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European Union

Brussels, 29 March 2019  
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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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<sup>1</sup> Document declassified by the European Commission on 29 March 2019.

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**COVER NOTE**

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

date of receipt: 19 April 2017

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

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No. Cion doc.: COM(2017) 191 final

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Subject: Recommendation for a COUNCIL DECISION authorising the opening of  
negotiations on the adaptation of protocols to the Agreement between the  
European Union and the Kingdom of Morocco

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Delegations will find attached document COM(2017) 191 final.

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Encl.: COM(2017) 191 final



EUROPEAN  
COMMISSION

Brussels, 19.4.2017  
COM(2017) 191 final

Recommendation for a

**COUNCIL DECISION**

**authorising the opening of negotiations on the adaptation of protocols to the Agreement  
between the European Union and the Kingdom of Morocco**

DECLASSIFIED

**EXPLANATORY MEMORANDUM**

**1. CONTEXT OF THE PROPOSAL**

• **Reasons for and objectives of the proposal**

Over almost half a century, the EU and Morocco have developed a rich and multidimensional partnership, by virtue of which an "advanced status" was granted to Morocco in 2008 to reflect the strength of bilateral ties as well as the shared ambitions and commitments of the two parties to advance their common agenda.

At the same time, the EU has consistently reiterated its commitment to the resolution of the conflict in Western Sahara. It fully supports the efforts being made by the United Nations Secretary-General (UNSG) and his Personal Envoy to help the parties find a just, lasting and mutually acceptable political solution which would provide for the self-determination of the people of Western Sahara in the context of arrangements consistent with the principles and purposes of the Charter of the United Nations as provided for in the United Nations Security Council resolutions, including resolution 2152 (2014) and resolution 2218 (2015).

In view of the granting of tariff preferences, the present proposal envisages amendments to Protocol 4<sup>2</sup> and Protocol 1<sup>3</sup> 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 (hereinafter referred to as the 'EU-Morocco Association Agreement' or the 'Association Agreement'), following the judgment of the European Court of Justice of 21 December 2016 in case C-104/16 P, which ruled that the EU-Morocco Association and Agriculture Agreements are not applicable to Western Sahara.

Before the Court ruling, the trade preferences foreseen in the Association Agreement and its protocols had been applied *de facto* to products originating in Western Sahara, a non-self-governing territory. However, such practice may not continue following the judgment of the Court of Justice, unless Protocol 4 on origin is amended in a manner that allows products from Western Sahara to be assimilated to those produced in Morocco. Following the Court ruling, uncertainties in the markets have affected bilateral commercial relations.

The present recommendation aims at authorising negotiations with a view to providing a legal basis to the continued granting of preferences to products originating from Western Sahara, in line with past practice. As these trade preferences on the EU market for agricultural and fisheries products are laid down in Protocol 1 to the Association Agreement, the scope of application of that Protocol ought to be clarified as well. This will avoid trade disruptions while keeping the level of market access to the EU stable, since no new preferences would be granted. The amendments of the relevant protocols of the Association Agreement may at a later stage be complemented, as the case may be, by a subsequent amendment of the

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<sup>2</sup> Protocol 4 to the Euro-Mediterranean Agreement, concerning the definition of "originating products" and methods of administrative cooperation.

<sup>3</sup> Protocol 1 to the Euro-Mediterranean Agreement, concerning the arrangements applicable to the importation into the European Union of agricultural products, processed agricultural products, fish and fishery products originating in the Kingdom of Morocco.

Association Agreement itself. Finally, it should be borne in mind that two cases (C-266/16 and T-180/14) concerning Morocco are still pending before the European Court of Justice with regard to the EU-Morocco Fisheries Partnership Agreement, which are likely to provide further guidance on the conditions for extending an agreement to a non-self-governing territory. Moreover, it is understood that any arrangement will only be provisional for as long as the resolution of the conflict in the context of the United Nations and in accordance with relevant UN Security Council resolutions remains pending.

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

The present recommendation is fully consistent with current trade policy, as customs authorities have *de facto* applied preferences to Western Sahara products certified as having Moroccan origin. No new trade preferences would be granted to Morocco, as the objective is simply to extend the geographical area covered by preferences, and not to alter their amount.

The proposal is consistent with the overarching objectives of the European Neighbourhood Policy inasmuch as it contributes to improving trade and economic relations in the Southern Neighbourhood in a spirit of close cooperation. It is also consistent with the overall EU policy vis-à-vis Morocco, which aims at fostering a privileged partnership with Morocco while not prejudging the outcome of the UN-led process regarding Western Sahara.

The fact that the trade preferences may have a wider scope is not unprecedented, as the EU-Morocco Association Agreement contains two Joint Declarations to the effect that products originating in the Republic of San Marino and in Andorra ‘shall be accepted by Morocco as originating in the Community within the meaning of the Agreement’.

