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PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 5 October 2017

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: COM(2017) 582 final

Subject: Proposal for a COUNCIL DECISION on the position to be adopted, on
behalf of the European Union, within the EEA Joint Committee concerning
an amendment to Protocol 31 to the EEA Agreement (Union's Preparatory
Action on Defence Research)

Delegations will find attached document COM(2017) 582 final.

Encl.: COM(2017) 582 final



Brussels, 5.10.2017
COM(2017) 582 final

2017/0253 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning an amendment to Protocol 31 to the EEA Agreement

(Union's Preparatory Action on Defence Research)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The draft Decision of the EEA Joint Committee (annexed to the proposed Council Decision) aims to amend Protocol 31 to the EEA Agreement in order to extend the cooperation of the Contracting Parties to the EEA Agreement to include the participation of EEA EFTA States in the Union's Preparatory Action on Defence Research (henceforth "Preparatory Action"). As Liechtenstein and Iceland did not express their interest in participating in this Preparatory Action, the draft Decision of the EEA Joint Committee therefore concerns only Norway.

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

The EEA Agreement foresees in Article 78 that the Contracting Parties shall strengthen and broaden cooperation in the framework of the EU's activities in the fields of research and technological development. The Commission, which currently finances exclusively civilian or dual-use R&D through its Horizon 2020 programme, considers the Preparatory Action as a major instrument for testing the added-value of defence-related research from the EU budget.

As Norway concluded an Administrative Arrangement with the European Defence Agency and the related Defence and Security Procurement Directive (2009/81/EC), which shall ensure genuine competition and equal treatment in this field, was incorporated into the EEA Agreement already in 2014, the participation of Norway in the Preparatory Action is consistent with existing policy provisions in the policy area.

- **Consistency with other Union policies**

Cooperative defence research in innovative technologies, products and services is key to safeguarding the long-term competitiveness of the defence sector and, ultimately, Europe's strategic autonomy. The cooperation with Norway would positively contribute to the EU's efforts in this field.

The Commission recognises that the Preparatory Action is part of its policies related to the internal market, industry and research. Further deepening of cooperation in this area in this area is therefore in line with objectives of the EEA Agreement.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis is Articles 54(2)(b), 84(2) and Article 124 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002¹ in conjunction with Article 1(3) of Council Regulation (EC) No 2894/94² concerning arrangements for implementing the EEA Agreement providing that the

¹ OJ L 248, 16.09.2002, p.1

² OJ L 305, 30.11.1994, p. 6–8

Council establishes the position to be adopted on the Union's behalf on such Decisions, on a proposal from the Commission.

The Commission in cooperation with the EEAS submits the draft Decision of the EEA Joint Committee for adoption by the Council as the Union's position. The Commission would hope to be able to present it in the EEA Joint Committee at the earliest possible opportunity.

- **Subsidiarity (for non-exclusive competence)**

The proposal complies with the subsidiarity principle for the following reason.

The objective of this proposal, namely to establishing cooperation in the area of defence research with EEA EFTA States through its participation in a Preparatory Action financed by the EU budget, cannot be sufficiently achieved by the Member States and can therefore, by reason of the effects, be better achieved at Union level.

- **Proportionality**

In accordance with the principle of proportionality, the proposal does not go beyond what is necessary in order to achieve its objective – to strengthen and broaden cooperation in the framework of the EU's activities in the fields of research and technological development.

- **Choice of the instrument**

In conformity with Article 98 of the EEA Agreement, the chosen instrument is the EEA Joint Committee Decision. The EEA Joint Committee shall ensure the effective implementation and operation of the EEA Agreement. To this end, it shall take decisions in the cases provided for in the EEA Agreement.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Collection and use of expertise and impact assessment**

The Commission considered in 2013 to launch a Preparatory Action³ on Defence Research in support of a more competitive and efficient defence and security sector⁴. The European Parliament⁵ and the Council⁶ welcomed this initiative and invited the Commission to develop a proposal to implement the Preparatory Action. In 2015, the European Council⁷ noted the need to ensure appropriate funding for the Preparatory Action, paving the way for a future defence research and technology (R&T) programme⁸.

³ Preparatory action within the meaning of Article 54(2) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p.1).

⁴ COM(2013)542: Towards a more competitive and efficient defence and security sector.

⁵ European Parliament resolution of 21 November 2013 on the European Defence Technological and Industrial Base (2013/2125(INI)).

