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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EC) No 1907/2006, (EC) No 1272/2008, (EU) No 528/2012, (EU) 2019/1021 and (EU) 2021/697 as regards defence readiness and facilitating defence investments and conditions for defence industry – Revised Presidency compromise text (EDF)

Delegations will find in the Annex a revised Presidency compromise text in relation to the above proposal, for examination at the meeting of the Antici Group (Simplification) on 7 November 2025. Additions to the Commission proposal are indicated in **bold**, deletions are marked as ~~strikethrough~~.

ANNEX

PUBLIC

2025/0176 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulations (EC) No 1907/2006, (EC) No 1272/2008, (EU) No 528/2012, (EU) 2019/1021 and (EU) 2021/697 as regards defence readiness and facilitating defence investments and conditions for defence industry

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114, Article 173(3), Article 182(4), Article 183, Article 188, second paragraph, and Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) In order to facilitate investments by Member States in defence, it is necessary to remove regulatory burdens for defence readiness. This facilitation will support the defence industry's growth over time and contribute to support the defence readiness of Member States.

(2) There is a need to ensure the right balance between maintaining a high level of protection of human health and the environment, a competitive internal market and defence readiness. While several instruments of Union legislation provide the necessary flexibility for Member States to take actions to facilitate the ramp-up of the defence industry, often national legislation and implementation hamper defence readiness. This is for example the case with the possibility for Member States to use exemptions from Regulation (EC) No 1907/2006 of the European Parliament and of the Council[1] where necessary in the interest of defence, including for defence readiness.

(3) The legal framework established by Regulation (EC) No 1907/2006 should be adapted to the objective of defence readiness. Flexibility and agility are required to safeguard national and Union security interests, reflecting the worsened geopolitical situation. At the same time, it is fundamental to maintain a high level of protection for human health and the environment. There are indications that national implementations of Regulation (EC) No 1907/2006 in some Member States do not fully take into account the flexibility provided by that Regulation. The current defence exemption can be improved to ensure legal certainty and allow for swifter actions. It is therefore appropriate to broaden the scope of existing national defence exemptions within Regulation (EC) No 1907/2006, providing Member States with the possibility to authorise broader exemptions as necessary, while maintaining the fundamental responsibility to balance defence and security needs with a high level of protection of human health and the environment.

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[1] Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1–849, ELI: http://data.europa.eu/eli/reg/2006/1907/oj).

(4) Similar changes should be made to other legal acts related to chemicals providing for an equivalent national exemption, namely Regulation (EC) No 1272/2008 of the European Parliament and of the Council[2] and Regulation (EU) No 528/2012 of the European Parliament and of the Council[3] to ensure a coherent regulatory environment for defence readiness.

(5) Regulation (EU) 2019/1021 of the European Parliament and of the Council[4] implements the Stockholm Convention on Persistent Organic Pollutants and the Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants. A party cannot grant exemptions once a decision has been adopted under the Convention to list a chemical in Annex A, B or C to the Convention beyond those granted under the Convention, unless the Party does not accept that listing; thus, defence readiness needs should be addressed in preparatory stages in the Union before prohibitions or restrictions are established at the international level in the Convention. For this reason, it is important that relevant information is collected, assessed and submitted for the purpose of the risk management evaluation stage within the process of listing a substance within the Convention, as it is at that stage where the Persistent Organic Pollutants Review Committee may consider potential exemptions from possible control measures for that substance.

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2 Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ L 353, 31.12.2008, p. 1, ELI: http://data.europa.eu/eli/reg/2008/1272/oj).

3 Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (OJ L 167, 27.6.2012, p. 1, ELI: http://data.europa.eu/eli/reg/2012/528/oj).

4 Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (OJ L 169, 25.6.2019, p. 45 ELI: http://data.europa.eu/eli/reg/2019/1021/oj).

(6) It cannot be excluded that information on the use of chemical substances contains sensitive information that needs to be protected. Member States should therefore, with due regard to international law, be allowed to make exemptions from the reporting requirements provided for in article 13(1) of Regulation (EU) 2019/1021 on grounds of protection of national or Union defence and security interests, for the purpose of protecting sensitive information.

(7) The report on the interim evaluation of the European Defence Fund (EDF), established by Regulation (EU) 2021/697 of the European Parliament and of the Council[5], has confirmed its overall effectiveness and relevance, while highlighting the need to further streamline procedures and reduce administrative burdens where possible and introduce clarification, simplification and flexibility in that Regulation in order to facilitate the implementation of the EDF. Regulation (EU) 2021/697 should therefore be amended, taking into account the experience gained since 2021 and the feedback received during the consultations carried out in the context of the interim evaluation of the EDF.

