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From: Presidency
To: Permanent Representatives Committee (Part 2)
No. Cion doc.: COM(2016) 447 final
Subject: Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 230/2014 of the European Parliament and of the Council establishing an instrument contributing to stability and peace
(First reading)

- Mandate for negotiations with the European Parliament

1. On 11 March 2014, the European Parliament and the Council adopted Regulation (EU) No 230/2014 establishing an instrument contributing to stability and peace (IcSP)¹. Regulation (EU) No 230/2014 applies until 31 December 2020.
2. On 6 and 18 July 2016, the Commission submitted to the Council a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 230/2014 of the European Parliament and of the Council of 11 March 2014 establishing an instrument contributing to stability and peace (doc. 11037/16 + 11037/1/16 REV 1 + ADD1 + ADD2 + ADD2 REV1).

¹ OJ L 77, 15.3.2014, p. 1.

3. The purpose of the proposal is to extend the Union's assistance under the IcSP by allowing for the financing of measures in support of capacity building for security and development (CBSD) of military actors in partner countries, in exceptional circumstances, with the objective of contributing to sustainable development and in particular the achievement of peaceful and inclusive societies. The specific objectives of the proposal are to: (i) contribute to improving the capacity of partner countries to prevent and manage crises by themselves; (ii) contribute to improving the effectiveness of the Union's development actions through the delivery of capacity building in support of security and development, as soon as possible, flexibly and comprehensively; and (iii) contribute to ensuring respect for the rule of law and good governance as well as enhanced civilian control and oversight over the military in third countries. The Council Legal Service issued an Opinion on the legal basis of the proposal on 29 July 2016 (doc. 11582/16).

4. The Foreign Relations Counsellors Working Party (RELEX) discussed the proposal in several meetings in July, September, October, November and December 2016. A majority of delegations, as well as the Commission, support the results of the discussions as set out in Annex I to this note. In RELEX discussions, two delegations made additional proposals as set out in the corresponding footnotes in Annex I. Luxembourg proposed that the funds reallocated from instruments eligible under Official Development Assistance (ODA) to the financing of CBSD actions under IcSP would be used in compliance with the OECD Development Assistance Committee (DAC) criteria (see footnote no. 12 in Annex I). Sweden proposed that CBSD actions under IcSP be limited to areas specified in the reporting directives of the OECD/DAC (see footnotes nos. 5, 8, 9 10 and 11 in Annex I). In that context, Luxembourg and Sweden indicated that they will make declarations as set out in Annex II.

5. As regards the financial reference amount in Article 13(1) of the proposal RELEX noted that the proposed amount is without prejudice to the prerogatives of the budgetary authority during the annual budgetary procedures.
6. Considering the foregoing, COREPER is invited:
- to reach agreement on the mandate for negotiations with the European Parliament on a Regulation of the European Parliament and of the Council amending Regulation (EU) No 230/2014 of the European Parliament and of the Council establishing an instrument contributing to stability and peace as set out in Annex I;
 - to take note of the declarations by Luxembourg and Sweden as set out in Annex II and agree to include them in the minutes of the meeting.
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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Regulation (EU) No 230/2014 of the European Parliament and of the Council of 11
March 2014 establishing an instrument contributing to stability and peace**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 209(1) and 212(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The 2005 European Consensus on Development recognised the link between security and development.²
- (2) The 2030 Agenda for Sustainable Development, adopted by Resolution of the United Nations General Assembly on 25 September 2015³, underlines the importance of promoting peaceful and inclusive societies both as a Sustainable Development Goal (SDG 16) and in order to achieve other development policy outcomes. SDG 16.a specifically requests to “Strengthen relevant national institutions, including through international cooperation, for building capacities at all levels, in particular in developing countries, for preventing violence and combatting terrorism and crime”.
- (2a) The primary objective of Union development policy is the reduction and, in the long term, the eradication of poverty.
- (2b) The OECD Development Assistance Committee (DAC) High Level Meeting Communiqué of 19 February 2016, updated the reporting directives on Official Development Assistance (ODA) in the field of peace and security⁴. The financing of the actions undertaken in accordance with Article 3a of this Regulation constitutes Official Development Assistance (ODA) when it fulfils the criteria set out in these reporting directives or any reporting directives the OECD/DAC may agree upon subsequently.

