



Brussels, 11.6.2018
COM(2018) 479 final

2018/0257 (NLE)

Proposal for a

COUNCIL DECISION

relating to the signature, on behalf of the European Union, of the Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco on the amendment of Protocols 1 and 4 to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

For nearly half a century, the European Union and Morocco have built a rewarding, multi-faceted partnership, most obviously reflected by the Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part¹ ('the EU-Morocco Association Agreement'), which entered into force in 2000. Liberalisation measures on agricultural products, processed agricultural products, fish and fishery products were introduced into the Association Agreement by an Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco² ('the Liberalisation Agreement'), which entered into force in 2012.

It was also under this special partnership that Morocco was awarded 'advanced status' in 2008, which enshrines the strength of the bilateral links between the parties and their shared ambitions and commitments with a view to the advancement of their joint initiatives, such as good governance and political and socio-economic reforms.

At the same time, the Union has consistently reaffirmed its commitment to resolving the dispute in Western Sahara. Although it has not recognised Morocco's sovereignty over Western Sahara, it fully supports the efforts made by the United Nations Secretary-General and his personal envoy to help the parties reach a fair, lasting and mutually acceptable political solution that would ensure the self-determination of the people of Western Sahara under agreements aligned with the principles and objectives of the Charter of the United Nations, as set out in the Resolutions of the UN Security Council, in particular Resolutions 2152 (2014) and 2218 (2015).

In its judgment of 21 December 2016 in [Case C-104/16 P](#)³, the Court of Justice of the European Union ruled that the Association Agreement and the Liberalisation Agreement between the Union and Morocco did not apply to Western Sahara.

Following the Court judgment, the practice of applying the trade preferences set out in the Association Agreement and its protocols on a de facto basis to products originating in Western Sahara, a non-self-governing territory, could not continue, unless Protocol 1 (access to the EU market for Moroccan agricultural products, processed agricultural products, fish and fishery products) and Protocol 4 (concerning rules of origin) were amended to establish that products originating in Western Sahara should be treated in the same way as those from Morocco.

On 29 May 2017, the Council authorised the Commission to open negotiations with a view to providing a legal basis to grant preferences to products originating in Western Sahara, and adopted negotiating guidelines. Two rounds of talks were held: the first on 15 and

¹ OJ L 70, 18.3.2000, p. 2.

² Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco concerning reciprocal liberalisation measures on agricultural products, processed agricultural products, fish and fishery products, the replacement of Protocols 1, 2 and 3 and their Annexes and amendments to the Association Agreement (OJ L 241, 7.9.2012, p. 2).

³ Judgment of the Court of Justice of 21 December 2016, *Council of the European Union v Polisario Front*, C-104/16 P, ECLI:EU:C:2016:973.

16 June 2017, and the second on 18 July 2017. The lead negotiators initialled the draft agreement on 31 January 2018.

This proposal applies amendments to Protocol 4 and Protocol 1 of the EU-Morocco Association Agreement with a view to respecting the obligations of the Court judgment of 21 December 2016 and providing a legal basis for granting preferences to products from Western Sahara.

The aim of the proposal is to avoid disrupting trade with Western Sahara while maintaining access to the EU market at a stable level, since no new preferences are being granted. In particular, it aims to foster the economic development of Western Sahara by treating its exports to the EU the same as exports of products of Moroccan origin. These measures will prevent Western Sahara suffering a competitive disadvantage and missing out on investment opportunities compared with neighbouring countries, which benefit from tariff preferences on different grounds (association agreements or under the Generalised System of Preferences).

Finally, it should be emphasised that the judgment delivered by the Court of Justice on 27 February 2018 in *Case C-266/16* relates to the partnership agreement between the EU and Morocco in the fishing industry. This is a separate issue from the matter of market access, which is covered by the Association Agreement and therefore this proposal.

Any agreement is understood to be purely provisional, pending the resolution of the dispute through the UN and in accordance with the relevant resolutions of the UN Security Council. On this point, the Agreement states that it is concluded without prejudice to the respective positions of the European Union and Morocco with regard to the status of Western Sahara.

