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PROPOSAL

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

date of receipt: 9 March 2018

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

No. Cion doc.: COM(2018) 121 final

Subject: Proposal for a COUNCIL DECISION on the position to be taken on behalf
of the European Union in the ACP-EU Council of Ministers regarding the
revision of Annex IC of the ACP-EU Partnership Agreement

Delegations will find attached document COM(2018) 121 final.

Encl.: COM(2018) 121 final



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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the ACP-EU Council of Ministers regarding the revision of Annex IC of the ACP-EU Partnership Agreement

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the ACP-EU Council of Ministers in connection with the envisaged adoption of a decision of the Council of Ministers concerning the reassignment of funds towards the allocation financing the intra-ACP and interregional cooperation with many or all of the ACP states.

2. CONTEXT OF THE PROPOSAL

2.1. The ACP-EU Partnership Agreement ("the Cotonou Agreement")

The ACP-EU Partnership Agreement¹ ('the Agreement') aims to set up an association between the European Union and the ACP States. The Agreement entered into force on 01 April 2003 and has been revised in 2005 and 2010 in accordance with the revision clause to re-examine the Agreement every five years.

In pursuance of article 95(2) of the Agreement, financial protocols are defined for a given period. Such financial protocols lay down the overall amount of the EU's financial assistance.

For the period 2014-2020, the financial protocol was adopted by Decision No 1/2013 of the ACP-EU Council of Ministers of 7 June 2013²: it takes the form of Annex IC to the Agreement.

Article 100 of the ACP-EU Partnership Agreement states that its Annexes may be revised, reviewed and/or amended by the ACP-EU Council of Ministers on the basis of a recommendation from the ACP-EU Development Finance Cooperation Committee.

Point 2(b) of Article 15 of the Agreement states that the functions of the ACP-EU Council of Ministers shall be to take the decisions necessary for the implementation of the provision of 'the Agreement'.

2.2. The ACP-EU Council of Ministers

The ACP-EU Council of Ministers can take decisions that are legally binding on the Parties. The Council of Ministers comprises, on the one hand, the members of the Council of the European Union and, on the other hand, a member of the government of each ACP State. The office of the President of the Council of Ministers is held alternatively by a member of the Council of the European Union and a member of the government of an ACP State. The Council meet as a rule once a year on the initiative of the President and whenever it seems necessary, in a form and a geographical composition appropriate to the issues to be addressed.

¹ Agreement (OJ L317, 15.12.2000, p. 3) as amended by the Agreement signed in Luxembourg on 25 June 2005 (OJ L209, 11.8.2005, p.27) and by the Agreement signed in Ouagadougou on 22 June 2010 (OJ L287, 4.11.2010, p 3).

² Decision No 1/2013 of the ACP-EU Council of Ministers of 7 June 2013 adopting a protocol on the multiannual financial framework for the period 2014-2020 under the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, OJ L-173 of 26.6.2013;

2.3. The envisaged act of the ACP-EU Council of Ministers

The ACP-EU Council of Ministers is to adopt a decision regarding the modification of Annex IC of the ACP-EU Partnership Agreement ('the envisaged act').

The Decision will apply to Annex IC, points 2(a) and 2(b) and concern the reassignment of funds towards the allocation financing the intra-ACP and interregional cooperation with many or all of the ACP states.

On the one hand, EUR 425 million will be deducted from the allocation financing the national and regional indicative programmes, referred to in point 2(a) of Annex IC.

On the other hand, the allocation financing the intra-ACP and interregional cooperation, referred to in point 2(b) of Annex IC will be increased by EUR 425 million to contribute to the financing of two initiatives, namely the Spotlight initiative and the Global Partnership for Education (GPE).

The Spotlight initiative is a joint EU-UN global action aimed at preventing and responding to violence against women and girls in targeted countries.

The GPE's overall objective is to mobilise global and national efforts to achieve quality education and learning for all, through inclusive partnership, a focus on effective education systems, and financing for basic education.

Funding will be allocated through the EDF, from the general reserve for National and Regional Indicative Programmes to the Intra-ACP cooperation as follows:

- An amount of EUR 350 million is allocated to the Spotlight initiative;
- An amount of EUR 75 million is allocated to the GPE.

The envisaged act will become binding on the parties in accordance with Article 15.3 of the Agreement which provides that 'The ACP-EU Council of Ministers may take decisions that are binding on the Parties'.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

According to Article 100 of the ACP-EU Partnership Agreement, the ACP-EU Council of Ministers, may revise, review and/or amend the Agreement on the basis of a recommendation from the ACP-EU Development Finance Cooperation Committee.

The European Union is strongly committed to gender equality, the empowerment of women of all ages and the elimination of all forms of violence against women and girls around the world.

The Spotlight initiative is a joint EU-UN global action aimed at preventing and responding to violence against women and girls in targeted countries. It was officially launched during the UN General Assembly 72nd session, on 20 September 2017.

