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**2017/0172 (NLE)**

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WTO 176  
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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:	27 July 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2017) 396 final
Subject:	Proposal for a COUNCIL DECISION on the position to be adopted, on behalf of the European Union, in the Joint CARIFORUM-EU Council of the Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part, as regards the amendment of Annex IX to Protocol I: Overseas countries and territories

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Delegations will find attached document COM(2017) 396 final.

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Encl.: COM(2017) 396 final



EUROPEAN  
COMMISSION

Brussels, 27.7.2017  
COM(2017) 396 final

2017/0172 (NLE)

Proposal for a

## **COUNCIL DECISION**

**on the position to be adopted, on behalf of the European Union, in the Joint  
CARIFORUM-EU Council of the Economic Partnership Agreement between the  
CARIFORUM States, of the one part, and the European Community and its Member  
States, of the other part, as regards the amendment of Annex IX to Protocol I: Overseas  
countries and territories**

## **EXPLANATORY MEMORANDUM**

### **1. SUBJECT-MATTER OF THE PROPOSAL**

The present proposal concerns the decision establishing the position to be adopted on behalf of the Union in the Joint CARIFORUM-EU Council of the Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part, in connection with the envisaged adoption of a Decision amending Annex IX to Protocol I of that Agreement on Overseas Countries and Territories.

### **2. CONTEXT OF THE PROPOSAL**

#### **2.1. The Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part**

The Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part ('the Agreement') aims to contribute to the reduction and eventual eradication of poverty through the establishment of a trade partnership consistent with the objective of sustainable development, the Millennium Development Goals and the Cotonou Agreement.

The Agreement was signed on 15 October 2008, and is provisionally applied as of 29 December 2008.

#### **2.2. The Joint CARIFORUM-EU Council**

The Joint CARIFORUM-EU Council shall generally be responsible for the operation and implementation of the Agreement and shall monitor the fulfilment of its objectives. It meets at ministerial level at regular intervals not exceeding a period of two years. In order to attain the objectives of this Agreement, it shall have the power to take decisions in respect of all matters covered by the Agreement. These decisions taken shall be binding on the Parties and the Signatory CARIFORUM States, which shall take all the measures necessary to implement them in accordance with each Party's and Signatory CARIFORUM State's internal rules.

#### **2.3. The envisaged act of the Joint CARIFORUM-EU Council**

On 17 November 2017 during its fourth meeting, the Joint CARIFORUM-EU Council is to adopt a Decision regarding the amendment of Annex IX to Protocol I that includes the list of Overseas Countries and Territories (OCTs) ('the envisaged act').

The purpose of the envisaged act is to ensure that the list of OCTs in Annex IX to Protocol I of the Agreement is updated and harmonised with Annex II TFEU, considering the change of status of three territories in the list.

Saint Barthélemy (FR) became an OCT associated with the European Union on 1 January 2012. Mayotte (FR) became an Outermost Region (OR) of the European Union on 1 January 2014. Council Decision [2013/755/EU](#) on the association of the OCTs with the European Union, which applies to all the OCTs listed in Annex II to the TFEU, also entered into force

on 1 January 2014. The list of OCTs in Annex IX to Protocol I of the Agreement should therefore be updated accordingly.

The envisaged act shall become binding on the parties in accordance with Article 229 paragraphs 1 and 2 of the Agreement.

### **3. POSITION TO BE ADOPTED ON BEHALF OF THE UNION**

The Agreement was signed on 15 October 2008, and it is being provisionally applied as of 29 December 2008.

The proposed position to be adopted on behalf of the Union aims at making the envisaged act binding.

### **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.’

##### *4.1.2. Application to the present case*

The Joint CARIFORUM-EU Council is a body set up by the Agreement.

The act which the Joint CARIFORUM-EU Council is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 229 paragraphs 1 and 2 of the Agreement.

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

The procedural legal basis for the proposed decision, therefore, 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 behalf of the Union.

##### *4.2.2. Application to the present case*

The main objective and content of the envisaged act relate to the common commercial policy.

The substantive legal basis of the proposed decision, therefore, is Article 207 TFEU.

### **4.3. Conclusion**

The legal basis of the proposed decision should be Article 207 in conjunction with Article 218(9) TFEU.

Proposal for a

## **COUNCIL DECISION**

**on the position to be adopted, on behalf of the European Union, in the Joint CARIFORUM-EU Council of the Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part, as regards the amendment of Annex IX to Protocol I: Overseas countries and territories**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part<sup>1</sup> ('the Agreement'), was signed on 15 October 2008, and is provisionally applied as of 29 December 2008.
- (2) Pursuant to Article 229 paragraphs 1 and 2 of the Agreement, the Joint CARIFORUM-EU Council may adopt decisions that shall be binding on the Parties and the Signatory CARIFORUM States, which shall take all the measures necessary to implement them in accordance with each Party's and Signatory CARIFORUM State's internal rules.
- (3) The Joint CARIFORUM-EU Council during its fourth meeting on 17 November 2017 is to adopt a decision on the amendment of Annex IX to Protocol I that include the list of Overseas Countries and Territories (OCTs).
- (4) It is appropriate to establish the position to be adopted on behalf of the Union in the Joint CARIFORUM-EU Council, as the decision will be binding upon the Union.
- (5) The attached proposal for a Council Decision constitutes the legal instrument for the amendment of Annex IX to Protocol I of the Agreement. The purpose of this amendment is to ensure a harmonised and updated presentation of the list of OCTs of Annex IX to Protocol I of the Agreement with Annex II TFEU, considering the change of status of three territories.

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<sup>1</sup> OJ L 289, 30.10.2008, p. 3.

- (6) As the act of the Joint CARIFORUM-EU Council will amend Annex IX to Protocol I of the Agreement, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.
- (7) In the Joint CARIFORUM-EU Council, the Union is to be represented by the Commission in accordance with Article 17(1) TEU. The Member States are to support the position of the Union in accordance with Article 4(3) TEU,

HAS ADOPTED THIS DECISION:

*Article 1*

The position to be adopted, on behalf of the Union, in the fourth meeting of the Joint CARIFORUM-EU Council on 17 November 2017 shall be based on the draft Decision of the Joint CARIFORUM-EU Council attached to this Decision.

*Article 2*

This Decision is addressed to the Commission and the Member States.

Done at Brussels,

*For the Council  
The President*