

**EXPLANATORY MEMORANDUM ON A EUROPEAN UNION DOCUMENT**

**Council Decision on the conclusion, on behalf of the European Union, of the Cooperation Agreement on Partnership and Development between the European Union and its Member States, of the one part, and the Islamic Republic of Afghanistan, of the other part**

Submitted by the Foreign and Commonwealth Office on 26 January 2017.

**SUBJECT MATTER**

1. The attached document seeks agreement from the Council to conclude, on behalf of the EU, the EU-Afghanistan Cooperation Agreement on Partnership and Development (CAPD). It is the counterpart to the Council Decision on the signing of the CAPD which was submitted in October 2016.
2. The CAPD is a signal of political commitment and a framework for further engagement and cooperation between the EU and Afghanistan. Its articles reflect shared priorities for the relationship: they include human rights and gender equality; peace and conflict prevention; counter-proliferation and counter-terrorism; development, including good governance and education; trade; rule of law and counter-narcotics; and migration.
3. Many of the CAPD's articles on areas for further cooperation are aspirationally worded, and the Agreement does not include detail on implementation; that will be decided once the CAPD is in place, in consultation with Member States throughout. This is likely to happen in the context of determining the EU's next strategy for Afghanistan, to follow-on from the current strategy which ran to the end of 2016.

**SCRUTINY HISTORY**

4. An Explanatory Memorandum on the Joint Proposal for a Council Decision on the signing, on behalf of the European Union, and provisional application of the Cooperation Agreement on Partnership and Development between the European Union and its Member States, of the one part, and the Islamic Republic of Afghanistan, of the other part was submitted for Parliamentary Scrutiny on 10 October 2016. The House of Commons European Scrutiny Committee cleared the documents as "legally and politically important" on 7 December 2016 (ESC 38105, 22nd Report, Session 2016/17). The House of Lords Select Committee on the European Union cleared the documents on 19 October 2016 at the Chairman's sift.

## **MINISTERIAL RESPONSIBILITY**

5. The Secretary of State for Foreign and Commonwealth Affairs is the Minister with overall responsibility for UK policy on the EU's Common Foreign and Security Policy. The Secretary of State for International Development has an interest.

## **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

6. The UK's Foreign Affairs policy is a reserved matter under the UK's devolution settlements and no devolved administration interests arise. The devolved administrations have therefore not been consulted in the preparation of this EM.

## **LEGAL AND PROCEDURAL ISSUES**

7. Legal Basis: Article 37 of the Treaty on European Union and Articles 207 and 209, in conjunction with Article 218(6)(a) and the second paragraph of Article 218(8), of the Treaty on the Functioning of the European Union.
8. Voting Procedures: Unanimity.
9. Impact on UK Law: There is no impact on UK law, as this is an agreement with a third country.
10. Application to Gibraltar: Yes.
11. Fundamental rights analysis: No fundamental rights issues apply.

## **APPLICATION TO THE EUROPEAN ECONOMIC AREA**

12. None.

## **SUBSIDIARITY**

13. The proposed CAPD is an agreement between the EU, its Member States and Afghanistan.

## **POLICY IMPLICATIONS**

14. On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.
15. The CAPD is one of a number of agreements that the EU has sought with third countries. Afghanistan is a developing country in the midst of a prolonged internal conflict, and trade flows with the EU are dominated by development assistance.



The CAPD reflects this dynamic, and is primarily composed of general political commitments and aspirations, with a focus on development objectives, rather than specific and binding technical agreements.

16. The UK's work in Afghanistan is aimed at building the capacity of the government and preventing Afghanistan from acting as a base for international terrorism. In pursuit of those aims, the Government supports the CAPD as a demonstration of continuing EU commitment to Afghanistan, and as a reflection of the broad range of our shared interests and objectives. The EU has a significant role to play in the future of Afghanistan, to help develop its governance and rule of law, and to develop the country more widely.
17. As the European External Action Service notes in the explanatory memorandum attached to the Council Decision, the High Representative and the Commission proposed in an earlier draft version of the Council Decision that the CAPD be an "EU-only" agreement, without the separate participation of Member States. The UK took the position that the Agreement should be "mixed" and other Member States had similar views. As a result, the CAPD is now a "mixed" agreement - between the EU and its Member States, on the one hand, and Afghanistan, on the other.
18. Independent of the EU, the UK's contribution to Afghanistan is significant, and the bilateral relationship is strong. The CAPD does not commit the UK to greater cooperation, and does not prevent us pursuing our bilateral cooperation.
19. The EU, like the UK, is an active participant in the broader process for coordinating donor activity in Afghanistan and monitoring the performance of the government. Any cooperation activity which ultimately flows from the CAPD will be coordinated with other donors through these processes, and will align with the conditionality measures agreed between the wider donor community and the Government of Afghanistan.

## **CONSULTATION**

20. Not applicable.

## **REGULATORY IMPACT ASSESSMENT**

21. Not applicable.

## **FINANCIAL IMPLICATIONS**

22. The Cooperation Agreement on Partnership and Development does not commit any funds directly. EU funding in Afghanistan comes from a variety of sources, the most significant being the current Multiannual Indicative Programme (MIP), part of the EU Development Cooperation Instrument (DCI), which covers the period 2014 to 2020 and has a total budget allocation of €1.4 billion. It also receives funding from regional and thematic programmes, including the Instrument for Stability and Peace, for projects covering the likes of human rights, rule of law, assistance for displaced persons, food security and health.

Once the CAPD is agreed, and once the details on implementation are decided, these are examples of the sources of funding from which the EU will draw.

#### **TIMETABLE**

23. The EEAS plans to bring the Council Decision to the Committee of Permanent Representatives in early 2017.

#### **OTHER OBSERVATIONS**

24. None.

A handwritten signature in black ink that reads "Alan Duncan". The signature is written in a cursive, slightly stylized font.

The Rt Hon Sir Alan Duncan MP  
Minister for Europe and the Americas  
Foreign and Commonwealth Office