EUROPEAN
COMMISSION

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2020/0074 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union within the CARIFORUM-EU Trade and Development Committee of the Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part, with regard to the establishment of a Special Committee on Services

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 Trade and Development Committee set up under Article 230 of the Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part ("the Agreement"), in connection with the envisaged adoption of a decision for the establishment of the Special Committee on Services under the Agreement.

2. CONTEXT OF THE PROPOSAL

2.1. The Agreement between the European Union and CARIFORUM for the Economic Partnership Agreement

The Agreement was signed on 15 October 2008 between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part. The Agreement has been provisionally applied as of 29 December 2008.

2.2. The Trade and Development Committee

The Trade and Development Committee is set up under Article 230 of the Agreement. It is composed of the representatives of the Parties, normally at senior officials' level. The Trade and Development Committee is in charge of trade and development matters under the Agreement. With regard to trade matters, it supervises and is responsible for the implementation and proper application of the provisions of the Agreement (including the provisions that relate to trade in services). With regard to the area of development, it assists the Joint Cariforum-EU Council in the performance of its functions regarding development co-operation falling under this Agreement.

Decision No 1/2010 of the Joint Cariforum-EU Council of 17 May 2010 sets up the rules of procedure for the Trade and Development Committee as well as the applicable rules of procedure for all Special Committees which may be established pursuant to Article 230(4) of the Agreement.

2.3. The envisaged act of the Trade and Development Committee

According to Article 230(4) of the Agreement, the Trade and Development Committee, in the performance of its functions, may set up and oversee any special committees or bodies to deal with matters falling within its competence, and determine their composition and duties, and their rules of procedure.

Trade in services is an important domain of the Agreement under Title 2 and it has been recognised by Cariforum at numerous bilateral meetings as crucial for their development and economic growth. The CARIFORUM-EU Joint Council in November 2017 identified the need for the establishment of a Special Committee on Services to address more specifically all trade matters related to services under the Agreement. The eighth annual meeting of the CARIFORUM-EU Trade and Development Committee, that took place in St Lucia on 6 December 2018, further considered the functions and composition of that Special Committee. The draft Decision of the CARIFORUM-EU Trade and Development Committee for the establishment of the Special Committee, attached to the present proposal for a Council Decision, reflects the discussions that were held between the Parties in this respect.

The rules of procedure for all Special Committee which may be established pursuant to Article 230(4) of the Agreement, as adopted by the Joint Cariforum-EU Council in its Decision 1/2010, should be applicable to the Special Committee on Services.

The Trade and Development Committee establishes any special committees or bodies by a decision. The Special Committee on Services is proposed to be established by a decision of the Trade and Development Committee after finalisation of the procedure.

2.4. Consistency with existing policy provisions in the policy area

The position of the Union is consistent with the existing policy provisions in the area.

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

This proposal is for a Council Decision to establish the position to be taken on the Union's behalf in the Trade and Development Committee under the Agreement as regards the establishment of a Special Committee on Services. The position to be taken should be based on the draft Decision of the CARIFORUM-EU Trade and Development Committee, attached to the present proposal for a Council Decision.

The draft Decision outlines the role, function and composition of the envisaged Special Committee on Services. More specifically, Article 2 of the draft Decision defines the functions of the Special Committee on Services. The main functions are to keep under review all aspects of Title II of Part II of the Agreement that relate to trade in services, to assist the CARIFORUM-EU Trade and Development Committee in this area and to make recommendations to the CARIFORUM-EU Trade and Development Committee and the Technical Sub-Committee on Development Cooperation with a view to enhancing the implementation and operation of the services provisions of the Agreement.

Article 3 sets out the composition of the Committee which is composed of representatives of the EU Party, on the one hand, and of representatives of the Signatory CARIFORUM States, on the other.

The draft decision also specifies that the Special Committee on Services will be a forum to exchange experiences, information and best practices and to consult on issues related to the objectives set out in Title II of Part II of the Agreement and relevant to trade between the Parties. The draft Decision reflects the discussions that were held between the Parties.

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 CARIFORUM-EU Trade and Development Committee is a body set up by an agreement, namely the Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part.

The act which the CARIFORUM-EU Trade and Development Committee is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 230(4) 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.

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(4), first paragraph TFEU.

4.3. Subsidiarity (for non-exclusive competence)

The common commercial policy, in accordance with Article 3 of the TFEU, is defined as an exclusive Union competence.

4.4. Proportionality

This proposal is necessary in order to establish any special committee, as set out in Article 230(4) of the Agreement and in the rules of procedure of the CARIFORUM-EU Trade and Development Committee.

4.5. Choice of the instrument

This proposal is in accordance with Article 218(9) TFEU, which envisages the adoption by the Council of decisions establishing the positions to be adopted on the Union's behalf in a body set up by an international agreement. There exists no other legal instrument that could be used in order to achieve the objective expressed in this proposal.

4.6. Conclusion

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

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[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.

5. PUBLICATION OF THE ENVISAGED ACT

It is appropriate to publish the envisaged act in the *Official Journal of the European Union* after its adoption by the CARIFORUM-EU Trade and Development Committee.

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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 207(4), first paragraph, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part[2] ('the Agreement'), was signed on 15 October 2008, and has been provisionally applied as of 29 December 2008.

(2) Pursuant to Article 230(4) of the Agreement, the CARIFORUM-EU Trade and Development Committee may set up and oversee any special committee to deal with matters falling within its competence.

(3) In order to deal more efficiently with all matters of the Agreement that relate to trade in services, a Special Committee on Services should be established to carry out the functions as set out in the draft decision of the CARIFORUM-EU Trade and Development Committee attached to this Decision.

(4) It is appropriate to establish the position to be taken on behalf of the Union within the CARIFORUM-EU Trade and Development Committee with regard to the establishment of a Special Committee on Services.

(5) The position to be taken on behalf of the Union within the CARIFORUM-EU Trade and Development Committee should be based on the attached draft Decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union within the CARIFORUM-EU Trade and Development Committee of the Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part, with regard to the establishment of a Special Committee on Services shall be based on the

[2] OJ L 289, 30.10.2008, p. 3.

draft Decision of the CARIFORUM-EU Trade and Development Committee attached to this Decision.

Minor changes to the draft Decision of the CARIFORUM-EU Trade and Development Committee may be agreed to by the representatives of the Union in the CARIFORUM-EU Trade and Development Committee without further decision of the Council.

Article 2

After its adoption, the Decision of the CARIFORUM-EU Trade and Development 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