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REARMING EUROPE THROUGH ARTICLE 122 TFEU: 'DEFENCE READINESS', EMERGENCY GOVERNANCE AND CONSTITUTIONAL CHANGE

Marzia Genovese*

Abstract: The European Union's turn towards 'defence preparedness' has acquired a new dimension with Readiness 2030 and the Security Action for Europe (SAFE) Regulation, which mobilises up to EUR 150 billion in Union-backed loans on the basis of Article 122(1) TFEU. This article argues that such developments extend beyond the progressive expansion of EU defence policy, reflecting a broader constitutional change whereby defence objectives are increasingly embedded within the Union's economic, fiscal, financial and industrial governance. It critically examines the reliance on Article 122(1) TFEU, distinguishing its scope and legal character from Article 122(2), and considers whether SAFE can properly be characterised as a measure 'appropriate to the economic situation' or whether its aim and content point instead towards the Union's industrial-policy competence under Article 173 TFEU. Particular attention is paid to the implications of this choice for the principle of conferral, institutional balance and democratic participation. Against the background of the pending action in Case C-560/25 (Parliament v Council), the article also considers the judicial review of SAFE and the constitutional limits of Article 122(1). Ultimately, it situates the controversy within a broader transformation of European integration, asking whether the growing centrality of 'military preparedness' and emergency-oriented governance is reshaping the nature and priorities of a Union historically and constitutionally committed to the promotion of peace.

Keywords: Article 122 TFEU, ReArm Europe, Readiness 2030, SAFE Regulation, EU defence policy, emergency governance, EU industrial policy, institutional balance, constitutional change.

1 Introduction

The European Union (EU) emerged from the devastation of the Second World War as a project of peace through law. Rather than simply seeking to foster economic cooperation, its founders conceived European integration as a constitutional and political response to the nationalist rivalries that had

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repeatedly culminated in armed conflict. Robert Schuman’s Declaration of 9 May 1950 famously envisaged the establishment of a supranational framework in which war between European states would become ‘not merely unthinkable, but materially impossible’.¹ This foundational aspiration has remained embedded in the Union’s constitutional identity. Articles 2 and 3 of the Treaty on the European Union (TEU)² identify peace, democracy, the rule of law, solidarity and respect for human dignity amongst the Union’s founding values and objectives, whilst Article 21 TEU projects these principles into the EU’s external action.³

Over the past decade, however, the Union has progressively developed a more prominent defence and security profile. This evolution has not occurred through a single constitutional rupture, but through a gradual expansion of defence-related competences, industrial initiatives and strategic coordination. Instruments such as the European Defence Fund (EDF),⁴ Permanent Structured Cooperation (PESCO),⁵ the Strategic Compass⁶ and a growing emphasis on ‘strategic autonomy’⁷ have increasingly integrated defence considerations into areas traditionally associated with industrial policy, internal market governance and economic resilience. Russia’s invasion of Ukraine, in February 2022, significantly accelerated this trajectory, providing the political impetus for a series of unprecedented initiatives aimed at strengthening the European defence technological and industrial base.

¹ R Schuman, ‘Schuman Declaration’ (Paris, 9 May 1950) <<https://n9.cl/yh4td>> accessed 16 July 2026.

² For a commentary of Arts 2 and 3 TEU, see M Klamert and D Kochenov, ‘Article 2 TEU’ in M Kellerbauer, M Klamert and J Tomkin (eds), *The EU Treaties and Charter of Fundamental Rights: A Commentary* (2nd edn, Oxford Law Pro 2024) 26; H Blanke and S Mangiameli, ‘Article 3 [The Objectives of the European Union]’ in Blanke and Mangiameli (eds), *The Treaty on European Union (TEU): A Commentary* (Springer 2013) 157.

³ For a commentary of Art 21 TEU, see L Lonardo, ‘Common Foreign and Security Policy and the EU’s External Action Objectives: An Analysis of Article 21 of the Treaty on the European Union’ (2018) 14(3) *European Constitutional Law Review* 584.

⁴ See R Csernaton and B Oliveira Martins, ‘The European Defence Fund: Key Issues and Controversies’ (2019) PRIO Policy Brief No 3/19 <<https://www.prio.org/publications/11332>> accessed 16 July 2026.

⁵ See A Marrone, ‘Permanent Structured Cooperation: An Institutional Pathway for European Defence’ (2017) IAI Commentaries 17/26 <<https://n9.cl/4g7vk2>> accessed 16 July 2026.

⁶ See P Bargués, ‘The EU Strategic Compass: A Blueprint for a European *Defensive* and *Securitisation* Policy’ (2022) CIDOB Joint Brief No 16/22 <<https://n9.cl/9ctok>> accessed 16 July 2026.

⁷ See E Calcagno, ‘European Strategic Autonomy and Defence Cooperation: Not an Inevitable Outcome’ (2026) IAI Briefs No 26/23 <<https://n9.cl/2o1bcu>> accessed 16 July 2026; J Wrangé, ‘Strategic Autonomy: A “Quantum Leap Forward on” European Total Defence?’ (2026) *European Journal of International Security* 1; M Demertzis, A Fiorito and K Panitsas, *Strategic Autonomy and European Competitiveness: Security Now Comes First* (European Parliament, Policy Department for Economic, Scientific and Quality of Life Policies, Study PE 764.371, March 2025) <<https://n9.cl/lo2j2>> accessed 16 July 2026; F Santopinto, *EU Defence Industrial Policy and Strategic Autonomy: How to Square the Circle with NATO?* (Note, IRIS, November 2024) <<https://n9.cl/i55jx>> accessed 16 July 2026.

The most ambitious expression of this development is the Commission's Readiness 2030 strategy⁸ (initially presented as 'ReArm Europe'⁹), unveiled in March 2025. Rather than constituting a single legislative act, Readiness 2030 is a comprehensive policy package combining financial instruments, regulatory initiatives and industrial-policy measures designed to increase defence investment, facilitate joint procurement, reinforce the European defence industrial base and enhance the Union's military preparedness. At the centre of this package lies the Security Action for Europe (SAFE) Regulation, which establishes a €150 billion loan instrument financed through Union borrowing and, crucially, relies on Article 122(1) TFEU as its legal basis.¹⁰ This choice has generated an intense constitutional debate regarding both the scope of Article 122(1) and the broader implications of employing emergency powers to pursue long-term structural objectives in the field of defence industrial policy.

Against this background, this article asks whether the recourse to Article 122(1) TFEU for the adoption of the SAFE Regulation represents a constitutionally permissible exercise of the Union's emergency powers or whether it instead reflects an expansion of emergency governance beyond the limits established by the Treaties. More fundamentally, the article explores what this development reveals about the ongoing evolution of the Union's constitutional order. Its central argument is that the constitutional significance of Readiness 2030 extends beyond the legality of a single legal basis. Rather, SAFE constitutes the principal legal expression of a broader transformation in the Union's model of governance, whereby emergency procedures increasingly become instruments for pursuing structural policy objectives that would ordinarily be adopted through the ordinary legislative process.

The article therefore develops two complementary arguments. At the doctrinal level, it critically examines the use of Article 122(1) TFEU as the legal basis for SAFE, distinguishing its scope and legal character from Article 122(2) and assessing the limits of the competence it confers, its relationship with other Treaty legal bases and its implications for the principles of conferral and institutional balance and for the role of the European Parliament (EP). Particular attention is paid to whether SAFE can genuinely be characterised as a measure 'appropriate to the economic situation' within the meaning of Article 122(1), or whether its aim and content point instead towards the Union's industrial-policy competence under Article 173 TFEU. At the constitutional level, the article argues that SAFE, situated within the broader Readiness 2030 strategy,

⁸ European Commission and High Representative of the Union for Foreign Affairs and Security Policy, *Joint White Paper for European Defence Readiness 2030* JOIN(2025) 120 final, 19 March 2025.

⁹ J Liboreiro, 'Brussels Rebrands "ReArm Europe" Plan after Backlash from Leaders of Italy and Spain' (*Euronews*, 21 March 2025) <<https://n9.cl/9yeav>> accessed 16 July 2026.

¹⁰ 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 [2025] OJ L2025/1106.

illustrates a wider trajectory towards the normalisation of emergency-oriented governance, in which legal mechanisms justified by exceptional circumstances increasingly facilitate structural transformations in the Union's policies, financial architecture and institutional relationships. This trajectory raises the broader question of whether an 'EU emergency constitution' is gradually taking shape. Rather than treating the legality of SAFE as an isolated question of legal basis, the article thus situates it within a broader process of constitutional change, raising questions about democratic legitimacy and the changing priorities and nature of European integration.

2 From peace through integration to European 'defence readiness'

European integration emerged as a project intended to prevent the recurrence of war amongst European states,¹¹ but this peace-oriented foundation should not be equated with the rejection of security interests, strategic power or defence cooperation. The European Coal and Steel Community itself placed materials essential to military production under a common supranational authority.¹² Its distinctive contribution was therefore not to remove strategic concerns from European politics, but to subject them to legal, institutional and economic interdependence.¹³ The objective was to constrain the unilateral exercise of national power and make armed conflict amongst the participating states materially and politically less conceivable.¹⁴

Nor did European integration develop exclusively within a pacifist or purely civilian institutional environment. During the Cold War, the security of Western Europe remained closely connected to the North Atlantic Treaty Organization (NATO)¹⁵ and to the defence responsibilities of its Member States, whilst early attempts to establish a European Defence Community demonstrated that questions of military integration were present from the beginning, even though that project ultimately failed.¹⁶ The subsequent development of European foreign, security and defence cooperation was gradual and institutionally

¹¹ See M Eilstrup-Sangiovanni and D Verdier, 'European Integration as a Solution to War' (2005) 11(1) *European Journal of International Relations* 99.

¹² C Wankel (ed), 'European Coal and Steel Community', *Encyclopedia of Business in Today's World* (SAGE Publications 2009) 621.

¹³ See D Petzina, WF Stolper and M Hudson, 'The Origin of the European Coal and Steel Community: Economic Forces and Political Interests' (1981) 137(3) *Journal of Institutional and Theoretical Economics* 450.

¹⁴ See N Hudson, *The European Coal and Steel Community: The Path Towards European Integration* (thesis, Portland State University 2016) <<https://pdxscholar.library.pdx.edu/honorstheses/276/>> accessed 22 July 2026.

¹⁵ R Griffiths, 'The European Defence Community' in E Hannah (ed), *Oxford Research Encyclopedia of Politics* (online edn, Oxford Academic 2020).

¹⁶ Most notably, the Treaty establishing the European Defence Community, signed in 1952, envisaged the creation of a European army under a common political and military authority, but the project ultimately failed following the refusal of the French National Assembly to ratify the Treaty in 1954.

differentiated rather than absent. The Maastricht Treaty established the Common Foreign and Security Policy,¹⁷ whilst the subsequent development of the European Security and Defence Policy, later renamed the Common Security and Defence Policy, enabled the Union to conduct civilian and military crisis-management missions.¹⁸ These arrangements retained strongly intergovernmental features, particularly unanimity and the central role of the Member States,¹⁹ but they also became increasingly embedded within the wider EU legal and institutional order.

The Lisbon Treaty further consolidated this evolution. It expressly provided for Permanent Structured Cooperation in Articles 42(6) and 46 TEU and Protocol No 10, allowing participating Member States that fulfilled higher military-capability criteria and made more binding commitments to deepen their cooperation in defence. PESCO, formally established in 2017, was therefore not inconceivable within the Union's constitutional order, but rather represented the implementation of a mechanism expressly envisaged by the Treaties. Its significance lies instead in the extent to which previously underused Treaty provisions began to support more systematic cooperation in capability development, investment and 'operational readiness'.²⁰

Defence cooperation also progressively extended beyond the intergovernmental framework of the CFSP and CSDP into supranational areas of Union policy. The European Defence Fund, established by Regulation (EU) 2021/697 through the ordinary legislative procedure, uses the EU budget to support collaborative research and development in defence products and technologies and to strengthen the competitiveness and innovation capacity of the European defence industry.²¹ Unlike traditional military operations, these initiatives are located at the intersection of defence, industrial policy, research, procurement, technological sovereignty and the internal market.²² The resulting constitutional landscape is therefore hybrid: Member States retain primary responsibility for their armed forces and defence choices, whilst Union

¹⁷ Arts J.1–J.11 TEU (Maastricht version).

¹⁸ See G Lori, *The EU Common Security and Defence Policy: Historical Development, Current Status and Future Challenges* (thesis, Luiss Guido Carli University 2020) <<https://n9.cl/9h78y>> accessed 22 July 2026.

¹⁹ See L Blotti, *The Construction of a Common Foreign, Security and Defence Policy in the EU and the Issue of Unanimity* (thesis, Luiss Guido Carli University 2022) <<https://n9.cl/difsc>> accessed 22 July 2026.

²⁰ See S Blockmans and D Macchiarini Crosson, 'PESCO: A Force for Positive Integration in EU Defence' (2021) 26 *European Foreign Affairs Review* 87.

