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From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	Proposal for a COUNCIL REGULATION amending Regulation (EU) 2021/2085 establishing the Joint Undertakings under Horizon Europe, as regards the Chips Joint Undertaking - Information from the Presidency

ANNEX

Proposal for a

COUNCIL REGULATION

amending Regulation (EU) 2021/2085 establishing the Joint Undertakings under Horizon Europe, as regards the Chips Joint Undertaking

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 187 and Article 188, first paragraph thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Whereas:

(1) Council Regulation (EU) 2021/2085[3] establishes the Joint Undertakings under Horizon Europe, including the Key Digital Technologies Joint Undertaking.

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1 OJ C , , p. .

2 OJ C , , p. .

3 Council Regulation (EU) 2021/2085 of 19 November 2021 establishing the Joint Undertakings under Horizon Europe and repealing Regulations (EC) No 219/2007, (EU) No 557/2014, (EU) No 558/2014, (EU) No 559/2014, (EU) No 560/2014, (EU) No 561/2014 and (EU) No 642/2014 (OJ L 427, 30.11.2021, p.17).

(2) The Key Digital Technologies Joint Undertaking addresses clearly defined topics that enable European industries at large to design, manufacture and use the most innovative technologies in electronic components and systems.

(3) Regulation (EU) […][4] establishes a framework for increasing the Union's resilience in the field of semiconductor technologies, reinforcing the Union's semiconductor capacity by reducing dependencies, enhancing digital sovereignty, stimulating investment, strengthening the capabilities, security, adaptability and resilience of the Union's semiconductor supply chain, and increasing cooperation among the Member States and the Commission. To create the conditions necessary to strengthen the Union's industrial innovation capacity, the Chips for Europe Initiative is established. In order to ensure a consistent implementation of the Chips for Europe Initiative, the European Semiconductor Board should provide advice to the Public Authorities Board.

(4) The activities supported under the Chips for Europe Initiative should be funded from Regulation (EU) 2021/695 of the European Parliament and of the Council[5] establishing the Horizon Europe Programme and from Regulation (EU) 2021/694 of the European Parliament and of the Council[6] establishing the Digital Europe Programme and should be implemented in accordance with the rules of the respective Programmes.

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4 OJ L …, p…

5 Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013 (OJ L 170, 12.5.2021, p. 1).

6 Regulation (EU) 2021/694 of the European Parliament and of the Council of 29 April 2021 establishing the Digital Europe Programme and repealing Decision (EU) 2015/2240 (OJ L 166, 11.5.2021, p. 1).

(5) The Chips for Europe Initiative aims to reinforce the competitiveness and resilience of the semiconductor technological and industrial base, whilst strengthening the innovation capacity of its semiconductor ecosystem across the Union, reducing dependence on a limited number of third country companies and geographies, and strengthening its capacity to design and produce, package, reuse and recycle advanced semiconductors. These aims should be supported by bridging the gap between the Union's advanced research and innovation capabilities and their industrial exploitation. It should promote capacity building to enable design, production and systems integration in next-generation semiconductor technologies, enhance collaboration among key players across the Union, strengthening Europe's semiconductor supply and value chains, serving key industrial sectors, and creating new markets.

(6) The operational objectives referred to in Article 4(2), points (a), (b), (c) and (d) of the [Chips Regulation] should be implemented through actions that should build upon the strong knowledge base acquired by the Electronic Components and Systems for European Leadership (ECSEL) Joint Undertaking and the Key Digital Technologies Joint Undertaking. The Key Digital Technologies Joint Undertaking should be renamed Chips Joint Undertaking and should be tasked with providing financial support, through any instrument or procedure provided for in Horizon Europe or the Digital Europe Programme, to actions funded under the Chips for Europe Initiative. Throughout the lifetime of the Chips Joint Undertaking, up to EUR 2.875 billion should be dedicated to the Chips for Europe Initiative, of which EUR 1.450 billion for capacity building activities for the operational objectives referred to in Article 4(2), points (a), (b), (c) and (d) of the [Chips Regulation] and EUR 1.425 billion for research and innovation activities related to the operational objectives referred to in Article 4(2), points (a), (b), (c) and (d) of the [Chips Regulation]. Furthermore, EUR 1.3 billion should be dedicated to research and innovation activities not covered under the Chips for Europe Initiative.

(7) The activities funded by the Chips Joint Undertaking should be covered in one single work programme, which should be adopted by the Governing Board. The work programme should include two specific parts. The first specific part should include a sub-section on capacity building activities for the operational objectives referred to in Article 4(2), points (a), (b), (c) and (d) of the [Chips Regulation] and sub-section on research and innovation activities related to the operational objectives referred to in Article 4(2), points (a), (b), (c) and (d) of the [Chips Regulation]. The second specific part should be dedicated to research and innovation activities not covered under the Chips for Europe Initiative.

