Council Decision (CFSP) 2020/1639 of 5 November 2020 establishing the general conditions under which third States could exceptionally be invited to participate in individual PESCO projects

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, in particular Article 46(6) thereof,

Having regard to Council Decision (CFSP) 2017/2315 of 11 December 2017 establishing permanent structured cooperation (PESCO) and determining the list of participating Member States[(1)], in particular Article 4(2)(g) thereof,

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

Whereas:

(1) On 14 November 2016, the Council adopted conclusions on implementing the EU Global Strategy in the area of security and defence, determining the Union level of ambition, in support of three strategic priorities identified in that Strategy: (a) responding to external conflicts and crises; (b) building the capacities of partners; and (c) protecting the Union and its citizens.

(2) In its conclusions on security and defence in the context of the EU Global Strategy, adopted on 19 November 2018, the Council further stated that by addressing Europe's current and future security and defence needs, the Union will enhance its capacity to act as a security provider and its strategic autonomy, and strengthen its ability to cooperate with partners.

(3) The eleventh paragraph of Annex I to the Notification[(2)] on PESCO to the Council and to the High Representative of the Union for Foreign Affairs and Security Policy ('the High Representative'), of 13 November 2017, specified that the more binding commitments must help to reach the level of ambition of the Union as defined in the Council conclusions of 14 November 2016, endorsed by the December 2016 European Council, and thus strengthen the strategic autonomy of both Europeans and the Union.

(4) On 11 December 2017, the Council adopted Decision (CFSP) 2017/2315.

(5) On 25 June 2018, the Council adopted Decision (CFSP) 2018/909[(3)] establishing a common set of governance rules for PESCO projects.

(6) Point (g) of Article 4(2) of Decision (CFSP) 2017/2315 provides that the Council is to establish in due time, in accordance with Article 9(1) of that Decision, the general

Changes to legislation: *There are currently no known outstanding effects for the Council Decision (CFSP) 2020/1639. (See end of Document for details)*

conditions under which third States could exceptionally be invited to participate in individual PESCO projects.

(7) Article 9(1) of Decision (CFSP) 2017/2315 provides that the decision to be adopted by the Council on such general conditions may include a template for administrative arrangements with third States.

(8) Paragraph 2.2.1, last subparagraph, of Annex III to the Notification on PESCO to the Council and to the High Representative, which contained proposals for the governance of PESCO, specified that third States which may exceptionally be invited by project participants would need to provide substantial added value to the project, contribute to strengthening PESCO and the Common Security and Defence Policy (CSDP) and meet more demanding commitments. It also specified that inviting third States will not grant powers of decision to them in the governance of PESCO.

(9) Article 9(2) and (3) of Decision (CFSP) 2017/2315 provides that the Council shall decide in accordance with Article 46(6) of the Treaty on European Union (TEU) whether a third State, which the participating Member States taking part in a project wish to invite to take part in that project, meets the requirements set out in the present Decision, and that following a positive decision by the Council, the participating Member States taking part in a project may enter into administrative arrangements with the third State concerned for the purpose of its taking part in that project. Such arrangements must respect the procedures and the decision-making autonomy of the Union.

(10) There should be consistency between actions undertaken within the framework of PESCO and other CFSP actions and other Union policies.

(11) The participation of third States in a PESCO project does not imply that third-country entities will necessarily have access to the EU Defence Industrial Development Programme (EDIDP) or other relevant Union instruments.

(12) Paragraph 13 of the Council Recommendation of 6 March 2018[(4)], concerning a roadmap for the implementation of PESCO, specified that the work to develop general conditions for exceptional participation by third States in individual projects should start as soon as the common set of governance rules for the projects and the sequencing of the fulfilment of commitments are in place.

(13) On 15 October 2018, the Council adopted a recommendation[(5)] concerning the sequencing of the fulfilment of the more binding commitments undertaken in the framework of PESCO and specifying more precise objectives.

(14) Support to PESCO by the European Defence Agency should be provided in accordance with Council Decision (CFSP) 2015/1835[(6)].

(15) It is therefore appropriate to establish the general conditions under which third States could exceptionally be invited to participate in individual PESCO projects,

HAS ADOPTED THIS DECISION:

***Changes to legislation:** There are currently no known outstanding effects for the Council Decision (CFSP) 2020/1639. (See end of Document for details)*

Article 1

Purpose

This Decision lays down the general conditions under which third States could exceptionally be invited to participate in individual PESCO projects.

Article 2

Invitation process

1 A third State may submit to the coordinator or coordinators of a PESCO project a request to participate in that project. Such request shall contain sufficiently detailed information on the reasons for participating in the project, as well as the scope and form of the proposed participation, in stages of the project if applicable, and shall substantiate the fulfilment of the general conditions set out in Article 3.

2 Upon receipt of such a request, the participating Member States taking part in the project ('the project members') shall assess, on the basis of the information provided by that third State, whether it complies with the general conditions set out in Article 3.

3 If the project members agree by unanimity:

a that they wish to invite the third State which submitted the request to participate in the project,

b on the scope, the form and, if applicable, the relevant stages of the participation of that third State, and

c that the third State complies with the general conditions set out in Article 3,

the coordinator or coordinators of the project, with the support of the PESCO Secretariat, shall notify the Council and the High Representative accordingly. Such notification shall also include the request submitted by the third State.

4 Based on the notification referred to in paragraph 3 of this Article, which includes the scope, the form and, if applicable, the relevant stages of the participation of the third State in the project, and following an opinion by the Political and Security Committee, the Council shall take a decision in accordance with Article 46(6) TEU and Article 9(2) of Decision (CFSP) 2017/2315 as to whether the participation of the third State in that project meets the conditions set out in Article 3 of this Decision.

