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*Committee on Legal Affairs  
The Chair*

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13.7.2017

Mr Elmar Brok  
Chair  
Committee on Foreign Affairs  
BRUSSELS

**Subject:** Opinion on the legal basis of the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 230/2014 of the European Parliament and of the Council of 11 March 2014 establishing an instrument contributing to stability and peace (COM(2016)447 - 2016/0207(COD))

Dear Mr Chair,

During the Coordinators' meeting of 11 July 2016, the Committee on Legal Affairs decided to examine of its own motion, under Rule 39(3) of the Rules of Procedure (RoP), the legal basis of the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 230/2014 of the European Parliament and of the Council of 11 March 2014 establishing an instrument contributing to stability and peace (COM(2016)447). Also, by letter of 15 November 2016, the Chair of the Committee on Development requested the Committee on Legal Affairs under Rule 39 RoP to verify the legal basis of the said legislative proposal. The proposal is based on Articles 209(1) and 212(2) of the TFEU on the adoption of measures necessary for the implementation of development cooperation policy and of economic, financial and technical cooperation measures with third countries other than developing countries respectively.

The committee considered this issue at its meeting of 13 July 2017.

## **I - Background**

Regulation (EU) No 230/2014 (hereinafter, "IcSP")<sup>1</sup> sets up measures of technical and

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<sup>1</sup> Regulation (EU) No 230/2014 of the European Parliament and of the Council of 11 March 2014 establishing an instrument contributing to stability and peace, OJ L 77, 15.3.2014, pp. 1–10.

financial assistance in order to prevent and respond to crises and contribute to building stability and peace. The proposed amendments to IcSP intend to add a new type of Union assistance specifically designed to build the capacity of military actors in third countries when exceptional circumstances occur. The Commission's proposal follows from an arguably **close link between security and development**, which envisages support to partner countries' security systems as part of a broader reform process to provide effective and accountable security to the State and to individuals, thus contributing to the EU's objectives of inclusive and sustainable development and the rule of law.

The security-development nexus as a matter of practice can be identified in Regulation 1717/2006 establishing an Instrument for Stability (hereinafter, IfS)<sup>1</sup> and which is the predecessor of IcSP. IfS was aimed at undertaking development cooperation measures and financial, economic and technical cooperation measures with third countries<sup>2</sup> and originally included military monitoring and peacekeeping operations within its scope.<sup>3</sup> The relevant provision – which was later dropped during the negotiation period of the Regulation between the Commission, the Council and the Parliament – was included in Article 2(a) and read as follows:

*“ military monitoring and peace-keeping or peace-support operations (including those with a civilian component) conducted by regional and sub-regional organisations and other coalitions or states operating with United Nations endorsement; measures to build the capacity of such organisations and their participating members to plan, execute and ensure effective political control over such operations.”*

## **II - The relevant Treaty Articles**

Article 209(1) TFEU in conjunction with Article 212(1) TFEU, in Part Five entitled 'The Union's External Action', are presented as the legal basis in the Commission's proposal and read as follows (emphasis added):

### ***Article 209 TFEU*** ***(ex Article 179 TEC)***

*1. The European Parliament and the Council, acting in accordance with the **ordinary legislative procedure**, shall adopt the measures necessary for the implementation of development cooperation policy, which may relate to multiannual cooperation programmes with developing countries or programmes with a thematic approach. [...]*

### ***Article 212 TFEU*** ***(ex Article 181a TEC)***

*2. The European Parliament and the Council, acting in accordance with the **ordinary legislative procedure**, shall adopt the measures necessary for the implementation of paragraph 1. [...]*

Paragraph 1 of Article 212 TFEU reads as follows (emphasis added):

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<sup>1</sup> [2006] OJ L 327/1.

<sup>2</sup> Art 1(1).

<sup>3</sup> COM(2004) 630 final, 'Proposal for a Regulation of the Council establishing an Instrument for Stability' Brussels, 29 September 2004, at 15.

**Article 212 TFEU**  
(ex Article 181a TEC)

1. Without prejudice to the other provisions of the Treaties, and in particular Articles 208 to 211, the Union shall carry out economic, financial and technical cooperation measures, including assistance, in particular financial assistance, with third countries other than developing countries. **Such measures shall be consistent with the development policy of the Union and shall be carried out within the framework of the principles and objectives of its external action.** The Union's operations and those of the Member States shall complement and reinforce each other.

