



Council of the  
European Union

Brussels, 24 August 2018  
(OR. en)

11690/18

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**Interinstitutional File:**  
**2018/0302(NLE)**

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ACP 67  
WTO 218  
COAFR 203  
RELEX 696

## PROPOSAL

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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) 573 final
Subject:	Proposal for a COUNCIL DECISION establishing the position to be taken on behalf of the European Union in the EPA Committee set up by the stepping stone Economic Partnership Agreement between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part, concerning the accession of the Republic of Croatia to the European Union

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Delegations will find attached document COM(2018) 573 final.

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Encl.: COM(2018) 573 final



Brussels, 6.8.2018  
COM(2018) 573 final

2018/0302 (NLE)

Proposal for a

## **COUNCIL DECISION**

**establishing the position to be taken on behalf of the European Union in the EPA Committee set up by the stepping stone Economic Partnership Agreement between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part, concerning the accession of the Republic of Croatia to the European Union**

## EXPLANATORY MEMORANDUM

### **1. SUBJECT MATTER OF THE PROPOSAL**

This proposal concerns the decision establishing the position to be adopted on behalf of the European Union ('the Union') in the EPA Committee set up by the stepping stone Economic Partnership Agreement between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part ('the Agreement'),<sup>1</sup> with a view to the adoption of a decision of the EPA Committee concerning the accession of the Republic of Croatia to the European Union.

### **2. CONTEXT OF THE PROPOSAL**

#### **2.1. Côte d'Ivoire – EU stepping stone Economic Partnership Agreement**

The aim of the Agreement is to establish an initial framework for a full economic partnership agreement in accordance with the Cotonou Agreement. Since 3 September 2016, the Agreement has been applied on a provisional basis.

#### **2.2. EPA Committee**

The EPA Committee is the joint institutional body of the Agreement. Article 73 of the Agreement provides that the EPA Committee is to be responsible for the administration of all the fields covered by the Agreement and for the achievement of all the tasks mentioned therein. The EPA Committee is to reach its decisions by consensus. The operation of the EPA Committee is laid down in its rules of procedure, approved by the parties in April 2017, as amended by the European Council, and adopted by the parties at the second meeting of the Côte d'Ivoire - European Union EPA Committee in March 2018.

#### **2.3. Act envisaged by the EPA Committee**

At its third meeting on [date], the EPA Committee must adopt a decision concerning the accession of the Republic of Croatia to the Union ('the envisaged act').

Article 77 of the Agreement provides that the EPA Committee may decide on any amending or transitional measures which might be necessary following the accession of new Member States to the Union.

The objective of the envisaged act is to make the necessary 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: 'The Parties shall review the effects of the accession of new Member States of the European Union on this Agreement. The EPA Committee may decide on any transitional measures or amendments which may be necessary.'

### **3. POSITION TO BE ADOPTED ON BEHALF OF THE UNION**

The Republic of Croatia acceded to the Union on 1 July 2013 and deposited its act of accession to the Agreement on 8 November 2017 with the General Secretariat of the Council of the Union. The accession clause in Article 77(2) of the Agreement provides for the

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<sup>1</sup> OJ L 59, 3.3.2009, p. 3-272

accession of Croatia to the Agreement by depositing an act of accession. As regards subsequent amendments which are necessary because of the accession, the accession clause provides for a decision of the EPA Committee.

The Union should therefore determine the position to be adopted in respect of the adoption of the envisaged act of the EPA Committee concerning the accession of the Republic of Croatia to the Agreement.

The Annex to this draft Council Decision contains a draft Decision to be taken by the EPA Committee.

The Agreement shall apply, 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 Côte d'Ivoire.

## **4. LEGAL BASIS**

### **4.1. Procedural legal basis**

#### *4.1.1. Principles*

Article 218(9) 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 having legal effects by virtue of the rules of international law governing the body in question. It also includes instruments which do not have a binding effect under international law, but which are 'capable of decisively influencing the content of the legislation adopted by the EU legislature'<sup>2</sup>.

#### *4.1.2. Application to the present case*

The EPA Committee is a body set up by the Agreement.

Article 77 of the Agreement concerning the accession of new Member States of the Union provides that the EPA Committee may adopt any transitional measures or amendments which may be necessary for the Agreement in the event of a new accession to the Union.

The act which 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 since it contains amendments to an international agreement which is already binding on the Union.

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

Accordingly, the procedural legal basis of the proposed decision is Article 218(9) TFEU.

### **4.2. Substantive legal basis**

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<sup>2</sup> Judgment of the Court of Justice of 7 October 2014, *Germany v Council*, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

#### *4.2.1. Principles*

The substantive legal basis of 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 behalf of the Union. 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 objective and content of the envisaged act concern trade and trade-related issues. Accordingly, the substantive legal basis of the proposed decision is Article 207 TFEU.

### **4.3. Conclusion**

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

## **5. PUBLICATION OF THE ENVISAGED ACT**

As the decision of the EPA Committee will amend the Agreement, it must be published in the Official Journal of the European Union once it has been adopted.

Proposal for a

## COUNCIL DECISION

**establishing the position to be taken on behalf of the European Union in the EPA Committee set up by the stepping stone Economic Partnership Agreement between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part, concerning 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 (TFEU), and in particular Articles 207 and 218(9) thereof,

Having regard to the stepping stone Economic Partnership Agreement between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part ('the Agreement')<sup>3</sup>,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement was concluded on behalf of the European Union ('the Union') by Decision 2009/156/EC<sup>4</sup> and has been applied on a provisional basis since 3 September 2016.
- (2) The Treaty concerning the accession of the Republic of Croatia to the Union was signed on 9 December 2011 and came 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) Under Article 77 of the Agreement, the EPA Committee may decide on any amending measures which might be necessary following the accession of new Member States to the Union.
- (5) The EPA Committee, at its annual meeting on [date], must adopt the decision envisaged concerning the accession of the Republic of Croatia to the Union.
- (6) It is appropriate to establish the position to be taken on behalf of the Union in the EPA Committee concerning the accession of the Republic of Croatia to the Union,

HAS ADOPTED THIS DECISION:

### *Article 1*

The position to be taken on behalf of the Union at the annual meeting of [date] of the EPA Committee set up by the Agreement concerning the accession of the Republic of Croatia to the Union shall be based on the draft decision annexed to this Decision.

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<sup>3</sup> OJ L 59, 3.3.2009, p. 2.

<sup>4</sup> OJ L 59, 3.3.2009, p. 1.

*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*