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# DEFENCE RELATED DEALS IN 2025: NAVIGATING THE REGULATORY LANDSCAPE FOR M&A AND JOINT VENTURES

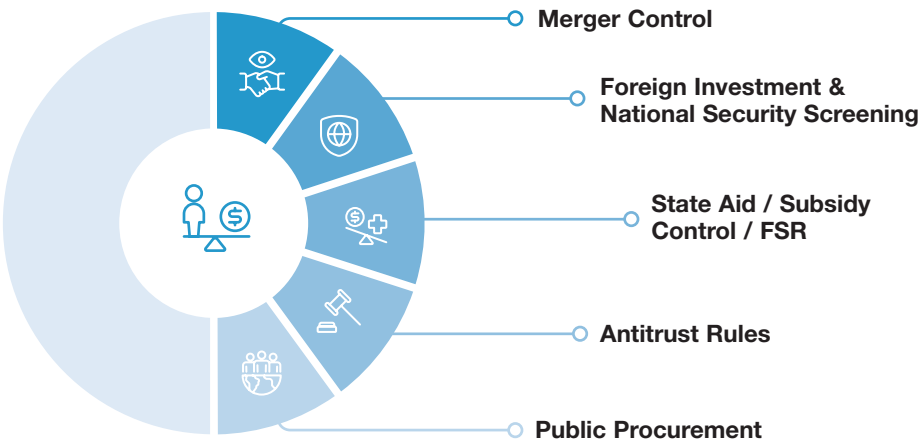
# DEFENCE RELATED DEALS IN 2025: NAVIGATING THE REGULATORY LANDSCAPE FOR M&A AND JOINT VENTURES

European governments are aligned in their recognition of the need for greater defence and defence-adjacent sector consolidation and collaboration in light of recent geopolitical events. Significant developments are happening at pace, with regulatory amendments allowing for greater defence spending announced on 22 April 2025 by Andrius Kubilius (European Commissioner for Defence and Space) and the German Monopolies Commission issuing a call on 23 April 2025 for an urgent transformation of defence and defence-adjacent procurement as part of a concerted effort to safeguard competition and remove bureaucratic barriers. Greater integration of and collaboration between the UK and EU defence industries under a new UK-EU security and defence pact is also the key agenda item of a UK-EU summit on 19 May 2025.

However, greater consolidation and collaboration will require parties to navigate a complex regulatory landscape.

## Key regulatory hurdles

This briefing explains how Europe is acting to strengthen its defence sector and highlights key antitrust considerations that businesses and investors in European defence-related supply chains and dual-use sectors should consider when designing M&A and collaboration strategies to take advantage of these new opportunities.



## A renewed focus on European defence capabilities

Europe is focusing on rearmament. This requires investment in and consolidation of European defence manufacturers and their supply chain partners; only three of the 15 largest defence manufacturers globally by revenue in 2023 are European. In Europe's fragmented defence sector (both in terms of size of companies and range of weapons systems), smaller regional players have comparatively higher manufacturing costs and rely on multiple supply chains. These challenges need to be addressed to improve these businesses' effectiveness and resilience.

Greater scale in defence markets has been identified as a priority by a number of influential reports on Europe's lack of international competitiveness, including the Draghi Report, the Letta Report and the European Commission's "Competitiveness Compass for the EU". The UK government has also announced a £2 billion increase to UK Export Finance's direct lending capacity for defence, with a view to "*[increasing] the competitiveness of the [UK's] defence industry, allowing UK exporters to grow their business through sales to [the UK's] allies around the world, and bolstering supply chains*."