Article 208 TFEU setting out the premises on which development cooperation measures may be adopted reads as follows (emphasis added):

**Article 208 TFEU**  
(ex Article 177 TEC)

1. **Union policy in the field of development cooperation shall be conducted within the framework of the principles and objectives of the Union's external action.** The Union's development cooperation policy and that of the Member States complement and reinforce each other.

**Union development cooperation policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty.** The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries. [...]

Given the reference back to principles and objectives of the European Union's external action, Article 21 TEU should be looked at (emphasis added):

**Article 21 TEU**

1. The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: **democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.** [...]

2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:

- (a) safeguard its values, fundamental interests, security, independence and integrity;
- (b) consolidate and support democracy, the rule of law, human rights and the principles of international law;
- (c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;
- (d) **foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;**

(e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;

(f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;

(g) assist populations, countries and regions confronting natural or man-made disasters; and

(h) promote an international system based on stronger multilateral cooperation and good global governance.

**3. The Union shall respect the principles and pursue the objectives set out in paragraphs 1 and 2 in the development and implementation of the different areas of the Union's external action covered by this Title and by Part Five of the Treaty on the Functioning of the European Union, and of the external aspects of its other policies. The Union shall ensure consistency between the different areas of its external action and between these and its other policies.** The Council and the Commission, assisted by the High Representative of the Union for Foreign Affairs and Security Policy, shall ensure that consistency and shall cooperate to that effect.

Article 24(1) TEU is also deemed relevant for the analysis and determination of the appropriate legal basis and reads as follows (emphasis added):

**Article 24 TEU**  
(ex Article 11 TEU)

*1. The Union's competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union's security, including the progressive framing of a common defence policy that might lead to a common defence.*

*The common foreign and security policy is subject to specific rules and procedures. **It shall be defined and implemented by the European Council and the Council acting unanimously,** except where the Treaties provide otherwise. **The adoption of legislative acts shall be excluded.** The common foreign and security policy shall be put into effect by the High Representative of the Union for Foreign Affairs and Security Policy and by Member States, in accordance with the Treaties. **The specific role of the European Parliament and of the Commission in this area is defined by the Treaties. The Court of Justice of the European Union shall not have jurisdiction with respect to these provisions, with the exception of its jurisdiction to monitor compliance with Article 40 of this Treaty and to review the legality of certain decisions as provided for by the second paragraph of Article 275 of the Treaty on the Functioning of the European Union.** [...]*

Article 40 TEU reads as follows:

**Article 40 TEU**

*The implementation of the common foreign and security policy shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences referred to in Articles 3 to 6 of the Treaty on the Functioning of the European Union.*

*Similarly, the implementation of the policies listed in those Articles shall not affect the*

*application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences under this Chapter.*

### **III - The proposed legal basis**

The Commission proposed Articles 209(1) and 212(2) TFEU as the appropriate legal basis for the amendment of Regulation (EU) No 230/2014. Both provisions are included in Title III on “Cooperation with third countries and humanitarian aid” within the framework of the Union’s external action, which has brought together the former Titles XX (Articles 177-181 TEC) and XXI (Article 181 a TEC) of Part Three of the Treaty on the European Community, enabling the Community (now Union) to undertake cooperation policy measures both with developing (Art.177-188 TEC) and developed countries (Art.188 a TEC).

The choice of the appropriate legal basis has been a recurring matter in the area of EU external action, in particular in relation to the nexus between Common Security and Defence Policy and development, economic, financial and technical cooperation policies. This is due to the substantial legal differences between the sets of provisions governing these fields as well as the close interplay between the policies, developed by the Union’s institutions as a matter of practice. Specifically, development and economic, financial and technical cooperation is undertaken based on the traditional integration model, whereby the European Parliament participates in decision-making actively pursuant to the ordinary legislative procedure following a proposal by the Commission and subject to the jurisdiction of the Court of Justice.<sup>1</sup> On the contrary, under the Common Security and Defence Policy, the Council adopts measures mainly by unanimity, merely keeping the Parliament informed, and expressly excluding the jurisdiction of the Court of Justice.<sup>2</sup>

It is against this background that the Committee on Legal Affairs has decided to look into the correct legal basis for the proposed amendment to Regulation No 230/2014. Should the Union adopt the proposed measure, which straddles development and economic, financial and technical cooperation and security and defence policy pursuant to the provisions governing the former or the latter? The answer to this legal question would define not only the procedure to be followed for the adoption of the proposed measure, but also its legal characteristics and implications.

