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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	24 February 2022
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2022) 64 final
Subject:	Proposal for a COUNCIL DECISION on the signing, on behalf of the Union, and on provisional application of the Agreement between the European Union, of the one part, and the Government of the Faroe Islands, of the other part, on the participation of the Faroe Islands in Union programmes

Delegations will find attached document COM(2022) 64 final.

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EUROPEAN
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Brussels, 24.2.2022
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2022/0044 (NLE)

Proposal for a

COUNCIL DECISION

on the signing, on behalf of the Union, and on provisional application of the Agreement between the European Union, of the one part, and the Government of the Faroe Islands, of the other part, on the participation of the Faroe Islands in Union programmes

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Article 16 (1)(d) of the Horizon Europe Regulation¹ concerning the association of third countries to the programme provides for the possibility of association of third countries and territories that jointly fulfil all of the criteria spelled out therein. Such third countries or territories are to participate in the Horizon Europe programme on the basis of an agreement covering the participation of the third country or territory to any Union programme.

The Faroe Islands became formally associated to the Seventh Framework Programme (FP7) in 2010, and a range of European projects attest to the active involvement of Faroese researchers and institutes in areas such as environment, oceanology, climate change, ecosystems and fisheries management. The Faroese association to Horizon 2020 as of 2014 gave researchers, research institutes and enterprises in the Faroe Islands full access to Union funding and collaborative activities for research and innovation on an equal footing with entities from Member States and other third countries that were also associated to Horizon 2020. This participation has become very important for the research community of the Faroe Islands, and establishes an important new and successful pillar of the Faroese-EU relations. With the successive agreements on the association to the Union Research and Innovation Framework Programmes being limited in time for the duration of each subsequent EU programme, there is currently no international agreement in place regulating the participation of Faroese entities in Horizon Europe or fostering the scientific, research and innovation cooperation between the EU and Faroese research communities.

On 14 May 2020, by a Letter of Intent, the Faroe Islands expressed their formal interest to associate to Horizon Europe. The Faroe Islands fulfil the criteria for association of third countries or territories to the Horizon Europe Framework Programme, as set forth by the Horizon Europe Regulation (Article 16(1)(d)). They dispose, notably, of good capacity in science, technology and innovation; are committed to a rules-based open market economy, including fair and equitable dealing with intellectual property rights, respect of human rights, and backed by democratic institutions; and actively promote policies to improve the economic and social well-being of their citizens.

On 13 July 2021, the Council authorised the Commission to open negotiations, on behalf of the Union, with the Faroe Islands on an Agreement between the European Union and the Faroe Islands on the general principles for the participation of the Faroe Islands in Union programmes and the association of the Faroe Islands to Horizon Europe – the Framework Programme for Research and Innovation (2021-2027). The Research Working Party and the EFTA Working Party were appointed by the Council to act in the capacity of the special committees to assist the Commission during the negotiations.

¹ Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013 (OJ L170, 12.05.2021, p.1.).

The negotiations started on 3 September 2021 and were successfully completed on 8 October 2021 when the text of the draft Agreement was initialled by representatives from each of the future Parties. The Research Working Party and EFTA Working Party of the Council and the European Parliament were regularly kept informed during the negotiations.

The Agreement annexed to this proposal for a Council decision is composed of two parts, notably the ‘umbrella agreement’ on the general principles for the participation of the Faroe Islands in Union Programmes and a Protocol on the association of the Faroe Islands to Horizon Europe – the Framework Programme for Research and Innovation (2021-2027) (‘the Horizon Europe Protocol’) in line with the negotiating directives which the Commission obtained from the Council.

