and has submitted an indicative tender that complies with the specification"*) is unnecessary, since under the new Article 29a., which is in line with the rules of Directive 2014/24/EU, there is no need to submit an indicative tender to join dynamic purchasing systems (such a rule was still in the previous Public Procurement Directive 2004/18/EC).

Amendment of point 5. of Article 9.

In accordance with the proposed amendment of the procurement thresholds in Article 8., we propose to increase the thresholds in Article 9. point 5.

Missing rules of open procedure

Although the draft refers to the possibility of conducting an open procedure at several points, the amendment does not include the detailed rules for the open procedure. It is proposed to define the

basic rules for the open procedure in Chapter V of the Directive (Articles 25-29.) and the deadline for submission of tenders in Article 33.

PUBLIC

Addition to Article 42.

We propose to include in Article 42. (Technical and/or professional ability) of the Directive the rule already known from the Public Procurement Directive (Article 63. paragraph (2)), according to which:

"In the case of works or service contracts or installation or commissioning operations relating to supply contracts, the contracting authority may require that certain critical tasks be carried out by the tenderer itself or, where the tender has been submitted by a group of economic operators within the meaning of Article 5.(2), by one of the members of the group."

In our opinion, it is important to transfer this provision to the Defence and Security Procurement Directive because, in the case of complex contracts, it is a legitimate expectation of the Contracting Authority that the contractor be directly the manufacturer or service provider and not an intermediary company.

Addition to Article 49a. (paragraph (17) of the legislative proposal)

The newly inserted Article 49a. codifies the possibility of contract amendments, largely taking over certain rules of Article 72 of Directive 2014/24/EU. However, it is not clear why the "de minimis" rule under Article 72(2) of Directive 2014/24/EU is not incorporated into Directive 2009/81/EC.

NETHERLANDS

NL Comments on Omnibus V – simplification of intra-EU transfers, and security and defence procurement

Regarding: DIRECTIVE 2009/43/EC on intra-EU transfers of defence-related products

1. The title of the new Article 5a mentions '*Union defence industrial programmes'*. To which programmes does this refer to? Besides EDF, do programmes as EDIP, ASAP, EDIRPA and others also fall within the scope of this article?

2. Para 2 of the new article 5a refers to the 'later phases of the life cycle of the projects occurring after the stages funded under a Union defence industrial programme'. Does the export to third countries of produced defence-related products also fall under these later phases of the life cycle of the projects?

3. Para 3 of the new article 5a mentions 'export of defence-related products' while the Directive regulates the internal transfer of defence-related products on the internal market. In which cases can there be export of these goods outside the EU in this context? After all, export control to third countries is regulated in EU Common Position 2008/944/CFSP (competence of EUMS).

4. Para 3 also mentions 'will not be shared without authorisation'. It is important to make explicit whose authorization is meant here. After all, this is a competence of Member EUMS.

5. Art 8(3a) states that the provisions of Art 8, in particular points (b) and (c), only apply to intangible technology transfers if they do not lead to disproportionate reporting obligations for suppliers. Which disproportionate reporting obligations have been identified that need to be addressed? Furthermore, what is the definition of disproportionate as it is used here and who determines whether there are actually "disproportionate reporting obligations"?

Regarding: DIRECTIVE 2009/81/EC on security and defence procurement

Article 2 (1) (d) amending article 1 by inserting point 18a

This point inserts a definition of the open procedure.

1. To what extent is it necessary to insert a definition of the 'open procedure'? (This procedure is also not defined in Directive 2014/24/EU and the amendments to Directive 2009/81/EC also do not contain a definition for the "Innovation Partnership".)

2. To the extent that it is necessary to insert a definition, should the definition be brought more in line with article 27 (1) of Directive 2014/24/EU, resulting in this definition: 'Open procedure' means a procedure in which any interested economic operator may submit a tender *in response to a call for competition*?

Article 2 (10) (e) amending article 28 (5)

3. Article 13 point (d) on purchases carried out by forces who are deployed outside the territory has been amended to include forces in training. To what extent can this addition of forces in training also be inserted in to article 28 (5), since the latter only related to deployed forces? This would increase the consistency of the proposal.

Article 2 (12) inserting article 29a

4. This article inserts article 34 of Directive 2014/24/EU into Directive 2009/81/EC. However, that conclusion does not apply to paragraph 7 of the aforementioned article 34 on the renewed/updated self-declaration. This seems a logical choice, since this document does not exist within the framework of Directive 2009/81/EC. However, it might still be necessary to request an update of the participants to validate if they still satisfy the selection criteria. What is the reason that this opportunity has not been created in this article?

Article 2 (14) amending article 33 (2)

5. Are we correct in our analysis that there is no minimum time-limit for the receipt of tenders under the open procedure?

Article 2 (18) inserting article 49a on the modification of contracts during their term

6. What is the rationale for including this article in the Defence Omnibus? Since the case-law of the European Court of Justice on the modification of contracts can already be applied to contracts awarded under Directive 2009/81/EC; how does this expedite the purchase of military products? It actually increases the administrative burden on contracting authorities, since it also includes an obligation to publish a notice in the Official Journal of the European Union.

Article 2 (19) deleting Article 68

7. This article on the revision of thresholds has been deleted. How does the European Commission envisage future revision of thresholds? Given the ongoing inflation, especially in the market for military products, it might be necessary to adjust the thresholds again in the near future in order to adhere to the reasoning behind this proposal.