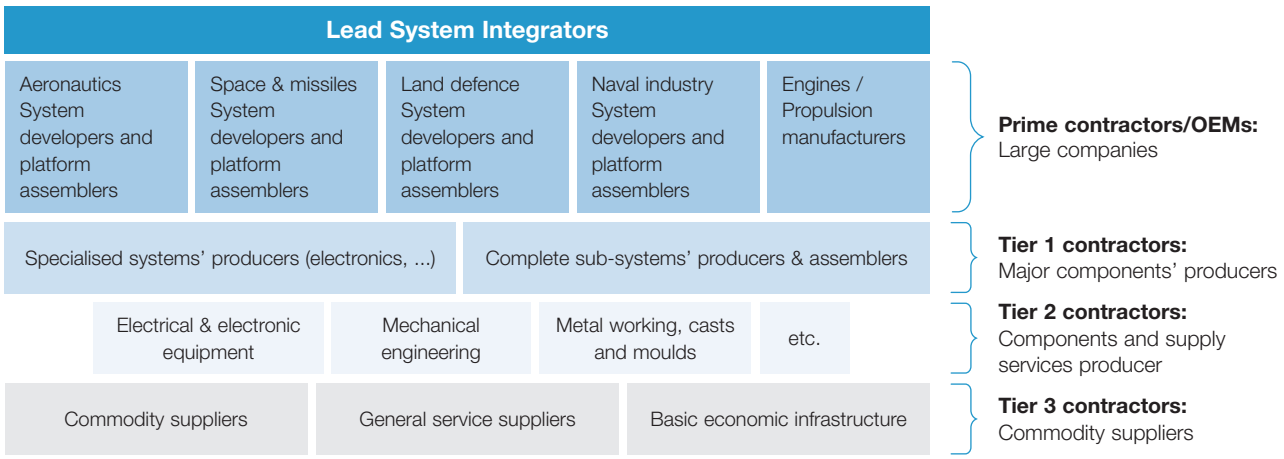
At the pan-European level, the European Commission (EC) has launched "ReArm Europe Plan / Readiness 2030", a EUR 800 billion stimulus package that provides for the coordinated unlocking of defence budgets of the EU's 27 Member States and a new loan instrument Security Action for Europe (SAFE) to facilitate investment and procurement in key defence areas. The European Investment Bank Group, which focuses on Europe's safety by funding security and defence projects, has committed to increasing its defence-related spending. Targeted amendments to existing EU funding programmes under a new EU Regulation were announced on 23 April 2025 to stimulate investment in defence and defence-adjacent sectors through funds within the EU budget. In particular, the investment scope of Strategic Technologies for Europe Platform (STEP), Digital Europe Programme (DEP) and Connecting Europe Facility (CEF) will now include defence-related technologies and dual-use items, with emphasis on AI and other digital capabilities.

Other key goals, identified in the EC's Joint White Paper for European Defence Readiness 2030 (EC White Paper) are to close capability gaps and support the European defence industry, deepen the single defence market and accelerate the transformation of defence through disruptive innovations, such as AI and quantum technology. The White Paper seeks to develop strategies to achieve these aims and calls for a "*truly functioning EU-wide Market for Defence equipment*" that would "*boost market opportunities across Member States through cross-border industrial collaborations, mergers and acquisitions or start-ups, thereby prompting more EU-made defence products*". It emphasises the need for consolidated scale and proposes a "buy European" policy for defence procurement and an increased role for JVs and partnerships in defence and defence-adjacent projects. It also sees scope for joint or collaborative procurement by several EU Member States, or by governments alongside the European Defence Agency or NATO, or even by the EC as a purchasing agency on behalf of Member States.

> "Silicon Valley's early growth in the 1950s and 1960s was largely supported by defence investment, well before today's venture capital industry emerged. More recently, innovation and technological breakthroughs in civilian sectors are increasingly applied in the field of defence, especially as defence solutions become more dependent on digital tools."
>
> **– Draghi Report**

Finally, (although not the focus of this briefing), there continues to be scope for strategic collaborations between non-EU firms (for example, those with specific expertise and which are not affiliated to a hostile actor) or in coordination with AUKUS, the trilateral security partnership between Australia, the UK, and the US. A pact between the EU and the UK on 19 May 2025 would mean, among other things, that UK defence companies would have access to SAFE funds to facilitate their growth and expansion plans. Further, the investment and growth strategies of core European defence contractors will positively impact many of its suppliers, be they suppliers of raw materials or of sophisticated hardware and software inputs.

**Many entry points to defence supply chains**




**Source: European Defence Agency, "Access to Defence Supply Chains"**

## Navigating the European M&A regulatory landscape for M&A and JVs

As a preliminary consideration, companies, including financial sponsors, need to satisfy themselves that they are free under their governance documentation to invest in defence-related companies. Financial regulators are also clarifying their position on investments in and the financing of defence-related M&A. The UK Financial Conduct Authority clarified in March 2025, rebutting speculation to the contrary, that there is "*nothing in our rules, including those related to sustainability, that prevents investment or finance for defence companies*".

In Europe, impending M&A deals in the wider defence ecosystem will need to secure clearances under merger control (i.e. competition scrutiny), foreign direct investment (FDI) and/or national security screening regimes. Some may also trigger subsidy control reviews under the UK's subsidy control rules, the EU's State aid regime and/or the EU's Foreign Subsidies Regulation. The award of defence contracts by governments – including efforts to benefit from joint procurement arrangements as mooted in the EC White Paper – may be subject to EU and UK public procurement rules. Collaborations and partnerships that do not take the form of a notifiable M&A transaction will still require detailed self-assessment for compliance with general competition rules (for example, regarding co-ordinated R&D and commercialisation).