⁶ European Council conclusions of 19-20 December 2013 (EUCO 217/13)

⁷ European Council conclusions of 25-26 June 2015 (EUCO 22/15)

⁸ The European Defence Agency defines "R&T" as defence-related research activities with a technology readiness level between 1 and 6.

4. BUDGETARY IMPLICATIONS

Norway shall financially contribute to Budget line 02 04 77 03: "Preparatory action on Defence research". The Norwegian contribution for 2017 is expected to be: €585.000.

5. OTHER ELEMENTS

In line with the EU budgetary policy, any participation in an EU activity can take place only once the corresponding financial contribution is paid. The payment can however take place once this draft Council Decision is adopted and the subsequent EU call for funds established by the European Commission is submitted to the EEA EFTA States.

Therefore, in order to bridge the period between the adoption of "Commission Decision on the financing of the 'Preparatory action on Defence research' and the use of unit costs for the year 2017" on 11 April 2017, and the reception of the respective payment, the draft Joint Committee Decision shall be retroactively applicable from 11 April 2017. Institutions, undertakings, organizations and nationals of Norway should therefore be entitled to participate in activities which start before the entry into force of this EEA Joint Committee Decision. The costs incurred for their participation to such activities, the implementation of which starts after 11 April 2017, should be considered eligible under the same conditions as those applicable to costs incurred by institutions, undertakings, organizations and nationals of the EU Member States provided that this Decision enters into force before the end of the preparatory action concerned.

The retroactivity does not affect the rights and obligations of persons concerned and respects the principle of the legitimate expectations.

In addition, in line with Protocol 32, Article 1 (8) EEA, an EEA Joint Committee Decision establishing a participation of the EEA EFTA State in an activity included in the EEA Annex to the general budget of the European Union shall be adopted by 10 July. If not, the cooperation shall be deferred to the following year, unless otherwise agreed.

Given the importance of commencing the cooperation from the beginning of the Preparatory Action, the attached EEA Joint Committee Decision foresees that the cooperation shall commence from 11 April 2017, even if this Decision of the EEA Joint Committee is adopted after 10 July 2017.

Proposal for a

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning an amendment to Protocol 31 to the EEA Agreement

(Union's Preparatory Action on Defence Research)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(9) thereof,

Having regard to Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area⁹, and in particular Article 1(3) thereof,

Having regard to Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002¹⁰ and in particular Articles 54(2)(b), 84(2) and Article 124 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on the European Economic Area¹¹ ('the EEA Agreement') entered into force on 1 January 1994.
- (2) Pursuant to Article 98 of the EEA Agreement, the EEA Joint Committee may decide to amend, inter alia, Protocol 31 to the EEA Agreement ('Protocol 31').
- (3) Protocol 31 to the EEA Agreement contains provisions on cooperation in specific fields outside the four freedoms.
- (4) It is appropriate to extend the cooperation of the Contracting Parties to the EEA Agreement to include the participation of the EFTA States in the Union's preparatory action on Defence research which is funded from the general budget of the European Union.
- (5) It is appropriate that the participation of EFTA States in the activities related to this preparatory action and financed from budget line 02 04 77 03 commence from 11

⁹ OJ L 305, 30.11.1994, p. 6–8.

¹⁰ OJ L 248, 16.09.2002, p.1

¹¹ OJ L 1, 3.1.1994, p. 3.

April 2017 even if the attached decision of the EEA Joint Committee is adopted, or if the fulfilment of constitutional requirements for this decision, if any, is notified after 10 July 2017.

- (6) Institutions, undertakings, organizations and nationals of the EFTA States should be entitled to participate in activities which start before the entry into force of this Decision. The costs incurred for their participation to such activities, the implementation of which starts after 11 April 2017, should be considered eligible under the same conditions as those applicable to costs incurred by institutions, undertakings, organizations and nationals of the EU Member States provided that the attached decision of the EEA Joint Committee enters into force before the end of the preparatory action concerned.
- (7) Protocol 31 to the EEA Agreement should therefore be amended in order to allow for this extended cooperation to take place from 11 April 2017.
- (8) The position of the Union within the EEA Joint Committee should be based on the attached draft decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on the Union's behalf, within the EEA Joint Committee on the proposed amendment to Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms, shall be based on the draft decision of the EEA Joint Committee attached to this Decision.

Article 2

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

Done at Brussels,

*For the Council
The President*