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NOTE

From:	Presidency
To:	Permanent Representatives Committee
Subject:	Council Decision establishing a European Peace Facility

1. In its conclusions of 1 February 2024, the European Council reviewed work in the Council on military support for Ukraine under the European Peace Facility and the proposed increase of its overall financial ceiling. The European Council invited the Council to reach agreement by early March 2024 to amend Council Decision (CFSP) 2021/509 on the basis of a proposal of the High Representative for a Ukraine Assistance Fund and the proposed key modalities, taking into account suggestions by the Member States.
2. On 9 February 2024, the High Representative, with the support of the Commission, submitted a proposal for a Council Decision amending Council Decision (CFSP) 2021/509 establishing a European Peace Facility (doc. 6394/24).
3. On 14 February 2024, the Political and Security Committee (PSC) invited the European External Action Service to present the proposal for a strategic orientation for the dedicated amount proposed, taking into account suggestions by the Member States, and invited the Working Party of Foreign Relations Counsellors (RELEX) supported by the EPF Committee to finalise the legal act, taking into account the guidance provided by the PSC, with a view to its adoption by the Council, via COREPER.

4. During the month of February and on 4 March 2024, RELEX discussed the draft legal act on several occasions.
 5. On 21 and 28 February 2024, COREPER held an exchange of views on the matter.
 6. On 6 March 2024, COREPER reverted to the draft Council Decision with a view to preparing for the adoption.
 7. On this basis, COREPER is invited to:
 - agree on the draft Council Decision, as set out in the Annex to this Note;
 - recommend that the Council adopt the Council Decision amending Decision (CFSP) 2021/509 establishing a European Peace Facility, subject to finalisation of the text by the legal/linguistic experts, at one of its forthcoming meetings;
 - decide to publish the Council Decision in the Official Journal.
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COUNCIL DECISION (CFSP) 2024/...**of ...****amending Decision (CFSP) 2021/509 establishing a European Peace Facility**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 28(1), 41(2), 42(4) and 30(1) thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy, with the support of the Commission,

Whereas:

- (1) In its conclusions of 29 and 30 June 2023, the European Council stated the Union's readiness to provide sustainable military support to Ukraine for as long as it takes, notably through the EU Military Assistance Mission in support of Ukraine (EUMAM Ukraine) and the European Peace Facility (the 'Facility') as part of the Union's overall efforts to contribute, together with partners, to future security commitments to Ukraine, which will help Ukraine defend itself in the long term.
- (2) In its conclusions of 26 and 27 October 2023, the European Council reconfirmed that military support to Ukraine is to continue, notably through the Facility and EUMAM Ukraine, as well as through bilateral assistance by Member States. The European Council underlined the importance of Member States' efforts and, in the immediate term, the need to accelerate the delivery of military support to Ukraine to help meet its pressing military and defence needs, including missiles and ammunition, notably under the one million rounds of artillery ammunition initiative, as well as air defence systems to protect its people and its critical and energy infrastructure. In the longer term, the Union and its Member States are to contribute, together with partners, to future security commitments to

Ukraine, which will help Ukraine defend itself, resist destabilisation efforts and deter acts of aggression in the future.

- (3) In its conclusions of 14 and 15 December 2023, the European Council concluded that the Union and its Member States will continue to address Ukraine's pressing military and defence needs. In particular, the European Council insisted on the importance of timely, predictable and sustainable military support for Ukraine, notably through the Facility and EUMAM Ukraine, as well as through direct bilateral assistance by Member States. The European Council invited the Council to intensify work on the reform of the Facility and the further increase of its financing, building on a proposal of the High Representative of the Union for Foreign Affairs and Security Policy (the 'High Representative').
- (4) In its conclusions of 1 February 2024, the European Council reviewed work in the Council on military support for Ukraine under the Facility and the proposed increase of its overall financial ceiling. The European Council invited the Council to reach agreement by early March 2024 to amend Council Decision (CFSP) 2021/509¹ on the basis of a proposal of the High Representative for a Ukraine Assistance Fund and the proposed key modalities, taking into account suggestions by the Member States.
- (5) The financial ceiling of the Facility should therefore be increased by an amount of EUR 5 000 million (in current prices) dedicated to continuing to address the needs of the Ukrainian Armed Forces through support for the provision of both lethal and non-lethal military support and training (the 'dedicated amount').
- (6) Prior to the adoption of this Decision, strategic orientation for the dedicated amount was provided, in line with Article 9 of Decision (CFSP) 2021/509. The Facility Committee established under Article 11 of Decision (CFSP) 2021/509 is to decide on the use of the dedicated amount, pursuant to Article 2(3) of that Decision, no later than one month after the adoption of this Decision.
- (7) The implementation of the increased financial ceiling of the Facility should respect the ceiling for payments agreed for 2024 and be articulated in a manner that is consistent with the key elements and modalities outlined in Recitals 8 to 14 of this Decision.

¹ Council Decision (CFSP) 2021/509 of 22 March 2021 establishing a European Peace Facility, and repealing Decision (CFSP) 2015/528 (OJ L 102 24.3.2021, p. 14).

