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European Union

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION establishing Permanent Structured Cooperation (PESCO) and determining the list of Participating Member States

COUNCIL DECISION (CFSP) 2017/...

of ...

**establishing Permanent Structured Cooperation (PESCO)
and determining the list of Participating Member States**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, in particular Article 46(2) thereof,

Having regard to Protocol No 10 on permanent structured cooperation established by Article 42 of the Treaty on European Union attached to the Treaty on European Union and to the Treaty on the Functioning of European Union,

Having regard to the proposal from the Federal Republic of Germany, the Kingdom of Spain, the French Republic and the Italian Republic,

Having regard to the opinion of the High Representative of the Union for Foreign Affairs and Security Policy (the High Representative),

Whereas:

- (1) Article 42(6) of the Treaty on European Union (TEU) provides that those Member States whose military capabilities fulfil higher criteria, and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish permanent structured cooperation (PESCO) within the Union framework.
- (2) On 13 November 2017, the Council and the High Representative received a joint notification in accordance with Article 46(1) of the TEU from 23 Member States, and on 7 December 2017 from two other Member States, that all those Member States have the intention to participate in PESCO on the basis that they satisfy the above-mentioned requirements and that they have made the more binding commitments to one another in this area as set out in the Annex to this Decision and on the basis of all the other elements in the notification, including the preamble and the guiding principles of PESCO set out in Annex I to the notification, to which they remain committed in its entirety, and also recalling Article 42(7) of the TEU, including Article 42(7)¹⁺.
- (3) The more binding commitments set out in the Annex to this Decision, are consistent with the achievement of the objectives set out in Article 1 of Protocol No 10 to the Treaties and the undertakings referred to in Article 2 of that Protocol.

¹ The notification is published together with this Decision (OJ L ...).

⁺ OJ: Please insert the publication details for the notification.

- (4) The decision of Member States to participate in PESCO is voluntary and does not in itself affect national sovereignty or the specific character of the security and defence policy of certain Member States. Contributions by the participating Member States to fulfil the more binding commitments under PESCO will be made in accordance with their applicable constitutional provisions.
- (5) Increasing joint and collaborative defence capability development projects, is among the binding commitments under PESCO. Such projects may be supported by contributions from the Union budget in compliance with the Treaties and in accordance with relevant Union instruments and programmes.
- (6) The participating Member States have set out in their respective National Implementation Plans their ability to meet the more binding commitments they have made to one another.
- (7) The necessary conditions having been met, it is therefore appropriate for the Council to adopt a decision establishing PESCO.
- (8) Any other Member State which wishes at a later stage to participate in PESCO may notify its intention to do so to the Council and to the High Representative in accordance with Article 46(3) of the TEU.
- (9) The High Representative will be fully involved in proceedings relating to PESCO.

- (10) There should be consistency between actions undertaken within the framework of PESCO and other CFSP actions and other Union policies. The Council and, within their respective areas of responsibility, the HR and the Commission, should cooperate in order to maximize synergies where applicable.
- (11) In accordance with Article 5 of Protocol No 22 on the position of Denmark annexed to the TEU and to the Treaty on the Functioning of the European Union, Denmark does not participate in the elaboration and the implementation of decisions and actions of the Union which have defence implications. Denmark is therefore not bound by this Decision,

HAS DECIDED AS FOLLOWS:

Article 1
Establishment of Permanent Structured Cooperation

Permanent Structured Cooperation (PESCO) within the Union framework is hereby established between those Member States whose military capabilities fulfil higher criteria as referred to in Article 1 of Protocol No 10, and which have made commitments to one another in this area as referred to in Article 2 of that Protocol, with a view to the most demanding missions, and contributing to the fulfilment of the Union level of ambition.

Article 2
Participating Member States

The Member States participating in PESCO shall be the following:

- Belgium,
- Bulgaria,
- Czech Republic,
- Germany,
- Estonia,
- Ireland,
- Greece,
- Spain,
- France,

- Croatia,
- Italy,
- Cyprus,
- Latvia,
- Lithuania,
- Luxembourg,
- Hungary,
- Netherlands,
- Austria,
- Poland,
- Portugal,
- Romania,
- Slovenia,
- Slovakia,
- Finland,
- Sweden.