PUBLIC

AUSTRIA

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Omnibus V

AT first observations regarding Art. 2 and 3 of COM (2025) 823 – amendment of Directive 2009/81/EC

General Remarks regarding Art. 2 of COM(2025) 823 - amendment of Dir 2009/81/EC:

- **Missing IA**: COM argues, that the "*targeted nature* [of the changes] *and the lack of relevant policy options make an impact assessment not necessary*" (see p. 4). AT cannot support this view since the proposal contains several changes to the legal framework with significant impacts on the market (for ex. higher thresholds, introduction of new procedures, temporary derogations to use non-transparent procedures …).
- COM **introduces** some aspects of Directive 2014/24 but unfortunately **not all necessary elements**: for ex. no rules on electronic communications (see Art. 22 of 2014/24) which would need to be adapted to the specific circumstances of 2009/81, electronic availability/transmission of tender documents (see Art. 53 of 2014/24) but taking into account the specificities of 2009/81, possible de-minimis changes to contracts and framework agreements without the need for a new procurement procedure – why is this flexibility not included in the proposal?
- Some **deviations** from 2014/24 are **incomprehensible (see details below)**
- **Coherence** with existing (new) legal framework (for ex SAFE, EDIP) doubtful – see Art. 49a
- **Time** is needed to analyse the text and impacts of changes – negotiations should not be rushed!
- **Timeline and coherence** with revision process of 2009/81? – COM announced [for ex in Single Market Strategy, COM(2025) 500] to table the proposal end of 2026 – presumably, this would be in the middle of the transposition timeframe of the current proposal! What is the impact of the current proposal on the revison process of 2009/81?
- What is the **impact** of this process/proposal on the revision process of the civil procurement regime (given that overall coherence is needed in the PP regime as such)?

Detailed analysis of the proposal:

- **General** linguistic remark: 2009/81 uses consistently the term "contract" not "public contract" – alignment is needed in the proposal to the current wording of 2009/81 (see for ex in definition of ancillary purchasing activities)
- **Art. 1 Nr 18** (def CPB): current text would exclude COM to be qualified as CPB under 2009/81; should be clarified that COM could be a CPB according to Dir 2009/81 (either in the text or in a Recital) – see in this regard for ex Art. 19-a (esp. para 1-a) of the current EDIP text (Doc 10204/25 of 16.6.2025)

- **Art. 1 Nr 21a** (def of DPS): text deviates from 2014/24 significantly and for unknown reasons: 1) DPS only for limited time and 2) need to submit "indicative tender"! ad 1) why? DPS should not be limited in time since DPS is open for new-comers!; ad 2) the proposal is based on the old concept of DPS's; in 2014/24 the need for indicative tenders was eliminated because this was cumbersome and lead to unattractiveness of DPS (see Rec 63 of Dir 2014/24: "*The systems need to be simplified; in particular they should be operated in the form of a restricted procedure, hence eliminating the need for indicative tenders, which have been identified as one of the major burdens associated with dynamic purchasing systems.*") – why is this reintroduced in the current proposal given the aim of simplification?

- AT **supports higher thresholds** – deletion of Art. 68 is however counterproductive; COM needs a mechanism to adapt thresholds (not for alignment with other PP Directives but for ex in light of inflation!) – see comments below

- **Art. 9 (9)** – estimation of value for framework agreements: what about the "maximum value" introduced by the ECJ as a new concept (see C-23/20, at no 68)? Should be taken into consideration!

- **Art. 10**:
  - **wording** deviates from 2014/24 for unknown reasons. For ex: para 1 and 2 addition of "or through" – this concept is already covered by the definition of central purchasing activities; sometimes terms are missing for unknown reasons (see at the end of para 1 subpara 1);
  - **Para 2**: instead of "purchases" it should read "acquires" (purchase for ex does not cover rent, lease)
  - **Para 2 letter b**: need for clarification (for ex in Recital) that FinReg 2024/2509 contains rules which are compatible with 2009/81 (for reasons of legal security); unclear, if remedies against COM acts (Court of First Instance/ECJ) are comparable to the remedies in 2009/81 (AT would assume yes, but benchmark for comparability is missing!)
  - **Para 2 letter b**: what about EDA? Could CA/CE use EDA under the umbrella of the new Art. 10 (2)?
  - **Missing parallel provision to Art. 37 (3)** of Dir 2014/24 ("*All procurement procedures conducted by a central purchasing body shall be performed using electronic means of communication, in accordance with the requirements set out in Article 22.*") – It should be discussed if CPBs should act only "electronically" – since this issue involves quite complex problems (for ex security) AT raises this point as a "reminder" which could also be discussed in the framework of the upcoming revision process!

- **Art. 10a**:
  - **Para 2 2nd subpara** should read: "may only use the centralised purchasing activities as defined either in Article 1(17b)(a) or (b)" – otherwise this provision makes no sense (see as well Art. 39 para 2 2nd subpara of 2014/24)!
  - why is a **parallel provision to Art. 39 (2) letter c of 2014/24 missing** ("*the determination pursuant to points (a) or (b) of Article 33(4) of which of the economic operators, party to the framework agreement, shall perform a given task*")?
  - **Para 4 3rd subpara**: instead of "purchases" it should read "acquires"

- **Art. 13**: AT welcomes the new version of Art. 13 letter c and d!

- **Art. 27a** (Innovation partnerships):
  - wording deviates in some places from 2014/24 for no apparent reasons – why? see for ex para 1 4th subpara.

