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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Joint Proposal for a COUNCIL DECISION on the signing, on behalf of the European Union, and provisional application of 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

Delegations will find attached document JOIN(2016) 42 final.

Encl.: JOIN(2016) 42 final



HIGH REPRESENTATIVE
OF THE UNION FOR
FOREIGN AFFAIRS AND
SECURITY POLICY

Brussels, 21.9.2016
JOIN(2016) 42 final

2016/0297 (NLE)

Joint Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, and provisional application of 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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

On 10 February 2014, the Council adopted a Decision authorising the Commission and the High Representative of the Union for Foreign Affairs and Security Policy to open negotiations for a 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’ or ‘PDCA’).

The negotiations began on 29 April 2014 and were concluded, after seven rounds, in March 2016. The Agreement was initialled on 11 March 2016 in Havana, in the presence of the High Representative and the Commissioner for International Development and Cooperation.

The Council was kept informed at all stages of the negotiations. It was consulted in the Working Party on Latin America and the Caribbean (COLAC) and in the Trade Policy Committee. Member States provided comments before the initialling of the Agreement.

The European Parliament was also kept informed throughout the negotiations.

The Commission and the High Representative consider that the objectives set by the Council in its negotiating directives have been met and that the draft Agreement can be submitted for signature.

The present proposal concerns the legal instrument for the signing of the Agreement.

2. THE AGREEMENT

Relations between the European Union and Cuba are currently governed by the EU’s Common Position 96/697/CFSP of 2 December 1996. The PDCA is the first bilateral agreement between the EU and Cuba. It will create a stable framework for EU-Cuba relations, superseding the *ad hoc* dialogue and piecemeal cooperation that have characterised them to date. It will serve as a framework and platform for closer cooperation and dialogue across a broad range of policy areas.

The Agreement aims to consolidate and strengthen links between the parties in the areas of political dialogue, cooperation and trade, on the basis of mutual respect, reciprocity, common interest and respect for their sovereignty. The relationship will be geared to supporting the modernisation of the Cuban economy and society, cooperating bilaterally and in international fora with a view to strengthening human rights and democracy, countering discrimination and achieving the sustainable development goals. The Agreement includes the EU’s standard essential elements, the human rights clause and the non-proliferation clause, the breaching of which can lead to its suspension.

The Agreement builds essentially on a three-pillar structure:

- *political dialogue (Part II)*: the relevant provisions cover a range of policy areas, including human rights, small arms and light weapons, disarmament and non-proliferation of weapons of mass destruction, terrorism, serious crimes of international concern (matters covered include the International Criminal Court), unilateral coercive measures

(i.e. the US embargo), combating the production, trafficking and consumption of illicit drugs, combating racial discrimination, xenophobia and related intolerance, and sustainable development;

- *cooperation and sector policy dialogue (Part III)*: these provisions cover a wide range of areas for future cooperation, including political and legal (governance and human rights, justice, citizens' security and migration), social, environmental and economic and developmental issues, including at the sub-national level. Particular attention is given to regional (Caribbean and Latin American) integration and cooperation; and
- *trade and trade cooperation (Part IV)*: this part codifies the conventional (WTO-related) basis for EU-Cuba trade. In addition, it includes provisions on trade facilitation and cooperation in areas such as technical barriers to trade and standards, with a view to improving prospects for deeper economic relations. It includes a clause envisaging the future development of a stronger framework for investment.

Part V (Institutional and Final Provisions) establishes an institutional framework composed of a Joint Council and a Joint Committee. It also includes a provision on the fulfilment of obligations, which contains measures to be taken and the procedure to be followed should one of the parties fail to fulfil its obligations under the Agreement.

The Agreement is concluded for an unlimited period and can be terminated at six months' notice.

The Agreement should supersede Common Position 96/697/CFSP. In parallel with this joint proposal, the High Representative will submit a proposal for a Council decision repealing Common Position 96/697/CFSP on the understanding that the Council will adopt both measures simultaneously.

3. LEGAL BASIS FOR THE PROPOSED DECISION

3.1. Substantive legal basis

The Court has held¹ that a measure that simultaneously pursues a number of objectives, or that has several components that are inseparably linked without one being incidental to the other, and to which various provisions of the Treaty therefore apply, must be founded, exceptionally, on the various corresponding legal bases, unless the procedures laid down for each legal basis are incompatible with each other.

The Agreement pursues objectives and contains components in the areas of the common foreign and security policy (CFSP), common commercial policy and development cooperation. These aspects of the Agreement are inseparably linked without one being incidental to the other.

The legal basis of the proposed decision should therefore include Articles 37 TEU, 207 TFEU and 209 TFEU.

3.2. Procedural legal basis

Article 218(5) TFEU provides for the adoption of a decision to authorise the signing of an agreement. The second subparagraph of Article 218(8) TFEU provides that the Council is to act unanimously if the agreement covers a field for which unanimity is required for the

¹ Case C-490/10 *Parliament v Council*.

adoption of a Union act. The CFSP is a field in which unanimity is required for the adoption of a Union act.

3.3. Conclusion

The legal basis of the proposed decision should therefore be Articles 37 TEU, 207 TFEU and 209 TFEU, in conjunction with Articles 218(5) TFEU and the second subparagraph of Article 218(8) TFEU. No additional provisions are required as legal basis².

4. NECESSITY OF PROPOSED DECISION

Article 216 TFEU provides that the Union may conclude an agreement with one or more other countries where the Treaties so provide or where this is necessary in order to achieve, in the framework of the Union's policies, one of the objectives referred to in the Treaties, is provided for in a legally binding Union act or is likely to affect common rules or alter their scope.

The Treaties provide for the conclusion of agreements such as this PDCA (see Articles 37 TEU, 207 TFEU and 209 TFEU). Moreover, the conclusion of the PDCA is necessary for the purpose of achieving, in the framework of the Union's policies, objectives referred to in the Treaties, including in the areas of political dialogue, the strengthening of human rights, the non-proliferation of weapons of mass destruction, counter-terrorism, the fight against corruption and organised crime, trade, migration, environment, energy, climate change, transport, employment and social affairs, education and agriculture.

The Agreement must be signed before it can be concluded on behalf of the Union.

² see Case C-377/12 Commission v Council

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the Treaty on the Functioning of the European Union, in particular Articles 207 and 209, in conjunction with Article 218(5) and the second paragraph of Article 218(8), thereof,

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

Whereas:

- (1) On 10 February 2014, the Council authorised the Commission to open negotiations with the Republic of Cuba for a Political Dialogue and Cooperation Agreement.
- (2) Negotiations for the Agreement were successful and it was initialled on 11 March 2016.
- (3) Article 86 of the Agreement provides for its provisional application before its entry into force.
- (4) The Agreement should therefore be signed on behalf of the Union and applied on a provisional basis, subject to its conclusion at a later date,

HAS ADOPTED THIS DECISION:

Article 1

1. The signing of 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 is hereby authorised on behalf of the Union, subject to the conclusion of the said Agreement.
2. The text of the Agreement to be signed is attached to this Decision.

Article 2

The Council Secretariat General shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person(s) indicated by the negotiators of the Agreement.

Article 3

1. In accordance with Article 86 of the Agreement and subject to the notifications provided for therein, the Agreement shall be applied provisionally in whole between the Union and the Republic of Cuba, pending its entry into force.
2. The date from which the Agreement is to be provisionally applied shall be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

Article 4

This Decision shall enter into force on the day following that of its adoption.

Done at Brussels,

For the Council
The President