



Council of the
European Union

Brussels, 15 April 2016
(OR. en)

7984/16

Interinstitutional File:
2016/0113 (NLE)

COASI 57
ASIE 17
AUS 1
WTO 92
COCON 6

PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 14 April 2016

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: JOIN(2016) 8 final

Subject: Joint Proposal for a COUNCIL DECISION on the signing, on behalf of the
European Union, and provisional application of the Framework Agreement
between the European Union and its Member States, of the one part, and
Australia, of the other part

Delegations will find attached document JOIN(2016) 8 final.

Encl.: JOIN(2016) 8 final



EUROPEAN
COMMISSION

HIGH REPRESENTATIVE
OF THE UNION FOR
FOREIGN AFFAIRS AND
SECURITY POLICY

Brussels, 14.4.2016
JOIN(2016) 8 final

2016/0113 (NLE)

Joint Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, and provisional application of the Framework Agreement between the European Union and its Member States, of the one part, and Australia, of the other part

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The present proposal concerns the signature and provisional application of the Framework Agreement between the European Union and its Member States, on the one part and Australia, on the other part ('the Agreement').

On 10 October 2011, the Council adopted a Decision authorising the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy to negotiate a Framework Agreement between the European Union and its Member States, of the one part, and Australia, of the other part. Negotiations began in December 2011 and were successfully concluded with the initialling of the Agreement on 5 March 2015.

This Agreement, similarly to those concluded by the EU with partner countries, includes binding political clauses based on the shared values of the two Parties. Accordingly, the EU and Australia declare their commitments in areas including human rights, non-proliferation and the fight against terrorism. These clauses are fully in line with the standard clauses found in similar agreements. Respect for human rights and democratic principles, and for international law and the principles set out in the Charter of the United Nations constitute the basis for cooperation under the Agreement. The Agreement also covers cooperation on economic and trade matters, including dialogues on economic, trade and investment related areas, agricultural trade, sanitary and phytosanitary issues and other sectoral issues. The Agreement equally includes cooperation in a broad range of policy areas such as health, the environment, climate change, energy, education, culture, labour, disaster management, fisheries and maritime affairs, transport, legal cooperation, money laundering and terrorist financing, organised crime and corruption.

The Agreement contributes significantly to the improvement of the partnership between the EU and Australia, a partnership which is based on joint values and principles, including respect for democratic principles, human rights and fundamental freedoms, the rule of law, international peace and security.

In accordance with the EU's Common approach on the use of political clauses, in cases of particularly serious and substantial violation of the essential elements of the Agreement, the Agreement may be suspended or terminated, and other appropriate measures affecting other agreements may be taken in accordance with the rights and obligations of the Parties under such agreements.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

The attached joint proposal constitutes the legal instrument for the signature and provisional application of the Agreement.

The choice of legal basis for the signing of the Agreement must rest on objective factors amenable to judicial review, which include the aim and content of the measure.

The purpose of this Agreement is *'to establish a strengthened Partnership between the Parties; to provide a framework to facilitate and promote cooperation across a broad range*

of areas of mutual interest; and to enhance cooperation to develop solutions to regional and global challenges' (Article 1 of the Agreement).

The content of the Agreement covers three pillars:

- political cooperation on foreign policy and security issues of common interest, including weapons of mass destruction (WMD), small arms and light weapons (SALW), counter-terrorism, promoting international peace and security and cooperation in multilateral fora;
- cooperation on economic and trade matters, including facilitating bilateral trade and investment flows, and sectoral economic and trade issues, such as sanitary and phytosanitary issues, the reduction of technical barriers to trade, government procurement;
- sectoral cooperation, including in the areas of research and innovation, education and culture, migration, counter terrorism, the fight against organised crime and cybercrime and judicial cooperation and intellectual property.

