



HIGH REPRESENTATIVE
OF THE UNION FOR
FOREIGN AFFAIRS AND
SECURITY POLICY

Brussels, 13.11.2017
JOIN(2017) 43 final

2017/0299 (NLE)

Joint Proposal for a

COUNCIL DECISION

on the position to be adopted on the Union's behalf in the Joint Council established by the Political Dialogue and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Cuba, of the other part, as regards the adoption of decisions on the rules of procedure of the Joint Council and of the Joint Committee

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a decision on the position to be adopted on the Union's behalf in the Joint Council established by the EU-Cuba Political Dialogue and Cooperation Agreement (PDCA), in connection with the planned adoption of the rules of procedure of the Joint Council and of the Joint Committee.

2. CONTEXT OF THE PROPOSAL

2.1. The EU-Cuba Political Dialogue and Cooperation Agreement

The PDCA aims to upgrade relations between the EU and Cuba to a level that reflects their strong historic, economic and cultural ties. It creates a strong enabling framework for enhanced political dialogue and bilateral cooperation across a wide range of areas. It will also provide a platform for joint action on global matters and in multilateral fora.

The PDCA sets out general principles and objectives for EU-Cuba relations and creates an institutional structure for managing the Agreement.

It will be applied provisionally from 1 November 2017.

2.2. Joint Council

The Joint Council is established by Article 81 of the Agreement. Its main tasks are to oversee work to achieve the objectives of the PDCA, guide its implementation and examine major issues arising in the context of the PDCA and any other bilateral, multilateral or international question of common interest.

The Joint Council may take decisions to ensure that the objectives of the Agreement are attained. Such decisions are binding on the parties, which must take all measures necessary to implement them. The Joint Council may also make recommendations and examine disputes over the parties' fulfilment of their obligations, with a view to finding mutually acceptable solutions, in accordance with Article 85 of the Agreement.

The Joint Council is composed of representatives of the parties at ministerial level and chaired alternately by a representative of the EU or of Cuba. It meets regularly at least every two years, or as agreed as circumstances require. It adopts its own rules of procedure.

2.3. Joint Committee

The Joint Committee is established by Article 82 of the Agreement. It assists the Joint Council in the performance of its duties and is responsible for the general implementation of the PDCA. Its main tasks are to prepare the meetings and deliberations of the Joint Council, implement its decisions where appropriate and, in general, ensure the continuity of relations and the proper functioning of the PDCA. It will consider matters referred to it by the Joint Council and any other matters arising in the course of the day-to-day implementation of the PDCA. It submits draft decisions or recommendations for adoption by the Joint Council. It can establish sub-committees to assist it in the performance of its duties.

The Joint Committee is composed of representatives of the parties at senior official level. It is chaired alternately by a representative of the EU or of Cuba. It normally meets once a year in the Union and Cuba alternately. Its rules of procedure are adopted by the Joint Council.

2.4. ENVISAGED ACT OF THE JOINT COUNCIL

The Joint Council is to adopt a decision on its own rules of procedure and those of the Joint Committee.

The purpose of the envisaged act is to adopt, in accordance with Articles 81(4) and 82(3) of the Agreement, rules of procedure governing the functioning of the Joint Council and of the Joint Committee to allow for implementation of the PDCA.

3. POSITION TO BE ADOPTED ON BEHALF OF THE UNION

The position to be adopted on behalf of the Union should enable adoption of the rules of procedure of the Joint Council and of the Joint Committee.

4. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

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 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.

4.1.2. Application to the present case

The Joint Council and the Joint Committee are bodies established by the PDCA.

The acts set out in the annex to this Decision constitute acts having legal effects, because Article 81(6) of the Agreement empowers the Joint Council to adopt decisions that are binding on the parties. The acts do 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 adopted 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

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

incidental, the decision must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

With regard to an act that simultaneously pursues a number of objectives, or has several components that 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 and content of the envisaged acts relate to the implementation of the Agreement.

The PDCA pursues objectives and has components in the areas of the EU's common foreign and security policy, common commercial policy and development cooperation policy. These aspects are inseparably linked without one being incidental to the other. The EU's signing of the PDCA was based on Article 37 of the Treaty on European Union (TEU) and Articles 207 and 209 TFEU.

The EU's position as regards the envisaged acts should therefore be based on the same substantive legal bases.

5. CONCLUSION

In the light of the above, the legal basis of the proposed Decision should be Article 37 TEU and Articles 207 and 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 European Union, and in particular Article 37 thereof,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 207 and 209 in conjunction with Article 218(9) thereof,

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

Whereas:

- (1) The Political Dialogue and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Cuba, of the other part ('the Agreement'), was signed in Brussels on 12 December 2016 and is to be applied provisionally from 1 November 2017.
- (2) Articles 81 and 82 of the Agreement establish a Joint Council and a Joint Committee to facilitate the implementation of the Agreement.
- (3) Article 81(4) of the Agreement provides that the Joint Council is to establish its own rules of procedure and Article 82(3) provides that it is to establish the rules of procedure of the Joint Committee.
- (4) Article 81(3) and (5) of the Agreement provides that the Joint Council is composed of representatives of the parties at ministerial level and is to be chaired alternately by a representative of the European Union or of Cuba.
- (5) Article 82(1) and (5) of the Agreement provides that the Joint Committee is composed of representatives of the parties at senior official level and is to be chaired alternately by a representative of the Union or of Cuba.
- (6) In order to ensure the effective implementation of the Agreement, the rules of procedure of the Joint Council and of the Joint Committee should be adopted.
- (7) The Union's position in the Joint Council should therefore be based on the attached draft texts of the rules of procedure of the Joint Council and of the Joint Committee,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on the Union's behalf in the EU-Cuba Joint Council as regards the rules of procedure of the Joint Council and those of the Joint Committee shall be based on the texts in the annex to this Decision.

Article 2

This Decision is addressed to the Commission and the High Representative of the Union for Foreign Affairs and Security Policy.

Done at Brussels,

*For the Council
The President*