The ‘umbrella agreement’ comprehensively regulates the conditions of association of the Faroe Islands applicable across all EU programmes. It governs the terms and conditions for participation in EU programmes, modalities for establishing participation in (association to) any given Union programme and the involvement of Faroe Islands in the governance of the Union Programmes or activities, reflecting the principle of no decision making powers. It contains detailed rules for the establishment of the financial contribution of the Faroe Islands to the Union Programmes, including, where applicable, an automatic correction mechanism. The ‘umbrella agreement’ contains comprehensive rules for the protection of EU financial interests, including powers which the Commission, European Court of Auditors, OLAF and EPPO exercise to that end, as well as rules on enforcement of Commission decisions on recovery and judgments of the Court of Justice of the European Union on the territory of the Faroe Islands. It also establishes institutional structures, i.e. a Joint Committee tasked with *inter alia* monitoring of the implementation of the Agreement and examining how to improve and develop the cooperation under the Agreement.

The ‘umbrella agreement’ is meant to create a lasting legal framework for cooperation between the Union and the Faroe Islands in relation to EU programmes. It is expected to remain in force for several Multi-annual Financial Frameworks of the EU, similarly to the Agreement on the European Economic Area, the EU-UK Trade and Cooperation Agreement or the framework agreements with Enlargement and European Neighbourhood Partnership countries on the general principles for participation of these countries in EU programmes. Eventual Protocols on association of the Faroe Islands to each specific Union programme could be added to this ‘umbrella agreement’ in the future, if such Programmes are open to Faroese participation under EU basic acts establishing each relevant Programme, if this is the political wish of both Parties, and following the required internal procedures. The duration of the Protocols will be limited in time to the implementation of any particular Union programme.

It is proposed that the Protocols will be adopted via decisions of the Joint Committee, which this agreement will establish. All essential elements pertaining to cooperation between the EU and the Faroe Islands in EU programmes are comprehensively regulated in the ‘umbrella agreement’. Article 3(4) of the Agreement specifically restricts the content of the future Protocols to: identifying the relevant Union Programme, activity or part thereof; setting the duration of the association; regulating matters which are programme-specific and not otherwise regulated in the ‘umbrella agreement’; and – in specific cases where the Union programme is implemented through a financial instrument or a budgetary guarantee - laying down the amount of the Faroe Islands’ contribution to such a Union programme.

The first such Protocol on Horizon Europe association exceptionally will not be adopted by the Joint Committee but was negotiated in parallel to the ‘umbrella agreement’ as its integral part, and is expected to be concluded and enter into force together with the ‘umbrella agreement’. This way of proceeding was authorised by the Council in the negotiating directives. It was necessary to achieve an association of the Faroe Islands to the Horizon Europe Programme from the start of the Programme and to ensure an uninterrupted cooperation between the EU and Faroese research communities. To that end, provisional application coupled with a retroactive application from 1 January 2021 of the entire Agreement (i.e. ‘the umbrella agreement’ including its Horizon Europe Protocol) is now being proposed.

Regarding the programme-specific terms and conditions providing for the association of the Faroe Islands to the Horizon Europe, they provide for association to all parts of the Programme, except for the specific programme on defence research established by Regulation (EU) 2021/697². This will ensure the continuity of the previous full association to Horizon 2020, and its predecessor FP7. This participation has been assessed as beneficial to both parties, with a particular value-added in thematic areas such as environment, health and food, as well as ocean research.

The Faroe Islands have been a net contributor to the two predecessor Framework Programmes by a significant margin. The proposed new agreement sets out fair and balanced conditions concerning the financial contribution of the Faroe Islands to the Horizon Europe. The ‘umbrella agreement’ provides in its Article 6(6) for the possibility of an application of a co-efficient and regulates respectively in Article 7 and Article 8 the adjustment and the correction mechanisms in relation to Programmes where – as is the case of Horizon Europe – these mechanisms are applicable. The Horizon Europe Protocol in its Annex I further regulate the payment schedule, the level of the applicable co-efficient to the Faroese financial contribution and the technical details for the functioning of the correction mechanism.