### **IV – CJEU case law on the choice of legal basis**

The Court of Justice has traditionally viewed the question of the appropriate legal basis as an issue of constitutional significance, guaranteeing compliance with the principle of conferred powers (Article 5 TEU) and determining the nature and scope of the Union’s competence.<sup>3</sup> According to settled case law of the Court of Justice, *“the choice of legal basis for a Community measure must rest on objective factors amenable to judicial review, which include in particular the aim and content of the measure”*.<sup>4</sup> The choice of an incorrect legal basis may therefore justify the annulment of the act in question. In this context, an institution’s wish for more active participation in the adoption of a given measure, the circumstances in which a

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<sup>1</sup> Art 209(1) TFEU.

<sup>2</sup> Art 24 (1) subpara. 2 TEU and Art 275 TFEU.

<sup>3</sup> *Opinion 2/00* [2001] ECR I-9713, para 5.

<sup>4</sup> Case C-45/86, *Commission v. Council* (Generalised Tariff Preferences) [1987] ECR 1439, para. 5; Case C-411/06 *Commission v. Parliament and Council* [2009] ECR I-7585.

measure was adopted as well as the work that has been done in other aspects within the scope of action covered by a given measure are irrelevant for the identification of the right legal basis.<sup>1</sup>

If examination of a measure reveals that it pursues a twofold purpose or that it has a twofold component one of which is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, that measure must be based on a single legal basis, namely that required by the main or predominant purpose or component.<sup>2</sup> However, where a measure has several contemporaneous objectives or components, which are indissociably linked, without one being secondary and indirect in relation to the other(s), such a measure will have to be based on the various corresponding legal bases,<sup>3</sup> if procedures laid down for the respective legal bases are not incompatible with and do not undermine the right of the European Parliament.<sup>4</sup>

## **V – Aim and Content of the proposed measure**

The aim of this Proposal, as stated by the Commission in its explanatory memorandum, is to insert “*a new Article into Title II of Regulation (EU) No 230/2014 in order to extend the Union’s assistance under exceptional circumstances to be used to build the capacity of military actors in partner countries in order to contribute to sustainable development and in particular the achievement of peaceful and inclusive societies*”.<sup>5</sup> According to the Impact Assessment accompanying the Commission proposal, the general objectives of this initiative are twofold: on the one hand to guarantee that the EU’s development assistance to fragile developing countries is not undermined by situations of instability and conflict, by enabling all security actors, including the military to ensure stability, peace and law and order; on the other hand to foster sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty.<sup>6</sup>

In this context, recital 3 states that supporting security sector actors, including the military under exceptional circumstances, in a conflict prevention, crisis management or stabilisation context is essential to ensure appropriate conditions for poverty eradication and development. It also emphasises that those actions are aimed at protecting civilian populations in the areas affected by conflict, crises or fragility, contributing to good governance and effective democratic control as well as compliance with human rights and the rule of law. Recitals 2, 4 and 5 reiterate the strong link between security and sustainable development, making reference for that purpose to the United Nations’ 2010 Agenda for Sustainable Development,<sup>7</sup> to the European Council Conclusions of 19/20 December 2013 and to the Joint Communication on ‘Capacity building in support of security and development - Enabling

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<sup>1</sup> Case C-269/97 *Commission v Council* [2000] ECR I-2257, para 44.

<sup>2</sup> Case C-137/12 *Commission v Council* EU:C:2013:675, para. 53; C-490/10 *Parliament v Council* EU:C:2012:525, para. 45; C-155/07 *Parliament v Council* [2008] ECR I-08103, para. 34.

<sup>3</sup> Case C-211/01 *Commission v Council* [2003] ECR I-08913, para. 40; Case C-178/03 *Commission v European Parliament and Council* [2006] ECR I-107, paras 43-56.

<sup>4</sup> Case C-300/89 *Commission v Council* (“Titanium dioxide”) [1991] ECR I-2867, paras. 17-25; Case C-268/94 *Portugal v Council* [1996] ECR I-6177.

<sup>5</sup> COM(2016)447 final, at 2.

<sup>6</sup> SWD(2016) 222 final, at 16.

