EUROPEAN
COMMISSION

HIGH REPRESENTATIVE
OF THE UNION FOR
FOREIGN AFFAIRS AND
SECURITY POLICY

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2018/0382 (NLE)

Joint Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Joint Committee established by the Euro-Mediterranean Interim Association Agreement on Trade and Cooperation between the European Community, of the one part, and the Palestine Liberation Organisation (PLO) for the benefit of the Palestinian Authority (PA) of the West Bank and the Gaza Strip, of the other part, concerning the extension of the EU – PA Action Plan

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the Union position within the Joint Committee established by the Euro-Mediterranean Interim Association Agreement on Trade and Cooperation between the European Community, of the one part, and the Palestine Liberation Organisation (PLO) for the benefit of the Palestinian Authority (PA) of the West Bank and the Gaza Strip, of the other part ("Interim Association Agreement"), with regard to the adoption of a decision concerning the extension of the EU-PA Action Plan.

2. CONTEXT OF THE PROPOSAL

2.1. The Interim Association Agreement

An Interim Association Agreement on Trade and Cooperation was signed on 24 February 1997 and entered into force on 1 July 1997. The Interim Association Agreement forms the legal basis for the bilateral relations between the EU and the PA. The Agreement provides for duty-free access to EU markets for Palestinian industrial goods, and a phase-out of tariffs on EU exports to Palestine over five years. The Agreement aims to:

– provide an appropriate framework for a comprehensive dialogue, allowing the development of close relations between the Parties;

– establish the conditions for the progressive liberalisation of trade;

– foster the development of balanced economic and social relations between the Parties through dialogue and cooperation;

– contribute to the social and economic development of the West Bank and the Gaza Strip;

– encourage regional cooperation with a view to the consolidation of a peaceful coexistence and economic and social stability;

– promote cooperation in other areas that are of reciprocal interest.

2.2. The Joint Committee

The Interim Association Agreement establishes a Joint Committee, which has the power to take decisions in the cases provided in the Agreement as well as in other cases necessary for the purpose of attaining the objectives set out therein. The decisions are binding on the Parties. The Joint Committee may also make recommendations for the attainment of the common objectives and the smooth functioning of the Agreement. The office of Chairman of the Joint Committee is held alternately by the EU and the Palestinian Authority in accordance with the conditions laid down in the rules of procedure. The Joint Committee meets at least once a year and when circumstances require on the initiative of its Chairman.

2.3. The envisaged act of the Joint Committee

The Joint Committee is to adopt a recommendation concerning the extension of the EU-PA Action Plan (the 'envisaged act'). In accordance with Article 10 of the Rules of Procedure of the Joint Committee, the recommendation will be adopted by written procedure.

The purpose of the envisaged act is to extend by three years the validity of the EU – PA Action Plan, to ensure the continuation of cooperation between the two parties. Should the need for a further extension arise, the Commission and the High Representative should be

empowered to extend the Action Plan for another three-year period without the need for a new Council Decision on the position to be taken by the European Union in the Joint Committee.

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

The position to be adopted by the European Union in the Joint Committee stablished by the Interim Association Agreement on the adoption of a recommendation on the three-year extension of the EU-PA Action Plan is based on the text of the decision annexed to this Decision.

Both parties have repeatedly confirmed the richness and vitality of relations between the European Union and PA and their full commitment to the continued development of the latter in all areas of mutual interest.

The extension of the EU – PA Action Plan is therefore in the interest of the Parties.

3.1. Procedural legal basis

3.1.1. 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].

3.1.2. Application to the present case

The Joint Committee is a body set up by an agreement, namely the Interim Association Agreement.

The act which the Joint Committee is called upon to adopt constitutes an act having legal effects. The envisaged act has legal effects because it will extend the current EU – PA Action Plan for three years.

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

3.2. Substantive legal basis

3.2.1. 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.

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

3.2.2. 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 TFEU.

3.3. Conclusion

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

4. PUBLICATION OF THE ENVISAGED ACT

As the act of the Joint Committee will modify the duration of the EU – PA Action Plan it is appropriate to publish it in the *Official Journal of the European Union* after its adoption, in accordance with Rules of Procedure of the EU – PA Joint 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 Articles 217 in relation to Article 218(9) thereof,

Having regard to the proposal from the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy ('High Representative'),

Whereas:

(1) The Euro-Mediterranean Interim Association Agreement on Trade and Cooperation between the European Community, of the one part, and the Palestine Liberation Organisation (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part (the 'Interim Association Agreement'), was signed on 24 February 1997 and entered into force on 1 July 1997.

(2) The Parties agree that the current Action Plan continues to reflect the privileged EU-PA partnership and to support the implementation of the Interim Association Agreement.

(3) Pursuant to Article 63 of the Interim Association Agreement, the Joint Committee may take decisions and make appropriate recommendations.

(4) The Joint Committee is to adopt the recommendation on the extension by three years of the EU – PA Action Plan by written procedure.

(5) It is appropriate to establish the position to be taken on the Union's behalf in the Interim Association Agreement as the recommendation will have legal effects.

(6) The Commission and the High Representative should be authorised to extend the Action Plan for a period of another three years should the need be.

(7) The extension of the Action Plan for three years will give the Parties the opportunity to take forward their cooperation for the coming years.

HAS ADOPTED THIS DECISION:

Article 1

The Union position within the Joint Committee established by the Euro-Mediterranean Interim Association Agreement on Trade and Co-operation between the European Community, of the one part, and the Palestine Liberation Organisation (PLO) for the benefit

of the Palestinian Authority (PA) of the West Bank and the Gaza Strip, of the other part, with regard to the extension of the EU-PA Action Plan shall be based on the draft recommendation of the Joint Committee attached to this Decision.

Article 2

The Commission and the High Representative are hereby authorised to extend the Action Plan for a period of another three years should the need be.

Article 3

This Decision is addressed to the Commission and the High Representative.

Done at Brussels,

For the Council
The President