

**EXPLANATORY MEMORANDUM ON THE EUROPEAN UNION'S
COMMON FOREIGN AND SECURITY POLICY**

Council Decision in support of the Hague Code of Conduct and ballistic missile non-proliferation in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction

Submitted by the Foreign and Commonwealth Office on 5 December 2017.

SUBJECT MATTER

1. The aim of this Council Decision is to promote through specific measures the universality, full implementation and enhancement of the Hague Code of Conduct against Ballistic Missile Proliferation (HCoC or the Code), in line with the EU strategy against the proliferation of weapons of mass destruction.
2. This Draft Council Decision has five objectives:
 - promoting the subscription to the Code by an ever larger number of States and ultimately its universality;
 - supporting the full implementation of the Code by subscribing States;
 - promoting dialogue among subscribing and non-subscribing States with the aim of helping build confidence and transparency, encourage restraint and create more stability and security for all;
 - reinforcing the Code's visibility and raising public awareness about the risks and threats posed by ballistic missile proliferation;
 - exploring, in particular through academic studies, possibilities of enhancing the Code and of promoting cooperation between the Code and other relevant multilateral instruments, such as the Missile Technology Control Regime (MTCR) and UN Security Council Resolution 1540(2004).

SCRUTINY HISTORY

3. An Explanatory Memorandum on the Draft Council Decision in support of the Hague Code of Conduct and ballistic missile non-proliferation in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction was last submitted for Parliamentary Scrutiny on 27 November 2014. The House of Commons European Scrutiny Committee cleared the document as “not legally or politically important” on 3 December 2014 (ESC 36531, 24th Report, Session 2014/15). The House of Lords Select Committee on the European Union cleared the document on 3 December 2014 at the Chairman’s sift.

MINISTERIAL RESPONSIBILITY

4. 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.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

5. 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

6. Legal Basis: Article 28(1) of the Treaty on European Union.
7. Voting Procedures: Unanimity.
8. Impact on UK Law: The Council Decision is binding on the UK.
9. Application to Gibraltar: Yes.
10. Fundamental rights analysis: No fundamental rights issues apply.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

11. None.

SUBSIDIARITY

12. This decision has to be taken at EU level to ensure the uniform application of the Council Decision across all EU Member States.

POLICY IMPLICATIONS

13. On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. The Government triggered Article 50 of the Treaty on European Union on 29 March 2017 to begin the process of exit. Until exit, 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 also continue to negotiate, implement and apply EU legislation.
14. The Draft Council Decision supports UK priorities in a key strategic policy area, which has the potential to negatively impact security in many regions, thereby directly affecting the UK and its security. The HCoC is part of a framework of agreements and bodies that help to cover and monitor the threats faced by the UK and its international partners. The UK continues to play a leading role in countering the illicit proliferation of ballistic and cruise missile technology, through its membership of international groupings like the HCoC. The Council Decision's

outcomes will inform the formulation of our policy for support of the HCoC after the UK leaves the European Union.

15. The Hague Code of Conduct is the result of international community efforts to regulate internationally the field of ballistic missiles. It is politically, not legally, binding, but is the only multilateral transparency and confidence building instrument concerning the spread of ballistic missiles. By subscribing to the HCoC, its 138 members voluntarily commit themselves to provide pre-launch notifications (PLNs) for ballistic missile (BM) and space-launch vehicle (SLV) launches and test flights. Subscribing States also commit themselves to submit an annual declaration (AD) of their country's policies on BMs and SLVs. Subscribing States do not financially support the Code.
16. The EU has strongly supported the HCoC from its start and is the only international body that supplies funding. For example, funding from the EU under Council Decision 2012/423/CFSP helped to set up the secure and public websites, with the secure site enabling subscribing States to share information and upload PLNs and ADs in a timely fashion. All EU Member States have subscribed to the HCoC and are implementing it.
17. The UK is supportive of the aims of this Draft Council Decision, which will expire 40 months after the date of the conclusion of the grant agreement. The UK is in favour of continuing the work initiated in the previous Council Decisions 2014/913/CFSP, 2012/423/CFSP and 2008/974/CFSP. The EU has pursued and supported the three headline aspects of the Code as follows:
 - Universality of the Code;
 - Implementation of the Code;
 - Enhancement and improved functioning of the Code.
18. Under the previous Council Decisions, the EU has tried to tackle differences in the implementation of the Code and its universality by organising workshops, seminars, expert meetings and side-events for subscribing and non-subscribing States to the Code. Such activities will continue under the Draft Council Decision, alongside new financing for a limited number of research papers on synergies between the HCoC and other relevant multilateral instruments, such as the MTCR, UN Security Council Resolution 1540(2004) and the UN Register for Objects Launched in Outer Space. The Draft Council Decision also aims to support the ongoing policy dialogue of the international community on security and sustainability in outer space, mainly through providing a limited financial contribution to annual space conferences organised by the United Nations Institute for Disarmament Research (UNIDIR) in Geneva. Practical implementation will be undertaken by the Fondation pour la recherche stratégique (FRS), which will also contribute to the project's funding, under direction from the EU.

19. The UK believes that technology and activities relating to space launches, including the emergence of non-state commercial space launch activities, present an increased ballistic missile proliferation risk that needs to be managed alongside the benefits they will increasingly provide in terms of flexible, low-cost access to space. We therefore welcome the Draft Council Decision's scope to raise awareness in this area.