(8) The current legal framework for the EDF implementation limits the use of indirect management to exceptional cases. However, to facilitate faster and leaner innovation cycles, enabling the EDF to respond more effectively to emerging defence needs and technological advancements and for a more cost-efficient implementation of the EDF, a more flexible use of indirect management may be necessary. Therefore, it is necessary to introduce the possibility to use indirect management in a more flexible manner, while ensuring that the principles of sound financial management, transparency and accountability are maintained, and that the use of indirect management is subject to rigorous monitoring and evaluation to guarantee the optimal use of Union funds. The evaluation and award procedures should be carried out in accordance with the provisions of this Regulation and of the Financial Regulation, regardless of whether they are conducted under direct or indirect management.

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5 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 L 170, 12.5.2021, p. 149, ELI: http://data.europa.eu/eli/reg/2021/697/oj).

PUBLIC

(9) ~~The requirement that all infrastructure, facilities, assets and resources used for the implementation of EDF funded projects be located within the Union and associated countries territory~~**Due to the rapidly evolving strategic context, particular as a result of Russia's aggression towards Ukraine, accelerating the technological transformation of European defence is crucial. Ukraine's defence ecosystem has proved** to be ~~eligible for funding limits the potential~~**innovative, resilient and cost-effective in many relevant aspects of defence technologies. It would be of particular interest** for the European Defence Technological and Industrial Base **(EDTIB)** to benefit from ~~testing opportunities that offer unique advantages. To address this limitation, it is necessary to allow for the costs of carrying out testing activities in non-associated third countries,~~**these experiences and know-how and to exchange best practices to improve its innovation capacity. Strengthening the collaboration between the EU recipients and Ukrainian entities through targeted actions could significantly contribute to this endeavour. Such collaboration can** in particular ~~those that can~~ provide ~~a unique test bed for defence products by offering a sustained, high-intensity conflict environment with diverse threats, rapid feedback, interoperability challenges, and stringent legal constraints, generating real-world performance data of immediate strategic value. Allowing testing in non-associated third countries exposed to acts of aggression provides~~ possibilities that are not readily available within the Union, such as rapidly available results, 24-hour testing and testing ~~on the battlefield, which~~**under realistic operational conditions. This** can significantly enhance the development and validation of defence technologies and products~~. In addition, it~~ **and** can facilitate the incorporation of ~~live experience on modern warfare~~**realistic scenarios** into the further development of defence technologies and products, thereby ensuring a technical and strategic advantage for the ~~European Defence Technological and Industrial Base~~**EDTIB**. By allowing costs of testing activities carried ~~outside the Union territory~~**out in Ukraine** to be eligible for funding, the EDF would be able to support the development of more effective and innovative defence solutions, ultimately contributing to the enhancement of the Union's defence capabilities. ~~It is the responsibility of the Programme Committee to specify and identify in which non-associated third countries~~ The costs of **such** testing activities should **only** be eligible for funding **as far as necessary for meeting the objectives of the Fund.**

(10) The interim evaluation of the EDF has shown that the current award criteria for the evaluation of proposals under that Fund are overly complex, unclear, and difficult to apply in practice. This has resulted in unnecessary administrative burdens and uncertainties for the Commission and the applicants, ultimately hindering the efficient implementation of the EDF. It is necessary to simplify the award criteria and introduce more flexibility in their application in order to make the evaluation more efficient, transparent, and effective. The possibility to select a relevant subset of award criteria according to specific objectives of the calls for proposals, on a ~~call by call~~**call-by-call** basis, would allow for a tailored and focused evaluation ~~thus for~~**, enabling** a better alignment with the priorities and objectives of the EDF. **To ensure transparency, each call topic under one call for proposal includes the same set of award criteria that is displayed within the call for proposal of the annual work programme.**

(11) The implementation of the EDF has been hindered by the requirement to adopt annual work programmes, resulting in complex procedures, making it challenging to ensure predictability and continuity of the actions supported by the EDF. To address that issue and provide more flexibility in the management of the EDF, it is necessary to introduce the possibility to implement the EDF through annual or multi-annual work programmes. This would enable the Commission to better plan and coordinate the support for defence research and development activities, while also allowing for more efficient use of resources and improved synergies between different projects and initiatives. By allowing multi-annual work programmes, the Fund would be able to better support long-term research and development projects, foster collaboration among stakeholders, and ultimately contribute to the enhancement of the Union's defence capabilities.