(7a) All research and innovation activities, including those related to the Chips for Europe Initiative, should be financed through Horizon Europe to implement the Strategic Research and Innovation Agenda. The sub-section dedicated to capacity building activities should be financed through the Digital Europe Programme.

(7aa) The work programme should include the conditions for access to publicly funded infrastructure, such as pilot and testing facilities and the competence centres, ensure openness to a wide range of users and grant access on a transparent and non-discriminatory basis and on market terms (or cost plus reasonable margin basis) for large undertakings, while including preferential access or reduced prices for SMEs and academic institutes.

(7b) Before the work programme is prepared, the Public Authorities Board, taking into account the advice of the private members to ensure the industrial relevance of the activities set out in the work programme and, where appropriate, the advice of the European Semiconductor Board and input from other relevant stakeholders, should outline the specific parts and relevant sub-sections, including their corresponding expenditure estimates. For this purpose, the Public Authorities Board should include only the Commission and Member States. Subsequently, on the basis of this outline and the Strategic Research and Innovation Agenda, the Executive Director should prepare the work programme for both specific parts and relevant sub-sections and their corresponding expenditure estimates.

(8) All representatives of the Governing Board should participate in the preparation of the work programme, in the relevant discussions and receive the necessary information. When the Governing Board adopts the work programme, the voting rights for the sub-section on capacity building activities of the specific part of the work programme dedicated to the implementation of the Chips for Europe Initiative should be limited to the Commission and Member States only; for the sub-section on research and innovation activities of the specific part of the work programme dedicated to the implementation of the Chips for Europe Initiative, the Commission and the Member States should hold 45% of the votes each and the private members 10%. The voting rights for the specific part of the work programme dedicated to R&I activities not covered under the Chips for Europe Initiative should be equally shared between the Commission, the Participating States, and the private members. In the event that a decision on one of the two parts of the work programme cannot be reached, the work programme should be adopted including only the part on which a positive decision has been reached.

(9) The Public Authorities Board should be responsible for the selection of proposals. For the selection of proposals related to the implementation of the Chips for Europe Initiative, the Public Authorities Board should include only the Commission and Member States.

[(10) Deleted.]

(11) The calls for proposals under the Chips for Europe Initiative should be open to different legal forms of cooperation and other participants, and the selection of proposals for funding should not be based on a specific legal form of cooperation. With a view to facilitating the implementation of the specific actions of the Chips for Europe Initiative, such as the design platform or pilot lines, a European Chips Infrastructure Consortium (ECIC) may be set up in accordance with [Article 7 of the Chips Act]. An ECIC should involve the participation of at least three members, which can be Member States, public or private legal entities from at least three Member States, or a combination thereof striving for broad representation across the Union.

(11a) Given that the activities supported under the Chips for Europe Initiative and implemented by the Chips Joint Undertaking are financed from Horizon Europe programme and the Digital Europe programme, the Union financial contribution to the Chips Joint Undertaking should be increased accordingly. The administrative costs of the Chips Joint Undertaking should also be increased in accordance with the increase of operational tasks. The participating states should not contribute to the administrative costs. The private members should not contribute to the additional administrative costs of the Chips Joint Undertaking as their voting rights for the part of the work programme dedicated to the Chips for Europe Initiative are reduced and limited to the research and innovation activities.

(11b) Exceptionally, participating states should be allowed to report financial contributions made since 8 February 2022 provided that the corresponding national activities comply with the rules of this Regulation in particular and with the objective to enhance existing and develop new advanced pilot lines across the Union, given that some participating states started to implement those capacity building activities after the Commission presented the proposal for a Chips Act due to the political urgency to respond to the seriousness of the chips crisis. The underlying costs of these activities should be eligible under certain conditions, in particular that the proposals are evaluated and selected by the Chips Joint Undertaking.

(12) Provision of financial support to activities from the Digital Europe Programme should comply with Regulation (EU) 2021/694.