CONSULTATION

20. Not applicable.

REGULATORY IMPACT ASSESSMENT

21. Not applicable.

FINANCIAL IMPLICATIONS

22. This will be a project mostly financed by the EU from the EU's CFSP budget, alongside a contribution from FRS as the implementing agency for the project. The Council Decision will not require any additional funds from the UK. The total estimated EU budget for its share of the total project cost is **€1,878,120.05** over three years.
23. The budget will be broken down as follows:
 - a) Organisation of nine regional/sub-regional outreach seminars (€941,526.00): Up to nine regional and/or sub-regional outreach seminars will be organised, including Latin America/Caribbean, the Middle East/Africa and South-East Asia as priority regions for engaging non-subscribing States and those with ongoing missile programmes. The HCoC Chair will be invited to attend each seminar. In consultation with the European External Action Service (EEAS), FRS will select potential countries where these will be held. The selection criteria will include the willingness and commitment of a relevant State, or intergovernmental organisation in a particular region, to host an event. FRS will also be in charge of the logistical aspects of the seminars. All non-subscribing States will be invited to participate at governmental level, with the intention of securing high-level buy-in. This is the most expansive part of the Council Decision, with the activities having the greatest potential for engaging non-subscribing States.
 - b) Organisation of six country-specific expert missions to non-subscribing States (€214,680.00): Up to six country-specific missions to non-subscribing States will be organised. Two regional experts on ballistic missile proliferation and FRS experts will form the basis of the missions, with the HCoC Chair invited. The FRS will select potential host countries in consultation with the EEAS. This more detailed and in depth level of activity will generally target those outside of government, such as interested parties in industry, encouraging a wider understanding and adoption of the Code.

- c) Organisation of three outreach side events in New York (€107,943.00): Three events aimed at engaging non-subscribing States will be organised in New York in the margins of the UN General Assembly First Committee, or the non-Proliferation Treaty Preparatory Committees.

These outreach side events will be designed to help deepen the relationships between the HCoC and the United Nations, in conformity with Resolution 71/33, adopted by the UN General Assembly on 5 December 2016.

- d) Organisation of three outreach side events in Vienna, Austria (€79,530.00): Three events aiming at engaging non-subscribing States will be organised in Vienna, Austria, in the margins of international conferences such as the HCoC Annual regular meeting. These outreach side events will also be designed to help deepen the relationship between the HCoC and the United Nations, in conformity with Resolution 71/33, adopted by the UN General Assembly on 5 December 2016.
- e) Organisation of a space launch site visit (€78,420.00): In close collaboration with relevant national authorities, FRS will organise a visit by a group of 20 experts to a space launch site, in accordance with HCoC as follows:

“The Subscribing States [...]

4. Resolve to implement the following:

Transparency measures as follows, with an appropriate and sufficient degree of detail to increase confidence and to promote non-proliferation of Ballistic Missiles capable of delivering weapons of mass destruction: [...]

ii) With respect to expendable Space Launch Vehicle programmes, and consistent with commercial and economic confidentiality principles, to: [...]

- consider, on a voluntary basis (including on the degree of access permitted), inviting international observers to their land (test-) launch sites [...]”

FRS will use this opportunity to promote effective implementation of the Code by subscribing States, including timely PLNs for BM and SLV launches and test flights.

- f) Contribution to three UNIDIR annual conferences (€87,720.00): As implementing agency for the project, FRS will transfer a €20,000 contribution for each of the three UNIDIR annual conferences on space security issues during the term of the project. An additional half-day programme dedicated to HCoC will also be organised back-to-back with each of the UNIDIR Space Security Conferences, with EU participation provided by two FRS researchers and three 3 experts.
- g) Research papers (€57,500.00): FRS will commission the institutions that are part of, or associated with, the EU Non-Proliferation Consortium to contribute at least 4 research papers on issues related to the HCoC, including one or more on the relationship between the HCoC and other relevant multilateral instruments, such as the MTCR and the UNSCR 1540(2004), and publish them. The research topics will be decided in consultation with the EEAS.

h) Leaflets (€9,750.00): FRS will print and distribute up to 2,000 leaflets describing EU support for the HCoC to complement the wider activities.

i) Welcome packages (€28,310.00): FRS will print and distribute up to 2,000 'welcome package' printed booklets. The 8 page booklet, which will also be made available online, will include:

- a detailed description of the HCoC
- the objective of the HCoC
- the obligations for subscribing States
- an explanation on the benefits for States to subscribe to the Code
- explanations on how to subscribe
- contact details
- the list of subscribing States

FRS will also produce and distribute up to 2,000 USB sticks. The USB sticks will provide the leaflet and 'welcome package' in various languages, the HCoC text, the relevant United Nations resolutions and any other relevant information about the HCoC.

Both items will be issued during outreach activities with non-subscribing States. The 'welcome packages' and the USB sticks can also be used to remind subscribing States about their obligations.

j) Website and social networks (€42,095.00): FRS will also update and maintain the EU Non-Proliferation Consortium website. A database and infographics will be added. The database will use open sources to collate information on SLVs and international BMs capacity for EU use only. The infographics will also use and illustrate the information from the database.

k) Management (€80,100.00): This is to cover FRS' overall management, including financial reporting to the EU, for the duration of the project.

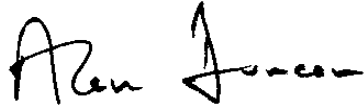
l) Contingencies (€51,827.22): 3% of the total of eligible direct costs.

m) Overheads (€120,930.18): 7% of the total of eligible direct costs.

n) FRS contribution (€22,211.35): 1.17% of the total cost of activities

TIMETABLE

24. The Budgetary Impact Statement was agreed at the RELEX working group on 26 October. The Draft Council Decision is expected to be transcribed onto the agenda for an upcoming Council of Ministers in early December for approval. There is currently a scrutiny reserve in place for this Council Decision.

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 long, sweeping tail on the 'n'.

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