- **Consistency with existing policy provisions in the policy area**

This proposal complies with current trade policy. It should be noted that, until 21 December 2016 - the date of the Court judgment in *Case C-104/16 P* - the Customs authorities applied preferences on a de facto basis to products from Western Sahara certified to be of Moroccan origin. No new trade preferences will be granted to Morocco or to Western Sahara in addition to those it received on a de facto basis before 21 December 2016, since the aim is simply to extend the geographical scope of the preferences, not to modify their volume or the products they cover.

The proposal is in line with the overall aims of the European Neighbourhood Policy in that it helps to improve economic and trade relations in the southern neighbourhood in a spirit of close cooperation. It is also in line with the EU's overall policy on Morocco, which seeks to strengthen a special partnership with it without prejudicing the outcome of the procedure implemented by the UN in relation to Western Sahara.

The fact that the scope of the trade preferences can be wider than the territories of the contracting parties is not unprecedented, since the EU-Morocco Association Agreement comprises two joint declarations indicating that products originating in the Republic of San Marino and Andorra 'shall be accepted by Morocco as originating in the Community within the meaning of the Agreement'.

- **Consistency with other Union policies**

The tariff preferences granted to Morocco by Protocols 1 and 4 can be extended to cover products from Western Sahara under certain conditions, provided that the appropriate legal basis exists. Establishing the legal basis is the specific purpose of the appended draft

agreement. Amending the relevant Protocols to the Association Agreement also allows EU tariff preferences to be granted on the basis of an assessment of the advantages for local populations and respect for human rights.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Given that the matter is related to the Common Commercial Policy, the legal basis that permits the Agreement to be signed is Article 207 of the Treaty on the Functioning of the European Union (TFEU), in conjunction with Article 218(5).

- **Subsidiarity (for non-exclusive competence)**

The Union has exclusive competence for the Common Commercial Policy (Article 3(1) TFEU) and, in accordance with Article 5(3) TEU, the principle of subsidiarity does not apply to areas of exclusive competence.

- **Proportionality**

The proposal constitutes a proportionate response to the matter raised. The Agreement will not change the degree of access to the EU market for products originating in Western Sahara that existed before the Court judgment of 21 December 2016. The rules of origin are defined in Protocol 4 of the Association Agreement; amendments are made to this protocol to achieve the pursued aim and respond within a reasonable time frame to current commercial uncertainty affecting exports to the Union of products from Western Sahara, without prejudice to the procedure implemented by the UN in relation to Western Sahara or the final outcome of the dispute.

Consequently, the Council's draft proposal relating to the signature, on behalf of the European Union, of the Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco on the amendment of Protocols 1 and 4 to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, does not go beyond what is necessary or appropriate in order to achieve the stated objectives.

- **Choice of instrument**

The protocols in question can only be amended by agreement between the parties. This also relates to the cooperation between the authorities required in order to implement the trade preferences.

The Agreement takes the form of an Exchange of Letters between the European Union and the Kingdom of Morocco. An agreement between the European Union and the Kingdom of Morocco is the only means of ensuring that the import of products originating in Western Sahara can benefit from preferential origin, given that only the Moroccan authorities are able to ensure compliance with the rules necessary for the granting of such preferences.

The draft agreement includes the possibility of applying the agreement provisionally before it has been concluded. However, this provisional application is not deemed necessary.

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

- **Impact assessment**

As requested by the Council, the Commission assessed the possible impact of the Agreement on sustainable development, particularly with regard to the advantages and disadvantages for the people concerned arising from the tariff preferences given to products from Western Sahara.

The Commission faced a variety of methodological constraints. Firstly, generally speaking, the statistical information concerning Western Sahara is still incomplete and uneven. A further constraint relates to the prevailing practice before 21 December 2016, the date of the judgment of the EU Court of Justice. Since goods from Western Sahara imported into the Union benefited on a de facto basis from the same preferences as goods originating in Morocco, it is not generally possible to distinguish Moroccan from Western Saharan imports. Moreover, the expression ‘people concerned’ can be interpreted in different, even conflicting, ways⁴. It can refer to the groups of people living in the region, which is the Moroccan interpretation and makes no distinction between inhabitants based on ethnicity or community. It can also refer to specific inhabitants, based on ethnicity or community (Sahrawis); in this case, the people concerned may, at least in part, be living outside Western Sahara (refugees) and current inhabitants who settled recently may not be included. This is the interpretation of the Polisario Front in particular.