## How to secure merger control approvals?

"Merger control" consists of the rules for competition authorities to review M&A transactions to assess whether they significantly reduce competition. In the EU, larger transactions are reviewed by the European Commission, and the remainder by national competition authorities. Outside the EU, including countries such as Switzerland and the UK, all transactions affecting the country concerned are reviewed by the country's national competition authority for example, in the UK, the Competition and Markets Authority (CMA).

Merger control reviews will take into account the particular nature of competition in defence-related sectors. Single government buyers (monopsonists) and competitive tenders for long-duration contracts mean that high market shares are not necessarily an obstacle to clearance. That said, although the EC will be mindful of serving the political imperative of facilitating the creation of "European champions" through consolidation in certain industries, including defence, the EC is still legally obliged under the rules to assess for the effects on competition when reviewing M&A transactions.

However, there may now be greater scope for securing clearance from the EC for defence deals, even where they appear to raise competition concerns, for a variety of reasons:

- Traditional competition considerations might well be compatible with defence-related M&A and partnerships – for example, parties to a transaction may emphasise that the merging companies have complementary, rather than competing, skills and capabilities.

- Current EU industrial and defence policy developments may give rise to a more genuinely pan-EU market for defence procurement where traditional national defence companies may be exposed to more competition from EU defence firms in other Member States. Such a dynamic could also facilitate obtaining merger control clearances in cases which would have been assessed in the past purely through a national lens and as a result would have been difficult to clear.

In addition, the Draghi Report recommended that the EC should be more open to clearing otherwise problematic mergers that can be shown to have beneficial impacts on supply chain resilience and innovation in the EU. This is now also expressly reflected in the mandate of the recently appointed EU Commissioner for competition matters, Teresa Ribera, which directs her to "*give adequate weight to the European economy's more acute needs in respect of resilience, efficiency and innovation, the time horizons and investment intensity of competition in certain strategic sectors, and the changed defence and security environment*". In merger control, the EC intends to implement these goals by revising its guidelines for assessing mergers, albeit not until late 2026 or early 2027. That said, these considerations may emerge in the decision-making practice of the EC before then. Indeed, the drive for supply-chain resilience in particular will be a key issue in the defence sector in the near term, in light of the current geopolitical context and the fragmented state of the defence sector. For example, several arms manufacturers have each already announced the acquisition of a key supplier.

**European companies rush to tap defence spending boom**

Industrial groups are converting production facilities or adapting existing technology for military use

"In Italy, industry minister Adolfo Urso told the Financial Times that car parts suppliers needed to diversify to survive, and defence was an obvious candidate as the US moved military assets away from Europe. "Italy is an industrial ecosystem primed for a diversification towards aerospace, underwater, shipbuilding, and also the defence industry."

**– Financial Times,** 27 March 2025

Similar considerations apply to UK merger control where the CMA has received a strategic steer from the UK government to prioritise pro-growth and pro-investment interventions, with particular reference to growth and international competitiveness in key industrial sectors, including defence. In response to these pressures, the CMA has committed to improving, among others, the predictability and pace of its merger reviews, while adopting a more business-friendly approach to legal certainty for investors.

Conversely, we may observe the use of specific legal powers for defence M&A which will require active management by transaction parties and their legal advisers:

- Within the EU, Member State governments can invoke Article 346 of the Treaty on the Functioning of the EU – a provision which allows Member States to override certain aspects of EU law to protect essential national security interests – by instructing merging parties not to disclose information in filings to the EC which the Member State considers contrary to the essential interests of its security. In such cases, the EC will typically require the Member State to justify the invocation of its Article 346 rights, which can lead to clearance delays. Consequently, early engagement with government customers at EU Member State level to clarify whether, and to what extent, they may invoke Article 346 is important for deal planning.

- Article 346 also contains a broad power for Member States to take steps which they consider necessary for the protection of the essential interests of their security which "are connected" with the production of or trade in arms, munitions and war material. This power has the potential to extend to M&A deals in a wide range of defence-adjacent sectors which may not normally be considered to form part of the defence sector.

Within the EU, if a transaction is not sufficiently large to be reviewable by the EC, it may be reviewable by national competition authorities of EU Member States. Many of these national merger control regimes allow governments to intervene and override the decision of a competition authority to block a transaction, or to impose remedies as a condition of clearance (for example, special national rules to override the application of the standard merger control regime in Germany under the special Ministerial Authorisation or *Ministererlaubnis*, which can be granted by the German Federal Minister for Economic Affairs and Energy, if a proposed concentration has been prohibited by the German competition authority). Although such powers are used infrequently, they need to be carefully assessed at an early stage as they may offer dealmakers a pathway through previously intractable hurdles to merger clearance.

