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2020/0263 (NLE)

Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, and provisional application of the Agreement amending the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part, as regards the accessions of the Independent State of Samoa and the Solomon Islands, and of future accessions of other Pacific Island States

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Reasons for and objectives of the proposal

The attached proposal for a Council Decision constitutes the legal instrument for the signature and provisional application of the Agreement amending the Interim Partnership Agreement between the European Union, of the one part, and the Pacific States, of the other part, pursuant to Article 218(5) TFEU.

The Council authorised the Commission to open negotiations for Economic Partnership Agreements (EPAs) with African, Caribbean and Pacific (ACP) Group of countries on 12 June 2002.

On 30 July 2009 the Union signed the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part¹ (the ‘Interim Partnership Agreement’), which establishes a framework for an Economic Partnership Agreement.

The Agreement aims to:

- (a) enable Pacific States to benefit from the improved market access offered by the EU;
- (b) promote sustainable development and the gradual integration of Pacific States into the world economy;
- (c) establish a free trade area between the Parties based on the common interest, through the progressive liberalisation of trade in a manner compliant with applicable WTO rules and the principle of asymmetry, taking account of the specific needs and capacity constraints of the Pacific States, in terms of levels and timing for commitments;
- (d) set up the appropriate dispute settlement arrangements; and
- (e) set up the appropriate institutional arrangements.

The Interim Partnership Agreement has been provisionally applied between the Union and Papua New Guinea since 20 December 2009 and between the Union and the Republic of Fiji since 28 July 2014.

Article 80 of the Interim Partnership Agreement provides that other Pacific Island States can accede to the Agreement on the basis of the submission of a GATT 1994 Article XXIV compliant market access offer. Accordingly, the Independent State of Samoa and Solomon Islands acceded to the Interim Partnership Agreement on 21 December 2018² and 7 May 2020³, respectively and have provisionally applied it since 31 December 2018 and 17 May 2020, respectively. The Parties’ procedures are underway for the accession of the Kingdom of Tonga, which has indicated its interest to accede to the Interim Partnership Agreement.

Following the accessions of Samoa and Solomon Islands, it is necessary to amend the Interim Partnership Agreement in order to list these countries as Parties to the Interim Partnership Agreement. Similar technical amendments will need to be made to the Interim Partnership Agreement each time a Pacific Island State accedes to it.

¹ Council Decision of 13 July 2009 on the signature and provisional application of the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part (OJ L 272, 16.10.2009, p. 1).

² OJ L 333, 28.12.2018, p. 1.

³ OJ L 85, 20.3.2020, p. 1.

1.2 The EPA Trade Committee

Article 68 of the Interim Partnership Agreement establishes a Trade Committee that is composed of representatives of the Parties (the EU and the Pacific States).

The Trade Committee shall deal with all matters necessary for the implementation of the Interim Partnership Agreement. In the performance of its functions, the Trade Committee may:

- (a) set up and oversee any special committees or bodies necessary for the implementation of the Agreement;
- (b) meet at any time agreed by the Parties;
- (c) consider any issues under the Agreement and take appropriate action in the exercise of its functions; and
- (d) take decisions or make recommendations in cases provided for in the Agreement.

Article 78 (revision clause) provides that the Trade Committee may review the Interim Partnership Agreement, its implementation, operation and performance where necessary and make appropriate suggestions to the Parties for its amendment.

Outcome of the sixth and seventh Trade Committees

On 24 October 2018, the Parties to the Interim Partnership Agreement (EU, PNG, Fiji), and the Independent State of Samoa, Solomon Islands and Tonga as observers, exchanged views on the **scope and procedure** for introducing the technical amendments to the Agreement, which are necessary following an accession.

The Parties mapped the **scope** of the amendments as being limited to listing an acceding Pacific State as a Party to the Interim Partnership Agreement and adding its market access offer to Annex II of the Agreement (customs duties on products originating in the EU Party). Concerning the **procedure**, the Parties noted that currently the Trade Committee does not have the power to introduce such amendments (the legal basis under the Interim Partnership Agreement is not sufficient). The Parties exchanged views on the following three procedural options.

Option 1 – To consider that the amendments concerned are implicitly introduced in the Interim Partnership Agreement by virtue of an accession (Article 80); therefore, there is no need to expressly introduce them through a specific procedure.

