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Non-legislative activities

3. Current Affairs

The Council took stock of the latest developments in the EU's relations with Russia following the adoption of sanctions under the EU Global Human Rights sanctions regime and reconfirmed the five guiding principles.

The Council briefly discussed the situation in Venezuela.

The Council briefly discussed developments in Hong Kong, the Western Balkans and Georgia.

The Council noted the severity of the situation in Myanmar and supported the adopted sanctions package.

The High Representative briefed ministers on recent developments in Ethiopia, as well as renewed mediation efforts of the FI Foreign Minister.

Sweden briefed the Council about its activity as OSCE Chairmanship-in-office related to Nagorno-Karabakh.

4. Southern Neighbourhood ***Exchange of views***

The Council held an exchange of views on the basis of the High Representative / Commission's Joint Communication on "A Renewed partnership with the Southern Neighbourhood – A new Agenda for the Mediterranean" with a view to relaunching the EU's strategic partnership with its Southern neighbours.

5. Turkey
Exchange of views

On the basis of the High Representative / Commission's Joint Communication on the "State of play of EU-Turkey political, economic and trade relations", the Council held a comprehensive discussion on EU-Turkey relations in preparation of the video conference of the members of the European Council on 24 and 25 March.

6. Any other business

China: Ministers were informed of the imposition of retaliatory punitive sanctions by China on EU officials, national parliamentarians and entities, among others.

Ministers were invited to the upcoming "Brussels V" Conference on supporting Syria and the region and asked to show unity on the "Palestinian package" at the UN Human Rights Council in Geneva.

Belarus: one Member State presented a new initiative - International Accountability Platform for Belarus.

Lebanon: one Member State informed about the ongoing political crisis in the country.

Iran: one Member State debriefed the Council on national ministerial visit to Teheran.

Bosnia & Herzegovina: one Member State presented a joint non-paper, co-signed by 6 Member States, concerning the situation in the country and the way ahead.

The legal nature of the ACP-EU agreement was raised.

Statements to the non-legislative "A" items set out in 7120/21**Ad "A" item 8:****Council Decision establishing a European Peace Facility**
*Adoption***STATEMENT BY GREECE**

“Greece reiterates that the implementation of assistance measures provided by the Facility shall take place, at all stages, in full accordance with the provisions of this Decision, including the principles reflected in articles 33(2)(c) and 56(2). In this regard, subcontractors and/or entities of a third State may only be involved in the implementation of assistance measures provided that such third State does not contravene the security and defence interests of the Union and the Member States and that it respects international law and the principle of good neighbourly relations with Member States.”

STATEMENT BY SWEDEN
basis for constructive abstention

“Sweden will join the decision to establish a European Peace Facility that will contribute to strengthening the EU as an actor for global peace and security. However, Sweden reiterates its concern that the EPF could allow for the supply of military equipment or platforms, designed to deliver lethal force, in very demanding circumstances and politically sensitive environments. In order to support the Council Decision, Sweden reserves its right to constructively abstain from such assistance measures, as confirmed in a statement by the Council Legal Service. Sweden’s right to constructively abstain is not in any way contingent on the character of its security and defence policy. Any such decision will be based on national considerations, including a context-based and case by case risk assessment of the proposed assistance measure.”

STATEMENT BY AUSTRIA

“As regards the Council Decision establishing a European Peace Facility, Austria underlines that this Council Decision does in no way affect the consequences of constructive abstentions as set out in Article 31(1) TEU.

This Treaty provision was introduced to enable the Union to act even if not all Member States can go along with a proposed action in the area of CFSP/CSDP. Its integrity is indispensable for the EU’s ability to act far beyond the European Peace Facility.

The Council Decision establishing a European Peace Facility ensures that Austria is under no obligation to finance any assistance measure she deems sensitive for constitutional or political reasons in line with the specific character of her security and defence policy. In this context, Austria underlines that her commitment – as set out in this Council Decision – to contribute an additional amount to assistance measures other than those concerning military equipment, or platforms, designed to deliver lethal force, is of a voluntary nature and with no prejudice to future follow-on regimes.

The General Guidelines and Proposed Priorities for Assistance Measures during the Inception Period (2021-2023) are an integral part of the EPF package. These set out the ambition of the EPF: “A Union that lives up to its full potential to prevent conflicts, respond effectively to crisis and contribute to peace as a global security provider.” Therefore, as set out in the General Guidelines, strengthening the ability of partner countries to prevent and respond to crises, and contribute to their resilience, in order to enable them to better protect their populations, constitutes a key overall objective, which proposed assistance measures for partner countries have to meet.