² 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 on European Union Development Policy entitled “The European Consensus”, Official Journal, C 46 of 24.2.2006

³ A/RES/70/1.

⁴ Document DCD/DAC(2016)3/FINAL of 8 April 2016.

- (3) Supporting security sector actors, including the military under exceptional circumstances⁵, in third countries in a conflict prevention, crisis management or stabilisation context is essential to ensure appropriate conditions for poverty eradication and development. Good governance and effective democratic control and civilian oversight of the security system, including the military, as well as compliance with human rights and the rule of law principles are essential attributes of a well-functioning State in any context, and should be promoted through a wider security sector reform support to third countries.
- (4) The European Council conclusions of 19/20 December 2013 on Common Security and Defence Policy (CSDP) emphasised the importance of supporting partner countries and regional organisations, through providing training, advice, equipment and resources where appropriate, so that they can increasingly prevent or manage crises by themselves.
- (5) In the Joint Communication entitled ‘Capacity building in support of security and development – Enabling partners to prevent and manage crisis’, the Commission and the High Representative of the Union for Foreign Affairs and Security Policy reiterated the need for stable and secure societies in order to achieve development objectives.⁶
- (6) In line with the EU's Comprehensive Approach and in order to maximize the impact, efficiency and consistency of EU support, the Council conclusions on CSDP of 18 May 2015 invited the High Representative for Foreign Affairs and Security Policy (HR) and the Commission to develop, in consultation with the Member States, an EU-wide strategic framework to support Security Sector Reform. This policy concept⁷ brings together CSDP and all other relevant CFSP tools as well as development co-operation instruments, while respecting their respective legal bases, primary objectives and decision-making procedures.

⁵ SWE: add "in limited areas specified in the reporting directives of the OECD/DAC"

⁶ JOIN(2015) 17 final of 28 April 2015

⁷ Joint Communication to the European Parliament and the Council on Elements for an EU-wide strategic framework to support security sector reform (JOIN (2016) 31 final of 5 July 2016).

- (6a) Capacity building of military actors in third countries should be undertaken as part of the Union's development cooperation policy when it mainly pursues objectives in the field of development and as part of the Union's CFSP when it mainly pursues objectives in the field of peace and security, in compliance with Article 40 TEU. This Regulation respects the application of the procedures and the extent of the powers of the institutions under the Union's development cooperation policy and its CFSP.
- (7) Regulation (EU) No 230/2014 should therefore be amended accordingly.

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 230/2014 is amended as follows:

(1) In Article 1(2) the following sub-paragraph is added:

“Where Union assistance is provided to the security sector actors, this may also include military actors under exceptional circumstances⁸ as provided for in Article 3a in the context of a wider security sector reform process or capacity building in support of development and security for development in third countries, in line with the overarching objective of achieving sustainable development.”

(2) The following Article 3a is inserted:

“Article 3a

Capacity building of military actors in support of development and security for development

1. In order to contribute to sustainable development which requires the achievement of stable, peaceful and inclusive societies, Union assistance under this Regulation may be used to build the capacity of military actors in partner countries, under the exceptional circumstances⁹ as set out in paragraph 3 of this Article, to deliver development activities and security for development activities.

⁸ SWE: "under exceptional circumstances in limited areas specified in the reporting directives of the OECD/DAC, in the context

⁹ SWE: under exceptional circumstances in limited areas specified in the reporting directives of the OECD/DAC, to deliver development activities

2. Assistance may cover in particular the provision of capacity building programmes, including training, mentoring and advice on, *inter alia*, human rights, governance and the rule of law, the protection of women and children, civilian crisis response, human resources management and technical co-operation¹⁰, as well as the provision of equipment, infrastructure improvements and directly related services, in support of development and security for development.¹¹

3. Assistance pursuant to this Article shall only be provided:

(a) where requirements cannot be met by recourse to non-military actors to adequately reach Union objectives under this Regulation and there is a threat to the existence of functioning State institutions, or a threat to the protection of human rights and fundamental freedoms and State institutions cannot cope with that threat;

and

(b) where a consensus exists between the country concerned and the European Union that military actors are key for preserving, establishing or re-establishing the conditions essential for sustainable development, including in crises and fragile or destabilised contexts and situations.

