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## PROPOSAL

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

date of receipt: 4 August 2016

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

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No. Cion doc.: JOIN(2016) 38 final

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Subject: Joint Proposal for a COUNCIL DECISION on the conclusion, on behalf of  
the European Union, of the Framework Agreement on Partnership and  
Cooperation between the European Union and the Government of  
Malaysia

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Delegations will find attached document JOIN(2016) 38 final.

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Encl.: JOIN(2016) 38 final



HIGH REPRESENTATIVE  
OF THE UNION FOR  
FOREIGN AFFAIRS AND  
SECURITY POLICY

Brussels, 4.8.2016  
JOIN(2016) 38 final

2016/0243 (NLE)

Joint Proposal for a

**COUNCIL DECISION**

**on the conclusion, on behalf of the European Union, of the Framework Agreement on  
Partnership and Cooperation between the European Union and the Government of  
Malaysia**

## EXPLANATORY MEMORANDUM

### **1. CONTEXT OF THE PROPOSAL**

In November 2004, the Council authorised the Commission to negotiate individual Framework Agreements on Partnership and Cooperation (PCA) with Thailand, Indonesia, Singapore, the Philippines, Malaysia and Brunei. Negotiations with Malaysia started in February 2011 following an agreement to launch the negotiations in October 2010 by Commission President Barroso and Prime Minister Najib Razak. The negotiations were concluded following the 11<sup>th</sup> round of negotiations on 12 December 2015. Both sides initialled the PCA in Putrajaya on 6 April 2016.

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. 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 conclusion. The present joint proposal concerns the legal instrument concluding the Agreement.

### **2. LEGAL ELEMENTS OF THE PROPOSAL**

#### **2.1 The aim and content of the agreement**

The PCA is the first-ever bilateral agreement between the EU and Malaysia and supersedes the current legal framework of the 1980 Cooperation Agreement between the European Economic Community and member countries of the Association of South-East Asian Nations.

The PCA contains legally binding commitments which are central to the EU's foreign policy, including provisions on human rights, non-proliferation, counter-terrorism, the International Criminal Court, migration and taxation.

The PCA broadens considerably the scope for mutual engagement in the economic and trade domain as well as justice and home affairs. The Agreement strengthens the cooperation across a wide spectrum of policy fields, including human rights, non-proliferation of weapons of mass destruction, counter-terrorism, the fight against corruption and organised crime, trade, migration, the environment, energy, climate change, transport, science and technology, employment and social affairs, education, agriculture, culture, etc. It also includes provisions to protect the EU's financial interests. The PCA also has an important trade cooperation section, which paves the way for the conclusion of the ongoing free trade agreement (FTA) negotiations.

Politically, the PCA with Malaysia marks an important step towards strengthening the EU's role in South-East Asia, based on shared universal values such as democracy and human rights. It paves the way for enhancing political, regional and global cooperation between two

like-minded partners. The implementation of the PCA will entail practical benefits for both sides, forming a basis for the promotion of the EU's broader political and economic interests.

The Agreement establishes a Joint Committee that will monitor the development of the bilateral relationship between the Parties. The Agreement includes a non-execution clause that provides for the possibility of suspending the application of the Agreement in case of violation of essential elements.

## **2.2 The legal basis for the proposed decision**

Article 218(6)(a)(iii) TFEU provides that, where an agreement establishes a specific institutional framework by organising cooperation procedures, the Council shall adopt a decision concluding the agreement after obtaining consent of the European Parliament. Moreover, the second subparagraph of Article 218(8) TFEU provides that the Council shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act.

With regard to a measure that simultaneously pursues a number of objectives, or that has several components, which are inseparably linked without one being incidental to the other, the Court has held that, where various provisions of the Treaty are therefore applicable, such a measure will have to be founded, exceptionally, on the various corresponding legal bases, unless the procedure laid down for each legal basis are incompatible with each other (Case C-490/10 Parliament v Council, ECLI: EU:C:2012:525, paragraph 46).

The Agreement pursues objectives and has components in the areas of the Common Foreign and Security Policy, the common commercial policy and development cooperation. These aspects of the Agreement are inseparably linked without one being incidental to the other.

The Common Foreign and Security Policy is a field for which unanimity is required for the adoption of a Union act.

The Agreement establishes an institutional framework by organising cooperation procedures between Malaysia and the EU.

The legal basis of the proposed decision should therefore be Article 37 TEU, Article 207 TFEU and Article 209 TFEU read in conjunction with Article 218(6)(a) TFEU and the second subparagraph of Article 218(8) TFEU. No additional provisions are required as legal basis (see Case C-377/12 Commission v Council, ECLI: EU: C:2014:1903).

## **2.3 The necessity of the proposed decision**

Article 216 TFEU provides that the Union may conclude an agreement with one or more third country where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or 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 the PCA, namely in Articles 37 TEU, 207 TFEU and 209 TFEU. Moreover, the conclusion of the PCA is necessary for the purpose of achieving, within the framework of the Union's policies, objectives referred to in the Treaties, including strengthening human rights, non-proliferation of weapons of mass destruction, counter-terrorism, the fight against corruption and organised crime, trade, migration, the environment, energy, climate change, transport, science and technology, employment and social affairs, education, agriculture.

Joint Proposal for a

**COUNCIL DECISION**

**on the conclusion, on behalf of the European Union, of the Framework Agreement on Partnership and Cooperation between the European Union and the Government of Malaysia**

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, read in conjunction with Article 218(6)(a) and the second subparagraph of Article 218(8) thereof,

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

Having regard to the consent of the European Parliament,

Whereas:

- (1) In accordance with Council Decision [XXX] of [...] <sup>1</sup>, the Framework Agreement on Partnership and Cooperation between the European Union and the Government of Malaysia ('the Agreement') was signed on behalf of the Union on [...], subject to its conclusion at a later date.
- (2) The objective of the Agreement is to strengthen the cooperation across a wide spectrum of policy fields including human rights, non-proliferation of weapons of mass destruction, counter-terrorism, the fight against corruption and organised crime, trade, migration, the environment, energy, climate change, transport, science and technology, employment and social affairs, education and agriculture.
- (3) The Agreement should be approved on behalf of the Union,

HAS ADOPTED THIS DECISION:

*Article 1*

The Framework Agreement on Partnership and Cooperation between the European Union and the Government of Malaysia is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

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<sup>1</sup> OJ L [...], [...], p. [...].

*Article 2*

The High Representative of the Union for Foreign Affairs and Security Policy shall chair the Joint Committee established under Article 50 of the Agreement.

*Article 3*

The President of the Council shall designate the person empowered to proceed, on behalf of the Union, to the notification provided for in Article 59 of the Agreement[, in order to express the consent of the Union to be bound by 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*