Finally, Austria underlines the need for an effective implementation of the risk and safeguards methodology in order to ensure that no equipment provided by the EU is used by a beneficiary for violations of international law, in particular human rights law and international humanitarian law.”

STATEMENT BY FRANCE

“France welcomes the adoption of the Decision establishing a European Peace Facility (hereinafter ‘the Decision’) and wishes to make the following points regarding the interpretation of the Decision.

1. Scope of the ad hoc budgetary mechanism in cases of abstention

Work in the Council has led to the development of a sound methodology for the management of assistance measures, which will provide all the necessary guarantees for the supply of sensitive equipment.

However, in discussions held since 2018, some Member States indicated that the delivery of the most sensitive equipment (‘*designed to deliver lethal force*’) could give rise to problems in their specific situation. In view of this, the Council decided, on the basis of the second subparagraph of Article 41(2) TEU, to create, by way of exception, a derogation mechanism allowing those Member States, under certain conditions, not to contribute financially to measures relating to the delivery of equipment specifically designed to deliver lethal force, while preserving the principle of financial solidarity for the Facility as a whole. **This mechanism therefore provides flexibility specifically to those Member States, in view of the constraints put forward during preparatory meetings, when they abstain on that basis.** It is not intended to undermine the cohesion of the Member States in their support for EPF assistance measures.

The definition of the equipment to which this mechanism applies should be interpreted as equipment included in categories ML1 to ML4 of the Common Military List of the European Union and the platforms referred to in ML6, ML9 and ML10, when equipped with the weapons, fixed or integrated equipment, or ammunition specified in categories ML1 to ML4.

2. Article 31(1) TEU

France recalls the provisions of the second subparagraph of Article 31(1) TEU: *‘When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration under the present subparagraph. In that case, it shall not be obliged to apply the decision, **but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision** and the other Member States shall respect its position’*. France would also point out that this mechanism does not affect the Member States’ obligation to actively and unreservedly support the Union’s external and security policy in a spirit of loyalty and mutual solidarity, as provided for in Article 24(3) TEU.

The abstention of a Member State under the second subparagraph of Article 31(1) TEU does not affect the financial contribution, which remains payable by the abstaining State, with the exception, provided for in the second subparagraph of Article 41(2) TEU, of *‘expenditure arising from operations having military or defence implications’*, for which *‘Member States whose representatives in the Council have made a formal declaration under Article 31(1), second subparagraph, shall not be obliged to contribute to [their financing]’*.

The ad hoc mechanism established in Article 5(3) of the Decision has no bearing on the interpretation of those provisions of the Treaty.

The mechanism is defined by the Council in a discretionary manner and by way of derogation on the basis of the second subparagraph of Article 41(2) TEU, which provides that *‘where expenditure is not charged to the Union budget, it shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise.’*

3. Implementation of an assistance measure by a CSDP mission or operation

The implementation of an assistance measure by a CSDP mission or operation, as provided for in Article 33(6) of the Decision, contributes directly to the achievement of the Union's security and defence objectives as regards its partners, in particular by giving the Union control over the entire training chain, which includes the provision of equipment to trained troops by trainers. The Union cannot be dependent on third powers in this respect. This role played by missions and operations also strengthens the Union's monitoring capabilities within the framework of the strict regulatory measures provided for by the Facility. Since the mandates of these CSDP missions and operations are adopted unanimously by the members of the Council, it is necessary that all Member States contribute to the assistance measures that those missions and operations implement.

In this context, we consider that the mechanism provided for in Article 5(3) of the Decision cannot be used in the case of assistance measures implemented by a CSDP mission or operation pursuant to Article 33(6) of the Decision.

4. Contributions following an abstention

Article 27 of the Decision, on contributions following an abstention, is without prejudice to the possibility, open to any Member State, to submit proposals at any time for assistance measures to which the contribution of the abstaining State may be allocated. Assistance measures must also meet the needs specifically identified by the High Representative and be adopted unanimously by the Council according to the procedure laid down in Article 59 of the Decision.

5. Sound financial management and preservation of the effectiveness of the Facility

The implementation of the mechanism provided for in Article 5(3) must be in line with the principles of sound financial management and preserve the effectiveness of the Facility, referred to in recital 23 and in Articles 11(6), 27(5) and 32 of the Decision. It must preserve the effectiveness of the Facility and must not hamper the Union's ability to provide equipment covered by Article 5(3) to beneficiaries of assistance measures decided on by the Council. It should not create excessive budgetary or financial complexity.