<sup>7</sup> United Nations, A/RES/70/1, Resolution adopted by the General Assembly n 25 September 2015.

partners to prevent and manage crisis'.<sup>1</sup>

Specifically, the proposal provides that the Union assistance to security actors might include military actors under exceptional circumstances, in the context of a wider security reform process and in line with the **overarching objective of achieving sustainable development** (new sub-paragraph to Article 1(2)). Article 3a reiterates in the first paragraph the objective of contributing to sustainable development and the achievement of stable, peaceful and inclusive societies through the provision of Union assistance in exceptional circumstances to build the capacity of military actors in partner countries. Paragraph 2 exemplifies that Union assistance to that purpose should take the form of capacity building programmes in support of security and development, including training, mentoring and advice, as well as the provision of equipment, infrastructure improvements and provision of other services. This form of assistance should be used **as a last resort**, when recourse to non-military actors cannot adequately guarantee the achievement of stable, peaceful and inclusive societies. This will be the case either when there is a serious threat to the existence of functioning State institutions as well as to the protection of human rights and fundamental freedoms, or when State institutions can no longer cope with this serious threat; and on condition that an agreement exists between the country concerned and the international community and/or the European Union that the military are key for stability, peace and development, particularly in crises and fragile contexts and situations. Paragraph 4 further limits the scope of military assistance by providing that it should not be used to finance, neither recurrent military expenditure, nor the procurement of arms and ammunition or training exclusively designed to contribute to the fighting capacity of armed forces. Finally, paragraph 5 reiterates that military assistance should be aimed at promoting ownership by the partner country and the development of the necessary elements and the good practices required for ensuring sustainability in the medium and long term, and promote the rule of law and established international law principles.

Other minor amendments to Articles 7(1), 8(1) and 10(1) of IcSP are aimed at introducing a cross reference to new Article 3(a). Finally, Article 13(1) is amended to increase the financial envelope for the implementation of the Regulation by EUR 100 000 000.

## **VI – Analysis and establishment of the appropriate legal basis**

The Commission proposed Articles 209(1) and 212(2) TFEU as the appropriate legal basis for the amendment of Regulation (EU) No 230/2014. According to Article 209(1) TFEU, the Union co-legislators, acting in accordance with the ordinary legislative procedure, may adopt the necessary measures for the implementation of the development cooperation policy, which pursuant to Article 208(1) TFEU shall be conducted within the framework of the principles and objectives of the Union's external action and whose primary objective is the reduction and, in the long term, the eradication of poverty. Poverty eradication constitutes an objective, which is also envisaged by Article 21(2) TEU –the general provision on the entire range of Union's external action objectives. In signalling out this objective, Article 208(1) TFEU arguably suggests that the other objectives set out in Article 21 (2) TEU may be pursued by development cooperation measures, but only in so far as these are secondary.<sup>2</sup>

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<sup>1</sup> JOIN(2015) 17 final of 28 April 2015.

<sup>2</sup> See Case C-91/05 *Commission v Council (ECOWAS)* [2008] ECR I-3651, para 73. See also Case C-377/12 *Commission v Council* [2014] ECLI:EU:C:2014:1903, at 37. P. Koutrakos, *The EU Common Security and Defence Policy* (2013 OUP), at 211-212.

The broad scope of understanding of Union development cooperation policy, when it comes to Development Cooperation Agreements (DCAs), was confirmed in *Portugal v Council*, where the Court of justice found that (emphasis added):<sup>1</sup>

*“It must therefore be held that the fact that a development cooperation agreement contains clauses concerning various specific matters cannot alter the characterisation of the agreement, **which must be determined having regard to its essential object and not in terms of individual clauses**, provided that **those clauses do not impose such extensive obligations concerning the specific matters referred to that those obligations in fact constitute objectives distinct from those of development cooperation**.”*

In case C-403/05 *Parliament v Commission* the Court reaffirmed that development cooperation referred (emphasis added):<sup>2</sup>

*‘**not only to the sustainable economic and social development of those countries, their smooth and gradual integration into the world economy and the campaign against poverty, but also to the development and consolidation of democracy and the rule of law, as well as to respect for human rights and fundamental freedoms**, whilst complying fully with their commitments in the context of the United Nations and other international organisations’.*

According to the note prepared by Parliament’s Legal Service in 2004 on the choice of the legal basis of the predecessor of IcSP – originally containing a similar provision on military capacity building in exceptional situations:<sup>3</sup>

*“measures related to peace-keeping and peace-support can clearly be considered to contribute to the objective of developing democracy and the rule of law. The wording of Articles 179 (now, 209(1) TFEU) and 181 a (now, 212(2) TFEU) EC Treaty does not exclude the financing of peacekeeping in order to fulfil their objectives. Moreover, the case-law of the Court of Justice has established that the Union’s development policy should be interpreted in a broad sense.”<sup>4</sup>*