Article 3

More binding commitments in accordance with Protocol No 10

1. To achieve the objectives set out in Article 1 of Protocol No 10 and the undertakings referred to in Article 2 of that Protocol, the participating Member States shall make contributions which fulfil the more binding commitments which they have made to one another as set out in the Annex.
2. For this purpose, participating Member States shall review annually, and shall update as appropriate, their National Implementation Plans, in which they are to outline how they will meet the more binding commitments, specifying how they will fulfil the more precise objectives that are to be set at each phase. The updated National Implementation Plans shall be communicated annually to the European External Action Service (EEAS) and the European Defence Agency (EDA), and shall be made available to all participating Member States.

Article 4

PESCO Governance

1. The governance of PESCO shall be organised:
 - at the level of the Council and;
 - in the framework of projects implemented by groups of those participating Member States which have agreed among themselves to undertake such projects.

2. Acting in accordance with Article 46(6) of the TEU, the Council shall adopt decisions and recommendations:
- (a) providing strategic direction and guidance for PESCO;
 - (b) sequencing the fulfilment of the more binding commitments set out in the Annex in the course of the two consecutive initial phases (the years 2018 - 2020 and 2021 - 2025) and specifying at the beginning of each phase the more precise objectives for the fulfilment of the more binding commitments set out in the Annex;
 - (c) updating, and enhancing if necessary, the more binding commitments set out in the Annex in light of achievements made through PESCO, in order to reflect the Union's evolving security environment. Such decisions shall be taken in particular at the end of the phases referred to in point (b) of paragraph 2, based on a strategic review process assessing the fulfilment of the PESCO commitments;
 - (d) assessing the contributions of participating Member States to fulfil the agreed commitments, according to the mechanism described in Article 6;
 - (e) establishing the list of projects to be developed under PESCO, reflecting both support for capability development and the provision of substantial support within means and capabilities to Common Security and Defence Policy operations and missions;

- (f) establishing a common set of governance rules for projects, which the participating Member States taking part in an individual project could adapt as necessary for that project;
- (g) establishing, in due time, in accordance with Article 9(1), the general conditions under which third States could exceptionally be invited to participate in individual projects; and determining in accordance with Article 9(2) whether a given third State satisfies these conditions; and
- (h) providing for any other measures required to further implement this Decision.

Article 5

PESCO Projects

1. Following proposals by the participating Member States which intend to take part in an individual project, the High Representative may make a recommendation concerning the identification and evaluation of PESCO projects, on the basis of assessments provided in accordance with Article 7, for Council decisions and recommendations to be adopted in accordance with Article 4(2)(e), following military advice by the Military Committee of the European Union (EUMC).
2. Participating Member States which intend to propose an individual project shall inform the other participating Member States in due time before presenting their proposal, in order to gather support and give them the opportunity to join in collectively submitting the proposal.

The project members shall be the participating Member States which submitted the proposal. The list of the project members of each individual project shall be attached to the Council decision referred to in Article 4(2)(e).

The participating Member States taking part in a project may agree among themselves to admit other participating Member States which subsequently wish to take part in the project.

3. The participating Member States taking part in a project shall agree among themselves on the arrangements for, and the scope of, their cooperation, and the management of that project. The participating Member States taking part in a project shall regularly inform the Council about the development of the project, as appropriate.

Article 6

Supervision, assessment and reporting arrangements

1. The Council, within the framework of Article 46(6) TEU, shall ensure the unity, consistency and effectiveness of PESCO. The High Representative shall also contribute to those objectives.
2. The High Representative shall be fully involved in proceedings relating to PESCO, in accordance with Protocol No 10.

3. The High Representative shall present an annual report on PESCO to the Council. This report shall be based on the contributions by the EDA, in accordance with Article 7(3)(a), and by the EEAS, in accordance with Article 7(2)(a). The High Representative's report shall describe the status of PESCO implementation, including the fulfilment, by each participating Member State, of its commitments, in accordance with its National Implementation Plan.

The EUMC shall provide the Political and Security Committee with military advice and recommendations regarding to the annual PESCO assessment process.

On the basis of the annual report on PESCO presented by the High Representative, the Council shall review once a year whether the participating Member States continue to fulfil the more binding commitments referred to in Article 3.

4. Any decision concerning the suspension of the participation of a Member State shall be adopted in accordance with Article 46(4) TEU only after the Member State has been given a clearly defined timeframe for individual consultation and reaction measures.

