EUROPEAN
COMMISSION

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2020/0129 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Joint Committee established by the Agreement between the European Community, of the one part, and the Government of Denmark and the Home Government of the Faroe Islands, of the other part, as regards the adoption of the amendments to Protocols 1 and 4 to the Agreement

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a decision establishing the position to be taken on the Union's behalf in the Joint Committee, established under the Agreement between the European Community, of the one part, and the Government of Denmark and the Home Government of the Faroe Islands, of the other part, for the adoption of a decision of the Joint Committee amending Protocols 1 and 4 to the Agreement.

2. CONTEXT OF THE PROPOSAL

2.1. The Agreement

The Agreement between the European Community, of the one part, and the Government of Denmark and the Home Government of the Faroe Islands, of the other part ('the Agreement') was concluded by the European Community by Council Decision 97/126/EC[1]. The Agreement aims to promote through the expansion of reciprocal trade the harmonious development of economic relations between the Community and the Faroes, provide fair conditions of competition for trade between the Parties and contribute to the removal of barriers to trade. The Agreement entered into force on 1 January 1997.

2.2. The Joint Committee

The Joint Committee, established under Article 31(1) of the Agreement, is responsible for the administration of the Agreement and ensures its proper implementation. Article 34(1) of the Agreement empowers the Joint Committee to amend the provisions of the Protocols to the Agreement.

2.3. The envisaged act of the Joint Committee

Article 36 of the Agreement provides that, at the request of the Faroe Islands, the Union will consider improving the access possibilities for specific products and extending its tariff concessions for Faroese fishery products.

In line with the results of the negotiations between the European Commission and the Faroe Islands, as agreed at the 18th Joint Committee meeting that took place in Norðragøta, Faroe Islands, on 9 October 2019, the Joint Committee is to adopt a decision regarding amendments to Protocols 1 and 4 to the Agreement.

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

The proposed amendments aim at increasing market access for both Parties as agreed on 9 October 2019 in the 18th Joint Committee meeting. There are three material amendments:

– Protocol 1: Frozen and preserved brislings or sprats (CN codes 0303 53 90 and 1604 13 90) are added on the list of products in Table I of Annex to Protocol 1 to the Agreement, indicating preferential customs duties and other conditions to be applied on import into the Community of products originating in and coming from the Faroes. The Union will apply zero import duties to these products originating in the Faroe Island. The Faroe Island submitted this request to the Union in accordance with Article 36 of the Agreement and the Parties agreed to amend Protocol 1.

[1] Council Decision 97/126/EC of 6 December 1996 concerning the conclusion of an agreement between the European Community, of the one part, and the Government of Denmark and the Home Government of the Faroe Islands, of the other part (OJ L 53, 22.2.1997, p. 1).

– Protocol 4: Footnote 1 and paragraph 2 of Article 1 of Protocol 4 to the Agreement are deleted. Footnote 1 contains a restriction on added gluten in fish feed exported from the Faroe Islands to the Union, which applies to CN codes ex 2309 90 10, ex 2309 90 31 and ex 2309 90 41. Paragraph 2 refers to the certification and control requirements as regards the tariff quota opened for fish feed under CN codes ex 2309 90 10, ex 2309 90 31 and ex 2309 90 41. Faroe Islands initially made the request for deletion at the Joint Committee meeting in November 2017, arguing that the composition of fish feed for the aquaculture sector had developed greatly, making gluten a more important component.

– Protocol 4: A new article is added establishing tariff quotas for meat goods exported from the Union to the Faroe Islands. In the framework of the above-mentioned negotiations, the Union requested an increase in market access for exports of Union's sheep meat to the Faroe Islands. The Parties agreed to establish a tariff quota for a range of sheep products (CN codes 0204, 0206 80 99, 0206 90 99, 0210 90 11, 0210 90 60, ex 0210 90 90). The tariff quota, under which a zero import duty will apply, will be introduced gradually: 40 tonnes as of adoption of the envisaged act (i.e. 2020), and 80 tonnes as of three years after (i.e. 2023).

The Commission informed Member States about the outcome of these negotiations during the meeting of the Council Working Party on European Free Trade Association (EFTA), held on 24 October 2019.

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 of the Council 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'[2].

4.1.2. Application to the present case

The Joint Committee is a body established by the Agreement. The act, which the Joint Committee is called upon to adopt, constitutes an act having legal effects. The envisaged act will amend Protocols 1 and 4 to the Agreement in accordance with Article 34(1) of the Agreement and those amendments will have binding effect on the Parties. The envisaged act does not supplement or amend the institutional framework of the Agreement.

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

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

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 objective and content of the envisaged act relate to the common commercial policy. Therefore, the substantive legal basis of the proposed decision is Article 207 TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be the first subparagraph of Article 207(4) TFEU, in conjunction with Article 218(9) thereof.

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the Joint Committee will amend Protocols 1 and 4 to the Agreement, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

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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 the first subparagraph of Article 207(4), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Agreement between the European Community, of the one part, and the Government of Denmark and the Home Government of the Faroe Islands, of the other part ('the Agreement'), was concluded by the European Community by Council Decision 97/126/EC[3] and entered into force on 1 January 1997.

(2) Pursuant to Article 34 of the Agreement, the Joint Committee may amend the provisions of the Protocols to the Agreement.

(3) Following negotiations, the Home Government of the Faroe Islands and the Union have agreed to amend certain provisions of Protocols 1 and 4 to the Agreement. These amendments aim at broadening the scope of market access for both Parties in selected products.

(4) The Joint Committee is to adopt a decision regarding the amendments to Protocols 1 and 4 to the Agreement.

(5) It is appropriate to establish the position to be taken on the Union's behalf in the Joint Committee, as the decision amending Protocols 1 and 4 to the Agreement will be binding on the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the Joint Committee regarding amendments to Protocols 1 and 4 to the Agreement shall be based on the draft decision of the Joint Committee attached to this Decision.

[3] Council Decision 97/126/EC of 6 December 1996 concerning the conclusion of an agreement between the European Community, of the one part, and the Government of Denmark and the Home Government of the Faroe Islands, of the other part (OJ L 53, 22.2.1997, p. 1).

Article 2

The decision of the Joint Committee shall be published in the *Official Journal of the European Union*.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President