Although the people of Western Sahara have the right to self-determination, firstly, it is not for the European Union to conduct a census on them, and secondly, the UN documents concerning economic activities in non-self-governing territories also refer to the inhabitants of these regions, in relation to socio-economic benefits.⁵ Bearing in mind these differences and the difficulties in examining the impact on a group of people whose contours are yet to be defined, given the fact that the preferences extend to products from a given territory and that the advantages will logically therefore be mainly associated with that territory, the assessment focused on the benefits for the people of Western Sahara.

The assessment criteria are based on the relevant parameters under Article 73 of the Charter of the United Nations, which states that those who ‘have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount’, and that they ‘accept as a sacred trust the obligation to promote to the utmost [...] the well-being of the inhabitants of these territories’.

The assessment thus focuses on trade flows originating in Western Sahara, more specifically fishery products, agricultural products and phosphates, as well as the effects on natural resources, employment and human rights. It is based on forecasts as well as on an assessment of existing data. Given the particular circumstances in Western Sahara and the difficulty for the Union as a third party to conduct investigations on its territory, the Commission strove to

⁴ It should be noted that while, for example, the French version of the negotiating directives talks of ‘populations’, the English version refers to ‘people’. This reflects varying terminology used in UN documents. For example, in its conclusions, the French version of the Advisory Opinion of 16 October 1975 of the International Court of Justice uses the term ‘populations’, while the English version uses ‘people’.

⁵ Resolution adopted by the General Assembly on 7 December 2017 on economic and other activities which affect the interests of the peoples of the Non-Self-Governing Territories (document A/RES/72/92 of 14 December 2017).

obtain objective and reliable data mainly by communicating with Morocco, civil society and the Polisario Front and by referring to publicly-available information. The Commission also took all other available information into consideration. In certain cases, the information is nonetheless inconclusive and limited.

Consultation of interested parties

The European Commission and the European External Action Service conducted a wide-ranging consultation with the people concerned in Western Sahara.

This consultation revealed a majority view in favour of amending the liberalisation agreement to extend its tariff preferences to products from Western Sahara. A majority of those consulted reported a positive impact on the population as a whole, emphasising in particular the decisive leverage effect of such trade preferences in terms of private investment. They claimed that privileged access to European markets would improve the business environment as well as European direct investment, thereby underpinning the new participatory and sustainable development model in Western Sahara. However, the majority also felt that persistent legal uncertainty affecting trade flows with Western Sahara would greatly undermine socio-economic development, as already evidenced by the slowdown in trade relations between Western Sahara and certain Member States and in certain industries. According to those consulted, restricting Western Sahara's access to foreign markets and investment would only hinder the development of domestic economic activities and jeopardise certain socio-economic and political changes just when the development of Western Sahara finally appears to be set for take-off.

The Polisario Front, which was also consulted, and a number of non-governmental organisations, expressed negative views. That said, these criticisms were not motivated by specific negative effects on the people concerned in Western Sahara from the application of the planned tariff preferences, but by a fear that the preferences would maintain the status quo in Western Sahara, which they consider to be under Moroccan occupation.

The assessment revealed that the granting of the tariff preferences set out in the EU-Morocco Association Agreement has a positive impact on the economy of Western Sahara and that this impact should continue and even be enhanced in the future. The fear that extending tariff preferences implies recognition of the status quo is not justified, as nothing in the Agreement implies recognition of Morocco's sovereignty over Western Sahara.

Human rights

The human rights situation in Western Sahara is broadly similar to that in Morocco. The mechanisms and laws governing protection of human rights are the same. However, there are particular circumstances in Western Sahara associated with the political dispute, mainly relating to freedom of speech, of protest and of association. For example, anything that 'undermines territorial integrity', which includes pro-Polisario separatism, is banned and punishable by a fine or even a prison sentence.

Generally speaking, with regard to the expected impact on the human rights situation in the region of extending tariff preferences to products from Western Sahara, an analogy can be drawn with the impact of the EU-Morocco Association Agreement on the human rights situation in Morocco. Insofar as the Agreement encourages regulatory convergence with EU standards in various fields, there is evidence of a positive indirect impact, mainly on

working conditions (for example safety measures), employment law (e.g. child protection), plant health measures and consumer protection.

Economic and commercial impact

The conclusions in relation to the various economic sectors are as follows.

