



Brussels, 14.10.2019
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2019/0220 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Joint Committee and the Subcommittee on Trade and Investment established by the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and Mongolia, of the other part as regards the adoption of decisions on the rules of procedure of the Joint Committee and the rules of procedure of the Subcommittee on Trade and Investment

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 rules of procedure of the Subcommittee on Trade and Investment to be taken on the Union's behalf in the Joint Committee and the Subcommittee on Trade and Investment established by the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and Mongolia, of the other part ('the Agreement').

2. CONTEXT OF THE PROPOSAL

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

The Agreement aims to establish a strengthened partnership between the EU, its Member States and Mongolia and to deepen and enhance cooperation on issues of mutual interest, reflecting shared values and common principles. The Agreement will create a coherent, legally binding framework for the EU's relations with Mongolia. The Agreement entered into force on 1 November 2017.

2.2. The Joint Committee and the Subcommittee on Trade and Investment

The Joint Committee is set up by Article 56 of the Agreement. Its main tasks are to: (a) ensure the proper functioning and implementation of this Agreement; (b) set priorities in relation to the aims of this Agreement; (c) make recommendations for promoting the objectives of this Agreement.

The Joint Committee is to make recommendations and adopt decisions, where appropriate, to give effect to the specific aspects of the Agreement. The Joint Committee meets at the appropriate high level. The Joint Committee is to adopt its rules of procedure. It may set up specialised working groups to deal with specific issues.

The Subcommittee on Trade and Investment is set up by Article 28 of the Agreement. Its task is to assist the Joint Committee in the performance of its tasks by dealing with all areas of cooperation on trade and investment.

2.3. The envisaged act of the Joint Committee and of the Subcommittee on Trade and Investment

The Joint Committee shall adopt a decision regarding the adoption of its rules of procedure and of specialised working groups. The Subcommittee on Trade and Investment shall adopt a decision regarding the adoption of its rules of procedure ('the envisaged act').

The purpose of the envisaged acts is to adopt, in accordance with Articles 28 (3) and 56 (6) of the Agreement, the rules of procedure underpinning the organisation of the Joint Committee and the rules of procedure of the Subcommittee on Trade and Investment and of specialised working groups 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-Mongolia Joint Committee and the rules of Procedure of the Subcommittee on Trade and Investment and of specialised working groups. The position should be based on the draft decisions of the Joint Committee and of the Subcommittee on Trade and Investment.

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 and the Subcommittee on Trade and Investment are bodies 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 Mongolia, of the other part.

The acts which these bodies are called upon to adopt constitute acts having legal effects. This is because in accordance with Article 56 (2) of the Agreement, the Joint Committee and the Subcommittee on Trade and Investment shall adopt decisions which are binding on the Parties.

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 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.

With regard to an envisaged 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. The rules of procedure of the Joint Committee concern the general functioning of a body set up on the basis of an agreement. Therefore, the field within which the 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 to 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 ACT

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, Commission v Council (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 Mongolia, of the other part ('the Agreement') entered into force on 1 November 2017.
- (2) Article 56 (1) of the Agreement establishes a Joint Committee to ensure the proper functioning and implementation of the Agreement.
- (3) Article 56 (6) of the Agreement provides that the Joint Committee is to adopt its rules of procedure and Article 56 (4) provides that it may set up specialised working groups.
- (4) Article 28 (1) of the Agreement establishes a Subcommittee on Trade and Investment
- (5) Article 28 (3) of the Agreement provides that the Sub-committee on Trade and Investment establish its rules of procedure.
- (6) In order to ensure the effective implementation of the Agreement, the Joint Committee's rules of procedure should be adopted as soon as possible.
- (7) It is therefore appropriate to establish the position to be taken on the Union's behalf within the Joint Committee and the Subcommittee on Trade and Investment. The position of the Union within the Joint Committee and the Subcommittee on Trade and Investment should be based on the attached draft Decisions of the Joint Committee and of the Subcommittee on Trade and Investment.

HAS ADOPTED THIS DECISION:

Article 1

The position on the envisaged adoption of the rules of procedure of the Joint Committee to be taken on the Union's behalf in the EU-Mongolia Joint Committee shall be based on the draft Decision of the Joint Committee attached to this Decision.

The position on the envisaged adoption of the rules of procedure of the Subcommittee on Trade and Investment to be taken on the Union's behalf in the EU-Mongolia Subcommittee on Trade and Investment shall be based on the draft Decision of the Subcommittee on Trade and Investment attached to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*