Article 7

Support by the EEAS and the EDA

1. Under the responsibility of the High Representative, also in his or her capacity as the Head of the EDA, the EEAS, including the EU Military Staff (EUMS), and the EDA shall jointly provide the necessary secretariat functions for PESCO other than at the level of the Council, and in this regard a single point of contact.

2. The EEAS, including the EUMS, shall support the functioning of PESCO in particular by:
 - (a) contributing to the High Representative's assessment, in his or her annual report on PESCO, of participating Member States' contributions with regard to operational aspects, in accordance with Article 6;
 - (b) coordinating the assessment of projects proposals envisaged in Article 5, notably in the areas of availability, interoperability, flexibility and deployability of forces. In particular, the EEAS, including the EUMS, shall assess proposed projects' compliance with, and their contribution to, operational needs.

3. The EDA shall support PESCO in particular by:
 - (a) contributing to the High Representative's assessment, in his or her annual report on PESCO, of participating Member States' contributions, in accordance with Article 6, with regard to capabilities, in particular contributions made in accordance with the more binding commitments referred to in Article 3;
 - (b) facilitating capability development projects, in particular coordinating the assessment of projects proposals envisaged in Article 5, notably in the area of capability development. In particular, EDA shall support Member States in ensuring that there is no unnecessary duplication with existing initiatives also in other institutional contexts.

Article 8
Financing

1. Administrative expenditure of the Union institutions and the EEAS arising from the implementation of this Decision shall be charged to the Union budget. Administrative expenditure of the EDA shall be subject to the relevant financing rules of the EDA in accordance with Council Decision (CFSP) 2015/1835¹.
2. Operating expenditure arising from projects undertaken within the framework of PESCO shall be supported primarily by the participating Member States that take part in an individual project. Contributions from the general budget of the Union may be made to such projects in compliance with the Treaties and in accordance with the relevant Union instruments.

Article 9
Participation of third States in individual projects

1. The general conditions for the participation of third States in individual projects shall be specified in a Council decision adopted in accordance with Article 4(2), which may include a template for administrative arrangements with third States.

¹ Council Decision (CFSP) 2015/1835 of 12 October 2015 defining the statute, seat and operational rules of the European Defence Agency (OJ L 266, 13.10.2015, p. 55).

2. The Council shall decide in accordance with Article 46(6) TEU whether a third State, which the participating Member States taking part in a project wish to invite to take part in that project, meets the requirements set out in the decision referred to in paragraph 1.
3. Following a positive decision as referred to in paragraph 2, the participating Member States taking part in a project may enter into administrative arrangements with the third State concerned for the purpose of its taking part in that project. Such arrangements shall respect the procedures and the decision-making autonomy of the Union.

Article 10

Security rules

The provisions set out in Council Decision 2013/488/EU¹ shall apply in the context of PESCO.

Article 11

Entry into force

This Decision shall enter into force on the date of its adoption.

Done at ...,

For the Council

The President

¹ Council Decision 2013/488/EU of 23 September 2013 on the security rules for protecting EU classified information (OJ L 274, 15.10.2013, p. 1).

ANNEX

List of ambitious and more binding common commitments
undertaken by participating Member States
in the five areas set out by Article 2 of Protocol 10

“a) cooperate, as from the entry into force of the Treaty of Lisbon, with a view to achieving approved objectives concerning the level of investment expenditure on defence equipment, and regularly review these objectives, in the light of the security environment and of the Union’s international responsibilities.”

Based on the collective benchmarks identified in 2007, participating Member States subscribe to the following commitments:

1. Regularly increasing defence budgets in real terms, in order to reach agreed objectives.
2. Successive medium-term increase in defence investment expenditure to 20 % of total defence spending (collective benchmark) in order to fill strategic capability gaps by participating in defence capabilities projects in accordance with CDP and Coordinated Annual Review (CARD).
3. Increasing joint and “collaborative” strategic defence capabilities projects. Such joint and collaborative projects should be supported through the European Defence Fund if required and as appropriate.

4. Increasing the share of expenditure allocated to defence research and technology with a view to nearing the 2 % of total defence spending (collective benchmark).
5. Establishment of a regular review of these commitments (with the aim of endorsement by the Council).