[(13) Deleted]

(14) Council Regulation (EU) 2021/2085 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) 2021/2085 is amended as follows:

(1) Article 2 is amended as follows:

(a) Points 2, 3 and 4 are replaced by the following:

"2. 'founding member' means any legal entity established in a Member State, a country associated to Horizon Europe or, where applicable, associated to the Digital Europe Programme, or an international organisation that is identified as a member of a joint undertaking in this Regulation or in one of its Annexes;

"3. 'associated member' means any legal entity established in a Member State, a country associated to Horizon Europe or, where applicable, associated to the Digital Europe Programme, or an international organisation that accedes to a joint undertaking by signing a letter of commitment in accordance with Article 6(3) and subject to an approval in accordance with Article 7;

4. 'participating state' means any Member State or country associated to Horizon Europe or, where applicable, associated to the Digital Europe Programme upon notification of its participation in the activities of the relevant joint undertaking by means of a letter of commitment;";

(2) Article 3 is amended as follows:

(a) In paragraph 1, point (g) is replaced by the following:

"(g) the Chips Joint Undertaking;";

(b) paragraph 3 is replaced by the following:

"3. In order to take into account the duration of Horizon Europe and, where applicable, the Digital Europe Programme, calls for proposals under the joint undertakings shall be launched at the latest by 31 December 2027. In duly justified cases, calls for proposals may be launched by 31 December 2028, at the latest."

(3) In Article 4 (1), the following subparagraph is added:

"The Chips Joint Undertaking shall also contribute to the general objective referred to in Article 4(1) and the operational objectives referred to in Article 4(2), points (a), (b), (c) and (d) of the [Chips Regulation] and to the general objectives of Digital Europe Programme, as set out in Article 3(1) of the Digital Europe Programme."

(4) In Article 10, paragraphs 2 and 3 are replaced by the following:

"2. The amount of the Union contribution specified in Part Two may be increased with contributions from third countries associated to Horizon Europe in line with Article 16(5) of Regulation (EU) 2021/695 and, where applicable, to the Digital Europe Programme in accordance with point (d) of Article 10(1) of Regulation (EU) 2021/694, provided that the total amount by which the Union contribution is increased is at least matched by the contribution of members other than the Union, or their constituent or affiliated entities.

3. The Union contribution shall be paid from the appropriations in the general budget of the Union allocated to the Specific Programme implementing Horizon Europe and, where applicable, to the Digital Europe Programme, in accordance with Article 62(1), point (c)(iv), and Article 154 of Regulation (EU, Euratom) 2018/1046 in the case of bodies referred to in Article 71 of that Regulation."

(5) Article 12(1) is amended as follows:

(a) The second subparagraph of paragraph 1 is replaced by the following:

"1. In addition to criteria set out in Article 22 of the Horizon Europe Regulation or, in the case of the Chips Joint Undertaking, in Article 18 of the Digital Europe Programme, the work programme may include, as an annex, eligibility criteria regarding national legal entities."

(b) The third subparagraph of paragraph 1 is replaced by the following:

"Each participating state shall entrust the joint undertaking with the evaluation of the proposals according to the Horizon Europe Regulation and, where applicable, to the Digital Europe Programme."

(6) In Article 29, paragraph 2 is replaced by the following:

"2. Budgetary commitments of the joint undertakings referred to in Article 3(1), points (b), (d), (g) and (h), may be divided into annual instalments. Until 31 December 2024, the cumulative amount of those budgetary commitments in instalments shall not exceed 50 % of the maximum Union contribution set out in Article 10. From January 2025, at least 20 % of the cumulative budget of the residual years shall not be covered by annual instalments."

(7) Article 126 is amended as follows:

(a) In paragraph 1 point (b) is replaced by the following:

"(b) Establish Union scientific excellence and innovation leadership in emerging components and systems technologies, including in activities related to lower TRLs; and promote the active involvement of SMEs, which, for all research and innovation activities, including those related to the Chips for Europe Initiative, shall represent at least one third of the total number of participants in indirect actions and at least 20 % of public funding should go to them."

(b) In paragraph 1 the following point (d) is added:

"(d) achieve large-scale technological capacity building and support related research and innovation activities throughout the Union's semiconductor value chain in cutting-edge and next-generation semiconductor and quantum technologies, and the innovation of established technologies to reinforce advanced design, systems integration and chip production capabilities in the Union, thereby increasing the competitiveness of the Union as well as contribute to the achievement of the green and digital transitions, in particular by reducing the climate impact of electronic systems, improving the sustainability of next generation chips and strengthening the circular economy processes, contributing to quality jobs within the semiconductor ecosystem and by addressing "security by design" that defends against cybersecurity threats."

(c) In paragraph 2 point (f) is replaced by the following:

"(fa) establish coherence between the Strategic Research and Innovation Agenda of the Chips Joint Undertaking and Union policies so that electronics components and systems technologies contribute efficiently."

(d) In paragraph 2 the following points (g), (h), (i) and (j) are added:

"(g) build up advanced design capacities for integrated semiconductor technologies.

(h) enhance existing and develop new advanced pilot lines across the Union to enable development and deployment of cutting-edge and next generation semiconductor technologies.

