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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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Russian invasion of Ukraine has underscored the urgent need to strengthen the capacity of the European Defence Technological and Industrial Base (EDTIB) of supporting the defence readiness of Member States in the face of emerging security threats. The ongoing conflict has exposed vulnerabilities in the European defence landscape, highlighting the importance of ramping-up without delay the EDTIB's production capacities and of tapping into its full innovation potential in particular by accelerating innovation cycles.

As stressed in the Joint White Paper for European Defence Readiness 2030[1], "*rebuilding European defence requires, as a starting point, a massive investment over a sustained period. Together we must accelerate work on all strands to urgently ramp up European defence readiness to ensure that Europe has a strong and sufficient European defence posture by 2030 at the latest"*.

Considering the above, and further to the Council call on the European Commission to accelerate the work on all strands to decisively ramp up Europe's defence readiness 2030, the present proposal aims to make the Union legislative framework conducive to the swift scaling up of defence industrial capacities and the strengthening of innovation in order to reach defence readiness levels that can credibly deter and counter any risk of armed aggression.

The proposal considers the significant defence investment gaps that have accumulated over past decades, which require extraordinary efforts to restore defence readiness by 2030. It also considers the fact that the current regulatory framework is not adapted to this need and requires to be adapted to achieve the defence readiness 2030 objective.

More specifically, the Commission's current proposal involves extending existing provisions in defence-specific legislation and the European Defence Fund, as well as in non-defence-specific legislation, to remove regulatory barriers and facilitate EU defence readiness and industrial buildup.

• Consistency with existing policy provisions in the policy area

All legislation affected by this proposal contain provisions that are intended to reduce the burden for Member States and industry or provide them with assistance to carry out the obligations imposed on them through the relevant acts, with the aim of making such legislation easier to apply and less burdensome. It is considered necessary to extend the provisions to the EU-wide defence market to support the defence readiness of Member States and foster the development of a competitive and innovative European defence industry.

• Consistency with other Union policies

The proposed measures to strengthen the European defence market are designed to build upon and complement existing policy provisions, with the aim of enhancing Europe's defence capabilities and supporting the defence readiness of Member States.

[1] Joint White Paper for European Defence Readiness 2030 : JOIN/2025/120 final, 19.03.2025.

Under the Regulatory Fitness and Performance Programme (REFIT), the Commission ensures that its legislation is fit for purpose, targeted to the needs of stakeholders, and minimises burdens while achieving its objectives. This proposal is therefore part of the REFIT programme, reducing unnecessary burdens for the defence sector, by aligning them with the rules currently applicable to the different procedures and schemes.

The current proposal focuses on the defence readiness actual situation needs, making the achievement of the objectives of legislation more efficient and less burdensome for enterprises and public authorities.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The proposal amends existing EU Regulations. Therefore, the legal basis for the proposal is the same as the legal basis of the amended regulations. To the extent that this Regulation amends Regulation (EC) 1907/2006, Regulation (EC) 1272/2008 and Regulation (EU) No 528/2012 the appropriate legal basis, in so far as those amendments are concerned, is Article 114 TFEU. To the extent that this Regulation amends Regulation (EU) 2019/1021 the appropriate legal basis, in so far as those amendments are concerned, is Article 192(1) TFEU. To the extent that this Regulation amends Regulation (EU) 2021/697 the appropriate legal basis, in so far as those amendments are concerned, is Article 173(3), Article 182(4), Article 183 and the second paragraph of Article 188.

• Subsidiarity (for non-exclusive competence)

The obligations, exemptions or derogations that are imposed directly and indirectly by Union law can therefore only be amended at Union level. Member States, industry and the Commission will be benefiting from the proposed changes with the objective of ensuring defence preparedness and simplification.

• Proportionality

The extension of provisions or the introduction of specific exemptions across different EU legislation to the defence area simplifies the legal framework by introducing minimum changes to existing obligations to clarify and specify the needs for defence readiness for Member States and which should hereinafter confer upon the same treatment as other areas targeted in those provisions, always with the appropriate safeguards. The proposal is therefore limited to those changes that are necessary to ensure defence readiness benefits from the same legal framework in the various EU areas.