However, parties should be mindful of the proliferation in the EU of broad powers to call in for merger control review transactions below the standard thresholds for mandatory filings.

**De-risking FDI and national security screening review processes**

In recent years, the number of FDI and national security screening regimes in Europe has increased rapidly. The UK and almost every EU Member State has such a regime. They all capture deals involving suppliers of military or dual-use products or services, and, in a number of cases, extend to direct and indirect suppliers to the defence sector. Given both the broad and often highly-specific scope of these regimes, it may not be immediately obvious that an M&A target's activities are within scope. Unlike most merger control regimes, FDI and national security regimes typically allow governments to intervene in transactions even if the target, or the interest being acquired in the target, is very small, and filings may also need to be aligned with change of control applications by government customers. Special security agreements are interrelated with the application of FDI regulations (which may require commitments from purchasers / bidders) and provide governments with additional control rights over defence-related companies, such as over governance, liquidity rights, asset transfers and to allow the triggering of a sale of shares to it in certain circumstances. The government could also use such agreements to control other key aspects of defence-related deals, such as technology transfer and export restrictions. They are increasingly used by governments and are by nature confidential and subject to a certain level of security clearance.

Importantly, acquirers from friendly or allied jurisdictions are not immune to intervention under these regimes, and some screening regimes apply irrespective of whether the investor is foreign. The nationality of an investor and whether an investor is government-linked are, nonetheless, important factors in assessing whether a filing is required and whether a transaction gives rise to a concern. Determining the nationality of an investor or whether it is government-linked frequently involves a nuanced assessment since different regimes may reach different conclusions about the same investor. The identity of even small minority co-investors or limited partners in funds can, therefore, be determinative for whether a transaction is notifiable or ultimately gives rise to public interest or national security concerns. Such considerations will be particularly important to deal certainty in cases where co-investors or limited partners in funds become subject to national or international sanctions as such sanction regimes impose an additional regulatory hurdle.

Moreover, these regimes are often procedurally opaque, and allow considerable flexibility for governments, making it harder to predict whether public interest or national security objections might be raised.

Unlike the EU merger control regime, there is no process for FDI screening by the EC, so deals may be subject to multiple, parallel reviews by national EU governments in addition to the UK. The EU's Foreign Direct Investment Screening Regulation facilitates greater information sharing between Member States and the EC, meaning that reviews can include considerations that extend beyond national borders, and proposed reforms are expected to strengthen and expand the scope of the Regulation.

In combination with FDI and national security screening, many jurisdictions will operate export control regimes designed to prohibit or restrict the outbound flow of sensitive assets. The scope of such regimes can be sufficiently broad to capture dual-use items and other assets in the defence supply chain.

> “Transport is key to security and defence. In the EU, it is estimated that up to 90% of the transport infrastructure needed for large military operations is dual use.”
>
> **– Draghi Report**

This means that early and detailed diligence is required to identify both the need for FDI clearances (and, where relevant, other closely-associated clearances relating to export control and sanctions) and a strategy for navigating potential hurdles to clearance where filings are required. Early engagement with important government customers and other key industry stakeholders will be critical in many cases to ensuring that potential issues are understood and addressed within the deal timetable.

**Does the transaction require EU State aid or foreign subsidy control reviews?**
If an M&A transaction itself involves subsidies, State aid clearance from the EC will usually be required. The traditional State aid review process remains lengthy and burdensome, but this may be addressed in light of the wider objective of strengthening the EU's defence capabilities. However, State aid decisions remain subject to possible legal challenges from third parties, including Member State governments. Buyers should also carry out due diligence to understand the risk that a target may be exposed to State aid liabilities arising from previously granted subsidies.

Any subsidies from governments or public authorities in the UK will also be subject to the UK's post-Brexit "subsidy control" regime. While this regime offers a speedier route, that comes at the expense of legal certainty, as subsidies granted are not subject to clearance decisions by a central authority (as they are in the EU).

It remains to be seen whether EU Member States (or the UK) make reference to provisions allowing for the protection of essential national security interests – Article 346 for the EU (see above) and equivalent provisions in the UK – to facilitate mergers or procurement processes through subsidies that are not subject to challenge under subsidy rules.

