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STATEMENT OF THE COUNCIL'S REASONS

Subject: Position of the Council at first reading with a view to the adoption of a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL establishing the European Defence Fund and repealing
Regulation (EU) 2018/1092

- Statement of the Council's reasons
- Adopted by the Council on 16 March 2021

I. INTRODUCTION

1. On 13 June 2018, the Commission presented a proposal for a Regulation of the European Parliament and of the Council establishing the European Defence Fund¹ (the 'Fund').
2. At its meeting on 19 November 2018, the Council adopted a partial General Approach² on the proposal, having left all provisions with implications for budgetary matters in brackets as they required the completion of negotiations on the multiannual financial framework 2021-2027 for the Council to be able to establish its position. Provisions related to third countries to be considered associated countries under the Fund (Article 5) were also bracketed and left outside of the scope of the Council's negotiating mandate.
3. The European Parliament voted on its report at Committee level on 21 November 2018³. On 12 December 2018, the Plenary adopted the report and thus provided the mandate to enter into negotiations with the Council.
4. The European Economic and Social Committee adopted its opinion⁴ on 12 December 2018.
5. Following trilogues on 16 January and 5 February 2019, the European Parliament and the Council reached a comprehensive common understanding on the proposal on 19 February 2019, excluding the bracketed provisions mentioned in point 2.
6. On 27 February 2019, the Permanent Representatives Committee took note of the progress report reflecting the common understanding⁵, thereby acknowledging that negotiations would resume with the European Parliament once the Council had a mandate on all elements of the proposal.
7. On the basis of the common understanding, the European Parliament adopted its position at first reading on 18 April 2019⁶.

¹ doc. 10084/18 + ADD 1.

² doc. 14094/1/18 REV 1.

³ P8_TA(2018)0516, the responsible committee: the Committee on Industry, Research and Energy (ITRE), rapporteur Mr Zdzisław Krasnodębski; Mr David McAllister (AFET) as co-rapporteur.

⁴ CCMI/162-EESC-2018.

⁵ doc. 6733/1/19 REV 1.

⁶ EP-PE_TC1-COD(2018)0254.

8. In its conclusions of 21 July 2020⁷, the European Council provided horizontal guidance as regards all matters with budgetary implications. In light of this, the Permanent Representatives Committee mandated⁸ the Presidency on 30 September 2020 to resume negotiations with the European Parliament with a view to reaching an agreement on the whole of the text.
9. Following a trilogue on 30 November 2020, the European Parliament and the Council, facilitated by the European Commission, reached a provisional political agreement on a final compromise text on 14 December 2020. This agreement was endorsed by the Permanent Representatives Committee on 18 December 2020⁹ and by the European Parliament's Committee on Industry, Research and Energy (ITRE) on 14 January 2021.
10. On 21 January, the Chair of the ITRE Committee sent a letter to the Chair of the Committee of Permanent Representatives indicating that, should the Council formally transmit to the European Parliament its position as agreed during trilogues, subject to legal-linguistic verification, he would recommend to the Plenary that the Council's position at first reading be accepted without amendments at the European Parliament's second reading.

II. OBJECTIVE

11. The general objective of the Fund is to foster the competitiveness, efficiency and innovation capacity of the European defence technological and industrial base (EDTIB) by supporting collaborative actions and cross-border cooperation between legal entities throughout the Union as well as by strengthening and improving the agility of both defence supply and value chains, widening cross-border cooperation between legal entities and fostering the better exploitation of the industrial potential of innovation, research and technological development.

⁷ doc. 00010/20.

⁸ doc. 11394/20.

⁹ doc. 14285/20.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

General observations

12. The Council and the European Parliament conducted negotiations with the aim of concluding an early second-reading agreement on the basis of a Council first reading position that the European Parliament could approve as such. The text of the Council first reading position fully reflects the compromise reached between co-legislators.
13. *Eligible entities:* The Council agrees with the European Parliament's first reading position as regards the provisions on eligible entities, which are based on the initial proposal by the European Commission.
14. *Eligible actions:* The Council supports the European Parliament's first reading position concerning eligible actions and agrees that at least 4% and up to 8% of the financial envelope should be allocated to calls for proposals or awards of funding supporting disruptive technologies for defence, which marks an increase in relation to the 5% ceiling initially proposed by the European Commission.
15. *Ethics:* The Council supports the European Parliament's first reading position in that actions for the development of products and technologies the use, development or production of which is prohibited by applicable international law are not eligible for support from the Fund. The Council further agrees with the European Parliament's first reading position as regards the ineligibility of activities aimed at the development of lethal autonomous weapons, which goes beyond the initial proposal by the European Commission.
16. *Governance:* The Council supports the European Parliament's first reading position that implementing powers should be conferred on the European Commission concerning the adoption of work programmes and the award of funding to selected research and development actions. The examination procedure will be used for the adoption of such implementing acts, whereby the draft implementing act may not be adopted where no opinion by the Programme Committee is delivered. The Fund will be implemented in direct management, but by way of derogation, in justified cases, specific actions may be implemented under indirect management by bodies referred to in Article 62(1)(c) of the Financial Regulation; such derogation however will not cover the selection and award procedure.

17. *Coherence:* The Council supports the European Parliament's first reading position that, in line with the European Commission's initial proposal, provides for an increased funding rate of an additional ten percentage points for actions developed in the context of Permanent Structured Cooperation (PESCO).

Specific observations

18. At the last trilogue on 14 December 2020, co-legislators were able to reach a compromise on the following issues.
19. *Duration:* Co-legislators agreed on the duration of the Fund. Article 1 establishes the Fund for the period from 1 January 2021 to 31 December 2027, in alignment with the duration of the multiannual financial framework 2021-2027.
20. *Financial envelope:* In line with the Horizon Europe Framework Programme, co-legislators further agreed on an overall financial envelope of EUR 7 953 000 000 in current prices for the Fund. The distribution of this overall financial envelope to 'research' and 'development' actions remains proportionate to the one contained in the initial proposal by the European Commission.

The Council position at first reading does not include a 'receiving clause' which would have enabled Member States to request the transfer to the Fund of resources allocated to them under shared management, where possible to their own benefit. The Council agreed not to include such a clause in response to ethical and practical concerns raised by the European Parliament and the European Commission, respectively.

The Council position at first reading reflects the 30%-goal of the multiannual financial framework 2021-2027 for the mainstreaming of climate expenditure across all EU programmes. It also contains a provision on the mainstreaming of biodiversity action.

21. *Third country participation:* The Council and the European Parliament agreed on the initial proposal by the European Commission concerning 'associated countries'. Article 5 of the Council position at first reading opens the Fund to the participation of members of the European Free Trade Association (EFTA) which are members of the European Economic Area (EEA), in accordance with the conditions laid down in the EEA agreement.

IV. CONCLUSION

22. The Council Position at first reading on the Regulation of the European Parliament and of the Council establishing the European Defence Fund fully reflects the compromise reached in negotiations between representatives of the Council and of the European Parliament, facilitated by the Commission.
23. Accordingly, the Permanent Representatives Committee is invited to suggest that the Council:
- endorse this statement of the Council’s reasons on its position at first reading, and
 - transmit this statement to the European Parliament.
24. After adoption by the European Parliament of its position at second reading, approving the Council’s position without amendments, the Regulation of the European Parliament and the Council establishing the European Defence Fund will enter into force on the day of its publication in the Official Journal of the EU.
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