



Brussels, 5.2.2018
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2018/0020 (NLE)

Proposal for a

COUNCIL DECISION

establishing the position to be taken on the Union's behalf in the EPA committee set up by the Stepping Stone Economic Partnership Agreement (EPA) between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part, on the adoption of the rules of procedure of the EPA Committee.

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the EPA committee set up by the Stepping Stone Economic Partnership Agreement (EPA) between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part, on the adoption of the rules of procedure of the EPA committee.

2. CONTEXT OF THE PROPOSAL

2.1. Stepping Stone Economic Partnership Agreement between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part

The Stepping Stone Economic Partnership Agreement (hereinafter known as 'the Agreement') between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other, aims to contribute to reducing and eradicating poverty by developing a consistent trade partnership, promoting a more competitive and diversified economy and stronger growth, trade cooperation and good governance, promoting the gradual integration of Côte d'Ivoire into world trade, improving capacities relating to trade policy and trade-related issues, reinforcing existing relations between the parties, based on solidarity and mutual interest, and promoting the development of the private sector and job creation.

The Agreement was signed in Abidjan on 26 November 2008 and in Brussels on 22 January 2009¹ and has been applied provisionally since 3 September 2016².

2.2. THE EPA COMMITTEE

Article 73 of the Agreement establishes an EPA Committee, which is responsible for the administration of all the fields covered by the Agreement and for the achievement of all the tasks mentioned in the Agreement.

Article 73 of the Agreement states that the EPA Committee determines the rules governing its organisation and operation, that its meetings may be open to third parties, and that the West African Economic and Monetary Union (WAEMU) and the Economic Community of West African States (ECOWAS) commissions may be invited to the EPA Committee meetings.

Decisions of the EPA Committee are adopted by consensus between the parties and after corresponding internal procedures.

The Union and its Member States are parties to the Agreement. The EU parties on the EPA Committee are representatives of the European Commission and the Member States.

2.3. The envisaged act of the EPA Committee

At its first meeting, the EPA Committee must adopt a joint decision establishing the rules of procedure of the EPA Committee (the 'envisaged act').

The aim is to determine, pursuant to Article 73(2) of the Agreement, the rules governing its organisation and operation.

¹ OJ L 59, 3.3.2009, p. 1.

² OJ L 272, 7.10.2016, p. 1.

3. POSITION TO BE ADOPTED ON BEHALF OF THE UNION

This proposal for a Council Decision establishes the Union position on a decision to be adopted by the EPA Committee on the rules of procedure of the EPA Committee.

After consulting each other in advance, the two parties to the Agreement approved and initialled the proposed text at the inaugural meeting of the EPA Committee on 5 April 2017 in Abidjan, Côte d'Ivoire. The draft rules of procedure are in line with Article 73 of the Agreement and similar to rules of procedure adopted by the European Union in the context of other economic partnership agreements.

The draft rules of procedure cover, in particular, the composition and chair of the EPA Committee, its secretariat, the organisation of its meetings, minute-taking and the decisions of the EPA committee, the language regime and expenses associated with EPA Committee meetings.

The obligation to draw up rules of procedure is set out in the Agreement.

The proposal has no impact on the economic, social or environmental policy of the EU or of Côte d'Ivoire.

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 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 EPA Committee is a body set up by the Agreement.

Article 73 of the Agreement provides that the EPA Committee determines the rules governing its organisation and operation.

The act which the EPA Committee is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 72 of the Agreement.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

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

³ Judgment of the Court of Justice of 7 October 2014 in Case C-399/12 *Germany v Council* (OIV), ECLI:EU:C:2014:2258, paragraphs 61-64.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision 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 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

Given the nature of the Agreement, the envisaged act pursues objectives and components in the areas of the common commercial policy and development cooperation. These aspects of the envisaged act are inseparably linked without one being incidental to the other.

The substantive legal basis of the proposed Council Decision, therefore, is Articles 207 and 209 TFEU.

4.3. Conclusion

The legal basis of the proposed Council Decision should be Articles 207 and 209 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 Articles 207 and 209, in conjunction with Article 218(9), thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Economic Partnership Agreement (hereinafter referred to as 'the Agreement') between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part, was signed in Abidjan on 26 November 2008 and in Brussels on 22 January 2009⁴ and has been applied provisionally since 3 September 2016⁵.
- (2) Article 73 of the Agreement establishes an EPA Committee, which is to be responsible for the administration of all the fields covered by the Agreement and for the achievement of all the tasks referred to in the Agreement.
- (3) Article 73 of the Agreement provides that the EPA Committee determines the rules governing its organisation and operation.
- (4) The EPA Committee shall, at its first meeting, adopt a decision on its rules of procedure.
- (5) It is appropriate to establish the position to be taken on behalf of the Union within the EPA Committee, given that the decision of the EPA Committee is binding on the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union at the first meeting of the EPA Committee is based on the draft decision of the EPA Committee annexed to this Decision.

⁴ OJ L 59, 3.3.2009, p. 1.

⁵ OJ L 272, 7.10.2016, p. 1.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*