EUROPEAN
COMMISSION

HIGH REPRESENTATIVE
OF THE UNION FOR
FOREIGN AFFAIRS AND
SECURITY POLICY

Brussels, 13.8.2018
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2018/0307 (NLE)

Joint Proposal for a

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, in the Joint Committee established by the Framework Agreement between the European Union and its Member States, of the one part, and Australia, of the other part, as regards the adoption of decisions of the Joint Committee on the Rules of procedure of the Joint Committee and the adoption of the terms of reference of the subcommittees and working groups

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The present proposal concerns the decision establishing the position to be adopted on behalf of the Union in the Joint Committee established by the Framework Agreement between the European Union and its Member States, of the one part, and Australia, of the other part.

1.1. The EU-Australia Framework Agreement

The Framework Agreement between the European Union and its Member States, of the one part, and Australia, of the other part ('the Agreement') aims to establish a strengthened partnership between the EU and its Member States and Australia and to deepen and enhance cooperation on issues of mutual interest, reflecting shared values and common principles, including through intensifying high-level dialogue. The Agreement will create a coherent, legally binding framework for the EU's relations with Australia.

1.2. The Joint Committee

The Joint Committee is set up by Article 56 of the Agreement. Its main tasks are to facilitate implementation and to further the general aims of the Agreement, as well to maintain overall coherence in the EU-Australia relations. Other functions of the Joint Committee include: monitoring the development of the relations between the EU and Australia; exchanging views and making suggestions on any issues of common interest; endeavouring to resolve disputes which might arise in areas covered by the Agreement.

The Joint Committee is to make recommendations and adopt decisions, where appropriate, to give effect to the specific aspects of the Agreement. The Joint Committee operates by consensus and it meets at the senior official level. The Joint Committees is to adopt its rules of procedure. It may set up subcommittees and working groups to deal with specific issues.

1.3 The envisaged act of the Joint Committee

The purpose of the envisaged acts is to adopt, in accordance with Article 56(4) of the Agreement, the Rules of procedure underpinning the organisation of the Joint Committee and the terms of reference of the subcommittees and working groups to allow for the implementation of the Agreement.

2. POSITION TO BE ADOPTED ON BEHALF OF THE UNION

The position to be adopted on behalf of the Union should aim at the adoption of the Rules of procedure of the EU-Australia Joint Committee and the terms of reference of the subcommittees and working groups. The position should be based on the draft decisions of the Joint Committee.

3. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

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 notion 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 the Framework Agreement between the European Union and its Member States, of the one part, and Australia, of the other part.

The acts the Joint Committee is called upon to adopt constitute acts having legal effects. This is because in accordance with Article 56(3)(i) of Agreement, the Joint Committee is to adopt decisions, which are binding upon the Parties to the Agreement.

The envisaged acts do not supplement or amend the institutional framework of the Agreement.

The procedural legal basis for the proposed decision, therefore, 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 adopted on behalf of the Union. 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.

With regard to an envisaged act that simultaneously pursues a number of objectives, or that has several components, which are inseparably linked without one being incidental to the other, the substantive legal basis of a decision under Article 218(9) TFEU will have to include, exceptionally, the various corresponding legal bases.

3.2.2 Application to the present case

The envisaged acts aim at furthering the objectives of the Agreement and at facilitating its implementation.

The Agreement pursues objectives and includes components from the areas of the Common Foreign and Security Policy, the Common Commercial Policy and cooperation with developed countries. These aspects of the Agreement are inseparably linked without one being incidental to the other. The signing of the Agreement was based on Article 37 TEU, Article 207 TFEU and Article 212(1).

The envisaged act should therefore be based on the same substantive legal bases.

3.3 Conclusion

In light of the above, the legal basis of the proposed decision should therefore be Article 37 TEU, Article 207 TFEU and Article 212(1) TFEU read in conjunction with Article 218(9) TFEU.

[1] Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraphs 61-64.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 37 thereof,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207 and 212(1), in conjunction with Article 218(9), thereof,

Having regard to the joint proposal of the High Representative of the Union for Foreign Affairs and Security Policy and of the European Commission,

Whereas:

(1) The Framework Agreement between the European Union and its Member States, of the one part, and Australia, of the other part[2] ('the Agreement') was signed in Manila on 7 August 2017 and is provisionally applied as of […];

(2) Article 56(1) of the Agreement establishes a Joint Committee to facilitate the implementation of the Agreement ('the Joint Committee');

(3) Article 56(4) of the Agreement provides that the Joint Committee is to adopt its rules of procedure and that it may set-up sub-committees and working groups to deal with specific issues;

(4) The Joint Committee's rules of procedure and the terms of reference of the sub-committees and working groups should be adopted as soon as possible, in order to ensure the effective implementation of the Agreement;

(5) The position of the Union within the Joint Committee should therefore be based on the attached draft Joint Committee Decisions,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union in the first meeting of the Joint Committee shall be based on the draft Decisions of the Joint Committee attached to this Decision.

[2] OJ L 237, 15.09.2017, p. 7.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

For the Council
The President