There is an agricultural sector in Western Sahara, mainly producing early fruit (tomatoes and melons), for which there is a market in the EU. The production volume is estimated at 64 000 tonnes and accounts for some 14 000 direct jobs. Its import value is around €65 million. If there were no tariff preferences, these exports would incur customs duties of €6.6 million.

These economic benefits could be expanded if Western Sahara develops its production and its exports to the EU further in the future, as part of projects currently under consideration. This would also have an impact on the number of jobs, which some projections indicate could multiply five-fold. With regard to claims that the development of agricultural activities encouraged by the Agreement would have an impact on the use of natural resources, especially water, Moroccan estimates on the use of the water table - although doubted by some - indicate a modest impact on non-renewable groundwater reserves. Measures are also being taken to reduce the use of water from the water table (such as localised irrigation and seawater desalination). Overall, there appear to be few credible alternatives at present to allow the region's economy to grow, and the disadvantages arising from the use of water resources are offset by the positive impact for Western Sahara.

As regards the fishery products sector, Western Sahara has a large processing industry, comprising 141 facilities authorised to export to the EU. Exports of fishery products from the region in 2015 and 2016 were worth between €100 million and €200 million. Approximately 45 000 jobs were directly or indirectly dependent on these exports to the EU. Extending tariff preferences to these imports would thus have a significant impact on the region's economy and therefore on jobs. It would also be consistent with the EU's efforts to lend financial support to sustain and develop the competitiveness of the sector, jobs and the quality of life of fishermen in Western Sahara, as well as the sustainable exploitation of natural resources. Conversely, refusing to grant these preferences would jeopardise jobs as well as exports and increase the likelihood of these processing activities moving to other locations, probably in Morocco. It would also run contrary to the objectives of the EU to support the development of this sector in Western Sahara.

European importers of fishery products from Western Sahara have stated that, given the high Common External Tariff (excluding preferences - non-preferential rates), it would be far less advantageous to buy these products if no preferential treatment were granted.

Finally, in relation to the phosphate industry, given its current status, it is not immediately and directly affected by Western Sahara's exclusion from the Association Agreement. There are three main reasons for this: 1. Some products (phosphate rock) are subject to a zero rate (most-favoured nation clause); 2. No phosphates are produced for which a market exists in the EU; 3. If certain phosphates produced in Western Sahara were processed in Morocco (or in any other country with which the EU has a preferential agreement), this would be enough to give these products Moroccan preferential origin, so the benefit of the preferences for these products does not depend on the origin of the minerals.

At the same time, it appears that granting preferences to products originating in Western Sahara would have an impact on the future development of the production of certain phosphates. Indeed, the substantial investments that have been announced (of more than \$2 billion) in the production of phosphate-derived products in Western Sahara (mainly phosphoric acid and fertiliser) would be jeopardised if exports to the EU of these phosphate products did not receive preferential treatment. If no preferences were given, it would be more attractive to make investments in other areas where production would benefit from preferences (e.g. Morocco) than in Western Sahara. An interruption of investment in Western Sahara would have an impact on production capacity, product diversity and therefore jobs in the region's phosphate sector.

Generally speaking, the granting of tariff preferences should therefore have a significant impact on the economic development of the region. However, in order to monitor these effects, the Agreement specifically provides for a suitable framework and procedure to allow the parties to assess its consequences during implementation, via regular exchanges of information.

Despite the difficulty in obtaining consistently accurate data, it can be concluded from this study that there are economic and production activities in Western Sahara that would benefit greatly from the same tariff preferences as those granted to the Kingdom of Morocco. In fact, some of these activities - such as the fishery product sector and certain agricultural products - benefited from such preferences until 21 December 2016, leading to economic growth and job creation in Western Sahara. Extending EU tariff preferences to these products would allow these exports to continue.

The necessary diversification of Western Sahara's economic potential involves incentives for outside investment, which will require greater legal security in particular and therefore clarification of the tariff conditions applicable to current and future exports from Western Sahara to the EU. Extending the benefit of tariff preferences to Western Saharan products will secure the conditions for investment and, given the region's untapped economic potential and the current low level of direct foreign investment, foster substantial and rapid growth favourable to local jobs.

