EUROPEAN
COMMISSION

Brussels, 5.11.2018
COM(2018) 724 final

2018/0374 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Joint Council established under the Economic Partnership Agreement between the European Union and its Member States, of the on part, and the SADC EPA States, of the other part as regards the adoption of the Rules of Procedure for the Joint Council and for the Trade and Development Committee

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Joint Council set up by the Economic Partnership Agreement between the European Union and its Member States, of the one part, and the Southern African Development Community ('SADC') EPA States, of the other part, in connection with the envisaged adoption of the Rules of Procedure of the Joint Council and the Rules of Procedure of the Trade and Development Committee.

2. CONTEXT OF THE PROPOSAL

2.1. The Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part

The Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part ('the Agreement') aims to:

(a) contribute to the reduction and eradication of poverty through the establishment of a trade partnership consistent with the objective of sustainable development, the MDGs and the Cotonou Agreement;

(b) promote regional integration, economic cooperation and good governance to establish and implement an effective, predictable and transparent regional regulatory framework for trade and investment between the Parties and among the SADC EPA States;

(c) promote the gradual integration of the SADC EPA States into the world economy in conformity with their political choices and development priorities;

(d) improve the SADC EPA States' capacity in trade policy and trade-related issues;

(e) support the conditions for increasing investment and private sector initiatives and enhancing supply capacity, competitiveness and economic growth in the SADC EPA States; and

(f) strengthen the existing relations between the Parties on the basis of solidarity and mutual interest.

The Agreement is provisionally applied between the European Union and its Member States, of the one part, and Botswana, Lesotho, Namibia, Eswatini and South Africa, of the other part, from 10 October 2016, and between the European Union and its Member States, of the one part, and Mozambique, of the other part, from 4 February 2018.

2.2. The Joint Council

Article 100 of the Agreement establishes the Joint Council and provides that it "shall oversee and administer the implementation of this Agreement".

Article 101 of the Agreement provides that the Joint Council shall be composed, on the one hand, of the relevant members of the Council of the EU and relevant members of the European Commission or their representatives, and, on the other hand, of the relevant Ministers of the SADC EPA States or their representatives. The functions of the Joint Council's include establishing its own rules of procedure and the rules of procedure of the Trade and Development Committee.

Article 102 of the Agreement foresees that the Joint Council adopts decisions by consensus and that those decisions shall be binding on the Parties.

2.3. The envisaged act of the Joint Council

During its first meeting, the Joint Council is to adopt a decision regarding the Rules of Procedure of the Joint Council and the Rules of Procedure of the Trade and Development Committee ('the envisaged act').

The purpose of the envisaged act is to establish the rules on the organisation and functioning of the Joint Council and of the Trade and Development Committee.

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

This proposal for a Council Decision establishes the position to be taken on the Union's behalf in the Joint Council set up by the EU-SADC EPA with regard to the rules of procedures of the Joint Council and of the Trade and Development Committee.

The Parties to the Agreement discussed these rules of procedures and agreed that, subject to the EU's decision making procedures, these should be adopted at the first meeting of the Joint Council that is foreseen for the first semester of 2019.

The substance of the attached rules of procedure is very similar to that of rules of procedure of other Economic Partnership Agreements or other trade agreements.

Rules of procedure are essential for completing the institutional framework of the Agreement and hence for ensuring a smooth implementation of the Agreement.

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 Joint Council is a body set up by an agreement, namely the EU-SADC EPA.

The act which the Joint Council is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 102(2) of the Agreement.

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.

[1] 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 main 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 Article 207 TFEU, in conjunction with Article 218(9) TFEU.

2018/0374 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Joint Council established under the Economic Partnership Agreement between the European Union and its Member States, of the on part, and the SADC EPA States, of the other part as regards the adoption of the Rules of Procedure for the Joint Council and for the Trade and Development Committee

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Economic Partnership Agreement between the European Union and its Member States, of the one part, and the Southern African Development Community ('SADC') EPA States, of the other part, was signed by the European Union and its Member States on 10 June 2016[2] ('the Agreement'). It is provisionally applied between the European Union and its Member States, of the one part, and Botswana, Lesotho, Namibia, Eswatini and South Africa, of the other part, from 10 October 2016, and between the European Union and its Member States, of the one part, and Mozambique, of the other part, from 4 February 2018.

(2) Pursuant to Article 102(1) of the Agreement, the Joint Council may adopt decisions in respect of all matters covered by this Agreement. Pursuant to Article 101(3)(h) and (i) the Joint Council establishes its own rules of procedure and the rules of procedure of the Trade and Development Committee.

(3) The Joint Council during its first meeting is to adopt decisions with regard to its Rules of Procedure and the Rules of Procedure of the Trade and Development Committee.

(4) It is appropriate to establish the position to be taken on the Union's behalf in the Joint Council, as the envisaged Joint Council decision will be binding on the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the first meeting of the Joint Council shall be based on the draft decision of the Joint Council with regard to the Rules of Procedure of the Joint Council and the Rules of Procedure of the Trade and Development Committee which is attached to this Decision.

[2] Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part (OJ L 250, 16.9.2016, p. 3).

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President