



HIGH REPRESENTATIVE
OF THE UNION FOR
FOREIGN AFFAIRS AND
SECURITY POLICY

Brussels, 23.11.2016
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2016/0373 (NLE)

Joint Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Union, of the Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Canada, of the other part

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The present proposal concerns the conclusion of the Strategic Partnership Agreement (SPA) between the European Union and its Member States, of the one part and Canada, of the other part (hereafter ‘the Agreement’).

On 8 December 2010, the Council adopted a Decision authorising the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy to negotiate a Framework Agreement between the European Union and its Member States, on the one part, and Canada, of the other part. The negotiations on the Agreement commenced in September 2011 and concluded in September 2014 with its initialling. The European External Action Service and the Commission were involved in the negotiating process. Member States were consulted throughout the negotiating process at meetings of the relevant Council Working Parties. The European Parliament was kept regularly informed throughout the negotiations.

Following the adoption of the Council Decision on the signing and provisional application of the Agreement on 28 October 2016, the Agreement was signed on 30 October 2016 at the 16th EU-Canada Summit.

The High Representative and the Commission consider that the objectives set by the Council in its directives on the negotiation of the Agreement have been met and that the Agreement can be submitted for conclusion. The present joint proposal concerns the legal instrument concluding the Agreement.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• The aim and content of the agreement

The EU and Canada have a history of extensive cooperation, dating back to the 1976 Framework Agreement for commercial and economic cooperation.

Cooperation between the EU and Canada has evolved with time to cover political dialogue and Common Foreign Security Policy-related issues, and a broad range of sectors including environment, justice and security, migration and integration, fisheries, education, culture, human rights, northern development and indigenous issues, youth exchanges and transport security.

The aim of the SPA is to strengthen EU - Canada political ties and cooperation on foreign and security issues, and to advance cooperation on a large number of policy areas besides trade and economics.

The Agreement enshrines EU-Canada common democratic values and will advance cooperation on a bilateral and multilateral level. The SPA will strengthen political dialogue in fields such as climate change, energy, environment, development, research and innovation, education and culture, migration, counter-terrorism and the fight against organised crime and cybercrime. It reaffirms the Parties' commitment to safeguarding international peace and security by preventing the proliferation of weapons of mass destruction and undertaking measures to deal with the illicit trade in small arms and light weapons.

The SPA provides the mechanism for conducting political dialogue by organising annual summits at leaders level and consultations at ministerial level. It also establishes a Joint Ministerial Committee, which replaces the previous Transatlantic Dialogue, and a Joint Cooperation Committee with the objective of monitoring the development of the strategic relationship between the Parties.

The Agreement provides for the possibility of suspending its application in case of a violation of essential elements of the Agreement such as human rights and non-proliferation. In addition, the Parties recognise that a particularly serious and substantial violation of human rights or non-proliferation could also serve as grounds for the termination of the Comprehensive Economic and Trade Agreement in accordance with Article 30(9) of that Agreement.

The SPA, in conjunction with the CETA, is expected to provide tangible benefits and opportunities to the citizens of the EU and Canada.

- **Legal basis**

Article 218(6)(a)(iii) TFEU states that, where an agreement establishes a specific institutional framework by organising cooperation procedures, the Council shall adopt a decision concluding the agreement after obtaining the consent of the European Parliament. Moreover, the second subparagraph of Article 218(8) TFEU states that the Council shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act.

With regard to a measure that simultaneously pursues a number of objectives, or that has several components, which are inseparably linked without one being incidental to the other, the European Court of Justice has held that, where various provisions of the Treaty are therefore applicable, such a measure will have to be founded, exceptionally, on the various corresponding legal bases, unless the procedures laid down for each legal basis are incompatible with each other (Case C-490/10 Parliament v Council, ECLI: EU:C:2012:525, paragraph 46).

The Agreement pursues objectives and has components in the areas of the Common Foreign and Security Policy and technical cooperation with developed countries. These aspects of the Agreement are inseparably linked without one being incidental to the other.

The Common Foreign and Security Policy is a field for which unanimity is required for adopting a Union act. The Agreement establishes an institutional framework for cooperation between the EU and Canada.

The legal basis of the proposed decision should therefore be Article 37 TEU and Article 212(1) TFEU read in conjunction with Article 218(6)(a) TFEU and the second subparagraph of Article 218(8) TFEU. No additional provisions are required as a legal basis (see Case C-377/12 Commission v Council, ECLI: EU: C:2014:1903).

- **The necessity of the proposed decision**

Article 216 TFEU provides that the Union may conclude an agreement with one or more third countries where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope.

The Treaties provide for the conclusion of agreements such as the SPA, namely in Articles 37 TEU and Article 212(1) TFEU. Moreover, the conclusion of the SPA is necessary for the purpose of achieving, within the framework of the Union's policies, objectives referred to in the Treaties. These include strengthening human rights, the non-proliferation of weapons of mass destruction, counter-terrorism, fighting corruption and organised crime, migration, the environment, energy, climate change, transport, science and technology, employment and social affairs, education and agriculture.

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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 Article 212(1), in conjunction with Article 218(6)(a) and the second subparagraph of Article 218(8) thereof,

Having regard to the joint proposal from 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 [XXX] of [...] ¹, the Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Canada, of the other part ("the Agreement") was signed on 30 October 2016, subject to its conclusion at a later date.
- (2) The objective of the Agreement is to strengthen cooperation across a wide spectrum of policy fields including human rights and fundamental freedoms, democracy and the rule of law, international peace and security and effective multilateralism, economic and sustainable development, justice, freedom and security. The Agreement will strengthen political dialogue and consultation and will establish a Joint Ministerial Committee and a Joint Cooperation Committee with the objective of monitoring the development in the strategic relationship between the Parties.
- (3) The Agreement should be approved on behalf of the Union,

HAS ADOPTED THIS DECISION:

Article 1

The Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Canada, of the other part, is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

¹ Council decision (EU) 2016/... of ... on the signing, on behalf of the Union, and provisional application of the Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Canada, of the other part OJ L [...], [...], p. [...].

Article 2

The President of the Council shall designate the person(s) empowered to proceed, on behalf of the Union, to give the notification provided for in Article 30 of the Agreement, in order to express the consent of the Union to be bound by the Agreement.

Article 3

This Decision shall enter into force on the date of its adoption².

Done at Brussels,

*For the Council
The President*

² 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.