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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 Agreement¹ 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.

Under the current 11th EDF, an amount of EUR 750 million was initially allocated to the APF for the period 2014-2020. This amount, which was based on APF commitments under the 10th EDF, failed to sufficiently take into account the sharp increase of the APF financial volume after 2012, which continued until 2015, when the Commission limited its funding to Peace Support Operations (PSOs) to 80% of the UN rate at that time for stipends paid to troops and police deployed in the framework of African-led PSOs. The introduction of this ceiling resulted in a stabilisation, but not a reduction, of APF disbursements, as savings obtained through the introduction of the ceiling on APF contributions to stipends were offset by an increase in the overall number of PSOs funded. As a consequence, demands for APF funding soon exceeded the available amount. The APF has therefore so far been replenished three times for a total of EUR 835 million: two replenishments of EUR 150 million each (decided on 24 September 2015² and 2 August 2016³, respectively) for the Action Programme 2014-2016, and a third replenishment of EUR 535 million (also decided on 2 August 2016⁴) to finance the Action Programme 2017-2018. The rise in demands has notably been due to the continuation of funding for existing operations (African Union Mission in Somalia - AMISOM), as well as the establishment of new PSOs (Economic Community of Western African States Mission in Guinea Bissau - ECOMIB, Multi-National Joint Task Force against Boko Haram - MNJTF, G5 Sahel Joint Force). Under the 11th EDF, the APF has so far committed a total of EUR 1,627.3 million⁵. This amount is considerably larger than commitments under previous EDFs, showing the increased engagement of EDF funding in peace and security.

The COREPER decision of 10 May 2016 on the replenishment of the APF determined the resources available for the APF until the end of 2018, but it did not cover financial requirements for the two last years of the 11th EDF, corresponding to the APF Action Programme 2019-2020. Resources for the period 2019-2020 should be able to respond to the continuous needs of the African Union and African regional organisations to address ongoing and emerging security crises in Africa. The predictability and sustainability of APF financing needs to be ensured. APF financial needs up to the end of 2020 are currently estimated at EUR 814 860 000.

The objective of this draft proposal for a Council decision is to obtain the authorisation of the Council to use decommitted funds from the 10th EDF to replenish the APF with an additional amount up to EUR 445 860 000, of which EUR 431 000 000 will contribute to the financing

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(2015) 8627 of 7 December 2015.

³ Commission Decision C(2016) 7258 of 17 November 2016.

⁴ Commission Decision C(2017) 2579 of 27 April 2017 as amended by Commission Decision C(2018) 1258 of 23 February 2018.

⁵ This amount includes EUR 16.5 million in voluntary contributions made by various Member States.

of APF requirements up to the end of 2020 and EUR 14 860 000 will cover the support expenditure incurred by the Commission. These funds will be utilised applying the 10th EDF Member States contribution key⁶. To complement these funds from the performance reserve (“réserve non-mobilisable”), additional funds will be mobilised for the APF from the 11th EDF National Indicative Programmes / Regional Indicative Programmes (NIP/RIP) reserve (EUR 369 000 000).

- **Consistency with existing policy provisions in the policy area**

The EU Global Strategy⁷ defines peace and security as one of the vital interests of the EU, furthermore stating that security within Europa is strongly linked to peace in neighbouring and surrounding regions. The renewed European Consensus on Development⁸, adopted in 2017, establishes “peace” as one of its five focus areas and reaffirms the EU’s commitment to a rules-based global order, with multilateralism at its core.

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. At the 5th AU-EU Summit in November 2017, leaders agreed on four common strategic priorities for the period leading to the next Summit, one of them being “Strengthening resilience, peace, security and governance”. Building on the new European Consensus on Development recalling the security-development nexus and on the EU Global Strategy stressing the need for an integrated approach to conflicts, cooperation in the area of peace and security therefore continues to be at the core of the Africa-EU Partnership. It is in this context that the European Commission and the African Union Commission signed, on 23 May 2018, a Memorandum of Understanding on Peace, Security and Governance, which provides a framework for an enhanced AU-EU cooperation to address peace and security challenges.

By allowing for the continuation of the APF activities until 2020, this proposal will 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 strategy⁹.

The additional funds will be used in accordance with the rules and procedures applicable to the 11th EDF. The programming of these funds will be established by the forthcoming APF

⁶ This does not constitute a precedent regarding the potential future use of decommitted funds from previous EDFs, which remains a decision to be taken by the Member States on a case-by-case basis, in compliance with Article 55 of Council Regulation (EU) 2018/1877 of 26 November 2018 on the financial regulation applicable to the 11th European Development Fund.

⁷ Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union’s Foreign and Security Policy, June 2016.

⁸ Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission (2017/C 210/01): The new European Consensus on Development - “Our World, Our Dignity, Our Future”, 7 June 2017.

⁹ Commission Decision C(2015) 7766 of 13 November 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.