- **para 4 2nd subpara**: AT points to the fact that the referenced Art. 6 is different than the (new) provision of Art. 21 of Dir 2014/24 – Art. 6 should be aligned (addition of Art. 21 para 2)
- **Para 5**: pls explain the new provision; how shall for ex a previous tenderer who has been excluded from the process be "reintroduced" again (timelines, equal treatment …); AT understands the idea behind the provision but sees major practical problems in implementing this provision without additional safeguards/clarifications.

- **Art. 28**:
- general remark: AT welcomes the flexibility shown by COM proposing these amendments! However, bearing in mind that according to the constant jurisprudence of the ECJ such exceptional provisions must be interpreted in a restrictive manner and bearing in mind that the new point 2 letter c contains seven (!) cumulative criteria and the new point 3 letter d contains also seven (!) cumulative criteria AT seriously doubts that these provisions will actually lead to the envisaged simplification and flexibility! AT therefore takes the view that the proposed criteria should be critically reviewed again as to their necessity and if found counterproductive to be deleted!
- **point 1 letter d**: given the fact, that only the term "open procedure" has been added, the new provision would be interpreted along the old guidance of COM (see for ex the "COVID communication" 2020/C 108 I/01: "*The exception cannot be invoked for the award of contracts that take longer than they would have taken if a transparent, open or restricted, procedure had been used, including accelerated (open or restricted) procedures.*"). Therefore this provision is not suitable for longer lasting crisis situations where flexibility is needed as well! A clarification in this regard in the text, making it applicable also for longer lasting crisis situations, is needed!
- **point 2 new letter c**: COM should explain the new provision! Introduction "development projects" – letter i "development contracts" – why a different wording?
- the parallel competing R&D contracts have to be awarded following which procedure? Does it have to be a competitive procedure with prior publication? Could this provision be used after using the exception of Art. 13 letter j?
- letter iv: definition of "principal place of business"? "Using resources" located in a MS/EEA/EFTA state – to which extent? What about using resources in Ukraine (see letter v)?
- letter v: why include Ukraine and for ex not the UK? This may be related to SAFE and EDIP but should it be limited only to Ukraine?
- **point 3 new letter d**: COM please explain
- introductory part: why three MS; should be two to make this provision really flexible!
- letter i: how are "minor modifications" defined (clarification with examples in Recital would be welcomed)
- letter iii: why include Ukraine and not (also) the UK?
- letter iv: the reference to Art. 16 (9) of the SAFE Regulation could be deleted since this aspect is taken care of by letter v! Overall letter iv and v are difficult to read because of the referenced other acts!
- letter vii: it is inconsistent to include Ukraine in letter iii but not in letter viii – what is the reason for this differentiation?
- **point 4 new letter b:**
- just linguistic remark: since in an IP a multiparty contractual relationship can be established (see Art. 27a para 1 3rd subpara of the proposal) the wording should refer to "operator**s**" and "contract**s**".

- if the aim of the proposal is simplification and flexibilisation, the timeline in the new letter b should be extended and not be kept at five years. AT proposes 7 years instead!

- **Art. 29a** (DPS):
  - **General remark**: Bearing in mind the scope of Dir 2009/81 this provision (as drafted or as in the AT proposed versions – see comments below, esp regarding para 4) would enable CA/CE to acquire only goods and services/works which do not involve classified or other critical information! Art. 29a therefore has a (very) limited scope of application in any way!
  - **para 2**: the part about "*shall not be limited in accordance with* [Article 65]" – see Art. 34 (2) of 2014/24 – is missing for unknown reasons! Can COM explain?
  - letter a: AT points out that the reference to "a prior information notice is used as a means of calling for competition" poses problems since this concept (see Art. 48 para 2 of 2014/24) is unknown (yet) to 2009/81!
  - letter b: Can COM explain why the last sentences (see Art. 34 para 2 letter b of 2014/24 – "*Where appropriate, Article 28(4) shall apply. Article 28(3) and (5) shall not apply.*") is missing?
  - **para 3**: since 2009/81 does not contain provisions on electronic communication (Art. 36 reflects the situation of 2004/18! – new "standard" see Art 22 of 2014/24) this provisions opens some tricky questions (which electronic means?, which safeguards? …).; AT asks for the inclusion of a parallel provision to Art. 22 of 2014/24 in 2009/81!
  - **para 4** letter d: what about the possibility to "offer unrestricted and full direct **electronic** access" (see Art. 53 of 2014/24)? This could be possible for procedures not involving security issues/restricted information! See also general remarks above!
  - **para 6** 2nd subpara: the reference to the "prior information notice … used as a means of calling for competition" poses problems since 2009/81 does not (yet) know this concept!
  - **para 7**: AT points out the possible need for adaptations to the business rules within new eForm because of this provision. This may entail a significant delay due to the need to adapt business rules by the OJ, encode them in a new SDK, and have that SDK be applied across all MS. Furthermore, the introduction of the DPS also requires an adaptation of the eForms Implementing Regulation 2019/1780, as the field BT-766 (Dynamic Purchasing System) is not available in (for example) the notice used under Directive 2009/81/EC.

- **Art. 30 new para 2a**: A reference to "framework agreements" is missing but needed (see Art. 50 para 2 2nd subpara of 2014/24)!

- **Art. 34 and 35 para 1**: the reference to "*in writing*" would prohibit CA/CE to use electronic means of communication! The term should be deleted!

- **Art. 46a para 2 1st subpara**: the reference to "invitation to confirm interest" is a concept (yet) unknown to 2009/81!

