

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION AND DOCUMENTS

COUNCIL DECISION (CFSP) 2018/1797 of 19 November 2018 amending and updating Decision (CFSP) 2018/340 of 6 March 2018 establishing the list of projects to be developed under PESCO to include the next set of PESCO projects, and calls for the swift implementation of all projects

Submitted by the Foreign and Commonwealth Office on 5 December 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 19 December 2018 at the Foreign Affairs Council, EU Member States participating in PESCO adopted a decision that identified 17 projects to be added to the current list of projects to be developed under PESCO.
3. 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.

SCRUTINY HISTORY

4. An Explanatory Memorandum on this issue was last submitted to Parliament for Scrutiny on 20 March 2018. The document was cleared at the House of Lords Chairman's sift on 27 March 2018. The House of Commons European Scrutiny Committee cleared the documents as "legally and politically important" on 26 April 2018 (ESC 39553, 22nd Report, Session 2017-19).

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 Secretaries of State for Defence and Exiting the EU have 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 not been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

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 - i. Legal Basis: Articles 42 (6), 46 of the Treaty on European Union (TEU), Protocol 10, Council Decision (CFSP) 2017/2315 of 11 December 2017 and Council Decision (CFSP) 2018/340 of 6 March 2018.
 - ii. Voting Procedures: Unanimity by PESCO participating Member States ("PESCO format").
 - iii. Impact on UK Law: None.
 - iv. Application to Gibraltar: No.
 - v. Fundamental rights analysis: No fundamental rights issues apply.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

8. None.

SUBSIDIARITY

9. Not applicable.

POLICY IMPLICATIONS (including Exit implications where appropriate)

10. On 23 June 2016, the UK voted to leave the EU. On 29 March 2017, the Government triggered Article 50 of the Treaty on European Union 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.
11. The UK did not join PESCO, so we were not invited to vote on the Council Decision at the 19 November Foreign Affairs Council and the decision does not have 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.

12. 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.
13. The Council Decision brings the total of PESCO projects to 34. The UK is not permitted to participate in any of these projects because we are not a PESCO participating Member State. After we leave the EU, subject to future agreement on third party participation, we could participate in projects as a third party.
14. The Ministry of Defence is scrutinising the revised list of 34 projects to identify which we might have an interest in, or be able to add value to, as a future third party. The UK would need to balance the benefits against military capacity, international, industrial and prosperity projects before making a decision to participate.
15. We have previously voiced our support for the Military Mobility initiative, included in the first tranche of PESCO projects, because of its link to our commitment under NATO to fulfil Supreme Allied Commander Europe's Area of Responsibility.
16. The Government believes that NATO remains the cornerstone of Euro-Atlantic security and that any EU work should complement NATO. We therefore support the need for all PESCO projects to form part of a unified vision for improved security and defence across Europe and we will therefore continue to champion greater capability cooperation between the EU and NATO.
17. Negotiations for third party participation in PESCO projects are ongoing. We want to have the ability to cooperate with PESCO as a third party, where it serves the UK's security, defence interests, and contributes to the enhancing European security as a whole.
18. The UK advocates an open and flexible PESCO and we have been working with likeminded Member States to achieve this. The decision, however, for rules governing third party participation is for PESCO participating Member States to make and the UK will decide whether it is in our interests to participate once that decision has been made.
19. 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

20. Not applicable.

IMPACT ASSESSMENT

21. Not applicable.

FINANCIAL IMPLICATIONS

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

TIMETABLE

23. The Council Decision was adopted on 19 November 2018.

OTHER OBSERVATIONS

24. 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 long, sweeping tail for the 'n'.

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