



EUROPEAN
COMMISSION

HIGH REPRESENTATIVE
OF THE UNION FOR
FOREIGN AFFAIRS AND
SECURITY POLICY

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2016/0166 (NLE)

Joint Proposal for a

COUNCIL DECISION

on the conclusion of the Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Kazakhstan, of the other part

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The attached proposal constitutes the legal instrument for the conclusion of the Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Kazakhstan, of the other part (hereinafter referred to as 'the Agreement').

Relations between the European Union (EU) and the Republic of Kazakhstan (Kazakhstan) are currently based on the Partnership and Cooperation Agreement signed in Brussels on 23 January 1995, which entered into force in June 1999.

On 13 April 2011, the Council adopted a Decision authorising the European Commission to negotiate the Enhanced Partnership and Cooperation Agreement between the European Union and Kazakhstan. Negotiation of the Agreement began in June 2011, and the EU and Kazakhstan initialled the Agreement on 20 January 2015. Following the adoption on 26 October 2015 of the Council Decision on the signing, on behalf of the European Union, and provisional application of the Agreement, the Agreement was signed on 21 December 2015, subject to its conclusion at a later date.

For the EU, the Agreement constitutes an important step towards increased political and economic involvement in Central Asia. By strengthening political dialogue and improving cooperation in a broad range of areas, it will provide the basis for more effective bilateral engagement with Kazakhstan.

The Agreement includes the EU's standard political clauses on human rights, the international criminal courts, weapons of mass destruction, small arms and light weapons and counter-terrorism. It also contains provisions on cooperation in the areas of health, the environment, climate change, energy, taxation, education and culture, employment and social affairs, science and technology and transport. In addition, it covers legal cooperation, the rule of law, money laundering and terrorist financing, organised crime and corruption.

The Agreement contains a substantive trade section with important commitments in several trade policy areas. These will ensure a better regulatory environment for businesses in Kazakhstan, and thus bring substantial economic benefits for EU businesses.

The Agreement was negotiated and initialled by the European Union and the Republic of Kazakhstan as the Union's Agreement only. As the European Union's Member States were unanimous in preferring a mixed Agreement, it was agreed to amend the initialled text of the Agreement and the Joint Proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the European Commission for a Council Decision on the signing and provisional application of the Agreement accordingly. In response to this, the European Commission made the following statement:

'Given the political and economic relevance of the Enhanced Partnership and Cooperation Agreement (EPCA) with Kazakhstan, the Commission stresses the importance of signing and ratifying it swiftly. The Commission reiterates its position that a "mixed" agreement is legally unnecessary in the present case and that all matters covered by the agreement fall within the

EU's competence. The Commission therefore regrets that the Member States insist on signing and ratifying the EPCA with Kazakhstan as a "mixed" agreement. The Commission reserves its position as to the future presentation of acts linked to the legal nature of an international agreement.'

Following the adoption of the Council Decision on the signing, on behalf of the European Union, and provisional application of the Agreement, the Agreement was signed by the European Union and the Republic of Kazakhstan as a mixed Agreement.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The choice of the legal basis 'must rest on objective factors amenable to judicial review, which include the aim and content of that measure'¹. The legal basis of a measure depends on its predominant purpose. Provisions that are ancillary to a principal purpose do not require a separate legal basis. Measures that do not have a single predominant purpose may, however, be founded on multiple legal bases², provided that the decision-making procedures entailed by each legal basis are mutually compatible.

As described in Article 2, 'Aims of this Agreement', the Agreement is designed to establish a partnership involving more extensive cooperation between the parties, based on mutual interest. It is designed to develop the relationship between the two parties in all the areas it covers. Such cooperation is described as a 'process between the Parties that contributes to international and regional peace and stability and economic development, and is structured around principles that the Parties also reaffirm through their international commitments, notably those under the UN and the OSCE'.

As regards its content, the Agreement is based on three key points:

- *Political dialogue and cooperation in the field of foreign and security policy*: Title I, 'General principles and aims of this Agreement' and Title II, 'Political dialogue: cooperation in the field of foreign and security policy'. Title II contains provisions on political dialogue, democracy and the rule of law, foreign and security policy, space security, serious crimes of international concern, conflict prevention and crisis management and counter-terrorism.
- *Trade and business*: Title III, 'Trade and business', includes provisions on trade in goods, customs, technical barriers to trade, sanitary and phytosanitary matters, services and establishment, capital movement and payments, intellectual property, government procurement, raw materials and energy, trade and sustainable development, competition and trade dispute settlement.
- *Sectoral cooperation*: Title IV, 'Cooperation in the area of economic and sustainable development'; Title V, 'Cooperation in the area of freedom, security and justice'; Title VI, 'Other cooperation policies'; Title VII 'Financial and technical cooperation'. These Titles include provisions on cooperation in a wide range of areas

¹ Case C-155/07, *Parliament v Council*, paragraph 34.

² Case C-490/10, *Parliament v Council*, paragraph 46.

such as migration, the environment, taxation, transport, education, the information society, agriculture and rural development.

This proposal for a Council Decision on the conclusion of the Agreement is based on Article 37 of the Treaty on European Union, and on Articles 207 and 209 of the Treaty on the Functioning of the European Union (TFEU), in conjunction with Article 218(6)(a) and the second subparagraph of Article 218(8) thereof.

Legal nature

The Agreement sets up an institutional framework comprising the Cooperation Council, the Cooperation Committee and the Parliamentary Cooperation Committee (see Title VIII, ‘Institutional framework’, and Title IX, ‘General and final provisions’). It also introduces a procedure for settling disputes, to be used should one of the parties fail to fulfil its obligations under the Agreement.

The Agreement is concluded for an unlimited period, and can be terminated at six months’ notice.

As of its entry into force, the Agreement supersedes the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Kazakhstan, of the other part, signed on 23 January 1995.

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

The Council has been kept informed at all stages of the negotiations. It has been consulted in the Working Party on Eastern Europe and Central Asia and in the Trade Policy Committee.

The European Parliament has also been kept promptly and fully informed throughout the negotiations.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 37 thereof,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 207 and 209, in conjunction with Article 218(6)(a) and the second subparagraph of Article 218(8) thereof,

Having regard to the joint proposal by the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy,

Having regard to the consent of the European Parliament,

Whereas:

- (1) In accordance with Council Decision (EU) 2016/123 of 26 October 2015³, the Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Kazakhstan, of the other part, was signed on 21 December 2015, subject to its conclusion at a later date.
- (2) The Agreement constitutes an important step towards the increased political and economic involvement of the European Union in Central Asia. By strengthening political dialogue and improving cooperation in a broad range of areas, it will provide the basis for more effective bilateral engagement with the Republic of Kazakhstan.
- (3) The Agreement should be approved on behalf of the European Union,

HAS ADOPTED THIS DECISION:

Article 1

The Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Kazakhstan, of the other part, is hereby approved on behalf of the European Union.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall designate the person(s) empowered to undertake, on behalf of the European Union, the notification provided for in Article 281 of the Agreement in order to express the consent of the European Union to be bound by the Agreement.

³ OJ L 29, 4.2.2016, p. 1.

Article 3

This Decision shall enter into force on the day of its adoption⁴.

Done at Brussels,

*For the Council
The President*

⁴ The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.