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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	31 October 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	JOIN(2017) 40 final
Subject:	Joint Proposal for a COUNCIL DECISION on the position to be adopted, on the Union's behalf in the Joint Ministerial Committee and the Joint Cooperation Committee established by the Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Canada of the other part, as regards the adoption of the Rules of Procedure of the Joint Ministerial Committee, the Terms of Reference of the Joint Cooperation Committee and the Terms of Reference of the subcommittees established by the Joint Cooperation Committee.

Delegations will find attached document JOIN(2017) 40 final.

Encl.: JOIN(2017) 40 final



EUROPEAN
COMMISSION

HIGH REPRESENTATIVE
OF THE UNION FOR
FOREIGN AFFAIRS AND
SECURITY POLICY

Brussels, 31.10.2017
JOIN(2017) 40 final

2017/0279 (NLE)

Joint Proposal for a

COUNCIL DECISION

on the position to be adopted, on the Union's behalf in the Joint Ministerial Committee and the Joint Cooperation Committee established by the Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Canada of the other part, as regards the adoption of the Rules of Procedure of the Joint Ministerial Committee, the Terms of Reference of the Joint Cooperation Committee and the Terms of Reference of the subcommittees established by the Joint Cooperation Committee.

EXPLANATORY MEMORANDUM

1. SUBJECT-MATTER OF THE PROPOSAL

The present proposal concerns the decision establishing the position to be adopted on the Union's behalf in the Joint Ministerial Committee and the Joint Cooperation Committee established by the Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Canada of the other part, in connection with the envisaged adoption of the Rules of Procedure of the Joint Ministerial Committee, the Terms of reference of the Joint Cooperation Committee and the Terms of reference of the subcommittees established by the Joint Cooperation Committee.

2. CONTEXT OF THE PROPOSAL

2.1. The EU – Canada Strategic Partnership Agreement

The Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Canada, of the other part ('the Agreement') aims to upgrade the EU – Canada strategic relationship by providing a comprehensive framework of cooperation on foreign and security policy issues and in a large number of sectoral policy areas. The Agreement is underpinned by EU's and Canada's shared values and principles as regards democracy, human rights, peace and security, and the rule of law, and is also designed to intensify and expand political dialogue and project those values in the world. To these ends the Agreement establishes structured consultation mechanisms.

The Agreement is being applied provisionally since 1 April 2017.

2.2. Joint Ministerial Committee

The Joint Ministerial Committee (JMC) is established by Article 27(2) of the Agreement. Its main task is to review the overall cooperation between EU and Canada and provide strategic guidance to facilitate implementation of the Agreement, ensure coherence and expand its scope where possible.

In particular, the JMC will take stock of the state of cooperation on the basis of an annual report from the Joint Cooperation Committee. It will make recommendations on the work of the Joint Cooperation Committee including on new areas for future cooperation and the resolution of disputes arising from the implementation of this Agreement, in accordance with Article 28 of the Agreement.

The JMC may take decisions in order to attain the objectives of the Agreement. Decisions will be adopted following the completion by the Parties of the Agreement of their respective internal procedures in accordance with their laws and regulations.

The JMC is composed of representatives of the Parties and is co-chaired by the Minister of Foreign Affairs of Canada and the High Representative of the Union for Foreign Affairs and Security Policy. It meets on an annual basis, or as mutually agreed as circumstances require. The Joint Ministerial Committee adopts its Rules and Procedures.

2.3. Joint Cooperation Committee

The Joint Cooperation Committee (JCC) is established by Article 27(3) of the Agreement. Its main tasks are to:

- recommend priorities in relation to cooperation between the Parties;
- monitor the developments in the strategic relationship between the Parties;
- exchange views and make suggestions on any issues of common interest;
- make recommendations for efficiencies, greater effectiveness and synergies between the Parties;
- ensure that the Agreement operates properly;
- provide an annual report to the JMC on the state of the relationship; and
- establish sub-committees to assist it in the performance of its duties.

The JCC is composed of representatives of both Parties and is co-chaired by one senior official from the Union and one from Canada. It meets once a year in the Union and Canada alternately. It agrees on its own Terms of Reference. The JCC may request committees and similar bodies established under existing bilateral agreements between the Parties to provide regular updates to the JCC on their activities as part of an ongoing, comprehensive overview of the relationship between the Parties.

2.4. Envisaged act of the Joint Ministerial Committee

The JMC is to adopt a decision regarding the adoption of the Rules of Procedure of the JMC ('the envisaged act').

The purpose of the envisaged act is to adopt, in accordance with Article 27(2)(b)(iv) of the Agreement, the Rules of Procedure governing the functioning of the JMC to allow for the implementation of the Agreement.

2.5. Envisaged acts of the Joint Cooperation Committee

The JCC is to adopt its own Terms of Reference and the Terms of Reference of the subcommittees ('the envisaged acts').