- **Art. 49a**:
  - **General remark**: 1) AT welcomes the introduction of this provision. The relationship to other provisions dealing with the same issue (see SAFE/EDIP) remains unclear however! Can COM elaborate and provide text for a Recital to clarify this relationship (for reasons of legal security)?
  2) Can COM elaborate, why the de-minimis provision (see Art. 72 para 2 of 2014/24) has not been included in the text! If the aim of this proposal is to simplify the legal regime of 2009/81 AT cannot understand why this important flexibilisation/simplification has been omitted in the proposal. AT asks therefore to include a parallel provision in the text!
  - **Para 1 letter b subletter i**: the term "and" at the end must be deleted. It would require,

that both conditions are met. However, if a change of contractor is already impossible for economic or technical reasons (subletter i) it makes no sense to require cumulatively that the change of contractor would furthermore need to cause significant inconvenience or substantial duplication of costs (subletter ii). This is a mistake already contained in Art. 72 of 2014/24!
- **para 1 letter e**: the reference at the end should be to para 3!
- **Para 1 end**: it should read "… in the cases referred to in point (b) and (c) of this paragraph shall publish a notice …" to clarify the referenced provision.
- **Para 3 letter c** should read: "the modification extends or reduces the scope …" – see Case C-549/14, Finn Frogne, at no 28/29 (published after adoption of 2014/24 and therefore not included in this Directive)

- **Art. 65 and 66**: Can COM elaborate how COM will monitor the effects of 2009/81? Can COM confirm that this will be done via analysing TED data?

- **Art. 68** (deletion – Revision of thresholds): as already elaborated, AT takes the view that this provision should not be deleted but amended. An alignment with the thresholds of the "civil Directives" is legally not required (because the procurements under 2009/81 are not covered by international obligations). However, a mechanism to change the thresholds in an easy way (without involving the co-legislators in a burdensome way) is required so as to enable COM to take for ex inflation into account!

- **Article 3**: AT asks for 2 years for transposing the Directive (see also general remarks about timeline and coherence with revision process of 2009/81)

PUBLIC

AT - Additional observations on changes to Directive 2009/81/EC

AT may provide additional comments on the entire proposal, as a thorough review of the changes was not yet possible, due to the very recent publication of the proposal and the extensive amendments proposed.

General comment: There are multiple reference to the need to provide information in the contract notice, which are taken from Directive 2014/24/EU. In view of the cost associated for MS with the implementation of amendments to eForms and the complicated nature of the underlying Software Development Kit (SDK), it should be considered, together with DG GROW, which notification requirements in the notice (instead of, for example, in the procurement documents) are really necessary at this point in time, within a "quick fix" omnibus. This should also be done in consideration of the upcoming revision, where the consideration of how much about eForms should be regulated where (in the Directive, an Implementing Regulation,…) could be subject to review.

Art. 1 Nr. 18a: The following text should be added to clarify this is a procedure with prior publication: „in response to a call for competition"(see Art. 27[1] RL 2014/24/EU).

Art. 1 Nr. 21a: As in the rest of the Directive, reference should be made to the "contracting authority/entity" (underlined missing).

Art. 1 Nr. 29: What is a "defence product"? Is it equivalent to "military equipment"? Is it also "sensitive equipment"? The latter terms should be used instead of introducing a new term which is then not explained. We realise this definition exists in the SAFE Regulation, but since that refers back to this Directive, a circular reference would not be helpful.

Article 9: The title is missing a reference to dynamic purchasing systems; a shorter title could be drawn from Art. 5 of Dir. 2014/24/EU: "Methods for calculating the estimated value of procurement".

In **paragraph 5**, it could be considered to raise (for example to 150 000 and 1 500 000, respectively) the thresholds, in order to support and mirror the raised thresholds in Art. 8. The percentage should also be raised to 30%.

Suggestion for new Article 10b: procurement with/through the Commission, if the Commission is to act as a CPB (via FR, this is not possible for EDA since EDA is no Union institution or body according to Art. 168 FR):

"Article 10b Procurement involving contracting authorities/entities and the Commission

1. In accordance with Article 168 of the Financial Regulation, Member States may request the Commission:
(a) to engage in a joint procurement with them as referred to in Article 168(2) of Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (Financial Regulation);
(b) to act as a central purchasing body to procure on behalf of, or in the name of, the interested Member States, as referred to in Article 168(3) of the Financial Regulation.

PUBLIC

2. When requesting the Commission to act in accordance with Article 168 paragraph 1 of the Financial Regulation, Member States' contracting authorities/entities shall be deemed to have complied with the requirements laid down in this Directive."

Note: This does not cover the case where a CA itself acts as a central purchasing body in the sense of signing the contract and then internally passing on the acquired goods; this however should not really happen in matters of this Directive, as the defence/security functions are usually centralised in MS (different in IMERA!).

Article 13(c): Instead of "this Article shall apply to the joining Member State", it should instead read, for example: „the exclusion under this Article may be applied to the joining Member State". This is because exemptions are not mandatory to be transposed, Member States may be stricter.

EDA is not a Union institution or body; if the exemption referring to "[a] research and development project managed by Union institutions or bodies" is (also) meant to cover EDA, reference should be made either explicitly to EDA, or to "European public bodies" (see Recital 23 of this Directive).

Article 27a (5): A maximum cost is something that is agreed on (see para. 2), not something used to exclude tenderers; how is this supposed to be applied here?