On the basis of evidence, the Spotlight initiative will focus on particular forms of sexual and gender based violence that are prevalent or prominently emerge in specific regions, thus contributing to reaching the SDG 5 on "Gender Equality".

A Multi-Donor Fund mechanism will be set up for the Gender initiative, managed by the UN SG Executive office. Funding will be allocated through the EU Development Cooperation Instrument (DCI) for Latin America and Asia and the European Development Fund (EDF) for ACP countries.

The GPE initiative supports the achievement of three high-level goals. The first two goals are equity including gender equality and inclusion, and quality teaching and learning. The third goal is building stronger educational systems with the capacity to deliver equitable, quality educational services. The initiative was created in 2012 to deliver on global education commitments made at the Dakar World Education Forum and the Millennium Summit.

The GPE is a multi-stakeholder partnership and funding platform that aims to strengthen education systems in low – and lower middle income countries by improving education sector plans and their implementation.

The EU, together with the ACP Group of States, has been supporting the GPE since 2005. Continuing to fund this partnership fits well within the EU-ACP policy framework.

Both initiatives are and will be in line with the European Consensus on Development that promotes a more comprehensive approach to human development. For education, this approach means more support for inclusive and equitable quality education for all and life-long learning (SDG 4), with a strong focus on promoting gender equality (SDG 5).

The Commission is thus proposing the Council to adopt the present decision.

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.’*

The concept 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’*³.

4.1.2. Application to the present case

The **ACP-EU Council of Ministers** is a body set up by an agreement, namely the Cotonou Agreement.

The act which the **ACP-EU Council of Ministers** is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 100 of the Cotonou Agreement.

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

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

³ Judgment of the Court of Justice of 7 October 2014, Germany v Council, **Case C-399/12**, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

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 taken 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.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to 'development cooperation'. Therefore, the substantive legal basis of the proposed decision is Article 209(2) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 209(2) TFEU, in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the **ACP-EU Council of Ministers** will apply to the Annex IC of the Cotonou Agreement, it is appropriate to publish it in the Official Journal of the European Union after its adoption.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the ACP-EU Council of Ministers regarding the revision of Annex IC of the ACP-EU Partnership Agreement

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 209 thereof in conjunction with Article 218 (9) thereof,

Having regard to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States of the other part, (hereinafter referred to as the 'ACP-EU Partnership Agreement')⁴,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The partnership agreement between the members of the African, Caribbean and Pacific Group of States ('ACP') of the one part, and the European Community and its Member States, of the other part ('the ACP-EU Partnership Agreement'), was signed in Cotonou on 23 June 2000. The ACP-EU Partnership Agreement entered into force on 1 April 2003 and was revised in 2005 and 2010 in accordance with the revision clause to re-examine the Agreement every five years.
- (2) In pursuance of article 95(2) of the ACP-EU Partnership Agreement, financial protocols are defined for a given period. Such financial protocols lay down the overall amount of the EU's financial assistance. For the period 2014-2020, the financial protocol was adopted by Decision No 1/2013 of the ACP-EU Council of Ministers of 7 June 2013⁵, in the form of Annex IC to the Agreement.
- (3) Pursuant to Article 100 of the ACP-EU Partnership Agreement, the ACP-EU Council of Ministers, may revise, review and/or amend the Agreement on the basis of a recommendation from the ACP-EU Development Finance Cooperation Committee.
- (4) The Union should support the reassignment of funds under Annex IC of the ACP-EU Partnership Agreement from the allocation to finance national and regional indicative

⁴ Agreement (OJ L317, 15.12.2000, p. 3) as amended by the Agreement signed in Luxembourg on 25 June 2005 (OJ L209, 11.8.2005, p.27) and by the Agreement signed in Ouagadougou on 22 June 2010 (OJ L287, 4.11.2010, p 3).

⁵ Decision No 1/2013 of the ACP-EU Council of Ministers of 7 June 2013 adopting a protocol on the multiannual financial framework for the period 2014-2020 under the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, OJ L-173 of 26.6.2013;

programmes, towards the allocation to financing the intra-ACP and interregional cooperation with many or all of the ACP states.

- (5) It is appropriate to establish the position to be taken on the Union's behalf in the ACP-EU Council of Ministers as the Decision will be binding on the Union.

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be taken on the Union's behalf in the ACP-EU Council of Ministers regarding the revision of Annex IC of the ACP-EU Partnership Agreement shall be based on the draft act of the ACP-EU Council of Ministers attached to this Decision.
2. Minor changes to the draft Decision may be agreed by the representatives of the Union in the ACP-EU Council of Ministers without further decision of the Council.

Article 2

After its adoption, the Decision of the ACP-EU Council of Ministers shall be published in the *Official Journal of the European Union*.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*