The purpose of the envisaged acts is to adopt, in accordance with Articles 27(3)(c) and 27(3)(b)(viii) of the Agreement, the Terms of Reference underpinning the functioning of the JCC and the Terms of Reference of the sub-committees established by the JCC to allow for the implementation of the Agreement.

3. POSITION TO BE ADOPTED ON BEHALF OF THE UNION

The position to be adopted on behalf of the Union should aim at adopting the Rules of Procedure of the JMC, the Terms of Reference of the JCC and the Terms of Reference of the sub-committees established by the JCC, as provided for by the Agreement.

4. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

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 notion 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*’.¹

4.1.2. Application to the present case

The JMC and the JCC and its sub-committees are bodies set up by the Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Canada, of the other part.

The acts set out in the annexes of this decision which the JMC and JCC is called upon to adopt are binding. This is because in accordance with Articles 27(2)(b)(iv) and (v) of the Agreement, the JMC is to adopt its own Rules of Procedure and decisions with the approval of both Parties, while in accordance with Article 27(3)(b)(viii) and (c), the JCC is to establish sub-committees and agree on its own Terms of Reference.

The envisaged acts do not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision 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 the Union's behalf. 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 under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

With regard to an envisaged act that simultaneously pursues a number of objectives, or has several components, which are inseparably linked without one being incidental to the other, the substantive legal basis of a decision under Article 218(9) TFEU will have to include, exceptionally, the various corresponding legal bases.

4.2.2. Application to the present case

The main objective and content of the envisaged acts relate to the implementation of the Agreement.

The Agreement pursues objectives and has components in the areas of the Common Foreign and Security Policy and technical cooperation with developed countries. These aspects of the Agreement are inseparably linked without one being incidental to the other. The signing of the Agreement and provisional application was based on Article 37 of the Treaty on European Union (TEU) and Article 212(1) of the Treaty on the Functioning of the European Union (TFEU).

The envisaged acts should therefore be based on the same substantive legal bases.

5. CONCLUSION

In the light of the above, the legal basis of the proposed decision should therefore be Article 37 TEU and Article 212(1) TFEU read in conjunction with Article 218(9) TFEU.

¹ Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraphs 61-64.

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on the position to be adopted, on the Union's behalf in the Joint Ministerial Committee and the Joint Cooperation Committee established by the Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Canada of the other part, as regards the adoption of the Rules of Procedure of the Joint Ministerial Committee, the Terms of Reference of the Joint Cooperation Committee and the Terms of Reference of the subcommittees established by the Joint Cooperation Committee.

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 212(1) read in conjunction with Article 218(9) thereof,

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

Whereas:

- (1) The Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Canada, of the other part ('the Agreement') was signed in Brussels on 30 October 2016 and it has been applied provisionally since 1 April 2017.
- (2) Article 27(2) and (3) of the Agreement establish a Joint Ministerial Committee, and a Joint Cooperation Committee to facilitate the implementation of the Agreement.
- (3) Article 27(2)(b)(iv) of the Agreement provides that the Joint Ministerial Committee is to adopt its Rules and Procedures and Article 27(3)(c) of the Agreement provides that the Joint Cooperation Committee is to agree on its own Terms of Reference. Article 27(3)(b)(viii) provides that the Joint Cooperation Committee is to establish subcommittees to assist it in the performance of its duties.
- (4) Article 27(2)(b)(ii) of the Agreement provides that the Minister of Foreign Affairs of Canada and the High Representative of the Union for Foreign Affairs and Security Policy are to co-chair the Joint Ministerial Committee. Article 27(3)(c) provides that the Joint Cooperation Committee is to be co-chaired by one senior official from Canada and one senior official from the Union.
- (5) In order to ensure the effective implementation of the Agreement, the Rules of Procedure of the Joint Ministerial Committee and the Terms of Reference of the Joint Cooperation Committee and of its sub-committees should be adopted.
- (6) The Union's position in the Joint Ministerial Committee and the Joint Cooperation Committee should therefore be based on the attached draft texts of the Rules of Procedure of the Joint Ministerial Committee and the Terms of reference of the Joint Cooperation Committee and of its sub-committees.

HAS ADOPTED THIS DECISION:

Article 1

- (1) The position to be adopted on the Union's behalf in the EU – Canada Joint Ministerial Committee shall be based on the text of the Rules of Procedure of the Joint Ministerial Committee attached to this Decision.
- (2) The position to be adopted on the Union's behalf in the EU – Canada Joint Cooperation Committee shall be based on the text of the Terms of Reference of the Joint Cooperation Committee and the text of the Terms of reference of the sub-committees attached to this decision.

Article 2

This decision is addressed to the Commission and the High Representative of the Union for Foreign Affairs and Security Policy.

Done at Brussels,

*For the Council
The President*