²¹ G Ianakiev, 'The European Defence Fund: A Game Changer for European Defence Industrial Collaboration' (2019) ARES Group Policy Paper No 48 <<https://n9.cl/2eftc>> accessed 22 July 2026.

²² See D Fiott, 'From Liberalisation to Industrial Policy? Towards a Geoeconomic Turn in the European Defence Market?' (2024) 62(4) *Journal of Common Market Studies* 1012.

institutions increasingly shape the economic, industrial and financial conditions under which European defence capabilities are developed.²³

Russia's invasion of Ukraine in February 2022 accelerated and broadened this trajectory.²⁴ Defence investment, industrial production, joint procurement, military mobility, security of supply and 'strategic autonomy' moved closer to the centre of the Union's policy agenda. The novelty of the post-2022 period lies not simply in the Union becoming a 'defence actor', since that process had been developing for several decades. It lies in the increasing integration of defence objectives into policy fields traditionally governed through the Union's economic and regulatory instruments, as well as in the scale, speed and financial ambition of the measures adopted or proposed.²⁵

Readiness 2030 – initially presented as the 'ReArm Europe' Plan – constitutes the most extensive expression of this shift.²⁶ It is not a single legal instrument but a broad political and financial framework set out principally in the Joint White Paper for European Defence Readiness 2030. Its stated objectives include closing critical capability gaps, replenishing military stocks, supporting Ukraine, increasing collaborative procurement and strengthening a competitive European defence technological and industrial base. The framework combines several distinct mechanisms: the SAFE loan instrument; the coordinated activation of the national escape clause under the Stability and Growth Pact;²⁷ greater flexibility in the use of existing Union funds, including cohesion-policy resources; increased European Investment Bank support for security and defence projects; and efforts to mobilise private capital for the defence industry. The Commission estimated that these mechanisms could facilitate at least EUR 800 billion in additional defence expenditure over four years.²⁸

SAFE is the principal binding legal instrument through which this broader strategy has been operationalised. Council Regulation (EU) 2025/1106 establishes a Union lending scheme of up to EUR 150 billion to provide financial assistance to Member States undertaking defence investments primarily through common procurement.²⁹ The loans are financed through borrowing by the Union

²³ See C Hoeffler, 'Beyond the Regulatory State? The European Defence Fund and National Military Capacities' (2023) 30(7) *Journal of European Public Policy* 1281.

²⁴ See LF Hellemeier, 'Europe's Defence Industry More Than Two Years after Russia's Full-scale Invasion' (2024) 11 *European Review of International Studies* 439.

²⁵ See D Fiott, 'From Inertia to Innovation? Five Years of the European Defence Fund, 2021-2025' (2026) CSDS Policy Brief No 12 <<https://n9.cl/tmif0>> accessed 22 July 2026.

²⁶ Readiness 2030 (n 8).

²⁷ Council of the European Union, 'National escape clause for defence expenditure' <<https://n9.cl/2rscji>> accessed 19 August 2026.

²⁸ See A Gilli, M Gilli and N Petrelli, 'Strategic Readiness 2030: European Security through Strategic Thinking' (IEP@BU Policy Brief No 46, Institute for European Policymaking at Bocconi University, September 2025) <<https://n9.cl/37feuy>> accessed 22 July 2026.

²⁹ SAFE Regulation (n 10).

and backed by the EU budget. Financial assistance is allocated on the basis of national defence investment plans, whilst the instrument encourages common procurement, supports the adaptation and expansion of the European defence technological and industrial base and permits, under specified conditions, the participation of Ukraine and certain partner countries. The scheme is temporary in formal terms, as the period of availability of the loans ends on 31 December 2030, but it is designed to support industrial adaptation and capability development extending over several years.³⁰

Against this background, the novelty of Readiness 2030 lies not in the emergence of an EU defence policy as such, but in the scale, cross-policy reach and constitutional means through which it is now being pursued. The Union had already developed defence missions, capability-coordination mechanisms, research funding and industrial-support programmes. Readiness 2030 does not therefore create European defence policy *ex nihilo*. Rather, defence objectives are increasingly pursued not only through CFSP structures, dedicated defence programmes and ordinary legislative instruments, but also through fiscal surveillance, Union borrowing, investment policy, emergency-oriented economic decision-making and even the possibility of redirecting cohesion-policy resources towards defence-related investments. Readiness 2030 thus contributes to embedding ‘military preparedness’ within the Union’s broader system of economic governance.

This article’s concern is accordingly not that any development of Union defence capacity is intrinsically incompatible with the EU’s peace-oriented foundations. The constitutional question is how that development is being pursued. In particular, the adoption of SAFE on the basis of Article 122(1) TFEU places a structural defence-industrial initiative within a procedure that excludes the European Parliament as co-legislator and empowers the Council to act, on a Commission proposal, through measures deemed appropriate to the economic situation. Readiness 2030 thus marks not merely a further stage in European defence cooperation but a potential change in its constitutional mode: the use of economic and exceptional decision-making instruments to accelerate long-term defence integration through procedures that depart from the ordinary legislative processes.

The significance of this development is both legal and political. At the doctrinal level, it raises questions concerning the material scope of Article 122(1) TFEU, the choice of legal basis, the principle of conferral and the institutional balance between the Council, Commission and Parliament. At the constitutional level, it illustrates how the language of urgency and emergency may facilitate transformations that extend beyond temporary crisis management and reshape

³⁰ See K Munungu, ‘The SAFE Regulation: Strengthening Europe’s Defence Industrial Base Through Strategic Financial Support’ (*Bird&Bird*, 2 July 2025) <<https://n9.cl/67vjq>> accessed 22 July 2026.

the Union's policy priorities, financial architecture and democratic procedures. One issue is therefore whether the legal means employed preserve the democratic and constitutional constraints through which such strategic choices should be made.

A further question concerns the substantive direction of this transformation. The Treaties do not establish an opposition between peace and defence: Article 3(1) TEU identifies the promotion of peace as one of the Union's aims, whilst Article 21(2)(c) TEU expressly connects the preservation of peace and prevention of conflict with the strengthening of international security. The development of defence capabilities may therefore be understood as serving the Union's peace-oriented objectives. What requires closer scrutiny, however, is whether this relationship is itself being transformed. As military preparedness, defence-industrial capacity and readiness become increasingly embedded across the Union's economic and regulatory policies, defence risks evolving from an instrument pursued in the service of peace and security into a more autonomous organising objective of European integration.

The constitutional significance of Readiness 2030 and SAFE must therefore be assessed not only in terms of competence and procedure, but also in terms of the kind of political and legal order that these developments are progressively constructing. The question is not whether the Union may defend itself or contribute to the defence capabilities of its Member States, but whether the normalisation of 'military readiness' – particularly when advanced through emergency-oriented forms of economic governance – may gradually reconfigure the hierarchy of objectives through which the European project understands itself. If so, the transformation at stake would concern more than defence policy: it would touch upon the Union's constitutional identity and raise the question whether an integration project increasingly structured around preparedness for military confrontation remains consistent with the Treaty commitment to promote peace, or instead reflects a deeper constitutional change occurring without an explicit process of constitutional revision.

3 Exceptionalism, emergency and democratic legitimacy

The increasing integration of defence into Union policy does not depend on emergency or exceptional powers alone. As the preceding section has shown, the EU has progressively developed its security and defence capacity through a heterogeneous legal architecture encompassing the CFSP and CSDP, PESCO, defence research and industrial policy, and instruments concerning procurement and the European defence market. What makes Readiness 2030 constitutionally significant is therefore not the replacement of those mechanisms by emergency governance, but the addition of a different mode of action to this architecture. Most notably, the SAFE Regulation was adopted solely on the basis of Article 122(1) TFEU, thereby mobilising an economic-policy legal basis and its

distinctive decision-making procedure in support of a large-scale and longer-term defence-industrial initiative.³¹

Any assessment of this development must begin by distinguishing the two legal bases contained in Article 122 TFEU.³² Under Article 122(1), the Council, acting on a proposal from the Commission and ‘in a spirit of solidarity between Member States’, may decide on measures appropriate to the economic situation, ‘in particular if severe difficulties arise in the supply of certain products, notably in the area of energy’. Article 122(2), by contrast, concerns Union financial assistance to a Member State that ‘is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control’. The textual connection with exceptional circumstances is thus considerably more explicit in paragraph 2 than in paragraph 1. The two provisions should consequently not be collapsed into a single, undifferentiated emergency competence.³³

Indeed, the constitutional character of Article 122(1) is contested. A significant strand of EU scholarship situates Article 122 within the Union’s developing architecture of emergency law, particularly in light of its repeated mobilisation during recent economic, health and energy crises.³⁴ Yet Chamon has specifically challenged the proposition that Article 122(1) constitutes an exclusively emergency-based competence. On the basis of a textual, historical, systemic and teleological interpretation, he argues that the provision may instead be understood as conferring a broader Union economic-policy competence, capable of operating outside strictly defined emergency situations.³⁵ This interpretation has important consequences for the present analysis. If Article 122(1) is not legally confined to emergencies, the objection to SAFE cannot simply be that defence readiness is not sufficiently sudden, temporary or exceptional to trigger an ‘emergency clause’. The more precise question is whether, having regard to the aim and content of SAFE, the instrument falls within the material scope of Article 122(1) as a measure ‘appropriate to the economic situation’, or whether its predominant purpose instead belongs to another field of Union competence carrying a different procedure.

³¹ See M Leson, ‘Moving towards a SAFE Defense Policy in Europe: Emergency Powers Move into the Realm of Security and Defense Policy’ (*Verfassungsblog*, 12 September 2025) <<https://n9.cl/dealr>> accessed 18 August 2026.

³² For a commentary of this provision, see A Weber and S Pilz, ‘Article 122 [Solidarity]’ in R Böttner and H Blanke (eds), *Treaty on the Functioning of the European Union – A Commentary, Volume II: Articles 90–164* (Springer 2024) 597.

³³ See M Chamon, ‘The Non-Emergency Economic Policy Competence in Article 122(1) TFEU’ (2024) 61(6) *Common Market Law Review* 1501.

³⁴ See B de Witte, ‘EU Emergency Law and Its Impact on the EU Legal Order’ (2022) 59(1) *Common Market Law Review* 3; C Cinnirella, ‘“Emergency Powers” of the European Union: An Inquiry on the Supranational Model’ (2025) 10(3) *European Papers* 525.

³⁵ Chamon (n 33) 1501–1526.

This distinction also requires greater precision as to what is meant in this article by the ‘stretching’ of Article 122(1). The term does not suggest that every innovative use of a Treaty legal basis is unlawful, nor that recourse to a procedure excluding the European Parliament as co-legislator is inherently illegitimate. Article 122 deliberately confers decision-making authority upon the Council, acting on a proposal from the Commission, without providing for the Parliament’s participation as co-legislator.³⁶ The capacity to take decisions without following the ordinary legislative procedure may facilitate the rapid adoption of measures in circumstances requiring an effective Union response. The mere fact that Article 122 permits swifter decision-making cannot therefore constitute an objection to its use: this institutional configuration is part of the Treaty framework itself.

The constitutional difficulty arises at a different level. Under the Court of Justice’s settled legal-basis doctrine, the choice of the legal basis of a Union measure must rest on objective factors amenable to judicial review, including in particular the measure’s aim and content.³⁷ The procedural consequences of that choice cannot themselves justify selecting a particular legal basis. ‘Stretching’, in the sense employed here, therefore occurs where the connection between the aim and content of a measure and the material conditions of Article 122(1) becomes insufficient to sustain recourse to that provision, particularly where another Treaty competence more specifically corresponds to the measure’s centre of gravity. The democratic concern is consequently conditional upon the competence question: exceptional or expedited procedures are not objectionable simply because they reduce parliamentary participation, but their use becomes constitutionally problematic if an expansive interpretation of their substantive scope permits them to displace legal bases under which Parliament would exercise legislative authority.

SAFE brings that question into particularly sharp focus. Regulation (EU) 2025/1106 establishes an instrument providing up to EUR 150 billion in Union financial assistance in the form of loans to Member States for defence investment through common procurement. The Regulation situates those measures within the exceptional security situation generated by the war in Ukraine and the perceived need to rapidly increase European defence capabilities and defence-industrial production capacity.³⁸ The sensed deterioration of the European security environment, capability shortages and pressures upon European

³⁶ See M Chamon, *The Use of Article 122 TFEU: Institutional Implications and Impact on Democratic Accountability* (European Parliament, Policy Department for Citizens’ Rights and Constitutional Affairs 2023).

³⁷ See, *inter alia*, Case C-300/89 *Commission v Council (Titanium Dioxide)* EU:C:1991:244, para 10; Case C-178/03 *Commission v Parliament and Council* EU:C:2006:4, paras 41–43; Case C-377/12 *Commission v Council* EU:C:2014:1903, paras 34–36.

³⁸ SAFE Regulation, Recitals 1–10.

defence production constitute the political context against which the appropriateness of Union action must be assessed.