6. Continuity with the African Peace Facility

As confirmed by the European Council in its conclusions of 17-21 July 2020 and in accordance with recitals 16, 18 and 19 of the Decision, the European Peace Facility must ensure continuity with the African Peace Facility. It aims to strengthen the military and defence capabilities of our partners by addressing a long-established need on the ground, and will boost the credibility of European Union missions and operations by making it possible to provide military equipment to the troops of our partners that we are helping to train."

STATEMENT BY IRELAND

“Ireland is committed to the EU’s CSDP, which provides the EU with the capacity to undertake peacekeeping and conflict prevention missions and to strengthen international security in accordance with the principles of the UN Charter. The establishment of the European Peace Facility (EPF) ensures continuity of funding for military CSDP activity and for the African Peace and Security Architecture.

Ireland recalls that decisions establishing operations and assistance measures funded from the Facility will be adopted on the basis of proposals or initiatives submitted in accordance with Article 42(4) or Article 30(1) TEU respectively. It is also noted that in certain circumstances - and with strong safeguards - funding from the EPF may be utilised for military equipment, including equipment or platforms designed to deliver lethal force. In such circumstances, Ireland intends to utilise the mechanism for constructive abstention and will not thus contribute to the funding of lethal equipment, which is provided for in the Decision. Through our voluntary elective commitment, Ireland will instead provide a corresponding contribution to the budget for assistance measures which do not involve supply of such lethal equipment or platforms.

Ireland reiterates its position that, as a matter of law, a Member State availing of the constructive abstention mechanism in the second paragraph of Article 31(1) TEU is not obliged to apply the decision in question, including in respect of financing. In this regard, we note that the draft Council Decision establishing the EPF provides for corresponding financial contributions to be made by Member States availing of constructive abstention but recognises that this is premised on a voluntary elective commitment. Ireland considers this to be compatible with its legal position on Article 31(1). While we will be legally bound by the Council Decision’s provisions on corresponding contributions on foot of constructive abstention, we wish to reiterate that we are entering into this framework because we are voluntarily choosing to do so, not because we consider ourselves obliged to do so under the Treaties. We would further emphasise in this regard that this Council Decision to establish the EPF is exceptional, sui generis and without prejudice to the generality of the second paragraph of Article 31(1).”

STATEMENT BY MALTA

“Malta affirms that its participation in decisions on operations and assistance measures and contributions to the financing of such operations and assistance measures under the EPF shall not prejudice its constitutional obligations. Malta reserves the right to abstain from assistance measures that allow for the supply of military equipment, or platforms, designed to deliver lethal force in accordance with Article 31(1), second paragraph, TEU.”

STATEMENT BY THE COMMISSION
concerning Article 41(2) TEU

“The Commission considers that Article 1(2) of the Council Decision cannot alter the obligations of the Member States and the Institutions as laid down in the Treaties. When implementing the EU budget in accordance with Article 317 TFEU and – if necessary – when acting as an administrator for assistance measures under the European Peace Facility, the Commission will continue to apply Article 41(2) TEU as precluding the funding of actions having military or defence implications by the EU budget. Such actions shall be funded by the Member States.”

STATEMENT BY THE COMMISSION
concerning the implementing rules for assistance measures

“The Commission notes that the rules for the implementation of expenditure financed through the Facility are still to be adopted.

Article 11(6)(b) of the Council Decision stipulates that these future implementing rules as regards assistance measures will be consistent with and guarantee the same level of sound financial management, transparency and non-discrimination as Regulation (EU, Euratom) 2018/1046 on the financial rules applicable to the general budget of the Union (hereafter, Financial Regulation), shall explicitly justify the cases that require difference from the rules of the Financial Regulation to allow for targeted flexibility, and ensure that the accounting rules adopted by the accounting officer comply with internationally accepted accounting standards for the public sector. Furthermore, pursuant to that provision, the Committee shall examine the proposed implementing rules in close cooperation with the administrator, in particular with a view to ensuring that they will comply with the principles of sound financial management, non-discrimination and respect for fundamental rights.

These safeguards are essential to allow the Commission to accept and perform the role of administrator and accounting officer for assistance measures, through its services. The Commission confirms that it will always apply the Implementing rules as regards assistance measures in line with the key principles of sound financial management, transparency and non-discrimination as enshrined in the Financial Regulation and the institutional prerogatives of the Commission, and that in its activity it will always ensure the respect of fundamental rights.

Should it consider that in a given case it is not possible to ensure the implementation in accordance with those principles and modalities, the administrator and/or the accounting officer will inform the Committee of the way forward after having raised the matter at the appropriate level in the Commission.”