



EUROPEAN COMMISSION

*Brussels, 4.1.2023
C(2023) 182 final*

Dear Presidents,

The Commission would like to thank the Cortes Generales for their Opinion on the proposal for a Regulation of the European Parliament and of the Council on establishing the European Defence industry Reinforcement through common Procurement Act {COM(2022) 349 final}.

The Commission welcomes the Cortes Generales' broad support for the aims of the proposal and is pleased to provide a number of clarifications regarding their concerns. This relates in particular to the appropriateness of checking the proposal's compliance with the principle of subsidiarity, as well as the doubts relating to the Article 173 (3) of the Treaty on the Functioning of the European Union as its legal base.

The Commission proposal aims at strengthening the competitiveness of the European Defence Technological and Industrial Base under Article 173 of the Treaty on the Functioning of the European Union according to the ordinary legislative procedure.

In line with Article 173 of the Treaty on the Functioning of the European Union, the instrument aims at supporting Member States in addressing short-term defence equipment needs through incentivising joint procurement and allowing the European defence industry to respond better to urgent needs. In doing so, the European Union will speed up the adjustment of industry to structural changes; encourage an environment favourable to initiative and to the development of undertakings throughout the European Union; encourage an environment favourable to cooperation between undertakings; and foster better exploitation of the industrial potential of policies of innovation, research and technological development. In full compliance with Article 173 (3) Treaty on the Functioning of the European Union, Member States remain free to decide what to procure, from whom and how. The procurement and acquisition of defence capabilities remain national competences and the measure does not envisage any harmonisation of national laws.

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In line with well-established case law¹, the legal basis of an act must be determined according to objective criteria, in particular the aim and the content of the measure. The aims of the proposal, as laid down in Article 3(1), are in line with the objectives set out in Article 173 of the Treaty on the Functioning of the European Union. The content of the act, in particular the eligibility criteria set in Articles 7 and 8 and the award criteria set in Article 10, aim at ensuring the competitiveness of the European industry, and at achieving the specific objectives of Article 173(1) of the Treaty on the Functioning of the European Union.

The Commission looks forward to continuing the political dialogue with the Cortes Generales in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*

*Thierry Breton
Member of the Commission*

¹ See case C-300/89 ‘Titanium dioxide’.