In contrast, not granting tariff preferences would significantly jeopardise exports from Western Sahara, especially those of fishery and agricultural products, and it is therefore likely that the already limited number of production activities would fall further still, placing an extra handicap on the region's development. Indeed, if preferences were not extended to Western Saharan products, they would incur customs duties applicable in the Union under the most-favoured nation system and would therefore not enjoy privileged access to the EU market. This would have only a very limited impact on exports of industrial products (phosphates), but a highly negative effect on exports of fishery and agricultural products to the EU.

More generally, the granting of tariff preferences should have a significant impact on the development of Western Sahara's economy, by stimulating investment in these sectors. This is the case, for example, for certain phosphates (such as phosphoric acid and fertiliser), where investments are already planned, for agriculture, where development projects are also underway, and for fishing. However, if these preferences were not granted, investment, growth and the diversification of economic activities, as well as jobs, could be adversely affected.

It is clear from international law, particularly Article 36 of the Vienna Convention, that the granting of the preferences is in itself no more than an additional right for the region of Western Sahara that does not include any obligations in return, and can therefore be presumed to be of benefit to the region. Indeed, in the case of water resources and jobs, the potentially negative effects are entirely indirect. In the case of human rights, no negative effects can be attributed to the tariff preferences.

- **Regulatory fitness and simplification**

The proposal is not linked to REFIT.

4. BUDGETARY IMPLICATIONS

With regard to the EU's customs revenues, no significant budgetary implications should be recorded. On this point, it should be emphasised that, until 21 December 2016, products originating in Western Sahara benefited on a de facto basis from the exemption from customs duties when entering the Union.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

In order to monitor the effects of the Agreement on the people concerned and the exploitation of the natural resources of the territories in question, the Agreement specifically provides for a suitable framework and procedure to allow the parties to assess its consequences during implementation, via regular exchanges of information. The European Union and Morocco agreed to exchange information at least once a year by means of the Association Committee set up under the EU-Morocco Association Agreement. The specific arrangements for this evaluation exercise will be determined at a later date before being adopted by the Association Committee.

Moreover, civil society will be kept informed by the Commission and the European External Action Service of the implementation of the Agreement.

Proposal for a

COUNCIL DECISION

relating to the signature, on behalf of the European Union, of the Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco on the amendment of Protocols 1 and 4 to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4), in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part⁶ ('the Association Agreement') entered into force on 1 March 2000.
- (2) Since the Association Agreement entered into force, the Union has continued to strengthen its bilateral relations with Morocco and awarded it advanced status.
- (3) At the same time, the Union, which has not recognised Morocco's sovereignty over Western Sahara, has consistently reaffirmed its commitment to resolving the dispute in Western Sahara, a non-self-governing territory, large parts of which are currently administered by Morocco. It fully supports the efforts made by the United Nations Secretary-General and his personal envoy to help the parties reach a fair, lasting and mutually acceptable political solution that would ensure the self-determination of the people of Western Sahara under agreements aligned with the principles and objectives enshrined in the Charter of the United Nations, as set out in the Resolutions of the UN Security Council, in particular Resolutions 2152 (2014) and 2218 (2015).
- (4) Since the Association Agreement came into force, products from Western Sahara certified to be of Moroccan origin have been imported to the Union, benefiting from the tariff preferences laid down in its relevant provisions.
- (5) However, in its judgment in Case C-104/16 P⁷, the Court of Justice of the European Union specified that the Association Agreement covered the territory of the Kingdom of Morocco alone and not Western Sahara, which is a non-self-governing territory.
- (6) It should be ensured that the trade flows developed over the years are not disrupted, while establishing appropriate guarantees for the protection of human rights and

⁶ OJ L 70, 18.3.2000, p. 2.

⁷ Judgment of the Court of Justice of 21 December 2016, *Council of the European Union v Polisario Front*, C-104/16 P, ECLI:EU:C:2016:973.

sustainable development in the territories concerned. On 29 May 2017, the Council authorised the Commission to open negotiations with the Kingdom of Morocco with a view to establishing a legal basis to grant the tariff preferences laid down in the Association Agreement to products originating in Western Sahara. An agreement between the European Union and the Kingdom of Morocco is the only means of ensuring that the import of products originating in Western Sahara benefits from preferential origin, given that only the Moroccan authorities are able to ensure compliance with the rules necessary for the granting of such preferences.

