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2019/0098 (NLE)

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 Partnership and Cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines, of the other part as regards the adoption of decisions on the rules of procedure of the Joint Committee and of the terms of reference of the specialised sub-committees.

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position on the envisaged adoption of the Rules of Procedure of the Joint Committee and of the terms of reference of the specialised sub-committees to be taken on behalf of the Union in the Joint Committee established by the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines, of the other part ('the Agreement').

2. CONTEXT OF THE PROPOSAL

2.1. The EU-Philippines Framework Agreement on Partnership and Cooperation

The Agreement aims to establish a strengthened partnership between the EU and its Member States and the Philippines, and to deepen and enhance bilateral 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 the Philippines. The Agreement was signed on 11 July 2012 in Phnom Penh and entered into force on 1 March 2018.

2.2. The Joint Committee

The Joint Committee is set up by Article 48 of the Agreement. Its main tasks are to ensure the proper functioning and implementation of the Agreement, the setting of priorities in relation to the aims of the Agreement and making recommendations for promoting the objectives of the Agreement. Other functions of the Joint Committee include to oversee the proper functioning of any sectoral agreement or protocol concluded or to be concluded between the Parties.

The Joint Committee is to make recommendations and take decisions, where appropriate, to attain the objectives of the Agreement. The Joint Committee meets at senior official level. The Joint Committee is to adopt its rules of procedure. It may set up specialised sub-committees 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 a decision concerning the terms of reference of the specialised sub-committees ('the envisaged acts').

The purpose of the envisaged acts is to adopt, in accordance with Article 48 (5) of the Agreement, the rules of procedure underpinning the organisation of the Joint Committee and the terms of reference of the specialised sub-committees 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 – Philippines Joint Committee and the terms of reference of the specialised sub-committees. 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*’¹.

4.1.2. Application to the present case

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

The act which the Joint Committee is called upon to adopt constitutes an act having legal effects. This is so because in accordance with Article 48(5) of the Agreement, the Joint Committee is obliged to adopt its own rules of procedure which will be binding on the Union.

The envisaged acts do 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 acts in respect of which a position is taken on the Union's behalf. If an 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 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 acts aim at furthering the objectives of the Agreement and at facilitating its implementation. Rules of Procedure concern the general functioning of a body set up on the basis of an agreement. Therefore, the field within which the contested decision falls must be determined in light of the Agreement as a whole.²

¹ Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraphs 61-64.

² Case C-244/17 Commission v Council (Kazakhstan), ECLI:EU:C:2018:662, paragraph 40.

In this particular case, the predominant purpose and component of the Agreement is cooperation with a developing country (Article 209 TFEU).³ Thus, the appropriate legal basis should be Article 209 TFEU.

4.3. Conclusion

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

5. PUBLICATION OF THE ENVISAGED ACTS

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.

³ For the scope of the development policy see case C-377/12, Commission vs. Council (the Philippines), paragraphs 36-37.

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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 209 in conjunction with Article 218 (9), thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines, of the other part ('the Agreement') entered into force on 1 March 2018.
- (2) Article 48 (1) of the Agreement establishes a Joint Committee to ensure the proper functioning and implementation of the Agreement.
- (3) Article 48 (5) of the Agreement provides that the Joint Committee is to adopt its rules of procedure and Article 48 (3) provides that it may set up specialised sub-committees.
- (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) It is therefore appropriate to establish the position to be taken on the Union's behalf within the Joint Committee. The position of the Union within the Joint Committee should be based on the attached draft Joint Committee Decisions.

HAS ADOPTED THIS DECISION:

Article 1

The position on the envisaged adoption of the rules of procedure of the Joint Committee and the adoption of the terms of reference of its sub-committees, to be taken on the Union's behalf in the first meeting of the EU-Philippines Joint Committee, 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*