At the same time, urgency does not dispense with the requirements governing the choice of legal basis. SAFE finances defence investment through common procurement, seeks to increase European defence-industrial production capacity and contributes to strengthening the European Defence Technological and Industrial Base. The relevant question is therefore whether these objectives remain sufficiently connected to the ‘economic situation’ contemplated by Article 122(1), or whether the instrument’s aim and content reveal a predominantly defence-industrial measure for which another Treaty legal basis should have been used. This question is no longer merely hypothetical. In Case C-560/25 *European Parliament v Council*, the Parliament seeks the annulment of the SAFE Regulation, arguing, first, that Article 122 TFEU constitutes an incorrect legal basis and that the Regulation should instead have been adopted under Article 173 TFEU, concerning Union industrial policy; and, secondly, that the Council infringed Article 296 TFEU by failing adequately to state the reasons for its choice of legal basis.³⁹ The pending proceedings thus place the relationship between competence, urgency and parliamentary participation at the centre of an actual constitutional dispute.

The democratic dimension of Article 122 should accordingly be framed with similar care. The absence of the European Parliament from the procedure is not *per se* contrary to the Treaties. Nevertheless, the interpretation given to Article 122(1) has consequences for institutional balance, because the choice of legal basis determines not only the substantive limits of Union action but also the institutions participating in its adoption. Chamon’s analysis is instructive in this respect. Even while defending a broader, non-emergency conception of Article 122(1), he recognises that such an interpretation creates a risk of conferring insufficiently constrained executive power on the Council, and therefore argues for safeguards capable of preserving the horizontal and vertical balances of power within the Union.⁴⁰ The constitutional issue is whether a broadly construed non-legislative competence may progressively substitute for legal bases that provide for parliamentary co-legislation when the measures concerned acquire a structural and long-term character.

It is against this doctrinal background that the concepts of emergency and exceptionalism become relevant. Comparative constitutional scholarship does not establish a mechanical rule requiring every provision associated with an emergency to receive the same restrictive interpretation. It does, however, identify a fundamental tension inherent in emergency government: legal orders must provide public authorities with sufficient capacity to confront extraordinary

³⁹ Case C-560/25 *European Parliament v Council*, action brought on 20 August 2025, OJ C, C/2025/5209, 6 October 2025.

⁴⁰ Chamon (n 36) 19–23.

circumstances whilst simultaneously defining the conditions and limits under which exceptional powers may be exercised.⁴¹ A similar concern has increasingly emerged in EU constitutional scholarship. De Witte identifies a developing body of ‘EU emergency law’ arising from the Union’s responses to successive crises;⁴² Nicolosi conceptualises a ‘European Emergency Constitution’ comprising Treaty provisions enabling accelerated or exceptional Union responses;⁴³ and Cinnirella has more recently sought to reconstruct a supranational model of emergency powers from a broader set of Treaty provisions, including, but not limited to, Article 122(1) and (2) TFEU.⁴⁴ Bellenghi, meanwhile, emphasises the conceptual importance of distinguishing an ‘emergency’ from the broader and more malleable notion of ‘crisis’, precisely because uncertainty over the conditions triggering exceptional powers may weaken the constitutional limits imposed on their exercise.⁴⁵ Leino-Sandberg and Ruffert warn that Article 122 could develop into a new ‘super competence’ operating without effective democratic scrutiny, partly because of Parliament’s extremely limited role.⁴⁶

The argument advanced here does not depend on categorising Article 122(1) conclusively as an emergency clause. Rather, ‘exceptionalism’ describes a mode of governance in which conditions of urgency facilitate reliance on decision-making procedures that depart from ordinary parliamentary legislation and concentrate authority in the Council and Commission. Such procedures may be entirely justified where their Treaty conditions are satisfied. The constitutional problem emerges when their material boundaries become sufficiently elastic that they can support interventions whose objectives and effects are structural rather than merely responsive, thereby allowing exceptional modes of decision-making to participate in the construction of durable policy architectures. In the context of Readiness 2030, this question assumes particular significance because SAFE is not merely an isolated response to a temporary supply disruption: it forms part of a broader and longer-term reorientation of the Union towards military preparedness. The issue is therefore not whether the Union may act urgently in response to serious security threats, but whether urgency can progressively become a constitutional technique through which long-term transformations of Union policy are pursued with reduced parliamentary participation. It is to the

⁴¹ See, eg, B Ackerman, ‘The Emergency Constitution’ (2004) 113 Yale Law Journal 1029; D Dyzenhaus, *The Constitution of Law: Legality in a Time of Emergency* (CUP 2006); A Greene, *Emergency Powers in a Time of Pandemic* (Bristol University Press 2020).

⁴² de Witte (n 34) 3–8.

⁴³ SF Nicolosi, ‘Emergency Legislation in European Union Law’ in T van den Brink and V Passalacqua (eds), *Balancing Unity and Diversity in EU Legislation* (Edward Elgar 2024) 61–79.

⁴⁴ Cinnirella (n 34) 525–553.

⁴⁵ G Bellenghi, ‘Neither Normalcy nor Crisis: The Quest for a Definition of Emergency under EU Constitutional Law’ (2026) 17(1) European Journal of Risk Regulation 20.

⁴⁶ See P Leino-Sandberg and M Ruffert, ‘Next Generation EU and Its Constitutional Ramifications: A Critical Assessment’ (2022) 59(2) Common Market Law Review 433. See also, M Chamon, ‘The Rise of Article 122 TFEU: On Crisis Measures and the Paradigm Change’ (*Verfassungsblog*, 1 February 2023) <<https://n9.cl/l0879y>> accessed 23 July 2026.

risks associated with the normalisation of this form of exceptional governance that the following section turns.

4 The risks of normalising exceptional governance

The constitutional concern identified in the preceding section does not arise from the existence of mechanisms enabling the Union to respond rapidly to exceptional circumstances. A political and legal order confronted with successive financial, health, energy and security crises requires sufficient institutional capacity to act effectively. The difficulty arises when decision-making arrangements justified by urgency produce effects extending beyond the circumstances that initially motivated their use and become incorporated into the ordinary structures of governance. EU crisis governance has already demonstrated this capacity for institutional persistence: scholarship on the euro crisis, for example, has shown how measures adopted under exceptional conditions may produce lasting changes in the distribution of authority and in the Union's constitutional balance.⁴⁷ Kreuder-Sonnen conceptualises a comparable phenomenon as the potential 'normalisation' of emergency powers, whereby crisis-induced expansions of authority leave durable effects on the institutional order even after the circumstances justifying them have receded.⁴⁸

In the context examined here, this distinction is particularly important. As argued above, Article 122(1) TFEU should not simply be treated as synonymous with an emergency clause, and its use outside narrowly conceived emergencies is itself defended in the literature. The risk of normalisation identified in this article is therefore more specific: it concerns the possibility that repeated reliance on procedures associated with urgency and reduced parliamentary participation may progressively alter the institutional, constitutional and political baseline against which Union decision-making takes place. The following analysis distinguishes four dimensions of that risk: institutional and democratic, constitutional-theoretical, legal, and social-political.

4.1 Institutional and democratic risks: parliamentary participation and constitutional balance

The Council already exercises legislative functions under the Treaties, whilst the Commission possesses the power of legislative initiative⁴⁹ and exercises extensive executive and regulatory functions.⁵⁰ The more precise issue is that measures based on Article 122 are adopted by the Council on a proposal from

⁴⁷ See M Dawson and F de Witte, 'Constitutional Balance in the EU after the Euro-Crisis' (2013) 76(5) *Modern Law Review* 817.

⁴⁸ C Kreuder-Sonnen, *Emergency Powers of International Organizations: Between Normalization and Containment* (OUP 2019), especially chs 2, 5 and 7.

⁴⁹ Art 17(2) TEU.

⁵⁰ Arts 290 and 291 TFEU.

the Commission without the European Parliament acting as co-legislator. The increasing use of that provision may therefore shift decision-making towards institutional configurations in which parliamentary participation is reduced.⁵¹

As emphasised in the preceding section, the Treaties themselves provide for differentiated procedures, and the capacity to act without following the ordinary legislative procedure may be indispensable where rapid action is required. Nor can the degree of parliamentary participation determine the appropriate legal basis: according to the Court's settled case law,⁵² that choice follows from objective factors, particularly the aim and content of the measure. The democratic concern arises instead when procedures characterised by reduced parliamentary involvement cease to operate as exceptional or context-specific mechanisms and increasingly become vehicles for policy choices of a structural character.

The issue is therefore one of constitutional balance. Dawson and de Witte demonstrated, in the context of the euro crisis, how crisis-driven institutional reforms can produce lasting changes in the Union's substantive, institutional and spatial constitutional balances.⁵³ Kreuder-Sonnen similarly argues that comparatively weak regulation of emergency politics at EU level may facilitate expansions of executive discretion that leave permanent effects upon the Union's authority structures and democratic legitimacy.⁵⁴ These analyses do not establish that every use of Article 122 produces democratic erosion. They nevertheless identify a structural risk relevant to its repeated use: institutional practices developed for circumstances requiring unusual decisiveness may gradually influence the distribution of authority under conditions that are increasingly removed from the paradigm of temporary crisis response.

The Parliament itself has expressed concern about its position in the emerging European defence architecture. In its March 2025 resolution on the future of European defence, it called for stronger parliamentary scrutiny and democratic accountability in this field.⁵⁵ The constitutional question is therefore whether repeated reliance on legal bases excluding the Parliament from co-legislation may progressively reduce parliamentary influence over major choices concerning expenditure, borrowing, industrial policy and defence. That risk becomes

⁵¹ See R Mañko, *Legal Bases in Article 122 TFEU: Tackling Emergencies Through Executive Acts* (European Parliamentary Research Service, April 2025) PE 769.579. See also B Dias Pinheiroa and CS Dias, 'Parliaments' Involvement in the Recovery and Resilience Facility' (2022) 28(3) *The Journal of Legislative Studies* 332.

⁵² See n 37 above.

⁵³ M Dawson and F de Witte, 'From Balance to Conflict: A New Constitution for the EU' (2016) 22(2) *European Law Journal* 204.

⁵⁴ See C Kreuder-Sonnen, 'Does Europe Need an Emergency Constitution?' (2023) 71(1) *Political Studies* 125.

⁵⁵ European Parliament, 'White Paper on the Future of European Defence' (Resolution) P10_TA(2025)0034, 12 March 2025.

particularly salient where the instruments concerned establish policies whose consequences extend well beyond the immediate circumstances invoked to justify their adoption.

4.2 Constitutional-theoretical risks: from exception to structural transformation

The problem can also be approached through the broader constitutional theory of emergency government.⁵⁶ Emergency powers embody an unavoidable tension. They seek to preserve a constitutional order by permitting departures from the procedures or distributions of authority applicable under ordinary conditions, yet precisely for that reason they create the possibility that exceptional allocations of authority may alter the constitutional order they were intended to protect. Ackerman's theory of the 'emergency constitution' responds to this dilemma by emphasising the need to structure emergency powers so that extraordinary authority does not become indefinitely entrenched.⁵⁷

Agamben's account of the 'state of exception' offers a more radical interpretation. For Agamben, the central danger lies in the tendency of exceptional government to become a durable technique of governance rather than a genuinely temporary response to extraordinary circumstances.⁵⁸ His theory should not be transposed directly into EU positive law: the Union does not possess a general state-of-exception regime comparable to the constitutional arrangements from which much of this literature derives, and recourse to Article 122(1) does not suspend the application of EU law. However, it is still highly relevant insofar as it draws attention to the possibility that the distinction between exceptional and ordinary governance may progressively become blurred when urgency becomes a recurring justification for institutional practices that subsequently acquire structural significance.

EU-specific scholarship provides a more directly applicable framework. Kreuder-Sonnen defines international-organisation exceptionalism in terms of crisis-induced expansions of executive discretion justified by exceptional necessity, and demonstrates how such expansions may produce either a 'ratchet' effect, through which authority gains become normalised, or subsequent institutional containment.⁵⁹ His analysis of the euro crisis is particularly pertinent because it illustrates how emergency politics may result not simply in temporary crisis management, but in structural transformation. More recently,

⁵⁶ See, *inter alia*, Z Szente, 'Conceptualising State of Emergency, Constitutional Crisis Management and Their Rule-of-Law Requirements' (2025) 16 *European Journal of Risk Regulation* 374; A Greene, *Permanent States of Emergency and the Rule of Law: Constitutions in an Age of Crisis* (Hart Publishing 2020).

⁵⁷ Ackerman (n 41) 1029.

⁵⁸ G Agamben, *State of Exception* (University of Chicago Press 2005).

⁵⁹ Kreuder-Sonnen (n 48), especially chs 2, 5 and 7.

Bellenghi has emphasised that emergency law performs a dual constitutional function: it must enable authorities to confront emergencies whilst simultaneously delimiting the circumstances under which extraordinary powers may legitimately be invoked.⁶⁰

In relation to the EU's defence policy, the concern is that the cumulative use of urgency-oriented mechanisms may contribute to constitutional change through practice rather than formal Treaty amendment. Where institutional arrangements developed in response to exceptional circumstances become mechanisms through which long-term fiscal, industrial or strategic priorities are implemented, the boundary between crisis response and ordinary policy formation becomes constitutionally significant.