Art. 28(2)(c):

Point (i): Aren't these "parallel competing research and development contracts" at least partially covered by an exemption (Art. 13[j])? Why would there now be a requirement to conduct a procurement procedure for exempted contracts?

Point (iii): The reference here is not to "estimated value", but to – agreed upon? – value; is that the price? Does this mean there would be a need to already negotiate on/know the price? It seems difficult to assume an ex ante assessment by the CA which at the same time seems to require already the conduct of the negotiated procedure.

Point (iv): In this Article, prospective contractors are called „economic operators" (see e.g. paragraph 1[e]); this should be the case here, too. Also, why is there only a reference to products (also in point [vii]), when this point falls under a provision which should be applicable to both products and services?

Point (vii): It seems very difficult to imagine that the design happens in Ukraine, but the performance of the R&D and the resources do not (letter iv); how would the fulfilment of both points work, why is there a mention of Ukraine here but not in point iv?

Art. 28(2)(d): Art. 10a speaks of CA procuring „jointly"; Art. 38 of Dir. 2014/24/EU speaks of "joint procurement". While the diverging terminology of EDIP and SAFE is known, "common procurement" is less precise terminology which diverges from the procurement Directives and should not be introduced here. Instead, the term "joint procurement" should be used.

Here again, the term "defence products" is used multiple times instead of "military equipment".

PUBLIC

Art. 29a(4)(d): It is not coherent to not provide for unrestricted and full direct access to the procurement documents when it comes to all other procedures. Also, by requiring direct access without considering security etc. concerns, as Dir. 2014/24/EU does, this provision may be harmful to the security concerns of the CA.

It is questionable to leave out Art. 34(7) of Dir. 2014/24/EU, as economic operators admitted to the DPS may in the meantime have to be excluded, if they fulfill some exclusion grounds because their circumstances have changed (in particular if a long time has passed since they have been admitted). It should be left to the CA to be allowed to require new documents – not having such a provision may suggest that the CA may not do so.

Art. 30(2a): In the interest of avoiding additional administrative burden and due to the needed adaptation of eForms: is this provision necessary or could awards based on dynamic purchasing systems be left to be optional, as they are for framework agreements? Also, why is the contract award notice here required after 30 days, where it is needed only after 48 days in paragraph 3? Finally, the imagined "grouping" of notices was, to our knowledge, not implemented in eForms; if this provision is to be kept, a different wording should be found in order to not cause confusion.

Art. 32: This provision is very outdated (e.g. use of fax); it could be updated to mirror Dir. 2014/24/EU. The same is true for Art. 36.

Art. 33: Why are there no time limits introduced for the open procedure (see Art. 27 of Dir. 2014/24/EU)? They should be introduced somewhere.

Art. 37: Administrative burden could be reduced if CA are not required to draw up a report in each case, but to only provide to the Commission this information when it is so requested. This still means it needs to be documented someplace, but there is no need for a report putting together this information even if the Commission never asks. Additionally, in paragraph 1(c), a reference to the innovation partnership should be added, and in paragraph 1(e), the reference should be to ten (not seven) years. Paragraph 2 could be deleted to reduce administrative burden.

Art. 41(1)(c): The following text could be added: "The minimum yearly turnover that economic operators are required to have shall not exceed two times the estimated contract value, except in duly justified cases such as relating to the special risks attached to the nature of the works, services or supplies. The contracting authority shall indicate the main reasons for such a requirement in the procurement documents." This is an SME-friendly provision taken from Art. 58(3) of Dir. 2014/24/EU, which should be easy enough to transpose/implement.

Art. 46a and 46b: Why are these provisions included – don't they reduce the freedom of contracting authorities for the existing procedures, in comparison to the currently existing Art. 26(3) and 27(4), read together with Art. 38(5)? What is the relationship of these new provisions – in particular of Art. 46b – to the existing ones?

PUBLIC

Art. 49a(1), last subparagraph: In terms of avoiding administrative burden: is this notice necessary or could it be omitted?

Art. 52: Paragraph 3: A note, the current text contradicts itself: the notification rules require CA/CE to publish, these provisions assume a publication by the subcontractor.

Paragraph 6: In the third subparagraph, the reference should be to ten (not seven) years.

Art. 55(1): A sentence should be added: "This includes framework agreements and dynamic purchasing systems." (compare to Art. 1(1), 3rd subparagraph, of Dir. 89/665/EEC).

Art. 58(c): The following text should be added: "and in the case of a specific contract based on a dynamic purchasing system as provided for in Article 29a."

Art. 60(1)(c): The following text should be added: "and a dynamic purchasing system."

Title V title: The reference to "statistical obligations," should be removed.

Art. 69(1)(a): the text "and the statistical reports provided for in Article 65" should be deleted.

PUBLIC

POLAND

Questions to the COM

PUBLIC

1. Regarding the proposed innovation partnership procedure – what is the essence of the changes and the flexibility in comparison to the analogous procedure from the Directive 2014/24/EU; there is a need of additional clarification regarding the point 5. of the proposed Article 27a.

   Is it legitimate to reinstate a bidder who has already been rejected at an earlier stage of negotiations to participate in the procedure?

2. In reference to the results of competitive procurement procedure for parallel R&D projects, how does it relate to defence pre-commercial procurement in the exemption from Article 13(j) of the Defence Directive? What exactly is the "competitive parallel project procedure in the area of R&D"?