The Horizon Europe Protocol builds on the Horizon 2020 and FP7 experience and, as in the previous association agreement, includes a reciprocity clause, ensuring that researchers and legal entities established in the Union have as far as possible access to participate to the Faroese research and innovation programmes that are equivalent to the Horizon Europe, in accordance with the conditions laid down in the domestic legislation of the Faroe Islands. Annex II to the Protocol contains a list of Faroese programmes open to participation of EU based research entities.

The draft Agreement attached to this proposal for a Council decision is in line with the negotiating directives issued by the Council.

2. LEGAL ELEMENTS OF THE PROPOSAL

The proposal for a Council decision is based on Article 186 and Article 218(5) of the Treaty on the Functioning of the European Union.

² Regulation (EU) 2021/697 of the European Parliament and of the Council of 29 April 2021 establishing the European Defence Fund and repealing Regulation (EU) 2018/1092 (OJ L 170, 12.5.2021, p.149.).

3. BUDGETARY IMPLICATIONS

The Legislative Financial Statement presented with this Decision sets out the indicative budgetary implications.

In the light of the above, the Commission proposes that the Council

- decide on the signature and provisional application of the Agreement on behalf of the Union;
- authorise the negotiator of the Agreement to sign, on behalf of the Union, the Agreement between the European Union and the Government of the Faroe Islands on the participation of the Faroe Islands in Union programmes and submit the notification required under Article 15(2) of the Agreement informing that the Union completed required internal procedures necessary for the provisional application of the said Agreement.

Proposal for a

COUNCIL DECISION

on the signing, on behalf of the Union, and on provisional application of the Agreement between the European Union, of the one part, and the Government of the Faroe Islands, of the other part, on the participation of the Faroe Islands in Union programmes

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 186 in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Union programme Horizon Europe – the Framework Programme for Research and Innovation (2021-2027) was established by the Regulation (EU) 2021/695³ (hereinafter referred to as ‘the Horizon Europe Programme’).
- (2) Pursuant to Article 16(1)(d) of Regulation (EU) 2021/695, the Horizon Europe Programme is open to the association of third countries and territories which fulfil jointly the criteria specified therein.
- (3) Pursuant to Article 16(2) of Regulation (EU) 2021/695, the association of such countries and territories to the Horizon Europe Programme requires an agreement covering the participation of such a country or territory to any Union programme, provided that the agreement ensures a fair balance as regards the contributions and benefits of the third country participating in the Union programmes, lays down the conditions of participation in the Union programmes, including the calculation of financial contributions to individual programmes, and their administrative costs, does not confer on the third country any decision-making power in respect of the Union programme, guarantees the rights of the Union to ensure sound financial management and to protect the Union's financial interests.
- (4) By letter of 14 May 2020 the Faroes Islands expressed their formal interest to become associated to the Horizon Europe Programme.
- (5) On 13 July 2021 the Council authorised the opening of negotiations on behalf of the European Union for the conclusion of an Agreement between the European Union, of the one part, and the Faroe Islands, of the other part, on the general principles for the participation of the Faroe Islands in Union programmes and the association of the Faroe Islands to Horizon Europe – the Framework Programme for Research and Innovation (2021-2027).

³ Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013 (OJ L 170, 12.5.2021, p.1.).

- (6) The negotiations have been successfully completed and the Agreement was initialled on 8 October 2021.
- (7) The Agreement sets out the terms and conditions of the association of the Faroe Islands to the Union programmes. Pursuant to Article 3 of the Agreement the association to the Union programmes is subject to the adoption of Protocols.
- (8) In line with the Council authorisation, the Protocol on the association of the Faroe Islands to Horizon Europe – the Framework Programme for Research and Innovation (2021-2027) - was negotiated in parallel to the Agreement and forms an integral part thereof.
- (9) The Agreement should be signed on behalf of the Union, subject to its conclusion at a later date.
- (10) In view of ensuring uninterrupted cooperation between the Union and the Faroe Islands in the field of research, technological development and innovation and allowing for the participation of the Faroe Islands in the Horizon Europe Programme from its start, the Agreement should be applied provisionally, pending the completion of the procedures necessary for its entry into force,

HAS ADOPTED THIS DECISION:

Article 1

The signing on behalf of the Union of the Agreement between the European Union, of the one part, and the Government of the Faroe Islands, of the other part, on the participation of the Faroe Islands in Union programmes is hereby authorised subject to the conclusion of the said Agreement.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall designate the person(s) empowered to sign the Agreement.