(i) build advanced technology and engineering capacities for accelerating the innovative development of cutting-edge quantum chips and associated semiconductor technologies.

(j) create a network of competence centres across the Union by enhancing existing or creating new facilities."

(8) Article 128 is replaced by the following:

Article 128

1. The Union financial contribution to the Joint Undertaking including EEA appropriations shall be up to EUR 4 175 000 000, including up to EUR 62 287 000 for administrative costs distributed as follows:

(a) up to EUR 2 725 000 000 from Horizon Europe;

(b) up to EUR 1 450 000 000 from the Digital Europe Programme;

[2. Deleted.]

[3. Deleted.]

4. The Union financial contribution referred to in paragraph 1 point (a) of this Article shall be used for the Joint Undertaking to provide financial support to indirect actions as defined in Article 2, point (43), of Regulation (EU) 2021/695, corresponding to the research and innovation activities of the Joint Undertaking, including research and innovation activities related to the operational objectives referred to in Article 4(2), points (a), (b), (c) and (d) of the [Chips Regulation].

5. The Union financial contribution referred to in paragraph 1 point (b) shall be used for capacity building activities of the operational objectives referred to in Article 4(2), points (a), (b), (c) and (d) of the [Chips Regulation].

6. The Union financial contribution referred to in paragraph 1 point (b) shall not exceed 50% of the total costs of the capacity building activities.

6a. The access to capacities resulting from implementation by the Chips Joint Undertaking of the operational objectives referred to in Article 4(2), points (a), (b), (c) and (d) of the [Chips Regulation] shall be open to a wide range of users across the Union and granted on a transparent and non-discriminatory basis directly proportional to the financial contribution by the Union to the total costs of those activities.

(9) In Article 129 paragraphs 3 and 4 are replaced by the following:

"3. By way of derogation from Article 28(4), the private members shall make or arrange for their constituent and affiliated entities to make a financial contribution of up to EUR 26 331 000 for administrative costs of the Chips Joint Undertaking. The share of the total contribution on an annual basis for administrative costs of the Chips Joint Undertaking by the private members shall be 30%.

4. The contributions referred to in paragraph 1 shall consist of contributions laid down in Article 11(3). Exceptionally, by derogation from Article 11(3), the participating states are allowed to report financial contributions made since 8 February 2022. The underlying costs of the related activities may be considered eligible as of that date, even if they were incurred before the grant application was submitted, provided that all the following conditions are fulfilled:

(a) the activities comply with the rules of this Regulation;

(b) the activities contribute to the objective referred to in point (h) of Article 126(2) of this Regulation and the related costs incurred consist of capital expenditure;

(c) the grant applications are evaluated and selected by the Joint Undertaking in accordance with Article 12(1);

(d) the activities continue to be carried out at the moment the grant is awarded;

(e) the participating state's contribution linked to these costs are not taken into account for the purpose of calculating the voting rights of participating states referred to in paragraphs 2 and 3 of Article 133 and in Article 136(1);

(f) the participating state's contribution linked to those costs do not exceed 25% of the total financial contribution by that participating state foreseen for the activities that contribute to the objective referred to in point (h) of Article 126(2) of this Regulation.

5. The contributions referred to in paragraph 2 of this Article shall consist of contributions laid down in Article 11(1), including at least 90 % of contributions laid down in Article 11(1), point (a).”

(10) In Article 133, the following paragraph 3a is added:

“3a. By derogation from paragraph 1, the Governing Board shall solely include the Commission and Member States when voting on the sub-section on capacity building activities of the specific part of the work programme dedicated to the implementation of the Chips for Europe Initiative. The Commission shall hold 50% of the voting rights. For the sub-section on research and innovation activities of the specific part of the work programme dedicated to the implementation of the Chips for Europe Initiative, the Commission and the Member States shall hold 45% of the voting rights each and the private members 10%. Paragraphs 2 and 3 shall apply *mutatis mutandis* to the voting rights of the Member States. All representatives of the Governing Board shall participate in the preparation of that specific part of the work programme.”

(11) The following Article 133a is inserted:

Article 133a

Rules applicable to the activities funded under the Digital Europe Programme

1. In addition to Article 24(2), Regulation (EU) 2021/694 shall apply to the activities funded by the Chips Joint Undertaking under the Digital Europe Programme.

2. The work programme and the calls for proposals of the Chips Joint Undertaking shall be published on the website of the Digital Europe Programme.

3. In the case of the Chips Joint Undertaking, ex post audits of expenditure on activities funded by the Digital Europe Programme budget shall be carried out by the Joint Undertaking in accordance with Article 27 of Regulation (EU) 2021/694.