3. The term of “small modifications” used in the documents seems to be imprecise. More strict description or definition should be considered for this notion in the context or through a relation to the “innovation” notion included in Directive 2014/24/EU.

4. Referring to the proposed regulations on permissible amendments to the contract - why do the proposed solutions not include “*de minimis modifications”* similar to the provisions of Article 72(2) of Directive 2014/24/EU and Article 89(2) of Directive 2014/25/EU, i.e. the possibility of modifying a contract without the need to conduct a new procurement procedure when the value of the modification is lower than the threshold for application of the directive (when at the same time is lower than 10% of the original value of the contract for service and supply, or lower than 15 % of the original contract value in the case of construction works.

5. In reference to the transfer licences: will transfer licenses not be required for industrial partnerships outside EU programmes; e.g. including bilateral partnerships with EU and non-EU countries not implemented under the EU programmes?

6. Will the public-private partnerships or other forms of industrial cooperation aimed at strengthening the EDTIB be possible for industrial partnerships outside EU programmes, e.g. including bilateral partnerships with EU and non-EU countries not implemented under EU programmes?

7. Will the temporary derogation to allow Member States to use the negotiated procedure without prior publication for collaborative procurement, including out-of-the-box procurement, also apply to unmanned weapon systems (e.g. drones) and will it be a basis for single-source procurement?

8. Will the Omnibus address as part of amendments to another act (in particular Council Directive 2006/112/EC of 28 November 2006 on the common system of VAT) changes in the VAT rate to 0% for military equipment purchased on the basis of Directive 2009/81/EC?

9. Referring to art. 28, the added letter (c) – we would like to draw your attention to the fact that it is difficult to compare two values with different characteristics (a product vs. a whole complicated contract which may include intellectual property rights, etc.). The comparison introduces a potentially arbitrary multiplier without a solid economic justification. Such an approach may lead to a lack of consequence in the application and does not take account of sectoral differences in the efficiency of research and development or commercialization of the results.
10. Referring to the added art. 39a – we would like to suggest moving it to Annex 6.
11. Referring to the added art. 39a item 1. of the additional article – we suggest that the new notice should be made in art. 30 or that the last paragraph of art. 30(3) should be repeated here.
12. In the added point 17a, stating: "the acquisition of supplies and/or services intended for contracting authorities/entities", they will ask about the possibility of adding entities from third countries.
13. In the added point 17b, subpoint a), beginning with the words: "technical infrastructure enabling contracting authorities", they will propose adding the word "sharing" before "technical infrastructure".
14. In the amended Article 10(2)(b), the phrase "are in accordance with this directive" raises concerns. This wording in fact implies the application of regulations identical to those in the directive. However, it seems that this provision is meant to refer to compliance with the principles clearly defined in the Directive, not to its individual provisions.

PORTUGAL

PT Additional comments

PT questions on the Defence Readiness Omnibus

09.07.2025

PUBLIC

Directive 2009/81/EC on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security

1) On the **application threshold**, although the rationale behind the proposed increase from EUR 443,000 to EUR 900,000 is not known, we would appreciate further detail on the technical and economic justification for this new threshold, and whether the introduction of a periodic revision clause indexed to inflation was considered.

2) On **minimum requirements and award criteria**, we would welcome clarification regarding the flexibility allowed in defining minimum requirements and award criteria, to ensure legal certainty and avoid creating ambiguities that could hinder practical implementation.

3) Regarding **framework agreements and joint procurement** and the proposed maximum duration of these, while we support the proposed simplification, we suggest considering a reduction in the minimum number of participating Member States from three to two, to avoid discouraging projects due to excessive complexity. Additionally, could the Commission clarify the contractual framework and the legal responsibilities of participating governments?

4) On **central purchasing bodies**, we would welcome clarification as to whether the proposal allows for such entities to be established on an *ad hoc basis*.

5) Concerning the **remedies regime**, although we agree that this is a sensitive subject, we would suggest that the issue of simplifying the remedies regime
be included in the broader review foreseen for 2026. We would also like to request, at this stage, a commitment on this.

Directive 2009/43/EC simplifying terms and conditions of transfers of defencerelated products within the EU

6) On the **new exemptions and flexibilities**, we support the proposed exemptions, as they contribute to simplifying lengthy procedures. However, we request clarification on the definition of "crises" and their legal framework, in order to prevent misuse and litigation. We also suggest greater clarification for the cases where the procurement process involves multiple phases.

7) On **delegated acts**, we consider that delegated acts must not compromise the balance between simplification and national sovereignty.

8) Regarding **General Transfer Licences (GTLs)**, we support their harmonisation and wider use. Nonetheless, we underline the importance of transparency in the definition of certification criteria, ensuring accessibility for smaller companies. We would also like to ask whether technical support and detailed guidance will be made available to national authorities for practical implementation.

9) On the **replacement of end-user certificates**, we would suggest further clarification on legal responsibility for compliance in case of breaches, as well as on the procedure for replacing and verifying standard "non-reexport" clauses.

10) With regard to **transfers within the supply chain**, we support the goal of reducing bureaucratic burdens. However, we would suggest a clear and commonly agreed definition of "sensitive components", to avoid subjectivity. We also suggest implementing monitoring systems to assess risks related to supply security, technology leakage, and loss of intellectual property rights.

11) On **timeline and coordination**, could the Commission provide more information on the planned deadlines for transposition and application. We also suggest adopting a phased implementation plan to allow for national adjustment. Furthermore, we propose the establishment of a joint task force between the Commission and Member States to provide ongoing clarification during the implementation phase, as well as the publication of clear and comprehensive FAQs.