Option 2 – The Trade Committee could make a declaration about how to read the Interim Partnership Agreement following an accession, with regard to the needed technical amendments. Article 68(4)(c) provides the legal basis for such declaration.

Option 3 – The Parties could amend Article 80 of the Interim Partnership Agreement to confer power to the Trade Committee to adopt the necessary decisions in the light of a new accession.

The Trade Committee agreed that Option 3 would provide legal certainty, and undertook to recommend to the Parties to amend Article 80 accordingly. Further to its seventh meeting on 3-4 October 2019, the Trade Committee has adopted a recommendation to that end, in line with the position to be taken on behalf of the Union (Council Decision (EU) 2019/1707 of 17 June 2019, OJ L 260, 11.10.2019, p. 45).

1.3. Consistency with existing policy provisions in the policy area

The proposal implements the Partnership Agreement between the members of the African, Caribbean and Pacific (ACP) Group of States, of the one part, and the European Community and its Member States, of the other part ('ACP-EU Partnership Agreement', or Cotonou Agreement)⁴, which is the legal basis for the Interim Partnership Agreement.

The accession of other Pacific States to the Interim Partnership Agreement reinforces the legal framework of the EU trade relations with partner countries, facilitates reciprocal trade and the insertion in the global economy. It also incorporates those States into the regime of joint rules and institutions established by the Agreement.

1.4. Consistency with other Union policies

The Interim Partnership Agreement is a trade agreement which contributes to the harmonious development of world trade, which extends asymmetric market access to the newly acceding States and allows them to shield sensitive sectors from liberalisation, while providing a large number of safeguards and a clause for infant industry protection. The Agreement contains provisions on the rules of origin that facilitate their exports into the EU. It further contains provisions on sustainable development (Article 3), whereby the Parties reaffirm that the objective of sustainable development shall be an integral part of the provisions of this Agreement, consistent with the overarching objectives and principles set out in Cotonou Agreement, and especially the general commitment to reduce and eventually eradicate poverty in a way that is consistent with the objectives of sustainable development. These provisions contribute to the objective of Policy Coherence for Development and are consistent with Article 208(2) TFEU.

2. LEGAL ELEMENTS OF THE PROPOSAL

2.1. Legal basis

The legal basis for this Council decision is the Treaty on the Functioning of the European Union, in particular the first subparagraph of Article 207(4), in conjunction with Article 218(5), thereof.

2.2. Subsidiarity (for non-exclusive competence)

The common commercial policy, in accordance with Article 3 of the TFEU, is an exclusive Union competence.

2.3. Proportionality

This proposal is necessary in order to implement the Union's international commitments, as set out in the ACP-EU Partnership Agreement, in particular to conclude new WTO compatible trading arrangements progressively removing barriers to trade between the Parties and enhancing cooperation in all areas relevant to trade with the Pacific States.

2.4. Choice of the instrument

There exists no other legal instrument that could be used in order to achieve the objective expressed in this proposal.

⁴ OJ L 287, 4.11.2010, p. 3. Agreement as amended by the Agreement signed in Luxembourg on 25 June 2005 (OJ L 209, 11.8.2005, p. 27) and by the Agreement signed in Ouagadougou on 22 June 2010 (OJ L 287, 4.11.2010, p. 3).

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

3.1. Impact assessment

A Sustainability Impact Assessment (SIA) of the EU-ACP Economic Partnership Agreements was carried out between 2003 and 2007. The terms of reference for this project were published by the European Commission in 2002 under a competitive call for tender. As a result of this call for tender a five-year framework contract was awarded to PwC France in August 2002. A draft version of the SIA's final report was presented to stakeholders in Europe during the EU Civil Society Dialogue meeting organised by the European Commission on 23 March 2007 in Brussels, Belgium.

3.2. Regulatory fitness and simplification

The approval of the Agreement amending the Interim Partnership Agreement is not subject to REFIT procedures; it does not imply any costs for the Union SMEs; and it does not raise any issues from the viewpoint of the digital environment.

3.3. Fundamental rights

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

4. BUDGETARY IMPLICATIONS

The proposed Decision has no budgetary implications.