4.3 Legal risks: conferral, legal basis and judicial control

The legal risks associated with the normalisation of exceptional governance require careful differentiation between the two legal bases contained in Article 122 TFEU. In this respect, *Pringle* provides an important point of reference in relation to Article 122(2).⁶¹ Hence, the judgment cannot be read as establishing a general doctrine governing the scope of Article 122(1). In *Pringle*, the Court observed that Article 122(2) enables the Union to grant *ad hoc* financial assistance to a Member State experiencing, or seriously threatened with, severe difficulties caused by natural disasters or exceptional occurrences beyond its control. It further concluded that Article 122(2) could not constitute an appropriate legal basis for the permanent stability mechanism envisaged by the European Council, having regard to both the permanent character of that mechanism and its objective of safeguarding the financial stability of the euro area as a whole.⁶² The judgment therefore demonstrates that the specific substantive conditions laid down in Article 122(2) impose limits on the measures that may be adopted on that legal basis; it does not establish an equivalent requirement of temporariness or emergency for Article 122(1).

For the purposes of Article 122(1), the broader legal concern instead follows from the principles of conferral and correct legal-basis selection. Under Article 5(1) and (2) TEU, the Union may act only within the limits of the competences conferred upon it by the Member States.⁶³ The Court has consistently held that the choice of legal basis for a Union measure must rest on objective factors amenable to judicial review, including in particular the measure's aim and

⁶⁰ Bellenghi (n 45) 20–39.

⁶¹ Case C-370/12 *Pringle v Government of Ireland and Others* EU:C:2012:756.

⁶² *ibid.*, para 65. For a commentary of the judgment, see G Beck, 'The Legal Reasoning of the Court of Justice and the Euro Crisis: The Flexibility of the Court's Cumulative Approach and the *Pringle* Case' (2013) 20(4) *Maastricht Journal of European and Comparative Law* 635.

⁶³ For a commentary of the provision, see H Blanke and S Mangiameli, 'Article 5 [Principles on the Distribution and Limits of Competences]' in Blanke and Mangiameli (eds), *The Treaty on European Union (TEU): A Commentary* (Springer 2013) 255.

content.⁶⁴ Normalisation becomes constitutionally problematic if repeated recourse to a broadly construed legal basis progressively loosens the connection between the substantive limits of that competence and the measures adopted pursuant to it. In that situation, the issue is not simply one of excessive emergency government as a matter of political theory, but of possible circumvention of the Treaty rules governing competence, legal basis and institutional participation.

This is also why judicial review is an essential component of the constitutional management of exceptional governance. Bellenghi's analysis of the European Parliament's proposed EU state-of-emergency clause⁶⁵ stresses the relationship between extraordinary powers, constitutional safeguards, competence allocation and judicial control.⁶⁶ Kreuder-Sonnen similarly identifies legal and political constraints upon emergency authority as essential to preventing temporary expansions of discretion from producing unchecked structural changes.⁶⁷ Judicial scrutiny can therefore distinguish legitimate adaptation to exceptional circumstances from changes that require a different legal basis, procedure or ultimately Treaty amendment.

In the specific context of SAFE, that function of judicial control is already being tested rather than remaining a hypothetical possibility. As previously noted, in Case C-560/25, the Parliament seeks annulment of Regulation 2025/1106, arguing that Article 122 TFEU constitutes an incorrect legal basis because, in light of its aim and content, SAFE concerns the development of Union industrial policy in the field of defence under Article 173 TFEU. It additionally alleges infringement of Article 296 TFEU through insufficient reasoning concerning the choice of legal basis.⁶⁸ The pending case should therefore provide an important opportunity for the Court to clarify the material limits of Article 122 in the context of the Union's expanding defence-industrial policy. It also illustrates why disputes over exceptional governance ultimately concern not only political legitimacy, but also the judicially enforceable allocation of competences and institutional authority under the Treaties.⁶⁹

⁶⁴ *Titanium Dioxide* (n 37) para 10; *Commission v Parliament and Council* (n 37) paras 41–43; *Commission v Council* (n 37) paras 34–36.

⁶⁵ European Parliament resolution of 22 November 2023 on proposals of the European Parliament for the amendment of the Treaties (2022/2051(INL)) [2024] OJ C, C/2024/4216.

⁶⁶ G Bellenghi, 'The European Parliament's Proposal for an EU State of Emergency Clause: A Comparative and Constitutional Analysis' (2024) 20 *Croatian Yearbook of European Law and Policy* 1.

⁶⁷ Kreuder-Sonnen (n 48), especially chs 2 and 7.

⁶⁸ *Parliament v Council* (n 39).

⁶⁹ See V Krelinger, 'Backbenchers Don't Really Fight Back Yet: Parliaments in EU Defence Policy' in G von Sydow and V Krelinger (eds), *Who Calls the Shots? Institutional and Political Dynamics in European Defence* (SIEPS Report No 10p, Swedish Institute for European Policy Studies 2026) 80–91.

4.4 Social and political risks: crisis narratives, contestation and legitimacy

The social implications of Readiness 2030 reveal a different dimension of the constitutional transformation examined in this article. The issue is not simply whether increased defence expenditure is economically sustainable, but what conception of ‘security’ the Union is progressively privileging and what competing public priorities may consequently receive fewer political and financial resources. Readiness 2030 predominantly conceptualises security through ‘military preparedness’, defence-industrial capacity and the ability of Member States to increase defence expenditure. Yet security can also be understood in broader terms, encompassing access to healthcare, social protection, housing, education, environmental resilience and the economic conditions necessary for social cohesion.⁷⁰ The political choice between these priorities becomes particularly significant when rearmament takes place against a background of constrained public finances and persistent deficiencies in European welfare systems.⁷¹

Healthcare provides a particularly tangible illustration of this tension. In several Member States, health systems continue to face shortages of healthcare professionals, service backlogs and long waiting times, whilst demographic ageing is increasing demand for health and long-term care, and the consequences of the COVID-19 pandemic continue to expose and exacerbate pre-existing structural weaknesses.⁷² Cioffi and Cecanneccchia therefore identify the increase in defence spending associated with ReArm Europe as presenting an opportunity-cost problem: additional resources devoted to military capabilities are resources that, depending upon national fiscal choices, might alternatively contribute to strengthening health systems, improving working conditions, expanding infrastructure and increasing preparedness for future health emergencies.⁷³ This does not mean that every euro spent on defence necessarily produces an equivalent reduction in healthcare expenditure. It nevertheless reveals an important distributive question: when fiscal resources and borrowing capacity are finite, the decision to privilege ‘military preparedness’ does affect the political space within which other forms of collective security are financed.

This tension is particularly relevant because a substantial part of Readiness 2030 operates through national fiscal policy. The activation of the national escape clause permits participating Member States to deviate from their net

⁷⁰ See United Nations Development Programme, *Human Development Report 1994: New Dimensions of Human Security* (OUP 1994) 22–25.

⁷¹ See European Commission, ‘Accommodating increased defence expenditure within the Stability and Growth Pact’ (Communication) C(2025) 2000 final, 19 March 2025.

⁷² OECD and European Commission, *Health at a Glance: Europe 2024 – State of Health in the EU Cycle* (OECD Publishing 2024), especially chs 1 and 2.

⁷³ A Cioffi and C Cecanneccchia, “ReArm Europe”: A Potential Further Disarmament of Health Systems? (2025) 33 *Ethics, Medicine and Public Health* 101076.

expenditure paths in order to increase defence expenditure, within the specified limits and period.⁷⁴ SAFE, meanwhile, provides up to EUR 150 billion in Union-backed loans for defence investment. The architecture of Readiness 2030 therefore does not simply allocate existing EU expenditure differently; it actively creates fiscal and borrowing capacity for a particular public priority. The resulting social question is consequently one of asymmetrical fiscal mobilisation: if extraordinary fiscal flexibility and common financial capacity can be mobilised rapidly for defence, why, and under what conditions, are comparable forms of fiscal latitude available – or unavailable – for healthcare, housing, poverty reduction, climate adaptation and other forms of social resilience?

This distributive dimension is increasingly visible in civil-society critiques of the Union's emerging defence policy. ASSEDEL, for example, argues that security should encompass resilient infrastructure, healthcare and effective public services alongside military defence, and warns that increasing military expenditure while weakening public services may itself undermine the social cohesion upon which European security ultimately depends.⁷⁵ More recently, a broad coalition of civil-society organisations has framed the issue explicitly in terms of 'human security', arguing that European security policy should encompass health, housing, education, environmental protection, human rights and social welfare rather than equating security predominantly with military expenditure.⁷⁶ These interventions are really significant because they reveal that Readiness 2030 involves a distributive and conceptual contest over what Europe is seeking to secure and for whom.

The issue becomes still more consequential when defence expenditure is considered alongside the Union's environmental commitments. Resources devoted to military-industrial expansion have opportunity costs not only for welfare policy but also for the investment required for decarbonisation, climate adaptation and environmental protection. The choice is not necessarily binary: defence, social policy and ecological transition can in principle be financed simultaneously. But this possibility depends upon taxation, borrowing, economic growth and political willingness to expand public resources. Where governments instead operate within constrained budgets, substantial and durable increases in military expenditure inevitably create pressure elsewhere,

⁷⁴ Council of the European Union, 'Coordinated Activation of the National Escape Clause' (30 April 2025) <<https://n9.cl/puojz>> accessed 22 August 2026.

⁷⁵ ASSEDEL, 'ReArm Europe: Towards a Safer or More Divided Continent?' (28 March 2025) <<https://n9.cl/lmbcdf>> accessed 22 August 2026.

⁷⁶ Transnational Institute, European Network Against Arms Trade and Stop ReArm Europe, 'Security for Whom? Civil Society Organisations from across the Spectrum Urge EU Decision-Makers to Reject the Military Budget Surge and Invest in Human Security Instead' (Open Letter, 17 June 2026) <<https://n9.cl/a7ul4>> accessed 22 August 2026.

making the distribution of those costs a question of social justice as well as fiscal policy.⁷⁷

The constitutional significance of these trade-offs should therefore not be reduced to an argument that ‘military spending causes welfare cuts’. The stronger claim is that Readiness 2030 constitutes a major reprioritisation of public resources and fiscal capacity, and that such reprioritisation has distributive consequences that should themselves be subject to democratic contestation. This connects the social dimension directly to the democratic argument developed above. Decisions concerning the balance between military security, social security and ecological security concern the kind of political community the Union seeks to become. If defence readiness is increasingly incorporated into fiscal governance, Union borrowing, industrial policy and the EU budget, the corresponding opportunity costs and distributive choices cannot be treated as merely technical consequences of geopolitical necessity.

There is, moreover, a deeper tension with the Union’s self-understanding as a political order committed not only to security but also to peace, solidarity, social justice and sustainable development. The question raised by Readiness 2030 is therefore not whether Europe should defend itself or preserve its welfare systems. It is whether an increasingly militarised conception of security may progressively reorder the Union’s hierarchy of objectives, making defence expenditure structurally privileged over other forms of collective security. In this respect, what Europe risks losing through rearmament is not simply a quantifiable amount of social expenditure. It is the broader conception of European security according to which protecting citizens also means protecting the material, social, health and environmental conditions necessary for them to live securely.

5 Readiness 2030 and the controversial use of Article 122(1) TFEU

Readiness 2030 does not rest as a whole upon Article 122 TFEU. As explained above, it constitutes a broader policy framework combining fiscal flexibility, defence-industrial investment and common procurement, Union borrowing and other measures operating through different areas of Union competence. The specific legal controversy examined in this section concerns Council Regulation (EU) 2025/1106 establishing the Security Action for Europe (SAFE), which creates an instrument of up to EUR 150 billion in financial assistance to Member States for urgent and major public investments supporting the European defence industry. The Regulation cites Article 122 TFEU as its legal basis without identifying a particular paragraph. The Commission proposal did the same,

⁷⁷ See T Tsiakalos and P Slon-Montero, *ReArm Europe Plan/Readiness 2030: An Economic Perspective of the Plan* (ENA Institute, June 2026) <<https://n9.cl/tmqp1>> accessed 22 August 2026, warning, *inter alia*, against the risk that increased defence expenditure may deprive healthcare and education of financial resources in order to support the defence sector.

although its accompanying financial statement expressly described SAFE as relying upon both Article 122(1) and Article 122(2).⁷⁸ This ambiguity is constitutionally significant because the two paragraphs constitute distinct legal bases with different material conditions. Article 122(1) empowers the Council to adopt measures appropriate to the economic situation, whereas Article 122(2) specifically authorises Union financial assistance to a Member State experiencing, or seriously threatened with, severe difficulties caused by natural disasters or exceptional occurrences beyond its control.

The relevant question here is not whether the Union possesses competence to pursue defence-industrial policy, but whether SAFE's aim and content satisfy the particular conditions attached to Article 122(1) and/or Article 122(2), or whether the instrument's centre of gravity lies elsewhere in the Treaties, particularly within industrial policy under Article 173 TFEU. Under the Court's settled case law, the choice of legal basis must rest on objective factors amenable to judicial review, including in particular the aim and content of the measure.⁷⁹

This question is no longer hypothetical. In Case C-560/25 *European Parliament v Council*, Parliament seeks the annulment of SAFE on the ground that Article 122 constitutes an incorrect legal basis and that, in light of the Regulation's aim and content, the measure instead concerns the development of Union industrial policy in the field of defence under Article 173 TFEU. The following analysis examines four dimensions of this issue.

