



Brussels, 19.7.2017
COM(2017) 382 final

2017/0160 (NLE)

Proposal for a

COUNCIL DECISION

establishing a European Union Position in view of the adoption of a decision of the EPA Committee set up by the Interim agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part, regarding the accession of the Republic of Croatia to the European union and changes in the list of countries and territories associated with the European Union

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The attached proposal constitutes the legal instrument for establishing the Union position to be adopted on its behalf in a body set up by an agreement between the Union and third countries. In particular, it relates to the implementation of the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part (hereinafter referred to as 'the Agreement'), regarding the adoption of a decision of the EPA Committee set up by the Agreement; the EPA Committee's decision is attached to the Council Decision.

The Agreement was signed on 29 August 2009 and has been provisionally applied since 14 May 2012.

The Agreement applies, on the one hand, to the territories in which the Treaty on the functioning of the European Union is applied and under the conditions laid down in that Treaty, and, on the other hand, to the territories of the Signatory Eastern and Southern Africa States (Madagascar, Mauritius, Seychelles and Zimbabwe).

The Article 67 of the Agreement states that the EPA Committee may decide on any transitional or amending measures that might be necessary concerning the accession of new Member States to the European Union. The Republic of Croatia joined the European Union on 1 July 2013 and deposited its Act of accession to the Agreement on 22 March 2017.

Annex IX to Protocol 1 to the Agreement lists the overseas countries and territories for the purposes of this Protocol without prejudice to the status of these countries and territories, or future changes in their status. Article 70 of the Agreement provides that the Annexes and Protocols to the Agreement form an integral part thereof and may be reviewed and or amended by the EPA Committee.

Saint Barthélemy (FR) became an overseas territory associated with the European Union on 1 January 2012. Mayotte (FR) became an outermost region of the European Union on 1 January 2014. On the same date, entered into force Council Decision 2013/755/EU on the association of the overseas countries and territories with the European Union, which applies to all the overseas countries and territories listed in Annex II to the TFEU. The list of overseas countries and territories in Annex IX to Protocol 1 of the Agreement should therefore be updated

The European Union should therefore determine the position to be taken with regard to the adoption of a decision of the EPA Committee regarding the accession of the Republic of Croatia to the European Union and changes in the list countries and territories associated with the European Union.

This Council Decision includes as an annex a draft Decision to be taken by the EPA Committee.

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

This proposal implements the Union's common commercial policy toward third Partner countries, based on the provisions of the above-mentioned Agreement. The proposed amendments to the Agreement are consistent with the TFEU and the Agreement.

- **Consistency with other Union policies**

The proposed amendments to the Agreement are consistent with other Union policies.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for this Council Decision is the TFEU, in particular Article 207 in conjunction with Article 218(9).

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

The common commercial policy, in accordance with Article 3 of the TFEU, is defined as an exclusive Union competence. Therefore, the subsidiarity principle does not apply.

- **Proportionality**

This proposal is necessary in order to implement the Union's international commitments set out in the Agreement.

- **Choice of the instrument**

This proposal is in accordance with Article 218(9) TFEU, which envisages the adoption by the Council of decisions on international agreements. There is no other legal instrument that could be used in order to achieve the objective expressed in this proposal.

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

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable

- **Stakeholder consultations**

Not applicable

- **Collection and use of expertise**

Not applicable

- **Impact assessment**

Not applicable

- **Regulatory fitness and simplification**

The proposal is not subject to REFIT procedures; it does not imply any costs for SMEs; and it does not raise any issues from the viewpoint of the digital environment.

- **Fundamental rights**

The proposal does not have consequences for the protection of fundamental rights in the Union.

4. BUDGETARY IMPLICATIONS

This proposal has no budgetary implications.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable

- **Explanatory documents (for directives)**

Not applicable

- **Detailed explanation of the specific provisions of the proposal**

This proposal aims to adopt a Union position in relation to a decision to be taken by the joint institutional body of that Agreement, i.e. the EPA Committee. The accession clause in Article 66 of the Agreement provides for the "automatic accession" for Croatia to the Agreement by virtue of depositing an act of accession with the General Secretariat of the Council of the EU. For the subsequent modifications necessary because of the accession, the accession clause provides for a decision by the EPA Committee.

With regard to the changes in the list of the OCTs, Article 70 of the Agreement provides that the Annexes and Protocols to the Agreement form an integral part thereof and may be reviewed and or amended by the EPA Committee.

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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 and Article 218(9) thereof,

Having regard to the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part¹,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part (hereinafter referred to as "the Agreement") applies provisionally since 14 May 2012.
- (2) The Treaty concerning the accession of the Republic of Croatia to the European Union was signed on 9 December 2011 and entered into force on 1 July 2013.
- (3) The Republic of Croatia acceded to the Agreement on 22 March 2017 by depositing its Act of Accession.
- (4) Pursuant to Article 67 of the Agreement, the Economic Partnership Agreement Committee ("EPA Committee") may decide on any amending measures that might be necessary in connection with the accession of new Member States to the European Union.
- (5) Article 70 of the Agreement provides that the Annexes and Protocols to the Agreement form an integral part thereof and may be reviewed and or amended by the EPA Committee.
- (6) Following the change of status of Mayotte² and Saint-Barthélemy³, and the entry into force of Council Decision 2013/755/EU on the association of the overseas countries

¹ OJ L 111, 24.4.2012, p. 2.

² European Council Decision 2012/419/EU of 11 July 2012 amending the status of Mayotte with regard to the European Union (OJ L 204, 31.7.2012, p. 131.).

³ European Council Decision 2010/718/EU of 29 October 2010 amending the status with regard to the European Union of the island of Saint-Barthélemy (OJ L 325, 9.12.2010, p. 4.).

and territories with the European Union⁴, the list of overseas countries and territories in Annex IX to Protocol I of the Agreement should be updated,

- (7) It is appropriate to determine the position of the Union with regard to the adoption of a decision of the EPA Committee regarding the accession of the Republic of Croatia to the European Union and changes of status of some countries and territories associated with the European Union,

HAS ADOPTED THIS DECISION:

Article 1

The position of the Union with regard to the adoption of a decision of the EPA Committee set up by the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part, regarding the accession of the Republic of Croatia to the European Union and changes in the list of countries and territories associated with the Union, shall be based on the draft decision of the EPA Committee annexed to this Decision.

Minor changes to the draft Decision may be agreed by the representative of the Union in the EPA Committee without further decision of the Council.

Article 2

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

Done at Brussels,

*For the Council
The President*

⁴ Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union ("Overseas Association Decision") (OJ L 344, 19.12.2013, p. 1).