5. OTHER ELEMENTS

5.1. Detailed explanation of the specific provisions of the proposal

Article 1 of the proposal approves the signing of the Agreement amending the Interim Partnership Agreement on behalf of the Union.

Article 2 authorises the Council Secretariat General to establish the instrument of full powers to sign the Agreement amending the Interim Partnership Agreement.

Article 3 specifies that the Agreement amending the Interim Partnership Agreement shall be applied on provisional basis.

Article 4 establishes the date of the entry into force of the Decision.

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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(4), first subparagraph, in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 12 June 2002, the Council authorised the Commission to open negotiations for Economic Partnership Agreements with the African, Caribbean and Pacific (ACP) Group of States¹.
- (2) The Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part² (the ‘Interim Partnership Agreement’), which establishes a framework for an Economic Partnership Agreement, as signed in London on 30 July 2009. The Interim Partnership Agreement has been provisionally applied between the Union and Papua New Guinea since 20 December 2009 and between the Union and Fiji since 28 July 2014.
- (3) Article 80 of the Interim Partnership Agreement provides for the accession of other Pacific Island States. By Decision (EU) 2018/1908³ and Decision (EU) 2020/409⁴, the Council approved the accessions of Samoa and of Solomon Islands to the Interim Partnership Agreement, respectively. Samoa acceded to the Interim Partnership Agreement on 21 December 2018 and has provisionally applied it since 31 December 2018, and Solomon Islands acceded to the Interim Partnership Agreement on 7 May 2020 and has provisionally applied it since 17 May 2020.
- (4) Following the accessions of Samoa and of Solomon Islands, for reasons of legal certainty, it is necessary to amend the Interim Partnership Agreement in order to list these countries as Parties to the Interim Partnership Agreement. A similar amendment

¹ Council Directives for the negotiations of Economic Partnership Agreements with ACP countries and regions (9930/02 (DG E II) HH/sg).

² OJ L 272, 16.10.2009, p. 2.

³ Council Decision (EU) 2018/1908 of 6 December 2018 on the accession of Samoa to the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part (OJ L 333, 28.12.2018, p. 1.)

⁴ Council Decision (EU) 2020/409 of 17 February 2020 on the accession of Solomon Islands to the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part (OJ L 85, 20.3.2020, p. 1.)

needs to be made to the Interim Partnership Agreement each time a Pacific Island State accedes to the Agreement.

- (5) Article 68 of the Interim Partnership Agreement establishes a Trade Committee that is to deal with all matters necessary for the implementation of the Agreement. It is appropriate to empower the Trade Committee to decide on any amendment to the Interim Partnership Agreement that might be necessary following the accession of other Pacific Island States.
- (6) By Decision (EU) 2019/1707⁵, the Council decided on the position to be taken on behalf of the Union in the Trade Committee as regards those amendments, which were agreed at the seventh meeting of the Trade Committee held on 4 October 2019.
- (7) Therefore, the Agreement amending the Interim Partnership Agreement should be signed on behalf of the Union, subject to its conclusion at a later date.
- (8) As Article 76(2) of the Interim Partnership Agreement provides for its provisional application pending its entry into force, the Agreement amending the Interim Partnership Agreement should be applied provisionally,

HAS ADOPTED THIS DECISION:

Article 1

1. The signing of the Agreement amending the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part, as regards the accessions of the Independent State of Samoa and the Solomon Islands, and of future accessions of other Pacific Island States, is hereby approved on behalf of the Union, subject to the conclusion of the said agreement.
2. The text of the Agreement to be signed is attached to this Decision.

Article 2

The Council Secretariat General shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person(s) indicated by the negotiator of the Agreement.

Article 3

The Agreement shall be applied provisionally, in accordance with Article 76(2) of the Interim Partnership Agreement, as from the day of its signature, pending its entry into force.

Article 4

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

Done at Brussels,

For the Council
The President

⁵ Council Decision (EU) 2019/1707 of 17 June 2019 on the position to be taken, on behalf of the European Union, in the Trade Committee established under the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part, as regards a recommendation for certain amendments to be made to the Agreement to take account of the accession of Samoa and of future accessions of other Pacific Island States (OJ L 260, 11.10.2019, p. 45.)