- **Consistency with other Union policies**

The EU position has always been that it is possible to extend its bilateral agreements with Morocco to Western Sahara under certain conditions, as illustrated, e.g. by the Fisheries Partnership Agreement, which explicitly covers the waters off the coast of Western Sahara. Modifying the relevant protocols of the Association Agreement would also allow basing the granting of EU tariff preferences on assessments of benefits for the local populations and of the respect of human rights.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

The recommendation is based on Article 218(3) and (4) of the Treaty on the Functioning of the European Union.

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

The common commercial policy is an exclusive competence of the Union (Art 3(1) TFEU) and in accordance with Article 5(3) TEU the subsidiarity principle is not relevant in areas of exclusive competence.

- **Proportionality**

The recommendation is a proportionate response to the issue at stake. The agreement would not modify the degree of market access to the Union. Rules of origin are defined in the protocol to the Association Agreement; amendments thereof are necessary to achieve the objective and offer a relatively expeditious response to current trade uncertainties affecting Morocco, without prejudice to the UN-led process on Western Sahara and without prejudging the final outcome of the conflict.

Therefore, the recommendation for a Council decision authorising the Commission to negotiate an agreement between the European Union and Morocco on adaptations to protocols to the Association Agreement relating to the origin of goods does not go beyond what is necessary or appropriate to achieve the policy objectives.

- **Choice of the instrument**

The relevant protocols may only be amended by agreement between the parties. This also covers the cooperation needed between authorities in order to implement the trade preferences.

The agreement will take the form of an exchange of letters between the EU and the Kingdom of Morocco.

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

- **Stakeholder consultations**

Exploratory talks have been held with Moroccan authorities and with Member States through the relevant structures of the Council.

The Commission should endeavour to ensure that, at the time of its proposal for signature and conclusion, the people concerned by the agreement have been adequately involved.

- **Impact assessment**

No Impact assessment has been carried out given that the recommendation actually consists in providing a legal basis for preferential treatment that had hitherto been *de facto* consistently applied to Western Sahara products for the past years. Therefore, since the degree of market access will not change, the proposal is unlikely to have any significant commercial impact in terms of trade flows, as compared to the ones existing for the last years.

However, the Commission will ensure, in the most appropriate way, that the Union can take into account information relevant to the sustainable development of Western Sahara, in particular as regards the benefits of the agreement for the local population and the exploitation of natural resources, at the time of signature and also afterwards.

- **Fundamental rights**

Article 2 of the Association Agreement includes a human rights and fundamental freedom clause. This is defined as an essential element of the Agreement, which, if breached, can lead to the suspension of the Agreement. It shall be ensured that the protocols are applied in line with the provisions of the Association Agreement relevant to the respect of fundamental freedoms and human rights.

#### **4. BUDGETARY IMPLICATIONS**

In terms of EU customs revenues, no budgetary implications can be expected as compared to the current situation given that products originating in Western Sahara had *de facto* benefitted from the exemption of customs duties at their entry in the EU.

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Recommendation for a

**COUNCIL DECISION**

**authorising the opening of negotiations on the adaptation of protocols to the Agreement  
between the European Union and the Kingdom of Morocco**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(3) and (4) thereof,

Having regard to the recommendation 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 part, hereafter referred to as the "Association Agreement", entered into force on 1 March 2000.
- (2) In its judgment in Case C-104/16 P, the Court of Justice clarified that the Association Agreement only covers the territory of the Kingdom of Morocco but does not cover Western Sahara, a non-self-governing territory. However, since its entry into force, products coming from Western Sahara and certified as having Moroccan origin have been imported into the Union under the tariff preferences provided for in the relevant provisions of the Association Agreement.
- (3) It is important that the flows of trade which have developed over the years are not disrupted, while ensuring that there are appropriate guarantees for the protection of human rights and the sustainable development of the territories concerned.
- (4) The European Union supports the efforts of the United Nations to find a mutually acceptable political solution which would provide for the self-determination of the people of Western Sahara consistent with the principles and purposes of the Charter of the United Nations.
- (5) It is therefore appropriate to negotiate a modification of the relevant protocols to the Association Agreement.



HAS ADOPTED THIS DECISION:

*Article 1*

The Commission is hereby authorised to negotiate, on behalf of the Union, an international agreement on the adaptation of protocols to the Association Agreement between the European Union and the Kingdom of Morocco. The Commission shall be the head of the negotiating team comprising also the High Representative of the Union for Foreign Affairs and Security Policy.

*Article 2*

The negotiating directives are set out in the Annex.

*Article 3*

The negotiations shall be conducted in consultation with the [name of the special committee to be inserted by the Council].

*Article 4*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council  
The President*