As such, the Agreement is composed of the following titles: *Purpose and Basis of the Agreement* (Title I), *Political Dialogue and Cooperation on Foreign Policy and Security Matters* (Title II), *Cooperation on Global Development and Humanitarian Aid* (Title III), *Cooperation on Economic and Trade Matters* (Title IV), *Cooperation on Justice, Freedom and Security* (Title V), *Cooperation in the areas of Research, Innovation and the Information Society* (Title VI), *Cooperation in the area of Education and Culture* (Title VII), *Cooperation in the area of Sustainable Development, Energy and Transport* (Title VIII), *Institutional Framework* (Title IX) and *Final Provisions* (Title X).

The provisions set out in the Agreement, in view of both their aim and content, fall within the scope of Article 37 of the Treaty on European Union and Articles 207 and 212 of the Treaty on the Functioning of the European Union.

The Agreement establishes a Joint Committee, the objective of which is to monitor the development of the bilateral relationship between the Parties. The Agreement provides for the possibility of suspending its application in the case of a violation of essential elements.

Pending its entry into force, certain parts of the Agreement, as mutually determined by the EU and Australia, will be provisionally applied in accordance with Article 61 of the Agreement. The scope of the provisional application is without prejudice to the division of competencies between the Union and its Member States as laid down in the Treaties. The date of provisional application will be published in the Official Journal of the European Union.

The Agreement will extend upon and replace the EU-Australia Partnership Framework adopted in 2008. It will create a coherent, legally binding overall framework for the EU's relations with Australia. All existing sector specific agreements remain in place.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

The European External Action Service and the Commission services have been involved in the negotiating process.

Member States have been consulted throughout the negotiating process at meetings of the relevant Council Working Parties. On 25 February 2014, the Permanent Representatives Committee endorsed the text of the Framework Agreement.

The European Parliament has been kept regularly informed throughout the negotiations.

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

Joint Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, and provisional application of the Framework Agreement between the European Union and its Member States, of the one part, and Australia, of the other part

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 Article 212(1), in conjunction with Article 218(5) and the second paragraph of Article 218(8) thereof,

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

Whereas:

- (1) On 10 October 2011, the Council authorised the Commission and the High Representative to open negotiations with Australia on a Framework Agreement to replace the EU-Australia Partnership Framework of 2008.
- (2) The negotiations on the Framework Agreement ('the Agreement') were successfully concluded on 5 March 2015. The Agreement reflects both the historically close relationship and increasingly strong links developing between the Parties, and their desire to further strengthen and extend their relations in an ambitious and innovative way.
- (3) Article 61 of the Agreement provides that the EU and Australia may provisionally apply certain provisions of the Agreement, determined mutually by the two Parties, pending its entry into force.
- (4) The Agreement should therefore be signed on behalf of the EU and applied on a provisional basis in accordance with Article 61 of the Agreement, pending its conclusion at a later date,

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Framework Agreement between the European Union and its Member States, of the one part, and Australia, of the other part, is hereby approved on behalf of the Union, subject to the conclusion of the said Agreement.

The text of the Agreement is annexed to this Decision.

Article 2

1. Pending its entry into force, in accordance with Article 61 of the Agreement and subject to the notifications provided for therein, the following parts of the Agreement shall be applied provisionally between the Union and Australia:
 - Article 3 '*Political Dialogue*'
 - Article 10 '*Cooperation in regional and international organisations*'
 - Article 56 '*Joint Committee*' (with the exception of paragraphs (g) and (h)), to the extent necessary for the purpose of ensuring provisional application of Articles 3 and 10 of the Agreement
 - Title X '*Final Provisions*' (with the exception of paragraphs 1 and 3 of Article 61), to the extent necessary for the purpose of ensuring the provisional application of the parts of Articles 3, 10 and 56 of the Agreement.
2. The date from which the parts of the Agreement shall be provisionally applied shall be published in the Official Journal of the European Union by the Council Secretariat General.

Article 3

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 4

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

Done at Brussels,

*For the Council
The President*