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2016/0228 (NLE)

Proposal for a

COUNCIL DECISION

concerning the allocation of funds decommitted from projects under the 10th European Development Fund for the purpose of replenishing the African Peace Facility

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The African Peace Facility (APF) was first established in 2003 within the framework of the Cotonou Agreement[1] and is funded by the European Development Fund (EDF), which is outside the general budget of the Union. The APF has become one of the key instruments to implement the Africa-EU cooperation on peace and security. The APF's financial resources for the period 2014-2016[2] are severely stretched. At the current rate of use, they will be depleted before the end of the period. Resources for the period 2017-2018 should also be able to respond to the continuing needs and demands from the African Union to address ongoing and emerging security crises in Africa, as well as unforeseen circumstances. The predictability and sustainability of the financing of the APF needs to be ensured. APF financial needs up to end 2018 are currently estimated at EUR 685 million.

The Political and Security Committee (PSC) and the Committee of the Permanent Representatives (Coreper) of the Council have discussed the financial sustainability of the APF to ensure financing up to 2018 on the basis of Commission proposals[3]. In its meeting of 18 May, the Coreper endorsed a compromise tabled by the Presidency[4] to use a combination of funds from the 10th and 11th EDFs.

The objective of this draft proposal for a Council decision is to obtain the authorisation from the Council to use decommitted funds from the 10th EDF to replenish the African Peace Facility with an additional amount up to EUR 491.38 million, of which EUR 475 million will contribute to the financing of the APF needs up to end 2018 and EUR 16.38 million will cover the support expenditure incurred by the Commission. To complement these funds from the performance reserve (‘réserve non-mobilisable’), additional funds will be mobilised for the APF from the 11th EDF reserves (EUR 100 million from the Intra-ACP reserve subject to prior approval of the African Union request by the ACP Committee of Ambassadors and EUR 110 million from the National Indicative Programmes / Regional Indicative Programmes (NIP/RIP) reserve).

• Consistency with existing policy provisions in the policy area

The APF is one of the key instruments for implementing Africa-EU cooperation on peace and security under the Joint Africa-EU Strategy adopted in Lisbon in 2007. At the 4th Africa-EU Summit in 2014, peace and security was reaffirmed as one of the five priority areas for the implementation of the Joint Strategy.

As a follow-up to the Council conclusions on Common Security and Defence Policy (CSDP) of 18 May 2015, the European External Action Service (EEAS) and Commission services would assess the potential of Union instruments of addressing capacity building in support of security and development (CBSD), including the feasibility of an adaptation of the APF to address its limitations. In the meantime, it is important that the APF continues to deliver and contribute to the peace and security policy objectives of the EU.

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1 Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000.

2 Commission Decision C(2014) 4907 of 15 July 2014.

3 Doc 164/15 ACP of 15.12.2015

4 Doc 8662/16 of 10.05.2016

This proposal, by contributing to a continuation of the APF activities until 2018, will ultimately also contribute to serve the Sustainable Development Goals (SDG), in particular SDG 16 "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels".

The APF is normally financed from the Intra-ACP envelope of the EDF. The activities financed by the additional funds allocated to the APF from the performance reserve ('réserve non-mobilisable') will remain in line with the general and APF specific objectives laid down in the Intra-ACP strategy[5].

The additional funds will be used in accordance with the rules and procedures applicable for the 11th EDF. The programming of these funds will be made through a Commission decision to amend the APF 2014-2016 Action Programme[6] and a Commission decision to adopt the forthcoming APF 2017-2018 Action Programme. In both cases, Coreper approval will be required, as foreseen by Article 15 of the 11th EDF Implementation Regulation[7].

- **Consistency with other Union policies**

NA

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 1(4) of the 11th EDF Internal Agreement[8].

Article 1 (4) of the 11th EDF Internal Agreement requires that the Council adopts its decision by unanimity.