The measures do not go beyond what is necessary to achieve these goals.

• Choice of the instrument

These pieces of legislation contain provisions that take into account the situation and the growing needs of the defence sector and ensure that requirements avoid imposing an unnecessary burden on the defence readiness, production and supply chain processes. This proposal aims at ultimately making such legislation easier to apply and less burdensome.

Therefore, in the interest of efficiency, a joint proposal for the various relevant provisions applicable to defence in the form of the Defence Readiness Omnibus proposal appears to be

the most suitable solution. In particular, the choice of a Regulation for this proposal is justified by the need to use the same legal instrument as the legal acts that are to be amended.

The targeted amendments only concern applicable elements that will now be extended to defence purposes and therefore are suitable to be included in a single proposal.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• Ex-post evaluations/fitness checks of existing legislation

N/A

• Stakeholder consultations

The stakeholder consultation process was comprehensive, including a public survey that was open until 22 April 2025, as well as a series of targeted meetings with Member States, relevant business representatives from the Union, and other key stakeholders. More specifically, further to open public consultation in April 2025 and the extensive consultations in the context of the interim evaluation of the European Defence Fund[2], the Commission services collected data, evidence and suggestions from Member States, industry and other stakeholders on legal, regulatory and administrative obstacles restricting the ability of the European defence industry to scale up production with enhanced agility and achieve defence readiness by 2030. The Defence Readiness Omnibus presents both immediate and corrective measures and long-term strategic solutions to address these impediments.

Many stakeholders, Member States as well as industrial actors, commented on chemical regulations, in particular the Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)[3]. Their main concern was that defence and security considerations were not taken into account at early stages in the different processes, citing for example the ongoing discussion on per- and polyfluoroalkyl substances (PFAS). Several stakeholders also saw the possibility for Member States to allow for national exemptions in the interest of defence (Article 2(3) of REACH) as being too narrow. In addition, it was also mentioned that the defence exemptions were worded differently in different acts of legislation, which brought a lack of legal clarity.

• Collection and use of expertise

The proposed measures have been identified through an internal review of existing legislation and based on experience gained from the implementation of the related legislation. Since this is a step in the process of continuous assessment of the needs of defence readiness capabilities arising from Union legislation, the scrutiny of such burden and of its impact on stakeholders will continue.

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2 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. 149-177.

3 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.

- **Impact assessment**

Due to the nature of the proposal, which is designed to support the rapid adaptation of the European defence industry to the new unstable geopolitical environment, no impact assessment could be carried out.

In addition, the European Council in its Conclusions of 6 March 2025 called on the Commission to accelerate the "*work on all strands to decisively ramp up Europe's defence readiness within the next five years*". Furthermore, in the same conclusions the European Council has expressly called on the Commission to rapidly follow up with simplification on security and defence.

Hence, it was not possible to deliver an impact assessment in the timeframe available to table the Defence Simplification Readiness. Within 3 months after the adoption of this proposal the Commission will present a Staff Working to justify in detail this legislative EU action and explain its appropriateness to achieve the identified policy objectives in accordance with the relevant Better Regulation rules.

The proposal concerns targeted changes to legislation. They are based on experience from implementing legislation. The changes provide for a more efficient and effective implementation. Their targeted nature and the lack of relevant policy options make an impact assessment not necessary. The attached Communication looks at elements on the impact of such measures, including the results of an EU public survey undertaken in this context.

- **Regulatory fitness and simplification**

This is a REFIT proposal, aiming to simplify legislation and reduce administrative burdens for stakeholders.

- **Fundamental rights**

N/A

4. BUDGETARY IMPLICATIONS

N/A

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

N/A

- **Detailed explanation of the specific provisions of the proposal**

Regarding Regulation (EU) No 1907/2006 (REACH):

The Commission notes that the existing possibility for Member States to allow for exemptions in specific cases for certain substances where necessary in the interests of defence (Article 2.3) has been used in a restrictive way, that does not correspond to the needs of the defence industry to develop, produce and maintain defence material. The Commission concludes that this is due to the exemption being limited to specific cases, as well as to a restrictive interpretation by the Member States, following the Code of Conduct on REACH Defence exemptions agreed by the Member States within the context of the European Defence Agency (EDA).

