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PROPOSAL

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

date of receipt: 6 August 2018

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

No. Cion doc.: COM(2018) 571 final

Subject: Proposal for a COUNCIL DECISION establishing a European Union
Position in view of the adoption of a decision of the EPA Committee set up
by the Stepping Stone Economic Partnership Agreement between Ghana,
of the one part, and the European Community and its Member States, of
the other part, regarding the accession of the Republic of Croatia to the
European Union

Delegations will find attached document COM(2018) 571 final.

Encl.: COM(2018) 571 final



Brussels, 6.8.2018
COM(2018) 571 final

2018/0301 (NLE)

Proposal for a

COUNCIL DECISION

establishing a European Union Position in view of the adoption of a decision of the EPA Committee set up by the Stepping Stone Economic Partnership Agreement between Ghana, of the one part, and the European Community and its Member States, of the other part, regarding the accession of the Republic of Croatia to the European Union

EXPLANATORY MEMORANDUM

1. SUBJECT OF THE PROPOSAL

The attached proposal relates to the adoption of a decision establishing a European Union (the "Union") position in view of the adoption of a decision of the EPA Committee set up by the Stepping Stone Economic Partnership Agreement between Ghana, of the one part, and the European Community and its Member States, of the other part (the "Agreement"), regarding the accession of the Republic of Croatia to the European Union.

2. CONTEXT OF THE PROPOSAL

2.1. Interim Economic Partnership Agreement between Ghana and the EU

The Agreement between Ghana, of the one part, and the European Community and its Member States, of the other part¹, aims to establish an initial framework for a full economic partnership agreement in line with the Cotonou Agreement. The Agreement has been applied provisionally since 15 December 2016.

2.2. EPA Committee

The EPA Committee is the mixed institutional body of the Agreement. Article 73 of the Agreement states that the EPA Committee is responsible for the administration in all fields covered by this Agreement and the achievement of all tasks mentioned in this Agreement. The EPA Committee makes its decisions by consensus. The functioning of the Ghana-EU EPA Committee is described in its rules of procedure agreed by the parties at the first meeting of the EPA Committee in January 2018.

2.3. Envisaged act by the EPA Committee

At its second meeting, on [date], the EPA Committee should adopt a decision regarding the accession of the Republic of Croatia to the Union (the "envisaged act").

Article 77 of the Agreement states that the EPA Committee may decide on any transitional or amending measures that might be necessary regarding the accession of new EU Member States.

The purpose of the envisaged act is to make the amendments to the Agreement following the accession of the Republic of Croatia to the Union.

The envisaged act will become binding on the parties in accordance with Article 77 (3) of the Agreement, which provides that: "The Parties shall review the effects of the accession of new EU Member States on this Agreement. The EPA Committee may decide on any transitional or amending measures that might be necessary."

3. POSITION TO ADOPT ON BEHALF OF THE EU

The Republic of Croatia joined the Union on 1 July 2013. The accession clause in Article 77 (2) of the Agreement provides for Croatia's accession to the Agreement by depositing an Act of Accession. Croatia deposited its Act of accession to the Agreement on 22 March 2017 to

¹ OJ L 287, 21.10.2016, p. 3-319

the General Secretariat of the Council of the Union. For subsequent amendments necessary due to accession, the membership clause provides for a decision of the EPA Committee.

The Union should therefore determine the position to be taken with regard to the adoption of a decision of the EPA Committee regarding the amendments necessary following the accession of the Republic of Croatia to the Agreement.

The proposed Council Decision includes as an annex a draft Decision to be taken by the EPA Committee.

The Agreement applies, on the one hand, to the territories in which the Treaty on the functioning of the European Union ("TFEU") is applied and under the conditions laid down in that Treaty, and, on the other hand, to the territory of Ghana.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) TFEU envisages 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 effect" includes acts having legal effects under the rules of international law governing the proceedings in question. It also includes instruments to which international law confers no binding effect, but which is "capable of decisively influencing the content of the legislation adopted by the EU legislature"².

4.1.2. Application in this case

The EPA Committee is a body created by the Agreement for the purpose of implementing the Agreement.

Article 77 of the Agreement provides that the EPA Committee may decide on transitional measures or necessary amendments to the Agreement in the event of new accession to the European Union.

The act that the EPA Committee is called upon to adopt is an act having legal effects. The envisaged act will be binding under international law, in accordance with Article 77 of the Agreement, as it will amend an international agreement, which is already binding the Union.

The envisaged act does neither complement nor modify the institutional framework of the Agreement.

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

4.2. Substantive legal basis

4.2.1. Principles

² ECJ Ruling 7.10.2014, Germany/Council (OIV), C-399/12, ECLI:EU:C:2014:2258, points 61 to 64.

The substantive legal basis for a decision under Article 218 (9) TFEU depends above all on the purpose and content of the envisaged act for which a position is taken on behalf of the Union. If the envisaged act follows two purposes or has two components and if one of those purposes or components is considered as primary, while the other is incidental, the decision based upon the article 218 paragraph 9 (TFEU) must rely on a single substantive legal basis, namely the one required by the main or predominant purpose or component.

4.2.2. Application in this case

The purpose and content of the envisaged act focuses on trade and trade-related issues. As a result, the substantive legal basis for the envisaged decision is Article 207 TFEU.

4.3. Conclusion

The legal basis for this Council Decision is the TFEU, in particular Article 207 in conjunction with Article 218(9).

5. PUBLICATION OF THE ENVISAGED ACT

Since the decision of the EPA Committee will amend the Agreement, it should be published in the Official Journal of the Union once it is adopted.

Proposal for a

COUNCIL DECISION

establishing a European Union Position in view of the adoption of a decision of the EPA Committee set up by the Stepping Stone Economic Partnership Agreement between Ghana, of the one part, and the European Community and its Member States, of the other part, regarding the accession of the Republic of Croatia to the European Union

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the Stepping Stone Economic Partnership Agreement between the Republic of Ghana, of the one part, and the European Community and its Member States, of the other part³ (the "Agreement"),

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement applies provisionally since 15 December 2016.
- (2) The Treaty concerning the accession of the Republic of Croatia to the European Union (the "Union") was signed on 9 December 2011 and entered into force on 1 July 2013.
- (3) The Republic of Croatia acceded to the Agreement on 8 November 2017 by depositing its Act of Accession.
- (4) Pursuant to Article 77 of the Agreement, the EPA Committee may decide on any amending measures that might be necessary following the accession of new Member States to the Union.
- (5) It is appropriate to determine the position of the Union with regard to the adoption of a decision of the EPA Committee on [date] regarding the amendments to the Agreement which are necessary following the accession of the Republic of Croatia to the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position of the Union with regard to the adoption of a decision taken during the annual meeting on [date] of the EPA Committee set up by the Stepping Stone Economic Partnership Agreement between the Republic of Ghana, of the one part, and the European Community and its Member States, of the other part, regarding the accession of the Republic of Croatia to the European Union, shall be based on the draft decision of the EPA Committee annexed to this decision.

³ OJ L 287, 21.10.2016, p. 1-2

Article 2

After its adoption, the decision of the EPA Committee 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*