PUBLIC

(12) In order to further improve the efficiency and effectiveness of the EDF, it is essential to provide the Commission with the necessary flexibility to manage the programme in a way that optimises the use of resources and minimises administrative burdens. To that end, the conditions under which the Commission may have recourse to direct awards should be clarified, allowing for a more streamlined and expedited procedure in certain circumstances, which are clear and deemed relevant for the purpose of the call topic. Continuity of efforts and efficient implementation of defence research and development projects should be facilitated, while respecting the principles of transparency, fairness, and equal treatment. The Commission should be enabled to better respond to the evolving needs of the defence sector, the cooperation between stakeholders should be fostered and the development of innovative and effective defence solutions should be improved, thereby enhancing the security of the Union and defence capabilities of the Member States.

(13) The EDF has the potential to boost the development of innovative defence technologies and solutions through pre-commercial procurement. However, the current legal framework is overly complex and lacks clarity on the conditions for pre-commercial procurement under the EDF, thus hindering its effective use. The conditions for pre-commercial procurement need to be simplified and clarified, as the current provisions promote the award of multiple contracts within the same procedure (multiple sourcing), which is not always suitable for the defence sector. Removing this restriction will provide for a clearer and more effective pre-commercial procurement framework, enabling the EDF to better support the development of innovative solutions, bridge the gap between research and market deployment, and provide a strong incentive for Member States to invest in defence research and development.

PUBLIC

(14) The current legal framework for the EDF has not provided sufficient access rights to the results of development projects to Member States, in particular for those co-financing such projects. To ease that concern and promote a more collaborative and cooperative approach to defence research and development, it is necessary to grant to the co-financing Member States the right to access the results of development projects on fair terms. In addition, where Member States or EDF associated countries have confirmed co-financing to some legal entities of a consortium, all legal entities of the selected consortium are expected to provide such Member States or EDF associated countries with rights to use or have used the results generated during the action, **including for certification, testing, and integration in national systems as well as for other**~~for their~~ defence purposes, to be agreed upon between the Member States or EDF associated countries and the legal entities of the selected consortium. The conditions for the exercise of such rights should be defined in the contractual relationship between the recipients and the national authorities co-financing the action. This will improve transparency and ease the negotiation process between the Member States and industry and facilitate the decision-making process, thereby accelerating the implementation of co-financed development projects. As a result, this will promote a more streamlined collaboration in defence research and development.

(15) ~~To maximise the benefits of the changes to Regulation (EU) 2021/697, the amendments to that Regulation should apply retroactively. While some provisions, such as those relating to the award criteria cannot be applied retroactively due to their very nature, others, such as those relating to funding rates or~~**The eligibility for costs related to** testing ~~outside of the territory of the Union,~~**activities in Ukraine** can improve the efficiency and efficacy of the projects funded under the EDF. To ~~ensure that Union funds are spent in the most effective way possible, these provisions~~**maximise the benefits of the changes to Regulation (EU) 2021/697, the related amendment to that Regulation** should ~~be applicable~~**apply retroactively** as of 1 January 2025.

(16) Regulations (EC) No 1907/2006, (EC) No 1272/2008, (EU) No 528/2012, (EU) 2019/1021 and (EU) 2021/697 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 1907/2006

In Article 2 of Regulation (EC) No 1907/2006, paragraph 3 is replaced by the following:

‘3. Member States may allow for exemptions from this Regulation for substances, on their own, in a mixture or in an article, where necessary in the interests of defence.’

Article 2

Amendments to Regulation (EC) No 1272/2008

In Article 1 of Regulation (EC) No 1272/2008, paragraph 4 is replaced by the following:

‘4. Member States may allow for exemptions from this Regulation for substances and mixtures, as well as articles referred to in section 2.1 of Annex I, where necessary in the interests of defence.;’

Article 3

Amendments to Regulation (EU) No 528/2012

In Article 2 of Regulation (EU) No 528/2012, paragraph 8 is replaced by the following:

‘8. Member States may allow for exemptions from this Regulation for biocidal products, on their own or in a treated article, where necessary in the interests of defence.;’

Article 4

Amendments to Regulation (EU) No 2019/1021

Regulation (EU) 2019/1021 is amended as follows:

(1) in Article 2, the following point (14) is added:

PUBLIC

‘(14) ‘defence readiness’ means the state of preparedness of a Member State or several Member States to respond to a crisis defined in Article 1, point (10), of Directive 2009/81/EC of the European Parliament and of the Council*, which relates to defence’;

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* Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76, ELI: http://data.europa.eu/eli/dir/2009/81/oj).;’

(2) in Article 3, the following paragraph (4a) is inserted:

‘4a. When collecting, assessing and submitting information for the purpose of the risk management evaluation referred to in Article 8(7)– and Article 8(8) of the Convention, the Commission and Member States shall duly take into account defence readiness and specificities of the defence sector, including impacts on defence production supply chains;’

(3) in Article 13(1) the following second subparagraph is added:

‘Where necessary, Member States may make exemptions from this article on grounds of protection of national or Union defence and security interests, for the purpose of protecting sensitive information provided that such exemptions do not undermine the Union or Member States compliance, where relevant, with their reporting obligations under the Convention-.’

Article 5

Amendments to Regulation (EU) 2021/697

Regulation (EU) 2021/697 is amended as follows:

(1) Article 2 is amended as follows:

(a) the following point (6a) is inserted:

‘(6a) ‘cross-border SMEs’ means SMEs which are established in Member States or associated countries other than those in which recipients that are not SMEs are established and which participate in the activity as recipients, subcontractors or other legal entities in the supply chain’

(b) point (17) is replaced by the following:

‘(17) ‘pre-commercial procurement’ means the procurement of research and development services involving risk-benefit sharing under market conditions where there is a clear separation of the research and development services procured from the deployment of commercial volumes of end-products;;’

(2) in Article 4 the following paragraph 6 is added:

‘6. The budgetary commitments relating to the Programme and which cover activities extending over more than one financial year may be broken down over several years into annual instalments.;’

(3) in Article 8 paragraph 2 is replaced by the following:

By way of derogation from paragraph 1 of this Article, specific actions may, in substantiated cases, be carried out under indirect management by bodies as referred to in point (c) of Article 62(1) of the Financial Regulation, under the conditions set out in the work programme.

(4) in Article ~~9(2)~~**9(6)** the following ~~second~~**sentence is inserted at the end of the third** sub-paragraph ~~is inserted~~:

PUBLIC

~~'By way of derogation from the first subparagraph, infrastructures, facilities, assets and resources used by~~**'However, if the** recipients and subcontractors involved in the action **cooperate with legal entities established in Ukraine, controlled by Ukraine, or controlled by a Ukrainian entity, for the sole purpose of utilising their infrastructure, facilities, assets and resources** for testing ~~of a defence product, tangible or intangible component or technology, as~~**activities** referred to in Article 10(3), point (f) ~~may be located or held outside the territory of the Member States or~~**, the related costs shall be eligible for support from the Fund as far as these costs benefit the funded action and are necessary for strengthening** of the ~~associated countries, as established by the work programme. This shall not contravene the security and defence interests of~~**competitiveness, efficiency and innovation capacity of the EDTIB throughout** the Union ~~and its Member States and, shall be consistent with the objectives set out~~**, as laid down** in Article 3 ~~and shall comply with Articles 20 and 23~~**'**;'

(4a) In Article 10, paragraph 5 is replaced by the following:

'Paragraph 4 shall not apply to actions relating to disruptive technologies for defence or to activities referred to in point (c) of paragraph 3 or to actions dedicated to SMEs.;'

(5) in Article 11(1) the second sub-paragraph is replaced by the following:

'In certain duly substantiated and exceptional circumstances, Union funding may also be granted without a call for proposals in accordance with Article 198 of Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council*, including in cases provided for in the first subparagraph, point (e), of that Article.';

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* Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (OJ L, 2024/2509, 26.9.2024, ELI: http://data.europa.eu/eli/reg/2024/2509/oj).;'

(6) Article 12 is replaced by the following:

'Article 12

Award criteria

1. In accordance with Article 203 of Regulation (EU, Euratom) 2024/2509, each proposal shall be assessed on the basis of one or more of the following criteria as set out in the work programme, on a call-by-call basis:

(a) its contribution to excellence in the defence domain, in particular by showing that the expected results of the proposed action present significant advantages over existing defence products or technologies;

(b) its contribution to the innovation or potential of disruption of the European defence industry, in particular by showing that the proposed action includes ground-breaking or novel concepts and approaches previously not applied in defence sector;

(c) its contribution to the competitiveness of the European Defence Technological and Industrial Base by creating new market opportunities across the Union and beyond and accelerating the growth of companies throughout the Union;