Parliament’s Legal Service has confirmed in its note of 6 January 2017 that the exceptional circumstances in which CBD measures would be provided under the amended IcSP could permit an alternative interpretation, according to which the military component in Article 3a is both incidental and necessary. This is further sustained by the exclusion of support of strictly military nature pursuant to Article 3a(4), which could be further reinforced by establishing explicitly a closer link to the Union’s development cooperation policy.<sup>5</sup> As confirmed in the note of 2 February 2017 of the Commission services on the legal basis in procedure No. 2016/0207(COD) which was issued at the request of the Committee on Legal Affairs, the proposal pursues a development objective through an additional actor involved – the military – in the limited circumstances where the actor does not act in its military

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<sup>1</sup> Case C-268/94 *Portuguese Republic v. Council of the European Union* [1996] ECR I-6177, para 39.

<sup>2</sup> Case C-403/05 *Parliament v Commission* [2007] ECR I-9045, paragraph 56.

<sup>3</sup> SJ-0746/04, at 7.

<sup>4</sup> See Case C-268/94 *Portugal v Council* (1996) ECR I-6177, paragraph 37.

<sup>5</sup> SJ-0729/16, p.10.



capacity, pursuing solely civilian objectives.<sup>1</sup>

According to the Commission's Joint Communication to the European Parliament and to the Council of 28 April 2015 on 'Capacity Building in support of Security and Development'<sup>2</sup> security sector capacity building may be focused on civilian or police forces but also on the military. The 2003 European Security Strategy provides that security is a precondition for development, since conflict destroys infrastructure, including social infrastructure, while encouraging criminality and deterring investment and normal economic activity.<sup>3</sup> Finally, according to the European Consensus on development, the essential objective of EU development cooperation is the eradication of poverty in the context of sustainable development, the latter including '**good governance, human rights and political, economic, social and environmental aspects**'.<sup>4</sup> What is more, the European Consensus is envisaged to "*guide the planning and implementation of the development cooperation assistance component of all Community instruments and cooperation strategies with third countries*" – the development assistance component being "*defined as all development aid (ODA) as agreed by the OECD Development Assistance Committee*".<sup>5</sup> Under the revised ODA Directives, the financing of the military of partner countries is only possible when exceptional circumstances require the delivery of development services through the military in its role of re-establishing the rule of law. By contrast, the direct participation in military expenditures remains non-eligible.<sup>6</sup> As a result, the situation where State institutions have become dysfunctional for the achievement of peaceful and inclusive societies is not covered by the revised ODA Directives and the proposed Regulation has deemed it possible to go beyond ODA in using the military as provider for developmental services.<sup>7</sup> From a legal perspective, ODA Directives do not constitute, as such, legally binding limits to the scope of Article 208 TFEU and the IcSP Regulation does not submit its implementation to such ODA conditionality.<sup>8</sup>

However, as recognised in the Impact Assessment attached to the proposal, building military and defence capacities for purposes not related to development cooperation would indeed encroach upon CFSP, also breaching Article 40 TEU, which has introduced the principle of '**mutual non-affectation**' between CFSP and non-CFSP external actions of the Union.<sup>9</sup> In the same way, a measure primarily focusing on the financing of the military of third countries for defence related purposes, should come under the Union's CFSP and cannot be combined with a non-CFSP legal basis. This was confirmed in the Court's case C-263/14, *Parliament v. Council*,

*"As regards acts adopted on the basis of a provision relating to the CFSP, it is the task of the Court to ensure, in particular, under the first clause of the second subparagraph of Article 275 TFEU and under Article 40 TEU, that the*

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<sup>1</sup> Sj.i(2017)303958, p.2.

<sup>2</sup> See JOIN(2015) 17 final.

<sup>3</sup> See *A Secure Europe in a Better World – European Security Strategy* (Brussels, 12 December 2003), at 11-13.

<sup>4</sup> OJ 2006 C 46/1, at 5, 7 and 42. See also Case C-377/12, *Opinion of AG Mengozzi* (2014), para. 40.

<sup>5</sup> OJ 2006 C 46/1, at.8.

<sup>6</sup> See Reporting Directives of 17 February 2016, OECD document DCD/DAC(2016)3/FINAL of 8 April 2016, paras. 96-98.