(12) Article 134 is replaced by the following:

Article 134

Limitations and conditions to participation in specific actions

1. For actions funded under the Horizon Europe, by way of derogation from Article 17(2), point (l), where the Commission so requests, following approval of the Public Authorities Board, participation in specific actions shall be limited in accordance with Article 22(5) of Regulation (EU) 2021/695.

2. For actions funded under the Digital Europe Programme, where the Commission so requests, following approval of the Public Authorities Board, participation in specific actions shall be limited in accordance with Articles 12(6) and 18 of the Regulation (EU) 2021/694.

4. The calls for proposals provided in the specific part of the work programme dedicated to the Chips for Europe Initiative shall be open to different legal forms of cooperation and to other participants. The selection of proposals for funding shall not be based on a specific legal form of cooperation. Actions may also be carried out by legal entities cooperating within a consortium structured in a form of an ECIC, in accordance with [Article 7 of the Chips Act]. The specific part of the work programme dedicated to the Chips for Europe Initiative shall specify that, where an ECIC applies for funding for a specific action, the ECIC itself, and not individual entities forming the ECIC, shall be the applicant.

(13) The following Article 134a is inserted:

Article 134a

Additional tasks of the Executive Director

By derogation from Article 19(4) point (c), the Executive Director of the Chips Joint Undertaking shall prepare on the basis of the outline prepared by the Public Authorities Board as referred to in Article 137(aa) and of the Strategic Research and Innovation Agenda and submit for adoption to the Governing Board the work programme for the joint undertaking.

(14) Article 136 is amended as follows:

(a) Paragraph 2 is replaced by the following:

"2. For the purpose of paragraphs (1) and (2) of Article 134, the Public Authorities Board shall include only the Member States. Paragraph 1 shall apply *mutatis mutandis*."

(b) Paragraph 2a is inserted:

"2a. For the purpose of point (aa) of Article 137 and for the selection of proposals corresponding to the implementation of the Chips for Europe Initiative under point (d) of Article 137, the Public Authorities Board shall include only the Commission and Member States. Paragraph 1 shall apply *mutatis mutandis*."

(15) Article 137 is amended as follows:

[(a) Deleted]

(aa) The following point (aa) is added:

"(aa) before each work programme is prepared and taking into account the advice of the private members and, where appropriate, the advice of the European Semiconductor Board and input from other relevant stakeholders, outline two specific parts of the work programme including the corresponding expenditure estimates, the first of which shall include a sub-section on capacity building activities for the operational objectives referred to in Article 4(2), points (a), (b), (c) and (d) of the [Chips Regulation] and a sub-section on research and innovation activities related to the operational objectives referred to in Article 4(2), points (a), (b), (c) and (d) of the [Chips Regulation], including conditions for access to publicly funded infrastructure, and the second of which shall be dedicated to research and innovation activities not covered under the Chips for Europe Initiative;"

(b) Point (d) is replaced by the following:

"(d) select proposals in accordance with Articles 12(1) and 17(2), point (u);"

(c) The following point (ea) is added:

"(ea) recommend, if necessary, that an ECIC takes remedial action, such as an amendment to its Statutes, where a Member State has brought the matter to the Public Authorities Board's attention following a refusal by the ECIC of a new membership without reasonably justifying such a refusal on the basis of the fair and reasonable terms specified in the Statutes."

(16) Article 141 is replaced by the following:

Article 141

Funding rates and rules for participation

1. For indirect actions funded under Horizon Europe, in accordance with Article 17(2) of Regulation (EU) 2021/695 and by way of derogation from Article 34 of that Regulation and for activities funded under the Digital Europe Programme, the Chips Joint Undertaking may apply different funding rates for the Union funding within an action depending on the type of participant, in particular SMEs and non-profit legal entities, and the type of action. The funding rates shall be indicated in the work programme.

1a. By way of derogation from Article 34 of Regulation (EU) 2021/695 and from paragraph 1, research and innovation actions up to TRL 4 shall be funded by the Union at 100% of the total eligible costs.

2. By derogation to Article 22(2) of Regulation (EU) 2021/695 or Article 18 of Regulation (EU) 2021/694, a competence centre or a single legal entity composed of at least three independent legal entities established in at least three different participating states, of which at least one Member State, shall be eligible to participate in calls for proposals funded by the Chips Joint Undertaking under Article 134(4), provided that this derogation is duly justified in the description of relevant topics in the work programme.

(17) The references to “Key Digital Technologies Joint Undertaking” shall be understood as referring to “Chips Joint Undertaking”.

Article 2

This Regulation shall enter into force on the date of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council

The President