- **Subsidiarity (for non-exclusive competence)**

NA
The EDF is set up by an internal agreement between the representatives of Member States and it foresees the possibility to use decommitted funds, if so agreed by the Council[9].

- **Proportionality**

The proposal and in particular the proposed amounts are based on a comprehensive analysis by the EEAS/Commission services (Annex to Council doc 8662/16 of 10.05.2016). The proposal integrates guidance by the PSC, for example a limitation applied to certain costs

5 Commission Decision C(2015) 7766 of 13/11/2015 on the adoption of the 2014-2020 Strategy Paper and Indicative Programme for intra-ACP cooperation between the European Union and the ACP Group of States

6 Commission Decision C(2014) 4907 of 15 July 2014

7 Council Regulation (EU) 2015/322 of 2 March 2015 (OJ L 58 of 3.3.2015, p.1)

8 Internal Agreement between the Representatives of the Governments of the Member States of the European Union, meeting within the Council, on the financing of European Union aid under the multiannual financial framework for the period 2014 to 2020, in accordance with the ACP-EU Partnership Agreement, and on the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the Treaty on the Functioning of the European Union applies (OJ L 210, 6.8.2013, p.1).

9 Article 1(4) of the 11th EDF Internal Agreement and Article 61 of Council Regulation (EU) 2015/323 of 2 March 2015 on the financial regulation applicable to the 11th European Development Fund (OJ L 58 of 3.3.2015, p.17)

(troop allowances) and therefore, as opposed to the past, does not cover with EDF funding alone all financing needs of African Union actions in this area, in particular Peace Support Operations (PSOs). The proposal is also based on the assumption that other contributors will contribute to financial efforts. In particular that African Union Member States will gradually fulfil the commitment made during the African Union Summit in Johannesburg, South Africa, of June 2015, to reach a 25% contribution of Peace Support Operations (PSOs) by 2020; and that other donors, including the UN, would contribute too. EU Member States also have the possibility to add voluntary contributions. Finally, the proposal complies with the PSC's request to improve APF's support balance between PSOs and capacity building activities.

- **Choice of the instrument**

The EDF is the unique source of funding of the APF at EU level. Due to legal limitations, existing EU instruments financed from the general budget of the Union cannot be used for operations having military or defence implications or to support military beneficiaries for other than explicitly civilian tasks.

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

- **Ex-post evaluations/fitness checks of existing legislation**

NA

- **Stakeholder consultations**

NA

- **Collection and use of expertise**

NA

- **Impact assessment**

NA

- **Regulatory fitness and simplification**

NA

- **Fundamental rights**

APF supports African led Peace Support Operations, where the threatening of fundamental rights might be an issue. On top of human rights provisions contained in the 11th EDF Implementation Regulation, the APF pluriannual action programme 2104-2016 contains specific provisions supporting "the mainstreaming of the relevant guidelines on human rights, the protection of women and children in armed conflicts and the role of women in solving conflicts, as well as the application of the UN Security Council resolutions 1325, 1820 and 1612". As a concrete example, training of peacekeepers on human rights is supported through the APF. These provisions are further translated in APF contractual arrangements with the African Union Commission.

4. BUDGETARY IMPLICATIONS

None (EDF is outside the EU budget).

5. OTHER ELEMENTS

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

Monitoring, evaluation and reporting arrangements are those applicable for the 11th EDF and those foreseen in the relevant pluriannual action programmes. Additional relevant measures are also included in the 'aide-mémoire' on measures to strengthen the African Union Commission, signed between the European Commission and the African Union Commission on 15 April 2016, which are to be respected by the African Union Commission in the implementation of the EDF in indirect management.

- **Explanatory documents (for directives)**

NA

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

Article 1 paragraph (1) of the proposal provides that de-committed funds up to a maximum amount of EUR 491 387 500 from projects under the 10th EDF will be allocated for the purpose of replenishing the APF to address outstanding financial needs of the APF Action Programme 2014-2016 and estimated financial needs of the Action Programme 2017-2018.

