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2023/0054 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Cooperation Council established by the Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Iraq, of the other part, in connection with the envisaged adoption of a decision concerning the establishment of a Sub-Committee on Development Cooperation

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf within the Cooperation Council, established by the Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Iraq, of the other part,[1] ('the Agreement') in connection with the envisaged adoption by it of a decision concerning the establishment of the specialised Sub-Committee on Development Cooperation.

2. CONTEXT OF THE PROPOSAL

2.1. The Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Iraq, of the other part

The Agreement aims to strengthen the relationship of the parties, who undertake to hold comprehensive dialogues, and to promote further cooperation between them on all sectors of mutual interest. The Agreement was signed on 11 May 2012, and entered into force on 1 August 2018.

2.2. The Cooperation Council

Article 111(1) of the Agreement establishes a Cooperation Council, which consists of the representatives of the Parties to the Agreement, and which supervises the implementation of the Agreement. It examines any major issues arising within the framework of the Agreement and any other bilateral or international issues of mutual interest for the purpose of attaining the objectives of the Agreement. The Cooperation Council may also make appropriate recommendations, by mutual agreement between the two Parties.

Pursuant to Article 112(2) of the Agreement, the Cooperation Council may decide to set up specialised sub-committees or bodies that can assist it in carrying out its duties. The Cooperation Council determines the composition and duties of such sub-committees or bodies and how they are to function. The EU and Iraq have both expressed interest in setting up a specialised Sub-Committee on Development Cooperation.

2.3. The envisaged act of the Cooperation Council

During its third session, or, if appropriate, by written procedure beforehand or afterwards in accordance with Article 10(1) of Annex I of its Rules of Procedure,[2] the Cooperation Council is to adopt a decision regarding the establishment of a specialised Sub-Committee on Development Cooperation, including the adoption of its terms of reference ('the envisaged act'), in accordance with Article 112(2) of the Agreement.

The purpose of the envisaged act is to set up a specialised Sub-Committee on Development Cooperation in order to assist the Cooperation Council in the performance of its duties.

In accordance with Article 10(1) of Annex I of the Rules of Procedures, the Cooperation Council takes its decisions and makes recommendations by common agreement of the Parties

[1] Council Decision (EU) 2018/1107 of 20 July 2018 on the conclusion of a Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Iraq, of the other part, OJ L 203, 10.8.2018, p. 1.

[2] Decision No 1/2013 of the EU-Iraq Cooperation Council of 8 October 2013 adopting its rules of procedure and those of the Cooperation Committee, OJ L 352, 24.12.2013, p. 68.

in the indicated in the Agreement itself. The Cooperation Council may take decisions or make recommendations by written procedure if both Parties so agree.

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

This proposal concerns a Council Decision establishing the position to be taken on the Union's behalf in the Cooperation Council set up by the Agreement to establish a specialised Sub-Committee on Development Cooperation and to adopt its terms of reference. The EU and Iraq have both expressed interest in setting up a specialised Sub-Committee on Development Cooperation.

The proposed Union position is based on the draft act of the Cooperation Council as set out in the Annex attached to this proposal for a Council Decision.

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 the Council, on a proposal from the Commission, to adopt 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*'[3].

4.1.2. Application to the present case

The Cooperation Council is a body set up by an agreement, namely by the Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Iraq, of the other part signed on 11 May 2012, and entered into force on 1 August 2018.

The European Union, together with its Member States, are parties to the Agreement.

The act which the Cooperation Council is called upon to adopt constitutes an act having legal effects. The envisaged act has legal effects as the decision of the Cooperation Council, taken pursuant to Article 112(2) of the Agreement and by common agreement of the Parties pursuant to Article 10(1) of Annex I of its Rules of Procedure, will allow for the creation of a specialised Sub-Committee on Development Cooperation.

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.

[3] Judgment of the Court of Justice of 7 October 2014, *Germany v Council*, Case 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.

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.

4.2.2. Application to the present case

The main objective of the envisaged act relates to the implementation of development cooperation in Iraq.

Therefore, the substantive legal basis of the proposed decision is Article 209 TFEU.

4.3. Conclusion

The legal bases of the proposed decision should be Article 209 TFEU, in conjunction with Article 218(9) TFEU.

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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 209 TFEU, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Iraq, of the other part ('the Agreement') was concluded by the Union by Council Decision 2018/1107[1] and entered into force on 1 August 2018.

(2) Pursuant to Article 111(1) of the Agreement, a Cooperation Council is established to supervise the implementation of the Agreement. Pursuant to Article 112(2) of the Agreement, the Cooperation Council may decide to set up any specialised sub-committees or bodies that can assist it in carrying out its duties. The Cooperation Council determines the composition and duties of such committees or bodies and how they are to function.

(3) The Union and Iraq have both expressed interest in setting up a specialised Sub-Committee on Development Cooperation in order to facilitate a dedicated dialogue on all aspects of Union-Iraq development cooperation and promote the effective implementation of Union development cooperation programmes in Iraq.

(4) During its third session, or, if appropriate, by written procedure beforehand or afterwards in accordance with Article 10(1) of Annex I of its Rules of Procedure[2], the Cooperation Council is to adopt a decision on the creation of a specialised Sub-Committee on Development Cooperation and on the adoption of its terms of reference.

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

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[1] Council Decision (EU) 2018/1107 of 20 July 2018 on the conclusion of a Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Iraq, of the other part, OJ L 203, 10.8.2018, p. 1.

[2] Decision No 1/2013 of the EU-Iraq Cooperation Council of 8 October 2013 adopting its rules of procedure and those of the Cooperation Committee, OJ L 352, 24.12.2013, p. 68.

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be taken on the Union's behalf in the third session of the Cooperation Council, or, if appropriate, by written procedure beforehand or afterwards, shall be based on the draft act of the Cooperation Council as set out in the Annex attached to this Decision – the establishment of specialised subcommittees and the adoption of their terms of reference.

2. Minor technical changes to the wording of the draft act of the Cooperation Council may be agreed to by the representatives of the Union within the Cooperation Council without further decision of the Council.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President