Action Programme 2019-2020, which requires COREPER approval before being adopted by the Commission, as foreseen by Article 15(b) of the 11th EDF Implementation Regulation¹⁰.

- **Consistency with other Union policies**

N/A

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 1(4) of the 11th EDF Internal Agreement¹¹.

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

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

N/A

The EDF is set up by an internal agreement between the representatives of Member States and foresees the possibility to use decommitted funds, if so agreed by the Council¹².

- **Proportionality**

The proposal and in particular the proposed amounts are based on a comprehensive analysis by Commission services and the EEAS. The proposal is also based on the assumption that other partners will contribute to financial efforts, including that African Union Member States will gradually fulfil the commitment made during the African Union Summit in Johannesburg, South Africa, of June 2015, to make a 25% contribution to PSOs by 2020; and that other donors, including the UN, will contribute as well. Furthermore, EU Member States have the possibility to channel voluntary contributions through the APF.

In July 2016, the AU adopted a decision to implement a 0.2% levy on eligible imports to finance the African Union. The purpose of the decision is to provide reliable and predictable funding for continental peace and security through the African Union Peace Fund. Implementation of the necessary legislation and practical measures is progressing, albeit at different speeds across AU Member States.

- **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 capacity building in support of development and security for development.

¹⁰ Council Regulation (EU) 2015/322 of 2 March 2015.

¹¹ 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).

¹² Article 1(4) of the 11th EDF Internal Agreement and Article 55 of Council Regulation (EU) 2018/1877 of 26 November 2018 on the financial regulation applicable to the 11th European Development Fund.

In accordance with Article 1(4) of 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, the Council decides on a proposal of the Commission.

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

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

N/A

- **Stakeholder consultations**

N/A

- **Collection and use of expertise**

N/A

- **Impact assessment**

N/A

- **Regulatory fitness and simplification**

N/A

- **Fundamental rights**

Strengthening the Human Rights dimension of conflict prevention, crisis management and post-conflict processes is one of the key areas of cooperation under the priority area "Peace and Security" of the JAES. The AU-EU Memorandum of Understanding on Peace, Security and Governance signed in May 2018 further underlines the centrality of Human Rights, including the fight against conflict-related gender-based violence, in the attainment of peace and security on the African continent.

Under the APF Action Programme 2019-2020, particular attention will be paid to the gender and Human Rights dimension of all relevant actions. Support will be provided to the AU and other relevant actors to establish a continental Human Rights and international humanitarian law compliance framework, applicable to all African-led PSOs.

4. BUDGETARY IMPLICATIONS

N/A

The EDF is not part of 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 multiannual 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 and amended on 24 May 2017, which are to be respected by the African Union Commission in the implementation of the EDF in indirect management.

- **Explanatory documents (for directives)**

N/A

- **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 445 860 000 from projects under the 10th EDF will be allocated for the purpose of replenishing the APF to address estimated financial needs of the APF Action Programme 2019-2020.

Article 1 paragraph (2) provides that a maximum of EUR 14 860 000 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 Regulations¹³).

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

¹³ Council Regulation (EU) 2015/322 of 2 March 2015 on the implementation of the 11th European Development Fund and Council Regulation (EU) 2018/1877 of 26 November 2018 on the financial regulation applicable to the 11th European Development Fund.

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

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 applies¹⁴, and in particular Article 1(4) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Under the 11th EDF, the EU has so far committed a total of EUR 1,627.3 million to the African Peace Facility (APF) to provide financial support to African Union responses to ongoing and emerging security crises in Africa. This engagement in peace and security on the African continent should be sustained for the period 2019-2020.
- (2) APF requirements for the period 2019-2020 are estimated at EUR 814 860 000.
- (3) It is appropriate to use decommitted funds from projects under the 10th EDF to ensure the financing of the APF up to the end of 2020.
- (4) These additional funds should finance APF activities, including support to the operationalisation of the African Peace and Security Architecture, support for initiatives aimed at preventing and managing violent conflict in case of urgent and unforeseen needs in crisis situations (Early Response Mechanism), and support to African-led Peace Support Operations, and cover support expenditure incurred by the Commission.
- (5) These funds should be used in accordance with the relevant APF multiannual action programme and with the rules and procedures applicable to the 11th EDF, as set out in Council Regulation (EU) 2015/322 of 2 March 2015 on the implementation of the 11th European Development Fund,¹⁵ and Council Regulation (EU) 2018/1877 of 26 November 2018 on the financial regulation applicable to the 11th European Development Fund.¹⁶

¹⁴ OJ L 210, 6.8.2013, p.1.

¹⁵ OJ L 58, 3.3.2015, p. 1-16.

¹⁶ OJ L 307, 3.12.2018, p. 1-21.

HAS ADOPTED THIS DECISION:

Article 1

An amount up to a maximum of EUR 445 860 000 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 2019-2020.

From this amount, up to a maximum of EUR 14 860 000 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*