Article 1 paragraph (2) provides that a maximum of EUR 16 387 500 of the amount under paragraph (1) will be allocated to the Commission for support expenditure. This is calculated by using the same ratio (3.45%) as the one foreseen for the management of the 11th EDF funds in Article 1(2) (a) of the 11th EDF Internal Agreement.

Article 1 paragraph (3) provides that the rules of the 11th EDF will be applicable (Implementation and Financial Regulations[10]).

Article 2 provides for the date of entry into force of the decision.

[10] Council Regulation (EU) 2015/322 of 2 March 2015 on the implementation of the 11th European Development Fund (OJ L 58 of 3.3.2015, p.1) and Council Regulation (EU) 2015/323 of 2 March 2015 on the financial regulation applicable to the 11th European Development Fund (OJ L 58 of 3.3.2015, p.17).

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Internal Agreement between the Representatives of the Governments of the Member States of the European Union, meeting within the Council, on the financing of European Union aid under the multiannual financial framework for the period 2014 to 2020, in accordance with the ACP-EU Partnership Agreement, and on the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the Treaty on the Functioning of the European Union applies[11], and in particular Article 1(4) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Commission, by adopting Decision C(2014)4907 of 15 July 2014 on the 2014-2016 Action Programme of the African Peace Facility in favour of the African Union Commission[12], has allocated a total amount of EUR 901 339 064.53 to the 2014-2016 Action Programme of the African Peace Facility (APF). Of this amount, EUR 900 000 000 are from the European Development Fund (EDF) and EUR 1 339 064.53 from an additional voluntary contribution of the Kingdom of Denmark.

(2) The European Union already provides a substantial financial contribution in support of African Union responses to ongoing and emerging security crises in Africa. Several measures to maintain the APF financial contribution to a sustainable level have been implemented. Nevertheless, the current and future situation will require a higher financial contribution from the Union, including through the APF, to respond to the African Union demands.

(3) The additional APF needs for the period 2016-2018 are estimated at EUR 685 000 000.

(4) It is appropriate to use decommitted funds from projects under the 10th EDF to address the APF's unmet funding needs for 2016, possible unforeseen circumstances and also to ensure the predictability of the financing of the APF up to end 2018.

(5) The additional APF funds should finance APF activities, including support to African-led peace support operations (PSOs), support to the operationalisation of the African Peace and Security Architecture (APSA), support for quick impact actions (Early Response Mechanism) and cover support expenditure incurred by the Commission.

[11] OJ L 210, 6.8.2013, p.1

[12] Commission Decision C(2014)4907 as amended by Commission Decisions C(2015) 1254, C(2015) 4995 and C(2015) 8627.

(6) These funds should be used in accordance with the relevant APF pluriannual action programmes[13] and with the rules and procedures applicable to the 11th EDF, as set out in Council Regulations (EU) 2015/322[14] and 2015/323[15].

HAS ADOPTED THIS DECISION:

Article 1

An amount up to a maximum of EUR 491 387 500 from the funds decommitted from projects under the 10th European Development Fund (EDF) shall be allocated for the purpose of replenishing the APF for the period 2016-2018.

From this amount, up to a maximum of EUR 16 387 500 shall be allocated for support expenditure incurred by the Commission.

These funds shall be used in accordance with the rules and procedures applicable to the 11th EDF.

Article 2

This Decision shall enter into force on the day following its adoption.

Done at Brussels,

For the Council
The President

[13] Commission Decision C(2014) 4907 of 15 July 2014.

[14] Council Regulation (EU) 2015/322 of 2 March 2015 on the implementation of the 11th European Development Fund (OJ L 58 of 3.3.2015, p.1).

[15] Council Regulation (EU) 2015/323 of 2 March 2015 on the financial regulation applicable to the 11th European Development Fund (OJ L 58 of 3.3.2015, p.17).