<sup>7</sup> See Sj.i(2017)303958, p.3.

<sup>8</sup> SJ-0729/16, p.7-8.

<sup>9</sup> See P. van Elsuwege, 'EU External Action after the Collapse of the Pillar Structure: in Search of a new Balance between Delimitation and Consistency', 47 *Common Market Law Review* 2010, at 1002.

*implementation of that policy does not impinge upon the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union's competences under the FEU Treaty. The choice of the appropriate legal basis of a European Union act has constitutional significance, since to proceed on an incorrect legal basis is liable to invalidate such an act, particularly where the appropriate legal basis lays down a procedure for adopting acts that is different from that which has in fact been followed. In accordance with settled case-law, the choice of the legal basis of a European Union act [...] must rest on objective factors amenable to judicial review, which include the aim and content of that measure ”<sup>1</sup>*

Along these lines, the military component of the proposed Regulation should be seen in the broader context of the objectives and content of the IcSP. To that purpose, the ‘last resort’ character of the proposed reform and the strictly delineated occasions in which recourse to military assistance might be deemed the sole effective means to contribute to the achievement of peaceful and inclusive societies should be taken into account. In addition, the proposal prohibits Union assistance for the financing of military training designed to contribute exclusively to the fighting capacity of the armed forces, recurrent military expenditure and the procurement of arms and ammunition, which could be argued is an indication of the proposal's aim to contribute to the security and safety of civilian populations in third countries.<sup>2</sup> This possibility is further restricted by the obligation for the Commission to establish appropriate risk assessment, monitoring and evaluation procedures for measures (paragraph 6 of the same provision). Monitoring and evaluation modalities are also laid down in Articles 12 and 13 of Regulation (EU) 236/2014 that applies to all EU external financing instruments, including the IcSP.

In light of the above, it could be argued that the proposed Regulation is aimed at contributing to sustainable development and the achievement of stable, peaceful and inclusive societies through good governance in public administration, including ministries of defence and the armed forces- an integral part of the executive branch of Government - albeit, under civilian oversight and in exceptional circumstances, where sustainable development cannot be achieved solely by recourse to non-military actors.

## **VII - Conclusion and recommendation**

In light of the foregoing, although the Commission proposal introduces obligations aimed at the development and consolidation of the rule of law and good governance through enhanced civilian control and oversight over the military in third countries and is thus linked to CFSP and CSDP, it nonetheless—pursues as its main and predominant objectives development and economic, financial and technical cooperation policies focusing on the contribution to peaceful and inclusive societies seen as indispensable for the achievement of sustainable development. Since these primary objectives are indissociably linked, without one being secondary and indirect in relation to the other,<sup>3</sup> Article 209(1) in conjunction with Article 212(2) TFEU should constitute the valid and appropriate legal basis for the proposal.

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<sup>1</sup> Judgment of 14 June 2016, *Parliament v. Council*, C-263/14, ECLI:EU:C:2016:435, paras.42-43.

<sup>2</sup> For analogous argumentation by Parliament's legal service in the context of IfS, the predecessor of IcSP, see: SJ-0746/04, at 7.

<sup>3</sup> See Case C-411/06 *Commission v. Parliament and Council* [2009] ECR I-7585.

At its meeting of 13 July 2017 the Committee on Legal Affairs accordingly decided, by 10 votes in favour, 7 against, and 6 abstentions<sup>1</sup>, to recommend to you that the correct legal basis for the proposed Regulation of the European Parliament and of the Council amending Regulation (EU) No 230/2014 of the European Parliament and of the Council of 11 March 2014 establishing an instrument contributing to stability and peace is Article 209(1) and Article 212(2) TFEU.

Yours sincerely,

Pavel Svoboda

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<sup>1</sup> The following were present for the final vote: Pavel Svoboda (Chair), Jean-Marie Cavada (Vice-Chair, rapporteur), Mady Delvaux (Vice-Chair), Lidia Joanna Geringer de Oedenberg (Vice-Chair), Axel Voss (Vice-Chair), Isabella Adinolfi, Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Lynn Boylan, Daniel Buda, Angel Dzhambazki, Kostas Chrysogonos, Rosa Estaràs Ferragut, Heidi Hautala, Mary Honeyball, Sylvia-Yvonne Kaufmann, Gilles Lebreton, António Marinho e Pinto, Angelika Niebler, Evelyn Regner, Tiemo Wölken, Tadeusz Zwiefka.