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2021/0225 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union within the Association Council set up by the Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part, as regards the extension of the EU-Tunisia Strategic Priorities until new updated joint documents are adopted by the EU and Tunisia

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf within the Association Council set up by the Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part, in connection with the envisaged adoption of a decision to extend the EU-Tunisia Strategic Priorities until new updated joint documents are adopted by the EU and the Republic of Tunisia.

2. CONTEXT OF THE PROPOSAL

2.1. The Association Agreement

The Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part (the 'Association Agreement'), was signed on 17 July 1995 and entered into force on 1 March 1998. The Association Agreement forms the legal basis for the bilateral relations between the EU and Tunisia. The Agreement aims to

– provide an appropriate basis for political dialogue between the Parties, allowing the development of close relations in all areas they consider relevant to such dialogue;

– establish the conditions for the gradual liberalisation of trade in goods, services and capital;

– promote trade and the expansion of harmonious economic and social relations between the Parties, notably through dialogue and cooperation, so as to foster the development and prosperity of Tunisia and its people;

– encourage integration of the Maghreb countries by promoting trade and cooperation between Tunisia and other countries of the region;

– promote economic, social, cultural and financial cooperation.

2.2. The Association Council

An Association Council is established which shall meet at ministerial level once a year and when circumstances require, on the initiative of its Chairman and in accordance with the conditions laid down in its rules of procedure. It shall examine any major issues arising within the framework of the Association Agreement and any other bilateral or international issues of mutual interest.

The Association Council shall consist of the members of the Council of the European Union and members of the Commission of the European Communities, on the one hand, and of members of the Government of the Republic of Tunisia, on the other.

The Association Council shall establish its rules of procedure. It shall be chaired in turn by a member of the Council of the European Union and a member of the Government of the Republic of Tunisia in accordance with the provisions laid down in its rules of procedure.

The decisions taken shall be binding on the Parties, which shall take the measures necessary to implement the decisions taken. The Association Council may also make appropriate recommendations.

2.3. The envisaged act of the Association Council

The Association Council is to adopt a decision concerning the extension of the EU-Tunisia Strategic Priorities 2018-2020 until new updated joint documents are adopted by the EU and the Republic of Tunisia. In accordance with Article 10 of the Rules of Procedure of the Association Council, the decision shall be adopted by mutual agreement of the Parties and may be adopted by written procedure if both Parties so agree.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The position to be adopted by the European Union in the Association Council established by the Association Agreement on the adoption of a decision on the extension of the EU-Tunisia Strategic Priorities is based on the text of the decision annexed to this Decision.

By Decision No. 1/2018 of the Association Council of 9 November 2018, the EU and Tunisia have agreed on Strategic Priorities with the aim of supporting and strengthening the democratic transition and the socioeconomic development of Tunisia for the period 2018-2020.

In the framework of the ongoing process of renewal of the EU's partnership with the Southern Neighbourhood and following the adoption of the Multiannual Financial Framework 2021-2027 and the new Neighbourhood, Development and International Cooperation Instrument (NDICI), the preparation and adoption of new updated joint documents with Southern Neighbourhood countries, including Tunisia, is planned for 2021. In this framework and to avoid a gap between the expiration of the EU-Tunisia Strategic Priorities and the adoption of new ones, it is in the interest of the Parties to extend the current Strategic Priorities until new updated ones are adopted.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing '*the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement*.'

The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*'[1].

4.1.2. Application to the present case

The Association Council is a body set up by an agreement, namely the Association Agreement.

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[1] Judgment of the Court of Justice of 7 October 2014, Germany v Council, Case C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

The act which the Association Council is called upon to adopt constitutes an act having legal effects. The envisaged act has legal effects because it will extend the current Strategic Priorities until new updated joint documents are adopted.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to cooperation with a third country in the framework of an association agreement and the European Neighbourhood Policy.

Therefore, the substantive legal basis of the proposed decision is Article 217.

4.3. Conclusion

The legal basis of the proposed decision should be Article 217 in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

Given that the act of the Association Council will amend the validity period of the EU-Tunisia Strategic Priorities, it should be published in the *Official Journal of the European Union* once it has been adopted.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 217 in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part, was signed on 17 July 1995 and entered into force on 01 March 1998[2].

(2) The EU-Tunisia Strategic Priorities were adopted by the Association Council on 9 November 2018[3].

(3) In an exchange of letters, both parties agreed on the continued validity of the EU-Tunisia Strategic Priorities as a guiding document to consolidate the partnership pending the adoption of new updated joint documents.

(4) Pursuant to Article 80 of the Euro-Mediterranean Agreement, the Association Council may take decisions for the purpose of attaining the objectives of the Agreement.

(5) The Association Council is to adopt a decision by written procedure to extend the Strategic Priorities until new updated joint documents are adopted between the EU and Tunisia.

(6) It is appropriate to establish the position to be taken on the Union's behalf in the Association Council, as the decision will be binding on the Union.

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[2] DECISION OF THE COUNCIL AND THE COMMISSION of 26 January 1998 on the conclusion of a Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part; OJ L 97; 30 March 1998.

[3] Decision No 1/2018 of the EU-Tunisia Association Council of 9 November 2018 adopting the EU-Tunisia strategic priorities for the period 2018-2020; OJ L 293/39; 20.11.2018

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf within the Association Council set up by the Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part, as regards the extension of EU-Tunisia Strategic Priorities until new updated joint documents are adopted between the EU and Tunisia, shall be based on the draft Decision of the EU-Tunisia Association Council attached to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President