5.1 Assistance to Non-Member States: the Ukrainian problem

Ukraine occupies an important position within the broader architecture of Readiness 2030, whose framework identifies support for Ukraine as one of its core objectives, alongside closing European capability gaps and strengthening the European defence industrial base. The Commission expressly presented SAFE as complementing existing Union initiatives supporting Ukraine and argued that enabling Member States to undertake common procurement would reinforce their capacity to transfer defence capabilities to Ukraine.⁸⁰ The Regulation itself integrates Ukraine into its defence-industrial architecture: entities established in Ukraine may participate in common procurement under the conditions established by SAFE, and components originating in Ukraine are treated favourably alongside those originating within the Union and EEA/EFTA States.⁸¹ The Commission's proposal also states that one of SAFE's 'key

⁷⁸ European Commission, 'Proposal for a Council Regulation establishing the Security Action for Europe (SAFE) through the Reinforcement of European Defence Industry Instrument' COM(2025) 122 final, 19 March 2025, 'Legislative Financial and Digital Statement', section 1.5.1.

⁷⁹ See n 37 above.

⁸⁰ European Commission, COM(2025) 122 final (n 78), 'Reasons for and objectives of the proposal'.

⁸¹ SAFE Regulation, Arts 16–17.

additional benefits’ is that it will enable Member States to provide immediate military equipment to Ukraine and thereby ‘massively increase their support to the country’s war efforts’.⁸²

This deserves closer constitutional scrutiny because Ukraine is neither a Member State of the European Union nor a member of NATO. That fact does not mean that the Union lacks competence to support Ukraine, nor does it make Article 122 inapplicable automatically. It does, however, underline that SAFE cannot be understood simply as the implementation of a pre-existing mutual-defence obligation owed to Ukraine. Article 42(7) TEU (the EU’s mutual assistance clause) applies where a Member State is the victim of armed aggression on its territory,⁸³ whilst Article 5 of the North Atlantic Treaty establishes collective-defence obligations amongst NATO parties.⁸⁴ Neither provision extends such obligations to Ukraine. Their relevance here is therefore contextual: they demonstrate that the substantial financial mobilisation associated with SAFE is not the consequence of a Treaty-based mutual-defence duty owed to Ukraine, but of a political and strategic choice to support Ukraine whilst simultaneously strengthening European defence capabilities.

That distinction matters because SAFE is financed through Union borrowing and provides loans to Member States rather than grants or financial assistance directly to Ukraine. Formally, Article 1 of the Regulation establishes financial assistance to Member States, so that they may undertake urgent and major public investments supporting the European defence industry. Yet the Commission links that financial architecture to the capacity of Member States to supply Ukraine with military equipment.

The legal significance of this arrangement should not be minimised. Article 122 does not prohibit measures merely because they generate benefits for a third country. However, the pertinent question here is whether Union borrowing and financial assistance to Member States remain sufficiently connected to the economic conditions contemplated by Article 122, when an important purpose and foreseeable effect of the instrument is to facilitate military support for a non-Member State, whilst simultaneously integrating that country’s defence industry into a broader European defence-industrial ecosystem.

⁸² European Commission, COM(2025) 122 final (n 78) 3.

⁸³ See M Vellano, ‘La clause de défense mutuelle prévue à l’article 42, paragraphe 7, TUE: portée, efficacité et implications actuelles’ in C Blumann and F Picod (eds), *Annuaire de droit de l’Union européenne 2024-2025* (Éditions Panthéon-Assas 2025) 97; F Fazio, ‘The EU’s Mutual Defence Clause: Legal and Strategic Considerations on Article 42(7) TEU in Light of the War in Ukraine’ (2025) 8(3) *Nordic Journal of European Law* 1.

⁸⁴ North Atlantic Treaty Organization, ‘Collective Defence and Article 5’ <<https://n9.cl/gim32>> accessed on 22 August 2026. See also F Fazio, ‘NATO’s Article 5 in a Changing Global Order: A Contextual Analysis’ (2026) *Journal of Conflict and Security Law* 1; F Fazio, ‘Collective Defence in NATO: A Legal and Strategic Analysis of Article 5 in Light of the War in Ukraine’ (Dublin European Law Institute Working Paper Series No 2/2024, 2024).

This third-country dimension is particularly relevant to the identification of SAFE's centre of gravity. If SAFE is understood as part of a wider structural strategy combining European rearmament, sustained support for Ukraine and the long-term integration and expansion of European and Ukrainian defence-industrial capacity, this dimension reinforces the argument that the measure cannot be characterised solely as temporary economic assistance. It instead becomes suitable evidence for the characterisation of SAFE as an instrument of structural defence-industrial policy.

The main question is therefore not whether the Union is entitled to support Ukraine, but whether Article 122 is the appropriate legal foundation for substantial Union borrowing and Member-State financial assistance, when one of the expressly identified strategic objectives of the instrument is to enable a sustained increase in military support to a country that falls outside both the Union's mutual-assistance obligation and NATO's collective-defence guarantee. That question must ultimately be answered by reference to SAFE's aim and content and to the material limits of Article 122 itself.

5.2 Actual vs hypothetical emergencies

The reliance on Article 122 TFEU must be connected to circumstances that are sufficiently concrete to satisfy the conditions laid down by the provision itself. This requirement must, however, be formulated differently for its two paragraphs. Article 122(2) expressly requires that a Member State 'is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control'. The provision therefore permits preventive action where severe difficulties have not yet fully materialised, but the threat of those difficulties must itself be serious and attributable to an identifiable exceptional occurrence. Article 122(1) is formulated more broadly and does not expressly require an 'exceptional occurrence': it empowers the Council to adopt, in a spirit of solidarity between Member States, 'measures appropriate to the economic situation', particularly where severe difficulties arise in the supply of certain products. It would therefore be inaccurate to derive from Article 122 as a whole a categorical rule that Union action is permissible only after an emergency has fully materialised. Nevertheless, Article 122(1) still requires the measure adopted to respond to an identifiable *economic situation*, rather than providing an autonomous competence to address any future risk considered politically important.⁸⁵

This distinction is particularly important in the case of SAFE. The Commission justified recourse to Article 122 by referring to an alleged 'brutal deterioration of the Union's security context since the beginning of 2025' and

⁸⁵ Chamon (n 33) 1501–1526; Maňko (n 51) 3–5.

qualifying it as a ‘sudden and exceptional event’, capable of producing a ‘massive and potentially disruptive impact for the defence and security interests of the Union and its Member States, which is likely to have a serious impact on the public finances of the Member States’.⁸⁶ The Regulation similarly presents Russia’s war against Ukraine as an alleged ‘existential challenge for the European Union’⁸⁷ and the deterioration of the security environment as circumstances requiring Member States urgently to increase defence expenditure and industrial capacity.⁸⁸ The legal justification thus moves from an existing war outside the territory of the Union to the possibility that the resulting geopolitical environment may expose Member States to future security threats and, consequently, to an urgent need to prepare for them.

That reasoning deserves closer scrutiny. The existence of the current war between Russia and Ukraine is indisputable; what is less self-evident, without any evidence, is the possibility of a future EU-Russian conflict and whether a perceived military threat to EU Member States constitutes, again without any evidence, the type of economic situation capable of justifying recourse to Article 122(1), or the serious threat of severe difficulties required by Article 122(2). Possible risks and Treaty-relevant emergencies should not be treated as interchangeable concepts. Defence planning necessarily operates prospectively: governments prepare precisely for contingencies that have not yet occurred. Article 122, however, is not a general Treaty competence for precautionary defence planning. Its use must remain connected to the strict conditions specified by the Treaty and to the objective characteristics of the measure adopted.

The existing case law supports such an insistence on demonstrating the connection between the circumstances invoked and the competence exercised. In *Anagnostakis v Commission*, the Court reiterated that Article 122(1) authorises measures appropriate to the economic situation, and held that the provision could not sustain a measure whose objective fell outside the competence conferred by it.⁸⁹ The judgment is therefore important for confirming that Article 122(1) is not an unlimited residual crisis competence: the measure must remain within the material conditions of the provision. This interpretation is consistent with scholarship identifying, in the context of Article 122(1), the need for a serious economic difficulty, an appropriate response, a causal relationship between the difficulty relied upon and the objectives of the measure, as well as sufficient urgency to justify resort to this exceptional procedure.⁹⁰

⁸⁶ European Commission, COM(2025) 122 final (n 78) 4.

⁸⁷ *ibid*, Recital 1.

⁸⁸ European Commission, COM(2025) 122 final (n 78), ‘Reasons for and objectives of the proposal’.

⁸⁹ Case C-589/15 P *Anagnostakis v Commission* EU:C:2017:663, paras 67–73.

⁹⁰ See S Storr and J Wallner, ‘EU Emergency Measures in Energy Law: Opportunities and Challenges of a New Legal Instrument’ (2023) 4187 *Acta Universitatis Wratislaviensis* 163. See also A Vecchio, ‘The White Paper Within the Institutional Constraints: The EU Short-Term

The distinction between risk prevention and hypothetical emergency is thus decisive. Article 122(2) expressly encompasses Member States that are *seriously threatened* with severe difficulties, but anticipatory action cannot mean that any conceivable future geopolitical threat becomes sufficient to activate Article 122. The threat relied upon must be demonstrated with sufficient specificity, and the resulting measure must remain causally and materially connected to the economic situation or threatened difficulties identified by the Treaty. Otherwise, the concept of emergency becomes potentially self-generating: the political determination that Europe should prepare for a possible future conflict would itself generate the urgency necessary to employ an exceptional Treaty competence.

This is precisely where SAFE raises the more difficult constitutional question. The central issue is not whether Russia may represent a security threat in geopolitical or strategic terms, but whether the evidence of that threat and its economic consequences is sufficiently concrete to satisfy the requirements of Article 122. A long-term assessment that Russia *might* attack an EU Member State, or that Europe must be militarily prepared for such an eventuality by 2030, cannot by itself establish the existence of the economic situation required by Article 122(1). To hold otherwise would risk transforming strategic anticipation into a continuing source of emergency competence. The constitutional question is consequently whether SAFE responds to demonstrable present economic difficulties generated by the existing geopolitical situation, or instead uses those circumstances to accelerate a structural programme of defence preparedness directed substantially towards hypothetical future contingencies. That distinction is decisive for assessing the legality of recourse to Article 122.

5.3 The material scope of Article 122 TFEU and its interpretation

The preceding analysis has already highlighted some of the features and constitutional implications of Article 122 TFEU. A closer examination of its wording, structure and interpretation is nevertheless necessary to determine the limits of the competence it confers and, ultimately, whether it can provide a valid legal basis for SAFE. Article 122 TFEU is situated in Chapter 1 ('Economic policy') of Title VIII TFEU (Economic and monetary policy) and contains two distinct legal bases.⁹¹ It provides:

Defence Policy "Readiness 2030" (*Verfassungsblog*, 28 March 2025) <<https://verfassungsblog.de/the-white-paper-readiness-2030/>> accessed 22 August 2026.

⁹¹ For a commentary of the provision, see M Kellerbauer, M Klamert and J Tomkin, 'Article 122 TFEU' in M Kellerbauer, M Klamert and J Tomkin (eds), *The EU Treaties and Charter of Fundamental Rights: A Commentary*, 2nd Edition (Oxford Law Pro 2024) 1803.

1. Without prejudice to any other procedures provided for in the Treaties, the Council, on a proposal from the Commission, may decide, in a spirit of solidarity between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy.
2. Where a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council, on a proposal from the Commission, may grant, under certain conditions, Union financial assistance to the Member State concerned. The President of the Council shall inform the European Parliament of the decision taken.

The two paragraphs differ materially. As discussed above, Article 122(2) expressly links financial assistance to a Member State experiencing, or seriously threatened with, severe difficulties resulting from natural disasters or exceptional occurrences beyond its control. Article 122(1), by contrast, does not expressly refer to an ‘emergency’, an ‘exceptional occurrence’ or circumstances beyond a Member State’s control. Its operative criterion is instead that the Council adopt ‘measures appropriate to the economic situation’. The reference to severe difficulties in the supply of certain products, notably energy, is introduced by the words ‘in particular’ and therefore seems to illustrate rather than exhaustively define the provision’s field of application.

The characterisation of Article 122(1) as an emergency competence is consequently contested. Dermine places Article 122 within the Union’s wider body of emergency law, describing it as a provision enabling Union responses to broadly conceived economic emergencies and emphasising its increasing use for major and structurally significant policy initiatives.⁹² Chamon, however, argues that Article 122(1) is properly understood as a non-emergency economic-policy competence, capable of supporting Union action beyond situations conventionally characterised as emergencies.⁹³ The disagreement is important because it prevents the limits of Article 122(1) from being derived from an assumed general rule that all emergency provisions must invariably receive a restrictive interpretation. The more significant inquiry is which limits follow from the provision’s own wording, its place in the Treaty architecture, and the general constitutional principles governing Union competences.