- (7) The Commission assessed the potential consequences of the Agreement for sustainable development, particularly with regard to the advantages and disadvantages for the people concerned arising from the tariff preferences given to products from Western Sahara and the exploitation of the natural resources of the territories in question. The effects of tariff benefits on employment, human rights and the exploitation of natural resources are very difficult to measure as they are by nature indirect. Moreover, it is not easy to obtain objective information on this issue.
- (8) Nonetheless, the assessment indicates that, overall, the advantages for the economy of Western Sahara arising from the granting of the tariff preferences laid down in the Association Agreement to products originating in Western Sahara, such as the powerful leverage effect it represents for economic growth and thus social development, outweigh the disadvantages raised in the consultation process, such as the extensive use of natural resources, especially underground water reserves, for which measures have been taken.
- (9) The extension of tariff preferences to products originating in Western Sahara will therefore have a positive overall effect for the people concerned and this effect should continue and even be enhanced in the future. The assessment shows that extending the benefit of tariff preferences to Western Saharan products will secure the conditions for investment and foster substantial and rapid growth favourable to local jobs. The existence in Western Sahara of economic and production activities that would benefit greatly from the tariff preferences laid down in the Association Agreement shows that failure to grant tariff preferences would significantly jeopardise exports from Western Sahara, especially those of fishery and agricultural products. By stimulating investment, the granting of tariff preferences should have a positive impact on the development of Western Sahara's economy.
- (10) The Commission, in liaison with the European External Action Service, has also ensured that the people concerned by the Agreement have been appropriately involved by conducting consultations covering a wide range of socio-economic and political operators from the Western Saharan population. The majority of these operators said they were in favour of extending the tariff preferences in the Association Agreement to Western Sahara. Those who rejected the idea did not identify any tangible negative consequences for the local population, but felt it essential that the Agreement should affirm Morocco's position on Western Sahara. However, nothing in the Agreement implies that it recognises Morocco's sovereignty over Western Sahara. The Union will also continue to step up its efforts in support of the process, initiated through the UN, working towards a peaceful resolution of the dispute.
- (11) The Commission has thus negotiated, on behalf of the Union, an Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco on the amendment of Protocols 1 and 4 to the Association Agreement, which was initialled on 31 January 2018.

- (12) The Agreement helps achieve the aims pursued by the Union under Article 21 of the Treaty on European Union.
- (13) Therefore, the Agreement should be signed on behalf of the European Union, subject to its conclusion at a later date,

HAS ADOPTED THIS DECISION:

Article 1

The signature of the Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco on the amendment of Protocols 1 and 4 to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, is approved on behalf of the Union, subject to the conclusion of that Agreement.

The text of the Agreement to be signed is attached to this Decision.

Article 2

The General Secretariat of the Council shall establish the instrument of full powers authorising the person(s) indicated by the negotiator of the agreement to sign the agreement, subject to its conclusion.

Article 3

This Decision shall enter into force on ...]

Done at Brussels,

*For the Council
The President*



Brussels, 11.6.2018
COM(2018) 479 final

ANNEX

ANNEX

to the

Proposal for a Council Decision

relating to the signature, on behalf of the European Union, of the Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco on the amendment of Protocols 1 and 4 to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part

ANNEX

Draft agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco on the amendment of Protocols 1 and 4 to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part

A. Letter from the Union

Dear Sir/Madam,

I write with reference to the negotiations that took place as part of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part ('the Association Agreement'), concerning the amendment of certain protocols to the Agreement.

Following these negotiations, the European Union and the Kingdom of Morocco have agreed the following:

This Agreement is concluded without prejudice to the respective positions of the European Union and Morocco with regard to the status of Western Sahara.

Both parties reaffirm their support for the United Nations process and back the efforts made by the Secretary-General to reach a definitive political settlement in line with the principles and objectives of the Charter of the United Nations and based on the Resolutions of the UN Security Council.

The European Union and Morocco agreed to insert the joint declaration below, after Protocol 4 to the Association Agreement.

'Joint declaration concerning the application of Protocols 1 and 4 to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part ('the Association Agreement').

1. Products originating in Western Sahara subject to controls by the Moroccan customs authorities shall benefit from the same trade preferences as those granted by the European Union to products covered by the Association Agreement.
2. Protocol 4 shall apply *mutatis mutandis* for the purposes of defining the originating status of the products referred to in paragraph 1, including with regard to proof of origin¹.
3. The customs authorities of the Member States of the European Union and Morocco shall be responsible for ensuring that Protocol 4 is applied to these products.'