5 Following a positive decision by the Council as referred to in paragraph 4, the coordinator or coordinators of the PESCO project shall send an invitation to participate in that project to the third State which submitted the request, on behalf of the project members.

6 Once the third State which submitted the request has informed the coordinator or coordinators of the PESCO project that it accepts the invitation, the project members, or the coordinator or coordinators on their behalf, shall initiate negotiations with that third State with a view to an administrative arrangement to be entered into by the project members, acting unanimously, and that third State, on the basis of the template attached to this Decision. Such administrative arrangement shall ensure consistency with provisions of Decision (CFSP) 2017/2315 and of Decision (CFSP) 2018/909.

7 The third State invited to participate in a project shall join the project on the date specified in the administrative arrangement referred to in paragraph 6.

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8 The coordinator or coordinators of a PESCO project shall make available to all PESCO participating Member States the administrative arrangements referred to in paragraph 6 of this Article, via the common electronic workspace referred to in Article 2(2) of Decision (CFSP) 2018/909.

Article 3

General conditions

A third State may exceptionally be invited to participate in a PESCO project, and continue to participate, if it fulfils all of the following general conditions:

(a) it shares the values on which the Union is founded, as laid down in Article 2 TEU, and the principles referred to in Article 21(1) TEU, as well as the objectives of the CFSP in points (a), (b), (c) and (h) of Article 21(2)TEU. It must not contravene the security and defence interests of the Union and its Member States, including respect for the principle of good neighbourly relations with the Member States, and it must have a political dialogue with the Union, which should also cover security and defence aspects when it participates in a PESCO project;

(b) it provides a substantial added value to the project and contributes to achieving its objectives. In line with the priority of a European collaborative approach, and in accordance with Article 4(5) of Decision (CFSP) 2018/909, the means which it brings into the project must be complementary to those offered by PESCO participating Member States, for example by providing technical expertise or additional capabilities including operational or financial support, thus contributing to the success of the project and hence to the advancement of PESCO;

(c) its participation contributes to strengthening the Common Security and Defence Policy (CSDP) and the Union level of ambition as determined in the Council conclusions of 14 November 2016, including in support of CSDP missions and operations;

(d) its participation must not lead to dependencies on that third State or to restrictions imposed by it against any Member State of the Union, as regards armament procurement, research and capability development, or on the use and export of arms or capabilities and technology, which would hamper progress or prevent the usability, whether joint or otherwise, the export or the operational deployment of the capability developed in the PESCO project. It must finalise an agreement at an appropriate level on conditions for the further sharing outside the PESCO framework on a case-by-case basis of capabilities and technology to be developed within that project, in order to prevent those capabilities from being used against the Union and its Member States;

(e) its participation is consistent with the more binding PESCO commitments as specified in the Annex to Decision (CFSP) 2017/2315, in particular those commitments which that PESCO project is helping to fulfil, depending on the specificities of that project. For capability-orientated projects, its participation must also contribute to fulfilling priorities derived from the Capability Development Plan and the Coordinated Annual Review on Defence (CARD), have a positive impact on the European Defence Technological Industrial Base (EDTIB), and make the European defence industry more competitive. In particular, participation by a third State in a project must contribute mainly to the availability, deployability and interoperability of forces;

(f) it has a Security of Information Agreement with the Union which is in force;

(g) it has an Administrative Arrangement which has taken effect with the European Defence Agency (EDA) as appropriate, in accordance with Decision (CFSP) 2015/1835, where the project is implemented with the support of the EDA, taking into account the relevant position paper of the EDA[(7)]; and

(h) it has committed itself, in its request for participation referred to in Article 2(1) of this Decision, to ensuring respect for provisions of Decision (CFSP) 2017/2315 and of Decision (CFSP) 2018/909.

Article 4

Rights and obligations of third States participating in a PESCO project

1 The participation of a third State in a PESCO project shall respect the arrangements concluded by the project members among themselves for the management of the project in accordance with Article 4(1) of Decision (CFSP) 2018/909. A third State participating in a PESCO project shall have the rights and obligations determined in an administrative arrangement as referred to in Article 2(6) of this Decision to be entered into by the project members, acting unanimously, and that third State. Such rights and obligations must respect the general conditions set out in Article 3 of this Decision and may include the following areas:

a attendance by the third State at meetings convened in the framework of the PESCO project;

b roles and responsibilities to be exercised by the third State participating in the PESCO project;

c scope of involvement of the third State in the decision-making process within the PESCO project;

d scope and areas of information-sharing between the project members and the third State participating in the PESCO project.

2 The invited third State may take part in the decision-making process for the implementation of the project, taking account of its contribution. The arrangements referred to in paragraph 1 shall fully respect the decision-making autonomy of the Union as well as the rights and obligations of the participating Member States, including as regards safeguarding the control of a project and its results within the PESCO framework and decision-making on potential new project members, in accordance with Decision (CFSP) 2017/2315, which establishes PESCO, and with the common set of governance rules for PESCO projects set out in Decision (CFSP) 2018/909.

Article 5

Review mechanism

1 The coordinator or coordinators of a project in which a third State participates shall communicate to the PESCO Secretariat, in accordance with the procedure and timelines set out in Article 2(2) of Decision (CFSP) 2018/909, information on the individual contribution to the project by that third State and the fulfilment of its commitments to the project, as well as on its continued fulfilment of the general conditions set out in Article 3 of this Decision.

2 The information referred to in paragraph 1 of this Article shall be communicated once a year to the Council by the PESCO Secretariat, in the context of the annual report on PESCO by the High Representative to the Council and as part of the consolidated information on the PESCO projects, as referred to in Article 2(2) of Decision (CFSP) 2018/909, to ensure that the