Article 3

Pending the completion of the procedures necessary for its entry into force, the Agreement shall be applied on a provisional basis in accordance with its Article 15(2) and subject to the notifications provided for therein.

Article 4

This Decision shall enter into force on [the date of its adoption].

Done at Brussels,

*For the Council
The President*

LEGISLATIVE FINANCIAL STATEMENT

1. NAME OF THE PROPOSAL:

Proposal for a Council Decision on the signing, on behalf of the Union, and provisional application of the Agreement between the European Union, of the one part, and the Government of the Faroe Islands, of the other part, on the participation of the Faroe Islands in Union programmes

2. BUDGET LINES:

Revenue line (Chapter/Article/Item): 6 0 1 0 — Horizon Europe — Assigned revenue

Amount budgeted for the year concerned:

(only in case of assigned revenues):

The revenues will be assigned to the following expenditure line (Chapter/Article/Item):

Whole article 01.0101 (01.010101, 01.010102, 01.010103, 01.010111, 01.010112, 01.010113, 01.010171, 01.010172, 01.010173, 01.010174, 01.010176)

Whole chapter 01.02 (01.020101, 01.020102, 01.020103, 01.020210, 01.020211, 01.020212, 01.020220, 01.020230, 01.020231, 01.020240, 01.020241, 01.020242, 01.020243, 01.020250, 01.020251, 01.020252, 01.020253, 01.020254, 01.020260, 01.020261, 01.020270, 01.020301, 01.020302, 01.020303, 01.020401, 01.020402)

Budget line 20.XX Administrative expenditure of the European Commission

3. FINANCIAL IMPACT

- ☐ Proposal has no financial implications
- ☐ Proposal has no financial impact on expenditure but has a financial impact on revenue
- ☒ Proposal has a financial impact on assigned revenue

The effect is as follows:

(EUR million to one decimal place)

Revenue line	Impact on revenue ⁴⁵	XX months period starting dd/mm/yyyy (if applicable)	Year N
6 0 1 0	7,8	84 month starting 01/01/2021	1,1

Situation following action							
Revenue line	2021	2022	2023	2024	2025	2026	2027
6 0 1 0	1,1	1,1	1,2	1,1	1,1	1,1	1,2

(Only in case of assigned revenues, under the condition that the budget line is already known):

Situation following action							
Expenditure line ⁶	2021	2022	2023	2024	2025	2026	2027
Article 01.0101 and chapter 01.02	1,1	1,1	1,1	1,0	1,1	1,1	1,1
20.XX	0,005	0,011	0,017	0,021	0,026	0,032	0,046

4. ANTI-FRAUD MEASURES

Article 325 of the Treaty on the functioning of the European Union (TFEU) requires the Commission to counter fraud and any illegal activities affecting the financial interests of the Union. Preventing and detecting fraud is therefore a general obligation for all Commission Services in the framework of their daily activities involving the use of resources. Fraud involving EU funds has a particularly negative impact on the reputation of the Commission and the implementation of EU policies

⁴ The amounts per year need to be an estimation based on the formula or method defined under section 5. For the starting year, the yearly amount is normally paid without a reduction or prorata.

⁵ In the case of traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.

⁶ To be used only if necessary.