⁹² P Dermine, ‘Article 122 TFEU and the Future of the Union’s Emergency Powers’ (*EU Law Live*, 25 January 2024) <<https://n9.cl/ie5b1m>> accessed 23 August 2026.

⁹³ Chamon (n 33) 1501–1526.

The Council Legal Service’s analysis of Article 122 (in the context of NextGenerationEU)⁹⁴ is particularly instructive in this respect.⁹⁵ Whilst accepting Article 122 as a possible legal basis for the Recovery Instrument, the Legal Service treated its suitability as depending on the aim and content of the measure⁹⁶ and analysed in detail whether the measures were exceptional, temporary and economic in character.⁹⁷ It expressly concluded that measures under Article 122(1) must be of an economic nature and, in its interpretation, temporary rather than capable of becoming a permanent form of Union action.⁹⁸ The Opinion also treated the exceptional and one-off character of the circumstances addressed by NGEU as an important safeguard supporting the legality of recourse to Article 122. These conclusions demonstrate that even an institution defending an extensive use of Article 122 has understood the provision as subject to meaningful substantive and temporal constraints.⁹⁹

There is also support in the Court’s case law for attaching an element of urgency to this relationship between Article 122(1) and other Treaty procedures. In *Balkan-Import-Export*, interpreting Article 103(2) EEC – the predecessor of Article 122(1) TFEU – the Court held that the provision concerned ‘conjunctural policy’, which required the institutions to deal with ‘sudden changes in the economic situation’ and therefore contemplated measures characterised by the need for rapid action.¹⁰⁰ Although the judgment predates the current Treaty architecture, it provides important support for the proposition that the provision’s exceptional procedural character was historically associated with circumstances requiring a more immediate response than the ordinary Treaty procedures could provide. This interpretation has also been defended in recent scholarship, which connects the ‘without prejudice’ formula to the need to prevent Article 122(1) from displacing more specific Treaty competences, except where the urgency of the economic situation genuinely warrants recourse to it.¹⁰¹

The Court’s more recent case law points in the same direction. In *Anagnostakis*, the Court examined separately the scope of Article 122(1) and

⁹⁴ For a description of NGEU, see European Commission, Directorate-General for Budget, *The EU’s 2021-2027 Long-Term Budget and NextGenerationEU: Facts and Figures* (Publications Office of the European Union 2021).

⁹⁵ Council of the European Union, Legal Service, ‘Opinion of the Legal Service: Proposals on Next Generation EU’ (24 June 2020) Council doc 9062/20, especially paras 11–40.

⁹⁶ *ibid*, paras 118 ff.

⁹⁷ *ibid*, paras 125 ff and 137–139.

⁹⁸ *ibid*, para 121. According to the Council Legal Service, recourse to that provision cannot be permitted to ‘undermine or circumvent’ the legal bases and procedures established by the Treaties for use in normal circumstances (49).

⁹⁹ *ibid*, paras 143–144 and 173.

¹⁰⁰ Case 5/73 *Balkan-Import-Export GmbH v Hauptzollamt Berlin-Packhof* EU:C:1973:109, paras 15 and 17.

¹⁰¹ D Calleja, T M Rusche and T Shipley, ‘EU Emergency – Call 122? On the Possibilities and Limits of Using Article 122 TFEU to Respond to Situations of Crisis’ (2024) 29(3) *Columbia Journal of European Law* 520, 532.

Article 122(2) and rejected the proposition that Article 122 could support a general mechanism for the cancellation of Member States' public debt. The significance of the judgment lies particularly in the requirement that the substance of the measure remain within the competence conferred by the relevant paragraph.¹⁰² This reflects the Court's settled legal-basis doctrine, according to which the legal basis of a Union measure must be determined on the basis of objective factors amenable to judicial review, in particular its aim and content.¹⁰³

The Court's judgment in *Slovakia and Hungary v Council* provides a further indication of how emergency-related Treaty provisions should be approached.¹⁰⁴ The case concerned Article 78(3) TFEU. The Court accepted that a non-legislative emergency legal basis could support measures necessary to respond swiftly and effectively to an emergency situation, but it simultaneously treated the substantive and procedural conditions laid down in the Treaty provision as legally binding constraints.¹⁰⁵ The judgment is therefore useful because it confirms that the need for rapid Union action does not free the institutions from the material and procedural limits of the legal basis chosen.

In light of this, the opening words of Article 122(1) – 'without prejudice to any other procedures provided for in the Treaties' – are particularly important in defining those limits. They indicate that Article 122(1) cannot be interpreted in isolation from the rest of the Treaty system. This formula requires attention to whether reliance on Article 122 would displace a Treaty procedure more specifically associated with the predominant aim and content of the measure. For example, the Council Legal Service assessed the Recovery Instrument together with the autonomous sectoral programmes through which its resources were ultimately to be spent, rather than treating Article 122 as an unlimited legal basis capable of replacing the competences governing those substantive policies.¹⁰⁶

The NextGenerationEU experience illustrates the breadth of Article 122, but also differs from SAFE in an important respect. The European Union Recovery Instrument (EURI)¹⁰⁷ was adopted in response to the COVID-19 pandemic and its already materialised economic and social consequences. The exceptional circumstances prompting Union action were therefore neither prospective nor hypothetical. NGEU was nevertheless constructed through a constellation of

¹⁰² *Anagnostakis v Commission* (n 89) paras 67–77.

¹⁰³ See n 37 above.

¹⁰⁴ Joined Cases C-643/15 and C-647/15 *Slovak Republic and Hungary v Council* EU:C:2017:631.

¹⁰⁵ *ibid*, especially paras 62–78, 124–127 and 145–150.

¹⁰⁶ Council Legal Service Opinion (n 95) paras 115–144.

¹⁰⁷ Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis [2020] OJ L433I/23.

legal instruments resting on different Treaty bases. Whilst EURI, established under Article 122 TFEU, determined the overall financial envelope and allocation of resources, the purposes and conditions governing expenditure were further regulated through sectoral instruments based on other Treaty competences.¹⁰⁸ Most significantly, the Recovery and Resilience Facility, through which the bulk of NGEU resources was channelled, was established under Article 175(3) TFEU through the ordinary legislative procedure.¹⁰⁹

The comparison is instructive in two respects. First, even in response to an actual and already materialised crisis, recourse to Article 122 did not displace the other Treaty competences governing the substantive policies through which the Union response was implemented. Secondly, the NGEU precedent cannot by itself establish that Article 122(1) may support measures adopted in anticipation of future threats whose materialisation remains uncertain. The legality of SAFE must therefore be assessed by reference to its own circumstances, aim and content and to the requirements of Article 122(1).

Even if SAFE has an economic dimension, it is not merely a neutral financial mechanism. Its resources may be used only for specified defence-related investment and procurement; the Regulation lays down detailed rules concerning common procurement, eligible contractors and subcontractors, production infrastructure and the origin of components; and its stated objectives include strengthening the European defence technological and industrial base, increasing production capacity and accelerating the availability of defence products. The financial instrument and the industrial-policy objectives are therefore structurally intertwined.

Sørensen and Foss identify SAFE as part of a broader trajectory in which Article 122 has moved from financial stabilisation and pandemic response, through the energy crisis, to security and defence.¹¹⁰ They argue that this evolution sharpens the need to distinguish circumstances constituting an actual emergency from policy problems whose importance or political urgency does not necessarily make them emergencies in the constitutional sense.¹¹¹ Their analysis is particularly relevant to SAFE, since the European Parliament's pending challenge places precisely this issue before the Court: whether the

¹⁰⁸ For a more detailed analysis, see F Fabbrini, 'Next Generation EU: Legal Structure and Constitutional Consequences' (2022) 24 Cambridge Yearbook of European Legal Studies 45; A Porras-Gómez, 'The EU Recovery Instrument and the Constitutional Implications of its Expenditure' (2023) 19(1) European Constitutional Law Review 1.

¹⁰⁹ For further discussion, see D Hodson and D Howarth, 'The EU's Recovery and Resilience Facility: An Exceptional Borrowing Instrument?' (2024) 46(1) Journal of European Integration 69.

¹¹⁰ D Brasso Sørensen and RE Foss, 'The Emergency Union: The EU's Rising Use of Article 122' (Think Tank EUROPA, 17 December 2025) <<https://thinkeuropa.dk/node/4352/pdf-export>> accessed 23 August 2026.

¹¹¹ *ibid.*, 6–7.

circumstances invoked were capable of justifying recourse to Article 122 and the consequent exclusion of Parliament from the ordinary legislative process.

This is where the Court's legal-basis doctrine becomes decisive.¹¹² An economic instrument may serve an objective situated within another field of Union competence. The relevant question is whether temporary financial assistance addressing an exceptional economic situation constitutes SAFE's main or predominant purpose, with its industrial effects remaining ancillary, or whether the financing mechanism principally serves a structural policy of expanding and reorganising European defence-industrial capacity. If the latter characterisation is correct, the mere presence of substantial economic and financial elements cannot by itself sustain Article 122 as the appropriate legal basis.

Article 122(1) is not confined textually to energy or supply emergencies, and its classification as an exclusively emergency-based competence is contested. Article 122(2), by contrast, contains more explicit conditions linked to severe difficulties and exceptional occurrences. Yet both paragraphs remain embedded within the Treaty system of conferred competences. Article 122(1) requires an economically appropriate measure and operates without prejudice to other Treaty procedures; Article 122(2) requires the specific conditions expressly stated in its text; and the legal basis of any measure remains subject to judicial scrutiny by reference to its objective aim and content.

5.4 Article 173 TFEU as an alternative legal basis

The doubts surrounding Article 122 TFEU become more concrete when SAFE is compared with the Treaty competence specifically addressing industrial policy. Article 173(1) TFEU requires the Union and the Member States to ensure the conditions necessary for the competitiveness of Union industry and identifies, amongst its objectives, the adjustment of industry to structural changes, the creation of an environment favourable to undertakings and cooperation between them, and the exploitation of the industrial potential of innovation, research and technological development. Article 173(3) further provides that the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt specific measures supporting action taken in the Member States to achieve those objectives, subject to the prohibition on harmonising national laws and regulations.¹¹³

The relevance of Article 173(3) to SAFE follows from the Regulation's own aim and content. SAFE does not merely make financial resources available to

¹¹² See n 37 above.

¹¹³ For a commentary of the provision, see M Kellerbauer, M Klamert and J Tomkin, 'Article 173 TFEU' in M Kellerbauer, M Klamert and J Tomkin (eds), *The EU Treaties and Charter of Fundamental Rights: A Commentary* (2nd edn, Oxford Law Pro 2024) 2035.

Member States. Its loans are tied to defence-related investment and common procurement, and the instrument forms part of a wider effort to reinforce European defence-industrial capacity, increase the availability of defence products and support the development of the European defence industry.¹¹⁴ These objectives have an evident industrial-policy dimension. The fact that the relevant products are military in nature does not, by itself, remove measures concerning their production, technological development or industrial competitiveness from the scope of the Union's economic competences.

The choice between Article 122 and Article 173 therefore raises a problem of potentially overlapping competences. As Engel explains, the boundaries between EU policy fields are often not clear-cut, so that a measure may plausibly fall within more than one Treaty competence. The choice between competing legal bases is constitutionally significant because it determines not only the material scope and nature of Union competence, but also the legal instruments and procedures available for exercising it.¹¹⁵ Engel accordingly treats legal-basis litigation as a mechanism for resolving competence overlaps through scrutiny of the measure's aim and content, applying the Court's 'centre of gravity' doctrine.¹¹⁶

That doctrine is particularly pertinent to SAFE. Engel's analysis of the Court's case law stresses that a measure must normally be attributed to the competence corresponding to its main or predominant purpose, whilst merely incidental effects cannot determine the legal basis.¹¹⁷ Applied here, the relevant question is not whether SAFE possesses an economic dimension, nor whether it produces industrial effects. It is whether the provision of temporary financial assistance in response to an economic situation constitutes the Regulation's predominant purpose, with the reinforcement of European defence-industrial capacity remaining ancillary, or whether the loans are principally the means through which a broader and more structural industrial policy is pursued.

The European Defence Fund provides an important comparator. Regulation (EU) 2021/697 was adopted on the basis of Article 173(3) TFEU together with the relevant Treaty provisions on research and technological development.¹¹⁸ Its use of Article 173 demonstrates that measures seeking to strengthen the competitiveness, innovation and technological capacity of the European defence industry may properly fall within the Union's industrial-policy competence and be adopted through the ordinary legislative procedure.¹¹⁹ Although SAFE and

¹¹⁴ SAFE Regulation, especially Arts 1, 4 and 16–17.

¹¹⁵ A Engel, *The Choice of Legal Basis for Acts of the European Union: Competence Overlaps, Institutional Preferences, and Legal Basis Litigation* (Springer 2018) 5–6.

¹¹⁶ *ibid.*, 13–15.

