EUROPEAN
COMMISSION

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2024/0244 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the OACPS-EU Council of Ministers concerning the adoption of joint guidelines for the conduction of partnership dialogue under Article 3 of the Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organisation of the African, Caribbean and Pacific States, of the other part

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the position to be taken by the Union in the OACPS-EU Council of Ministers regarding the adoption of joint guidelines for the implementation of the partnership dialogue foreseen in Article 3 of the Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organisation of African, Caribbean and Pacific States (OACPS), of the other part ('the Samoa Agreement').

2. CONTEXT OF THE PROPOSAL

2.1. The Partnership Agreement between the European Union and its Member States, and the members of the Organisation of African, Caribbean and Pacific States

The Samoa Agreement aims to establish a strengthened political partnership between the Parties to generate mutually beneficial outcomes on common and intersecting interests and in accordance with their shared values. The Agreement was signed in Samoa, on 15 November 2023, and is being provisionally applied since 1 January 2024, in accordance with Article 98(4) of the Agreement. The Agreement will enter into force following the completion of the Parties' respective internal procedures, in accordance with Article 98(2).

The European Union and all its Member States are parties to the Agreement[1].

2.2. The OACPS-EU Council of Ministers

The OACPS-EU Council of Ministers is a ministerial level body, set up by Article 88 of the Samoa Agreement. It comprises, on the one hand, a representative of each OACPS Member at ministerial level and, on the other hand, representatives of the European Union and of its Member States at ministerial level. It shall be co-chaired by the Chair nominated by the OACPS Members on the one hand and by the Chair nominated by the EU Party on the other hand.

The functions of the OACPS-EU Council of Ministers include, among others, the adoption of policy guidelines and decisions to give effect to specific aspects necessary for the implementation of the provisions of the Agreement.

The OACPS-EU Council of Ministers shall adopt decisions that are binding on all Parties, unless otherwise specified, or make recommendations concerning any of its functions listed in Article 88(4) of the Agreement. Its proceedings shall be valid only if the representatives of the European Union, at least half of the Member States of the European Union and at least two thirds of the members representing the governments of the OACPS Members are present. Any member of the OACPS-EU Council of Ministers unable to attend may be represented. The representative shall exercise all the rights of that member.

The OACPS-EU Council of Ministers may also take decisions or make recommendations by written procedure, as foreseen in Article 88(6).

[1] COUNCIL DECISION of 20 July 2023 on the signing, on behalf of the European Union, and provisional application of the Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organisation of African, Caribbean and Pacific States, of the other part, OJ L 2023/2861, 28.12.2023.

2.3. The envisaged act of the OACPS-EU Council of Ministers

Article 3 of the Samoa Agreement calls on the Parties to engage in a regular, balanced, comprehensive, and substantive partnership dialogue on all areas of the Agreement, leading to commitments and, where appropriate, actions on both sides, for its effective implementation. This dialogue aims at exchanging information, fostering mutual understanding and facilitating the establishment of agreed priorities and shared agendas at the national, regional and international levels, contributing to increased cooperation and coordination on issues of common interest and new challenges in international settings. The partnership dialogue shall be conducted at the most appropriate domestic, regional or multi-country level, taking full advantage of all possible channels, including in regional and international settings.

The OACPS-EU Council of Ministers shall adopt guidelines for the implementation of the partnership dialogue foreseen under Article 3 of the Samoa Agreement ('the envisaged act'), aiming at providing general operational guidance, although keeping the necessary flexibility to allow a tailor-made approach to the different contexts and dialogue levels.

The envisaged act takes into account the lessons learnt from the political dialogue under Article 8 of the previous OACPS-EU Partnership Agreement[2], which point out to the need of: i) defining balanced and jointly agreed agendas for the partnership dialogue; ii) ensuring a flexible and tailor-made approach on the regularity of the dialogue and agenda items; iii) strengthening civil society and private sector engagement when possible; iv) improving synergies between the policy and political dialogues and between the dialogue at national, regional and global levels; v) strengthening joint follow up.

The envisaged act will become binding on the parties, after its adoption, in accordance with Article 88(5) of the Agreement, which provides: 'The OACPS-EU Council of Ministers shall adopt decisions that are binding on all Parties unless otherwise specified, or make recommendations concerning any of its functions listed in paragraph 4 by common agreement of the Parties'.

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

The Commission proposes that the Union agrees with the adoption of the proposed act. The draft act of the OACPS-EU Council of Ministers is set out in the Annex attached to this Proposal.

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

[2] Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000.

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*'[3].

4.1.2. Application to the present case

The OACPS-EU Council of Ministers is a body set up by Article 88 of the Samoa Agreement.

The OACPS-EU Council of Ministers is called upon to adopt an act having legal effects. The envisaged act will be binding under international law in accordance with Article 88(5) of the Samoa 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 aim 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 aim and content of the envisaged act relate to association with third countries, in particular to furthering the implementation of the aims and objectives of the Samoa Agreement. The measures whose adoption is envisaged concern all areas covered by the Samoa Agreement and aim at further implementing and deepening the association between the Parties. It follows that the field within which this decision falls must be determined in the light of the horizonal character of the Association Agreement as a whole and a corresponding substantive legal basis covering all aspects of the implementation of the Samoa Agreement.

Therefore, the substantive legal basis is the same as the legal basis of the Samoa Agreement itself, i.e. Article 217 TFEU.

4.3. Conclusion

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

[3] 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.

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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 Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organisation of African, Caribbean and Pacific States, of the other part ('the Agreement') was signed on 15 November 2023, in accordance with Council Decision (EU) 2023/2861[4], and entered into provisional application on 1 January 2024.

(2) Pursuant to Article 88(4) of the Agreement, the OACPS-EU Council of Ministers may adopt policy guidelines and take decisions to give effect to specific aspects necessary for the implementation of the provisions of the Agreement.

(3) The OACPS-EU Council of Ministers is to adopt joint guidelines for the conduction of partnership dialogue under Article 3 of the Agreement.

(4) It is appropriate to establish the position to be taken on the Union's behalf in the OACPS-EU Council of Ministers, as the joint guidelines for the conduction of partnership dialogue under Article 3 of the Agreement will be binding on the Union.

(5) The envisaged act aims at providing general operational guidance for the conduction of Article 3, although keeping the necessary flexibility to allow a tailor-made approach to the different contexts and dialogue levels,

HAS ADOPTED THIS DECISION:

Sole Article

1. The position to be taken on the Union's behalf in the OACPS-EU Council of Ministers, shall be based on the draft guidelines for the conduction of partnership dialogue under Article 3 attached to this Decision.

[4] COUNCIL DECISION of 20 July 2023 on the signing, on behalf of the European Union, and provisional application of the Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organisation of African, Caribbean and Pacific States, of the other part, OJ L 2023/2861, 28.12.2023.

2. Minor technical corrections to the draft joint guidelines may be agreed to by the representatives of the Union within the OACPS-EU Council of Ministers without further decision of the Council.

Done at Brussels,

For the Council
The President