The current Commission Anti-Fraud Strategy (COM(2019)196) was adopted on 29 April 2019, to replace the 2011 Strategy. It is a policy document setting out the Commission's priorities in the fight against fraud in view of the 2021-2027 multiannual financial framework. The 2019 CAFS' main objectives are to 1) "further improve the understanding of fraud patterns, fraudsters' profiles and systemic vulnerabilities relating to fraud affecting the EU budget" (data collection and analysis), and 2) "optimise coordination, cooperation and workflows for the fight against fraud, in particular among Commission services and executive agencies" (coordination, cooperation and processes). The strategy is accompanied by a 63-point action plan, the full implementation of which is, in principle, due for end 2021.

The guiding principles and target standards of the 2019 CAFS are:

- zero tolerance for fraud;
- fight against fraud as an integral part of internal control;
- cost-effectiveness of controls;
- professional integrity and competence of EU staff;
- transparency on how EU funds are used;
- fraud prevention, notably fraud-proofing of spending programmes;
- effective investigation capacity and timely exchange of information;
- swift correction (including recovery of defrauded funds and judicial/administrative sanctions);
- good cooperation between internal and external players, in particular between the EU and national authorities responsible, and among the departments of all EU institutions and bodies concerned;
- effective internal and external communication on the fight against fraud.

The Articles 9 – 12 of the Agreement contain detailed provisions concerning anti-fraud measures. These measures are to be applicable horizontally to ensure protection of EU financial interests across EU Programmes or activities covered in the future Protocols potentially to be adopted by the Joint Committee under the Agreement to associate the Faroe Islands to a number of EU programmes or activities. They are applicable also to Faroese association to the Horizon Europe Programme covered by the Protocol on the association of the Faroe Islands to Horizon Europe – the Framework Programme for Research and Innovation (2021-2027) which was negotiated in parallel to the Agreement and forms an integral part thereof.

Notably the above-mentioned provisions (Articles 9 – 12 of the Agreement) provide for the necessary details, processes and allows for unhindered execution of tasks by the bodies safeguarding the financial interests of the EU (the Commission, including OLAF, the European Court of Auditors and the EPPO). Throughout the implementation of the Programmes or activities covered by the Protocols to the Agreement, the principle remains the same: the financial interests of the EU are to be protected by means of proportionate measures, including measures relating to the prevention, detection, correction and investigation of irregularities, including fraud, to the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, to the imposition of the administrative penalties.

In accordance with the Financial Regulation, any person or entity receiving Union funds is to fully cooperate in the protection of the financial interests of the Union, grant the necessary rights and access to the Commission, OLAF, the Court of Auditors and ensure that any third parties involved in the implementation of Union funds grant equivalent rights. As expressly provided in Article 9(4) of the Agreement, reviews and audits may be carried out also after the suspension of application of a Protocol, cessation of application or termination of the Agreement.

The Agreement ensures the possibility for the European Anti-Fraud Office (OLAF) to carry out administrative investigations, including on-the-spot checks and inspections on the territory of the Faroe Islands, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union.

The Agreement obliges the authorities of the Faroe Islands to cooperate with the European Public Prosecutor's Office to allow it to fulfil its duty to investigate, prosecute and bring to judgment the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the European Union as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law.

Furthermore the Agreement provides for effective mechanism to ensure enforcement on territory of the Faroe Islands of Commission decisions and judgments and orders of Court of Justice in relation to claims stemming from the Programme.

5. OTHER REMARKS

The method for calculation of the Faroe Islands financial contribution across EU programmes is defined in Article 6, 7 and 8 of the Agreement. In relation to the financial contribution of the Faroe Islands to the Horizon Europe Programme, further technical details for application of the adjustment mechanism and automatic correction mechanism are laid down in Article 5 of the Protocol on the association of the Faroe Islands to Horizon Europe – the Framework Programme for Research and Innovation (2021-2027), and Annex I thereto. The financial contribution model applicable under the Horizon Europe Programme is specific amongst all other EU Programmes, providing for application of an automatic correction mechanism (in line with Article 16 of the Horizon Europe Regulation).