

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION AND DOCUMENTS

COUNCIL DECISION (CFSP) 2018/340 of 6 March 2018 establishing the list of projects to be developed under PESCO

COUNCIL RECOMMENDATION of 6 March 2018 concerning a roadmap for the implementation of PESCO

Submitted by the Foreign and Commonwealth Office on 20 March 2018.

SUBJECT MATTER

1. Permanent Structured Cooperation (PESCO) is a political framework, based on a set of commitments intended to improve the respective military assets and defence capabilities of participating Member States. PESCO allows groups of participating Member States to work together to propose and pursue specific capability initiatives and projects.
2. On 11 December 2017 at the Foreign Affairs Council, EU Member States participating in PESCO adopted a declaration that identified 17 projects to be developed under PESCO.
3. On 6 March 2018 at the Foreign Affairs Council (Defence), EU Defence Ministers adopted a Council Decision that formally established the 17 PESCO projects and a Council Recommendation on PESCO's implementation. The Council sat for the first time in PESCO format, which means that Ministers from all EU Member States were present and invited to speak, but only those from PESCO participating Member States could vote. As a non-participating State, the UK did not vote on either legal text and will not be bound by them.
4. The 17 projects are a mix of capability development, training, and enabling initiatives that span different operating environments. Each project includes a list of the PESCO participating Member States that have agreed to join that specific initiative. The Council Decision also establishes that there will be a common set of governance rules for projects adopted as a future Council Decision at the joint FAC/FAC (Defence) in June.
5. The Council Recommendation sets out a roadmap for the implementation of PESCO. Council Recommendations are legal acts, but are not legally binding. The EU's Council Legal Service proposed a Council Recommendation on PESCO instead of Council Conclusions, which are politically binding on all Member States.
6. The principal purpose of the Council Recommendation is to set out next steps for the implementation of PESCO. It includes a timeline for the review of the national implementation plans that detail how PESCO participating Member States will fulfil their commitments, in accordance with the Annex to the Decision (CSFP) 2017/2315.

The Council Recommendation provides a timeline for other future Decisions, including on the agreement of possible future projects; the main elements of a common set of governance rules for projects; and the general conditions for exceptional third state participation. The Council Recommendation also sets out the reporting requirements for HR/VP Mogherini, who will present an annual report to the Council describing the status of PESCO implementation, including the fulfilment of commitments by Member States in accordance with their national implementation plans.

SCRUTINY HISTORY

7. An Explanatory Memorandum on the Council Decisions establishing PESCO and determining the list of participating Member States (14866/17) was submitted for Parliamentary Scrutiny under FCO EM dated 13 December 2017. The documents were sifted to the Lords EUC Sub-Committee C (Sift 1676) and remain under scrutiny. The House of Commons European Scrutiny Committee did not clear the documents, and recommended a debate on the Floor of the House and requested further information on 18 December 2017 (ESC 39354 & 38852, 7th Report, 17-19).

MINISTERIAL RESPONSIBILITY

8. 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 Secretaries of State for Defence and Exiting the EU have an interest.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

9. 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 not been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

10. Legal Basis: Articles 42 (6), 46 of the Treaty on European Union (TEU), Protocol 10, and Council Decision (CFSP) 2017/2315 of 11 December 2017.

11. Voting Procedures: Unanimity by PESCO participating Member States ("PESCO format").

12. Impact on UK Law: None.

13. Application to Gibraltar: Yes.

14. Fundamental rights analysis: No fundamental rights issues apply.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

15. None.

SUBSIDIARITY

16. Not applicable.

POLICY IMPLICATIONS (including Exit implications where appropriate)

17. On 23 June 2016, the UK voted to leave the EU. On 29 March 2017, the Government triggered Article 50 of the TEU to begin the process of exit. Until exit negotiations are concluded, the UK remains a full member of the EU and all the rights and obligations of EU membership remain in force. During this period, the Government will also continue to negotiate, implement and apply EU legislation.