PUBLIC

ROMANIA

RO input on Defence Omnibus V – COM (2025)823 final - Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2009/43/EC and 2009/81/EC, as regards the simplification of intra-EU transfers of defence-related products and the simplification of security and defence procurement

PUBLIC

Directive 2009/81

We consider it necessary to further elaborate or supplement specific provisions in **Directive 2009/81/EC**, as follows:

- It would be useful to **include, within Directive 2009/81/EC, details regarding the exceptions to the applicability of the Directive**, through an amendment that focuses on **clarifying the conditions for using the derogation provided for in art. 346 TFEU**, as well as the **Government-to-Government (G2G) contractual mechanisms**. Although the Directive already provides for a series of exclusions and derogations in art. 12 and 13, the current provisions are often restrictive or subject to interpretation and may limit the ability of Member States (especially those with emerging national defence industry) to use these instruments to develop their own strategic capabilities, in relation to existing risks and threats. In this regard, we consider that it is necessary to **introduce, within the Directive, a sufficiently clear definition of the concept of "fundamental security interest" invoked by art. 346 TFEU**. We believe such a clarification will provide legal certainty to national authorities willing to move fast to ramp-up national capabilities and industries to meet current challenges.

- At the same time, the G2G contract mechanism, in art. 13(f), **requires a provision** that would bring more transparency and predictability in terms of **eligibility conditions**, the nature of the contracts and the conditions under which they can be used without violating competition rules. Currently, the general wording of this exception does not allow for a coherent and consistent use in all MS, discouraging those strategic cooperation approaches that can be essential for the development of defence capabilities at national and European level.

- Therefore, a detailed review of these provisions, taking into account the strategic and industrial realities of the MS, would represent an important step towards real strategic autonomy, and this approach would not contravene the principles of the internal market, but would allow the procurement regime to be adapted to the concrete needs of defence and security, within a clearer, fairer, more functional legal framework and less likely to indirectly contribute to the triggering of infringement procedures.

- We consider that **collaborative public procurement procedures carried out jointly by the MS should be addressed and detailed within Directive 2009/81/EC similar to Directive 2014/24**.

- We propose **supplementing Directive 2009/81/EC with the legal reasoning found in art. 12 of Directive 2014/24/EU**, also taking into account the arguments presented in point (32) of the Preamble to the aforementioned Directive.

- Regarding **the concept of "crisis"** (found in art. 1 point 10 of Directive 2009/81/EC), **it should be extended to cover the new contingencies (neither at war nor at peace), in particular the needs of the MS located in the vicinity of the armed conflict whose procurement of equipment is urgent**; for the clarity and predictability of the legislative text, we consider it necessary to redefine the concept of crisis to cover such exceptional situations;

- We propose introducing and, implicitly, **defining the concepts of inadmissible, non-compliant, unacceptable and inadequate tender** at least to the level of clarity regulated by the provisions of art. 35 para. (5) of Directive 2024/24/EU, in order to ensure coherence in the tender evaluation process. We believe that regulating situations in which the submitted tender may be declared non-compliant, unacceptable, inadequate and, consequently, inadmissible, represents the decisive step in the tender evaluation process, the absence of which leads to the impossibility of completing the procedure and to the ineffectiveness of the procurement procedure;

- We propose regulating the possibility of supplementing the funds necessary for the award of the contract if the submitted offers exceed the estimated value by a maximum of 10%.

- **Given the proposal to insert art. 49a into Title II, Chapter VII, Section 3 (para. 18 of the proposed Directive), we request amending Directive 2009/81/EC by including the provisions in art. 72 para. (2) Directive 2014/24/EU. We propose regulating the modification of the contract during its validity period, without carrying out a new procurement procedure** and defining the concepts of a substantial/non-substantial modification, similar to the situation in art. 72 of Directive 2014/24/EU.

- There is a **need to identify a solution for regulating, within the framework of Directive 2009/81/EC, the situation in which a contracting authority in one MS wishes to purchase products that are the subject of a framework agreement/contract already concluded by another contracting authority in another MS (open existing contracts)**.

- We consider it appropriate to **supplement Directive 2009/81/EC with clear provisions regarding the cases and conditions in which a MS may impose requirements related to the security of supply on economic operators participating in the procedure.** Thus, we point out that it is necessary to address

this concept explicitly in order to clearly understand the content and limits of these specific requirements.

- It is necessary to **supplement art. 28 (1) (e)** with the following content: "(e) when, for technical reasons, **operational reasons**, or reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular economic operator". The reasoning for this proposal is that, from the perspective of the conditions that need to be met by a product in terms of interoperability, we consider it necessary to include this distinct hypothesis in order to adapt public procurement regulations in the fields of defence and security to the operational needs of military structures.

- We support the amendment in **art. 28 (3) to add a new point (d) but we propose to replace in this text the condition of minimum 3 MS with 2 MS.**

- We propose to re-examine / review the products/equipment included in the *List of arms, munitions and war material* adopted by the Council in its Decision 255/58 of 15 of April 1958 in order to update them. As a recommendation, we consider that this List may become an integral part of Directive 2009/81/EC, in the form of an annex.

- Finally, the **open procedure** (introduced through the current proposal) and the **restricted procedures** should be detailed in a similar way as in the civil Directive, in order to ensure legal clarity.

