

(English version)

**Question for written answer E-000881/26
to the Commission
Anna Zalewska (ECR)
(4 March 2026)**

Subject: Action brought by Parliament before the CJEU for annulment of the regulation establishing SAFE

On 20 August 2025, Parliament brought an action before the CJEU seeking the annulment of Council Regulation (EU) 2025/1106 of 27 May 2025 establishing the Security Action for Europe (SAFE) through the Reinforcement of the European Defence Industry Instrument.

The applicant raises two pleas in law in support of its action.

The first plea alleges that the contested act is wrongly based on Article 122 TFEU. The applicant submits that, in accordance with the relevant case-law on the choice of legal basis and in the light of its objective and content, the contested act does not satisfy the conditions for invoking Article 122 TFEU and rather concerns the development of the EU's defence industrial policy on the basis of Article 173 TFEU.

The second plea alleges infringement of the obligation to state reasons. The applicant submits that the Council, in breach of Article 296 TFEU, failed to provide sufficient reasons for its choice of legal basis for the contested act. In particular, the reasons given by the Council are not sufficient to determine whether the contested act could rightly be based on Article 122 TFEU.

In this connection:

1. When approving the SAFE national plans, did the Commission take into account the possibility that the CJEU might declare the document establishing the programme invalid?
2. Who will repay the EUR 150 billion in loans taken out unlawfully when the SAFE fund is declared invalid?
3. Who took the decision to apply Article 122 TFEU in respect of taking out loans for SAFE?

Submitted: 4.3.2026

**Answer given by Mr Kublicus on behalf of the European Commission
(20 May 2026)**

Article 122 of the Treaty on the Functioning of the European Union (TFEU) ⁽¹⁾ provides a legal basis for the EU to act swiftly in emergency situations. Under this provision, the Council may adopt necessary measures based on a Commission proposal, ensuring continuity in critical policy areas.

On 30 November 2025, the Commission received the European defence industry investment plans from Member States and assessed them in accordance with the criteria set out in the Security Action for Europe (SAFE) Regulation ⁽²⁾. The subsequent steps in the regulation's implementation are underway and progressing as planned.

The Commission considers that Article 122 TFEU is the only and appropriate legal basis for the SAFE Regulation. However, should the Court of Justice of the European Union (CJEU) ultimately annul the SAFE Regulation, this would not automatically suspend its implementation. The European Parliament has requested that the CJEU maintain the regulation's effects until it is replaced by a new act adopted under the ordinary legislative procedure.

⁽¹⁾ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E122:EN:HTML>.

⁽²⁾ <https://eur-lex.europa.eu/eli/reg/2025/1106/oj/eng>.