



Brussels, 26.3.2020
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2020/0045 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the EPA Committee established under the stepping stone Economic Partnership Agreement between Ghana, of the one part, and the European Community and its Member States, of the other part, as regards the adoption of the Rules of Procedures of the EPA Committee

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 Committee established under the stepping stone Economic Partnership Agreement (also 'EPA') between Ghana, of the one part, and the European Community and its Member States, of the other part ('the EPA Committee'), in connection with the envisaged adoption of the Rules of Procedure of the EPA Committee.

2. CONTEXT OF THE PROPOSAL

2.1. 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 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') aims at:

- (a) Allowing Ghana to benefit from the enhanced market access granted by the Union within the framework of EPA negotiations and thereby avoiding trade disruption between Ghana and the Union when the transitory trade regime of the Cotonou Agreement expires on 31 December 2007, while waiting for the conclusion of a full EPA;
- (b) Establishing the grounds for the negotiation of an EPA which contributes to poverty reduction, promotes regional integration, economic cooperation and good governance in West Africa and improves capacities of West Africa in the fields of trade policy and trade-related issues;
- (c) Promoting the harmonious and gradual integration of Ghana into the world economy in accordance with its political choices and its development priorities;
- (d) Strengthening existing links between the Parties on the basis of solidarity and mutual interest;
- (e) Creating an agreement compatible with Article XXIV of GATT 1994.

The Agreement is provisionally applied between Ghana, of the one part, and the European Union and its Member States, of the other part, from 15 December 2016.

2.2. The EPA Committee

Article 73 of the Agreement establishes the EPA Committee and provides that it is responsible for the administration in all fields covered by the Agreement and the achievement of all tasks mentioned in the Agreement.

Article 73 of the Agreement foresees that the Parties agree that the composition, organisation and operation of this EPA Committee will respect the principle of equality. The Committee will determine its organisation and functioning rules. The EPA Committee meetings may also be open to third parties. The Economic Community of West African States (ECOWAS) Commission may be invited to the EPA Committee meetings, according to its internal procedures.

Article 2 of the Rules of Procedures, to be adopted, indicates that the EPA Committee shall be composed of representatives of the European Union and of representatives of Ghana, at ministerial or senior official level.

Article 9 of the Rules of Procedures, to be adopted, foresees that the EPA Committee shall adopt its decisions and recommendations by consensus.

2.3. The envisaged act of the EPA Committee

During the first half of 2020, the EPA Committee is to adopt a decision regarding its Rules of Procedure ('the envisaged act').

The purpose of the envisaged act is to establish the rules on the organisation and functioning of the EPA Committee.

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

This proposal for a Council Decision establishes the position to be taken on the Union's behalf in the EPA Committee set up by the Agreement with regard to the Rules of Procedures of the EPA Committee.

The Parties to the Agreement discussed the envisaged Rules of Procedures and agreed that, subject to the Union's decision-making procedures, the EPA Committee should adopt these Rules of Procedure in the first half of 2020.

The substance of the envisaged Rules of Procedure is similar to that of Rules of Procedure of other trade agreements of the Union.

The Rules of Procedure are essential for completing the institutional framework of the Agreement and hence for ensuring a smooth implementation of the Agreement.

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'¹.

4.1.2. Application to the present case

The EPA Committee is a body set up by an agreement, namely the EU-Ghana stepping stone EPA.

The act which the EPA Committee is called upon to adopt constitutes an act having legal effects as it will establish binding legal rules for the functioning of the EPA Committee.

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.

¹ 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. 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.

4.2.2. Application to the present case

The main objective of the Agreement and content of the envisaged act relate to the common commercial policy.

Therefore, the substantive legal basis of the proposed decision is Article 207(4), first subparagraph, TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 207(4), first subparagraph TFEU, in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the EPA Committee will introduce the rules of procedure for the EPA Committee under the Agreement, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(4) first subparagraph, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The stepping stone Economic Partnership Agreement ('EPA') between Ghana, of the one part, and the European Community and its Member States, of the other part, was signed by the European Union and its Member States on 28 July 2016² ('the Agreement'). It is provisionally applied between the European Union and its Member States, of the one part, and Ghana, of the other part, from 15 December 2016³.
- (2) Pursuant to Article 73(3) of the Agreement, the EPA Committee is responsible for the administration in all fields covered by that Agreement and the achievement of all tasks mentioned in that Agreement. Pursuant to Article 73(2) the EPA Committee determines its organisation and functioning rules.
- (3) The EPA Committee is to adopt a decision with regard to its Rules of Procedures in the first half of 2020.
- (4) It is appropriate to establish the position to be taken on the Union's behalf in the EPA Committee, as the envisaged EPA Committee decision will establish legally binding rules for the functioning of the EPA Committee,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf shall be based on the decision of the EPA Committee establishing the Rules of Procedure of the EPA Committee which is attached to this Decision.

² The stepping stone Economic Partnership Agreement between Ghana, of the one part, and the European Community and its Member States, on the other part, (OJ L 287, 21.10.2016, p. 1).

³ Council Decision (EU) 2016/1850 of 21 November 2016 on the signature and provisional application of the stepping stone Economic Partnership Agreement between Ghana, of the one part, and the European Community and its Member States, of the other part

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*