18. The UK did not join PESCO, so we were not invited to vote on either the Council Decision or the Council Recommendation at the 6 March Foreign Affairs Council (Defence) and neither document has a legal effect on the UK. This Explanatory Memorandum has been submitted in keeping with our commitment to ensure the Committees are kept fully updated on developments with PESCO.

19. The UK has welcomed the establishment of PESCO, recognising its potential to help drive up defence investment in Europe and to strengthen capability, so long as capabilities developed in this framework remain Member State-owned and are available to NATO and the UN, not just the EU.

20. The Council Decision reaffirms the 17 projects agreed in December 2017. The UK may not participate in any of these projects as we are not a PESCO participating Member State. After we leave the EU, subject to future agreement, we could participate in projects as a third party. Of the current list of projects, the UK is principally interested in the development of Military Mobility; we recognise the need to improve Military Mobility across Europe and are engaged in multiple projects within both NATO and the EU. We also support the need for all PESCO projects to form part of a unified vision for improved security and defence across Europe. For the UK, NATO remains the cornerstone of Euro-Atlantic security and any EU work should complement NATO. We will therefore continue to champion greater capability cooperation between the EU and NATO.

21. The list of projects will be updated in November 2018, in accordance with the procedure set out in Article 5 of Decision (CFSP) 2017/2315.

22. Of more relevance to the UK is the Council Recommendation on timescales for future PESCO-related Decisions, including on "*General conditions for exceptional third-state participation*". We want to have the ability to cooperate with PESCO as a third state, should it serve the UK's security and defence interests. Our key objective on the Council Recommendation was to secure a specific timeline on arrangements for third state participation. We therefore welcomed the language in paragraph 13 calling for discussions to start "*as soon as the common set of governance rules for the projects and the sequencing of the fulfilment of commitments are in place by June 2018 and, subject to a further assessment by the Council, a Decision should in principle be adopted before the end of 2018.*"

23. We support and understand the requirement to prioritise PESCO project governance arrangements first, but were encouraged by the number of Member States who spoke about the importance of early decisions on third state participation at the recent Foreign Affairs Council (Defence) meeting. The UK will leave the EU at the end of March 2019 but our interest goes beyond our own future involvement. To ensure complementarity with NATO we believe PESCO projects should be open to third states, as is the case with other projects led by the European Defence Agency (EDA). The UK has consistently called for third state participation in PESCO projects where there is clear value in doing so, including for our defence industry.

24. We now have a clearer idea of the timing for discussions on arrangements for third state participation, but the substance is still to be determined. The UK will be present and able to speak in negotiations, and will work with and through likeminded Member States to secure a positive outcome.

25. During discussions on the Council Recommendation, we set out the importance of aligning future project proposals with the outcomes of the Coordinated Annual Review on Defence (CARD) and the Capability Development Plan (CDP). CARD is a stocktake of the European Capability Development landscape that provides Member States and the EDA with a clear understanding of current capabilities, shortfalls, Member States' plans, and potential areas for cooperation, with the initial analysis likely to be published in autumn. The CDP is the EDA's strategic tool for defining future European capability needs in the short and long term and sets priority areas to guide Member States in their development plans. The CDP is expected to be updated in May/June. Both these initiatives could help to ensure that projects are developed to deliver capabilities that fulfil a European level of ambition that is coherent with NATO.

26. The Government's position remains that we will not support measures that would undermine Member States' competence for their own military forces, or lead to competition and duplication with NATO. We and other EU Member States continue to make clear that defence remains a national competence.

CONSULTATION

27. Not applicable.

IMPACT ASSESSMENT

28. Not applicable.

FINANCIAL IMPLICATIONS

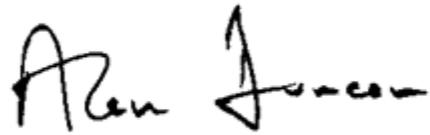
29. There are no financial implications resulting from this communication.

TIMETABLE

30. The Council Decision and Recommendation were adopted on 6 March 2017.

OTHER OBSERVATIONS

31. None.

A handwritten signature in black ink that reads "Alan Duncan". The signature is written in a cursive style with a large initial 'A' and a distinct 'D'.

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