Directive 2009/43

- Romania supports Commission's proposal to increase flexibility and reduce unnecessary administrative burden in the authorization process for low-risk intra-EU Transfers, while also maintaining the national competence in matters related to transfer and export control policies.

- Would appreciate clarification on COM's proposal for art. 4 para 3 (d): "the transfer is necessary for cross-border cooperation" - the term is quite broad. Suggest replacing it with "*structured cross-border industrial partnerships*" as referred to in Recital (3).

- Support proposal in art. 4 for a new para 8a and also in Art. 5 para 2a for a harmonization process between MS's simplified procedures for intra-EU transfers. However, we would suggest a more prominent involvement of the expert group for the adoption of the harmonization related delegated acts, including through the establishment of ad-hoc working groups. We would refer back to the successful cooperation between COM and MS for the adoption of the set of COM Recommendations for GTLs in 2016-2018.

- Given that the amendments proposed by the draft Directive will entail amendments to the internal primary legislation and its implementing rules, we consider it necessary to provide for a reasonable transposition period (minimum 1 year).

FINLAND

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.

FI Additional Comments - 9.7.2025

PUBLIC

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SWEDEN

Regarding Directive 2009/43/EC as regards the simplification of intra-EU transfers of defence-related products

SE notes that the proposal, aimed at simplifying intra-EU transfers of defence related products, would expand the Commission's powers at the expense of MS national competence. In particular, the proposed de minimis regulation would enable the Commission to set thresholds below which MS would no longer be permitted to apply national export control rules. This would directly affect MS ability to assess and regulate transfers based on national strategic considerations.

Furthermore, the proposal to extend the Commission's mandate to issue General Transfer Licences could result in European military equipment being transferred from the EU to third countries that are currently not eligible under existing national frameworks. This would represent a significant shift in competence that undermines MS control over defence exports.

Any simplification of intra-EU transfers must respect MS national competence in export control.

Regarding Directive 2009/81/EC as regards the simplification of security and defence procurement

SE is still analyzing and overall positive to the proposal, in particular to the parts that aims to facilitate rules for the MS to make it easier to procure. Possible increase of proposed raised thresholds would be welcome. In order to facilitate for common procurement, also 2 MS as requirement for common procurement would be sufficient.

In general, the aim of Omnibus V is to facilitate for the MS, i.e. to be able to concentrate on the procurement itself, rather than having to focus on excessive administrative burden. Against this background SE does not understand the reason for incorporating eligibility rules in article 28. The proposed Article 28(3)(d) mirroring eligibility rules in SAFE is not appropriate in this directive nor in an omnibus. It is a substantial change for MS own procurement, it has not been a part of the directive before and is not a simplification proposal. It instead entails new administrative burden for MS. It is important to acknowledge that there is a difference between eligibility rules for common spending and rules in a directive that applies to MS procurement (national spending).

SLOVENIA

PUBLIC

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directives 2009/43/EC and 2009/81/EC, as regards the simplification of intra-EU transfers of defence-related products and the simplification of security and defence procurement

In general, we support simplification and the introduction of greater flexibility in the public procurement system, as well as the unification of public procurement rules regardless of the scope of application, which is why we do not oppose the proposed changes. However, we assess that a comprehensive analysis of the public procurement directives, including the defense directive, is currently underway, which is why partial, ad hoc and rapid changes to only one of them, without a proper analysis of the need for these changes, are not the most appropriate or effective. From the perspective of the stability of the legal order, this also represents multiple implementations of EU rules in a very short period of time, which certainly does not contribute to legal certainty.

There are also no specific arguments as to whether these changes are actually necessary and urgent, for example, the question arises as to the necessity of introducing an innovation partnership in this area, since the effects of this procedure can be achieved by the contracting authority, if it so wishes, in addition to the existing directive, in other ways (e.g. competitive dialogue).

The proposal for a directive also introduces an open procedure in the field of defence, although the text of the provision regulating the open procedure is missing. The latter is mentioned in some amended provisions as a consequence of the introduction of the open procedure. On the other hand, some provisions are not adequately amended, although they should have been due to the introduction of the open procedure (e.g. in setting deadlines, Article 33 of the directive).

The proposal for a directive also changes the circumstances in which the use of the negotiated procedure without prior publication is permitted, namely for cases where no tenders have been received in the prior transparent procedure. Unlike Directives 2014/24/EU and 2014/25/EU, this proposal for a directive also lists competitive dialogue, innovation partnership and negotiated procedure with publication among the procedures, but no adequate argumentation or reasons can be found for such a distinction, which may bring additional uncertainty on the part of contracting authorities.

This proposal for a directive also sets out a different approach to Directives 2014/24/EU and 2014/25/EU in the conditions for using the negotiated procedure without prior publication, e.g. Directive 2014/24/EU distinguishes between the circumstances and the manner of implementation for using the competitive negotiated procedure and for using the negotiated procedure without prior publication, while this proposal combines these into a single concept.

The proposal for a directive also introduces institutes that are already known from Directives 2014/24EU and 2014/25/EU, namely joint procurement, dynamic purchasing system, innovation partnership, reduction of the number of candidates and tenders and contract modifications. However, we note that the wording of individual provisions in this proposal for a directive deviates slightly from the regulation in Directives 2014/24EU and 2014/25/EU, for which it is not possible to understand the reasons. For example, we point out that the provision governing contract modifications does not allow for "de minimis " changes.

In general, we assess that different regulations on the same subject matter are not appropriate, which will lead to problems in practice with interpretations of rules of the same scope in different regulations in different ways (different approaches).