“b) bring their defence apparatus into line with each other as far as possible, particularly by harmonising the identification of their military needs, by pooling and, where appropriate, specialising their defence means and capabilities, and by encouraging cooperation in the fields of training and logistics.”

6. Playing a substantial role in capability development within the EU, including within the framework of CARD, in order to ensure the availability of the necessary capabilities for achieving the level of ambition in Europe.
7. Commitment to support the CARD to the maximum extent possible acknowledging the voluntary nature of the review and individual constraints of participating Member States.
8. Commitment to the intensive involvement of a future European Defence Fund in multinational procurement with identified EU added value.
9. Commitment to drawing up harmonised requirements for all capability development projects agreed by participating Member States.

10. Commitment to considering the joint use of existing capabilities in order to optimize the available resources and improve their overall effectiveness.
11. Commitment to ensure increasing efforts in the cooperation on cyber defence, such as information sharing, training and operational support.

“c) take concrete measures to enhance the availability, interoperability, flexibility and deployability of their forces, in particular by identifying common objectives regarding the commitment of forces, including possibly reviewing their national decision-making procedures.”

12. With regard to availability and deployability of the forces, the participating Member States are committed to:
 - Making available formations, that are strategically deployable, for the realization of the EU LoA, in addition to a potential deployment of an EUBG. This commitment does neither cover a readiness force, a standing force nor a stand by force.
 - Developing a solid instrument (e.g. a data base) which will only be accessible to participating Member States and contributing nations to record available and rapidly deployable capabilities in order to facilitate and accelerate the Force Generation Process.
 - Aiming for fast-tracked political commitment at national level, including possibly reviewing their national decision-making procedures.

- Providing substantial support within means and capabilities to CSDP operations (e.g. EUFOR) and missions (e.g. EU Training Missions) - with personnel, materiel, training, exercise support, infrastructure or otherwise - which have been unanimously decided by the Council, without prejudice to any decision on contributions to CSDP operations and without prejudice to any constitutional constraints,
- Substantially contributing to EU BG by confirmation of contributions in principle at least four years in advance, with a stand-by period in line with the EU BG concept, obligation to carry out EU BG exercises for the EU BG force package (framework nation) and/or to participate in these exercises (all EU Member States participating in EU BG).
- Simplifying and standardizing cross border military transport in Europe for enabling rapid deployment of military materiel and personnel.

13. With regard to interoperability of forces, the participating Member States are committed to:

- Developing the interoperability of their forces by:
 - Commitment to agree on common evaluation and validation criteria for the EU BG force package aligned with NATO standards while maintaining national certification.
 - Commitment to agree on common technical and operational standards of forces acknowledging that they need to ensure interoperability with NATO.

- Optimizing multinational structures: participating Member States could commit to joining and playing an active role in the main existing and possible future structures partaking in European external action in the military field (EUROCORPS, EUROMARFOR, EUROGENDFOR, MCCE/ATARES/SEOS).

14. Participating Member States will strive for an ambitious approach to common funding of military CSDP operations and missions, beyond what will be defined as common cost according to the Athena council decision.

“d) work together to ensure that they take the necessary measures to make good, including through multinational approaches, and without prejudice to undertakings in this regard within the North Atlantic Treaty Organisation, the shortfalls perceived in the framework of the ‘Capability Development Mechanism.’”

15. Help to overcome capability shortcomings identified under the Capability Development Plan (CDP) and CARD. These capability projects shall increase Europe’s strategic autonomy and strengthen the European Defence Technological and Industrial Base (EDTIB).

16. Consider as a priority a European collaborative approach in order to fill capability shortcomings identified at national level and, as a general rule, only use an exclusively national approach if such an examination has been already carried out.

17. Take part in at least one project under the PESCO which develops or provides capabilities identified as strategically relevant by Member States.

“e) take part, where appropriate, in the development of major joint or European equipment programmes in the framework of the European Defence Agency.”

18. Commitment to the use of EDA as the European forum for joint capability development and consider the OCCAR as the preferred collaborative program managing organization.
19. Ensure that all projects with regard to capabilities led by participating Member States make the European defence industry more competitive via an appropriate industrial policy which avoids unnecessary overlap.
20. Ensure that the cooperation programmes - which must only benefit entities which demonstrably provide added value on EU territory - and the acquisition strategies adopted by the participating Member States will have a positive impact on the EDTIB.
