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PROPOSAL

From:	Ms Ilze JUHANSONE, Secretary-General of the European Commission
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Delegations will find attached document COM(2020) 477 final.

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2020/0228 (NLE)

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 established in 2003 within the framework of the Cotonou Agreement[1] for the period of application of the Cotonou Agreement 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 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's 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. The rise in demand 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).

The APF has therefore been replenished four times to date, for a total amount of EUR 1,635 million: two replenishments of EUR 150 million each (decided on 24 September 2015[2] and 2 August 2016[3], respectively) for the Action Programme 2014-2016, a third replenishment of EUR 535 million (also decided on 2 August 2016[4]) to finance the Action Programme 2017-2018, and a fourth replenishment of EUR 800 million (decided on 11 April 2019[5]) to finance the Action Programme 2019-2020. These funds enable the implementation of activities under the APF until the end of 2020.

In line with the Commission proposal for the Multi-Annual Financial Framework 2021-2027[6] and the proposal of the High Representative for a European Peace Facility (EPF)[7], the activities currently funded under the APF are expected to be taken over by the Neighbourhood, Development and International Cooperation Instrument (NDICI) and the EPF from 1 January 2021. To ensure continuous and reliable EU support to African-led peace and security activities, a smooth transition between the APF and these new instruments should be facilitated from January to June 2021 or until the expiration of the Cotonou Agreement, whichever comes first.

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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 Commission Decision C(2019)4070 of 6 June 2019.

6 Proposal of the Commission for the Multiannual Financial Framework 2021-2027, May 2018.

7 HR(2018)94 of 13 June 2018.

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 of up to EUR 129 million. These funds will be utilised applying the 10th EDF Member States contribution key[8].

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

The EU Global Strategy[9] defines peace and security as one of the vital interests of the EU, furthermore stating that security within Europe is strongly linked to peace in neighbouring and surrounding regions. The renewed European Consensus on Development[10], 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. Most recently, this focus on a continued strong cooperation with African partners on peace and security has been anchored in the Commission and EEAS March 2020 Joint Communication "Towards a comprehensive Strategy with Africa"[11].

By enabling the continuation of the APF activities until mid-2021, or until the expiration of the Cotonou Agreement, whichever comes first, this proposal will contribute to serve the UN 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 and regional envelopes of the EDF. The activities financed by the additional funds allocated to the APF from the performance reserve

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8 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.

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

10 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.

11 European Commission and High Representative of the Union for Foreign Affairs and Security Policy, Joint Communication to the European Parliament and the Council: Towards a Comprehensive Strategy with Africa, JOIN(2020) 4, 9 March 2020.

("réserve non-mobilisable") will remain in line with the general and APF specific objectives laid down in the Intra-ACP strategy[12].

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 an amendment of the APF Action Programme 2019-2020, adding the implementation of activities from January 2021 or until the expiration of the Cotonou Agreement, whichever comes first. This amendment of the APF Action Programme 2019-2020 requires COREPER approval before being adopted by the Commission, as foreseen by Article 15(b) of the 11th EDF Implementation Regulation[13].

- **Consistency with other Union policies**

N/A

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 1(4) of the 11th EDF Internal Agreement[14].

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 provides for the possibility to use decommitted funds, if so agreed by the Council[15].

- **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. 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 though the African Union Peace Fund. Implementation of the necessary legislation and practical measures is progressing, albeit at

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12 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.

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

14 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).

15 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.

different speeds across AU Member States. The amount of funding available under the AU Peace Fund is increasing steadily, and has reached a level of over EUR 160 million.

- **Choice of the instrument**

The EDF is the only source of funding for the APF at Union 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 other than in the context of capacity building in support of development and security for development.

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[16], 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 Joint Africa-EU Strategy (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[17], particular attention is paid to the gender and Human Rights dimension of all relevant actions. The Action Programme includes financing to

[16] OJ L 210, 6.8.2013, p. 1-14.
[17] Commission Decision C(2019) 4070 of 6 June 2019.

support the AU and other relevant actors in establishing 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 to the 11th EDF and foreseen in the APF Action Programme 2019-2020.

- **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 129 million from projects under the 10th EDF will be allocated for the purpose of replenishing the APF to address estimated financial needs for a duration covering up to the first six months of 2021.

Article 1 paragraph (2) provides that the rules of the 11th EDF will be applicable (Implementation and Financial Regulations[18]).

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

[18] 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.

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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 applies[19], and in particular Article 1(4) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The ongoing European Union engagement in peace and security on the African continent under the African Peace Facility (APF) should be sustained until the end of June 2021 or until the expiration of the application of the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States ('ACP') of the one part, and the European Union and its Member States, of the other part ('the ACP-EU Partnership Agreement')[20], whichever comes first.

(2) APF financial requirements for a period covering up to January to June 2021 are estimated at up to EUR 129 000 000.

(3) It is appropriate to use decommitted funds from projects under the 10th EDF to ensure the financing of the APF until the end of June 2021 or until the expiration of the application of the ACP-EU Partnership Agreement, whichever comes first.

(4) These additional funds should finance support to African-led Peace Support Operations.

(5) The 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,[21] and Council Regulation (EU) 2018/1877 of 26 November 2018 on the financial regulation applicable to the 11th European Development Fund.[22]

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19 OJ L 210, 6.8.2013, p.1.

20 Agreement (OJ L317, 15.12.2000, p. 3) as amended by the Agreement signed in Luxembourg on 25 June 2005 (OJ L209, 11.8.2005, p.27) and by the Agreement signed in Ouagadougou on 22 June 2010 (OJ L287, 4.11.2010, p 3).

21 OJ L 58, 3.3.2015, p. 1-16.

22 OJ L 307, 3.12.2018, p. 1-21.

HAS ADOPTED THIS DECISION:

Article 1

An amount up to a maximum of EUR 129 000 000 from the funds decommitted from projects under the 10th European Development Fund (EDF) shall be allocated for the purpose of replenishing the APF from 1 January to 30 June 2021 or until the expiration of the application of the ACP-EU Partnership Agreement, whichever comes first.

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