The European Union and the Kingdom of Morocco reaffirm their commitment to applying the protocols in accordance with the provisions of the Association Agreement concerning respect for fundamental freedoms and human rights.

The insertion of this joint declaration is based on the long-standing special partnership

¹ The Moroccan customs authorities shall be responsible for applying the provisions of Protocol 4 for the products referred to in paragraph 1.

between the European Union and Morocco, as notably embodied in the advanced status awarded to Morocco, and on the parties' shared desire to deepen and expand the partnership.

In this spirit of partnership and in order to allow the parties to assess the impact of the Agreement, particularly on sustainable development and with regard to the advantages for the people concerned and the exploitation of the natural resources of the territories in question, the EU and the Kingdom of Morocco have agreed to exchange information at least once a year by means of the Association Committee.

The specific arrangements for this evaluation exercise will be determined at a later date before being adopted by the Association Committee at the latest two months after the entry into force of the Exchange of Letters.

This Exchange of Letters can be applied provisionally by mutual agreement notified by an exchange of notifications between the parties, with effect from the date of the signature authorised by the Council of the European Union.

This Agreement in the form of an Exchange of Letters takes effect the day after the date on which the parties notify the completion of the internal procedures for its adoption.

I would be obliged if you would confirm that your Government is in agreement with the above.

Yours faithfully,

For the Council of the European Union

B. Letter from the Kingdom of Morocco

Dear Sir/Madam,

I have the honour to acknowledge receipt of your letter of today's date, which reads as follows:

'Dear Sir/Madam,

I write with reference to the negotiations that took place as part of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part ('the Association Agreement'), concerning the amendment of certain protocols to the Agreement.

Following these negotiations, the European Union and the Kingdom of Morocco have agreed the following:

This Agreement is concluded without prejudice to the respective positions of the European Union and Morocco with regard to the status of Western Sahara.

Both parties reaffirm their support for the United Nations process and back the efforts made by the Secretary-General to reach a definitive political settlement in line with the principles and objectives of the Charter of the United Nations and based on the Resolutions of the UN Security Council.

The European Union and Morocco agreed to insert the joint declaration below, after Protocol 4 to the Association Agreement.

‘Joint declaration concerning the application of Protocols 1 and 4 to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part (‘the Association Agreement’).

1. Products originating in Western Sahara subject to controls by the Moroccan customs authorities shall benefit from the same trade preferences as those granted by the European Union to products covered by the Association Agreement.
2. Protocol 4 shall apply *mutatis mutandis* for the purposes of defining the originating status of the products referred to in paragraph 1, including with regard to proof of origin².
3. The customs authorities of the Member States of the European Union and Morocco shall be responsible for ensuring that Protocol 4 is applied to these products.’

The European Union and the Kingdom of Morocco reaffirm their commitment to applying the protocols in accordance with the provisions of the Association Agreement concerning respect for fundamental freedoms and human rights.

The insertion of this joint declaration is based on the long-standing special partnership between the European Union and Morocco, as notably embodied in the advanced status awarded to Morocco, and on the parties’ shared desire to deepen and expand the partnership.

In this spirit of partnership and in order to allow the parties to assess the impact of the Agreement, particularly on sustainable development and with regard to the advantages for the people concerned and the exploitation of the natural resources of the territories in question, the EU and the Kingdom of Morocco have agreed to exchange information at least once a year by means of the Association Committee.

The specific arrangements for this evaluation exercise will be determined at a later date before being adopted by the Association Committee at the latest two months after the entry into force of the Exchange of Letters.

This Exchange of Letters can be applied provisionally by mutual agreement notified by an exchange of notifications between the parties, with effect from the date of the signature authorised by the Council of the European Union.

² The Moroccan customs authorities shall be responsible for applying the provisions of Protocol 4 for the products referred to in paragraph 1.

This Agreement in the form of an Exchange of Letters takes effect the day after the date on which the parties notify the completion of the internal procedures for its adoption.

I would be obliged if you would confirm that your Government is in agreement with the above.

Yours faithfully'

I am able to confirm that my Government is in agreement with the contents of your letter.

Yours faithfully,

For the Kingdom of Morocco