4. Union assistance under this instrument shall not be used to finance capacity building of military actors for purposes other than the delivery of development or security for development. In particular, it shall not be used to finance:

(a) recurrent military expenditure;

(b) the procurement of arms and ammunition, or any other equipment designed to deliver lethal force;

¹⁰ SWE: In line with the Revised Reporting Directives on ODA in the field of Peace and Security agreed by the OECD DAC in February 2016, training should preferably be under civilian oversight in the following areas: Human rights and rule of law; Protection of women in conflict and prevention of sexual and gender-based violence; International humanitarian law; Humanitarian response and disaster relief preparedness; Prevention and treatment of communicable diseases; Anti-corruption, including prevention of predatory behaviour against civilians; and Transparency, respect of civilian oversight and democratic control.

¹¹ SWE: "development activities, under exceptional circumstances in limited areas specified in the reporting directives of the OECD/DAC, including training"

(c) training which is designed to contribute specifically to the fighting capacity of the armed forces.

5. When designing and implementing measures pursuant to this Article, the Commission shall promote ownership by the partner country. It shall also develop the necessary elements and the good practices required for ensuring sustainability in the medium and long term and promote the rule of law and established international law principles.

6. The Commission shall establish appropriate risk assessment, monitoring and evaluation procedures for measures pursuant to this Article.¹²

(3) In Article 7, paragraph (1) is replaced by the following:

“1. Union assistance pursuant to Article 3, and to Article 3a as appropriate, shall be provided through exceptional assistance measures and interim response programmes.”

(4) In Article 8, paragraph (1) is replaced by the following:

“1. Thematic strategy papers shall constitute the general basis for the implementation of assistance pursuant to Articles 4 and 5, and to Article 3a as appropriate. Thematic strategy papers shall provide a framework for cooperation between the Union and the partner countries or regions concerned.”

(5) In Article 10, paragraph (1) is replaced by the following:

“1. The Commission shall ensure that measures adopted under this Regulation in relation to the fight against terrorism and organised crime, as well as measures covered under Article 3a, are implemented in accordance with international law, including human rights law and international humanitarian law.”

¹² LU proposal to add paragraph 7 that would read: "7. Funds provided from ODA eligible instruments for the financing of actions undertaken in conformity with this Article shall be used in compliance with the aforementioned OECD / DAC criteria."

(6) In paragraph 1 of Article 13:

The number '2 338 719 000' is replaced by '2 438 719 000'.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg,

For the European Parliament

For the Council

The President

The President

Declaration by Luxembourg

Luxembourg is convinced that the security-development nexus needs to be addressed by capacity building measures, to be financed in the short term through an amended Instrument contributing to Stability and Peace. In our view, funds provided from ODA eligible instruments for the financing of actions undertaken in conformity with art. 3a of the present regulation amending regulation 230/2014 should be used in compliance with the OECD CAD criteria as set out in the reporting directives on Official Development Assistance from February 19th, 2016.

Sweden's Declaration on the Council Position regarding the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 230/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument Contributing to Stability and Peace

Sweden strives for an efficient and fully operational solution to CBSD.

Sweden regrets that the current amendment of the Instrument contributing to Stability and Peace does not respect the ODA-criteria, agreed in the OECD/DAC in February 2016. The proposal's definition of development cooperation with respect to "building capacity of military actors in partner countries under exceptional circumstances" goes far beyond the ODA-criteria, which only allow for support to the military in clearly specified limited areas. Protecting the development budgets and their use, secured through the respect for the OECD/DAC rules, is of utmost importance. Thus, Sweden would have liked to see a clear reference in the amendment to the reporting directives on ODA in the field of peace and security.

Sweden fully recognizes the close interrelationship between development and security, acknowledging the importance of adequate funding for measures contributing to security and stability – a pre-requisite for sustainable development. However, blurring the boundaries of development cooperation and security-related activities will not provide a sustainable solution. In the long run we risk undermining the development agenda, as well as the effectiveness of the CBSD.