- (8) Military support to Ukraine under the dedicated amount should continue to be driven by the evolving needs of the Ukrainian Armed Forces, seeking to maximise the EU's added value and complementing bilateral efforts, and should be articulated through a more structured, efficient and pragmatic approach, making use of increased joint procurement from the European defence industry (and Norway).
- (9) The increased joint procurement to meet Ukraine's needs under the dedicated amount should draw, inter alia, on the lessons learned from the three-track ammunition initiative, including the importance of taking advantage of well-functioning national procurement structures as well as existing framework contracts, leveraging both a lead nation approach and the European Defence Agency (EDA), and including the joint procurement of the required defence equipment from the European defence industry and Norway, including small and medium sized enterprises, while allowing for flexibility in supply chains which may include operators established or having their production outside of the Union or Norway. The necessary provisions will be set out in individual assistance measures for joint procurement from the European defence industry (and Norway), taking into account the capability coalitions under the Ukraine Defence Contact Group (UDCG), and in accordance with the implementing rules of the Facility. Initiatives that bring together European and Ukrainian defence industry partners, including through joint ventures, should be promoted, taking into account the security and defence interests of the Union and its Member States.
- (10) The reimbursement of Member States' other deliveries (i.e. from stocks, unilateral and joint purchases of equipment available in the market, and unilateral procurement) under the dedicated amount should be limited after a transition period, subject to assessment in the Facility Committee, taking into account Ukraine's priority military needs, once the dedicated amount is nearing depletion. These deliveries will continue to be eligible until a date to be determined by the Council pursuant to Article 2(4) of Council Decisions (CFSP) 2022/338² and (CFSP) 2022/339³, taking into account Ukraine's priority military needs. During the above-mentioned transition period, Member States' deliveries from joint procurement concluded in the framework of the capability coalitions under the Ukraine

² Council Decision (CFSP) 2022/338 of 28 February 2022 on an assistance measure under the European Peace Facility for the supply to the Ukrainian Armed Forces of military equipment, and platforms, designed to deliver lethal force (OJ L 060 28.2.2022, p. 1).

³ Council Decision (CFSP) 2022/339 of 28 February 2022 on an assistance measure under the European Peace Facility to support the Ukrainian Armed Forces (OJ L 061 28.2.2022, p. 1).

Defence Contact Group (UDCG), should give priority to the European defence industry (and Norway), while exceptionally allowing for flexibility in cases where it cannot provide within a timeframe compatible with Ukrainian needs, in accordance with the implementing rules of the Facility.

- (11) Military support under the dedicated amount should ensure the continuation of ‘train and equip’ provided through EUMAM Ukraine, in line with the evolving training needs of the Ukrainian Armed Forces.
- (12) Governance arrangements should be improved in the implementation of the dedicated amount, inter alia, through a revised valuation methodology, to be agreed by the Facility Committee, for Member States’ deliveries from stocks as from [OJ please add the date of entry into force of this Decision], through the establishment of a fixed reimbursement rate, and through making use of the possibility to offset the value of the reimbursement to be received for the support delivered in-kind⁴ under the Facility by a Member State against its ordinary financial contributions due in the same year, in accordance with the implementing rules of the Facility and the principle of sound financial management. Offsetting applied to one Member State does not affect other Member States’ contributions or the liquidity of the Facility.
- (13) Military support will be provided in full respect for the security and defence policy of certain Member States, ensuring the transparency and traceability of Facility-funded support, and taking into account the security and defence interests of all Member States.
- (14) Exceptionally, where a Member State has made a formal declaration under the second subparagraph of Article 31(1) TEU and has abstained from the adoption of an assistance measure to be financed with this dedicated amount, that Member State should not contribute to the costs of that measure. Instead, that Member State should contribute an additional amount to other assistance measures.
- (15) Further comparable annual increases could be envisaged until 2027, based on Ukrainian needs and subject to political guidance by the Council.
- (16) Decision (CFSP) 2021/509 should therefore be amended accordingly,

⁴ ‘in-kind’ meaning any material support as provided under the Facility assistance measures, such as equipment and/or maintenance, repair and refit.

HAS ADOPTED THIS DECISION:

Article 1

Decision (CFSP) 2021/509 is amended as follows:

(1) in Article 2, paragraph 1 is replaced by the following:

‘1. The financial ceiling for the implementation of the Facility for the period 2021 to 2027 shall be EUR 17 040 000 000 in current prices.’;

(2) in Article 73, paragraph 10 is replaced by the following:

‘10. From ... [the date of adoption of this Decision], an amount of EUR 5 000 000 000 in current prices shall be dedicated to the provision of additional support to Ukraine (the ‘dedicated amount’) under the annual ceilings established in Annex I.

The Committee shall decide on the use of the dedicated amount pursuant to Article 2(3) no later than one month after the adoption of this Decision.

Exceptionally, and without prejudice to Article 5(3), in cases where a Member State has abstained in a vote and made a formal declaration in accordance with the second subparagraph of Article 31(1) TEU regarding an assistance measure to be financed with the dedicated amount, that Member State shall not contribute to the costs of that assistance measure. In such a case, that Member State shall make an additional contribution to other assistance measures. For the purpose of applying Articles 26(7) and 27 to such contributions, a reference in those Articles to Article 5(3) shall be understood to be a reference to this subparagraph.’

(3) Annex I is replaced by the following:

‘ANNEX I

ANNUAL FINANCIAL CEILINGS

The annual appropriations shall be authorised within the limits of the following amounts, without prejudice to Article 17(3) and (3a) and subject to Article 73(2) and (10):

Current prices, in million euros

	2021	2022	2023	2024	2025	2026	2027
Current prices	399	591	980	2 785	4 047	4 092	4 146'

Article 2

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

Done at ...,

For the Council

The President