The Commission therefore proposes to amend Article 2(3) of the REACH Regulation so that it should not only be applicable to specific cases for certain substances.

Regarding Regulation (EU) No 1272/2008 on classification, labelling and packaging of chemical substances (CLP)

To ensure a coherent exemption across chemicals legislations, the Commission proposes that the same exemption for defence as proposed for the REACH amendment should also be introduced in Regulation (EU) No 1272/2008.

Regarding Regulation (EU) No 528/2012 on Biocidal Products

To ensure a coherent exemption across relevant legislations, the Commission proposes that the similar wording as proposed for the REACH amendment should also be introduced in the Biocidal Products Regulation.

Regarding Regulation (EU) No 2019/1021 on Persistent Organic Pollutants:

Regulation (EU) 2019/1021 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 the EU's preparatory stages 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.

It cannot be excluded that information on the use of chemical substances can contain information that could be sensitive. The Commission therefore proposes that Member States may make exemptions from the reporting requirements embedded in art 13(1) of Regulation (EU) 2019/1021 on grounds of protection of national or EU security interests.

Regarding Regulation (EU) 2021/697 establishing the European Defence Fund

The proposed changes to Regulation (EU) 2021/697 aim to:

– clarify and simplify award criteria, introducing the possibility of selecting only the most relevant award criteria, and implementing the EDF through annual or multi-annual work programmes;

– clarify the rules applicable to direct awards;

– facilitate the use of indirect management;

– simplify pre-commercial procurement and access rights of co-financing Member States to the results of development projects;

– make costs for testing activities conducted outside of the Union territory (e.g. Ukraine) eligible for funding.

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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) 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[4] 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

[4] 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).

authorise broader exemptions as necessary, while maintaining the fundamental responsibility to balance defence and security needs with health and environmental protection.

(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[5] and Regulation (EU) No 528/2012 of the European Parliament and of the Council[6] to ensure a coherent regulatory environment for defence readiness.

(5) Regulation (EU) 2019/1021 of the European Parliament and of the Council[7] 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.

(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[8], 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

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5 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).

6 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).

7 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).

8 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).

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.

(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 to be eligible for funding limits the potential for the European Defence Technological and Industrial Base 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 third countries, such as Ukraine, to be eligible for EDF funding. Testing in Ukraine provides possibilities that are not readily available within the Union, such as rapidly available results, 24-hour testing and testing on the battlefield, which can significantly enhance the development and validation of defence technologies and products. In addition, testing in Ukraine can facilitate the incorporation of live experience on modern warfare into the further development of defence technologies and products, thereby ensuring a technical and strategic advantage for the European Defence Technological and Industrial Base. By allowing costs of testing activities carried outside the Union territory 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.

(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 would allow for a tailored and focused evaluation thus for a better alignment with the priorities and objectives of the EDF.

(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.

(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. 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.

(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. The conditions for the exercise of such access rights should be defined in the contractual relationship between the recipients and the national authorities co-financing the action. This will simplify the negotiation process between the Member States and industry and reduce time to grant, thereby promoting 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 testing outside of the territory of the Union, 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 should be applicable 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 mixtures, and 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:

‘(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 and defence 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 where the legal entities cooperating within a consortium which are not SMEs or mid-caps are established;’;

(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(2) the second sentence is deleted.

(4) in Article 9(2) the following second sub-paragraph is inserted:

‘By way of derogation from the first subparagraph, infrastructures, facilities, assets and resources used by recipients and subcontractors involved in the action for testing of a defence product, tangible or intangible component or technology, as referred to in Article 10(3), point (f) may be located or held outside the territory of the Member States or of the associated countries, as established by the work programme. This shall not contravene the security and defence interests of the Union and its Member States and, shall be consistent with the objectives set out in Article 3 and shall comply with Articles 20 and 23.’;

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

‘In certain duly substantiated 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:

   (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.

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 % 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 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), which participate in the activity as recipients, subcontractors or other legal entities in the supply chain;';

(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 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).';

(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 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	*For the Council*
The President	*The President*