(d) its contribution to reducing dependency on non-Union sources and strengthening security of supply;

(e) its contribution to cross-border cooperation between legal entities established in Member States or associated countries, in particular with SMEs and mid-caps that bring substantial added-value to the action, as recipients, subcontractors involved in the action or as other legal entities in the supply chain;

(f) its quality and efficiency of the implementation of the action;

(g) its contribution to increasing efficiency across the life cycle of defence products and technologies, including cost-effectiveness and the potential for synergies in the procurement, maintenance and disposal processes;

(h) its contribution to the further integration of the European defence industry throughout the Union, in particular regarding joint use, ownership or maintenance of the final product or technology.

PUBLIC

2. The work programme shall lay down details concerning the selection procedures, and the application of the award criteria listed in paragraph 1. This shall include any weighting of the criteria, scoring thresholds and, where relevant, rules for dealing with ex aequo proposals, taking into consideration the objectives of the call for proposals.;'

(7) Article 13 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. By way of derogation from paragraph 1 of this Article, support from the Fund shall not exceed 20 % of the eligible costs for activities referred to in Article 10(3), point (e), without prejudice to higher funding rates which may apply in accordance with paragraph 3 of this Article.;'

(b) in paragraph 3, point (b) is replaced by the following:

'(b) an activity may benefit from an increased funding rate, as referred to in this point, where at least ~~10~~**20** % of the total eligible costs of the activity are allocated to SMEs established in Member States or in associated countries and which participate in the activity as recipients, subcontractors or other legal entities in the supply chain.

The funding rate may be increased by percentage points equivalent to the percentage of the total eligible costs of the activity allocated to SMEs established in Member States or in associated countries in which recipients that are not SMEs or mid-caps are established and which participate in the activity as recipients, subcontractors or other legal entities in the supply chain, up to an additional ~~5~~**10** percentage points.

The funding rate may be increased by percentage points equivalent to twice the percentage of the total eligible costs of the activity allocated to cross-border SMEs as defined in Article 2, point (6a);'

(8) in Article 14, paragraph 1 is replaced by the following:

'1. Notwithstanding Article 201 of Regulation (EU, Euratom) 2024/2509, only the financial capacity of a coordinator shall be verified.;'

(9) in Article 17(2), point (b) is replaced by the following:

'(b) may authorise, in specific cases, the award of multiple contracts within the same procedure (multiple sourcing);'

(10) Article 22 is deleted;

(11) Article 23 is amended as follows:

(a) paragraphs 3 and 4 are replaced by the following:

'3. This Regulation shall not affect the Member States' discretion as regards their policy on the transfer and export of defence-related products. As regards transfers, Member States shall endeavour to use all facilitating tools at their disposal, such as general transfer licences, as referred to in Article 5 of Directive (EC) 2009/43 of the European Parliament and of the Council* and avoid disproportionate administrative pre-conditions to ensure the smooth implementation of the actions.

4. With regard to results generated by recipients through development actions supported by the Fund, and without prejudice to paragraph 3 of this Article, the Commission shall be notified prior to any transfer of ownership to a non-associated third country or to a non-associated third-country entity, which takes place within 3 years after the final payment of the action. If such a transfer of ownership contravenes the security and defence interests of the Union and its Member States or the objectives set out in Article 3, the support provided from the Fund shall be reimbursed.';

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* Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community (OJ L 146, 10.6.2009, p. 1, ELI: http://data.europa.eu/eli/dir/2009/43/oj).;'

PUBLIC

(b) the following paragraph 6 is added:

'6. Access rights to the results of development actions shall be granted to the national authorities co-financing the action under fair and reasonable conditions to be agreed upon with the recipients generating those results.

Terms and conditions for the exercise of such access rights shall be defined in the contractual relationship between the recipients and the national authorities co-financing the action.;'

(12) in Article 24, paragraph 1 is replaced by the following:

'1. The Fund shall be implemented by means of annual or multiannual work programmes as referred to in Article 110(2) of the Regulation (EU, Euratom) 2024/2509. Work programmes shall set out, where applicable, the overall amount reserved for blending operations.'

Article 6

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article ~~9(2) second~~**9(6) third** subparagraph ~~and Article 13~~ of the Regulation (EU) 2021/697, as amended by the present Regulation, shall apply from 1 January 2025.

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

Done at Strasbourg,

For the European Parliament
The President

For the Council
The President

PUBLIC