The EU has also recently implemented its Foreign Subsidies Regulation (FSR) which, among other things, regulates M&A transactions involving acquirers that have received subsidies from a non-EU government (including the UK), or an entity linked to such a government. This adds yet another mandatory clearance requirement for deals involving targets with significant levels of EU turnover. If the EC concludes that an acquirer benefits from subsidies from a non-EU government it can prohibit the transaction, or impose remedies, on the grounds that the subsidies have affected the acquisition process or would give the target an unfair advantage when competing, post-transaction, in the EU. Such subsidies could include, for example, large government contracts that are not on market terms. While the regime has not yet been tested with a defence sector deal, merging parties may be prevented by foreign laws from disclosing relevant information about sensitive contracts, in which case the EC can draw the adverse inference that the contracts involved subsidies.

**Are key contracts compliant with relevant public procurement rules?**
The award of defence contracts by governments and public authorities (for example, purchasing equipment or services) may be subject to public procurement rules, under relevant EU directives in addition to FSR clearance for larger procurements (to screen for bids facilitated by subsidies from non-EU governments), and, in the UK, under the Procurement Act 2023. It is important to be compliant, as rivals who fail to secure contracts may invoke the public procurement rules to challenge the award of the contract, with a view to annulling it.

This will also apply to the joint or collaborative procurement (for example, by several governments) envisaged by the EC White Paper (see above), which may well be a feature, or indeed part of the business model of cross-border M&A and joint ventures in defence (and defence-adjacent) industries. Joint procurement by Member States of defence equipment via the European Defence Agency is currently 35% of total defence procurement in the EU, and likely to increase in line with the White Paper's aspirations alongside consolidation in these sectors.

There are exemptions from the EU and UK public procurement rules for the protection of essential national security interests, as well as for contracts below certain value thresholds. There are also specified circumstances in which direct awards may be allowed as an alternative to a full competitive tender. It is essential to be well-advised on these issues as part of any business strategy in the defence and defence-adjacent sectors.

The procurement space will also provide a host of opportunities in the near term, with the call by the German Monopolies Commission for greater simplification and cohesion in pan-European procurement procedures providing the momentum needed for SMEs, in particular to drive innovation in defence and defence-adjacent sectors. The Monopolies Commission acknowledges the key role venture capital will play in forming co-financing mechanisms for government procurement in this space. While immediate and urgent defence needs will be met by proven providers of defence and weapon systems, demand for simpler and more agile procurement systems will allow innovative SMEs in key technologies such as AI, quantum technology, cybersecurity and communication systems to play a greater role in shaping European defence capabilities. Future procurement will be designed to spur innovation and competitiveness instead of consolidating existing market power. SPRIND, the innovation agency backed by the German government, exemplifies the proposed model for disruptive innovation.

**Beware of the continued application of general competition rules**
Partnerships, joint R&D and other collaborations between rivals that are not subject to merger control (see above) will need to be assessed for compliance with the competition law prohibition on anti-competitive agreements and information exchanges. This prohibition applies under EU law, under the competition law of each Member State and under UK law, but is in essentially the same terms in all jurisdictions. As there is no notification and clearance mechanism under the prohibition in the EU or UK, this is a self-assessment exercise to be carried out by businesses and their advisers. The potential consequences of non-compliance include large fines (up to 10% of global group turnover) imposed by the relevant competition authorities (for example, the EC or the CMA), unenforceability of contracts, and exposure to third-party damages claims in the courts.

> "Defence-related small and medium-sized enterprises (SMEs) are key enablers of innovation and growth. Europe's defence industry should be fully able to draw upon the innovations coming from SMEs; including those SMEs that are mainly active in civil industries. More than 2,500 SMEs are playing a central role in the complex defence supply chains in Europe."
>
> **– European Commission,** Directorate-General for Defence Industry and Space

In the context of the prohibition, issues that can arise in defence-sector collaborations include:

- joint bidding between rivals for contracts that suppliers could credibly bid for on their own;
- arrangements between competitors to jointly produce their products, carry out joint R&D, or to specialise by withdrawing from the other's product market;
- sharing of competitively sensitive information between rival members of a bidding or purchasing consortium; and
- technology licensing arrangements that result in allocation of markets or customers, output limitations, price controls on the licensee, or restrictions on the licensee's ability to exploit its own intellectual property rights to carry out any independent R&D.

It is possible that governments will, in emergency circumstances, apply extraordinary powers to allow for collaboration between defence sector competitors that would normally be prohibited under competition law. For example, the UK Government has in the past provided temporary exemptions on public policy grounds, (or contemplated doing so) for example to deal with fuel shortages or to ensure security of supply of essential goods during the COVID pandemic.

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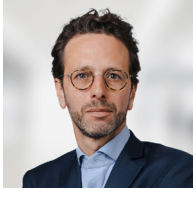

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