¹¹⁷ *ibid.*; *Commission v Council (Titanium Dioxide)* (n 37) para 10.

¹¹⁸ Regulation (EU) 2021/697 of the European Parliament and of the Council of 29 April 2021 establishing the European Defence Fund and repealing Regulation (EU) 2018/1092, OJ L170.

¹¹⁹ *Ibid.*, preamble and Arts 1–3.

the EDF differ in their financing mechanisms and immediate objectives, the EDF confirms that the defence character of the sector does not preclude the application of Article 173 where the measure's substantive centre of gravity concerns industrial capacity and competitiveness.

Different legal bases frequently prescribe different decision-making procedures and therefore different levels of institutional participation. Those procedural effects can generate divergent institutional preferences: Parliament has an evident interest in legal bases providing for co-legislation, whilst the Council or Commission may have various institutional incentives depending on the voting and procedural requirements attached to the available competence. These legal effects should not always be regarded as neutral consequences arising only *after* the choice of legal basis has been made; where multiple legal bases are potentially available, procedural consequences may themselves influence institutional preferences concerning the basis selected. The Court's judgment in *European Parliament v Council* (concerning the International Fund for Ireland) illustrates the constitutional significance of those procedural differences.¹²⁰ The contested measure was adopted solely on the basis of Article 308 EC (now Article 352 TFEU), which required unanimity in the Council and consultation of Parliament. Parliament challenged that choice, arguing for reliance on Article 159(3) EC (now Article 175(3) TFEU), which provided for co-decision. The Court ultimately found that Article 308 EC was not sufficient on its own and that the measure should have been founded jointly on both legal bases.¹²¹ Hence, the Court applied the most stringent procedural requirements, thereby preserving the higher level of parliamentary participation whilst simultaneously respecting the unanimity requirement attached to the other legal basis.

This is particularly relevant to SAFE because Articles 122 and 173(3) entail markedly different institutional arrangements. Under Article 173(3), Parliament and Council act together under the ordinary legislative procedure. Article 122, by contrast, enables the Council to act on a Commission proposal without Parliament serving as co-legislator. The choice between the two consequently determines whether Parliament participates directly in the adoption of a measure involving Union borrowing, large-scale defence expenditure and the structural development of European defence-industrial capacity.

Of course, Parliament's greater participation can be relevant only once the substantive requirements of the competing legal bases have been satisfied. However, the procedural difference does heighten the constitutional importance of identifying the Regulation's centre of gravity correctly. The pending litigation concerning SAFE (C-560/25) crystallises this conflict.¹²²

¹²⁰ Case C-166/07 *European Parliament v Council* EU:C:2009:499.

¹²¹ *ibid*, paras 66–69.

¹²² *European Parliament v Council* (n 39).

At the same time, the centre-of-gravity inquiry should not become a substitute for examining the substantive scope of the competing competences themselves. An excessive focus on identifying a predominant aim and on procedural compatibility may foster competence creep by allowing broadly formulated legal bases to pre-empt more specific Treaty competences.¹²³ A more holistic approach, in which the principle of conferral and the substantive limits of each potential legal basis remain equally central to the analysis, is very much needed.

This concern is reinforced by the introductory qualification in Article 122(1), according to which measures may be adopted ‘without prejudice to any other procedures provided for in the Treaties’. The availability of a more specific legal basis does not necessarily exclude Article 122(1), but it makes the relationship between the competing Treaty procedures part of the legal-basis inquiry. Marin similarly argues that the breadth of Article 122(1), combined with its exceptional institutional configuration (Council decision-making by qualified majority without Parliament participating in the adoption of the measure), requires particular caution and an explanation of why recourse to Article 122 is justified where other Treaty legal bases are potentially available. She expressly links the ‘without prejudice’ formula to the need to assess whether a more specific legal basis should instead govern the measure.¹²⁴

Recent scholarship on Article 122(1) points in a comparable direction. Turecek argues, on the basis of the provision’s historical development and early case law, that its ‘without prejudice’ formula reflects a continuing subsidiary relationship with other Treaty procedures and cautions against allowing the broad wording of Article 122(1) to transform it into a virtually unlimited vehicle for new policy objectives.¹²⁵ Although his analysis concerns the proposed reparations loan for Ukraine rather than SAFE, he expressly places SAFE within the same broader trajectory of increasingly frequent and unconventional reliance on Article 122 and notes that Parliament’s pending challenge has already placed the Regulation’s legal basis before the Court. The objection advanced here is therefore specific: where an instrument pursues substantial and structural industrial objectives for which the Treaties provide an express competence, recourse to the broad economic-policy power in Article 122 requires a convincing substantive justification. Procedural expediency cannot compensate for the

¹²³ In this regard, see A Engel, ‘The CJEU’s Centre of Gravity Theory in Legal Basis Litigation: A Flawed Concept’ in L Lonardo and A Loxa, *The Reasoning of the Court of Justice of the EU: A Normative Assessment* (OUP 2026) 234.

¹²⁴ L Marin, *Solidarity and Crises in the European Union: A Constitutional Principle in the Pandemic and Energy Crises* (Cacucci Editore 2024), ch 4, 125–140.

¹²⁵ C Turecek, ‘Courageous or Naïve about the Reparations Loan for Ukraine? The Seemingly Unlimited *Effet Utile* of Article 122(1) TFEU’ (*Völkerrechtsblog*, 25 February 2026) <<https://n9.cl/fg7s3x>> accessed 23 August 2026.

absence of competence, just as the democratic advantages of Article 173 cannot establish competence where its material conditions are not satisfied.

6 Judicial review of SAFE: the pending action and additional grounds of challenge

The constitutional and legal uncertainties surrounding SAFE are no longer merely hypothetical. Regulation 2025/1106 is currently the subject of an action for annulment brought by the European Parliament against the Council in Case C-560/25. The pending litigation brings before the Court some of the central questions examined in the preceding sections, most notably whether Article 122(1) TFEU constitutes the correct legal basis for the Regulation. The judicial review of SAFE need not, however, be confined analytically to the pleas raised in that action. Other aspects of the Regulation may give rise to distinct questions of legality, including compliance with the principle of proportionality. This section first considers the actors capable of bringing SAFE before the Union courts and the significance of the pending action, before examining the principal grounds on which the Regulation is, or could potentially be, challenged.

6.1 Member States and the European Parliament

As a Council regulation, SAFE is amenable to judicial review through an action for annulment under Article 263 TFEU. Member States and the European Parliament are privileged applicants and could therefore challenge the Regulation without having to establish direct or individual concern. Under Article 263(6) TFEU, an action against a published act must be brought within two months of its publication. Since Regulation 2025/1106 was published in the Official Journal on 28 May 2025, the period for Member States to bring a direct action has now expired, and no Member State has challenged the Regulation within that period.

The absence of a Member-State challenge to SAFE does not, however, diminish the broader relevance of Member States as actors in the judicial review of measures adopted in response to exceptional circumstances. The Court's case law contains significant examples of Member States using Article 263 TFEU to contest such measures. In *Slovakia and Hungary v Council*,¹²⁶ for instance, the applicants sought annulment of the provisional relocation mechanism adopted under Article 78(3) TFEU in response to the 2015 migration crisis, contesting, *inter alia*, the appropriateness of the legal basis, the procedure followed and the proportionality of the measure.¹²⁷ The Court ultimately dismissed those actions,

¹²⁶ Joined Cases C-643/15 and C-647/15 *Slovak Republic and Hungary v Council* EU:C:2017:631.

¹²⁷ See H Labayle, 'Solidarity Is Not a Value: Provisional Relocation of Asylum-Seekers Confirmed by the Court of Justice (6 September 2017, Joined Cases C-643/15 and C-647/15 Slovakia and

but the litigation demonstrates that political disagreement with crisis measures may translate into judicial scrutiny of the conditions attached to exceptional Treaty competences.¹²⁸

In the case of SAFE, direct judicial review has instead materialised at the initiative of the European Parliament. On 20 August 2025, the EP brought an action for annulment against the Council in Case C-560/25 *European Parliament v Council*, seeking the annulment of Regulation 2025/1106 whilst requesting that its effects be maintained until its replacement by an act adopted on the appropriate legal basis.¹²⁹ Parliament advances two pleas. First, it submits that SAFE was incorrectly based on Article 122 TFEU: applying the Court's established case law on choice of legal basis and examining the Regulation's aim and content, Parliament argues that SAFE does not satisfy the conditions governing Article 122 and instead concerns the development of Union industrial policy in the field of defence under Article 173 TFEU. Second, Parliament alleges an infringement of Article 296 TFEU, arguing that the Council failed adequately to state the reasons justifying its choice of Article 122.

The action is particularly significant because it transforms what might otherwise appear to be a largely theoretical dispute about the constitutional limits of Article 122 into a concrete legal-basis controversy before the Court. Parliament is not challenging Union action in support of defence *as such*. Its application instead contests the constitutional route through which that policy has been pursued: whether an instrument directed at reinforcing European defence-industrial capacity may validly be adopted under Article 122, thereby excluding Parliament from co-legislation, or whether its objective characteristics place it within Article 173 and therefore within the ordinary legislative procedure. This distinction is important. The dispute concerns the allocation and exercise of Union competences and the corresponding institutional procedure, rather than the desirability of increased European defence expenditure.¹³⁰

6.2 Private parties

Direct challenges by private applicants face substantially greater obstacles. Under the fourth paragraph of Article 263 TFEU, natural and legal persons may challenge acts addressed to them, acts of direct and individual concern, and regulatory acts of direct concern that do not entail implementing measures.¹³¹

Hungary v Council)' (*EU Migration Law Blog*, 11 September 2017) <<https://n9.cl/wf99y7>> accessed 24 August 2026.

¹²⁸ On this issue, see M Del Monte and K Luyten, 'Emergency Measures on Migration: Article 78(3) TFEU' (European Parliamentary Research Service, PE 698.851, December 2021) 6–7.

¹²⁹ *European Parliament v Council* (n 39).

¹³⁰ K Neubert and N Ionta, 'European Parliament Sues Council over €150 billion Defence Loan Scheme' (*Euractiv*, 20 August 2025) <<https://n9.cl/vkvq2>> accessed 24 August 2026.

¹³¹ On this issue, see AH Türk, *Judicial Review in the European Union* (Edward Elgar 2025), ch 5, 116–261.

SAFE principally establishes a framework through which the Union provides financial assistance to Member States, which in turn undertake defence investments and procurement. Whether an individual economic operator could satisfy the standing requirements would therefore depend on the particular effects of the Regulation and its implementation on that operator. However, defence companies will certainly benefit from the scheme rather than be harmed.¹³²

Judicial review could nevertheless arise indirectly before the Court through Article 267 TFEU (preliminary ruling). Questions concerning the validity of SAFE may be raised before national courts in disputes arising from its implementation and referred to the Court of Justice for a preliminary ruling. Such proceedings could therefore provide an additional route through which questions concerning the validity of an EU act reach Luxembourg, independently of the privileged applicants entitled to bring direct actions under Article 263 TFEU.¹³³

6.3 Grounds of review

Key arguments for litigation in this case could be:

6.1.1 Incorrect legal basis

The central issue is already before the Court. Parliament's first plea alleges that Article 122 TFEU constitutes an incorrect legal basis for SAFE and that, assessed according to its aim and content, the Regulation instead concerns the development of Union industrial policy in the field of defence pursuant to Article 173 TFEU. This plea directly engages the legal questions examined in the preceding section: the substantive scope of Article 122, the significance of its opening words 'without prejudice to any other procedures provided for in the Treaties', the industrial objectives and content of SAFE and the relevance of Article 173(3) as a Treaty competence capable of supporting measures strengthening European defence-industrial capacity.

¹³² M Carlisle, 'Special European Council on Defence – Who stands to benefit from ReArm Europe?' (*The Left in the European Parliament*, 6 March 2025) <<https://n9.cl/vcoai>> accessed 24 August 2025.

¹³³ For example, private parties could initiate proceedings at national level concerning domestic measures connected with the implementation or financial implications of Union borrowing. The constitutional litigation surrounding NextGenerationEU in Germany illustrates such an indirect avenue: in that case, private complainants challenged the German legislation ratifying the Own Resources Decision authorising Union borrowing, prompting the Federal Constitutional Court to consider, *inter alia*, whether the EU had exceeded its competences and the adequacy of Art 122 TFEU as a legal basis for the Recovery Instrument. See judgment of the Second Senate of 6 December 2022, 2 BvR 547/21 and 2 BvR 798/21 (Act Ratifying the EU Own Resources Decision – Next Generation EU).

The Court will most likely apply its established legal-basis methodology. As discussed above, the choice of legal basis must rest on objective factors amenable to judicial review, including principally the aim and content of the measure.¹³⁴ The decisive issue should consequently not be whether defence expenditure has economic consequences, but whether SAFE's objective characteristics bring the Regulation within the competence conferred by Article 122(1).

