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COASI 194
ASIE 38
CFSP/PESC 710
COHOM 99
CONOP 66
COTER 101
JAI 772
WTO 194
AGRI 365
ENER 280
TRANS 327
TELECOM 227
ENV 524
EDUC 291

PROPOSAL

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

date of receipt: 13 July 2018

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

No. Cion doc.: JOIN(2018) 21 final

Subject: Joint Proposal for a COUNCIL DECISION on the position to be taken on
behalf of the European Union in the Joint Committee established by the
Framework Agreement on Comprehensive Partnership and Cooperation
between the European Union and its Member States, of the one part, and
the Socialist Republic of Viet Nam, of the other part in relation to the
adoption of the Rules of procedure of the Joint Committee, and the
establishment of subcommittees and specialised working groups and the
adoption of their terms of reference

Delegations will find attached document JOIN(2018) 21 final.

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HIGH REPRESENTATIVE
OF THE UNION FOR
FOREIGN AFFAIRS AND
SECURITY POLICY

Brussels, 13.7.2018
JOIN(2018) 21 final

2018/0284 (NLE)

Joint Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Joint Committee established by the Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part in relation to the adoption of the Rules of procedure of the Joint Committee, and the establishment of subcommittees and specialised working groups and the adoption of their terms of reference

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 Joint Committee established by the Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part ('the Agreement').

2. CONTEXT OF THE PROPOSAL

2.1. The EU-Viet Nam Framework Agreement on Comprehensive Partnership and Cooperation

The Agreement aims to establish a strengthened partnership between the EU and its Member States and Viet Nam and to deepen and enhance cooperation on issues of mutual interest, reflecting shared values and common principles, including through intensifying high-level dialogue. The Agreement will create a coherent, legally binding framework for the EU's relations with Viet Nam. The Agreement entered into force on 1 October 2016.

2.2. The Joint Committee

The Joint Committee is set up by Article 52 of the Agreement. Its main tasks are to facilitate implementation and to further the general aims of the Agreement, as well to maintain overall coherence in the EU-Viet Nam relations. Other functions of the Joint Committee include: monitoring the development of the relations between EU and Viet Nam; exchanging views and making suggestions on any issues of common interest; endeavouring to resolve disputes which might arise in areas covered by the Agreement.

The Joint Committee is to make recommendations and adopt decisions, where appropriate, to give effect to the specific aspects of the Agreement. The Joint Committee meets at the highest possible level. The Joint Committee is to adopt its rules of procedure. It may set up subcommittees and specialised working groups to deal with specific issues.

2.3. The envisaged act of the Joint Committee

During its first meeting, the Joint Committee is to adopt a decision regarding the adoption of the Rules of procedure of the Joint Committee and the terms of reference of the subcommittees and specialised working groups ('the envisaged act').

The purpose of the envisaged act is to adopt, in accordance with Article 52 (5) of the Agreement, the Rules of procedure underpinning the organisation of the Joint Committee and the terms of reference of the subcommittees and specialised working groups to allow for the implementation of the Agreement.

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

The position to be adopted on behalf of the Union should aim at the adoption of the Rules of procedure of the EU – Viet Nam Joint Committee and the terms of reference of the subcommittees and specialised working groups. The position should be based on the draft decisions of the Joint Committee.

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’.

4.1.2. Application to the present case

The Joint Committee is a body set up by an agreement, namely the Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part.

The act which the Joint Committee is called upon to adopt constitutes an act having legal effects. This is because in accordance with Article 52 (5) of the Agreement, the Joint Committee shall adopt its own Rules of procedure.

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.

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.

With regard to an envisaged act that simultaneously pursues a number of objectives, or that 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 envisaged act aims at furthering the objectives of the Agreement and at facilitating its implementation.

The conclusion of the Agreement was based on Article 207 and Article 209 TFEU .

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

4.3. Conclusion

The legal basis of the proposed decision should be Article 207 TFEU and article 209 TFEU in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the Joint Committee will set out its Rules of Procedure, it is appropriate to publish it in the Official Journal of the European Union after its adoption.

Joint Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Joint Committee established by the Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part in relation to the adoption of the Rules of procedure of the Joint Committee, and the establishment of subcommittees and specialised working groups and the adoption of their terms of reference

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207 and 209 in conjunction with Article 218 (9), thereof,

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

Whereas:

- (1) The Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part ('the Agreement') entered into force on 1 October 2016.
- (2) Article 52 (1) of the Agreement establishes a Joint Committee to ensure the proper functioning and implementation of the Agreement.
- (3) Article 52 (5) of the Agreement provides that the Joint Committee is to adopt its Rules of procedure and Article 52 (3) provides that it may set up subcommittees and specialised working groups.
- (4) In order to ensure the effective implementation of the Agreement, the Joint Committee's Rules of procedure should be adopted as soon as possible.
- (5) The position of the Union within the Joint Committee should therefore be based on the attached draft Joint Committee Decisions.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union in the first meeting of the Joint Committee set up by Article 52 of the Framework Agreement between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part, in relation to:

- the adoption of the rules of procedure of the Joint Committee
- the establishment of sub-committees and specialised working groups and the adoption of their terms of reference, shall be based on the draft Decisions of the Joint Committee attached to this Decision.

Article 2

This decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*