The litigation is thus likely to turn on competing characterisations of the same instrument. The Council can point to SAFE's temporary financial-assistance mechanism, the geopolitical circumstances identified in its recitals and the economic implications of urgent increases in defence expenditure. Parliament's position, as disclosed in the notice of action, is instead that SAFE's aim and content reveal an instrument for the development of Union industrial policy in the field of defence.¹³⁵ The Court's assessment of that characterisation may consequently have implications extending beyond SAFE, since it will help delineate the extent to which the broad reference of Article 122(1) to 'measures appropriate to the economic situation' can support structural measures situated within policy fields for which the Treaties provide other competences.

The choice of legal basis also has an institutional-balance dimension. Article 13(2) TEU requires each institution to act within the limits of the powers conferred upon it by the Treaties and in conformity with the procedures, conditions and objectives set out therein, whilst requiring the institutions to practise mutual sincere cooperation.¹³⁶ The Court has long linked compliance with Treaty-prescribed procedures to the preservation of the institutional balance established by the Treaties. In Case C-70/88 *Parliament v Council*, it held that observance of the institutional balance requires each institution to exercise its powers with due regard for those of the others and that Parliament's participation in the legislative process, in the cases provided for by the Treaties, constitutes an essential element of that balance, also adding that any breach of that rule must be capable of being penalised.¹³⁷ The institutional implications of the SAFE dispute therefore depend on the resolution of the legal-basis question itself. If Article 122(1) constitutes the correct legal basis, Parliament's absence as co-legislator follows from the procedure established by the Treaties and cannot, in itself, amount to a disturbance of the institutional balance. If, however, SAFE had to be adopted under Article 173(3), reliance on Article 122(1)

¹³⁴ See n 37 above.

¹³⁵ B Romano, 'Rearmament, Why the EU Parliament Rejects the Path Chosen by the Commission' (*Il Sole 24 Ore*, 24 April 2025) <<https://n9.cl/iaa68>> accessed 24 August 2026.

¹³⁶ For a commentary of this provision, see H Blanke and S Mangiameli, 'Article 13 [The Institutions]' in Blanke and Mangiameli (eds), *The Treaty on European Union (TEU): A Commentary* (Springer 2013) 529; M Kellerbauer, M Klamert and J Tomkin, 'Article 13 TEU' in M Kellerbauer, M Klamert and J Tomkin (eds), *The EU Treaties and Charter of Fundamental Rights: A Commentary*, (2nd edn, Oxford Law Pro 2024) 158.

¹³⁷ Case C-70/88 *European Parliament v Council of the European Communities* EU:C:1990:217, paras 21, 22 and 28.

would have deprived Parliament of the co-legislative prerogatives attached to the applicable Treaty competence. Hence, the dispute over SAFE's legal basis is also a dispute over the allocation of institutional powers prescribed by the Treaties.¹³⁸

6.1.2 Obligation to state reasons

Parliament's second plea raises a distinct question under Article 296 TFEU.¹³⁹ It alleges that the Council failed adequately to explain why SAFE could properly be adopted on the basis of Article 122 TFEU. According to the published notice of the action, the reasoning provided is insufficient to ascertain whether the conditions for reliance on that provision are satisfied.¹⁴⁰

This plea should be distinguished from the substantive correctness of the legal basis. The obligation to state reasons requires an EU act to disclose clearly and unequivocally the reasoning of the institution that adopted it, enabling interested parties to understand the justification for the measure and the Court to exercise judicial review.¹⁴¹ The significance of that requirement is heightened where the choice between competing legal bases carries markedly different institutional consequences. In SAFE's case, reliance on Article 122 removes Parliament from the co-legislative role it would exercise under Article 173(3). Adequate reasoning as to why the Regulation satisfies the conditions of Article 122 is therefore important not merely as a matter of formal drafting, but as a precondition for effective judicial scrutiny of the choice of legal basis.

The two pleas are consequently interconnected but analytically distinct. Even if the Court were ultimately to accept that Article 122 is capable of supporting an instrument of SAFE's kind, it would still have to determine whether the Council sufficiently explained why that competence was applicable to the particular measure adopted. Conversely, extensive reasoning cannot cure reliance on a Treaty provision whose substantive conditions are not satisfied.

6.1.3 Proportionality

¹³⁸ This institutional dimension is particularly visible in the controversy surrounding the pending SAFE litigation. Several Member States have reportedly criticised the Commission's decision to support the European Parliament's action against the Council, precisely because a successful challenge could strengthen Parliament's role in the adoption of comparable defence measures and affect the institutional allocation of powers between Parliament and the Council. See M Giera, 'EU Countries Threaten to Take Commission to Court for Giving Parliament Extra Powers' (*Politico*, 24 February 2026) <<https://n9.cl/v0g7c>> accessed 26 August 2026.

¹³⁹ For a commentary of the provision, see M Kellerbauer, M Klamert and J Tomkin, 'Article 296 TFEU' in M Kellerbauer, M Klamert and J Tomkin (eds), *The EU Treaties and Charter of Fundamental Rights: A Commentary*, 2nd Edition (Oxford Law Pro 2024) 2575.

¹⁴⁰ *European Parliament v Council* (n 39).

¹⁴¹ See Case C-455/11 P *Solvay SA v European Commission* EU:C:2013:796, paras 90–91.

Questions of proportionality, duration and structural effect may also inform the judicial assessment of SAFE. As discussed above, the legal character of paragraphs 1 and 2 of Article 122 must be distinguished. The temporal and structural characteristics of SAFE may be relevant to determining whether the Regulation can genuinely be characterised as a measure ‘appropriate to the economic situation’ under Article 122(1), particularly when read alongside the provision’s ‘without prejudice’ clause. The fact that SAFE is formally time-limited¹⁴² supports the Council’s position to some extent, but temporariness cannot by itself establish the validity of the legal basis. A temporary instrument may still fall outside Article 122 if its aim and content place it within another Treaty competence, just as a measure’s urgency cannot itself create a competence that the Treaties have not conferred.

Whatever the outcome, Case C-560/25 now offers the Court an important opportunity to clarify the constitutional limits of Article 122(1) TFEU. The judgment may determine not only whether that provision can sustain an instrument such as SAFE, but also how its broadly formulated economic competence interacts with more specific Treaty legal bases and the ‘without prejudice’ clause. In that sense, the significance of the litigation extends beyond European defence: it may help define the judicially enforceable boundaries of a provision that has assumed an increasingly prominent role in the Union’s response to successive crises.

7 Conclusion

Readiness 2030 marks a significant moment in the constitutional development of the European Union. Its importance lies not simply in the unprecedented scale of the resources that the Union seeks to mobilise for defence, but in the means through which that transformation is being pursued. European defence cooperation is not new, nor can the development of a Union defence capacity *per se* be regarded as incompatible with the Treaties. What is distinctive about the present trajectory is the increasing incorporation of military objectives into the Union’s economic, fiscal, financial and industrial governance and, in the case of SAFE, the mobilisation of Article 122(1) TFEU to accelerate that process outside the ordinary legislative procedure.

The analysis developed in this article has shown why the legality of that choice cannot be reduced to the question whether defence expenditure has economic consequences. Article 122(1) and Article 122(2) constitute distinct legal bases whose scope and legal character must not be conflated. While Article 122(1) is

¹⁴² However, SAFE’s formally limited availability period should be distinguished from the considerably longer duration of the financial commitments it creates. Although payments to Member States may be approved only until 31 December 2030 (Art 12), the Regulation authorises up to EUR 150 billion in Union loans, with individual loan agreements potentially extending for up to 45 years (Art 10).

formulated in broad terms, allowing the Council to adopt measures ‘appropriate to the economic situation’, the extent of that competence – and particularly its relationship with situations of urgency or emergency – remains contested. The opening qualification ‘without prejudice to any other procedures provided for in the Treaties’, the principle of conferral and the Court’s established legal-basis jurisprudence all require the use of Article 122(1) to remain anchored in the constitutional allocation of competences established by the Treaties. Urgency may justify rapid action within a competence conferred upon the Union; it cannot itself confer that competence.

SAFE brings this problem into particularly sharp relief. The Regulation is presented as an exceptional and temporary response to a deteriorating geopolitical environment, but simultaneously seeks to increase defence-industrial production capacity and facilitate structural adaptation of the European defence industry. The availability of Article 173 TFEU, and the previous use of that provision for the European Defence Fund, consequently raises a question that goes beyond terminological classification. If an instrument pursuing substantial and structural industrial objectives can instead be adopted under the broadly formulated economic power in Article 122(1), the constitutional significance of the ‘without prejudice’ limitation and of the more specific competences provided by the Treaties risks being progressively diminished. The consequence is also institutional: the choice between Articles 122(1) and 173(3) determines whether the European Parliament participates as a co-legislator in decisions involving Union borrowing, defence expenditure and the long-term development of European industrial capacity.¹⁴³

Case C-560/25 *European Parliament v Council* therefore represents more than a technical dispute over the correct legal basis of a single regulation. It gives the Court an opportunity to clarify whether Article 122(1) possesses judicially enforceable boundaries capable of preventing a broadly framed economic competence from progressively displacing Treaty procedures carrying different substantive and institutional guarantees. Parliament’s decision to challenge SAFE, whilst expressly requesting that its effects be maintained until its replacement on the appropriate legal basis is found, is particularly revealing. The dispute is between different constitutional methods of pursuing European defence.

¹⁴³ The procedural implications extend, albeit differently, to national parliaments. Since measures adopted under Art 122 TFEU are non-legislative acts, they fall outside the early-warning mechanism applicable to draft legislative acts under Protocol No 2. Significantly, the European Parliament has recently expressed concern about recourse to Art 122 TFEU for ReArm Europe/Readiness 2030 and called for more rigorous control of the use of Arts 122 and 352 TFEU and strengthened prior consultation of national and regional parliaments with legislative powers. See European Parliament resolution of 27 November 2025 on the ‘Application of the Treaty provisions related to the principles of subsidiarity and proportionality and the role of national parliaments in the EU legislative process’ (2025/2042(INI)) paras 6–7.

The deeper concern raised by Readiness 2030, however, extends beyond Article 122. Successive crises have demonstrated the Union's remarkable capacity to adapt its existing legal and financial instruments to circumstances for which the Treaties were not necessarily designed. Such flexibility can be a strength. But constitutional adaptability becomes problematic when exceptional modes of decision-making cease merely to respond to extraordinary circumstances and begin to provide the means through which durable transformations in the Union's priorities, spending and institutional relationships are accomplished. A constitutional order cannot rely indefinitely on the proposition that the exceptional circumstances confronting it are always sufficiently unprecedented to justify another expansion of exceptional governance.

Readiness 2030 must also be situated within a more fundamental transformation in the aims of European integration. The Union emerged from the devastation of European warfare around an integration project whose historical legitimacy rested on replacing military rivalry with economic interdependence, law and institutionalised cooperation. That historical commitment subsequently acquired an explicit constitutional expression. Article 3(1) TEU provides that the Union's aim is to 'promote peace, its values and the well-being of its peoples', whilst Article 21(2)(c) TEU requires the Union in its external action to 'preserve peace, prevent conflicts and strengthen international security'. These provisions do not constitutionally prohibit defence integration, military preparedness or assistance to a State subjected to aggression. Yet the Union's commitment to peace should not be treated as a merely historical narrative, devoid of consequences for the direction in which integration develops.

It is here that the current trajectory warrants particular scrutiny. An integration project increasingly organised around military readiness, defence-industrial production, weapons procurement and the mobilisation of public and private capital for defence represents more than the acquisition of additional policy instruments. It potentially alters the priorities through which the Union understands and projects itself, making defence and 'military preparedness' not simply fields of European cooperation but increasingly transversal organising objectives. The deeper constitutional question is therefore no longer only whether the Union possesses the competence to adopt individual defence measures, but what kind of Union the cumulative exercise of those competences is producing.

This question also has distributive and democratic dimensions. The resources mobilised for military preparedness are not politically neutral: choices concerning defence expenditure coexist with competing demands for social protection, healthcare, education, cohesion and ecological transformation. Nor are decisions of this magnitude merely technical responses to an externally given necessity. They embody choices about risk, public expenditure and the future priorities of European integration. Presenting them predominantly through the

vocabulary of emergency and inevitability risks obscuring their inherently political character, as well as narrowing the space in which alternative priorities can be democratically contested.

None of this requires denying the profound transformation of Europe's security environment following Russia's invasion of Ukraine. It requires rejecting a different proposition: that geopolitical insecurity places the constitutional means through which the Union responds beyond meaningful scrutiny. Security cannot become a self-validating constitutional argument. If the European Union responds to successive crises by continuously expanding exceptional decision-making, reallocating institutional power and embedding military objectives ever more deeply within its economic constitution, the danger is not simply 'competence creep'. It is that the Union may gradually transform itself without openly confronting, through ordinary democratic and constitutional processes, the nature and purposes of that transformation.

Whether this development ultimately strengthens the conditions for peace remains to be seen. What can already be demanded, however, is that such a transformation occur within the constitutional limits of the Treaties, through procedures commensurate with the political magnitude of the choices involved and with meaningful democratic participation. A Union committed to the promotion of peace by its own constitutional text should not allow permanent preparedness for war to become normalised without first confronting, openly and democratically, what that transformation means for the purpose of European integration itself.

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